

Advisory Committee on the Code of Judicial Conduct

Hon. Frank H. Allen, Jr. Chairman
Hon. Thomas A. Donnelly
Prof. William T. MacPhearson, Jr.
Hon. Marie A. Baca

June 23, 1999

The Honorable

Re: Judicial Advisory Opinion 99-06

Dear Judge

In your letter of May 24, 1999, you explain that you have hired an individual to serve as your new bailiff in the _____ Judicial District. That person is also a _____ County Commissioner, and thus holds office in an elected, political position. You indicate that there will probably be occasions when matters pertaining to _____ County and/or the County Commission would be an interested party before your Division and in such instance you would recuse yourself from hearing such matters. You explain that in such event, the matter would then be transferred to one of the other Civil Division Judges. You have explained that our bailiff, at times, also assists as a bailiff in other district judges' courts as well.

You have inquired whether your new employee may serve as bailiff, so long as you recuse yourself in cases pertaining to him or to _____ County. You have also asked whether the other Civil Division Judges must automatically recuse themselves when matters pertaining to your bailiff or _____ County arises. We conclude that it would be a violation of the Code of Judicial Ethics for him to serve as both a court bailiff and a County Commissioner in the _____ Judicial District.

We enclose a copy of New Mexico Advisory Opinion 94-04, which addresses similar questions. Although the issues raised in Advisory Opinion 94-04 are not identical to the issues raised herein, they are sufficiently analogous to provide guidance. In Advisory Opinion 94-04, we concluded that "it is a conflict of interest for a Court Reporter to hold the position of Chairperson of a County political party."

Like a court reporter, a bailiff has a confidential and fiduciary role within the judicial system. A bailiff, "unlike other judicial employees, sits in the courtroom in close proximity to the judge in

virtually every case and sometimes accompanies the judge outside the courtroom on official business." Advisory Opinion 94-04. Thus, we conclude it would be a conflict of interest for an individual to serve both as a _____ County Commissioner and a bailiff for the _____ Judicial District Civil Division. In our opinion, a conflict of interest created by this dual service also violates Rule 26 of the New Mexico Judicial Branch Personnel Rules, and gives rise to an appearance of impropriety for the judge contrary to Rules 21-200 and 21-300(B) (2) of the Code of Judicial Conduct, NMRA 1999. A copy of Rules 25 and 26 of the Judicial Branch Personnel Rules are also enclosed.

As we noted in Advisory Opinion 94-04, while the position of a court employee may not actually cause a conflict of interest, "the appearance of a conflict of interest will be so great in the minds of the public that it will create doubt or questioning of the impartiality and integrity of the judicial system." Id.; see also New Mexico Advisory Opinion 92-05 (considering ethical problem of appearance of impropriety as opposed to conduct).

In considering the individual's role in the judicial system and his First Amendment rights, we have undertaken to balance his proposed role as a bailiff and his political office as _____ County Commissioner. Having done so, we conclude that the dual roles will unquestionably call into question the independence and integrity of the judicial system.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Frank H. Allen, Jr.", written in dark ink on a light background.

Frank H. Allen, Jr.
Chairman, Judicial Advisory Committee

Enclosures