

Committee on Judicial Ethics
Teleconference
Thursday, July 26, 2012

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

MINUTES

- I. With the above noted Committee members present, Justice Schaller called the meeting to order at 9:35 a.m. Although publicly noticed, no members of the public attended.
- II. The Committee members present unanimously approved the Minutes of the July 20, 2012 meeting.
- III. The Committee postponed ratification of Emergency Staff Opinion JE 2012-23 until the next meeting.
- IV. The Committee discussed Informal JE 2012-24. The facts are as follows: A Judicial Official previously served in a non-judicial governmental position and was a named defendant in his or her official capacity in several civil actions at the time of his or her appointment to the bench. A private attorney represented the Judicial Official with respect to those matters, and the attorney later changed law firms while continuing to represent the Judicial Official in these actions. Approximately one year ago, while these actions against the Judicial Official remained pending and after the Judicial Official's attorney had changed law firms, another attorney who was a member of the first attorney's current law firm appeared before the Judicial Official in an unrelated contested matter. That second attorney was not involved in the first attorney's representation of the Judicial Official, and the Judicial Official did not realize at the time that the two attorneys were members of the same law firm. The Judicial Official subsequently issued a decision in that unrelated matter, and no appeal was taken. Recently, however, the Judicial Official has learned or realized that the two attorneys were members of the same law firm. The Judicial Official has added the law firm to his or her conflicts list, and intends in the future to provide notice to the parties if a member of the firm appears before the Judicial Official in the future. However, with respect to the prior unrelated matter, the Judicial Official now inquires whether he or she has a duty to notify the parties or counsel that, at the time the matter was argued and decided, the Judicial Official was represented by a member of the same law firm that represented one of the parties in the prior unrelated matter.

Rule 1.2 of the Code of Judicial Conduct states that a judge "should act at all times in a manner that promotes public confidence in the ... impartiality

of the judiciary, and shall avoid impropriety and the appearance of impropriety. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge."

Rule 2.11 states, in relevant part, that a judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned including, but not limited to, specified circumstances. One such circumstance is if the judge has a personal bias or prejudice concerning a party or party's lawyer. In addition, subsection (f) of that Rule states as follows: "The fact that the judge was represented or defended by the attorney general in a lawsuit that arises out of the judge's judicial duties shall not be the sole basis for recusal by the judge in lawsuits where the attorney general appears."

Based on the facts presented, including that the Judicial Official did not realize that his attorney had affiliated with the law firm at the time the unrelated contested matter was argued and decided, the Committee unanimously determined that there is no duty to notify the parties or counsel in the unrelated contested matter because no personal bias or prejudice concerning the party's lawyer could have existed under Rule 2.11. The Committee noted that even though disclosure is not required under the Code, the Judicial Official may choose to disclose the relationship if he or she wishes. The Committee agrees that there is a duty to disclose or to consider recusal under Rule 2.11 if the law firm appears before the Judicial Official in the future.

V. The meeting adjourned at 9:51 a.m.