

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.
Prof. Robert L. Schwartz

December 14, 2006

Re: Judicial Advisory Opinion No. 06-06

Dear Judge,

Your request for an advisory opinion from the Advisory Committee on the Code of Judicial Conduct has been referred to me.

You have advised the Committee that you will be selling your residence in the next few months, and an attorney who regularly appears before you expressed an interest in buying your residence. The attorney, however, may not qualify for a traditional loan from a lending institution and inquired whether you would consider owner financing. It is your understanding that you must avoid a continuous business relationship with the attorney and that, therefore, commercial financing would be the preferred way of financing the sale, rather than private financing. Specifically, you have inquired whether a transaction accomplished through title and escrow companies that would be responsible for the preparation of all documents, arrange for the closing, and collect monthly payments would be permissible under the Code of Judicial Conduct.

The applicable provision of the Code of Judicial Conduct is Rule 21-500(D) NMRA. This provision applies to you as a child support hearing officer by virtue of NMSA 1978, § 40-4B-4(C) (1993). Rule 21-500(D)(1)(b) prohibits a judge from engaging in financial and business dealings that involve the judge in continuous business relationships with lawyers likely to come before the judge. Rule 21-500(D) is designed to "avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification." *See* Commentary to Rule 21-500(D)(1)(b). The Committee does not believe that the involvement of title and escrow companies as intermediaries between you and the attorney to effectuate the sale of your residence avoids this danger. Although the third parties would be involved, the Committee assumes that you and the attorney would nevertheless be parties to a real estate contract that requires periodic payments to the escrow company on your behalf. The real estate contract would be ongoing, and your relationship with the attorney continuous until the contract is fulfilled.

In addition, Rule 21-500(D)(4) obligates a judge to manage the judge's financial

interest to minimize the number of cases in which the judge is disqualified. During the time of the real estate contract, your relationship with the attorney would, at a minimum, obligate you to disclose the relationship to the parties in each case in which the attorney appears before you and provide the parties the opportunity to waive disqualification. *See* Rule 21-500(C) NMRA. By placing yourself in this relationship with the attorney, therefore, you would be creating, rather than minimizing, circumstances in which you would be disqualified from cases assigned to you.

Very truly yours,

James J. Wechsler
Chair

JJW:ow

cc: Hon. Marie Baca
Hon. Kevin Fitzwater
Paul L. Biderman, IPL Director
Professor Robert L. Schwartz