



STATE OF NEW MEXICO
SECOND JUDICIAL DISTRICT
DIVISION IV

CHAMBERS OF
FRANK H ALLEN, JR.
DISTRICT JUDGE

PO BOX 488
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May 6, 1994

Re: Judicial Advisory Opinion 94-04

You have asked for an advisory opinion answering the following question:

Does the Code of Judicial Conduct prohibit a Court Reporter in the employ of the District Court and who is an exempt employee of a District Judge (to) hold the position of Chairperson of a County political party provided the Court Reporter otherwise complies with the New Mexico Judicial Branch Personnel Rules, Revised July 1, 1989?

Our brief answer is that it is a conflict of interest for a Court Reporter to hold the position of Chairperson of a County political party, because it is a violation of the New Mexico Judicial Branch Personnel Rules.

The reasoning supporting this conclusion is that a Court Reporter has a confidential and fiduciary role within the judicial system. This confidential and fiduciary role is owed to the judge and the community. Engaging in partisan politics to the degree indicated in your letter will cause the public to question the impartiality of the system and if the fiduciary duties of the court reporter will be performed with impartiality and integrity.

In addition, a Court Reporter, unlike other judicial employees, sits in the courtroom in close proximity to the judge in virtually every case and sometimes accompanies the judge outside the courtroom on official business. We think that a judicial employee having such a close working relationship with a judge, while at the same time holding office in a partisan political organization, cannot help but give rise to an appearance of impropriety for the judge in conflict with SCRA 1986, 21-200

(Repl. 1992). See id; see also Missouri Commission on Retirement, Removal & Discipline, Op. 23 (April 25, 1979) (judges may not allow court employees to participate in political activities which they themselves cannot engage in); South Carolina Committee on Standards of Judicial Conduct, Op. 1-1986 (April 9, 1986) (based upon the need to avoid the appearance of impropriety, a judicial employee may not actively participate in the campaign of any political party or candidate unless the employee's spouse is a candidate).

While the role of Chairperson of a County political party may not actually cause a conflict of interest, the appearance of a conflict of interest will be so great in the minds of the public that it will create doubt or questioning of the impartiality and integrity of the judicial system.

While our discussion of this complex question is relatively brief in this letter opinion, the research to support this conclusion has been extensive. Our conclusion is supported by analogous reasoning and the discussions contained in the New Mexico Code of Judicial Conduct; the New Mexico Judicial Branch Personnel Rules; the Rules Governing the Recording of Judicial Proceedings; Attorney General Opinion, No. 61-28; Prohibiting Public Employees From Running For Elective Office as Violation of Employee's Federal Constitutional Rights, 44 ALR Fed. 306; Dismissal Of, Or Other Adverse Personnel Action Relating to, Public Employees For Political Patronage Reasons As Violative of First Amendment, 70 ALR Fed. 371; Validity, Construction, and Effect of State Statutes Restricting Political Activities of Public Officers or Employees, 51 ALR 4th 702; Pruitt v. Kimbrough, 536 F. Supp. 764 (1982); In Re Prohibition of Political Activities, 375 A.2d 1257 (Pa. 1977).

We also recognize that the New Mexico Personnel Act, NMSA 1978, 10-9-1 to -25 (Repl. Pamp. 1992), expressly prohibits executive branch employees from holding office in a political organization. Section 10-9-21; see also State ex rel. Gonzales v. Manzagol, 87 N.M. 230, 531 P.2d 1203 (1975) (decided under prior law). Although the Personnel Act does not apply to judicial branch employees, Section 10-9-4(I), we think same prohibition is implicit in Canon 21-200.

We agree with the suggestion contained in your letter that if a judge were to participate in the questioned activity that it would be a violation of the New Mexico Code of Judicial conduct and a judge could not be judge and serve, at the same time, as a County Chairperson of a political party. We, however, are not confident that this determination answers the question raised. We do not believe that an activity prohibited for a judge necessarily answers the question: is that activity prohibited by an employee of the court, particularly, when the activity may be protected by First Amendment Rights.

The test for an employee of the judicial system in this area

is does the restriction on engaging in political activities have a reasonable balance between first Amendment Rights of the employee and the role of the employee in the judicial system? The New Mexico Supreme Court in stating this balance expresses the prohibition in terms of whether the activity creates a conflict of interest or interferes with an employee's assigned duties. "Gonzales, 87 N.M. at 234, 531 P.2d 1207." Further, it is important to note that we have not found in our research any rule that creates an absolute prohibition on the right of a judicial employee to exercise his or her first Amendment Rights to participate in political activity. Acceptable prohibition is always one of reasonable degree.

Thus, the test to determine conduct that is prohibited from activity that is allowed requires an analysis of the role of the employee in the judicial system balanced against the proposed political activity. The thrust of the reasoning contained in case law and legal articles suggests that when this analysis is conducted and leads to the conclusion that the political activity will call in to question the integrity of the judicial system the proposed political activity can be reasonably prohibited.

The first question to raise in our analysis is will the employee's role as a Court Reporter possibly be influenced or be more easily influenced by members of her political party because of her position as County Chairperson? It would seem reasonable to conclude that because the position is elective and requires the goodwill of the members of the party to be elected to the office that such could be the case. What is more important is what would be the perception of the public as to this role. Again, it seems reasonable to conclude that the public would view this situation with great concern and suspicion.

The second question to consider is what is the role of a Court Reporter in the judicial system? An examination of the Rules governing the regulation of court reporters demonstrate that the New Mexico Supreme Court intended this role to be important in maintaining the integrity and impartiality of the judicial system. Clearly, the Rules demonstrate that the Supreme Court intended that court reporters would have a professional role within the system. This is shown by the standards governing admission and the activities of court reporters within the system to assure that they will function with impartiality, confidentiality, and integrity.

The suggestions that the fiduciary duties of a judge and those of a Court Reporter are similar has considerable merit. "See SCRA 1986, 21-300(B)(2) (Repl. 1992) (judicial employees subject to a judge's direction and control are required to "observe the standards of confidentiality, fidelity and diligence that apply to the judge")," Perhaps, that conclusion is sufficient to conclude that if a judge cannot engage in the political activity, a Court Reporter cannot engage in the poli-

tical activity. This reasoning may be sufficient to decide the question, but careful thought suggests that, perhaps, the role of the Court Reporter is sufficiently different to suggest that care should be taken to assure the Court's Reporter's role is protected from the influence of politics to an even greater degree than the role of the judge.

An essential role of the Court Reporter is to make an accurate and complete record in order that the activities of the legal system and the judge can be questioned and reviewed. To accomplish this goal, there is an assumption within the legal system that a Court Reporter will accurately create this record with impartiality and integrity. Whether or not this is done is left, to a great degree, to the individual reporter's concept of professionalism. Certainly, in the minds of the public this role is relatively unregulated and unquestioned in comparison with the role of a judge. For this reason, it is important to protect the role of a Court Reporter from the influence of politics, and an individual court reporter should not be *in* a position to influence legislation affecting the legal system, the funding of the legal system, or the judicial office.

We have no details concerning the role of a County chairperson of a political party, but we believe it is reasonable to assume that a person occupying such a role and that a Court Reporter would be particularly subjected to partisan political influence. Also, such a person would have special powers to influence legislation affecting the legal system.

For these reasons we conclude that it would be a conflict of interest, for a Court Reporter to *hold* the position of County Chairperson of a political party at the same time that she or he has been appointed a Court Reporter by a judge.

Very truly yours,

Frank H. Allen, Jr.
Chairman, Judicial Advisory
Committee

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