

Committee on Judicial Ethics
Teleconference
Thursday, November 20, 2014

Members present via teleconference: Judge Christine E. Keller, Chair, Judge Maureen D. Dennis, Vice Chair, Judge Barbara M. Quinn and Professor Sarah F. Russell. Staff present: Attorney Martin R. Libbin, Secretary and Attorney Viviana L. Livesay, Assistant Secretary.

MINUTES

- I. With the above noted Committee members present, Judge Keller called the meeting to order at 9:31 a.m. Although publicly noticed, no members of the public were in attendance.
- II. The Committee members present approved the minutes of the October 16, 2014 meeting.
- III. The Committee discussed **Informal JE 2014-20** concerning whether a Judicial Official may complete an anonymous survey, post-trial, rating a lawyer's performance before the court.

A non-profit organization would like to use an anonymous survey, for its internal use, to evaluate the lawyers it employs. The lawyers are GALs and AMCs who appear before the court. Their services are provided by the non-profit organization at no cost to indigent families.

Although the survey is still in its infancy stage, the following process is being considered by the organization. At the conclusion of trial, the organization would like to send the superior court judge a link to "Survey Monkey" asking the judge to rate his or her experience with the lawyer. The organization will not track the court locations from which the survey originates. It is anticipated that the survey will contain the below five performance standards and asks the judge to strongly agree, agree, somewhat agree, neutral, somewhat disagree, disagree, strongly disagree or indicate N/A after each statement. The judge will also have an opportunity to enter comments.

- 1) The GAL/AMC was well-prepared for court
- 2) The GAL/AMC acted professionally
- 3) The GAL/AMC made effective recommendations
- 4) The GAL/AMC articulated the basis for the recommendations
- 5) I would appoint [the lawyer] in a case again

The results will be reviewed by the Executive Director and will not be shared with the evaluated lawyers. The organization plans to use the survey to improve staff training and identify areas where additional training is needed.

Rule 1.2 of the Code of Judicial Conduct states that a judge “should act at all times in a manner that promotes public confidence in the ... impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.”

Rule 1.3 states that a judge “shall not use or attempt to use the prestige of judicial office to advance the personal or economic interests of the judge or others or allow others to do so.” Comment (2) to Rule 1.3 notes that a judge “may provide a reference or recommendation for an individual based on the judge’s personal knowledge.”

Rule 2.11 states that a judge “shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned” including, but not limited to, when the judge has a personal bias or prejudice concerning a party’s lawyer.

In reaching its decision, the Committee considered its prior opinions in [JE 2009-15](#), (Judicial Official should decline to serve as evaluator for the Child Protection Attorney because the process is not likely to remain confidential), [JE 2011-17](#), (providing a peer review to Martindale-Hubbell is not permissible under the Code), [JE 2012-16](#) (Judicial Official may complete and submit a questionnaire about a lawyer who is being considered for inclusion in an international legal honor society, with conditions, because it was analogous to providing a letter of support for an attorney) & [JE 2013-40](#) (Judicial Official may serve as a reference for a law firm. The confidential reference would be submitted to Chambers and Partners, a company that publishes rankings).

Based upon the facts presented, the Committee concluded that the process is not likely to remain confidential, as some family courts in the state only have one judge assigned to a court location, the lawyers being evaluated may appear regularly in specific courts before the assigned Judicial Official, and disputes do not frequently go to trial. The Committee unanimously determined that the Judicial Official should decline, under Rule 1.2, to complete the survey because participation in this process may require recusal both presently and in the future with respect to any case handled by the evaluated GAL/AMC lawyers. Although the Committee

appreciates the organization's need to evaluate its attorneys, compliance with the proposed evaluation process would put Judicial Officials in the untenable position of violating or appearing to have violated the Code provisions as to impartiality or bias.

- IV. The Committee ratified **Emergency Staff Opinion JE 2014-21** concerning whether a nominee for judicial office may be sworn in to office if he or she is still serving as the conservator of the person or estate in pending probate matters at the time the individual is scheduled to be sworn in as a judicial official.
- V. The meeting adjourned at 9:44 a.m.