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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.

October 11, 2017

Re: [REDACTED]
Judicial Advisory Opinion No. 17-04

Dear [REDACTED]

You are the judge of a county court. The county is participating in a fundraising drive of United Way and is requiring all departments of the county, including the court, to participate. Specifically, it is requiring that each department hold monthly fundraising events, that each employee return donation forms regardless of whether the employee is making a donation, and that departments post fliers concerning the fundraising effort. Because the court has a limited number of employees, the county is requiring it to join with other departments as part of the fundraising effort. You have asked the Advisory Committee on the Code of Judicial Conduct whether your court and its employees may participate along with other county departments.

Your inquiry raises questions concerning the actions of court employees and the use of court facilities under the Code of Judicial Conduct. Both relate to the permissible actions of you as the judge.

Rule 21-307 NMRA addresses the manner in which a judge may participate in fundraising for charitable organizations. Under Rule 21-307(A), a judge may assist such organizations in planning fundraising, but a judge may not solicit contributions from anyone

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other than members of the judge's family or "other judges over whom the judge does not exercise supervisory or appellate authority." Rule 21-307(A)(1), (2). The purpose of these restrictions is based on the judge's obligation "to promote public confidence in the independence, integrity, and impartiality of the judiciary" and to avoid the appearance of impropriety. Rule 21-102 NMRA. Indeed, if it were to appear that a judge were soliciting funds for a charitable organization, a reasonable question could arise as to whether the judge would act fairly and impartially depending upon whether litigants or attorneys made donations to the organization. See Geyh, Alfini, Lubet & Shaman, *Judicial Conduct and Ethics*, (5th Ed. 2013), 9-16 (stating the concerns over participating in solicitation of funds as intimidation of potential donors, trade of prestige of office, and expectation by donors of return of favor).

Court employees fall within the purview of the Code to the extent that they reflect upon the integrity and impartiality of the court. A judge, of course, is in charge of the court, but any appearance of impropriety on the part of court employees also affects the public perception of the court as a whole. A judge, therefore, "shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations" under the Code. Rule 21-212(A) NMRA. See Rule 21-103 NMRA (stating that a judge may not "abuse the prestige of judicial office to advance the . . . economic interests . . . of others, or allow others to do so"). Thus having court employees act on behalf of the court to solicit donations from other employees would be just as troublesome as if the judge were doing it himself.

The use of court premises for non-judicial activities further exacerbates the issues. Rule 21-301(E) prohibits a judge (and by extension court employees) from using court premises and other resources for extrajudicial activities, "except for incidental use for activities that concern the law, the legal system, or the administration of justice." The exceptions are not applicable to fundraising you have described.

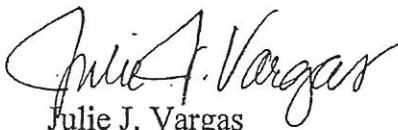
The Committee advises, therefore, that neither you nor court employees may either conduct meetings to solicit donations or post fliers promoting such donations in the court. The Committee understands that such meetings would include court employees as well as employees from other departments. Regardless of whether non-court employees were to attend, any solicitation under the imprimatur of the court involves you as the judge. And, while the Committee acknowledges that court employees may solicit charitable donations from others in their personal capacity, the involvement of the court triggers the prohibitions of the Code that we have discussed.

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As to the individual actions of yourself or court employees, the Committee does not believe that the Code restricts you from making your own donations so long as the court is not involved in the fundraising effort.

Very truly yours,

James J. Wechsler
Co-Chair


Julie J. Vargas
Co-chair

cc: Paul L. Biderman, Esq.
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