

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

January 17, 2007

Re: Judicial Advisory Opinion No. 07-01

Dear Judge,

You have asked the Advisory Committee on the Code of Judicial Conduct for an opinion concerning the propriety under the Code of Judicial Conduct of your selling your prior law firm's telephone number to another attorney. The Committee believes that under the circumstances you have described you may take such action.

Specifically, you have advised that you are a recent appointee to the district court. Prior to your assuming the position, you engaged in a solo law practice. When you discontinued your law practice, as a courtesy to your former clients, you continued to pay the telephone company for service that enabled you to inform callers about the closing of your practice. An attorney has contacted you wishing to purchase the telephone number of your law office from you and to transfer the number to his office. You understand that the attorney wishes to accomplish this transfer in order to obtain new business of callers to your former law firm's telephone number.

Rule 21-500(D)(1) NMRA of the Code of Judicial Conduct provides:

- (1) A judge shall not engage in financial and business dealings that:
 - (a) may reasonably be perceived to exploit the judge's judicial position; or
 - (b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

With respect to Subparagraph (b), you have advised the Committee that you have been assigned to the [blacked out] and that the attorney making the request does not practice in that area of the law. Moreover, the transaction is not one that is designed to repeat or to place you in a continued business relationship with the attorney. As to Subsection (a), the transaction arises from your previous law practice and the good will that you built into that practice. The attorney solicited the transaction, and it does not appear that you have exploited your judicial position in connection with the transaction.

See also Rule 21-200(B) NMRA ("A judge shall not lend the prestige of judicial office to advance the private interest of the judge.").

The problem the Committee perceives with the transaction is a degree of lack of control on your part of the attorney after the transaction is completed to avoid any appearance that you have any continuing relationship with the attorney or that your position as a judge will inure to the benefit of the attorney in the handling of cases for clients who call the telephone number. The Committee believes that you can avoid this problem by including contractual provisions in your transaction with the attorney that require affirmative disclosures by the attorney to persons calling on the telephone number for a specified period of time. The disclosures may explain that you have discontinued the practice of law, without stating that you are a sitting judge, and disclaim any connection between you and the attorney.

Very truly yours,

James J. Wechsler
Chair

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