



Advisory Committee on the Code of Judicial Conduct

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Hon. James J. Wechsler, Chair

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Paul L. Biderman, Esq.

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Hon. Freddie J. Romero

Hon. Sandra W. Engel

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SUPREME COURT
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September 24, 2014

[REDACTED]

Re: Judicial Advisory Opinion No. 14-06

Dear Judge [REDACTED]

You have asked the Advisory Committee on the Code of Judicial Conduct whether the Code of Judicial Conduct permits you to accept an invitation to serve as a member of the children's cabinet established by the mayor of a city within your judicial district. Rule 21-304(A) NMRA prohibits judges from accepting appointment to governmental commissions, with certain exceptions. The question is whether any of the exceptions apply.

This Committee appreciates your having provided us with detailed information about the composition and objectives of the children's cabinet. As you have summarized the charge of the children's cabinet and your role in it:

Basically, the Cabinet's focus is to get those that work with children, youth and families in the community, such as myself, the Superintendent [of schools], and the [Community] College, to educate the community's foundations and grant resources on the needs of the children, youth and families in our community. To this end, I would be called upon to address the concerns particular to juvenile delinquency court, such as the type of services that have benefitted, or would likely benefit, at risk youth.

As described, the children's cabinet would provide a valuable service to the judicial system and the community as a whole. As this Committee recognized in a previous advisory opinion, AO 02-06, a juvenile court judge may serve on what was then called a Juvenile Justice Advisory

Committee (JJAC)¹, the role of which was “the fostering of juvenile justice and delinquency prevention programs.” This Committee believed that the judge could serve on that committee because such service helped the judge direct federal funds toward appropriate programs “directly related to the function of our children’s courts in the handling of juvenile proceedings.” The city’s children’s cabinet would have a similar objective, which, without consideration of other factors, would seem to fall under the “administration of justice” exception to the prohibition on accepting appointment.

This Committee believes that the ethical problem in connection with your inquiry is your connection with the mayor as a member of the children’s cabinet. Indeed, the term “cabinet” itself connotes a group of trusted advisors to the chief executive. Rule 21-304, comment 1 specifically directs a judge considering whether to serve on any government committee to give “due regard to the requirements of the independence and impartiality of the judiciary.” The mayor serves as the chief executive officer of the city and exercises at least indirect authority over the city police department. City police officers regularly come before you as witnesses in juvenile delinquency proceedings and adult criminal cases. As a result, your service on this cabinet for and with the mayor could undermine your appearance of impartiality.

While AO 02-06 authorized a judge to serve on a JJAC committee with representatives of law enforcement and prosecutorial agencies, there are two significant differences from the children’s cabinet. First, a juvenile court judge’s service on JJAC is specifically provided for in federal statute 42 USC 5633(a)(3)(A)(2)(II). There is no statutory authorization for the city’s children’s cabinet. Second, the sole funding source to which JJAC is authorized to provide guidance on funding needs is the federal government. The children’s cabinet’s purpose is to “educate the community’s *foundation and grant resources* on the needs of the children, youth and families in our community.” [Emphasis added.]

The current Rule 21-304(A) creates an exception to the prohibition against a judge’s service on government commissions when required by law. AO 02-06 was decided under the former rule on this topic, Rule 21-500(C)(2) NMRA, which did not include the exception for statutorily-required appointments. Nonetheless, the fact that federal law required the creation of JJAC bodies and authorized juvenile court judges to serve on them negated any conceivable damage to their appearance of impartiality.² The establishment of JJAC was, and remains, a prerequisite to awarding federal funds to our state. 42 USC 5633(a).

It is also significant that the funds sought and rewarded through the JJAC process are all derived from the federal government, or at least so the federal statute contemplates. Attaining

¹ The current designation is Juvenile Justice Advisory Board, but this opinion will refer to the body as JJAC, for consistency with our previous advisory opinion.

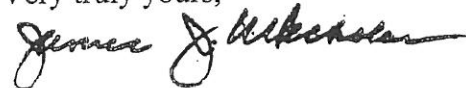
² The federal statute requires the creation of the JJAC entity for a state to receive federal grants, but only *authorizes* the appointment of the juvenile judge as one of its members. The advisory committee believes that this authorization to serve on a mandated committee satisfies the requirement of our rule. To hold otherwise could unnecessarily mute the voice of the judiciary in this vital funding process.

funding for the courts through government sources is a constant necessity to improving the administration of justice. More importantly in this context, governmental funding is the lifeblood for the judiciary. The appearance of impartiality of any judge working appropriately to attain such funds cannot suffer damage.

In the case of the city children's cabinet, by contrast, the funding would be sought from private sources, including undetermined "foundations and grant resources." This broad categorization of the potential funders could include individuals or organizations (e.g., corporate donors, wealthy individuals, or family foundations) hoping to influence the outcome of cases that you hear. While this potential in no way reflects on your personal ability to withstand any such pressures, the problem lies in the appearance of a judge's becoming involved in seeking and accepting grants from a variety of private sources answerable only to the donors—especially when doing so in coordination with the ultimate supervisor of the city's law enforcement services. It is far from inconceivable that presentations to funders would have to take into account the needs and perspectives of law enforcement as well as those of the juvenile court.

This Committee therefore believes that your service on the mayor's children's cabinet would be inconsistent with the prohibition in Rule 21-304(A) against accepting appointment to a governmental committee. However, the Committee believes that you are not restricted from appearing or testifying in front of the cabinet on matters related to the administration of justice, including recommendations for services needed by the juvenile justice system, pursuant to Rule 21-302(A).

Very truly yours,



James J. Wechsler
Chair

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