

## VIRGINIA:

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Tuesday the 20th day of October, 2015.*

### JUDICIAL ETHICS ADVISORY COMMITTEE

The Judicial Ethics Advisory Committee was established on January 5, 1999, by order of this Court. The January 5, 1999 order is hereby vacated, and this order shall now re-establish the Judicial Ethics Advisory Committee ("Committee") and control the membership, jurisdiction, and procedures of the Committee.

#### **Enabling Provisions**

The Committee is hereby established to render advisory opinions concerning the compliance of proposed future conduct with the Canons of Judicial Conduct. The Committee shall have eleven members, and all members shall be appointed by the Chief Justice of the Supreme Court of Virginia.

A request for an advisory opinion may be made by any judge or any person whose conduct is subject to the Canons of Judicial Conduct. The Judicial Inquiry and Review Commission and the Supreme Court of Virginia may, in their discretion, consider compliance with an advisory opinion by the requesting individual to be a good faith effort to comply with the Canons of Judicial Conduct provided that compliance with an opinion issued to one judge shall not be considered evidence of good faith of another judge unless the underlying facts are substantially the same.

#### **Membership**

1. The Committee shall have eleven members appointed by the Chief Justice of the Supreme Court of Virginia. Members of the Judicial Inquiry and Review Commission may not serve simultaneously on the Committee.
2. Six members shall be active or retired judges. One judge member shall be appointed from the Circuit, General District and Juvenile and Domestic Relations Courts and from the Court of Appeals. No current member of the Supreme Court of Virginia may be appointed to the Committee. A Senior Justice or retired Justice may serve.
3. Four members shall be attorneys admitted to the practice of law in Virginia for at least ten years, who shall not be judges at the time of appointment.
4. One member shall be a citizen and resident of Virginia who is not admitted to practice law in any state.

5. Committee members shall serve for three-year terms from the date of appointment, except that, to achieve staggered terms, four of the members first appointed shall be appointed for one year, four shall be appointed for two years, and three shall be appointed for three years. Committee members may be reappointed, but no member shall serve for more than two full consecutive terms.

6. All members shall be appointed by the Chief Justice of the Supreme Court of Virginia, and serve at the pleasure of the Chief Justice. A vacancy shall occur when a committee member resigns, ceases to be a member of the category from which the member was appointed, or becomes unable to serve for any reason, including if the Chief Justice revokes the appointment. Vacancies shall be filled in the same manner as the original appointment, and appointments to fill a vacancy shall be for the balance of the term vacated.

### **General Provisions**

7. Members should be reimbursed for expenses actually and necessarily incurred in the performance of their duties for the Committee.

8. To encourage judges to seek advice from the Committee, the judge members of the Committee, when acting in their advisory capacity, shall be exempt from the provisions regarding disciplinary responsibilities in the Canons of Judicial Conduct. The attorney members of the Committee, when acting in their advisory capacity, shall be exempt from the provisions regarding reporting misconduct in the Virginia Rules of Professional Conduct.

9. By the concurrence of the majority of its members, and subject to approval by the Supreme Court of Virginia, the Committee may promulgate additional rules of procedure not inconsistent with these rules.

10. The chair of the Committee shall be elected by the members of the Committee. The chair shall serve for a term of two years and shall not serve more than two successive terms. The chair is authorized to call meetings as needed, to preside over those meetings, and to coordinate the work of the Committee. A vice chair shall be elected in the same manner and may preside in the absence of the chair and perform any duties delegated by the chair.

11. No member of the Committee shall participate in any request for advice in which he or she has a direct or indirect interest, including his or her personal inquiry.

12. The Committee may submit to the Supreme Court of Virginia recommendations for amendments to the Canons of Judicial Conduct.

13. On or before December 1 of each year, the Committee shall submit to the Supreme Court a report of its activities for the prior year. The report shall include the number of requests for advisory opinions received by the Committee, the number of advisory opinions issued by the Committee, and if a request did not result in the issuance of an advisory opinion, an explanation of how and why the Committee resolved the request.

14. The Office of the Executive Secretary of the Supreme Court of Virginia shall provide administrative and research support sufficient to carry out the Committee's functions.

### **Jurisdiction**

15. Any judge or person whose conduct is subject to the Canons of Judicial Conduct may request an advisory opinion about the propriety of his or her own conduct.

16. The Committee shall not render opinions regarding the proposed conduct of someone other than the inquirer, except the Committee may respond to requests from a judge about a person subject to the judge's direction and control, from a judge about the judge's relatives, or from a judge with supervisory responsibilities.

17. The Committee shall only issue opinions that address contemplated or proposed future conduct and shall not issue opinions addressing past or current conduct unless the past or current conduct relates to future conduct or is continuing. The Committee may not issue an opinion in response to a request when the facts are known to be the subject of pending litigation or disciplinary investigation or proceeding.

18. The Committee may in its discretion decline to respond to an inquiry where the Committee determines that a response would be inappropriate or that an opinion would not aid the judge, benefit the judiciary as a whole, or serve the public interest.

19. The Committee may not issue an advisory opinion that interprets any constitutional provision, statute, rule or regulation that does not relate to judicial ethics.

20. Notwithstanding any other provision of these rules, the Committee may also issue opinions at its own initiative on matters of interest to the judiciary.

21. The Committee shall submit any proposed advisory opinion to the Supreme Court of Virginia for approval prior to its release to the inquirer and the public.

### **Procedures**

22. A request for an advisory opinion must be in writing, signed by the person requesting the opinion, and sent to the Office of the Executive Secretary.

