

VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the
City of Richmond on Tuesday the 5th day of January, 1999.*

A Judicial Ethics Advisory Committee is hereby established to render advisory opinions concerning the compliance of proposed future conduct with the Canons of Judicial Conduct. The committee shall have nine members. Five members shall be active or retired judges; two members shall be attorneys; and two members shall be lay persons. All members shall be appointed by the Chief Justice of the Virginia Supreme Court. Committee members shall serve for three-year terms from the date of appointment.

A request for an advisory opinion may be made by any judge or any person whose conduct is subject to the Canons of Judicial Conduct. The committee may not issue an opinion in response to a request where the facts are known to be the subject of a past or pending litigation or disciplinary proceeding or investigation. The committee may also issue opinions at its own initiative on matters of interest to the judiciary.

All opinions shall be advisory only, and no opinion shall be binding on the Judicial Inquiry and Review Commission or the Supreme Court in the exercise of its judicial discipline responsibilities. However, the Judicial Inquiry and Review Commission and the Supreme Court may in their discretion consider compliance with an advisory opinion by the requesting individual to be evidence of a good faith effort to comply with the Canons of Judicial Conduct provided that compliance with an opinion issued to one judge shall not be considered evidence of good faith of another judge unless the underlying facts are substantially the same.

Membership

1. The committee shall have nine members appointed by the Chief Justice of the Supreme Court. Members of the Judicial Inquiry and Review Commission may not serve simultaneously on the Judicial Ethics Advisory Committee.
2. Five members shall be either active or retired judges. One judge member shall be appointed from the Circuit, General District and Juvenile and Domestic Relations Courts and from the Court of Appeals. No member of the Supreme Court may be appointed to the Judicial Ethics Advisory Committee.
3. Two members shall be attorneys admitted to the practice of law in Virginia for at least ten years, who shall not be judges nor ever have been judges. The attorney members shall not be employees or officers within any branch of government except that they may be employees of educational institutions.

4. Two members shall be citizens who are not admitted to practice law in any state and who are not employees or officers within any branch of government except that they may be employees of educational institutions.

5. Committee members shall serve for three-year terms from the date of appointment, except that, to achieve staggered terms, three of the members first appointed shall be appointed for one year, three shall be appointed for two years, and three shall be appointed for three years. Committee members may be reappointed, but no member shall serve for more than two full consecutive terms.

6. A vacancy shall occur when a committee member resigns, ceases to be a member of the category from which the member was appointed, or becomes unable to serve for any reason. Vacancies shall be filled in the same manner as the original appointment, and appointments to fill a vacancy shall be for the balance of the term vacated. A member whose term expires shall continue to serve until a successor is appointed.

General Provisions

7. Members should be reimbursed for expenses actually and necessarily incurred in the performance of their duties for the committee.

8. To encourage judges to seek advice from the committee, the judge members of the committee, when acting in their advisory capacity, shall be exempt from the provisions regarding disciplinary responsibilities in the Canons of Judicial Conduct. The attorney members of the committee, when acting in their advisory capacity, shall be exempt from the provisions regarding reporting misconduct in the Code of Professional Responsibility.

9. By the concurrence of a majority of its members and subject to approval by the Supreme Court, the committee may promulgate additional rules of procedure not inconsistent with these rules.

10. The chair of the committee shall be elected by the members of the committee. The chair shall serve for a term of one year and shall not serve more than two successive terms. The chair is authorized to call meetings as needed, to preside over those meetings, and to coordinate the work of the committee. A vice chair shall be elected in the same manner.

11. No member of the committee shall participate in any request for advice in which he or she has a direct or indirect interest, including his or her personal inquiry.

12. The committee may submit to the Supreme Court recommendations for amendments to the Canons of Judicial Conduct.

13. Each year, the committee shall submit to the Supreme Court a report of its activities.

14. Counsel to the Judicial Inquiry and Review Commission shall provide administrative and research support sufficient to carry out the committee's functions.

Jurisdiction

15. Any judge or any person whose conduct is subject to the Canons of Judicial Conduct may request an advisory opinion about the propriety of his or her own conduct. The committee may decline to respond to an inquiry from someone who is not a member of the judiciary.

16. The committee shall not render opinions regarding the proposed conduct of someone other than the inquirer, except the committee may respond to requests from a judge about a person subject to the judge's direction and control, from a judge about the judge's relatives, or from a judge with supervisory responsibilities.

17. 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 response to a request when the facts are known to be the subject of a past or pending litigation or disciplinary investigation or proceeding.

18. 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.

19. The committee may not issue an advisory opinion that interprets any constitutional provision, statute, rule, or regulation that does not relate to judicial ethics.

20. Notwithstanding any other provision of these rules, the committee may also issue opinions at its own initiative on matters of interest to the judiciary.

