



**Committee on Judicial Ethics Advisory Opinions
New Haven Judicial District Courthouse
235 Church Street, New Haven
Tuesday, July 10, 2007 at 4 p.m.**

Members present: Judge Barry R. Schaller, chair; Judge Robert J. Devlin, Jr.; Judge Linda K. Lager and Judge Socrates H. Mihalakos. Staff present: Melissa Farley, Esq. and Martin Libbin, Esq.

MINUTES

- I. Judge Schaller called the meeting to order at 4:04 p.m.

Judge Schaller explained the background of the Committee. He originally prepared a memorandum for the executive committee of the Connecticut Judges Association, outlining alternate ways for judges to obtain prompt, confidential and accurate advisory opinions... Judge Schaller reported that the General Assembly considered a proposal during the last legislative session which would have authorized the Judicial Review Council to provide advisory ethics opinions to judges. This bill did not go forward. Chief Justice Rogers thereafter appointed this Committee to study the issue and present recommendations for a Judicial Branch ethics advisory committee. The members of the Committee agreed that this resource would be extremely useful.

Judges currently use informal methods to obtain advice on ethics issues. Some judges consult with other judges who have expertise in this area. Other judges consult with the American Judicature Society resource or with counsel at Legal Services who researches the issues and prepares informal opinions.

- II. Judge Schaller defined the goals of the Committee on Judicial Ethics Advisory Opinions. The Committee has been charged with developing a proposal for the Chief Justice's review to provide a procedure for judges to obtain ethics advisory opinions.
- III. The Committee discussed the Massachusetts system, which may be a useful model for Connecticut. The Massachusetts advisory committee is designated as the Committee on Judicial Ethics. In Massachusetts, the Supreme Judicial Court hears matters regarding disciplinary action

by judges after preliminary fact finding by the Commission on Judicial Conduct. Massachusetts offers two basic types of opinions, namely, informal and formal. Most judges seek informal opinions, which are confidential. Staff counsel keeps a record of the request, and reports to the chair, who consults with the other members. If they deem it appropriate to issue an informal opinion, they provide the judge with advice orally.

When a judge in Massachusetts seeks a formal opinion, the judge can receive protection from disciplinary proceedings if the facts are stated fully and correctly and the opinion is strictly followed. These opinions are not confidential. This process takes longer, as an opinion is drafted and circulated to the members of the committee who must vote to approve the opinion.

- IV. The Committee on Judicial Ethics Advisory Opinions discussed the following issues:
- a. **Whether the new committee would need to be implemented by statutory or rule-making:** the members determined that statutory authority would be needed if protection in proceedings before the Judicial Review Council were to be sought. If protection were not a factor, however, formal opinions could still serve as prima facie evidence of good faith. Whether to provide for protection or defer any such action is a policy decision. Alternate recommendations on this issue can be provided.
 - b. **The composition of the membership:** the members reached preliminary consensus on recommending 5 members, consisting of 4 judges and one law professor, specializing in professional ethics, who is not engaged in the practice of law. The question arose as to whether family support magistrates would be able to obtain advisory opinions.
 - c. **The method of appointment of the future committee:** the members reached preliminary consensus to recommend that the Chief Justice would be the appointing authority, with provision for recommendations by the Judges' Association.

- d. **Terms:** the preliminary consensus was that the members should have three-year staggered terms.
- e. **Confidentiality:** the members agreed that confidentiality is essential except in the case of formal opinions that would carry some form of protection for judges.
- f. **Meetings:** the new committee would ordinarily meet on a monthly basis.

Formal and/or informal opinions: the members discussed the possibility of allowing judges to seek either oral or written advice on an informal basis, considering that the goal is to set up a system that will encourage the maximum number of judges to seek advice on ethics issues. The same quality of answers should be provided, whenever possible, with the understanding that time pressure is a factor. Judges would be able to choose whether to follow the advisory opinion. Judges should be aware that an oral opinion may not be as thoroughly researched as a written advisory opinion.

- g. The members also discussed the need to provide a consistent body of decisions.

The Committee also discussed the issue of whether the informal opinions, properly redacted, should be accessible to the judges in some way. One suggestion was to post them on the judges secure intranet site.

The question arose as to whether a judge appearing before the Judicial Review Council would be criticized for not seeking an ethics opinion. The members agreed, however, that the issue will be whether or not the judge violated the Code of Judicial Conduct. The fact that the judge sought an ethics opinion could serve as a mitigating factor; the fact that the judge did not seek an ethics opinion should not serve as an aggravating factor in the disciplinary proceedings.

- h. **Procedure for obtaining advisory opinions:** the members discussed a possible procedure for obtaining advisory opinions. Procedures should be simple and straightforward

and accessible on the Judicial website. The members concluded that requests for advice would not have to be in writing.

i. The consensus was that the process could be initiated by telephone call or e-mail to staff counsel. If the facts were complicated, the committee could request the judge to put the facts in writing. In addition, the members discussed whether the new committee should decline to answer hypothetical questions or questions not directly related to judges (as in Massachusetts). The preliminary consensus was not to provide rules that preclude particular types of inquiries but to provide for discretion not to answer certain types of requests. Generally, hypotheticals would not likely be answered. Inquiries appearing to involve non-judges, such as family members, might turn out to concern judges directly. The committee should have discretion to determine the nature of the request.

j. Procedural rules: the members discussed the need for the new committee to adopt its own procedural rules which should be posted on the Judicial Branch website.

k. Judicial staff Counsel Support: Judge Schaller asked Attorney Libbin to e-mail him a list of the types of ethics questions he has received as well as any written opinions provided.

l. There was a discussion as to whether it would be necessary for the Rules Committee to adopt a rule to establish the new committee or whether that could be accomplished by a recommendation from the Executive Committee to the judges that they approve the proposal at a special meeting. It was noted that the judges of the Superior Court, Appellate Court and Supreme Court would probably need to vote to adopt the proposal. Judge Schaller mentioned that he and Judge Keller, along with the Rules Committee, will be reviewing the ABA Revised Model Code of Judicial Conduct as well as Connecticut's Code. It was noted that the Code, itself, might need to be amended to refer to the new committee or for other purposes related to the new committee.

- V. **Assignments:** Judge Schaller agreed to develop, with Attorney Libbin's assistance, a draft proposal including rules of the new committee and procedures. Judge Schaller will distribute the draft proposal prior to the next meeting with the goal of reaching a consensus at the next meeting. The approved proposal would then be submitted to the Chief Justice.
- VI. The next meeting will be scheduled in the latter part of September.
- VII. The meeting was adjourned at 5:25 p.m.