

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

2   **Intent:**

3   To establish the Ethics Advisory Committee ("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~~applies to the Judiciary, all employees of the judicial branch of government  
8   ~~who are subject to the Code of Judicial Conduct.~~

9   **Statement of the Rule:**

10   (1) Duties.

11   (1)(A) Written opinions. The ~~Ethics Advisory~~ Committee is responsible for providing  
12   opinions on the interpretation and application of the Code of Judicial Conduct to specific  
13   factual situations. The Committee will, in appropriate cases, prepare and publish written  
14   opinions concerning the ethical propriety of professional or personal conduct when  
15   requested to do so by the Council, the Boards, the Judicial Conduct Commission, judicial  
16   officers, court employees, judges pro tempore, or candidates for judicial office. The  
17   eCommittee may interpret statutes, rules, and caselaw when necessary to answer a  
18   request for an opinion.

19   (1)(B) Code of Judicial Conduct. The Committee may, on its own initiate or upon the  
20   request of the Council, the Boards, the Judicial Conduct Commission, judicial officers, or  
21   court employees, propose amendments to the Code of Judicial Conduct and submit  
22   recommendations to the Supreme Court for consideration.

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

25   ~~(2)~~(3) Duties of the committeeEthics advisory opinions.

26   ~~(3)~~(A) Preparation of opinions.

27   (2)(A) Formal and informal. As used in these rules, the term "informal opinion" refers to  
28   an opinion that has been prepared and released by the Committee. The term "formal  
29   opinion" refers to an opinion that has been approved and released by the Council.  
30   "Formal opinions" will usually be reserved for situations of substantial and general  
31   interest to the public or the Judiciary.

32   (3)(A)(i) The Ethics Advisory Committee shall, in appropriate cases, prepare and publish  
33   written opinions concerning the ethical propriety of professional or personal conduct  
34   when requested to do so by the Judicial Council, the Boards of Judges, the Judicial  
35   Conduct Commission, judicial officers and employees, judges pro tempore or candidates

36 ~~for judicial office. The Committee may interpret statutes, rules, and case law as may be~~  
37 ~~necessary to answer a request for an opinion.~~

38 (23)(BA)(ii) **Conduct of others.** The Committee ~~shall~~will respond to an inquiry into the  
39 conduct of others only if:

40 (23)(BA)(ii)(a) the inquiry is made by the ~~Judicial~~ Council, a ~~Board of Judges~~, or  
41 the Judicial Conduct Commission; and

42 (23)(BA)(ii)(b) the inquiry is limited to matters of general interest to the judiciary  
43 or a particular court level.

44 (23)(CA)(iii) **Past conduct.** The Committee ~~will~~shall not answer requests for legal  
45 opinions or inquiries concerning conduct that has already taken place, unless it is of an  
46 ongoing nature.

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

51 (24)(D) **Request sSubmission of requests.**

52 (4)(A) Requests for advisory opinions ~~shall~~must be ~~in writing~~ addressed to the ~~Chair of the Committee~~, ~~submitted to~~through ~~the Office of General Counsel ("General Counsel")~~ in writing, and, ~~and shall~~ include ~~the following:~~

55 (24)(DA)(i) ~~a~~A brief statement of the contemplated conduct~~:-~~

56 (24)(DA)(ii) ~~r~~Referencess to ~~the~~ relevant section(s) of the Code of Judicial  
57 Conduct~~:- and~~

58 (24)(DA)(iii) ~~c~~Gitationss to any relevant ethics opinions or other authority, if known.

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

61 (35) **Committee review and publication of informal opinion. nsideration of requests.**

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

67 (35)(AB) **Preliminary recommendation.** Upon receipt of a request for an advisory  
68 opinion, ~~the~~ General Counsel ~~will~~shall research the issue and prepare a preliminary  
69 recommendation for the Committee's consideration. The opinion request, preliminary  
70 recommendation~~:-~~ and supporting authorities ~~shall~~must be distributed to ~~the~~ Committee  
71 members within 21 days of receipt of the request.

72       (35)(B) Committee comments. The Committee members ~~shall~~will review the request  
73       and recommendation and submit comments to ~~the~~ General Counsel within 14 days of  
74       ~~their~~ receipt of the request and preliminary recommendation.

75       (35)(C) Final review. General Counsel ~~will~~shall review the comments submitted by ~~the~~  
76       ~~eC~~ Committee members and, within 14 days of receipt of the comments, prepare a  
77       responsive informal opinion in writing which ~~shall~~will be distributed to the Committee  
78       members for approval.

79       (35)(D) Majority vote. A majority vote of ~~the~~ Committee members is required for  
80       issuance of an informal opinion. -Alternatively, the Committee may by majority vote refer  
81       the request to the Council without issuing an informal opinion. The vote~~and~~ may be  
82       obtained by electronic means or, upon the request of a Committee member, the ~~c~~Chair  
83       may continue the vote until the next meeting of the Committee.

