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PROPRIETY OF A JUSTICE OF THE
PEACE BEING A SHAREHOLDER IN A
LAW FIRM

Issue

May a justice of the peace, serving in a township where the justice is permitted to engage in the practice of law, be partner, shareholder or associate in a law firm?

Answer: No.

Facts

A candidate for a justice of the peace in a small township is presently a member of a law firm. If elected, the candidate desires to know whether he or she could remain a member of the law firm, continue to receive a salary that is not tied to a unit of production, or participate in the profits of the law firm. The candidate inquires if the justice of the peace cannot be a partner, may he or she work "of counsel" for the firm and be paid on an hourly/daily basis? May the law firm provide the justice with benefits such as insurance or a vehicle?

Discussion

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

Canon 4G of the Nevada Code of Judicial Conduct states:

"Unless otherwise permitted by law, a judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family."

In addition to this specific Canon, Canon 2A states that a judge has the duty to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 2B states that a judge shall not lend the prestige of judicial office to advance the private interests of the judge or others. These Canons are also relevant to the issue raised in this request for advisory opinion.

Nevada Revised Statute (NRS) 4.215 states that a justice of the peace in a township whose population is more than 75,000 may not act as attorney or counsel in any court except in an action or proceeding to which he is a party on the record. This statute permits attorneys to serve as justices of the peace in small townships (less than 75,000 in population) which cannot afford to pay full time salaries to their judicial officers. According to a 1981 Attorney General Opinion, AGO 81-10, regarding this statute, the justice of the peace may engage in the part time practice of law out of court but must not allow his practice to interfere in any way with the performance of his judicial duties in accordance with the Code of Judicial Conduct

applicable to full time judges.

NRS 1.270 states, however, as follows:

"No judge or justice of the peace shall have a partner acting as attorney or counsel in any court of this state."

Therefore, although a justice of the peace in a small township may engage in the private practice of law, the Nevada Legislature has made it clear that no judge or justice of the peace may be a partner in a law firm practicing law in Nevada courts. Based on the language of the statute, construed in accordance with the Nevada Code of Judicial Conduct, the Committee believes that the word "partner" is broadly intended to include attorneys who are "shareholders" in a professional law corporation or who are employed as "associate" attorneys by a law firm, whether organized as a partnership or professional corporation. The Committee also believes that the term partner applies to attorneys who are listed as "of counsel" to a law firm and who may be paid by the law firm for their services on an hourly or daily basis. The term "of counsel" by its nature is intended to convey that the attorney is associated with the law firm in the practice of law. In the case of judges, this appears to be contrary to the dictates of Canon 4G and NRS 1.270.

Because a judge may not be a partner in a law firm that practices law in Nevada courts, the justice of the peace may not be paid a salary, share in the profits or receive other compensation from the law firm for rendering legal services. Nothing stated herein, however, is intended to opine on the propriety of payments made to a judge by his or her former law firm/partners in satisfaction of amounts earned by and owed to the judge, prior to assuming judicial office, or for

payment of his partnership interest in the law firm.

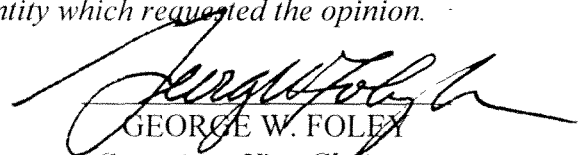
Conclusion

Regardless of whether a justice of the peace may engage in the private practice of law, he or she may not be a partner, shareholder, associate in, or "of counsel" to a law firm practicing law in any Nevada court. Accordingly, the justice of the peace may not be paid a salary, a share of fees or profits or other compensation, including insurance benefits or vehicle allowances or fringe benefits, by a law firm for legal services provided by the justice of the peace while serving in judicial office.

References

Nevada Code of Judicial Conduct; Canons 2 and 4; NRS 1.270 and NRS 4.215; AGO 81-10.

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