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STATE OF NEVADA

STANDING COMMITTEE ON JUDICIAL ETHICS

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ADVISORY OPINION: JE12-008

PROPRIETY OF A JUDICIAL CANDIDATE ACCEPTING A CAMPAIGN CONTRIBUTION FROM A PARTISAN POLITICAL PARTY AND DISSEMINATING CAMPAIGN MATERIALS AT POLITICAL PARTY OFFICE

FACTS

A Justice of the Peace has presented three hypothetical questions inquiring whether it would be a violation of the Nevada Code of Judicial Conduct ("NCJC") for a judicial candidate to engage in certain campaign related activity involving a partisan political party. Specifically, the hypothetical inquires whether it would be permissible for a judicial candidate: 1) to accept a \$400 campaign contribution from a partisan political organization, where the partisan organization offers to make such contribution to both judicial candidates; 2) to place campaign materials in a partisan political party's office, where the political party has designated an area in the office for all judicial candidates to place campaign literature; and 3) to use a political party to advance the judicial campaign by disseminating lawn signs and campaign literature, where the "group has made available their monthly meetings to disseminate lawn signs for certain judicial candidates and handouts...."

ISSUE

May a judicial candidate: 1) accept a \$400 campaign contribution from a partisan political organization; 2) make campaign materials available to the public at a political party office; or 3) use a political party to disseminate campaign lawn signs and literature?

ANSWER

The Committee believes that, consistent with prior decisions of this Committee, a judicial candidate would not violate Canon 4 by accepting a \$400 campaign contribution from a partisan political party or by making campaign materials available to the public at a partisan political party's office. The Committee also concludes that Canon 4 would permit a judicial candidate to disseminate lawn signs and campaign literature at monthly meetings of a partisan political party; however, it would be impermissible for the judicial candidate to "use" the political party to disseminate campaign materials on behalf of the judicial candidate.

DISCUSSION

The Committee is authorized to render advisory opinions evaluating the scope of the NCJC. *Rule 5 Governing the Standing Committee On Judicial Ethics*. Accordingly, this opinion is limited by the authority granted in Rule 5.

"[T]he role of a judge is different than that of a legislator or executive branch official, . . . [and] campaigns for judicial office must be conducted differently from campaigns for other offices." *See Nev. Code*



Jud. Conduct Comment 11, Rule 4.1. Canon 4 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 4.1(A)(6) and (7) states in pertinent part:

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

(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.

Comment [1] to Rule 4.1 provides further insight on the scope of these restrictions, recognizing that public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence, and therefore Canon 4 “imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates.”

The Committee notes at the outset that it has previously issued several opinions addressing the propriety of accepting campaign contributions or disseminating judicial campaign materials at locations controlled by political organizations. See *Advisory Opinion JE 12-001* (candidate may speak at event sponsored by political organization); *Advisory Opinion JE10-001*; *Advisory Opinion JE08-009*; *Advisory Opinion JE06-006*; *Advisory Opinion JE98-05*. As a result of some of the conclusions reached by the Committee, specific sections of the Canon have been amended and new Commentary added based on the Supreme

Court’s conclusion that initial Committee opinions unduly restrained a judge’s political activities. See *Administrative Docket No. 413*; *Advisory Opinion JE 08-009*. The Committee finds these prior advisory opinions and the Supreme Court’s clarifications and amendments instructive to the issues presented in this hypothetical.

Regarding the first inquiry, the Committee previously concluded that it is permissible under Rule 4.1(A) for a judicial candidate to accept monetary campaign contributions from a political organization. *Advisory Opinion JE10-001*. In that opinion, the Committee concluded that the “Supreme Court of Nevada recognizes a distinction between [monetary] campaign contributions from a partisan political organization and endorsements [from a] partisan political organization,” the latter being unequivocally prohibited by Rule 4.1(A)(7) and 4.1(B)(5), while no comparable restriction exists on the former. The Committee finds that the conclusions in that advisory opinion remain valid and apply to the hypothetical presented here, and concludes that acceptance of the \$400 campaign contribution at issue would be permissible under the Canons. The Committee cautions judicial candidates to be cognizant that the amount of a campaign contribution from a partisan political organization may in a particular instance be in such substantial amount that it could erode public confidence in the political independence and impartiality of the judicial candidate.

Turning to the second inquiry, Comment [6A] to Rule 4.1 states that “judges and candidates may place their campaign materials on a table designated for the distribution of literature at any gathering regardless of whether the table is sponsored by a particular political party.” In

construing the scope of Rule 4.1 and the Comment, the Committee again finds prior advisory opinions instructive. In Advisory Opinion JE06-006, the Committee concluded that a judicial candidate could place his or her name and a link to the candidate's website on the website of a political party. In Advisory Opinion JE08-009, the Committee concluded that a judicial candidate could place campaign materials at a booth sponsored by a political party even when only judicial candidates who are members of that party were allowed to do so. Based on the clear language in Comment 6A and the manner in which the Canon and Commentary have evolved, the Committee concludes it would be permissible for a judicial candidate to place campaign materials at the office of a partisan political organization; however, the candidate should caution the political organization to simply make the material available and not make any public statement of support or endorsement of the candidate contrary to Rule 4.1(A)(7).

As to the third inquiry, the hypothetical was not clear whether the judicial candidate would be affirmatively using the political organization to advance the candidate's candidacy and to disseminate campaign materials, or whether the political organization would simply make its monthly meetings available so the judicial candidate could disseminate campaign materials to attendees of such meetings. The Committee has assumed that the hypothetical involves the latter.

Nothing in Rule 4.1(A) prohibits a judicial candidate from speaking to a political organization. Moreover, Rule 4.1(C) provides that except as prohibited by law, a judicial candidate may at any time "attend political gatherings . . . sponsored by a political organization or a candidate for

public office" or "make a public speech or appearance or speak to gatherings on his or her own behalf." The Committee has previously recognized that a judicial candidate could speak at an event sponsored by a political organization where the invitation did not state that only members of a political party would be allowed to speak and where the candidate did not identify himself or herself as a candidate of a political organization. See *Advisory Opinion 12-001*. 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), the Committee concludes that a candidate may disseminate campaign materials at an event sponsored by a political organization so long as the candidate does not identify himself or herself as a candidate of or as having received the endorsement of the political organization.

To the extent the hypothetical inquires whether a judicial candidate may affirmatively use the political organization to advance the candidate's candidacy and disseminate campaign materials, the Committee concludes such active, public campaign activities by a political organization at the request of, and on behalf of a judicial candidate, constitute a public statement of support by a political organization which would not be allowed by the judicial candidate under Rule 4.1(A)(7).

CONCLUSION

The Committee believes that a judicial candidate would not violate Canon 4 by accepting a \$400 campaign contribution from a partisan political party or by making campaign materials available to the public at a partisan political party's office. The Committee also concludes that Canon 4

would permit a judicial candidate to disseminate lawn signs and campaign literature at monthly meetings of a partisan political party; however, it would be impermissible under Rule 4.1(A) for the judicial candidate to "use" the political party to disseminate campaign materials on behalf of the judicial candidate

REFERENCES

Nev. Code Jud. Conduct, Canon 4; Rule 4.1; *Commentary [1] and [6A] to Rule 4.1; Rule 5 Governing the Standing Committee On Judicial Ethics Rule 5 Governing the Standing Committee On Judicial Ethics; Republican Party of Minnesota v. White*, 536 U.S. 765 (2002); *Advisory Opinion JE 12-001; Advisory Opinion JE10-001; Advisory Opinion JE08-009; Advisory Opinion JE06-006; Advisory Opinion JE98-05.*

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.



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