STATE OF NEVADA

STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

DATE ISSUED: August 17, 2006

OPINION: JE06-009

DISCUSSION

Canon 3E of the Nevada Supreme Court Rules provides:

A judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, ...

The commentary to 3E gives “substantial weight” to the judge’s opinion of his or her ability to be fair and impartial, pursuant to Las Vegas Downtown Redev. Agency v. Hecht, 113 Nev. 644, 650, 940 p.2d 134 (1997). While Hecht deals with previous acrimony between a jurist and an attorney, it can be applied by analogy to the instant question. Faced with this situation, a judge must ask if prior knowledge of the criminal defendant’s lifestyle or transgressions will render the jurist unable to fairly conduct court proceedings involving the defendant or to sentence the defendant if found guilty or upon the entry of a plea. Barring “extreme situations” or those where “malice is obvious”, Hecht would allow the judge to proceed if he or she determines he or she can be impartial.

However, prior to conducting a proceeding involving such a defendant, even if the judge believes there is no basis for disqualification, he or she must disclose any recollection of the defendant previously going through drug court. Extensive detail is not necessary to make a simple record that the jurist remembers having the criminal defendant before him or her as a drug court participant.

PROPRIETY OF A JUDGE WHO DEALT WITH AN OFFENDER IN DRUG COURT LATER ADJUDICATING THE SAME DEFENDANT IN NON-DRUG COURT CRIMINAL PROCEEDINGS.

ISSUE

Can a judge ethically preside over and rule in the criminal case of a defendant who had previously appeared before the judge in drug court?

ANSWER

Yes, with limitations.

FACTS

The request letter asks whether a judge who has become familiar with details of the life of an individual through drug court is prohibited from subsequently presiding over a criminal case for the same offender. From the drug court process, the jurist may become familiar with the participant’s drug and/or alcohol use and other alleged criminal acts, plus employment and family issues. Should this same judge later adjudicate the individual’s case as a criminal defendant? The judge requesting this opinion is concerned, because in less populous counties the same judge often presides over both courts.
The Committee also discussed the “rule of necessity” as it relates to this inquiry. Relying again on Hecht: “In a small state such as Nevada, with...limited bar membership, it is inevitable that frequent interactions will occur between the members of the bar and the judiciary.” Id at 648. By analogy, in some Nevada counties, with a limited number of jurists, one or two judges may preside over all courts. As a consequence, one judge may see the same defendant in more than one setting. Especially in the criminal context, these jurists are obliged to avoid the undue delay which may be caused by disqualification and calling in another judge from an often distant sister jurisdiction.

CONCLUSION

Canon 3E requires disqualification when a judge determines he or she cannot be fair or impartial. The Commentary to 3E and interpretative case law limits such recusal to extreme circumstances and cases where the jurist has obvious malice. The Committee determined the question before it does not fall into these categories. The Committee did stress, however, the judge’s obligation to disclose on the record the fact the judge had previously presided over a drug court involving the same individual the judge is now adjudicating as a criminal defendant.

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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