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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.

December 13, 2017



Re: Judicial Advisory Opinion No. 17-06

Dear 

NMSA 1978, Section 35-8-1 (2009) provides the “[e]xcept for contempt of the magistrate court, penalty assessment misdemeanors or offenses that do not prescribe incarceration as a penalty, the right to trial by jury exists in all actions in the magistrate court that are within magistrate trial jurisdiction.” Rule 6-602(A) NMRA permits a party in magistrate court when the charge is a petty misdemeanor offense punishable by less than six months to demand a jury trial.

Rule 6-103 NMRA authorizes a magistrate court to adopt rules governing its practice that may address “procedures for effecting a just, speedy and inexpensive determination of” cases. Such rules must be approved by the Director of the Administrative Office of the Courts. Id. Your court has adopted such rules. Local Rule #1 provides that “INCARCERATION SHALL NOT BE IMPOSED” on specified traffic offenses that are “misdemeanor offenses that statutorily carry a possible penalty of incarceration.” Under Section 35-8-1 and Rule 6-602(A), a party in cases with such charges would otherwise be entitled to a jury trial.

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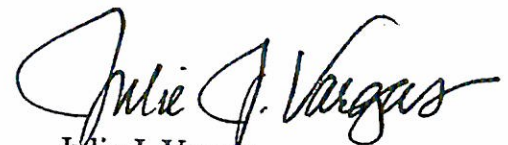
You have advised the Committee on the Code of Judicial Conduct that one of your cases involving such charges was appealed to the district court. The district court remanded the case to the magistrate court with instructions to conduct a jury trial. You have asked the Committee whether, under the Code of Judicial Conduct, in view of Local Rule #1, you must comply with the district court's instruction on remand.

Although the Committee observes the possible conflict between the practice of your court based on Local Rule #1 and the district court's remand order, the Committee does not believe that it must address that possible conflict in order to respond to your inquiry. Rule 21-101 NMRA requires a judge to "respect and comply with the law." New Mexico courts have long applied the law of the case doctrine under which "a decision made by an appeals court on an issue of law made at one stage of a lawsuit becomes binding on subsequent trial courts . . ." *State ex rel. King v. UU Bar Ranch Limited Partnership*, 2009-NMSC-010, ¶ 21, 145 N.M. 769, 205 P.3d 816. By virtue of the law of the case doctrine, the district court's ruling as an appellate court binds the magistrate court as the trial court. If the parties believed that the district court erred and that a jury trial was improper, they had the right to appeal the district court's ruling.

The Committee thus believes that you must follow the district court's ruling on remand and proceed with a trial by jury.

Very truly yours,


James J. Wechsler
Co-Chair


Julie J. Vargas
Co-Chair

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

*Please note that Hon. Freddie J. Romero was not involved in this decision by the Committee.