



AUG. 10 2015

SUPREME COURT  
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## 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

August 3, 2015

[REDACTED]

Re: Judicial Advisory Opinion No. 15-01

Dear [REDACTED]

A county in your district has a youth development program task force and has invited you to serve as one of its members. You have asked the Advisory Committee on the Code of Judicial Conduct whether the Code of Judicial Conduct permits you to serve in that capacity.

As the county has described it to you, the purpose of the task force is "to rectify and enhance the current quality of services to youth within . . . [the] community and surrounding areas." More specifically the county has stated that the task force would study and assess:

1. Current [s]ervices and programs offered by YDP [the county's youth development program][;]
2. Alternatives to the services and programs offered by YDP, including possible service providers for those alternatives[;]
3. The current and future demand for YDP's current services and programs and alternatives identified by the [t]ask [f]orce[;]
4. The advisability of using the current facility for YDP's current services and programs and alternatives identified by the [t]ask [f]orce, taking into account such factors as the physical layout of the current facility, and the current maintenance costs;
5. Alternative uses for the current facility; and

6. Alternative funding or intergovernmental organizational structures for YDP's programs and services and alternatives identified by the [t]ask [f]orce.

The other members of the task force would be a management employee of the county public safety department; the county clerk; a representative of the community; an appointee of a local community foundation; an employee of the New Mexico Children, Youth and Families Department, Juvenile Services Division; an appointee of the district attorney; and a representative of the public defender's office.

The county's invitation asks you to serve on a governmental committee as an extrajudicial activity. The Code of Judicial Conduct does not permit a judge to accept appointment to a governmental committee unless the committee "is required by law, or is one that concerns the law, the legal system, or the administration of justice." Rule 21-304(A) NMRA. Assuming that the services and programs of YDP are designed for juvenile offenders, the subject matter of the task force appears to be sufficiently related to the administration of justice to fall within the exception of Rule 21-304(A).

The subject matter does not end our inquiry, however. Rule 21-301 NMRA, while permitting a judge to engage in extrajudicial activities, nevertheless prohibits activities that would otherwise violate provisions of the Code and specifically prohibits a judge from, as may be relevant to the task force, participating in activities "that will interfere with the proper performance of the judge's judicial duties"; "will lead to frequent disqualification of the judge"; or "would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality[.]" Rule 21-301(A), (B), (C).

With respect to the first of these prohibitions, Rule 21-301(A), the Committee does not perceive a direct problem based on the functions of the task force as described by the county. Nonetheless, the Committee cautions you to be alert to any potential problem if you choose to become a member of the task force.

As to the second and third prohibitions, Rule 21-301(B) and (C), you have advised that other members of the task force will include representatives of the county, the district attorney, and the public defender's office. The offices of the district attorney and public defender regularly appear before you in cases on your docket, which is exclusively criminal, juvenile, and habeas corpus cases.

Neither the subject matter nor the composition of the task force seems to present a problem under Rule 21-301(A). The subject matter relates to services and programs provided to children in the community in need of services, which include children who are involved in the juvenile justice system. Although your knowledge of the juvenile justice system would be significant to your work on the task force, the subject matter of the task force does not appear to contemplate discussion of specific pending or potential cases in your court. *See* Rule 21-210(A) NMRA ("A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court . . ."). In the event that any discussion of the task force, should you choose to become a member, relates to any pending or impending case,

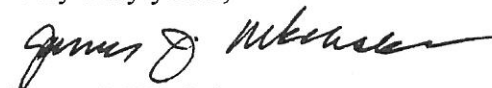
you must excuse yourself from such discussion. If such discussions become more than isolated instances, you would no longer be able to serve as a task force member.

The composition of the task force appears to be designed to be inclusive and includes representation from the different groups that appear in juvenile proceedings. As such, it does not give rise to either an appearance of partiality or a basis for your disqualification in a case. *See* Rule 21-211(A)(1) NMRA (“A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned,” including circumstances in which the “judge has a personal bias or prejudice concerning a party’s lawyer, or personal knowledge of facts that are in dispute . . . .”) The mere fact that you serve on a public task force with a lawyer in a proceeding is not generally sufficient to require disqualification.

Likewise, the Committee does not believe that if you choose to serve as a member of the task force that there would be a reasonable appearance that your independence has been impaired. The task force serves a specific purpose of enhancing services and programs for youth in the community. You have been invited to serve on the task force because of your involvement with the juvenile system, not for some personal reason. You will not receive compensation for your service. Of course, if any issue concerning the YDP or the work of the task force should come before the court, Rule 21-211 would require your disqualification.

The Committee therefore concludes that the Code of Judicial Conduct does not prohibit you from serving as a member of the youth development program task force. If you choose to become a member, we advise, however, that you continue to scrutinize the work of the task force to ensure that circumstances do not place you in a position in which your independence, integrity, or impartiality might be compromised in such a manner that you would no longer be able to participate in the task force.

Very truly yours,



James J. Wechsler  
Chair

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