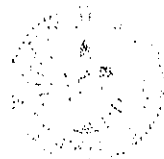


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# Advisory Committee on the Code of Judicial Conduct

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

February 14, 2013

[REDACTED]

Re: Judicial Advisory Opinion No. 13-02

Dear [REDACTED]

You have asked the Advisory Committee on the Code of Judicial Conduct whether the Code of Judicial Conduct prohibits you, as a probate judge, from seeking election to a trustee position in the electric cooperative that serves your community and of which you are a member. You state that the cooperative is a private, non-profit entity that is owned by its members.

Although the cooperative is a non-profit entity, it engages in the business of providing electric service to its members. As a general rule, the Code prohibits judges from serving as a director of a business entity. Probate judges, however, as continuing part-time judges, are not subject to this restriction of the Code. Code of Judicial Conduct, Application, II. Continuing Part-time Judge.

Rule 21-301 NMRA further restricts a judge's ability to engage in extrajudicial activities. It provides

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:

- A. participate in activities that will interfere with the proper performance of the judge's judicial duties;
- B. participate in activities that will lead to frequent disqualification of the judge;
- C. participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;
- D. engage in conduct that would appear to a reasonable person to be coercive; or
- E. make use of court premises, staff, stationary, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice.

You have not provided the Committee with any specifics concerning the activities of a trustee of the cooperative. Before seeking a trustee position, the Committee urges that you examine the responsibilities of the position in order to determine whether the restrictions of Rule 21-301 apply. Of course, if you become a trustee, you may not use any court resources in connection with your trustee activity, as prohibited in Rule 21-301(E).

The related question of your inquiry is whether the Code permits you to run in a contested election for the trustee position. No provision of the Code directly addresses this issue. Under the Code, a full-time judge may not be elected to a public, non-judicial office. Rule 21-405(C) NMRA. Because, as a part-time probate judge, the Code does not preclude you from seeking election to a public, non-judicial office, the Committee believes that it also does not preclude you from seeking election to a non-public, non-judicial office. In conducting a campaign, however, the Committee

recommends that you act at all times in a manner consistent with the Code.

Very truly yours,

A handwritten signature in black ink, appearing to read "James J. Wechsler". The signature is fluid and cursive, with a long horizontal stroke at the end.

James J. Wechsler  
Chair

JJW:ow

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