

Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Chair
Hon. Marie A. Baca
Hon. Kevin L. Fitzwater
Paul L. Biderman, Esq.

February 24, 2006

Re: Judicial Advisory Opinion No. 06-01

Dear Judge,

You have asked the Advisory Committee on the Code of Judicial Conduct for an opinion as to whether the Code of Judicial Conduct indicates a conflict between serving as a municipal judge pro tem and your full-time employment as Director of the Institute of Public Law at the University of New Mexico. You have informed the Committee that you are concerned with the imposition of the two-dollar judicial education fee in the course of mandatory court costs and fees in that, as Director of the Institute of Public Law, this fee is administered entirely by the Institute to operate its Judicial Education Center.

The issue presented is whether the performance of duties as judge pro tem would be seen, as a result of the required imposition of costs and fees, as a conflict with your duties as Director of the Institute of Public Law. We are of the opinion that it does not.

As you have stated, a fraction of the judicial education fee has been distributed to pay the salaries of administrative staff at the Institute, including the director. It is appropriate that you have arranged to ensure that no part of these fees will go to your personal salary or benefits. This will ensure that even the appearance of personal gain would be removed. 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 21-200(A) NMRA. 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). We note that courts in New Mexico do, as a course of law, collect other fees and costs that fund

operations of the judiciary, such as the Court Facilities Fund and the Court Automation Fund, without the implication or appearance of improper self-service. NMSA 1978, § 35-6-1 (2003); *see also* NMSA 1978, § 35-14-11 (2003).

Rule 21-500(H) NMRA mandates that “(a) judge shall not hold any other paid position, judicial or otherwise, that conflicts with the hours and duties the judge is required to perform....In no event shall other paid employment or compensable activity hours be performed simultaneously.” You are therefore required to take leave of your position as Director whenever you perform any duties as judge pro tem.

Otherwise, no conflicts between your duties as judge pro tem and your position as Director of the Institute of Public Law have been identified based on the issues presented. We therefore conclude that it would be proper for you to assume the position of judge pro tem of the Municipal Court, from time to time, as may be required.

Very truly yours,

James J. Wechsler
Chair

JJW:ow

Cc: Hon. Marie A. Baca
Hon. Kevin L. Fitzwater
Professor Robert L. Schwartz