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## Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Chair

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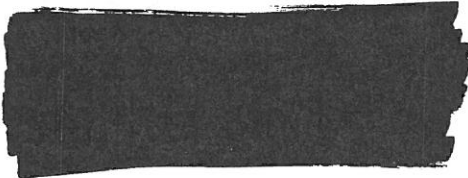
Paul L. Biderman, Esq.

Prof. Robert L. Schwartz


Hon. Freddie J. Romero

Hon. Sandra W. Engel

August 19, 2016



Re: Judicial Advisory Opinion No. 16-02

Dear Judge 

You are an elected part-time municipal judge who practices as a criminal defense lawyer. Because of your part-time judicial status, you are not prohibited from practicing law, except in the court on which you serve. *See* Rule 21-310 NMRA (prohibiting a full-time judge from practicing law); Rule 21-004(B)(2) NMRA (excepting elected part-time municipal judges from limitations on practicing law except before the court on which the judge serves).

Your law firm has been contacted by a local family to represent a child in a juvenile delinquency case. You anticipate that the case will soon be brought in the local district court. The arresting officer in the case is a police officer for your municipality who regularly appears before you in your court. You have asked the Advisory Committee on the Code of Judicial Conduct whether the Code permits you to represent the child.

The Committee believes that you should not. Although Rule 21-004(B)(2) permits you to practice law before courts other than your own, you may nonetheless not engage in any extrajudicial activity, including the practice of law, that "would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality." Rule 21-301(C) NMRA. *See also* Rule 21-102 NMRA ("A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.").

If you were to undertake this representation, it is likely that, in your role as advocate for your client, you will need to interview and take a statement from the officer, and, if the case proceeds to trial, cross-examine the officer. Because the officer regularly appears before you, it is reasonable to

believe that your position as a judge could affect the manner in which the officer responds to your involvement. Moreover, if you were to take the case, and it is resolved even without a trial, there could arise the reasonable perception that your rulings in cases that later involve the officer may have been affected by your interaction with the officer in this case. As a result, the Committee believes that the representation that you describe is not permitted under Rule 21-301(C).

Very truly yours,



James J. Wechsler  
Chair

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