

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE STANDING
COMMITTEE ON JUDICIAL ETHICS
AND ELECTION PRACTICES.

ADKT 0458

FILED

JUN 29 2011

TRACIE A. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER AMENDING PART VIII OF THE SUPREME COURT RULES

WHEREAS, the Honorable Mark Gibbons and the Honorable Nancy M. Saitta, justices of the Supreme Court of Nevada, filed a petition on November 19, 2010, requesting that this court review the role of the Standing Committee on Judicial Ethics and Election Practices; and

WHEREAS, this court solicited public comment and conducted a public hearing on this matter on March 10, 2011, and thereafter considered the comments and submissions received; and

WHEREAS, this court concludes that amendments to Section VIII of the Supreme Court Rules are warranted; accordingly,

IT IS HEREBY ORDERED that Part VIII of the Supreme Court Rules shall be amended and shall read as set forth in Exhibit A; and

IT IS FURTHER ORDERED that these amendments shall be effective 30 days from the date of this order. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the

accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing rule amendments.

Dated this 29th day of June, 2011.

Douglas, C.J.
Douglas

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: All District Court Judges
All Justices of the Peace
All Municipal Court Judges
Constance Akridge, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
David F. Sarnowski, General Counsel and Executive Director,
Nevada Commission on Judicial Discipline
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Administrative Office of the Courts

**PART VIII. RULES GOVERNING THE STANDING
COMMITTEE ON JUDICIAL ETHICS [AND ELECTION
PRACTICES]**

Rule 1. Creation and organization of the committee.

1. Creation and purpose. The Standing Committee on Judicial Ethics and Election Practices is hereby created to ~~[resolve ethical disputes arising in the course of campaigns for judicial office, and to]~~ provide judges and aspirants to judicial office advisory opinions regarding ethical matters that may arise in the ordinary course of judicial service, or in the elective or appointment process.

2. Organization of the committee. The committee shall consist of thirty members. Twelve shall be attorneys, twelve shall be non-attorneys, and six shall be judges designated to serve on the ethics advisory committee as provided in Rule 5. ~~[In addition, every district and senior judge is an ex officio member of the unfair election practices panels, and may be asked by the chair to serve as a non-voting member of a panel as provided in Rule 4.]~~

The Board of Governors of the State Bar shall appoint the attorney members, and the Governor may appoint the non-attorney members. If the Governor declines to appoint, then the Board of Governors of the State Bar and the Nevada Commission on Judicial Discipline shall each appoint six of the non-attorney members. The supreme court shall appoint three district judges and three judges serving either as municipal court judges or justices of the peace.

When appointing the non-attorney members, consideration shall be given to each appointee's experience in the areas of advertising and public relations, journalism, regulatory bodies, politics and political campaigns, and also to the appointee's other qualifications and

experience as will ensure that diverse points of view are represented on the committee.

(a) Terms. Appointments or reappointments are for a two-year term of office. The initial membership shall have staggered terms. No member shall be appointed to more than four[,] consecutive full terms.

(b) Removal. Committee members are not subject to removal by their appointing authority during their terms of office, except for cause. Cause includes unexcused failures to attend scheduled meetings, the number of which the committee shall set in an attendance policy.

3. Officers of the committee. There shall be a chair and vice-chair. The Nevada Commission on Judicial Discipline shall appoint the chair and vice-chair from the attorney members of the committee for two-year terms.

4. Executive director of the committee. The executive director of the Nevada Commission on Judicial Discipline shall act as the executive director of the committee.

Rule 2. Functions of the committee. The committee shall:

~~1. Provide judicial candidates with a forum to resolve charges of knowing misrepresentation of the identity, qualifications, present position or other fact concerning the candidate or an opponent;~~

~~2. Decide whether a candidate has engaged in unfair election practices;]~~

~~[3.]~~1. Render non-binding advisory opinions on hypothetical questions regarding the Nevada Code of Judicial Conduct; and

~~[4.]~~2. Assist the supreme court by studying and recommending additions to, amendments to, or repeal of provisions of the Nevada Code of Judicial Conduct or other laws governing the conduct of judges and judicial candidates.

Rule 3. Conflicts of interest. Committee members shall not participate in any matter in which they have either a material pecuniary interest that would be affected by a proposed advisory opinion or committee recommendation, or any other conflict of interest which prevents them from participating. However, no action of the committee will be invalid where full disclosure of a potential conflict of interest has been made and the committee has decided that the member's participation was not improper.

Rule 4. Reserved. ~~[Unfair election practices. The committee shall have the authority to determine whether a candidate for judicial office has engaged in an unfair election practice. An "unfair election practice" is any practice or act which would violate Canon 5 of the Nevada Code of Judicial Conduct, except that the committee has no authority to determine whether a candidate has made pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office as prohibited by 5A(3)(a) and 5A(3)(d)(i).~~

~~1. Panels. Matters concerning unfair election practices shall be decided by panels of five members, such panels consisting of two attorneys, two non-attorneys, and one judge. A district judge, a justice of the peace or municipal judge, or a senior judge, justice of the peace or municipal judge, may serve as a member of the panel. The panels shall be chosen on a random basis by the chair. Four voting members shall constitute a quorum, and the vote of three members of any panel is necessary to take action.~~

~~(a) If requested to serve on a panel, a judge shall accept the appointment unless the judge is disqualified from serving under the provisions of Canon 3E of the Nevada Code of Judicial Conduct.~~

~~(b) The chair shall not request a judge to serve on a panel and a judge shall not serve on a panel if:~~

~~(1) The alleged unfair election practice involves a candidate for any judicial office within the judicial district in which the judge holds office or previously held office; or~~

