

# 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

April 9, 2001

Re: Request for Advisory Opinion 01\_03  
Dated March 12, 2001

Dear

We are writing in response to your March 12, 2001 request for opinion on behalf of a non-lawyer New Mexico judge who is contemplating the filing of a personal Chapter 7 bankruptcy petition. Specifically, you request an opinion as to whether the judge would violate the Code of Judicial Conduct by declaring for bankruptcy under the United States bankruptcy laws. You state that your client engaged in a retail business that did not involve the practice of law prior to becoming a judge and that the failure of his business precipitated his interest and that of his spouse to initiate bankruptcy proceedings.

The New Mexico Code of Judicial Conduct addresses the extra-judicial activities of a judge as well as a judge's financial activities. Rule 21-500(A), (D) NMRA 2001. As to extra-judicial activities, a judge is required to conduct the judge's extra-judicial activities so as not to

- (1) cast doubt on the judge's capacity to act impartially ...;
- (2) demean the judicial office;

(3) interfere with the proper performance of judicial duties; or

(4) violate the judge's oath and obligation to uphold the laws and constitutions of the United States and the State of New Mexico.

Rule 21-500(D) relates specifically to financial and business dealings of a judge. A judge is permitted within restrictions to manage and participate in a business closely held by the judge. Rule 21-500(D)(3)(a) However, a judge is proscribed from even such generally-allowed conduct if the judge's activities will interfere with the judge's ability to impartially and regularly perform the judge's judicial duties. Rule 21-500(D)(1)(b), 21-500(D)(4) .The judge may not allow himself or herself to be in a position that causes a conflict of interest or which the public may consider to exploit the judge's judicial position. Rule 21-500(D)(1).

In addition to the specific provisions of the Code of Judicial Conduct which relate to extra-judicial activity, a judge has the obligation to establish, maintain, and enforce "high standards of conduct," even in the judge's personal life, such that the judge will preserve the "integrity and independence of the judiciary." Rule 21-100. As you have noted in your request, a judge can be sanctioned for "willful misconduct in office. " In re Donald A. Martinez, 99 N.M. 198, 202-03, 656 P.2d 861, 865-66 (1982).

You have not provided any information to indicate that your client has engaged in any improper activity. We assume that he did not operate the business in any manner during his tenure as a judge and that his business affairs and personal dealings with his creditors do not in any way otherwise violate the Code of Judicial Conduct. We further assume that his business is and was entirely separate and unrelated to his responsibilities as a judge and to the performance of his judicial responsibilities.

With these assumptions, we do not perceive the filing of a bankruptcy petition under the circumstances you have described to demean your client's judicial office or to constitute a willful act which does not maintain the required level of personal conduct for a judge. The bankruptcy laws are established by the United States Congress to apply to various debtors. We assume that your client

would be complying with these federal laws. Unless he has engaged in some conduct which you have not described, such as improper treatment of his creditors or receipt of partial treatment by debtors, or there are implications to his proposed bankruptcy filing which are not stated in your request, we do not believe that his mere filing for bankruptcy and for debt protection under the laws of the United States is conduct that is prohibited by the Code of the Judicial Conduct.

Very truly yours,

Frank H. Allen Jr.  
Chairman  
Judicial Advisory Committee