



Ohio Board of Professional Conduct

OPINION 2021-8

Issued October 1, 2021

Judicial Participation in a Documentary Film

SYLLABUS: Subject to certain ethical limitations, a specialized docket court judge may participate in a not-for-profit documentary film that includes the filming of courtroom proceedings and interviews of the judge and court personnel.

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Ohio Board of Professional Conduct

65 SOUTH FRONT STREET, 5TH FLOOR, COLUMBUS, OH 43215-3431

Telephone: 614.387.9370 Fax: 614.387.9379

www.bpc.ohio.gov

PATRICIA A. WISE
CHAIR
HON. D. CHRIS COOK
VICE-CHAIR

RICHARD A. DOVE
DIRECTOR
D. ALLAN ASBURY
SENIOR COUNSEL
KRISTI R. MCANAU
COUNSEL

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SYLLABUS: Subject to certain ethical limitations, a specialized docket court judge may participate in a not-for-profit documentary film that includes the filming of courtroom proceedings and interviews of the judge and court personnel.

QUESTION PRESENTED:

Whether a judge in a specialized docket court may permit a documentary filmmaker to record court proceedings and interview the judge and court personnel as part of a documentary film about community support of persons with serious mental illness.

APPLICABLE RULES: Jud.Cond.R. 1.2, 1.3, 2.1, 2.4, 2.10, 2.12, 3.1, and 3.12

OPINION:

A documentary filmmaker has approached a judge presiding over a specialized docket court about filming court proceedings and potentially interviewing the judge and court personnel for a documentary film. The specialized docket court is considered a partner in a countywide effort to assist individuals diagnosed with mental illness and involved in the criminal justice system and will be one focus of the documentary. The documentary film will portray the work of law enforcement, medical providers, social service workers, peer supporters, patients, and families in the county, in supporting people with serious mental illness. The documentary film will be financially underwritten by several nonprofit entities and will not be commercially marketed.

Judge's Participation in a Documentary Film

A judge's participation in a documentary film is an extrajudicial activity. *See* Ca. S.Ct. Comm. Inf. Op. 2014-04. A judge is generally permitted and even encouraged to engage in extrajudicial activities, especially those that involve the law, the legal system, or the administration of justice. Jud.Cond.R. 3.1, cmt.[1]. Participation by judges in certain extrajudicial activities "further[s] public understanding of and respect for courts and the judicial system." Jud.Cond.R. 2.1, cmt.[2]. Given that the underlying subject of the proposed documentary concerns the legal system, a judge's involvement is permissible if the judge aligns his or her conduct with certain ethical limitations imposed by the Code of Judicial Conduct.

Jud. Cond. R. 3.1

A judge may participate in extrajudicial activities, including a documentary film, to the extent they do not interfere with the proper performance of the judge's official duties. Jud.Cond.R. 3.1(A). When participating in a documentary film a judge must avoid any appearance that he or she is devoting a significant amount of time unrelated to his or her judicial responsibilities. A judge's official duties must take precedence over the judge's participation in a documentary film. Jud.Cond.R. 2.1.

Moreover, a judge may not participate in a documentary if it would appear to a reasonable person that the participation will undermine the judge's independence, integrity, or impartiality. Jud.Cond.R. 3.1(C). *See In re Inquiry of Broadbelt*, 146 N.J. 501, 515, 683 A.2d 543 (1996) (a judge should avoid appearing in either commercial or non-commercial programs when the judge's association with that program compromises the independence and integrity of the judiciary.) During the filming of the documentary when court is in session, a judge should continue to carry out the regular and ordinary functions of his or her judicial office. The judge must also uphold the integrity of the judiciary and not engage in conduct during filming that would call into question whether the proceedings or the judge's official actions are provided for the benefit of the documentary or are being conducted in the regular course of court business. Likewise, a judge must be cognizant of the ethical requirement to avoid outside influence by third parties including pressure or suggestions from a filmmaker to make certain rulings or

reach a specific result in a case. Jud.Cond.R. 2.4 (a judge shall not allow other interests to influence the judge's judicial conduct or judgment).

