



**CALIFORNIA SUPREME COURT
COMMITTEE ON JUDICIAL ETHICS OPINIONS**

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CJEO Informal Opinion Summary No. 2014-004

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JUDICIAL APPEARANCE IN AN EDUCATIONAL DOCUMENTARY

The Committee on Judicial Ethics Opinions (CJEO) was asked by the Tribal Court-State Court Forum (Forum)¹ for an informal opinion about whether state court judicial officers who are members of the Forum may appear in an educational

¹ This informal opinion summary identifies the requesting party as the Tribal Court-State Court Forum, which has submitted a written waiver of confidentiality and consent to disclose its identity. (Cal. Rules of Court, rule 9.80(h)((3); Cal. Com. Jud. Ethics Opns., Internal Operating Rules & Proc., rule 5(e) [requesting parties may waive confidentiality and consent to disclosure by CJEO of identifying information].) The Forum is an advisory body of the Judicial Council that makes recommendations to the council for improving the administration of justice in all proceedings in which there is overlapping authority to exercise jurisdiction by the state judicial branch and the tribal justice systems. Members of the Forum include tribal court judges, state court judges, and chairs of the Judicial Council's advisory committees. For purposes of this informal opinion summary, the Forum and tribal courts are referred to as those terms are used in California Rules of Court, rule 10.60.

documentary being produced for public television that focuses on tribal justice systems in California. The committee was advised that the state court members of the Forum would appear in the documentary in a minor or secondary capacity and would be identified by judicial title but not wear robes, except in any filmed court proceeding.

I. Questions Presented

The Forum provided the committee with the following information and specifically asked the following questions:

“A respected filmmaker is producing an educational documentary for public television exploring the work of tribal courts in California. Would the appearance in the film of one or more state court judges (in particular, judges who are members of the Tribal Court-State Court Forum (Forum)) violate canon 2(B)(2) or any other provision of the California Code of Judicial Ethics because the documentary might ultimately generate some downstream pecuniary or other personal benefit to the producer or her production company, which owns the copyright?

Specifically, we seek an informal opinion on the following three, closely related questions: Does a judge’s appearance in a minor or secondary capacity in a documentary produced for public television focusing on tribal justice systems in California violate the Code of Judicial Ethics, when he or she:

“(1) Is interviewed about tribal courts, the overlap of jurisdiction with the state judicial branch and/or the work of the Forum [note: the judge would be identified by title but would not be wearing robes; the interview would not take place in a courtroom]?

“(2) Is filmed during a meeting of the Forum to illustrate aspects of inter-court cooperation [again, the judge would not be wearing robes; the meetings occur at the Judicial Council offices; the judge might be identified by title]?

“(3) Is filmed presiding over an actual judicial proceeding involving a case that is also being heard in a tribal court or otherwise involves inter-jurisdictional issues?”

II. Summary of Conclusions Provided

The appearance by state court Forum judges in the described documentary film would not justify a reasonable suspicion that the prestige of office was being utilized to promote a commercial product. The state court judges are permitted under the canons to appear in filmed interviews in which they explain their work with the Forum and tribal courts, including discussing court procedures and legal issues that would promote public understanding and confidence in the administration of justice. However, they must be cautious not to answer questions in such a way that discusses the substance of pending cases, creates the appearance of political bias or prejudgment, or otherwise reveals facts from confidential proceedings. The documentary may include filming of trial court proceedings only as permitted under California Rules of Court, rule 1.150, and any applicable local rules. Finally, state court Forum judges may appear in a filmed Forum meeting but must use the cautions advised for appearances and interviews.

III. Appearance in the Documentary

The Forum’s threshold question was whether California judges who are members of the Forum may appear in an educational documentary made for public television that could ultimately generate pecuniary or personal benefit to the filmmaker and copyright holder.

The committee concluded that there was no question the documentary film described in the request concerned the law, the legal system and the administration of justice. The Forum state court judges are authorized by canon 4B to participate

in educational activities concerning legal matters, and they may do so in televised media programming or educational film appearances. (Cal. Judges Assn., Formal Ethics Opn. No. 57 (2006) p. 2 (CJA Opinion No. 57); Cal. Judges Assn., Judicial Ethics Update (2003) p. 8.) Indeed, the Standards for Judicial Administration consider community activities that promote public understanding and confidence in the administration of justice to be an official judicial function, and judges are encouraged to develop educational programs to increase public understanding of the court system. (Cal. Stds. for Jud. Admin., std. 10.5(a), (b)(2)).² However, both canon 4B and the Standards for Judicial Administration specify that any judicial participation in educational activities must be consistent with the requirements of the California Code of Judicial Ethics.

