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Advisory Committee on the Code of Judicial Conduct

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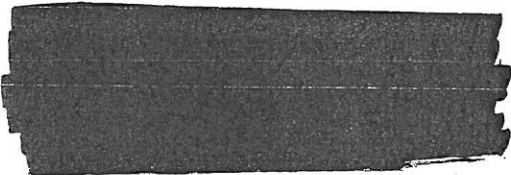
Paul L. Biderman, Esq.

Prof. Robert L. Schwartz

Hon. Freddie J. Romero

Hon. Sandra W. Engel

September 19, 2016



Re: Judicial Advisory Opinion No. 16-03

Dear Judge 

You are a judge on a court that does not have jurisdiction over death penalty cases, and you would like to write an article for a local newspaper concerning the death penalty. You have provided a draft of the article to the Advisory Committee on the Code of Judicial Conduct and have asked the Committee if you may publish the article as written.

The Committee does not believe that it is in a position to advise you with respect to the specific content of the article. We can, nonetheless, provide guidance pertinent to your writing such an article.

Relevant to your inquiry, the Code of Judicial Conduct permits a judge to engage in extrajudicial activities that are not prohibited by the Code and do not "interfere with the proper performance of the judge's judicial duties"; "lead to frequent disqualification of the judge"; or "appear to a reasonable person to undermine the judge's independence, integrity, or impartiality." Rule 21-301(A)-(C) NMRA. The Committee Commentary recognizes the unique qualifications of judges to write about the law, the legal system, and the administration of justice, and encourages judges to do so "to the extent that time permits." Rule 21-301, comm. cmt.1.


Because you do not preside over death penalty cases in your court, the Committee does not believe that your contemplated article will lead to your frequent disqualification. And, the length of time to write a single article is not likely to interfere with your proper performance of your judicial duties.

The focus of your inquiry, therefore, becomes whether either your writing of the article or its content will reasonably appear to undermine your judicial independence, integrity, or impartiality. As discussed, the Committee Commentary to the Code encourages judges to write about issues concerning the law, legal system, and the administration of justice. As a result, generally speaking, your writing an article concerning the death penalty in criminal cases would be permissible under the Code.

As to the content of the article, even though you do not have jurisdiction over death penalty cases, your court does hear criminal cases. Comments that you make, therefore, may have bearing upon your judicial independence, your integrity, or, in particular, your impartiality. The draft that you have provided attempts to represent opposing arguments both in favor of and in opposition to the death penalty. The Committee does not perceive that the draft as a whole can reasonably be viewed as impairing your impartiality to hear criminal cases that may come before you.

The Committee notes that First Amendment issues concerning free speech may also pertain to your inquiry. *See Republican Party of Minnesota v. White*, 536 U.S. 765 (2002) (striking ethical prohibition against judges expressing opinions on legal subjects during election campaigns). You have not raised such issues, and the Committee does not comment upon them.

Very truly yours,


James J. Wechsler
Chair

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