

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 82-02
(June 9, 1982)

**Practice of Law by a Full-time
Justice of the Peace**

Issue

May a full-time justice of the peace practice law?

Answer: No.

Facts

The requesting judge asked the Advisory Committee to issue an opinion on whether or not it is ethical for an attorney, who is a justice of the peace receiving compensation pursuant to A.R.S. § 22-125, added by Laws 1981, Ch. 289, § 4, at the highest level for full-time judicial activities, to practice law. The judge informed the committee that his usual daily judicial calendar begins at 8:30 a.m. and concludes at approximately 4:00 p.m. five days a week, and that he is required to be available 24 hours per day every day for the issuance of search and arrest warrants.

Discussion

Canon 5F of the Code of Judicial Conduct, hereinafter the "Arizona Code", adopted October 27, 1975, by the Supreme Court, effective January 1, 1976, as Rule 45 of the Rules of the Supreme Court of Arizona, states that "A judge should not practice law." The compliance section of the Arizona Code also states:

This Code shall govern all of the justices and judges of all the courts in Arizona's judicial system performing judicial functions, including an officer such as a court commissioner, justice of the peace and city or town magistrate. All judges should comply with this Code except as provided below:

A. Part-time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

(1)

(2) should not practice law in the court on which he serves, or acts as a lawyer in a proceeding in which he has served as a judge or in any other proceeding related thereto.

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Canon 5F is identical to Canon 5F of the American Bar Association which was the precursor of the Arizona provision. The American Bar Association *Reporter's Notes* (1973) to its Code of Judicial Conduct, hereinafter "the Code," concerning compliance with the code reads as follows: "The full-time judge, no matter what his title, should comply with all provisions of the Code." Further, the section on compliance states that "If a judge is paid on a full-time basis but works only part-time because the docket in his court is up to date, he is a full-time judge within the meaning of this Code." Thode at 101.

The *Reporter's Notes* concerning the reason for the prohibition of Canon 5F reads as follows:

Old Canon 31 permits full-time judges of some inferior courts to practice law because the 'county or municipality is not able to pay adequate living compensation for a competent judge.' The committee members were in agreement that the Code should prohibit the practice of law by any full-time judge. The likelihood of conflicts of interest, the appearance of impropriety, and the appearance of a lack of impartiality—all have their greatest potential in the practice of law by a full-time judge.

The suggestion was made that the committee should define in specific terms what is meant by "the practice of law." After examining the various decisions and ethics opinions of a number of states on the question, the committee decided that the definition of 'practice of law' should be left to common law development by each adopting jurisdiction in light of its own decision, ethics opinions, and local practices." *Id.* at 90.

Because the Arizona Code is identical to the ABA Code, the *Reporter's Notes* are of importance in this state. Furthermore, both codes describe a part-time judge as one "whose compensation for that reason is less than that of a full-time judge." Compliance section, *supra*.

Accordingly, the committee is of the opinion that a person who is a full-time judge and that an attorney who is a justice of the peace being compensated at the level of a full-time judicial officer should not practice law.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canon 5F and Compliance Section (1975).

Other References

E. Wayne Thode, *Reporter's Notes to Code of Judicial Conduct*, American Bar Association (1973).