

Colorado Supreme Court  
Colorado Judicial Ethics Advisory Board (CJEAB)

C.J.E.A.B. Advisory Opinion 2023-01

(Finalized and effective July 25, 2023)

**BACKGROUND:**

An attorney who has been appointed as a part-time county judge also works as a part-time prosecutor in an adjoining judicial district. The part-time judge does not preside over any cases in the adjoining judicial district, and when acting as a prosecutor, he does not enter any appearances in the district on which he serves as a part-time judge.

The requesting judge is presiding over a case in which the part-time prosecutor has entered an appearance. As a part-time county court judge, the part-time prosecutor has access to the state-wide email system used between all judges. County court judges routinely send questions to the entire county-court judge membership for consideration and input. If a judge were to ask the membership a question about an issue involving the part-time prosecutor's case (or a case involving the district attorney's office), the part-time prosecutor would be privy to the communication because of his status as a part-time judge. Defense counsel in the case is concerned about the part-time prosecutor's ability to access private or advantageous information relating to the matter as well as the appearance of impropriety given the access to such nonpublic information.

The requesting judge has asked the Judicial Ethics Board ("Board") whether the part-time judge may work as a part-time prosecutor if the district attorney's office is in a different judicial district.

**ISSUE PRESENTED:**

Whether a part-time judge may work as a part-time prosecutor in a different judicial district without violating the Code of Judicial Conduct ("Code")?<sup>1</sup>

**SUMMARY:**

Nothing in the Code prevents a part-time judge from practicing law in a different judicial district from the one on which the judge serves. Accordingly, the part-time judge may serve as a part-time prosecutor in an adjoining judicial district, but in discharging his prosecutorial duties,

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<sup>1</sup> The Board is only authorized to provide advisory opinions "concerning the compliance of intended, future conduct with the Colorado Code of Judicial Conduct." Amended C.J.D. 94-01, sec. I. This opinion discusses only the part-time judge's obligation to comply with the Code and does not discuss any ethical obligations the judge has as a prosecutor to comply with the Colorado Rules of Professional Conduct. *Compare, with* CBA Formal Eth. Op. 45 (addendum 1996) (discussing client representation by a part-time judge).

the part-time prosecutor may not use any nonpublic information that he acquires in his judicial capacity.

**APPLICABLE PROVISIONS OF THE COLORADO CODE OF JUDICIAL CONDUCT:**

The “Application” section of the Code provides, in relevant part, as follows:

[a] judge who serves on a part-time basis . . .

(B) shall not practice law in the court on which the judge serves or in any comparable level court in the same judicial district on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto;

(C) shall not practice law with respect to any controversies which will or appear likely to come before the court on which the judge serves or any court of the same or comparable jurisdiction within the same judicial district on which the judge serves.

As explained in Comment [1], the “Canon limits a part-time judge from practicing law in any comparable level court in the same judicial district as the judge serves.”

Rule 1.2 provides that “[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 3.5 provides that “[a] judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge’s judicial duties.” Comment [1] explains that “a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.”

**ANALYSIS:**

Pursuant to the Code, a part-time judge “shall not practice law in the court on which the judge serves or in any comparable level court *in the same judicial district on which the judge serves* or in any court subject to the appellate jurisdiction on which the judge serves.” (Emphasis added.) The prohibition does not extend to other judicial districts—only the judicial district on which the judge serves. Based on the language of the Code, the part-time judge may serve as a part-time prosecutor in a different judicial district.

The Board has not considered the issue, but in C.J.E.A.B. Advisory Opinion 2007-06, we addressed a related issue. The Board analyzed whether a part-time judge could preside over a criminal docket while making appearances in civil cases within the same judicial district. We determined that part-time judges were barred from practicing law in the same district court on which the judge served. Other jurisdictions have also concluded that judges may not serve and

appear as attorneys in the same district. *See, e.g.*, AR Jud. Eth. Adv. Comm. Ad. Op. 2008-08 (judicial code of conduct prohibits part-time judge from serving as a deputy prosecuting attorney or representing criminal defendants in same county); KS Jud. Eth. Adv. Comm. Op. JE-57 (attorney serving as a part-time judge may not practice law before the court upon which the attorney serves); SC Bar Eth. Adv. Comm. Ad. Op. 94-02 (part-time municipal judge prohibited from serving as part-time city attorney in same city because part-time judges may not act as lawyers in the court on which they serve).

In Advisory Opinion 2007-06 we reasoned that “allow[ing] a judge to preside over cases while practicing in the same court would erode public confidence in the integrity and impartiality of the judiciary,” because “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.” The concern with preferential treatment given to judges appearing as attorneys in the same judicial district does not exist when a judge serves in one district and appears as an attorney in another.

Other jurisdictions with judicial code provisions similar to ours have also determined that a part-time judge may practice law in a court division distinct from the division the judge serves on. *See, e.g.*, SC Adv. Comm. Std. Jud. Cond. Op. No. 4-1996 (attorney/part-time municipal judge may represent criminal defendants in other municipal courts); NY Jud. Adv. Comm. Jud. Eth. Op. 92-35 (part-time county judges are only prohibited from appearing as attorneys within the same county; part-time judge could represent a criminal defendant in a proceeding before the state supreme court).

While the part-time judge may serve as a part-time prosecutor in an adjoining district, he is still subject to Rule 3.5 and is prohibited from using any nonpublic information that he acquires in a judicial capacity as a prosecutor. Although the requesting judge’s inquiry was limited to the part-time prosecutor’s use of information acquired through a state-wide email system, we note that to protect the integrity of the judicial office and to guard against the appearance of impropriety the part-time prosecutor is prohibited from using any information he obtains from any nonpublic judicial application, system, or source. *See* C.J.C. 3.5, cmt. [1].

## **CONCLUSION:**

The Code does not prevent a part-time judge from practicing law in a different judicial district from the one in which the judge serves. Accordingly, the part-time judge may act as a part-time prosecutor in an adjoining judicial district. However, he may not use any nonpublic information that he acquires in a judicial capacity while acting in his prosecutorial capacity.

FINALIZED AND EFFECTIVE this 25th day of July, 2023.