

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*

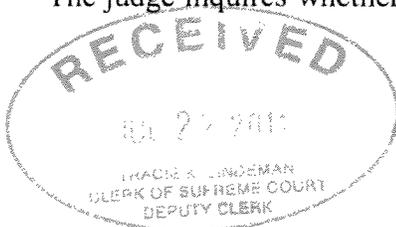
ANSWER

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.

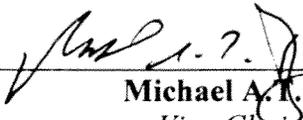
### REFERENCES

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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**Michael A. Pagni**  
*Vice-Chairman*