

Advisory Committee on the Code of Judicial Conduct

Hon. Frank H. Allen, Jr., Chairman
Hon. Marie A. Baca
Hon. James J. Wechsler
Prof. William MacPherson

June 30, 2000

The Honorable
District Judge
Judicial District
P.O. Box
NM

Re: Judicial Advisory Opinion 00-01

Dear Judge

You have asked our committee for advice concerning the disbursement of \$141,917.65 held in a Final Unclaimed Fund as the result of a _____ class action case. The parties have complied with the court's order concerning distribution and the above amount is unclaimed.

The parties have no objection to disbursing the funds to a charitable or non-profit organization. We take no position about the legality of the decision to contribute funds to charity or to the applicability of Uniform Unclaimed Property Act in this case.

In deciding the designation of the recipient or recipients of the fund we feel you should take into consideration the following. Under NMRA 2000 Rule 21-200 (A), a judge must promote public confidence in the integrity and impartiality of the judiciary. Under Rule 21-200 (B), a judge shall not allow any relationship "to influence the judge's judicial conduct or judgment," and a "judge shall not lend the prestige of judicial office to advance the private interest of the judge or others."

The selection of the organization therefore should not be influenced by the judge's prior relationships with the organization. The selection should be made so that it cannot be inferred that the prior relationship influenced the judge's conduct or judgment or that the judge sought to advance the interest of the organization in order to indirectly receive personal gratification or public acknowledgment.

Rule 21-500A (1) also imposes restrictions upon a judge's extra-judicial activities such that they do not cast doubt on the judge's capacity to act impartially as a judge. The judge's past extra-judicial activities should not affect his decision as to the selection of the charity.

We have a suggestion as to how to proceed with the selection of the charity so that the problems just suggested do not occur. If the selection could be made by three or more of the judges of the _____, Judicial District the selection could not be criticized as being done because it was a judge's "private charity." At a meeting of the judges, nominations could be made and discussed and an organization could be selected by agreements.

An alternative suggestion is the use of a citizens panel to make recommendations to the judge.

We hope that these suggestions will be of some help.

Very truly yours,

Frank H. Allen, Jr. Chairperson
Judicial Advisory Committee

FHA/mvh

xc: The Honorable Marie Baca
The James J. Wechsler
Professor MacPherson
Thaddeus P. Bejnar