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**STATE OF NEVADA**

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**STANDING COMMITTEE ON  
JUDICIAL ETHICS AND ELECTION PRACTICES**

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CLERK OF SUPREME COURT  
BY \_\_\_\_\_  
DEPUTY CLERK

**DATE ISSUED: August 12, 2010**

**ADVISORY OPINION: JE10-006**

PROPERTY OF A JUDGE  
PARTICIPATING IN MEDIATION OR  
SETTLEMENT CONFERENCES IN A  
CASE PENDING BEFORE ANOTHER  
JUDGE

**ISSUE**

May a judge conduct a mediation or settlement conference in a case pending before another judge in the same or another judicial district when requested or assigned to do so by the judge presiding over the case?

**ANSWER**

Yes. A judge may participate in mediation or settlement conferences so long as the proceedings occur as part of judicial duties at the request or assignment of the presiding judge, as opposed to independent private mediation services, which remain prohibited by Rule 3.9.

**FACTS**

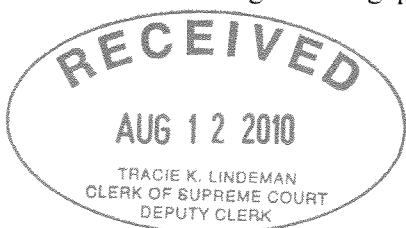
A judge seeks an advisory opinion regarding whether he may conduct a settlement conference or mediation in a case pending before another judge in the same or different judicial district located in the State of Nevada. The judge notes that it is has been a long-standing practice for judges in

Nevada to provide such services when requested by other judges, and that in the requesting judge's experience, such Court directed dispute resolution services have provided significant benefits to the court system and litigants.

**DISCUSSION**

Canon 3 states that "A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office." Relevant to the question presented, Rule 3.9 further provides that "A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law." The Committee's opinion on this issue turns on whether, under the facts presented here, performing mediation or settlement conference services in a case pending before another judge, when assigned or requested to do so by the other judge, would be considered a judicial function included within the judge's official duties permitted by Rule 3.9.

Comment 1 to Rule 3.9 is instructive. Comment 1 states nothing in Rule 3.9 prohibits a judge "from participating in arbitration, mediation or settlement conferences performed as part of



assigned judicial duties.” The Committee believes the Comment recognizes a fundamental distinction between dispute resolution services provided as part of a judge’s official, public duties and those private dispute resolution services rendered separate and independent from performance of the judge’s duties as a judicial officer, the former being permitted where otherwise authorized by law, while the latter are barred.

Supreme Court Rule 252 authorizes a court to order parties and their attorneys to meet in person “with a judge other than the judge assigned to preside over the trial” for the purpose of attempting to settle the case. The concept of assigning non-presiding judges thus appears authorized by law, and consistent with impartiality objectives under Canon 2. *See Comments 2 and 3 to Rule 2.6* (recognizing that judges may “play an important role in overseeing the settlement of disputes”, but “must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality.”) NRS 3.220 recognizes that district “judges possess equal coextensive and concurrent jurisdiction and power,” further supporting the premise that the judge’s official, public duties within that district may encompass performance of assigned dispute resolution judicial duties in cases pending before another judge. Additionally, the Committee notes that the Supreme Court of Nevada has held that district judges are “state officers” who enjoy statewide jurisdiction,” further

supporting the conclusion that the performance of Court directed dispute resolution services in another judicial district may fall within the judicial duties or functions of the judge. *See State ex rel. Masto v. Montero*, 188 P.3d 47 (2008).

Under the facts presented, the judge has indicated that there is not always a formal assignment or order entered by the presiding judge appointing the other to oversee the dispute resolution process. The Committee understands the process involved is often more informal, and that the presiding judge or staff will request the other judge provide dispute resolution services in a given case. However, given the underlying purpose of the dispute resolution services described, the performance of such services in connection with assigned judicial duties, and the distinction recognized in Comment 1 to Rule 3.9, the Committee does not find the absence of a formal order from the presiding judge controlling, and in this respect believes the critical inquiry is whether the dispute resolution services are being performed on behalf of, at the direction of, and in furtherance of administration of justice by, the presiding Court.

Finally, the Committee notes that the restrictions set forth in Rule 3.9 and comments in this opinion related to private mediation services do not apply to retired judges. *Revised Nevada Code of Judicial Conduct, Application Sec. II*. However, in Nevada, retired judges subject to recall as commissioned “senior judges” may also

serve as settlement judges when assigned or asked to do so, consistent with this opinion.

### **CONCLUSION**

It is the opinion of the Committee that under Rule 3.9 and applicable Canons, a judge would be allowed to perform mediation or settlement conference functions in a case pending before another judge in the same or another judicial district when requested or assigned to do so by the judge presiding over the case where such functions are performed in connection with assigned judicial duties.

### **REFERENCES**

Revised Nevada Code of Judicial Conduct, Application Section II; Canon 2; Canon 3; Rule 2.6; Rule 3.9; Comment 2 and 3 to Rule 2.6; Comment 1 to Rule 3.9; SCR 252; NRS 3.220; *State ex rel. Masto v. Montero*, 188 P.3d 47 (2008).

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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 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.*



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