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## Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Chair

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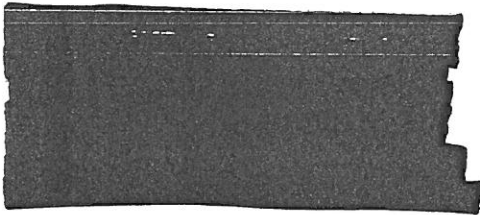
Paul L. Biderman, Esq.

Prof. Robert L. Schwartz


Hon. Freddie J. Romero

Hon. Sandra W. Engel

September 30, 2016



Re: Judicial Advisory Opinion No. 16-04

Dear Judge 

You are the presiding judge in a foreclosure case in which the plaintiff is a lending institution with which you have had six mortgages, one of which is still outstanding. You have issued a judgment of foreclosure in the case against the defendants, who have filed a motion requesting that you vacate the judgment and disqualify yourself from the case.

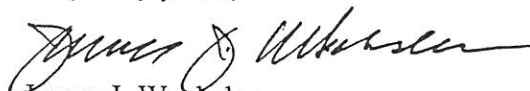
Rule 21-211(A) NMRA addresses a judge's disqualification. It provides that a "judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned" and includes a non-inclusive list of circumstances in which disqualification is necessary. Among that list are circumstances in which a judge "has more than a de minimis interest that could be substantially affected by the proceeding." Rule 21-211(A)(2)(c).

Generally, the Committee does not believe that merely having a mortgage with an institutional lender is sufficient to require disqualification of a judge in a foreclosure case in which the judge does not have a direct financial interest. *See* Rule 21-211(A)(3) (requiring disqualification if the judge or specified family member "has an economic interest in the subject matter in controversy"). Other circumstances, however, concerning the business relationship between the judge and the institution may give rise to a reasonable appearance that would indicate the basis for disqualification.

You have not described the nature of your business relationship with the lending institution other than to explain that you have paid off all mortgages with the institution other than one. The number of mortgages, however, is significant and suggests a continuing business relationship with

the institution. The Committee believes that such a continuing business relationship might permit a reasonable person to question whether that relationship might affect your impartiality in a case involving that institution. The Committee therefore suggests that you recuse from the case.

Very truly yours,

A handwritten signature in cursive script, appearing to read "James J. Wechsler".

James J. Wechsler  
Chair

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