

STATE OF NEVADA

STANDING COMMITTEE ON JUDICIAL ETHICS

DATE ISSUED: September 22, 2014

ADVISORY OPINION: JE14-005

PROPRIETY OF A JUSTICE OF THE PEACE REPRESENTING PETITIONERS IN *HABEUS CORPUS* CASES OUTSIDE THE JUSTICE’S JURISDICTION

Standing Committee On Judicial Ethics. Accordingly, this opinion is limited by the authority granted in Rule 5.

ISSUE

May a justice of the peace in a township with a population of less than 60,000 represent a petitioner in a *habeus corpus* proceeding outside the justice’s jurisdiction?

Canon 3 of the NCJC states “[a] judge shall conduct the judge’s personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.” Rule 3.10 provides that “[u]nless otherwise permitted by law, a judge shall not practice law.”¹ See *Nev. Code Jud. Conduct Rule 3.10*. NRS 4.215 addresses rights of justices of the peace to practice law. NRS 4.215 prohibits a justice of the peace in a township with a population greater than 75,000 from practicing law unless he is a party in the proceedings. The Nevada Attorney General has opined that NRS 4.215 grants a “limited right” to practice of law as set forth in NRS 4.215 and subject to restrictions in the Nevada Code of Judicial Canons. See *1981 Nev. Op. Atty. Gen. 52* (construing earlier version of NRS 4.215 which applied to townships of greater than 60,000).

ANSWER

Yes, provided such practice occurs outside the District Court judicial district in which the township over which the judge presides is located and does not otherwise impair the judge’s ability to perform his judicial duties.

The judge in this hypothetical opines that by limiting the prohibition to townships over 75,000, the Nevada Legislature

FACTS

A Justice of the Peace has inquired whether it would be a violation of the Nevada Code of Judicial Conduct (“NCJC”) to represent a petitioner in a *habeus corpus* proceeding “outside his jurisdiction.” Under the hypothetical presented, the township in which the judge serves has a population of less than 60,000.

¹Rule 3.10 does not apply to a jurist who serves as a pro tempore part-time judge. See *NCJC, Application III (B)(3)(d)*. However, the Committee was advised that justices of the peace in the subject township serve on a full-time basis, and therefore it is assumed for purposes of this opinion that Rule 3.10 applies to this hypothetical.

DISCUSSION

The Committee is authorized to render advisory opinions evaluating the scope of the NCJC. *Rule 5 Governing the*



intended that NRS 4.215 authorize justices of the peace in townships of less than 75,000 to practice law. However, the Attorney General opinion does not address rights of judges in townships of *less* than 75,000, nor are we aware of any published court decision construing the statute. As an administrative body created by the Court, the Committee is limited in its jurisdiction to interpretation and enforcement the Canons. Our jurisdiction does not extend to construing the legal effect of statutory law, and to the extent such issues exist, the Committee believes they are best addressed by courts of appropriate jurisdiction. For purposes of this hypothetical, the Committee has assumed as part of the underlying facts that NRS 4.215 authorizes the practice of law in townships less than 75,000 as proffered by the requesting judge.

Assuming NRS 4.215 authorizes justices of the peace in townships of less than 75,000 to practice law, the rights of such judges to practice law remain subject restrictions in the Judicial Canons. See *Advisory Opinion JE 11-013*. As recognized by the Nevada Attorney General:

[S]ince these justices of the peace are being compensated on the basis that they are full-time judges, any part-time private law practice out of court must not interfere in any way with the judge's performance of his judicial duties, in accordance with the canons of the Nevada Code of Judicial Conduct applicable to full-time judges. . . . Such compliance is necessary to assure that public confidence in the integrity of the judiciary would not be affected by the restricted practice of law permitted certain justices of the peace in the State of Nevada.

1981 Nev. Op. Atty. Gen. 52. All judges are subject to limitations set forth in Canon 1, Rules 1.2 (a judge shall at all times act in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary), Rule 1.3 (a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of others), Rule 3.1 (a judge shall not participate in extra judicial activities which undermine the judge's independence, integrity, or impartiality), Rule 4.1(A) (1) (a judge shall not act as a leader or hold office in a political organization), Rule 4.1(A)(6) (a judge shall not publicly identify himself or herself as a candidate of a political organization), and Rule 4.1(A)(7) (a judge shall not seek, accept or use endorsements or publicly stated support of a political organization).

The Committee expressed significant concern with a justice of the peace representing petitioners in *habeus corpus* proceedings in the same District Court judicial district in which the judge's township is located. The nature of such habeus proceedings often involve challenges to the competency of counsel, many of which counsel may appear before a judge on a regular basis, or the court itself. The nature of such legal practice may lead to frequent disqualification or otherwise implicate the limitations set forth in Rules 1.2, 1.3, 3.1 and 4.1(A). Assuming this practice of law is authorized under NRS 4.215, these concerns lead the Committee to believe that such practice should occur, if at all, outside the District Court judicial district in which the township over which the justice of the peace presides is located.

Finally, given that the judge serves on a full time basis, the Committee strongly cautions the judge to avoid any practice of law which interferes with the judge's ability to perform his official judicial duties. Rule 3.1.

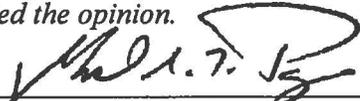
CONCLUSION

Rule 3.10 prohibits judges from practicing law unless otherwise expressly authorized. Assuming NRS 4.215 implicitly permits a justice of the peace in a township of less than 75,000 to practice law, the Committee recognizes that depending on the specific factual circumstances representing petitioners in *habeas corpus* proceedings may otherwise be prohibited by the Nevada Code of Judicial Conduct, believes that such practice should occur, if at all, outside the District Court judicial district in which the township over which the justice of the peace presides is located. The Committee cautions judges to be cognizant of the limitations in Rules 1.2, 1.3, 3.1 and 4.1(A) before practicing law in such circumstances.

REFERENCES

Nev. Code Jud. Conduct, Canon 3; Rule 1.2; Rule 1.3; Rule 3.1; Rule 3.10; Rule 4.1(A); *Rule 5 Governing the Standing Committee On Judicial Ethics; Application Section III and IV. 1981 Nev. Op. Atty. Gen. 52*

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