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## STATE OF NEVADA

## STANDING COMMITTEE ON JUDICIAL ETHICS

DATE ISSUED: March 28, 2014

ADVISORY OPINION: JE14-001

PROPRIETY OF AN ELECTED LIMITED  
JURISDICTION JUDGE SERVING  
CONCURRENTLY AS A PRO TEMPORE  
JUDGE IN ANOTHER COURT

ISSUE

May an elected limited jurisdiction  
judge serve as a special master or pro  
tempore judge in another court?

ANSWER

Yes. The Committee found no rule  
which explicitly prohibits a limited  
jurisdiction judge from serving as a pro  
tempore judge, but cautions both the  
appointing and nominee judge that the  
performance of the nominee judge's limited  
jurisdiction judicial duties must at all times  
remain paramount, and to avoid any  
appointment which will reasonably lead to  
frequent disqualification in either role, or  
involve a time commitment which will  
interfere with the proper performance of the  
judge's judicial duties contrary to Rule 3.1.

FACTS

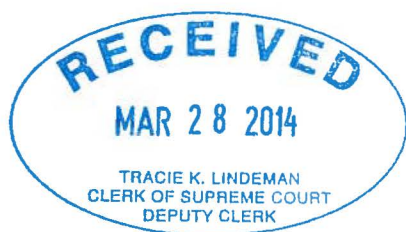
A Judge has inquired whether it  
would be a violation of the Nevada Code of  
Judicial Conduct ("NCJC") for a judge to  
appoint a limited jurisdiction judge to serve  
as a pro tempore judge in a district court, or  
whether it would be a violation of the NCJC  
for an elected limited jurisdiction judge to

serve as a pro tempore judge in another  
court. As described in the hypothetical, the  
appointed position would act as a special  
master in the district court as authorized by  
NRS 3.405. The requesting judge has  
indicated that while it may be theoretically  
possible, it is extremely unlikely the pro  
tempore special master would ever be asked  
to hear any matter in an appellate capacity  
that was first heard in the limited  
jurisdiction court and that such situations  
could be avoided if necessary.

DISCUSSION

The Committee is authorized to  
render advisory opinions evaluating the  
scope of the NCJC. *Rule 5 Governing the  
Standing Committee On Judicial Ethics.*  
Accordingly, this opinion is limited by the  
authority granted in Rule 5.

A continuing part-time judge is a  
judge who serves repeatedly on a part-time  
basis by election or under a continuing  
appointment, including a retired judge  
subject to recall for service. *See NCJC,  
Application III (A).* A pro tempore part-time  
judge is a judge who serves or expects to  
serve sporadically on a part-time basis under  
a separate appointment for each period of  
service or for each case heard. *See NCJC,  
Application IV (A).* With various  
exceptions, the Canons also apply to the  
conduct of pro tempore judges. *See NCJC,  
Application IV (A).* As described in this  
hypothetical, the special master position at



issue would be considered a pro tempore part-time judge for purposes of the NCJC.

The hypothetical presents two issues for consideration: whether it is permissible for the appointing judge to make such an appointment, and whether it is permissible for an elected judge to accept such an appointment. The Committee notes that this opinion is limited to whether an appointment is permitted under the Canons – whether an actual appointment is prudent in a given circumstance is within the sound discretion of the appointing judge to determine.

Canon 2 of the NCJC states “[a] judge shall uphold and promote the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.” Rule 1.2 imposes upon judges the obligation to act at all times in such a manner. *See Nev. Code Jud. Conduct Rule 1.2*. The Commentary states that “the test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge’s ... impartiality....” *See* Rule 1.2, Comment [5]. This obligation applies equally to an appointing jurist and to a jurist who serves as a pro tempore part-time judge. *See NCJC, Application III (B)(3)(d)*.

Under Rule 2.13, an appointing judge “shall exercise the power of appointment impartially and on the basis of merit, and shall avoid nepotism, favoritism, and unnecessary appointments.” *See Nev. Code Jud. Conduct Rule 2.13*. With respect to both the exercise of that appointing power and the performance of functions as a special master by an elected judge, the Committee also finds Rules 3.1 and 3.9 instructive. Rule 3.1 prohibits a judge from engaging in extra judicial activities which interfere with the proper performance of the judge’s judicial duties, that will lead to

frequent disqualification, or that would appear to a reasonable person to undermine the judge’s independence, integrity or impartiality. *See Nev. Code Jud. Conduct Rule 3.1* Rule 3.9 provides that a judge shall not act as a mediator, arbitrator “or perform other judicial functions apart from the judge’s official duties unless expressly authorized by law.” *See Nev. Code Jud. Conduct Rule 3.9*.

