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**STATE OF NEVADA**

**STANDING COMMITTEE ON JUDICIAL ETHICS**

**DATE ISSUED: December 30, 2021**

**ADVISORY OPINION: JE21-002**

PROPRIETY OF A SITTING JUDICIAL OFFICER (1) MAINTAINING A BLOG ON VARIOUS ISSUES BEFORE TAKING THE BENCH; (2) SELLING BOOKS THEY AUTHORED ON LEGAL TOPICS WHICH WERE PUBLISHED PRIOR TO TAKING THE BENCH; (3) REFERRING TO THEIR JUDICIAL OFFICE WHEN PROVIDING BIOGRAPHICAL INFORMATION IN BOOKS THEY INTEND TO SELL; (4) ADVERTISE BOOKS IN LEGAL PUBLICATIONS; (5) AUTHOR/PUBLISH BOOKS, AFTER TAKING OFFICE FOR WHICH THEY HOPE TO PROFIT THROUGH SALE OR ROYALTY.

**ISSUES**

May a sitting judicial officer: (1) maintain a blog containing articles on various legal topics written by the officer and published prior to their ascent to the bench; (2) after taking the bench, continue selling and receiving royalties from books they authored prior to taking the bench; (3) after taking the bench, refer to their judicial office when providing biographical information in the body of a book they intend to sell; (4) after taking the bench, advertise books on legal topics they have authored for sale as long as they do not refer to their office in the advertisements; and (5) after taking the bench, author and publish books from which they hope to profit through sale or royalty?

**ANSWER**

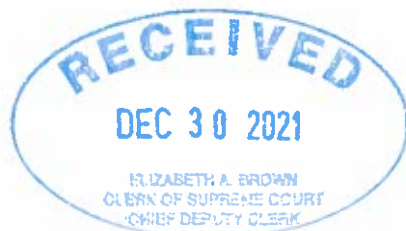
Yes, subject to certain qualifications and limitations.

**FACTS**

The Standing Committee on Judicial Ethics received an inquiry from a sitting judicial officer regarding various issues involving the sale and profit of legal publications authored by the judicial officer prior to their ascension to public office. These issues varied from maintaining a legal blog which originated prior to public office, the ongoing and continuing sale of the legal publications - which they authored - prior to their public service, the mention/use of their judicial office in the biographical section of those publications, the advertisement of those publications during their period of public service, and the possibility of future authoring and sale of legal publications for profit during the period of public service.

**DISCUSSION**

The Committee is authorized to render advisory opinions evaluating the scope and applicability of the Revised Nevada Code of Judicial Conduct ("NCJC"). *Rule 5 of the Rules Governing the Standing Committee on Judicial Ethics.*



The Revised Nevada Code of Judicial Conduct sets forth the applicable standards from which judicial officers are provided guidance for ethical conduct.

Canon 3 declares that “a judge shall conduct the judge’s personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.” Revised Nevada Code of Judicial Conduct, Canon 3, Rule 3.1 provides that “when engaging in extrajudicial activities, a judge shall not:

(A) participate in activities that will interfere with the proper performance of the judge’s judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality;

(D) engage in conduct that would appear to a reasonable person to be coercive; or

(E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.”

Revised Nevada Code of Judicial Conduct, Canon 3, Rule 3.1. The *Comments* to Rule 3.1 further elaborates:

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

the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects.”

See Revised Nevada Code of Judicial Conduct, Canon 3, Rule 3.1, *Comment (1)* to Rule 3.1.

Rule 3.12 states that judges “may accept reasonable compensation for extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.” Nevada Code of Judicial Conduct, Canon 3, Rule 3.12.

The *Comments* to Rule 3.12 further elaborates:

“A judge is permitted to accept compensation for extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed and the acceptance of the compensation does not violate NRS 281A.510 prohibiting honoraria. A judge may, however, accept reimbursement for expenses incurred in connection with speaking engagements as provided in Rule 3.14. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.” See Revised Nevada Code of Judicial Conduct, Canon 3, Rule 3.12, *Comment (1)* to Rule 3.12.

Nevada Code of Judicial Conduct, Canon 1, Rule 1.3 states:

“A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.”

The *Comments* to Rule 1.3 further elaborate on this Rule, emphasizing that:

“It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind.”

