

# Nebraska Judicial Ethics Opinion 11-3

---

## ***Question Presented --***

*May a judge appear in a video presentation, to be viewed by county officials at an annual meeting, which intends to highlight recent renovations to a courthouse and is produced by the architectural firm responsible for the project?*

---

## **Conclusion**

Despite the brevity of the architectural firm's identity, the Nebraska Revised Code of Judicial Conduct does not permit a judge to participate under these circumstances.

## **Statement of Facts**

Every year at an annual meeting of county officials, an architectural firm shows a PowerPoint presentation on a featured courthouse project. This year the firm wishes to showcase a particular project by producing a video with interviews of various "instrumental people," including judges and their courtroom renovations. The firm has agreed to donate a copy of the video to a "Friends of the Courthouse" committee for use in future projects and will also donate \$100 to this committee for every volunteer interviewee. The firm will place no restriction on its use by the committee other than receiving credit for the work which occurs at the end of the approximately 5-minute video.

## **Applicable Code Sections**

Neb. Rev. Code of Judicial Conduct, Canon 1 and § 5-301.3

## **References in Addition to Nebraska Code of Judicial Conduct**

Nebraska Judicial Ethics Opinion 06-2

Florida Judicial Ethics Advisory Opinion No. 2006-14

## **Discussion**

The Nebraska Supreme Court adopted an updated model code which went into effect on January 1, 2011. As part of the model code revisions, Canons 1 and 2 of the prior Code were combined, "to underscore the instrumental relationship between them, and thereby reinforce the importance of both." See Model Code of Judicial Conduct, Reporter's Explanation of Changes (2007). The revised Code also replaced "lend" with "abuse" to avoid confusion and more accurately define judicial responsibilities.

The applicable revised Code section reads as follows:

**Canon 1. A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.**

....

**§ 5-301.3. Avoiding abuse of the prestige of judicial office.**

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

Over the years, this Committee has consistently maintained that judges should be very careful if their names are attached to a certain initiative or project. Outside of courtrooms for example, we indicated that judges should not, “display advertisements for any private organizations or individuals which are not related to the business of the court.” See Nebraska Judicial Ethics Opinion 06-2.

The Florida judicial ethics committee was asked whether a judge should be permitted to appear in a documentary film about a reading instruction program which would be commercially marketed. They concluded that “if the judge were to permit the interview to appear in a documentary that is being used in a marketing campaign to promote a particular method of reading instruction, giving such permission would violate Canon 2B. Even though the judge does not specifically endorse the reading instruction method being marketed in the interview, the judge's appearance in a documentary which is now to be used as a marketing tool would constitute a tacit endorsement of the reading method being marketed. This would lend the prestige of the judge's office to advance the private interests of others . . . .” See Florida Judicial Ethics Advisory Opinion No. 2006-14.

We understand, with the advent of technology, that judges will be actively engaged in courtroom renovations that improve our abilities and benefit our citizens. These activities will require judges to meet and cooperate with a number of public officials and those assigned to carry out certain responsibilities. Here, the architectural firm’s video presentation intends to highlight courtroom improvements that other counties are most certainly considering. While we are sympathetic to the judge’s desire to showcase these improvements, we must be careful not to appear to endorse the private interests of the architects or abuse the prestige of the office. For these reasons, the Committee has determined that the judge should not participate in this video.

**Disclaimer**

*This opinion is advisory only and is based on the specific facts and questions submitted by the person or organization requesting the opinion pursuant to appendix A of the Nebraska Code of Judicial Conduct. Questions concerning ethical matters for judges should be directed to the Judicial Ethics Committee.*

APPROVED AND ADOPTED BY THE COMMITTEE  
ON JULY 12, 2011

*Judge Robert B. Ensz  
Judge Lawrence D. Gendler  
Judge William B. Cassel  
Judge J Russell Derr  
Judge Linda S. Caster Senff  
Judge Max J. Kelch  
Judge Edward D. Steenburg*