

Committee on Judicial Ethics
Teleconference
Friday, September 4, 2009

Members present via teleconference: Judge Linda K. Lager, Vice Chair, Judge Robert J. Devlin, Jr., Judge Socrates H. Mihalakos and Associate Professor Jeffrey A. Meyer. Staff present: Viviana L. Livesay, Esq., Assistant Secretary.

MINUTES

- I. With a quorum present, Judge Lager called the meeting to order at 9:30 a.m. Although publicly noticed, no members of the public attended.
- II. The four participating members of the Committee unanimously approved the draft Minutes of the August 19, 2009 meeting.
- III. The participating members of the Committee considered Judicial Ethics Informal Opinion 2009-27 concerning whether a Judicial Official may serve as co-chair of a charitable organization's goods drive. A charitable organization conducts an annual goods drive for donations of food, clothing or similar items and seeks to have the Judicial Official serve, with his or her spouse, as an honorary co-chair; the Judicial Official would be publicly identified as an honorary co-chair and his/her name would appear on the organization's letterhead, possibly with identification of the Judicial Official's title in the letterhead or on the organization's website. Although the Judicial Official would not directly solicit goods or funds, the Judicial Official would intend to speak, in his/her role as an honorary co-chair, to various church and rotary groups about the needs in the community and the special health and related issues affecting young children. Based on these facts, the participating Committee members found no tenable distinction between directly soliciting funds and indirectly soliciting in-kind goods donations by publicly speaking about the needs in the community in the context of the Judicial Official's capacity as honorary co-chair of the goods donation drive. The Committee determined that participation as honorary co-chair under the stated facts would be a violation of Canon 5 (b) (2) in two respects. First, because the Judicial Official's judicial title may be disclosed or could be readily known to potential donors, it would violate Canon 5 (b)(2)'s prohibition of "us[ing] or permit[ting] the use of the prestige of his or her office for that [fund-raising] purpose." Second, the scope of the Judicial Official's public and highly visible involvement in the organization's charitable goods drive (unlike the more general involvement in charitable organizations permitted by Canon 5(b)) could objectively be perceived as encouraging contributions to the charitable drive in violation of the Canon 5 (b)(2)'s proscription against "solicit[ing] funds" because the exclusive purpose of the honorary co-chair title would be for the public purpose of soliciting the

equivalent of funds. Notwithstanding the Judicial Official's salutary intent, under Canon 5(b) the Judicial Official's conduct must be evaluated by an objective, reasonable person standard.

The Committee also observed that while, on these facts, serving as honorary co-chair of a charitable drive is a violation of Canon 5, the following would be permissible: (1) the Judicial Official may participate anonymously in the planning of the charitable drive in a way that is not directly involved with any acts of solicitation, and (2) the Judicial Official may speak to groups about the social and human needs that may form the basis for a charitable contribution drive provided the Judicial Official does not solicit donations or associate his or her name with any donation/fund-raising efforts.

IV. The meeting adjourned at 9:40 a.m.