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STATE OF NEVADA

STANDING COMMITTEE ON JUDICIAL ETHICS
AND ELECTION PRACTICES

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PROPRIETY OF A NEVADA DISTRICT JUDGE USING THE UNCOMMITTED BALANCE OF HIS OR HER CAMPAIGN FINANCE ACCOUNT TO MAKE CONTRIBUTIONS TO ANOTHER CANDIDATE FOR ELECTIVE OFFICE OR TO PAY EXPENSES RELATED TO THE JUDGE'S OFFICE BETWEEN ELECTIONS.

ISSUE

May a District Judge use excess campaign funds to either (i) make contributions to the campaigns of other candidates for elective office; or, (ii) pay the expenses associated with attending public functions, membership fees in civic or professional organizations, communications with the public and for campaign staff support between elections?

ANSWER

A Nevada judicial officer may not make contributions to the campaigns of other candidates for elective office from excess campaign funds. Nevada jurists may expend excess campaign funds for *bona fide* expenses related to the judge's office.

FACTS

A Nevada District Judge has inquired concerning the scope of appropriate use of the uncommitted balance of his or her campaign finance account after successful election to judicial office. Specifically, the judge has sought guidance on the topic of

making contributions to the campaigns of other candidates for elective office and observed that there is a conflict on this topic between the Nevada Code of Judicial Conduct and the Nevada statutes generally governing campaign finance practices. The judge also asks whether excess campaign contributions can be used to pay expenses to "maintain a presence, and therefore a political viability during the interim six years between elections . . ."

DISCUSSION

The Committee is authorized only to render an opinion that evaluates compliance with the requirements of the Nevada Code of Judicial Conduct (the "NCJC"). *Rule 5 Governing the Standing Committee On Judicial Ethics & Election Practices*. Accordingly, this opinion is limited by the authority granted by Rule 5.

The question presented arises under Canon 4. That canon states "[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. See Nev. Code Jud. Conduct, Canon 4. Rule 4.2 to Canon 4 of the Nevada Code of Judicial Conduct (the "NCJC") states in pertinent part:

- (A) A judicial candidate in a public election shall:
....
(6) if elected to judicial office, a candidate who received contributions

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that were not spent or committed for expenditure as a result of the campaign may dispose of the money in any combination as provided in subsections (a)–(d). *Any other disposition of the money is prohibited.*

(a) return the unspent money to contributors;

(b) donate the money to the general fund of the state, county or city relating to the judge's office;

(c) use the money in the judge's next election or for the payment of other expenses related to the judge's public office or the judge's previous campaigns for judicial office;

(d) donate the money to any tax-exempt nonprofit entity, including a nonprofit state or local bar association, the Administrative Office of the Courts or any foundation entrusted with the distribution of Interest on Lawyer's Trust Accounts (IOLTA) funds.

Nev. Code Jud. Conduct, Canon 4, Rule 4.2(A)(6)(emphasis added).

A comment to Canon 4 is instructive:

Paragraph (A)(6) provides a variety of methods for handling excess campaign funds. Although it is entirely ethical to use or dispose of such funds in accordance with the provisions of Rule 4.2(A)(6), candidates are encouraged to be responsive to the desires of the contributors concerning the disposition of such funds within the available options, to the extent such desires are known to the candidate or the candidate's campaign committees.

The 2007 amendments to former Section 5C(4) conform the Code more closely to NRS 294A.160(2). However, *this Canon is more restrictive than the provisions of NRS 294A.160(2)*. Candidates for judicial office are subject to the reporting requirements of NRS 294A.200 relating to campaign contributions, together with all other applicable state campaign reporting and contribution laws.

Candidates who are not elected to or holding judicial office are subject to the requirements of NRS 294A.160(3) governing the disposition of unspent campaign funds.

See Comment [5] to Nev. Code Jud. Conduct, Canon 4, Rule 4.2(A)(6)(emphasis added). Although construing NRS 294A.160 is beyond the scope of the Standing Committee's jurisdiction, we observe that the provisions of Paragraphs (a), (c) and (d) of Rule 4.2(A)(6) are identical or substantially similar to Paragraphs (a), (b) and (d) of NRS 294A.160(2). Thus, as the Supreme Court of Nevada has indicated in Comment 5, a judge must comply with both Rule 4.2(A)(6) and NRS 294A.160(2) by adhering to the more restrictive provisions of Rule 4.2(A)(6).

Accordingly, as Rule 4.2(A)(6) makes explicit, a judge may not use the uncommitted balance of his or her campaign finance account to make contributions to any other candidate for elective office, a political organization or a ballot question, initiative or referendum effort. Comment 5 indicates that an unsuccessful candidate for judicial office who does not hold judicial office may dispose of such an uncommitted balance of

his or her campaign finance account consistent with the provisions of NRS 294A.160(3) without also complying with the more restrictive mandates of Rule 4.2(A)(6).

