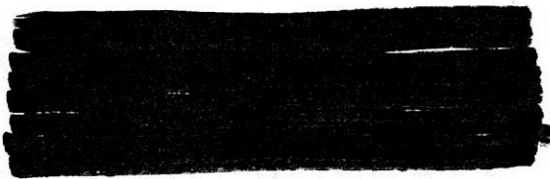


Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Co-Chair (ret.)
Hon. Julie J. Vargas Co-Chair
Paul L. Biderman, Esq.
Prof. Robert L. Schwartz
Hon. Freddie Romero
Hon. Sandra 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.

January 19, 2021



RE: AO 21-01

Dear 

You formerly served as the deputy secretary and secretary of a State of New Mexico department. During that time, a person with the same name as a witness in a case before you worked for the department including as an acting division director. The case before you is an employment case against a public agency; the person named as a witness was the executive director of the agency. The agency listed him as a witness, and he provided an affidavit in support of the agency's motion for summary judgment, which you granted. He was not a party to the case. You have requested an advisory opinion from the Advisory Committee on the Code of Judicial Conduct as to whether, under the Code of Judicial Conduct, (1) you should now, after learning about the prior employment of the witness, disqualify yourself from the case; and (2) you should reverse your summary judgment ruling.

Rule 21-211(A) NMRA provides

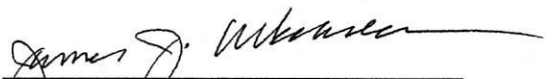
A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party

.....

Although you have stated that you do not know with certainty that the witness was the person with whom you previously worked, for the purposes of our opinion, the Committee will assume that he is the same person. We note that you were not aware that you had any connection with the witness until it was brought to your attention after you acted on the summary judgment motion.

Under Rule 21-211(A)(1), you would be disqualified if, as a result of your previous work with the witness, you had a personal bias for the witness's current employer, the defendant in the case. You have advised the Committee that you do not have such a bias, that you did not work closely with the witness, and that you have not had any contact with the witness since your employment with the department ended nearly ten years prior to your action in the case before you. The Committee does not believe that the circumstances you have described give rise to an appearance of personal bias toward the defendant in the case. Nor does the Committee believe that these circumstances raise an appearance under which your impartiality might reasonably be questioned. Because you would not be disqualified from the case under Rule 21-211(A), you would not need to reverse your summary judgment ruling.



James J. Wechsler
Co-chair