



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

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December 18, 2017

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Supreme Court Law Library
Santa Fe, New Mexico

Re: Judicial Advisory Opinion No. 17-07 (Revised*)

Dear [REDACTED]

You have asked the Committee on the Code of Judicial Conduct whether the Code of Judicial Conduct permits your court to provide access within the courthouse to a civil legal aid program wishing to provide free legal services to eligible parties in landlord-tenant cases. Specifically, the legal aid program has requested permission to set up a table outside the courtroom where such cases are heard and to offer to financially eligible litigants information, legal advice, pro se pleadings, and, in some cases, representation. In addition, the program would use this access to conduct a study of the differences in outcomes between clients who are represented by counsel and those who are not, in coordination with a university-based research program.

Your concern is whether providing such access within the courthouse to the legal services program would imply a judicial bias toward the legal rights of tenants appearing in your courts. While your concern over the potential appearance of bias is a valid consideration, the Committee believes that your court may nonetheless authorize the legal aid program to provide both services as requested, subject to an appropriate disclaimer.

It is of course fundamental to judicial ethics that judges avoid actions that would create any actual or apparent bias in the disposition of justice, Rules 21-202 and 203 NMRA. But of equal importance to the Code is the duty of the judiciary to provide access to justice.

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Indeed, an official comment to Rule 21-202, a rule providing that a “judge shall perform all duties of judicial office fairly and impartially[,]” provides:

When pro-se litigants appear in court, they should comply with the rules and orders of the court and will not be treated differently from litigants with counsel. It is not a violation of this rule, however, for a judge to make reasonable accommodations to ensure all litigants the opportunity to have their matters fairly heard.

Rule 21-202, comment [4].

The Committee believes that your court may, consistently with the dictates of Rule 21-202, determine that a non-profit legal aid program setting up a table to offer free legal services to financially eligible parties provides such a reasonable accommodation. See also Rule 21-102 NMRA, comment [4] (“Judges should . . . promote access to justice for all.”); Rule 21-205 NMRA, comment [4] (“[A] judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay.”). It would be reasonable for your court to find that the legal services proposal would further these ends.

The Committee does not believe that your permitting the legal aid program to have access to the courthouse would amount to favoritism by the court for one side over the other in these cases. The legal aid program has indicated its intention to offer its services to all financially eligible litigants, whether landlords or tenants. While the court feels that tenants would be favored, the Committee notes that not all landlords would be ineligible. For example, older, longtime homeowners renting out guest houses or rooms in their homes may rely on pensions and rents as their primary income and be unable to retain counsel when a tenant fails to pay rent. The legal aid program could offer them explanations of their rights and obligations that they would not otherwise be able to obtain. While Rule 21-203 prohibits discrimination, among other factors, on the basis of “socioeconomic status,” the legal aid proposal removes this concern by making the service available to anyone meeting its eligibility guidelines.

The legal aid program has pointed out that similar programs exist in other states. The Committee notes that a similar program set up in New York was not barred as unethical by that state’s advisory committee, New York Advisory Opinion 93-51 (April 29, 1993). We share the opinion of that committee that the court should avoid any basis for complaints of bias by requiring a disclaimer, stating that the legal aid attorneys are not associated with the court and are authorized to set up their table solely as a courtesy. More recently, the Ohio

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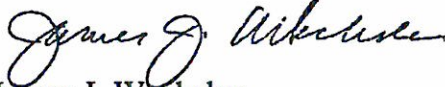
Board of Professional Conduct has authorized a court to undertake an even more ambitious legal services program, allowing a court to hire attorneys to operate a self-help clinic:


In order to ensure the right of self-represented litigants to be heard, a court may establish and fund a self-help center to assist self-represented litigants as long as the independence, integrity, and impartiality of its judges is maintained. A court may appoint and compensate lawyers to provide limited scope representation to litigants in a self-help clinic.

Ohio Board of Professional Conduct Opinion 2017-07 (October 6, 2017).

In summary, the Committee believes that your court has discretion to authorize the legal services proposal without violating the Code of Judicial Conduct, provided that proper disclaimers are required to be displayed.

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

*The following language was deleted from the last full paragraph on Page 2: "(The court may consider whether and how to provide for conflict cases, in which both parties may be eligible for and seek free legal counsel.)"