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# STATE OF NEVADA STANDING COMMITTEE ON JUDICIAL ETHICS AND ELECTION PRACTICES 19 2002

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CLERK OF SUPREME COURT JE02-002

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PROPRIETY OF DISTRICT COURT EMPLOYEES WORKING AS ELECTION POLLING CENTER SUPERVISORS

## Issue

May district court employees work as election polling center supervisors in response to a directive from the county manager.

**Answer:** Yes, as qualified herein.

## Facts

In advance of the upcoming primary and general elections, the county manager has distributed a memorandum asking all department heads to provide employees to work as team leaders and assistants at polling places. The chief judge of the district has asked whether supplying court employees is in violation of the Canons of Judicial Ethics, considering that many of the district judges may have opponents and be participating in the campaign process.

The use of court employees to assist with elections apparently is a long-standing practice in this district. The district court employees are paid by the county general fund. County employee benefits are extended to court employees. Under the doctrine of separation of powers, court staff are not employees of county government, but rather are "court employees". See State v. Harvey, 117 Nev. Adv. Op. 64 (October 10, 2001). District court judges are state employees and set policy for all employees of the court. Thus while district court employees are paid out of the county general fund they are ultimately responsible to the district court judges.

The district court judges would like to continue the past practice of supplying employees if such practice does not violate the Canons. District court judges have agreed that it would not be appropriate to have judicial employees who report directly to and serve at the pleasure of the judge such as bailiffs, law clerks and judicial executive assistants working at election centers. The judges would like to know if other court employees who do not work as closely with the judges may be assigned to polling centers.

# Discussion

Canon 2 of the Nevada Code of Judicial Conduct states:

"A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

"A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Canon 3C(2) states:

"A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties."

The Canons further provide that a judge shall not accept appointment to a

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JANETTE M. BLOOM CLERK OF SUPREME COURT DEPUTY OF FRK governmental committee or commission or other governmental position except under limited circumstances. Judges are cautioned to accept governmental appointments that are not likely to interfere with the effectiveness and independence of the judiciary. Canon 4C(2) and Commentary.

The committee agrees with the expressed policy of the district court not to provide employees reporting directly to and serving at the pleasure of the judge, such as bailiffs, judicial executive assistants and law clerks to fill polling center positions as such employees have continuous, close daily contact with the judge. It would create an appearance of impropriety if such individuals, working directly for a judge seeking reelection, were to greet members of the public as they arrive to cast their votes at polling centers. The presence of such employees could reflect negatively on the judiciary as a whole.

With these pronouncements in mind, the committee believes that the district court may supply employees to staff polling centers if those employees are not subject to the judge's direction and control as those employees are required to observe the same standards of fidelity and diligence that apply to the judge. Canon 3C(2).

Those district court employees serving in clerical or support positions with insignificant and infrequent contact with the judges, who are not subject to the judges' direction and control, may serve as polling center supervisors. However, the committee is not mindful of all job duties of district court employees and cannot provide any more specific guidelines as to which employees are and are not subject to the judges' direction and control.

# <u>Conclusion</u>

The Code of Judicial Conduct does not

prevent the district court from providing employees to serve as polling center workers as long as those employees are not subject to the district judges' direction and control. The committee believes that non-management court employees are best suited to serve in the capacity of polling center workers.

#### References

Nevada Code of Judicial Conduct, Canon 2A, 3C(2), 4C(2) and Commentary; <u>State v. Harvey</u>, 117 Nev. Adv. Op. 64 (October 10, 2001)

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