

FILED

OCT 07 2011

STATE OF NEVADA
STANDING COMMITTEE ON JUDICIAL ETHICS

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY _____
DEPUTY CLERK

DATE ISSUED: October 7, 2011

OPINION NO.: JE11-013

PROPRIETY OF A CONTINUING PART-TIME JUSTICE OF THE PEACE REPRESENTING A GOVERNMENT, GOVERNMENTAL AGENCY OR POLITICAL SUBDIVISION OF A GOVERNMENT.

ISSUE

May a continuing part-time Nevada Justice Court Judge undertake an engagement to represent a government, governmental agency or political subdivision of a government in connection with his or her private practice of law?

ANSWER

Yes, provided the judge exercises care to limit the scope of the representation to comply with the requirements of the Nevada Code of Judicial Conduct.

FACTS

A justice of the peace has inquired whether a Nevada judicial officer on continuing part-time status may represent a non-judicial government, governmental agency or political subdivision of a government as an attorney.

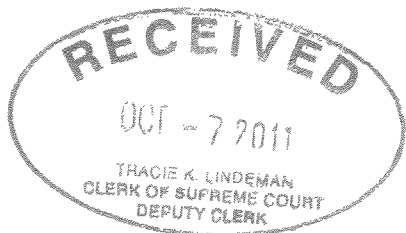
DISCUSSION

The Committee’s opinion evaluates the question presented only as it relates to compliance with the requirements of the Nevada Code of Judicial Conduct (the “NCJC”). *Rule 5 Governing Standing*

Comm. On Judicial Ethics. Accordingly, this opinion is limited by the authority granted by Rule 5. The Committee, therefore, is not providing guidance on the jurist’s compliance with the Nevada Rules of Professional Conduct (the (“NRPC”). In this regard, it may be prudent for the inquiring judge to independently evaluate his or her duties under the NRPC or secure guidance of Counsel to the Nevada State Bar. Similarly, for the avoidance of doubt, the Committee here has not been asked and does not opine on whether a continuing part-time judge simultaneously may practice law as an executive branch public lawyer, a situation that presents questions under Section 1 of Article 3 of the Constitution of the State of Nevada.

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.” Nevada Code of Judicial Conduct, Canon 3. NCJC Rule 3.10 provides that “[u]nless otherwise permitted by law, a judge shall not practice law.” Nevada Code of Judicial Conduct, Canon 3, Rule 3.10. This proscription does not apply to jurists who serve as a continuing part-time judge. *See* NCJC, Application III(B)(3)(d).

The right of a continuing part-time judge to practice law is explicitly restricted in that he or she “shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in



which the judge has served as a judge or in any other proceeding related thereto. See NCJC, Application III(C). Relatedly, Rule 3.11 states:

A judge shall not engage in financial activities permitted under [this rule] if they will:

- (1) interfere with the proper performance of judicial duties;
- (2) lead to frequent disqualification of the judge;
- (3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or
- (4) result in violation of other provisions of this Code.

Nevada Code of Judicial Conduct, Canon 3, Rule 3.11(C).

The Committee interprets the phrase “financial activities” as used in Rule 3.11 to include the financial relationship typical between attorney and client. Consequently, the NCJC also prohibits the proposed type of private practice if the legal representation of a government, governmental agency or political subdivision of a government by the continuing part-time judge interferes with judicial duties, results in frequent disqualification, involves frequent transactions or relationship with persons who appear before the judge or otherwise violate the NCJC.

On this latter point -- other NCJC violations -- we observe that a judge accepting such an engagement as an attorney must likewise be generally mindful of the

disqualification requirements of Rule 2.11 and specifically that:

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonable be questioned, including but not limited to the following circumstances:

....

(6) The judge:

(a) served as a lawyer in the matter in controversy or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter;

Nevada Code of Judicial Conduct, Canon 2, Rule 2.11(A)(6).

Based on the facts presented and the applicable provisions of the NCJC, the Committee concludes a continuing part-time judge may represent in his or her capacity as a private practice attorney a government, governmental agency or political subdivision of a government. The jurist must, however, adhere to the specific limitations on the scope of that representation as set forth in Part III(C) of

the NCJC provisions on Application. Moreover, the continuing part-time judge must not undertake such a representation if doing so would result in violations of NCJC Rule 3.11 and with particular attention given to the mandates of NCJC Rule 2.11.

CONCLUSION

A continuing part-time Nevada Justice Court Judge may undertake an engagement to represent a non-judicial government, governmental agency or political subdivision of a government in connection with the private practice of law. The jurist must exercise care to make certain that the scope of this representation is consistent with explicit limitations on such private practice under the NCJC and the requirements of NCJC Rules 2.11 and 3.11.

REFERENCES

Rule 5 Governing Standing Comm. On Judicial Ethics; Nevada Code of Judicial Conduct, Canon 2, Rule 2.11(A)(6); Nevada Code of Judicial Conduct, Canon 3, Rule 3.10 & Rule 3.11(C); Nevada Code of Judicial Conduct, Application Part III(B)(3)(d) & III(C).

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.



Dan R. Reaser, Chairman