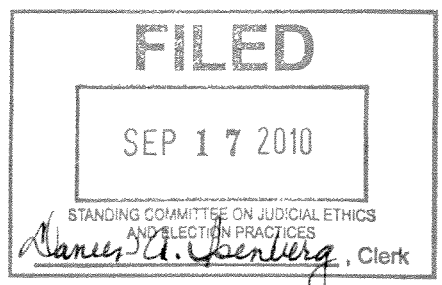


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STATE OF NEVADA
STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

IN RE UNFAIR ELECTION PRACTICE)
COMPLAINT PURSUANT TO NCJC)
CANON 4 AND NCJC RULE 4.1)
SCOTT E. PEARSON)
Complainant)
vs.)
LEWIS S. TAITEL)
Respondent.)



PUBLISHED DECISION: 10-4

DECISION

This matter came before a Panel of the Standing Committee on Judicial Ethics and Election Practices (“Committee”) for hearing on September 8, 2010. The Panel, selected in accordance with Rule 4.1 of the Rules of the Standing Committee on Judicial Ethics and Election Practices, was comprised of the Honorable David A. Hardy, Cheryl Blomstrom, Yvonne Murphy, Michael Pagni, Esq., and Michael Pintar, Esq. A quorum of the Panel was present and participated in the hearing.

The Complainant Scott E. Pearson (“Pearson”) was present and appeared *in propria persona*. The Respondent Lewis Taitel (“Taitel”) was present and likewise appeared *in propria persona*. Taitel was accompanied at the hearing by his wife, who did not participate in the hearing. No other witnesses appeared for either party.

The Panel reviewed the pleadings and papers submitted by the parties and accepted testimony, additional evidence and argument from both Pearson and Taitel at the hearing. The administrative record in this matter is comprised of the Complaint and exhibits filed by Pearson on August 28, 2010, the response and exhibits filed by Taitel on September 7, 2010, the correspondence on file with the Standing Committee designating the Panel and setting the hearing, and testimony and exhibits submitted at the hearing. Neither Pearson nor Taitel

1 presented any objection to the composition of the Panel.¹

2 SUMMARY OF CLAIMS AND EVIDENCE

3 1. Pearson and Taitel are each duly declared candidates for Department 4, Reno
4 Justice Court. Neither is the incumbent of this judicial office.

5 2. Pearson generally alleges that prior to and after the primary election, Taitel has
6 violated Rule 4.1(A)(11) of the Revised Nevada Code of Judicial Conduct (the “NCJC”) by “(1)
7 grossly exaggerating his judicial experience; (2) knowingly making false claims regarding
8 Candidate Pearson’s lack of experience; (3) inappropriately implying he is the incumbent; and
9 (4) engaging in improper election practices which include conduct that violates the Nevada
10 Revised Statutes.” Pearson cites fourteen types of conduct to support the Complaint, the
11 collective effect of which Pearson contends creates “a significant distortion of the truth regarding
12 the candidates’ experiences.”

13 3. Specifically, Pearson alleges the following:

14 a. Pearson contends Taitel made a false or misleading statement by grossly
15 overstating his Pro Tem appearances. In a voter letter circulated to potential voters, Taitel states
16 he has “appeared as a judge (pro tem) in many of our local courts more than 1000 times.”
17 Similarly, in a radio advertisement Taitel states he has “filled in for our local judges more than
18 1000 times in the past 13 years.” Pearson contends Taitel’s actual pro tem appearances are
19 approximately 528.

20 b. Pearson contends Taitel made a false or misleading statement by stating
21 his pro tem experience is the equivalent of a full time judge. In a voter letter, radio
22 advertisement and on his website, Taitel states, after referencing his 1000 appearances as a pro
23 tem judge, that “[t]his judicial experience is the equivalent of at least two years of being a full-
24 time judge.” Pearson contends the comparison exaggerates the role of a pro tem judge, and that
25

26 ¹ Panel member Pagni disclosed for the record that both his ex-wife and one of the
27 partners in his law firm have endorsed Pearson’s candidacy, and will be hosting a campaign
28 event for him in the future. It was also disclosed that Pearson worked as a summer associate at
Mr. Pagni’s firm in 1997, prior to Mr. Pagni’s employment at the firm. Panel member Pintar
disclosed members of his family were acquaintances of Taitel.

