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STATE OF NEVADA
STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

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CLERK OF SUPREME COURT
BY DEPUTY CLERK

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OPINION: JE01-001

PROPRIETY OF A FULL-TIME LIMITED JURISDICTION JUDGE ACTING AS AN ATTORNEY IN BANKRUPTCY COURT, ACCEPTING APPOINTMENTS AS A RECEIVER IN FEDERAL COURT, ACTING AS AN ARBITRATOR OR OWNING AND OPERATING AN ATTORNEY-ASSISTED PARALEGAL SERVICE

paralegal service, assisting pro per individuals in preparing court documents for divorce and bankruptcy.

ISSUE

May a full-time Justice Court Judge also work as an attorney in Chapter 7 Bankruptcy proceedings, accept appointments as a Receiver in federal cases, act as an arbitrator or own and operate an attorney-assisted paralegal service.

Answer: No.

FACTS

A full-time Justice of the Peace in a township with a population of more than 75,000 has asked the Committee to consider whether he or she may:

1. Maintain a limited legal practice handling Chapter 7 proceedings in United States Bankruptcy court.
2. Accept appointments as a Receiver in Federal cases.
3. Act as an arbitrator in either binding or non-binding proceedings.
4. Own and operate an attorney-assisted

DISCUSSION

The Nevada Code of Judicial Conduct sets forth many different standards which apply to the request by this Justice of the Peace.

Canon 2 of the Nevada Code of Judicial Conduct states:

"A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

"A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

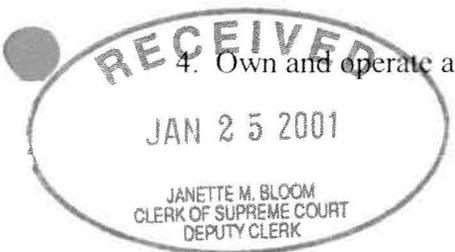
Canon 3A states:

"The judicial duties of a judge take precedence over all the judge's other activities."

Canon 4 states:

"A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

A. Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so



that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

With these general pronouncements in mind, the Committee considered each of the requests in order:

1. May the Judge Act as an Attorney in Chapter 7 Bankruptcy Proceedings?

NRS 4.215 states:

"A Justice of the Peace in a township whose population is more than 75,000 may not act as attorney or counsel in any court except in an action or proceeding to which he is a party on the record." Emphasis added.

The judge acknowledges this statute and refers the Committee to Attorney General Opinion 52 which attempted to answer the question "Does a Justice of the Peace in a county serving a township over 60,000 in population have the right to practice law at all?"

That Attorney General Opinion states the general rule as follows:

"In the absence of an explicit statute regulating the right of a judge to practice law, the general rule appears to have been stated in the Illinois case of Bassi v. Langloss, 22 Ill. 2d 190, 174 N. E. 2d 682, 89 ALR 2d 881, 1961, in which the Illinois Supreme Court stated as follows:

We are of the opinion that the practice of law by an attorney during his tenure as county judge, in or out of court, directly or indirectly, is incompatible with his judicial responsibilities and duties and contrary to public policy.

Nev. Op. Atty. Gen. 52, October 23, 1981.

The Attorney General then concluded based upon NRS 4.215, that the right of justices of the peace to practice law has been restricted in Nevada but not absolutely prohibited. The Attorney General concluded that any practice of law would have to comply with NRS 4.215 and the applicable Canons of the Nevada Code of Judicial Conduct.

In the opinion of the Committee, Nevada laws clearly prohibits the practice of law by a justice of the peace in bankruptcy court. This judge may not practice law "in any court". NRS 4.215. As an attorney in a Chapter 7 proceeding, pleadings would have to be filed, an occasional court appearance would be required and it may even be necessary for the bankruptcy court to present a certified question under Nevada law to the Supreme Court of Nevada.

The Committee also notes the following conclusion by the authors of Judicial Conduct and Ethics: "With regard to sitting judges, then, any ambiguity concerning the practice of law should be resolved against the permissibility of the practice". Judicial Conduct and Ethics, Shaman, Lubet, and Alfani, 2nd Ed., p. 234.

