



Advisory Committee on the Code of Judicial Conduct

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Hon. Julie J. Vargas, Co-Chair
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October 31, 2018

[REDACTED]

Re: AO 18-08

Dear [REDACTED]

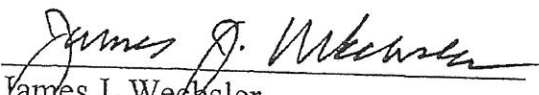
Your court recently hired a domestic relations commissioner. Four of the unsuccessful candidates filed a petition in the Supreme Court for a writ of mandamus and request for a stay, challenging the hiring decision. They named you as the defendant in your official capacity as chief judge. Four other judges on your court, which has a total of eight judges, also served on the committee that conducted interviews and made the hiring decision. The four petitioners have numerous cases pending in your court. You have asked the Advisory Committee on the Code of Judicial Conduct whether you and the other participating judges are disqualified from

hearing the cases of the petitioners.

Rule 21-211(A) NMRA requires a judge to disqualify himself or herself “in any proceeding in which the judge’s impartiality might reasonably be questioned,” Our Supreme Court has stated that the basis for disqualification “must stem from an extrajudicial source.” *United Nuclear Corp. v. General Atomic Co.*, 1980-NMSC-094, ¶ 418, 96 N.M. 155, 629 P.2d 231 (internal quotation marks and citation omitted). The Court determined that the district judge was not disqualified because of criticism the judge had of a party in the course of a court proceeding. *Id.* ¶¶ 411-28. Our Court of Appeals has held that, absent personal animosity, a judge need not recuse from a contempt hearing due to previous contempt charges and sanctions imposed. *Purpura v. Purpura*, 1993-NMCA-001, ¶¶ 8-12, 115 N.M. 80, 847 P.2d 314 (decided prior to 2011 compilation). Moreover, as a leading treatise has noted, “a judge is not ordinarily disqualified from presiding over a case where one of the attorneys has filed a disciplinary complaint against the judge.” Geyh, *et. al.*, *Judicial Conduct and Ethics*, § 4.10 (5th ed. 2013).

Although the basis for the petition filed against you does not stem from judicial proceedings, it arises from official court business. As a result, for the purposes of disqualification, the Committee views it similarly to judicial activity. Indeed, it does not arise from personal involvement that you or the other judges have had with the petitioners. Under these circumstances, the Committee believes that you are not disqualified absent some actual personal prejudice that you may have against any of

the petitioners, either because of the petition or otherwise. *See* Rule 21-211(A)(1) (stating that a judge shall disqualify himself or herself if the judge “has a personal bias or prejudice concerning a party or a party’s lawyer”); *see also* Geyh, *et. al*, *Judicial Conduct and Ethics*, § 4.07(3) (“hostility toward a party’s attorney must be both personal and extreme before it is disqualifying”)


James J. Wechsler
Co-chair

Judge Julie J. Vargas did not participate in this opinion.