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STATE OF NEVADA
STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

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OPINION: JE07-001

PROPRIETY OF JUDGES PRESIDING OVER CASES WHERE THE ATTORNEY FOR A PARTY IS ASSOCIATED WITH A LAW FIRM REPRESENTING AN ASSOCIATION OF WHICH THE JUDGES ARE MEMBERS BEFORE THE LEGISLATURE IN SUPPORT OF LEGISLATION TO INCREASE THE NUMBER OF JUDGES IN THE DISTRICT COURT ON WHICH THE JUDGES SIT.

ISSUE

1. Are judges disqualified from presiding over cases in which a party is represented by an attorney from a law firm representing on a pro bono basis a judges' association of which the judges are members before the legislature in support of enactment of legislation increasing the number of judges within the judges' district?

2. Assuming the judges are not disqualified, must the judges disclose that the attorney for the party is from a law firm which is providing the pro bono representation of the association in support of the legislation?

ANSWERS

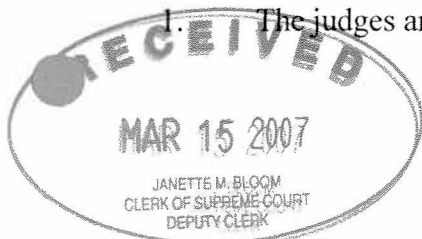
1. The judges are not disqualified.

2. It is reasonable for a judge to conclude that disclosure is not required, but the decision on disclosure is a decision which must be made by each individual judge within the district.

FACTS

A law firm has agreed to represent an association of judges on a pro bono basis to secure enactment of legislation which would increase the number of judges in a particular judicial district. Additional judges are needed because of large caseloads within the district, and would aid in providing timely access to the courts within the district. Attorneys associated with the law firm providing these pro bono services frequently appear in cases before district judges in the district which may receive the additional judicial departments if the legislation is enacted.

One of the judges within the district asks whether, under these circumstances, each judge within that district will be disqualified from presiding over cases where the attorney representing a party is associated with the law firm providing such pro bono services. The judge also asks, if disqualification is not required, are the judges nevertheless required to disclose the pro bono representation. These are important questions, not only for the judges who sit in the district which may receive



additional departments, but also for the law firm providing pro bono representation which Rule 6.1(a)(2)(ii) of the Nevada Rules of Professional Conduct encourages its lawyers to provide.

DISCUSSION

Canon 3E of the Nevada Code of Judicial Conduct specifically guides the judiciary in matters of disqualification. In relevant part, Canon 3E(1) of the Nevada Code of Judicial Conduct provides:

A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned...

In part, the Commentary to Canon 3E(1) provides:

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply.

In a prior opinion, in a situation where each of the district judges in a judicial district had been sued, and were represented by two attorneys from the Attorney General's office, this Committee concluded that every judge in the district would be disqualified in any proceeding in which those specific attorneys appeared until the lawsuit was finally resolved. See, Advisory Opinion JE99-007. The Committee reasoned that the nature of the representation likely would create a close working relationship between the judges being sued and the attorneys representing them, and that in that situation, there was a potential that an opposing party might

“have reason to question the impartiality of the district judges when facing the two lawyers for the district judges.”

The situation here is different. The judges are not being directly represented. The law firm represents an association of which the judges are members. The nature of the representation does not create the same kind of close relationship as is created and necessary where an attorney is representing a judge in litigation, and which might lead an attorney to reasonably question the judge's impartiality.

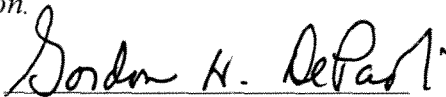
In addition, in Advisory Opinion JE99-007, the Committee concluded that it was remote that the impartiality of a judge from the district might be questioned when a deputy attorney general not involved in the litigation appeared in the district court. Although it is not essential to the Committee's opinion here, the Committee notes that it is unlikely that the attorneys from the law firm representing the judges' association in support of the legislation before the legislature will be the same attorneys from the law firm who will appear in district court.

The Commentary to Canon 3E(1) also states:

A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification. [Emphasis added.]

In the past, this Committee has concluded that disclosure may or may not be required, depending on the circumstances of each case. Here, the Committee has determined that it would be reasonable for a judge of this district to believe that the pro bono representation would not be considered relevant to the question of disqualification by the parties or their lawyers and, therefore, disclosure is not required. However, pursuant to the Commentary, the decision on whether disclosure is required is a subjective decision which must be made by each individual judge of the district.

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 which requested the opinion.


Gordon H. DePaoli, Esq.
Committee Chairman

CONCLUSION

Judges of a judicial district are not disqualified from presiding over cases under Canon 3E(1) of the Nevada Code of Judicial Conduct simply because the attorney for a party is associated with the law firm representing an association of which the judges are members before the legislature in support of legislation to increase the number of judges in the district in which the judges sit. The judges are also not required to disclose that situation. However, the decision on disclosure is a decision which must be made by each individual judge within the district.

REFERENCES

Nevada Code of Judicial Conduct, Canon 3E; Canon 3E(1); Commentary to Canon 3E(1); Advisory Opinion JE99-007; Nevada Rules of Professional Conduct, Rule 6.1(a)(2)(ii).

This opinion is issued by the Standing Committee on Judicial Ethics and Election Practices. It is advisory only. It