



STATE OF DELAWARE
THE JUSTICE OF THE PEACE COURT

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POLICY DIRECTIVE 14-251 (REVISED)

**TO: ALL JUSTICES OF THE PEACE
ALL NON-JUDICIAL COURT EMPLOYEES**

**FROM: ALAN G. DAVIS
CHIEF MAGISTRATE** *AGD*

DATE: JUNE 5, 2019

**RE: PAID ADVERTISING SHOWN ON VIDEO MONITORS IN COURT
LOBBIES**

This policy directive rescinds and replaces former Policy Directive 14-251 dated December 12, 2014. This revision rescinds the requirement for a quarterly “direct financial interest review” by Court staff of all active advertisers. The number and turnover of advertisers has proven to be much less than originally estimated. Advertisers will continue to be initially screened for staff “direct financial interest.”

Please destroy all copies of the December 2014 version of Policy Directive 14-251.

Scope:

This Policy Directive sets forth the Court’s rationale and process for reviewing and approving or disapproving paid advertising shown on video monitors in Court lobbies, operated by the Motor Vehicle Network (MVN).

Justice of the Peace Court Policy:

It is the policy of the Justice of the Peace Court to prescreen advertisers and advertisements proposed to be shown on lobby monitors to ensure that they neither compromise nor give the impression of compromising the impartiality of the Court and its judicial officers. Additionally, the Court will not approve any advertising that advances or gives the appearance of advancing the personal or economic interests of its judges or any of its employees.

Policy Directives/Legal Memoranda Affected:

Although the Justice of the Peace Court has issued several legal memoranda and policy directives regarding judicial impartiality and sales on Court premises, no other policy directives or legal memoranda address the specific topic of paid advertising appearing on lobby monitors. As a result, none are directly affected by this policy directive.

Effective Date:

This policy shall take effect immediately upon issuance and shall continue until further notice.

Discussion:

In 2012, the Chief Magistrate of the Justice of the Peace Court requested an opinion from the Judicial Ethics Advisory Committee (JEAC) of the State of Delaware to address the ethical concerns raised by providing programming containing advertisements on video monitors in Justice of the Peace Court lobbies. At the time, the Justice of the Peace Court was considering entering into an agreement with the Motor Vehicle Network (MVN), a private company that provides lobby programming to state motor vehicle agencies across the country, including the Delaware Department of Motor Vehicles.

MVN programming consists of current news, weather, trivia, sports and customer specific notices. The purpose of providing MVN programming is three-fold: crowd-control, the provision of general information about court proceedings, and the provision of news. MVN services are provided at no cost to government agencies; for funding, MVN sells advertising slots that air during the programming. MVN allows clients, such as the Court, complete control over both the advertiser list and advertisement content.

The Chief Magistrate's letter requested a JEAC advisory opinion regarding the ethical concerns of displaying paid advertising in the Court lobbies raised by Rules 1.2(A), "Promoting Confidence in the Judiciary,"¹ and Rule 1.3(A), "Avoiding Abuse of the Prestige of Judicial Office,"² of the Delaware Judges' Code of Judicial Conduct.

To address these concerns, the Chief Magistrate proposed a screening process that would require MVN to prescreen the content to be placed on the monitors to ensure that no sexually suggestive advertising or advertising dealing with firearms or alcohol appeared on monitors in court lobbies. The Court would also have MVN screen out advertising from lawyers, bail bond companies, apartment complexes, and any additional groups that have frequent interaction with

¹ Rule 1.2(A) states "a judge should act at all times in a manner that promotes confidence in the integrity and impartiality of the judiciary and should avoid impropriety and appearance of impropriety in all activities."

² Rule 1.3(A) states "A judge should not abuse the prestige of the judicial office to advance the personal or economic interest of the judge or others, and should discourage others from doing so."

the Court. Potential advertisers would be further screened for involvement in active and recent cases before the Court and for people or entities that have relationships with the Court or Court employees. Finally, to address any lingering concerns, the programming would include a prominent disclaimer stating that the Court does not endorse any of the products or services advertised.