23. A request shall contain a statement describing in detail all relevant facts and circumstances pertaining to the conduct for which an opinion is being sought. The request shall also include a clear, concise statement of the question of judicial ethics for which an opinion is sought and include references to the relevant section(s) of the Canons of Judicial Conduct, advisory opinions, case law, and other authority that the inquirer has already consulted.

24. The chair shall review the request for an advisory opinion and notify the inquirer if it does not comply with these rules.

25. If an existing opinion answers the question presented in a request, the chair may send a copy of the opinion to the inquirer, and the Committee need not issue a new advisory opinion.

26. If an existing opinion does not answer the question presented in a request, the chair shall send the request and any accompanying documents to all members of the Committee.

27. If the facts and circumstances provided by the requesting individual are unclear, vague, or insufficient in detail, the chair or any member of the Committee shall request supplemental information. If the supplemental information provided is still insufficient or is not provided within a reasonable time, the chair shall inform the inquirer, and the Committee shall not render an advisory opinion.

28. After discussion and consideration of the request, the chair shall assign the responsibility for drafting an opinion to members of the Committee. The assigned member(s) will have 30 days to prepare a proposed opinion and circulate it to the other members.

29. Committee members will have 15 days to indicate their approval or disapproval of a proposed opinion and to make comments. The failure to respond within 15 days shall be deemed an assent to the proposed opinion. Each Committee member will send his or her response to all other Committee members, including the chair, and to staff. Members will have an additional 15 days to respond to the comments of other members.

30. Any member of the Committee may submit a minority opinion to be circulated for comment.

31. A meeting may be arranged to discuss the proposed opinion and any comments. Members may participate in the meeting via telephone or video conference.

32. Once a majority of the members of the Committee have concurred on the proposed opinion, it shall be sent to the Supreme Court for approval by the Justices.

33. An advisory opinion may not be released to the requester or the public without approval by a majority of the Justices of the Supreme Court of Virginia.

### **Advisory Opinions**

34. All advisory opinions shall set forth the facts upon which the opinion is based and provide advice only with regard to those facts. Opinions shall cite the rules, cases, and other authorities that bear upon the advice rendered and shall quote the applicable provisions of the Canons of Judicial Conduct.

35. Opinions shall contain a discussion section that analyzes the issues and provides the rationale for the advice given the Committee. If the opinion responds to more than one issue, each issue shall be answered separately.

36. If the request raises issues under constitutional provisions, statutes, rules, or regulations other than the Canons of Judicial Conduct, the opinion may note the issues but shall indicate that the Committee is not authorized to interpret a judge's obligations under any law other than the Canons of Judicial Conduct.

37. Opinions shall state the authority of the Committee and explain the effect of compliance with the opinion in disciplinary proceedings.

### **Emergency Requests**

38. An emergency request for an opinion may be made by any judge or person subject to the Canons of Judicial Conduct faced unexpectedly with a judicial ethics question that requires an immediate response. Whenever possible, a request for an emergency opinion shall be in writing. An emergency request shall be accompanied by an explanation of the circumstances that make an immediate response necessary.

39. When an emergency request is made, the chair may, with the concurrence of three additional members of the Committee, give a provisional response, orally or in writing. The response must make clear that the advice is provisional until consideration by the entire Committee and approval by the Supreme Court of Virginia.

40. The chair shall report, in writing, on all provisional responses. If a majority of the Committee agrees with the advice given, a written, confirming opinion shall be prepared. If a majority disagrees, a written opinion shall be prepared setting forth the provisional response and the view of the entire Committee. Once a written opinion has been approved by the majority of the Committee, it shall be sent to Supreme Court for approval.

### **Distribution and Publication**

41. The advisory opinion shall be sent to the person requesting the opinion, and copies shall be distributed to all Committee members.

42. The Committee shall prepare an edited version of the opinion that omits the names of persons, courts, places, and any other information that might tend to identify either the person making the request or any other person. The chair shall review the edited opinion and add a heading.

43. Copies of edited opinions as they are prepared shall be sent to the Supreme Court of Virginia, the Judicial Inquiry and Review Commission, the Executive Secretary of the Supreme Court, the Supreme Court Law Library, all law school libraries in Virginia, and the Center for Judicial Ethics at the National Center for State Courts.

44. Copies of all edited opinions shall be posted on Supreme Court of Virginia's website on a page dedicated to the Committee.

## **Reconsideration and Modification**

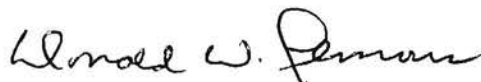
45. The Committee shall examine and reconsider any of its opinions upon the request of the Judicial Inquiry and Review Commission or the Supreme Court.

46. The Committee shall periodically review all of its opinions to determine if any are obsolete. A majority of the Committee may modify or reverse any prior advisory opinion, but any new written opinion must be approved by the Supreme Court prior to release, according to the requirements previously set forth in this order.

47. Within thirty days after the release of an advisory opinion, any person authorized to request an opinion may also petition the Committee to reconsider the opinion. This request must be in writing and must explain the basis for the request. The Committee shall respond to the request by either reaffirming or revising the opinion. Revised opinions must be approved by the Supreme Court, and distributed and published in the same manner as the original opinion.

## **Confidentiality**

48. With the exception of edited opinions, all opinions, inquiries, replies, circulated drafts, records, documents, files, communications with staff, and proceedings of the committee shall be confidential.



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Chief Justice of the Supreme Court of Virginia