

STATE OF NEVADA  
STANDING COMMITTEE ON  
JUDICIAL ETHICS AND ELECTION PRACTICES

**DATE ISSUED: August 17, 2006**

**OPINION: JE06-009**

DISCUSSION

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

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, ...

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 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.

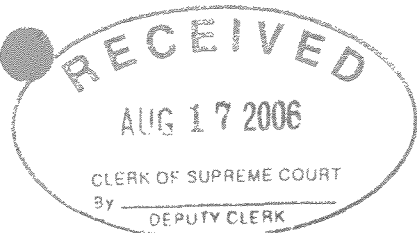
However, prior to conducting a  
proceeding involving such a defendant,  
even if the judge believes there is no basis  
for disqualification, he or she must disclose  
any recollection of the defendant  
previously going through drug court.  
Extensive detail is not necessary to make a  
simple record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

FILED

AUG 17 2006

JANETTE M. BLOOM  
CLERK OF SUPREME COURT

BY \_\_\_\_\_  
DEPUTY CLERK



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.

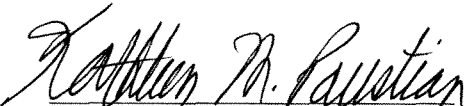
#### REFERENCES

Nevada Supreme Court Rules, Code of Judicial Conduct, Canon 3E and

Commentary; *Las Vegas Downtown Redev. Agency v. Hecht*, 113 Nev. 644, 650, 940 p.2d 134 (1997).

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*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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