**NEW MEXICO**  
Effective January 1, 2012 (amendments effective as noted)


| Preamble | Changes numbering format from [1]-[3] to [A]-[C]  
*Amendment effective December 31, 2015*  
[B] is MR [2]: Adds at the end:  
At the same time, the Code recognizes that a judge’s participation in community activities provides important benefits both to society and to the judge’s personality. The Code seeks to strike a balance between those activities that may create an appearance of impropriety or bias and therefore affect the public’s perception of judicial fairness and those activities that are a part of necessary and healthy public life. Judges often are asked to participate in activities on behalf of charitable nonprofit organizations. The Code permits such activities with certain limitations, primarily relating to fund-raising activities. A judge should always be mindful to avoid any participation that would create the appearance of impropriety or lend the prestige of judicial office to private, fund-raising activities. A judge should always be mindful to avoid any participation that would create the appearance of impropriety or lend the prestige of judicial office to private, fund-raising fundraising activities. Judges and judicial candidates are also encouraged to pay extra attention to issues surrounding emerging technology, including those regarding social media, and are urged to exercise extreme caution in its use so as not to violate the Code.  

| Scope | Changes numbering format from [1]-[7] to [A]-[G]  
*Amendment effective December 31, 2015*  
[C] is MR [3]: Replaces “explanatory material” in the beginning of the third sentence with “exemplary material”  
[F] is MR [6]: Deletes “the facts and circumstances that existed at the time of the transgression” after “the seriousness of transgression;” Adds at the end: “See Judicial Standards Commission Rule 30 for factors considered in recommending the imposition of discipline.”

| Terminology | Adds letter before each term (A-Z)  
*Amendment effective December 31, 2015*  
Deletes reference to asterisks; deletes all asterisks throughout the Code.  
Replaces references to MC Rules with corresponding NM Rules 21-100 to 21-406 NMRA.  
- “Aggregate:” Replaces reference at the end with: “See Rule 21-315 NMRA.”
• Adds: “**Appearance of impropriety:**” includes conduct that would create in reasonable minds a perception that the judge violated the code of engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge and undermines a judge’s independence, integrity, or impartiality.

• **Appropriate authority:** Replaces “having authority” with “with authority;” Replaces reference at the end with: “See Rules 21-214 and 21-215 NMRA.”

• **Contribution:** Replaces reference at the end with: “See Rules 21-211, 21-213, 21-307, 21-401, and 21-404 NMRA.”

• **De minimis:** Replaces reference at the end with: “See Rule 21-211 NMRA.”

• **Domestic partner:** Replaces “other than a person … legally married” with “without a legally recognized marriage;” Replaces references at the end with: “See Rules 21-211, 21-213, 21-313, and 21-314 NMRA.”

• **Economic interest:** Replaces reference at the end with: “See Rules 21-103 and 21-211 NMRA.”

• **Fiduciary:** Replaces reference at the end with: “See Rules 21-103 and 21-211 NMRA.”

• **Impartial, impartiality, and impartially:** Replaces reference at the end with: “See Canons 1, 2, and 4, and Rules 21-102, 21-202, 21-210, 21-211, 21-213, 21-301, 21-312, 21-313, 21-401, and 21-402 NMRA.”

• **Impending matter:** Replaces reference at the end with: “See Rules 21-209, 21-210, 21-313, and 21-401 NMRA.”

• **Impropriety:** Adds “reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge and” before “undermines judge’s independence …” Replaces reference at the end with: “See Canon 1 and Rule 21-102 NMRA.”

• **Independence:** Replaces reference at the end with: “See Canons 1 and 4, and Rules 21-102, 21-301, 21-312, and 21-402 NMRA.”

• **Integrity:** Deletes “honesty;” Replaces reference at the end with: “See Canon 1 and Rule 21-102 NMRA.”

• **Judge:** means all justices and judges of the Supreme Court, Court of Appeals, district courts, magistrate courts, metropolitan courts, probate courts, and municipal courts.

• **Judicial candidate:** Replaces reference at the end with: “See Rules 21-211, 21-401, 21-402, and 21-404 NMRA.”


• **Member of the judge’s family:**” Replaces reference at the end with: “See
As of November 3, 2015

Application

*Amendment effective December 31, 2015

Rules 21-307, 21-308, 21-310, and 21-311 NMRA.”