The JEAC issued an opinion saying that while the use of court sponsored television programming does raise some ethical concerns, if handled appropriately it may provide a great public service and would not violate The Delaware Judges' Code of Judicial Conduct. The JEAC concluded that the proposed planning and screening process and proposed disclaimer would, "appropriately and sufficiently address any ethical concerns about the implementation of this program."

The Court concluded an agreement with MVN effective February 1, 2013. Term 12.a.³ of the agreement gives the Court the right to exclude any advertising at its discretion and acknowledges that the Court will employ the screening process for potential advertisers and advertisements that were embodied in the JEAC's opinion. While the Court retains complete discretion, it is mindful of advertisers' First Amendment rights and will deny advertising only in those cases where it fails to meet the standards set by MVN and the Court's ethical requirements as defined by The Delaware Judges' Code of Judicial Conduct.

In order to implement the accepted screening process, the Justice of the Peace Court will provide MVN with a categorical list of advertisers that will not be accepted by the Court. That list will supplement the MVN policy of not accepting firearms or alcohol advertising. In addition to the other categories described by Chief Magistrate to the JEAC (lawyers, bail bond companies, and apartment complexes), the Court will not approve advertising from public storage companies and companies providing professional services to the Court (e.g., professional witnesses, court transcription services, etc).

The Justice of the Peace Court will provide MVN with text for a disclaimer that will run periodically during the programming shown in Court lobbies. The disclaimer will say that the Court does not solicit advertising, is not paid for the advertising being shown, and that the Court does not endorse any of the products or services advertised.

MVN will be directed to provide the Justice of the Peace Court with a list of proposed advertisers once MVN has solicited advertisers for the Court's broadcast system. MVN will also provide updates whenever a new advertiser is proposed and when an existing advertiser is dropped. The list/updates will identify the full legal name of the artificial entity (i.e., company or public body) as established with the state in which it is incorporated or registered. MVN will be directed to ask prospective advertisers whether they have been a party to proceedings before the Court within the past six months or have an officer who serves as *pro se* representative for the advertiser

³ Term 12.a states "All advertisers shall be responsible and reputable firms, advertising appropriate products or services of interest to the general public, and Subscriber [JP Court] has the right to exclude any advertising at its discretion upon written notice to RNS Communications, Inc [d.b.a MVN]. To address any potential ethical concerns, Subscriber proposes implementation of a thorough screening process for potential advertisers and advertisements, as set forth in the opinion from the Judicial Ethics Advisory Committee of the State of Delaware."

and has a current JP Civil Form 50 on file with the Court. Advertisers responding positively shall not be accepted.

Upon receipt of names of proposed advertisers, the Justice of the Peace Court will ensure that they comply with the categorical restrictions provided to MVN. Court staff will review the civil case management system (Contexte) to verify whether the advertiser has current or recent business before the Court. If so, they shall not be accepted. Court staff will also review the current list of Form 50 *pro se* representatives. Entities with active representation shall not be accepted.

The Justice of the Peace Court will distribute the list of advertisers that pass the above review to all Justice of the Peace Court employees via email, requesting that employees report if they have any "direct financial interest" in any of the proposed advertisers. The email will define "direct financial interest" for non-judicial staff as defined in 29 *Del.C.* §5804(5)⁴ and for judicial staff as an artificial entity for which they would file a report of financial interest in accordance with 29 *Del.C.* §5813.⁵ Staff will be advised to report any "direct financial interest" to the Administrative Office and staff attorney. Advertisers for which any Court employee reports a verifiable "direct financial interest" shall not be accepted.