1 the two year quantification is inflated and misleading.

2 c. Pearson contends Taitel made a false or misleading statement by stating
3 he has “14 years on the bench.” On his website, Taitel states “I believe my 14 years on the
4 bench as a Pro Tem Judge will greatly add additional experience to our Justice system.” Pearson
5 contends it is misleading to equate pro tempore judicial appearances over a 14 year period with
6 14 years on the bench.

7 d. Pearson contends Taitel made a false or misleading statement by stating he
8 has 400-500 appearances as a Judge. After citing appearances in Reno courts on the front of a
9 business card, on the back Taitel states he has “[a]nother 400-500 appearances as a Judge in
10 other local courts.” Pearson contends the statement is misleading because Taitel has never been
11 a full time judge.

12 e. Pearson contends Taitel made a false and misleading statement by
13 implying he has approval of all attorneys and agencies that have appeared before him as a pro
14 tempore judge. On his website, Taitel states “I have the right demeanor and temperament for the
15 position, as well as the ongoing acceptance and approval of the attorneys and agencies that
16 appear in the Court (otherwise I would not have been asked/invited back again and again).”
17 Pearson contends Taitel does not have the approval of the attorneys and agencies that appear in
18 Court, and that the agencies that appear most in the Court endorse Pearson.

19 f. Pearson contends Taitel made a false and misleading statement by
20 misrepresenting the allocation of civil and criminal cases in Department 4. In a voter letter and
21 on his website, Taitel states “whether by category of law or cases filed (approximately 8,000
22 criminal cases were filed in the last fiscal year and approximately 16,000 civil cases in that
23 period), one-third of the Justice of the Peace job is criminal law and two-thirds is civil law
24 based.” Pearson contends when traffic citation matters are included, 69% of the cases filed are
25 criminal, arguing Taitel intentionally changed the facts to bolster his civil experience in
26 comparison to Pearson.

27 g. Pearson contends Taitel made a false and misleading statement by
28 representing Pearson has had only one job since passing the bar. In a voter letter, Taitel states

1 “Scott [Pearson] has had one job since passing the bar, being a deputy district attorney.” Pearson
2 contends the statement is misleading because he was employed as a District Court clerk from
3 1998-1999.

4 h. Pearson contends Taitel made a false and misleading statement by stating
5 Pearson does not know civil law. In a voter letter, Taitel states Pearson “only knows one side of
6 the law” and on his website in a comparison of civil law experience Taitel states Pearson has
7 “zero experience.” Pearson contends the statement is misleading because his admission to the
8 bar demonstrates he knows civil law and that he has civil law experience through his judicial
9 clerkship, work as a summer associate with a local firm, and civil law issues which arose in
10 connection with the criminal cases he has handled.

11 i. Pearson contends Taitel made a false and misleading statement by stating
12 in a voter letter that “Scott [Pearson] only knows one side of the law and has no idea how to
13 judge it.” Pearson contends the statement is misleading because he has judged the facts and law
14 for 11 years as a prosecutor and assisted a district court judge in doing so in 1996, 1998 and
15 1999.

16 j. Pearson contends Taitel made a false and misleading statement by stating
17 in a voter letter that Taitel is “the only candidate with the background and experience necessary
18 for this important job.” Pearson contends NRS 4.010 only requires a candidate have 5 years
19 experience practicing law to qualify for the position, and Taitel’s statement falsely implies he
20 does not hold the minimal requisite experience.

21 k. Pearson contends Taitel made a false and misleading statement by
22 knowingly implying he is the incumbent. Pearson alleges that for five months Taitel has
23 displayed campaign signs which state “Lewis S. Taitel, Justice of the Peace, Dept. 4”. Pearson
24 contends the signs are misleading as they do not include the requisite “for” or “elect” language
25 under NRS 294A.340.

26 l. Pearson contends Taitel has engaged in conduct inconsistent with the
27 integrity of the judiciary by wearing campaign buttons while acting as a pro tem judge and while
28 representing clients in Reno Municipal Court, and by handing out campaign brochures in the

1 foyer of the Court. Pearson contends such political activity does not represent adherence to the
2 highest principles and ideals of the judiciary as intended by the Canons.

