



Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Co-Chair (ret.)
Hon. Kristina Bogardus, Co-Chair
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Hon. Freddie Romero
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August 26, 2024

[REDACTED]

Re: AO-24-01

Dear Judge [REDACTED]

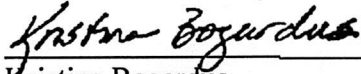
You have asked the Advisory Committee on the Code of Judicial Conduct whether the Code of Judicial Conduct permits you to serve on the board of directors of a charitable organization. The organization expects its directors to bring in substantial funds annually, either through their own donations or by raising funds from others. Although you are a retired judge, you are listed on a panel of judges eligible for appointment by the Supreme Court for pro tempore assignment on individual cases before the Court. Since your retirement four years ago, you have been asked to serve three times. You last served three years ago, although you were asked two years ago but could not sit because of a conflict of interest.

The Code of Judicial Conduct permits, and even encourages, judges to serve as board members on charitable organizations provided that the activity is consistent with the performance of judicial responsibilities; does not undermine the judge's independence, integrity, or impartiality; and does not otherwise violate the Code. Rule 21-301; Rule 21-307(A). A judge may serve as a director but may not solicit contributions for the organization except from family members or other judges "over whom the judge does not exercise supervisory or appellate authority." Rule 21-307(A)(2), (5). Retired judges who serve as part-time judges under contract or by appointment must comply with the Rules 21-301 and 21-307. *See* Rule 21-004(B)(2) (exempting part-time judges serving by contract or appointment from complying with certain provisions of the Code but not Rules 21-301 or 21-307).

Therefore, if you are a part-time judge under Rule 21-004(B)(2) of the Code, you may serve as a director of a charitable organization, but you may not solicit contributions for the organization except from family and certain other judges. The Committee does not believe that you fit within that definition.

Rule 21-004(B)(2) addresses retired judges who serve as judges either under contract or by appointment. Although you may be appointed to serve on individual cases by the Supreme Court, you are merely on a list to accept appointments – you are not serving under any appointment and do not know whether you will be asked again to do so. You last served under an appointment three years ago; the appointment has long expired. Moreover, in contrast to judges currently serving by appointment, you have full discretion to decline an appointment. *Cf. In re Philip J. Romero*, JSC Inquiry Nos. 2014-063 & 2014-075, Sup Ct. Docket No. 30,316 (considering retired judge on contract to serve as pro tempore judge and assigned to eight cases to be subject to the Code); Judicial Conduct and Ethics, Geyh, Alfini, Lubet, and Shaman, 5th ed., ¶ 1.07 (“Retired judges who are eligible for recall to the bench but who are not receiving full compensation are required to follow those provisions of the Code that govern part-time judges.”).

The Committee, therefore, believes that, under your circumstances, you are currently not restricted in your service as a director of a charitable organization merely because you are on a list to receive an appointment to a Supreme Court case. If you were to receive an appointment, you would not be able to solicit contributions while serving under that appointment. Of course, you would not be able to accept an appointment to any case in which you would be disqualified because of any activity in which you may have engaged as a director of the charitable organization.



Kristina Bogardus
Co-Chair



James J. Wechsler
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