

RULES OF THE JUDICIAL ETHICS ADVISORY COMMITTEE

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Rule 1. Membership; scope of rules; authority.

Membership of the Committee shall be as provided in Court on the Judiciary Rule 13(a). These rules shall govern procedures of the Judicial Ethics Advisory Committee, as authorized by Court on the Judiciary Rule 13(b)(2).

Rule 2. Definitions.

The following terms shall have the following definitions:

"Committee" shall mean the Judicial Ethics Advisory Committee established in Court on the Judiciary Rule 13.

"Rules" shall mean the rules of the Judicial Ethics Advisory Committee.

"Supreme Court" shall mean the Supreme Court of Delaware.

Rule 3. Duties of officers.

(a) *Chair*. The chair shall call meetings as needed, preside over those meetings, and otherwise coordinate the work of the committee.

(b) *Vice-chair*. In the absence of the chair, the vice-chair shall act as chair and shall otherwise perform such other duties as may be assigned by the chair.

(c) *Secretary*. The secretary shall record minutes of meetings of the committee, distribute opinions, prepare an annual revised index to the committee's opinions, and otherwise perform such duties as may be assigned by the chair.

Rule 4. Requests for opinions.

(a) *Who may request opinion*. Any person subject to the Delaware Judges' Code of Judicial Conduct may request an advisory opinion on proper judicial conduct with respect to the Delaware Judges' Code of Judicial Conduct. The committee shall decline to respond to an inquiry from someone who is not subject to the Delaware Judges' Code of Judicial Conduct.

(b) *Scope of opinions*. The committee shall not render opinions regarding the proposed conduct of someone other than the inquirer, except that the committee may respond to requests from a judge about a person subject to the judge's direction and control or about a judge's spouse or close relatives. The committee shall only issue opinions that address contemplated or proposed future conduct and shall not issue opinions addressing past or current conduct unless the past or current conduct relates to future conduct or is continuing. The committee may not issue an opinion in a matter known to be the subject of a past or pending litigation or disciplinary investigation or proceeding.

(c) *Discretion of committee*. The committee may in its discretion decline to respond to any inquiry where the committee determines that a response would be inappropriate or that an opinion will not aid the judge, benefit the judiciary as a whole, or serve the public interest.

(d) *Opinions issued on own initiative*. Notwithstanding any other provision of these rules, the committee may also issue opinions at its own initiative on matters of interest to the judiciary.

Rule 5. Issuance of opinions.

(a) *Contents of request.* Except for an emergency request pursuant to Rule 8, a request for an advisory opinion must be in writing, signed by the person requesting the opinion, and submitted to the chair. A request shall contain a statement describing in detail all relevant facts and circumstances pertaining to the conduct for which an opinion is being sought. The request shall include a clear and concise statement of the question of judicial ethics for which an opinion is sought. The request shall also include references to and summarizations of the relevant section(s) of the Delaware Judges' Code of Judicial Conduct, advisory opinions, case law, and other authority that the inquirer has already consulted.

(b) *Threshold considerations.* The chair shall review the request for an advisory opinion and notify the inquirer if it does not comply with these rules. If an existing opinion answers the question presented in a request, the chair may send a copy of that opinion to the inquirer, and the committee need not issue a new advisory opinion. If an existing opinion does not answer the question presented in a request, the chair shall send the request and any accompanying documents to all members of the committee. The identity of the individual whose proposed conduct is the subject of the request shall be disclosed to the members of the committee. If the facts or circumstances provided by the requesting individual are unclear, vague, or insufficient in detail, the chair shall request supplemental information. If the supplemental information provided is still insufficient or is not provided within a reasonable time, the chair shall advise the inquirer that the committee shall not render an advisory opinion.

(c) *Drafting of opinion.* The chair shall assign the responsibility for drafting an opinion to members of the committee on a rotating basis. The assigned member shall have 30 days to prepare a proposed opinion and to circulate it to the other members. If a proposed opinion is not submitted within 30 days or within any extension approved by the chair, the chair may re-assign the opinion to another committee member. Committee members shall have 15 days to indicate their approval or disapproval of a proposed opinion to the author of the proposed opinion and to make comments. The failure to respond within 15 days may be deemed an assent to the proposed opinion. Committee members shall send their responses to all other committee members who shall have an additional 15 days to respond to the comments of other committee members. The times set forth in this subsection may be enlarged or shortened by the chair for good cause.

(d) *Voting; lack of unanimity.* The chair will maintain a record of the voting of all members. A majority of the members shall be required to concur in any advisory opinion issued by the committee. If the committee is evenly divided with regard to an issue, an opinion stating that division, with the arguments of both sides, may be issued. Dissenting members may issue a minority opinion or opinions.

(e) *Effect of an opinion.* A judge who has requested and relied upon an shall be entitled to introduce that opinion as evidence that conduct conforming to the opinion is *prima facie* permissible pursuant to the Delaware Judges' Code of Judicial Conduct, as authorized by Court on the Judiciary Rule 13(c).

