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Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Chair

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Paul L. Biderman, Esq.

Prof. Robert L. Schwartz

Hon. Freddie Romero

September 24, 2013



Re: Judicial Advisory Opinion No. 13-06

Dear 

You have inquired of the Advisory Committee on the Code of Judicial Conduct whether the Code of Judicial Conduct permits you to assist in establishing a teen court as a juvenile alternative sentence program in a county outside the jurisdiction of your municipality. You have developed and implemented such a program in your county, and the adjoining county has asked you to structure a similar program and train facilitators and juveniles in the operation of the program. The program is funded through a Department of Children, Youth & Families Department Juvenile Justice Grant, from which you would be paid \$400.00 weekly, which includes your travel expenses and program supplies. You would need to work in the other county one afternoon each week from noon to 5:30 p.m.

Generally, a judge may engage in extrajudicial activity that is not expressly prohibited by the Code of Judicial Conduct. Rule 21-301 NMRA. A judge shall not, however,

- A. Participate in activities that will interfere with the proper performance of the judge's judicial duties;
- B. Participate in activities that will lead to frequent disqualification of the judge;
- C. Participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;
- D. Engage in conduct that would appear to a reasonable person to be coercive; or

E. Make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice.

Id.

You have provided the Committee with information that indicates that paragraphs B through E are not applicable to your proposed activity. You do not perceive any conflict with your judicial duties because referrals to the program would be made by the courts and officials of the adjoining county, the program is not related in any way to any agency within your jurisdiction, and, in any event, your court does not have juvenile jurisdiction. You would not use any court resources in connection with the program.

With respect to Rule 21-301, therefore, the Committee focuses its discussion on paragraph A, whether your participation in the program will interfere with your proper performance of your judicial duties. Because you will be compensated for your activity, Rule 21-312(B) NMRA is also relevant to this discussion. It provides:

A judge shall not hold any other paid position, judicial or otherwise, that conflicts with the hours and duties the judge is required to perform for every judicial position. A judge shall devote the number of hours that is required by any judicial position held. In no event shall other paid employment or compensable activity hours be performed simultaneously.

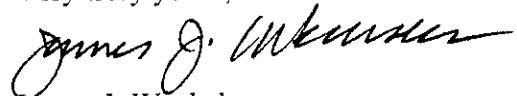
You have informed the Committee that you would work on this teen court program by traveling to the adjoining county Thursday afternoons from noon to 5:30 p.m. You chose that time because you regularly do not have cases on your docket at that time. You state that the program would therefore not interfere with your responsibilities to your court and that you would restructure your work schedule so that you would nevertheless be working at your court for thirty-six and one-half hours each week.

The Committee believes that your proposed activity is consistent with Rule 21-301(A). We reach this conclusion based on your information that your court does not regularly schedule a docket on Thursday afternoons and that you can rearrange your schedule at your court to properly perform all your judicial duties during the hours that you are present at the court. We would reach a different conclusion if either you could not properly fulfill your responsibilities during the time you will be present at the court or your presence is required on Thursday afternoon during business hours.

We analyze Rule 21-312(B) on the same basis. The question of whether your participation in the program "conflicts with the hours and duties" you are required to perform for your judicial position depends upon the requirements of your position. If, as you state, you can properly perform all the duties of your position under your rearranged schedule, which requires your presence at the court for thirty-six and one-half hours each week, the Committee does not believe that your participation conflicts with the intent of Rule 21-312(B).

The Committee lastly notes that Rule 21-312(A) NMRA permits a judge to receive reasonable compensation for allowed extrajudicial activities unless it would appear to a reasonable person that such compensation would "undermine the judge's independence, integrity, or impartiality." You have not provided information that would lead the Committee to believe that your receiving compensation would undermine your independence, integrity, or impartiality. As to whether the compensation is reasonable, the Committee suggests that you ascertain whether it is comparable to what others in your community would receive for similar work.

Very truly yours,



James J. Wechsler
Chair

cc: Paul L. Biderman, Esq.
Professor Robert L. Schwartz
Hon. Freddie J. Romero