



In particular, the Committee declines the request to review and opine on the specific policies delineated in the Candidate Plan and concludes that such an undertaking here or on behalf of any candidate for judicial office is both beyond the Committee's opinion jurisdiction under Rule 5 and may place at risk the ability of the Committee in some future case to perform the adjudicative functions assigned by Rule 4. Similarly, the Committee's jurisdiction does not extend to providing advisory opinions on ethical, conflicts of interest or campaign finance laws or policies that govern officers or employees of public agencies or institutions, such as the Nevada Ethics in Government Law, codified in NRS Chapter 281A, or the Nevada Campaign Practices Act, set forth in NRS Chapter 294A, by way of illustration.

The Committee has previously opined:

Canon 5 of the Code of Judicial Conduct does apply to a candidate for election to judicial office even though the candidate is not serving in a judicial capacity on a full-time basis and does not perform any judicial function on a part-time basis.

Indeed, the Commentary to Canon 5A(1)(a) specifically notes that a candidate for elective judicial office may retain during candidacy "a public office, such as county prosecutor." Canon 5B(2)(b)(i) expressly allows a candidate for appointment to judicial office to

retain an office in a political organization during that candidacy.

*Nevada Advisory Opinion JE08-003*  
(March 7, 2008).

Thus, in Opinion JE08-003, we concluded "nothing in Canon 5 . . . would prohibit a candidate for election to judicial office from continuing to serve as an officer of a Bar Association. The Nevada Bar Association is a public corporation established by state statute. Nev. Sup. Ct. R. 76(1). Our previous opinion, therefore, allowed a person in a bar association office to retain that position in a public corporation while a candidate in judicial office.

As noted, the Commentary to Canon 5A also makes certain that an individual with prosecutorial authority, such as a city attorney, district attorney or the attorney general and their respective assistants and deputies, may retain their public offices while pursuing election to the judiciary in this State. There should be no different standard where the person has prosecutorial authority and discretion that is administrative in character. For example, that a deputy attorney general can exercise prosecutorial discretion to bring an administrative case to sanction a business that holds a license or privilege issued by the State of Nevada should be treated no differently than the authority of a deputy district attorney to bring a felony criminal complaint.

Canon 5A(3)(a) requires candidates for judicial office to "maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary . . ." The

Committee's prior opinions have explained that guidance concerning compliance with Canon 5 is provided by the provisions of and the commentary on Canon 1, Canon 2 and Canon 4, all of which apply to persons acting in a judicial capacity and which cover issues similar to those referenced in Canon 5A(3)(a). See, e.g., Nevada Advisory Opinion JE06-008 (July 21, 2006). Given this observation, the Committee concludes that a person in the circumstances here presented must exercise diligence to adhere to the requirements of Canon 5 – as amplified by Canon 1, Canon 2 and Canon 4 – to avoid ethical conflicts between his or her concurrent candidacy for judicial office and employment in a public office or position with prosecutorial authority. Although *not exhaustive*, the Committee notes the following particularly obviously considerations.

Canon 2A states that a judge “shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” NCJC Canon 2A. The commentary to this canon elaborates as follows:

The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

Commentary to Canon 2A. Given the objectives of Canon 2A, a person in the situation here under review should employ discretion in personally exercising or directing the prosecutorial discretion and

responsibilities of his or her position in instances where the public could reasonably perceive such discretion and responsibilities were not discharged with unimpaired “integrity, impartiality and competence.”

Canon 5C provides in pertinent part:

A candidate\* may personally solicit or accept campaign contributions in accordance with the law\* or personally solicit publicly stated support. However, *where practicable, a candidate is encouraged to use committees of responsible persons to solicit and accept such lawful contributions and conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law.*

*See* NCJC Canon 5C(2)(emphasis added). The Commentary to Canon 5C(2) states that:

A candidate and members of the candidate's campaign committees must exercise a high degree of ethical behavior in the solicitation and acceptance of campaign contributions, and must especially take great care in avoiding coercion or the appearance of coercion in the solicitation and acceptance of such contributions.

Commentary to Canon 5C(2). The solicitation and acceptance of campaign contributions by an individual that exercises *administrative* prosecutorial

authority can be no less coercive or appear so than those sought and secured by an individual with the ability to bring criminal charges. For this reason, the Committee observes that the administrative prosecutor must directly and indirectly through third parties exercise sensitivity that campaign finance activities are conducted to avoid both actual and any appearance of impropriety.

### CONCLUSION

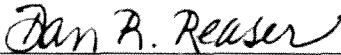
A person may continue in his or her office or employment in a position of administrative prosecutorial authority by an agency, corporation or other public institution that is established by Nevada statute or court rule while a candidate for judicial office. The individual in the circumstances here presented must exercise diligence to adhere to the requirements of Canon 5 – with guidance from Canon 1, Canon 2 and Canon 4 – to avoid ethical conflicts between his or her concurrent candidacy for judicial office and employment in a public office or position with prosecutorial authority.

### REFERENCES

Rule 4 and Rule 5 Governing Standing Committee On Judicial Ethics & Election Practices; NCJC Canon 2A; NCJC Canon 5C(2); Nev. Sup. Ct. R. 76(1); Commentary to Canon 2A; Commentary to Canon 5C(2); *Nevada Advisory Opinion JE08-003* (March 7, 2008); *Nevada Advisory Opinion JE06-008* (July 21, 2006).

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*This opinion is issued by the Standing Committee on Judicial Ethics and Election Practices. It is advisory only. It is not binding on 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 requesting the opinion.*



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