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STATE OF NEVADA

STANDING COMMITTEE ON  
JUDICIAL ETHICS AND ELECTION PRACTICES

**DATE ISSUED:** June 23, 2006

**OPINION:** JE06-006

PROPRIETY OF A JUDGE OR JUDICIAL CANDIDATE PLACING HIS OR HER NAME ON THE WEBSITE OF A POLITICAL PARTY FOR THE PURPOSE OF PROVIDING A LINK TO THE WEBSITE OF THE JUDGE OR JUDICIAL CANDIDATE AT WHICH THE CAMPAIGN MATERIALS OF THE JUDGE OR JUDICIAL CANDIDATE ARE LOCATED.

**ISSUE**

May a judge or a judicial candidate place his or her name on the website of a political party for the purpose of providing a link to the website of the judge or judicial candidate, at which site the campaign materials of the judge or judicial candidate are located?

**ANSWER**

**Answer:** Yes.

**FACTS**

A judge asks whether a judge or judicial candidate may place his or her name on the website of a political party. Initially, the Committee considered whether it should decline to act on the request based upon the provisions of Standing Committee Rule 5, 4 (f), which allows the Committee by majority vote to determine that "it would be inadvisable to respond to the request," and to "specify in writing its reasoning to the person who

requested the opinion." A panel of the Committee was initially concerned that the inquiry did not provide enough information. Ultimately, after consulting all sixteen members of the Committee who sit on panels for advisory opinions, it was determined that the Committee should respond to the request.

As noted above, the inquiry does not provide enough information to provide a meaningful response. As a result, this panel made certain factual assumptions. For purposes of this advisory opinion, the panel first assumed that the name was placed on the website of the political party by the affirmative act of the judge or judicial candidate. Second, the panel assumed that there was no express statement which identified the judge or judicial candidate as a member of the particular political party. Third, the panel assumed that included with the name of the judge or judicial candidate was a link to the website of the judge or judicial candidate at which were located the campaign materials of the judge or candidate. Finally, the panel assumed that the campaign material at the website of the judge or judicial candidate conformed in all respects to the Nevada Code of Judicial Conduct. In summary, the panel assumed that placement of the name of the judge or judicial candidate on the website of the political party was for the purpose of distributing campaign materials of the judge or judicial candidate.

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## DISCUSSION

The Nevada Code of Judicial Conduct sets forth the applicable standards from which judges are provided guidance for ethical conduct. In relevant part, Canon 5 C(1)(a)(ii) provides:

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

(a) At any time:

\*\*\* (ii)

Upon request, identify himself or herself as a member of a political party ....

In applicable part, the commentary to that Canon provides:

Even though judges in Nevada are chosen by means of non-partisan election, judges and candidates for judicial office are occasionally asked at candidates' forums to identify their political party affiliations. An interpretation of the rule in effect prior to the 2000 amendment prohibits a public response to such inquiries. Adherence to that interpretation creates the appearance that judges and candidates are being evasive or secretive. The

2000 amendment to Section 5 (C)(1)(a)(ii) permits a judge or candidate to identify his or her political party membership upon request. While judges and candidates may now properly respond to questions regarding their party affiliation, it is impermissible for them to align themselves with a political party or to affiliate themselves with a political party and campaign literature, mailings, billboards, yard signs, radio and television advertising, and the like. Nonetheless, judges and candidates may place their campaign materials on a table designated for the distribution of literature at any gathering regardless of whether the table is sponsored by a political party.

As the commentary indicates, the Canon was amended in 2000 in response to an interpretation of the Canon in effect prior to that time. In fact, there were two prior relevant actions by the Committee. One involved a published decision based upon an unfair election practices complaint, and the other involved an advisory opinion.

On August 18, 1998, after a hearing, the Standing Committee, issued a published decision based upon unfair election practice complaints against two candidates for judicial office who stated

their political party affiliations in response to questions by an interviewer during a local radio broadcast regarding their candidacies. At that time, the relevant Canon allowed a judge or candidate only to "privately identify himself or herself as a member of a political party." In its published decision, the Committee found a violation of Canon 5 C(1)(a)(ii). See, Published Decision 98-1. In 2000, partly in response to that published decision, the Nevada Supreme Court amended Canon 5 C(1)(a)(ii) to read as it reads today, and at the same time added the commentary quoted above.

On October 20, 1998, the Committee also issued Opinion JE98-005. In that opinion, the Committee found that it was improper and a violation of the Canon for a judicial candidate to place campaign literature at a booth purchased by a political party at the Nevada State Fair. In that opinion, the Committee found the Canon violated because "placing brochures at the booth of a particular political party creates a danger that members of the public will associate the judge with the philosophy of that political party, and assume that the judge is publicly identifying himself or herself as a member of that political organization. This danger exists even if the judge or candidate supplies the same written materials to all political parties." Advisory Opinion: JE98-005, p. 2.

When the Nevada Supreme Court amended Canon 5 (C)(1)(a)(ii) in 2000, it also added commentary which expressly overrules that Ethics Advisory Opinion. That commentary states: "Nonetheless, judges and candidates may place their

campaign materials on a table designated for the distribution of literature at any gathering regardless of whether the table is sponsored by a political party."

Even with the hypothetical facts which the Committee has included as a necessary part of this opinion, this was a very difficult and close question for the Committee. However, in finding that the Canon was not violated, the Committee reasoned as follows. First, by simply placing his or her name on the website of a political party, a judge or a judicial candidate is not directly identifying himself or herself as a member of that party. Just like placing campaign materials on a table designated for such materials sponsored by a political party, placing one's name on the website of a political party for purposes of a link to the campaign materials of a judge or judicial candidate, creates a danger that members of the public will assume that the judge or judicial candidate is a member of that party.

However, in light of the language added to the commentary by the Nevada Supreme Court in 2000 which overrules Advisory Opinion 98-005, along with the fact that Canon 5 C(1)(b)(iii) expressly allows a candidate for election to "distribute pamphlets and other promotional campaign literature supporting his or her candidacy," the Committee found no meaningful distinction between what is being done through a political party's website and what the commentary expressly allows to be done through a table sponsored by a political party. In both cases, the judge or judicial candidate is distributing campaign materials through a medium provided by a political party.

### CONCLUSION

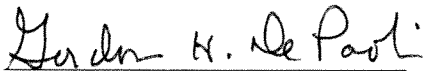
It is, therefore, the opinion of the Committee that under the hypothetical facts assumed in this opinion, a judge or a judicial candidate may place his or her name on the website of a political party for the purpose of distributing the judge's or judicial candidate's campaign materials through a link to the website of the judge or judicial candidate.

### REFERENCES

Nevada Code of Judicial Conduct, Canon 5 C(1)(a)(ii); Canon 5 C(1)(b)(iii); JE98-005; Published Decision 98-1.

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*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.*



**Gordon H. DePaoli, Esq.**  
*Committee Chairman*