

JUN 05 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT

CHIEF DEPUTY CLERK

## STATE OF NEVADA

## STANDING COMMITTEE ON JUDICIAL ETHICS

DATE ISSUED: June 5, 2012

ADVISORY OPINION: JE12-007

PROPRIETY OF A JUDGE CO-HOSTING A  
TELEVISION PROGRAM ON  
COMMERCIAL TELEVISION NETWORKISSUE

May a judge act as a co-host of a television program on a commercial television network with a practicing lawyer as his co-host?

ANSWER

No.

FACTS

A district court judge asks whether he may continue to act as a co-host of a television show. The television show in question airs weekly on a commercial, for-profit television station, has an interview format and features notable personalities in the legal, cultural and charitable communities. His co-host is a practicing lawyer who used to be the judge's partner in private practice. The last five minutes of the commercial broadcast will be used as a promotion to discuss the judge's retention election and campaign.

DISCUSSION

The Committee is authorized to render advisory opinions evaluating the scope and applicability of the Nevada Code of Judicial Conduct ("NCJC"). *Rule 5 of the Rules Governing the Standing Committee on Judicial Ethics.*

A judge's regular appearance on a television or radio show raises a host of potential ethical issues. For instance, a judge's perceived impartiality might be jeopardized if the judge is placed in a position to comment on issues related to pending cases or charged political or social issues which might at some point in the future come before the judge. Likewise, a judge hosting a talk show with an interview format must use care to avoid creating the impression that an invitation to appear on the show equates to an endorsement of a political candidate. Finally, regular appearances on a television program create the danger that a judge will lend the prestige of office to a third party. A judge may take steps to mitigate these risks. Under the facts presented here, particularly as to the risk of lending the prestige of office to a third party, we do not believe the risks can be adequately mitigated.

Canon 1 of the NCJC states "[a] judge shall uphold and promote the independence, integrity and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety." This includes an obligation not to use "the prestige of judicial office to advance the personal or economic interests of the judge or others." NCJC Rule 1.3. Thus, although judges are allowed, and indeed encouraged, to participate in extrajudicial activities in their communities, judges have an obligation to avoid those extracurricular activities that lend the prestige of judicial office to the private interests of others. *See* Rule 3.1 and Comment [2] to Rule 3.1. The purpose of this limitation is to prevent a judge's name from being directly or indirectly used to

JUN 05 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

attract public attention to a sponsor, or that sponsor's business or product. California Judges Association Opinion No. 57.

The television show in this case airs on a commercial television station. The co-host of the program is a lawyer with a private practice in Nevada. Under these circumstances, the Committee unanimously concludes that the judge's continued participation as the host of the television show lends the prestige of judicial office to both the commercial television station and the co-host lawyer. As such, it is the Committee's opinion that this activity violates Rule 1.3.

This conclusion is consistent with this Committee's prior opinion JE08-016. While that opinion also addressed the question of whether a judge could host a television program, the television show in that instance aired on a public access channel. This is a critical distinction, and one that the Committee observed in that opinion, noting "that regular appearances by judges under arrangement with commercial television and radio stations have been found to violate [judicial Canons]" because they "lend the prestige of judicial office to advance the private interests of the station."

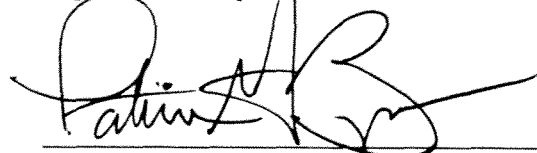
The Committee finds the opinions from other jurisdictions that have addressed this issue persuasive. In considering this request, the Committee considered opinions and case decisions from a number of other jurisdictions, including the opinions referenced in Opinion JE08-016. The vast majority of those opinions and cases support the view that hosting or making regular appearances on a commercial television network improperly lends the prestige of judicial office to the television network. *See e.g.* Alabama Advisory Op. 07-890 (part-time municipal judge could not enter into

arrangement to appear periodically on morning news show to explain legal issues); Florida Advisory Op. 96-25 (judge's appearance as a regular commentator on commercial airwaves would lend prestige to the commercial interests of the station); *In re Broadbelt*, 683 A.2d 543, 550 (N.J. 1996) (judge's regular appearances on commercial television violated judicial Canons); South Carolina Advisory Opinion 14-1991 (by associating himself with a talk show on a regular basis, the judge would lend the prestige of his office to the radio station); Virginia Advisory Op. 99-7 (regular appearances by judge on talk show concerning legal issues could create appearance that judge is advancing the private interests of others).

Admittedly, committees in other jurisdictions have suggested that a judge's participation on a television show might be allowable so long as the judge is not identified as a judge. *See e.g.*, New Mexico Advisory Op. 07-11 (judge not prohibited from hosting weekly bilingual radio music program with restriction that neither the judge nor station employees refer to him as judge in any manner relating to the program). In this instance, however, the last five minutes of the show have been dedicated to discussing the judge's retention election and campaign. But even if this portion of the program were removed, other jurisdictions still find a violation. *See* Virginia Advisory Op. 99-7 ("[I]t is of no significance that the judge would not be identified as a judge."); Florida Advisory Op. 96-25 ("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."). Thus, under the present circumstances, the judge's continued participation as a host of the television program violates Rule 1.3 of the NCJC.

The Committee is cognizant that the question presented by this request raises First Amendment issues that are beyond the scope of the Committee's advisory role with respect to the scope of the NCJC. Therefore, the Committee has not considered those First Amendment issues, instead limiting this advisory opinion to the applicability of the NCJC Canons and Rules.

*responsibilities, any member of the Nevada judiciary, or any person or entity which requested the opinion.*



---

**Patrick G. Byrne, Esq.**  
*Vice-Chairman*

### CONCLUSION

Rule 1.3 of the NCJC prohibits judges from engaging in activities that lend the prestige of the judicial office to the personal or economic interests of others. By hosting a television show on a commercial network with a practicing lawyer as the co-host, a judge lends the prestige of office to the television network and the co-host. As such, it is the opinion of the Committee that the judge's participation as co-host of the television show would violate Rule 1.3 of the NCJC.

### REFERENCES

Rule 5 Governing the Standing Committee on Judicial Ethics; Nev. Code Jud. Conduct, Canon 1, Rules 1.3 and 3.1; Commentary to Rule 3.1; JE08-016; Alabama Advisory Op. 07-890; California Judges Association Opinion No. 57; Florida Advisory Op. 96-25; *In re Broadbelt*, 683 A.2d 543, 550 (N.J. 1996); New Mexico Advisory Opinion 07-11; South Carolina Advisory Opinion 14-1991; and Virginia Advisory Opinion 99-7.

---

*This opinion is issued by the Standing Committee on Judicial Ethics. It is advisory only. It is not binding upon the courts, the State Bar of Nevada, the Nevada Commission on Judicial Discipline, any person or tribunal charged with regulatory*