

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 92-16
(Reissued March 8, 1993)

**Ethical Constraints on Lawyers Serving
As Pro Tem Judges**

Issues

1. May part-time pro tempore judges practice law in the same court in which they serve as a judges?

Answer: No, but see discussion and notice at the end of the opinion.

2. May members of a part-time pro tempore judge's law firm practice in the same court if the judge does not hear any of the firm's cases?

Answer: No.

Facts

From time to time, Arizona courts use part-time pro tempore judges. These judges may be appointed by city councils pursuant to city charter or by presiding superior court judges under the state constitution. After appointment, the schedule and the conditions under which pro tempore judges may serve or hear cases are set by the presiding magistrate or judge.

The present inquiry is from a presiding magistrate who would like to use an attorney with an active law practice as a part-time pro tempore judge. The lawyer would be one of several such judges. She would act as a judge on an occasional, irregular basis, working in the court a maximum of only two or three days per month.

The attorney handles many types of cases which are heard in the court in which she would serve as a judge. Neither she nor her law firm desire to limit their law practice so as to preclude representing clients in that court.

Discussion

Issue 1

Part-time judges and judges pro tempore are generally subject to the same canons of judicial conduct as regular judges. Compliance With the Code of Judicial Conduct, 17A A.R.S., Rule 81 of the Rules of the Supreme Court. Although part-time and pro tempore judges are excepted from portions of the Code of Judicial Conduct by the compliance section of the code, none of the listed exceptions applies here.

Canon 2 requires a judge to "conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Part-time and pro tempore judges are subject to this restriction. *See* Compliance Section.

Advisory Opinion 92-16

Most of the judicial ethics advisory committees of the various states agree that a part-time or temporary judge cannot practice law in the court in which he or she serves as a judge. *E.g.*, Ind. Policy Statement (December 8, 1983); La. Op. 26 (February 3, 1976); Tex. Op. 132 (October 18, 1989). We agree that the appearance of impropriety is too great to permit a lawyer who regularly acts as a judge to act as an advocate in the same court. A party might well believe that the lawyer has special stature or other advantages in the court in which the lawyer acts as a judge.

Part B of the compliance section of our code bans a part-time pro tempore judge from appearing in any "specialized division, department or part of the court" in which she serves on a continued scheduled basis. By implication, this provision suggests that part-time, pro tempore judges may appear as lawyers in a part of the court other than that in which they sit. For example, a judge who serves part-time and pro tempore in the juvenile division of superior court may appear as a lawyer in the civil, criminal, domestic relations or probate divisions. However, when the court involved here is not composed of separate specialized divisions or departments, the part-time pro tempore judge is subject to the general rule that she may not appear as a lawyer in the court in which she serves.

Although the irregular and occasional nature of the actual service as a judge may lessen the appearance of impropriety, it does not obviate it. It may be of little assurance to the party who sees the lawyer in court one day as advocate and the next day as judge that the lawyer may serve only one or two more days as judge in that month. Moreover, part-time service as a pro tempore judge is commonly occasional and irregular. Accepting two or three days of service as proper would lead us down the path of arbitrary line-drawing between the extent of permissible judicial service and that which is not permitted.

Issue 2

Most ethics committees agree that the restrictions on the practice of law by a partner or associate of a part-time judge are the same as those on the law practice of the judge herself. Thus, the partner or associate generally cannot practice law in the court in which the judge sits. Ind. Bar Op. 1981-5 (February 1982); Mich. Informal Op. CI-779 (July 19, 1982); N.Y. Ops. 88-131 (January 12, 1989); 89-7 (January 12, 1989).

While the Code of Judicial Conduct does not apply directly to lawyers, the part-time judge cannot continue to associate with lawyers whose practice in her court gives rise to the appearance of impropriety. *Cf.* N.Y. Op. 88-50 (September 19, 1988) (part-time judges may not allow their partners to handle cases initiated in their courts); Tex. Op. 132 (October 18, 1989) (relief judge may not practice law with attorney who represents party in case in which another judge of same court took action). The judge's continued association alone implicates Canon 2 by contributing to the apparent impropriety.

The associates and partners of a part-time judge generally may not appear in the judge's court, even if the judge does not hear any of their cases. Although the appearance of impropriety is arguably attenuated compared to that created when the judge herself practices before the court, the taint remains. An observer or party might suspect that the lawyer's

Advisory Opinion 92-16

association with the part-time judge fosters special influence or advantage. We note that the exception of Part B of the Compliance Section may apply here. That is, the associates and partners may appear in a specialized part of the court other than that in which their colleague serves as a judge. We also observe that the prohibition applies only during the term of the appointment. *See* Opinion 88-01.

Applicable Code Sections

Arizona Code of Judicial Conduct, Compliance Section (1985 as amended 1992).

Other References

Arizona Judicial Ethics Advisory Committee, Opinion [88-01](#) (April 20, 1988).

Indiana Commission on Judicial Qualifications, Policy Statement [on part-time judges re practice of law] (Dec. 8, 1983).

Louisiana Committee on Judicial Ethics, Opinion 26 (Feb. 3, 1976).

Texas Committee on Judicial Ethics, Opinion 132 (Oct. 18, 1989).

Indiana State Bar Association, Legal Ethics Committee, Opinion 1981-5 (Feb. 1982).

Michigan State Bar Standing Committee on Professional & Judicial Ethics, Informal Opinion CI-779 (July 19, 1982).

New York Advisory Committee on Judicial Ethics, Opinions 88-131 and 89-7 (Jan. 12, 1989); 88-50 (Sept. 19, 1988).

Revision History

Originally issued on December 8, 1992.

Revised and reissued on March 8, 1993.

Notice

On March 30, 1993, the Arizona Supreme Court issued an order at the request of the Arizona Judicial Council staying the effect of Advisory Opinion 92-16 until further notice. The court subsequently revised the code to permit greater flexibility in the use of pro tem judges. These changes can be found in sections D(3) and (4) of the Application Section of the 1993 Code of Judicial Conduct and the related commentary. In addition, the superior court in various counties may have adopted administrative rules further regulating the use of pro tem judges.

For a later opinion on the ethical constraints on lawyers serving as pro tem judges in courts of limited jurisdiction, see Advisory Opinion 02-06.