

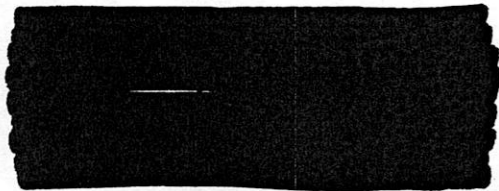


## Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Co-Chair (ret.)  
Hon. Julie J. Vargas, Co-Chair  
Paul L. Biderman, Esq.  
Prof. Robert L. Schwartz  
Hon. Freddie J. Romero  
Hon. Sandra W. Engel

This is an advisory opinion by the New Mexico Advisory Committee on the Code of Judicial Conduct. Advisory opinions are responses to inquiries from judges seeking guidance on judicial ethics questions. They are not issued, approved, or endorsed by the New Mexico Supreme Court; nor are they binding.

March 13, 2019



Re: AO 19-01

Dear 

As an extrajudicial activity after court hours, you have enrolled in an online veterinary technician program offered by a New Mexico college. The program requires students to affiliate with a veterinary clinic through a Preceptor, a veterinarian who can supervise a student in practice areas. You have affiliated with a Preceptor. You sought to do so as a volunteer, but your Preceptor, like all available Preceptors, requires that you be paid as an employee so that your clinical practice is covered by malpractice insurance. You requested and receive minimum compensation, and you return it to the Preceptor. You have asked the Advisory Committee on the Code of Judicial Conduct whether the Code permits you to continue your activity with the Preceptor.

The Code of Judicial Conduct permits a judge to engage in extrajudicial activities subject to provisions that are not applicable to your request. Rule 21-301 NMRA. Rule 21-312 NMRA permits a judge to “accept reasonable compensation for extrajudicial activities permitted” by the Code, provided that such acceptance

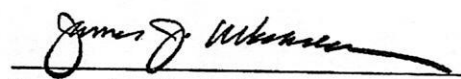
does not raise issues concerning the judge's independence, integrity, or impartiality. The commentary to Rule 21-312 states: "A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with then task performed." Rule 21-312, cmnt 1. Rule 21-312 and the commentary would permit you to receive reasonable compensation for your clinic activity.

The Code also specifically addresses a judge's extrajudicial employment. Rule 21-311(B) NMRA provides, with exceptions not applicable to your request, that a "judge shall not serve as an officer, director, manager, general partner, advisor, or employee of a business entity[.]" Your Preceptor's clinic is a "business entity." On its face, therefore, Rule 21-311(B) would preclude you from being an "employee" of your Preceptor's clinic.

The Committee believes, however, that Rule 21-312, rather than Rule 21-311, applies to your inquiry. The prohibitions of Rule 21-311 address business activity. They appear to be designed to preclude a judge from engaging in business activity as an extrajudicial activity that could impair the judge's ability to act in a manner consistent with the Code. The nature of your extrajudicial activity is not business, however; it is educational. You are working at the clinic as an internship to satisfy a requirement of your educational program. And you cannot satisfy this requirement on a voluntary basis. The Committee believes, therefore, that the proper rule to evaluate your request is Rule 21-312, which allows you to receive a stipend for extrajudicial activities that is reasonable and commensurate with the tasks performed. There is no question that the minimal amount that you receive is reasonable compensation for your activities.

The Committee thus believes that the Code does not prohibit you from continuing your activity with your Preceptor. However, you must report the payment that you receive under Rule 21-315(D) NMRA. *See* Rule 21-315 (D) (requiring annual reporting of the "date, place, and nature of any activity for which the judge received extrajudicial compensation").

You have also asked the Committee whether you should self-report your situation to the Judicial Standards Commission. The Committee does not express an opinion in that regard, leaving the decision to your discretion.

A handwritten signature in black ink, appearing to read "James J. Wechsler", is written over a horizontal line.

James J. Wechsler  
Co-chair

Judge Julie J. Vargas did not participate in this opinion.