

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.
Robert L. Schwartz

May 1, 2006

Re: Judicial Advisory Opinion No, 06-02

Dear Judge,

You have asked this Committee for an advisory opinion as to whether it would be proper under the Code of Judicial Conduct for you to serve as a member of the New Mexico Intimate Partner Violence Death Review Team (the Death Review Team). You have provided a copy of a recent annual report provided by the Death Review Team, which indicates that this multidisciplinary agency reviews all deaths that arise out of intimate partner violence in an effort to help develop policy that ultimately will prevent deaths in similar cases in the future. The Death Review Team has no fonnal authority, but is an advisory body composed of several dozen members "committed to the eradication of this social problem who provide[] vital information and their unique perspectives." While the Death Review Team does not appear to be a government agency, it is funded by a grant. administered by the New Mexico Crime Victims Reparation Commission. The Death Review Team is fully independent of the Commission, however. In the year for which the annual report was provided, the Death Review Team developed several recommendations relating to new legislation, the coordination of state and federal law enforcement, policy promotion, offender supervision, the role of victim advocates (outside of the courts), the provision of statewide technical support to local and tribal agencies, and other issues.

The Code ofJudicial Conduct addresses a judge's extra judicial activities in Rule 21-500 NM RA. The relevant parts of this section provide:

A judge shall so conduct the judge's extra judicial activities as to minimize the risk of conflict with judicial obligations.

A. Extra judicial activities in general. A judge shall conduct all of the judge's extra judicial activities so that they do not:

- (1) cast doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office;
- (3) interfere with the proper performance of judicial duties; or
- (4) violate the judge's oath and obligation to uphold the laws and constitutions of the United States and the State of New Mexico.

Governmental, civic or charitable activities.

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the judiciary or matters relating to the judiciary or which affect the interests of the judiciary, the legal system or the administration of justice ...;

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice...;

(3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal, or civic organization not conducted for profit, subject to the following limitations and other requirements of this Code:

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization:

(i) will be engaged in proceedings that would ordinarily come before the judge; or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

This provision includes different standards for service on governmental commissions (see section (C)(2)) and other civic or charitable agencies (see section (C)(3)), and it is unclear whether the Death Review Team should be classified as a governmental or non-governmental agency. Service on governmental committees or commissions is limited to those that address "the improvement of the law, the legal system or the administration of justice." The Death Review Team's central consideration appears to fall in these categories. To the extent that the Team also addresses subjects outside this core area, those subjects are inextricably intertwined with the improvement of the law, the legal system, or the administration of justice. Thus, we conclude that the subject of the Death Review Team's work would not disqualify a judge from participating as a member even if the Team were a governmental agency.

Regardless of whether the Death Review Team is a governmental organization, you may not serve as a non-legal advisor or Death Review Team member if the Team will be engaged in proceedings that would ordinarily come before you or will be engaged frequently in adversary proceedings in your court. While the Death Review Team does not appear to be involved in litigation per se, many members of the Team, including hospital personnel, law enforcement officers, prosecutors and defense attorneys, and others, may occasionally appear in your court on matters that are related to your work on the Death Review Team. This question seems closely related to the question raised in Judicial Advisory Opinion 02-06, in which a judge inquired about membership on the New Mexico Juvenile Justice Advisory Committee. (See copy attached) As we pointed out in that opinion, there was no reason to believe that service on that agency would cast doubt upon the judge's ability to act impartially

as a judge. The same conclusion appears to apply to the Death Review Team.

The only remaining potential impediment to your service on the Death Review Team would be the possibility that it would violate section Rule 21-500(A)(1) of the Code, which requires a judge to conduct his or her extra judicial activities so that they do not "cast doubt on the judge's ability to act impartially as a judge." Because the Death Review Team has such a wide range of members, and because it is not identified with any particular view or position, it does not appear that your participation in its current activities would cast doubt on your ability to act impartially.

The Advisory Committee thus concludes that your service on the Death Review Team is not prohibited by the Code of Judicial Conduct. As the Commentary to section 21-500(C)(3)(a) of the Code points out, "The changing nature of some organizations and their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation." We caution you that if it ever should appear to you that the Death Review Team no longer maintains its neutral and unbiased scientific approach to the issues it considers, and thus your membership might cast doubt on your capacity to act impartially as a judge, you will have to resign from the Death Review Team.

Very truly yours,

James J. Wechsler

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cc: Hon. Marie A. Baca
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