



Advisory Committee on the Code of Judicial Conduct

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December 3, 2019

[REDACTED]

RE: AO 19-05

Dear Judge [REDACTED]

You regularly perform wedding ceremonies in your capacity as a judge. You have refused to perform them, however, if they involve a minor under the age of eighteen. You have reasoned that if the other potential spouse is more than four years older than the minor, and if there has been a sexual relationship, the other potential spouse could have committed criminal sexual penetration of a minor under NMSA 1978, Section 30-9-11(G)(1) (2009). As a result, you state that "there is a possibility that a wedding performed between this individual and the minor could theoretically be entered for the purposes of avoiding criminal prosecution." You have requested an opinion from the Advisory Committee on the Code of Conduct whether you may refuse to perform any wedding ceremony that involves a minor under the age of eighteen.

Under the Code of Judicial Conduct, a judge "shall respect and comply with the law[.]" Rule 21-101 NMRA. Statutory law addresses the circumstances in which a minor may receive a marriage license and be married. Under NMSA 1978, Section 40-1-6 (2013):

Restrictions on marriage of minors.

A. The county clerk shall not issue a marriage license to an unemancipated person sixteen or seventeen years of age, and no

person authorized by the laws of this state to solemnize marriages shall knowingly unite in marriage any person sixteen or seventeen years of age, unless the minor first receives the written consent of each of the minor's living parents as shown on the minor's certificate of birth, or the district court has authorized the marriage of such person upon request of a parent or legal guardian of the person for good cause shown, and a certified copy of the judicial authorization is filed with the county clerk.

B. The county clerk shall not issue a marriage license to any person under sixteen years of age, and no person authorized by the laws of this state to solemnize marriages shall knowingly unite in marriage any person under sixteen years of age, unless the children's or family court division of the district court has first authorized the marriage of the person upon request of a parent or legal guardian of the person in settlement of proceedings to compel support and establish parentage, or where an applicant for the marriage license is pregnant, and a certified copy of the judicial authorization is filed with the county clerk.

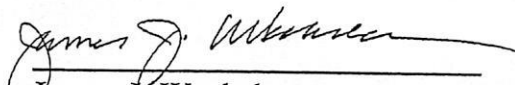
Thus, a person authorized to solemnize a marriage may only do so for an unemancipated minor sixteen or seventeen years of age with parental consent of both parents or court order and for a minor under sixteen years of age with court authorization based on a request of the parent or legal guardian or if an applicant for the marriage license is pregnant. The law establishes the procedure for authorization of the marriage and application to the county clerk for a marriage license.

Under the Code of Judicial Conduct, a "judge shall perform the duties of judicial office . . . without bias or prejudice." Rule 21-203(A) NMRA. A judge may perform weddings. NMSA 1978, Section 40-1-2(C) (2013). If a judge exercises the judge's discretion to perform weddings, the judge must do so without discrimination. Rule 21-203(A).

In your inquiry, you state that you intend to decline to perform weddings for any minor. Section 40-1-6 states the intent of the Legislature to permit minors to be married upon the satisfaction of the statutory requirements. As a tenet of statutory construction, the Legislature is deemed to understand the law related to its

enactments. *See State ex rel. Quintana v. Schnedar*, 1993-NMSC-033, ¶ 4, 115 N.M. 573, 855 P.2d 562 (stating the presumptions that the legislature acts “with full knowledge of relevant statutory and common law”). The Committee construes the Legislature’s adoption of Section 40-1-6 as contemplating that the minor’s parents or the court authorizing a marriage license can best determine the propriety of the proposed marriage.

That is not to say, however, that a judge who elects to perform weddings must perform a wedding for any couple who appears before the judge with a marriage license. The Committee believes that judge has the discretion to decline to act if the judge has a valid basis for doing so. Thus, if, upon inquiry, you form a valid basis to believe that the wedding would be illegal or would achieve an illegal purpose, the Committee believes that you should decline from acting even if the couple has a valid marriage license. But the Committee does not believe that you may adopt a general policy to decline to perform any particular type of wedding.


James J. Wechsler
Co-chair

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