



**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

July 22, 1999

Re: Judicial Advisory Opinion 99-08

Dear Judge

By your letter of June 24, 1999 you have requested an opinion of our committee concerning the propriety of you a _____ Judge making a sealed bid on the construction of a new courthouse in _____ County. The bidding is being advertised statewide by the Administrative Office of the Courts.

There are a number of provisions of the Code of Judicial Conduct which apply to a situation such as this:

21-100. A judge shall uphold the integrity and independence of the judiciary.

21-200. A judge shall avoid impropriety and the appearance of impropriety in all the judge's activities.

The Commentary to Paragraph A states in part "... A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly."

21-500 D(1)(a). Financial activities. (1) A judge shall not engage in financial and business dealings that: (a) may reasonably be perceived to exploit the judge's judicial position;

The Commentary to Paragraph D (1) states "[p]articipation by a judge in financial and business dealings is subject to the general prohibitions in Paragraph A of this rule against activities that tend to reflect adversely on impartiality, demean the judicial

office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Rule 21-200 against activities involving impropriety or the appearance of impropriety and the prohibition in Paragraph B of Rule 21-200 against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Rule 21-100."

As pointed out it is not enough to avoid impropriety, a judge must avoid the appearance of impropriety. To the ordinary citizen, the awarding of a contract to a judge over others who bid for the construction of a courthouse may reasonably be perceived to exploit the judge's judicial position.

Also, there may be questions of the judge working full-time in his judicial capacity if he is also involved in the courthouse construction. One can also envision other problems of impropriety and perceived exploitation if there are arguments and disagreements during construction.

It is therefore this committee's advice that you should not make a bid on the construction of the new courthouse.

Very truly yours,

Frank H. Allen, Jr.
Chairman
Judicial Advisory Committee

FHA/mav