

Advisory Committee on the Code of Judicial Conduct

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

September 17, 1998

Re: Judicial Advisory Opinion 98-05

Dear Judge

You have requested an advisory opinion from this Committee concerning whether you can serve as a board member for the _____ NM Community Action Corporation _____. You have been newly appointed as _____. Based on your letter, we assume that your board responsibilities would include administering _____ various programs.

You have indicated that the _____ is a charitable, nonprofit organization governed by a volunteer board of directors. _____ administers community action programs providing services to children, senior citizens, and low income individuals. _____ currently operates in _____ and _____ Counties. _____ receives funding from federal, state, and local sources and has 250 employees. The board administers the following programs: Head Start, Child Adult Care Food Program, Senior Citizens Meal Program, Foster Grandparents, Senior Companions, Community Service Block Grant, FEMA, Summer Feeding, Head Start Food Program, Temporary Emergency Food Assistance Program, Low Income Home Energy Assistance Program and an Emergency Relief Program.

We direct your attention to the following provisions of Canon 21-500(C) of the Code of Judicial Conduct:

C. Governmental, civic or charitable activities.

...

(3) A judge may serve as an officer, director, trustee or non- legal advisor of ... [a] charitable ...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.

The _____ a charitable, nonprofit organization. You have not indicated whether it is likely that the _____ would ordinarily appear before you, or frequently in adversary proceedings before the _____ Court or any court subject to the appellate jurisdiction of the _____ Court. In New Mexico Judicial Advisory Committee Opinion 95-02, we permitted a metropolitan judge to serve as a board member for a civic, nonprofit organization which provides psychological and emotional support for crime victims. The Opinion recognized that although the organization's volunteers often testify in felony case in District Court, these matters were not within the jurisdiction of the metropolitan court except in the rare case of preliminary hearing in a felony case.

Similarly, in Ohio Judicial Advisory Opinion 90-16, the committee determined that a judge may serve as a trustee of a charitable, nonprofit foundation provided that it did not conflict with the judge's official duties. We assume for purposes of your expedited request that the _____ its programs or individuals receiving its benefits would not ordinarily appear before you, or frequently in adversary proceedings before the _____ Court, or any court subject to the appellate jurisdiction of the _____ Court.

If, however, it is likely that the _____ its programs or the individuals receiving such benefits will engage in proceedings that would ordinarily appear before you, or frequently in adversary proceedings before the _____ Court or in any court subject to the appellate jurisdiction of the _____ court, you may not serve on the _____ board.

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In New Mexico Judicial Advisory Opinion 88-7, we explained that it would be inappropriate for a judge to serve as president on the board of directors of a charitable organization sheltering victims of domestic violence because "those served by the charity in question are victims of violence, they are quite likely to appear before a court, possibly" the judge's own. The Opinion determined that this would be contrary to Canon 21-500(C).

You have not explicitly indicated your responsibilities a _____ board member. However, we call your attention to the limitations on fund raising in Canon 21-500(C)(3)(b). Further, see the comments in Paragraph C(2) discussing the use of judicial time and Paragraph (C)(3) prohibiting a judge from serving as a legal advisor to a civic or charitable organization.

It is our opinion, therefore, that serving as a board member for the _____ charitable, nonprofit organization is not prohibited by the Code of Judicial Conduct subject to the requirements of Canon 21-500.

Respectfully yours.

Thomas A. Donnelly
Member, Judicial Advisory Committee