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STATE OF NEVADA  
STANDING COMMITTEE ON  
JUDICIAL ETHICS AND ELECTION PRACTICES

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY DEPUTY CLERK

DATE ISSUED: January 22, 2001

OPINION: JE01-002

PROPRIETY OF A DISTRICT COURT  
JUDGE HEARING MATTERS PENDING  
IN THE COUNTY DISTRICT  
ATTORNEY'S OFFICE PRIOR TO THE  
JUDGE TAKING THE BENCH

Judicial Conduct states:

"1. A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

ISSUE

Is a District Judge required to disqualify himself or herself in every matter which was pending in the county district attorney's office where the judge was a prosecutor before taking the bench.

"(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

**Answer:** Not in all cases.

"(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it".

FACTS

A recently elected district judge served as a deputy district attorney for seven years. A criminal defense attorney has expressed the opinion to the new judge that the judge will be required to recuse himself in any criminal matter or civil matter that was pending in any division or office of the district attorney prior to the time the judge resigned as a district attorney, to avoid claims of error by the defendant on appeal. The judge wants to know whether his recusal will be required in all such matters.

The Commentary makes it clear that a lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3(E)(1)(b). However, a judge formerly employed by a government agency should disqualify himself or herself in a proceeding where the judge's impartiality might reasonably be questioned because of such association.

The judge has announced a personal policy to disqualify himself in any criminal matter that was being handled in the particular town office where he was resident district attorney before taking the bench.

Therefore, a judge is not required to recuse himself or herself in every proceeding which was pending in the county district attorney's office where the new judge worked as a prosecutor before he or she became a judge.

DISCUSSION

Canon 3E of the Nevada Code of

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As no blanket disqualification is required, the judge will be required to make a case-by-case determination whether the particular case before the court raises a personal bias or prejudice or involves personal knowledge that will require disqualification.

The parties always have the opportunity for a remittal of the disqualification pursuant to Canon 3F. The parties may, after disclosure by the court of the basis for the disqualification decide, out of the presence of the judge, whether to waive that disqualification which agreement shall be incorporated in the record of the proceeding.

The new district judge has raised the issue that the failure to disqualify may result in an appellate issue for criminal defendants. This Committee cannot speak to errors of law that may occur in criminal proceedings as the result of a failure to disqualify.

#### CONCLUSION

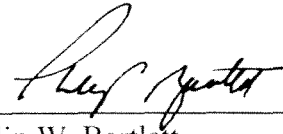
A district judge is not required to disqualify himself or herself in all matters which were pending in the county district attorney's office before he or she took the bench. A case-by-case determination will be necessary to determine whether the judge believes he or she can impartially hear the matter in light of the knowledge he or she had of this particular case before he or she took the bench. The parties may waive any basis for disqualification.

#### REFERENCES

Nevada Code of Judicial Conduct, Canons 3D, 3E and 3F.

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Phillip W. Bartlett  
Committee Chairman