

Fall-Spring 2017-2018

Dear Candidate for Office of Municipal Judge:

The Administrative Office of the Courts (AOC), in cooperation with the New Mexico Judicial Education Center (JEC) and the New Mexico Municipal League, is responsible for certifying to the Supreme Court that all newly elected municipal court judges have satisfied the educational prerequisites to begin their service on the bench. This letter is to advise you of those requirements should you be elected as municipal judge.

All municipal judges who are elected for the first time, or those who previously have been municipal judges but have not served within the last four years, must attend an initial week-long orientation program to qualify for judicial office.

JEC is responsible for providing the orientation for new municipal judges and has scheduled the orientation in Albuquerque from **Monday, March 19, through Friday, March 23, 2018**. As needed, JEC will pay the costs of this program, including mileage, lodging and per diem, for the week of instruction. Attendance is mandatory.

If you win the election, you **must contact Laura Bassein at JEC immediately** at bassein@law.unm.edu or 505-277-1083 to register for the new judge orientation program. You also should contact Roger Makin at the New Mexico Municipal League, 1-800-432-2036, to confirm your election and be added to their mailing list.

The following legal provisions apply to municipal judge training:

1. Supreme Court Rule 25-102 requires new municipal court judges to initially qualify for office by attending a judicial qualification training course approved by the AOC. The approved course is the one offered by JEC as described above. This rule also requires new municipal court judges to notify AOC of their initial election or appointment. You may fulfill this obligation by calling AOC at 505-827-4800 in Santa Fe.
2. Supreme Court Rule 25-103 requires all municipal court judges to attend an annual continuing judicial education program. JEC is responsible for providing this program. The next annual Municipal Judges Conference is scheduled for **May 2-4, 2018** in Albuquerque. The annual education requirement is available at <http://jec.unm.edu/education/training-requirements-in-nm-1>.
3. Supreme Court Rule 25-104 provides that the Supreme Court may suspend or remove any municipal court judge who fails to attend the initial training or to meet the continuing education requirement.
4. Section 35-14-10 of the New Mexico Statutes requires municipal court judges to annually complete a judicial training program and states that no municipal judge "shall receive any salary until he has successfully completed, or been exempted from, the required judicial training program."
5. New municipal judges are also assigned a mentor and will have a follow-up educational program in Albuquerque on **September 27-28, 2018**.
6. These four components (March Orientation, May Annual Conference, Mentor, and September Follow-up) constitute the 2018 new municipal judge training program.

As a candidate for judicial office, you must adhere to the campaign and fundraising restrictions found in the Code of Judicial Conduct. Please be aware that the Code of Judicial Conduct applies to incumbents and challengers alike. The Code of Judicial Conduct is available from the New Mexico Compilation Commission via the New Mexico Public Access Law website as described on the following page.

Sincerely,



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New Mexico Code of Judicial Conduct

The Code of Judicial Conduct applies to all municipal judges and all candidates for municipal judge. To locate the Code of Judicial Conduct take the following steps:

1. Go to the New Mexico Compilation Commission's website at: <http://nmcompcomm.us/>
2. Click on the dropdown menu labeled: **Public Access Law**
3. Click on: **Rules of Practice and Procedure**
4. Two steps are required to find the entire Code of Judicial Conduct.
 - a. First, click on: **Recently Approved Rule Amendments Since Release of the 2017 NMRA**
–Recent changes to the Code of Judicial Conduct may be found here labeled **Rule Set 21**.
 - b. Second, return to the **Rules of Practice and Procedure** page, and:
 - i. click on: **Unannotated Version of Rules contained in the 2017 NMRA**
 - ii. then click on: **OK**
 - iii. then go to the upper left hand corner and click on the 'plus' sign next to:
Statutes, Rules and Const.
 - iv. then click on: **NMRA (Unannotated)**
 - v. then click on: **21. Code of Judicial Conduct**

It is very important for judges and candidates for judicial office to understand the entire Code of Judicial Conduct. Canon 4 provides particularly important requirements for election related activity for both sitting judges and candidates for judicial office.

21-400. Canon 4.

