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AUG 22 2006

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STATE OF NEVADA  
STANDING COMMITTEE ON  
JUDICIAL ETHICS AND ELECTION PRACTICES

DATE ISSUED: August 22, 2006

OPINION: JE06-011

PROPRIETY OF A CANDIDATE FOR JUDICIAL ELECTION, WHO IS NOT SERVING IN A JUDICIAL CAPACITY ON A FULL- OR PART- TIME BASIS, SPONSORING, IN THE NAME OF THE CANDIDATE'S CAMPAIGN, A FUND-RAISER FOR A NON-PROFIT ORGANIZATION WHICH WOULD RECEIVE ALL OF THE PROCEEDS RAISED.

organization. The local non-profit organization would receive all of the proceeds from the event.

DISCUSSION

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. As the Committee noted in a recent Advisory Opinion (JE06-008), the Code applies in its entirety to persons who serve in a judicial capacity on a full-time basis. For purposes of this Opinion, the Committee has assumed that the candidate here does not perform judicial functions in any capacity.

ISSUE

May a candidate in a judicial election, who is not serving in a judicial capacity on a full-or part-time basis, sponsor, in the name of the candidate's campaign, a fund-raiser for a non-profit organization, which organization would receive all of the proceeds raised?

Canon 5 is the only Canon of the Code of Judicial Conduct which expressly and directly applies to candidates for election to judicial office who are not serving in a judicial capacity on a full-time basis, and do not perform any judicial function on a part-time basis. Canon 5 does not expressly prohibit such a candidate from sponsoring, in the name of the candidate's campaign, a fund-raiser for a non-profit organization which would receive all of the proceeds raised. However, Canon 5, includes several provisions concerning the fund-raising activities of a candidate, and the use of campaign contributions by a candidate. First, Canon 5A(1)(d) prohibits a candidate from soliciting funds for a political organization or candidate. Second, Canon 5C(2) in applicable part provides:

ANSWER

No.

FACTS

A candidate in a judicial election, who is not serving in a judicial capacity on a full- or part-time basis, asks whether such a candidate may sponsor, in the name of the candidate's campaign, a fund-raiser for a non-profit organization which would receive all of the proceeds raised. As part of his/her campaign for judicial election, a candidate proposes to have his/her campaign committee sponsor a fund-raising event for a local non-profit

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A candidate may personally solicit or accept campaign contributions in accordance with law.... A candidate shall not use or permit the use of campaign contributions for the private benefit of...others.

Finally, candidates who are elected to judicial office are allowed by Canon 5C(3)(d) to donate unspent and uncommitted campaign contributions to "any tax-exempt non-profit entity."

The Committee recognizes that, under the facts presented here, the candidate is not directly soliciting campaign contributions for the benefit of another. It could be inferred from Canon 5A(1)(d) that a candidate may solicit contributions for any organization as long as the organization is not a political organization. On the other hand, it could be inferred from Canon 5C(2) that a candidate may only solicit contributions for the candidate's campaign. The Committee declines to draw either inference from those provisions.

A portion of the Commentary to Canon 5C(2) is, however, important to the Committee's conclusion on this question. That portion of the Commentary to Canon 5C(2) states as follows:

A candidate\* and members of the candidate's campaign committees must exercise a high degree of ethical behavior in the solicitation and acceptance of campaign contributions, and must

especially take great care in avoiding coercion or the appearance of coercion in the solicitation and acceptance of such contributions.

That provision recognizes that there is the potential for coercion, or the appearance of coercion, in the solicitation and acceptance of campaign contributions by candidates for judicial election. That recognition applies with respect to candidates who are incumbents and candidates who serve in no judicial capacity, but who may become judges. The Commentary makes no distinction between candidates who are judges and those who are "potential" judges.

Canon 5A(3)(a) does apply here. In applicable part, it provides:

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....

Previously, the Committee has concluded that guidance concerning compliance with Canon 5A(3)(a), is provided by the provisions of, and the Commentary on, Canons 1, 2 and 4, which apply to persons acting in a judicial capacity and which relate to issues similar to those referenced in Canon 5A(3)(a). See, Ethics Advisory Opinion No. JE06-008 (July 21, 2006).

Canon 1A states that the entire Code is to be “construed and applied to further the objective” of upholding the independence and integrity of the judiciary. Canon 4C(4) relates to the civic and charitable activities of a judge with respect to non-law related organizations. In applicable part, Canon 4C(4)(b)(i) provides that a “judge...shall not personally participate in the solicitation of funds, or other fund-raising activities” of a charitable or civic organization. The Commentary to Canon 4C(4)(b), in part, states:

A judge may solicit membership or endorse or encourage membership efforts for a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone....

In addition, a judge must also make reasonable efforts to ensure that the judge’s staff, court officials and others subject to the judge’s

direction and control do not solicit funds on the judge’s behalf for any purpose, charitable or otherwise.

That Commentary makes it clear that the limitations on a judge’s fund-raising activity for non-law related organizations, including charitable organizations, are based on concerns over coercion, or the appearance of coercion. As noted above, the Commentary to Canon 5C(2) expresses a similar concern with respect to a candidate’s solicitation of campaign contributions. It recognizes that there is potential for coercion or the appearance of coercion from the mere fact that one who is not presently a judge may, in the future, be elected a judge. It is the opinion of the Committee that the potential for coercion or the appearance of coercion is the same whether the non-judge candidate is soliciting funds for his or her campaign or for a charitable organization. Therefore, in order to act in a manner consistent with the integrity and independence of the judiciary as required by Canon 5A(3)(a), a candidate for judicial election, who is not serving in a judicial capacity on a full- or part-time basis, may not sponsor in the name of his or her campaign a fund-raiser for a non-profit organization.

#### CONCLUSION

A candidate for judicial election, who is not serving in a judicial capacity on a full- or part-time basis, may not sponsor, in the name of his campaign, a fund-raiser for a non-profit organization. Canon

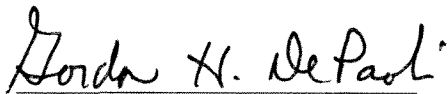
5A(3)(a), and the guidance provided by Canon 4C(4)(b)(i), prohibit such an activity because of the potential for coercion or the appearance of coercion.

**REFERENCES**

Nevada Code of Judicial Conduct, Canon 1; Canon 1A; Canon 2; Canon 4C(4); Canon 4C(4)(b)(i); Canon 5A(1)(d); Canon 5A(3)(a); Canon 5C(2); Canon 5C(3)(d); Ethics Advisory Opinion No. JE06-008 (July 21, 2006).

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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.*



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