

Advisory Committee on the Code of Judicial Conduct

Hon. Frank H. Allen, Jr., Chairman
Hon. Marie A. Baca
Hon. James J. Wechsler
Prof. William MacPherson

February 14, 2001

Judge

NM

Re: Judicial Advisory Committee Opinion 01-01

The Advisory Committee on the Code of Judicial Conduct has received your January 4, 2001 letter requesting advice concerning the application of Rule 21-800(E) NMRA 2000 (effective February 16, 1995) of the Code of Judicial Conduct to your campaign for Judicial office. We understand from your letter that after the election, your campaign sought contributions to retire outstanding campaign debt and incurred additional fund raising debt to do so. Thirty days after the certification of the election results, your unpaid campaign debt exceeded the funds in your campaign account. You hope to obtain additional contributions to retire your remaining campaign debt.

We discern two questions in your request: first, whether you may leave your campaign account open beyond thirty days after the

date the election results were certified; and second, whether your campaign may continue to solicit and receive contributions to pay outstanding campaign debt after the thirty day period

Rule 21-800(E) provides:

A candidate for judicial office in either a partisan or retention election who has unused campaign funds remaining after election, and after all expenses of the campaign and election have been paid, shall refund the remaining funds pro rata to the campaign contributors, or donate the funds to a charitable organization, or to the state of New Mexico, as the candidate may choose, within thirty (30) days after the date the election results are certified.

As to the first question, we do not read Rule 21-800(E) to apply. Under that provision, a candidate for judicial office must refund funds remaining in a campaign account within thirty days after the date the election results are certified when the candidate has "unused campaign funds remaining after election, and after all expenses of the campaign and election have been paid." You have described that your unpaid campaign expenses exceeded any unused campaign funds which remained in your campaign account after the election. Because of your outstanding campaign debt, you did not have "unused campaign funds" that are covered by Rule 21-800(E).

The second question relates exclusively to post-election

activity. You have indicated that your campaign has sought contributions to retire campaign debt after the election and has incurred additional campaign debt to raise those further funds.

Except as may be particularly specified, a judicial candidate is subject to the Campaign Reporting Act, Section 1-19-25 to 1-19-36, 16-37 (1997). Generally, the Campaign Reporting Act mandates reporting of expenditures and contributions of a candidate for public office. See id.

The Campaign Reporting Act describes the manner in which campaign contributions may be used and includes the elimination of campaign debt as a lawful expenditure of campaign contributions. See § 1-19-29.1 (A) (5). Subsection B of Section 1-19-29.1 specifically relates to candidates for judicial office, requiring such candidates to "solicit or accept campaign funds and return unused funds in accordance with the provisions of the Judicial Code of Conduct." This subsection does not address the expenditure of campaign funds. Thus, unless prohibited by the Code of Judicial Conduct, the Campaign Reporting Act permits a candidate for judicial office to solicit and accept campaign funds after an election in order to pay campaign debt.

The Code of Judicial Conduct does not expressly prohibit post-election fund-raising activity. Rule 21-800 (E) discusses unused

campaign funds. The thirty-day period in the rule requires the prompt return of unused campaign funds. It does not require a campaign account to be closed within that period when funds are not "unused." We believe that it would be an overbroad reading of Rule 21-800 (E) to prohibit the raising of campaign funds to pay campaign debt after the thirty-day period in which unused campaign funds are to be returned. In the event that your campaign does have unused funds, we believe that the policy underlying Rule 21-800(E) of the prompt return of unused funds dictates immediate return of such funds or donation in the manner provided in Rule 21-800(E).

Rule 21-800(A) requires that candidates for judicial office "refrain from campaign fund-raising activity which has the appearance of impropriety." Fund-raising activity by the campaign committee of a candidate for judicial office has a greater risk of the appearance of impropriety after the candidate has successfully been elected to the office. However, we do not read Rule 21-800(A) to be a prohibition of the Code of Judicial Conduct, including the requirement of Rule 21-800(C) that fundraising be managed by a campaign committee.

As a result, we conclude that you may leave your campaign

account open to receive additional contributions to pay remaining
existing campaign debt and distribute any excess of funds received
after paying campaign debt immediately in the manner provided in
Rule 21-800(E).

Very truly yours,

A handwritten signature in cursive script that reads "Frank H. Allen, Jr." The signature is written in black ink and is positioned above the typed name.

Frank H. Allen, Jr.

Chairman

Judicial Advisory Committee

xc: The Honorable Marie Baca
Professor MacPherson
Thaddeus P. Bejnar