

FILED

JUN 05 2003

JANETTE M. BLUMER
CLERK OF SUPREME COURT
BY _____
DEPUTY CLERK

STATE OF NEVADA
STANDING COMMITTEE ON JUDICIAL
ETHICS AND ELECTION PRACTICES

DATE ISSUED: June 3, 2003

OPINION: JE03-002

Issues

1. May a judge use judicial stationary to send congratulation letters to successful candidates in State or County elections?
2. To what extent, if any, may a judge assist a candidate for election to either judicial or non-judicial office.

Facts

A judge has requested an advisory opinion whether the judge may use official judicial stationary to send letters of congratulation to successful candidates in State or County elections.

The judge further requests an advisory opinion regarding the extent, if any, to which a judge may assist a candidate for election to either judicial or non-judicial office. In this regard, the judge notes that some judges believe that anything that is not public, i.e., private telephone calls to friends, or arranging meetings with the candidate and others, is permitted. Other judges believe that a judge should not engage in any conduct that appears to lend support to a candidate for elective office.

The judge also notes that the issue is further complicated by an advisory opinion of this Committee which indicates that judges may attend judicial and non-judicial election fund raising events so long as the judge's attendance charge or donation does not exceed \$100.00. \$100.00 is the amount at which

campaign donations to a candidate must be publicly reported and the donor identified.

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.

The following Canons of the Nevada Code of Judicial Conduct are applicable or relevant to this opinion:

Canon 2B states:

A Judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

The Commentary to Canon 2B states that a judicial letterhead must not be used for conducting a judge's personal business. It also states that although a judge should be sensitive to the possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge serve as a reference or provide a

RECEIVED
JUN 05 2003
CLERK OF SUPREME COURT
By _____
DEPUTY CLERK

letter of recommendation. The Commentary further states that a judge may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship.

Canon 5A(1)(b) further states:

Except as authorized in Sections 5B(2) and 5C(1) a judge or candidate for election or appointment to judicial office shall not:

- (b) publicly endorse or publicly oppose another candidate for public office;

The Commentary to this Canon states that it does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

Canon 5C(1)(a)(i) further states:

(1) A judge or a candidate subject to public election may, except as prohibited by law:

- (a) at any time
 - (i) purchase tickets for and attend political gatherings.

The Commentary to this Canon states that judges who are not candidates may not publically endorse or oppose any candidate for judicial office.

Finally, Canon 5D states:

A judge shall not engage in any political activity except (i) as authorized under any other Section of this Code, (ii) on behalf of measures to improve the law, the legal system or the administration of justice, or (iii) as expressly authorized by law.

The foregoing Canons do not explicitly prohibit a judge from sending a letter of congratulation on official judicial stationery to a successful candidate for election to judicial or non-judicial office. So long as this is done privately and is not couched in terms of an endorsement of that candidate's election, it is probably not prohibited by the Nevada Code of Judicial Conduct. Sending such a letter to a successful candidate for election or re-election to judicial office would appear to be appropriate as a matter of collegiality. Generally, if a judge desires to send such a private letter of congratulations to a successful candidate for election to non-judicial office, the Committee believes it is advisable that such communications be sent on the judge's personal, rather than official judicial letterhead stationery, to avoid the appearance of an "official" endorsement of that candidate's election.

Judges are expressly prohibited from publicly endorsing or publicly opposing another candidate for public office (other than one seeking election to the same office as the judge or candidate).

The authorization under Canon 5C(1) for judges or candidates to purchase tickets for and attend political gatherings, recognizes that as candidates for election or re-election, judicial candidates find it necessary to attend other candidates' election or fund raising events to promote their own candidacies.

Even in that regard, the Canons and this Committee's previous opinions indicate that judicial candidates should exercise caution or discretion in purchasing tickets for and attending such events, so that the judicial candidates do not lend their conduct to a public perception that they are endorsing candidates for election to other offices.

The Committee's previous decision that judges should not donate more than \$100 to other candidates' fund raising events is in furtherance of this concern, because donations above that amount must be publicly reported and the donor identified by the receiving candidate or his or her campaign committee. By being publicly listed as a contributor or donor to the campaign of another candidate, the judge may be perceived by the public as giving a public endorsement to the candidate.

The Canons do not prohibit a judge from privately expressing his or her views about candidates for other offices to family, friends or possibly other associates. Canon 5D, however, would appear to indicate that a judge should not actively assist another candidate's election. Although the distinction between a judge privately expressing his or her views about candidates for other offices and actively assisting another candidate's election may not be susceptible of a bright line test, the Canons indicate that a judge should not actively assist or seek the assistance of other persons in support of a particular candidate's election, except, of course, in support of the judge's own election.

Nothing stated in this Advisory Opinion is intended to address the proprietary of judges attending other allegedly political events, such as events conducted or sponsored by political parties or public interest groups.

Conclusion

It is, therefore, the opinion of the Committee that while a judge is not expressly prohibited from sending a private letter of congratulation to a successful candidate for election to other judicial or non-judicial office on official judicial stationary, judges should exercise caution that such letters not give the appearance of an endorsement of the successful candidate or authorize the use of the letter by the recipient in future elections.

If a judge desires to send such a letter, the Committee recommends, however, that he or she should do so on his or her private stationary. The judge should also make clear that such letters should not be used for purposes of implying any endorsement of the candidate.

Judges should not engage in political activity in support of the election of other candidates for judicial or non-judicial office. Judges may express their private views on other candidates to family, friends and other associates, but should exercise reasonable caution and discretion in so doing, to ensure that their private expressions do not cross the line into a public endorsement or support for another candidate. The Committee recognizes that the line between such private and public conduct may not always be clear, and in that regard, judges should exercise caution on the side of not making such comments or expressions where it reasonably appears that such expressions or activity will be perceived by others as public support for another candidate's election.

References

Nevada Code of Judicial Conduct Canons Canon 2B; 5A(1)(b); 5C(1)(a)(i); and 5D .

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