

Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Chair
Hon. Marie A. Baca
Hon. Kevin L. Fitzwater
Paul L. Biderman, Esq.
Prof. Robert L. Schwartz

September 11, 2006

Re: Judicial Advisory Opinion No. 06-05

Dear Judge,

You have asked the Advisory Committee on the Code of Judicial Conduct whether you may engage in fundraising to retire the outstanding debt of your election campaign for magistrate judge. Your political party selected you as its candidate on the general election ballot by your victory in the primary election. You do not have opposition in the general election.

You have informed the Committee that for the primary election you received only minimal contributions and financed most of your campaign by a personal loan to your campaign. You intend to partially repay that debt with the balance in your campaign account and would like to raise additional funds to retire the outstanding debt.

The Code of Judicial Conduct specifically addresses the campaign funds of judicial candidates who are unopposed or become unopposed in a campaign as follows:

Candidates in partisan elections for judicial office who have a campaign fund, but who are unopposed or become unopposed in the campaign, shall return all unused and uncommitted campaign funds pro rata to the contributors of the funds, or donate the funds to a charitable organization, or to the State of New Mexico, as the candidate may choose, with disbursement of such funds to occur within thirty (30) days after the absence of opposition becomes known.

Rule 21-800(D) NMRA.

The Code of Judicial Conduct also contains a provision with regard to unused campaign funds remaining after a judicial election. It reads:

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 [of] the election results are certified.

Rule 21-800(E).

Your inquiry first raises the question of whether you may use the balances remaining in your campaign account to repay your personal loan to your campaign. Regardless of whether your situation is addressed by Subsection D or E of the Rule, the campaign of a candidate for judicial office may pay all expenses of the campaign and election before it must refund or donate any remaining funds. Your personal loan is clearly one such expense.

The second question, arising from the fact that your remaining campaign fund is insufficient to pay off your personal loan, is whether you may continue to raise campaign funds to pay off the balance of your loan. In Advisory Opinion 01-01, the Committee has previously addressed the question of continued fundraising by a judicial campaign in order to retire campaign after an election has been completed. (See copy attached.) We concluded that neither the Campaign Reporting Act, NMSA 1978, § 1-19-29.1(A), (B) (1997), nor the Code of Judicial Conduct prohibits post-election fund-raising activity in a judicial campaign in order to retire campaign debt, even if the fundraising takes place after the 30-day period in which unused campaign funds are to be returned or donated under Rule 21-800(E). The Committee considers the analysis of Advisory Opinion 01-01 to be applicable to your inquiry. We thus conclude that your campaign may engage in fund-raising activity to pay outstanding campaign debt.

We caution, as we did in Advisory Opinion 01-01, that if your campaign raises funds in excess of your campaign, that Rule 21-800(E) would then become applicable, requiring the immediate return of donation of such excess funds. We further caution, as we did in Advisory Opinion 01-01 that

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 such activity, particularly because of the other protections of the Code of Judicial Conduct, including the requirement of Rule 21-800(C) that fundraising be managed by a campaign committee.

Very truly yours,

James J. Wechsler
Chair

JJW:ow

cc: Hon. Marie Baca
Hon Kevin Fitzwater
Paul L. Biderman, IPL Director
Professor Robert L. Schwartz

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,

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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 raises funds that exceed your campaign debt such 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 such activity, particularly because of the other protections

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,

Frank H. Allen, Jr.
Chairman
Judicial Advisory Committee

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