

Committee on Judicial Ethics
Teleconference
Tuesday, June 9, 2009

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Linda K. Lager, Vice Chair, and Judge Robert J. Devlin, Jr. Staff present: Martin R. Libbin, Esq., Secretary, Viviana L. Livesay, Esq., Assistant Secretary (after start of meeting).

MINUTES

- I. With a quorum present, Justice Schaller called the meeting to order at 9:30 a.m. Though publicly noticed, no members of the public attended.
- II. The participating Committee members unanimously approved the draft Minutes of the May 26, 2009 meeting.
- III. The Committee considered Judicial Ethics Informal Opinion 2009-19 concerning whether a Judicial Official may authorize the inclusion of his or her name on a list of officials willing to perform same sex marriages that is maintained on the website of a nonprofit advocacy organization. The organization currently maintains a list of justices of the peace who are willing to officiate at such marriages on its website under a heading that indicates that the justices of the peace “have asked us to publicize their names as friends of the LGBT community who would be happy to perform a ceremony.” The organization indicated that if a Judicial Official authorizes adding his or her name to the list, it probably would rephrase the heading, although exact replacement wording has not yet been determined. The organization anticipates that it may transfer the list to another advocacy organization for that organization to maintain. The organization engages in community education, grassroots organizing, legislative advocacy and lobbying.

Based upon the information provided, the four participating Committee members unanimously determined that a Judicial Official may authorize a listing on such a website of his or her willingness to officiate at a same sex marriage without violating the Code of Judicial Conduct, provided that the Judicial Official complies with the following conditions: (1) to ensure compliance with Canon 2, the Judicial Official must review, in advance, the actual heading language that will be used to make sure that the listing does not create an impropriety, appearance of impropriety, or lend the prestige of judicial office to advance the interests of the organization; (2) consistent with the Commentary to Canon 5 (b), due to the changing nature of some organizations and of their relationship to the law, the Judicial Official must regularly reexamine the activities of organization and the website listing to determine whether it is proper to continue his or her listing; and (3) the Judicial Official must monitor any transfer of the listing to another organization and review the new listing to determine whether it is appropriate to authorize the listing of his or her name on the new organization’s website in accordance with conditions (1) and (2).

Notwithstanding the foregoing, the participating Committee members unanimously expressed prudential concerns that (1) the listing of a Judicial Official's name in this or other similar contexts on the website of any advocacy organization carries some risk of creating a perception that the Judicial Official may be affiliated with the advocacy organization or may endorse the organization or its political agenda; and (2) a Judicial Official who agrees to such a listing may have to devote a significant amount of time to comply with his or her ongoing duty to maintain control over how his or her name is used, including monitoring any website on which the Judicial Official's name appears, as well as the wording used, to prevent the misuse of the Judicial Official's name and to ensure compliance with the above noted conditions in order to avoid violating Canons 2 and 5.

IV. The meeting adjourned at 9:51 a.m.