

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

January 22, 2002

Re: Judicial Advisory Opinion 01-09

Dear

You have requested an opinion concerning whether you can finance the purchase of an office building owned by you by an attorney who appears in your court. You have indicated that you have rented the building to this attorney for use as a law office. You have previously offered the building for sale on two occasions but did not receive an offer to purchase. Real estate of this nature does not sell well in your small town, and the only likely use for the building is for a law office because of the proximity to the courthouse.

Rule 21-500(D) of the Code of the Judicial Conduct addresses the personal financial activities of a judge. Under Rule 21- 500(D)(1)(b), a judge shall not engage in financial and business dealings that involve the judge in frequent transactions or a continuing business relationship with a lawyer likely to come before the judge's court. Under Rule 21-500(D)(4), a judge is obligated to manage the judge's investments and financial interests "to minimize the number of cases in which the judge is disqualified." Rule 21-500(D)(4) requires a judge to "divest himself or herself of investments and other financial interests that might require frequent disqualification." However, the rule recognizes that such divestiture may take time under certain market conditions and, therefore, the rule allows the judge the time to accomplish divestiture, requiring that the judge do so as soon as possible "without serious financial detriment." Rule 21-500(D)(4). See Judicial Advisory Opinion 97-06.

From the history that you have provided, it appears that you have complied with Rule 21-500(D) (4) in your efforts to sell the building. The response to your inquiry is contained in Rule 21-500(D)(1)(b). With the sale of the building, you have a choice of

financial arrangement. If commercial financing is available, Rule 21-500(D)(1)(b) requires that you avoid a continuing business relationship with the renting attorney.

You have indicated in your request that an attorney appearing before you in a case opposing the renting attorney had suggested an impropriety in the relationship you had with the renting attorney who also practiced before you. You recused in that case and also in two other cases in which the attorney making the suggestion of impropriety was involved. These circumstances indicate the problem which the rule seeks to avoid.

The purpose of Rule 21-500(D)(1)(b), as stated in the commentary, is "to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification." The problem is not different when the attorney is a mortgagee rather than a renter. The relationship is a continuing business relationship with a lawyer likely to come before your court. See Rule 21-500(D)(1)(b). Therefore, we do not believe that the aspect of Rule 21-500(D)(4) which allows a judge to wait to divest property until it can be accomplished without serious financial detriment applies to the choice of financing arrangements upon the sale of the property. You have the ability to obviate the problem by divesting yourself of the building without a continuing financial relationship with the purchasing attorney. We do not believe that tax consequences make a difference in these circumstances.

As a result, if commercial financing is available, Rule 21-500(D)(1)(b) requires that you refrain from entering into a continuing business relationship with the purchasing lawyer.

Very truly yours,

Frank H. Allen, Jr.
Chair
Judicial Advisory Committee