

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: MAY 12, 2022

ADVISORY OPINION 22-950

USE OF PRESTIGE OF OFFICE: BUSINESS AND FINANCIAL ACTIVITIES

ISSUE

May two judges, a circuit judge and a part-time municipal judge, who are related within the first degree of consanguinity act on a television show as judges or mediators presiding over fictional disputes?

Answer: No.

FACTS

A television production company has asked two judges, a circuit judge and a part-time municipal judge, who are related within the first degree of consanguinity to preside over fictional disputes on a show tentatively titled, "Teen Court." The judges' roles on the show would be to aid actors who are playing teenagers resolve disputes. The judges have not been asked to mediate, arbitrate, or adjudicate any actual legal disputes, and none of their decisions made on the show would be binding. Nor will any of the disputes depicted be representative of any actual legal dispute that the judges will hear. The show is intended for entertainment purposes, but also has an educational component in that it will show youth how to resolve conflict effectively and appropriately.

The show will be taped in a consolidated manner and only on weekends, holidays, or while the judges are on leave. Public property, time, labor, or equipment will not be

used in the production of the project. The judges will receive compensation for their participation in the project.

The judges have already sought an opinion from the Alabama Ethics Commission as to the application of the Alabama Ethics laws to their proposed conduct.

DISCUSSION

Canon 5A of the Alabama Canons of Judicial Ethics states, "A judge may . . . engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his [or her] office or interfere with the performance of his [or her] judicial duties." Canon 5C further allows a judge to "engage in other remunerative activity including the operation of a business," so long as such activity does not affect the judge's impartiality, interfere with the judge's official duties, exploit the judicial position, or cause frequent disqualification. Canons 5C(1)–(3). However, even though a judge's proposed conduct is permissible under one Canon, it may still be prohibited by others. *See In re Inquiry of Broadbelt*, 683 A.2d 543, 550–51 (N.J. 1996).

The Commission assumes that you will be able to properly perform your judicial duties while you are taping the shows. However, while the activity may not be prohibited by Canon 5, it is the opinion of the

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Commission that the conduct is prohibited under Canon 2C.

Canon 2C provides, “[A judge] should not lend the prestige of his [or her] office to advance the private interests of others; nor should he [or she] convey or permit others to convey the impression that they are in a special position to influence him [or her].” In *In re Inquiry of Broadbelt*, 683 A.2d 543, 550 (N.J. 1996), the court considered four factors in determining whether a judge’s appearance as a commentator on television lent the prestige of his judicial office to the television station. The factors were: (1) the frequency of the judge’s appearance; (2) the intended audience; (3) the subject-matter; and (4) whether the project is commercial in nature. *Id.*; see also *In re Inquiry Concerning Honorable John Roach, Jr.*, Docket No. SCR 18-0006 (Tex. Special Court of Review July 24, 2018) (describing the analysis of a judge’s extra-judicial activities as a spectrum). In *Broadbelt*, the court held that the judge’s frequent appearances caused the judge to become regularly identified with the show, thereby lending the prestige of his judicial office to the show in violation of the canons. 683 A.2d at 550.

The inquiring judges will be appearing on the television show as actresses. Additionally, although the resolutions on the show will not be binding or depict any actual legal disputes, based on the working title “Teen Court” and the fact that the judges’ roles would be to help

fictional teenagers resolve their disputes, the Commission assumes that the subject-matter of the show will involve the judges acting as “judges” or decision-makers in a courtroom-like setting or some other adversarial context. Due to the judges’ appearances in every show as the “judges” presiding over “Teen Court,” it is likely that the judges will become the “faces” of—i.e., regularly identified with—the television show. Lastly, the show is being produced to entertain its audience as a means of making a profit for the production company, and not purely for its educational value. Even still, “the fact that such activity may in some respect be educational does not overcome the prohibition of Canon 2C.” Ala Adv. Op. 07-890 (citing *Broadbelt*, 683 A.2d at 550–51). It is true that the show will not be restricted to any one particular area or audience but will instead be broadcast nationally. However, this fact alone is not enough to overcome the strong appearance that the inquiring judges will be lending the prestige of their judicial offices to advance the private interests of the production company and exploiting their judicial offices for personal gain.

Therefore, based on the foregoing analysis, it is the opinion of the Commission that the inquiring judges are prohibited from participating in the production of the television show as it would likely lend the prestige of their judicial

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offices to the production company and exploit their judicial offices for personal gain.

REFERENCES

Alabama Advisory Opinions 07-890.

Alabama Canons of Judicial Ethics
2C, 3, 5A, 5C(1), 5C(2), 5C(3).

In re Inquiry Concerning Honorable John Roach, Jr., Docket No. SCR 18-0006 (Tex. Special Court of Review July 24, 2018).

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

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 18 of the Alabama 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; email: jic@jic.alabama.gov.