



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

April 30, 2012

[REDACTED]

Re: Judicial Advisory Opinion No. 12-04

Dear Judge [REDACTED]

You have been requested by the local Crime Stoppers organization (Crime Stoppers) to require a donation to Crime Stoppers from an offender as a condition of a deferred sentence when you defer a sentence for a traffic violation. Crime Stoppers requests that the donation amount be the amount of the fine that you otherwise could have imposed. You have asked the Advisory Committee on the Code of Judicial Conduct for an opinion as to whether you may comply with the request.

Legislative Action

The Committee first notes that by statute, magistrate, metropolitan, and district court judges may require a defendant, as a condition of a deferred or suspended sentence to "make a contribution of not less than ten dollars (\$10.00) and not more than one hundred dollars (\$100.00), . . . to a local crime stopper program . . . that operates in the territorial jurisdiction of the court." NMSA 1978, § 31-20-6(E) (2007). As a municipal judge, your court derives its authority from the ordinances of your municipality. *See* N.M. Const. art. VI, § 1 ("The judicial power of the state shall be vested in the senate when sitting as a court of impeachment, a supreme court, a court of appeals, district courts; probate courts, magistrate courts and such other

courts inferior to the district courts as may be established by law from time to time in any district, county or municipality of the state.”).

NMSA 1978, Section 35-15-14 (1987) authorizes municipalities to adopt ordinances permitting a municipal court to suspend a sentence in whole or in part and to place a defendant on probation subject to terms and conditions. Section 35-15-14(A)(1),(2). Section 35-15-14(2) also tracks aspects of Section 31-20-6(D) with respect to community service, permitting a municipality to adopt an ordinance that would authorize its municipal court to order community service as a condition of probation. Notably, however, Section 35-15-14 does not authorize a municipality to, in turn, authorize its municipal court to require donations to a local Crime Stoppers organization as a condition of probation.

The statutory language of Sections 31-20-6 and 35-15-14 tends to indicate that the Legislature did not intend to authorize municipalities to give their municipal judges the ability to require donations to a local Crime Stoppers as a condition of probation. Regardless, unless your municipality has granted you authority that would encompass your taking such action, you would not otherwise have such authority. The Committee suggests, therefore, that you examine your municipality’s ordinances for your authority to act. The Committee does not take any position as to whether a broad, general grant of authority to a municipal court by ordinance to impose conditions of probation would include the specific authority to require donations to a Crime Stoppers organization.

Code of Judicial Conduct

In the absence of authorization by ordinance, the Committee believes that your requiring a donation to Crime Stoppers as requested would present problems under the Code of Judicial Conduct. Crime Stoppers is a “community program that relies on anonymous tips to solve crimes and to locate fugitives from justice.” www.crimestoppersnm.org. It is a charitable organization. *Id.* It is not connected to your court.

By requesting that you order donations to Crime Stoppers as a condition of a deferred sentence, Crime Stoppers is requesting that you, and the court, raise funds for its efforts. As you point out, an offender who fails to comply with conditions of a deferred sentence may be held in contempt by the court. *See* Rule 8-110(A)(3)

NMRA (noting the jurisdiction of a municipal judge to punish for contempt for “disobedience or resistance to any lawful order . . . of the court”).

Rule 21-102 NMRA 2012 provides that a “judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.” Rule 21-103 NMRA 2012 provides in relevant part that a “judge shall not abuse the prestige of judicial office to advance the . . . economic interests of . . . others.”

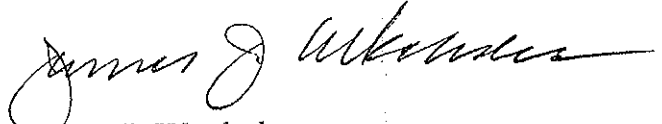
Crime Stoppers’ request poses concerns with both rules. With respect to Rule 21-102, a judge may not act in a manner that gives the appearance of an impropriety. *See* Comment 5 to Rule 21-102. If you were to require the donations as requested, your action would benefit a private organization that is not officially associated with your court. The independence of the judiciary could reasonably be questioned. Moreover, by its very nature, Crime Stoppers is an organization identified with combating crime. To many, it is associated with law enforcement. Because your local police officers regularly appear in your court, there may additionally be a question of impartiality if you were to include Crime Stoppers as part of your deferred sentence process.

As to Rule 21-103, generally, the rule is designed to address circumstances in which a judge promotes a cause outside of court but abuses the judge’s position when doing so. The direct action of a judge that supports a private organization that is not officially associated with the court is more clearly a problem because the judge would be using the authority of the judge’s official position to support the cause.

Conclusion

The Committee believes that you may not require traffic violators to donate to Crime Stoppers as a condition of a deferred sentence unless your municipality has granted your court such authority. We note that our opinion applies to any organization that is not authorized by ordinance or officially connected to the court, regardless of its value and service to the community.

Very truly yours,

A handwritten signature in cursive script, appearing to read "James J. Wechsler".

James J. Wechsler

JJW:ow

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