

Committee on Judicial Ethics
Teleconference
Wednesday, December 10, 2008

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

MINUTES

- I. With all members except Judge Mihalakos present, Justice Schaller called the meeting to order at 9:20 a.m. Though publicly noticed, no members of the public attended.
- II. Those present unanimously approved the draft Minutes of the November 26, 2008 meeting.
- III. Judge Mihalakos joined the meeting and the Committee considered Judicial Ethics Opinion 2008-19 concerning the propriety of a judicial official accepting payment from the judicial official's former law firm (a) for work done on contingency fee lawsuits that were pending at the time the judicial official was appointed to the bench or (b) for cases initiated for clients that the judicial official brought to the firm prior to the judicial official's appointment. Based upon the facts presented, which involved a single payment to be made for a case the Judicial Official worked on and which was approved by his/her former law firm and the client, the Committee unanimously agreed that it is ethically permissible for the Judicial Official to accept payment provided the amount to be paid reasonably reflects the work the Judicial Official performed on the case. The Judicial Official should also consider whether the decision to accept payment may affect the Judicial Official's qualification to hear matters involving the client, opposing parties and the law firm.
- IV. The Committee considered Judicial Ethics Opinion 2008-20 concerning the propriety of a judicial official, either individually or on behalf of a group of judicial officials, initiating communications with the media concerning another judicial official's years of service, that judicial officials are entitled to a presumption of innocence the same as everyone else, and that a case involving a judicial official should be decided in court based upon the evidence presented. The Committee unanimously decided that the proposed comments were not appropriate and would violate Canon 3(a)(6). It was noted that there was an absolute prohibition on initiating such comments and that qualifying the comments by noting that they were the personal opinion of the judicial official did not obviate the ethical prohibition.
- V. The Committee considered Judicial Ethics Opinion 2008-21 concerning the necessity of a judicial official, who prior to appointment as a judicial official served as a part-time corporation counsel, recusing himself or herself from civil or criminal

cases in which the former municipal employer is a party or the complaining witness, such as the arresting agency or the complaining party in a criminal housing matter. The Committee unanimously decided that provided the case is not one that was handled by the corporation counsel's office at the time the judicial official served as corporation counsel or otherwise involve a matter about which the judicial official acquired personal knowledge of disputed evidentiary facts due to prior service as corporation counsel, and the judicial official does not believe that he or she has any personal bias (favorable or unfavorable) involving the municipality or its counsel, the judicial official need not recuse himself or herself. The judicial official must; however, for a reasonable period of time, which is not less than two years, provide notice of the prior employment relationship in such cases.

- VI. The Committee considered Judicial Ethics Opinion 2008-22 concerning the propriety of a judicial official notifying a federal judge who is hearing a parallel case of the judicial official's ruling in the state court matter. The Committee unanimously decided that the judicial official should not directly contact the federal judicial official to bring to his or her attention the decision in the state court matter; however, the judicial official may suggest to the parties that they do so.
- VII. The Committee considered Judicial Ethics Opinion 2008-23 concerning the propriety of a judicial official serving as the judge for a mock trial conducted as part of a training program for contract attorneys regarding direct and cross-examination, given that the training program is only open to attorneys that represent a single class of clients (i.e. plaintiffs or defendants). The Committee unanimously decided that the judicial official could participate subject to the following conditions: (1) the judicial official had already decided not to accept questions from those attending the program, in order to limit his or her rulings to the hypothetical facts in the mock trial and to avoid commenting on a pending or impending matter; (2) the judicial official must be willing and available to participate in training for attorneys representing the other side in litigation; (3) the judicial official should not provide guidance on the "in-and-outs" of practice before the judicial official's court; (4) the judicial official should not suggest a particular interpretation of a disputed legal issue; (5) the judicial official should not provide direct assistance in a particular case; (6) the judicial official should avoid the appearance of bias or favoritism in the content of the presentation; (7) the judicial official may not provide legal advice; and (8) the judicial official may not comment on pending or impending cases.
- VIII. The meeting adjourned at 10:04 a.m.