• “Member of the judge’s family residing in the judge’s household:” Replaces reference at the end with: “See Rules 21-211 and 21-313 NMRA.”

• “Nonpublic information:” Replaces reference at the end with: “See Rules NMRA.”

• “Pending matter:” Replaces reference at the end with: “See Rules 21-209, 21-210, 21-313, 21-401 NMRA.”

• “Personally solicit:” Replaces reference at the end with: “See Rules 21-307, 21-401, and 21-404 NMRA.”

• “Political organization:” Replaces reference at the end with Rule 21-404 MNRA and Rules 21-401 and 21-402 NMRA.

• “Public election:” Replaces reference at the end with: “See Rules 21-402 and 21-404 NMRA.”

• “Third degree or relationship:” Replaces reference at the end with: “See Rule 21-211 NMRA.”

21-004. Application. A. Applicability of this code. Unless a particular rule provides otherwise, the provisions of this Code apply in their entirety to full-time judges, including justices of the Supreme Court and judges of the Court of Appeals, district courts, the metropolitan courts, magistrate courts, municipal courts, and probate courts. The provisions of this Code also apply to elected part-time judges of probate and municipal courts and judges serving by contract or appointment on a part-time basis, except as specifically provided in either a particular rule or this Application provision. Where stated, the Code also applies to judicial candidates.

B. Exceptions for part-time judges. (1) An elected part-time probate judge, or a judge appointed to a vacant seat on a part-time probate court, (a) is not required to comply with Rules 21-304 (Appointments to governmental positions), 21-308(A) (Appointments to fiduciary positions), 21-309 (Service as arbitrator or mediator), 21-310 (Practice of law), 21-311(B) (Financial or business activities), and 21-315 (Reporting requirements) NMRA; and (b) shall not practice law in the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto. (2) An elected part-time municipal judge, or a judge appointed to a vacant seat on a part-time municipal court, (a) is not required to comply with Rules 21-304 (Appointments to governmental positions), 21-308(A) (Appointments to fiduciary positions), 21-309 (Service as arbitrator or mediator), 21-310 (Practice of law), 21-311(B) (Financial or business activities), and 21-315 (Reporting requirements) NMRA; and (b) shall not practice law in the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto. (3) Other judges serving by contract or appointment on a part-time basis (a) are not required to comply at any time, with Rules 21-304 (Appointments to governmental positions), 21-308(A) (Appointments to fiduciary positions), 21-309 (Service as arbitrator or
As of November 3, 2015

mediator), 21-310 (Practice of law), 21-311(B) (Financial or business activities), and 21-315 (Reporting requirements) NMRA; and (b) shall not practice law in the courts on which the judges serve, and shall not act as lawyers in proceedings in which the judges have served as judges or in any other proceedings related thereto; and (c) are not required to comply, except while serving as a judge, with Rules 21-302 (Appearances before governmental bodies and consultation with government officials), and 21-401(C)(1) through (4) (Political activity and election for judges generally, and who are not currently running in either a partisan, non-partisan, or retention election) NMRA.

C. Hearing officers and special commissioners. A child support hearing officer, domestic violence special commissioner, domestic relations hearing officer, children’s court hearing officer, mental health commissioner, or any other hearing officer or commissioner employed by the judicial branch shall comply, as a condition of the person’s employment, with Rules 21-100 to 21-215; 21-300 to 21-311; 21-313; 21-400 to 21-401; 21-403; and 21-405 NMRA.

D. Time for compliance. A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 21-308 (Appointments to fiduciary positions) and 21-311 NMRA (Financial or business activities) apply shall comply with those rules as soon as reasonably possible, but in no event later than one year after the Code becomes applicable to the judge. [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. — Applicability of This Code

[1] The rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function and are premised upon the supposition that, to the extent possible, a uniform system of ethical principles should apply to all those authorized to perform judicial functions.

