

Colorado Supreme Court
Colorado Judicial Ethics Advisory Board (CJEAB)

C.J.E.A.B. Advisory Opinion 2022-03
(Finalized and effective May 18, 2022)

BACKGROUND:

Colorado Mountain College (“CMC”) is a public community college with several campuses in western Colorado. The CMC Board of Trustees has seven at-large seats, which are elected by the voters in the six counties that make up the CMC District. *See* C.R.S. § 23-71-123.¹ The Board of Trustees is responsible for hiring and evaluating CMC’s president, approving the college budget, certifying the mill levy, working with the college president to develop a strategic plan, monitoring CMC’s progress, and acting in CMC’s best interests.

The requesting judge has been approached to run for election as a regional trustee.

ISSUE PRESENTED:

Whether the requesting judge may run for election and, if successful, serve as a trustee of CMC without violating the Code of Judicial Conduct (“Code”).

SUMMARY:

Colorado follows the “resign to run” rule, which requires judges to resign from judicial office upon becoming a candidate for nonjudicial elective office. While the requesting judge could serve as a trustee of CMC if he volunteered or was appointed to the position, Rule 4.4(A) prohibits the judge from running for election unless he resigns from judicial office.

APPLICABLE PROVISIONS OF THE CODE:

Rule 3.7 governs the extent to which judges may participate in certain extrajudicial activities “sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit.” Rule 3.7(A)(6) permits judges to

serv[e] as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

- (a) will be engaged in proceedings that would ordinarily come before the judge; or
- (b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

¹ Colorado Mountain College Board of Trustees, available at [Board of Trustees - Colorado Mountain College \(coloradomtn.edu\)](https://www.coloradomtn.edu/board-of-trustees).

Canon 4 provides that a judge “shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.” Rule 4.4(A) provides that “[u]pon becoming a candidate for nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office.”

ANALYSIS:

The question before the CJEAB is whether the requesting judge may run for election to a trustee position for CMC and, if successful, serve in that capacity. Although Rule 3.7(A)(6) permits serving as a CMC trustee, Rule 4.4(A) prohibits running for nonjudicial elective office while maintaining judicial office. Thus, while the judge could serve if he volunteered or was appointed as a trustee, he may not run for office.

The commentary to Rule 4.4 explains why judges may not run for nonjudicial elective office, even if the position is apolitical or nonpartisan:

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 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.

C.J.C. Rule 4.4, cmt. [1]. Comment [2] explains that “the ‘resign to run’ rule . . . ensures that a judge cannot use the judicial office to promote his or her candidacy and prevents post-campaigning 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.”

Colorado courts have not yet considered the resign to run rule, but other jurisdictions with similar provisions have concluded that judges are prohibited from becoming candidates for election to nonjudicial office, including school boards. *See, e.g.*, NV Standing Comm. on Jud. Ethics & Election Pract. Op. JE 98-001 (June 15, 1998) (non-partisan municipal judge may not run for and serve, if elected, as a non-partisan, unpaid regent of the University of Nevada); KS Jud. Eth. Adv. Op. JE 56 (June 15, 1995) (municipal court judge elected to the board of education prior to becoming a judge and before the code of judicial conduct was amended may finish serving her term of office on the board but must resign judgeship if she intends to become a candidate for elected school board office again); NY Jud. Adv. Comm. Joint Op. 89-157, 90-7 (Jan. 18, 1990) (in light of prohibition against judges campaigning for other elective offices, a part-time judge may not seek election to local board of education without resigning from judicial office); WA Ethics Adv. Comm. Op. 85-08 (Oct. 1, 1985) (improper for part-time municipal court judge to continue in judicial position while running as a candidate for the school board even though school district is outside of municipality where judge sits).

CONCLUSION:

Unless the requesting judge resigns from judicial office, the judge may not run for election to CMC's Board of Trustees under Rule 4.4(A).

FINALIZED AND EFFECTIVE this 18th day of May, 2022.