

Committee on Judicial Ethics
Special Meeting
Wednesday, October 2, 2019

Committee members present via teleconference: Judge James T. Graham (Chair), Judge Robert B. Shapiro, Judge Vernon D. Oliver, Judge Michael P. Kamp, Judge Karen A. Goodrow (Alternate) and Professor Carolyn W. Kaas. Staff present: Attorney Viviana L. Livesay (Assistant Secretary) and Attorney Adam P. Mauriello (Assistant Secretary).

MINUTES

- I. Judge Graham called the meeting to order at 1:33 p.m. Although publicly noticed, no members of the public were present.

- II. The Committee discussed **Informal JE 2019-03** concerning whether a Judicial Official may play a scripted role of a fictional judge in an upcoming movie. The Judicial Official will receive no compensation for playing the role. The additional facts are as follows: A nationally known writer and producer, whose headquarters is in NYC, has invited a Judicial Official to play a scripted role of a fictional judge in a movie entitled “Justice on Trial 20/20.” The movie, scheduled for release on February 1, 2020, is about two civil rights attorneys suing the United States Department of Justice for reparations and damages on behalf of the African-American community. The production brings back time using witnesses from the past to testify, such as Harriet Tubman, Medgar Evers and Emmett Till. The production reaches its climax during a mixed-race jury deliberation during which many relevant legal and socio-economic issues are discussed.

The Judicial Official characterized this project as a “docudrama” because it is a dramatized re-enactment of actual events. The Judicial Official stated that the docudrama is educational in nature and has historical significance. The Judicial Official’s role would be to preside over the proceeding, which would include allowing the parties to make opening statements and closing arguments, and rule on evidentiary issues. The Judicial Official has not been asked to promote the docudrama to the public at large. However, if asked, the Judicial Official would not object to speaking on occasion to small groups about the educational and historical significance of this film.

A [two minute online trailer](#) of the movie depicts the following: a theatrical courtroom scene in which an attorney talks about reparations, real-time video recording of a car shooting victim, police camera footage of police brutality, and video clips of white supremacists, President Trump at a rally and a speaker talking to an audience about the \$17 trillion cost of reparations. The words “Justice on Trial the Movie 20/20,” “The Killing of Innocent Blacks on Trial,” “Police Brutality on Trial” and “Reparations Now” also flash on the screen.

Rule 1.2 of Code states that a judge should act at all times in a manner that promotes public confidence in the ... impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.

Rule 3.1 of the Code states that a judge may engage in extrajudicial activities, except as prohibited by law. However, when engaging in extrajudicial activities, a judge shall not: (1) participate in activities that will interfere with the proper performance of judicial duties; (2) participate in activities that will lead to frequent disqualification of the judge; (3) participate in activities that would appear to a reasonable person to undermine the judge’s independence, integrity or impartiality; (4) engage in conduct that would appear to a reasonable person to be coercive; or (5) make use of court premises, staff or resources except for incidental use or for activities that concern the law, the legal system or the administration of justice, or if the use is permitted by law.

The rule’s commentary encourages judges to participate in appropriate extrajudicial activities and observes that “[t]o the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of

justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law.” Rule 3.1, cmt. (1).

This Committee has not previously considered whether a judge may participate as an actor in a movie. Advisory committees from other jurisdictions have generally concluded that a judge may, subject to certain limitations, participate in educational video programming (such as news programs, talk shows, documentaries or other educational programs). See [New York Advisory Joint Opinion 17-163/18-03/18-21](#) (judge may participate in a commercially produced television documentary series or news program/news segment); [California Informal Advisory Opinion 2014-004](#) (judge may appear in an educational documentary for public television on tribal justice systems in California); [Massachusetts CJE Opinion 2007-5](#) (judge may appear, without compensation, as a “presiding judge” on an episode of a public television children’s program that is to be filmed in a real courtroom); and [Texas Judicial Ethics Opinion 204 \(1997\), p. 121](#) (a sitting judge may appear in a television program portraying a judge presiding over simulated court proceedings based on actual trials, provided the judge is not paid and all other portions of the Code are followed, i.e. does not demean the judiciary, etc.). These cases can be distinguished from the present inquiry because the subject matter of these programs is not controversial or political in nature. In contrast, the trailer for the movie “Justice on Trial 20/20” raises several controversial political and societal issues, such as reparations, police brutality, and the killing of innocent blacks. The Committee recognized that this trailer represents a preview of the coming attraction and may differ from the finished product. Nevertheless, the Committee concluded that the overall tenor of the preview was illustrative.

Based on the facts presented, the Committee determined that the Judicial Official should not play a scripted role of a fictional judge in the movie "Justice on Trial 20/20." The Committee noted that the Judicial Official may be called upon to rule in

cases that involve claims of a police shooting or police brutality. The Committee concluded that the Judicial Official's proposed participation in the movie would violate Rules 1.2 and 3.1 (3) of the Code of Judicial Conduct because the extrajudicial activity would appear to a reasonable person to undermine the Judicial Official's independence and impartiality.

III. The meeting adjourned at 1:52 p.m.