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STATE OF NEVADA
STANDING COMMITTEE ON JUDICIAL
ETHICS AND ELECTION PRACTICES

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PROPRIETY OF A COURT APPOINTED CHILD SUPPORT MASTER PRACTICING FAMILY LAW WITHIN THE SAME JUDICIAL DISTRICT WHERE HE OR SHE SERVES AS A MASTER.

Issue

May a continuing part-time master appointed by the Court to handle paternity and support issues practice family law in the same judicial district where he or she handles family law matters as a Master?

Answer: No.

Facts

A group of rural county district court judges appointed and contracted with Reno lawyers to serve as masters in actions regarding paternity and to establish or enforce an obligation for the support of a child or to modify or adjust an order for the support of a child. The masters are attorneys licensed to practice law in the State of Nevada but do not reside within any of the judicial districts where they serve as masters.

The judge asks whether the master may appear as attorney of record and file a motion to modify a divorce decree in a case which he does not oversee as a master, but is within the judicial district where he serves as a master; specifically a motion to increase visitation of the children.

Discussion

The Canons provide that anyone who is an officer of the judicial system and who performs judicial functions, including a

special master or referee, is a judge within the meaning of the Nevada Code of Judicial Conduct. All judges are required to comply with the Code except as otherwise provided. The Committee believes that based upon these facts, the masters come within the definition of continuing part-time judges under the Code.

"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 and who is permitted to practice law." 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: [Such a judge]

"(2) Shall not practice law in the court on which the judge serves or any court subject to the appellate jurisdiction of the court in 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."

Masters appointed pursuant to NRS 3.405 are appointed by the court, serve as an adjunct to the court, have powers or duties contained in an order of reference, issue orders subject to the confirmation of the

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district court and submit findings of fact, conclusions of law and recommendations subject to acceptance by the district court, absent objection of the parties.

Family law masters assigned to the rural courts return on a recurring basis and they may sit for only one or two hours in each particular district court of any judicial district, frequently having little or no contact with the district judge. The family law master may occupy the courtroom of the district judge and hear matters from the district court bench.

Based upon these factors, the family law masters are "serving" in the manner of a district judge in the district courts of this state. As such, the Canons prohibit them from practicing family law in any court on which they serve as family law masters.

While the question posed pertained to the narrow issue of whether the child support master could practice family law in the district court where he serves, it is appropriate to advise the Bench and Bar that any person serving as a continuing part-time judge as defined by the Canons would be prohibited from practicing law in any respect in any of the courts where they serve on a continuous basis as a part-time judge.

Compare these facts to the situation of a *pro tempore* part-time judge, which is defined as a judge who serves or expects to serve once or only sporadically under a separate appointment for each period of service or for each case heard. Such individuals are not prohibited by the Canons from practicing law in the courts they serve as a master, but rather only in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

We are mindful that this opinion may

cause an economic hardship upon rural child support masters who also wish to practice law in rural courts. However, any judge is required by the Canons to uphold the integrity and independence of the judiciary and avoid impropriety and the appearance of impropriety in all of a judge's activities. See Canons 1 and 2. The Committee believes that there is a potential appearance of impropriety when a master assigned to the district court in the capacity of a part-time continuing master also seeks to practice law before the judge that appointed him as a master, and before whom the master's decisions are submitted for approval.

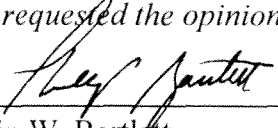
Conclusion

A master appointed to handle paternity and child support matters on a recurring basis is a continuing part-time judge subject to the Canons of Judicial Ethics. In order to avoid the appearance of impropriety, a master (continuing part-time judge) may not serve as an attorney on family law matters in the same district courts in which they serve as master.

References

Nevada Code of Judicial Conduct:
Terminology, Canons 1 and 2 and Application of the Code of Judicial Conduct. See also, NRS 1.428 and 3.405.

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