Several canons set limits on judges when appearing and being interviewed in educational programs that will be broadcast or otherwise released for public viewing. Specifically, canon 2B(2) prohibits lending the prestige of judicial office to advance the pecuniary interests of others. The purpose for this limitation has been expressed in the context of televised appearances as preventing commercial endorsement and protecting the independence and integrity of the judiciary. (Cal. Judges Assn., Formal Ethics Opn. No. 10 (1958) p. 3 (CJA Opinion No. 10) [purpose of canon 2B(2) limitation is to prevent a judge's name or office from being directly or indirectly used as an instrument for attracting public attention to a

² See *Inquiry Concerning Ross* (2005) 49 Cal.4th CJP Supp. 79, 120-121 (*Ross*), where the Commission on Judicial Performance (CJP) found that judicial appearances on a public television program related to community affairs were not inappropriate based on 'the strong public policy encouraging California judges to promote public awareness of the judiciary and the judicial system,' under Standard of Judicial Administration, former section 39, now standard 10.5. However, the CJP also found that some of the comments made by the judge during those appearances were improper. (*Ross*, at p. CJP Supp. 123; see discussion of interviews, *post.*)

television program sponsor, business, or product]; *In re Inquiry of Broadbelt* (1996) 146 N.J. 501, 516 (*Broadbelt*) [a judge should avoid appearing in either commercial or noncommercial television programs when the judge's association with the program lends the prestige of office and compromises the independence and integrity of the judiciary].)

To prevent the use of the judicial office to promote commercial interests, at least one jurisdiction prohibits media appearances unless they are produced for purely nonprofit purposes.³ California, however, has long recognized that judicial appearances in commercially sponsored and funded programming may be permissible. (CJA Opn. No. 10, *supra*, p. 3 [canon 2B(2) does not proscribe the appearance of a judge on a television program merely because it is commercially sponsored].) The vast majority of jurisdictions are in accord.⁴ The line drawn in

³ (See N.Y. Advisory Com. on Jud. Ethics, Opn. 01-86 (2001) p. 1 [judge should not participate in an educational video production about the judicial branch of government that is being produced by a for-profit entity]; N.Y. Advisory Com. on Jud. Ethics, Opn. 09-182 (2009) p. 1 [judge may not be interviewed in a documentary that would accompany a criminal justice textbook where the video will be produced by a for-profit organization]; N.Y. Advisory Com. on Jud. Ethics, Opn. 94-116 (1995) p. 1 [judge may not participate in a television production intended to result in a television series based on the judge's judicial experiences and life].)

⁴ (See *Broadbelt*, *supra*, 146 N.J. at p. 516 [not every television appearance by a judge on commercial television will be improper]; Va. Jud. Ethics Advisory Com., Opn. 99-7 (1999) p. 1 [judge is not necessarily prohibited from all appearances on a commercial radio or television program]; ABA Com. on Prof. Ethics, Informal Opn. C-230(g) (1961) [the nature of the program and the appearance is the important thing and whether or not it is commercially sponsored is secondary]; S.C. Advisory Com. on Stds. Jud. Conduct, Opn. 14-1991 (1991) p. 1 [the nature and effect of the judge's appearance is the focus, not merely whether the show is commercial or noncommercial]; Md. Jud. Ethics Com., Opn. No. 1973-05 (1973) p. 1 [mock trial staged and filmed at commercial studios for a commercial program to inform the public about juvenile court proceedings is not

these jurisdictions between permissible and impermissible appearances is based on the educational nature of the programming and, more specifically, the degree to which it is commercially sponsored, endorses a product, or constitutes an advertisement.⁵

In California, the line has been similarly drawn. According to a 1958 advisory opinion by the California Judges Association (CJA), there was an impermissible degree of commercial sponsorship where a judge participated in a weekly television program that simulated traffic court proceedings. (CJA Opn. No. 10, *supra*, p. 1.) The show was originally an unsponsored public service program that became popular and was sold to commercial advertisers. The show opened and closed with a sponsorship announcement by a car dealership association and was interrupted by commercials designed to sell cars. CJA concluded that from this degree of commercial sponsorship, public viewers would have “fair reason to believe there was at least tacit official judicial approval of the reliability of the sponsor and his product” (*Id.*, pp. 3-4.)

proscribed so long as the tape is not used for fundraising and is not directly sponsored by an advertiser[.])

