

Committee on Judicial Ethics Advisory Opinions  
New Haven Judicial District Courthouse  
235 Church Street, New Haven  
Friday, November 9, 2007, 4 p.m.

Members present: Justice Barry R. Schaller, chair; Judge Robert J. Devlin, Jr.; Judge Linda K. Lager and Judge Socrates H. Mihalakos. Staff present: Holly T. Sellers, Esq. and Martin R. Libbin, Esq.

**MINUTES**

- I. Justice Schaller called the meeting to order at 4:00 p.m.
- II. The minutes of the July 10, 2007 meeting were approved as submitted.
- III. Review of the goals of the Committee noted that, in addition to the procedures to be submitted to the Chief Justice, there may be recommendations regarding implementation of the proposal.
- IV. The Committee reviewed the draft policy and rules. Proposed sections 4(a) and 4(b) are to be conformed to recognize that only judicial officers may submit requests for opinions, whether the opinion is to be formal or informal. A discussion of the difference between formal and informal requests noted that either should be viewed as a good faith effort to comply with the Code, pursuant to paragraph nine (9) of the proposal. It was agreed that paragraph nine should be amended to delete the requirement that the opinion be in writing to be offered as evidence of a good faith attempt to comply with the Code. This change is consistent with paragraph six, providing that informal opinions shall be given orally.

Further discussion of the distinction between formal and informal requests addressed the timing or urgency of the request and the possibility of a limited opportunity for committee members to discuss any response. It was agreed that some requests may be time critical, with time only for an informal opinion. This option has been useful in Massachusetts and the committee members agreed it should be part of the Connecticut proposal. Paragraph 3 (c) recognizes this by requiring less than a quorum to respond to requests where a response is needed on an urgent basis.

The need to internally document informal requests and responses thereto was recognized as useful for both the individual requesting an opinion and the records of the Committee. It is contemplated that some requests for informal opinions may be required to be submitted in writing, and it was agreed that all requests will be commemorated in some manner.

The Committee next discussed the publication of advisory opinions and the basis in the proposal for the Committee's choice of which written opinions to publish. It was suggested that the Committee could include a number of factors, including the likelihood that a scenario may be repeated, or that an opinion is based on an unusually fact-bound query. Further, the Committee could choose to publish a representative opinion for similar queries rather than publish repetitive opinions. Discussion included whether published opinions would be included on a Judicial Branch web site, and to whom access to the opinions would be provided.

Should the proposed rules be adopted, it was suggested that there should be provision for a procedure whereby the Committee could adopt additional procedural regulations to aid it in its operation. It was agreed that the initial rules would be presented to the Judges if the Chief Justice accepts this Committee's recommendation, and that regulations could thereafter be adopted by the Committee.

- V. The Committee next reviewed separate recommendations to the Chief Justice in furtherance of implementation. Discussion focused on disclosure of information including requests, responses, and written advisory opinions. Paragraph seven of the current draft proposal addresses confidentiality. Massachusetts permits requests for advisory opinions to be confidential unless disclosure is necessary to prevent injury. Further discussion considered the provisions of Canon 1 and Canon 3 (b) (3) in light of the current proposal. Consideration was also given to the operation of FOIA in the context of this proposal. The Committee agreed to discuss this further at its next meeting, and to include a recommendation to the Chief Justice specifically addressing this aspect of the proposed policy.

The Committee discussed whether a preamble to the policy is needed, and agreed that the philosophy behind the proposal would be better presented to the Judges at a meeting where the proposal is being considered.

- VI. Discussion of further proposed changes will take place at the next Committee meeting.
- VII. Vote on approval of Policy and Rules to submit to the Chief Justice was deferred until final changes are agreed upon by the Committee.
- VIII. The next meeting date will be set by the Committee after additional information raised during the discussion, and draft changes needed, if any, are distributed to Committee members.
- IX. The meeting adjourned at 5:00 p.m.