

Committee on Judicial Ethics

Annual Report for January 1 - December 31, 2010

Membership. The Committee on Judicial Ethics, which began operating on August 1, 2008, continued its work throughout 2010. The membership remained constant during the first seven months of the year, consisting of the following members: Hon. Barry R. Schaller, Chair; Hon. Linda K. Lager, Vice Chair; Hon. Robert J. Devlin; Hon. Francis X. Hennessy; and Professor Jeffrey A. Meyer. Attorney Martin R. Libbin continued to serve as Secretary to the Committee, and Attorney Viviana L. Livesay, as Assistant Secretary. After Judge Devlin decided not to seek a new term because of other judicial responsibilities, the Chief Justice appointed Hon. Edward R. Karazin to a full three-year term. The Chief Justice also reappointed Professor Meyer to a full three-year term. The members and staff of the Committee wish to commend Judge Devlin for his outstanding contributions to the work of the Committee during his tenure. His knowledge and appreciation of the ethical responsibilities of judges, plus his practical understanding of the role of judges, enabled him to play a major role in the operation of the Committee from its inception. His spirit of collegiality and willingness to listen to the views of others complemented his principled approach to the ethical questions before the Committee.

Policy and Rules. At the recommendation of the Committee, on May 24, 2010, the Chief Justice made one change to the Policy and Rules during 2010. The following language in Section 1 relative to the qualifications of the ethics professor was eliminated: "and is not engaged in the practice of law other than in the federal courts as part of the professor's teaching responsibilities."

Webpage and Other Means of Publicizing the Work of the Committee. During 2010, the Committee and its staff continued developing the Subject Index of Advisory Opinions for all opinions. The index, which is posted on the Committee's Webpage, is updated and regularly maintained upon approval of the minutes of each meeting.

An ethics component was included in the 2010 Connecticut Judges Institute on disqualification and recusal. Hon. Linda K. Lager participated in the presentation in her personal capacity and not as a member of the Committee.

At the annual meeting of Superior Court judges in June, the work of the Superior Court Rules Committee along with a special subcommittee of judges, who produced a draft of a new Code of Judicial Ethics based on the 2007 ABA Model Code, came to fruition. By unanimous vote, the Superior Court judges adopted the new Connecticut Code, which became effective on January 1, 2011. The Committee began to anticipate in its opinions the effect of the new Code as it considered requests made in the latter part of 2010, particularly those that concerned matters likely to take place in 2011.

Activity. During 2010, the Committee received thirty-eight requests for opinions. In

response, the Committee issued thirty-six informal opinions and one formal opinion. One request was withdrawn. Two of these opinions were issued on an emergency basis. In each instance of an emergency opinion, Committee members circulated comments on the request and in one instance, discussed the request at a regular meeting. In each instance, the Secretary consulted with the Chair regarding the informal opinion to be conveyed to the Judicial Official.

As in the preceding year, most requests, by far, concerned off-the-bench activities. References to 2010 Formal and Informal Summaries are included with the following comments. All seven of the requests that involved on-the-bench conduct related to recusal or disclosure of prior relationships with attorneys or others who were likely to appear before Judicial Officials (4, 9, 19, 23, 25, 26, 28). Of the thirty requests that involved off-the-bench activities (excluding the withdrawn request), the requests raised a wide variety of issues. Two pertained to speaking at or attending fundraising events (27, 38) and three concerned participating in various other types of fundraising activities (2, 31, 34). Three concerned the acceptance of awards or honorary degrees (13, 30, 32). Three involved the permissibility of speaking at events sponsored by non-profit or other private organizations (11, 22, 17).

Two involved attending social events because of concerns about the possible political nature of the events (33, 36). Two involved administering oaths of office to officials (12, 37). Two concerned the permissibility of writing or endorsing publications (15, 35). Two concerned participating in various types of social activity (8, 18). Two concerned the duty to report possible attorney or judicial misconduct (6, 10). The remaining requests concerned matters including post-retirement employment, serving on a governmental commission, making a campaign contribution, writing a recommendation letter, accepting a gift, accepting a lifetime membership in an organization, accepting pay for serving on a foundation, and serving as guardian (14, 16, 20, 29, 3, 5, 7, 24). The formal opinion (21) concerned the permissibility of speaking to a group of Connecticut state employees. Many of the subjects involved more than one issue and some also involved recusal concerns along with other subjects.

The Committee noted that the subjects of the requests during 2010 revealed that Judicial Officials continue to pay close attention to the growing body of past opinions and some are seeking clarification or expansion of matters covered in past opinions. Judicial Officials are not, for the most part, asking about matters that have been addressed in 2008 and 2009 but, rather, are relying on past opinions. The requests show an ever-growing sophistication on the part of our Judicial Officials in seeking opinions as to increasingly nuanced and complex issues, reflecting heightened sensitivity with respect to and concern for ethical conduct. The Committee is encouraged that this development indicates that Judicial Officials are benefiting 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. The Committee, however, strongly urges Judicial Officials not to hesitate requesting opinions whenever they are in doubt, regardless of the subject matter or the complexity of the issue.

Since several requests concerned matters involving more than one Judicial Official, the Committee again made 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. All Committee members 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 continued excellent 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 improve its website to insure effective access to the growing body of ethical opinions.

In order to clarify the process for the reconsideration of informal opinions, the Committee recommends amending Section 10 of the Policy and Rules as follows:

Reconsideration. Within thirty days after ~~the distribution notice~~ of a formal **or an informal** opinion, the person who requested the opinion may petition the Committee to reconsider its opinion by submitting a request for reconsideration to the Secretary to the Committee in the form of a letter or memorandum explaining the basis for the request. The Committee shall respond to the request by either reaffirming or revising the ~~formal~~ opinion. If warranted, the Committee may reconsider an opinion at any time on its own motion.

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.

January 13, 2011

Respectfully submitted,

Barry R. Schaller, Chair