(f) *Opinion limited to judicial ethics.* If the request raises issues under constitutional provisions, statutes, rules, or regulations other than the Delaware Judges' Code of Judicial Conduct, the opinion may note the issues but shall indicate that the committee is not authorized to interpret a judge's obligations under any law other than the Delaware Judges' Code of Judicial Conduct.

Rule 6. Formal opinions.

Style of opinions. Formal opinions shall set forth the facts upon which the opinion is based and shall provide advice only with regard to those facts. Formal opinions shall cite the rules, cases, and other authorities that bear upon the advice rendered and shall quote the applicable provisions of the Delaware Judges' Code of Judicial Conduct. Formal opinions shall contain a statement of facts; a brief summary of the conclusion and a thorough but succinct discussion of the issue(s). If the opinion responds to more than one issue, each issue shall be answered separately. The names of each committee member subscribing to any formal opinion shall be set forth at the conclusion of the opinion, but only the chair need actually sign the final opinion.

Rule 7. Informal opinions.

(a) *Basis for issuance.* An informal opinion may be issued if the opinion does not reverse prior formal

opinions and the chair finds that the subject is not of general substantial interest and continuing concern to the judiciary or to the public. If a request is made that requires only an informal opinion, the chair or a member designated by the chair may render an informal opinion only after soliciting the advice of three other members. The chair must always be consulted. Informal opinions may initially be oral but shall subsequently be memorialized in writing and circulated to all members of the committee. Informal opinions need not follow the format of formal opinions.

(b) *Post-issuance procedures.* The chair shall report at the next meeting of the committee on all informal opinions issued since the last meeting of the committee. If three members of the committee disagree with an informal opinion, that opinion shall be resubmitted for further study and issuance of a formal opinion, and the inquiring judge shall promptly be so notified by the chair. Informal opinions will not be distributed or published in the same manner as formal opinions.

Rule 8. Emergency requests.

(a) *Basis for issuance.* An emergency request for an opinion may be made by any judge faced unexpectedly with a question of judicial ethics that requires an immediate response. Whenever possible, a request for an emergency opinion shall be in writing. An emergency request shall be accompanied by an explanation of the circumstances that make an immediate response necessary.

(b) *Procedures.* When an emergency request is made, the chair may with the concurrence of two members of the committee give a provisional response, orally or in writing. The response must make clear that the advice is provisional until consideration by the entire committee. The chair shall report promptly to the committee, in writing, on all provisional responses. If a majority of the committee agrees with the advice given, a written, confirming opinion shall be issued to the inquirer. If a majority disagrees, a written opinion shall be issued to the inquirer setting forth the provisional response but also setting forth the views of the entire committee on the issue presented. The view of the majority of the full committee will supersede the inconsistent provisional response.

Rule 9. Distribution and publication.

The original formal opinion and any minority opinion shall be mailed the judge requesting the opinion, and copies shall be distributed to all committee members. The secretary shall cause to be prepared an edited version of a formal opinion that omits the names of persons, courts, and places, and any other information that might tend to identify either the person making the request or any other person. The edited opinion shall use gender neutral references. The chair shall review the edited opinion, add a heading if necessary, and assign a case number to the formal opinion.

Copies of edited opinions shall promptly be sent by the secretary to the Clerk of the Court on the Judiciary, to the Clerk of the Supreme Court, to the Administrative Office of the Courts, to all county law libraries in Delaware, to the American Judicature Society, and to such other recipients as the chair shall designate. Copies of all edited opinions and an updated index to all formal opinions shall be sent by the secretary annually to all members of the Judicial Conference. A complete set of the committee's edited opinions shall be provided by the secretary to each new member of the Judicial Conference.

Rule 10. Reconsideration and modification.

Any determination of the propriety of particular conduct by the Judicial Ethics Advisory Committee or by the Court on the Judiciary shall supersede any conflicting prior opinion of the committee. The committee shall examine and reconsider any of its opinions upon the request of the Court on the Judiciary. At any time, a majority of the committee may modify or reverse any advisory opinion. The committee shall periodically review all of its opinions to determine if any are obsolete. Any judge may petition the committee to reconsider any opinion by letter or memorandum explaining the basis for the request. The committee shall respond to the request by either reaffirming or revising the opinion. Revised opinion shall be distributed and published in the same manner as the original opinion.

Rule 11. Confidentiality.

Disclosure of a formal or informal opinion shall be as provided in Court on the Judiciary Rule 13(d).

Rule 12. Miscellaneous.

(a) *Transaction of business.* Committee business, including the issuance of an advisory opinion, may be transacted in person, by telephone conference call, or by writing circulated to all members.

(b) *Recusal.* No member of the committee shall participate in any request for advice in which the member has a direct or indirect interest.

(c) *Recommendations for amendments to Code of Judicial Conduct.* The committee may submit recommendations to the Supreme Court for amendments to the Delaware Judges' Code of Judicial Conduct.

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