A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] The public's perception of a fair and impartial judiciary may be greatly affected by the manner in which judges or candidates for judicial office comport themselves. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[2] Even when subject to public election, a judge plays a role different from that of other elected officials. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free from political influence and political pressure. So too, the public's perception of a fair and impartial judiciary may be greatly affected by the manner in which judges or candidates for judicial office comport themselves. This canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[3] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.

[4] Rule 21-401 NMRA addresses the limitations on the political activities of judges generally, and who are not currently running for judicial office. Rule 21-402 NMRA establishes the boundaries for political and campaign activities that circumscribe the conduct of judges and non-judges who are judicial candidates engaged in a partisan, non-partisan, or retention election. Rule 21-403 NMRA addresses the limitations on activities of candidates seeking appointment to judicial office. Rule 21-404 NMRA requires that candidates for judicial office create campaign committees and establishes the rules for those campaign committees. Rule 21-405 NMRA addresses the activities of judges who either become candidates for or seek appointment to a non-judicial office. Finally, Rule 21-406 NMRA creates the mechanism for investigating and resolving violations of the Code, including challenges for violations of the Code in election campaigns.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

COMPILER'S ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. See the table of corresponding rules for former rule

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numbers and the corresponding new rule numbers.

The **2015 amendment**, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, in the committee commentary, in Paragraph [4], deleted the first sentence, which read, "The Code organizes Canon 4 by the political status of the judge, that is, whether the judge is or is not a current candidate for judicial office." and in the present second sentence, after "conduct of judges and", added "non-judges who are".

21-401. Political activity and elections for judges generally, and who are not currently running in either a partisan, non-partisan, or retention election. non-partisan, or retention election.

A. A judge may engage in political activity on behalf of the legal system, the administration of justice, measures to improve the law and as expressly authorized by the law or by this Code.

B. A judge may, unless prohibited by law, attend non-fundraising political gatherings.

C. A judge shall not, except as permitted by Rule 21-402 NMRA,

(1) act as a leader or hold office in a political organization;

(2) publicly endorse or publicly oppose

(a) a candidate for public office, or

(b) a ballot issue unrelated to the administration of justice or the legal system;

(3) make speeches on behalf of a political organization;

(4) solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate;

(5) knowingly, or with reckless disregard for the truth, make any false or misleading statement;

(6) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or

(7) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

D. A metropolitan, district, or appellate court judge shall not

(1) purchase tickets for or attend dinners or other fundraising events sponsored by a political organization or a candidate for public office; or

(2) publicly identify himself or herself as a candidate of a political organization.

E. A judge shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge, any activities prohibited under this Code.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

**Committee commentary. —
Participation in Political Activities**

[1] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited from assuming leadership roles in political organizations, such as ward chair or delegate to a party convention. See Subparagraph (C)(1) of this rule pertaining to judges and Rule 402(A)(2)(b) NMRA pertaining to judicial candidates. Non-candidates may attend political events, but must be conscious that a judge may abuse the prestige of judicial office by being present at the event and should consider whether the interests of the judiciary would best be served by not attending. A judge should not attend events organized for the sole purpose of raising money for a political campaign.

[2] Judges under Subparagraphs (C)(2) and (C)(3) of this rule, and judicial candidates as provided under Rule 402(A)(2)(b), are prohibited from publicly endorsing or opposing candidates for public office or making speeches on behalf of political organizations, to prevent them from lending the prestige of judicial office to advance the interests of others. See Rule 21-103 NMRA. These rules do not prohibit candidates from campaigning on their own behalf. See Rule 21-402(C)(1) NMRA.

[3] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in Subparagraph (C)(2)(a) of this rule or Rule 402(A)(2)(b) NMRA, against a judge or judicial candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that the judge or judicial candidate endorse any family member's candidacy or other political activity.

[4] Judges and judicial candidates retain the right to participate in the political process as voters in all local, state, and government elections.

[5] Subparagraph (C)(7) of this rule and Rule 21-402(A)(2)(b) make applicable to both judges and judicial candidates the prohibition relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[6] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge or judicial candidate should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

[7] The Code does not prohibit a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. See Rule 21-302 NMRA.

