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STATE OF NEVADA

STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

DATE ISSUED: January 30, 2004

OPINION: JE04-001

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

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

ISSUE

DISCUSSION

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

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

Answer: No.

Canon 2 provides:

FACTS

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

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.

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

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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

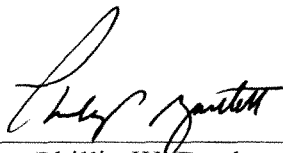
This Committee has previously ruled that the circumstances under which a judge may be required to disqualify in Nevada are extremely limited. A justice of the peace is not necessarily disqualified because the judge used to be an attorney for a public

housing agency which is now pursuing eviction cases in the judge's court.

REFERENCES

Nevada Code of Judicial Conduct Canon 2; Canon 3E(1)(a)(b); Canon 3E(1) Commentary; Canon 3E(1)(b) and Commentary; Ham v. District Court, 93 Nev. 409, 415, 566 P.2d 420, 424 (1977); Las Vegas Downtown Redevelopment Agency v. Hecht, 113 Nev. 644, 940 P.2d 134 (1997). Sonner v. State, 112 Nev. 1328, 1335 (1996) Goldman v. Brian, 104 Nev. 644, 649, 764 P.2d 1296, 1299 (1988); Judicial Opinion JE01-002; Judicial Opinion JE03-001; and Judicial Opinion JE03-003.

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.



Phillip W. Bartlett
Committee Chairman