⁵ (See Fla. Jud. Ethics Advisory Com., Opn. No. 2006-14 [judge may not appear in a documentary film about a reading instruction program that tacitly endorses the program and is used as a marketing tool]; Neb. Jud. Ethics Com., Opn. 11-3, p. 2 [judge may not appear in an architectural firm's video about a courtroom construction project to be shown to potential courtroom renovation clients]; N.M. Advisory Com. on Code Jud. Conduct, Advisory Opn. No. 97-04 (1997) pp. 1-2 [judge prohibited from appearing on a CBS video as a judge reading and singing a morning television show endorsement]; Ind. Jud. Com. on Jud. Qualifications, Advisory Opn. 2-89, pp. 1-2 [judge may not appear on a television commercial for a cable television company that advances the cable company's private interests and is an advertisement or endorsement]; Md. Jud. Ethics Com., Opn. No. 2013-14 (2013) p. 1 [judge may not appear on for-profit program where the sponsor hopes the judge's presence will attract more viewers].)

In 1983, CJA addressed the question of whether a judge could appear on a public television program that was funded by a commercial sponsor. (CJA Opn. No. 28 (1983) p. 1.) The public service program opened and closed with an announcement that the program was made possible by a grant from a for-profit legal publisher. Observing that the judge did not announce the grant and was not identified personally with the grantor's product, CJA distinguished the commercial sponsorship in Opinion No. 10 and concluded that the judge's public television appearance was permissible because it did not use the power and prestige of judicial office to promote a business or product. (CJA Opn. No. 28, p. 2.) CJA concluded that "the public benefit" to be derived from "sparking interest in the law" and "presenting the law in a dignified and professional setting . . . far outweighs any remote possibility . . . that the judge will be perceived as a salesman for those making the grant." (*Ibid.*)

In 2006, CJA again addressed media appearances and lending the prestige of judicial office to personal or business interests. (CJA Opn. No. 57, *supra*, p. 3.) CJA concluded generally that when commercial factors do not predominate, there is little reason to find that a media appearance violates canon 2B(2) by lending prestige to an enterprise simply because the program is being aired for commercial profit, particularly if the media appearance or interview has solid educational content. (CJA Opn. No. 57, p.3.)

Here, the potential for some downstream pecuniary or other personal benefit to the copyright holder does not constitute a commercial factor that would violate canon 2B(2). The educational content not only predominates, it is the sole purpose of the film. As described, the appearance of the state court Forum judges cannot reasonably be perceived as that of a salesperson for the copyright holder's product. The clear public benefit to be derived from sparking an interest in the cross jurisdictional legal issues that are to be documented far outweighs any remote

possibility of personal or pecuniary gain. Judicial appearance in the documentary film would not lend the prestige of office to a predominately for-profit enterprise and is therefore not prohibited by the canons.⁶

(1). *Interview About Tribal Courts and the Forum*

The question of whether such appearances may include interviews potentially implicates several canons. In Opinion No. 57, CJA explained that a judge may not participate in media appearances and interviews if participation would cast doubt on the judge's impartiality (canons 1, 2A, 4A(1)), require the judge to comment on pending or impending cases or engage in inappropriate political activity (canons 2A, 3B(9)), demean the judicial office (canon 4A(2)), or interfere with the performance of judicial duties (canon 4A(4)). (CJA Opinion No. 57, *supra*, p. 2 [noting that educational programming on legal matters rarely creates a risk of demeaning the judicial office].)

Specifically, canon 2A prohibits public comments about cases or issues that are likely to come before the courts, and canon 3B(9) prohibits public comments about a case pending in *any* court.⁷ Although these canons apply to all media

⁶ As a judicial branch entity, the Forum's significant participation in the production of the film further supports this conclusion. (Wash. St. Courts Ethics Advisory Com., Opn. 99-04 (1999) p. 1 [judiciary may purchase or use donated time from a broadcasters association for radio and television presentations to educate the public as to how the judicial branch operates or to present programs on matters relevant to the judiciary]; N.Y. Advisory Com. on Jud. Ethics, Opn. 13-158 (2013) p. 1 [judge may participate in creating and producing a video to provide information about the history and current capabilities of the court and may invite other judges to appear in the video].)

