Committee on Judicial Ethics
Teleconference
Thursday, May 6, 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: Martin R. Libbin, Esq., Secretary, Viviana L. Livesay, Esq., Assistant Secretary.

MINUTES

I. With all members present, Justice Schaller called the meeting to order at 9:31 a.m. Although publicly noticed, no members of the public attended.

II. The Committee unanimously approved the draft Minutes of the May 3, 2010 meeting.

III. The Committee considered Judicial Ethics Informal Opinion 2010-10 concerning whether a Judicial Official has a duty to report the possible misconduct of another judge.

The underlying facts of the inquiry are as follows: Judicial Official #1 ("JO #1") reports to Judicial Official #2 ("JO #2") that JO #1 learned from a reliable and trustworthy attorney that Judicial Official #3 ("JO #3") acted in a manner that may have violated the Code of Judicial Conduct. In particular, the attorney reported to JO #1 that JO #3 attended a tape recorded meeting with JO #3's spouse, who is an attorney, the spouse's client, and a consulting state agency. The purpose of the meeting was to discuss voluntary custody issues. JO #1 did not listen to the recording. According to the information conveyed to JO #2 by JO #1, JO #3 can be clearly heard on the tape recording stating that JO #3 is the spouse of the attorney who is representing a client at the meeting. It was also reported that JO #3 "may have said something else at the meeting."

The inquiring Judicial Official in this case, JO #2, states that it is "highly foreseeable" that the representative from the state agency knew that JO #3 was, in fact, a judicial official. JO #3 was subpoenaed to a subsequent court proceeding that was related to the recorded meeting, although the case settled and JO #3 did not need to testify. JO #2 has supervisory and administrative responsibilities over both JO #1 and JO #3. JO #2 indicates that s/he has not listened to the tape recording of the meeting and prefers not to undertake measures to investigate the matter.

The inquiring Judicial Official asks the following: (1) does JO #2, who has administrative responsibilities, have a duty to report JO #3's conduct to a

disciplinary authority, and (2) does JO #1 have a duty to report JO #3's conduct to a disciplinary authority? In reviewing this case, JO #2 asks this Committee to limit its inquiry to the "duty to report" issue.

Based upon the information provided, the Committee unanimously determined that, while there is no specific requirement under Canon 3(b)(3) to report JO #3's conduct to a disciplinary authority, both JO #1 and JO #2 have a duty under that Canon to "take or initiate appropriate disciplinary measures" against JO #3 if, based on the quality of the information they receive, they believe that JO #3 acted unprofessionally and in violation of the Code of Judicial Conduct. The appropriate disciplinary measures to take depend on the seriousness of the conduct and the circumstances involved. Appropriate disciplinary measures may include, but not be limited to, communicating directly with the judicial official who may have violated the Code, communicating with a supervising judge, or reporting the suspected violation to the Judicial Review Council. The Committee agreed that under the factual circumstances here JO #1 took appropriate measures by reporting the alleged misconduct to his/her supervisor and, as a result, has no further duty to report. With respect to JO #2, the Committee concluded that JO #2 has discretion to decide whether to take or initiate disciplinary measures, as noted above, including reporting to the appropriate disciplinary authority. If, after evaluating the quality of the information received, JO #2 is satisfied that there is a sufficient, credible factual basis to conclude that JO #3's conduct constitutes a substantial violation of the Code, JO #2 has a duty to take or initiate disciplinary measures. If, however, JO #2 decides otherwise, no such duty exists. In that latter event, however, if the information that JO #2 has is sufficient to warrant further reasonable investigation with respect to obvious and readily available sources, JO #2 should undertake such reasonable investigation in order to clarify the situation.

IV. The Committee considered Judicial Ethics Informal Opinion 2010-11 concerning whether a Judicial Official may speak before a group of doctors, lawyers and others at an out-of-state conference hosted by a non-profit organization regarding the Judicial Official's personal views of the particular scientific evidence that was presented in a case that the Judicial Official presided over. If it is permissible to speak, may the Judicial Official accept an honorarium and reimbursement of expenses for the cost of the conference, travel and lodging?

Based upon the information provided, including that the underlying case that the Judicial Official has been asked to discuss is a criminal case which resulted in a judgment of not guilty and the Judicial Official has been asked to discuss his/her personal views of the scientific evidence in the case, the Committee members determined as follows:

1: Pursuant to C.G.S. § 54-142a (a), all police and court records pertaining to such a judgment of not guilty were required to be erased upon the

expiration of the period of time to file a writ of error or an appeal, since no such writ or appeal was filed. Furthermore, pursuant to C.G.S. § 54-142a (e), "The clerk of the court or any person charged with the retention and control of such records in the records center of the Judicial Department or any law enforcement agency having information contained in such records shall not disclose to anyone, except the subject of the record … information pertaining to any charge erased under any provision of this section …." While C.G.S. § 54-142a (h) excludes transcripts from the definition of "court records" that are subject to erasure and the case law makes clear that the erasure of a charge does not serve to obliterate a person's memories[1], consistent with the foregoing statutes and Canon 1 (a judge should participate in establishing, maintaining, and enforcing, and should observe, high standards of conduct) and Canon 2(a) (a judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), a Judicial Official should not discuss specific information that is attributable to an identifiable erased case. Since the Judicial Official has been requested to present his/her views of the scientific evidence presented in a particular erased case in which a not guilty judgment was rendered, the Judicial Official should not do so. Based upon the foregoing, the Committee declined to address the question regarding an honorarium and reimbursement of fees.

With respect to the issue as to whether the Judicial Official may discuss his/her personal views of the particular evidence presented in the case, the Committee members determined as follows:

2: Canon 2 (a) directs that a judge respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. It was the unanimous opinion of the Committee that discussion of a Judicial Official's personal views of the scientific evidence that was presented in a particular case and elaborating beyond what is specifically stated in an oral or written ruling would impugn the integrity of the judicial office in violation of Canon 2 and, in the event of any future civil litigation stemming from the criminal case, may cast doubt on the Judicial Official's capacity to impartially decide a related issue that may come before him/her in violation of Canon 4. Based upon the foregoing, the Committee declined to address the question regarding an honorarium and reimbursement of fees.

The Committee noted that the foregoing opinion does not apply to a general discussion of forensic evidence. If the Judicial Official wishes to seek an

[1] "The Erasure Act was not intended to obliterate memory or to exclude any testimony not shown to have been derived from erased records. See Rawling v. New Haven, 206 Conn. 100, 109, 537 A.2d 439 (1988); State v. Marowitz, supra, 453 (Shea, J., concurring)." *Rado v. Board of Education*, 216 Conn. 541, 550 (1990).

opinion concerning speaking on that topic generally, the Committee will gladly provide a supplemental opinion.

V. Judge Devlin exited the teleconference at 10:11 a.m.

VI. The meeting adjourned at 10:18 a.m.