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Advisory Committee on the Code of Judicial Conduct

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

November 5, 2012



Re: Judicial Advisory Opinion 12-11

Dear 

You have written a book that is awaiting publication. It is autobiographical, addressing your experiences as a lawyer, midwife, and judge and focusing on your emotional response to events. The stories you recount present factual accounts of public information, but they do not contain any potentially identifying information concerning the individuals discussed. You do not take a position on any issues. You are identified in the book and on the back cover as a district judge in New Mexico as well as a midwife. Your publisher will be responsible for the marketing of the book, and it will be sold through book stores, Amazon.com, and the publisher's internet site. You have inquired of the Advisory Committee on the Code of Judicial Conduct whether your actions concerning the book comply with the Code of Judicial Conduct.

Rule 21-301 NMRA provides:

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:

A. participate in activities that will interfere with the proper performance of the judge's judicial duties;

B. participate in activities that will lead to frequent disqualification of the judge;

C. participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;

D. engage in conduct that would appear to a reasonable person to be coercive; or

E. make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice.

As long as you do not take time from your responsibilities as a judge, engage in coercive conduct to market the book, or use court resources in any way, Paragraphs A, D, and E do not pertain to your inquiry. As a result, we address Paragraphs B and C. Both depend on the content of the book.

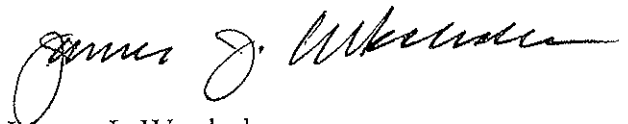
As to Paragraph B, the question is whether the book discusses recognized persons or issues that may come before you in the future. If it does, it may put you in a position that would lead to your disqualification. *See* Rule 21-210(B) NMRA ("A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office."). The Committee notes in this regard that you state that you do not take any position on any issue in the book.

The concern of Paragraph C is whether the content of the book would appear to undermine your independence, integrity, or impartiality in future cases. Rule 21-102 NMRA additionally requires a judge to "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary[.]" Also relevant to your inquiry is Rule 21-210(A), which prohibits a judge from making public statements "that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court."

In this regard, the Committee notes that a judge's extra-judicial writing may come into question if the judge criticizes the law, leaving the impression that the judge would impose the judge's "concept of what the law ought to be for what the law actually is." *In re Inquiry Concerning A Judge, Gridley*, 417 So. 2d 950, 954 (Fla. 1982) (holding that the judge did not engage in a violation because his writing criticizing the death penalty made clear that he was bound to nevertheless follow the law); *see Inquiry Concerning A Judge, Miller*, 644 So. 2d 75, 78 (Fla. 1994) (reprimanding a judge for publishing letters that, although stating his indication that he would uphold the death penalty, made comments that "could be interpreted as making him less than impartial").

Thus, the Committee advises that you scrutinize the content of your book to satisfy yourself that it complies with these provisions of the Code. We note that you have offered the Committee the opportunity to read the book in connection with this opinion. If, after reviewing this opinion, you have particular questions concerning particular parts of the book, please bring them to the Committee's attention, and we will address them at that time. We further note that the manner in which you are identified as a district judge and the marketing of the book exclusively by your publisher do not appear to raise issues concerning Rule 21-103 NMRA ("A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge[.]").

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