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STATE OF NEVADA

JUL 21 2006

STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

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DATE ISSUED: July 21, 2006

OPINION: JE06-008

DISCUSSION

PROPRIETY OF A CANDIDATE FOR JUDICIAL ELECTION, WHO IS NOT SERVING IN A JUDICIAL CAPACITY ON A FULL OR PART-TIME BASIS, TO CONTINUE TO PUBLISH A NEWSPAPER COLUMN AND TO APPEAR IN MEDIA ADVERTISEMENTS, NEITHER OF WHICH DIRECTLY SUPPORT HIS OR HER CANDIDACY.

ISSUE

May a candidate in a judicial election who is not serving in a judicial capacity on a full or part-time basis: (1) continue to publish a weekly newspaper column, and (2) appear in media advertisements, neither of which directly support his or her candidacy?

ANSWER

Yes.

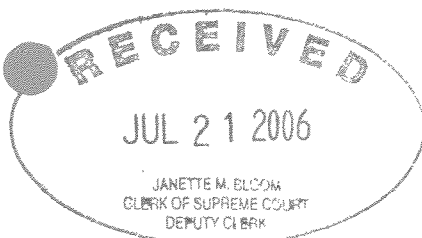
FACTS

A judge asks whether a candidate in a judicial election, who is not serving in a judicial capacity on a full or part-time basis, may continue to publish a weekly newspaper column, and appear in newspaper and other media advertisements, none of which directly support his or her candidacy.

The Nevada Code of Judicial Conduct sets forth the applicable standards from which judges and candidates for judicial election are provided guidance for ethical conduct. The Code of Judicial Conduct applies in its entirety to persons who serve in a judicial capacity on a full-time basis. See, Application of Code of Judicial Conduct. It also applies to officers of a judicial system who perform judicial functions, including a magistrate, court commissioner, special master, or referee. Id. There are also four categories of judicial service in other than a full-time capacity which are defined generally, and to which certain Code provisions do not apply. See, Application of Code of Judicial Conduct, B., Retired Judge Subject to Recall; C., Continuing Part-time Judge; D., Periodic Part-time Judge; and E., Pro Tempore Part-time Judge. For purposes of this opinion, the Committee has assumed that the candidate here also does not perform judicial functions in any of those capacities.

Canon 5 of the Code of Judicial Conduct does apply to a candidate for election to judicial office even though the candidate is not serving in a judicial capacity on a full-time basis and does not perform any judicial function on a part-time basis.

Canon 5C(1)(b)(ii) provides:



C. Judges and Candidates Subject to Public Election.

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

* * *

(b) when a candidate for election and only when a candidate for election:

* * *

(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy;

* * *

[Emphasis added]. Under a very strained interpretation of Canon 5C(1)(b)(ii), one might contend that when a candidate, a person may not appear in a newspaper or other media, except to support his or her candidacy. It is the Committee's opinion, however, that that provision does not and was not intended to be a limitation on activities which do not directly involve supporting one's candidacy. Such activities are governed by other parts of the Code. See, e.g., Canons 4, 1 and 2.

In this situation, where the candidate is not serving in a judicial capacity on a full-time basis and does not

perform any judicial function on a part-time basis, one must consider other portions of Canon 5. Those other provisions of Canon 5 do not prohibit such a candidate from continuing to publish a newspaper column in a local newspaper which is not intended to directly support his or her candidacy. However, in publishing that newspaper column, the candidate for judicial election should consider, examine and evaluate the other provisions of Canon 5.

For example, Canon 5A(1)(b) prohibits a candidate from publicly endorsing or opposing another candidate for public office. In addition, Canon 5A(3)(d)(i) prohibits a candidate from making "pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office" with respect to "cases, controversies or issues that are likely to come before the court." Those provisions could well bear on the content of the weekly newspaper column.

It is also the Committee's view that Canon 5 does not prohibit such a candidate from appearing in media advertisements which do not directly support his or her candidacy. Again, in engaging in such activities, such a candidate should consider, examine and evaluate the other provisions of Canon 5, including those mentioned above. There is another part of Canon 5 which is also applicable to the weekly newspaper column, and which the Committee believes is of particular importance with respect to media advertisements. In applicable part, Canon 5A(3)(a) provides:

(3) A candidate* for judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary . . .

In writing a weekly newspaper column, and especially in appearing in media advertisements, a candidate should comply with Canon 5A(3)(a). It is the Committee's opinion that guidance concerning compliance with Canon 5A(3)(a) is provided by the provisions of, and the commentary on, Canon 1, Canon 2 and Canon 4 which apply to persons acting in a judicial capacity and which cover issues similar to those referenced in Canon 5A(3)(a).

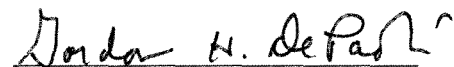
CONCLUSION

A candidate for judicial election, who is not serving in a judicial capacity on a full or a part-time basis, may continue to publish a weekly newspaper column and may appear in media advertisements, neither of which directly support his or her candidacy. However, such candidates should consider the specific requirements of the Canons referenced above, and the provisions of Canons 1, 2 and 4 for guidance on compliance with Canon 5A(3)(a).

REFERENCES

Nevada Code of Judicial Conduct, Canon 1; Canon 2; Canon 4; Canon 5A(1)(b); Canon 5A(3)(a); Canon 5A(3)(d); Canon 5A(3)(d)(i); Canon 5C(1)(b); Canon 5C(1)(b)(ii); Application of Code of Judicial Conduct, A, B, C and D.

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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