

Committee on Judicial Ethics  
Teleconference  
Thursday, June 3, 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 9:30 a.m. Although publicly noticed, no members of the public attended.
- II. The Committee unanimously approved the draft Minutes of the May 25, 2010 meeting.
- III. The Committee considered Judicial Ethics Informal Opinion 2010-14 concerning whether a Judicial Official may continue to serve as guardian for the estate and person of a disabled “member of the judge’s family” (within the meaning of Canon 5(d)) who resides in a group home. Based upon the facts presented, the Committee unanimously concluded that the Judicial Official may continue to serve as guardian for his/her sibling subject to the following conditions:
  1. The Judicial Official must cease service if it is likely that he/she will be engaged in proceedings that would ordinarily come before the Judicial Official or if the sibling becomes involved in an adversary proceeding in the court on which the Judicial Official serves or one under its appellate jurisdiction (Canon 5 (d) (1));
  2. While serving as guardian, the Judicial Official is subject to the same restrictions on financial activities that apply to the Judicial Official in his or her personal capacity (Canon 5 (d) (2));
  3. The Judicial Official must refrain from financial and business dealings on behalf of the ward that tend to reflect adversely on the Judicial Official’s impartiality, interfere with the proper performance of the judicial position, or involve the Judicial Official in frequent transactions with lawyers or persons likely to come before the court on which the Judicial Official serves (Canon 5 (c) (1)); and
  4. The Judicial Official may not practice law on behalf of the ward (Canon 5 (f)).
- IV. The Committee considered Judicial Ethics Informal Opinion 2010-15 concerning whether a Judicial Official may author a foreword to a book

written by a police officer on the subject of child safety and the Internet. The Judicial Official has been requested to write the foreword because of his/her association with the author in the course of the Judicial Official's work in the field of law enforcement prior to the Judicial Official's becoming a judge, and the Judicial Official plans to reference this past experience and association with the author but not to identify his/her current judicial position in the foreword to the book.

Based upon the facts presented, the Committee unanimously concluded that the Judicial Official may author the foreword subject to the following conditions:

1. The Judicial Official should maintain editorial control over the content of the foreword and should retain the right to review any biographical information that may be published in connection with the book even though in this case his/her official title will not appear in the book;
2. The Judicial Official should review the entire contents of the book and satisfy him/herself that authoring a foreword to the book would not cast doubt on his/her impartiality in future cases or reflect a predisposition with respect to particular cases or issues or regarding any party or witness that may appear before the Judicial Official; and
3. In accordance with the obligations of Canons 2 & 3, if the author appears as a party or witness before the Judicial Official or if the Judicial Official presides over a case concerning the subject matter of the book, the Judicial Official should disclose that he or she wrote the foreword and what it states. Thereafter, if a party requests that the Judicial Official recuse himself or herself, 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 book 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 meeting adjourned at 9:43 a.m.