

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

2 Intent:

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

9 Statement of the Rule:

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

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

15 (3) Duties of the committee.

16 (3)(A) Preparation of opinions.

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

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

24 (3)(A)(ii)(a) the inquiry is made by the Judicial Council, ~~or~~ a Board of Judges, [or the](#)
25 [Judicial Conduct Commission](#); and

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

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

30 (3)(B) The Committee may receive proposals from the Judicial Council, the Boards
31 of Judges, [the Judicial Conduct Commission](#), and judicial officers and employees or

32 initiate its own proposals for necessary or advisable changes in the Code of Judicial
33 Conduct and shall submit appropriate recommendations to the Supreme Court for
34 consideration.

35 ~~(3)(C) The Committee shall develop and provide educational programs to assist~~
36 ~~judicial officers and employees in their understanding of the Code of Judicial Conduct~~
37 ~~and the roles of the Judicial Conduct Commission, the Judicial Council and the~~
38 ~~Supreme Court in issues of professional conduct.~~

39 (4) Submission of requests.

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

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

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

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

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

47 (5) Consideration of requests.

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

53 (5)(B) Upon receipt of a request for an advisory opinion, General Counsel shall
54 research the issue and prepare a preliminary recommendation for the Committee's
55 consideration. The opinion request, preliminary recommendation and supporting
56 authorities shall be distributed to the Committee members within 15 days of receipt of
57 the request.

58 (5)(C) The Committee members shall review the request and recommendation and
59 submit comments to General Counsel within 10 days of their receipt of the request and
60 preliminary recommendation.

61 (5)(D) General Counsel shall review the comments submitted by the Committee
62 members and, within 10 days of receipt of the comments, prepare a responsive informal
63 opinion in writing which shall be distributed to the Committee members for approval.

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

68 (5)(F) Informal opinions shall be released to the requesting party within 45 days of
69 receipt of the request unless the opinion is contrary to previous opinions of the
70 Committee or the matter is referred to the Judicial Council.

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

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

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

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

85 (7) Reconsideration of opinions.

86 (7)(A) Within 10 days of the issuance of an opinion, the requesting party or a
87 Committee member may request reconsideration. Requests for reconsideration of
88 informal opinions must be made in the first instance to the Committee and then to the
89 Judicial Council. Requests for reconsideration of formal opinions shall be made to the
90 Judicial Council. Requests for reconsideration shall be in writing addressed to the Chair

91 of the Committee or the Presiding Officer of the Council, through General Counsel, and
92 shall include the following:

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

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

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

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

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

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

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

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

110 (9) Publication. All opinions of the Committee and the Judicial Council shall be
111 numbered upon issuance, ~~compiled annually and published periodically in a publication~~
112 and published in a format approved by the Judicial Council. No published opinion
113 rendered by the Committee or the Council shall identify the requesting party whose
114 conduct is the subject of the opinion unless confidentiality of the requesting party is
115 waived in writing.

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

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