3 m. Pearson contends Taitel made a false or misleading statement by stating
4 on his website and brochure that he has been a pro tem judge in Sparks Justice Court from
5 “1997-Present”. Pearson contends the statement falsely represents Taitel’s experience as Taitel
6 has not been on the approved list of pro tem judges in Sparks since 2005.

7 n. Pearson contends Taitel has engaged in conduct inconsistent with the
8 integrity of the judiciary by knowingly placing a campaign sign on a utility pole in violation of
9 NRS 704.638.

10 4. In support of the allegations, Pearson submitted thirty exhibits including copies of
11 Taitel’s voter letter, website and radio ad content, payroll records of courts in which Taitel
12 served as a pro tempore judge, pictures of campaign signs, and correspondence between the
13 parties.

14 5. Taitel defends against Pearson’s claims in a response dated and filed with the
15 Committee on September 7, 2010. In that response, Taitel generally denies that the statements
16 were false or misleading, and contends many represent opinion which Taitel argues he is still
17 allowed to express, judicial candidate or not. Taitel does admit, however, that a campaign sign
18 was posted on a utility pole without his knowledge, and further acknowledges that 100 of his
19 2,437 signs inadvertently omitted the word “for”.

20 SUMMARY OF DECISION

21 6. The underlying issue presented by twelve of the fourteen allegations is where
22 does political rhetoric end and a violation of the Canons begin?² The integrity of the judicial
23 system suffers when judicial candidates are allowed to campaign using hyperbole and
24 exaggeration. The Committee is cognizant of First Amendment protections, however, and also
25 recognizes that such conduct does not necessarily constitute an unfair election practice.

26 _____
27 ² The Committee believed that but for the important questions related to political speech,
28 given the absence of any serious transgressions under the facts presented, this decision would not
likely have warranted publication. See Standing Committee Rule 4(4)(b)(“a public statement by
the committee or panel of its findings may not always be appropriate”).

1 7. Judicial integrity is a state interest of the highest order. Yet, to quantify the
2 essence of judicial integrity and delineate the point of demarcation when overblown political
3 rhetoric devolves into a Canon violation is a difficult task. The difficulty of the undertaking,
4 however, should not dissuade candidates from the attempt. To strive for judicial integrity is the
5 work of a lifetime. See Republican Party of Minnesota v. White, 536 U.S. 765, 794, 122 S.Ct.
6 2528, 2545 (2002)(Kennedy, concurring).

7 8. Nevada, for the time being, has chosen to select its judiciary through contested
8 elections. In so doing, it “has itself created a politically motivated judiciary, bedeviling any
9 claim it has in removing politics from the process.” See Wersal v. Sexton, Case No. 09-1578 (8th
10 Cir. July 29, 2010). As modern campaigns become more aggressive, it is sadly predictable that
11 judicial candidates may begin to engage in the same venal assaults, techniques and tactics too
12 often used by those who seek other offices.³ However, judicial candidates must remember that
13 “the role of a judge is different than that of a legislator or executive branch official, . . . [and]
14 campaigns for judicial office must be conducted differently from campaigns for other offices.”
15 See Nev. Code Jud. Conduct Comment 11, Rule 4.1.

16 9. There is no question introducing political rhetoric into judicial campaigns may
17 foster disrespect for the legal system. Indeed, there are some who believe the petty
18 gamesmanship and rough-and-tumble of politics is inconsistent with the very judicial integrity
19 the Canons seek to foster. Judicial integrity, like politics, is perception. Yet, as distasteful as
20 political rhetoric may be in a judicial campaign, such distaste must yield to First Amendment
21 rights of candidates in certain circumstances. Taitel is entitled to present subjective, political
22 opinions on the strengths and weakness of the candidates’ qualifications if a reasonable basis in
23 fact supports such claims. As the Supreme Court has recognized, debate on qualifications is at
24 the core of our electoral process and First Amendment freedoms, not the edges. See White, 536
25 U.S. at 781, 122 S.Ct. at 2538.

26 With these principles in mind, the Committee addresses each allegation in turn:

27 _____
28 ³ The Committee is concerned that such tactics may lead to abuse of this process for
political gain.

