

Advisory Committee on the Code of Judicial Conduct

Hon. Frank H. Allen, Jr. Chairman

Hon. Thomas A. Donnelly

Hon. Marie A. Baca

January 30, 1997

Re: Judicial Advisory Opinion No.97-01

Dear

This advisory opinion is in response to your inquiry regarding whether you can serve on an interview panel for selection of a probation officer at the request of the Children, Youth & Families Department (CYFD), Juvenile Justice Division, and also serve on an interview panel for selection of a Detention Coordinator at the request of ---- County. We conclude that it would be improper to serve on these interview panels based on our review of the Code of Judicial Conduct and its Committee Commentary.

As you correctly noted in your letter of inquiry, Canon 21-500(C)(1) is applicable to your situation. Canon 21-500(C)(1) NMRA 1997 provides:

A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the judiciary or matters relating to the judiciary or which affect the interests of the judiciary, the legal system or the administration of justice or except when acting *pro se* in a matter involving the judge or the judge's interests[.] [Emphasis added.]

Although service on these types of interview panels may relate in part to matters affecting the administration of justice, we believe a judge's participation on panels of this nature may give rise to an appearance of impropriety contrary to Canon 21-200 NMRA 1997 of the Code of Judicial Conduct. Probation officers often appear before the court and make recommendations concerning sentencing and other matters on which a judge must act. Similarly, detention coordinators or administrators may be called before the court to testify concerning matters which must be resolved by the court.

If the individuals recommended or selected by the interview panels are too closely aligned with a judge, or the judge may have to consider their recommendations or testimony of such officers in subsequent cases, the situation may give rise to an appearance of impropriety and necessitate the judge's recusal. See Canon 21-200(B) ("A judge shall not... convey or permit others subject to the judge's direction and control to convey the impression that they are in a special position to influence the judge."); see also Canon 21-400 NMRA 1997 (outlining circumstances requiring recusal) and Doe v. State, 91 N.M. 51, 53, 570 P.2d 589, 591 (1977) ("[A] judge should avoid any hint of impropriety in his activities, [and] should use his discretion and remove himself from a particular case when he believes he will not be able to remain impartial," or such situation may be an appearance of impropriety.). Thus, we conclude that service on such interview panels would be contrary to Canons 21-200 and 21-500.

Yours very truly,

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