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JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY _____
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STATE OF NEVADA
STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

DATE ISSUED: November 13, 2006

OPINION: JE06-018

PROPRIETY OF DISTRICT COURT
STAFF ATTORNEY ACTING AS A
TEMPORARY FAMILY COURT
MASTER, WHERE THE STAFF
ATTORNEY IS ALSO A LAW CLERK
FOR, AND IS SUPERVISED BY, THE
JUDGE WHO WILL REVIEW THE
F I N D I N G S A N D
RECOMMENDATIONS OF THE STAFF
ATTORNEY IN HIS MASTER
CAPACITY.

and recommendations of the staff attorney
in his master capacity, is also the judge
who directs and supervises the staff
attorney in that capacity.

DISCUSSION

The Nevada Code of Judicial
Conduct applies to any officer of a judicial
system "who performs judicial functions,
including an officer such as a ... special
master." See, Application of Code of
Judicial Conduct, A. The Canons relevant
to this issue apply, whether this master is
considered a Continuing Part-time Judge, a
Periodic Part-time Judge, or a Pro Tempore
Part-time Judge. See, Application, C, D
and E and relevant terminology definitions.

ISSUE

May a District Court staff attorney
who, in part, functions on a multi-year
basis as a law clerk for a judge, act as a
temporary Family Court Master where his
or her findings and recommendations will
be reviewed by the judge who directs and
supervises the staff attorney?

Canon 2 provides that "a judge
shall avoid impropriety and the appearance
of impropriety in all of the judge's
activities." Canon 2A further states that "a
judge shall...act at all times in a manner
that promotes public confidence in the
integrity and impartiality of the judiciary."
The Commentary states that "the test for
appearance of impropriety is whether the
conduct would create in reasonable minds
a perception that the judge's ability to
carry out judicial responsibilities
with...impartiality...is impaired." It is the
opinion of the Committee that an
appearance of impropriety is created here,
not only for the staff attorney when
functioning as a master, but also for the

ANSWER

No.

FACTS

A judge asks whether a District
Court staff attorney may function as a
temporary master in certain Family Court
cases. The staff attorney is a licensed
member of the State Bar, and functions, in
part, as a law clerk on a multi-year basis.
The judge, who will review the findings

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judge when reviewing the staff attorney's findings and recommendations as master. It is the working relationship between the judge and the staff attorney in those roles, which would, in reasonable minds, create a perception that the ability of each to carry out their judicial responsibilities impartially is impaired when acting in their roles as master and reviewing judge. In the case of the master, a perception would be created that the master will act in a particular way because the findings and recommendations are reviewable by his or her supervisor. In the case of the judge, the perception is created that the judge may act in a particular way because the findings and recommendations are made by someone with whom the judge works closely and who is supervised by the judge.

Here, the judge and staff attorney relationship places a strain on their master and reviewing judge functions which the Canons do not anticipate or intend to allow. On the one hand, in applicable part, Canon 3B(7) prohibits a judge from having ex parte communications outside the presence of the parties. On the other hand, Canon 3B(7)(c) creates an exception to that rule as follows:

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's a d j u d i c a t i v e responsibilities....

The situation here, however, would require that communications expressly allowed by the Canon be prohibited, and the parties would have to have confidence that such communications would not, in fact, occur. In the judgment of the Committee,

regardless of any assurances which might be provided by both the judge and the master, a perception would continue in reasonable minds that such communications might occur, thus adding to the larger perception problem described above.

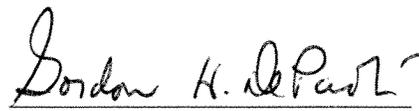
CONCLUSION

It is, therefore, the opinion of the Committee that under the facts presented, a District Court staff attorney who, in part, functions on a multi-year basis as a law clerk for a judge, may not also function as a temporary Family Court Master where the findings and recommendations of the master are reviewed by the judge who directly supervises him or her as a staff attorney.

REFERENCES

Nevada Code of Judicial Conduct, Application of Code of Judicial Conduct, Application A, C, D and E; Canon 2; Canon 2A; Canon 3B(7); Canon 3B(7)(c).

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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