STATE OF NEVADA
STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

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OPINION: JE04-001

PROPRIETY OF A JUSTICE COURT JUDGE PRESIDING OVER CASES IN WHICH THE JUDGE'S FORMER PUBLIC AGENCY CLIENT IS A PARTY

ISSUE

Is a justice court judge disqualified from hearing cases in which his or her former public agency client is a party?

Answer: No.

FACTS

A justice of the peace is a recent appointment to the bench. Prior to this appointment, the judge had significant involvement as a private attorney in cases involving public housing. Then for several years the judge served as general counsel to a municipal housing authority, where the judge worked until appointment to the justice court bench. As a government attorney, the judge rarely represented the housing authority in eviction matters. As a justice of the peace, the judge regularly hears all types of eviction matters, including summary evictions and formal civil evictions. For the first year after taking the bench, the judge recused himself or herself on all cases involving the housing authority. The judge did this so that sufficient time would elapse to eliminate any perceived bias, interest or prejudice suggested by the prior employment.

The judge does not believe that continued recusal is required and asks for an advisory opinion of the Committee in this regard.

DISCUSSION

The Nevada Code of Judicial Conduct sets forth the applicable standards from which our judges are provided guidance for ethical conduct.

Canon 2 provides:

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

Canon 3E(1) provides:

A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in
controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

The Nevada Supreme Court has made it clear that it takes a narrow view of those circumstances which justify disqualification pursuant to the Canons of Judicial Ethics. The commentary to Canon 3E informs Nevada’s judiciary that judges have “a duty to sit.” See Ham v. District Court, 93 Nev. 409, 415, 566 P.2d 420, 424 (1977). Whether a judge’s impartiality might reasonably be questioned, and the opinion of the judge as to his or her ability to be impartial, is determined pursuant to Las Vegas Downtown Redevelopment Agency v. Hecht, 113 Nev. 644, 940 P.2d 134 (1997).”

In the Hecht matter, the court held:

Many times we have stated that a judge or justice’s opinion concerning his or her bias or prejudice should be given substantial weight [Sonner v. State, 112 Nev. 1328, 1335 (1996)] (“This court has always accorded substantial weight to a judge’s determination that he can fairly and impartially preside over a case.”); see also Goldman v. Brian, 104 Nev. 644, 649, 764 P.2d 1296, 1299 (1988).

The Commentary to Canon 3E(1)(b) provides:

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge’s impartiality might reasonably be questioned because of such association.

Based upon the foregoing authorities, this Committee has previously ruled that a judge is not required to disqualify:

1. When hearing matters which were pending in the district attorney’s office where the judge worked before taking the bench. JE01-002;

2. When the judge’s spouse has consulted as a medical expert on behalf of attorneys appearing before the judge. JE03-001; and

3) When a hearing master presides over child support cases prosecuted by attorneys who are supervised by the master’s spouse. JE03-003.

The Committee cannot anticipate all potential matters that might come before the justice of the peace. If the judge believes, based upon the circumstances of any particular case, that there are circumstances which one “might reasonably consider relevant to the question of disqualification, …” then disclosure should be made to the attorneys and parties to allow a preemptory challenge or an affidavit of bias. Commentary, Canon 3E(1).

CONCLUSION

This Committee has previously ruled that the circumstances under which a judge may be required to disqualify in Nevada are extremely limited. A justice of the peace is not necessarily disqualified because the judge used to be an attorney for a public
housing agency which is now pursuing eviction cases in the judge’s court.

REFERENCES


This opinion is issued by the Standing Committee on Judicial Ethics and Election Practices. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, the Nevada Commission on Judicial Discipline, any person or tribunal charged with regulatory responsibilities, any member of the Nevada judiciary, or any person or entity which requested the opinion.

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