⁴ 29 *Del.C.* §5804(5) states: A person has a "financial interest" in a private enterprise if: a. The person has a legal or equitable ownership interest in the enterprise of more than 10% (1% or more in the case of a corporation whose stock is regularly traded on an established securities market); b. The person is associated with the enterprise and received from the enterprise during the last calendar year or might reasonably be expected to receive from the enterprise during the current or the next calendar year income in excess of \$5,000 for services as an employee, officer, director, trustee or independent contractor; or c. The person is a creditor of a private enterprise in an amount equal to 10% or more of the debt of that enterprise (1% or more in the case of a corporation whose securities are regularly traded on an established securities market)

⁵ 29 *Del.C.* §5823 states: Every public officer as defined in § 5812 of this title shall file a report disclosing financial interests, as hereinafter provided. Each report shall be on a form prescribed by the Commission, shall be signed by the public officer and shall include at least the following information: (a)The name and position of the public officer; and (1)The name, instrument and nature of ownership, and any position of management held by, or constructively controlled by, the public officer in any business enterprise in which legal or equitable ownership is in excess of \$5,000 fair market value or from which income of more than \$5,000 was either derived during the preceding calendar year or might reasonably be expected to be derived during the current calendar year. Time or demand deposits in a financial institution, or any debt instrument having a fixed yield shall not be listed unless convertible to an equity instrument; and (2)The name, address and type of practice, without reference to the identity of any individual clients served, of any professional organization in which the public officer is the sole practitioner, officer, director or partner, or serves in any advisory capacity, or which is constructively controlled by the public officer, from which income of more than \$5,000 was either derived during the preceding year or might reasonably be expected to be derived during the current calendar year; provided, however, that any such organization construed as a business enterprise and reported pursuant to paragraph (a)(2) of this section need not be reported under this subsection; and (3)The source of each of the following items received during the preceding calendar year, or reasonably expected to be received during the current calendar year: (4)Any income derived for services rendered exceeding \$1,000 from a single source, unless such income is otherwise identified pursuant to paragraph (a)(2) or (3) of this section; or a. Any capital gain exceeding \$1,000 from a single source other than from the sale of a residence occupied by the public officer; or b. Any reimbursement for expenditures exceeding \$1,000 from a single source; or c. Any honoraria; or d. Any gift with a value in excess of \$250 received from any person, identifying also in each case the amount of each such gift. For purposes of compliance with this gift reporting obligation, the recipient may rely in good faith upon the representation of the source of the gift as to the gift's value; and e. Each creditor to whom the public officer was indebted for a period of 90 consecutive days or more during the preceding calendar year in an aggregate amount in excess of \$1,000. (5) Each creditor to whom the public officer was indebted for a period of 90 consecutive days or more during the preceding calendar year in an aggregate amount in excess of \$1,000.

The Justice of the Peace Court will advise MVN of advertisers who have been approved. Once MVN has the artwork/text for the ad(s) ready for review they will forward to the Court for its review. Court staff will review the advertising for any objectionable content and advise MVN of the results of that review.

The Justice of the Peace Court will maintain a listing of approved advertisers. At least once a quarter the Court will review all advertisers for appearances before the Court during the quarter or filing for *pro se* representation. MVN will be notified to remove advertisers found to have active litigation/*pro se* representation from Court programming as soon as possible.

Additionally, a listing of all active advertisers will be sent annually to all JP Court staff via email for a follow up “direct financial interest” review. The purpose of this is for employees hired since the last review to determine if they have “direct financial interest” in any of the advertisers as defined above and for existing employees to review for any changes in their financial interests. Advertisers for which a positive reply is received will be removed from the list of approved advertisers and MVN will be notified to remove their advertisements from Court programming as soon as possible.

Conclusion

It is the policy of the Justice of the Peace Court not to permit paid advertising to appear on Court lobby monitors that calls into question the impartiality of the Court or any of its officers or that advances or appears to advance the financial interests of any of its employees.

cc: Honorable Leo E. Strine, Jr.
Honorable Andre G. Bouchard
Honorable Jan Jurden
Honorable Alex J. Smalls
Honorable Michael K. Newell
Amy Quinlan, State Court Administrator
All Justice of the Peace Courts
Marianne Kennedy, Justice of the Peace Court Administrator
Jody Huber, Esquire, Justice of the Peace Court Staff Attorney
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