



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
Hon. Freddie J. Romero

April 14, 2010

Re: Judicial Advisory Opinion No. 10-04

Dear XXXXX

You have asked the Advisory Committee on the Code of Judicial Conduct for guidance regarding the role of judges as members, officers and directors of the New Mexico Association of Drug Court Professionals, an interdisciplinary organization that is in the process of organizing as a not-for-profit corporation in New Mexico. The organization promotes the drug court model and supports drug court best practices, and it provides courts and individuals in New Mexico with education and training, technical assistance and other resources. The organization plans to seek funding from local, state and federal agencies and private sources.

Section 21-500 provides as follows:

(A) Extra judicial activities in general. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast doubt on the judge's capacity to act impartially as a judge;

....

(C) (3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal, or civic organization not conducted for profit, subject to the following limitations and other requirements of this Code:

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization:

- (i) will be engaged in proceedings that would ordinarily come before the judge; or
 - (ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.
- (b) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:
- (i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;
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 - (iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Subparagraph (3)(b)(i) of this paragraph, if the membership solicitation is essentially a fund-raising mechanism;
 - (iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

Because the organization is devoted to the improvement of the law, the legal system or the administration of justice, you are not prohibited from serving as an officer, director, trustee or non-legal advisor, as long as your participation will not cast doubt on your impartiality, and the organization (i) will not be engaged in proceedings that would ordinarily come before you and (ii) will not be engaged frequently in adversary proceedings in the court of which you are a member. Our first concern is whether your participation casts doubt on your ability to act impartially when those who reject an opportunity to participate in drug court come before you. The current website of the organization suggests that there is some concern about the role of the drug court, and that some people believe that it could lead to the unfair treatment of some criminal defendants. While this concern is not sufficient to disqualify you from service as an officer of an organization that serves to support a series of programs that have been formally adopted by courts throughout the State, we urge you to be sensitive to claims that individual defendants may make in this regard.

Second, while the organization itself does not appear before you as a party, it is unclear if those with whom you maintain professional relationships through the organization will regularly appear before you. This Committee has previously

recognized that a judge could not serve as an officer in a CASA organization designed to support volunteers who regularly appeared before that judge, Adv. Op. 96-06, and, consistently, we determined that a Metropolitan Court judge could serve as an officer in a felony victims' rights organization only because the Metropolitan Court normally does not hear felony cases. Adv. Op. 95-02 If other officers and members of the organization regularly appear before you, we recommend that you not serve as an officer, although you may continue to be a member of the organization. If other officers and members will not regularly appear before your court in this capacity, you may continue to serve as an officer of the organization.

If you determine that you can serve as an officer without casting doubt on your ability to act impartially, and that the organization and its members, in their capacity as drug court professionals, will not regularly appear before you, you are still bound by other restrictions in the Code. Under these circumstances, you may only solicit funds from other judges over whom you exercise no supervisory authority. In addition, you may not participate in any membership solicitation or fundraising that might be considered coercive, and you should be vigilant not to use the prestige of judicial office for fund-raising or membership solicitation. Finally, it is important to assure that your commitment to the organization and its goals is not so burdensome that it affects your ability to discharge your judicial duties.

As the Commentary to the Rule points out, "As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law."

Very truly yours,



James J. Wechsler
Chair

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