



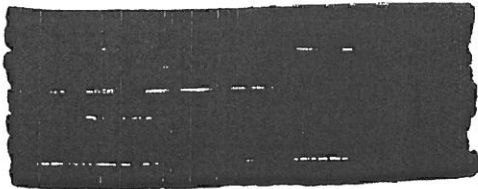
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Advisory Committee on the Code of Judicial Conduct

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.

May 11, 2018



Re: Judicial Advisory Opinion No. 18-05

Dear 

Through a grant funded by the New Mexico Public Education Department, the school district in your jurisdiction, the juvenile probation office of the district court, and you as municipal court judge have partnered to participate in a truancy intervention court. You describe the program as education-based, designed to reduce truancy and to provide tutoring and family support to students and families.

In the program, students and parents receive a letter scheduling them to attend a voluntary meeting with a school administrator, a school truancy officer, and yourself to discuss an education and truancy-reduction plan. The meetings are held in your courtroom, and you wear your judicial robe. Nevertheless, you stress at the outset of the meeting that your court does not have any jurisdiction and that you may not make any court orders. The goal of the meetings is to develop a plan for each student that may include tutoring, recovery of lost class credits, counseling, and other referrals.

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The program has been operating as a pilot program. You have asked the Advisory Committee on the Code of Judicial Conduct whether the Code of Judicial Conduct permits you to participate in the program as it advances beyond its pilot stage.

This Committee addressed a similar request by a magistrate judge in Advisory Opinion No. 13-05 (copy attached). In that opinion, we specifically advised that a judge's acting as a truancy judge after business hours in the judge's courtroom while wearing the judge's judicial robe conflicted with Rule 21-301(D) and (E) NMRA of the Code. Rule 21-301 provides in these provisions:

21-301. Extrajudicial activities in general.

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, as judge shall not:

...

D. engage in conduct that would appear to a reasonable person to be coercive; or

E. make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice.

There is a difference in the judge's involvement in that opinion from your involvement in your program. In that program, the judge solely made determinations as to the actions to be taken concerning a student's truancy. In your program, all participants make the recommendations. The Committee does not believe, however, that this distinction permits your use of the court premises or your judicial robe as part of the program. As we stated in Advisory Opinion No. 13-05, the very use of the courtroom setting and judicial robes establish the authority of a judge. Even though you may not be the only person making decisions as to action to be taken, your authority is implicit in the surroundings. Again, as we stated in Advisory Opinion No. 13-05, the facts that the program is beneficial to the student and the community is not


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a factor in determining whether a judge may participate in the program under the Code. In addition, as stated in Advisory Opinion No. 13-05, the use of your courtroom itself is prohibited by Rule 21-301(E).

You have suggested that you need not wear your judicial robe during program meetings. In Advisory Opinion No. 13-05, this Committee also advised that the judge's involvement in the truancy court was problematic under the Code even if the truancy court were held outside of the courthouse without the judge wearing a judicial robe. As stated in that opinion, your position as a judge is known in your community, such that your involvement in the program meetings that you have described would nevertheless be coercive regardless of the surroundings.

In Advisory Opinion No. 13-05, this Committee suggested that the judge could assist the school district's truancy court either as an advisor or as a speaker providing general information concerning compulsory school attendance and court procedures for violation of compulsory school attendance laws. We recommend such action to you if you wish to continue to serve your community in this manner.

Very truly yours,


James J. Wechsler
Co-Chair


Julie J. Vargas
Co-Chair

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