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STATE OF NEVADA
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PROPRIETY OF JUDGE SUBMITTING PRIVATE LETTER SUPPORTING A CANDIDATE FOR APPOINTMENT TO JUDICIAL OFFICE AND PROPRIETY OF JUDGE WRITING PRIVATE LETTER ENDORSING A CANDIDATE FOR ELECTION TO A PUBLIC OFFICE

Issue

May a judge submit a private letter to the appointing authority supporting a candidate for appointment to a judicial office? May a judge write a private letter of support endorsing a candidate for election to a public office? Answer: Yes, as qualified herein.

Facts

A judge inquires whether he/she may submit a private letter supporting a candidate for appointment to the bench; and also whether he/she may write a private letter of support endorsing a candidate for election to a public office.

Discussion

The Nevada Code of Judicial Conduct sets forth the applicable standards from which our judges are provided guidance for ethical conduct.

In regard to whether judges may or should provide recommendations or endorsements for candidates for appointment to judicial office, Canon 2B of the Nevada Code of Judicial Conduct generally provides guidance as follows:

"A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others

to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness."

The Commentary to Canon 2B contains the following additional statement:

"Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. See also Canon 5 regarding use of the judge's name in political activities."

Canon 5A(1)(b) of the Nevada Code of Judicial Conduct provides guidance in regard to a judge endorsing the candidacy of other persons seeking election to judicial or other public office:

"A. All Judges and Candidates

(1) Except as authorized in Sections 5B(2) and 5C(1), a judge or a candidate* for election or appointment to judicial office shall not:

(b) publicly endorse or publicly oppose another candidate for public office."

The Commentary to Canon 5 further states:

"Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office."

Conclusion

Based on the foregoing Canons and Commentaries, a judge may submit a letter of reference or recommendation for a candidate for appointment to judicial office if formally requested to do so by the appointing authority. A judge should not offer his or her recommendation, endorsement or views on a

candidate for appointment to judicial office if the judge has not been requested to provide such information by the appointing authority.

Pursuant to Canon 5A(1)(b), a judge may privately endorse or express his views on judicial candidates or other candidates for public office. In expressing his or her views about other candidates for judicial or other public office in letters or other recorded forms of communication, the judge should exercise reasonable caution and restraint to ensure that his private endorsement is not, in fact, used as a public endorsement. The judge should not provide a letter of endorsement for a candidate if the judge could reasonably expect that the endorsement will be publicly announced or publicly distributed in support of the endorsed candidate.

The judge should also exercise reasonable caution and restraint in regard to the persons to whom he or she sends such private letters and in regard to the number of letters of endorsement he or she writes in support of a candidate to ensure that the endorsement is, in fact, private and not a form of public campaigning. For example, sending a substantial number of allegedly "private" letters of endorsement to persons whom

the judge does not know would not be considered a "private" endorsement.

If a judge writes a private letter endorsing another candidate for office, it is advisable that the judge state in the letter that the recipient or the endorsed candidate should not publicize the letter in support of the endorsed candidate.

References

Nevada Code of Judicial Conduct: Canons 2B and 5A(1)(b) and related Commentaries.

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