

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 29, 2002

Re: Advisory Opinion No.02-06

Dear

You have requested that the Advisory Committee advise you concerning the propriety of your service on various boards and committees upon which you have been requested to serve.

The Code of Judicial Conduct addresses a judge's extra-judicial activities in Rule 21-500 NMRA 2002. Rule 21-500 (A) provides:

A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast doubt on the judge's capacity to act impartially as a judge;
- (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 specifically addresses a judge's appointment to a governmental committee or commission, prohibiting a judge from accepting such a position "that is concerned with issues of fact or policy on matters other than the improvement of law, the legal

system or the administration of justice." Rule 21-500(C)(2). The rule permits a judge to "serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice" or of a non-profit "educational, religious, charitable, fraternal, or civic organization" subject to certain limitations and other requirements of the Code. Rule 21-500(C)(2)(3). These limitations preclude a judge from serving as an officer, director, trustee or non-legal advisor for an organization that will either "be engaged in proceedings that would ordinarily come before the judge" or "be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member." Rule 21-500(C)(3)(a) Rule 21-500 also limits a judge who serves a non-profit organization from engaging in the solicitation of funds or other fund-raising activities and prohibits a judge from using or permitting the use of the prestige of "the judge's office for fund-raising purposes. Rule 21-500(C)(3)(b).

Your request describes five circumstances. We discuss each in turn.

1. Santa Fe Sister City Committee. You state that you have been asked to serve as the president of the Santa Fe/Spain Sister City Committee for the City of Santa Fe. You indicate that you would be expected to serve as a goodwill ambassador and that the organization, a non-profit, does not solicit funds and is essentially a cultural organization that promotes goodwill and cultural and artistic exchanges between the City of Santa Fe and its sister city in Spain. From your description, we understand the organization to be a non-profit organization rather than a governmental committee. Rule 21-500(C)(3) permits you to serve as an officer of a non-profit civic or educational organization, provided that the organization will not be engaged in proceedings that would ordinarily come before you or be engaged frequently in adversary proceedings in your court or in a court subject to your appellate jurisdiction. As long as your service as president of the organization does not interfere with the proper performance of your judicial duties or otherwise conflict with Rule 21-500(A), we believe that you may serve as president of the organization. Moreover, Rule 21-500(C)(2) permits you to represent the City of Santa Fe in connection with educational or cultural activities.

(2) Museum of Spanish Colonial Arts. You indicate that you would like to serve as a board member of the Museum of Spanish Colonial Arts. The museum operates the annual Spanish market in Santa Fe and recently opened a museum to house a Spanish colonial

arts collection. The museum also plans educational activities for children. The board of directors has the responsibility of soliciting funds for its operations. You stated that you would not participate in fund-raising and would like to serve on the education subcommittee which fosters programs for children. Under Rule 21-500(C)(3), a judge may serve as a director of a non-profit charitable organization if other requirements of the Code are met and if the organization is not likely to be engaged in proceedings that would ordinarily come before the judge or be engaged frequently in adversary proceedings in the court of which the judge is a member, or a court subject to the appellate jurisdiction of the judge's court. You have not indicated that the museum is likely to be engaged in such litigation. As you are aware, Rule 21-500(C)(3)(b) precludes a judge serving as a director of a charitable organization from personally participating in fund-raising activities. We believe that you may serve as a director of the museum provided that it is not likely to be engaged in litigation that would preclude your service and provided that you do not engage in membership solicitation or fund-raising activity. Further, your service would be subject to the general provisions of Rule 21-500 (A).

(3) Catherine Center for Youth and Family Education. You have also been asked to serve as a director or non-legal advisor of a newly formed non-profit organization, the Catherine Center for Youth and Family Education. This organization was created to pursue the acquisition of property, formerly the St. Catherine Indian School, to house and operate programs for children and families in need. The organization intends to solicit funds to acquire and improve the property to use it for educational and social services programs. You indicate that the structure of the organization has not yet been established. Although you do not know the specific functions to be performed by the organization because of its formative nature, we foresee a problem with your serving as a director or non-legal advisor of the organization. Because the intent of the organization is to provide educational and social services programs for children and families in need, it appears likely that the organization, or its activities, will be involved in court proceedings, either directly or through court referrals. Under these circumstances, Rule 21-500(C)(3)(a) would not permit you to serve as a director or non-legal advisor of the organization. You have further informed the Committee that as a graduate of the St. Catherine Indian School, you have historical knowledge that may be helpful to interested parties concerning the property. We believe that it is permissible for you to provide such information to interested parties.