In a split decision, the Committee concludes that nothing in the Canons expressly prohibit an appointment of a limited jurisdiction judge as a special master for another court. A dissenting panel member believed that absent explicit statutory authority authorizing such dual positions, this type of appointment constitutes an extra judicial function not authorized by law which is prohibited by Rule 3.9. However, the majority of the Committee concluded that appointments of a master are authorized by statute, and found a 2007 opinion on similar dual service persuasive.

In 2007, the Committee evaluated the propriety of circumstances which are nearly opposite to those posed in this hypothetical. In that opinion, the Committee examined whether a full time district court special master appointed pursuant to NRS 3.045 may also serve as a continuing part-time justice of the peace. *See Advisory Opinion JE07-006*. Evaluating former Canon 3A, the Committee found nothing in the Code which made such dual service impermissible, but cautioned that the master’s primary judicial duties should take a precedence over all other activities and that the master should be cognizant of possibilities of acquiring information as a master that may relate to a proceeding arising in district court.

The majority of the Committee found the reasoning in that decision

persuasive, and believes nothing in the revised Canons prohibit this type of judicial activity. The majority of the Committee also believed Rule 3.9 was not implicated because the extra judicial activity here involves the performance of a court appointed judicial function in furtherance of the administration of the court system, as opposed to independent or private mediation or arbitration services. *See JE10-006* (judge may act as mediator in case pending before another court when assigned to do so by presiding judge).

While no express prohibition exists, the Committee expressed concerns under Rule 3.1 regarding the potential impact this type of extrajudicial activity may have on the appointed judge's time and ability to perform his or her primary duties as an elected limited jurisdiction judge. The Committee cautions both the appointing judge and the nominee judge that the performance of the elected judge's duties as a limited jurisdiction judge must at all times remain paramount, and any appointment which will reasonably lead to frequent disqualification in either role, or which involves a time commitment which will interfere with the proper performance of the judge's judicial duties would be contrary to Rule 3.1. Both the appointing judge and the nominee judge should be cognizant of these limitations when considering any such appointment.

Finally, the Committee instructs that the appointing judge should insure that any appointment is consistent with Rule 1.2. In 2006, the Committee concluded it was not appropriate for a judge to appoint a District Court staff attorney as a temporary Family Court Master where his or her findings would be reviewed by the judge who supervises the attorney in a staff capacity. *See Advisory Opinion JE06-018*. Evaluating

former Canon 2A, the Committee opined that the working relationship of the staff attorney and judge "would, in reasonable minds, create a perception that the ability of each to carry out their judicial responsibilities impartially is impaired...."

*Id.* The Committee expressed concern that the close working relationship in the employment context placed a strain on their judicial functions and independence which created a perception that the judge's independence, integrity or impartiality was impaired.

While expressing similar concerns, the Committee reached a different conclusion in 2013 with respect to the appointment of a court administrative employee as a pro tempore judge. *See Advisory Opinion JE13-004*. The Committee found no rule which explicitly prohibits a judge from appointing a court employee as a pro tempore judge; however, the Committee cautioned that given the obligations under Rule 1.2 to insure appointments promote public confidence in the independence, integrity and impartiality of the judiciary, judges should avoid such appointments in accordance with Rule 2.13 where possible and where the number of qualified candidates makes appointments of court personnel unnecessary.

The Committee believes the same concerns recognized in JE 13-004 apply to the appointing judge in this hypothetical, and concludes that an appointing judge should always be cognizant that any appointment promote public confidence in the independence, integrity and impartiality of the judiciary and be consistent with the limitations set forth in Rule 2.13.

### CONCLUSION

The Committee does not believe the appointment of a limited jurisdiction judge as a special master in another court is

prohibited by the Canons; however, the Committee cautions both the appointing and nominee judge that the performance of the nominee judge's limited jurisdiction judicial duties must at all times remain paramount, and to be cognizant that any appointment will not reasonably lead to frequent disqualification in either role, or involve a time commitment which will interfere with the proper performance of the judge's judicial duties contrary to Rule 3.1.

#### REFERENCES

Nev. Code Jud. Conduct, Canon 2; Rule 1.2; Rule 2.13; Rule 3.1; Rule 3.9; *Rule 5 Governing the Standing Committee On Judicial Ethics; Application Section III and IV. See Advisory Opinion JE06-018; Advisory Opinion JE 07-006; Advisory Opinion JE10-006; Advisory Opinion JE13-004.*

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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 which requested the opinion.*

  
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Chairman