[8] A judge is prohibited from publicly endorsing a judicial candidate or candidate for public office, e.g., adding the judge's name to a list of supporters or publicly recommending the judge's election or appointment. Private endorsements, however, are permitted. A judge or judicial candidate is not prohibited from privately expressing the judge's or judicial candidate's views on judicial candidates or other

candidates for public office.

[9] Paragraph D of this rule exempts magistrate, municipal, and probate judges from the prohibitions identified in this paragraph.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

COMPILER'S ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. See the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

The 2015 amendment, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, in the rule, in Paragraphs B and Subparagraph D(1), changed "non-fund raising" to "non-fundraising"; in the committee commentary, in Paragraph [1], in the second sentence, after "prohibited", deleted "by Paragraph (C)(1)", and at the end of the sentence, added "See Subparagraph (C)(1) of this rule pertaining to judges and Rule 402(A)(2)(b) NMRA pertaining to judicial candidates."; in Paragraph [2], at the beginning of the first sentence, added "Judges under", deleted "Paragraphs", and added "Subparagraphs", after "(C)(3)", added "of this rule," and deleted "prohibit judges", after "judicial candidates", added "as provided under Rule 402(A)(2)(b), are prohibited", after "from", deleted "making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office" and added "publicly endorsing or opposing candidates for public office or making speeches on behalf of political organizations", after "organizations," deleted "respectively", and after the second occurrence of "See", deleted "Rule 21-402(A)(7)" and added "Rule 21-402(C)(1)"; in Paragraph [3], in the first sentence, after "prohibition in", deleted "Paragraph" and added "Subparagraph", and after "(C)(2)(a)", added "of this rule or Rule 402(A)(2)(b) NMRA"; in Paragraph [4], after the first sentence, deleted "Statements and Comments Made during a Campaign for Judicial Office (see also Rule 21-402 NMRA); Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative Duties of Judicial Office."; in Paragraph [5], at the beginning of the paragraph, deleted "Paragraph (C)(9) (and Rule 21-402(A)(2)(a))" and added "Subparagraph (C)(7) of this rule and Rule 21-402(A)(2)(b)", and after "the prohibition", deleted "that applies to judges in Rule 21-201(B) NMRA"; in Paragraph [6], in the third sentence, after "a judge", added "or judicial candidate"; and in Paragraph [7], after "See", deleted "Rule 21-312 NMRA" and added "Rule 21-302 NMRA".

JUDICIAL REPRIMANDS

Endorsement of political candidate. — Where a magistrate court judge authorized the use of the judge's name for an endorsement of a candidate for reelection as mayor of a municipality and the endorsement, which was published in a local newspaper, did not explicitly identify the judge as a magistrate court judge, the judge violated the Code of Judicial Conduct. *In re Vincent*, 2007-NMSC-056, 143 N.M. 56, 172 P.3d 605 (decided prior to the 2011 recompilation).

False statements about judicial disciplinary complaints. — Where, during a radio broadcast debate, a judge made false or misleading statements that no judicial disciplinary complaints had been filed against the judge with the Judicial Standards Commission, the judge committed willful misconduct in office. *In re Miller-Byrnes*, S.Ct. No. 28,716 (Filed August 31, 2004) (decided prior to the 2011 recompilation).

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.]

COMPILER'S ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. See the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

The 2015 amendment, approved by Supreme Court Order No. 15-8300-003, effective November 1, 2015, provided additional restrictions on judicial candidates' political activities, provided that certain provisions of the rule apply to non-partisan elections as well as partisan and retention elections, removed the provision that candidates for judicial office may not personally accept campaign contributions, revised the committee commentary to note that the prohibition on candidates for judicial office from personally accepting campaign contributions is provided for in Rule 21-404 NMRA, and made technical changes; in Subparagraph A(1)(b), after "campaign", deleted "fund-raising" and added "fundraising"; in Subparagraph A(1)(e), at the beginning of the sentence, deleted "shall", after "intending to", deleted "raise" and added "accept funds from others", and at the end of the sentence, deleted the period and added a semicolon; deleted former Subparagraph A(2)(b) and added new Subparagraphs A(2)(b) and A(2)(c), and redesignated former Subparagraph A(2)(c) as Subparagraph A(2)(d); in Subparagraph A(3)(e), after "violate", deleted "Subparagraph (6) of Paragraph C of", and after "Rule 21-401", added "(C)(6)"; in Paragraph B, after "judicial office in", deleted "both", after "partisan", added "non-partisan", and after "campaign", deleted "fund-raising" and added "fundraising"; in Paragraph C, deleted the introductory sentence, which read, "Subject to the restrictions of Rule 21-404 NMRA and Paragraphs A and E of Rule 21-402 NMRA"; deleted Subparagraph C(1), which read, "candidates in both partisan and retention elections for judicial office may solicit contributions for their own campaigns, but shall not solicit funds for any other political campaign, or for any candidate for any other office; and"; deleted Subparagraph C(2), which read, "judicial candidates may run for election as part of a slate of judicial candidates and may participate in joint fundraising events with other judicial candidates.", and added the new paragraph; in

