

STATE OF NEVADA

STANDING COMMITTEE ON JUDICIAL ETHICS

BY

DATE ISSUED: March 15, 2013

ADVISORY OPINION: JE13-001

PROPRIETY OF CERTAIN ACTIONS BY
A JUSTICE OF THE PEACE IN THE
WINDING DOWN OF A PRIVATE LAW
PRACTICE UPON ELECTION TO THE
BENCH

ISSUE

1. May a lawyer who is elected
as a justice of the peace base the purchase
price of his or her former practice on a
percentage of the private practice's billed
and collected gross revenue over a set period
after the date of the sale?

2. May a judge assist the
purchaser of his former practice in matters
that were ongoing at the time of the sale of
the practice?

3. May a judge continue to pay
employees of his former law practice as
employees of his professional corporation
after taking the bench?

4. How long does a judge who
is named as a trustee or successor trustee in
a client trust have to remove himself as a
fiduciary and/or trustee?

ANSWER

1. No, while the sale of the law
practice, including the goodwill associated
with the practice, is permissible, basing the
purchase price on the future success of the
law practice impermissibly joins the

interests of the judge with the interests of his
former practice.

2. The justice of the peace must
cease any involvement in prior cases. He
may, however, answer factual inquiries from
the purchaser regarding such prior
representation.

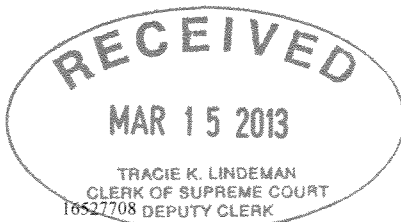
3. No. Any former employees
must be hired and paid by the purchaser.

4. The judge must step down as
soon as reasonably practicable, and in any
event not longer than one year after
becoming a justice of the peace.

FACTS

A recently elected justice of the
peace requests the Committee's opinion
with respect to winding down his private
law practice. The purchaser of the law
practice will take over the offices of the
prior practice and the purchase price of the
practice is based on the number of clients
who remain with the practice after the sale
and the revenue those clients generate.
There will not be any compensation paid for
clients who choose to seek other
representation. As a result, the purchase
price of the practice will be set at a
percentage of the actual billed and collected
gross revenue over the next 12 to 18 months.

The justice of the peace also
proposes providing assistance to the
purchaser of the practice for a six-month



transition period with respect to matters that were pending at the time of the sale and to continue paying his secretary as an employee of his professional corporation until that six-month transition is complete. Finally, the justice of the peace is a trustee or successor trustee for several client trusts and asks for guidance as to when he must remove himself as a trustee for those trusts.

DISCUSSION

The Committee is authorized to render advisory opinions evaluating the scope and applicability of the Nevada Code of Judicial Conduct (“NCJC”). *Rule 5 of the Rules Governing the Standing Committee on Judicial Ethics.*

1. It is not permissible under the NCJC to set the purchase price for the practice at a set percentage of the billed and collected revenue over a given period of time.

The judge’s first inquiry relates to the method by which the purchase price of the practice is set. According to the judge, the purchase price will be set as a percentage of billed and collected revenue over the next 12 to 18 months. The reason for using such a formula is that the purchase price is based on the number of clients who remain with the practice after the judge departs.

It is the Committee’s opinion that the use of such a formula to determine the sale price of the practice would violate the NCJC. Specifically, it is the Committee’s opinion that the proposed arrangement requires an ongoing, impermissible connection between the justice of the peace and the future success or failure of his former law practice that creates the appearance of impropriety. Fla. JEAC Op.

2013-01; Mass. CJE Op. 2000-1; NCJC Rule 3.1(C).

In addition, NCJC Rule 3.11 precludes a judge from taking an interest in a business. Comment 2 to that rule requires judges to divest themselves “as soon as practicable without serious financial detriment” of any interest that might require frequent disqualification or otherwise violate this Rule.

Given these restrictions, it is the Committee’s opinion that while it is permissible for the judge to sell his former law practice, including the goodwill associated with that practice, the sale must be for a fixed sum rather than contingent on the future success of that practice. *See* Fla. JEAC Op. 2013-01; Mass. CJE Op. 2000-1. This is not to say, however, that payment may not be made over time provided that payment is on a fixed amount. *Id.* But even then, such payments should be made over the shortest period of time possible, especially where the financial arrangement might require frequent disqualification.

