

**NORTH DAKOTA JUDICIAL ETHICS ADVISORY COMMITTEE  
OPINION 2026-1**

**ISSUES**

When a political organization makes an unsolicited endorsement of a judicial candidate does the Code of Judicial Conduct mandate the judicial candidate proactively disavow the endorsement?

**FACTS**

A political organization has posted to social media an endorsement of a particular judicial candidate with a photograph of the candidate and a political party symbol on the photograph. The judicial candidate did not request the endorsement.

**ANALYSIS**

Rule 4.2(A)(1)(d) and (g) state:

A. All Judges and Judicial Candidates.

(1) Except as authorized in Rules 4.3(B) and 4.4(B), a judge or judicial candidate shall not:

(d) seek, accept, or use an endorsement or letter of support from a political organization;

...

(g) publicly identify himself or herself as a candidate of a political organization;

...

Comment [1] to Rule 4.2 states, in part:

The state has a compelling interest in maintaining the independence, integrity, and impartiality of the judiciary, thus enhancing public confidence in the justice system. The independence of the judiciary is necessary to ensure the rule of law. Judicial independence is intended to guarantee much more than impartiality toward litigants. The judiciary acts as a check on the other branches of government and protects the rights enumerated in our Constitution. An independent judiciary is one that is not dominated by or dependent upon the other two branches of government, is not unduly entangled in the political machinery of the other two branches, and is not actuated in its decision-making by the same political policy considerations and interests as the other branches.

Comment [2] to Rule 4.2 states:

In order to advance the state’s compelling interest, Rule 4.2 imposes restrictions on the political and campaign activities of all sitting judges and all candidates for judicial office, while taking into account the methods of selecting judges and the constitutional provisions governing free speech and expressive association. In all events, a candidate for judicial office should maintain the dignity appropriate to judicial office.

A “political organization” is defined as

a political party or other group sponsored by or affiliated with a political party or candidate, a principal purpose of which is to further the election or appointment of candidates for legislative or executive office or to support or oppose the continuation, amendment, repeal, enactment, initiative, or referendum of any constitutional, statutory, or regulatory provision.

Rule 4.3(A)(2) states “A judicial candidate: ... (2) shall take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.6, that the candidate is prohibited from doing by Rule 4.2 . . .”

The Code of Judicial Conduct is clear that a judicial candidate cannot ask a political organization to endorse the candidate or utilize any endorsement if one is made. Other jurisdictions have determined that such conduct is prohibited under similar rules. See, e.g., Halverson v. Harada, 461 P.3d 869 (Mont. 2020); NM Advisory Comm. on the Code of Jud. Conduct, Op. 02-08; FL Jud. Ethics Advisory Comm., Op. 2000-29. However, the Code is less clear on what obligations the candidate may have to avoid being deemed to have “accepted” the endorsement and it does not appear that other jurisdictions have formally responded to such an inquiry. Cf., Fischer v. Thomas, -F.4th-, 2026 WL 1296146 (E.D. Ky.) (stating disavowal of unsolicited endorsement not required where comment to rule specifically states disavowal is not required to avoid being deemed to have accepted).

“Accept” means “to receive (something offered) willingly.” Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/accept>. The Committee does not believe a judicial candidate has “accepted” an unsolicited endorsement by failing to proactively disavow the endorsement. There is concern about the public’s perception of such an endorsement regarding the candidate’s relationship to the political organization, but without some involvement by the judicial candidate, it cannot be said that the endorsement is made on behalf of the judicial candidate.

While the Committee does not believe the Code of Judicial Conduct mandates that the candidate take any proactive steps, the Committee believes best practice would be for the candidate to: (1) make a general public statement that the candidate does not accept endorsements from political organizations, and (2) request the political organization remove the endorsement from its social media site. However, the Committee believes the judicial candidate would be required to disavow the endorsement of the political organization if directly questioned about the endorsement.

## **CONCLUSION**

The independence and integrity of the judiciary is of utmost importance and Canon 4 of the Code of Judicial Conduct serves to meet the state's interest in preserving that independence and integrity. While a judicial candidate cannot seek a political organization's endorsement or use an endorsement should one be made, the failure to proactively disavow an unsolicited endorsement does not equate to acceptance of the endorsement in violation of Rule 4.2.