

# 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

February 8, 2007

## Re: Judicial Advisory Opinion No. 07-03

Dear Judge,

You have asked the Advisory Committee on the Code of Judicial Conduct for an opinion concerning your continued service as an elected member of the Community College Board of Trustees after your recent election as probate judge. As the Committee understands your circumstances, you were elected to the Board of Trustees in February 2005 for a four-year term. You were elected as probate judge of County in November 2006 and assumed office on January 1, 2007. The Committee believes that the Code of Judicial Conduct does not permit you to hold the two positions simultaneously, regardless of the order of your elections.

We first note that as a probate judge, you are not subject to the prohibition of Rule 21-500(C)(2) NMRA that a judge not accept appointment to a "governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice." See Rule 21-901(C)(1)(b) NMRA. As a part-time probate judge, you may serve in such a position, provided that your service does not otherwise violate the Code, including Rule 21-500(H) pertaining to conflicts with the hours and duties of a judicial position.

Your inquiry, however, involves more than your service in two governmental positions; it involves two elected positions. Under Rule 21-700(C) NMRA, the Code partially addresses the circumstances of a judge holding dual elected offices. That rule, contained in the part of the Code concerned with elections and political activity, prohibits an incumbent judge from being nominated for, or elected to, a public non judicial office. Rule 21-700(C). It does not address the issue of whether an official already elected to non-judicial office may subsequently run in an election for, and be sworn in as, a judge. We see that situation as addressed in a different rule.

Every elected official, including a judge, is responsible to the citizens of the State of New Mexico. Among a judge's responsibilities is the duty of undivided loyalty to the independent and impartial performance of judicial functions. Rule 21-200(A) NMRA. ("A judge shall ... act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."). The Committee believes that it is a conflict of interest under the

Code of Judicial Conduct for a judge to undertake or retain elective responsibilities different from or beyond those of his or her judicial responsibilities. The preservation of the independence of the judiciary is an essential element of the Code of Judicial Conduct. Rule 21-100 NMRA ("A judge ... shall personally observe those standards so that the integrity and independence of the judiciary will be preserved.").

Rule 21-700(C) recognizes one aspect of this premise, by prohibiting a sitting judge from seeking non judicial elective office. We believe that Rules 21-100 and 21-200(A), embodying the independence of the judiciary, consider the other side of this issue and preclude a judge from continuing in an elected, public non judicial office after assuming a judicial position. We therefore express our opinion that an elected member of a community college board of trustees must resign that post upon election to the office of probate judge.

Very truly yours,  
James J. Wechsler  
Chair

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