

Committee on Judicial Ethics
Teleconference
Friday January 30, 2009

Members present via teleconference: Justice Barry R. Schaller, Chair; Judge Linda K. Lager, Vice-Chair, Judge Robert J. Devlin, Jr., Judge Socrates H. Mihalakos and Associate Professor Jeffrey A. Meyer. Staff present: Martin R. Libbin, Esq., Secretary.

MINUTES

- I. Justice Schaller called the meeting to order at 2:02 p.m. Though publicly noticed, no members of the public attended.
- II. The draft Minutes of the January 27, 2009 meeting were unanimously approved.
- III. The Committee considered Judicial Ethics Opinion 2009-03 concerning (1) the propriety of a judicial official inquiring of an attorney concerning the attorney's potential involvement in drafting a complaint against the judicial official, (2) the judicial official's duty to recuse himself or herself in matters where the attorney referenced in the prior issued appears before the judicial official, and (3) the obligation of the judicial official to report alleged misconduct involving the attorney to appropriate disciplinary authorities. Based upon the facts presented, the Committee unanimously decided those issues as follows. While the issue of whether a judicial official can inquire of an attorney about his or her involvement in drafting a complaint is not an issue that is currently pending before a court, agency or commission, in accordance with paragraph 5 of the Committee's Rules, the Committee declines to answer this inquiry beyond noting that the use of judicial office to question an attorney in order to investigate the source of a complaint would be in violation of Canons 1, 2 and 3. The judicial official is correct to recuse him or herself from hearing matters in which the attorney appears during the pendency of the complaint. Following the disposition of the complaint, the judicial official should be guided by Canon 3(c)(3), which provides that a judge is not automatically disqualified from sitting on a proceeding merely because a lawyer to the proceeding has filed a lawsuit against the judge or filed a complaint with the judicial review council. In such instances, the judge is required to disclose on the record that fact to the lawyers and parties to the proceeding before the judge. In addition, the judicial official is to be guided by the principle enunciated in *Consiglio v. Consiglio*, 48 Conn. App. 654 (1998) that "[t]he matter of a judge's recusal is in the reasonable discretion of that judge.... The decision to recuse oneself is an intrinsic part of the independence of a judge." *Id.* at 561-562. Finally, with respect to whether the judicial official has a duty to refer the attorney to a disciplinary authority for alleged misconduct during a proceeding, Canon 3(b)(3) and its Commentary note that while a judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge becomes aware, the judge has discretion to report the matter depending upon the seriousness of the conduct and the

circumstances involved. The judicial official should be guided by these provisions in exercising his or her own discretion as to whether to report the attorney's conduct.

IV. The meeting adjourned at 2:29 p.m.