

1 **Rule 3-109. Ethics Advisory Committee.**

2 Intent:

3 To establish the Ethics Advisory Committee as a resource for judges to request advice on the
4 interpretation and application of the Code of Judicial Conduct.

5 To establish a process for recording and disseminating opinions on judicial ethics.

6 Applicability:

7 This rule shall apply to all employees of the judicial branch of government who are subject to the
8 Code of Judicial Conduct.

9 Statement of the Rule:

10 (1) The Ethics Advisory Committee is responsible for providing opinions on the interpretation and
11 application of the Code of Judicial Conduct to specific factual situations.

12 (2) The Administrative Office shall provide staff support through the Office of General Counsel and
13 shall distribute opinions in accordance with this rule.

14 (3) Duties of the committee.

15 (3)(A) Preparation of opinions.

16 (3)(A)(i) The Ethics Advisory Committee shall, in appropriate cases, prepare and publish written
17 opinions concerning the ethical propriety of professional or personal conduct when requested to do so by
18 the Judicial Council, the Boards of Judges, the Judicial Conduct Commission, judicial officers and
19 employees, judges pro tempore or candidates for judicial office. The Committee may interpret statutes,
20 rules, and case law as may be necessary to answer a request for an opinion.

21 (3)(A)(ii) The Committee shall respond to an inquiry into the conduct of others only if

22 (3)(A)(ii)(a) the inquiry is made by the Judicial Council, a Board of Judges, or the Judicial Conduct
23 Commission; and

24 (3)(A)(ii)(b) the inquiry is limited to matters of general interest to the judiciary or a particular court
25 level.

26 (3)(A)(iii) The Committee shall not answer requests for legal opinions or inquiries concerning conduct
27 ~~which~~that has already taken place, unless it is of an ongoing nature.

28 (3)(B) The Committee may receive proposals from the Judicial Council, the Boards of Judges, the
29 Judicial Conduct Commission, and judicial officers and employees or initiate its own proposals for
30 necessary or advisable changes in the Code of Judicial Conduct and shall submit appropriate
31 recommendations to the Supreme Court for consideration.

32 (4) Submission of requests.

33 (4)(A) Requests for advisory opinions shall be in writing addressed to the Chair of the Committee,
34 through General Counsel, and shall include the following:

35 (4)(A)(i) A brief statement of the contemplated conduct.

36 (4)(A)(ii) Reference to the relevant section(s) of the Code of Judicial Conduct.

37 (4)(A)(iii) Citation to any relevant ethics opinions or other authority, if known.

38 (4)(B) The request for an opinion and the identity of the requesting party is confidential unless waived
39 in writing by the requesting party.

40 (5) Consideration of requests.

41 (5)(A) As used in these rules, the term "informal opinion" refers to an opinion ~~which~~that has been
42 prepared and released by the Committee. The term "formal opinion" refers to an opinion ~~which~~that has
43 been considered and released by the Judicial Council. "Formal opinions" will usually be reserved for
44 situations of substantial and general interest to the public or the judiciary.

45 (5)(B) Upon receipt of a request for an advisory opinion, General Counsel shall research the issue
46 and prepare a preliminary recommendation for the Committee's consideration. The opinion request,
47 preliminary recommendation and supporting authorities shall be distributed to the Committee members
48 within ~~45~~21 days of receipt of the request.

49 (5)(C) The Committee members shall review the request and recommendation and submit comments
50 to General Counsel within ~~40~~14 days of their receipt of the request and preliminary recommendation.

51 (5)(D) General Counsel shall review the comments submitted by the Committee members and, within
52 ~~40~~14 days of receipt of the comments, prepare a responsive informal opinion in writing which shall be
53 distributed to the Committee members for approval.

54 (5)(E) A majority vote of the Committee members is required for issuance of an opinion and may be
55 obtained by electronic means or, upon the request of a Committee member, the Chair may continue the
56 vote until the next meeting of the Committee.

57 (5)(F) Informal opinions shall be released to the requesting party within ~~45~~60 days of receipt of the
58 request unless the chair determines that additional time is needed for the committee members to
59 deliberate and finalize the opinion ~~is contrary to previous opinions of the Committee~~ or the matter is
60 referred to the Judicial Council.

61 (5)(G) Upon the written request of a party and for good cause, the Committee may issue a response
62 to a request within a shorter period of time than provided for in these rules. The requesting party has the
63 responsibility of establishing that the request is of an emergency nature and requires an abbreviated
64 response time.

65 (6) Referral to Judicial Council. Upon an affirmative vote of a majority of the Committee members, a
66 motion of the requesting party, or a motion by the Judicial Council, an opinion request and Committee
67 recommendation shall be referred to the Judicial Council for consideration. Within 60 days of receipt of
68 the referral, the Council shall consider the request and recommendation and take the following action:

69 (6)(A) Approve or modify the opinion and direct the Committee to release the opinion, as initially
70 drafted or modified, to the requesting party as an informal opinion of the Committee, or

71 (6)(B) Approve or modify the opinion and release the opinion as a formal opinion of the Council.

72 (7) Reconsideration of opinions.

73 (7)(A) Within ~~40~~14 days of the issuance of an opinion, the requesting party or a Committee member
74 may request reconsideration. Within 30 days of the issuance of the opinion, a Board of Judges may

75 request reconsideration if the Board was not the requesting party and the opinion addresses matters of
76 general interest to the judiciary or to a particular court level. Requests for reconsideration of informal
77 opinions must be made in the first instance to the Committee and then to the Judicial Council. Requests
78 for reconsideration of formal opinions shall be made to the Judicial Council. Requests for reconsideration
79 shall be in writing addressed to the Chair of the Committee or the Presiding Officer of the Council,
80 through General Counsel, and shall include the following:

81 (7)(A)(i) A brief statement explaining the reasons for reconsideration.

82 (7)(A)(ii) Identification of any new facts or authorities not previously submitted or considered.

83 (7)(B) The Committee or Council shall consider the request as soon as practicable and may take the
84 following action:

85 (7)(B)(i) Approve the request for reconsideration and modify the opinion;

86 (7)(B)(ii) Approve the request for reconsideration and approve the opinion as originally published; or

87 (7)(B)(iii) Deny the request.

88 (7)(C) The Committee shall be kept advised of the status of any request to reconsider an opinion.

89 (8) Recusal. Circumstances ~~which~~that require recusal of a judge shall require recusal of a Committee
90 member from participation in Committee action. If the chair is recused, a majority of the remaining
91 members shall select a chair pro tempore. If a member is recused, the chair may appoint a judge of the
92 same court and if applicable the same geographic division or a lawyer to assist the Committee with its
93 deliberations. Preference should be given to former members of the Committee.

94 (9) Publication. All opinions of the Committee and the Judicial Council shall be numbered upon
95 issuance, and published in a format approved by the Judicial Council. No published opinion rendered by
96 the Committee or the Council shall identify the requesting party whose conduct is the subject of the
97 opinion unless confidentiality of the requesting party is waived in writing.

98 (10) Legal effect. Compliance with an informal opinion shall be considered evidence of good faith
99 compliance with the Code of Judicial Conduct. Formal opinions shall constitute a binding interpretation of
100 the Code of Judicial Conduct.