

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 12-02
(June 21, 2012)

**Pro Tem Part-Time Judge – Need to Resign to Run for Non-Judicial Elective Office;
Use of Photos as Judge in Campaign for Non-Judicial Elective Office**

Issues

1. Does the Code of Judicial Conduct require a pro tempore part-time judge to resign that position before becoming a candidate for non-judicial elected office?

Answer: No.

2. May a pro tempore part-time judge be photographed sitting on the bench wearing a judicial robe and use such photographs for campaign purposes in a non-judicial election?

Answer: No.

Facts

A pro tempore part-time judge is considering running for county attorney and wants to know whether he must resign his judicial position to do so. If resignation is not required, he asks whether he may use photographs in his campaign that depict him sitting on the bench in a judicial robe.

Discussion

The Code of Judicial Conduct defines a pro tempore part-time judge as follows:

A pro tempore part-time judge is a person appointed pursuant to Article 6, § 31 of the Arizona Constitution, or municipal charter or ordinance, who serves or expects to serve repeatedly on a less than full-time basis, but under a separate appointment by a presiding judge for each limited period of service or for each matter.

Part D of the Application Section of the Code of Judicial Conduct, referred to as “Application Section.”

Issue 1

Rule 4.5(A) requires a judge who becomes a candidate for non-judicial elective office to resign from his or her judicial position. However, a pro tempore part-time judge is exempt from the requirements of Rule 4.5. *See* Application Section, Part D(1)(b). A pro tempore part-time

judge thus need not resign before seeking non-judicial elective office under the Code of Judicial Conduct. It is beyond the scope of the Judicial Ethics Advisory Committee's jurisdiction to address whether any other legal authorities might require resignation under these circumstances.

Issue 2

A pro tempore part-time judge is required to comply with Rule 4.3, which addresses campaigns for nomination or election to *judicial* office. See Part D(1) of the Application Section. The inquiry at issue, though, relates to a non-judicial office. Rule 4.3 therefore does not control our analysis. We note, however, that we have previously determined that a pro tempore part-time judge may not use the title "judge" in seeking *judicial* office because its use may mislead voters. See Advisory Opinion 98-03. As discussed below, we deem the risk of misleading voters at least as significant when the candidate is seeking non-judicial office and depicts him or herself as a sitting judge in campaign materials.

Pro tempore part-time judges are required to comply with Rule 1.3. That rule states that a judge "shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge." We conclude that a pro tempore part-time judge would abuse the prestige of judicial office by using photographs in a non-judicial campaign depicting him or herself in a judicial robe or sitting on the bench. At least as much as the scenario addressed in Advisory Opinion 98-03 (and arguably more so), such campaign activity has the potential to mislead voters. The candidate would obviously be attempting to bolster his or her stature as a candidate by using such photographs, placing such conduct squarely within Rule 1.3's prohibition against advancing personal or economic interests. Cf. Advisory Opinion 03-06 ("Obviously, the primary purpose of listing oneself as a judge pro tem on legal letterhead and in advertising is to impress current and prospective clients."). See also Texas Judicial Ethics Opinion No. 159 (1993) (a sitting judge who runs for non-judicial political office may not refer to himself as "judge" in political advertising because it lends the prestige of judicial office to advance private interests).

Finally, our conclusion is bolstered by Advisory Opinion 03-06, which prevents pro tempore judges from using their judicial title on legal stationery or in advertising. We also note that a judge seeking elective office could not use staged photographs in the manner proposed. See Rule 4.1(A)(8)(a judge or judicial candidate may not use court staff, facilities, or other court resources in a campaign for judicial office); Advisory Opinion 10-02 (the bench and courtroom cannot be used for campaign purposes, though some judges may be depicted in robes, even in the courtroom, if the photographs were not staged for the campaign).

References

Arizona Code of Judicial Conduct, Part D of the Application Section

Canons 1, 4; Rules 1.3, 4.1, 4.3, 4.5

Arizona Judicial Ethics Advisory Committee, Opinions 98-03 (April 17, 1998), 03-06 (November 18, 2003), 10-02 (rev. December 2, 2010)

Texas Judicial Ethics Opinion No. 159 (1993)