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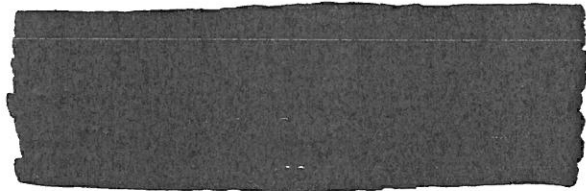
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## Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Co-Chair (ret.)  
Hon. Julie J. Vargas, Co-Chair  
Paul L. Biderman, Esq.  
Prof. Robert L. Schwartz  
Hon. Freddie J. Romero  
Hon. Sandra W. Engel

August 25, 2017

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.



Re: Judicial Advisory Opinion No. 17-02

Dear 

You have advised that your courtroom clerk is in a relationship with the assistant district attorney assigned to your docket and that they live together and coparent their child. You have asked the Advisory Committee on the Code of Judicial Conduct whether it is appropriate for you to request the re-assignment of your clerk to avoid any appearance of impropriety that the relationship may create.

The Code of Judicial Conduct provides that 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." Rule 21-201 NMRA. An appearance of impropriety is one that "would create in reasonable minds a perception that the judge violated the Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge." 21-003(B) NMRA.

The Committee believes that the relationship between your clerk and the assistant district attorney does create an appearance of impropriety and that, because of the clerk's position with the court and her prominent presence as a court representative in the courtroom, a reasonable person could believe that the

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impartiality of the proceedings in your court might be affected by your clerk and her perceived bias in favor of the assistant district attorney. In light of that appearance of impropriety and, because, as you have indicated, that your court has multiple clerks available for assignment to your courtroom, it is appropriate to request that your court manager assign a different clerk to you when you are hearing cases involving that assistant district attorney in order to insure that the integrity of the judiciary is preserved and any appearance of impropriety is avoided.

In response to your question about the ethical obligations of other court employees, please note that the obligation to avoid the appearance of impropriety and promote public confidence in the impartiality of the judiciary extends to all employees of the judicial branch, including your court manager and court clerk. The New Mexico Judicial Branch Code of Conduct for Judicial Employees requires that all judicial employees—not just judges—“avoid impropriety and the appearance of impropriety in all their activities for the judicial branch.” *Canon 2*. This includes acting “at all times in a manner that promotes public confidence in the integrity *and impartiality* of the Judicial Branch.” *Canon 2(A)* (emphasis added). In particular, “[w]hen faced with conflicting loyalties, [j]udicial [e]mployees shall seek first to maintain public trust.” *Id.*, *Canon 2* cmt. Therefore, it is not only your obligation to insure that public confidence is maintained by your compliance with the Code of Judicial Conduct, but it is also the obligation of your courtroom clerk and court manager to insure that same public confidence under the Code of Conduct for Judicial Employees.

Very truly yours,

  
James J. Wechsler  
Co-Chair

  
Julie J. Vargas  
Co-chair

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