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SUPREME COURT  
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## Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Chair

~~Hon. Marie A. Pava~~

~~Hon. Kevin J. Fitzwater~~

Paul L. Biderman, Esq.

Prof. Robert L. Schwartz

Hon. Freddie Romero

September 9, 2013

[REDACTED]

**Re: Judicial Advisory Opinion No. 13-05**

Dear [REDACTED]

You have asked the Advisory Committee on the Code of Judicial Conduct questions concerning your participation under the Code of Judicial Conduct as a judge in a truancy court that would be sponsored by your local school district. You have advised that the school district would refer parents of students who have missed school or classes to a program it calls the truancy court.

In the program, a group of students, their parents, and the school principals appear before a judge. The judge advises the parents about the compulsory school attendance laws, including the potential for the school district to file a criminal complaint, and tells the students about the importance of education. Then, each school principal comes forward with individual students and the student's parents and reports to the judge the facts concerning that student's truancy. Based upon the principal's recommendation, the judge will inform the student and parents whether the principal will continue to monitor the student's attendance and whether the student and parents will need to return to the truancy court. The same process is followed at subsequent sessions.

The Committee<sup>1</sup> responds as follows to your questions.

(1) Whether you may act as a truancy court judge after business hours in your courtroom and wearing your judicial robe.

The program you have described does not involve the jurisdiction of your court. No filing would be made with the court. And, as a magistrate judge, although you would have jurisdiction if

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<sup>1</sup>Judge Freddie J. Romero did not participate in this advisory opinion.

a complaint were filed against a student's parents under the compulsory school attendance laws, your court does not have jurisdiction in juvenile proceedings. Thus, any actions you take in connection with the truancy program would be extrajudicial activity. In general, the Code of Judicial Conduct addresses extrajudicial activities in Rule 21-301 NMRA, which reads:

21-301. Extrajudicial activities in general.

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.

Your question raises the Committee's concerns with regard to paragraphs D and E. As to D, a judge may not act in a manner that appears to be coercive. The Committee believes that, in considering whether a judge's actions comply with this requirement, it must address only the actions involved and not the purpose of the actions. Indeed, actions advising parents of the law and encouraging a truant student to attend school are beneficial to the student and the community and should, in the general sense, be encouraged. The Code, however, is concerned with the extrajudicial behavior of judges, not the result of the judge's behavior. By way of example, under Rule 21-307 NMRA, a judge may not, with minor exceptions, solicit funds for a charitable purpose, even if the purpose enjoys universal acceptance, such as feeding starving children or eliminating cancer. The courtroom setting and judicial robes are designed to establish the authority of the judge. By their very nature, they provide a coercive appearance for actions taken by a judge. The truancy court is not a mock trial or moot court proceeding conducted for educational purposes; it involves actual behavior and consequences. The Committee does not believe that you may use your courtroom and wear your judicial robes for this activity. As to paragraph E, although your use of the courtroom may be after hours, the truancy court does not concern the law, the legal system, or the administration of justice.

The Committee also notes a potential problem that your question does not specifically raise--will your participation in the truancy court lead to your frequent disqualification as a judge in cases subsequently brought against parents for failing to comply with the compulsory school attendance laws so presenting a problem under Rule 21-301(B). Under 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 . . . ." These circumstances include situations in which a judge has "personal knowledge of facts that are in dispute." Thus, the Committee does not believe that you would be able to preside over any case in which the parents of a student who has appeared before you in the truancy court has been charged in the magistrate court with violating the compulsory school attendance laws. You will need to determine if the frequency of such filings presents a problem under Rule 21-301(B).


(2) Whether you may serve as the truancy court judge outside of your courthouse without wearing your judicial robe.

Outside of your courthouse and without your judicial robe, the environment does not have the same coercive atmosphere. There, nevertheless, is a related problem. Generally, as a magistrate judge, you are known in your community, and your position commands respect regardless of your surroundings. As a result, even in a truancy-court setting in a local school, your actions directing a student or parents to take a particular action have the appearance of being coercive. On this basis, the Committee believes that your acting as the truancy court judge raises an issue under Rule 21-301(D). This issue is exacerbated when you advise the student's parents that continued truancy could lead to criminal charges.

(3) Whether there are ways in which you can participate in the truancy court program.

The Committee does believe that you can assist the school district's truancy court in at least two possible ways. First, you may assist the school district in its truancy court as an advisor rather than as a judge. Second, rather than serving as a judge, you may speak to groups at a location such as a school to provide general information about the compulsory school attendance laws and the manner in which such cases are addressed when they come before the court.

Very truly yours,

  
James J. Wechsler  
Chair

cc:

Paul L. Biderman, Esq.  
Professor Robert L. Schwartz  
Hon. Freddie J. Romero