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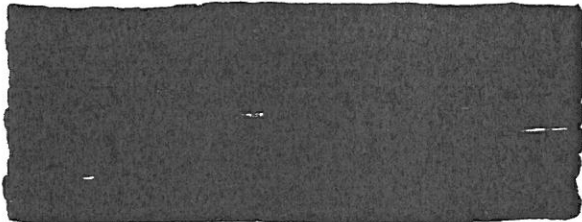
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Advisory Committee on the Code of Judicial Conduct

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

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.

September 13, 2017



Re: Judicial Advisory Opinion No. 17-03

Dear 

You have asked the Advisory Committee on the Code of Judicial Conduct whether the Code of Judicial Conduct permits you to write a newspaper article in which you volunteer to assist citizens of New Mexico with tasks they may request. In the proposed article, which you have shared with the Committee, you discuss the manner in which conflict and discord arise in your court and your desire to "Help a Stranger." In pursuit of your "search for happiness and harmony, and the need for well-intended actions," you offer "volunteer services." Specifically, you offer, for twelve consecutive Sundays, to:

Travel anywhere in the State of New Mexico, and free of charge; . . .
Mediate any conflict, teach a law class, math or someone how to read,
coach a sport, build or paint any fence, pull weeds, clean yards, or do
anything that requires only time and effort to help a stranger.

Acknowledging that you cannot "help everyone" with your "volunteer services," you ask those interested to contact you at an e-mail address and tell you "a little something about yourself and why you need help."

The Committee addresses two issues pertaining to your inquiry: (1) whether your proposed newspaper article involves an abuse of prestige of judicial office under Rule 21-103 NMRA; and (2) whether your proposed article impermissibly encourages ex parte communications under Rule 21-209(A) NMRA.

(1) Abuse of Prestige of Judicial Office:

Because the volunteer services that you propose are not within your duties as a judge, they fall within the provisions of the Code concerning extrajudicial activities. Under Rule 21-301 NMRA, a “judge may engage in extrajudicial activities, except as prohibited by law or . . . [the] Code.” Except for your mediating conflicts, the Code does not prohibit your engaging in the activities that you have listed. Indeed, to the extent that you can do so without compromising principles of independence and impartiality, the committee commentary to the Code recognizes that you should be “encouraged to engage in appropriate extrajudicial activities.” Rule 21-301, comment [1].

The Code does not, however, permit a judge to participate in extrajudicial activity when doing so would infringe upon other requirements of the Code. *See* Rule 21-301. While the activities that you propose may be appropriate, your promotion of the activities is a necessary part of your proposal in order for the people of the State to know of and accept your offer. You have proposed to include that promotion in the newspaper article.

Rule 21-103 provides in relevant part that “[a] judge shall not abuse the prestige of judicial office to advance the personal . . . interests of the judge” As you express in your proposed article, you wish to undertake the volunteer services at least in part to achieve “happiness and harmony.” This is a personal goal. It therefore falls within the purview of Rule 21-103, such that you may not abuse the prestige of your judicial office in order to advance it.

The Committee believes that the content of your proposed article determines whether it involves an abuse of the prestige of your judicial office. In that regard, before stating your offer, the article discusses at length your experience in court. The Committee anticipates that your judicial position would be stated in connection with the article. In the view of the Committee, your position is integrally connected with

September 13, 2017

your offer. The Committee believes, therefore, that the content of the proposed article constitutes an abuse of the prestige of judicial office.

(2) Ex Parte Communications:

The procedure that you propose to adopt for your volunteer service allows members of the public to contact you in order to request your service. Although you disclaim that you cannot discuss "any case that has been or is pending in my court," you have no way of precluding any party to a case before you from attempting to contact you.

While parties may in other circumstances seek to communicate with judges by e-mail, as a general rule, they are not able to do so with the same ease as in your proposal because judges do not regularly publish their e-mail addresses. As a result, the Committee is concerned that you are increasing the prospect for parties to initiate ex parte communications by inviting the public to respond to your offer by e-mail. It is unlikely that your disclaimer against discussions about cases would fully dissuade litigants from contacting you. And, the only way that you can screen such communications is by reading them. Doing so, however, may place you in a position that requires your disqualification from cases involving a party contacting you. Rule 21-211(A) NMRA ("A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, . . ."). See Rule 21-301(B) (prohibiting a judge from engaging in extrajudicial activities that would lead to frequent disqualification). The Committee believes, therefore, that your proposal undermines the prohibition of Rule 21-209(A) that judges not permit ex parte communications.

Very truly yours,



James J. Wechsler
Co-Chair



Julie J. Vargas
Co-chair

cc: Paul L. Biderman, Esq.
Hon. Sandra W. Engel
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