

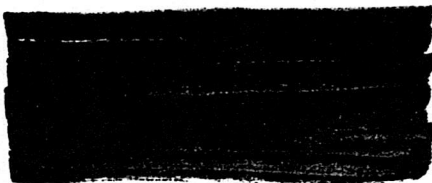


Advisory Committee on the Code of Judicial Conduct

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

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.

September 10, 2024



Re: AO 24-02

Dear Judge 

A defendant in a number of criminal cases before you has recently interacted with members of your family and church members in inappropriate ways, necessitating your filing an incident report to the court for security purposes.

As you have described the facts, the defendant approached your wife by knocking on her car window, advising her that he knows she is a "judge's wife." The defendant has also started to go to the church that you attend and serve as an officer both for services and during business hours. He has interacted with your son who works at the church, speaking with him and hugging him, making your son uncomfortable. Church staff reported to you that at one service the defendant followed church members' daughters to and from the restroom, making the members uncomfortable. After that service, you approached the defendant in the parking lot and told him that because you were the judge presiding over his cases; (1) it was not appropriate for you to have anything more than a cordial relationship with him, nothing more than exchanging pleasantries; and (2) it was inappropriate for him to contact your family as he had been doing. After you filed the incident report, the New Mexico State Police instructed the defendant not to have contact with you or your family.

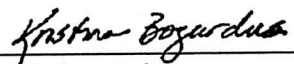
You have asked the Advisory Committee on the Code of Judicial Conduct whether you must disqualify yourself from the defendant's cases.

Rule 21-211(A) NMRA provides that a "judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned[.]" The determination whether to disqualify oneself from a case rests with the sound discretion of the judge. *Demers v. Gerety*, 1978-NMCA-019, ¶ 10, 92 NM 749, 595 P.2d 387.

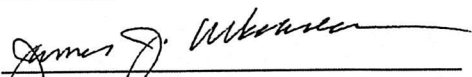
In *State v. Riordan*, our Supreme Court addressed whether a district judge must recuse from all cases involving a defendant who was charged in a separate case of conspiring to assault the judge with a deadly weapon. *State v. Riordan*, 2009-NMSC-022, ¶ 3, 146 NM 281, 209 P.3d 773. The judge disqualified herself from the separate case. The judge denied the defendant's motion to recuse in other cases. The Court stated that "recusal should not automatically be required when a judge is threatened." *Id.*, ¶ 13. The Court noted that "[t]he law is clear that a party, including a defendant in a criminal case, cannot drive a . . . trial judge off the bench in a case by threatening him or her." *Id.* (internal citation and quotation marks omitted). For disqualification to be required, the Court stated that the facts must evidence bias when viewed by an objective standard. *Id.*, ¶ 14. The Court did not find any such evidence in the record and observed that the judge stated that she did not have any "personal bias or animosity toward" the defendant. *Id.*, ¶ 15.

The Committee, similarly, does not believe that you must disqualify yourself under the circumstances you describe. Although the defendant has inappropriately interacted with your family and church members, the behavior is not as egregious as in *Riordan*; no threats were made. Like the judge in *Riordan*, you have informed the Committee that your ability to be fair and impartial to the defendant has not been impaired. The Committee notes that your conversation with the defendant was not an improper *ex parte* communication because it did not involve the subject matter of his cases.

Moreover, policy considerations do not require your disqualification. The Committee agrees with our Supreme Court's analysis that a defendant should not be able to initiate extrajudicial action in order to create a basis to disqualify a judge from the defendant's case. By way of example, a judge is not disqualified from a case because a defendant has filed a disciplinary complaint against the judge. Unless there is objective evidence that the judge's impartiality might reasonably be questioned, the judge is not disqualified. Rule 21-211(A).



Kristina Bogardus
Co-Chair



James J. Wechsler
Co-Chair