84       (35)(E) Release to requester. Informal opinions ~~shall~~will be released to the requesting  
85       party within 60 days of receipt of the request unless the chair determines that additional  
86       time is needed for the ~~e~~ Committee members to deliberate and finalize the opinion or the  
87       matter is referred to the ~~Judicial~~ Council.

88       (3)(F) Issuance. Unless referred to the Council, the Committee will issue the informal  
89       opinion within 30 days of its release to the requester.

90       (35)(G) Expedited review. Upon the written request of a party and for good cause, the  
91       ~~eC~~ Committee may ~~issue a respond~~se to a request within a shorter period of time than  
92       provided for in these rules. The requesting party ~~has the responsibility of~~must  
93       establishing that the request is ~~of an emergency nature~~urgent and requires an  
94       abbreviated response time.

95       (46) Referral of informal opinion to Judicial Council. ~~The Council must consider a referral of~~  
96       an informal opinion made: (1) upon a majority vote from the Committee ~~Upon an affirmative vote~~  
97       ~~of a majority of the Committee members~~or, (2) a motion made by ~~of~~ the requesting party within  
98       14 days of release of the, ~~or a motion by the Judicial Council, an opinion request~~ informal  
99       opinion ~~and Committee recommendation shall be referred to the Judicial Council for~~  
100       consideration. Within 60 days of receipt of the referral, the Council ~~will~~shall consider the ~~request~~  
101       ~~and recommendation~~referral and take the following action:

102       (46)(A) ~~a~~Approve or modify the informal opinion and direct the Committee to ~~release~~  
103       issue the opinion, as initially drafted or modified, ~~to the requesting party~~ as an informal  
104       opinion of the Committee, or

105       (46)(B) ~~a~~Approve or modify the opinion and ~~release~~issue the opinion as a formal opinion  
106       of the Council.

107       (57) Reconsideration of formal and informal opinions.

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

110 ~~of Judges or Council member~~ may request reconsideration if they ~~were~~ ~~Board was~~ not the  
111 requesting party and the opinion addresses matters of general interest to the ~~J~~judiciary or to a  
112 particular court level.

113 **(5)(A) Reconsideration request submission.** Requests for reconsideration of informal  
114 opinions must be made in the first instance to the Committee and then to the ~~Judicial~~  
115 Council. Requests for reconsideration of formal opinions ~~must~~shall be made to the  
116 ~~Judicial~~ Council. Requests for reconsideration ~~shall~~must be in writing, addressed to the  
117 ~~c~~Chair of the Committee or the Presiding Officer of the Council, submitted to~~through~~ the  
118 General Counsel, and ~~shall~~ include the following:

119 (57)(A)(i) ~~a~~A brief statement explaining the reasons for reconsideration; and  
120 (57)(A)(ii) ~~l~~Identification of any new facts or authorities not previously submitted  
121 or considered.

122 (75)(B) **Committee or Council action.** The Committee or Council ~~shall~~will consider the  
123 request as soon as practicable and may take the following action:

124 (57)(B)(i) ~~a~~Approve the request for reconsideration and modify the opinion;  
125 (57)(B)(ii) ~~a~~Approve the request for reconsideration and approve the opinion as  
126 originally ~~published~~issued; or  
127 (57)(B)(iii) ~~d~~Deny the request.

128 (57)(C) **Committee notice.** The ~~e~~Committee ~~shall~~will be kept advised of the status of  
129 any request to reconsider an opinion.

130 (68) **Recusal.** Circumstances that require recusal of a judge ~~shall~~will require recusal of a  
131 Committee member from participation in Committee action. If the chair is recused, a majority of  
132 the remaining members ~~shall~~will select a chair pro tempore. If a member is recused, the chair  
133 may appoint a ~~lawyer or a~~ judge of the same court ~~level~~ and ~~if applicable the same~~ geographic  
134 division, ~~if applicable, or a lawyer~~ to assist the Committee with its deliberations. Preference  
135 should be given to former members of the Committee.

136 (79) **Publication.** All opinions of the Committee and the ~~Judicial~~ Council ~~shall~~will be numbered  
137 upon issuance, and published in a format approved by the ~~Judicial~~ Council. ~~No published~~  
138 ~~opinion rendered by the Committee or the Council shall identify the requesting party whose~~  
139 ~~conduct is the subject of the opinion unless confidentiality of the requesting party is waived in~~  
140 ~~writing.~~

141 (8) **Confidentiality.** The request for an opinion and the identity of the requesting party is  
142 confidential unless waived in writing by the requesting party.

143 (940) **Legal effect.** Compliance with an informal opinion ~~shall~~will be considered evidence of  
144 good faith compliance with the Code of Judicial Conduct. Formal opinions ~~shall~~will constitute a  
145 binding interpretation of the Code of Judicial Conduct.

146 (10) Staff support. The Administrative Office will provide staff support through the Office of  
147 General Counsel and will distribute opinions in accordance with this rule.

148 *Effective: November 1, 2015*May 1, 2026