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STATE OF NEVADA

STANDING COMMITTEE ON JUDICIAL ETHICS

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ADVISORY OPINION: JE12-001

PROPRIETY OF A CANDIDATE FOR JUDICIAL OFFICE ACCEPTING AN INVITATION TO SPEAK AT AN EVENT SPONSORED BY A POLITICAL ORGANIZATION WHEN THE INVITATION DOES NOT EXPRESSLY STATE THAT ONLY JUDICIAL CANDIDATES WHO ARE REGISTERED MEMBERS OF A GIVEN POLITICAL PARTY WILL BE ALLOWED TO SPEAK.

ISSUE

May a candidate for election to judicial office accept an invitation to speak at an event that is sponsored by a political organization when the invitation does not expressly state that only judicial candidates who are registered members of a given political party will be allowed to speak?

ANSWER

Yes, but the candidates may not identify themselves as a candidate of a political organization and may need to take certain actions to clarify that they are running for a non-partisan office.

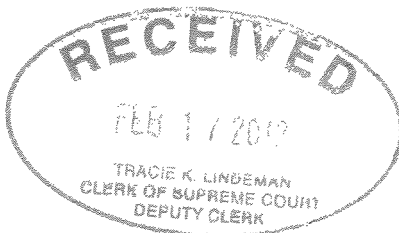
FACTS

A candidate for election to judicial office asks whether the candidate may accept an invitation to speak at an event that is sponsored by a political organization. Although the invitation does not expressly state that only candidates of a particular political party will be allowed to speak, it indicates that only candidates who are registered members of that party have been invited.

DISCUSSION

A. Introduction

This is not the first time this Committee has been asked to address the propriety of a judicial candidate appearing at an event that is sponsored by a political organization or party. In 2008, the Committee, following a 7-6 vote, issued an opinion advising that a judicial candidate could not accept an invitation to speak at an event where the invitation stated that only candidates who were registered members of a particular party would be allowed to speak. Standing Committee on Judicial Ethics and



Election Practices Opinion JE08-009,
August 22, 2008.

Although the present request raises a question similar to that addressed in the Committee's 2008 opinion, we are presented with different facts along with recent revisions to the Code of Judicial Conduct. These changes compel a different conclusion in this matter

B. Analysis

In 2009, the Nevada Supreme Court created a Commission on the Amendment to the Nevada Code of Judicial Conduct ("Revised Code"). That Commission's report resulted in the Court's adoption of the Revised Nevada Code of Judicial Conduct, effective January 19, 2010.

Canon 4 of the Revised Code provides 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." As was the case in 2008 when this Committee addressed a similar question under the prior version of the code, however, the Revised Code does not contain a specific rule that gives a clear answer to the question before the Committee. Accordingly, the Committee must look not only to the language of Canon 4, but to those rules that, although not directly applicable, relate to the question, and to the comments to those rules.

Rule 4.1(A) of the Revised Code governs political and campaign activities of judges and judicial candidates. The relevant portions of that rule provide:

Except as permitted by law, or by Rules 4.2, 4.3, and 4.4, a judge or judicial candidate shall not:

* * *

(2) make speeches on behalf of a political organization;

* * *

(6) publicly identify himself or herself as a candidate of a political organization; [or]

(7) seek, accept, or use endorsements or publicly stated support from a political organization;

The comments to that section, however, expressly provide that nothing in the rule prohibits a judge or candidate from speaking to a political organization. Moreover, Rule 4.1(C) provides:

Except as prohibited by law, a judge or judicial candidate subject to public election may at any time:

* * *

(1) attend political gatherings...sponsored by a political organization or a candidate for public office;

(2) upon request, identify himself or herself as a member of a political party;

* * *

(5) make a public speech or appearance or speak to gatherings on his or her own behalf;

Reading these provisions together, and taking into consideration the United States Supreme Court's decision in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), a substantial majority of the Committee is of the opinion that appearing to speak at an event where the invitation to speak does not expressly

require a judge or judicial candidate to be a member of a particular party, such an appearance does not, without more, constitute a public identification as a candidate of a political organization.

Notwithstanding the majority's opinion, the Committee is mindful of the need to balance the public interest in preserving judicial elections as non-partisan contests with the free speech rights of judicial candidates by allowing them appropriate opportunities to state their case for election.

With this in mind, the Committee cautions that this decision is based only on the facts before it. Should a statement be made during the event that the candidate is running for a judicial position as representative of a particular political party, the candidate should take action to clarify to the attendees of the event that he or she is running for a nonpartisan position. Likewise, if the organization sponsoring the event publishes or otherwise disseminates marketing or other materials stating that the candidate is running as a representative of a particular party, such materials may create a situation in which appearing at the event does equate to public identification as a candidate of, or alignment with, a political party. The candidate should consider cautioning the organization from making such representations. Should such a situation arise, however, the candidate should reevaluate the propriety of appearing at the event.

CONCLUSION

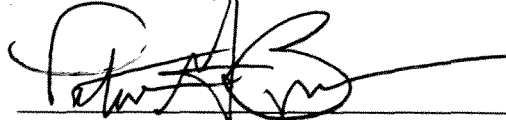
It is the opinion of the Committee that, under the facts presented, a candidate for election to judicial office may speak at an event sponsored by a political organization so long as the invitation does

not require, as a condition to participation, that the candidate affirm his or her affiliation to a specific party. If, however, circumstances arise which create the appearance that a candidate is running on behalf of a political party, the candidate must take action to clarify that the position for which he or she is running is non-partisan.

REFERENCES

Standing Committee on Judicial Ethics and Election Practices Advisory Opinion JE08-009 (August 22, 2008); Revised Nevada Code of Judicial Conduct, Canon 4, Rule 4.1(A); *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002)¹

This opinion is issued by the Standing Committee on Judicial Ethics. 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.



Patrick G. Byrne
Vice-Chairman

¹The Committee's search of relevant authorities did not reveal any other cases or prior opinions of this or any other standing committee on judicial ethics directly addressing the issues presented by this request.