[2] In recent years many jurisdictions have created what are often called “problem solving” courts, in which judges are authorized by court rules to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts’ programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual judicial role as independent decision makers on issues of fact and law. When local rules specifically authorize conduct not otherwise permitted under these rules, they take precedence over the provisions set forth in the Code. Nevertheless, judges serving on “problem solving” courts shall comply with this Code except to the extent local rules provide and permit otherwise. Part-Time Judge

[3] When a person who has been a part-time judge is no longer a part-time judge, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the informed written consent of all parties and approval of the court, and pursuant to any applicable rules of professional conduct. Hearing Officers and Special Commissioners
As of November 3, 2015

<table>
<thead>
<tr>
<th>Canon 1/21-100 NMRA</th>
<th>Same as Model Code.</th>
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</thead>
<tbody>
<tr>
<td>Rule 1.1/21-101 NMRA</td>
<td>Adds “respect and” before “comply with the law” Adds [1]: Judges should be independent. They must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and the judicial system.</td>
</tr>
<tr>
<td>Rule 1.2/21-102 NMRA</td>
<td>[2] Adds at the end: “… and should do so freely and willingly. Examples are the restrictions on judicial speech imposed by Rules 210401 and 210402 NMRA that are indispensable to the maintenance of the integrity, impartiality, and independence of the judiciary.” [5] Adds at the end: “…The test for appearance of impropriety is a rule of reason that should be applied consistently with constitutional requirements, statues, other court rules, and decisional law, and with due regard for all relevant circumstances.” [6] Substitutes “should” with “a judge may initiate and…”</td>
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<tr>
<td>Canon 2/21-200 NMRA</td>
<td>Same as Model Code.</td>
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<tr>
<td>Rule 2.1/21-201 NMRA</td>
<td>Same as Model Code.</td>
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</table>
| Rule 2.2/21-202 NMRA | [4] Reads: “When pro-se litigants appear in court, they should comply with the rules and orders of the court and will not be treated differently from litigants with counsel. It is not a violation of this rule, however, for a judge to make reasonable accommodations to ensure all litigants the opportunity to have their
As of November 3, 2015

| Rule 2.3/21-203 NMRA | (B), (C), and [3] Expands prohibited discriminatory grounds by adding to the list: “color,” “ancestry,” “gender identity,” “spousal affiliation;” Replaces “disability” with “physical or mental handicap or serious medical condition” [3] Reads: “Harassment, as referred to in Paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, religion, color, national origin, ethnicity, ancestry, sex, sexual orientation, gender identity, marital status, spousal affiliation, socioeconomic status, political affiliation, age, physical or mental handicap or serious medical condition. Judges are also subject to the New Mexico Judicial Branch harassment policy.” |
| Rule 2.4/21-204 NM | (A) Replaces “public clamor” for “public opinion” |
| Rule 2.6/21-206 NMRA | [2] Deletes first half of the fist sentence and starts with: “A judge should be careful…;” Deletes the rest of the text starting with: “Among the factors that a judge should consider…is civil or criminal.” [3] Deletes ABA Model Code Comment [3]. |
| Rule 2.7/21-207 NMRA | Changes title to “Responsibility to hear and decide” Changes reference to corresponding Rule 21-211 NMRA; adds “the constitution” before “or other law” |
| Rule 2.8/21-208 NMRA | (C) Adds to end: “but may express appreciation to jurors for their service to the judicial system and the community.” |
| Rule 2.9/21-209 NMRA | (A)(2) Adds sentence to end: “A probate judge may obtain written or verbal advice from a disinterested expert on the law applicable to a proceeding before the judge without notice to the parties.” (A)(5) Adds after “authorized by law:” “rule, or Supreme Court Order” [1] Adds to end: “A judge may utilize court staff for the purposes of screening potential ex parte communications. Court staff should return ex parte communications to the sender with the admonition that the sender, if an attorney, must comply with Rule 16-305(B) NMRA.” [3] Adds to end: “An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.” [4] Adds after “authorized by law:”; “rule, or Supreme Court Order” |
| Rule 2.10/21-210 NMRA | [1] Adds to end: “The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process until final disposition. [2] Deletes second part of the first sentence after “in a personal capacity;” Changes the last sentence to: “The judge must not comment publicly on cases in which the judge is a litigant in an official capacity, such as a writ of mandamus.” |
**Rule 2.11/21-211 NMRA**  
*Amendment effective December 31, 2015*

<table>
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<tbody>
<tr>
<td>(A)(2) Adds at end: “or a member of the judge’s staff”</td>
<td><strong>(A)(2) Adds at end: “or a member of the judge’s staff”</strong></td>
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<tr>
<td>NM (A)(4) is the same as Model Code (A)(5)</td>
<td><strong>NM (A)(4) is the same as Model Code (A)(5)</strong></td>
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<tr>
<td>NM(A)(5) is the same as Model Code (A)(6)</td>
<td><strong>NM(A)(5) is the same as Model Code (A)(6)</strong></td>
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**Adds [5]:**

> The fact that an employee of the court is a party to the proceeding does not of itself disqualify the judge. The judge shall consider the specifics of the case in determining whether the judge’s impartiality might reasonably be questioned and if a recusal is required. Specific rules of procedure, including local court rules, may dictate automatic recusal, but when no rule exists, this comment shall apply.

