

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

August 16, 2007

Re: Judicial Advisory Opinion No. 07-10

Dear Judge,

You have inquired of the Advisory Committee on the Code of Judicial Conduct as to whether it is permissible for you to participate in a mediation in which your court is a party. You have advised that your court negotiated a contract to receive technology services from a private provider and that you have been a member of your court team that negotiated the contract and manages the project. Currently, issues exist concerning the implementation of the contract, and a mediation is scheduled to attempt to resolve these issues. Your court has asked you to participate in the mediation. Your particular inquiry is whether your participation would violate the prohibition of Rule 21-500(G) NMRA with respect to a judge's practice of law.

Rule 21-500(G) states that a "judge shall not practice law." It accepts only a judge's pro se actions and certain uncompensated activities on behalf of family members. The Code does not define the practice of law. However, the Committee understands the definition to be broad and to encompass all of the services provided by a practicing attorney to a client. *See* Jeffrey M. Shaman, Steven Lubet & James J. Alfini, *Judicial Conduct and Ethics* § 7.21, (3d ed. 2000).

Although Rule 21-500(G) would thus prohibit you from representing the court by performing the functions that would be performed by an attorney in the mediation, it does not apply to you in your representation of the court as a party. You have informed the Committee that you have been actively involved in this court project since its inception. As a result, you have the knowledge of the court's involvement and interests in the project. The conduct of a mediation necessitates the knowledgeable participation of representatives of all interested parties. Such representatives are generally not lawyers. The Committee does not believe that such a representative engages in the practice of law by participating in the mediation. Consequently, as long as you limit your participation in the mediation to the functions of a party, rather than an attorney, the Committee does not believe that you would violate the restrictions of Rule 21-500(G).

Your description of the plans for the mediation buttresses this conclusion. You have advised that the general counsel for the administrative office of the courts will act as the court's attorney in the mediation. We assume that you will divide your responsibilities with her such that she assumes all functions of the court's attorney and that you limit your responsibility to the functions of the court's representative as a party to the mediation.

Very Truly Yours,

James J. Wechsler
Chair

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