



Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Chair

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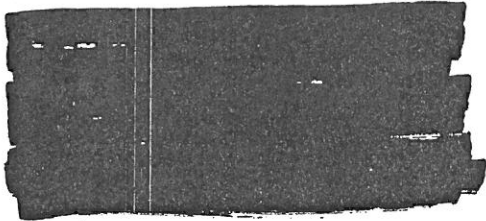
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Paul L. Biderman, Esq.

Prof. Robert L. Schwartz

Hon. Freddie Romero



October 30, 2013



Re: Judicial Advisory Opinion No. 13-10

Dear 

Your wife has applied for a position as a victim's advocate in the district attorney's office that serves the county in which you serve as a magistrate judge. The position for which she has applied is in the adjoining county in which you do not serve unless you are specifically designated in the event of a conflict of the presiding judge. You have asked the Committee on the Code of Judicial Conduct whether you would be disqualified from cases involving the district attorney's office if your wife were to accept the position.

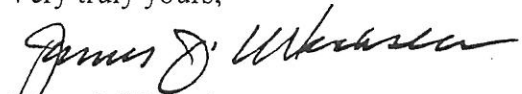
Under the Code of Judicial Conduct, a judge is disqualified and must recuse "in any proceeding in which the judge's impartiality might reasonably be questioned." Rule 21-211(A) NMRA. This Committee has interpreted the disqualification provision of previous versions of the Code in connection with relatives of a judge who served as attorneys in a district attorney's office. In Advisory Opinion No. 07-04 , the Committee advised that a judge is disqualified from presiding in any case involving the district attorney's office because the judge's spouse was the chief deputy district attorney with supervisory authority over the other attorneys in the office. In Advisory Opinion No. 87-06 , the Committee advised that a judge was not disqualified from cases involving the district attorney's office merely because the judge's son was an attorney in the office. The judge was disqualified only in cases in which the judge's son had participated or entered his appearance. For cases in which the son had not participated, the judge was required to inform the defendants of the relationship and provide the opportunity for the defendants to request the judge's recusal.

The Committee appreciates that Rule 21-211(A), as did its prior versions, contains specific illustrations of circumstances in which a judge's impartiality might reasonably be questioned that

includes when a judge's spouse or son is "acting as a lawyer in the proceeding." Rule 21-211(A)(1)(b). The Committee believes, however, that the same principles apply regardless of whether the judge's spouse is employed by the district attorney's office as an attorney or as a victim's advocate. The example of the attorney in the rule is merely illustrative. The Committee believes that you may preside in cases involving the district attorney's office provided that your wife has not participated in the case or actually worked on it in any capacity. It does not matter that your wife may be assigned to the district attorney's office in the adjoining county from where you serve because she would nevertheless be employed by the same district attorney's office that appears in your court. To the extent that you are designated to preside over cases in the adjoining county in the event of conflict, you must avoid any case in which your wife has participated or may have worked on in any way.

Rule 21-211(C) sets forth your disclosure in any case involving the district attorney's office in which you might otherwise preside. You must disclose on the record in each such case the facts of your wife's employment and "ask the parties and their lawyers to consider, outside the presence of [yourself] and court personnel, whether" they wish to waive your disqualification. Id.

Very truly yours,



James J. Wechsler
Chair

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