**Adds [6]:**

> In Caperton v. Massey Coal Co., 129 S. Ct. 2252 (2009), the United States Supreme Court held that the failure of a state supreme court justice to recuse when a party had made extraordinary and disproportionate contributions in support of the justice’s candidacy in the previous election violated the opposing party’s due process rights. The Court applied an objective standard and stated “that there is a serious risk of actual bias – based on objective and reasonable perceptions – when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising or directing the judge’s election campaign when the case was pending or imminent.” Id. At 2263-64. The Court recognized that states may, in their codes of judicial conduct, set more stringent standards for disqualification than imposed by the due process clause. Id. At 2267. A judge’s impartiality might reasonably be questioned under Paragraph A of this rule as a result of campaign contributions even though they are not so extraordinary and disproportionate as to violate a person’s due process rights. The intent of the Code of Judicial Conduct is to insulate judges from this type of bias; Rules 21-402(E) and 21-403 NMRA contemplate that a judge or judicial candidate not solicit or be informed of campaign contributions from attorneys and litigants. Despite these prohibitions, a judge may become aware of contributions made on behalf of the judge’s campaign.

**Adds [7]:**

> Excessive contributions to a judge’s campaign by a party or a party’s attorney may also undermine the public’s confidence in a fair and impartial judiciary. An appearance of impropriety may result when attorneys or parties appearing before a judge generate large amounts of money for a campaign, either by contributing directly to the campaign, by contributing to political action committees supporting the judge, or by organizing large fund raisers. However, contributions made by attorneys to the campaigns of judicial candidates would not require a judge’s disqualification in the absence of extraordinary circumstances.

**NM [8] is the same as Model Code [5]**
As of November 3, 2015

| Rule 2.12/ 21-212 NMRA | Adds (C):  
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<td>A judge shall not direct court personnel to engage in conduct on the judge’s behalf or as the judge’s representative when such conduct would violate the code if undertaken by the judge.</td>
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<td>Adds (D):</td>
<td>A judge shall not retaliate against court personnel who refuse to engage in conduct that would violate the code if undertaken by the judge.</td>
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<td>[1] Deletes the last sentence.</td>
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<td>Adds [3]:</td>
<td>A judge shall inform and require the judge’s staff, court officials, and others subject to the judge’s direction and control to observe the standards of confidentiality, fidelity, and diligence that apply to the judge and to refrain from bias and prejudice in the performance of their official duties.</td>
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| Rule 2.13/ 21-213 NMRA | (A) Adds “including the appointment of lawyers” after “In making administrative decisions”  
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<tbody>
<tr>
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<td>Adds (A)(3): shall avoid the appearance of impropriety.</td>
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<tr>
<td>Deletes Model Code (B)</td>
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<tr>
<td>New Mexico (B) is the same as Model Code (C)</td>
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<tr>
<td>Model Code Comment [3]: Deleted.</td>
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| Rule 2.14/ 21-214 NMRA | Model Code Rule corresponds to New Mexico A., which changes the beginning of the sentence to: “A judge who has a reasonable belief” and Replaces “a lawyer or judicial assistance program” at the end with: “the |
As of November 3, 2015

| Rule 2.15/21-215 NMRA | Changes “judge having knowledge” to a “judge who knows” throughout the Rule  
(A) Replaces “the appropriate authority” with “the Judicial Standards Commission”  
(B) Replaces “the appropriate authority” with “the Disciplinary Board” |
|-----------------------|---------------------------------------------------------------------------------------------------|

| Rule 2.16/21-216 NMRA | (A) Replaces language after “and honest with” with: “all rules, requirements, and procedures of the New Mexico Judicial Standards Commission, the New Mexico Disciplinary Board, and the New Mexico Judicial Performance Evaluation Commission.”  
(B) Adds “filed a complaint or” before “assisted or cooperated” |

| Canon 3/21-300 NMRA | Same as Model Code. |

| Rule 3.1/21-301 NMRA | (E) Deletes “or unless such additional use is permitted by law” at the end.  
[1] Replaces reference at the end with corresponding Rule 21-307 NMRA;  
Adds sentence: “They may also speak, write, lecture, teach, and engage in other extrajudicial activities concerning non-legal subjects, subject to the requirements of this Code.”  
[3] Adds “ancestry” as a ground for prohibited discrimination; Replaces “disability” with “physical or mental handicap;” Replaces reference at the end |

