

JUDICIAL ETHICS ADVISORY COMMITTEE
OF THE
STATE OF DELAWARE

The Hon. Kenneth M. Millman, Chair
The Hon. Richard F. Stokes, Vice Chair
The Hon. Jan R. Jurden
The Hon. Charles W. Welch, III
The Hon. Alan G. Davis
The Hon. Michael K. Newell
The Hon. J. Travis Laster

JEAC 2011-2

May 13, 2011

**Re: Request for Opinion from the Judicial Ethics Advisory Committee
Propriety of Judicial Clerk Receiving a Law Firm Salary Advance**

Dear [REDACTED]

By correspondence dated April 4, 2011, you requested an opinion from the Judicial Ethics Advisory Committee (the "Committee") as to the propriety of one of your incoming law clerks (the "Clerk") accepting a salary advance. The advance would consist of \$20,000 from the firm the Clerk will be working for post-clerkship. It is to be provided "to assist with moving and living expenses." The funds will be repaid by the Clerk via deductions from her paychecks once she begins at the firm. Specifically, you wanted to know if: (1) the Clerk is permitted to accept the \$20,000 advance while working as a clerk; or (2) if the Clerk instead would be permitted to begin at the firm

immediately after graduation from law school, receive the advance, and then begin her clerkship at the normal time in September.

A. The Applicable Rules of the Law Clerk Conduct Code

The Law Clerk Conduct Code (the “Code”) provides the ground rules for ethical clerk behavior. The Code places heavy emphasis on the avoidance of any appearance of impropriety. “An independent and honorable judiciary is indispensable to justice in our society. A law clerk should observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of [the] Code should be construed and applied to further that objective.” Law Clerk Conduct Code, Canon 1. “A law clerk should not engage in any activities that would put into question the propriety of the law clerk’s conduct in carrying out the duties of the office.” Law Clerk Conduct Code, Canon 2.

The Code allows clerks to accept loans only in a narrow band of specifically enumerated circumstances. “Neither a law clerk, nor a member of the law clerk’s household should solicit or accept a . . . loan from anyone except for: . . . a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not law clerks . . . [or a loan where the lender] has not sought and is not seeking to do business with the court or other entity served by the law clerk [or] is not a party or other person who has had or is likely to have an interest in the performance of the law clerk’s official duties.” Law Clerk Conduct Code, Canon 5(C)(2).

The Code further discusses the interactions a clerk may have with future employers. “A law clerk may not accept the payment of any bonuses or moving expenses

until the end of the clerkship” Law Clerk Conduct Code, Canon 5(E). “[A] law clerk shall not receive any salary, or any supplementation of salary, as compensation for official services from any source other than the State of Delaware.” Law Clerk Conduct Code, Canon 6(C). There exists no previous opinion issued by the Committee that bears on your question.

B. The Clerk May Not Accept the Salary Advance.

Neither of the proposed courses of action are permissible under the Code. The salary advance at issue would essentially be an interest-free loan from the firm. Clerks are proscribed from taking such loans, as law firms are not traditional lending institutions and are likely to have a strong interest in the Clerk’s performance of her duties. The Code further establishes that clerks should not receive any bonuses or moving expenses until the end of their clerkship. This advance is specifically described as providing assistance with “moving and living expenses.” It would be improper under the Code for the clerk to accept the proposed advance.

A potential solution is for the Clerk to work for the summer at the firm, save up funds from her normal salary, and then start the clerkship. Another solution would be for the advance to issue at the beginning of the summer and be repaid *in total* over the course of the summer, before the clerkship begins. If either of these solutions were employed, no loan would be outstanding at the clerkship’s inception.

For the Committee,



J. Travis Laster
Judicial Ethics Advisory Committee



Kenneth M. Millman
Chair, Judicial Ethics Advisory Committee

cc: The Honorable Carolyn Berger, Liaison Justice
Members of the Judicial Ethics Advisory Committee:
The Honorable Kenneth M. Millman, Chair
The Honorable Richard F. Stokes, Vice Chair
The Honorable Jan R. Jurden
The Honorable Alan G. Davis
The Honorable Michael K. Newell
The Honorable J. Travis Laster
The Honorable Charles W. Welch, III