

**PROPOSED REVISIONS TO THE CODE OF JUDICIAL CONDUCT  
PROPOSAL 2023-005**

**March 24, 2023**

The Code of Judicial Conduct Committee has recommended amendments to Rule 21-313 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court  
New Mexico Supreme Court  
P.O. Box 848  
Santa Fe, New Mexico 87504-0848  
[nmsupremecourtclerk@nmcourts.gov](mailto:nmsupremecourtclerk@nmcourts.gov)  
505-827-4837 (fax)

**Your comments must be received by the Clerk on or before April 24, 2023**, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

---

**21-313. Acceptance of gifts, loans, bequests, benefits, or other things of value.**

A. A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality, or if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

B. Unless otherwise prohibited by law, or by Paragraph A, a judge may accept the following:

- (1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;
- (2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 21-211 NMRA;
- (3) ordinary social hospitality;
- (4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

- (5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;
- (6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;
- (7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;
- (8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household, but that incidentally benefit the judge;
- (9) gifts incident to a public testimonial; or
- (10) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:
  - (a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or
  - (b) an event associated with any of the judge's educational, religious, charitable, fraternal, or civic activities permitted by this Code, if the same invitation is offered to non-judges who are engaged in similar ways in the activity as is the judge.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012.]

**Committee commentary. —**

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 21-313 NMRA imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported.

[2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 21-211 NMRA, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 21-313 NMRA applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 21-313 NMRA and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely and incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

[5] Rule 21-313 NMRA does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other rules of this Code, including Rules 21-403 and 21-404 NMRA.

[6] Rule 21-313 NMRA prohibits a judge from accepting free or discounted legal services:

a. From any lawyer who has appeared or is likely to appear before the judge or whose interests have or are likely to come before the judge; and

b. From any lawyer employed by a law firm if other lawyers in that law firm at the time of the proposed legal services have appeared or are likely to appear before the judge, or if other lawyers in that law firm at the time of the proposed legal services have appeared or are likely to appear before the judge, or if those other lawyers' interests are likely to come before the judge.

Rule 21-313 NMRA does not prohibit a judge from accepting free or discounted legal services if allowed under Rule 21-313(B)(2) or (4) NMRA.

[Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]



New Mexico  
Courts

Amy Feagans <supajf@nmcourts.gov>

## [nmsupremecourtclerk-grp] comment about proposal 2023-005

1 message

Jeff Baker <jeff@thebakerlawgroup.com>

Fri, Mar 24, 2023 at 9:15 AM

Reply-To: jeff@thebakerlawgroup.com

To: "nmsupremecourtclerk@nmcourts.gov" <nmsupremecourtclerk@nmcourts.gov>

### *Proposal 2023-005 – Acceptance of Gifts*

*Rule 21-313 NMRA prohibits a judge from accepting free or discounted legal services: a. From any lawyer who has appeared or is likely to appear before the judge or whose interests have or are likely to come before the judge; and b. From any lawyer employed by a law firm if other lawyers in that law firm at the time of the proposed legal services have appeared or are likely to appear before the judge, or if other lawyers in that law firm at the time of the proposed legal services have appeared or are likely to appear before the judge, or if those other lawyers' interests are likely to come before the judge. Rule 21-313 NMRA does not prohibit a judge from accepting free or discounted legal services if allowed under Rule 21-313(B)(2) or (4) NMRA. [Adopted by Supreme Court Order No. 11-8300-045, effective January 1, 2012;*

Years ago, I was hired and paid by State Risk Management to represent a Second Judicial District judge who was being sued by a *pro se* litigant. I assume the Judge did not reimburse State Risk Management for my services (therefore, my services were "free" for the judge). I do not know if the judicial branch of government paid an insurance premium to State Risk Management, but I doubt the individual judges paid a premium to be covered by the state insurance program. Given the low rates which State Risk Management pays its contract lawyers, and given how quickly *pro se* lawsuits against judges can be dismissed, how will this proposed rule work? In my situation, I would be inclined to say "no" to an assignment from State Risk Management to defend Judge X if it meant I could not appear before that Judge in the future.

Jeffrey L. Baker

jeff@bzjustice.com



(505) 263-2566