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Advisory Committee on the Code of Judicial Conduct

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

November 15, 2012



Re: Judicial Advisory Opinion No. 12-12

Dear 

You have asked the Advisory Committee on the Code of Judicial Conduct whether the Code permits you to serve on the board of directors of a private, non-profit comprehensive mental health organization that provides mental health care in the area that is served by your court. The organization has a professional staff that provides outpatient counseling services that include services for alcohol and substance abuse, emergencies, prevention and education, and youth training. You have advised the Committee that your court does not interconnect with the organization in any manner and does not make referrals to the organization.

Under Rule 21-307(A)(5) NMRA of the Code of Judicial Conduct, a judge may serve as a director of a non-profit civic organization, "unless it is likely that the organization . . . (a) will be engaged in proceedings that would ordinarily come before the judge; or (b) will frequently be engaged in adversary proceedings in the court of which the judge is a member[.]" The Committee views this rule to include any non-profit organization. Because you have advised the Committee that the organization or its counselors or staff do not appear in proceedings before your court and are not provided referrals by your court, the Committee does not believe that your

participation as a director would conflict with this rule.

Rule 21-301 NMRA addresses extra-judicial activities in a more general manner. It permits a judge to engage in such activities, provided that the judge does not, as related to your inquiry, participate in activities that “will lead to frequent disqualification of the judge” or “would appear to a reasonable person to undermine the judge’s independence, integrity, or impartiality.” Rule 21-301(B), (C). Again, because of your described lack of involvement of the organization or its staff in your court’s cases, as litigants, witnesses, or as resources, the Committee does not believe that Rule 21-301 impedes your ability to serve as a director of the organization.

Thus, under the facts that you have provided, the Committee does not believe that the Code restricts your participation on the board of directors of the non-profit organization that you have described. We caution, however, that, if the organization, its counselors, or its staff begin either to appear as litigants or witnesses in your court or to receive referrals from you court, you will need to analyze whether you can continue to serve as a director.

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