*Amendment effective December 31, 2015*
As of November 3, 2015

| Rule 3.2/21-302 NMRA | (A) Deletes “the law” before “the legal system”  
(B): Deleted  
Model Code (C) is the same as New Mexico (B)  
[1] Deletes “matters of law” before “the legal system;” Adds to end: “Judges shall not, however, testify about substantive legal issues that may come before them for decision.”  
[2] Adds to start: “For example, it may be necessary for the Chief Justice or judges who have budgetary responsibilities for the courts to provide testimony about budgetary or administrative matters. So too, judges may have special expertise that would be of benefit to committees or groups constituted to study issues relating to law and social policy. A judge’s participation in such settings is not prohibited by this rule.” Replaces references to corresponding MN Rules 21-103, 21-210 and 21-301(C), respectively. |
| Rule 3.3/21-303 NMRA | [1] Replaces “abuses the prestige” with “lends the prestige;” Replaces reference with the corresponding Rule 21-103 NMRA.  
| Rule 3.4/21-304 NMRA | Adds after . . . “or other governmental position”, “unless it is required by law”;  
Adds as B, same as Model Code Comment [2]:  
A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.  
[1] Replaces reference to corresponding Rule 21-304 NMRA  
[2]: Deleted but appears in New Mexico Code as Rule 21-304 B. |
| Rule 3.5/21-305 NMRA | [2] Replaces “the judge or a member of a judge’s family, court personnel, or other judicial officers” with “any member of the general public” |
| Rule 3.6/21-305 NMRA | (A) Adds prohibited grounds of discrimination: “color”, “ancestry”, “gender identity, marital status, spousal affiliation, socioeconomic status, political affiliation, age, physical or mental handicap, or serious medical condition.”  
(B) Deletes the last sentence  
[2] Adds : “color”, “ancestry”, “gender identity, marital status, spousal affiliation, socioeconomic status, political affiliation, age, physical or mental handicap, or serious medical condition.” |
| Rule 3.7/21-307 NMRA *Amendment effective December 31, 2015 | (A) Replaces reference with corresponding reference to Rule 21-301 NMRA  
Model Code (A)(3): Deleted  
Model Code (A)(4) is the same as New Mexico (A)(3), but replaces text after “used to support the objectives of the organization or entity” with: “A judge shall not personally or expressly solicit financial support during the event;”  
Model Code (A)(5) is the same as New Mexico (A)(4), but New Mexico deletes “law” before “the legal system, or the administration of justice”  
Model Code (A) (6) is the same as New Mexico (A)(5).  
[2] Deletes “Even for law-related organizations” in the beginning  
[3] New Mexico cites paragraph A (3) instead of A (4) at the end of the first sentence; adds after first sentence: “Too strict a rule forbidding a judge’s attendance at or participation in community events would discourage judges
from participating in their communities and interacting with citizens and neighbors, a result that would isolate judges from the public they serve and would be detrimental to encouraging public support for the judiciary. At the same time, there is a potential for a judge’s presence as a major participant at a fund-raising event to exert undue influence on persons to contribute to the event. Paragraph (A)(3) strikes a balance by recognizing a de minimis level of participation that is permitted and encouraged.” Replaces language after “to serve as an usher or a food server or preparer” with: “to be part of a theatrical or musical performance with others, to introduce speakers or present awards and to perform similar functions, at fund-raising events.” Adds at the end: “A judge must be cognizant of the requirements of Rule 21-103 NMRA in connection with fund-raising activities for educational, religious, charitable, fraternal, or civic organizations and activities.”

[4] “It shall be permissible for a judge’s name to appear on an organization’s letterhead, even if the letter solicits funds or membership, as long as the judge is not personally involved in the solicitation. A judge’s title, however, shall not appear on an organization’s letterhead for any purpose.”

