Committee on Judicial Ethics
Teleconference
Wednesday, December 23, 2009

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

MINUTES

I. Justice Schaller called the meeting to order at 9:17 a.m. Although publicly noticed, no members of the public attended.

II. The Committee members present unanimously approved the draft Minutes of the December 3, 2009 meeting.

III. The Committee considered Judicial Ethics Informal Opinion 2009-36 concerning whether a Judicial must restrict a Temporary Assistant Clerk ("TAC"), who performs purely administrative and non-discretionary duties from interacting with law firms to which the TAC has applied for a position. The Judicial Official asked the following:

1) Must a TAC be restricted from recording dispositions and other orders in the Judicial Official's courtroom during a short calendar session with respect to cases in which a party is represented by a law firm to which the TAC applied for a position?

2) Must the TAC be restricted from communicating with such a law firm regarding scheduling issues, advising of notices, etc.?

3) Is there a distinction between a TAC who applies for a position and one who, at a minimum, has an interview?

4) If the TAC who has applied to a law firm is restricted by the Judicial Official from working on any cases involving the firm, how long does the ban last?

5) What guidance can be offered with respect to the meaning of "a reasonable period of time" as that phrase is used in opinion JE 2009-20?

Based upon the facts presented, including that the duties of the TAC are purely administrative and non-discretionary, the participating Committee members unanimously concluded that the answers to the questions are as follows: (1) No, (2) No, (3) There is a distinction between a TAC who is an

applicant and one who has been offered an interview. The TAC's status as an applicant does not necessitate restriction of the TAC. However, upon becoming aware that a TAC has received or has been offered an interview or is otherwise engaged in active employment negotiations with a law firm or a lawyer who has a matter pending before the Judicial Official, the Judicial Official must exercise his or her discretion, in accordance with the obligations of Canons 2 and 3, to determine whether the TAC should be restricted from participating in any case involving the lawyer or law firm, whether disclosure on the record, or recusal is necessary or whether no action is required, (4) If the Judicial Official determines that the TAC should be restricted, the restriction should be for a reasonable period of time, as determined by the Judicial Official based on the circumstances, and should terminate once a decision is made regarding the employment application of the TAC, and (5) Because the underlying facts in Opinion 2009-20 were different from those presented by the inquiring Judicial Official, in that they did not involve a staff member who was involved exclusively in administrative matters that did not involve the exercise of discretion, the Committee declined to address this issue.

IV. The Committee considered Judicial Ethics Informal Opinion 2009-40. Several years ago a Judicial Official, at the request of the co-author of a hornbook on a particular area of Connecticut law, wrote a prologue to the hornbook. The prologue basically provides a general description of how a judge views that particular field of law. In the prologue, the Judicial Official made some very laudatory remarks about the other co-author, who is a partner in a law firm that handles a significant number of cases involving the subject matter of the book, and also described the hornbook as having been for years the authoritative source on its subject. The Judicial Official inquired whether, if either of the co-authors or members of their respective firms appear before the Judicial Official, he or she is outright disqualified from hearing the case or, alternatively, is obligated to disclose to all parties that he or she wrote the prologue.

Based upon the facts presented, the Committee members present unanimously concluded that Canon 3's objective test for disqualification did not require the Judicial Official to disqualify himself or herself automatically when either co-author or members of his or her respective law firm should appear before the Judicial Official provided that the Judicial Official has determined that he or she can be impartial. Canon 2's directive to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, however, requires the Judicial Official to disclose his or her authorship of the prologue to all appearing counsel/parties when either of the co-authors or members of their respective firms appear before the Judicial Official. If a party or counsel thereafter moves to disqualify the Judicial Official based upon the disclosure, the Judicial Official, after considering the facts, law and argument of counsel, must exercise his or her discretion in

deciding whether to grant the motion. Issues to consider in determining such a recusal motion include, but are not necessarily limited to, the nature of the proceeding or docket, whether reference to or reliance upon the hornbook is foreseeable, whether the Judicial Official is the sole decision maker (i.e. whether the matter is to the court or a jury) and whether self-represented parties or lawyers are involved.

V. The Committee discussed the 2009 Annual Report to the Chief Justice. Justice Schaller will draft the report and circulate to Committee members for comment.

VI. The meeting adjourned at 9:52 a.m.