

Committee on Judicial Ethics
Teleconference
Thursday, July 22, 2010

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Linda K. Lager, Vice Chair, Judge Robert J. Devlin, Jr., and Judge Francis X. Hennessy. Staff present: Martin R. Libbin, Esq., Secretary, Viviana L. Livesay, Esq., Assistant Secretary.

MINUTES

- I. With the above noted members present, Justice Schaller called the meeting to order at 9:30 a.m. Although publicly noticed, no members of the public attended.
- II. The four Committee members present unanimously approved the draft Minutes of the July 14, 2010 meeting.
- III. The Committee considered Judicial Ethics Informal Opinion 2010-22 concerning whether a Judicial Official may speak before a group of doctors, lawyers and others at an out-of-state conference hosted by a non-profit organization regarding the general use and presentation of forensic and scientific evidence in a criminal trial. If it is permissible to speak, may the Judicial Official receive an honorarium as well as reimbursement for the costs of the conference, travel, lodging and meals?

The inquiring Judicial Official in JE 2010-11 has resubmitted his/her inquiry with modified facts. Under the revised information provided, the Judicial Official indicated that if permitted to speak at the out-of state conference, he/she would not discuss his/her views of the evidence presented at the criminal trial he/she presided over beyond what was articulated in the ruling from the bench. Instead, the Judicial Official would discuss the general use and presentation of forensic and scientific evidence in a criminal trial. The idea would be to explain to those steeped in the science the challenges they face presenting such evidence to a judge or jury who does not have the same background or knowledge. Based on the revised facts presented, the participating Committee members determined as follows:

The Judicial Official may speak at the conference regarding “the general use and presentation of forensic and scientific evidence in a criminal trial” subject to the limitations set forth in JE 2010-11 and the conditions set forth in Formal Advisory Opinion JE 2010-21 which were premised on Canons 2, 3 and 4 of the existing Code of Judicial Conduct (hereinafter, “CJC”) and Rule 3.1 of the Code of Judicial Conduct which takes effect on January 1, 2011 (hereinafter, “New CJC”):

(1) The Judicial Official should not comment on a pending or impending matter or make any statement that might reasonably be expected to impair the fairness of a pending or impending matter (see also CJC Canon 3(a)(6) and New CJC Rule 2.10(A));

(2) The Judicial Official's participation should not be such as to lead a reasonable person to question his/her capacity to decide impartially any issue under discussion that may come before the Judicial Official (see also CJC Canon 4 and New CJC Rule 2.10(A)), and specifically:

(A) the Judicial Official should not suggest that he/she would adopt a particular interpretation of disputed legal issues,

(B) the Judicial Official should not make statements that indicate a predisposition regarding any particular case, issue or witness that may come before the Judicial Official, and

(C) the Judicial Official should ensure that his/her participation will not interfere with the proper performance of his/her judicial duties or create grounds for disqualification;

(3) The Judicial Official should not offer legal or other advice to the conference participants as to how they should handle specific matters and should exercise caution in answering any questions that seek to elicit such advice (see also CJC Canon 5(f) and New CJC Rule 3.10);

(4) In the event that the Judicial Official chooses to comment on a case that he/she presided over, any such commenting is subject to the following restrictions:

(A) if the case involves a confidential juvenile matter, it would not be proper to reveal information that would lead to the identity of the juvenile involved (see also CJC Canon 2(a) and New CJC Rule 1.1 and 1.2),

(B) if the case is now an erased matter, it would not be proper to discuss any specific information that is attributable to it (see also CJC Canon 2(a) and New CJC Rule 1.1),

(C) disclosure of any confidential information acquired in the Judicial Official's judicial capacity would not be proper (see also CJC Canon 2 and New CJC Rule 3.5), and

(D) it would not be proper to state personal views that may go beyond what was specifically stated in oral or written rulings or on the record of the particular case (see also CJC Canon 2 and New CJC Rule Canons 1 & 2);

(5) The Judicial Official must be willing and available to participate in appropriate educational activities for other groups, if requested and available (see also CJC Canon 2 and New CJC Canons 1 and 2); and

(6) The Judicial Official should retain the right to review and pre-approve the use of any biographical information or other material used to describe the Judicial Official's participation in the program and to review any post-presentation publications (see also CJC Canon 2(b) and New CJC Rules 1.3 and 2.4(C)).

To the extent compensation is involved, the Committee determined that this single instance of speaking at an out-of-state seminar attended by doctors, lawyers and others does not appear to violate the general provisions of Canon 5 (c)(1) in that it does not reflect adversely upon the Judicial Official's impartiality, interfere with judicial duties (provided the time away from the Judicial Official's job is approved) and does not involve frequent transactions with persons who are likely to come before the court on which the Judicial Official serves. The payment of travel, hotel, meals and conference fees qualify as reimbursement of expenses pursuant to Canon 6. A \$300 honorarium does not exceed a reasonable amount and, therefore, provided that other keynote speakers receive a similar honorarium, acceptance of the payment is permitted by Canon 6. The Judicial Official would need to verify that the honorarium is comparable to what is provided to non-judge keynote speakers. Furthermore, the Judicial Official should report the honorarium as income to the extent required by law. (See also Conn. Gen. Stat. § 51-46a and New CJC Rules 3.14 & 3.15)

The Committee noted that this opinion should not be construed to repudiate the conclusions reached in Informal JE 2010-11, especially the determination regarding the prohibition against discussing scientific evidence presented in an erased case.

- IV. The Committee considered Judicial Ethics Informal Opinion 2010-23 concerning whether a Judicial Official has a duty to disclose and/or recuse himself or herself when the Judicial Official's spouse is the beneficial owner of a small amount of stock in a corporation that is the majority partner in a second business that appears as a party or intervener before the Judicial Official.

A Judicial Official's spouse is the beneficial owner of a small amount of stock (valued at less than \$1,000 with annual dividends of less than \$100) in a multi-billion dollar corporation that does business in Connecticut. The corporation is the majority partner in a second business. The Judicial Official has inquired about his or her duty to recuse himself or herself or to disclose

the fact of the spouse's beneficial ownership of the stock of the corporation to the parties in a case if the partnership (but not the corporation) appears before the Judicial Official either as a party or intervener. Based upon the facts presented, the participating Committee members unanimously determined that the JO's spouse has a financial interest in a party to the proceeding within the meaning of Canon 3(c)(1) of the existing Code of Judicial Conduct and, therefore, the Judicial Official should recuse himself or herself subject to a remittal of disqualification by the parties in accordance with Canon 3(d). The participating Committee members noted that under the Code of Judicial Conduct effective January 1, 2011, Rule 2.11 provides that disqualification is required in any proceeding in which a judge's impartiality might reasonably be questioned, which includes the judicial official or his or her spouse having more than a de minimis interest that could be affected by the proceeding or having an economic interest in the subject matter of the controversy or in a party to the proceeding. For purposes of Rule 2.11, "de minimis" means "an insignificant interest that could not raise a reasonable question regarding the judge's impartiality" while "economic interest" means "ownership of more than a de minimis legal or equitable interest...." Based upon the foregoing, the participating members of the Committee unanimously determined that under the Code that will be in effect on January 1, 2011, the spouse's beneficial interest of less than \$1,000 in stock in a multi-billion dollar corporation appears to fall within the definition of "de minimis".

V. The meeting adjourned at 9:48 a.m.