

RECEIVED

JAN 04 2012

SUPREME COURT
LAW LIBRARY



Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Chair
~~Hon. Maria A. Baca~~
Hon. Kevin L. Fitzwater
Paul L. Biderman, Esq.
Prof. Robert L. Schwartz

January 3, 2012

[REDACTED]

Re: Judicial Advisory Opinion No. 12-01

Dear [REDACTED]

You have asked the Advisory Committee on the Code of Judicial Conduct for an advisory opinion on whether you may be a guest speaker on the topic of "the judiciary and the role of bonds in the judicial system" at a national conference of bail bondsmen in Las Vegas, NV. You indicated that you have been invited to give this talk by a New Mexico bail bond company owner who is a former president of the national organization. In particular, you have asked whether you may accept reimbursement of your expenses for airfare, meals and motel from the association or, if as anticipated that is not offered, from the local bail bondsman who invited you.

The speaking engagement would take place after the effective date of the revised Judicial Code of Conduct ("the Code"), so our response is based on the provisions of that Code. Your question poses two issues: (1) whether you may, consistently with the Code, serve as a guest speaker at the conference; and (2) whether you may accept reimbursement for your travel-related expenses in so doing. Our conclusion is that you may speak, but you should not accept the expense reimbursement from either source (the national association or the bail bond business owner who invited you).

The Code encourages judges to participate in educational activities involving the judicial system. See, e.g., Rule 21-301 NMRA 2012, committee commentary paragraph 1 (“Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing [or] teaching[.]”). A judge with your extensive experience in the oversight of bail bonds would undoubtedly contribute to the working of the legal system by providing your perspectives to those who issue and manage these bonds. We see no problem with your speaking to this organization on the topics you have identified.

The offer of reimbursement for your expenses, however, poses more complicated issues, summarized in commentary paragraphs 2 and 3 to Rule 21-314 NMRA 2012 of the Code. This rule allows judges to accept reimbursements for reasonable expenses in appropriate circumstances, Rule 21-314(A)-(B). But commentary paragraphs 2 and 3 call upon a judge to assess each situation for the appearance it would create. Several of the factors identified in commentary paragraph 3 cause particular concern in this situation as you have described it. For example, factor (a) asks the judge to consider whether the reimbursements would come from an educational institution or a trade association; in this case, it would be the latter, contributing to an appearance of accepting a gratuity from an interested party. This is of particular concern if the reimbursement were to come from the individual, local bail bondsman whose interests are affected by your rulings, rather than from the national association. Similarly, factor (b) raises concerns if the reimbursement were to come from the individual bail bond business owner rather than the national association.

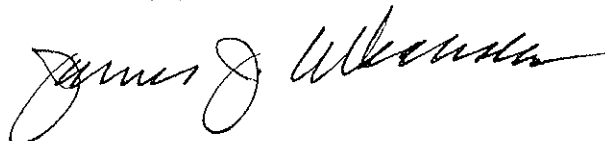
Factors (c) and (f) in commentary paragraph 3 raise further concerns, since you indicate that you rule frequently on whether to require bonds, which would affect the business interests of the individual or group who would be paying your expenses. We also would ask you to review factors (g) and (h), as the variety of viewpoints and participants at the conference may also point against your accepting reimbursement for attending.

Finally, we would note factor (d) in commentary paragraph 3, which raises the additional concern of whether the activity is primarily recreational or educational. The location of the program in Las Vegas, NV, a well-known recreational destination, is not by itself problematic, since legitimate educational activities can certainly take

place there. But viewed in conjunction with the apparent one-sided, financially interested nature of the audience; the source of your expense reimbursements; and the frequent exercise of your judicial discretion in matters affecting this business and the individual who invited you, the location adds to an unfavorable appearance from accepting reimbursement.

It is therefore our opinion that while you may speak at this conference should you so desire, the Code would render your acceptance of expense reimbursements from either source you have identified as highly inadvisable.

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