

**JUDICIAL ETHICS COMMITTEE
ADVISORY OPINION NO. 16-01**

June 27, 2016

Question:

The following two questions have been submitted to the Judicial Ethics Committee:

1. Does Tennessee Supreme Court Rule 10, and the Canons of Judicial Ethics therein, apply to part-time assistant/Deputy . . . Divorce Referees? In particular: is a part-time assistant/Deputy . . . Divorce Referee a “continuing part-time judge” as that term is included in Supreme Court Rule 10, Article III?

2. If the Canons of Judicial Ethics apply to a part-time assistant/Deputy . . . Divorce Referee, does a part-time assistant/Deputy . . . Divorce Referee enjoy the same judicial immunity protections (for acts performed within his/her appointed duties) as would the . . . Divorce Referee?

Response of the Committee:

1. Yes, part-time assistant divorce referees are continuing part-time judges, as the term is used in the Code of Judicial Conduct.

2. The Tennessee Judicial Ethics Committee may provide responses only as to matters of judicial ethics. Since questions regarding judicial immunity are beyond the scope of the Code of Judicial Conduct, we cannot respond to this question.

DISCUSSION

Based upon the language of the Code of Judicial Conduct then in effect, this committee opined in Advisory Opinion No. 05-01 that “the Canons of Judicial Ethics apply to a part-time divorce referee.” This conclusion was based upon language from Tennessee Supreme Court Rule 10, Canon 5C, which specifically stated that “part-time divorce referees . . . shall be considered continuing part-time judges.” However, the newer version of the Code of Judicial Conduct, adopted in 2012, changed the language of the relevant section, so that it now provides:

III. Continuing Part-Time Judge

A judge who serves repeatedly on a part-time basis by election or under a continuing appointment is a “continuing part-time judge.” These include, but are not limited to, part-time judges, magistrates, referees, and judicial commissioners in the general sessions, juvenile, municipal and other courts.

In construing the questioned paragraph, we first note that the definition of “continuing part-time judges” is sufficiently broad so that its coverage is not intended to be limited to elected judges. The second sentence of the paragraph, in providing examples of part-time judges, is based upon an adjective followed by a series of nouns, the latter being a list of officials of the Tennessee court system. With a strict application of the “last antecedent rule,” the adjective “part-time” would modify only “judges.” See In re Estate of Martha M. Tanner, 295 S.W.3d 610, 624 (Tenn. 2009). However, the court in Tanner further explained, “[C]anons of construction, though helpful, should always be tested against the other interpretive tools at a court’s disposal.” Id. at 624 n.13.

As to this matter, we conclude that the last antecedent rule should not be applied. In making this determination, we note first that the 2012 language regarding part-time judges replaced a previous provision which explicitly provided that part-time divorce referees were within the definition of “part-time judges,” and there is no indication in the current language or applicable comments that the language was changed in 2012 for any reason other than to avoid repeating the adjective “part-time” before each example of judicial official. Further, we note that in the present version of this provision, it states that legal officials who are part-time judges include, “but are not limited to,” the list set out in the provision which includes referees.

For these reasons, we conclude that assistant divorce referees are “continuing part-time judges” as defined by the Code of Judicial Conduct.

FOR THE COMMITTEE:

ALAN E. GLENN, JUDGE

CONCUR:

JUDGE CHERYL A. BLACKBURN

JUDGE JAMES F. RUSSELL

JUDGE BETTY THOMAS MOORE

JUDGE PAUL B. PLANT

JUDGE TIMOTHY E. IRWIN

JUDGE JEAN A. STANLEY