

Advisory Committee on the Code of Judicial Conduct

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

November 10, 2004

Re: Advisory Opinion No. 04-06

Dear

The Advisory Committee on the Code of Judicial Conduct has received your request for an advisory opinion from the Chief Clerk of the Supreme Court. You have voluntarily removed yourself from handling cases as a _____ judge on a temporary basis, and you request advice as to whether you may resume your work on the bench.

You have advised the Committee that your action followed a shooting incident at your home. As a result of the incident, the local police department is treating you and your wife as homicide suspects. The local district attorney has recused, and a homicide investigation is being conducted by another district attorney. You indicate that you handle a heavy caseload and are willing and able to work. You voluntarily removed yourself from handling cases on a temporary basis because of your concern about an appearance of impropriety.

Rule 21-100 NMRA provides that a judge "shall participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and the independence of the judiciary will be preserved." Rule 21-200(A) NMRA states that a judge "shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." These rules of the Code of Judicial Conduct make clear the obligation of a judge to comply with the law and emphasize the significance of the public confidence in the integrity, independence and impartiality of the judiciary.

Although media reports of the shooting incident indicates facts that would justify your actions on the incident, the existence of the media reports also demonstrates a public interest in the incident. Moreover, officers of the local police department which is conducting the homicide investigation regularly appear as witnesses in cases in the court on which you sit. The Committee believes that because of the nature of the ongoing investigation and because of the nature of the cases that come before your court necessitating the appearance as witnesses of officers of the police department conducting the investigation, your concern about an appearance of impropriety is well taken.

The Committee believes that you should continue your voluntary removal from cases until such time as the investigation is complete and you and your wife are cleared of criminal charges.

Very truly yours,

James J. Wechsler
Chair

JJW: ow

cc: Hon. Marie A. Baca
Paul L. Biderman, Esq.
Kathleen Jo Gibson, Esq.
Thaddeus Bejnar, Esq.