

Committee on Judicial Ethics
Teleconference
Thursday, December 18, 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. Justice Schaller called the meeting to order at 9:20 a.m. Though publicly noticed, no members of the public attended.
- II. The draft Minutes of the December 10, 2008 meeting were unanimously approved.
- III. The Committee considered Judicial Ethics Opinion 2008-19A concerning the propriety of a judicial official accepting payment from the judicial official's former law firm for a case initiated on behalf of a client that the judicial official had brought to the firm as a "rainmaker" and for whom the judicial official had provided nominal legal services, where the fee arrangement was made in lieu of any payments to the judicial official for his/her interest in the practice. The facts presented included, inter alia, that there was a verbal separation agreement that specified the percentage of fees that the judicial official would receive from the total legal fees the firm received for cases initiated on behalf of clients the judicial official had brought to the firm prior to the judicial official's departure and that the client was aware of the fee arrangement and approved the payment. Based upon its consideration of Canons 2, 3(c) and 5(e), as well as Rule 1.5(e) of the Rules of Professional Conduct, the Committee unanimously approved the judicial official's receipt of payment when the sole remaining case is finally settled, although that will occur approximately four years later than the firm and judicial official had contemplated when the separation agreement was entered. The Committee noted that while the verbal pre-existing separation agreement was acceptable, it was preferable for such agreements involving judicial officials to be in writing. The Committee also noted that the judicial official should 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 2008-24 concerning whether it was proper for a judicial official to serve as a member of a team appointed by one municipality to meet with a team appointed by a second municipality and a private mediator in an attempt to resolve a dispute between the municipalities. There is related pending federal litigation and it is foreseeable that there will be additional litigation if the mediation is unsuccessful. The Committee unanimously decided that the judicial official was prohibited from serving on such a team by virtue of the prohibition in Canon 5 (g) barring a judicial official from accepting appointments to

a governmental committee, commission or position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. The Committee also was concerned with potential violations of Canon 2's prohibition on lending the prestige of judicial office to advance the private interests of others, Canon 3(a)(6)'s prohibition on public comments about a pending or impending proceeding in any court, and Canon 5(f)'s prohibition on the practice of law.

- V. The Committee considered Judicial Ethics Opinion 2008-25 concerning the propriety of a judicial official participating on a "Law Talk" segment of a local radio station program devoted to the Judicial Branch's foreclosure mediation program. The program will be hosted by a private attorney and include a foreclosure mediator, who is employed by the Judicial Branch, as well as the judicial official. Members of the public will be able to call-in to the show and ask questions. Based upon the facts presented, including that the request involves a single appearance for an educational program for the public, the Committee unanimously approved the judicial official's participation subject to the following conditions: (1) the appearance does not interfere with the judicial official's judicial duties; (2) the judicial official does not give opinions which would cast doubt on the judicial official's impartiality; (3) the judicial official is careful not to express opinions or to present the topic in any way that would indicate that the judicial official has a predisposition with respect to particular cases; (4) the judicial official's presentation is factual and instructive about the procedures and parameters of the subject matter but does not include comments about any pending matters; and (5) the judicial official retains the right to review and pre-approve the use of any biographical information about the judicial official used to advertise the segment in order to avoid a violation of Canon 2(b)'s prohibition against lending the prestige of judicial office to advance the private interests of others.
- VI. The Committee discussed the draft Opinion Summary Log and noted that they would like subject matters headings and citations to the relevant Canons added to the summaries as well as incorporation of changes recommended by Professor Meyer. It was suggested that standardized subject matter headings be adopted, after a review of the headings used by other jurisdictions, possibly with the assistance of a student intern.
- VII. The meeting adjourned at 9:43 a.m.