

Committee on Judicial Ethics
Teleconference
Friday, February 5, 2010

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Linda K. Lager, Vice Chair, Judge Robert J. Devlin, Jr., Judge Francis X. Hennessy (at 9:45 am) and Associate Professor Jeffrey A. Meyer. Staff present: Martin R. Libbin, Esq., Secretary and Viviana L. Livesay, Esq., Assistant Secretary.

MINUTES

- I. Justice Schaller called the meeting to order at 9:35 a.m. Although publicly noticed, no members of the public attended.
- II. The Committee members present unanimously approved the draft Minutes of the January 29, 2010 meeting.
- III. The Committee considered Judicial Ethics Informal Opinion 2010-04 concerning whether a Judicial Official, who served as an assistant attorney general (AAG) approximately 15 years ago, must recuse him/herself from presiding over any cases in which his/her former client is a party or, at a minimum, disclose the prior relationship. Based on the facts presented, the participating members of the Committee unanimously determined that the Judicial Official is not disqualified from presiding over the case involving a former client subject to the following conditions: (1) the case is not one that was handled by the Attorney General's Office at the time the Judicial Official served as an AAG, (2) the Judicial Official does not believe that he or she has any personal bias (favorable or unfavorable) involving the client of the Attorney General's Office, and (3) the former client will not be defending policies or practices that the Judicial Official helped to formulate or defend. In addition, the Committee concluded that the Judicial Official does not have any affirmative obligation to provide notice to the litigants of the prior relationship. See *also* JE 2008-21.
- IV. Judge Hennessy joined the teleconference.
- V. The Committee considered Judicial Ethics Informal Opinion 2010-02. The facts of this inquiry are as follows: A Judicial Official is on the board of a tax exempt non-profit organization and serves as the organization's historian. The organization raises funds by holding an annual sporting event. In addition to collecting admission fees in connection with the event, the organization solicits and receives contributions from sponsors, as well as producing a program book that is distributed at the event. An independent contractor designs and edits the program book and solicits the ads that

appear in the program book. The ads in the program book normally exceed the cost of the publication (distributed free on the day of the event), including the independent contractor's fee. The Judicial Official's title is not mentioned, but the Judicial Official's name appears with the articles. The Judicial Official does not solicit any of the sponsors or the ads for the program book. Each year, the net proceeds raised by the organization are given to various charities.

(1) The Judicial Official has been asked to co-author a book about the history of the sporting event the charity sponsors. The Judicial Official would not accept any payment; however, the co-author, who is unrelated to the Judicial Official, and who will design and produce the book, will be compensated. It is possible that the non-profit organization will be the publisher of the book and would retain any net profits after costs for the co-author, printing, etc. The Judicial Official's official title would not be used. May the Judicial Official serve as a co-author consistent with Canon 5 of the Code of Judicial Conduct? (2) May the Judicial Official author articles to be included in the program book in the Judicial Official's capacity as the organization's historian? (3) May the Judicial Official serve as emcee at the awards ceremony following the conclusion of the annual sporting event?

Based upon the information provided, the Committee members unanimously determined as follows: (1) The Judicial Official may co-author the book about the sporting event. There is no indication that the book would detract from the dignity of the judicial office or interfere with the performance of judicial duties. Co-authoring the book does not constitute fund raising. The Judicial Official should be aware that if his or her co-author appears before the Judicial Official, the Judicial Official may have a duty to recuse himself or herself. Finally, the Judicial Official should retain the right to review any biographical information that may be published in connection with the book even though in this case his/her official title will not appear in the book. (2) The Judicial Official may author articles to be included in the program book, even though the program book is used as a fund-raiser. On the facts presented, the submission of the articles and their inclusion in the program book do not constitute "soliciting funds" within the meaning of Canon 5 (b) (2). Furthermore, with the understanding that the Judicial Official's title will not appear in conjunction with his authorship of any articles, there is no indication that the articles would detract from the dignity of the judicial office or interfere with the performance of judicial duties. (3) The Judicial Official may not serve as the emcee at the awards ceremony. The awards ceremony is the culmination of the annual fund raising activities. Serving as the emcee is the functional equivalent to being a guest of honor or speaker at a fund raising event, which is prohibited by Canon 5 (b) (2).

VI. The meeting adjourned at 9:51 a.m.