



Advisory Committee on the Code of Judicial Conduct

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This is an advisory opinion by the New Mexico Advisory Committee on the Code of Judicial Conduct. Advisory opinions are responses to inquiries from judges seeking guidance on judicial ethics questions. They are not issued, approved, or endorsed by the New Mexico Supreme Court; nor are they binding.

[REDACTED]

Re: AO 22-02

Dear [REDACTED]

You have asked the Advisory Committee on the Code of Judicial Conduct whether the Code of Judicial Conduct permits you to attend legal proceedings in a case involving criminal charges against your adult daughter. You wish to attend in order to provide emotional support to your daughter; you do not intend to participate in the proceedings in any manner.

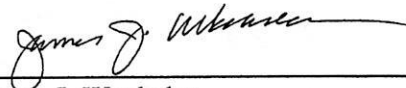
The relevant Code provision is Rule 21-103 NMRA, which provides that a judge "shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others." The Committee assumes that because you and your daughter have the same, uncommon surname that a judge presiding over her proceedings will at least suspect that your daughter is related to you.

By virtue of their position, judges carry with them the prestige of judicial office. They must therefore be careful that their actions do not abuse that prestige. Rule 21-103. Your presence at judicial proceedings invokes this prestige of your judicial office. The Code recognizes, however, that not all actions of a judge improperly invoke the judge's position. Notably, the language of Rule 21-103 was modified in the most recent revision of the Code effective January 1, 2012. Previously, the 1995 version of Rule 21-103 provided that a judge could not "lend the prestige of judicial office to advance the private interest of the judge or others." Rule 21-200 NMRA (1995). The 2012 revision limited prohibited actions to those that "abuse the prestige of judicial office." Rule 21-103.

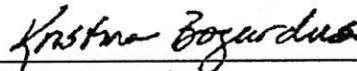
Although not an essential element of abuse, a judge's intent to use the prestige, or influence, of the judge's position to advance the interest of the judge or the judge's relative is indicative of an abuse of the prestige of judicial office. Hence, our Supreme Court held in *In re Naranjo*, 2013-NMSC-026, ¶¶ 4-5, 17, 303 P.3d 849, that a judge's ex parte telephone call to the judge presiding in a case involving the calling judge's stepson requesting a bond reduction and release of the judge's stepson was an abuse of the calling judge's prestige of judicial office.

You have advised the Committee that the sole reason you wish to attend your daughter's legal proceedings is to support your daughter. You do not intend to communicate with the judge or intervene in the proceedings in any manner. Although, arguably, your mere presence can be viewed as implicitly influencing the judge to act in a favorable manner toward your daughter, by attending, you are not intending to exercise such influence. Rather, as a parent, you seek solely to provide emotional support to your daughter. Under these circumstances that do not indicate an improper intent, the Committee does not believe that you would be abusing the prestige of your judicial office by attending the proceedings.

Moreover, other Code provisions are relevant to the issue. A judge must perform the judge's duties fairly and impartially. Rule 21-202 NMRA. If an assigned judge does not believe that he or she can act fairly and impartially in the case because of your possible relationship with the defendant, the judge has the obligation to disqualify himself or herself. *See* Rule 21-211(A)(1) NMRA ("A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned," including because of a personal bias.). The Code presumes that any judge who does not disqualify himself or herself will act fairly and impartially in the proceeding. *See* Rule 21-102 (requiring a judge to perform judicial duties fairly and impartially).



James J. Wechsler
Co-Chair



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Paul L. Biderman did not participate in this opinion.