

FILED

JAN 30 2004

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY \_\_\_\_\_  
DEPUTY CLERK

STATE OF NEVADA

STANDING COMMITTEE ON  
JUDICIAL ETHICS AND ELECTION PRACTICES

DATE ISSUED: January 30, 2004

OPINION: JE04-002

PROPRIETY OF A JUSTICE COURT  
JUDGE PRESIDING OVER EVICTION  
MATTERS PURSUED BY OWNER OF  
APARTMENT COMPLEXES WITH  
WHOM JUDGE MEETS TO DISCUSS  
EVICTION BUSINESS

ISSUE

Is a justice of the peace disqualified from hearing civil eviction cases brought by owner of apartment complexes with whom the judge discusses eviction matters and has a social relationship?

**Answer: Yes.**

FACTS

A justice of the peace has a friend who is a principal in a corporation which owns apartment complexes totaling more than five thousand units. The judge has introduced this friend to an attorney for the purpose of helping to facilitate the creation of an attorney-client relationship so that this friend may have representation in eviction proceedings. The judge attended initial meetings between the friend and the lawyer to "assist in establishing a rapport and a business relationship." The lawyer then began representing the friend's corporation in the court where the judge sits. The judge recuses himself on all cases involving the friend's corporation. The judge has, however, helped to establish court procedures for filing processes for

companies with large numbers of eviction filings. The judge has been careful to emphasize with court staff that the friend's company and the attorney now representing his friend's company are to be treated the same as other companies with large eviction filings. The judge has followed this practice for six years and now wants to know whether he should continue to recuse himself from all eviction matters involving his friend's company. The judge continues to meet every three to four months with his friend and the company's lawyer "regarding eviction business as well as socially."

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:

RECEIVED  
JAN 30 2004  
CLERK OF SUPREME COURT  
By \_\_\_\_\_  
DEPUTY CLERK

(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;

Canon 4 provides:

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.

According to the commentary to Canon 3E(1), "[w]hether 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 Redev. Agency v. Hecht, 113 Nev. 644, 940 P.2d 134 (1997)." In that case, the Nevada Supreme Court emphasized the following:

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 Nevada Supreme Court has also held that a judge or justice is "presumed not

to be biased, and the burden is on the party asserting the bias to establish sufficient factual grounds warranting disqualification." Goldman v. Brian, 104 Nev. 644, 649 (1988).

The Nevada Supreme Court and this Committee have interpreted Canon 3E in a very narrow fashion, there being very limited circumstances under which a judge must disqualify himself or herself. See JE01-002, JE03-001 and JE03-008.

The current question presents a factual scenario where the judge's impartiality could certainly be questioned. This scenario presents a circumstance where the judge is not acting in a manner that promotes public confidence in the integrity and impartiality of the judiciary. See Canons 2A and 3E(1).

The Committee also believes that the judge is participating in extra-judicial activities which may demean the judicial office in violation of Canon 4A(2). The Committee has no objection to a judge providing a friend with the names of lawyers who may be able to represent him. However, when the judge goes beyond providing the names of potential lawyers to attending meetings between the lawyer and the friend, establishing court procedures which benefit the friend's business, and then continues to meet with his friend and the lawyer to discuss eviction business conducted in the same court where the judge sits, the judge has effectively precluded himself from presiding over any matter involving his friend's evictions for the foreseeable future. The relationship between the apartment owner, the lawyer and the judge is so pervasive that the judge will be perceived as "biased" or "interested" in a manner that cannot be cured by the passage of time.

Even if the judge has recused himself or herself from those matters involving a friend in the past, by continuing to discuss “eviction business” every three to four months, the judge is engaging in a troubling course of conduct that appears may involve the risk of discussion of pending or impending court matters in violation of Canon 3B(9). This ongoing conduct by the judge also may be viewed as inconsistent with the prohibition on the practice of law under Canon 4G.

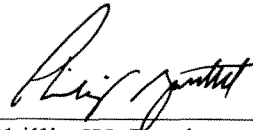
#### CONCLUSION

The scenario presented is distinct from those reviewed in prior decisions of this Committee where no basis for disqualification was found. The hypothetical presented involves a long standing, ongoing relationship between a judge and a party with significant continuing litigation before the court, where the judge has engaged in ongoing discussion with the party of the subject area of that litigation. While this Committee cannot criticize an ongoing social relationship, an ongoing discussion of eviction business with this friend may result in numerous violations of the Code of Judicial Conduct.

#### REFERENCES

Nevada Code of Judicial Conduct Canon 2; Canon 3E(1)(a); Canon 4; Las Vegas Downtown Redevelopment Agency v. Hecht, 113 Nev. 644, 940 P.2d 134 (1997). Sommer 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 JE03-008.

*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