

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  
14       General 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, 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~~that 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 (4) Submission of requests.

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

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

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

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

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

43 (5) Consideration of requests.

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

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

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

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

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

64 (5)(F) Informal opinions shall be released to the requesting party within 4560 days of  
65 receipt of the request unless the chair determines that additional time is needed for the  
66 committee members to deliberate and finalize the ~~opinion is contrary to previous~~  
67 ~~opinions of the Committee~~ or the matter is referred to the Judicial Council.

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

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

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

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

82 (7) Reconsideration of opinions.

83 (7)(A) Within ~~40~~14 days of the issuance of an opinion, the requesting party or a  
84 Committee member may request reconsideration. Within 30 days of the issuance of the  
85 opinion, a Board of Judges may request reconsideration if the Board was not the  
86 requesting party and the opinion addresses matters of general interest to the judiciary or  
87 to a particular court level. Requests for reconsideration of informal opinions must be  
88 made in the first instance to the Committee and then to the Judicial Council. Requests  
89 for reconsideration of formal opinions shall be made to the Judicial Council. Requests  
90 for reconsideration shall be in writing addressed to the Chair of the Committee or the

91 Presiding Officer of the Council, through General Counsel, and shall include the  
92 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~~that require recusal of a judge shall require  
105 recusal of a Committee member from participation in Committee action. If the chair  
106 is recused, a majority of the remaining members shall select a chair pro tempore. If a  
107 member is recused, the chair may appoint a judge of the same court and if applicable  
108 the same 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, and published in a format approved by the Judicial Council.  
112 No published opinion rendered by the Committee or the Council shall identify the  
113 requesting party whose conduct is the subject of the opinion unless confidentiality of the  
114 requesting party is waived in writing.

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

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