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STATE OF NEVADA
STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

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OPINION: JE08-005

PROPRIETY OF A CANDIDATE FOR MUNICIPAL COURT JUDGE SOLICITING AND RECEIVING RE-ELECTION CAMPAIGN CONTRIBUTIONS PRIOR TO AN OPPOSITION CANDIDATE FILING A DECLARATION BUT WITHIN THE TIME PERIOD PRESCRIBED BY NEVADA CODE OF JUDICIAL CONDUCT CANON 5C(3).

ISSUE

May a candidate for municipal court judge solicit and receive contributions for his or her re-election campaign beginning on a date within 120 days before the primary election but prior to the date upon which an opposition candidate files a declaration of candidacy?

ANSWER

Yes.

FACTS

A candidate for municipal court judge has inquired whether, consistent with Nevada Code of Judicial Conduct (NCJC) Canon 5C(3), the candidate may solicit and receive contributions for his or her re-election campaign beginning 120 days before the date for the primary election, even though that time frame includes a period of time prior to the deadline for filing a declaration of

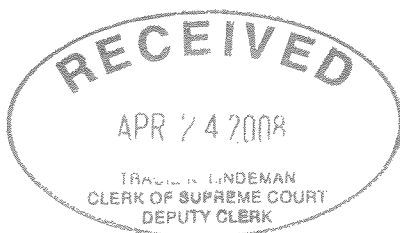
candidacy by any opposition candidate. In effect, the candidate asks whether a candidate for municipal court may solicit and accept campaign contributions at a time when it may not yet be possible to determine whether the candidate will or will not be opposed.

DISCUSSION

In November 2007 the Supreme Court of Nevada amended NCJC Canon 5C(3). The Committee's opinion evaluates a question of first impression under the amended Canon only as relates to compliance with the requirements of the Nevada Code of Judicial Conduct. *Rule 5 Governing Standing Committee On Judicial Ethics and Election Practices.* The pertinent provisions of Canon 5C(3) of the Nevada Code of Judicial Conduct state:

(3) A candidate* who is not opposed in an election must not solicit or accept contributions for the candidate's campaign, either personally or through a candidate's committee, at any time.

A candidate becomes opposed in an election when, at the close of filing, another candidate has filed a declaration of candidacy or



acceptance of candidacy for the same judicial office.

....

Candidates running exclusively for municipal court . . . may solicit or accept contributions for the candidate's campaign no earlier than 120 days before the primary election and no later than 90 days after the last election in which the candidate participates during the election year. *If, at the close of filing for judicial office in a municipal court election a candidate is unopposed, the candidate must not solicit or accept campaign contributions after the close of filing.*

See NCJC Canon 5C(3) (emphasis added).

The Commentary to Canon 5C(3) provides in relevant part:

Based on the statutory changes enacted by the Nevada Legislature in 2007, and approved by the Governor, the filing date for a candidate for supreme court, district court, and justice of the peace has been advanced from May to January. Therefore, candidates involved in a contested election should have sufficient time to raise campaign contributions before the August primary date. *Due to the divergent filing deadlines and election dates in municipal elections, special time limitations on fundraising are required for those elections.*

See NCJC Canon 5C(3), *Commentary* (emphasis added).

As recently amended by the Supreme Court of Nevada, Canon 5C(3) expresses a general rule that unopposed candidates for election to Nevada judicial offices may not directly or indirectly engage in campaign financing activities. The Court amended Canon 5C(3) in response to changes in state statute enacted in 2007 by the Nevada Legislature, advancing from May to January the filing date for judicial declarations of candidacy for candidates for election to the supreme court, district courts and justice courts. See NCJC Canon 5C(3), *Commentary*; see also Act of May 18, 2007, Nev. Legis., 74th Sess., ch. 74, § 1(a), 2007 Nev. Stats. 211, 212. The commentary to the revised Canon indicates the Court viewed the extension by four months of the campaign season for these judicial offices as an adequate basis to require candidates to delay campaign finance activities until actually opposed, which may mean awaiting the close of the filing period for declarations of candidacy.¹

Canon 5C(3) also recognizes, however, that candidates for election to municipal court office are subject to a different and more compressed campaign schedule. Specifically, the commentary to the Canon explains that because of "divergent filing deadlines

¹ To the extent our prior opinion issued in 2005 appears inconsistent, we note that the earlier opinion was rendered under a different statutory scheme and prior to the Court's modification of NCJC Canon 5C(3). See Advisory Opinion JE05-001 (dated January 10, 2005).

and election dates in municipal elections, *special time limitations on fundraising are required for those elections.*” Given these special circumstances, the Court created an exception to the general rule and allows candidates for municipal court office to begin campaign finance activities prior to the date another candidate has filed a declaration of candidacy or acceptance of candidacy for the same judicial office provided no contributions are solicited or received within the statutorily prescribed 120 days preceding the primary election. *Cf.* Advisory Opinion JE03-005 (dated December 26, 2003)(opining that NCJC prohibits any campaign finance activities except during statutorily set time period).

The Canon makes explicit this exception in that the Code states that “[i]f, at the close of filing for judicial office in a municipal court election a candidate is unopposed, the candidate must not solicit or accept campaign contributions after the close of filing.” This provision demonstrates that the Court envisioned that a municipal court candidate may solicit and receive contributions before definitively knowing whether he or she is opposed in an election. Once the filing date has passed, Canon 5C(3) mandates the candidate must cease campaign financing activities if another candidate has not filed a declaration of candidacy or acceptance of candidacy for the same judicial office.

CONCLUSION

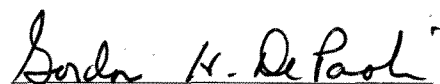
A candidate for election to the municipal court may solicit and receive contributions for his or her re-

election campaign beginning on a date within 120 days before the primary election but prior to the date upon which an opposition candidate files a declaration of candidacy.

REFERENCES

Rule 5 Governing Standing Committee on Judicial Ethics & Election Practices; Canon 5C(3); Act of May 18, 2007, Nev. Legis., 74th Sess., ch. 74, § 1(a), 2007 Nev. Stats. 211, 212; Advisory Opinion JE05-001 (dated January 10, 2005); Advisory Opinion JE03-005 (dated December 26, 2003).

This opinion is issued by the Standing Committee on Judicial Ethics and Election Practices. It is advisory only. It is not binding on 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 requesting the opinion.



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