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PROFESSIONAL CONDUCT RULES

Rules of the Committee on Judicial Ethics

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1. Requests for opinions and informal advice

A judge seeking advice from the Committee on Judicial Ethics should contact Supreme Judicial Court Senior Attorney Barbara F. Berenson, counsel to the Committee, at Barbara.Berenson@sjc.state.ma.us (<mailto:Barbara.Berenson@sjc.state.ma.us>) or 617-557-1048.

A request for an Informal Opinion may be made via email or phone. A request for a Letter Opinion (formerly known as an Advisory Opinion) must be in writing (email preferred, but a judge may alternatively send a letter to Attorney Barbara Berenson, Supreme Judicial Court, John Adams Courthouse, One Pemberton Square, Boston, MA 02108). A judge or any other person or organization seeking an Ethics Advisory from the Supreme Judicial Court should also contact Barbara Berenson.

2. Form of request for advisory opinion

The request should be signed by the judge (or nominee) requesting the advice and should set forth fully all facts bearing on the question or questions on which he requests advice. Because [Supreme Judicial Court Rule 3:11\(2\)](#) (</supreme-judicial-court-rules/supreme-judicial-court-rule-311-committee-on-judicial-ethics>) precludes the committee from rendering opinions "on issues pending before a court, agency, or commission, including the Judicial Conduct Commission," the request should contain an affirmation that, to the best of the information and belief of the judge (or nominee) requesting the opinion, no issue raised thereby, whether in reference to himself or to any other person, is presently pending before any court, agency, or commission.

3. Scope of question

Under [Supreme Judicial Court Rule 3:11](#) (</supreme-judicial-court-rules/supreme-judicial-court-rule-311-committee-on-judicial-ethics>), advisory opinion requests must relate "to the interpretation of rules of court relating to the ethical and professional conduct of judges." The committee will not render opinions on hypothetical questions nor upon questions relating to the conduct of persons other than the requesting judge (or nominee).

4. Advisory opinions

Opinions of the committee require the affirmative vote of at least three members and, except for emergency opinions, will be rendered in writing. The committee may publish its opinions but the name of the judge (or nominee) requesting the opinion and any other identifying information shall not be included in a published opinion unless the requester consents to such inclusion.

Pursuant to [Supreme Judicial Court Rule 3:11\(3\)](#) (</supreme-judicial-court-rules/supreme-judicial-court-rule-311-committee-on-judicial-ethics>), if "the judge did not omit or misstate any material fact in his request for an opinion, the judge may rely on a written opinion until and unless revised or revoked."

5. Emergency opinions

To offer guidance to judges faced unexpectedly with questions within the committee's jurisdiction that require an immediate response, the secretary with the approval of two members of the committee, or the chairperson or vice-chairperson with the concurrence of one other member of the committee, may give advice on an emergency basis. Whenever possible, the request for advice shall be in writing. The emergency advice will be given orally or in writing, as seems appropriate. Emergency advice shall be submitted to the full committee for action. If the committee agrees with the advice given, it will issue a written confirming opinion to the inquirer. If it disagrees, it will issue a written opinion to the inquirer setting forth the emergency advice that was given so that the judge will have the benefit of the protection given by [S.J.C. Rule 3:11\(3\)](#) ([/supreme-judicial-court-rules/supreme-judicial-court-rule-311-committee-on-judicial-ethics](#)) as to conduct undertaken in reliance on that advice, but it will also set forth the view of the full committee on the issue presented. The view of the full committee will supersede all inconsistent emergency advice.

6. Informal advice

To provide informal guidance to judges (or nominees) who orally request advice, the committee may also give advice as follows: (A) Upon receiving an oral request for advice, the secretary shall tell the requesting judge (or nominee) that informal, unwritten advice from the committee does not carry with it the protection described in [S.J.C. Rule 3:11\(3\)](#) ([/supreme-judicial-court-rules/supreme-judicial-court-rule-311-committee-on-judicial-ethics](#)), and that the judge (or nominee) is free to submit to the committee a written request for an opinion. If the judge (or nominee) elects to proceed with a request for informal advice, the secretary shall present the request to the committee. (B) If the committee concludes that the answer to the request can be found in one of its previously published opinions or is otherwise reasonably clear, the committee, through the secretary, may respond orally to the requesting judge (or nominee) with informal advice, and shall remind the judge (or nominee) that such advice does not come with the protection described in [Rule 3:11\(3\)](#) ([/supreme-judicial-court-rules/supreme-judicial-court-rule-311-committee-on-judicial-ethics](#)). If the committee determines that the answer is unclear, the committee, through the secretary, shall so inform the requesting judge (or nominee) and shall indicate that the committee will act only in response to a written request for an opinion. (C) The secretary shall maintain a record of all requests for informal advice and committee responses thereto. (D) The committee may elect to treat any request for informal advice as a request for an emergency opinion and may proceed in accordance with rule 5.

7. Decision to refuse opinion or advice

In addition to the reasons stated in rules 1, 2, 3 and 6, the committee may decline to render an opinion or provide informal advice for any other reason which it deems sufficient.

8. Confidentiality

All requests to the committee for advisory opinions, emergency opinions, and informal advice, and all committee proceedings thereon, shall be confidential as provided by [SJC Rule 3:11\(6\)](#) (/supreme-judicial-court-rules/supreme-judicial-court-rule-311-committee-on-judicial-ethics).

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