



Advisory Committee on the Code of Judicial Conduct

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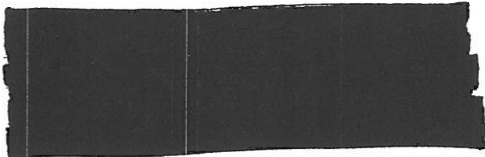
Hon. Sandra W. Engel

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June 3, 2014



Re: Judicial Advisory Opinion No. 14-04

Dear 

You have asked the Advisory Committee on the Code of Judicial Conduct whether a certain family business in which you engage may present an ethical conflict. Specifically, you and your brother share ownership of a business that contracts with the New Mexico Department of Energy, Minerals and Natural Resources to operate three marinas and provide retail services to visitors to a state park. The park is situated within your county, and a significant number of cases, often filed by park police, are filed in your court involving conduct of people in that park. There are other state parks within the county, but your business does not own or operate any concessions in those parks. You are the only judge in your county.

You already understand that in the rare instance of a court case directly involving your business, such as a debt collection or personal injury matter, you would be required to disqualify yourself. Your question is whether your ownership interest in a business contracting with the state agency that operates the parks represents a conflict for you as to cases arising from the park in which your business operates; and if so, whether that conflict also would exist in cases arising from other state parks.

Rule 21-311(B) NMRA generally bars a judge from holding any ownership interests or participating in a business. But the rules allow a judge to manage and participate in "a business closely held by the judge or members of the judge's family." Rule 21-311(B)(1). From your description, this business is wholly owned by you and your brother, so we assume it qualifies as a closely-held family business.

The Code imposes additional conditions, however. The conditions applicable here include:

C. A judge shall not engage in financial activities permitted under Paragraphs A and B if they:

- (1) will interfere with the proper performance of judicial duties;
- (2) will lead to frequent disqualification of the judge;
- (3) will involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves[.]

We will look individually at each of these conditions.

(1) Interference with the proper performance of judicial duties. Under this rule, as well as Rule 21-201 NMRA, your time spent managing or operating the business cannot be allowed to encroach upon the time necessary to fulfill your responsibilities as judge. These responsibilities include maintaining regular office hours, devoting adequate time to hearing and resolving all cases, and disposing of all matters promptly and efficiently. Assuming that the time you devote to managing or operating the business is limited and you give your highest priority to fulfilling your responsibilities as a judge, you will have satisfied this requirement.

(2) Frequent disqualifications. The second condition for owning and managing a closely held family business is whether the judge's business interest will lead to frequent disqualifications. Several factors in your case make this condition an issue of some concern. Your ownership of marinas within the boundaries of a state park will mean that cases will be cited into your court. Those cases that come before you could include matters that might indirectly impact, or appear to impact your business interests. See Rule 21-102 NMRA (requiring a judge to act to promote public confidence in the impartiality of the judiciary and avoid the appearance of impropriety). For example, littering, failing to pay park fees, DWI, assault, or disorderly conduct charges that occur within the park where your businesses operate might be seen as impacting your financial interests. Moreover, our analysis of paragraph (3) below may result in even more disqualifications.

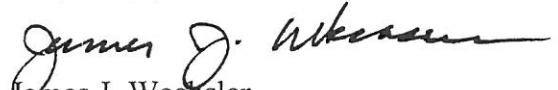
(3) Continuing business relationships with . . . persons likely to come before the court on which the judge serves. This issue presents the Committee's greatest concern. Many of the cases arising in the state park where your business is located are filed and prosecuted by park rangers. As part owner of a business that contracts with the state agency that employs those park rangers, your impartiality could be called into question. See Rule 21-102. The state agency that decides periodically whether to renew your concession could be seen as having undue influence over you through its financial leverage. This concern would be present regardless of the park in which the matter arose, because the problem resides in your financial relationship with the agency, not the location where the incident arises.

You have told the Committee that a number of cases are expected to arise in the state parks, but, because of recent changes in state law, more such violations will be disposed of as penalty assessments. In the first five months of this year, there have been more than eighty cases. While most of the cases will likely be disposed of through penalty assessments that do not require hearings, you still are required to sign off on those cases.

The opinion of the Committee is that your ownership in the marinas and retail businesses in the state park creates a conflict of interest that can only be cured by divesting yourself of your interest in the businesses that contract with the Energy, Minerals and Natural Resources Department of the state. You should do so "as soon as practicable without serious financial detriment," pursuant to Rule 21-311, cmt. 2.

The Committee does not feel that your brother's ownership interest in this business presents a conflict for you, however. Rule 21-311, cmt. 4 calls upon judges to discourage their family members from engaging in dealings that would reasonably appear to exploit the judge's judicial position. Since this contract predates your service on the bench, it would not be likely to appear that his continued sole ownership of the business by your brother exploits your judicial position.

Very truly yours,


James J. Wechsler
Chair

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