1 DISCUSSION AND ANALYSIS

2 10. The Committee is authorized to determine whether a candidate for judicial office
3 has engaged in an unfair election practice. See Standing Committee Rule 4. An “unfair election
4 practice” is any practice or act which would violate Canon 4 of the Nevada Code of Judicial
5 Conduct (“NCJC”). Id. Canon 4 of the NCJC states “[a] judge or candidate for judicial office
6 shall not engage in political or campaign activity that is inconsistent with the independence,
7 integrity, or impartiality of the judiciary.” See Nev. Code Jud. Conduct, Canon 4.

8 11. Relevant to these proceedings, Rule 4.1(A)(11) provides in relevant part that “a
9 judge or a judicial candidate shall not. . . knowingly, or with reckless disregard for the truth,
10 make any false or misleading statement.” See Nev. Code Jud. Conduct, Rule 4.1(A)(11).
11 “Knowingly” is defined as “actual knowledge of a fact in question”. See Nev. Code Jud.
12 Conduct, Terminology.

13 12. The commentary to Rule 4.1(11) explains that:
14 Judicial candidates must be scrupulously fair and accurate in all statements made
15 by them and by their campaign committees. Paragraph (A)(11) obligates
16 candidates and their committees to refrain from making statements that are false
17 or misleading, or that omit facts necessary *to make the communication*
18 *considered as a whole not materially misleading.*
19 See Comment 7 to Rule 4.1(11)(emphasis added). Commentary provides guidance regarding the
20 purpose of Rules, but is not enforceable as independent grounds for discipline. See Nev. Code
21 Jud. Conduct Scope, Par. [3]-[4].

22 13. The Committee’s obligation under Rule 4.1(A)(11) is to determine if the judicial
23 candidate made a materially false or misleading statement considering the campaign
24 communication as a whole, and if so, whether the misleading statement was made by the judicial
25 candidate with knowledge of its falsity or with reckless disregard of the truth.

26 14. Also relevant to these proceedings, Rule 4.2(A)(2) provides in relevant part that
27 “a judicial candidate in a public election shall . . . comply with all applicable election, election
28 campaign, and election campaign fund-raising laws and regulations of this jurisdiction.”

1 as pro tempore judge during the period between 1997-2010.

2 19. Given the absence of complete or accurate Court records to refute Taitel's sworn
3 testimony, the Committee unanimously concludes Pearson failed to provide sufficient evidence
4 to demonstrate Taitel's statement that he made over 1,000 appearances as a Pro Tem judge was
5 either false or misleading. Although Pearson argued that the appearances in the missing years
6 could be estimated using averages from other years (based on which Pearson calculated a total of
7 558 appearances), the Committee does not believe such methodology reliable or reasonable for
8 purposes of this matter. The Committee concludes a reasonable basis in fact exists to support
9 Taitel's statement and finds no basis which warrants intervention by the Committee.

10 Allegation (b)

11 20. It is undisputed that Taitel made the statement that his pro tempore experience is
12 "the equivalent of at least two years of being a full-time judge." Pearson contends appearances
13 as a pro tempore judge are "not the same as being a full time judge", and to make such
14 comparison is misleading *per se*.⁴ Citing the Committee's decision in Adair v. Israel, Pub. Dec.
15 02-03 for support, Pearson contends it is false and misleading to voters to equate pro tempore
16 judicial experience with that of a full time judge.

17 21. Taitel contends the comparison was not improper, arguing that as a pro tempore
18 judge he handled all aspects of cases in the same manner as a full time judge. Taitel testified that
19 he was aware of the Adair decision and believed his statement was appropriate despite the
20 conclusions in Adair. Taitel also stated that his website contained a detailed description of what
21 a pro tempore judge was and what the position entailed. However, the Committee notes that
22 such disclaimer was not present in his voter letter or in his radio advertisement, where the
23 allegedly improper statements were made.

24 22. The Committee previously addressed whether it is appropriate for a judicial
25 candidate to equate pro tempore judicial experience with that of a full time judicial position in
26

27 ⁴ Pearson also contends the "two year" quantification is a gross exaggeration, based on
28 his contention Taitel made 558 appearances. For the reasons discussed in Allegation (a), the
Committee rejects this assertion.

1 Adair. In Adair, the candidate had served as a pro tempore judge in the short trial program. The
2 candidate's campaign materials included a picture of the candidate in a judicial robe, followed
3 with the statement "The Integrity of an Eagle Scout . . . the Experience of a Judge Pro Tem".