Conversely, Paragraph (c) of Rule 4.2(A)(6) allows for a judicial officer to use the uncommitted balance of his or her campaign finance account in the “next election or for the payment of other expenses related to the judge’s public office.” Paragraph (c) must be read in conjunction with Rule 4.1(A)(9), which instructs that a judge or a judicial candidate “shall not . . . use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others.” Nev. Code Jud. Conduct, Canon 4, Rule 4.1(A)(9).

Rule 4.1(A)(9) is a restatement of the general proposition of Nevada law that candidates for public office are prohibited from spending money received as campaign contributions for personal use. *See* NEV. REV. STAT. § 294A.160. The term “personal use of campaign funds” is not defined under the statute and there apparently is no judicial determination in Nevada as to the meaning of the term. In 2002, however, the Nevada Attorney General’s Office issued an opinion concluding that elected public officers are prohibited from using campaign funds for typical personal and household expenses if the particular use would fulfill a commitment, obligation, or expense “that would exist irrespective of the candidate’s campaign or duties as an officeholder.” *See* 2002 Nev. Att’y Gen. Op. No. 23 (May 21, 2002). In applying the “irrespective” test, the Attorney General opined that the use of campaign funds to pay attorney fees to defend against an ethics violation would not constitute the personal use of campaign funds in violation of state law. The Standing Committee has opined similarly. *See*

Advisory Op. No. JE06-020 (December 22, 2006).

In applying this analysis, each item or expense must be individually evaluated. Legislative history of the Senate Bill enacting the relevant provision of NRS 294A.160 reveals the law-makers’ intent that political contributions not be converted to personal income or to pay an individual’s personal expenses such as utility bills or personal rent or mortgage payments. *See Hearing on S.B. 166 Before the Senate Comm. On Gov’t Affairs*, 66th Sess., Nev. Legis., at 7 & 10 (Jan. 30, 1991). The intent of the prohibition on personal use of funds was to allow for the use of funds for “real” costs associated with the holding of a public office for which the use of political contributions is “fitting and proper.” *See Hearing on S.B. 166 Before the Senate Comm. On Gov’t Affairs*, 66th Sess., Nev. Legis., at 31-32 (March 12, 1991) (statement of Senator Cook).

The Committee on Government Affairs considered that “in order to do a good job,” a public official must keep current with various matters and stay in touch with the voters. Thus, the realm of permissible spending of campaign funds could include costs incurred by public officials to attend conferences, correspond with voters, travel in connection with conferences or meetings that are not reimbursable, attend meetings with various groups, and attend charitable events and town meetings. *See Hearing on S.B. 166 Before the Senate Comm. On Gov’t Affairs*, 66th Sess., Nev. Legis., at 30 (Feb. 7, 1991) (statement of Senator Cook).

The Standing Committee acknowledges that the Opinion of the Attorney General and the Legislative History of NRS 294A.160 are not

addressing an interpretation of Canon 4. That said, we view these collateral sources as useful in discerning the appropriate scope of what the Nevada Supreme Court intended in adopting the language of Rule 4.1(A)(9), as well as Rule 4.2(A)(6)(c) which mirrors NRS 294A.160(2)(b). Accordingly, we conclude that unspent campaign funds may be used by a judicial officer to pay *bona fide* costs incurred to attend conferences, correspond with voters, travel in connection with conferences or meetings that are not reimbursable, attend meetings with various groups, and attend charitable events.

CONCLUSION

A Nevada judicial officer may not make contributions to the campaigns of other candidates for elective office from excess campaign funds. A Nevada judge may, however, use the uncommitted balance of his or her campaign finance account to pay *bona fide* expenses related to the judge's office, such as to attend conferences, correspond with voters, travel in connection with conferences or meetings that are not reimbursable, attend meetings with various groups, and attend charitable events.

REFERENCES

Rule 5 Governing the Standing Committee On Judicial Ethics & Election Practices; Nev. Code Jud. Conduct, Canon 4, Rule 4.1(A)(9) & Rule 4.2(A)(6); *Comment [5]* to Rule 4.2(A)(6); NEV. REV. STAT. § 294A.160; 2002 Nev. Att'y Gen. Op. No. 23 (May 21, 2002); *Advisory Op. No. JE06-020* (December 22, 2006); *Hearing on S.B. 166 Before the Senate Comm. On Gov't Affairs*, 66th Sess., Nev. Legis., at 7 & 10 (Jan. 30, 1991); *See Hearing on S.B. 166 Before the Senate Comm. On Gov't Affairs*, 66th Sess., Nev. Legis., at 31-32 (March 12, 1991); *Hearing on S.B. 166 Before the Senate*

Comm. On Gov't. Affairs, 66th Sess., Nev. Legis., at 30 (Feb. 7, 1991).

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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