~~(2) The judge is a candidate for judicial office and he or she has an opponent who has officially filed a declaration of candidacy for the same judicial office.~~

~~2. Powers of the panel. A committee panel may consider:~~

~~(a) Only matters referred to the committee by a candidate for judicial office; and~~

~~(b) Only incidents arising from actions of a candidate for judicial office or those working for a candidate's~~

~~election; provided, however, that the committee panel shall have the authority to determine whether a person is, in fact, working for the election of a candidate.~~

~~3. Procedure for reviewing complaints.~~

~~(a) A complaint by a judicial candidate against another judicial candidate shall be submitted to the executive director of the committee in writing and must set forth the facts underlying the complaint.~~

~~(b) Upon receipt of the complaint, the committee chair or executive director shall immediately contact the candidate whose conduct is in question, advise him or her of the complaint, and ascertain whether the allegations are admitted or denied.~~

~~(1) If the accused candidate admits the truth of the allegations, then the matter shall be referred to a panel of the committee for appropriate action. The accused candidate shall be invited to attend the meeting of the panel to explain his or her actions.~~

~~(2) If the accused candidate denies the actions, the complaining candidate shall be advised to be present at the meeting of the panel and to bring forth proof of the matters alleged in the complaint. The accused candidate shall also be invited to attend and present a defense to the complaint.~~

~~(3) During this entire procedure, neither the candidate nor any member of the committee or panel shall make any public reference to the fact that the matter is pending before the committee. Nothing in these rules, however,~~

~~prohibits a candidate from making public charges of unfair election practices.~~

~~4. Resolution of complaint. Once the committee or panel reaches a decision, the candidates will be advised of the decision and the intended remedy. All decisions shall be in writing, and shall be open for public inspection at the committee's office.~~

~~(a) If the committee or panel finds unfair election practices, the committee or panel has authority to:~~

~~(1) Impose sanctions, including public censure, but excluding fines or civil penalties. If a public statement is made by the committee or panel, that statement may be used by the aggrieved candidate in the campaign.~~

~~(2) Refer any matter to the appropriate body for professional discipline, and the committee's or panel's findings may be used as evidence in any disciplinary proceeding.~~

~~(3) Respond publicly to any unauthorized public reference to the committee by a candidate.~~

~~(b) A public statement by the committee or panel of its findings may not always be appropriate. For example, an untrue statement may be corrected by a public retraction of the statement by the offending candidate; in the event that the group addressed by the offending candidate was relatively small, then a retraction directed to that particular group may be deemed sufficient.~~

~~5. Confidentiality. All meetings of panels concerning unfair election practices are confidential. Any decision shall be signed by the chair or vice chair, and all decisions must be made public.]~~

Rule 5. Ethics advisory committee. The attorney members of the Standing Committee on Judicial Ethics and Election Practices and six judges appointed by the supreme court shall function as an ethics advisory committee. The committee has the authority to render non-binding advisory opinions on hypothetical questions regarding the Nevada Code of Judicial Conduct. The advisory opinions may also be issued by a panel of the ethics advisory committee.

1. Opinions. Any opinion issued by the committee expresses the judgment of the committee and is advisory only. When it is determined that a request warrants a written opinion, the opinion shall:

(a) Set forth hypothetical facts of the ethical question presented in a general manner without identification of the requesting judge or judicial candidate or any details of the request which would permit such identification;

(b) Identify the judicial canons ~~[or other authorities]~~ relied upon and include other authorities relevant to the disposition of the opinion;

(c) Include a discussion and conclusion;

(d) Be signed by the chair or vice-chair of the committee;

and

(e) Conclude with the following statement:

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

2. Panels. The ethics advisory committee may be divided into panels of eight members each. The chair or vice-chair, one district judge, and one municipal judge or justice of the peace shall be members of each panel.

3. Filing and delivery. The formal advisory opinion shall be furnished by personal delivery or ~~[first class]~~ first-class mail to the address provided by the requesting party. The committee shall also file a copy of the opinion with the clerk of the supreme court. All formal advisory opinions shall be numbered and maintained on file at the committee's office, together with all materials considered by the committee in adopting the opinion, and shall be available to any member of the bench or bar upon request. A reasonable charge to defray the costs of reproduction of such opinions and postage may be collected.

4. Limitations. The committee shall not act on requests for opinions when any of the following circumstances exist:

(a) There is a pending state bar or judicial discipline commission complaint, investigation, proceeding, or litigation concerning the subject of the request.

(b) The request constitutes a complaint against a member of the judiciary.

(c) The request involves procedures employed by the judicial discipline commission in processing complaints against judges.

(d) The request involves activities, the propriety of which depends principally on a question of law unrelated to judicial ethics.

(e) Where it is known that the request involves a situation in litigation or concerns threatened litigation or involves the propriety of sanctions within the purview of the courts, such as contempt.

(f) The committee has by majority vote determined that it would be inadvisable to respond to the request and has specified in writing its reasoning to the person who requested the opinion.

5. Confidentiality. Except for the opinions issued by the committee, all meetings, deliberations, materials considered, and work product of the committee shall be confidential.

Rule 6. Recommendations for revision or amendment of canons of judicial conduct and other laws governing judges or judicial candidates. The committee shall study and submit recommendations to the supreme court regarding proposed changes to the Nevada Code ~~for~~ of Judicial Conduct or other laws governing the conduct of judges and judicial candidates.

Rule 7. Immunity. The members of the committee and all staff persons assisting them shall have absolute immunity from civil liability for all acts undertaken in the course of their official duties pursuant to these rules.