4 The Adair Committee concluded:

5 The Committee does not believe it was the intent of the Supreme Court to vest pro
6 tempore judges with the attributes or status of judicial office applicable to full-
7 time district court judges, justices of the peace or municipal court judges. This is
8 demonstrated by the fact that the private civil attorneys who serve as pro tempore
9 judges are permitted to continue with their private law practices. *Therefore, it is*
10 *not proper for an attorney seeking election to judicial office to represent or imply*
11 *that he or she is a full time judge by virtue of an appointment or service as a pro*
12 *tempore judge.*

13 In Re Adair v. Israel, Pub. Dec. 02-03 (emphasis added).

14 23. By a split decision, the Committee concludes that under the circumstances
15 presented, Taitel's statement that his part time experience as a pro tempore judge was the
16 equivalent of at least two years of being a full-time judge was a knowing or reckless
17 misrepresentation in violation of Rule 4.1(A)(11). While the circumstances presented are not as
18 egregious as those found in Adair, the majority of the Committee believed under these facts it is
19 a reckless misrepresentation to explicitly equate part time pro tempore experience with that of a
20 full time judge, and believed such representation is misleading to voters.⁵

21 24. Pursuant to Rule 4.4(a)(i) of the Rules of the Standing Committee, Taitel is
22 instructed within five (5) business days of the entry of this Decision to remove the statement
23 from his campaign materials. The Committee finds that such corrective action together with the
24 publication of this decision in accordance with Rule 4(a)(1) of the Committee Rules is the
25 appropriate remedy to the foregoing violation.

26 //

27 _____
28 ⁵ The remaining members of the Committee believed the statement was inappropriate, but
did not rise to the level of warranting intervention by the Committee.

1 Allegation (c)

2 25. It is undisputed that Taitel made the statement “I believe my 14 years on the
3 bench as a Pro Tem Judge will greatly add additional experience to our Justice system.” It is
4 also undisputed that Taitel made appearances as a pro tempore judge during the period between
5 1997 and 2010.

6 26. Pearson contends it is misleading to equate part time pro tem appearances over a
7 14 year period with 14 years on the bench, and citing Adair contends the statement is false and
8 misleading to voters.

9 27. Taitel argues that Pearson’s focus on the phrase “14 years on the bench” is taken
10 out of context, and when the entire statement is considered it is clear Taitel is referring to his pro
11 tempore judicial experience and the 14 year period over which he provided such services.

12 28. Unlike Allegation (b), the Committee believes the statement, in context, does not
13 create an inappropriate comparison between pro tempore judicial services and those of a full time
14 judge. The statement clearly discloses that Taitel’s time “on the bench” was in the capacity as a
15 “Pro Tem Judge”, rather than silently implying such service was as a full time judge. The
16 Committee concludes a reasonable basis in fact exists to support Taitel’s statement and finds no
17 basis which warrants intervention by the Committee.

18 Allegation (d)

19 29. It is undisputed Taitel circulated business cards which contained the statement on
20 the back that he has “[a]nother 400-500 appearances as a Judge in other local courts.” Taitel
21 further testified that the cards were used temporarily during the start of the campaign, but were
22 no longer circulated after March 27, 2010.

23 30. Taitel argues that the allegation cannot be sustained jurisdictionally because the
24 card is no longer in circulation. The Committee disagrees. An unfair election practice is not
25 moot merely because corrective action has been taken. Regardless of whether a candidate
26 voluntarily takes corrective action to cure conduct that violates the Canons, such conduct is still
27 ripe for review and sanction by the Committee.

28 31. Pearson argues that the statement is false and misleading because it implies Taitel

1 has served as a full time judge in other courts. Examined in a vacuum, Pearson's interpretation
2 is understandable and could be cause for concern for the reasons discussed above. However, the
3 statement was not made in a vacuum. Taitel testified that the statement was a continuation of
4 information contained on the front side of the business card, and was intended as a continuation
5 of the statement "[a]pproximately 500 appearances as a Justice of the Peace (Pro Tem) in Reno
6 and Sparks". Taitel acknowledged the language "could have been more artfully done", which he
7 testified was the reason it was changed in March.