<table>
<thead>
<tr>
<th>Rule 3.8/21-308 NMRA</th>
<th>(D) Specified time period is one year. [1] Replaces reference with respective Rule 21-211 NMRA</th>
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</thead>
<tbody>
<tr>
<td>Rule 3.9/21-309 NMRA</td>
<td>Same as Model Code.</td>
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<tr>
<td>Rule 3.10/21-310 NMRA</td>
<td>Adds “full-time” before “judge”; adds at end of first sentence: “unless with the written approval of the Supreme Court while on unpaid leave.” [1] Replace reference with respective Rule 21-103 NMRA</td>
</tr>
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<td>Adds [2]: A part-time judge is not required to comply with Rule 21-310 NMRA but is prohibited from practicing law in the court on which the judge serves and from acting as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto. See Rule 21-004 NMRA.</td>
</tr>
<tr>
<td>*Amendment effective</td>
<td>Changes title to: “Financial or business activities”</td>
</tr>
<tr>
<td>Rule 3.11/21-311 NMRA</td>
<td>December 31, 2015</td>
</tr>
<tr>
<td></td>
<td>Changes title to: “Financial or business activities”</td>
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<tr>
<td></td>
<td>Adds C(4):</td>
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<td>May reasonably be perceived to exploit the judge’s judicial position; or Model Code (C)(4) is the same as New Mexico C(5)</td>
</tr>
<tr>
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<td>[1] Adds “or unduly burdens” before “the performance of judicial duties;”</td>
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<td></td>
<td>Replaces references with respective Rules 21-201 NMRA and 21-103 and 21-211 NMRA.</td>
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<td>Adds [3]:</td>
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<td>When a judge acquires information in a judicial capacity, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain.</td>
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<td>Adds [4]:</td>
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<td>A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge’s court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to</td>
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</tbody>
</table>
As of November 3, 2015

| Rule 3.12/ 21-312 NMRA | New Mexico Adds B. **B. Conflicting compensated activities.** A judge shall not hold any other paid position, judicial or otherwise, that conflicts with the hours and duties the judge is required to perform for every judicial position. A judge shall devote the number of hours that is required by any judicial position held. In no event shall other paid employment or compensable activity hours be performed simultaneously.

[1] Replaces reference with corresponding Rule 21-201 NMRA
Add [3]:

> No judge may receive any remuneration, including a gratuity, for performing a marriage ceremony. For reasonable travel expenses, See Rule 21-314 NMRA.

| Rule 3.13/ 21-313 NMRA | Changes title to: “Acceptance of gifts, loans, benefits, or other things of value”
(A) Adds to the end: “or if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.”
(B)(2) Replaces reference with respective Rule 21-211 NMRA
Add [B](9), which is the same as Model Code (C)(1)
Add [B](10)(a) and (b), which are the same as Model Code (C)(2)(a) and (b)
(C): Deleted
[1] Replaces reference with corresponding Rule 21-313 NMRA; Deletes the rest of the text after “such items need not be publicly reported.”
[2] Replaces reference with corresponding Rule 21-211 NMRA
[4] Replaces references with corresponding Rule 21-313 NMRA

| Rule 3.14/ 21-314 NMRA | (A) and (C) Replaces references with corresponding Rules 21-301, 21-313(A) and 21-315 NMRA, respectively.

| Rule 3.15/ 21-315 NMRA | *Amendment effective December 31, 2015*

**Title:** Extrajudicial compensation, expense reimbursement, and reporting.

A. Compensation and reimbursement. A judge may receive compensation and reimbursement of expenses for extrajudicial activities permitted by this Code, unless such acceptance would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.

B. Extrajudicial compensation. (1) Extrajudicial compensation is the consideration received for services rendered by a judge to a person, firm, corporation, or association other than the salary, benefits, and perquisites of office provided to the judge for the performance of official judicial duties. (2) Extrajudicial compensation does not include (a) interest, dividends, rents, royalties, working interests, proceeds of or profits from the sale or exchange of
assets; (b) compensation or income earned prior to entering judicial service, including fees, salary, benefits, perquisites, disability benefits, or retirement benefits; (c) reimbursement of expenses incurred prior to entering judicial service; or (d) compensation or income of a spouse or domestic partner attributed to the judge by operation of community property or other law. (3) Extrajudicial compensation should not exceed a reasonable amount for the activities performed, and should not exceed what a person who is not a judge would receive for the same activity. (4) A judge shall publicly report extrajudicial compensation received.

