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# Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Chair

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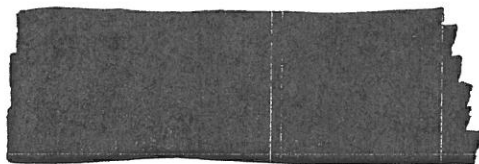
Paul L. Biderman, Esq.

Prof. Robert L. Schwartz


Hon. Freddie J. Romero

Hon. Sandra W. Engel

August 8, 2016



Re: Judicial Advisory Opinion No. 16-01

Dear Judge 

You have asked the Advisory Committee on the Code of Judicial Conduct for an opinion as to whether you may organize a concert for the benefit of the marching band of your local high school as well as other possible concerts for charitable purposes. Prior to your appointment as a judge, you had organized and directed at least twenty concerts at various locations, and you are experienced at raising funds in this manner.

You have informed the Committee that you would like to perform the following tasks in preparation for and during the concerts:

- (1) connect the performers with the band directors;
- (2) develop a program;
- (3) schedule the concert;
- (4) prepare the program and advertising material on your home computer;
- (5) include your name as a sponsor, along with other sponsors, on promotional material;
- (6) organize ticket sales, without being involved in the actual sales;

(7) advise others as to persons or businesses to approach for block ticket sales or donations, including those you had contacted for previous concerts;

(8) confirm the fee charged by the performers; and

(9) act as the master of ceremonies, including introducing each act and thanking sponsors.

You would not receive any compensation. You would receive reimbursement only for any purchases you incur for items purchased for a concert. If your personal stage or audio equipment is used, you will not receive any compensation.

The Code of Judicial Conduct generally permits a judge to engage in extrajudicial activities that are not prohibited by law or the Code unless the activities will (1) interfere with the judge's judicial duties; (2) lead to frequent disqualification; (3) reasonably appear to undermine the judge's independence, integrity, or impartiality; (4) involve conduct that reasonably appears to be coercive; or (5) involves the use of court resources. Rule 21-301 NMRA. The Code specifically addresses participation by a judge in fundraising activities for charitable and non-profit organizations in Rule 21-307 NMRA.

As pertinent to your inquiry, Rule 21-307 does not prohibit a judge, subject to the requirements of Rule 21-301, from: (1) assisting a charitable or non-profit organization in planning fundraising events; and (2) "appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in conjunction with" a fundraising event of a charitable or non-profit organization, provided that the judge does not "personally or expressly solicit financial support during the event." Rule 21-307(A)(1), (3).

If viewed separately, as discussed below, the Code does not prohibit you from engaging in any of the activities that you have described if performed on behalf of a charitable or non-profit organization. Items (1)-(4), (6), and (8) above are activities performed behind the scenes of a fundraising event that the Code clearly contemplates as permissible. Item (7) also does not appear to be problematic, provided that your name is not used in any manner in connection with any solicitation. Item (5) does not appear to present an issue in view of Comment 4 to Rule 21-307, permitting the use of a judge's name to appear on a charitable or non-profit organization's letterhead even for the purposes of solicitation of funds provided that the judge is not personally involved in the solicitation.

With regard to Item (9), the Code permits you to act as master of ceremonies of the event. Rule 21-307(A)(3). You are not, however, allowed to "personally or expressly solicit financial support during the event." *Id.* You have asked whether you may thank sponsors for their donations. The Committee believes that you may not. Although it is not direct solicitation, your expressly thanking the sponsors gives the appearance of a personal connection to the solicitation. *See* Rule 21-307, comment 3 (acknowledging that, while a judge should be able to participate in community events, "there is a potential for a judge's presence as a major participant at a fundraising event to exert undue influence on persons to contribute to the event"). Someone else should be assigned that responsibility.

Although, as discussed, the Code does not prohibit the individual items discussed, the Committee has an overall concern that you may have too great a role in the fundraising activity that you describe. Indeed, as mentioned above, Comment 3 to Rule 21-307 cautions about the “potential for a judge’s presence as a major participant at a fundraising event . . . .” The Committee believes that the same caution applies to any major participation of a judge in the event. One cannot assume that the public will not be aware of such a significant involvement on the part of a judge. Rule 21-307(A)(1) permits a judge to “assist” a charitable or non-profit organization in “planning related to fundraising.” It does not contemplate that the judge manage the event.

The Committee suggests, therefore, if there is a board or other organized body of the charitable or non-profit organization, that it manage the event and that you work directly with that board or body to assist it in planning and carrying out the event. If the charitable or non-profit organization does not have such a workable board, or if it is a governmental organization without such a board, the Committee suggests that, before engaging in any of the activities discussed, a committee of interested persons be formed to also assist the organization. *See* Rule 21-304(A) NMRA (“A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is required by law, or is one that concerns the law, the legal system, or the administration of justice.”)

You have also raised the question about the amount of time the activities you have described may take and whether they will interfere with your judicial duties. *See* Rule 21-301(A) (prohibiting a judge from participating in extrajudicial activities “that will interfere with the proper performance of the judge’s judicial duties”). You have stated that your experience with concerts will enable you to engage in the activities described in less time than it would appear. The Committee cautions you to take into account Rule 21-301(A) and not participate in any activities that will interfere with the performance of your judicial duties. The Committee also notes Rule 21-301(E) that prohibits the use of court resources for the activities that you have described.

Lastly, the Committee would additionally note that Rule 21-301 precludes a judge from engaging in extrajudicial activities that “will lead to frequent disqualification of the judge.” In this regard, we advise that, if the activities you propose would involve persons or entities who appear, or may potentially appear in more than an infrequent manner, before your court, Rule 21-301 may prevent or limit your activities.

Very truly yours,



James J. Wechsler  
Chair

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