

Committee on Judicial Ethics
Teleconference
Tuesday April 19, 2011

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Edward R. Karazin, Jr., and Professor Jeffrey A. Meyer, and Judge Thomas Corradino, alternate. Staff present: Martin R. Libbin, Secretary.

MINUTES

- I. With three members present (Judge Corradino joined the meeting after item III, below), Justice Schaller called the meeting to order at 9:18 a.m. Although publicly noticed, no members of the public attended.
- II. The Committee members present unanimously approved the Minutes of the March 4, 2011 meeting.
- III. The Committee members present ratified the text of the summary for Informal Opinion JE 2011-07.
- IV. The Committee considered Judicial Ethics Informal Opinion 2011-08 concerning whether a Judicial Official may preside over foreclosure and other cases involving a financial institution if the Judicial Official owns 500 shares of stock worth between \$6,500 and \$7,000 in the financial institution. The facts presented included that the financial institution has over a billion shares of stock, is regularly involved in collection and other litigation, and has generated annual dividends that have ranged between less than \$100 and in excess of \$1,000.

Background: In Judicial Ethics Informal Opinion 2011-07, the Committee majority determined that a \$25,000 investment in a financial institution under similar circumstances was a prohibited economic interest in a party because the investment was more than an insignificant interest that could not raise a reasonable question as to the Judicial Official's impartiality. The remaining Committee member believed that the investment was de minimis unless it represented a substantial portion of the Judicial Official's portfolio; however, on the facts presented in that case, the Judicial Official should recuse himself or herself due to an appearance of impropriety under Rule 1.2.

Standard Adopted: Based upon the requirement for the disclosure of individual investments in excess of \$5,000 on a Judicial Official's annual financial disclosure form as well as the standard adopted in some other jurisdictions, and in order to provide guidance for Judicial Officials as to when an investment is de minimis and, therefore, does not require a Judicial Official to recuse himself or herself, the Committee adopted the following standard:

An investment that is (1) five thousand dollars (\$5,000) or less and also (2) one percent (1%) or less in an entity, shall be deemed de minimis, whereas an interest in excess of either of that amount or that percentage shall be deemed an economic interest unless exempted by the definition of “economic interest” in the Terminology section of the Code of Judicial Conduct. The Committee noted that even when a Judicial Official has a de minimis interest, the Judicial Official must consider whether factors, such as an investment that holds special significance to the Judicial Official, requires disqualification. Furthermore, while an economic interest in the subject matter in controversy or in a party to a proceeding requires disqualification pursuant to Rule 2.11(a)(3), the Committee noted that pursuant to Rule 2.11(a)(2), an economic interest that is not in a party or the subject matter in controversy does not require automatic disqualification unless that interest could be substantially affected by the proceeding. The Committee further concluded that a Judicial Official disqualified in accordance with the above provisions may seek remittal of disqualification in accordance with Rule 2.11(c).

- V. The Committee began discussions with respect to Informal Opinion 2011-09 concerning whether a Judicial Official may serve as a delegate to the annual meeting of an organization that promotes, inter alia, a particular national origin and religious belief, and may receive a stipend, from the local chapter that the Judicial Official would be representing, to partially offset the cost of attending the meeting. Discussion followed about the proper framework for determining whether any particular organization is one that “practices unlawful discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, physical or mental disability, or sexual orientation” within the meaning of Rule 3.6. Justice Schaller suggested evaluating organizations in accordance with the approach taken by the Arizona Judicial Ethics Advisory Committee in its opinion 94-07; however, since Connecticut’s standard is “unlawful” instead of “invidious” discrimination, only the first two questions need be answered. Arizona listed those questions as follows: “The first question is whether the organization discriminates based on race, national origin, religion or gender. Next, the organization can be examined to determine whether it ‘is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited.’ If so, the discrimination is not prohibited.”

Professor Meyer noted that an alternative approach would be that taken by the New York Judicial Ethics Committee in opinion 96-82. In that matter, the Committee advised the inquiring Judicial Official of relevant provisions of the Code but declined to render an opinion as to whether the Masons was an organization that practiced invidious discrimination. The Committee stated that it was not “equipped to undertake the kind of fair (sic) ranging investigation into the history, background, policies and internal membership of the organization that would be required” and left it to the inquiring Judicial Official to make his or her own determination. Professor Meyer further noted

that his quick search of case law revealed no case in which the particular organization was found to have engaged in unlawful discrimination.

Discussion of this opinion was continued to the next meeting.

- VI. At 9:57 a.m. the Committee voted to go into Executive Session to receive an attorney-client communication. The Executive Session ended at 10:05.
- VII. The next meeting was tentatively set for Wednesday April 27, 2011 at 9:15 a.m. The meeting adjourned at 10:06 a.m.