



Advisory Committee on the Code of Judicial Conduct

Hon. Frank H. Allen, Jr. Chairman
Hon. Thomas A. Donnelly
Prof William T. MacPhearson, Jr.
Hon. Marie A. Baca

April 24, 1996

Honorable

Re: Judicial Advisory Opinion 96-03

Dear Judge

You have requested an advisory opinion concerning whether you are required to resign your position as _____ Judge _____, following your filing as a candidate for the position of State Representative, _____. Based on our review of the Code of Judicial Conduct promulgated by the New Mexico Supreme Court, we conclude that the provisions of Canon 21-700(C) specifically addresses and answers your inquiry.

Canon 21- 700(C) states:

Elections for non-judicial offices. No judge of any court in the State of New Mexico may while in office be nominated or elected to a public non-judicial office. A judge must, when filing a statement of candidacy for a non-judicial office, resign the judge's office immediately. [Emphasis added.]

This rule restricts judges from engaging in certain political activity while serving as a judge, and precludes individuals who hold judicial office from simultaneously holding judicial office and seeking election or appointment to an office outside the judicial branch of government. See also Article III, Section 1 of the New Mexico Constitution (persons holding office in one branch of government may not exercise powers belonging to other branches, except as otherwise provided in the Constitution); and Article IV, Section 3(A) of the New Mexico Constitution ("No person shall be eligible to serve in the legislature who, at the time of qualifying, holds any office of trust or profit with the state, county or national governments,

except notaries public and officers of the militia who receive no salary.").

Yours very truly,

Frank H. Allen, Jr.

Chairman, Judicial Advisory Committee