


DEC 10 2012

SUPREME COURT  
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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

December 3, 2012

  
**Re: Judicial Advisory Opinion No. 12-13**

Dear 

You have requested an opinion from the Advisory Committee on the Code of Judicial Conduct as to whether you may assist with a mock trial organized by the district attorney's office or a law enforcement agency to train law enforcement officers to testify in court proceedings. It is your understanding that the training would be conducted exclusively by the district attorney's office or a law enforcement agency and would only involve prosecutors and law enforcement officers and trainees.

A judge may, subject to the Code, engage in extra-judicial activities, including teaching about the law and the legal system. Rule 21-301 NMRA, comment 1. Rule 21-301(C) specifically prohibits a judge from engaging in extra-judicial activities that "would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality." Moreover, Rule 21-102 requires that a judge "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary" and avoid even the appearance of impropriety.

In our criminal justice system, the state, acting in its executive capacity, has the

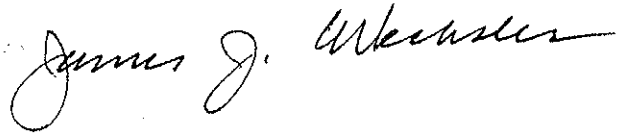
responsibility to investigate and prosecute crime. Included within that responsibility is the training of its personnel who fulfill that responsibility. The judiciary, of course, is an independent branch of state government.

As implied by the Code, the independence of the judiciary is essential to continued confidence of the public in the judiciary in performing its function as impartial arbiter within the criminal justice system. *See* Rule 21-102 (requiring a judge to “act at all times in a manner that promotes public confidence in the independence . . . of the judiciary”). By training law enforcement officers to testify in court through a mock trial, a judge steps away from the judicial role to support the state in performing its role as the prosecutor of crime. The training is not a multi-faceted, scholarly discussion of the law, but rather an instructional session about how to present a case in court. Although the judge may well be advancing the public interest of having trained law enforcement officers properly performing their jobs, that responsibility belongs to the law enforcement community within the executive branch, including the district attorneys. Lawyers within the law enforcement agencies can, and do, regularly carry out this training responsibility. The involvement of a judge attaches the risk that the public may perceive the judge as promoting the interest of the state in its capacity as prosecutor. The Committee does not believe that this perception would be unreasonable.

The Committee further notes that it is entirely possible that an officer you have trained will eventually testify before you in a case similar to the one involved in the mock trial. Under such circumstances, you may be in a position that requires your disqualification. *See* Rule 21-211(A) NMRA (“A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned[.]”). Rule 21-301(B) prohibits a judge from engaging in extra-judicial activities “that will lead to frequent disqualification of the judge.”

The Committee believes that your participation in a mock trial to train law enforcement officers could give rise to a reasonable appearance of bias. This appearance could impair public confidence in your impartiality in cases involving the officers you train or the law enforcement agency that is conducting the training. The Committee does not believe that the Code permits such extra-judicial activity.

Very truly yours,

A handwritten signature in black ink that reads "James J. Wechsler". The signature is written in a cursive style with a large, looped initial "J".

James J. Wechsler

JJW:ow

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