

Metropolitan News-Enterprise

Friday, March 19, 2010, Page 7

PERSPECTIVES (Column)

Judicial Candidates, AG Aspirants Seek to Use False Ballot Designations

By ROGER M. GRACE

Four candidates in current judicial contests in the county have been playing games with their ballot designations, pretending to be what they're not. But their attempts at trickery pale in contrast to that of an aspirant for the Republican nomination for attorney general, former Chapman University School of Law Dean John C. Eastman, an academician turned low-down politico.

Assembly member Ted Lieu, a candidate for the Democratic nomination for attorney general, would also appear to be misrepresenting himself.

The four judicial candidates who have sought to bamboozle voters are Los Angeles Deputy City Attorneys Chris Garcia and Tom Griego, as well as Pasadena private practitioner Tony de los Reyes and realtor/lawyer Douglas Weitzman.

The theme of the applicable legal provisions is that candidates are not permitted, through their designations, to fool voters as to what they do for a living.

Elections Code §13107 limits a candidate who is not an office-holder to a ballot designation comprised of “[n]o more than three words designating either the current principal professions, vocations, or occupations of the candidate, or the principal professions, vocations, or occupations of the candidate during the calendar year immediately preceding the filing of nomination documents.”

Someone who is an office-holder and who wants to cite an additional principal undertaking is likewise limited to three words.

Literal truth is not enough. Under the statute, election officials must reject a proposed designation if it “would mislead the voter.” That proviso, according to a 1995 Court of Appeal opinion, “seeks to prevent ‘creative’ misuse of ballot designations by candidates.”

California Code of Regulations §20714 elaborates on the statute:

“Each proposed principal profession, vocation or occupation submitted by the candidate must be factually accurate, descriptive of the candidate’s principal profession, vocation or occupation, must be neither confusing nor misleading, and must be in full and complete compliance with Elections Code §13107 and the regulations in this Chapter.”

In other words: Fudging and finagling are verboten.

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Judicial Candidates

CHRIS GARCIA's proposed designation as “Federal Criminal Prosecutor” was torpedoed by the Registrar-Recorder’s Office. The word “federal” was excised.

That made sense given that Garcia’s job title is “deputy city attorney.”

A few members of the City Attorney’s Office, including Garcia, had been detached, for a spell, to the U.S. Attorney’s Office, to help out there. City Attorney Carmen Trutanich, understandably, called them back; in these times of city budget cutbacks, he needs all his deputies.

Garcia, on his worksheet filed with the Registrar-Recorder’s Office, tried to justify the designation by saying:

“From April 2008 through September 2009 I worked at the United States Attorney’s Office as a Special Assistant United States Attorney prosecuting federal felony identity theft and government benefits fraud matters.”

The designation was disallowed, not based on it being misleading—which it is—but in light of CCR §20714(b)(2)(d), which says:

“If the candidate is engaged in a profession, vocation or occupation at the time he or she files his or her nomination documents, the candidate’s proposed ballot designation is entitled to consist of the candidate’s current principal professions, vocations and occupations. In the event the candidate does not have a current principal profession, vocation or occupation at the time he or she files his or her nomination documents, the candidate may use a ballot designation consisting of his or her principal professions, vocations or occupations, which the candidate was principally engaged in during the calendar year immediately preceding the filing of the candidate’s nomination papers.”

Maybe that was a valid basis for scuttling Garcia’s desired designation...maybe not.

Election officials interpret the regulation (which has the force of law) to mean that if a candidate has a present job, he or she may not list a prior position just because it was held within the past year. The awkwardly phrased sentence as to the “ballot designation” being “*entitled*” to be comprised of the present “principal professions, vocations and occupations” does not restrict a designation to what the candidate is currently employed to do; the word “entitled” is permissive. However, the subsequent sentence in the regulation does at least imply that *only* if the person is currently unemployed may a job be used that was previously held.

Yet, the statute, itself, does appear to permit use of any position held within the past year, even if the candidate is presently employed in some other line of work. That’s how the Court of Appeal interpreted the statute in 1994. Administrative regulations may elaborate on statutes, but not contradict them.

The designation is, nonetheless, inappropriate because it's misleading. For Garcia to list himself as a federal prosecutor would be like a Municipal Court judge, back when there was such a court, being listed as a "Superior Court" judge based on a cross assignment to the upper trial bench—or a Superior Court judge being listed as "Appeals Court justice" based on a three-month stint on the Court of Appeal, on assignment.

Garcia received a temporary appointment; he was never hired as a deputy United States attorney.

The candidate advises:

"Technically, I am still a federal criminal prosecutor. My appointment doesn't terminate until April, 2011."

That obviously misses the point.

He is not a federal prosecutor. The ballot designation Garcia sought to use is deceptive, and therefore reflects ill on the candidate's integrity.

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Garcia is seeking Office No. 28; Griego is competing for Office No. 117; de los Reyes is vying for Office No. 107; and Weitzman covets Office No. 35.

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