Paragraph E, deleted the second sentence which read, "Candidates for judicial office, in both partisan and retention elections, shall not personally solicit or personally accept campaign contributions from any attorney, or from any litigant in a case pending before the candidate."; in the committee commentary, in Paragraph [1], deleted the second sentence which read, "Candidates for judicial office may solicit contributions for their own campaigns, within the restrictions of this rule, but not for the campaigns for other candidates or offices." and added the second, third and fourth sentences; in Paragraph [11], after the first sentence, deleted "Paragraph A(2)(b)" and added "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)"; at the end of Paragraph [13], deleted "In addition, a judicial candidate has recourse to the complaint procedures of the Fair Judicial Elections Committee of the State Bar. In extreme cases, when there may have been a violation of the Code of Judicial Conduct, a judicial candidate may proceed under Rule 21-406 NMRA of this Code" and added the last sentence; and made technical changes throughout the committee commentary.

Judge cannot simultaneously run for separate judicial positions. — Paragraph B of former Rule 21-700 NMRA indicates that a judge may be nominated or run for another judicial office without resigning. It does not, however, state that a judge may simultaneously run for separate judicial positions. 1990 Op. Att'y Gen. No. 90-04 (opinion rendered prior to the 2011 recompilation).

JUDICIAL REPRIMANDS

Making campaign promise to provide assistance if elected. — Where, during the time a judge was a candidate for magistrate court judge, the judge told a landlord that the judge would help if the landlord had a problem in court; when the judge learned that the landlord was having trouble with a tenant, the judge reviewed the lease and advised the landlord to file suit after the judge was elected; the judge also explained how the landlord could excuse the other magistrate court judges to make sure the judge heard the case; after the judge was elected, the landlord filed suit and excused the other magistrate court judges; and at a hearing on the case, the judge became impatient with the landlord and filed a recusal, the judge violated the Code of Judicial Conduct, subjecting the judge to removal from office. *In re Rodella*, 2008-NMSC-050, 144 N.M. 617, 190 P.3d 338 (decided prior to the 2011 recompilation).

21-403. Activities of candidates for appointive judicial office.

A. A candidate for appointment to judicial office shall not solicit or accept funds, personally or through a committee or otherwise, to support the candidacy.

B. A candidate for appointment to judicial office shall not engage in political activity to secure the appointment except that such candidate may:

(1) communicate with the appointing authority, including any nominating commission designated to screen candidates;

(2) seek support or endorsement for the appointment from organizations and from individuals to the extent requested, required or permitted by the appointing authority and the nominating commission; and

(3) provide to the appointing authority and the nominating commission information as to the candidate's qualifications for office.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

Committee commentary. —

[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rules 21-401(C)(7) and 21-402(A)(2)(b) NMRA.

[2] Candidates for appointive judicial office should submit to the same requirements as a judicial candidate. See Rule 21-402 NMRA.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

COMPILER'S ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. See the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

The 2015 amendment, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, in the committee commentary, in Paragraph [1], at the end of the paragraph, deleted "See Rules 21-401(A)(3)(c)(i) and 21-402(E)(6)(a) NMRA" and added "See Rules 21-401(C)(7) and 21-402(A)(2)(b) NMRA".

21-404. Campaign committees.

