



Supreme Court of Illinois
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MEMORANDUM

To: Anthony F. Trapani, Court Services Division

From: Justice Joy V. Cunningham, Chair
Judicial Performance Evaluation Committee

Date: August 1, 2012

Re: *Himmel*, 125 Ill. 2d 531 (1998)

A number of facilitators have inquired about the applicability of the *Himmel* rule in relation to their duties as a facilitator for an evaluated judge. See *In re Himmel*, 125 Ill. 2d 531 (1998) (Illinois Supreme Court ruled that lawyers who learn of misconduct and/or a violation of the Rules of Professional Conduct by another lawyer have a duty to report it to the Attorney Registration and Disciplinary Commission (ARDC)). *Himmel* does not apply to the Judicial Performance Evaluation process as outlined in Illinois Supreme Court Rule 58 (Rule 58).

The Illinois Supreme Court, in amending Rule 58, (Ill. S. Ct. R. 58 (eff. Mar. 1, 2011)) intended to provide the strongest possible means to achieve the goal of objective, judicial performance evaluation. There is no indication that the court intended to extend the *Himmel* ruling to the judiciary in application of Rule 58. The confidentiality which cloaks the evaluation process includes the interaction between the facilitator and the evaluated judge. It necessarily

includes the information obtained during the evaluation process. The confidentiality component of Rule 58 is a factor of the court's oversight powers and does not rest in the discretion of individual judges who are evaluated, nor the facilitators. Accordingly, it is not a privilege which can be waived by individual judges or facilitators because it is the court's privilege. If during the course of facilitation, a facilitator believes that the judge who has been evaluated may have committed an act of misconduct or a breach of the Judicial Code of Ethics, the facilitator should act in the same manner as he or she would act under similar circumstances outside of the evaluation process. As the protocol currently stands, in such situations, one would report the matter to the Chief Judge, Presiding Judge, or Supervising Judge as is appropriate to the situation, who would then follow established chain of command reporting requirements or protocol to address the matter.

In cases of criminal conduct, Rule 58 makes an exception to the confidentiality protection afforded to the evaluation process. In that situation, the Illinois Supreme Court would follow its protocol for handling the judicial conduct at issue and the confidentiality provision could be lifted by the court.

To summarize: The evaluation and facilitation process which results from Illinois Supreme Court Rule 58, does not trigger a duty under *Himmel*. However, regardless of the evaluation process, the inherent duty to address judicial misconduct or breach of judicial ethics in a manner consistent with the canons of judicial conduct remains unchanged. Accordingly, should there be a need to address this issue, the manner in which such reporting or other resolution should be carried out is not dictated by, nor is it any way impacted by Rule 58 or *Himmel*.