⁷ This would include comments by state court judges about cases pending in tribal courts. "When the case is pending before a judge other than the commenting judge, the public may perceive the comment as an attempt to influence the judge

appearances, including those discussed generally above, they are of particular concern in the context of interviews where a judge is answering questions put to him or her by others. (CJA Judicial Ethics Update (Oct. 1989) No. 8 [where participation involves answering questions, a judge must be mindful of the prohibition against discussion of cases pending in the court system].)⁸

Canon 3B(9), however, expressly permits judges to explain court procedures and legal issues to promote public understanding and confidence in the administration of justice. (Rothman, *supra*, §§ 5.32-5.34, pp. 226-230.) Canon 3B(9) contains a narrow ‘public procedural exemption’ that permits judges to publically provide information about court procedures and give the public a better understanding of legal issues, even in cases pending in the judge’s court. (*Ross, supra*, 49 Cal.4th at pp. CJP Supp. 124, 128 [exemption permits explaining venue and jury procedures and providing neutral background information concerning the case and the specific issue before the court].) But the exemption does not allow the judge to comment publicly on the substance of a case, to make statements that could give the appearance of political bias or prejudgment, or to discuss facts from confidential proceedings. (*Ross, supra*, at p. CJP Supp. 123 [improper discussion of confidential juvenile proceedings showed an abandonment of neutrality that

who is charged with deciding the case.” (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1101.) Such commentary could undermine public confidence in the decisions of the court. (Rothman, *California Judicial Conduct Handbook* (2013 supp.) § 5.32, p. 226 (Rothman).)

⁸ Other jurisdictions are in accord regarding the potential pitfalls of interviews. (Va. Jud. Ethics Advisory Com., Opn. 99-7, *supra*, p. 1 [it is difficult to imagine an interview with a judge on a radio or television program that would not lead to discussion of legal issues either pending or impending]; *Broadbelt, supra*, 146 N.J. at p. 510, citing N.J. Advisory Com. on Jud. Conduct, Opn. 1-89 (1989) p. 1 for the caution that the give and take of an interview discussion might expose the judge to the hazard of commenting on the issues in a pending case].)

undermined public trust]; *id.*, at pp. CJP Supp. 124, 127 [improper comments about the facts and political overtones of a case on appeal had significance beyond the legal issues].) Thus, great care must be taken in any interview to avoid commenting on a case in a way that could undermine public confidence in the integrity and impartiality of the judiciary. (Rothman, *supra*, § 5.34, p. 227 [comments on cases rarely made due to concern that permitted comments on procedural matters are seen as involving the substance of the case].)

An interview that is a personal profile about the judge and does not mention cases is therefore permitted under canon 3B(9). (Rothman, *supra*, § 5.34, p. 230 [discussing a nationally broadcast interview with Judge Ito that did not mention the high profile case he was hearing].) This would necessarily extend to an interview that profiles the work with the Forum and tribal courts where cases are not mentioned.

In sum, the state court Forum judges are permitted under the canons to appear in filmed interviews in which they explain their work with the Forum and tribal courts, including discussing court procedures and legal issues that would promote public understanding and confidence in the administration of justice. But they must be careful not to make statements that describe the substance of pending cases, create the appearance of political bias or prejudgment, or reveal facts from confidential proceedings.

