Advisory Committee on the Code of Judicial Conduct

October 16, 2015

[redacted]

Re: Judicial Advisory Opinion No. 15-02

Dear [redacted]

You have asked the Advisory Committee on the Code of Judicial Conduct two questions concerning the interplay of the Voter Action Act, NMSA 1978, Sections 1-19A-1 to -17 (2003, as amended through 2015), and the Code of Judicial Conduct.

The Voter Action Act permits certified candidates for statewide judicial positions to apply for, and receive, campaign financing from the public election fund. Sections 1-19A-2(D), 6, 10. The requirements for Secretary of State certification include that the candidate submit an "appropriate number of qualifying contributions" and comply with "seed money contribution and expenditure restrictions." Section 1-19A-6(A)(2), (4). "Qualifying contributions" are $5.00 donations by registered voters made during a specified time period. Section 1-19A-2(H), (I). The availability of "seed money" allows a candidate to collect contributions of no more than $100.00 each from individual donors and political action committees to be spent during the qualifying period "for the primary purpose" of obtaining qualifying contributions and petition signatures. The total of all such seed money contributions may not exceed $5000. Section 1-19A-5(A), (B), (H).

You have posed the following questions.

(1) Does the prohibition contained in Rule 21-402(E) NMRA regarding a judge's knowledge of the identity of a lawyer contributor apply to seed money contributions or qualifying contributions?

(2) Can a judicial candidate ask lawyers for seed money contributions or qualifying contributions?

Since your request, the Supreme Court has modified Rule 21-402(E) and Rule 21-404 NMRA to clarify the ability of a judicial candidate to solicit and accept campaign contributions for

the candidate's campaign. Rule 21-404 now states that candidates "shall not personally solicit or personally accept contributions for their own campaigns." Commentary to Rule 21-402 and Rule 21-404 make clear that seed money and qualifying contributions under the Voter Action Act fall within this proscription. Rule 21-402, Comment 1; Rule 21-404, Comment 6. Comment 1 to Rule 21-402 states:

> Under Rule 21-404 NMRA, candidates for judicial office shall not personally solicit or personally accept campaign contributions. Seed money under NMSA 1978, Sections 1-19A-2(K) and 1-19A-5, and qualifying contributions under NMSA 1978, Sections 1-19A-2(H) and 1-19A-4, are considered campaign contributions for the purposes of these rules. A judicial candidate is prohibited from personally soliciting or personally accepting such contributions.

These rule modifications directly respond to your second question; a judicial candidate is not permitted to solicit seed money or qualifying contributions from anyone.

With regard to your first question, Rule 21-402(E) provides in relevant part that "[c]ontributions from attorneys . . . shall be made only to a campaign committee" and that "[c]ampaign committees shall not disclose to the judge or candidate the identity or source of any funds raised by the committee."

The purpose of Rule 21-402(E) is to avoid an appearance that a judge's action in any case will be affected by contributions to the judge's campaign. The rule carries out this purpose by removing and/or insulating the judicial candidate from the campaign contribution process. The recently adopted comment to Rule 21-402 treats contributions under the Voter Action Act for qualifying contributions and seed money the same as other campaign contributions with regard to a judicial candidate's solicitation and acceptance. The Committee thus believes that the Code does not contemplate that Voter Action Act contributions should be treated any differently with regard to a campaign committee disclosure of contributors of such contributions.

Very truly yours,

James J. Wechsler
Chair

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