8 32. The Committee agrees the language on the card could be subject to an
9 interpretation that is misleading, but also finds Taitel's comments regarding intention and
10 contrary interpretation compelling. The Committee concludes a reasonable basis in fact exists to
11 support Taitel's statement and finds no basis which warrants intervention by the Committee.

12 Allegation (e)

13 33. It is undisputed Taitel made the statement "I have the right demeanor and
14 temperament for the position, as well as the ongoing acceptance and approval of the attorneys
15 and agencies that appear in the Court (otherwise I would not have been asked/invited back again
16 and again)."

17 34. Pearson contends the statement is necessarily false because Pearson has been
18 endorsed by the agencies or heads of agencies that appear most in Reno Justice Court. Pearson
19 further asserts that the "majority of the criminal defense attorneys who routinely appear in [Reno
20 Justice Court] . . . all support Candidate Pearson, as do most of the deputy DA's and many public
21 defenders." Pearson then cites a case in which the District Attorney's office appealed a decision
22 of Taitel, asserting that belies Taitel's claim.

23 35. Taitel argued that the statement is simply his opinion that he does, in fact, have
24 the support of many attorneys and employees of agencies that appear in the Court. Taitel further
25 argues that just because he does not have someone's endorsement, doesn't mean he doesn't have
26 their approval. Finally, Taitel argued that his intention in making the statement was to recognize
27 that he has been asked back to the position, a fact he believes indicates his performance in the
28 position is positive.

1 basis in fact exists for Taitel to rely on and cite statistics produced in the Nevada Judiciary
2 Annual Report in making comparative statements about the candidates legal experience. The
3 Committee concludes a reasonable basis in fact exists to support Taitel's statement and finds no
4 basis which warrants intervention by the Committee.

5 Allegations (g) through (j)

6 42. Taitel does not dispute that the statements alleged by Pearson in allegations (g)
7 through (j) were in fact made by Taitel in campaign materials.

8 43. In testimony, Pearson argued such statements are technically false, and
9 improperly distort his civil experience and qualifications. Pearson contends that he necessarily
10 has knowledge of civil law based on the fact he passed the Nevada bar exam. Pearson further
11 contends it is false and misleading to contend he has "zero civil experience" because he worked
12 as a clerk for the district court after passing the bar, and worked as a summer associate at a civil
13 law firm during law school.

14 44. Taitel contends such statements represent his opinion of the comparative
15 distinctions in the candidates' civil law experience and are within his rights to make in a
16 contested election. Taitel argued that in his opinion, neither passing the bar exam, nor working
17 as a district court clerk provides the equivalent civil law experience as civil law in private
18 practice, and that the statements simply reflect his opinion regarding their respective legal
19 experience.

20 45. The Committee acknowledges that under Pearson's strict interpretation, the
21 statements made by Taitel are not precisely accurate and if examined in a vacuum could be
22 subject to an interpretation that is misleading. The Committee also recognizes, however, that the
23 statements could also be reasonably construed as political rhetoric comparing the candidate's
24 legal experience. While such rhetoric may be distasteful to some, the Committee concludes a
25 reasonable basis in fact exists to support Taitel's statement and finds no basis which warrants
26 intervention by the Committee.

27 Allegation (k)

28 46. It is undisputed that Taitel failed to include the words "for" or "elect" on 100 of

1 his 2,437 campaign signs. Taitel testified that the exclusion of the word “for” on 100 of the signs
2 was an inadvertent error of which he was unaware until Pearson had brought it to his attention.
3 Taitel testified that the error was limited to signs of a certain size, and contended the error was
4 that of the printing company, not an intentional act by his campaign. Taitel further testified that
5 he was in the process of correcting the error as signs were located, but that he did not have any
6 manner of tracking where the defective signs were located such that complete corrective action
7 could be certified.

8 47. NRS 294A.340 prohibits using the name of a candidate in a way that implies the
9 candidate is the incumbent in office. In construing NRS 294A.340, the Attorney General has
10 opined that using the terms “elect” or “for” in campaign materials removes the implication of
11 incumbency. See Attorney General Opinion 98-19.

