

#### STATE OF NEVADA

FFR 1 9 2009
TRACIE K. LINDEMAN
CLERK OF SUPREME COUNT
BY
DERUY CLERY

# STANDING COMMITTEE ON JUDICIAL ETHICS AND ELECTION PRACTICES

DATE ISSUED: February 19, 2009

REQUIREMENT OF A JUDGE TO DISCLOSE THAT CURRENT EMPLOYEES ARE USING THE LEGAL SERVICES OF AN ATTORNEY WHO FORMERLY WORKED FOR THE JUDGE.

# **ISSUE**

Is a judge required to disclose that current employees are using, or have used, a former court attorney to prepare wills and business documents?

#### ANSWER

No.

#### **FACTS**

This written request came from a sitting judge who has a staff member who used the services of a former court attorney in the past to prepare a will and who has another staff member who is currently using the same lawyer to prepare personal business documents and a will. The Judge asks if he is required to disclose this information. The Judge also inquired, if disclosure is required: (1) What is the duration of his duty to disclose? (2) Would his obligation to disclose extend to all members of the former court lawyer's firm, or only to the attorney who formerly worked for the judge? (3) Would the judge be required to disclose this information in uncontested matters, such as probate cases?



# DISCUSSION

**ADVISORY OPINION: JE09-001** 

While the request was not specific as to the potential recipient of such a disclosure, the Committee extrapolated from the letter that the judge meant other lawyers who might appear in his court opposite to the attorney who formerly worked in the department. While there is no Nevada rule or canon on point, the Committee relied on The Nevada Code of Judicial Conduct Canons 2B and 3E(1)(a) which provide:

2B: A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.

3E(1), "Disqualification": 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;

A judge must disclose information the judge believes the parties or their might reasonably counsel consider relevant to the question of disqualification even if the judge believes there is no basis for disqualification. The Committee considered this disclosure question in relationship to the duty to disqualify and found the judge had no obligation under these facts to inform opposing counsel of the relationship between his former staff lawyer and his two (2) current employees. Based on the principles espoused in *Hecht*, the Committee has taken a narrow view of those circumstances in which the connection or relationships of an attorney to a judge require disqualification under Canon 3E. See, Las Vegas Downtown Redevelopment Agency v. Hecht, 113 Nev. 632, 940 P.2d 127 (1997); see also, JE07-001. The facts as presented in this matter do not suggest the intermittent relationship between the former staff attorney and current employees rises to a level which would give opposing counsel reason to question the impartiality of the judge. However, the Committee instructs judges to consider such issues on a case by case basis, bearing in mind their obligations under 2B and 3E(1)(a).

Because the panel did not see a need to disclose here, it did not take up the inquiring judge's three (3) follow-up questions. The Committee did wish to remind Nevada jurists of their obligation to require staff to comply with Canon 3C(2), "Administrative responsibilities", which provides:

A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity

and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

## **CONCLUSION**

The Committee found the judge does not have an obligation to disclose the relationship between his former staff attorney and his current staff.

## REFERENCES

Nevada Code of Judicial Conduct, Canons 2B and 3E(1)(a); *Las Vegas Downtown Redevelopment Agency v. Hecht*, 113 Nev. 632, 940 P.2d 127 (1997); and, Canon 3C(2).

This opinion is issued by the Standing Committee on Judicial Ethics and Election Practices. It is advisory only. It is not binding on 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 requesting the opinion.

Kathleen M. Paustian Committee Chairperson