C. Expense reimbursement. A judge shall publicly report reimbursement of expenses and waiver of fees or charges permitted by Rule 21-314 NMRA, unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed five hundred dollars ($500.00). Any payment in excess of actual cost is extrajudicial compensation subject to the requirements of this rule. Reimbursement of expenses and waiver of fees or charges, when provided by a governmental entity or entity primarily funded by state or federal funds in connection with judicial education and training, are neither extrajudicial compensation nor subject to the requirements of this rule.

D. Public reports. In addition to all other reports required by law, a judge should report the date, place, and nature of any activity for which the judge received extrajudicial compensation or expense reimbursement as defined in this rule, including the name of the payor and the amount, or character and value, of extrajudicial compensation or expense reimbursement so received. The judge’s report shall be filed annually as a public document in the office of the clerk of the court on which the judge serves or other office designated by law, and, when technically feasible, posted by the court or office personnel on the court’s website.

Committee commentary. — The Code does not prohibit a judge from accepting honoraria or speaking fees, provided that the amount of the extrajudicial compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts of interest are created by the arrangements. A judge must not appear to trade on judicial office for personal advantage. A judge shall not spend significant time away from court duties in order to meet speaking or writing commitments. Neither the source of payment nor the amount paid as extrajudicial compensation must raise any question of undue influence or the judge’s ability or willingness to be impartial. Engaging in business for profit with the State of New Mexico or any of its departments, officials, or political subdivisions, either in person or through an entity in which the judge owns an interest, should be carefully scrutinized to avoid creating a conflict of interest or suggesting that the judge is exploiting judicial office for personal advantage. For further guidance on compensation for extrajudicial activities, see Rule 21-312 NMRA. For further guidance on reimbursement of expenses and waivers of fees and charges, see Rule 21-314 NMRA.
As of November 3, 2015

**Canon 4/21-400 NMRA**
*Amendment effective December 31, 2015*

**Adds 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 incumbent judges 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 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 nonjudicial 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.

**Rule 4.1/21-401 NMRA**
*Amendment effective December 31, 2015*

**Changes title to:** “Political activity and elections for judges generally, and who are not currently running in either a partisan, non-partisan, or retention election”

(A) Replaces language with: “A judge may engage in political activity on behalf of the legal system, the administration of justice, measures to improve...”
As of November 3, 2015

2015

the law and as expressly authorized by the law or by this Code.”

(B) Replaces language with: “A judge may, unless prohibited by law, attend non-fund raising political gatherings.”

Add C:

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

1. same as Model Code (A)(1)
2. similar to Model Code (A)(3), but adds “publicly” before “oppose; Adds (b): … oppose “a ballot issue unrelated to the administration of justice or the legal system”
3. same as Model Code (A)(2)
4. same as Model Code (A)(4)
5. same as Model Code (A)(11)
6. same as Model Code (A)(12)
7. same as Model Code (A)(13)

Add D:

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

1. purchase tickets for or attend dinners or other fund-raising events sponsored by a political organization or a candidate for public office;
2. publicly identify himself or herself as a candidate of a political organization.

E. Same as Model Code (B) but deletes reference to “judicial candidate”.

Committee Commentary

New Mexico [1] is similar to Model Code [3], but replaces reference with Paragraph (C)(1) and adds to end: “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 the presence of judges may lend the prestige of judicial office to 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.”

New Mexico [2] is similar to Model Code [4]: 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.
New Mexico [3] is similar to Model Code [5], but replaces reference with “paragraph (C)(2)(a) of this rule or Rule 402(A)(2)(b) NMRA” and replaces “they” at the end with “the judge or judicial candidate”

New Mexico [4] is similar to Model Code [6], but deletes MR second sentence.

[7]: Deleted
[8]: Deleted
[9]: Deleted
[10]: Deleted
[11]: Deleted

New Mexico [5] is the same as Model Code [12], but replaces references with paragraph (C)(7) and Rule 21-402(A)(2)(b).

