

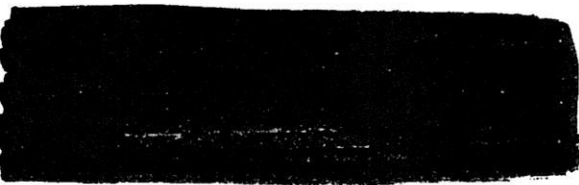


Advisory Committee on the Code of Judicial Conduct

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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.

June 17, 2020



RE: AO 20-03

Dear 

You have been assigned the docket of a retired judge that includes a legal malpractice case against a lawyer who has multiple other cases on the docket. You have made a ruling in one of those other cases in favor of that lawyer's client. The lawyer representing the plaintiff in the malpractice case has filed a motion for your disqualification, alleging that you are "judicially biased" and unable to grant his client a fair and impartial trial because of your ruling in favor of the defendant lawyer's client and because of the number of cases the defendant lawyer has before you. You have asked the Advisory Committee on the Code of Judicial Conduct whether you are disqualified from presiding over the legal malpractice case. You have informed the Committee that you do not have any personal relationship with, or actual bias toward, the defendant lawyer.

The Code of Judicial Conduct addresses disqualification in Rule 21-211 NMRA. As pertinent to your inquiry, Rule 21-211(A) provides


A judge shall disqualify himself or herself from any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer,

....

Under Rule 21-211(A)(1), the bias or prejudice that gives rise to disqualification is a personal one. Thus, actions that a judge takes in the course of the judge's disposition of cases do not generally require disqualification. In *United Nuclear Corp. v. General Atomic Co.*, 1980-NMSC-094, para 411-18, 96 N.M. 155, 629 P.2d 231, our Supreme Court held that a district judge was not disqualified because of criticism the judge had of a party in the course of a court hearing. The Court stated that the basis for disqualification "must stem from an extrajudicial source." 1980-NMSC-094, para 418 (internal quotation marks and citation omitted). In *Purpura v. Purpura*, 1993-NMCA-001, para 8-12, 115 N.N. 80, 847 P.2d 314 (decided prior to 2011 compilation), our Court of Appeals held that a judge need not recuse from a contempt hearing despite previous contempt charges and sanctions imposed.

Because your only contact with the defendant lawyer in the malpractice case is in connection with your adjudicative responsibilities, the Committee does not believe that Rule-211 requires your disqualification from the malpractice case.


James J. Wechsler
Co-chair