



STATE OF NEW MEXICO
SECOND JUDICIAL DISTRICT
DIVISION IV

CHAMBERS OF
FRANK H. ALLEN, JR.
DISTRICT JUDGE

P-O. BOX 488
ALBUQUERQUE, NM 87103
(505) 841-7455

July 22, 1999

The Honorable

Re: Judicial Advisory Opinion 99-07

Dear Judge

You have requested an opinion from this committee as to whether an appointed judge running for office in a contested election for the seat to which the judge was appointed can use the word "retain" in association with campaign related literature.

Important to this question is the following section of 21-700 Elections and political activity.

B. Candidates for election to judicial office in partisan, non-partisan and retention elections including judges, lawyers and non-lawyers are permitted to participate in the electoral process, subject to the requirements that all candidates:

.....

(4) shall not:

.....

(d) misrepresent the candidate's identity, qualifications, present position or other material fact;

.....

(6) may use advertising that does not contain any misleading contents, provided that the advertising is within the bounds of proper judicial

decorum and does not, in non-partisan elections, contain any reference to the candidate's affiliation with a political party;

Therefore, the word "retain" may be used in political literature in a partisan election if it is not misleading and does not misrepresent the candidate's identity, qualifications, present position or other material fact.

As we know in any election for the judiciary in New Mexico, we will have both partisan and retention elections on the same ballot. Is using the word "retain" in a partisan election by any incumbent judge confusing or misleading? Our committee does not believe so. An appointed judge running in a partisan election is retained in office if elected just as a judge running in a retention election is retained. The ballot clearly shows the difference between the two forms of elections for the judiciary. It is our opinion that the use of the word "retain" by an appointed judge in a partisan election is not misleading nor does it misrepresent the candidate's present position.

Very truly yours,

Frank H. Allen, Jr.
Chairman
Judicial Advisory Committee

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