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## Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Chair  
~~Hon. Maria A. Roca~~  
Hon. Kevin L. Fitzwater  
Paul L. Biderman, Esq.  
Prof. Robert L. Schwartz  
Hon. Freddie J. Romero

December 20, 2011

[REDACTED]

Re: Judicial Advisory Opinion No. 11-04

Dear [REDACTED]

You have asked the Committee on the Code of Judicial Conduct for an opinion as to whether you may, under the Code of Judicial Conduct, receive the endorsements of the [REDACTED] County Bar Association and the [REDACTED] Police Union in support of your campaign to be elected to your position of magistrate judge. Although you have not sought the endorsements, these organizations have offered to endorse your election.

The Code addresses campaign endorsements in Rule 21-800(C) NMRA. It requires a candidate for judicial office to establish a campaign committee "of one or more responsible persons to conduct campaigns for the candidate using media advertisements, brochures, mailings, candidate forums and other means not prohibited by law or" the Code. Rule 21-800(C) authorizes campaign committees to "obtain public statements of support in behalf of the candidate, subject to the restrictions of" the Code. Thus, as a general rule, your campaign committee may obtain endorsements of community organizations in support of your election.

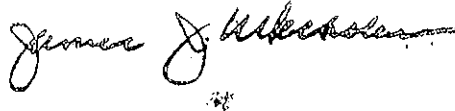
The revised Code of Judicial Conduct, recently adopted by the New Mexico Supreme Court to take effect January 1, 2012, has similar provisions. Rule 21-402(A)(3)(c) will allow candidates to seek, accept, or use endorsements from any person or organization." Rule 21-404(A) NMRA 2012 permits campaign committees to "obtain public statements of support on behalf of the candidate, subject to the restrictions of" the rules. The commentary to Rule 21-

402(A)(1) NMRA 2012, ¶ 17, also allows campaign committees to solicit endorsements of support, including from attorneys and further provides that the judicial candidate "should not be informed about the identity of individual attorney supporters."

Although, under Rule 21-800(C) and the revised Rule 21-404, the actions of your campaign committee may be subject to other provisions of the Code, with regard to your campaign speech, the Committee believes that *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), limits the Code's restrictions. In *White*, the United States Supreme Court held that a clause in the Minnesota canons of judicial conduct that prohibited a judicial candidate from announcing views on disputed legal or political issues violated the First Amendment of the United States Constitution. *Id.* at 788. It noted that the Court had "never allowed the government to prohibit candidates from communicating relevant information to voters during an election." *Id.* at 782.

Based on Rule 21-800(C) (and revised Rule 21-404) and *White*, the Committee believes that your campaign committee may receive the endorsements.

Very truly yours,



James J. Wechsler  
Chair

JJW:ow

cc: Hon. Kevin L. Fitzwater  
Hon. Freddie J. Romero  
Paul L. Biderman  
Professor Robert L. Schwartz