(2). Filming of a Case

Media coverage that includes recording and broadcasting court proceedings is governed by California Rules of Court, rule 1.150, which specifies that filming is prohibited unless exempted under the rule. (Cal. Rules of Court, rule 1.150(c).) The rule expressly prohibits filming of spectators (rule 1.150(e)(6)(D)), proceedings closed to the public (rule 1.150(e)(6)(B)), and conferences between

attorneys and clients, witnesses or other attorneys, and bench conferences (rule 1.150(e)(6)(E)). Otherwise, media coverage is permitted by court order. The judge has discretion to permit or limit recording (rule 1.150(e)). The rule specifies the factors a judge must consider when permitting filming.⁹ In addition, some courts have adopted local rules that provide further limitations on filming. So long as the filming is consistent with all applicable rules, the documentary may include filming of trial court proceedings.¹⁰

⁹ The specified factors include: (A) the importance of maintaining public trust and confidence in the judicial system; (B) the importance of promoting public access to the judicial system; (C) the parties' support of or opposition to the request; (D) the nature of the case; (E) the privacy rights of all participants in the proceeding, including witnesses, jurors, and victims; (F) the effect on any minor who is a party, prospective witness, victim, or other participant in the proceeding; (G) the effect on the parties' ability to select a fair and unbiased jury; (H) the effect on any ongoing law enforcement activity in the case; (I) the effect on any unresolved identification issues; (J) the effect on any subsequent proceedings in the case; (K) the effect of coverage on the willingness of witnesses to cooperate, including the risk that coverage will engender threats to the health or safety of any witness; (L) the effect on excluded witnesses who would have access to the televised testimony of prior witnesses; (M) the scope of the coverage and whether partial coverage might unfairly influence or distract the jury; (N) the difficulty of jury selection if a mistrial is declared; (O) the security and dignity of the court; (P) undue administrative or financial burden to the court or participants; (Q) the interference with neighboring courtrooms; (R) the maintenance of the orderly conduct of the proceeding; and (S) any other factor the judge deems relevant. (Cal. Rules of Court, rule 1.150(e)(3)(A)-(S).)

¹⁰ Other jurisdictions are in accord with the educational value of filming court proceedings. (See Nev. Standing Com. on Jud. Ethics & Election Practices, Opn. JE07-0 11 (2007) p. 1 [under rules of court, a judge may allow a television station to videotape an entire trial for posting on the television station's Web site and viewing by the general public].) Although New York is a jurisdiction that prohibits appearances and interviews in for-profit programming generally, as noted above, that prohibition does not apply to the filming of actual court proceedings. (See N.Y. Advisory Com. on Jud. Ethics, Joint Opn. 11-154/11-155 (2012) p. 1 [subject to administrative approvals, a judge may permit a for-profit video

(3). Filming of a Forum Meeting

The canons already discussed in section III.(1). would apply to any decision by the Forum to film its meetings. Thus, state court Forum judges may appear in a filmed Forum meeting but must use caution not to discuss the substance of pending cases, make statements that create the appearance of political bias or prejudice, or reveal facts from confidential proceedings.

IV. Conclusions

The appearance by state court Forum judges in the described documentary film would not give rise to a reasonable suspicion that the prestige of office was being utilized to promote a commercial product. The demonstrable public benefit to be derived from the educational content of the documentary far outweighs any attenuated possibility of personal or pecuniary gain to the copyright holder. Judicial appearance in the documentary film is therefore not prohibited by the canons. Further, the state court Forum judges are permitted under the canons to appear in filmed interviews in which they explain their work with the Forum and tribal courts, including discussing court procedures and legal issues that would promote public understanding and confidence in the administration of justice. However, they must be cautious not to discuss the substance of pending cases, create the appearance of political bias or prejudice, or reveal facts from confidential proceedings. The documentary may include filming of trial court

production company to film regular court proceedings for a documentary, and may permit a local public access television channel to film selected court hearings for broadcast at a later time, as long as the judge will merely perform his or her regular judicial duties while being filmed, will not receive compensation from the filming company or broadcaster, and will not allow the filming process to interfere with the court's proceedings].)

proceedings that are excepted under California Rules of Court, rule 1.150, and that follow any applicable local rules. Finally, state court Forum judges may appear in a filmed Forum meeting but must use the cautions that apply to appearances and interviews.



This informal opinion summary is advisory only (Cal. Rules of Court, rules 9.80(a), (e); Cal. Com. Jud. Ethics Opns., Internal Operating Rules & Proc. (CJEO) rule 1(a), (b)). It is based on facts and issues, or topics of interest, presented to the California Supreme Court Committee on Judicial Ethics Opinions in a request for an opinion (Cal. Rules of Court, rule 9.80(i)(3); CJEO rule 2(f), 6(c)), or on subjects deemed appropriate by the committee (Cal. Rules of Court, rule 9.80(i)(1); CJEO rule 6(a)).