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STATE OF NEVADA

STANDING COMMITTEE ON JUDICIAL ETHICS

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ADVISORY OPINION: JE11-011

PROPRIETY OF A JUDGE USING
UNCOMMITTED CAMPAIGN FUNDS
TO PURCHASE HOME SECURITY
SYSTEM

DISCUSSION

A judge's use of excess campaign funds is governed by NRS 294A.160 and Canon 4 of the Nevada Code of Judicial Conduct (the "NCJC"). The Committee has no jurisdiction to construe NRS 294A.160, and is authorized only to render an opinion evaluating the scope of the NCJC. *Rule 5 Governing the Standing Committee On Judicial Ethics & Election Practices.*

ISSUE

May a judge use excess campaign funds after successful election to office to purchase a home security system?

ANSWER

No. The Nevada Code of Judicial Conduct prohibits the expenditure of excess campaign funds in any manner other than those expressly set forth in Rule 4.2. The Committee does not believe the purchase or maintenance of a home security system is a *bona fide* expense related to the judge's office within the permitted uses identified in the Rule 4.2 (A)(6).

FACTS

A Nevada District Judge has inquired whether the Code permits a judge to use campaign funds for the purchase of a home security system. Under the hypothetical presented, the judge inquired whether such use of campaign funds would be appropriate where, as a result of a decision in a case or performance of judicial duties, the judge had a heightened subjective fear for the safety of the judge and his or her family. Under the hypothetical presented, there was no specific threat asserted against the judge.

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 4.2 governs expenditure of campaign funds, and states in pertinent part:

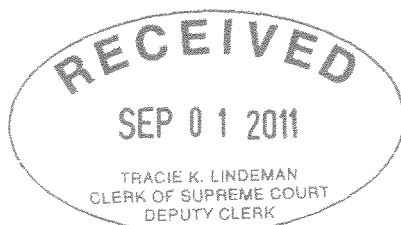
(A) A judicial candidate in a public election shall:

....

(6) if elected to judicial office, a candidate who received contributions that were not spent or committed for expenditure as a result of the campaign may dispose of the money in any combination as provided in subsections (a)-(d). ***Any other disposition of the money is prohibited.***

(a) return the unspent money to contributors;

(b) donate the money to the general fund of the state, county or city relating to the judge's office;



(c) use the money in the judge's next election or for the payment of other expenses related to the judge's public office or the judge's previous campaigns for judicial office;

(d) donate the money to any tax-exempt nonprofit entity, including a nonprofit state or local bar association, the Administrative Office of the Courts or any foundation entrusted with the distribution of Interest on Lawyer's Trust Accounts (IOLTA) funds.

Nev. Code Jud. Conduct, Canon 4, Rule 4.2(A)(6)(emphasis added).

Paragraph (c) of Rule 4.2(A)(6) thus allows uncommitted campaign funds to be used "for the payment of other expenses related to the judge's public office." The issue presented in this matter is whether the purchase or maintenance of a home security system is an expense "related to the judge's public office" as contemplated by the NCJC, or would otherwise be construed an impermissible personal expense.

The Committee has previously issued opinions regarding the scope of permitted campaign fund expenditures. See *Advisory Opinion JE 10-011*; *Advisory Opinion JE 11-04*. While construing NRS 294A.160 is beyond the scope of the Committee's jurisdiction, we have previously observed that "the provisions of Paragraphs (a), (c) and (d) of Rule 4.2(A)(6) are identical or substantially similar to Paragraphs (a), (b) and (d) of NRS 294A.160(2). Thus, as the Supreme Court of Nevada has indicated in Commentary 5, a judge must comply with both Rule 4.2(A)(6) and NRS 294A.160(2) by adhering to the more restrictive provisions of Rule 4.2(A)(6)." See *Advisory Opinion JE 10-011*; *Advisory Opinion JE11-*

04; see also *Comment [5] to Nev. Code Jud. Conduct, Canon 4, Rule 4.2(A)(6)*.

