STATE OF NEVADA
STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

DATE ISSUED: August 10, 2007

PROPRIETY OF A JUDGE PARTICIPATING AND CONTINUING MEMBERSHIP IN CLUBS AND COMMITTEES AFFILIATED WITH A POLITICAL PARTY.

ISSUE

May a judge participate in, and continue to be a member of, clubs and committees affiliated with a political party?

ANSWER

No.

FACTS

A recently elected judge asks whether it is appropriate for the judge to continue as a member of, and to continue to participate in, a club of a political party and the central committee of a political party.

DISCUSSION

Canon 5B of the Nevada Code of Judicial Conduct provides:

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.

No other relevant section of the Code authorizes judges to be members of, or to participate in, clubs and committees of a political party. In fact, the Code sections which touch on the political activities of judges suggest that it would be inappropriate for a judge to continue to be a member of and to participate in such clubs and committees.

Canon 5 provides that a judge shall refrain from inappropriate political activities. Its Sections then provide some specific examples of inappropriate political activities. Canon 5A(1) includes a list of political activities in which a judge may not engage. They include acting as a leader or holding office in a political organization, publicly endorsing or publicly opposing another candidate for public office, making speeches on behalf of a political organization, or soliciting funds for a political organization or candidate. Although one might contend that, by implication, those provisions would allow a judge to be a member of a club or committee of a political party so long as he or she did not act as a leader or hold an office, the Code does not provide, and is
not written to provide, a rule to cover every activity in which a judge might engage. The Canons and Sections are to provide general guidance and to state basic standards. See, Preamble. Thus, the fact that some activities are expressly prohibited does not mean that all others are permitted. The more general standards of other Canons must be considered.

For example, Canon 2 provides that a judge shall avoid the "appearance of impropriety in all of the judge's activities." The Commentary to Canon 2A notes that:

The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

Canon 3B(2) provides in part that a judge "shall not be swayed by partisan interests." Canon 4 requires that a judge conduct all of the judge's extrajudicial activities so that they do not (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; (2) demean the judicial office; or (3) interfere with the proper performance of judicial duties. It is the Committee's opinion that the membership and participation contemplated here would, at the least, create the appearances and doubt which those Canons and Sections are intended to prevent.

Although the Commentary to Canon 5A(1) states that a judge retains the right to participate in the political process as a voter, and to privately contribute to a candidate or political organization, the remainder of the Commentary to that section makes it clear that what a judge may do must be done privately. Finally, Canon 5C(1)(a)(ii) provides that a judge may at any time "upon request, identify himself or herself as a member of a political party". [Emphasis added]. A judge's continued participation or membership in clubs and committees of a political party are, in the judgment of the Committee, the equivalent of the judge's identifying himself or herself as a member of a political party without a request for such an identification. See, Nevada Advisory Opinion JE06-016, October 6, 2006 (A judge or a judicial candidate may not participate in a parade as part of an entry sponsored by a political party because it identifies the judge as a member of a political party without a request).

CONCLUSION

It is the opinion of the Committee that under the facts as presented, a judge may not be a member of a club or a committee of a political party.

REFERENCES

Nevada Code of Judicial Conduct, Canon 2; Canon 3B(2); Canon 4; Canon 5; Canon 5A(1); Canon 5B; Canon 5C(1)(a)(ii); Nevada Advisory Opinion JE06-016, October 6, 2006.

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