12 48. The Committee has previously found unfair election practices where judicial
13 candidates circulated campaign materials that misrepresented the candidate’s position as an
14 incumbent judge or implied incumbency. See Published Decision 00-1; Published Decision 98-
15 5. Those decisions were reached under former Canon 5A(3)(d)(iii), which did not expressly
16 incorporate general campaign laws such as NRS 294A.340 into the Canons. See Published
17 Decision 00-1, citing NRS 294A.340.

18 49. The Revised NCJC now expressly incorporates campaign laws such as NRS
19 294A.340 into the Canons. Rule 4.2(A)(2) states that a “judicial candidate in a public election
20 shall . . . comply with all applicable election, election campaign, and election campaign
21 fundraising laws and regulations of this jurisdiction. . . .” See also, Comment 8 to Rule
22 4.1(A)(11) (recognizing candidates may not knowingly make false or misleading statements
23 regarding the present position, experience, or qualifications of a candidate). Further, Rule
24 4.2(A)(3) mandates that judicial candidates shall:

25 “review and approve the content of all campaign statements and materials
26 produced by the candidate or his or her campaign committee, as authorized by
27 Rule 4.4, before their dissemination”

28 50. Taitel acknowledges excluding the word “for” was “a problem”, but contends it

1 does not rise to the level of a violation. The Committee disagrees. The fact that a violation of
2 campaign or election laws was the product of inadvertent error does not excuse a candidate's
3 failure to comply. Rule 4.2(A)(2) is not limited to intentional violations of campaign laws. See
4 Rule 4.2(A)(2). Taitel was required under Rule 4.2(A)(3) to review the content of his campaign
5 signs before dissemination, and Rule 4.2(A)(2), NRS 294A.340, and prior opinions of the
6 Committee and Attorney General, provide notice to candidates that it is improper under Nevada
7 campaign laws and the Canons to create an implication of incumbency.

8 51. The Committee unanimously concludes that, while the action may have been an
9 inadvertent error, circulating campaign signs that implied Taitel was the incumbent is contrary to
10 Nevada election law and Rule 4.2(A)(2). The Committee does not consider the allegation moot
11 merely because corrective action has been taken, but considers important the fact that Taitel has
12 voluntarily implemented corrective action. Pursuant to Rule 4.4(a)(i) of the Rules of the
13 Standing Committee, Taitel is instructed to correct any remaining defective signs within ten (10)
14 days of the entry of this Decision. Given Taitel's difficulty in locating such signs, to the extent
15 Pearson is or becomes aware of the location of any improper signs Pearson is instructed to advise
16 Taitel of the location of such signs so that Taitel shall take corrective action on such sign(s)
17 within 24 hours. The Committee finds that such corrective action together with the publication
18 of this decision in accordance with Rule 4(a)(1) of the Committee Rules is the appropriate
19 remedy to the foregoing violation.

20 Allegation (I)

21 52. Taitel admitted that he has worn his campaign button while appearing as a pro
22 tempore judge, but contended it was "always hidden [under his robe] during court proceedings."
23 Taitel acknowledged there may be occasions when he may have worn his campaign button
24 visibly while he was checking on the docket behind the clerk's counter in between courtroom
25 appearances. Pearson did not produce any evidence that Taitel wore his campaign button visibly
26 while appearing on the bench.

27 53. Taitel also admitted he had distributed campaign materials within the courthouse
28 building, but testified that such only occurred in "public areas" of the courtroom, and that no

1 materials were distributed within the courtrooms, interview rooms, foyer areas, or other areas
2 “under the exclusive control of the Reno Municipal Court” which the Reno Municipal Court
3 stated were impermissible for electioneering practices in an August 2, 2010 letter. Pearson did
4 not produce evidence which rebutted Taitel’s claims.

5 54. In establishing areas where campaign speech was prohibited and permitted, the
6 Reno Municipal Court sought to balance reasonable time, place and manner restrictions with a
7 candidate’s right to free speech activity in public areas. The Committee is cognizant of these
8 same issues. Some members of the Committee disapproved of Taitel’s campaign activities
9 within the Court building, but the Committee as a whole finds no restriction which put Taitel on
10 notice that such conduct was a violation of the Canons. While some expressed concern that such
11 activity is inconsistent with the integrity of the judiciary, the Committee was cognizant of
12 Taitel’s First Amendment rights and unanimously concluded insufficient evidence existed to
13 demonstrate Taitel’s campaign activities violated Canon 4.

