

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

July 24, 2007

Re: Judicial Advisory Opinion No. 07-08

Dear Judge,

You have asked the Advisory Committee on the Code of Judicial Conduct for an opinion concerning the use of your name by a non-profit organization of which you were a founding director.

The organization provides services to parents and children regarding divorce and child custody issues. You serve in the family court division of your court. You have advised the Committee that your involvement with the organization was while you worked in private practice prior to becoming a judge. You resigned from your position on the board of directors of the organization at that time. Nevertheless, the organization continues to list your name on its letterhead as a founding member, identifying you with the description "Esq." not as a judge. It is presently involved in a fundraising mail campaign in which it uses the organization's letterhead.

Rule 21-500(C)(3)(b) NMRA of the Code of Judicial Conduct addresses the circumstances in which a judge, as an officer, director, non legal advisor, or member of a non-profit organization. It prohibits a judge from using the prestige of the judicial office for such fundraising. Rule 21-500(3)(b)(iv). It further prohibits a judge from personally participating in such fundraising activities except to "solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority." Rule 21-500(3)(b)(i). The commentary to the Code states:

Use of an organization letterhead for fund-raising or membership solicitation does not violate Paragraph C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation.

Although you are not presently a director, advisory, or member of the organization, Rule 21-500(C)(3)(b) pertains to your request. As a general matter, the Committee believes that the organization's listing of you on its letterhead as an attorney who was a founding member of the organization, would not put you in the position of violating Rule 21500(C)(3)(b). However, because you are a family court judge and

because the activities of the organization directly relate to parents and children involved in divorce and child custody issues, the Committee believes that there is a potential that recipient of the solicitation may seek to contribute to the organization because of your prior relationship to the organization. Indeed, some of these persons may be involved, directly or indirectly, in cases that are, or may come, before you. This prospect presents an appearance issue that can adversely reflect upon the integrity and independence of the judiciary. *See* Rule 21-100 NMRA ("A judge shall participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved.").

However, because you have advised the Committee that the letters have already been sent without your prior knowledge or approval, the only action that the Committee advises you to take at this time is to request the organization to remove your name from the letterhead. We do not believe that it would be advisable, as you have inquired, to ask the organization to issue a correction letter. Such a letter would only call attention to your previous connection to the organization and perhaps exacerbate the situation.

Very truly yours,

James J. Wechsler

JJW:ow

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