The legislative history of NRS 4.215 is also consistent with this holding as the Legislature reasoned that in the larger townships justices of the peace are expected to serve on a full-time basis. Legislators and

witnesses noted the importance of salary adjustments to enable full-time justices of the peace to earn a livable wage. See Nev. Op. Atty. Gen. 52.

2. May a Justice of the Peace Accept an Appointment as a Receiver in a Federal Case?

The justice of the peace asking this question believes that appointment as a receiver is not the practice of law and that if a legal issue arises the receiver could hire a lawyer to represent the entity in court.

Receivers can be appointed on a regular basis and often on an emergency basis, requiring significant time and effort to monitor the affairs of entities in various states of financial peril.

A full-time justice of the peace must give precedence to his judicial duties over all of the judge's other activities and must not engage in extra-judicial activities which interfere with the performance of those judicial duties. Canons 3A and 4A. Regular or even occasional appointments as a receiver have a significant probability of interfering with the ability of the judge to perform his or her duties in a diligent and proper manner.

The Committee also agrees with the statement:

"Any piece of legal or quasi-legal work is potentially the subject of litigation, thereby subjecting the judge's efforts to review, perhaps by her own court. Moreover, for judges to render even non-litigative services, the appearance would inevitably be created that their assistance is sought in order to exploit the judicial position. Consequently an abundance of caution is justified in order to maintain

public confidence in the judiciary."

Judicial Conduct and Ethics, supra, at p. 234.

With regard to this specific request, a majority of the Committee believed that by acting as a receiver the judge may also be acting as a fiduciary in violation of Canon 4E(1).

3. May a Justice of the Peace Act as an Arbitrator?

The Committee interprets this request as asking whether it is permissible to serve as an arbitrator, either privately retained by the parties or pursuant to the Court Annexed Arbitration Program. Canon 4F provides:

"A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law."

The Commentary makes it clear that this section does not prohibit a judge from participating in arbitration, mediation or settlement conferences which are commonly performed as part of judicial duties. However, the judge may not accept a fee either under the Court Annexed Arbitration Program or through private arbitrations as such arbitrations are in violation of the Canons prohibiting the performance of judicial functions in a private capacity.

The Committee also believes that accepting appointments as a private arbitrator or through the Court Annexed Arbitration Program has the clear capacity to distract the judge from the diligent performance of his or her judicial duties. Canons 3A and 4A.

4. Can a Justice of the Peace Own and Operate an Attorney-assisted Paralegal Service?

The Committee has previously ruled that a justice of the peace in a small township may not be a partner, shareholder or associate in a law firm. See JE00-002. That decision was based upon an analysis of Canon 4G of the Nevada Code of Judicial Conduct which states:

"Unless otherwise permitted by law, a judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family."

The decision referred to above also relied upon Canon 2A which states that a judge has a duty to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. It also relied on Canon 2B which states that a judge shall not lend the prestige of judicial office to advance the private interests of the judge or others.

Whether active or passive in the ownership of a paralegal service, the Committee believes that there is a significant risk that such participation in a legal service company will have the appearance of impropriety to the public and be perceived as lending the prestige of judicial office to advance the private interest of the judge or others. Canon 2A and B.

NRS 4.215 also applies to prohibit this extra-judicial activity. If the justice of the peace "owns and operates" a paralegal service, the Committee believes that the justice of the peace may be "acting" as an

attorney or of counsel by preparing or supervising the preparation of court documents for divorce and bankruptcy proceedings, even though he or she may not appear as attorney of record.

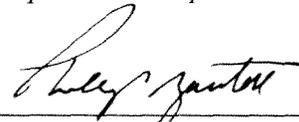
CONCLUSION

The Code of Judicial Conduct does not allow a full-time justice of the peace in a township of greater than 75,000 population to engage in the extra-judicial activities proposed above. The Committee believes that rules prohibiting the practice of law and requiring single-minded devotion to judicial activities must be interpreted broadly in order to inspire continued confidence in the independence and integrity of the judiciary.

REFERENCES

Nevada Code of Judicial Conduct, Canons 2, 2A, 2B, 3A, 4, 4A, 4E, 4F, 4G; Nevada Revised Statutes 4.215; Nev. Opp. Atty. Gen. 52; Judicial Conduct and Ethics, Shaman, Lubet, and Alfini, 2nd Ed.

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Committee Chairman