



## Advisory Committee on the Code of Judicial Conduct

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Hon. Julie J. Vargas, Co-Chair  
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March 29, 2019

[REDACTED]

AO 19-03

Dear [REDACTED]

You have asked the Advisory Committee on the Code of Judicial Conduct whether the Rule 21-307 NMRA of the Code of Judicial Conduct permits you to serve as a member of the board of directors and secretary of a charitable foundation established by your deceased father. The foundation provides grants to tax-exempt organizations operating in the areas of education, child welfare, medical care and research, and religious philanthropy. In New Mexico, it has awarded grants to a museum and a private school.

You have informed the Committee that, as a director, your responsibilities would include acting on grant requests and managing the foundation's investments.

Although the other two directors solicit applications or receive compensation, you would not. As secretary, you would take minutes of the foundation's meetings.

As pertinent to your inquiry, Rule 21-307 provides:

Subject to the requirements of Rule 21-301[(A)], a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit including, but not limited to, the following activities:

(1) . . . participating in the management and investment of the organization's or entity's funds;

. . . .

(4) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the legal system, or the administration of justice; and

(5) serving as an officer, director, trustee, or legal advisor, unless it is likely that the organization or entity:

. . . .

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court in which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

The pertinent proscription of Rule 21-301 NMRA also prohibits activities that will

lead to frequent disqualification. Rule 21-301(B). Because you exclusively preside over a criminal docket, the Committee does not believe that the restrictions of Rule 21-301(B) and the Rule 21-307(A)(5)(a) and (b) apply.

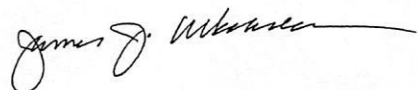
You have informed the Committee that the foundation is a non-profit, charitable foundation. Under Rule 21-307(A)(5), therefore, you may serve as an officer or director of the foundation. You may thus serve as the secretary. Rule 21-307(A)(1) specifically permits you to participate in the management of the foundation's investments.

You have raised for the Committee the question of whether Rule 21-307(A)(4) limits your ability to act with regard to the foundation's grant applications because Rule 21-301(A)(4) restricts the ability of a judge in "making recommendations . . . in connection with . . . programs and activities" to organizations or entities concerned with the legal system or the administration of justice. The foundation is not concerned with the legal system or the administration of justice.

The Committee does not interpret Rule 21-307 to preclude you as a director from participating in the foundation's grant activities. Subject to the restrictions of Rule 21-301(A)(5)(a) and (b), Rule 21-307(A)(5) specifically permits a judge to serve as a director or officer of a charitable organization. The Code therefore contemplates that the judge will have the ability to carry out the responsibilities of such position unless otherwise prohibited by the Code. Rule 21-307(A)(4) is not such a prohibition.

Rather, it too is permissive, allowing a judge who is not an officer or director of an organization or entity that is concerned with the legal system of the administration of justice to make recommendations regarding grants that relate to the legal system or the administration of justice.

You have additionally asked the Committee whether the foundation may include your name on its letterhead with the prefix "Hon.". As you have pointed out, Rule 21-307, comment 4 states that a judge's title "shall not appear on an organization's letterhead for any purpose." The Committee believes that this restriction includes the prefix "Hon." because it refers to your position as a judge.

  
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James J. Wechsler  
Co-Chair

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