



Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Chair

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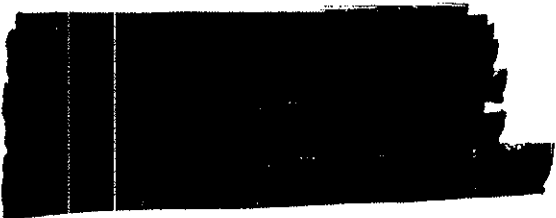
Hon. Kevin L. Fitzwater

Paul L. Biderman, Esq.

Prof. Robert L. Schwartz

Hon. Freddie J. Romero

September 21, 2011



Re: Judicial Advisory Opinion No. 11-03

Dear 

You have asked the Advisory Committee on the Code of Judicial Conduct for an opinion as to whether the Code of Judicial Conduct precludes you and your wife from purchasing foreclosed real property at a scheduled judicial sale. The district court upon which you sit entered the underlying judgment of foreclosure by default approximately eighteen months ago.

You have also informed the Committee that: (1) you had no involvement whatsoever in the case; (2) you learned of the foreclosure sale by reading about it in the newspaper and thereafter read the court file by checking it out at the court clerk's office in the same manner that any person would be entitled to do; (3) you would not attend or personally participate in the bidding at the sale; (4) you do not know the special master responsible for conducting the sale; and (5) if successful in the bidding, you and your wife would pay for the property with community funds and take title jointly.

The Code of Judicial Conduct permits a judge to "hold and manage investments of the judge and members of the judge's family, including real estate," subject to the other provisions of the Code. Rule 21-500(D)(2) NMRA. The Code prohibits a judge from engaging in business or financial activities that "may reasonably be

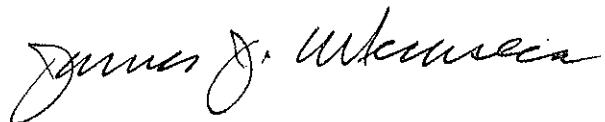
perceived to exploit the judge's judicial position." Rule 21-500(D)(1)(a). Further, the Code provides that "[a] judge shall not lend the prestige of judicial office to advance the private interest of the judge or others." Rule 21-200(B) NMRA.

The Committee does not believe that your proposed action would violate the Code. First, we do not believe that your action can be reasonably perceived to be exploiting your position. You did not participate in the case and learned about it through the public notice that was available to anyone. You read the court file in the same manner as would a member of the public, and you will not participate in the bidding at the sale to avoid any identification of you by the special master.

Second, we do not believe that your proposed action lends the prestige of your office to advance the private interests of you and your wife. You have advised that you do not know the special master, and, moreover, that you will not attend the bidding. In addition, there is no pre-registration that would identify bidders prior to the bidding process.

Based on the facts that you have provided, the Committee does not believe that the Code of Judicial Conduct prohibits your participation in the foreclosure sale in the manner that you have described.

Very truly yours,



James J. Wechsler
Chair

JJW:ow

cc: Hon. Kevin L. Fitzwater
Hon. Freddie J. Romero
Paul L. Biderman
Professor Robert L. Schwartz