

Wyoming Supreme Court Judicial Ethics Advisory Committee

W.S.C.J.E.A.C. Advisory Opinion 2016-03

QUESTION PRESENTED:

“Can a part-time municipal court judge practice criminal defense cases in jurisdictions other than the jurisdiction where the judge presides?”

RESPONSE:

Yes. Though caution must be exercised to avoid conflicts or the appearance of impropriety, part-time service as a judge does not prohibit representation of criminal defendants except in the Court where the judge presides.

FACTS:

This judge serves in a part-time capacity in a municipal court. That Court hears matters involving only violations of municipal ordinances which are misdemeanor criminal offenses. The judge, in his capacity as a private attorney, represents persons charged with crimes in circuit court, (misdemeanor violations of State law, but not municipal ordinances) and district courts where alleged felony conduct is tried. The judge has voluntarily, in an abundance of caution, limited his practice in criminal matters to representation in courts outside the county in which he resides.

APPLICABLE PROVISIONS OF THE WYOMING CODE OF JUDICIAL CONDUCT:

II. *Part-time Judge.* – A judge who serves on a part-time basis by retention election or under a continuing appointment, including a retired judge who has been given a general or special appointment to hear cases by the Wyoming Supreme Court,

(A) is not required to comply:

(2) at any time with Rules ... 3.10 (Practice of Law) ...

Rule 1.2. Promoting Confidence in the Judiciary.

A judge shall act at all times in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety* and the appearance of impropriety.*

Rule 3.10. Practice of Law.

A judge shall not practice law...

DISCUSSION:

The question posed here is of great importance to the judiciary and the bar alike, as it is, of necessity, a common one in Wyoming's communities. Part-time judges in many capacities are common and necessary to deliver justice to citizens by law-trained judges. Many, perhaps most cities and towns, cannot afford full-time judgeships. Many treatment courts, and substitute jurists for the circuit and district courts (referred to variously as magistrates and commissioners), are practicing attorneys fulfilling important roles in the delivery of services to the public.

The Canons, on their face, recognize the importance of part-time judges in setting out the provision above, which define their applicability. Specifically, the prohibition in Rule 3.10 on a judge practicing law does not apply to part-time judges.

Of course, that doesn't end the inquiry. This committee and the requesting judge recognize how an appearance of bias may be present where a judge trying criminal cases also represents criminal defendants. That appearance is attenuated to a great degree by segregation between the lawyer's practice and the judge's jurisdiction. Client specific conflicts would, of course, be addressed by the judge, and the committee assumes that analysis is always done by an attorney or judge.

The possible public perception of bias is, in this committee's view, a minimal risk. Lawyers, by the nature of their work, are advocates and judges are not. But the transition to the role of judge, even on a part-time basis, can be accomplished at the same time a judge's obligation to be neutral is satisfied. Care must be taken to ensure that a part-time judge does not have clients appearing in front of them, regardless of what the nature of that attorney-client relationship may be.

The committee addresses the question here on the basis of the jurisdiction of the court involved, not the boundaries of the area served by the court. That is, while the judge who presented this question has stopped any criminal practice in the county where his municipality is located, we do not find that necessary to comply with the Canons.

On one of the few occasions this question has arisen in our courts, the Wyoming Supreme Court came to a similar conclusion under the previous version of the Code of Judicial Conduct, ruling that a district court commissioner could practice in the district court in which he occasionally performed work on behalf of that Court. Adoption of KD, 41 P.3d 522, (Wyo. 2002). (Interpreting the Code in effect until July 1, 2009 when it was replaced with the current version.)

Wyoming is a very large state with some very small communities. Recognizing this, the committee believes practice in a circuit or district court by a part-time municipal judge would, subject to the general cautions we have identified, be permissible.

CONCLUSION:

A part-time municipal judge who is a practicing attorney may represent criminal defendants in courts other than the municipal court in which he/she serves. The obligation to identify conflicts and avoid them, along with a healthy respect for the public's perception of service in this role, seem to the committee to be adequate safeguards of the principles of our Canons.

FINALIZED AND EFFECTIVE this 18th day of March, 2016 by the Wyoming Supreme Court Judicial Ethics Advisory Committee.