

Advisory Committee on the Code of Judicial Conduct

Hon. Frank H. Allen, Jr., Chairman

Hon. James J. Wechsler

October 8, 2003

The Honorable

Re: Judicial Advisory Opinion 03-02

Dear Judge

As an attorney you prepared a program which aired statewide on KNME- TV Channel 5 prior to your becoming a probate judge. The program concerned wills, trusts, probate and health laws and were meant to be a community service, geared at informing a lay audience about important legal topics. You have been requested by KNME to revise the program and prepare new material. During the intro of the show you will be called "Judge \_\_\_\_". Also you will be paid a fee for writing and presenting the program with royalties on the sales of videotape of the show.

Your main concern is that you have no control as to when these programs are aired. For instances they could be aired during pledge drives to raise funds for KNME. The show could be aired nationally by PBS affiliates out of state during pledge drives. Also there could be a follow-up show that you would host with local attorneys answering

questions from viewers that would be aired during a pledge drive.

It is also contemplated that KNME would offer copies of your book \_\_\_\_ and/or videotapes of the show during pledge drives and other fund-raising activities.

Your question to this committee is whether this relationship between a probate judge and KNME would violate the Code of Judicial Conduct. Clearly a judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system and the administration of justice, Rule 21-500(B).

Although the Code does not require a probate judge to comply with some parts of the Code (Rule 21-901(C) NMRA 2003), it does require that a probate judge comply as follows:

1. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Rule 21-200(B) NMRA 2003.

2. A judge shall not engage in financial and business dealings that (a) may reasonably be perceived to exploit the judge's judicial position. Rule 21-500(D)(1)(a) NMRA 2003.

3. A judge as a member or otherwise shall not personally participate in the solicitation of funds or other fund-raising activities. Rule 21-500(C)(3)(b)(iv) NMRA 2003.

The commentary to these rules is helpful in answering your question. "The test

for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired". (Commentary Rule 21-200, Paragraph B)

The prohibition to a judge participating in fund-raising activities requires that the judge "personally" participate. A judge must not engage in direct individual solicitation of funds. Since the Code allows a judge's name and judicial designation to appear on organization letterhead for fund-raising solicitation (Commentary Paragraph C (3)(b) Rule 21-500), it would not be a violation of the Code for the judge's name to be aired during a fund-raising event if the judge did not personally participate or engage in direct individual solicitation.

It is the committee's opinion that the business relationship between you and KNME is permissible for a probate judge to participate in as long as you do not personally participate in any fund-raising activities and that this extra-judicial activity does not interfere with the proper performance of your judicial duties.

Very truly yours,

Frank J. Allen, Jr.  
Chairperson  
Judicial Advisory Committee