



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 15, 2010

Dear XXXXXXXXX

Re: Judicial Advisory Opinion No. 10-03

You have asked the Committee on the Code of Judicial Conduct for its opinion as to whether the Code of Judicial Conduct requires you to form a campaign committee in connection with your retention election if you do not intend to raise or expend any funds in the campaign. Not only do you not intend to raise funds, you also do not intend to expend any of your own. The only campaign activity that you might perform would be attending and speaking at public events when you are invited to do so.

The Code addresses campaign committees in Rule 21-800(C), which 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.

The general intent of Rule 21-800(C) is to insulate a judicial candidate from engaging in the type of campaign activity that would give rise to an appearance of impropriety. The rule fulfills this purpose by requiring a judicial candidate to establish a campaign committee to assume responsibility for the conduct of campaign activities. It specifically provides that a campaign committee, rather than the judicial candidate, be responsible for receiving, managing, and disbursing funds, and also for soliciting public statements on behalf of the judicial candidate.

Although the language of Rule 21-800(C) is mandatory, requiring a judge in a retention election to form a campaign committee, the Committee believes that the rule does not contemplate the need for a campaign committee when a judge in a retention election does not intend to conduct a campaign as addressed in the rule. Indeed, if a judge in a retention election does not intend to raise funds, expend funds, solicit public endorsements, or engage in activity other than personally addressing voters in a manner not prohibited by law or the Code, there would not be any function for a campaign committee.

The Committee has recently issued an advisory opinion expressing the view that a judge in a partisan election must form a campaign committee under the Code even if the judge does not intend to raise funds because the judge intended to use the judge's own funds to support campaign expenses. *See* Advisory Opinion No. 10-02, a redacted version of which is attached hereto. We stated in that opinion that the mandatory language of Rule 21-800(C) required a judge in that situation to form a campaign committee because of the intent to use and disburse funds in the campaign. We would expect, as does Rule 21-800(C), that a judicial candidate who has or anticipates opposition in a partisan campaign would need to engage in campaign activity that necessitates forming a campaign committee. On the other hand, a judge in a retention election may elect to refrain from the campaign activity contemplated by Rule 21-800(C). The Committee believes that in such circumstances Rule 21-800(C) does not require the judge to form a campaign committee.

Very truly yours,

A handwritten signature in black ink, appearing to read "James J. Wechsler". The signature is fluid and cursive, with a long horizontal stroke at the end.

James J. Wechsler
Chair

JJW:ow

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