

# JUDICIAL INQUIRY COMMISSION

DATE ISSUED: November 30, 2006

ADVISORY OPINION 06-873

## APPEARING IN UNIVERSITY TELEVISION COMMERCIAL

### ISSUE

May a supreme court justice permit the use of her photograph in a television commercial for her alma mater? **Answer:** Under the specific circumstances described, yes.

### FACTS

A justice on the Alabama Supreme Court has been asked to appear in a television commercial for her alma mater. She has been informed that the advertising agency is contacting some outstanding alumni of the university to seek permission to use a still photograph in a 4 to 5-second customized opening for a set of 30-second commercials that will be broadcast nationally. The commercials are based on the Chancellor's message that "a truly successful university is measured by the success of its alumni."

The justice's picture would be included in an opening collage that will include other outstanding university graduates; there will be 20 to 25 photographs rotating on and off screen during this 4 to 5-second opening. There will be no identifying elements accompanying the judge's picture, *i.e.*, neither her name nor her title will appear.

The justice inquires whether her participation is permissible and, if so, whether she may appear in her judicial robe.

### DISCUSSION

Canon 2C includes a provision that a judge "should not lend the prestige of his office to advance the private interests of others."

Canon 5B addresses civic and charitable activities. It permits general participation in activities that "do not reflect adversely upon [the judge's] impartiality or interfere with the performance of his judicial duties." It also

permits a judge to serve as an officer or director of a charitable or civic organization subject to certain limitations. The second limitation states that it "is desirable that a judge not solicit funds for any educational, religious, charitable, fraternal, or civic organization or institution, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization or institution."

The Commission has previously held that Canon 2C prohibits a judge from permitting his photograph to be used in a commercial advertisement. Advisory Opinion 80-92 (prominent display of judge's photograph on business premises prohibited); Advisory Opinion 84-228 (appearance in an ad for a clothing store prohibited if identified as a judge); Advisory Opinion 87-295 (appearance in public service announcement with a drug abuse prevention message sponsored by a hospital with a chemical dependency unit prohibited because the announcement could be construed as an ad for the hospital).

The Commission has also held that the canons did not prohibit participation in advertisements supporting and/or congratulating the Girl Scouts organization. In Advisory Opinion 87-290, the Commission decided a judge could appear in her judicial robe in a public service announcement congratulating a Girl Scout Chapter for its 75<sup>th</sup> anniversary; the Commission noted that the announcement was not intended as part of a fund-raising activity. In Advisory Opinion 93-496, the Commission concluded a judge could appear in a public service video announcement the theme of which was "Believe in the future. Support Girl Scouting." The judge was to appear in her judicial robe but would not make any verbal comment or be identified by name. In the video, a child asks, "Mommy, can I really be anything I want to be when I grow up?" The Commission wrote that it did

not construe the phrase, "Support Girl Scouting," as a discouraged solicitation of funds.

The ad described does not emphasize the judicial office. Instead, it will simply include the photographic fact that a judge is among the university's graduates, inviting inferences favorable to the university in a way that can "fairly be viewed as a manifestation of the ordinary pride all institutions of higher learning take in the accomplishments of their highly successful graduates." CJE Opinion No. 2000-6 (Massachusetts Committee on Judicial Ethics); *see also*, Informal Opinion 01-3 (Utah Ethics Advisory Committee). Since the justice's name and title will not be used and she will not be singled out for particular attention, the Commission does not believe the proposed ad would substantially use the prestige of the judicial office to advance private interests contrary to Canon 2C.

The Commission also does not find a conflict with Canon 5B. Appearance in the ad would not reflect adversely upon the justice's impartiality nor interfere with the performance of her judicial duties. The advertising campaign in question is not specifically focused on fund raising, it will not be specifically directed at potential donors, and the justice's name and title will not be used. *See*, Massachusetts Opinion 2000-6 and Utah Opinion 01-3.

It is the opinion of the Commission that the

justice may permit the use of her photograph in the proposed commercial for her alma mater and that she may appear in her judicial robe. Under the particular facts presented, the Commission finds no conflict with the Canons of Judicial Ethics.

#### REFERENCES

Advisory Opinions 80-92, 84-228, 87-290, 87-295, 93-496.

Alabama Canons of Judicial Ethics, Canons 2C, 5B, and 5B(2).

CJE Opinion No. 2000-6 (Massachusetts Committee on Judicial Ethics).

Informal Opinion 01-3 (Utah Ethics Advisory Committee).

---

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043; E-mail: [jic@alalinc.net](mailto:jic@alalinc.net).