

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 93-03
(September 2, 1993)

**Potential Conflicts of Interest Involving
Pro Tempore Appellate Court Judges**

Issue

May a lawyer who represents a client in litigation against or in negotiations adverse to a government agency sit as a pro tempore appellate court judge to hear an appeal involving the same government agency?

Answer: No.

Facts

The court of appeals has appointed two pro tempore judges to sit on a panel to hear an appeal involving the Federal Deposit Insurance Corporation. One of the pro tempore judges has, as a lawyer, several pending matters in litigation against the FDIC. The other represents a client with interest adverse to the FDIC in negotiations with the FDIC.

Discussion

A lawyer serving as a pro tempore court of appeals judge is disqualified from judging an appeal in which one of the appellate litigants is an adverse party in other pending matters being handled by the pro tempore judge in his or her law practice. Canon 3E of the 1993 Code of Judicial Conduct requires judges to disqualify themselves in proceedings "in which the judge's impartiality might reasonably be questioned." In the case posited, the pro tem appellate judge, in his other life as a lawyer, represents clients in pending litigation against one of the parties to the appeal the pro tem judge would hear. Clearly, the pro tem judge's impartiality might reasonably be questioned. The same is true where the pro tem judge as a lawyer is representing clients in ongoing negotiations with one of the appellate parties.

The disqualification requirements of Canon 3E apply equally to pro tem judges and to full-time judges. By virtue of the "Application" section, the entire Code of Judicial Conduct covers pro tempore judges except for the handful of provisions from which pro tems are specifically exempted. *See* Application, Section D.

For future reference, we also note that special masters appointed by the court have been held to a judge's standard of conduct with respect to the appearance of impartiality and the requirement of disqualification. *Jenkins v. Sterlacci*, 849 F.2d 627, *reh. denied*, 856 F.2d 274 (D.C. Cir. 1988).

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Applicable Code Sections

Arizona Code of Judicial Conduct, Canon 3E and Application, Section D (1993).

Other References

Jenkins v. Sterlacci, 849 F.2d 627, *reh. denied*, 856 F.2d 274 (D.C. Cir. 1988).