

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: November 16, 2007

ADVISORY OPINION 07-890

JUDGE AS LEGAL COMMENTATOR ON COMMERCIAL TELEVISION NETWORK

ISSUE

May a part-time municipal judge enter into a business arrangement with a commercial television station to appear periodically on its morning news show to educate the public about legal matters and to explain legal issues in “the forefront of daily news”? **Answer:** No.

FACTS

The judge is a part-time municipal judge in a metropolitan area. She would like to appear on a new morning show on the local affiliate of a major television network. She would make occasional appearances to educate the viewers about legal matters, including operations of the court system and general legal terms, issues, and concepts, but without commenting on the merits of any pending case. In addition, the news director, in outlining the program’s vision of the judge’s participation, explained, as follows:

[T]here are frequently legal issues in the forefront of daily news. I would hope [the judge] can help break down complex issues into layman’s terms ... everything from what the issues are in a high profile case to precedents in similar cases.

DISCUSSION

A part-time municipal judge is not required to comply with all canons. *See* Compliance with the Canons of Judicial Ethics, A(1). She is

required, however, to comply with Canon 2C. *Id.* Canon 2C includes the provision that a judge “should not lend the prestige of [her] office to advance the private interests of others.” See also Canon 5C(1), which likewise applies to a part-time judge, providing that “[a] judge should refrain from financial and business dealings that tend to ... exploit [her] judicial position.”

This is the first time the Commission has been presented with the question whether a judge may appear occasionally as a legal commentator on commercial television. Other judicial ethics advisory committees, however, have addressed the threshold concern that such occasional appearances may lend the prestige of the judicial office to advance the private interests of others and have accordingly disallowed such activity. In Virginia Advisory Opinion 99-07, the committee was asked whether a trial judge may appear on a regular basis on a television talk show concerning only legal practice and procedure even though the judge would not conduct interviews, accept compensation, or comment on the merits of pending cases, pending investigations, or political issues. In response, the Committee stated:

A more direct concern is whether a judge’s appearing on a commercial radio or television network would advance the financial interests of that organization. ...

The fact that a network desires the appearance of a judge to comment on legal matters indicates that the network sees some advantage to his appearance. The well-known

competition among news organizations leads to the inescapable conclusion that a network would conclude that the more authoritative the speaker, the more the program would appeal to the audience. The committee is of the opinion that appearing on such programs on a regular basis could create the appearance that the judge is advancing the private interests of others. [*In re Inquiry of Broadbelt*, 683 A.2d 543,] at 550 [(N.J. 1996)]; Opinion 96-25, Florida Committee on Standards of Conduct Governing Judges. It is of no significance that the judge would not be identified as a judge. A judge is a public official, and it would strain credulity to conclude that the audience, or a part of the audience, would not be aware of his position.

See also In re Broadbelt, 683 A.2d 543, 550 (N.J. 1996) (the frequency of a municipal court judge's appearance on "Court TV" as a guest (albeit unpaid) commentator – more than fifty times in four years – resulted in an identification of the judge with the program, thereby lending it the prestige of his judicial office); Florida Advisory Opinion 96-25 (canonical prohibition of lending judicial prestige to commercial interests of television station applies to judge's proposed arrangement with the station to make regular appearances on a news forum to "comment about, explain to, and educate the public concerning diverse legal matters including explaining and clarifying the proceedings during high publicity trials" and thus to "educate the public and explain the procedures and workings of the court system"); South Carolina Advisory Opinion 05-2003 (judge's

regular participation on a radio talk show would clearly lend the prestige of his office to advance the radio station regarding an area where the public perceives the judge to be an expert).

Alabama advisory opinions have applied Canon 2C to a judge's activity in other commercial formats. In those opinions, the Commission has advised that Canon 2C prohibits the following activity: appearance in a public service announcement with a drug-abuse prevention message sponsored by a hospital with a chemical-dependency unit because the announcement could be construed as an ad for the hospital, Advisory Opinion 87-295; part-time municipal judge's appearance as a judge in an ad for a clothing store, Advisory Opinion 84-228; prominent display of judge's photograph on business premises, Advisory Opinion 80-92. *Compare* Advisory Opinion 06-873 (appearance in judicial robe in one photograph of a collage of 20 to 25 photographs of outstanding alumni in 4- to 5-second opening for television commercial for justice's alma mater is not in violation of Canon 2C because the justice's name and title will not be used and she will not be singled out for particular attention).

Further, this Commission has acknowledged Canon 2C's prohibition against a judge's activity that could appear to advance the promotion of a particular business over its competitors. *See* Advisory Opinions 07-888 (judge should decline to write a column for a religious magazine if its dissemination is limited geographically and competitors with other similar publications consider the judge's authorship to appear to advance the promotion of one local publisher over others); 86-265 (same, regarding authorship of monthly

newspaper column). One such advancement of promotion is lending the prestige of the judicial position to enhance the credibility of others. *Cf.* Advisory Opinion 98-708 (judge may not serve on board of directors of a non-profit environmental organization because his involvement may be perceived as lending the prestige of his judicial office to enhance the credibility of the organization).

The Commission advises that the requesting judge's proposed arrangement with the television network is prohibited by Canon 2C because it raises a reasonable concern that the power and prestige of the judicial office could be used to advance the private interests of others and, thus, could exploit the judicial position. The fact that such activity may in some respect be educational does not overcome the prohibition of Canon 2C. *Broadbelt*, 683 A.2d at 550-51 (rejecting judge's argument that his conduct was permitted by New Jersey Code of Jud. Conduct, Canon 4, as teaching about the judicial system, and holding that Canon 4 does not excuse violations of other canons). *See also* New York Advisory Opinion 93-133 (occasional appearance as unpaid commentator for "Court TV" cannot be deemed to constitute quasi-judicial activities designed to improve the law, the legal system, and the administration of justice). Because the requesting judge must avoid all impropriety and appearance of impropriety and must expect to be the subject of constant public scrutiny, she must accept restrictions on her conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Commentary to Canon 2.

REFERENCES

Alabama Advisory Opinions 07-888, 06-873, 98-708, 87-295, 86-265, 84-228, and 80-92.

Alabama Canons of Judicial Ethics, Canons 2C and 5C(1); Commentary to Canon 2; Compliance with the Canons of Judicial Ethics, A(1).

In re Inquiry of Broadbelt, 683 A.2d 543 (N.J. 1996).

New Jersey Code of Jud. Conduct, Canon 4.

Florida Advisory Opinion 96-25.

New York Advisory Opinion 93-133.

South Carolina Advisory Opinion 05-2003.

Virginia Advisory Opinion 99-07.

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.