14 Allegation (m)

15 55. It is undisputed that Taitel made the statement that he has served as a pro tempore
16 judge in Sparks Justice Court from “1997-Present”. Taitel also does not dispute that he has not
17 been on the approved list of pro tem judges in Sparks since 2005, and contends the statement was
18 simply an inadvertent oversight, not an intentional misrepresentation.

19 56. As cited above, Rule 4.2(A)(3) obligates Taitel to review and approve the content
20 of all campaign statements and materials before dissemination. The Committee finds Taitel’s
21 explanation understandable, but recognizes Taitel was obligated to ensure that information
22 regarding his own experience was accurate. The Committee concludes that misstating the years
23 Taitel served on the Sparks Justice Court constitutes an unfair election practice and violation of
24 Rule 4.1(A)(11). Pursuant to Rule 4.4(a)(i) of the Rules of the Standing Committee, Taitel is
25 instructed to remove the statement that he served as a pro tempore judge in Sparks Justice Court
26 from “1997-Present” within five business days of the entry of this Decision. The Committee
27 finds such corrective action together with the publication of this decision in accordance with
28 Rule 4(a)(1) of the Committee Rules is the appropriate remedy to the foregoing violation

1 Allegation (n)

2 57. It is undisputed that Taitel’s campaign placed a single campaign sign on a utility
3 pole in violation of NRS 704.638. Taitel testified that he was aware of the prohibition under
4 NRS 704.638 and advised his campaign staff not to post any signs on utility poles. Taitel further
5 testified he was not aware the sign had been improperly posted.

6 58. NRS 704.638 prohibits the posting of campaign signs on public utility poles. As
7 discussed more fully in allegation (n), the Revised NCJC now expressly incorporate campaign
8 laws such as NRS 704.638 into the Canons.

9 59. Taitel testified that he had instructed his campaign staff not to place campaign
10 signs on utility poles, and that he was not aware the sign had been placed on a utility pole until
11 Pearson brought the matter to his attention. Taitel testified that he had removed the sign
12 voluntarily upon learning of its placement.

13 60. The Committee unanimously concludes that, while the action may have been an
14 inadvertent error, posting signs on utility poles is contrary to Nevada election law and Rule
15 4.3(A)(2). The Committee does not consider the allegation moot merely because corrective
16 action has been taken, but considers important the fact that Taitel has voluntarily implemented
17 corrective action. The Committee finds that the publication of this decision in accordance with
18 Rule 4(a)(1) of the Committee Rules is the appropriate remedy to the foregoing violation.

19 DECISION

20 Therefore, the Committee determines:

- 21 1. That Canon 4 has been violated by posting a campaign sign on a utility pole in
22 violation of NRS 704.638 and posting campaign signs that implied Taitel is the
23 incumbent, and that such acts constitute unfair election practices in violation of Rule
24 4.2(A)(2). Within ten (10) business days of the entry of this Decision, Taitel shall (i)
25 remove all improper campaign signage posted on utility poles and (ii) either remove
26 or correct campaign signage which implies Taitel is the incumbent by adding the
27 word “for” or “elect” thereto. Taitel must further remove or correct any improper
28

1 signage within 24 hours of notice from Pearson of the specific location of an
2 improper sign; and

- 3
- 4 2. That Canon 4 has been violated by misstating the years Taitel appeared as a pro
5 tempore judge in Sparks Municipal Court and equating pro tempore judicial
6 experience with “two years of being a full time judge.” Taitel must remove or correct
7 the statements within five (5) business days of the entry of this Decision; and
- 8 3. The Committee believes a reasonable basis in fact exists to support the remaining
9 campaign statements challenged by Pearson regarding the candidate’s respective
10 experience and qualifications, and finds no basis which warrants further intervention
11 by the Committee; and
- 12 4. That this decision shall be published in accordance with Rules 4.4 and 4.5 of the
13 Standing Committee on Judicial Ethics and Election Practices.

14

15 DATED this 17th day of September, 2010.

16 NEVADA STANDING COMMITTEE ON
17 JUDICIAL ETHICS AND ELECTION PRACTICES

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19 By: 

20 Michael A.T. Pagni, Esq.
21 Committee Vice-Chairman

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