

Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Chair
Hon. Marie A. Baca
Paul L. Biderman, Esq.
Thaddeus Bejnar, Esq.

March 30, 2004

Re: Advisory Opinion 04-02

Dear

You have requested an opinion of the Advisory Committee-on the Code of Judicial Conduct concerning the qualification of an applicant to serve as an alternate judge on your court. The applicant engages in the full-time practice of law in the county in which your court is located as well as the adjoining county. His practice includes the representation of law enforcement officers and law enforcement organizations, including the Department of Public Safety of your municipality. You have informed the committee that it is your understanding that the applicant represents the association or union of law enforcement officers in your municipality and that the association or union refers law enforcement officers to him for representation in disciplinary actions.

A part-time municipal judge is not subject to all of the provisions of the Code of Judicial Conduct. Rule 21-901(C) NMRA 2004. As a result, a part-time municipal judge may engage in the practice of law, but may not practice "in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves." Rule 21-901(C) (2). However, a part-time municipal judge is not exempt from the requirements of Rule 21-200 NMRA 2004 with regard to the significance of maintaining public confidence in the judiciary. Rule 21-200(A) provides: "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."

We find instructive an unreported 1997 opinion in which the New Mexico Supreme Court suspended without pay and then placed on extended probation a magistrate judge who, among other violations, maintained connections with law enforcement officers who appeared in his court. Aspects of these law enforcement relationships the Court cited as improper included the magistrate's acting as a training officer and firearms instructor for law enforcement agencies, regularly carrying and listening to a "walkie talkie" on the sheriff's department frequency, maintaining a police radio in his personal vehicle and maintaining contact with the sheriff's department, and maintaining law enforcement certifications. In re: Edward S. Cramer, Hidalgo County Magistrate, (Supreme Court No. 23, 504 (1997)) (as reported in the FY 2003 Annual Report of the New Mexico Judicial Standards Commission, at 33).

Because local law enforcement officers regularly appear in your court, Rule 21-200(A) would not permit the applicant to continue the client representation of his law practice that you have described and also serve as a part-time municipal judge. His representation of the law enforcement officers and their organizations would present, at the minimum, an appearance of partiality because of his relationship with his clients. Commentary to Rule 21-200(A) ("A judge must avoid all impropriety and appearance of impropriety.").

Very truly yours,

James J. Wechsler,
Chair

JJW:ow