(4) New Mexico Juvenile Justice Advisory Committee. The Juvenile Justice Advisory Committee is appointed by the Governor to perform functions in connection with the federal Juvenile Justice and Delinquency Prevention Act of 1974 (the Act) including approval of a state plan "reflecting statewide goals, objectives and priorities for the expenditure of federal funds under the federal act" in conjunction with the Children, Youth and Families Department and approving applications submitted pursuant to the Act. NMSA 1978, § 9-24-16(A) (1992). Other members of the committee are representatives of agencies and persons serving, providing service to, or having interest in the juvenile justice system. See 28 CFR, § 31.302 (1995). Generally, a judge may not serve on a governmental committee that deals with factual, or policy issues. Rule 21-500(C)(2). However, the Code of Judicial Conduct permits a judge to serve on a governmental committee if the issues before the committee concern "the improvement of the law, the legal system or the administration of justice." Id. Of course, such service is subject to the mandate of Rule 21-100 that a judge preserve the integrity and independence of the judiciary. The overall purpose of the Act is the fostering of juvenile justice and delinquency prevention programs. See 42 U.S.C. § 5602 (1992). It is our understanding that in New Mexico such programs include those focusing on juvenile probation, release from detention, reporting, community custody on pretrial release, shelter homes, and expedited processing of juvenile cases. These types of programs are directly related to the function of our children's courts in the handling of juvenile proceedings. Thus, we consider this type of programming to fall within the purview of the administration of justice. Nor does it appear from the information that we have available to us that your service on this committee would, in a general manner, cast doubt upon your ability to act impartially as a judge so as to violate Rule 21-500(A)(1). The committee consists of representatives of the varied interests within the juvenile justice system and is not designed to, and does not on its face, promote any particular view or position. We caution you that if it appears to you that the committee is no longer balanced in its membership, does not focus on the administration of juvenile justice programs, promotes a particular view or position within the juvenile justice system, or casts doubt on your ability to act impartially as a judge or the independence of the judiciary in any way, you must resign your membership on the committee.

(5) Attendance and Participation in Community Meetings Addressing Youth and Family Issues. You have informed us that as a children's court judge you are frequently asked to attend meetings of public and private organizations to address issues affecting children and families. You have inquired whether it is appropriate for you to attend these meetings, discuss your

perspective on the issues, and answer questions posed to you. We assume that these meetings are unconnected to any fund-raising or membership activity. Under Rule 21-500, a judge may speak about the law, the legal system, and the administration of justice, subject to the requirements of the Code of Judicial Conduct. You are thus permitted to address groups interested in the legal process and explain the law and the legal system. This activity is subject to the other provisions of the Code, including Rule 21- 500(A), requiring that you not cast doubt on your ability to act impartially. Consequently, you must be careful not to give legal advice, render advisory opinions, comment on pending cases, or take other action that would impair your ability to impartially perform your judicial responsibilities. Because the appearance of impartiality is also an issue, you should take care not to create an improper appearance concerning your impartiality with the selection of groups to which you speak.

Lastly, we have an additional observation that relates to your inquiry in the overall sense. You have not stated the amount of time you would spend with each of the activities discussed. We note the provision of Rule 21-500(A) (3) that prohibits a judge from conducting the judge's extracurricular activities in a manner that would "interfere with the proper performance of judicial duties." This provision prohibits a judge from spending too much time on extra-judicial activities if the activities then affect the judge's ability to properly perform the judge's judicial responsibilities.

Subject to the discussion set forth in this opinion, the Committee believes that you may engage in each of the activities contained in your request with the exception of the Catherine Center for Youth and Education.

Very truly yours

A handwritten signature in cursive script, appearing to read "Frank H. Allen Jr.", written in dark ink.

Frank H. Allen Jr.
Chairperson
Judicial Advisory Committee