



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 15, 2009

Re: Judicial Advisory Opinion No. 09-03

You have requested an advisory opinion from the Advisory Committee on the Code of Judicial Conduct concerning whether it is ethically permissible for you or members of your staff to receive travel and financial support for courses from judicial education fees generated under NMSA 1978, NMSA Section 35-14-1 I (B)(2) (2009). In particular, you have inquired whether you may receive these funds to attend optional out-of-state programs such as those offered by the National Judicial College in Reno, Nevada.



By virtue of Section 35-14-11(B)(2), the legislature has mandated that each municipality enact an ordinance requiring its municipal judge to collect a three dollar judicial education fee "from persons convicted of violating any ordinance relating to the operation of a motor vehicle or any ordinance that may be enforced by the imposition of a term of imprisonment." Section 35-14-11(C). Section 35-14-11(F) requires that the fees collected be remitted to the state treasurer, credited to the judicial education fund, and used for the education and training of municipal judges and other municipal court employees. The judicial education fund is administered by the Institute of Public Law, Judicial Education Center, and the Judicial Education Center independently decides upon the appropriate use of the fund, subject to general oversight by the Judicial Education and Training Advisory Committee, of which you are a member.

Although you have not specified the basis for your inquiry, the Committee believes that you may be concerned that the use of fees generated through

convictions in your court for judicial education may appear to conflict with your obligation under the Code of Judicial Conduct to promote public confidence in the integrity and impartiality of the judiciary. Rule 21-200(A) ("A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."). In this regard, your inquiry raises the question of whether the public may reasonably question your impartiality when you convict an offender with knowledge that your judicial act will generate funds that will further your judicial education and may even permit you to travel outside the state to attend a judicial education program.

The Committee does not believe that there is a violation of the Code of Judicial Conduct for you or your staff to attend judicial education programs, even outside New Mexico, paid for through the judicial education fund. First, your imposition of the fee is a non-discretionary act under Section 35-14--11(B)(2). The legislature has mandated it, and it has required that it be used for judicial education. Second, although you exercise your judicial discretion in determining the guilt of a person charged with an offense, you are also obligated to be faithful to the law in fulfilling your responsibilities. Rule 21-300(B)(2). Third, the amount of the fee is minimal, and, because the fee is remitted to the state *treasurer*, and the Judicial Education Center makes independent decisions concerning its use, you do not receive any direct benefit from it. *Cf.* Rule 21-400(A)(2) (requiring a judge to recuse in proceedings in which the judge's impartiality might reasonably be questioned because the judge has more than a "*de minimis*" interest" in the proceeding). Considering these factors, the Committee believes that any appearance of partiality that would result from your receiving travel and financial support from the judicial education fund is too remote to give rise to a reasonable question as to your impartiality.

Very truly yours,

James J. Wechsler Chair

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cc: Hon. Kevin L. Fitzwater
Hon. Freddie J. Romero
Paul L. Bideirnan, IPL Director
Professor Robert L. Schwartz