

STATE OF NEVADA

STANDING COMMITTEE ON JUDICIAL ETHICS
AND ELECTION PRACTICES

DATE ISSUED: July 22, 2011

ADVISORY OPINION: JE11-008

PROPRIETY OF A JUDGE
VOLUNTARILY SUBMITTING
COMMENTS TO THE PAROLE BOARD
REGARDING THE RELEASE OF A
PRISONER

difference if the judge were concerned for
his/her personal safety because of the
defendant's actions and behavior during the
trial and other behaviors that lead to the
defendant's conviction.

ISSUE

DISCUSSION

May a judge voluntarily provide
written comments to the Parole Board
regarding the release of a prisoner where the
judge, prior to taking the bench, served as
the district attorney that prosecuted the
prisoner?

Canon 3 states “[a] judge shall conduct
the judge’s personal and extrajudicial
activities to minimize the risk of conflict
with the obligations of judicial office.”
Nev. Code Jud. Conduct, Canon 3. In
furtherance of this Canon, Rule 3.3 prohibits
a judge from “testify[ing] as a character
witness in a judicial, administrative, or other
adjudicatory proceeding or otherwise
vouch[ing] for the character of a person in a
legal proceeding, except when duly
summoned.” Comment [1] to Rule 3.3
expands on this limitation, and citing Rule
1.3 states that “a judge who, without being
subpoenaed, testifies as a character witness
abuses the prestige of judicial office to
advance the interests of another.” *See Rule
1.3*

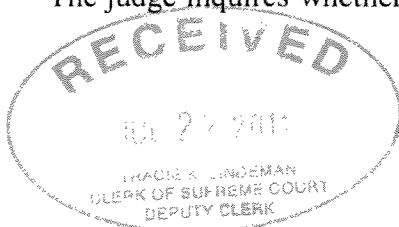
ANSWER

The Committee believes that unless
duly summoned, it is not appropriate for a
judge to voluntarily provide written
comments to a parole board regarding the
release of a prisoner on a matter in which
the judge did not preside.

FACTS

A Justice of the Peace has presented
a hypothetical question inquiring whether it
is appropriate for a judge to submit written
comments to the Parole Board and/or attend
a parole hearing where the Parole Board
solicits comments from the judge regarding
the release of a prisoner. In the
hypothetical, the judge formerly served as
the district attorney which prosecuted the
prisoner, prior to appointment to the bench.
The judge inquires whether it would make a

A number of other jurisdictions have
addressed similar questions under their
respective codes of judicial conduct, which
decisions the Committee finds instructive.
These jurisdictions have noted distinctions
under codes of conduct similar to Nevada’s
between providing information voluntarily
and responding to a formal request or
subpoena, recognizing the former is
generally not permitted while the latter is



allowed. See *Kentucky Ethics Committee Judicial Ethics Opinion JE 104* (“a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request.”); *New York State Advisory Committee on Judicial Ethics Opinion 07-104* (judge may not, at the request of a person involved in a criminal proceeding, voluntarily submit a letter or affidavit recommending a course of action). On facts similar to the hypothetical presented here, the Massachusetts Commission on Judicial Ethics concluded that a judge could testify before a parole board on factual matters involving a former client where such testimony was provided in response to a subpoena. *Massachusetts Commission on Judicial Ethics Opinion 2006-2*. However, Massachusetts concluded even where testimony is made in response to a subpoena care should be exercised not to abuse the prestige of office, advising the judge should inquire whether the information might be obtained from another source and in all events should limit testimony to factual information.

The Committee recognizes that the Parole Board guide states that views of judges and district attorneys “are welcomed by the Board.” However, the desires of the Parole Board cannot, in themselves, overcome the obligations imposed on judges under the Canons. The Committee is concerned that voluntarily offering testimony appears akin to advocating for the advancement of the personal interests of another, conduct proscribed by Rule 1.3. Moreover, the Committee recognizes that if the Parole Board believes the testimony of a judge, whether in her capacity as a judge or former district attorney, is critical to its evaluation of a prisoner, a judge may still

offer such factual testimony in response to a formal request from the Parole Board.

The Committee concludes that a judge may offer factual testimony in response to a formal request from the Parole Board, but a judge is precluded by Rules 1.3 and 3.3 of the Code of Judicial Conduct from voluntarily providing testimony regarding the release of a prisoner. The Committee also cautions that a judge should limit any testimony to factual information, not character testimony. While not presented by the hypothetical in this case, the Committee notes that such limitations may not apply where the judge is a victim of a criminal act and provides factual information based on the judge’s personal involvement in the crime.

CONCLUSION

A Nevada judge may provide factual testimony to the Parole Board regarding the release or detention of a prisoner where given in response to a formal request. However, with the exception of cases in which the judge is a victim of a criminal act, he/she may not voluntarily offer testimony to the Parole Board.

REFERENCES

Nev. Code Jud. Conduct, Rule 1.3 & Rule 3.3; Commentary [1] to Rule 3.3; *Kentucky Judicial Ethics Opinion JE 104*; *New York State Advisory Committee on Judicial Ethics Opinion 07-104*; *Massachusetts Commission on Judicial Ethics Opinion 2006-2*.

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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.

A handwritten signature in black ink, appearing to read "Michael A. Pagni", written over a horizontal line.

Michael A. Pagni
Vice-Chairman