

**Colorado Supreme Court
Judicial Ethics Advisory Board (C.J.E.A.B.)
C.J.E.A.B. Advisory Opinion 2007-06
(Finalized and effective May 18, 2007)**

ISSUE PRESENTED

The requesting judicial officer is a part-time county court judge. He also maintains a private part-time law practice, for which he occasionally appears as an attorney in civil cases in the district court. Every year, the chief judge in the district enters an order authorizing the county judge to accept guilty pleas and impose sentences in class four, five and six felonies, as well as to hear other district court matters that may arise in the absence of a sitting district judge. The county judge has sole discretion to decline to exercise this authority. He has never exercised this authority in the past. The judge asks whether he may exercise this yearly authority to sit as a district judge only in criminal matters without thereby being prohibited from appearing as a lawyer in district court in his judicial district in civil matters.

CONCLUSION

The judicial officer may not both sit as a district judge on an ongoing basis in criminal matters and appear as a lawyer in that district court in civil matters.

APPLICABLE CANONS OF THE CODE OF JUDICIAL CONDUCT

Canon 2 directs that a judge should avoid impropriety and the appearance of impropriety in all of the judge's activities in order to promote public confidence in the integrity and impartiality of the judiciary. Subsection B specifies that a judge should not convey or permit others to convey the impression that they are in a special position to influence the judge.

Canon 3 provides that the judicial duties of a judge shall take precedence over all of the judge's other activities.

Canon 8(B) governs the activities of part-time judges; subsection (2) of that section proscribes the practice of law by a part-time judge in the court on which the judge serves or in any comparable level court in the same judicial district.

DISCUSSION

Under the Canons, a part-time judge is barred from practicing law in the court on which the judge serves or in any comparable level court in the same judicial district. The Commentary to Canon 8(B)(2), however, notes that this restriction does not apply to any

temporary assignment of a part-time judge to a court of higher jurisdiction in the judicial district in which the judge serves. The question raised here is whether the prohibition contained in Canon 8(B)(2) applies to a county court judge who practices civil law in district court and who is authorized by order on a yearly basis to hear criminal matters in the district court in the absence of a sitting district judge.

In the Board's view, the judge may not properly preside over cases in the district court, pursuant to an ongoing order granting such authority, while continuing to practice in that court. To allow a judge to preside over cases while practicing in the same court would erode public confidence in the integrity and impartiality of the judiciary, in contravention of Canon 2. As other jurisdictions have cautioned, a part-time judge's status as a lawyer practicing in the same court may create the perception that the lawyer has a special stature in the court, or that special advantages or preferential treatment may be conferred upon that lawyer by court employees and judicial staff. *See, e.g.,* Ms. Ad. Op. 38; S.C. Ad. Op. 11-1987; Az. Ad. Op. 92-16. Such concerns would not be alleviated even if the lawyer were to limit his practice to civil matters exclusively and were to sit only in district court criminal matters.

Although the judge is precluded from concurrently practicing in and presiding over the same court on an ongoing and as-needed basis pursuant to an order of his chief judge, we distinguish this situation from temporary judicial assignments discussed in the commentary to Canon 8(B)(2). Here, the judge has been issued a blanket grant of authority for one year to hear district court cases. Should the judge act on that authority, he would be serving on the district court in an ongoing, continuous, part-time capacity. In contrast, *pro tempore* part-time judges, who sit by temporary assignment for short and finite periods of time or who sit sporadically pursuant to one-time appointments, are specifically exempted from the limitations on practice set forth in Canon 8(B)(2). By comparison, because this judge could, at any time over the course of the year, hear district court cases were he called upon to do so, the judge would be serving on the district court on a continuing, albeit part-time, basis for an entire year without further action by the appointing chief judge, and would therefore be subject to the prohibitions of Canon 8(B)(2). Thus, should he wish to hear district court cases pursuant to this yearly grant of authority, the judge must refrain from practicing in the district court in both civil and criminal matters. Canon 3.

FINALIZED AND EFFECTIVE by the Colorado Judicial Ethics Advisory Board this 18th day of May, 2007.