

Committee on Judicial Ethics

Annual Report for January 1 - December 31, 2012

Membership. The Committee on Judicial Ethics, which began operating on August 1, 2008, continued its work throughout 2012. The membership remained constant during the first five months of the year, consisting of the following members: Honorable Barry R. Schaller, Chair; Honorable Edward R. Karazin, Vice Chair; Honorable Maureen Dennis; Honorable Francis X. Hennessy; Professor Jeffrey A. Meyer; and Honorable Thomas J. Corradino, alternate member. Attorney Martin R. Libbin continued to serve as Secretary to the Committee, and Attorney Viviana L. Livesay, as Assistant Secretary. After Judge Hennessy's term expired, the Chief Justice appointed Honorable Christine E. Keller, on August 1, 2012, to a full three-year term.

The members and staff of the Committee wish to commend Judge Hennessy for his outstanding contributions to the work of the Committee during his tenure. His knowledge and appreciation of the ethical responsibilities of judges, together with his seasoned practical understanding of the role of judges, enabled him to play a major role in the operation of the Committee.

Policy and Rules. No policy or rules changes took place during 2012.

Committee Webpage. During 2012, the Committee and its staff continued to undertake revisions of the Committee's Webpage in order to enable judicial officials and others to locate pertinent opinions. The newest addition to the webpage included the creation of an "Ethics Alert" feature. The purpose of the "Ethics Alert" is to bring advisory opinions that are likely to have a broad impact on the bench to the attention of all judicial officials in a timely manner. The first "Ethics Alert" was posted on September 6, 2012, and provided notice to all judicial officials of the Committee's informal opinion in 2012-25 (receiving an award from MADD at an annual dinner). A link to the Committee's "Ethics Alert" webpage was also made available via the Judges' Intranet website.

Activity. During 2012, the Committee received thirty-four requests for opinions, some of which consisted of multiple subjects. In response, the Committee issued thirty-four informal opinions. No requests for formal opinions were received. Seven of these opinions were issued on an emergency basis after the Secretary consulted with the Chair and Committee members circulated comments on the requests. In each instance, the Committee discussed and approved the opinions at subsequent meetings.

Only four of the thirty-four requests concerned on-the-bench activities. All of those concerned recusal or disclosure of prior relationships with attorneys or others who had some involvement in proceedings before Judicial Officials (2012-08, 2012-09, 2012-19, 2012-24).

The inquiries that concerned off-the-bench activities raised a wide variety of issues. Five concerned the permissibility of attending various kinds of social and professional events (2012-01, 2012-11, 2012-15, 2012-21, 2012-22). Four matters pertained to serving on boards of extra-judicial organizations (2012-06, 2012-07, 2012-28, 2012-33). Four involved accepting gifts of various types (2012-03, 2012-17, 2012-18, 2012-34). Three involved providing recommendation letters for individuals (2012-05, 2012-16, 2012-27). Three involved the permissibility of accepting awards from extra-judicial organizations (2012-25, 2012-29, 2012-30). Three concerned the permissibility of making various public statements (2012-14, 2012-23, 2012-32). Two pertained to promotional activities for publications (2012-12, 2012-13). Two involved participating in administrative or court proceedings (2012-20, 2012-31). The remaining requests concerned matters including accepting membership in a special bar association (2012-10), assisting a mock trial team (2012-26), serving in a fiduciary position (2012-04) and accepting a referral fee (2012-02).

The Committee observed that the subjects of inquiries during 2012, as in the previous two years, revealed that Judicial Officials continue to pay close attention to the growing body of formal and informal opinions and some seek clarification or expansion of matters covered in past opinions. Judicial Officials, for the most part, do not ask about matters that were prevalent in 2008 and 2009; rather, they appear to rely on past opinions to guide their conduct. The requests during 2012 consist of increasingly nuanced and complex subjects, reflecting heightened sensitivity with respect to and concern for ethical conduct.

The Committee is encouraged that this development indicates that Judicial Officials are benefitting from access to the summaries of Informal and Formal opinions and the cross-referenced Subject Matter Index, as well as the minutes of Committee meetings. While encouraging Judicial Officials to consult the webpage regularly, the Committee continues to urge that Judicial Officials should not hesitate to present inquiries whenever they have concerns, regardless of the subject matter or the complexity of the issue.

The Committee notes the prevalence of inquiries about off-the-bench activities. All on-the-bench inquiries called for Emergency Opinions, indicating that such questions arise with minimal advance notice. The Committee believes that the Emergency Opinion procedure has dealt effectively with such urgent requests on each occasion.

Since several requests involved matters that could affect more than one Judicial Official, the Committee continued to make efforts to inform and coordinate with the Chief Court Administrator so that access to the requests and opinions would be maximized at the earliest time. The "Ethics Alert" feature, as noted, increases the likelihood that advisory opinions on crucial matters of broad interest will come to the attention of Judicial Officials. All Committee members continue to receive monthly updates from the ethics director of the American Judicature Society.

The members of the Committee join in thanking and commending the Secretary and Assistant Secretary for their excellent and prompt professional assistance in the work of the Committee.

Recommendations. The Committee again recommends that ethics components be included on a regular basis in the CJI program. The Committee also welcomes suggestions as to how it can further improve its website to insure effective access to the growing body of ethical opinions.

Conclusion. The Committee is dedicated to providing accurate, timely, and effective ethics opinions for the guidance of Judicial Officials while also maximizing the privacy of Judicial Officials who submit requests.

Respectfully submitted,

Barry R. Schaller, Chair
January 11, 2013