

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

August 15, 2001
Opinion 01-05

Dear

You have requested an advisory opinion as to whether a probate judge can accept a fee for writing a newspaper column. You have indicated that the column would not be written at the court, and we assume that employees of the court would not participate in the production of the column. You indicate that the column might discuss probate and court issues.

A probate judge is not subject to the provisions of the Code of Judicial Conduct specifically relating to extra-judicial activities and compensation. Rule 21-901(C)(1)(f) NMRA 2001(exempting probate judges from compliance with Rule 21-600 NMRA 2001). Nevertheless, a probate judge must ensure that the judge's extra-judicial activities comply with Rule 21-500 (A) NMRA 2001 so as not to: "cast doubt on the judge's capacity to act impartially as a judge;" "demean the judicial office;" and "interfere with the proper performance of judicial duties." A probate judge has the responsibility to observe high standards of conduct to preserve the integrity and independence of the judiciary, Rule 21-100 NMRA 2001, to avoid lending the prestige of the judge's office to advance the judge's private interest, Rule 21-200(B) NMRA 2001, and to act in a manner that promotes the public confidence, avoiding the appearance of impropriety, Rule 21-200 (A). A probate judge may not engage in financial and business dealings that "may reasonably be perceived to exploit the judge's judicial position. Rule 21-500(D)(1)(a).

A judge may write about the law, the legal system, and the administration of justice subject to the requirements of the Code of Judicial Conduct, Rule 21-500(B). We assume that the newspaper articles are designed to educate the public about probate matters and court procedures and that they would not infringe upon any of the rules of the Code of Judicial Conduct discussed above in content. We further assume that the compensation does not exceed what is reasonable. Moreover, we understand that you have written such articles for compensation prior to the time that you became a probate judge and that you are not currently engaged in the active practice of law. We believe that this past activity and inactive practice minimize any possible appearance of exploitation of your judicial position. See Rule 21-500 (D) (1) (a).

With this basis, we do not believe that the fact that you are compensated to write the articles does not, in and of itself, violate the Code of Judicial Conduct.

Very truly yours,

Frank H. Allen, Jr.

Chair, Judicial Advisory Committee