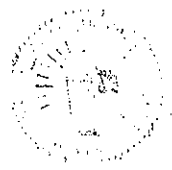


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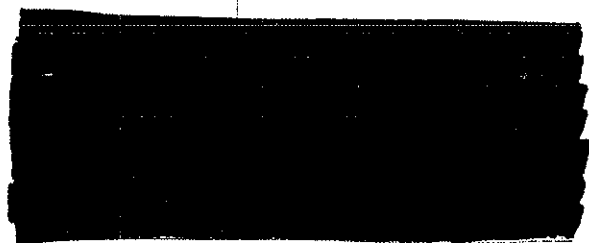
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Advisory Committee on the Code of Judicial Conduct

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

February 7, 2012



Re: Judicial Advisory Opinion No. 12-02

Dear

You have asked the Advisory Committee on the Code of Judicial Conduct for guidance as to whether a judge may participate, either as a performer or talent judge, in a State Bar Foundation fundraising event to support legal services programs for indigent clients. In 2008, the Committee addressed this same question under our former Code of Judicial Conduct in AO #08-04, and, at that time, we advised that such activity would violate the Code. With the adoption of our new Code, however, that advice has now changed: effective January 1, 2012, judges may participate in either capacity in such fundraising programs, subject to certain limitations. This opinion letter will attempt to explain the newly allowed activity and outline some of those limitations.

Rule 21-307(A) NMRA 2012 of the new Code provides a non-exclusive list of activities judges may engage in to support both law-related and charitable causes. According to official Code committee commentary paragraph 3, a rule overly restricting judicial attendance at and participation in such activities would isolate judges from their communities and discourage efforts to gain public support for the judiciary. The rule is intended to strike a balance between that result and the equally undesirable extreme that would arise from allowing judges to use their status to

coerce people into making contributions.

While many of the permissible activities of the new rule are essentially unchanged from those authorized in the prior rule, one significant change is the activity in which judges may participate at fundraising events for law-related and charitable organizations. This participation now includes “appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity.” Rule 21-307(A)(3). Judges still may not, however, directly solicit contributions at such events or otherwise, except from their family members or from other judges over whom they do not exercise supervisory or appellate jurisdiction. Rule 21-307(A)(2). Even more explicitly with regard to your inquiry, the commentary to this rule states in paragraph 3 that: “It is generally permissible for a judge to serve as an usher or a food server or preparer, to be part of a theatrical or musical performance with others, to introduce speakers or present awards” *Id.* The italicized language in the rule and commentary leaves no doubt that judges may now participate in artistic performances to support any of the listed law-related or charitable activities (although there may be arguably be some question as to whether a judge could perform in an exclusive and solo engagement, as the rule is worded). We also note the language favorable to judicial encouragement of legal service programs in Rule 21-307(B), further underscoring the new policy.

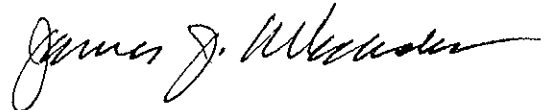
Although the question of whether judges may serve as talent judges of performers at the fundraising event is not explicitly addressed by the rule or commentary, the list of permissible activity in the rule is not exclusive. Performing publicly at a fundraiser, which is now explicitly permitted, would seem to this Committee to show far more visible support by the judge for the cause involved than would judging the merits of performances by other contestants. Based on the intent of the new Code, we do not believe that a law judge serving as a talent judge at such an event could reasonably be seen as impermissibly favoring or being influenced in his or her official duties by a person whose performance is being judged; exercising prestige of office in support of private interests; or otherwise creating an appearance of impropriety merely by reviewing and rating performances of others, regardless of whether those performers might appear before the judge in a more weighty context at another time.

Therefore, as a general rule, judges are now free to perform at fundraising

events. However, those who do so must still exercise sound discretion to avoid appearances of impropriety. Paragraph 2 of the commentary to Rule 21-307 cautions against supporting activities that would “conflict with the judge’s obligation to refrain from activities that reflect adversely upon a judge’s independence, integrity, and impartiality.” Moreover, the entire rule is subject to the requirements of Rule 21-301 NMRA 2012, which further constrains judges generally in their outside activities. This rule and associated commentary create boundaries designed to protect the integrity of the judiciary and its resources. Any judge contemplating activity encompassed within Rule 21-307 should carefully consult Rule 21-301 to ensure that the planned activity complies with those requirements.

In light of the adoption of the new Code and its revised provisions, we advise the judiciary henceforth to disregard our former opinion on this subject, AO #08-04, in favor of this new opinion.

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