

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 19, 2002

Re: Advisory Opinion 02-01

Dear Judge

You have requested an advisory opinion from the Advisory Committee on the Code of Judicial Conduct concerning the use of the title of judge in campaign advertising. Specifically, you ask whether you may state in your advertising: "Please elect _____ to the Magistrate Court" when you are currently the incumbent probate judge.

The Code of Judicial Conduct permits a candidate for election to judicial office to use advertising that is within the bounds of proper judicial decorum if the advertising is not misleading. Rule 21-700(B) (6) NMRA 2002. Under the Code, a candidate for election to judicial office may not "misrepresent the candidate's identity, qualifications, present position or other material fact." Rule 21-700(B) (4) (d). Rule 21-700(B) applies to all candidates for a judicial office, regardless of whether the candidate is the incumbent, a judge, a retired judge, or someone who has never served in a judicial office. Rule 21-900 NMRA 2002. The Advisory Committee on the Code of Judicial Conduct has issued an opinion concerning your specific question under the previous version of Rule 21-700. See Advisory Opinion 92-3. At that time, Rule 21-700(C) prohibited a judge from using any misleading campaign advertisement. The request for the opinion posed the following question.

What if the candidate is a lower court judge running for higher office? Should s/he be required to identify the court in which s/he is currently serving if the word "judge" is used in campaign literature and advertising? Example: "Judge Smith for District Judge" instead of "Mary Smith, Probate Judge, for District Court"?

The opinion answered the question in the affirmative, stating:

A judge who is running for a judicial position in a higher court should not advertise him/herself as a judge without identifying the lower court position that s/he currently holds.

The current version of Rule 21-700(C) also prohibits misleading campaign advertising and specifically addresses the misrepresentation of a candidate's identity and position. The ruling of Advisory Opinion 92-3 is applicable under the current Code of Judicial Conduct.

Very truly yours,

Frank H. Allen, Jr.
Chair, Judicial
Advisory Committee