See Revised Nevada Code of Judicial Conduct, Canon 1, Rule 1.3, *Comment (1)* to Rule 1.3.

The *Comments* further expand when the Judge is an author for profit, emphasizing:

“Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge’s office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge’s writing, the judge should retain sufficient control over the advertising to avoid such exploitation.”

See Revised Nevada Code of Judicial Conduct, Canon 1, Rule 1.3, *Comment (4)* to Rule 1.3.

Subject to the specific requirements of the NCJC, the Committee views a judge’s participation in the authoring of a legal blog as an acceptable extrajudicial activity subject to the restriction that such blog is *procedural* in nature, and not *substantive*.

Judges have unique experience and knowledge which they may convey to other professionals in the legal field but must exercise caution to not provide legal opinions on issues which are substantive in nature. To do so could place a Judge in a compromising position where a Judge could unknowingly be providing a decision on an issue which could

be pending before their office, and further could lead to situations where a Judge’s impartiality may be questioned in regards to an issue that a Judge had previously written about in their legal blog. See Nevada Standing Committee on Judicial Ethics Advisory Opinion No. JE08-011 (Sep. 9, 2008).

This restriction would also be advised when considering legal publications that a Judge has authored - before and after his or her ascent to the position of public office.

In the facts provided to the Committee, the topics of the legal publications are quite diverse, and have a reasonable relation to the law and administration of justice, consistent with *Comment 1* to Rule 3.1.

However, the publication on substantive legal topics, similar to those that have been discussed in the legal blog, should be avoided as such discussions and opinions could risk the judicial independence, integrity and impartiality of the position held.

The Committee would admonish the Judge to use due care - either in the electronic blog or formal publication - and restrict such publications (while in public office) to those that are *procedural* in nature and exercise care on an on-going basis. Further, such care would prevent issues in which parties would seek to disqualify the judge for bias and lack of impartiality.

Advertising the judge's position in such publications does raise concerns under the Canons, but the simple mention and use of the position in biographical materials does not by itself give the appearance of impropriety or diminish public confidence in the integrity and impartiality of the judiciary. However, with the use and/or reference to the position in legal publications, the Judge should further consider, examine and evaluate the Canon and Rules set forth herein.

Finally, in regards to a Judge's acceptance of profit through sale or royalty of their legal publications, the Committee determined that the judicial officer *may* take such profits subject to the restrictions of Rule 3.12.

The Committee views a Judge's participation as an author an important extrajudicial activity. As previously noted in the Comments to Rule 3.1, the judge is "uniquely qualified" to speak, teach and write on the legal system and judicial process.

Under the NCJC, a judge may be compensated for such activity, as long as the compensation is reasonable given the task performed and as long as it does not undermine the judge's independence, integrity or impartiality. The Committee also recommends that a Judge constantly consider Rule 1.3 - in avoiding the abuse of the prestige of judicial office, and not put their personal and/or financial gain over the position of public service.

As advised previously in this opinion, the Judge should restrict their publication to those that are procedural in nature to avoid any appearance of bias or impropriety.

With such considerations in place, the Committee advises that the receipt of compensation is permitted, as long it does not compromise the judge's independence, integrity or impartiality.

### CONCLUSION

A judicial officer may continue to maintain a legal blog containing articles written by the judicial officer, published prior to taking the bench and continue to author and publish books on legal topics if such publications are *procedural*, and not *substantive* in nature.

A judicial officer may also use and advertise such publications with the use of their judicial position with the restriction that such reference can only be made in biographical information of the author. It cannot be used to promote the sale of such a publication and the reference to the judicial position must be restricted from the front and/or back covers of such a publication.

Finally, a judicial officer may receive royalties and/or profit from the sale of their legal publication if such compensation does not interfere with the performance of their judicial duties, does not nor appear to undermine their independence, integrity or impartiality and it does not appear to be an abuse of the prestige of the judicial office held.

## REFERENCES

Rule 5 of the Rules Governing the Standing Committee on Judicial Ethics; Revised Nevada Code of Judicial Conduct, Canon 3, Rules 3.1, 3.12, 3.14, Canon 1, Rule 1.3, Canon 2, Rule 2.1, and *Advisory Opinion* No. JE08-011 (Sep. 9, 2008).

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*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 requesting the opinion.*



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