

Committee on Judicial Ethics
Teleconference
Thursday, February 16, 2012

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Edward R. Karazin, Jr., Vice Chair, Professor Jeffrey A. Meyer, Judge Maureen D. Dennis and Judge Thomas J. Corradino, Alternate. Staff present: Attorney Martin R. Libbin, Secretary and Attorney Viviana L. Livesay, Assistant Secretary.

MINUTES

- I. With the above noted members present, Justice Schaller called the meeting to order at 11:32 a.m. Although publicly noticed, no members of the public attended.
- II. The Committee unanimously approved the Minutes of the January 12, 2012 meeting.
- III. The Committee discussed Judicial Ethics Informal 2012-03 concerning a Judicial Official who plans to marry an attorney who is employed in a non-supervisory role by a large governmental law office divided into various functional or geographical units. The issues are as follows: (1) Is the Judicial Official required to report any and all wedding gifts received from attorneys or others who are likely to appear before the Judicial Official? (2) Following the wedding, is the Judicial Official required to disclose his or her marital relationship if another attorney assigned to the same unit where the Judicial Official's spouse is assigned appears before the Judicial Official?

The facts included, inter alia, that the future spouse is one of approximately fifteen attorneys in his or her unit; the future spouse does not supervise anyone else in the unit; some, but not all, of the future spouse's co-workers will be invited to the wedding; and the Judicial Official occasionally presides over matters in which attorneys assigned to the future spouse's unit appear for limited purposes. Based upon the facts presented, the Committee unanimously determined as follows.

Receipt and Reporting of Wedding Gifts: Rule 3.13 permits a judge to accept benefits and not to report such benefits that constitute "ordinary social hospitality" in circumstances where acceptance of such benefits are not prohibited by law or would not otherwise appear to a reasonable person to undermine the judge's independence, integrity or impartiality. Wedding gifts are a part of ordinary social hospitality within the meaning of Rule 3.13. As a result, the Judicial Official may accept and need not report a wedding gift unless the value of the gift is so great that a reasonable person would believe that the gift would undermine the judge's independence, integrity or impartiality (in which event the judge may not accept the gift) or bring it outside the bounds of ordinary hospitality based upon the relationship of the individuals and any historical gift giving between them.

Disqualification and Disclosure in Cases Involving Appearances by Attorneys from the Judicial Official's Spouse's Unit: Rule 1.2 requires a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and to avoid impropriety and the appearance of impropriety. Rule 2.4 prohibits a judge from permitting family relationships to influence the judge's judicial conduct or judgment and prohibits a judge from conveying or permitting others to convey the impression that any person is in a position to influence the judge's judicial conduct or judgment. Although Rule 2.11(a)(2) requires disqualification from any proceeding in which a judge's spouse acts as an attorney, Comment (4) to Rule 2.11 provides that "[t]he fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge," unless in circumstances that "the judge's impartiality might reasonably be questioned" under Rule 2.11(a).

In light of these rules, the Judicial Official should disclose to all parties the marital relationship in any case in which an attorney from the Judicial Official's spouse's unit appears before the Judicial Official. The Judicial Official should further inquire of the parties whether the Judicial Official's spouse has had any involvement in the case. If the spouse has had any involvement in the case, the Judicial Official should recuse him or herself or may follow the procedure set forth in Rule 2.11 (c) to request the parties to consider whether to waive the Judicial Official's disqualification. If the spouse has had no involvement in the case, the Judicial Official may preside over the case unless a motion for disqualification is filed and based upon the information provided in connection with that motion the Judicial Official determines that he or she should recuse him or herself. Although not required, the Judicial Official may wish to consider disclosure of the marital relationship in any additional case in which an attorney from the spouse's governmental office who is employed outside the spouse's functional or geographical unit appears before the Judicial Official.

IV. The meeting adjourned at 11:43 a.m.