



STATE OF NEW MEXICO
SECOND JUDICIAL DISTRICT
DIVISION IV

CHAMBERS OF
FRANK H. ALLEN, JR.
DISTRICT JUDGE

P.O. BOX 488
ALBUQUERQUE, NM 87103
(505) 841-7455

March 6, 1997

Re: Judicial Advisory Opinion 97-03

Dear Judge

As a part-time Municipal Judge you have asked for an advisory opinion on two matters which you have set out in your letter of February 3, 1997.

1) May you participate as a member of advisory board for a fundraising project to send students of _____ High School to an international drama festival _____? Such participation would include your name and judicial title on letterhead with other board members that would be sent out for general communication and fund solicitation.

Although a part-time Municipal Judge is not required to comply with all of the requirements of the Code of Judicial Conduct (21-901,C.) he or she is required to comply with 21-500, C, (3) which provides in part:

(3) A Judge may serve as an officer, director, trustee or non-legal advisor of...charitable, fraternal, or civic organization not conducted for profit, subject to the following limitations and other requirements of this Code:

(b) A judge as an officer, director, trustee on 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 fundraising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority.

In answering your question fully, the following portion of the Commentary for Paragraph 21-500C(3) (b) is directly on point.

A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: (1) a judge may solicit for funds or memberships other judges over whom the judge does not exercise supervisory or appellate authority; (2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves; and (3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for fundraising or membership solicitation does not violate Paragraph C(3) (b) provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

2) May a part-time Municipal Judge for the Village of _____ represent a municipal judge in another municipal jurisdiction to sue that municipality regarding a separation of powers issue?

21-901C(2) provides as follows:

C. A probate judge or part-time magistrate or municipal judge:

(2) shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

Since this is the only restriction which prohibits a part-time municipal judge from practicing law, it is the committee's opinion that your representation is not prohibited by the Code of Judicial Conduct.

Sincerely,

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

FHA/mav