

Advisory Committee on the Code of Judicial Conduct

Hon. Frank H. Allen, Jr., Chairman
Hon. James J. Wechsler

October 8, 2002

Re: Judicial Advisory Opinion No. 02-09

Dear

You have asked the Advisory Committee on the Code of Judicial Conduct for an opinion concerning your ability to serve on the Board of Directors of a charitable foundation. The foundation is being funded, at least in part, as the result of a settlement reached through mediation in a case in which you were appointed by the trial judge to be the mediator. As part of the settlement, the defendant agreed to provide a large amount of the initial funds for the foundation. All parties to the litigation support your serving as a member of the Board of Directors.

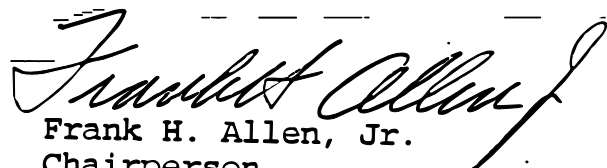
Rule 21-500(C) (3) NMRA 2002 permits a judge to serve as a director of a non-profit, charitable organization if it is not likely that the organization will be engaged in proceedings that would ordinarily come before the judge and will not frequently be engaged in adversary proceedings in the court of which the judge is a member or a court subject to the appellate jurisdiction of the judge's court. Rule 21-500(C) (3) (a). You have advised that these prohibitions are not applicable to this foundation. In addition, Rule 21-500(C) (3) precludes a judge from personally participating in fund-raising activities and certain membership solicitation of a charitable organization. You have advised that it is not anticipated that this foundation will be required to engage in these activities.

Under the Code of Judicial Conduct, a judge has the obligation to maintain high standards of conduct in order to preserve the integrity and independence of the judiciary. Rule 21-100 NMRA 2002. Further, a judge has the responsibility to promote the public confidence in the integrity and impartiality of the

judiciary and may not lend the prestige of judicial office to advance the private interest of others. Rule 21-200(A), (B) NMRA 2002. From the facts you have described, although the genesis of the foundation was in the litigation-related mediation, the litigation is completed and the activity of the foundation is not related to litigation. As a result, the Committee does not believe that there is an improper appearance involved in your service as a member of the Board.

In the opinion of the Committee, the Code of Judicial Conduct does not preclude you from serving as a member of the Board of Directors of the foundation.

Very truly yours,


Frank H. Allen, Jr.
Chairperson
Judicial Advisory Committee