A. Campaign committees. Candidates in partisan, non-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 on behalf of the candidate, subject to the restrictions of these rules including, but not limited to, Rule 21-402 NMRA. Candidates shall not personally solicit or personally accept contributions for their own campaigns. Nor shall candidates solicit personally, or through campaign committees, contributions for the campaigns of other candidates or offices. 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 candidate shall take reasonable steps to ensure that his or her campaign committee complies with applicable provisions of this Code and other applicable law.

B. Unused campaign funds. A candidate for judicial office in either a partisan, non-partisan, or retention election who has unused campaign funds remaining after election, and after all expenses of the campaign and election have been paid, shall refund the remaining funds.

pro rata to the campaign contributors, or donate the funds to a charitable organization, or to the State of New Mexico, as the candidate may choose, within thirty (30) days after the date the election results are certified.

[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] Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. This rule recognizes that judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept reasonable financial contributions or in-kind contributions.

[2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.

[3] At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are reasonable in amount, appropriate under the circumstances, and in conformity with applicable law. Although lawyers and others who might appear before a successful candidate for judicial office are permitted to make campaign contributions, the candidate should instruct his or her campaign committee to be especially cautious in connection with such contributions, so they do not create grounds for disqualification if the candidate is elected to judicial office. See Rule 21-211 NMRA.

[4] Contributions for campaigns are limited to sources and amounts that do not create an appearance of impropriety. Candidates for election to judicial office are required to create campaign committees, see Rule 21-402(A)(1)(e) NMRA, 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.

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

[6] Judicial candidates for statewide judicial elective office may elect to participate in public financing that imposes restrictions on fundraising. See NMSA 1978, §§ 1-19A-1 to -17. The restrictions governing campaign finances and requirements for campaign committees apply to publicly financed campaigns. A judicial candidate who seeks or has been certified for public financing must comply with Rule 21-404 NMRA. 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. Unused campaign funds for a publicly financed judicial candidate must, by law, be returned to the public election fund.

[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.]

COMPILER'S ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of

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Conduct was recompiled, effective January 1, 2012. See the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

The 2015 amendment, approved by Supreme Court Order No. 15-8300-003, effective November 1, 2015, provided that candidates for judicial office are prohibited from personally soliciting or personally accepting campaign contributions for their own campaigns or for the campaigns of other candidates or offices, and revised the committee commentary; in Paragraph A, in the first sentence, after "Candidates in", deleted "both", in the second sentence, after "not limited to", deleted "Rule 21-402D" and added "Rule 21-402", and added the third and fourth sentences of the paragraph; and in the committee commentary, in Paragraph [1], after the first sentence, deleted "See Rule 21-402(C) NMRA"; in Paragraph [4], after the first sentence, deleted "Candidates for judicial office may solicit contributions for their own campaigns, within the restrictions of this rule, but not for the campaigns of other candidates or offices."; in Paragraph [5], after "post-election", deleted "fund-raising" and added "fundraising"; and in Paragraph [6], in the first sentence, after "restrictions on", deleted "fund-raising" and added "fundraising", after "See", deleted "Sections 1-19A-1 through 1-19A-17 NMSA 1978" and added "NMSA 1978, §§ 1-19A-1 to -17", and added the present fourth sentence to the paragraph to clarify that seed money and qualifying contributions are considered campaign contributions for the purposes of the Code of Judicial Conduct.

21-405. Activities of judges who become candidates for nonjudicial office.

A. A judge seeking appointment to a public, nonjudicial office shall not:

(1) solicit or accept funds, personally or through a committee, or otherwise, to support the candidacy;

(2) engage in any political activity to secure the appointment except:

(a) communicating with the appointing authority;

(b) seeking the support or endorsement for the appointment from organizations and from individuals to the extent requested, required or permitted by the appointing authority, subject to these rules; and

(c) providing to the appointing authority information concerning the candidate's qualifications for the office.

B. A judge seeking appointment to a public nonjudicial office, during the time the appointment is sought, shall be disqualified from presiding or participating as a judge in any legal proceeding involving or materially affecting the interests of:

(1) the appointing authority; or

(2) an organization or individual that has been contacted by the candidate to make, or is known by the candidate to be making, a recommendation to the appointing authority concerning the appointment.