Procedures

21. A request for an advisory opinion must be in writing, signed by the person requesting the opinion, and sent to Counsel for the Judicial Inquiry and Review Commission.

22. 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 also include a clear, concise statement of the question of judicial ethics for which an opinion is sought and include references to the relevant section(s) of the Canons of Judicial Conduct, advisory opinions, case law, and other authority that the inquirer has already consulted.

23. Counsel shall review the request for an advisory opinion and notify the inquirer if it does not comply with these rules.

24. If an existing opinion answers the question presented in a request, Counsel may send a copy of the opinion to the inquirer, and the committee need not issue a new advisory opinion.

25. If an existing opinion does not answer the question presented in a request, Counsel shall send the request and any accompanying documents to all members of the committee.

26. If the facts or circumstances provided by the requesting individual are unclear, vague, or insufficient in detail, the chair or any member of the committee shall request supplemental information. If the supplemental information provided is still insufficient or is not provided within a reasonable time, the chair shall inform the inquirer, and the committee shall not render an advisory opinion.

27. After discussion and consideration of the request, the chair shall assign the responsibility for drafting an opinion to members of the committee. The assigned member will have 30 days to prepare a proposed opinion and circulate it to the other members.

28. Committee members will have 15 days to indicate their approval or disapproval of a proposed opinion and to make comments. The failure to respond within 15 days shall be deemed an assent to the proposed opinion. Each committee member will send his or her response to all other committee members, including the chair, and to staff. Members will have an additional 15 days to respond to the comments of other members.

29. A telephone conference call may be arranged to discuss the proposed opinion and any comments.

30. A majority of the members shall be required to concur in any advisory opinion issued by the committee.

31. Any member of the committee may submit a minority opinion to be circulated for comment.

Formal Opinions

32. Formal opinions shall set forth the facts upon which the opinion is based and 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 Canons of Judicial Conduct.

33. Formal opinions shall contain a discussion section that analyzes the issues and provides the rationale for the advice given by the committee. If the opinion responds to more than one issue, each issue shall be answered separately.

34. If the request raises issues under constitutional provisions, statutes, rules, or regulations other than the Canons of Judicial Conduct, the formal 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 Canons of Judicial Conduct.

35. Formal opinions shall state the authority of the committee and explain the effect of compliance with the opinion in disciplinary proceedings.

Informal Opinions

36. Counsel for the Judicial Inquiry and Review Commission may issue informal opinions. An informal advisory opinion may be issued if the opinion is not inconsistent with prior formal opinions and Counsel finds that the subject is not of general substantial interest and continuing concern to the judiciary or the public.

37. If a request is made that requires only an informal opinion, Counsel may render an informal opinion at once or solicit the advice of the chair and other members before rendering an informal opinion.

38. Informal opinions may be oral. A written record shall be maintained by Counsel and a copy of the memorandum shall be promptly forwarded to the chair.

39. Counsel shall report in writing at the next meeting of the committee, on all informal opinions. If one-third of the members of the committee disagree with an informal opinion, that opinion shall be resubmitted for further study and issuance of a formal opinion.

40. Compliance with an informal opinion shall have the same effect as compliance with a formal opinion in judicial discipline proceedings.

41. Informal opinions will not be distributed or published in the same manner as formal opinions.

Distribution and Publication

42. The original formal opinion shall be mailed to the person requesting the opinion, and copies shall be mailed to all committee members.

43. The committee shall cause to be prepared an edited version of a formal opinion that omits the names of persons, courts, 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 neutral gender references. The chair shall review the edited opinion and add a heading.

44. Copies of edited opinions as they are prepared shall be sent to the Supreme Court, the Judicial Inquiry and Review Commission, the Executive Secretary of the Supreme Court, the Supreme Court Law Library, all law school libraries in Virginia, and the American Judicature Society.

45. Copies of edited opinions shall be published in a publication generally available to judges.

46. Copies of all edited opinions shall be sent by the Executive Secretary of the Supreme Court to all judges at least once a year. An index shall be distributed to all judges annually. A complete set of the committee's edited opinions shall be provided to each new judge.

47. A minority opinion shall be distributed and published in the same manner as the majority opinion of the committee.

48. The committee will release a copy of any edited opinion upon request.

Reconsideration and Modification

49. Any determination of the propriety of particular conduct by the Judicial Inquiry and Review Commission or the Supreme Court shall supersede any conflicting opinion of the committee. The committee shall examine and reconsider any of its opinions upon the request of the Judicial Inquiry and Review Commission or the Supreme Court.

50. 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.

51. Within thirty days after the distribution of an edited opinion to all judges, any person, court, or agency authorized to request an opinion may petition the committee to reconsider the 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 opinions shall be distributed and published in the same manner as the original opinion.

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Teste:


Clerk