



## Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Chair

~~Hon. M. A. ...~~

~~Hon. K. ...~~

Paul L. Biderman, Esq.

Prof. Robert L. Schwartz

Hon. Freddie Romero

Hon. Sandra W. Engel

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February 20, 2014

[REDACTED]

Re: Judicial Advisory Opinion No. 14-02

Dear Judge [REDACTED]


You have asked the Advisory Committee on the Code of Judicial Conduct whether the Code of Judicial Conduct permits you, as an appointed municipal judge pro tempore, to engage in lobbying at the New Mexico Legislature. You have contracts to lobby for a community college and the public schools.

The Code has specific provisions that describe its applicability to part-time and pro tempore judges. Under these provisions, the Code defines a "pro-tempore part-time judge" as a "judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment or by contract for each period of service or for each case heard." Code of Judicial Conduct, Application, IV. The Code further defines a "continuing part-time judge" as a judge "who serves repeatedly on a part-time basis by election, under a continuing appointment, or by contract." Code of Judicial Conduct, Application II.

The difference between these two categories is crucial to our analysis. Under Rule 21-302 NMRA, a judge may not "appear voluntarily at a public hearing, or otherwise consult with, an executive or a legislative body or official, except" when addressing "matters concerning the legal system or the administration of justice" or when acting pro se concerning certain matters involving the judge's private interests. Thus, through Rule 21-302, the Code prohibits a judge from engaging in most lobbying activity. A "pro-tempore part-time judge" is not required to comply with the prohibition of Rule 21-302, "except while serving as a judge." Code of Judicial Conduct, Application, IV(A). The Code does not, however, contain the same exemption for a "continuing part-time judge." See Code of Judicial Conduct, Application, IV(A) (stating that a "continuing part-time judge" need not comply with certain provisions of the Code that do not include Rule 21-302).

You have advised the Committee that you serve under a continuing, annual contract and are appointed by the municipal judge to serve less than ten days during the year. Although you do not serve on a regular basis, you do serve repeatedly during the term of your contract. Moreover, your judicial status is the result of a continuing contract in contrast to "a separate appointment or contract for each period of service or for each case." Code of Judicial Conduct, Application, IV. As a result, the Committee<sup>1</sup> believes that you fall within the definition of a "continuing part-time judge." The Committee understands that this conclusion is a technical one that depends specifically upon the details of your contract and appointment. It may be that, if you were able to modify those details, you would fall within the "pro-tempore part-time judge" category.

Very truly yours,

  
James J. Wechsler  
Chair

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

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<sup>1</sup>Paul L. Biderman did not participate in this advisory opinion.