

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 99-05
(October 22, 1999)

**Propriety of Superior Court Judge Serving
As Juvenile Tribal Court Judge**

Issues

Can an Arizona superior court judge ethically hold the office of a juvenile tribal judge for a federally recognized Native American tribe?

Answer: No.

Facts

A federally recognized Native American tribe's reservation is located adjacent to a city and county of this state. Currently, law enforcement on the reservation is provided by both the tribal police and the county sheriff's office pursuant to an intergovernmental agreement. Native American juveniles arrested on the reservation are detained in the county detention center pursuant to another intergovernmental agreement. Juvenile cases resulting from these arrests are presently being heard by a justice of the peace acting *pro tempore* as a tribal judge.

The tribal authorities and the presiding superior court juvenile judge desire uniform treatment for juveniles who commit crimes in that county, whether on or off the reservation. The tribe has therefore asked the judge to serve as its juvenile judge. The tribe has suggested that the judge receive no compensation for duties performed during the normal business week (Monday through Friday) but wishes to compensate the judge, pursuant to a contract, for duties performed on weekends or holidays.

Discussion

In Advisory Opinion 93-02, this committee addressed the propriety of state court judges acting as visiting tribal judges. The judges served for a temporary term without compensation, and we opined that there was no impropriety and no violation of former Canon 5G of the Arizona Code of Conduct. The temporary service was viewed as helpful to the tribe's needs and it promoted the relationship between the state and tribal courts.

In the case at hand, however, the judge in question would act as the only tribal juvenile court judge. The judge would not be "visiting," but would hold the office. This implicates the Arizona Constitution. We may render opinions on judicial conduct based on constitutional provisions. *See* Rule 82(b)(1), Rules of the Arizona Supreme Court. Needless to say, however, our opinion is advisory, and may only be used as a defense in a disciplinary proceeding. *See* Rule 82(h). It has no binding effect in any proceeding in which the judge's jurisdiction or the validity of his incumbency in office might be raised.

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The Arizona Constitution, Article 6, Section 28, provides in relevant part:

Justices and judges of courts of record shall not be eligible for any other public office or for any other public employment during their term of office, except that they may assume another judicial office, and upon qualifying therefor, the office formerly held shall become vacant. . . .

Article 6, Section 30, provides:

The supreme court, the court of appeals and the superior court shall be courts of record. Other courts of record may be established by law, but justice courts shall not be courts of record.

Thus, the Constitution strictly prohibits a superior court judge, as a judge of a court of record, from assuming another judicial office during his or her tenure, except upon vacating the existing judicial post. The tribal position is, in our opinion, a “public office.” A full-time superior court judge cannot also concurrently serve as a juvenile tribal court judge. Because of our determination, we need not address the issue of compensation for such employment.

Our prior Opinion 93-02 is easily reconciled with our conclusion here. A judge who sits on another court on a temporary, occasional basis does not assume the office of judge of the other court. In contrast, the proposal here is that the superior court judge become a tribal judge. Even in pro tempore assignments, judges must take care to comply with Canon 3A, which provides: “The judicial duties of a judge take precedence over all the judge’s other activities.” A judge therefore may not accept duties as a pro tempore judge of another court if that interferes with the performance of the duties of the judge’s office.

Applicable Code Sections

Arizona Code of Judicial Conduct, former Canon 5G, Canon 3A (1993).

Other References

Arizona Constitution, Article 6, §§ 28, 30

Arizona Judicial Ethics Advisory Committee, Opinion [93-02](#) (March 16, 1993)