



Advisory Committee on the Code of Judicial Conduct

Hon. Frank H. Allen, Jr. Chairman
Hon. Thomas A. Donnelly
Prof. William T. MacPhearson, Jr..

August 26, 1994

Re Judicial Advisory Opinion 94-05

Dear Judge

You have asked for our opinion as to whether for any reason a retired judge should decline the recognition he or she may receive as the result of a gift to _____ to endow a teaching chair _____ which Chair would reflect recognition of the judges name.

As you stated in your letter you have been a retired District Judge since _____. In 1991 you were designated by our Supreme Court to preside over a very complicated property case which was completed and your judgment was affirmed by our Supreme Court in _____ 1994. Cortiorari was denied by the U.S. Supreme Court on _____ 1994. One of the litigants in this case is the proposed donor of the Chair and wishes to honor you with this public testimonial. This donor was unknown to you before the litigation and your only contact since then has been notification by him of the proposed donation.

As a retired judge you may be appointed judge protempore as you were in this case but this has only happened the one time in the _____ years since your retirement.

CANON 21-500 (D) (3) (a) provides that "a judge may accept a gift incident to a public testimonial to him."

The commentary to the Model Code of Judicial Conduct states that "a judge may accept a public testimonial or a gift incident there to only if the donor organization is not an organization whose members comprise or frequently represents the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this code. See Sections 4A(1) and 2B."

Section 4A(1) concerns the judges conduct in extra-judicial

activities so not to "cast reasonable doubt on the judge's capacity to act impartially as a judge." Section 2B requires the judge to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

This gift to the _____ in your name in no way reflects adversely on your impartiality or interferes with the performance of your judicial duties (as judge protempore). The donor is not an organization that frequently represents the same side in litigation. The litigation which brought you to this honor is completely finished and the award was not requested or sought after by you.

It should also be noted that the litigation involved complicated matter taking over four and one half months to complete after seven judges had either recused themselves or had been disqualified.

It is our opinion that your acceptance of this honor in no way violates the Code of Judicial Conduct.

Since it is not necessary, we take no position as to whether a retired judge is covered either completely or partially by the Code of Judicial Conduct. It should be noted that NMSA 1978 Section 10-12B-17 Suspension or forfeiture of benefits provides for forfeiture of pension benefit if the retired judge is removed from office pursuant to the provisions of Article 6, Section 32 of the Constitution of New Mexico (Judicial Standards Commission).

Very truly yours,

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

FHA/mav