PROPRIETY OF A CANDIDATE FOR JUDICIAL OFFICE, WHO SERVES AS A PART-TIME JUDGE, WEARING A JUDICIAL ROBE IN CAMPAIGN ADVERTISING

Issue

May a candidate for election to judicial office, who serves as an unpaid part-time judge, appear in a judicial robe in campaign advertising?

Answer: No.

Facts

A practicing attorney is seeking election to judicial office. The attorney has been appointed as a part-time judge to preside over matters in the short-trial program. Attorneys serving as part-time judges in the program are not required to give up the practice of law while serving in such appointed positions. The candidate has requested an opinion whether the candidate may appear in a judicial robe in campaign advertising.

Discussion

The Nevada Code of Judicial Conduct sets forth the applicable standards from which judges and candidates for judicial office are provided guidance for ethical conduct.

Canon 3A(3)(d)(iii) states that a candidate for judicial office shall not "knowingly misrepresent the identity, qualifications, present position or other facts concerning the candidate or an opponent."

The section of the Nevada Code of Judicial Conduct regarding "Application of the Code of Judicial Conduct" states:

"A. Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a magistrate, court commissioner, special master or referee, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below."

This section, however, exempts periodic part-time judges and pro tempore part-time judges from many of the provision of the Code, including the prohibition against judges engaging in the practice of law. Attorneys appointed to serve as part-time judges in the short-trial program serve in a judicial capacity while participating as judges in the program. However, attorneys serving in the program are not required to give up the practice of law.

By appearing in a judicial robe in campaign advertising, a candidate would likely create the appearance and impression in the minds of the public that the candidate is a full-time judge, rather than a practicing attorney and would be contrary to the requirements of Canon 3A(3)(d)(iii).
Conclusion

It is, therefore, the opinion of the Committee that a candidate for judicial office who serves as a part-time judge, may not appear in a judicial robe in campaign advertising.

Nothing stated in this opinion is intended to prohibit the candidate from stating to the public and in campaign advertising that he or she has been appointed as a part-time judge as evidence of the candidate’s qualifications for election to judicial office.

References

Nevada Code of Judicial Conduct Canon 3A(3)(d)(iii); “Application of the Code of Judicial Conduct”.

This opinion is issued by the Standing Committee on Judicial Ethics and Election Practices. It is advisory only. It is not binding upon the Courts, the State Bar of Nevada, the Nevada Commission on Judicial Discipline, any person or tribunal charged with regulatory responsibilities, any member of the Nevada Judiciary, or any person or entity which requested the opinion.

GEORGE W. FOLEY, JR.
Committee Vice-Chairman