

Maryland Judicial Ethics Committee

Opinion Request Number: 2006-11

Date of Issue: September 28, 2006

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge's Participation in Television Commercial for Medical Procedure

Issue: Is a judge's participation in a television commercial ("infomercial") for surgery permitted under the Maryland Code of Judicial Conduct.

Answer: No.

Facts: A judge recently underwent surgery, performed by a local physician at a local hospital. The surgery was the first performed by the physician using a new technique. The judge responded well to surgery and was asked by the physician and hospital to appear in an infomercial in which the physician would explain the procedure and the judge's successful recovery and rehabilitation. The infomercial would be a few minutes long and run five or six times on a local television station. The judge's judicial position would not be referred to in the infomercial.

Discussion: The request directly implicates Canon 2 of the Maryland Code of Judicial Conduct (2005) entitled Avoidance of Impropriety and the Appearance of Impropriety, specifically Canon 2B that provides, in relevant part, that a "judge shall not lend or use the prestige of judicial office to advance the private interests of the judge or others". It also implicates Canon 4, Extra Judicial Activities, which permits extra judicial activities that do not "demean the judicial office".

Obviously, the purpose of the infomercial is to advance the professional interests of the physician and the hospital. It is not intended as a scholarly presentation to medical professionals for the advancement of medical science, but "to advance the private interests of ... others."

The question then becomes whether the fact that there will be no reference to the judge's judicial position is sufficient to avoid impropriety or the appearance of impropriety. If there were other patients with similar surgical outcomes, one might easily conclude that the judge's selection was based on the desire to use the prestige of the judge's judicial position for the physician's and the hospital's private financial interests. In this case, however, it appears that the judge may be the only patient of the physician and the hospital to undergo this form of surgery. In that case, the judge's judicial position might not be a major factor in the judge's selection. Nevertheless, we are not persuaded that this fact controls the analysis.

Even if the judge's name is not mentioned in the infomercial, circuit court judges, even in urban areas, are frequently well known, and if recognized, the judge's apparent endorsement may well impact the credibility and the persuasiveness of the infomercial. Moreover, the judge would not be able to control disclosure of his judicial position to people

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making further inquiry after seeing the infomercial.

Without demeaning infomercials generally, or this proposed infomercial specifically, we believe that the judge's appearance in an infomercial, were it known that he was a judge, would detract from the dignity of the office that all judges are obligated to maintain. Under the circumstances, we believe that the applicable Canon provisions prevent the judge's participation in the infomercial.

Application: The Judicial Ethics Committee cautions that this opinion is applicable only prospectively and only to the conduct of the requestor described in this opinion, to the extent of your compliance with this opinion. Omission or misstatement of a material fact in the written request for opinion negates reliance on this opinion.

Additionally, this opinion should not be considered to be binding indefinitely. The passage of time may result in amendment to the applicable law and/or developments in the area of judicial ethics generally or in changes of facts that could affect the conclusion of the Committee. If you engage in a continuing course of conduct, you should keep abreast of developments in the area of judicial ethics and, in the event of a change in that area or a change in facts, submit an updated request to the Committee.