



Advisory Committee on the Code of Judicial Conduct

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October 26, 2023



AO 23-05

Dear Judge [REDACTED]

You have asked the Advisory Committee on the Code of Judicial Conduct whether you are disqualified from presiding over a case in which a party's attorney also represents the interests of your court in other litigation.

There are three such cases. In one, in which the attorney represents a former judge, the complaint alleges constitutional violations resulting from the judge's actions in a domestic relations case; the court is not a named party. The other two cases are brought against the court by former employees based on their employment with the court. You were not a judge on the court while the domestic relations case was pending; your court tenure overlaps that of one of the plaintiffs in the employment cases by approximately one month. The attorney was assigned the cases by the State of New Mexico Risk Management Division. The chief judge is the attorney's liaison with the court in all the cases. You do not have any contact with the attorney in that regard. You have disclosed the attorney's representation of the court to the parties in your case.

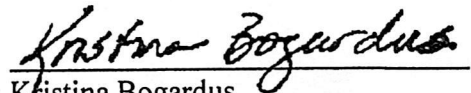
Rule 21-211 NMRA, in addressing a judge's disqualification, provides in relevant part:

A. A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including . . . ;

(1) The judge has a personal bias or prejudice concerning a . . . party's lawyer[.]

The Committee does not believe that the circumstances you describe require your disqualification. Significantly, you have no communication or reason to communicate with the attorney in the handling of the cases involving the court; the chief judge is the court's liaison, and you are not in any way connected to the facts alleged in the cases. You have advised the Committee that you have no personal bias toward the attorney, and the Committee does not believe that the attorney's representation of the court gives rise to an appearance of such bias or a reasonable question as to your impartiality in the case before you. Although not directly on point, comment 5 to Rule 21-211 is helpful to our analysis. It provides that "[t]he fact that an employee of the court

is a party to the proceeding does not of itself disqualify the judge." The attorney, while not an employee, has an attorney-client relationship with the court. As with an employee as a party, a judge's disqualification would depend on the particular circumstances of the relationship with the judge. See Rule 21-211, comment 5 ("The judge shall consider the specifics of the case in determining whether the judge's impartiality might reasonably be questioned and if a recusal is required.") As we have discussed, the circumstances you describe do not require your disqualification.



Kristina Bogardus
Co-Chair



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