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PROPRIETY OF CONTINUING PART-TIME JUDGE PRACTICING LAW BEFORE THE DISTRICT COURT WHICH HAS APPELLATE JURISDICTION OVER THE LOWER COURT ON WHICH THE JUDGE SERVES

Issue

May a continuing part-time judge of a municipal court practice law before the district court which has appellate jurisdiction over that municipal court? Answer: Yes.

Facts

A municipal court proposes to appoint a continuing part-time judge. The court wants to know whether the successful applicant would be prohibited from practicing law in the local district court which has appellate jurisdiction over the municipal court in question.

Discussion

"A continuing part-time judge is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment, including a retired judge subject to recall who is permitted to practice law." See: Nevada Code of Judicial Conduct- Terminology.

Section C of the Application of the Code of Judicial Conduct limits the practice of law by a continuing part-time judge as follows:

"(2) 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." (Emphasis added.)

Since the municipal court is of inferior jurisdiction to the district court and has no appellate jurisdiction over district court matters, a continuing part-time municipal court judge is not prohibited per se from practicing before the district court. Obviously, the judge may not act as counsel in the district court on any matter in

which he acted in his judicial capacity in municipal court. Nor may he act as counsel in any related matter. If, for example, in his capacity as a municipal court judge he acted with respect to a traffic citation which arose from an accident, he would be prohibited from representing any party in district court with respect to any personal injury or criminal proceeding which arose directly or indirectly from the accident. This does not, however, constitute a complete ban, as would be required of practice in a municipal court by a continuing part-time judge sitting on the district court which enjoyed appellate jurisdiction over that municipal court.

Conclusion

A continuing part-time judge of a municipal court is not prohibited from practicing in the district court which has appellate jurisdiction over that municipal court. The continuing part-time judge is, however, prohibited from any representation in the district court with regard to any matter in which he served as a judge or in any related matter.

References

Nevada Code of Judicial Conduct: Terminology and Application of the Code of Judicial Conduct.

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