



Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Chair

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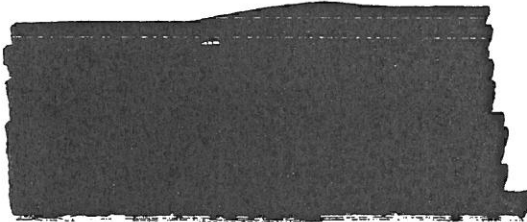
Paul L. Biderman, Esq.

Prof. Robert L. Schwartz

Hon. Freddie J. Romero

Hon. Sandra W. Engel

November 19, 2014



Re: Judicial Advisory Opinion No. 14-08

Dear 

You have asked the Advisory Committee on the Code of Judicial Conduct whether judges may submit letters of recommendation in support of candidates who have applied to judicial nominating commissions for appointment to vacant judicial positions.

The applicable provision of the Code of Judicial Conduct prohibits a judge from abusing “the prestige of judicial office to advance the personal or economic interests” of others. Rule 21-103 NMRA. By virtue of this rule, a judge is not permitted to use his or her position to gain favorable treatment for others. *See* Rule 21-103, comment 1 (“It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind.”).

The commentary to the Code gives guidance and examples that are helpful to our analysis of your inquiry. *See* Code of Judicial Conduct, Scope, [3] (stating that although the commentary does not provide binding obligations as do the rules, it provides “guidance regarding the purpose, meaning, and proper application of the rules” and also may “provide examples of permitted or prohibited conduct”). The commentary recognizes that there are circumstances in which a judge does not abuse the prestige of judicial office even though the judge may be acting in a manner that supports others. For instance, Rule 21-103, comment 2 states that a judge “may provide a reference or recommendation for an individual based on the judge’s personal knowledge.”

More specific to your inquiry, the commentary recognizes that judges may have knowledge relevant to the judicial selection process and may cooperate with appointing authorities and screening committees and respond to inquiries concerning the professional qualifications of applicants. Rule

21-103, comment 3. The commentary directly provides: “A judge may write letters of recommendation for any candidate for judicial appointment.” *Id.* These comments apply to all full-time judges of the state courts. Code of Judicial Conduct, Application, I(A).

You have inquired about the relevance of Rule 21-401, comment 8, which reads:

A judge is prohibited from publicly endorsing a judicial candidate or candidate for public office, e.g., adding the judge’s name to a list of supporters or publicly recommending the judge’s election or appointment. Private endorsements, however, are permitted. A judge or judicial candidate is not prohibited from privately expressing the judge’s or judicial candidate’s views on judicial candidates or other candidates for public office.

The Committee agrees that the distinction between a public and private endorsement is not always a clear one. However, Rule 21-103, comment 3 more specifically addresses recommendations to appointing authorities and judicial selection commissions with respect to judicial candidates. When we read that comment and Rule 21-401, comment 8 together, we believe that the intent of the Code is to treat a recommendation to an appointing authority or judicial selection committee as a private endorsement.

The Committee thus is of the opinion that judges may provide recommendations directly to an appointing authority (the Governor) and to judicial nominating committees in support of candidates for judicial appointment.

Very truly yours,



James J. Wechsler
Chair

cc: Paul L. Biderman, Esq.
Hon. Sandra W. Engel
Hon. Freddie J. Romero
Professor Robert L. Schwartz