



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 Romero

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July 1, 2013

[REDACTED]

Re: Judicial Advisory Opinion No. 13-04

Dear [REDACTED]

You are the co-chair of the [REDACTED] Committee of the New Mexico State Bar, a committee that actively monitors programs that include [REDACTED]. You have been asked to write a letter in that capacity to the [REDACTED] Corporation in support of a grant application by [REDACTED]. You would sign the letter using your judicial title. You have asked the Advisory Committee on the Code of Judicial Conduct whether the Code of Judicial Conduct permits you to write the letter.

Rule 21-301 NMRA permits a judge to engage in extrajudicial activities that are not prohibited by law or the Code. Rule 21-103 NMRA prohibits a judge from using the prestige of judicial office to advance the economic interests of others. On the other hand, Rule 21-302 NMRA allows a judge to appear before and consult with a governmental body or official "in connection with matters concerning the legal system or the administration of justice." In addition, a comment to Rule 21-103 advises that a judge may "provide a reference or recommendation for an individual based on the judge's personal knowledge."

The Committee believes that you may write the letter because, in these circumstances, the Code's interest of advancing the legal system overrides any countervailing considerations. To further this goal, the Code permits a judge to consult with governmental officials. Although the [REDACTED] corporation, as a non-profit corporation, does not expressly fit within this language of Rule 21-302, it is the funding source by which legal aid organizations throughout the United States receive federal funds. We do not believe that this distinction is material to the purpose of the rule. In addition, the fact that a judge may write a letter of recommendation for an

individual the judge personally knows supports our opinion that a judge may also write a recommendation for a legal aid organization with which the judge has personal experience.

One of the countervailing considerations that the Committee has considered is the provision of Rule 21-301 that prohibits a judge from engaging in an extrajudicial activity if the judge's participation "will lead to frequent disqualification of the judge." Rule 21-301(B). Under Rule 21-211 NMRA, a judge "shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." In view of the overriding goal of enhancing the legal system, however, the Committee does not believe that a judge's impartiality "might reasonably be questioned" by supporting funding for a legal aid organization that may appear in the judge's court representing clients who could not otherwise afford a lawyer.

Very truly yours,



James J. Wechsler
Chair

JJW:alm

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