



Judicial Ethics Advisory Committee

MEMBERS:

Hon. Edwin Alderson
Municipal Judge Retired

Prof. Howard W. Brill

Hon. John Cole
Circuit Judge Retired

PRESS RELEASE

POINT OF CONTACT: DAVID J. SACHAR

PHONE: 501-682-1050

FOR IMMEDIATE RELEASE

May 2, 2013

The Arkansas Judicial Ethics Advisory Committee issued an advisory opinion to Judge Ralph Ohm of Hot Springs, Arkansas.

A copy of the Advisory Opinion is attached



Judicial Ethics Advisory Committee

MEMBERS:

Hon. Edwin Alderson
Municipal Judge Retired

Prof. Howard W. Brill

Hon. John Cole
Circuit Judge Retired

May 2, 2013

Honorable Ralph Ohm
Hot Springs District Court
PO Box 1558
Hot Springs, AR 71901

RE: JEAC Opinion 2013-02

Dear Judge Ohm:

Your letter of February 15, 2013 stated that a production company wishes to film sessions of your district court and also to film activities in surrounding areas inside the courthouse. You have provided us with a 7 minute trailer from the production company. The trailer includes excerpts from court sessions, interviews with district judges at the courthouse and in other locations, interviews with court personnel, titles such as "America's Busiest District Court" and "Located in America's Most Dangerous City", and photographs of prisoners. The production company wishes to convert the filming into a television program, profit based and perhaps syndicated.

Discussion: We approach this question by the need to balance the necessity of maintaining the dignity of the court proceedings, the separation of the courts from for profit enterprises, and the importance of educating the public as to court proceedings. We have addressed a similar issue in Advisory Opinion 2010-01. Although that opinion specifically involved a drug court, some of its broader policy concerns are applicable here. Similarly, in Advisory Opinion 2013-01 we discussed a judge's participation with a newspaper's series on drug court clients. This opinion builds upon both of those.

We have also considered Advisory Opinions from other states: Virginia 99-7 (whether appearance on a television network would advance the private interests of others); Nevada JE 12-007 (judge as co-host on a commercial television network); Maryland 2011-31 (judge appearing in a video discussing collaborative divorce); Maryland 2006-11 (judicial participation in television commercial for surgery); Colorado 2008-04 (judge appearing in program with League of Women Voters would be viewed as campaign activity); California 1983-28 (appearance on public television program); New York 11-154 (for profit video production company to film court proceedings for use in documentary); Florida 2011-18 (company wishes to film and broadcast the judge's criminal arraignments on a regular network).

The Code of Judicial Conduct: As adopted by the Supreme Court in 2009, the Code requires a judge to act at all times in a manner that promotes public confidence in the impartiality of the judiciary and to avoid even the appearance of impropriety. Rule 1.2 A judge should expect to be the subject of public scrutiny, exceeding that of other citizens, and must accept the restrictions of the Code. Comment 2. A judge must not allow others to abuse the prestige of judicial office to advance the economic interests of the judge or others. Rule 1.3. A judge is to maintain order and decorum in the court. Rule 2.8. A judge may engage in extrajudicial activities, subject to the cautionary restraints of Rule 3.1.

The Preamble to the Code states that "Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respond and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system." Comment 2 emphasizes that "judges should maintain the dignity of judicial office at all time."

1)Television cameras are permitted in the courtroom only under the guidelines of Supreme Court Administrative Order Six, as amended August 1, 2011. Your letter indicates that you understand that Administrative Order Six must be complied with completely. You propose to place "signs all over the courtroom." If "any person expresses a concern about the filming process", his case would be transferred to a different court without any filming.

We are not convinced that these guidelines are sufficient. For instance will the signs fairly and properly notify of the nature and use of the filming? In addition Administrative Order 6(c)(2) says "the court shall inform witnesses of their right to refuse to be broadcast". Posting notices on the walls does not seem to adequately inform witnesses of this right. Notices on the wall, a general announcement from the bench, or a distributed written announcement may be adequate to inform the audience in the background that they are not filmed. But as to parties, witnesses and attorneys, we believe that a more individualized method of informed consent is required. We repeat our concern from Advisory Opinion 2010-01 that "a defendant might think the judge would hold it against him or her if he or she refused to cooperate in a televised court session."

2)Your letter states that no compensation will be paid to "court personnel." We interpret that category broadly to include judges, prosecutors and public defenders, deputies, clerks, court reporters, jail officials and others.

3)But the question of compensation is also a broader issue. Rule 1.3 states "A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so." Advisory Opinion 2010-01 concluded "we think the taping and televising of these proceedings in a for profit venue does indeed violate this section." Because of the 2011 amendment to Administrative Order Six, drug courts can no longer be televised under any circumstances.

Administrative Order 6 permits a judge to allow a local television station to broadcast a single hearing or trial. Likewise, we believe that a judge may participate with a documentary or a series produced for educational television. Such uses fall within the broad educational objective that is found in the Code of Judicial Conduct. On the other hand we are here presented with a production company that wishes to making a series of programs about a particular court, syndicate those programs, perhaps nation-wide, and make a profit from "reality television". The former examples are educationally based; the latter, as proposed, appears to be primarily based in entertainment for a profit motive.

4)Administrative Order 6 mandates that the dignity of the proceedings not be impaired by any recording. But more broadly, the Code of Judicial Conduct envisions that all court related activities will be conducted in an appropriate manner. Rule 2.8

5)You anticipate that the production company will give you considerable discretion and control over the final product. In the abstract, such oversight seems appropriate. But given the nature of the proposed show, questions may be asked as to your role in the production of the show. For instance, titles such as "Located in America's Most Dangerous City" may not be well received by the Hot Springs community.

6)Production may require access to various parts of the courthouse and use of government facilities at the courthouse. Permission or authorization from county officials may be required or appropriate. Any written agreement should be limited in time and expressly permit cancellation of the program, pursuant to your authority under Administrative Order 6, for whatever reasons you wish, whenever you wish, without limitation or consequences to Garland County.

Conclusion: Although we are aware of the principle of open courts, as well as the public awareness and understanding of the judicial system, we believe that your involvement with this project would cross a line. The proposal raises significant risks of impairing the prestige and dignity of the court, connects the court to an on-going commercial enterprise for entertainment, and raises the appearance of impropriety. See Rules 1.2; 1.3; 3.1. This opinion discusses some of our particular concerns with the proposal, and to some extent discusses possible solutions and remedies. But in principle we conclude that participation with the television program proposal as set forth will be inconsistent with the administration of justice in the Arkansas courts and with the principles of the Code of Judicial Conduct.

For the Committee,

Howard W. Brill