



## Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Chair

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Paul L. Biderman, Esq.

Prof. Robert L. Schwartz

Hon. Freddie J. Romero

Hon. Sandra W. Engel

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July 23, 2014

[REDACTED]

Re: Judicial Advisory Opinion No. 14-05

Dear [REDACTED]

Prior to your appointment as a district judge, you served as a hearing officer in your court. In that capacity, you heard issues concerning child support and interim income allocation and made recommendations to a district judge. A case in which you acted as a hearing officer concerning interim income allocation has now been assigned to you for trial on the merits of a divorce in your new capacity as a district judge. You have asked the Advisory Committee on the Code of Judicial Conduct whether the Code of Judicial Conduct requires your disqualification from the case.

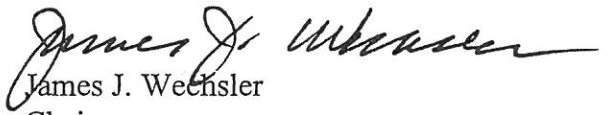
Rule 21-211 NMRA requires a judge to “disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned.” The rule includes specific circumstances that require disqualification, including (1) when a judge “has a personal bias or prejudice concerning a party,” (2) when a judge has “personal knowledge of facts that are in dispute, and (3) when a judge “previously presided as a judge over the matter in another court.” Rule 21-211 (A)(1), (5)(d).

As to personal bias or prejudice, you have advised the Committee that you have none and that you can fairly and impartially act in the case based on the law and the facts that are presented at trial. With respect to personal knowledge of facts, although you have knowledge of some facts that may be relevant in the trial, you gained such knowledge in your capacity as a hearing officer within a legal proceeding. The rule requiring disqualification for personal knowledge of facts only pertains to facts acquired from an extrajudicial source. *See U.S. v. Grinnell Corp.*, 384 U.S. 563, 583 (1966) (stating that, to be disqualifying, alleged bias or prejudice “must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.”); *see* Geyh, Alfini, Lubet, & Shaman, *Judicial Conduct and Ethics*, § 4.10,

at 4-42 (5th ed. 2013) (“The rule against prior personal knowledge only applies to knowledge garnered from extrajudicial sources.”). As a hearing officer, you worked under the auspices of the court, and the knowledge you obtained is not extrajudicial. Of course, even a judicial proceeding may give rise to a prejudice or bias that may require disqualification. You should carefully examine the circumstances to determine whether you have developed such bias or prejudice as a result of your prior work.

We thus turn to the provision of Rule 21-211 that requires disqualification when a judge “has previously presided as a judge over the matter in another court.” We assume that, because of your previous capacity as a hearing officer, you would be considered a judicial officer who “presided . . . over the matter” for the purposes of this rule. Nevertheless, this proscription does not apply to your situation because you were acting in the case within the same court as you currently sit. The purpose of this provision is to preclude a judge who presently serves in an appellate capacity from acting on the same matter in which the judge had previously presided. The matter that is now before you was not previously “in another court.” You are not disqualified by Rule 21-211(A)(5)(d) from hearing it.

Very truly yours,

  
James J. Wechsler  
Chair

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