Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Chair Hon. Kevin L. Fitzwater Paul L. Biderman, Esq. Prof. Robert L. Schwartz

October 23, 2007

Re: Judicial Advisory Opinion No. 07-11

Dear Judge,

You have asked the Advisory Committee on the Code of Judicial Conduct for an opinion as to whether, under the Code, you may serve as a host on a bilingual radio music program on a local radio station. The program would feature classical Spanish and English music as well as old recipes and information on cultural traditions. The program will air on Saturday mornings.

Under Rule 21-500(B)NMRA, a judge may participate in extra-judicial activities concerning non-legal subjects, if the judge's involvement otherwise meets the requirements of the Code of Judicial Conduct. Rule 21-500(A) generally addresses such requirements concerning a judge's extra-judicial activities by stating that a judge shall conduct such activities "so that they do not: 1) cast doubt on the judge's capacity to act impartially as a judge; 2) demean the judicial office; 3) interfere with the proper performance of judicial duties; or 4) violate the judge's oath and obligation to uphold the laws and constitutions of the United States and State of New Mexico."

With regard to the first two of these requirements, we caution that in hosting the radio program, you carefully avoid making statements that may reflect upon your impartiality as a judge or demean your judicial position. You have informed the Committee that you will not be referred to as "judge" on the program, or in any manner related to the program. Nevertheless, your position is known within the community, and it is your responsibility to ensure that your actions do not improperly reflect upon your position, or your ability to act independently and impartially as a judge. It is significant to the Committee that it does not appear from the content of the program you have described that you will be discussing issues directly bearing upon your judicial position. As to the requirement that your extra-judicial activities not interfere with the proper performance of your judicial duties, you have informed the Committee that the program will broadcast on Saturday mornings. We anticipate, however, that your responsibilities will include additional preparation time. Your judicial duties must take precedence over your responsibilities as radio program host. If these responsibilities interfere with your judicial duties, it would not be appropriate for you to continue as a program host.

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Rule 21-200(B)NMRA also pertains to your inquiry. It reads in part: "A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others..." It is, therefore, inappropriate under the Code of Judicial Conduct for you to enable the radio station, a private enterprise, to advance or promote its interests based upon your position. Your inquiry shows that you are sensitive to this issue. You have informed the Committee that not only will you not be referred to as judge on the program, but station employees will be advised not to refer to you as judge in any manner relating to the program or broadcast. We understand your statement to mean that the program will not be promoted in any way using your position. The Committee agrees with you that these are appropriate restrictions. Again, we caution you to be aware of the potential for inappropriate activity under Rule 21-200(B) and advise you that you may not continue as program host if there is such a violation.

Lastly, we note Rule 21-500(H) that prohibits a judge from holding another paid position "that conflicts with the hours and duties the judge is required to perform for every judicial position." We do not see a conflict with this rule because you have informed us that you will not be compensated for hosting the program.

Thus, the Committee advises you that the Code of Judicial Conduct does not prohibit you from acting as program host for the program you have described as long as your activity does not otherwise conflict with the requirements of the Code.

Very truly yours,

James J. Wechsler Chair

CC: Hon. Kevin Fitzwater
Paul L. Biderman, IPL Director
Professor Robert L. Schwartz