

Committee on Judicial Ethics  
Teleconference  
Tuesday, March 2, 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.

**MINUTES**

- I. With all members present, Justice Schaller called the meeting to order at 8:54 a.m. Although publicly noticed, no members of the public attended.
- II. The Committee unanimously approved the draft Minutes of the February 5, 2010 meeting.
- III. The Committee considered Judicial Ethics Informal Opinion 2010-05 concerning whether a Judicial Official who is not a senior judge or judge trial referee may serve as a non-voting member or observer on the State Post-Employment Benefits Commission and, if not, whether a Judicial Official, as part of the Judicial Branch's cooperation and provision of support to that Commission, may attend meetings and volunteer information for consideration by the Commission. Based upon the information presented, the Committee members unanimously determined as follows:

(1)(a) Canon 5(g) provides that a "judge should not accept appointment to a governmental committee, commission or other 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." Based upon the foregoing, a judge is not permitted to serve as either a voting or non-voting member of the Commission.

(1)(b) While a judge is not permitted to serve on the Commission, a senior judge or judge trial referee may serve as a member because the Compliance section of the Code of Judicial Conduct states that senior judges and judge trial referees "are not required to comply with Canon 5 (d) and (g)." However, a senior judge or judge trial referee is required to comply with other applicable provisions of the Code of Judicial Conduct and may serve on a governmental commission only if: (1) such participation is consistent with Canon 2(a)'s mandate to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary"; (2) service on the Commission does not take precedence over the judicial activities of the senior judge or judge trial referee, see Canon 3; and (3) legal advice is

not provided to the Commission by the senior judge or judge trial referee, see Canon 5(f).

(2) A judge who may not otherwise serve on the Commission may attend the Commission's meetings as a representative of the Judicial Branch, in order to respond to questions and provide information on matters related to the Judicial Branch, including but not limited to the role that pensions and post-employment benefits play in attracting and retaining qualified members of the judiciary. See Canon 4(a)(2). Any judge so appearing must be careful not to engage in or create the appearance of engaging in political advocacy or create the appearance that he/she is effectively a member of the Commission.

IV. The Committee considered Judicial Ethics Informal Opinion 2010-06 concerning whether a Judicial Official has a duty to report unprofessional conduct of an out-of-state attorney who testified under oath in a Connecticut case that the attorney had commingled funds in the attorney's single law office account which he holds in a state in which commingling of funds is an ethical violation and, if so, how the Judicial Official should report the misconduct. Based upon the information provided, the Committee members unanimously determined that the Judicial Official should report the misconduct. Commingling of funds is an ethical violation in Connecticut and in the jurisdiction in which the attorney maintains an office. The Judicial Official's duty to report such conduct is based upon the requirements in Canon 1 (a judge should participate in establishing, maintaining, and enforcing, and should observe, high standards of conduct), 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), and Canon 3(b)(3) (a judge should take or initiate appropriate measures against a judge or lawyer for unprofessional conduct of which the judge may become aware). The Commentary to Canon 3(b)(3) states that a judge may report a lawyer's misconduct to an appropriate authority. The Committee noted that a commonly used method to report misconduct that occurs on the record is to forward a copy of a transcript to the appropriate disciplinary authority with a cover letter noting that the matter is being referred for such consideration as the disciplinary authority deems appropriate. However, the Judicial Official may report the misconduct to the appropriate authority in any manner that he/she determines is appropriate under the circumstances.

V. The meeting adjourned at 9:15 a.m.