

Hon. James J. Wechsler, Co-Chair (ret.)
Hon. Kristina Bogardus, Co-Chair
Paul L. Biderman, Esq.
Hon. Freddie Romero
Judge Yvette Gonzales

June 21, 2023

AO 23-03

Dear Judge

You are a municipal judge in an area in which you have lived most of your life. You are a retired educator, having taught in the public schools in the area for more than twenty-five years. You have been, and continue to be, active in the community. As a result of your involvement in the schools and the community, you know and have formed relationships with numerous people in the area served by your court. Many of these people appear before you, usually self-represented, principally in response to traffic citations but occasionally in contested proceedings.

You have asked the Advisory Committee on the Code of Judicial Conduct whether (1) you must disclose any current or former relationship you have with a defendant appearing before you, and (2) whether, after the business of the court is completed, you may engage in conversation with the defendant.

Rule 21-211 NMRA addresses a judge's disqualification and pertains to your inquiry. Rule 21-211 (A) (1) requires a judge to "disqualify himself or herself" from "any proceeding in which the judge's impartiality might reasonably be questioned, including "when the judge "has a personal bias or prejudice concerning a party[.]"

A judge who has lived, worked, and been active in a community is expected to have developed relationships in the community. Such relationships would not, in the normal course, give rise to the disqualification of the judge. As a result, the Committee does not believe that you are disqualified from presiding in proceedings involving people with whom you have formed casual relationships in your community. To be disqualifying, you must have "a personal bias or

prejudice concerning” the party to the proceeding or your relationship with the party must be such as to give rise to a reasonable question as to your ability to be impartial in the proceeding. Rule 21-211 (A) (1). Thus, the Committee does not believe that the fact that a former student is a party in a proceeding before you requires your disqualification unless there is something more special about the relationship.

If your relationship with a party does give rise to a disqualification for the reason of your actual bias or prejudice, Rule 21-211 (C) provides a procedure for you to disclose the basis for your disqualification and to offer the parties an opportunity to waive the disqualification. The rule allowing waiver states:

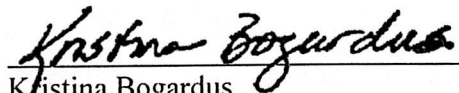
A judge subject to disqualification under this rule, other than for bias or prejudice under Subparagraph (A) (1) may disclose on the record the basis of the judge’s disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive the disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding.

The remittal procedure of Rule 21-211 (C) may be appropriate in your court, even in traffic-citation cases.

You have specifically asked whether you must disclose any current or former relationship you have with a defendant appearing before you. In uncontested proceedings, this is not an issue in that the defendant is already aware of any relationship you currently may have or previously have had. In contested proceedings, the Committee advises that you disclose information concerning a relationship you now have or previously had with a defendant if you believe that the information could reasonably be relevant to a motion for disqualification. *See* Rule 21-211, comment [8] (“A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.”). In this regard, the Committee suggests that you exercise your discretion in determining whether to make disclosures about former students or people you know in the community.

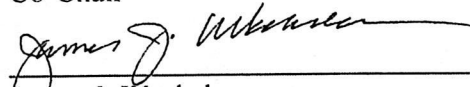
You have also asked whether you may engage the defendant in conversation after the business of the court is concluded. You have informed the Committee that when proceedings are concluded, you sometimes inquire, if you consider it appropriate, about the defendant’s current

activities or family. Rule 21-202 NMRA requires a judge to “perform all duties of judicial office fairly and impartially.” Under Rule 21-102 NMRA, a judge must avoid even the appearance of an impropriety. The Committee advises that you exercise care in engaging in such conversations. Although the conversation itself may not be problematic, the attendant circumstances may generate an appearance of unfairness or partiality. By way of example, if you have several defendants in your courtroom, another defendant observing such a conversation may misinterpret it and believe that he or she is not receiving the same treatment as the defendant with whom you converse.



Kristina Bogardus

Co-Chair



James J. Wechsler

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