

Committee on Judicial Ethics
Teleconference
Friday, January 29, 2010

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

MINUTES

- I. Justice Schaller called the meeting to order at 9:31 a.m. Although publicly noticed, no members of the public attended.
- II. The Committee members present unanimously approved the draft Minutes of the December 23, 2009 meeting.
- III. The Committee considered Judicial Ethics Informal Opinion 2009-39 concerning whether a Judicial Official may receive an award and be recognized as a guest of honor at an annual awards banquet for student athletes and others involved with sports.

A Judicial Official has inquired about the propriety of accepting an award at an annual awards banquet for student athletes. The facts presented are as follows. Approximately 30 student athletes and 4-5 adults will receive awards. The sponsoring organization is a non-profit entity. Those being recognized are not charged for attending the dinner. The catering hall charges \$10 less, per person, than the sponsoring organization will charge for regular dinner tickets. There also will be patron tickets at a higher fee. In addition to ticket sales, there will be an ad journal and sponsorships. Typically, 300 – 400 people attend the awards banquet, basically all of whom are associated with the athletic programs/schools the student athletes attend or are friends/family of the award recipients. This year the organization is celebrating an anniversary and has invited prior year's award recipients to attend, which may result in an increase in attendance.

The organization gives out scholarships, which are supported, in part by funds collected in connection with the annual awards banquet. While the fees and prices normally are set so that the banquet program breaks even (including the cost of the dinner, scholarships, program book, etc.), in some years the organization has realized a slight net profit while in other years the organization has had to subsidize the event. Last year the organization incurred a net expense of approximately \$350. This year the organization has budgeted \$5,000 of its funds toward the cost of the event. It is anticipated that these additional funds will be needed because the

organization is planning to have one or more nationally recognized speakers at the banquet, whereas in the past the organization has used local personalities as speakers.

Publicity for the event generally consists of press releases and photographs of the award recipients. Last year a press release was forwarded to area newspapers approximately six weeks prior to the awards banquet. The press release identified the 4-5 adults receiving an award and the award that he or she would receive. It is anticipated that, in this instance, although the press release would not identify the recipient as a Judicial Official, the program book distributed on the day of the banquet would include a write-up about each award recipient and would include what the recipient does professionally.

The Committee has previously expressed on several occasions its opinion regarding participation in fundraising events. See JE 2009-09 (speaking at a legal aid breakfast); JE 2009-11 (award recipient at a nonprofit fundraising dinner); JE 2009-14 (accepting award, in a representative capacity, at a fundraiser); and JE 2009-32 (accepting recognition at an advocacy organization fundraiser). Based upon the information provided, the Committee unanimously determined that the event qualifies as a fund-raising event because the funds that would be collected from ticket sales, including higher priced patron tickets and the program book, would be applied, not only to the specific costs associated with the banquet, but also to support the scholarship program. The Committee concluded that, although the Judicial Official may attend the banquet, Canon 5(b) prohibits the Judicial Official from accepting an award or being recognized as a guest of honor at the fundraising event.

- IV. The Committee tabled discussed on Judicial Ethics Informal Opinion 2010-02 until the next meeting.
- V. The Committee considered Judicial Ethics Informal Opinion 2010-03 regarding whether a Judicial Official may, anticipating post-retirement employment outside the Judicial Branch, but prior to the effective date of resignation, (1) have his or her name listed with a private alternative dispute resolution (ADR) service, such as the American Arbitration Association (AAA), as available on a specified date after the Judicial Official's resignation to provide mediation and arbitration services, and (2) advertise in newspapers or provide general notices to attorneys of the Judicial Official's future availability to provide such services?

Based upon the facts presented, the Committee unanimously determined that Canons 2, 3 and 5 prohibit the Judicial Official, in advance of resignation, from listing his or her name with a private ADR service, such as the AAA, advertising in newspapers or providing general notices to attorneys

regarding the Judicial Official's availability to provide mediation and arbitration services after his/her resignation. The Committee previously determined in JE 2008-08 that it would not be proper for a Judicial Official, who was seeking post-retirement employment with a law firm, to make it generally known that he/she was seeking such a position, in order to avoid being solicited by a number of law firms that may appear before the Judicial Official before his/her departure. In this case, the Judicial Official's proposed issuance of a general notice of availability for employment of various means is prohibited by the Code as constituting general solicitation of future employment by means of contacting or notifying attorneys and parties that may have pending, recently pending, or future matters before the Judicial Official. Such conduct would not promote public confidence in the integrity and impartiality of the judiciary (Canon 2), and could raise doubts about the Judicial Official's impartiality (Canon 3). It could also interfere with the proper performance of his/her duties while still a Judicial Official, exploit his/her position, and could involve the Judicial Official in frequent transactions with attorneys or parties likely to come before the court (Canon 5).

The Committee distinguished this case from JE 2008-08 in which the Committee opined that a Judicial Official could initiate selective individual contacts with prospective employers in ways that did not cause recusals or that would interfere with the proper performance of his/her judicial duties. The Committee notes that it may be proper under circumstance to be determined on a case by case basis, for a Judicial Official contemplating resignation to make discreet, selective, individual inquiries about post-judicial employment in order to make an informed decision about whether to resign. However, the types of notice proposed in this case are prohibited by the Code. It should be noted that this opinion does not apply to Judicial Officials who participate in the Court Annexed Mediation program created under General Statutes § 51-5a.

VI. The meeting adjourned at 10:03 a.m.