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**STATE OF NEVADA
STANDING COMMITTEE ON
JUDICIAL ETHICS**

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ADVISORY OPINION: JE17-003

PROPRIETY OF A PRO TEMPORE/
ALTERNATE JUDGE VOLUNTARILY
SERVING CONCURRENTLY ON THE
STATE BAR OF NEVADA'S
STANDING COMMITTEE ON
PROFESSIONAL RESPONSIBILITY
AND ETHICS

part-time positions to also be a volunteer member of the State Bar of Nevada's Standing Committee of Professional Responsibility and Ethics?

There are no other unusual facts that relate to this advisory opinion.

ISSUE

May a *pro tempore*/alternate judge serve concurrently as a volunteer member of the State Bar of Nevada's Standing Committee on Professional Responsibility and Ethics?

DISCUSSION

Various portions of the Revised Nevada Code of Judicial Conduct ("Code") apply to both full time and part-time judicial officers. *See*, Application, Sections I, II, III, and IV. Specifically, Section IV applies to *pro tempore* judges and lists the Code's Rules which do and do not apply when not serving in a judicial capacity. A *pro tempore* judge is defined under Application, Section IV as: "A pro tempore part-time judge is a judge who serves or expects to serve sporadically on a part-time basis under a separate appointment for each period of service or for each case heard."

ANSWER

Yes, provided the *pro tempore*/alternate judge consistently applies the Revised Nevada Code of Judicial Conduct while serving in a judicial capacity.

In Section IV (B) (3), it provides as follows: A pro tempore part-time judge is not required to comply: At any time with: (a) Rules 3.1 (B) and 3.1 (D) (Extrajudicial Activities in General);...(d) Rule 3.7 (A) (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities);[A list of other Rules with which such *pro tempore* judge need not comply have been omitted for brevity.]

FACTS

This written request came from a sitting *pro tempore*/alternate judge in Las Vegas Justice Court. Additionally, this same judge serves as a *pro tempore*/alternate judge for the Las Vegas Municipal Court. In addition to the current roles as a *pro tempore*/alternate judge serving both in Las Vegas Municipal Court and the Las Vegas Justice Court, the question has arisen as to whether it is appropriate for someone holding such



However, there are also the cautionary provisions of the Application section which indicate that while serving as a *pro tempore* judge, generally Rules 2.10; 2.14; 2.15; and 3.3 apply. None of those Rules are implicated by the facts presented in this opinion request.

On the other hand, the general principles governing any type of Judge, whether part-time or full time, have been established by the overarching principles of Canon 1, and still apply: "A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety."

When serving in a part-time or *pro tempore* capacity, such persons must act in a manner which does not impugn the values which define what is expected of judicial officers on any level or at any time. Overall, the limitations set forth in the Rules for part-time judges are largely inapplicable to the question presented here. Despite the interplay between the sections of the Code relating to full-time versus part-time judges, the ultimate question is whether a *pro tempore*/alternate judge may be prohibited from serving on the State Bar of Nevada Standing Committee on Professional Responsibility and Ethics?

The functions which are performed by the Standing Committee on Professional Responsibility and Ethics are defined by the State Bar's website as follows:

The Standing Committee on Professional Responsibility and Ethics, which includes 11 members plus one liaison from the Board of Governors, is governed by Nevada Supreme Court Rules 222 through 228. The purpose of the committee is to make available advisory opinions on the ethical considerations of the practice of law, which shall function to prevent harm to the public from the unethical practice of law and to provide a clear and timely understanding of the ethics of practicing law.

Given this definition of the purposes which are served by membership on that State Bar Committee, which clearly has no unethical, selfish, or profit motive intended, it is clear its purpose is to create an environment which fosters a forum in which practitioners can seek advice on ethical concerns.

The Code not only allows, but encourages judges to further judicial principles set forth in Canon 1. As explained in Comment 2 to Rule 3.1: "Participation in both law-related and other extrajudicial activities helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system."

Whether designated as a full time or part-time judge, serving on the Standing Committee on Professional Responsibility and Ethics furthers both the aspirational

goals described in Comment 2 above and Rule 3.7 (A), which reads:

“(A) Subject to the requirements of Rule 3.1, a Judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice. . . .”

Certainly, membership in the State Bar of Nevada Standing Committee on Professional Responsibility and Ethics fits within the interpretation of this Rule.

As provided in Comment 1 to Rule 3.1:

“To the extent that time permits, and judicial independence and impartiality are not compromised, Judges are encouraged to engage in appropriate extrajudicial activities....”

A thorough review of Rule 2.11 to the Code reveals none of the disqualifying elements which are incumbent on judicial officers when assessing the independence, integrity, and impartiality of the judiciary.

In a related Advisory Opinion, JE-08-015, this Committee clarified that in efforts to prevent domestic violence, it was appropriate for a judge to sit on a state domestic council. Similarly, a part-time judge is likewise qualified to evaluate ethical issues arising from an attorney’s performance associated with inquiries submitted to the State Bar of Nevada.

Likewise, in an opinion which closely parallels the question presented to this Committee, the Arizona Supreme Court Judicial Ethics Advisory Committee issued Advisory Opinion 92-07, in which it concluded: “A judge may serve as a member of an advisory commission to the State Bar of Arizona’s Board of Legal Specialization.”

Given the guidance of previous opinions of this Committee, the almost identical opinion from our sister state of Arizona, other state advisory opinions, and the review of the Code as described above, it is clear the inquiry from the *pro tempore*/part-time judge must be answered in the affirmative.

CONCLUSION

This Committee concludes that it is appropriate for a *pro-tempore*/alternate judge to serve concurrently as a member of the State Bar of Nevada’s Standing Committee on Professional Responsibility and Ethics, so long as the provisions of the Revised Nevada Code of Judicial Conduct are observed while serving in a part-time judicial capacity.

REFERENCES

Revised Nevada Code of Judicial Conduct, Code Application Sections I, II, III, and IV; Application, Section IV (B) (3); Canon 1; Rule 2.11; Rules 2.10; 2.14; 2.15; and 3.3; Comment 1 and 2 to Rule 3.1; Rules 3.1 and 3.7(A); 2002 essay by Cynthia Gray, Director of the Center for Judicial Ethics,

for the American Judicature Society and the State Justice Institute; "Judicial Conduct and Ethics, Fourth Edition"; Nevada Standing Committee on Judicial Ethics, Advisory Opinion JE-08-015, Florida Committee on Standards of Conduct Governing Judges, Opinions 95-14, 94-38 and 33; Arizona Supreme Court Judicial Ethics Advisory Committee, Advisory Opinion 92-07; Washington Ethics Advisory Committee Opinion 96-02; Colorado Supreme Court Judicial Ethics Advisory Board, Advisory Opinion 2005-04; Vermont Judicial Ethics Committee, Opinion 2728-12; New Mexico Advisory Committee on the Code of Judicial Conduct, Advisory Opinion No. 02-06; Nebraska Ethics Advisory Opinion 97-6; Alaska Commission on Judicial Conduct, Advisory Opinion #2001-01.

This opinion is issued by the Standing Committee on Judicial Ethics. It is advisory only. It is not binding on 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 requesting the opinion.



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