Wyoming Supreme Court Judicial Ethics Advisory Committee
Advisory Opinion 2014-01

This opinion is in response to an inquiry from a municipal judge as to whether signing a proposed *Resignation Agreement and General Release* containing a confidentiality clause prohibiting certain disclosures by the parties would potentially violate Canon 1 of the Wyoming Code of Judicial Conduct.

Factual Background

The judge in question has been the long time judge in a Wyoming municipality. By ordinance he/she serves at the pleasure of the mayor. The judge was advised at a private meeting with the mayor that it was the mayor's intention to terminate the judge's employment unless he agreed to resign. At a second meeting shortly thereafter attended by the mayor, the judge, and the municipal personnel officer, the judge was presented with a letter detailing specific reasons for the mayor's proposed actions. The judge had already determined to resign and gave the mayor his proposed resignation letter at the second meeting. The day after the second meeting, the personnel director presented the judge with a *Resignation Agreement and General Release* agreement (resignation agreement).

The resignation agreement contains a number of terms, including the effective date of the judge's resignation, financial considerations, and a confidentiality clause that reads as follows:

> E. Confidentiality of Agreement. The Parties agree to keep this Agreement confidential and will not communicate the terms of this Agreement, the facts or circumstances giving rise to this Agreement, or the fact that such Agreement exists, to any third party except, as necessary, to accountants, legal or financial advisors or otherwise as appropriate or necessary as required by law or court order. The Parties understand and agree that EMPLOYEE held a public position with EMPLOYER, and that public inquiry and discussion of the subject of his employment with EMPLOYER is inevitable and that such inquiry and discussion is beyond the Parties' control. Mindful of the foregoing, the Parties' communication with the Press and public will be consistent with and limited to the provisions set forth in a letter of resignation and/or press release to be reviewed by counsel for the Parties.

Response

The committee is of the opinion that execution of the proposed agreement would not violate Canon 1 of the Wyoming Code of Judicial Conduct.

Discussion

In this factual situation, the municipal judge serves at the pleasure of the mayor and is in essence an at-will employee. The committee perceives the agreement to be designed to address a broad range of issues attendant to the parties' relationship. The

confidentiality clause is a reasonable requirement applicable to both parties in order to facilitate the termination of the employment relationship as a whole.

Conclusion

It is the opinion of the committee the judge's execution of an agreement which addresses several aspects of the employment relationship, the parties' duties and obligations on termination, and includes a confidentiality clause as an incident of the parties' termination agreement applicable to both, would not violate Canon 1 of the Wyoming Code of Ethical Conduct.

FINALIZED AND EFFECTIVE this 28th day of April, 2014 by the Wyoming Supreme Court Judicial Ethics Advisory Committee.