C. No judge of any court in the State of New Mexico may while in office accept a nomination for, or be elected to, a public nonjudicial office. A judge must, when filing a statement of candidacy for elective nonjudicial office, resign the judge's office immediately.

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

Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

Committee commentary. —

[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The "resign to run" rule set forth in Paragraph C ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the "resign to run" rule.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

COMPILER'S ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. See the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

The 2015 amendment, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, changed "non-judicial" to "nonjudicial" throughout the rule and committee commentary; and in Paragraph C, after "No", deleted "full-time".

21-406. Violations.

A. Violations by judges. Violations of any of the rules of the Code of Judicial Conduct by judges shall be investigated, proceeded upon, and disposed of by the Judicial Standards Commission in accordance with its authority and rules of procedure, and by the Supreme Court of New Mexico acting under its powers of contempt and superintending control. Judges shall comply with all rules, requirements, and procedures of the Judicial Standards Commission, shall cooperate with the Judicial Standards Commission in the performance of its functions, and shall comply with all laws applicable to judicial office.

B. Violations by non-judge candidates for judicial office. Violations of any of the rules of the Code of Judicial Conduct by persons who are members of the bar shall be deemed to constitute violations of the Rules of Professional Conduct, and shall be investigated, proceeded upon, and disposed of by the Disciplinary Board of the Supreme Court in accordance with its authority and rules of procedure, and by the Supreme Court of New Mexico acting under its powers of contempt and superintending control. Violations of the rules by candidates who are not lawyers are within the superintending control of the Supreme Court, and may be grounds for

petitioning the Supreme Court for relief by way of mandamus, injunction, or other equitable relief to require compliance and rectify non-compliance.

C. Challenges of violations in election campaigns. A candidate may bring an action to challenge a violation by the candidate's opponent of Rules 21-401 and 21-402 NMRA occurring in election campaigns for judicial office.

(1) **Filing and venue.** In election campaigns for the Supreme Court and Court of Appeals, by filing a complaint in the district court for Santa Fe County. In election campaigns for district, metropolitan, magistrate, municipal, and probate courts, by filing a complaint in the district court of the county in which the complainant or the defendant resides, but only within the judicial district where the election is to occur. The complainant shall serve all parties within three (3) days after filing the action. If available, any statement, advertisement, or publication alleged to constitute a violation shall be filed with the complaint.

(2) **Standing; parties.** Violations by a candidate or by a candidate's campaign committee can be challenged by an opposing candidate. The alleged violator shall be joined as a defendant and shall be served forthwith in person with the complaint, summons, and notice of hearing when issued. A candidate who has not been joined as a party may intervene in the proceeding by filing a notice of intervention and a response to the complaint within the time required by this rule.

(3) **Hearing.** The complaint shall be heard by the district court without a jury within ten (10) days after the action is filed, unless the time is extended for good cause. Peremptory challenges to the district judge shall be filed by the complainant within three (3) days after the action is filed and by a defendant within three (3) days after service of process on that defendant. The district court shall enter its decision, findings of fact, and conclusions of law, within not more than three (3) days after the hearing is completed. The decision of the district court shall constitute a final judgment immediately upon entry.

(4) **Remedies.** The district court is authorized to issue any order provided by the Rules of Civil Procedure for the District Courts and any remedial decrees for cessation of violations, retractions, corrective publications, or other relief as may be reasonably required to rectify the effects of the violation. The district court may also refer any violation to the Judicial Standards Commission or the Disciplinary Board of the Supreme Court for additional action.

(5) **Discovery.** Any documentary or demonstrative evidence to be offered at the hearing shall be exchanged by the opposing parties as ordered by the district court, and in any case not less than twenty-four (24) hours prior to the commencement of the hearing. Discovery shall not delay the hearing on the merits, but wrongful refusal, obstruction, or delay in discovery may be sanctioned in the discretion of the district court. The parties may, by subpoena, require the appearance of witnesses and the production of evidence at the hearing. The district court may allow oral testimony to be admitted telephonically.

(6) **Appeals.** Appeals shall be taken directly to the Supreme Court of New Mexico

pursuant to the provisions of Rule 12-603 NMRA of the Rules of Appellate Procedure.