Avoiding the Abuse of the Prestige of Office

Under the Code of Judicial Conduct, a judge may not abuse the prestige of office to advance the economic interests of others. Jud.Cond.R. 1.3. Consequently, a judge must consider any potential pecuniary benefit to the filmmaker or others in order to avoid the potential for an abuse of the prestige of office. When a documentary, including the one in question, is entirely grant funded, will not be commercially marketed, and will not generate any income for any person or entity, a judge's involvement in the project does not implicate Jud.Cond.R. 1.3. Judicial involvement in a documentary film that will be commercially marketed or serve as a source of income for a person or entity may, in some circumstances, be construed as an abuse of the prestige of office. Ark. Eth. Adv. Comm. 2013-02 (taping or televising court proceedings for for-profit entity violates Rule 1.3.)

In addition, a judge involved in a documentary film must be careful to avoid abusing the prestige of office to advance his or her own personal interests. Potential personal interests in this context generally consist of esteem, publicity, and notoriety for the judge. Consequently, a judge should discourage a documentary filmmaker to make him or her the focus or subject of the film. A judge's role in the documentary, regardless of whether the judge is being interviewed or merely observed on camera, should be limited and comparable to the roles of other public officials taking part in the film. The more focused the documentary is on a judge, the greater the likelihood that an abuse of the prestige of office to further the personal interests of the judge may arise.

Discussion of Impending/Pending Matters

As part of the documentary film a director or producer may desire to interview the judge or court personnel. While a judge may generally participate in such an interview, the judge cannot publicly comment on pending or impending matters in his or her court. Jud.Cond.R. 2.10(A). During the filming of a documentary interview, a judge may not comment about a participant's case including, but not limited to, any treatment by a third-party provider, an overview of the underlying facts, the applicable law, the judge's judicial mental process, or the likely outcome in a case. Because cases on a specialized docket may be transferred to the regular docket, appealed, or even

reopened, a judge must refrain from discussing the specifics of open and closed cases with a documentary filmmaker. A judge may, however, comment on the function of the specialized docket court, provide an overview of the court's general functions, processes, and procedures, and its overall mission. *See* Jud.Cond.R. 2.10(D)(a judge may make public statements in the course of official duties and explain court procedures.) A judge should also ensure that his or her staff complies with the same conduct expected of the judge and not comment with the documentary filmmakers on a pending or impending matter that will be heard in the specialized docket court. *See* Jud.Cond.R. 2.12.

Compensation

Although a judge's participation in the documentary is an extrajudicial activity, a judge may not accept any compensation from a documentary filmmaker. Doing so eliminates any appearance of impropriety, avoids undermining the judge's independence, integrity, or impartiality, and ensures compliance with state law. Jud.Cond.R. 3.12. A judge is already compensated by state law for the performance of his or her regular judicial duties that occur when regular court proceedings are filmed or when the judge is interviewed during regular court hours. Any additional compensation to the judge for performing official duties constitutes supplemental income prohibited by R.C. 2921.43. The statutory prohibition against the receipt of supplemental income also applies to court personnel.

Incidental Use of Court Facilities and Personnel

The production of a documentary film will involve the use of court premises and the judge's and staff's time. A judge may engage in the incidental use of court premises, personnel, or other resources when engaging in an extrajudicial activity. Jud.Cond.R. 3.1(E). Therefore, a judge may permit the infrequent or occasional use of court premises by a documentary filmmaker to record court proceedings and the use of staff to assist in making arrangements for the filming of proceedings or interviews. In addition, a judge should ensure that the filming does not interfere with the regular daily operation of the court. For example, the judge should avoid suggestions by the filmmaker when to hear certain matters at a specific time, in a particular order, or to allow for a "second take" of matters that have already been heard on the record.