Finally, the Committee cautions that this advisory opinion is limited to an evaluation of the propriety of the proposed sale under the NCJC and not of whether the sale violates any other rule or law, such as the NRPC.¹

2. The judge generally may not continue providing assistance and guidance to

¹ Specifically, the judge may wish to inquire with the State Bar of Nevada as to whether this structure constitutes impermissible fee splitting under the NRPC 1.5. That question is beyond the scope of the Committee’s authority.

the purchaser regarding ongoing matters after taking the bench.

The judge's second inquiry relates to whether a judge may provide assistance to the purchaser of his practice with respect to matters that are pending at the time of the sale. Such assistance would continue for a six-month transition period.

Rule 3.10 of the NCJC provides that "unless otherwise permitted by law, a judge shall not practice law." Rule 3.11 further prohibits judges from engaging in business activities with lawyers or other persons likely to come before the court on which the judge serves.

It is not clear from the judge's inquiry whether the purchaser of his practice is likely to come before the court on which he will serve, but Rule 3.10 is clear. With exceptions that are not applicable here, full-time judges who are also lawyers cannot practice law. Thus, depending on the nature of the proposed assistance and guidance requested, providing such services could result in a violation of Rule 3.10 or 3.11. The judge's involvement must, therefore, be very limited to avoid practicing law or becoming involved in the operation of the business.

Still, the Committee is mindful of the potential impacts such a transition could have on the judge's former clients. Accordingly, the Committee believes it is appropriate for the justice of the peace to answer any factual inquiries the purchaser of the practice may have about the prior representation that would assist in the transition.

3. The judge may not continue employing his secretary as an

employee of his professional corporation.

The judge's third inquiry relates to his desire to keep his secretary employed at the judge's professional corporation to assist the purchaser in servicing the clients in the transition process over a six (6) month period.

It is the Committee's opinion that maintaining the secretary under the employ of the Justice of the peace's professional corporation would violate both Rules 3.10 and potentially 3.11 discussed above. As such, the secretary should be employed, compensated and directed by the purchaser – and not the judge's corporation.

4. The judge must remove himself from any fiduciary positions as soon as reasonably practicable, but in no event more than one year after becoming a justice of the peace.

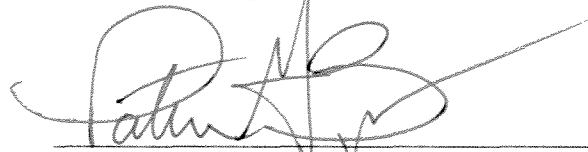
The judge's fourth inquiry asks how long he has to remove himself as trustee or successor trustee of certain client's trusts. Rule 3.8(A) prohibits judges from serving in a fiduciary position, including service as a trustee. Under Rule 3.8(D), a person who is serving in a fiduciary position that subsequently becomes a judge must remove himself or herself from such a position "as soon as reasonably practicable, but in no event later than one year after becoming a judge." Accordingly, the justice of the peace must remove himself as trustee for any client trust as soon as reasonably practicable, but in no event later than one year after he is sworn in.

CONCLUSION

The sale of a law practice by a person elected as a judge creates a number

of concerns that impact the newly elected judge or justice, his former clients, and the purchaser of the practice. While the committee is cognizant that the judge is attempting to mitigate the impact of this transition, Rule 3.10 is clear in its prohibition on practicing law. Likewise, Rule 3.11 plainly prohibits judges from continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves. Given these considerations, it is the opinion of this Committee that: (1) it is permissible under the NCJC to sell a law practice, including the goodwill associated with the practice, but the sale price of the practice must be a fixed sum not contingent on the future success of the practice; (2) the judge generally may not continue providing assistance to the purchaser regarding ongoing cases after taking the bench; (3) the judge may not continue employing his secretary as an employee of his professional corporation; and (4) the judge must remove himself from any fiduciary positions as soon as reasonably practicable, but in no event more than one year after becoming a justice of the peace.

judiciary, or any person or entity which requested the opinion.



Patrick G. Byrne, Esq.
Vice-Chairman

REFERENCES

Rule 5 Governing the Standing Committee on Judicial Ethics; Nev. Code Jud. Conduct, NCJC Rules 3.1, 3.10 and 3.11; Comment [2] to Rule 3.11; Fla. JEAC Op. 2013-01; Mass. CJE Op. 2000-1.

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