

BEFORE THE NEBRASKA COMMISSION OF JUDICIAL QUALIFICATIONS

S-35-020002

In the matter of)
)
JANE H. PROCHASKA,)
County Judge of the Fourth)
Judicial District of Nebraska)

No. JQ 01-16

FILED

REPRIMAND

OCT 07 2002

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

The Nebraska Commission on Judicial Qualifications, pursuant to the authority under Article V of the Nebraska Constitution and NEB. REV. STAT. §§ 24-715 et seq. (Reissue 1991), hereby reprimands Judge Jane H. Prochaska.

On October 31, 2001, a complaint was filed by the Commission against Judge Prochaska alleging that she violated Canon 5 of the Nebraska Code of Judicial Conduct and that such violation was prejudicial to the administration of justice that brings the judicial office into disrepute. By agreement of the Commission and Judge Prochaska, a formal closed hearing pursuant to Rule 4 (h) (1) of the Commission's Rules of Procedure was held before a special master appointed pursuant to Rule 7 (b). The Commission has reviewed de novo the proceedings before the special master.

Jane H. Prochaska is and was at all material times a duly-appointed judge of the County Court of Douglas County, Nebraska. In March of 2001, Paul Gnabasik, an attorney who practices before Judge Prochaska, informed Judge Prochaska that he was running for the Omaha City Council. His opponent was Robert Sivick, an attorney who also practiced before Judge Prochaska. Several days later, Gnabasik approached Judge Prochaska in the Douglas County Court House and stated: "I know you can't give me money for my campaign, but maybe your husband can give me money." Judge Prochaska agreed to talk to her husband and subsequently delivered a brochure given to her by Gnabasik to her husband.

On March 26, 2001, Judge Prochaska's husband, Donald R. Prochaska, signed a check in the amount of \$50.00 payable to the order of "People for Paul Gnabasik." The check was written on a joint account with the names "Donald F. or Jane H. Prochaska" printed thereon in which Judge Prochaska "most often" deposited her judicial pay check. Her husband also deposited funds into this account and the account was used by them to pay a variety of expenses.

Judge Prochaska took the check to her office to mail. Several days later

Judge Prochaska saw Gnabasik in the courthouse and said "Paul, I have something for you." He accompanied Judge Prochaska to her office and she handed him an envelope which contained the check.

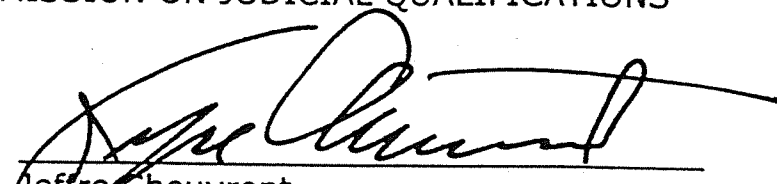
It is Judge Prochaska's position that she had no intention of making a political contribution herself and considered the contribution to be from her husband alone. Judge Prochaska testified that she reviewed Canon 5 of the Nebraska Code of Judicial Conduct prior to the check being written and concluded that it was permissible for a contribution to be made by her husband. Judge Prochaska testified that she was unaware of Nebraska Ethics Advisory Opinion No. 96-6 dated October 17, 1996. She also testified that she did not know what the index to the ethics opinions looks like.

Notwithstanding Judge Prochaska's intent, and her belief that the contribution was from her husband, the Commission finds that there is clear and convincing evidence that Judge Prochaska violated Canon 5 of the Nebraska Code of Judicial Conduct which provides: "A judge or judicial candidate shall refrain from inappropriate political activity," specifically Canon 5 A.(1)(e) which states in pertinent part that "a judge . . . shall not . . . make a contribution to a political organization or candidate. . ." Judge Prochaska took an active role in facilitating the campaign contribution in that she personally communicated the solicitation of funds to her husband, delivered the campaign literature to him, and personally delivered the check to the political candidate. The check itself was written on a joint account into which Judge Prochaska deposited significant funds of her own (her judicial salary). Because of the co-mingling of such funds, the contribution cannot be considered to be from the husband's funds alone.

Judge Prochaska's conduct is a violation of Canon 5 and constitutes conduct prejudicial to the administration of justice that brings the judicial office into disrepute under NEB. REV. STAT. § 24-721 (Reissue 1995).

COMMISSION ON JUDICIAL QUALIFICATIONS

By:


Jeffrey Chevront
Commission Vice Chairperson