



Advisory Committee on the Code of Judicial Conduct

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Hon. Kristina Bogardus, Co-Chair
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Hon. Freddie Romero
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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 22-03

Dear [REDACTED]

You preside over cases under the Kinship Guardianship Act, NMRA 1978, §§ 40-10B-1-21 (2001). The vast majority of caregivers petitioning your court to be appointed kinship guardians do not have significant financial resources. CYFD does not currently provide any assistance. As a result, the Access to Justice Committee in your district is proposing a program to provide gift cards from local stores to appointed kinship guardians to help defray guardianship expenses. The program would be sponsored by local attorneys or the local bar association.

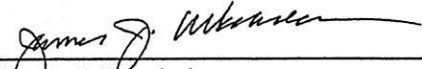
You have sought the advice of the Advisory Committee on the Code of Judicial Conduct concerning the process to be followed to distribute the gifts cards. You have informed this Committee that you believe that the only practical way to distribute the gift cards is at the court in that it is reasonable to expect that, after they leave the courthouse, many of the appointed kinship guardians will not be able to readily access third-party sponsors whether through the internet or otherwise. You have thus asked this Committee whether the Code of Judicial Conduct permits you to distribute the gift cards to the kinship guardians you appoint.

The issues you raise concern the appearance of impartiality addressed in Rule 21-102 NMRA, requiring judges to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and Rule 21-202 NMRA, requiring judges to "perform all duties of judicial office fairly and impartially." Rule 21-102 NMRA, comment 3, notes that "conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary."

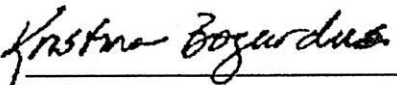
The kinship guardians whom you appoint are petitioners in proceedings before you. Although they have been appointed, additional issues may arise that require further proceedings. It would raise at least the appearance of partiality if you were part of a program that provided gifts to them or decided whether they should receive such gifts.

This Committee therefore recommends that you do not participate in the program or the distribution of the gifts cards. We propose that the program sponsor work with another office of

the court to distribute the gift cards. You may inform appointed kinship guardians that there is such a program, that it is independent of the court, and that the kinship guardian should go to the office working with the sponsor if the guardian is interested in receiving gift cards.



James J. Wechsler
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