

Advisory Committee on the Code of Judicial Conduct

Hon. Frank H. Allen, Jr., Chairman

Hon. James J. Wechsler

July 31, 2003

Re: Advisory Opinion No.03-01

Dear Judge

You have asked the Advisory Committee on the Code of Judicial Conduct for an opinion concerning your referrals to the "Alive at 25" program. We understand from your inquiry that the program is designed for traffic offenders for people ages 14 to 25 who are considered to be high risk drivers. You indicate that the program specifically addresses the special needs of this group and these special needs are not addressed in the more traditional defensive driving classes. Classes of the program are taught by instructors certified by the Traffic Safety Council.

You have informed the committee that there are only two certified instructors in the State of New Mexico, both in Santa Fe. One is a former employee of your court. The other is the current court administrator who became certified on her own time and with her own money. She conducts classes after hours and on Saturdays and receives compensation from offenders and a grant from the Santa Fe County DWI Task Force.

As a judge, you refer offenders to "Alive at 25" classes and referrals are also made by the Juvenile Probation Officer of your court, Teen Court, the National Safety Council, and other courts in the state. You make your referrals to the New Mexico Traffic Safety Bureau which provides an offender the names of the certified instructors for the offender to select a class.

Rule 21-200(A) NMRA 2003 provides that a judge "shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Under this rule, a judge may not act in a manner which gives the appearance of impropriety. See Commentary to Rule 21-200(A). The situation you describe gives rise to an appearance of impropriety.

As the judge, you have the administrative responsibility for the operations of the court. The court administrator is in charge of carrying out your administrative responsibilities. There is no question that you would not be able to profit from the business or operations of the court. Rule 21-500(D)(1)(a) NMRA 2003. We believe that when a person in the position of court administrator can profit from the business or operations of the court, there is an appearance that the integrity of the court is compromised.

We reach the same result when we consider your adjudicatory responsibilities. There is a potential that there is an appearance that an offender may receive different or special treatment from the court if the offender chooses the court administrator's class.

We expect that your court administrator assists you in carrying out your adjudicative responsibilities. As such, the Code of Judicial Conduct allows you to consult with her in fulfilling those responsibilities. Rule 21-300(B) (7) (c) NMRA 2003. Because of the close contact which you must necessarily have with your court administrator, we believe that the public confidence in the judiciary can be impaired if the court administrator is in a position to personally benefit from the court's action. This appearance is not removed by your making referrals to the Traffic Safety Bureau which provides the names of certified instructors to offenders. As you have explained, your court administrator is the principal instructor receiving referrals. Offenders may select her because they believe that they can receive favored treatment from the court.

As a result, we believe that your action in allowing your court administrator to receive referrals for offenders before your court creates an improper appearance. Our opinion does not affect any referrals she may receive from other courts.

Very truly yours,

Frank H. Allen, Jr.
Chairperson
Judicial Advisory Committee