

Committee on Judicial Ethics
Teleconference
Tuesday, May 26, 2009

Members present via teleconference: Justice Barry R. Schaller, Chair, Judge Linda K. Lager, Vice Chair, Judge Robert J. Devlin, Jr. and Associate Professor Jeffrey A. Meyer. Staff present: Martin R. Libbin, Esq., Secretary, Viviana L. Livesay, Esq., Assistant Secretary (after start of meeting).

MINUTES

- I. With all members present, Justice Schaller called the meeting to order at 9:16 a.m. Though publicly noticed, no members of the public attended.
- II. The Committee unanimously approved the draft Minutes of the April 30, 2009 meeting.
- III. The Committee considered Judicial Ethics Informal Opinion 2009-17 concerning whether a Judicial Official may join the American Board of Trial Advocates (ABOTA) in the “Judge” category. ABOTA is an organization whose stated purposes include, inter alia, elevating the standards of integrity, honor and courtesy in the legal profession, aiding in the education and training of trial lawyers, preserving the jury system, and promoting the efficient administration of justice and constant improvement of the law. ABOTA has adopted over 40 resolutions on a variety of topics, as well as taking a position with respect to certain legislation and filing briefs as amicus curiae in various cases. Membership in ABOTA is limited to those who have attained certain levels of jury trial experience and who are approved by the membership and board of the local chapter and the national board. (Judges only need meet the experience criteria and be approved by the national board.)

Based upon the information available, four of the Committee’s members determined that ABOTA is a Canon 4 organization devoted to the improvement of the law, the legal system, and the administration of justice and that membership is permissible subject to the following conditions: (1) if there is a sponsoring member and that member appears before the Judicial Official, the Judicial Official must disclose the relationship for a reasonable period of time, but not less than one year from the date on which the sponsoring member recommends the Judicial Official; (2) the Judicial Official is cautioned that, consistent with the Commentary to Canon 5 (b), due to the changing nature of some organizations and of their relationship to the law, the Judicial Official should regularly reexamine the activities of ABOTA to determine whether it is proper for the Judicial Official to continue his or her relationship with it; and (3) if an issue comes before the Judicial Official for decision that involves a matter on which ABOTA has taken a public position (such as by adopting a resolution or filing an amicus curiae brief), the Judicial Official should consider whether recusal is necessary.

One member of the Committee expressed strong reservations about whether it would be prudent for a Judicial Official to accept a membership invitation to ABOTA, even if not a technical violation of the Code of Judicial Conduct. The reservations were based on ABOTA's prerequisites for membership, which effectively preclude many attorneys/judges from being invited to join, and its lobbying and advocacy. These facts may create a perception that ABOTA is a partisan organization that does not reflect the many different segments of the bar or represent various sides of professional issues. In addition, as an ABOTA member the Judicial Official may have to devote a fair amount of time to monitoring the organization's lobbying and advocacy activities and may have to avoid particular assignments, for example in complex litigation, as a civil presiding judge or a civil trial judge, to avoid a conflict with either Canons 2 or 3.

IV. The meeting adjourned at 9:37 a.m.