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Advisory Committee on the Code of Judicial Conduct

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

June 19, 2012



Judicial Advisory Opinion No. 12-07

Dear Judge 

A judge on the district court has announced retirement, and you wish to compete for the position. Because the position becomes available after the primary election, the central committees of the political parties will have the opportunity to select candidates to be on the ballot for the position in the November general election. In order to introduce yourself to your party's central committee, you wish to hold a social function at your home and invite central committee members and other political active persons. You have asked the Advisory Committee on the Code of Judicial Conduct whether the Code of Judicial Conduct permits you to do so.

The Code of Judicial Conduct does not have any provision that directly addresses political activity in pursuit of a ballot position by selection of a central committee. It does, of course, address political and campaign activities of a sitting judge who becomes a candidate for a judicial office. *See* Rule 21-402 NMRA (discussing permitted and prohibited actions of judicial candidates in partisan elections). The Committee considers Rule 21-402 to be applicable to your inquiry because the process you describe involves an election within a political party to select a judicial candidate in a partisan election. Once you announce your candidacy or solicit support for the position, you become a "judicial candidate" under the Code. Code of Judicial Conduct, Terminology.

Although it is not specifically addressed in the Code of Judicial Conduct, the Code contemplates, as in any election, that judicial candidates may personally contact voters to request votes. Indeed, the Code specifically permits judicial candidates to “speak on behalf or . . . [their candidacies] through any medium, including, but not limited to, advertisements, websites, or other campaign literature.” Rule 21-402(A)(3)(a). It does not prohibit judicial candidates from personally soliciting campaign contributions from persons other than from attorneys or litigants in cases pending before the judicial candidate. Rule 21-402(E). It is common in any election, including judicial elections, for candidates to personally solicit votes from the electorate as part of the campaign. Often, a candidate’s opportunity to have contact with voters will arise at a “meet and greet” function organized by the candidate’s campaign. *See* Rule 21-404 (stating that judicial candidates shall form campaign committees “to conduct campaigns for the candidate using media advertisements, brochures, mailings, candidate forums and other means not prohibited by law or these rules”). As a result, the Committee concludes that the Code does not forbid you from holding such a “meet and greet” function to introduce yourself to the central committee and other politically active persons.

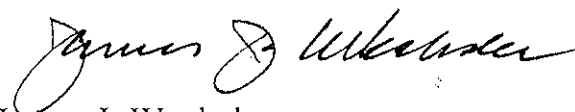
You raise the question whether you may hold such function at your home. Again, nothing in the Code specifically addresses or prohibits your doing so. The Committee believes that because you may hold the function at another venue and because of the context of the function as part of the election process, you are not prohibited from holding it at your home.

The Committee notes, however, that in permitting a judicial candidate to participate in the election process, Rule 21-402 nevertheless requires that the candidate “act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary.” Rule 21-402(A)(1)(a). The Committee cautions that you remain cognizant of this requirement.

In addition, the Committee notes that regardless of whether you hold the function you have described, if you become a candidate in this type of election, the Committee believes that you must disqualify yourself in cases involving attorneys who are members of the central committee during the process. *See* Rule 21-211 NMRA (“A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned[.]”). Further, the Committee points out that on becoming a judicial candidate, you become subject to the

requirements of Rule 21-402, including the formation of a campaign committee if you intend to raise or spend more than \$1,000.00. Rule 21-402(A)(1)(e).

Very truly yours,

A handwritten signature in black ink, appearing to read "James J. Wechsler". The signature is written in a cursive style with a large initial "J".

James J. Wechsler
Chair

JJW:ow

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