STATE OF NEVADA
STANDING COMMITTEE ON JUDICIAL ETHICS AND ELECTION PRACTICES

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OPINION: JE02-001

PROPRIETY OF JUDICIAL RECUSAL WHERE ATTORNEY HAD CONTRIBUTED TO JUDGE'S ELECTION CAMPAIGN.

Issue

1. Is a judge required to recuse himself or herself from presiding in proceedings in which an attorney for a party(s) has participated in the judge's election campaign by engaging in any of the following activities or positions:

a. Has contributed money or service to, or has solicited or raised money on behalf of the judge's election campaign;

b. Has publically endorsed the judge for election including, but not necessarily limited to, authorizing the attorney's name to be listed on campaign literature as a member of the judge's election campaign or as a contributor or supporter of the judge for election, or

c. Has served as an officer of the judge's campaign committee including such offices as the campaign chairperson or treasurer?

2. Is a judge required to disclose to other attorneys or parties in a proceeding that an attorney for a party(s) has engaged in any of the foregoing activities or positions in regard to the judge's election campaign?

Answer:

1. A judge is not necessarily required to recuse himself or herself from hearing matters involving an attorney who has supported the judge's election campaign.

2. The judge is required to determine whether an attorney's participation in the judge's election campaign is so substantial or extraordinary that it requires the judge to disclose that attorney's participation to other counsel or parties and afford them the opportunity to request that the judge recuse himself or herself in the matter.

Facts

A candidate for a judicial office has requested an advisory opinion as to whether the candidate, if elected to judicial office, will be required to recuse himself or herself from presiding in proceedings in which an attorney for a party(s) has supported the judge's election campaign through contributions, or by serving on the judge's election committee, or by serving as an officer of the judge's campaign, such as campaign chairperson or treasurer.

Discussion

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

Canon 3E(1) of the Nevada Code of Judicial Conduct states:

> "A judge shall disqualify himself or herself in a

> proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where . . ."

Canon 3E(1), subparts (a) through (d) lists instances in which a judge is required to recuse himself or herself from presiding over a matter, but does not specifically list an attorney's support of the judge's election campaign as grounds upon which a judge should recuse himself or herself.

The Commentary to Canon 3E(1), however, addresses campaign contributions as follows:

> "The mere receipt of a campaign contribution from a witness, litigant or lawyer involved with a proceeding is not grounds for disqualification."

In *City of Las Vegas Downtown Redevelop. Agency v. District Court*, 116 Nev. Adv. Op. No. 74, 5 P.3d 1059 (2000), the Court issued a writ of mandamus directing a district court judge to preside over a case in which the judge recused himself because he had received campaign contributions from some of the parties involved on one side of the litigation. The judge stated that he recused himself in order to protect the appearance of judicial impartiality even though the judge stated that the contributions received in amounts ranging from $150 to $2,000, did not cause him to be biased and did not, in fact, render him unable to act impartially in the proceeding.

Because other judges had also received campaign contributions from the same parties, the judge's decision to recuse himself caused a "chain-reaction" of recusals by other judges to whom the case was reassigned. In directing that the first judge preside over the case, the Supreme Court stated:

> "In the context of campaign contributions, we have recognized that a contribution to a presiding judge by a party or an attorney does not ordinarily constitute grounds for disqualification. See *In re Petition to Recall Dunleavy*, 104 Nev. 784, 769 P.2d 1271 (1988). Indeed, we commented that such a rule would "severely and intolerably" obstruct the conduct of judicial business in a state like Nevada where judicial officers must run for election and consequently seek campaign contributions. Id., 104 Nev. at 790, 769 P.2d at 1275; see also *O'Brien v. State Bar of Nevada*, 114 Nev. 71, 76 n.4, 952 P.2d 952, 955 n.4 (1998) (judge serving on state bar board of governors was not disqualified from voting on appointment to commission on judicial selection despite having received over $100,000.00 in campaign contributions from a prospective appointee and her partner).
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> "In recognition of this recurring problem of campaign contributions, this court recently amended the commentary to NCJC 3(E)(1) to include the following guidance: 'The mere receipt of a campaign contribution from a

witness, litigant or lawyer involved with a proceeding is not grounds for disqualification.' NCJC Canon 3(E)(1) Commentary (2000).

"In the present matter, the campaign contributions to Judge Denton, which ranged from $150.00 to $2,000.00, are not extraordinary in amount and, without more, constitute only an 'insignificant interest' that does not raise a 'reasonable question as to a judge's impartiality.' While we commend Judge Denton's efforts to carefully balance his duty to preside with his duty to uphold the integrity of the judiciary, we conclude that the campaign contributions to Judge Denton do not serve as grounds for disqualification under Canon 3(E).

