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STATE OF NEVADA
STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

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CLERK OF SUPREME COURT

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OPINION: JE02-005

PROPRIETY OF A JUDGE MAKING
POLITICAL CONTRIBUTIONS TO
JUDICIAL AND NON-JUDICIAL
CANDIDATES.

Issue

Do the canons of judicial ethics allow Nevada judges to make political contributions to judicial and non-judicial candidates.

Answer: Not if the fact of the contribution will be public information.

Facts

A District Judge asks whether he and his fellow judges are allowed to make political contributions to judicial and non-judicial candidates. The judge points out that under state elections law, the name of any contributor of \$100.00 or less does not have to be reported by the candidate receiving the contribution. See NRS 294 A.140. The judge seeks the opinion of this Committee whether a contribution in excess of the threshold for public disclosure constitutes a "public endorsement" of a candidate for public office in violation of the Nevada Code of Judicial Conduct.

The judge points out that while judges are prevented from endorsing other candidates, they are also allowed under the rules to "purchase tickets for and attend political gatherings." It is common practice in some judicial districts for judicial candidates to attend fundraisers for other judicial candidates; there are commonly tickets or "suggested donations" to attend such fundraising events which may exceed the \$100.00 limit for public disclosure. Judicial candidates sometimes receive complimentary free admission to their colleagues' fundraisers;

on other occasions judicial candidates are expected to pay and desire to pay, the same amount as other attendees.

The judge also states that many of his fellow judges who are unopposed and who have surplus campaign funds would like to make contributions to other candidates for judicial and non-judicial offices. He states that judges feel they have a right to do this under applicable provisions of the Code of Judicial Conduct, as long as they do not make a public pronouncement of their support for a specific candidate.

Discussion

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

Canon 5A(1) states that ". . . a judge or candidate for election or appointment to judicial office shall not:

(b) "Publicly endorse or publicly oppose another candidate for public office."

As the judge who requests this opinion acknowledges, Canon 2 also impacts judicial political contributions. Canon 2 states: "A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities." The commentary to that Canon states:

"A judge must expect to be the subject of constant public scrutiny. A judge must therefore expect restrictions on the judge's conduct that might be

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viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of the judge.”

Canon 2B states in relevant part: “The judge shall not lend the prestige of judicial office to advance the private interests of the judge or others.” The commentary cautions that “judges should distinguish between proper and improper use of the prestige of office in all of their activities.”

This language of Canon 2B and its commentary, which controls the conduct of the judge or judicial candidate with respect to political activities, is an overriding principle which guides the decision of this Committee.

Therefore, despite the fact that Canon 5C allows a judge to “purchase tickets for and attend political gatherings,” he or she remains subject to the prohibition against public endorsement of political candidates by the judiciary, to avoid lending the prestige of judicial office to advance the interests of others. Canon 5A(1), Commentary and Canon 5C(1)(a)(i). The Code of Judicial Conduct makes it clear that judges are only allowed to engage in limited public political activity on their own behalf and not on behalf of others. The commentary of Canon 5C(1) states: “Judges who are not candidates may not publicly endorse or oppose any candidate for judicial office.”

Nevada law currently requires a political candidate to disclose any contribution of more than \$100.00. NRS 294A.140. Therefore, any contribution above that amount by a judicial officer is a public contribution and

constitutes a public endorsement of another candidate for public office prohibited by the Nevada Code of Judicial Conduct. Canon 5A(1)(b). Such a contribution above the public disclosure threshold mandated by Nevada law is a contribution, not done in the judge’s private capacity, but is in every respect a public donation which the recipient may announce to the world. However, even if the candidate receiving the donation does not choose to make it public, it is public and available for review by any individual who contacts the City Clerk, County Clerk or Secretary of State. NRS 294A.140.

The Committee acknowledges that members of the judiciary and judicial candidates attend political gatherings hosted by their judicial colleagues. This Committee does not believe mere attendance at such gatherings violates the prohibition against public endorsement as such public gatherings allow judicial candidates to campaign on their own behalf. The Committee also understands that the cost to purchase tickets for such gatherings may exceed the public disclosure limit. The fact that the public disclosure limit may seem low to some does not change the conclusion of this Committee; if the cost to attend a political gathering exceeds the public disclosure limit established by Nevada law, a judge or judicial candidate purchasing such a ticket is in violation of the Nevada Code of Judicial Conduct.

The judge also describes a practice of using surplus campaign funds to make contributions to other candidates for judicial and non-judicial offices. Canon 5C(3) limits the disposition of unspent campaign funds as follows:

“A candidate who is elected to judicial office and who received contributions that were not spent or committed for expenditure as a result of the

campaign may dispose of the money in any combination as provided in subsections (a) - (d). Any other disposition of the money is prohibited.

“(a) return the unspent money to contributors;

(b) donate the money to the general fund of the state, county or city relating to the judge’s office;

(c) use the money in the judge’s next election or for the payment of other expenses related to the judge’s public office or the judge’s campaign;

(d) donate the money to any tax-exempt non-profit entity, including a nonprofit, state or local bar association, the Administrative Office of the Courts or any foundation entrusted with the distribution of Interest on Lawyers’ Trust Accounts (IOLTA) funds.”

The Commentary to this section states:

“[C]andidates are encouraged to be responsive to the desires of the contributors concerning the disposition of such funds within the available 5C(3) options, to the extent such desires are known to the candidate or the candidate’s campaign committees.”

It is difficult to imagine how a judicial officer would be “responsive to the desires of the contributors” when donating unspent campaign contributions to the judicial campaign of a colleague. However, even if contributors approved of such conduct, such a disposition of the money is not allowed by any provision in Canon 5(3)(c) listed above. This Committee does not consider such a

disposition of the funds to be an “expense related to the judge’s public office” pursuant to Canon 5(3)(c).

Conclusion

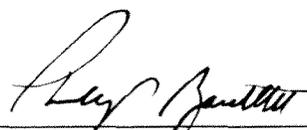
No judge or judicial candidate may contribute to any political candidate in an amount subject to public disclosure as such a contribution constitutes a public endorsement prohibited by the Nevada Code of Judicial Conduct. This prohibition includes the purchasing of tickets for a political gathering in an amount that exceeds the public disclosure threshold.

Judicial candidates may not use unspent campaign funds to donate to the campaign of another judicial candidate.

References

Nevada Code of Judicial Conduct; Canon 2, Canon 2B, Canon 5A(1)(b), Canon 5C(1)(a)(i), 5C(3)(a)-(d) and Commentary thereto; NRS 294A.140.

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.



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