Resolution

Resolution to Establish a Judicial Advisory Group and to Propose an Amendment to Canon 3(D)

Recommended by
Ohio Judicial Conference Judicial Ethics and Professionalism Committee

Approved by
Ohio Judicial Conference Executive Committee

November 18, 2005

The Executive Committee approved the following recommendation:
The Judicial Ethics and Professionalism Committee recommends that the Ohio Judicial Conference establish a Judicial Advisory Group (JAG) to work with the Ohio Lawyers Assistance Program (OLAP) to enhance and extend its ability to provide confidential assistance to judges.

The Committee further recommends that the Ohio Judicial Conference propose that Canon 3(D) of the Code of Judicial Conduct be amended to provide an exemption to the duty to report misconduct for information learned as part of a process of providing assistance to a judge through the OLAP/JAG program.

The recommendation concerning the establishment of a judicial adjunct to OLAP is spelled out in some detail in the attached program description. The proposed judicial adjunct to OLAP aims to accomplish two purposes:

- enhance OLAP's ability to address its traditional concerns (alcohol or drug abuse and mental health issues) with judges: the judges on the JAG will help OLAP adapt its work to the demands and challenges of judges' positions as elected officials and decision makers in contested cases;

- extend OLAP's ability to assist judges into new areas: the judges on the JAG can address issues of judicial temperament and demeanor which may or may not be related to OLAP's traditional areas of concern.

In order for the program to work as envisioned in the attached document, Canon 3(D) needs to be revised. As it is currently written, that Canon imposes a duty to report information about possible misconduct regardless of how that information was learned. This contrasts sharply with Disciplinary Rule 1-103, which provides an exemption for information learned while acting as an agent of

an assistance program. We recommend that the Ohio Judicial Conference propose that Canon 3(D) be amended by adding the following section:

(4) Any knowledge obtained by a member of Ohio Lawyers Assistance Program (OLAP) and its Judicial Advisory Group (JAG) shall be privileged for all purposes under Canon 3(D), provided the knowledge was obtained while performing duties as a member or agent of OLAP or JAG

This language closely parallels DR 1-103(C). (The full texts of Canon 3(D) and DR 1-103 are provided in Appendix B of the attached program description.)