

## Advisory Committee on the Code of Judicial Conduct

Hon. Frank H. Allen, Jr. Chairman  
Hon. Thomas A. Donnelly  
Prof. William T. MacPhearson, Jr.  
Hon. Marie A. Baca

March 19, 1997

Re: Judicial Advisory Opinion No.97-04

Dear

You have requested an advisory opinion of this Committee regarding whether your appearance in a proposed CBS video would violate the Code of Judicial Conduct. The content of the proposed tape is as follows:

Here in Albuquerque, New Mexico as a State Court Trial Judge  
I make decisions all the time.  
My first decision weekdays when I wake up is to watch CBS.  
Because there' s more to this morning.

The provision of the Judicial Code applicable to your inquiry is Rule 21-200(B), NMRA 1997, which reads, in part, as follows:

A judge shall not lend the prestige of judicial office to advance the private interest of the judge or others[.]

Having reviewed the Rule and pertinent advisory opinions, it is our opinion that the text which you read and sing in the proposed CBS tape would amount to an improper endorsement of CBS This Morning. In the video, you identify yourself as a New Mexico Trial Court Judge and indicate that you watch CBS every weekday. Judicial Advisory Opinion 95-03 is instructive in this case. There, we addressed the issue of whether Rule 21- 200(B) precluded a photographer from displaying a picture of the Supreme Court in his studio as an example of his work. We found that the photographer could display the photograph without violating the Judicial Code; however, it could "not be done so with accompanying text or in any other manner that would create the appearance of endorsement or advertising by the Supreme Court. "

Since your appearance in the video is specifically linked to your position as a judge and the tape supports and endorses CBS and its morning show, we believe this falls within the prohibition of Rule 21-200(B) because it lends the prestige of your judicial office to advance the private interests of CBS. See New Mexico Advisory Opinion 95-03; see also New York Advisory Opinion No.87-13 (1987) (private research institute cannot use judge's complimentary letter for advertising); Florida Advisory Opinion 80-4 (May 20, 1980) (judge's picture can be used in public or nonprofit college paper but may not be used to promote student enrollment). If the tape did not identify you as a judge, the video would be acceptable; however, here, the script emphasizes your judicial position and your daily decisionmaking duties as a judge.

Thus, we would advise against permitting use of the tape.

Very truly yours,

Frank H. Allen, Jr.  
Chairman, Judicial  
Advisory Committee