

**21-402. Political and campaign activities of judicial candidates in public elections.**

A. **Candidates for election to judicial office.** A judicial candidate in a partisan, non-partisan, or retention election,

- (1) shall
  - (a) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary;
  - (b) comply with all applicable election, election campaign, and election campaign fundraising laws and regulations;
  - (c) review and approve the content of all non-financial campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 21-404 NMRA, before their dissemination;
  - (d) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 21-404 NMRA, that the candidate is prohibited from doing under these rules; and
  - (e) if intending to accept funds from others or expend funds in excess of one thousand dollars (\$1,000), establish a campaign committee pursuant to the provisions of Rule 21-404 NMRA;
- (2) shall not
  - (a) seek to discover who has contributed to the campaign of either the judge or the judge's opponent;
  - (b) engage in behaviors or activities prohibited by Rule 21-401(C)(1), (C)(2), (C)(3), (C)(5), (C)(6), and (C)(7) NMRA;
  - (c) solicit funds for a candidate or a political organization, or make a contribution to a candidate, except as permitted by Subparagraphs (A)(3)(b) and (c) below; or
  - (d) misrepresent the candidate's or the candidate's opponent's identity, qualifications, present position or other material fact;
- (3) may
  - (a) speak on behalf of his or her candidacy through any medium, including, but not limited to, advertisements, websites, or other campaign literature;
  - (b) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;
  - (c) contribute to a political organization;
  - (d) use advertising that does not contain any misleading contents, and does not, in nonpartisan elections, contain any reference to the candidate's affiliation with a political party; and
  - (e) respond to personal attacks or attacks on the candidate's record as long as the response does not violate Rule 21-401(C)(6) NMRA.

B. **Contributions creating appearance of impropriety.** Candidates for judicial office in partisan, non-partisan, and retention elections shall refrain from campaign fundraising activity which has the appearance of impropriety, and shall not accept any contribution that creates an appearance of impropriety.

C. **Solicitation for other campaigns and candidates.** Candidates in partisan, non-partisan, and retention elections for judicial office shall not solicit funds for any other political campaign, or for any other candidate for any other office. Judicial candidates may, however, run for election as part of a slate of judicial candidates and may participate in joint fundraising events with

other judicial candidates.

D. **Unopposed candidates in partisan and non-partisan elections.** Candidates in partisan and non-partisan elections for judicial office who have a campaign fund, but who are unopposed or become unopposed in the campaign, shall return all unused and uncommitted campaign funds pro rata to the contributors of the funds, or donate the funds to a charitable organization, or to the State of New Mexico, as the candidate may choose, with disbursement of such funds to occur within thirty (30) days after the absence of opposition becomes known. This paragraph does not apply to retention elections.

E. **Contributions by attorneys and litigants.** If a case is pending before any candidate for the judicial office being contested, restrictions of this paragraph apply to all candidates for that office. Contributions from attorneys and litigants shall be made only to a campaign committee, and are subject to all the requirements of this rule. Campaign committees may solicit contributions from attorneys. Campaign committees shall not knowingly solicit a contribution from a litigant whose case is then pending before the candidate. Campaign committees shall not disclose to the judge or candidate the identity or source of any funds raised by the committee.

F. **A judicial candidate in a partisan public election.** A judicial candidate in a partisan election may

- (1) identify himself or herself as a candidate of a partisan political organization;
- and
- (2) seek, accept, and use endorsements from a partisan political organization.

G. **A judicial candidate in a retention or non-partisan election.** A judicial candidate in a retention or non-partisan election may

- (1) identify himself or herself as a candidate but shall not identify himself or herself with any specific partisan political organization; and
- (2) seek, accept, and use endorsements from a partisan political organization.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-003, effective November 1, 2015.]

**Committee commentary.** —

[1] This rule restricts contributions for campaigns for judicial office to sources and amounts that do not create an appearance of impropriety. Under Rule 21-404 NMRA, candidates for judicial office shall not personally solicit or personally accept campaign contributions. Seed money under NMSA 1978, Sections 1-19A-2(K) and 1-19A-5, and qualifying contributions under NMSA 1978, Sections 1-19A-2(H) and 1-19A-4, are considered campaign contributions for the purposes of these rules. A judicial candidate is prohibited from personally soliciting or personally accepting such contributions. Candidates for election to judicial office are required to create campaign committees to solicit and accept contributions, to solicit public support, and to receive, manage, and disburse all campaign contributions. Each candidate must instruct the campaign committee to solicit or accept only those contributions that are reasonable under the circumstances, and that meet the requirements of this rule.

