



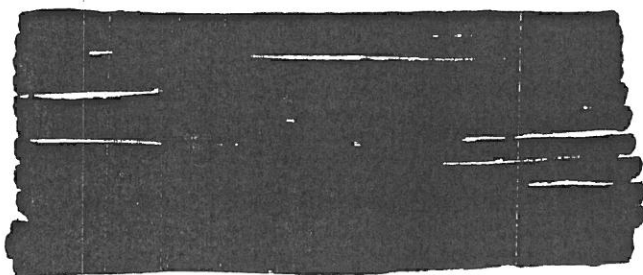
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Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Co-Chair (ret.)
Hon. Julie J. Vargas, Co-Chair
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Prof. Robert L. Schwartz
Hon. Freddie J. Romero
Hon. Sandra W. Engel

This is an advisory opinion by the New Mexico Advisory Committee on the Code of Judicial Conduct. Advisory opinions are responses to inquiries from judges seeking guidance on judicial ethics questions. They are not issued, approved, or endorsed by the New Mexico Supreme Court; nor are they binding.

April 10, 2018



Re: Judicial Advisory Opinion 18-04

Dear 

You have asked the Advisory Committee on the Code of Judicial Conduct whether you may serve on the election and credentials committee of your local electric cooperative in connection with an upcoming contested election. The duties of committee involve determining whether a person or entity has the proper credentials to vote in the election and the counting of the ballots.

Rule 21-301 NMRA of the Code of Judicial Conduct permits judges to "engage in extrajudicial activities, except as prohibited by law or . . . [the] Code." In doing so, however, among other proscriptions, "a judge shall not . . . participate in activities that will interfere with the proper performance of the judge's judicial duties;" . . . lead to frequent disqualification of the judge;" . . . or "would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality." Rule 21-301(A)-(C).

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Your position as a part-time probate judge is particularly relevant to the Committee's analysis. First, as a probate judge, your jurisdiction is limited to uncontested probate matters. Rule 21-004(B)(1) NMRA. As a result, the Committee does not perceive that the proscriptions of Rule 21-301 (A)-(C) restrict your ability to serve on the election and credentials committee. Second, as a part-time probate judge, the Code permits you to engage in extrajudicial activities that are not permissible for a full-time judge. *See* Rule 21-004(1)(a) (exempting part-time probate judges from compliance with rules pertaining to restrictions on extrajudicial activities).

The Committee believes that the essential issue raised by your inquiry is whether your service on the election and credentials committee violates Rule 21-103 (and thereby also is impermissible extrajudicial activity under Rule 21-301). Rule 21-103 provides in pertinent part "A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of . . . others" Thus, the issue is whether your service on the election and credentials committee abuses the prestige of your judicial office because it impermissibly advances the interests of the cooperative, presumably in providing a fair election.

The Committee notes the distinction between "abusing" the prestige of judicial office, as currently prohibited by the Code, and "lending" the prestige of judicial office, as prohibited by the Code prior to its amendment effective January 1, 2012. Rule 21-103. By the nature of a judge's official position, a judge carries the prestige of judicial office in most if not all of the judge's actions. Rule 21-103. Thus, actions a judge may take for the benefit of another, such as a cooperative entity, could likely involve the *lending* of the prestige of judicial office. Indeed, a judge acting as a committee member determining the ability of a person or entity to vote in an election may attach the prestige of judicial office.

The Code permits you, however, as a part-time probate judge to practice law or serve on a governmental committee, board, or commission, as a fiduciary, as an arbitrator or mediator, or a business advisor. *See* Rule 21-004(B)(1)(a) (exempting part-time probate judges from compliance with Rule 21-304 NMRA (Appointments to governmental positions); 21-308(A) NMRA (Appointments to fiduciary positions); 21-309 NMRA (Service as arbitrator or mediator), 21-310 NMRA (Practice of law); and 21-311(B) NMRA (Financial or business activities)). In any of

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these capacities, you may be known as a judge, and with that recognition follows the prestige of your office. Unless there are extenuating circumstances, in these capacities you do not "abuse" the prestige of judicial office because you are specifically permitted to publicly act in such capacities.

By analogy, the Committee does not believe that you would abuse your judicial position by acting as a member of the election and credentials committee. Although your judicial position may be known, the Code permits you, as a part-time probate judge, to take actions outside of your judicial capacity that involve the interests of others. As a result, the Committee does not believe that your service on the committee would violate Rule 21-103 and that it is permitted under Rule 21-301. The Committee advises, however, that you should be sensitive to any circumstances not apparent from your inquiry that would indicate the presence of any of the Rule 21-301 proscriptions and would prevent your service.

Very truly yours,

James J. Wechsler
Co-Chair


Julie J. Vargas
Co-Chair

cc: Hon. Sandra W. Engel
Hon. Freddie J. Romero
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