



Advisory Committee on the Code of Judicial Conduct

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Judge Yvette Gonzales

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August 8, 2023

[REDACTED]

Re: AO 23-04

Dear Judge [REDACTED]

You are a retired district judge who serves as a judge pro tempore by appointment. You have asked the Advisory Committee on the Code of Judicial Conduct (1) whether Rule 21-401(C)(4) and Rule 21-401(D)(1) NMRA of the Code of Judicial Conduct preclude your spouse from making political contributions to a candidate, and (2) whether Rule 21-102 NMRA and Rule 21-102, comment 5 prevent your spouse from supporting political candidates financially or otherwise even if your spouse makes political contributions from your spouse's separate property.

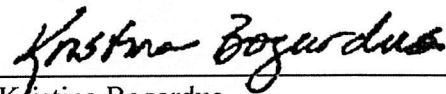
Rule 21-401(C)(4) prohibits a judge who is not a judicial candidate from making a contribution to a political candidate or organization. Rule 21-401(D)(1) prohibits district judges who are not judicial candidates from purchasing tickets to fundraising events sponsored by a political candidate or organization. Rule 21-102 provides that a judge "shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety." Comment 5 to Rule 21-102 states a rule of reason test to determine if a judge has engaged in conduct "that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge."

Under Rule 21-004(B)(3)(C), a retired judge serving by appointment as a judge pro tempore is not required to comply with Rules 21-401(C)(1) - (4) "except while serving as a judge." You have informed the Committee that you serve as a judge pro tempore on a weekly basis. Because you regularly serve as a pro tempore judge, Rule 21-004(B)(3)(C) does not except you from compliance with Rule 21-401(C)(4).

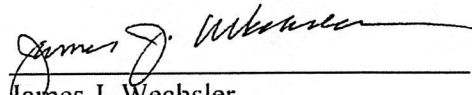
Although Rule 21-401 and Rule 21-102 apply to you as a retired judge, they do not apply to your spouse. Your spouse has rights under the First Amendment to the United States Constitution to participate in the electoral process. As recognized in the commentary to Rule 21-401, family members of judges "are free to engage in their own political activity." Rule 21-401, comment 3. The commentary provides in such circumstances, in order to avoid public misunderstanding, that the judge "urge" family members to take "reasonable steps to avoid any

implication that the judge” endorses the family member’s political activity. *Id.* As stated in Rule 21-401(E), a judge must “take reasonable measures to ensure that other persons do not undertake” activities prohibited by the Code on the judge’s behalf.

The Committee thus advises that you inform your spouse of your responsibilities under the Code and urge that your spouse refrain from activity that may give any appearance that you may be directly or indirectly involved in your spouse’s political activity. As you have intimated, your spouse has separate property that your spouse may use to make political contributions. This use of separate property is advisable. For a discussion of the use of community property for political contributions, see AO 17-01 (July 6, 2017).



Kristina Bogardus
Co-Chair



James J. Wechsler
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