

FILED

STATE OF NEVADA

MAR 15 2013

STANDING COMMITTEE ON JUDICIAL ETHICS

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

BY: _____
DEPUTY CLERK

DATE ISSUED: March 15, 2013

ADVISORY OPINION: JE13-002

PROPRIETY OF NEWLY APPOINTED JUDGE (1) SELLING HIS LAW PRACTICE TO A LAWYER LIKELY TO APPEAR BEFORE HIM ON A REGULAR BASIS AND (2) MAINTAINING AN INTEREST IN REAL PROPERTY LEASED TO THE STATE OF NEVADA

Nevada and occupied by the State Public Defender's office.

The proposed sale of the law practice is to an attorney that the judge identifies as likely to appear before him on a regular basis. The structure of the sale will be a one-time cash payment at closing.

ISSUE

The building at issue has been leased to the State of Nevada Department of Administration for twenty years for purposes of providing a space for the Nevada State Public Defender's office. The judge does not receive income from any of the attorneys in the public defender's office, but rather from the State of Nevada.

1. May a lawyer who is appointed to the bench sell his practice to a lawyer who will appear before him regularly if the sale will be structured to require a one-time lump sum cash payment at closing?

2. May a lawyer who is appointed to the bench maintain an interest in a building in which space is leased by the State of Nevada and occupied by the Nevada State Public Defender?

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.*

ANSWER

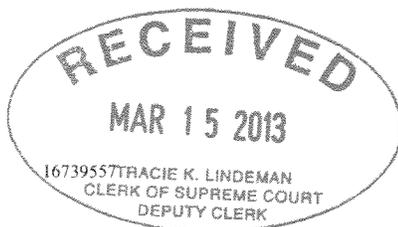
Yes to both questions. The proposed sale is permissible based on the fact that it is for a fixed sum to be paid at closing. The lawyer may also maintain the interest in the building so long as there is no direct landlord/tenant relationship between the judge and the lawyer tenants.

1. It is permissible under the NCJC for a judge to sell his private law practice prior to taking the bench.

FACTS

A recently appointed district court judge requests the Committee's opinion with respect to the sale of his practice and his interest in a building leased by the State of

The Committee recently considered a similar request in JE13-001. That request involved a proposed sale in which the sales price would be adjusted based on the future success of the practice. The Committee concluded that such an arrangement was impermissible due to the ongoing



connection it would create between the interests of the justice of the peace and those of his former practice. No such concerns exist here, as the proposed sale is for a one-time cash payment. As such, the Committee concludes that the sale is permissible under the NCJC.

Moreover, because the proposed sale will be a cash transaction with a one-time payment at closing there will not be an ongoing creditor-debtor relationship that would potentially lead to frequent disqualification. *See* NCJC 3.11(B).¹

2. The Judge may keep his interest in the leased building.

The judge's second inquiry relates to his interest in a building that has been leased to the State of Nevada Department of Administration for the last twenty years. The State of Nevada uses the leased space to house the Nevada State Public Defender. The attorneys working in the building do not pay any income to the judge, but rather the lease is paid by the State of Nevada.

The judge would like to know if, in light of the Committee's prior opinion, JE08-014, he can maintain his interest in the building after taking the bench. In JE08-014, the Committee considered the propriety of a judge owning a building in which the tenants were private lawyers who frequently appeared in his court. Applying former Canon 3(E) of the NCJC, the Committee opined that the judge would have to

disqualify himself from hearing matters brought before him by his tenants.

In contrast, the attorneys who would be appearing in front of the judge here are a step removed from the judge's role as landlord. As the Committee understands the present facts, the State of Nevada, rather than the attorneys, is the party to the lease, and is responsible for negotiating the terms of and paying the lease. As such, while the committee cautions that disclosure might be required in certain instances, it does not find that the judge's continued interest in the building would lead to frequent disqualification or involve the judge in a continuing business relationship with lawyers or other persons likely to come before the court. *See* NCJC 3.11(C).

CONCLUSION

Given the nature of the proposed sale of the law practice, a one-time cash payment at closing, the Committee concludes the proposed sale of the practice is permissible under the NCJC. Similarly, based on the facts provided, the Committee concludes that the judge may maintain his interest in the building which is presently, and has been for some 20 years, leased by the State of Nevada.

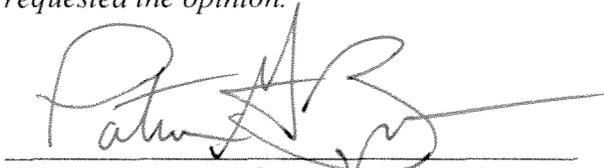
REFERENCES

Rule 5 Governing the Standing Committee on Judicial Ethics; Nev. Code Jud. Conduct, NCJC Rule 3.11; JE08-014; JE13-001.

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

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.

A handwritten signature in black ink, appearing to read "Patrick G. Byrne", written over a horizontal line.

Patrick G. Byrne, Esq.
Vice-Chairman