[2] Attorneys and litigants have the right as citizens to participate in the electoral process of public officers, including judges, and have the right to support and make contributions to candidates for judicial office. Therefore, campaign contributions by attorneys and litigants are permitted, within the restrictions of this rule. However, campaign contributions from litigants with cases pending before any candidate for the judicial office being contested may not be knowingly solicited or accepted by any candidate for that office or that candidate's campaign committee. Once

a campaign committee determines it has received a contribution from a litigant with a case pending before the judicial candidate, the contribution must be returned.

[3] Although Paragraph E does not forbid a judicial candidate's campaign from accepting a contribution from a lawyer in a firm that has a pending case, a judicial candidate's campaign committee should not accept the contribution if accepting such a contribution creates an appearance of impropriety. For example, a large contribution from a law firm with many lawyers may create the appearance of impropriety as might a smaller contribution from a firm with only two or three lawyers. These examples serve only to illustrate the point that campaign committees should exercise particular vigilance when accepting contributions from lawyers whose firm has a pending case.

[4] Campaign committees established under this rule should attempt to manage campaign finances responsibly, avoiding deficits that may necessitate post-election fundraising.

[5] Subparagraphs (A)(3)(a) through (e) of this rule permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 21-401 NMRA. A candidate may begin to engage in activities permitted under Rule 21-401 NMRA before the next applicable electoral event, such as a primary election, or as soon as the candidate makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes, or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office.

[6] Despite Subparagraphs (A)(3)(a) through (e) of this rule, judicial candidates for public election remain subject to many of the same provisions as are contained in Rule 21-401 NMRA. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. *See* Subparagraph (A)(2)(b) of this rule.

[7] In partisan public elections for judicial office, a candidate may be nominated by, affiliated with, or otherwise publicly identified or associated with a political organization, including a political party. This relationship may be maintained throughout the period of the public campaign, and may include use of political party or similar designations on campaign literature and on the ballot. A candidate for judicial office does not publicly endorse another candidate for public office by having that candidate's name on the same ticket, or by participating in joint fundraising with other judicial candidates, or by running for election as part of a slate of judicial candidates.

[8] Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations.

[9] Although judicial candidates in nonpartisan public elections are prohibited from running on a ticket or slate associated with a political organization, they may group themselves into slates or other alliances to conduct their campaigns more effectively.

[10] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[11] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Rule 21-401 (C)(7) NMRA (prohibiting the making of pledges or promises in connection with matters likely to come before the court that are

inconsistent with the impartial performance of judicial duties) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating Subparagraph (A)(2)(b) of this rule and Rule 21-401(C)(7), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. *See* Rule 21-211 NMRA.

[12] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Judges and judicial candidates and their committees must refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading. *See* Subparagraph (A)(2)(b) of this rule and Rule 21-401(C)(5) NMRA.

[13] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate Subparagraph (A)(2)(b) of this rule as pertains to Subparagraphs (C)(3) (prohibiting speeches on behalf of a political organization), (C)(6) (prohibiting any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter impending or pending in any court), or (C)(7) (prohibiting the making of pledges or promises in connection with matters likely to come before the court that are inconsistent with the impartial performance of judicial duties) of Rule 21-401 NMRA, the candidate may respond directly and make a factually accurate public response. When a violation of the Code of Judicial Conduct may have occurred, a judicial candidate may proceed under Rule 21-406 NMRA of this Code.

[14] In addition, if a judge knows that an independent third party has made unwarranted attacks on a candidate's opponent, the candidate should disavow the attacks and request the third party to cease and desist. When false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited from making the facts public. Subject to Subparagraph (C)(6) of Rule 21-401 NMRA (prohibiting any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter impending or pending in any court), as made applicable by Subparagraph (A)(2)(b) of this rule, a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign. It is, however, preferable for someone else to respond if the allegations relate to a pending case.

[15] A candidate for elective judicial office is not prohibited from retaining during candidacy a public office such as district attorney, which is not an office in a "political organization."

[16] Candidates for judicial office should consider setting a limit on any individual contribution for purposes of determining whether contribution above that limit creates an appearance of impropriety or would otherwise undermine the public's confidence in the integrity and independence of the judiciary. Judicial candidates may be informed about the total amounts contributed to the campaign in order to make informed budgeting decisions relating to the campaign.

Under most circumstances, however, judicial candidates should not be informed about the specific details of individual contributions.

[17] Candidates for judicial offices may, through a campaign committee, solicit endorsements of support, including endorsements from attorneys. The judicial candidate may not solicit endorsements and should not be informed about the identity of individual attorney supporters. [Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-003, effective November 1, 2015.]