

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 88-01
(April 20, 1988)

**Applicability of Canons to Practicing Lawyers
Who Serve as Part-time or Pro Tem Judges**

Issues

To what extent are the following Canons applicable to practicing lawyers who act as part-time judges pro tempore for no more than three weeks per year?

1. Canon 3A(6) provides: "A judge should abstain from public comment about a pending or impending proceeding in *any court*." How does this apply to these lawyers?
2. Canon 5B limits civic and charitable activities. Many lawyers who sit temporarily as judges are actively engaged in fund-raising and many are members of ACLU. Are they required to refrain from this type of activity and give up their membership in ACLU?
3. Canon 5C(4) sets limitations on the acceptance of gifts. What gifts may these lawyers accept?
4. Canon 7A(1) controls political conduct of judges and candidates for judges. How do its provisions apply to the lawyers in question?

Discussion

The lawyers considered here are a combination of the definitions of part-time judges and judges pro tempore as defined in Canon 7A and B. As such, they are excepted from compliance with the following Canons:

- Canon 5C(2) which prohibits a judge from serving as an officer, director, manager, advisor or employee of any business other than a closely-held business;
- Canon 5C(3) which requires a judge to divest himself of investments and other financial interests that might require frequent disqualification;
- Canon 5D which limits the service of a judge as a fiduciary;
- Canon 5E which prohibits a judge from acting as administrator or mediator;
- Canon 5F which prohibits a judge from practicing law; and
- Canon 5G which prohibits a judge from accepting nonjudicial appointments.

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A comparison of these named exceptions with the sections discussed in this opinion discloses the appropriateness of a measured application of the latter to the part-time judges pro tempore who sit for less than three weeks per year. The questioned sections must be employed to implement their intended ethical purpose in reference to the judicial tenure in question. Anything more serves only to burden the private life of the lawyer beyond service as a part-time judge pro tempore. Indeed no practicing lawyer could reasonably be expected to give up these proscribed rights, beyond the parameters required to protect the judicial office, for the privilege of acting as a part-time judge pro tempore for such a limited time with either no compensation, as in Pima County, or small compensation, as in Maricopa County.

We believe the sections in question should apply insofar as they protect the judicial process. Beyond that, they should not be construed to delimit a valuable resource pool of part-time pro tempore judges. In furtherance of those dual purposes, we address the sections in question individually and discuss their individual applicability.

Issue 1. Public Comment on Cases

Canon 3A(6) requires that a judge, albeit a lawyer who acts as a judge on a limited basis, should abstain from public comment about pending or impending cases in any court during the time he is actually sitting as a judge. During any times when he has judicial matters under advisement and is also engaged in legal practice, he should abstain from public comment regarding the case before him or any case related thereto. A part-time judge, before agreeing to sit, should always carefully examine the case to determine whether or not he should disqualify himself pursuant to the requirements of Canon 3C from any proceeding in which his impartiality might reasonably be questioned.

Issue 2. Civic and Charitable Activities

Canon 5B should apply during the period the lawyer is acting as a judge. Beyond that period, however, lawyers who sit temporarily as judges for no more than three weeks per year should not be required to refrain from charitable activities, including fundraising, or membership in the ACLU, other than in strict compliance with the disqualification requirements of Canon 3C. However, before accepting a case, a part-time judge should determine whether his involvement in such activities would impair or appear to impair his impartiality in the proceeding. Any other limitation is unreasonably burdensome and serves no beneficial purpose since few people other than those litigants who have appeared before part-time judges think of them as judges. All others look upon them as practicing lawyers, which indeed they are, more than 90 per cent of the time.

Issue 3. Accepting Gifts

Canon 5C(4) Accepting Gifts. This section provides that a judge and members of his family residing in his household accept no gifts, favors or loans from anyone except as specified in (a) and (b), and then in (c), the Canon states that "A judge or a member of his family may accept any other gift, favor or loan only if the donor is not a party or other person

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whose interests are likely to come before him." Thus, it is only necessary for the part-time judge to be scrupulously careful not to violate Canon 3C by accepting an assignment of a case involving any litigant from whom he has accepted loans, gifts or favors. Nor should he thereafter accept such benefit.

Issue 4. Political Conduct

Since lawyers are often actively involved with political organizations as members, officers, fund-raisers, and also take part in political campaigns, care should be taken by any part-time judge who is politically active, to avoid the appearance of impropriety which could arise if he accepted assignment to a case, the outcome of which would in any way affect the political party or candidate which he publicly supported.

During the short periods of time the judges pro tempore are sitting in court or have matters under advisement, they must fully comply with the provisions of Canon 7(A)(1). Under no circumstances should reference be made during any political activity by a lawyer who acts as a part-time judge to in any way give rise to the appearance that the lawyer is seeking to use whatever "prestige" the part-time judgeship may give him to benefit any political cause.

Conclusion

This committee concludes that practicing attorneys who act as part-time judges pro tempore for limited periods totaling no more than three weeks per year should, during the period of their judicial tenure, be subject to the limitations of the sections of the canons of judicial ethics covered by this opinion as specified herein.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 3A(6), 3C, 5B, 5C(2)(3)(4), 5D, 5E, 5F, 5G and 7A(1) (1985).