

**JUDICIAL ETHICS ADVISORY COMMITTEE
OF THE
STATE OF DELAWARE**

The Hon. Kenneth M. Millman., Chair
The Hon. Richard F. Stokes, Vice Chair
The Hon. Jan R. Jurden
The Hon. Charles W. Welch, III
The Hon. Alan G. Davis
The Hon. Michael K. Newell
The Hon. J. Travis Laster

JEAC 2012-2

May 3, 2012



**RE: Request for Opinion from the Judicial Ethics Advisory Committee
Regarding Video Monitors in Lobbies at Courts**

Dear :

By correspondence dated February 28, 2012, you have requested an opinion from the Judicial Ethics Advisory Committee (“Committee”) to address the ethical concerns raised by providing programming containing advertisements on video monitors in the lobbies at Delaware Justice of the Peace Courts. Thank you for the information presented with your request. This information was quite useful to the Committee. For the reasons that follow, the Committee has determined that while the use of court sponsored television programming does raise some concerns, if done appropriately, it could provide

a great public service and will not violate The Delaware Judges' Code of Judicial Conduct.

Factual Background (as provided in your correspondence):

The Delaware Justice of the Peace Courts currently have video monitors in several high volume lobbies. There is a three-fold purpose for these monitors. They are utilized for crowd-control, to provide general information about standard proceedings and to provide news. Unfortunately, the Justice of the Peace Courts lack the necessary resources to develop and implement new programs to be broadcast on these monitors. Despite being in place for several years, at this time, the monitors are only used to show the weather and news.

The Justice of the Peace Court ("Court") would like to enter an agreement with the Motor Vehicle Network ("MVN"), which is a private company currently providing programming to similar monitors at the Delaware Department of Motor Vehicles. MVN would assume the costs of equipment, programming and maintenance. MVN is able to provide these services to governmental agencies at no charge because they make their money from selling advertising slots that air during the programming. These advertising slots make up approximately three of every fifteen minutes of "air" time.

MVN allows its clients to have complete control over both the advertiser list and the actual content of the advertisements. To address any potential ethical concerns, the Court proposes the implementation of a thorough screening process for potential advertisers and advertisements. The preliminary plan is to use some of the programming that MVN already provides to the Delaware Department of Motor Vehicles, such as information about seat belts, car seats and traffic safety. In addition, MVN will work

with the Court to develop location specific content that would also help explain the arraignment process, civil proceedings and court calendars.

The Screening Process (as described in your correspondence):

The first step in the screening process will require MVN to prescreen the content to be placed on the monitors to ensure that any sexually suggestive advertising or advertising dealing with firearms or alcohol is removed. The Court would also have MVN screen out lawyers, bail bond companies, apartment complexes, and any additional groups that have frequent interaction with the Court. Advertising that makes it through these initial screening procedures will then be further screened for active and recent cases, as well as for people and entities that have relationships with the Court or court employees, and other inappropriate subject matter. Finally, to address any lingering concerns, the programming will also include a prominent disclaimer stating that the Court does not endorse any of the products or services advertised.

Requirements of The Delaware Judges' Code of Judicial Conduct

Your inquiry implicates Rule 1.2 and Rule 1.3 of The Delaware Judges' Code of Judicial Conduct. The relevant portions of these rules provide as follows:

Rule 1.2 Promoting Confidence in the Judiciary

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

Comment: The test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity,

impartiality and competence is impaired. . . A judge may initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge should act in a manner consistent with this Code.

Rule 1.3: Avoiding Abuse of the Prestige of Judicial Office

(A) A judge should not abuse the prestige of the judicial office to advance the personal or economic interests of the judge or others, and should discourage others from doing so.

A. Rule 1.2(A) Analysis (Promoting Confidence in the Judiciary)

The use of video monitors to provide information and advertising in a court lobby raises some unique ethical issues to be considered. The major issue is whether the programming or advertisements on these video monitors would damage public confidence in the integrity and impartiality of the Court and its judicial officers. Delaware Rule 1.2(A) of Canon 1 of The Delaware Judges' Code of Judicial Conduct requires a judge to act in a manner that will promote "public confidence in the integrity and impartiality of the judiciary." Del. Judges' Code of Judicial Conduct Canon 1, R. 1.2(A). The Rule further states that judges "should avoid impropriety and the appearance of impropriety in all activities." *Id.*

The Comment to Rule 1.2(A) provides some additional guidance that seems to be helpful in resolving the issue here. Del. Judges' Code of Judicial Conduct Canon 1, R. 1.2(A) cmt. According to the Comment, the test for whether any conduct in question would lead to the appearance of impropriety is "whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable

inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired." *Id.*

So long as MVN and the Court adhere to the steps in the advertising screening process as have been proposed, the test as provided in the Comment should be satisfied. A reasonable mind would most likely understand that advertising is necessary to provide funding for programming, and will not necessarily associate that advertising with the judge or court where the video monitor is placed. The disclaimers that the Court proposes to use would most certainly take care of any residual doubt.

Additional support for this conclusion can also be found in the same Comment for Rule 1.2(A). Del. Judges' Code of Judicial Conduct Canon 1, R. 1.2(A) cmt. In this regard, the Comment states that "A judge may initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice" as long as such activities are conducted in a manner that is consistent with The Delaware Judges' Code of Judicial Conduct. *Id.* The Court plans to work with MVN to develop content that will be helpful to the members of the public to which the Court provides service. The proposed use of video monitors appears to be exactly the kind of community outreach and promotion of public understanding that the Comment was intended to encourage.

B. Rule 1.3(A) Analysis (Avoiding Abuse of the Prestige of Judicial Office)

Your inquiry also implicates Rule 1.3(A) of The Delaware Judges' Code of Judicial Conduct. This Rule provides that a "judge should not abuse the prestige of the judicial office to advance the personal or economic interests of the judge or others, and

should discourage others from doing so.” Del. Judges’ Code of Judicial Conduct Canon 1, R. 1.3(A). The screening system that the Court plans to implement for selecting appropriate advertising should also remedy any ethical concerns arising from this Rule. The Court should not select any advertising that advances the personal or economic interests of its judges or any of its employees. The proposed screening plan appears to include a step that would remove potential advertising of any organization or individual who has a relationship with the Court, its judges or any of its employees. This particular element of the screening procedure is crucial in ensuring that Rule 1.3(A) is not violated.

Conclusion:

The use of court sponsored video programming does raise some ethical issues, but, if handled appropriately, could provide a great public service and will not violate The Delaware Judges’ Code of Judicial Conduct. The Court and MVN have proposed a thorough system for screening out improper advertisements and they appear well prepared to work towards creating programming that will be beneficial to both the public and the Court. If the Court and MVN apply the screening process to advertisements and programming as described in the request for this advisory opinion, there is no reason to believe the conduct in question would violate applicable ethics rules. By all accounts, MVN has a great deal of experience implementing programming for government agencies in many states. MVN has an appreciation of the special risks and issues that government agencies, such as the Court, are facing. In light of these facts, and the particular circumstances, it appears that the proposed planning and screening process,

along with the proposed disclaimer, will appropriately and sufficiently address any ethical concerns about the implementation of this program.

For the Committee,



Kenneth M. Millman
Chair, Judicial Ethics Advisory Committee



Charles W. Welch, III
Judicial Ethics Advisory Committee

cc: The Honorable Carolyn Berger, Liaison Justice
Members of the Judicial Ethics Advisory Committee:
The Honorable Richard F. Stokes, Vice Chair
The Honorable Jan R. Jurden
The Honorable Michael K. Newell
The Honorable J. Travis Laster