"We note that Judge Denton's minute order indicated that his recusal was made 'notwithstanding the lack of actual or implied bias, prejudice, partiality, or impropriety.' Therefore, we see no reason why Judge Denton cannot preside over the matter, and accordingly we grant the Agency's petition for a writ of mandamus."

The Nevada Supreme Court, has therefore, made clear that a judge is not required to, and should not, recuse himself or herself from presiding over a matter merely because an attorney has contributed to the judge's election campaign.

The same rule appears to apply in regard to attorneys who have publicly endorsed a judicial candidate's election. Attorneys are frequently asked to endorse judicial candidates and to allow their names to be listed on campaign literature as supporters of the candidate or as a member of his or her "campaign committee." Candidates for judicial office presumably seek such endorsements to demonstrate to the voters that they have the respect of the legal community and are considered worthy of judicial office by those most actively involved in the legal system. Likewise, attorneys have a legitimate interest in supporting qualified candidates for judicial office. It would be counterproductive to the election of qualified judges if attorneys could only endorse or publicly support a judicial candidate on condition that they not appear before that judge if he or she is elected to office.

As in the case of campaign contributions, generally, the fact that an attorney has endorsed the judge's candidacy or has agreed to be listed on a judicial candidate's campaign committee without more, constitutes only an "insignificant interest" that does not raise a "reasonable question as to a judge's impartiality." *City of Las Vegas Downtown Redevelop. Agency v. District Court, supra.*

The Supreme Court indicated that campaign contributions that are "extraordinary in amount" may raise a reasonable question as to a judge's impartiality such that a judge may be required to recuse himself or herself. Whether a contribution is extraordinary in amount such as to raise a reasonable question of impartiality is one that is left, in the first instance, to the judge's determination. In determining whether recusal is necessary, the judge should again be guided by his or her duty to preside unless there is some statute, rule of court, ethical standard, or other

compelling reason for recusal, including, of course, whether the contribution has, in fact, affected the judge's ability to preside impartially.

The same standard also appears to apply to recusal based on the fact that an attorney has served as the judge's campaign chairperson, treasurer or in another high office or position in the campaign. The holding of such an office or position may reasonably imply a close relationship between the judicial candidate and the attorney, perhaps even one involving a relationship of trust and confidence. It is, therefore, more likely that such a relationship will give rise to a reasonable question as to a judge's ability to preside impartiality in matters involving an attorney who has served the judge's campaign in such a capacity.

In regard to a judge's duty to disclose to parties or their counsel that one of the attorneys has supported the judge's election campaign, the judge should determine whether the attorney's support was substantial enough to raise a reasonable question of impartiality such that the parties should be informed about it and, at least, be afforded the opportunity to request recusal. Again, the mere fact that an attorney has made a contribution to the judge's candidacy does not, in and of itself, require the judge to disclose the contribution to the parties when the attorney appears in a proceeding before the judge. Likewise, the fact that an attorney endorsed the judge's candidacy or was listed on his or her campaign committee does not require such disclosure when the attorney appears before the judge.

If the attorney's involvement has been more substantial or extraordinary, in terms of the amount of his or her contribution or because the attorney has served in a high campaign office or position, then disclosure of that contribution or involvement should be made. If a party then requests recusal, the judge should apply the foregoing standard in determining whether recusal is required.

Conclusion

A judge is not required to and, indeed, should not recuse himself or herself from presiding in a matter because an attorney involved in the proceeding has contributed to the judge's campaign, or has endorsed the judge's candidacy or has been listed on campaign literature as a member of the judicial candidate's election committee.

Absent an extraordinary contribution in terms of amount, or a more substantial involvement in the candidate's campaign, such as by holding a high campaign office or position, a judge is not required to disclose an attorney's contribution or support to parties when the attorney appears in a proceeding before the judge.

Where the attorney has made a contribution that is extraordinary in amount, as compared to other contributions, or has held a high campaign office or position, disclosure should be made and the judge should determine under the circumstances whether recusal is required because of a reasonable question of impartiality and/or because the judge concludes he or she could not act impartially in matters involving that attorney.

References

Nevada Code of Judicial Conduct; Canons 3E; *City of Las Vegas Downtown Redevelop. Agency v. District Court,* 116 Nev. Adv. Op. No. 74, 5 P.3d 1059 (2000).

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