

Advisory Committee on the Code of Judicial Conduct

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

July 7, 2005

Re: Advisory Opinion No. 05-04

Dear

You have asked the Advisory Opinion on the Code of Judicial Conduct for an opinion as to whether the Code of Judicial Conduct permits you and your husband to rent a warehouse to the Region Drug Task Force. You have informed the Committee that you and your husband own a warehouse in the town in which you are a judge and that the deed is in your name only. The Drug Task Force may be interested in renting the building to store vehicles. Your husband would be the contact person and you would not be personally involved. You have advised that your jurisdiction for possession of illegal drugs is limited to under one ounce of marijuana and that you do not recall ever sitting as judge in a case filed by the Drug Task Force in the three years that you have been a judge. You note that the drug possession cases that you handle are usually incident to a traffic stop and that you will occasionally handle a traffic citation issued by an officer on the Drug Task Force.

Rule 21-200(A) NMRA of the Code of Judicial Conduct requires a judge to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Rule 21-500 (D) (2) NMRA addresses a judge's extra-judicial activities. It permits a judge to hold and manage real estate, subject to the requirements of the Code. It prohibits a judge from engaging in extra-judicial activities that "cast doubt on the judge's capacity to act" or that interfere with the impartiality as a judge or that "interfere with the proper performance of judicial duties." Rule 21-500 (A) (1), (3). It prohibits business activity that involves the judge in a continuing business relationship with "persons likely to come before the court on which the judge serves." Rule 21-500 (D) (1) (by).

On the basis of these rules, the Committee believes it would not be appropriate for you to rent the building to the Drug Task

Force. Regardless of whether you only handle occasional cases involving an officer of the Drug Task Force, as a matter of course, officers of your municipality's police department regularly appear in your court. It is the Committee's understanding that the Drug Task Force includes members of this police department.

A judge must not only act in a manner that promotes public confidence in the integrity and impartiality of the judiciary; it is necessary that a judge "avoid all impropriety and appearance of impropriety." Commentary to Rule 21-200(A). Even though members of your municipality's police department who appear before you may not be members of the Drug Task Force, there is little if any distinction in the minds of the general public between members of the Task Force and other members of the police department. As a result, if you were to rent the building to the Task Force, you would create the appearance of engaging in a business relationship with police officers. When viewed in this manner, a business relationship with the Drug Task Force would be prohibited by Rule 21-500(A) (1) in that it would involve you in a continuing business relationship with representatives of the police department, which, through the same or other representatives, regularly appears in your court. Moreover, such a relationship would have the potential of either casting doubt on your ability to act impartially in matters involving members of the police department, contrary to Rule 21-500(A)(1), or, interfering with your performance of your judicial duties, in violation of Rule 21-500 (A) (3), because you would be required to recuse in cases involving the Drug Task Force or other members of the police department. See Rule 21-400(A)(1) NMRA (requiring a judge to recuse if "the judge's impartiality might reasonably be questioned," including when the judge has a personal bias concerning a party). Further, because you are an owner of the property, it does not matter that you would not be involved in the active management of the property.

We therefore conclude that it would be improper for you to lease your commercial building to this law enforcement agency while serving as a municipal judge.

Very truly yours,

James J. Wechsler

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cc: Hon. Marie A. Baca
Hon. Kevin L. Fitzwater
Paul Biderman, Esq.
Thaddeus Bejnar, Esq.