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STATE OF NEVADA

STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

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ADVISORY OPINION: JE10-005

PROPRIETY OF A JUDGE
CONDUCTING A MEET AND GREET
EVENT FOR ANOTHER JUDICIAL
CANDIDATE IN THE PRIVACY OF HIS
HOME

DISCUSSION

Canon 4 states that “A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity or impartiality of the judiciary.” More specifically, Rule 4.1(A)(3) provides that “a judge or judicial candidate shall not: (3) publicly endorse or oppose a candidate for public office.” The Committee’s opinion on this issue turns on whether, under the facts presented here, a judge would be considered as implicitly or explicitly “publicly endorsing” a judicial candidate by conducting a meet and greet event for the judicial candidate in the privacy of the judge’s home.

ISSUE

May a judge conduct a “meet and greet” event in the privacy of his home for the benefit of a fellow judge who is seeking re-election?

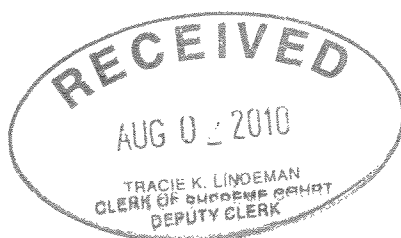
ANSWER

No. A “meet and greet” event hosted by a judge would run afoul of Rules 1.3 and 4.1, which prohibit a judge from endorsing candidates for public office.

FACTS

A judge asks whether a sitting judge may host a “meet and greet” event in his private residence, for the benefit of a fellow judge who is campaigning for reelection. For purposes of this opinion, the Committee has assumed that the “meet and greet” event is being conducted for the benefit of introducing the judicial candidate to prospective voters and members of the public and soliciting their support of the candidate.

Rule 4.1 specifically prohibits a judge from publicly endorsing or publicly opposing a candidate for public office. The prohibition applies to all endorsements, whether by action or words, and is absolute in application. As recognized in the Comments to Rule 4. 1, “this Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates” for the purpose of “prevent[ing] them from abusing the prestige of judicial office to advance the interests of others.” Rule 4.1, Comment 1 and 3; see also Rule 1.3. The Committee notes that nothing in this opinion implicates a judge’s ability “to participate in the political process as a voter . . . and contribute personal funds to a candidate or



political organization.” See comment 3, Rule 4.1.

The Committee finds that “meet and greet” events are campaign related events whose purpose is to further the campaign of candidates for public office and solicit public support of candidates. These campaign events provide a forum for candidates to meet and seek support, whether financial or otherwise, from prospective voters. While not the sole purpose, such functions often involve solicitations for campaign contributions or endorsements through placement of yard signs, etc., implicating additional issues under Rule 4.1(A)(4) (prohibiting judges from soliciting funds for a candidate). The Committee concludes that hosting a meet and greet event for a candidate would appear to reasonable minds as an explicit endorsement (if not an implicit endorsement) of the candidate on whose behalf the event is held, contrary to Rule 4.1(A)(3).

The Committee finds the act of hosting the event of particular note. Hosting a campaign related event at a judge’s home for another candidate may have an inherent, coercive tendency creating pressure on attendees to support or contribute funds to the judicial candidate supported by the judge, and in so doing arguably lend “the prestige of judicial office to advance the personal or economic interests of ... others”, in violation of Rule 1.3 (“A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so”). The fact the judge would act as the host and would conduct the event in his home also distinguishes this conduct from that permitted under Rule 4.1(C), which Rule allows a judge to “attend political gatherings . . . sponsored by a political

organization or a candidate for public office.” Emphasis added.

Finally, the Committee notes that it has issued prior opinions which addressed what might be perceived as implicit public endorsement under former Canon 5A(1)(b) (which contained nearly identical prohibitions as Rule 4.1). See Opinion JE07-013. In Opinion JE07-013, the Committee discussed at some length when an implied violation should be found despite the absence of a direct violation of the relevant Canon. The Committee noted that in the past where the Committee has been concerned with whether a judge’s conduct might create in reasonable minds a perception that an activity is in violation of an express provision of the Canons, the Committee has considered Canon 1 (formerly Canon 2) which requires a judge to promote the independence and integrity of the judiciary and “avoid impropriety and the appearance of impropriety.” The Committee has also cited comments to the Canons (currently set forth in comments to Rule 1.2), that state a judge “should expect to be the subject of public scrutiny” and therefore must accept the restrictions that might be viewed as burdensome if applied to other citizens.

Opinion JE 07-013 concluded that under the facts presented in that case, the Committee was reluctant to find an implied violation where no direct violation existed. The Committee believes the present facts are distinguishable, as hosting a campaign event in a judge’s residence for the purpose of soliciting public support of another candidate directly implicates the endorsement prohibitions in Rule 4.1. The Committee notes that the Canons do, nonetheless, impose upon judges more burdensome restrictions than other citizens in the endorsement arena, and that

appearances, perception and promotion of public confidence in the judiciary remain matters of significant concern in the Revised Code of Judicial Conduct adopted in 2009. See Canon 1.

Finally, the Committee notes that there is an ongoing debate in jurisdictions regarding the constitutionality of the endorsement clause contained in Rule 4.1(A)(3). See *Wersal v. Sexton, et. al.*, --- F.3d---, 2010 WL 2945171, (8th Cir., 2010). To the extent such issues may arise in the future under Nevada's Revised Code of Judicial Conduct, the Committee believes such constitutional questions are best addressed by courts of appropriate jurisdiction.


CONCLUSION

It is the opinion of the Committee that Canons 1 and 4, specifically Rule 1.3 and 4.1(A)(3), prohibit a judge from hosting and conducting a "meet and greet" campaign event for another candidate in the judge's private residence, as such a campaign function would appear to reasonable minds as an endorsement by the judge in support of the candidate.

REFERENCES

Revised Nevada Code of Judicial Conduct, Canon 1; Canon 4; Rule 1.3; Rule 4.1(A)(3); Rule 4.1(A)(4); Rule 4.1(C); Commentary to Rule 1.3; Comment 1 and 3 to Rule 4.1; Advisory Opinion JE07:013; Former Canon 5A(1)(b)

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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