New Mexico [6] is the same as Model Code [13]

[14]: Deleted
[15]: Deleted

Adds [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.*

Adds [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.*

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

<table>
<thead>
<tr>
<th>Rule 4.2/21-402 NMRA</th>
<th>(A) Adds subtitle: “Candidates for election to judicial office.” Replaces (1)-(4) with:</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Amended November 1, 2015</em></td>
<td>(1) shall</td>
</tr>
<tr>
<td>New Mexico A(1)(a) is the same as Model Code (A)(1)</td>
<td></td>
</tr>
<tr>
<td>New Mexico A(1)(b) is similar to Model Code (A)(2), but deletes “of this jurisdiction” at the end</td>
<td></td>
</tr>
<tr>
<td>New Mexico A(1)(c) is similar to Model Code (A)(3), but adds “non-financial” before “campaign” and replaces reference with corresponding Rule 21-404 NMRA</td>
<td></td>
</tr>
</tbody>
</table>
New Mexico A(1)(d) is similar to Model Code (A)(4), but Replaces reference with corresponding Rule 21-404 NMRA and Replaces “by Rule 4.1” with “under these rules”

Adds A(1)(e):

if intending to accept funds from others or expend funds in excess of $1,000, establish a campaign committee pursuant to the provisions of Rule 21-404 NMRA.

Adds A(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;

Adds A(3):

may:

(a) same as Model Code (B)(2)

(b) same as Model Code (B)(4)

(c) same as Model Code B(5), but Deletes all text after “or organization”

(d) 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 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) Replaces with:

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) Replaces with:

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 elections. 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.

E. Contributions by attorneys and litigants. If a case is pending before any candidate for the judicial office being contested, restrictions of this subparagraph 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 political organization; and

(2) seek, accept, and use endorsements of a 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.

Committee commentary.-

Adds:

[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 fund-raising.

New Mexico [5] is similar to Model Code [1], but replaces reference with paragraph A(3)(a) through (e) in the first sentence; replaces second sentence with: “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.”

New Mexico [6] is similar to Model Code [2], but replaces references with paragraph A(3)(a) through (e) and Rule 21-401 NMRA, respectively. Deleted last sentence.

New Mexico [7] is the same as Model Code [3], but adds “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 fund-raising with other judicial candidates, or by running for election as part of a slate of judicial candidates.”

New Mexico [8] is same as Model Code [5].

New Mexico [9], similar to Model Code [7] but deletes last sentence. “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
As of November 3, 2015

[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. [Paragraph A(2)(b)] 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 [Paragraph Subparagraph (A(2)(b))] (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), (A)(8) (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)(9) (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 Paragraph (C)(8) of Rule 21-401 (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.

**Rule 4.3/21-403 NMRA**

*Amendment effective December 31, 2015*

Replaces the beginning of the Rule with:

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) is similar to Model Code (A), but Replaces language after “including any” with: “nominating commission designated to screen candidates”

(2) is similar to Model Code (B), but Replaces language after “the
| Rule 4.4/21-404 NMRA | Replaces Rule with: **Campaign committees.**  
A. **Campaign committees.** Candidates in 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 in 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 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 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.  

[1] Replaces reference with Rule 21-402(C) NMRA and Deletes “in many jurisdictions” before “judicial candidates must”  
[3] Replaces reference at the end with corresponding Rule 21-211 NMRA  
Add:  
[4] Contributions for campaigns are limited to sources and amounts that do not create an appearance of impropriety. 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. Candidates for election to judicial office are required to create

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**Appointment from** with: “organization and from individuals to the extent requested, required or permitted by the appointing authority and the nominating commission;”  
(3) provide to the appointing authority and the nominating commission information as to the candidate’s qualifications for office.

[1] is the same as Model Code, but Replaces reference at the end with: “See Rules 21-401(C)(7) and 21-402(A)(2)(b) NMRA.”

Add [2]:

Candidates from appointive judicial office should submit to the same requirements as a judicial candidate. See Rule 21-402 NMRA.
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.
[5] Campaign committees established under this rule should attempt to
manage campaign finances responsibly, avoiding deficits that may
necessitate post-election fund-raising.
[6] Judicial candidates for statewide judicial elective office may elect to
participate in public financing that imposes restrictions on fund-raising.
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.

Rule 4.5/21-405 NMRA

Replaces Rule with:
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.
[2] Replaces reference with paragraph C.

NM Rule 21-406 NMRA

21-406. Violations.
As of November 3, 2015

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
As of November 3, 2015

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.


(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.

Committee commentary.—
[2] Judges are required to cooperate with the Judicial Standards Commission or the Supreme Court in the course 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.