

## Committee on Judicial Ethics

### Annual Report for January 1 - December 31, 2013

**Membership.** The Committee on Judicial Ethics, which began operating on August 1, 2008, continued its work throughout 2013. The membership remained constant during the first seven months of the year, consisting of the following members: Honorable Barry R. Schaller, Chair; Honorable Edward R. Karazin, Vice Chair; Honorable Maureen D. Dennis; Honorable Christine E. Keller, Professor Jeffrey A. Meyer; and Honorable Thomas J. Corradino, alternate member. Attorney Martin R. Libbin continued to serve as Secretary to the Committee, and Attorney Viviana L. Livesay, as Assistant Secretary. After Judge Karazin's term expired, the Chief Justice appointed Honorable Barbara M. Quinn to a full three-year term, starting on August 1, 2013, and appointed Judge Keller as Vice Chair. Upon the expiration of Professor Meyer's term, the Chief Justice appointed Professor Sarah F. Russell to a full three-year term, on August 1, 2013.

The members and staff of the Committee wish to thank Judge Karazin for his dedicated contributions to the work of the Committee during his tenure. His knowledge and appreciation of the ethical responsibilities of judges, together with his seasoned practical understanding of the role of judges, enabled him to serve with distinction on the Committee. Professor Meyer served on the Committee from its inception. His insights, wisdom, and dedication to the ethical principles that guide the Committee have made an immense contribution to the judiciary. His consistent efforts to provide clear, cogent and accurate opinions have been exemplary. The members and staff wish to express their great appreciation for his six years of service.

**Policy and Rules.** No policy or rules changes took place during 2013.

**Committee Webpage.** No substantial changes were made to the webpage during 2013.

**Activity.** During 2013, the Committee received forty-eight requests for opinions, many of which consisted of multiple subjects. For summary purposes, inquiries will be listed under only one category rather than multiple categories. In response, the Committee issued forty-three informal opinions and one formal opinion (2013-28). Four requests were withdrawn. Six of these opinions were issued on an emergency basis after the Secretary consulted with the Chair, and Committee members circulated comments on the requests. In each instance, the Committee discussed and approved the opinions at subsequent meetings.

Only five of the requests involved on-the-bench conduct. Four of those matters related to recusal or disclosure of prior relationships with attorneys or others who had some involvement in proceedings before the Judicial Official (2013-20, 2013-45, 2013-46, 2013-48). The other related to participation in a courthouse-related charitable function (2013-04).

The inquiries that concerned off-the-bench activities raised a wide variety of issues. The category that elicited the most inquiries concerned the permissibility of attending or participating in various types of events, including charitable, educational, business, social, professional, and governmental (2013-07, 2013-13, 2013-23, 2013-28 [formal], 2013-29, 2013-35, 2013-37, 2013-41, 2013-42, 2013-43, 2013-47).

Another category that produced numerous requests consisted of issues arising upon transition from law practice to the bench. These questions, raised by newly-appointed judges, covered a wide variety of issues including use of former law office email, referral compensation and fees, acceptance of gifts, providing information to lawyers on referred cases, disclosure of referred cases, and continued use of a Facebook account. The Committee's comprehensive opinion on the Facebook (electronic social media) issue (2013-06) received national attention in the judicial ethics field and was featured at an American Judicature Society ethics symposium (2013-05, 2013-06, 2013-08, 2013-09, 2013-10, 2013-12, 2013-19, 2013-22, 2013-34).

Four matters pertained to serving on boards of extra-judicial organizations (2013-01, 2013-15, 2013-26, 2013-31). Five involved participating in bar association functions or specialty bar organizations (2013-16, 2013-17, 2013-18, 2013-25, 2013-33). Four involved providing recommendation letters for individuals or organizations (2013-24, 2013-30, 2013-32, 2013-40). One involved the permissibility of accepting an award from an extra-judicial organization (2013-21). Two pertained to engaging in educational activities (2013-11, 2013-39). The remaining requests concerned accepting a gift (2013-27), attending a political event (2013-36) and attending fundraising events (2013-02).

The Committee observed that the subjects of inquiries during 2013, as in the previous three years, revealed that Judicial Officials continue to pay close attention to the growing body of formal and informal opinions. Although some seek clarification or expansion of matters covered in past opinions, Judicial Officials, for the most part, do not ask about matters that were prevalent in 2008 and 2009. Rather, they appear to rely on past opinions to guide their conduct. The requests during 2013 consist of increasingly nuanced and current subjects, reflecting heightened sensitivity with respect to and concern for ethical conduct. The increase in requests from newly-appointed judges, especially those involving electronic social media and use of current communication technology, reflect heightened awareness of the differences between

careers in private practice and in judicial service. Our staff counsel will continue speaking to groups of new judges to make them aware of the Committee's work and to encourage them to submit inquiries pertaining to the transitional stage as well as throughout their careers.

The Committee, which has now completed five and a half years of service, is encouraged that Judicial Officials appear to be actively using our services and benefitting from access to the summaries of Informal and Formal opinions and the cross-referenced Subject Matter Index, as well as the minutes of Committee meetings. While encouraging Judicial Officials to consult the webpage regularly, the Committee continues to urge that Judicial Officials should not hesitate to present inquiries whenever they have concerns, regardless of the subject matter or the complexity of the issue or whether the particular subject may have been addressed in some respects previously. Ethics inquiries are highly fact-specific and even issues that have been addressed before may present new concerns.

The Committee notes once again the prevalence of inquiries about off-the-bench activities. As before, most on-the-bench inquiries called for Emergency Opinions, indicating that such questions arise with little advance notice. The Committee finds that the Emergency Opinion route deals effectively with urgent requests. Despite the time constraints, virtually all Committee members were able to submit recommendations before the opinion had to be rendered.

Since several requests involved matters that could affect more than one Judicial Official, the Committee continued to make efforts to inform and coordinate with the Chief Court Administrator so that access to the requests and opinions would be maximized at the earliest time. In addition, the Committee is prepared to use the "Ethics Alert" feature of the webpage whenever necessary to increase the likelihood that advisory opinions on crucial matters of broad interest will come to the attention of Judicial Officials. All Committee members continue to receive monthly updates from the ethics director of the American Judicature Society.

The members of the Committee join in thanking and commending the Secretary and Assistant Secretary for their excellent and prompt professional assistance in the work of the Committee.

**Recommendations.** The Committee again recommends that ethics components be included on a regular basis in the CJI program. The Committee also welcomes suggestions as to how it can further improve its website to insure effective access to the growing body of ethical opinions.

**Conclusion.** The Committee is dedicated to providing accurate, timely, and effective ethics opinions for the guidance of Judicial Officials while also maximizing the privacy of Judicial Officials who submit requests.

Respectfully submitted,

Barry R. Schaller, Chair

January 23, 2014