

Committee on Judicial Ethics
Teleconference
Wednesday, September 16, 2009

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Linda K. Lager, Vice Chair, Judge Socrates H. Mihalakos and Associate Professor Jeffrey A. Meyer. Staff present: Martin R. Libbin, Secretary, Viviana L. Livesay, Esq., Assistant Secretary.

MINUTES

- I. With a quorum present, Justice Schaller called the meeting to order at 9:22 a.m. Although publicly noticed, no members of the public attended.
- II. The Committee approved the draft Minutes of the September 4, 2009 meeting. (Justice Schaller abstained.)
- III. The participating members of the Committee considered Judicial Ethics Informal Opinion 2009-28 concerning whether a Judicial Official may serve on the board of directors of a publicly-held company. A Judicial Official has inquired about the propriety of serving on the board of directors of a publicly-held company engaged in business having no connection to the legal profession. The Judicial Official's duties as director would include, but not be limited to, attending quarterly board meetings, serving on committees, completing financial reviews of the company, evaluating compensation packages and voting on actions. The Judicial Official would receive compensation, as well as stock options, in exchange for his or her service.

Based on these facts, the participating members of the Committee agreed that the Judicial Official should not accept a position on a publicly-held company's board of directors, because to do so would effectively "lend the prestige of judicial office to advance the private interests of others," in violation of Canon 2 (b) for the following reasons: As a member of the board of a publicly traded company, it appears clear that the Judicial Official's name and biographical information would have to be disclosed to the SEC and in other publicly available regulatory filings. A shareholder could reasonably attach investment significance to the fact that a sitting judge is a member of the corporate board, thereby increasing the likelihood that the Judicial Official's service on the board could objectively be perceived as improper. The Committee noted, however, that the current Code of Judicial Conduct allows a Judicial Official to operate a business, subject to financial reporting requirements. The Committee also observed that proposed Rule 3.11 of revised Code of Judicial Conduct, when enacted, would ban service as an officer, director, manager, general partner, or advisor of any business except for a business closely held by the judge or members of the judge's

family or a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

- IV. The participating members of the Committee considered Judicial Ethics Informal Opinion 2009-29 concerning whether a Judicial Official could appear in an Executive Branch agency's employment recruitment video. A Judicial Official has been asked to appear in a Department of Children and Families' "job preview" video. The purpose of the video is to improve recruitment and retention of social workers by providing candidates with a realistic overview of a social worker's expectations. The Department has asked the Judicial Official to appear in the video to speak about the judge's expectations of social workers, the role social workers play in the legal process, and the impact they have on cases.

Based on the information provided, the participating Committee members determined that it is ethically permissible for the Judicial Official to participate in the DCF recruitment video, subject to the following conditions: (1) the filming/appearance does not interfere with the proper performance of the Judicial Official's official duties, nor create grounds upon which the Judicial Official may have to recuse him/herself, (2) the Judicial Official does not give opinions that would cast doubt on the Judicial Official's impartiality or indicate that the Judicial Official has a predisposition with respect to a particular case, (3) the presentation is factual and instructive and does not contain any comment about pending or impending matters, (4) the Judicial Official does not offer legal advice as to how social workers should handle specific matters or provide guidance regarding the social workers' appearance in his/her court, (5) the Judicial Official retains the right to review the content of the script and approve that portion pertaining to him/her, and (6) the Judicial Official retains the right to review any biographical information that may be published in connection with the release of the video.

- V. The meeting adjourned at 9:25 a.m.