(7) ***Other rules applicable.*** The Rules of Civil Procedure for the District Courts, Rules of Appellate Procedure, and Rules of Evidence shall apply unless inconsistent with this rule.

(8) ***Other proceedings.*** The jurisdiction of the Judicial Standards Commission, the Supreme Court, and the Disciplinary Board to hear violations of the Code of Judicial Conduct is not affected by this paragraph.

D. Violations by hearing officers and special commissioners. Violations of any of the applicable rules of the Code of Judicial Conduct by a hearing officer or special commissioner shall be addressed by the chief judge of the judicial district in which the hearing officer or special commissioner is employed. Any such violation shall be treated as an employment matter and may result in discipline up to and including dismissal. In addition, the Supreme Court and the Disciplinary Board retain jurisdiction to hear violations of the Code of Judicial Conduct by hearing officers and special commissioners.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

Committee commentary. —

[1] Rule 21-406 NMRA governs violations of the Code of Judicial Conduct by both judges and judicial candidates.

[2] Judges are required to cooperate with the Judicial Standards Commission or the Supreme Court in the course of their investigations of alleged judicial misconduct. The failure to do so is a violation of Rule 21-406 NMRA.

[3] Judicial candidates are also subject to certain provisions of the Code of Judicial Conduct. Violations by members of the bar are deemed violations of the Rules of Professional Conduct and subject the violator to discipline.

[4] Rule 21-406 NMRA also provides a detailed procedure to obtain an expedited judicial review of alleged violations of the Code during election campaigns. The expedited review recognizes the importance of maintaining the integrity of the election process by swiftly resolving allegations of misconduct.

Judicial candidates may also be subject to other requirements imposed by law that implicate ethical considerations including the Voter Action Act, NMSA 1978, Sections 1-19A-1 to -17, for judicial candidates who have elected public financing, and the Campaign Reporting Act, NMSA 1978, Sections 1-19-25 to -36.

[5] Certain provisions of the Code are applicable by statute to hearing officers and special commissioners as a condition of their employment by the judicial branch. See NMSA 1978, § 40-4B-4 (child support hearing officers); *id.* § 40-13-9 (domestic violence special commissioners); see also Rule 21-004(C) NMRA. However, hearing officers and special commissioners are not subject to the jurisdiction of the Judicial Standards Commission, which is limited to matters that involve a "justice, judge or magistrate." See N.M. Const. Art. VI, § 32; NMSA 1978, § 34-10-2.1. Thus, Paragraph D provides that

violations of the Code by a hearing officer or special commissioner shall be addressed as an employment matter by the chief judge of the judicial district in which the hearing officer or special commissioner is employed.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. 15-8300-013, effective December 31, 2015.]

COMPILER'S ANNOTATIONS

Recompilations. — Pursuant to Supreme Court Order No. 11-8300-045, the former Judicial Code of Conduct was recompiled, effective January 1, 2012. See the table of corresponding rules for former rule numbers and the corresponding new rule numbers.

The 2015 amendment, approved by Supreme Court Order No. 15-8300-013, effective December 31, 2015, provided for additional procedures to address violations of the Code of Judicial Conduct by non-judge candidates for judicial office, hearing officers, and special commissioners; in Paragraph A, in the heading, after "Violations by", deleted "incumbents" and added "judges"; in Paragraph B, in the heading, after "Violations by", added "non-judge", and after the heading, deleted "All candidates for judicial office shall comply with Rules 21-401, 21-402, 21-403, 21-404, or 21-405 NMRA of the Code of Judicial Conduct.", in the present first sentence, after "Violations of", deleted "those" and added "any of the", after "rules", added "of the Code of Judicial Conduct", after "Professional Conduct", added "and shall be investigated, proceeded upon, and disposed of by the Disciplinary Board of the Supreme Court in accordance with its authority and rules of procedure, and by the Supreme Court of New Mexico acting under its powers of contempt and superintending control.", and in the present second sentence, after "Violations of", deleted "those" and added "the"; added Paragraph D; and in the committee commentary, added Paragraph [5] and made stylistic changes.

