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TRACIE K. LINDEMAN
CLERK OF SUPREME COURTBY ~~CHIEF~~ DEPUTY CLERK

STATE OF NEVADA

STANDING COMMITTEE ON JUDICIAL ETHICS

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PROPRIETY OF A JUDGE ACTING AS
INFORMAL LEGAL ADVISOR TO A
POLITICAL ORGANIZATIONISSUE

May a judge act as an informal legal advisor to a political organization, and does the answer differ if the judge is a Justice of the Peace or a Municipal Court judge?

May an office holder or member of a political organization use the resources of the political organization to support a judicial candidate?

ANSWER

The Committee believes that Rule 3.10 prohibits a judge from acting as a legal advisor to a political organization. The Committee recognizes that Rule 3.10 does not apply to continuing part time judges, however, recognizes that depending on the specific factual circumstances such representation may otherwise be prohibited by the Nevada Code of Judicial Conduct, and cautions continuing part time judges to be cognizant of the limitations in Rules 1.2, 1.3, 3.1 and 4.1(A) before practicing law as a legal advisor to a political organization.

FACTS

A Justice of the Peace has inquired whether it would be a violation of the Nevada Code of Judicial Conduct ("NCJC")

for a judge to act as an "informal legal advisor" to a political organization. Under the hypothetical presented, the judge inquires whether the answer would differ if the judge were a district court judge, justice of the peace, or a municipal court judge.

The Justice also asks whether an office holder or any member of a political organization can use the resources of a political organization to support the campaign of a 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.

Canon 3 of the NCJC states "[a] judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office." Rule 3.10 provides that "[u]nless otherwise permitted by law, a judge shall not practice law." *See Nev. Code Jud. Conduct Rule 3.10*. This prohibition does not apply to a jurist who serves as a pro tempore part-time judge. *See NCJC, Application III (B)(3)(d)*.

With respect to all judges other than continuing part-time judges and pro tempore



part-time judges¹, the Committee believes that Rule 3.10 prohibits the judge from acting as legal counsel to a political organization. The Committee finds no material distinction under Rule 3.10 between acting as a “formal legal advisor” or an “informal legal advisor”, and construes Rule 3.10 as prohibiting the practice of law presented in this hypothetical.

While Rule 3.10 does not apply to continuing part-time or pro tempore part-time judges, the rights of such judges to practice law are subject to other restrictions. See *Advisory Opinion JE 11-013*. Continuing part-time judges are prohibited from practicing law “in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding relating thereto.” See *NCJC, Application III (C)*. Pro tempore part-time judges are prohibited from acting “as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto”, except as permitted by Rule 1.2(a). See *NCJC, Application IV (C)*.

Additionally, all judges are subject to limitations set forth in Canon 1, Rules 1.2 (a judge shall at all times act in a manner that

¹ A continuing part-time judge is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment, including a retired judge subject to recall for service. See *NCJC, Application III (A)*. A pro tempore part-time judge is a judge who serves or expects to serve sporadically on a part-time basis under a separate appointment for each period of service or for each case heard. See *NCJC, Application IV (A)*.

promotes public confidence in the independence, integrity and impartiality of the judiciary), Rule 1.3 (a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of others), Rule 3.1 (a judge shall not participate in extra judicial activities which undermine the judge’s independence, integrity, or impartiality), Rule 4.1(A) (1) (a judge shall not act as a leader or hold office in a political organization), Rule 4.1(A)(6) (a judge shall not publicly identify himself or herself as a candidate of a political organization), and Rule 4.1(A)(7) (a judge shall not seek, accept or use endorsements or publicly stated support of a political organization).

While the Committee recognizes that the judicial canons do not expressly prohibit a continuing part-time judge or pro tempore judge from acting as a lawyer for a political organization *per se*, the Committee cautions such judges to be cognizant of the limitations set forth in Rules 1.2, 1.3, 3.1 and 4.1(A) and scrutinize the facts and circumstances of such representation closely to ensure such practice of law does not otherwise violate the judicial canons.

As to the second inquiry, the Committee understands the hypothetical is inquiring whether a non-judicial office holder or member of a political organization may use the resources of the political organization to support a judicial candidate. See generally, Rule 4.1(A)(1)(prohibiting a judge from being an office holder of a political organization). The Nevada Code of Judicial Conduct only applies to judges and judicial candidates, and therefore the Committee has no jurisdiction to render any advisory opinion with respect to conduct of non-judges. However, the Committee cautions judges to be cognizant of the limitations in Rule 4.1(A)(6) and (7) which prohibit a judge or judicial candidate from publicly identifying themselves as a

candidate of a political organization or accepting publicly stated support from a political organization.


CONCLUSION

The Committee believes Rule 3.10 prohibits judges (other than continuing part-time or pro tempore part-time judges) from practicing law as a legal advisor of a political organization. While Rule 3.10 does not apply to such activities by continuing part-time or pro tempore part-time judges, the Committee cautions such judges that depending on the scope and nature of the representation, such practice of law may be otherwise prohibited by Rules 1.2, 1.3, 3.1, and 4.1(A) and the judge should exercise care to limit the scope of representation to comply with the requirements of other applicable provisions of the Nevada Code of Judicial Conduct. As to the second inquiry, the Committee has no jurisdiction to issue advisory opinions with respect to the conduct of persons other than judges or judicial candidates.

REFERENCES

Nev. Code Jud. Conduct, Canon 3; Rule 1.2; Rule 1.3; Rule 3.1; Rule 3.10; Rule 4.1(A); *Rule 5 Governing the Standing Committee On Judicial Ethics; Application Section III and IV. See Advisory Opinion JE 11-013.*

person or tribunal charged with regulatory responsibilities, any member of the Nevada judiciary, or any person or entity which requested the opinion.


Michael A.T. Pagni
Chairman

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