



Advisory Committee on the Code of Judicial Conduct

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RE: AO 21-06

Dear 

You are a district court hearing officer. Your responsibilities include conducting hearings in child support matters. You are subject to significant provisions of the Code of Judicial Conduct as a condition of your judicial employment. Rule 21-004(C) NMRA.

You have informed the Advisory Committee that you are hiring a court monitor who will, among other cases, monitor child support hearings in which the New Mexico Child Support Enforcement Division (CSED) is a party. One of the applicants has worked as a legal secretary for CSED for approximately twenty-two months. In that position, she is primarily responsible for the e-filing of pleadings. She proofreads the pleadings for facial correctness such as proper captioning, correct spelling, and attorney signatures, but she has no knowledge or involvement in the substance of any pleading or case. She has informed you that, in a handful of cases, she has contacted parties to obtain updated contact information.

You have asked the Committee whether the Code would preclude you from hiring this applicant.

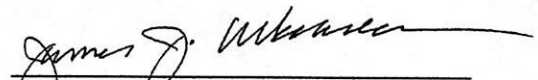
One of the prime concerns of the Code of Judicial Conduct is upholding the independence, integrity, and impartiality of the judiciary. The Code provides that a judge "shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary" Rule 21-102 NMRA. Rule 21-211 NMRA requires the disqualification of a judge if the "judge's impartiality might reasonably be questioned." As a hearing officer, you are subject to these provisions of the Code. Rule 21-004(C).

The Code does not specifically address the manner in which court staff activity might bear upon the independence, integrity, or impartiality of court proceedings. The New Mexico Judicial Branch Code, applicable to judicial employees, does, however, provide that judicial employees act "at all times in a manner that promotes public confidence in the integrity and impartiality of the Judicial Branch." New Mexico Judicial Branch Code for Judicial Employees, Canon 2.

Commentary to the Judicial Branch Code provides that “[w]hen faced with conflicting loyalties, [j]udicial [e]mployees shall seek first to maintain public trust.” *Id.* Canon 2 comment.

With minor exception discussed below, the Committee does not perceive a problem if this applicant acted as your court monitor in child support cases. She would be responsible for monitoring and recording court proceedings. She would not have adjudicative responsibilities and would not be part of the adjudicative process. Although she had previously worked for CSED, the work she performed was not substantive such that she would have been involved in matters that would be entertained in the adjudicative determination of cases. Moreover, working for the court, she would no longer have any connection to CSED; her loyalty would be solely to the court, not CSED. See Judicial Branch Code, Canon 2 comment (addressing conflicting loyalties of judicial employees).

The Committee believes, however, that in order to scrupulously avoid any appearance of partiality, the applicant should not monitor cases in which she had any personal contact with parties other than CSED. Moreover, for the same reason, although you have not stated that she has received any such information while at CSED, if the applicant had actually received any substantive information concerning a case, directly or indirectly, she should not monitor the case.



James J. Wechsler
Chair