

Rule 3-109. Ethics Advisory Committee.**Intent:**

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

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

Applicability:

This rule ~~shall apply~~applies to the Judiciary. ~~all employees of the judicial branch of government who are subject to the Code of Judicial Conduct.~~

Statement of the Rule:**(1) Duties.**

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

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

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

(2) Duties of the committee Ethics advisory opinions.**(3)(A) Preparation of opinions.**

(2)(A) Formal and informal. 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 approved and released by the Council. "Formal opinions" will usually be reserved for situations of substantial and general interest to the public or the Judiciary.

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

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

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

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

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

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

~~(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.~~

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

(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:~~

(24)(DA)(i) a brief statement of the contemplated conduct;

(24)(DA)(ii) rReferences s to ~~the~~ relevant section(s) of the Code of Judicial Conduct; ~~and~~

(24)(DA)(iii) cCitations s to any relevant ethics opinions or other authority, if known.

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

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

~~(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.~~

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

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

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

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

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

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

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

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

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

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

(57) Reconsideration of formal and informal opinions.

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

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

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

(~~57~~)(A)(i) ~~a~~A brief statement explaining the reasons for reconsideration; ~~and~~;

(~~57~~)(A)(ii) ~~i~~Identification of any new facts or authorities not previously submitted or considered.

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

(~~57~~)(B)(i) ~~a~~Approve the request for reconsideration and modify the opinion;

(~~57~~)(B)(ii) ~~a~~Approve the request for reconsideration and approve the opinion as originally ~~published~~issued; or

(~~57~~)(B)(iii) ~~d~~Deny the request.

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

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

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

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

(~~949~~) **Legal effect.** Compliance with an informal opinion ~~shall~~will be considered evidence of good faith compliance with the Code of Judicial Conduct. Formal opinions ~~shall~~will constitute a 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*