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SANTA FE, NEW MEXICO

Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Chair

~~Hon. Maria A. Beck~~

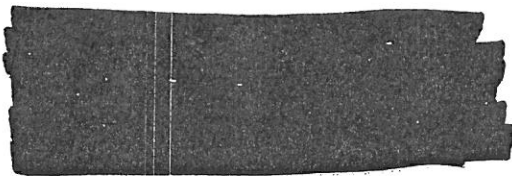
~~Hon. Kevin K. Fitzmaurice~~

Paul L. Biderman, Esq.

Prof. Robert L. Schwartz

Hon. Freddie Romero

November 4, 2013



Re: Judicial Advisory Opinion No. 13-09

Dear 

You have been invited to submit your pottery for a Law Alumni art exhibition at the UNM School of Law. Your pottery would be displayed along with art produced by other Law School alumni and staff in the School of Law forum for approximately a month. During that time people could commit to purchase any displayed pieces, for which they would take delivery after the last day of the exhibit. You would be identified only as an artist and alumnae, not as a New Mexico state judge. Each buyer of your work would be required to make two payments: (1) a tax-deductible donation to the School of Law; and (2) a payment to you as the artist. Each of these two components of the price would be fixed in advance and displayed with each piece and in an exhibit brochure. You have asked the Advisory Committee on the Code of Judicial Conduct whether, under the Code of Judicial Conduct, you may participate in this exhibition under these circumstances.

Since your participation would financially benefit both the non-profit School of Law and you personally as the artist, the answer to your inquiry lies within two sections of the Code of Judicial Conduct: Rule 21-307 NMRA, which addresses support for charitable activities; and Rule 21-312 NMRA, concerning personal compensation for extra-judicial activities.

Rule 21-307 permits judges to assist non-profit organizations such as law schools in their fund-raising activities, within limits. Since the adoption of the current Code of Judicial Conduct effective January 1, 2012, judges have been afforded greater latitude than under previous codes to attend, speak at, and even perform at charitable fund-raising events. Rule 21-307A(3); *see* Committee Comment 3 ("It is generally permissible for a judge to serve as an usher or a food server or preparer, to be part of a theatrical or musical performance with others, to introduce speakers or present awards and to perform similar functions, at fund-raising events.") Given this recently increased latitude, the Committee believes that the display and sale of a judge's artistic works in

support of a charitable cause are now permitted. While neither the rule nor the commentary directly addresses such sales, the Committee believes that such support constitutes the same “de minimis level of participation that is permitted and encouraged” as the examples cited in the Code comment. While the rule prohibits “personal or explicit” solicitation by the judge, displaying a work of art for sale does not entail the direct, personal contact this prohibition contemplates. Nor do we believe that your participation would constitute any impermissible use of your prestige of office. *See* Rule 21-103 NMRA (prohibiting a judge from abusing the “prestige of judicial office to advance the personal or economic interests of the judge or others”).

Your participation as an artist will also entitle you to receive separate personal compensation from purchasers of your pottery. Rule 21-312 authorizes judges to accept reasonable compensation for their extra-judicial activities so long as those activities are otherwise permitted by the Code. Business activities are prohibited when they create conflicts for the judge, will detract from the judge’s time to perform the judge’s official duties, or may exploit the judge’s official position for personal gain. Rule 21-311 NMRA. No such constraints generally apply to the production and sale of artistic work, so you may accept reasonable compensation for pieces. Like any judge earning outside income, you will be required to comply with the reporting requirements of Rule 21-315 NMRA.

The Committee nevertheless recommends that you consider adopting safeguards to prevent any appearance of impropriety. First, it is preferable to note prominently that you will not be told the identity of any buyer. You should make every effort to avoid learning the identity of any buyer, especially if the buyer is an attorney who may appear before you or party on whose interests you may be required to rule. Knowing the name of a buyer might later require you to recuse yourself from a case involving that person, since you will have benefitted financially from their purchase. Second, it is also preferable that you set a firm price in advance, and not accept a higher price, to avoid any appearance that the buyer (should his or her identity become known) is seeking to influence you.

Very truly yours,



James J. Wechsler
Chair

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