Rule 4.2(A)(6) must be read in conjunction with the fundamental restriction of Canon 4 (expenditures must not be inconsistent with the independence, integrity, or impartiality of the judiciary) as well as Rule 4.1(A)(9), which instructs that a judge or a judicial candidate "shall not . . . use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others." Nev. Code Jud. Conduct, Canon 4, Rule 4.1(A)(9).

As explained in Advisory Opinion JE 10-011, Rule 4.1(A)(9) is a restatement of the prohibition against using campaign contributions for personal use, while permitting "the use of funds for 'real' costs associated with the holding of a public office for which the use of political contributions is 'fitting and proper.'" See *Advisory Opinion JE10-011* (citing *Hearing on S.B. 166 Before the Senate Comm. On Gov't Affairs*, 66th Sess., Nev. Legis., at 31-32 (March 12, 1991) (statement of Senator Cook)). While "personal use" or use "for private benefit" of campaign funds is not defined, the Committee has previously applied the "irrespective test" as described in a 2002 Nevada Attorney General opinion to determine when campaign expenditures constitute impermissible personal expenditures. See *Advisory Opinion JE10-11*; *2002 Nev. Atty.Gen.Op. No. 23* (May 21, 2002).

Under the "irrespective test", an expenditure of campaign funds is impermissible "if the particular use would fulfill a commitment, obligation, or expense that would exist irrespective of the

candidate's campaign or duties as an officeholder." *Id.*¹

While the Committee acknowledges that a judge may have a subjective belief that performance of judicial duties creates heightened safety concerns, the inquiry under Rules 4.1(A)(9) and 4.2(A)(6) should be objective, and focus on whether the type of expenditure is a *bona fide* expenditure related to public office that would not exist but for the judge's duties as an officeholder. This inquiry must always be made in the context of the overarching purpose of Canon 4, and prescriptions in Rule 4.1(A)(9) against using campaign funds for a private benefit.

The Committee concludes that expenditures for a home safety system are expenses which exist irrespective of the judge's duties as an officeholder. All members of the bar as well as the general public can have similar safety concerns which warrant purchase of these systems. The Committee recognizes that the scope of Rule 4.2 (A)(6) is narrow, and when considered in the context of limitations in Rule 4.1(A)(9), a judge's obligation to exercise a "high degree of ethical behavior",

¹ The Committee has previously recognized that permissible spending of campaign funds "related to the judge's office" include costs incurred to attend conferences, correspond with voters, travel in connection with conferences or meetings that are not reimbursable, attend meetings with various groups, and attend charitable events and town meetings. *Advisory Opinion JE10-011*; *Advisory Opinion JE11-004*; see also *Hearing on S.B. 166 Before the Senate Comm. On Gov't. Affairs*, 66th Sess., Nev. Legis., at 30 (Feb. 7, 1991) (statement of Senator Cook).

and the Supreme Court's intention that such rules be construed more strictly than NRS 294A.160, the Committee believes this type of expenditure is not permissible under the current Canons. See also, *Comment 3 to Rule 4.4*.

CONCLUSION


A Nevada judge may not use the campaign funds to pay for the installation or maintenance of a home security system, as such expenditures would constitute impermissible personal use of campaign funds.

REFERENCES

Rule 5 Governing the Standing Committee On Judicial Ethics & Election Practices; Nev. Code Jud. Conduct, Canon 4, Rule 4.1(A)(9) & Rule 4.2(A)(6); *Commentary [5]* to Rule 4.2(A)(6); *Commentary [3]* to Rule 4.4; NEV. REV. STAT. § 294A.160; *Hearing on S.B. 166 Before the Senate Comm. On Gov't Affairs*, 66th Sess., Nev. Legis., at 7 & 10 (Jan. 30, 1991); *Hearing on S.B. 166 Before the Senate Comm. On Gov't Affairs*, 66th Sess., Nev. Legis., at 31-32 (March 12, 1991) ;*Hearing on S.B. 166 Before the Senate Comm. On Gov't. Affairs*, 66th Sess., Nev. Legis., at 30 (Feb. 7, 1991); *Advisory Opinion JE10-011*; *Advisory Opinion JE11-004*.

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*judiciary, or any person or entity which
requested the opinion.*



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