

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 95-03  
(March 20, 1995)

**Ethical Constraints on the Practice of Law  
by Full-time Justice of the Peace and Former Public Defender**

**Issues**

1. May a full-time judge handle private criminal matters in another county?

**Answer:** No.

2. May the judge handle pro bono cases as an attorney?

**Answer:** No.

3. May a judge hear a case in which the judge once represented the defendant if both sides agree to waive the conflict?

**Answer:** Yes.

4. May a judge hear a case in which the defendant was a client of the public defender's office in which the judge worked but where the judge had no personal knowledge of the case?

**Answer:** No.

**Facts**

A newly-elected justice of the peace worked as a public defender before taking judicial office. The judge would like to continue practicing law either as a pro bono attorney or in private criminal matters outside the county. The judge is also concerned about the appearance of impropriety in hearing cases involving defendants who were represented by the public defender's office during the time he worked there.

**Discussion**

All of these issues are specifically addressed in the Code of Judicial Conduct. [The issue of whether a full-time justice of the peace may practice law is also addressed in Advisory Opinion 82-02.]

Canon 4G provides that, "A judge shall not practice law." There is no exception for one who crosses county or state lines before engaging in the forbidden activity. Nor is the activity allowed if done for noble motives or without compensation. *See In re Van Susteren*, 82 Wis.2d 307, 262 N.W. 2d 133 (1978).

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Canon 3E(1) provides in part:

A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it.

The judge may not under these rules hear a case in which the judge formerly represented the client nor in which a person with whom the judge previously practiced law represented the client in the matter at the time of the joint practice. Such disqualification, however, may be remitted under the terms of Canon 3F:

A judge disqualified by the terms of Section 3E may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If the parties and their lawyers after such disclosure and an opportunity to confer outside of the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceedings. The agreement should be incorporated in the record of the proceeding.

### **Applicable Code Sections**

Arizona Code of Judicial Conduct, Canons 3E(1), 3F and 4G (1993).

### **Other References**

Arizona Judicial Ethics Advisory Committee, Opinion [82-02](#) (June 9, 1982).

*In re Van Susteren*, 82 Wis.2d 307, 262 N.W.2d 133 (1978).