



Advisory Committee on the Code of Judicial Conduct

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November 16, 2018

[REDACTED]

RE: AO 18-09

Dear [REDACTED]

You are unopposed as a candidate for election to serve as Probate Judge for [REDACTED] County, a part-time position. You will continue your law practice, which includes estate planning and probate, when not serving on the bench. You have asked the Advisory Committee on the Code of Judicial Conduct whether you will be able to identify your status as probate judge on your private law office website. You have also asked whether you can identify your private law practice in your biography to be posted on the probate court website.

The rule of the Code of Judicial Conduct most applicable to your inquiry is Rule 21-103 NMRA, *Avoiding abuse of the prestige of judicial office*. That rule prohibits judges from abusing “the prestige of judicial office to advance the personal or economic interests of the judge or others. . . .”

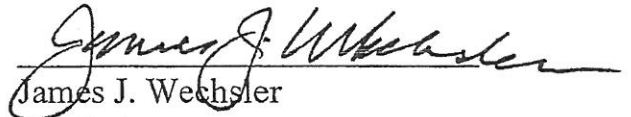
Identifying yourself on your law office website as the probate judge for your county would not constitute an abuse of the prestige of that office. Stating on your law office website that you hold that position, which is public information in any event, provides factual information for potential clients about your background and experience. Moreover, you likely have a First Amendment right to advertise using honest commercial speech, under *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

The answer to your second question, as to whether you can identify your estate planning and probate practice on your biography on the court website, is less clear. Describing your law practice on the court's official website may also be seen as providing useful, factual information to the public. For example, heirs filing probate proceedings may want assurance that their judge will be qualified to preside over probates, as they decide whether to file in probate or district court. Since petitioners may know that probate judges in our state may be elected to that office with no required background in probate, they have a legitimate interest in receiving factual information regarding the judge's experience and credentials.

On the other hand, the reference to the judge's private law practice on the official court website may be viewed as suggesting that heirs hire the judge as their private attorney. If so, this reference could at least create the appearance that the judge is using the prestige of judicial office, as well as judicial technological resources, to attract private, paying clients. It might even engender conflicts or confusion under the restriction of Rule 21-310 NMRA, "A part-time judge is not required to comply with Rule 21-310 [prohibiting full-time judges from practicing law] but is prohibited from practicing law in the court on which the judge serves. . . ." Rule 21-310, comm. cmt 2. Thus, a probate judge who takes on a private probate case could not then process it in the judge's own court, possibly causing confusion for clients. Additionally, using the court website to describe the judge's private law practice may be interpreted to violate the restrictions of the Governmental Conduct Act, *see* NMSA (1978), §10-16-3(A), -4 (2011), against taking official action for private benefit.

To convey valuable information to potential petitioners while avoiding the possibility of violating these rules, the Committee suggests that you limit any statement regarding your private law practice to only the minimum information necessary to convey your background in this field. A simple statement such as, "Judge X has practiced probate law in New Mexico for X years," would inform potential petitioners that the judge is qualified to conduct the probate, without seeming to invite them to hire the judge as their attorney.

The Committee believes that using the court's website to identify your private probate practice in greater detail would likely create, at least to some parties, an appearance of impropriety under Rule 21-103. We therefore advise you against identifying your estate planning or probate law practice on the court's website beyond the limited disclosure of your experience. We do not see a problem identifying yourself as probate judge on your law office website.


James J. Wechsler
Co-chair

Judge Julie J. Vargas did not participate in this opinion.