

# 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

June 4, 2007

## Re: Judicial Advisory Opinion No. 07-06

Dear Judge,

As a follow-up to Advisory Opinion No. 06-06 concerning the sale of your home to an attorney who regularly appears before you in your position as a district court hearing officer, you have requested an opinion of the Advisory Committee on the Code of Judicial Conduct based on different circumstances.

In Advisory Opinion No. 06-06, the Committee stated its opinion that the sale of your home under a real estate contract to the attorney was not permissible under the Code of Judicial Conduct because you would thereby be involved in a continuous business relationship with the attorney contrary to Rule 21-500(D)(1)(b) NMRA. You now advise that the attorney has qualified for commercial financing and has expressed an interest in purchasing your home outright. The sale transaction would entail coordinating with a title company for the signing of real estate contract, arranging for inspections and an appraisal, and closing without the assistance of a realtor. You have informed the Committee that the attorney has stated that he would not appear before you during the time of the sale until after closing. You inquire whether you may permissibly enter into this transaction under the Code of Judicial Conduct.

Rules 21-500(A)(1) and (D)(1)(b) and 21-400(A)(1) NMRA have direct bearing on your inquiry. Rule 21-500 addresses a judge's extra-judicial activities. Rule 21-500(A) states the general standard that a judge shall conduct the judge's extra-judicial activities in a way that does not "cast doubt on the judge's capacity to act impartially as a judge." Rule 21-500(A)(1). Rule 21-500(D)(1) specifically pertains to a judge's financial activities and precludes a judge from becoming involved in "frequent transactions or continuing business relationships" with lawyers likely to come before the judge's court. Rule 21-500(D)(1)(b). The Committee does not believe that Rule 21-500 prohibits the transaction that you have described. As to Rule 21-500(D)(1)(b), the transaction is a single transaction that, under the way you have now structured it, does not involve a continuing relationship with the attorney. You intend to enter a real estate contract, conduct the inspections and appraisal necessary to fulfill the real estate contract, and close the transaction. The attorney has stated that he will not appear before you "during the time of the sale of the house until after the closing." We agree that he should not appear in your

court during the critical time. However, we suggest that this period begin immediately because it appears that he has begun discussions with you concerning a potential transaction.

We consider the general requirements of Rule 21-500(A)(1) separately and in conjunction with Rule 21-400(A)(1). Rule 21-500(A), by itself, requires that you refrain from the transaction with the attorney if it would cast doubt on your ability to act impartially in cases in which the attorney appears. The Committee does not believe that a single transaction involving the sale of a residence leads to such doubt. Although the purchase or sale of a home is a significant personal financial endeavor, unless other circumstances are present that give rise to concerns about the transaction, we believe that the public understands that the transaction does not involve any special relationship between the parties to the sale. We assume, therefore, that the transaction is conducted at an arm's length, for a market price, and without special terms that favor your party. *See* Rule 21-500(D)(5) (prohibiting a judge from accepting gifts).

We also consider Rule 21-400(A) to pertain to your inquiry. Under that rule, a judge is disqualified and shall recuse from a case if "the judge's impartiality might reasonably be questioned." The rule particularly states that a judge is disqualified and shall recuse if "the judge has a personal bias or prejudice concerning ... a party's lawyer." Rule 21-400(A)(1). If the transaction with the attorney is at arm's length, at market value, and without circumstances leading to concerns that a special relationship between you and the attorney exists, the Committee does not believe that the transaction would lead to your disqualification from cases involving the attorney after the closing of the transaction. However, we caution you to be alert to such circumstances, as well as to any understanding that the particular parties or attorneys in a case may have about the transaction. If, at any point, you believe that your impartiality might reasonably be questioned, you would be disqualified from such cases involving the attorney. In those instances, you may follow the remittal procedure of Rule 21-400(C) to ascertain if the parties and their lawyers would agree that you should not be disqualified, enabling you to participate in the case.

Very Truly Yours,

James J. Wechsler  
Chair

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