



reached similar conclusions, recognizing that judges are prohibited from testifying as expert witnesses voluntarily, citing judicial canons similar to Canon 1 and Rule 3.3 of the NCJC. *See State of Washington, Ethics Advisory Committee, Opinion 85-04; Texas Committee on Judicial Ethics, Opinion 139 (1991); Florida Judicial Ethics Advisory Committee, Opinion 2005-10.*

While the outcome from the foregoing limitations appears clear for most judges, it is not as clear for pro tempore judges. Nevada's Code of Judicial Conduct applies to all judges except as otherwise provided in Parts II through IV of the Application section of the Code. *NCJC Application Part I. Application Part IV(B)(1)(d)* specifically provides that, except while serving as a judge, a pro tempore judge is not required to comply with the limitations in Rule 3.3. Application Part IV further exempts pro tempore judges from numerous other provisions of the Canons, including several related to testifying. *See Application Part IV(B)(3).*

Rule 3.3 expressly prohibits a judge from testifying as a character witness voluntarily. The commentary with respect to Rule 3.3 recognizes the rationale underlying the prohibition against a judge providing character testimony is that in doing so a judge "abuses the prestige of judicial office to advance the interests of another" by testifying voluntarily, conduct otherwise proscribed by Canon 1. *Comment [1], Rule 3.3.* This Committee has previously recognized that such rationale applies with equal force to a judge testifying as an expert witness. *Advisory Opinion JE 06-001.*

Given that the Supreme Court specifically exempted pro tempore judges from the limitations in Rule 3.3, and that

such limitations are founded upon principles set forth in Canon 1 and apply equally to expert testimony, the Committee concludes the Supreme Court did not intend the limitations under Rule 3.3 or Canon 1 to preclude a pro tempore judge from testifying as an expert witness so long as the pro tempore judge is not serving as a judge at the time of the testimony. While the Committee concludes that a pro tempore judge may testify as an expert in another court, a pro tempore judge must not use or allow others to use his position as a pro tempore judge as a foundation for his qualifications or expertise to provide testimony, or otherwise refer to the fact that the judge serves as a pro tempore judge, as such would constitute abuse the prestige of judicial office to advance the interests of others.

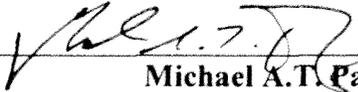
#### CONCLUSION

A pro tempore judge may testify as an expert witness in a matter pending before another court provided that the judge's position as a pro tempore judge is not used to establish credentials or qualifications of the judge to testify as an expert.

#### REFERENCES

Rule 5 Governing the Standing Committee On Judicial Ethics & Election Practices; Nev. Code Jud. Conduct, Application Part I and Application Part IV; Nev. Code Jud. Conduct, Canon 1, Rule 1.2, Rule 1.3 & Rule 3.3; *Commentary [1]* to Rule 3.3; *Advisory Opinion JE06-001; Advisory Opinion JE11-008; State of Washington, Ethics Advisory Committee, Opinion 85-04; Texas Committee on Judicial Ethics, Opinion 139 (1991); Florida Judicial Ethics Advisory Committee, Opinion 2005-10.*

*This opinion is issued by the Standing Committee on Judicial Ethics. 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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