



Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Chair
Hon. Kevin L. Fitzwater
Paul L. Biderman, Esq.
Prof. Robert L. Schwartz
Hon. Freddie J. Romero

March 5, 2010

Dear XXXXXXXX

Re: Judicial Advisory Opinion No. 10-02

You have requested advice from the Advisory Committee on the Code of Judicial conduct concerning the requirement of Rule 21-800(C) NMRA that you form a campaign committee in connection with your re-election campaign. You have advised that both of you will not accept any contribution to your campaign and intend to use your own money for campaign literature, which you generally print with your own equipment. As a matter of campaign strategy, you believe that establishing a campaign committee is not viewed favorably in your communities and could be detrimental to your election efforts.

Rule 21-800(C) reads:

Candidates in both partisan and retention elections shall establish committees of one or more responsible persons to conduct campaigns for the candidate using media advertisements, brochures, mailings, candidate forums and other means not prohibited by law or these rules. Campaign committees may solicit and accept reasonable campaign contributions, and obtain public statements of support in behalf of the candidate, subject to the restrictions of these rules. All campaign contributions shall be paid or turned over to the campaign committee, and shall be managed and disbursed by the committee. A candidate shall not use or permit the use of campaign contributions for the private benefit

of the candidate or others.

You pose the following questions, and the Committee responds to each in order with regard to your obligations under the Code. We do not address the constitutional implications of Rule 21-800 under the constitutions of the United States and the State of New Mexico because of the complexity and uncertainty of such an analysis.

(1) When I establish the committee - and I continue to exclusively use my own money to fund the campaign - can I still show "paid for by candidate . . ." or must I use "paid for by the committee to elect ..."?

The Code of Judicial Conduct assigns specific roles to a candidate and a campaign committee. For instance, the Code specifies that a candidate must form a campaign committee, Rule 21-800(C), and may, subject to limitations, solicit contributions for the campaign. Rule 21-800(B). On the other hand, a campaign committee has the responsibility to conduct the candidate's campaign "using media advertisements, brochures, mailings, candidate forums and other [permissible] means." Rule 21-800(C). The Code further gives a campaign committee the responsibility to solicit and accept contributions, obtain permitted statement of support, and manage and disburse the contributions. Rule 21-800(C). The only overlapping responsibility arises from the ability of both the candidate and the committee to solicit funds. Rule 21-800(B), (C). Otherwise, the respective responsibilities are distinct.

The Code uses mandatory language with respect to a committee's responsibility to manage and disburse funds generated by contributions. *See Team Specialty Prods., Inc. v. N.M. Taxation & Revenue Dept*, 005-NMCA-020, ¶ 10, 137 N.M. 50, 107 P.3d 4 (filed 2004) (indicating that usage of the word "shall" indicates an intent for the action to be mandatory). It does not give the candidate any such authority. The Committee believes that the language of the Code was so designed to require a campaign committee to be the exclusive means to manage and disburse funds. Indeed, this exclusive authority serves as protection to the public by ensuring that a responsible third party is conducting the campaign, as well as protection for the candidate who is insulated from aspects of campaign management.

As a result, the Committee advises that your campaign committee, as the exclusive means to disburse funds, must be listed on your campaign literature

as the body responsible for payment. We note that your personal funding of the campaign is a financial contribution to be managed by your campaign committee. However, we see nothing in Rule 21-800(C) that prevents you from stating in your campaign literature that your campaign committee paid for all publishing costs from your funds. To this effect, your literature might state something such as "Paid for by the Committee to Elect . . . with funds contributed by the Candidate." We further note, that, to the extent that you are concerned about the appearance in your community of the detrimental effect of using a campaign committee, any opponent in the campaign must also abide by Rule 21-800(C) and form a campaign committee. *See* Rule 21-800(C) (applying to candidates for judicial office not only judges).

(2) If I can continue to say "paid for by candidate . . .," must I also print that I have a committee?

As we have discussed, you must reflect that you have a campaign committee.

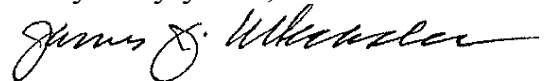
(3) Can I (or my treasurer) still file the Affidavit of Exception?

The Campaign Reporting Act, NMSA 1978, § § 1-19-1 to -37 (2009), formerly provided that candidates in non-statewide elections could file a statement of exception from the reporting requirements if they did not anticipate receiving or expending \$1000 in an election. This provision was repealed in 2009, and the Committee does not believe that there is such an exception at this time. *See* § 1-19-33 (1995, repealed 2009).

(4) Is there any option to the canons to exempt full-time judges who exclusively use their own money to be exempt from establishing a committee?

No. The Code of Judicial Conduct is mandatory in its language requiring judicial candidates to establish campaign committees. Rule 21-800(C).

Very truly yours,



James J. Wechsler
Chair

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cc: Hon. Kevin L. Fitzwater
Hon. Freddie J. Romero
Paul L. Biderman, IPL Director
Professor Robert L. Schwartz