

Advisory Committee on the Code of Judicial Conduct

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

February 7, 2005

Re: Advisory Opinion No. 05-01

Dear Judge

You have asked the Advisory Committee on the Code of Judicial Conduct for an opinion as to whether you can serve as a part-time tribal judge while you are employed as a full-time magistrate judge. You have advised that you have been asked to serve as a tribal judge pro tempore during the evening or on Saturday mornings for two to three hours on a biweekly basis.

NMSA 1978, § 35-1-36.1 (1994) provides that a magistrate judge serves on a "full-time" basis. It provides that a magistrate judge may not hold "other employment that may conflict" with the judge's full-time judicial duties. Section 31-1-36.1(B). The Code of Judicial Conduct requires that a judge devote the time required by the position and precludes a judge from holding another position that conflicts with the hours and duties of the judge or is performed simultaneously with the judge's position. Rule 21-500(H) NMRA.

Although Rule 21-500(H) contemplates that a judge may hold another judicial position as long as it does not conflict with the hours and duties of the judge's other judicial position, another provision of the Code specifically prohibits a full-time judge from holding more than one judicial position. Rule 21-500 (I) NMRA provides: "No full-time municipal, magistrate, metropolitan, district or appellate judge may hold any other judicial position, elected or appointed." Rule 21-500 (I) NMRA. Because you are a full-time judge, we believe that this provision controls your inquiry. As a result of this provision, the Committee advises that you may not serve as a magistrate judge and, at the same time, hold the position of tribal judge pro tempore.

Very truly yours,

James J. Wechsler

JJW:ow

cc:

Hon. Marie A. Baca
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