

**Colorado Supreme Court
Judicial Ethics Advisory Board (C.J.E.A.B.)**

**C.J.E.A.B. ADVISORY OPINION 2008-04
(Finalized and effective June 3, 2008)**

ISSUE PRESENTED

A district judge has been contacted by the League of Women Voters, which is concerned that voters have too little information about judges when they go to the polls for retention elections. Although the League contact is aware of various sources of information regarding judges standing for retention, including the Our Courts program, the League nevertheless would like to put together a half-hour television program, which would air on local television in the district, in which one or more representatives of the League would ask questions of district and county judges who are up for retention. The program would be piloted in one judicial district this year and, if it is successful, would be enlarged to include other districts in future years. The questions would be revealed to the judges in advance.

The requesting judge explained to the League representative that, while the proposal was interesting, he was concerned that judges could not ethically participate given Canon 7B(2)'s prohibition on judges engaging in campaign activity associated with their retention candidacy (unless they face active opposition). The League views the television program as an informational event rather than a campaign event. May the judges appear on the television program?

CONCLUSIONS

No, the judges may not appear on the television program. They have been asked to do so because they are candidates for retention and would be reasonably understood by viewers to be engaged in campaign activity.

APPLICABLE CANONS OF THE CODE OF JUDICIAL CONDUCT

Canon 7 provides that judges should refrain from political activity inappropriate to their judicial office. Canon 7A forbids judges from engaging in political conduct in general and outlines different types of political conduct that fall within that prohibition. Canon 7B(1) requires a judge who is a candidate for retention to maintain the dignity appropriate to judicial office and, with certain exceptions, to avoid making pledges or promises of conduct in office. Canon 7B(2) requires judges who are candidates for retention and who do not face active opposition to their retention to abstain from campaign activity.

DISCUSSION

For more than forty years, Colorado has employed a merit-based system for selecting its judges in which judges are chosen based on their qualifications, not on the strength of their fundraising prowess or campaign trail pledges. One of the hallmarks of this system is the deliberate removal of judges from the partisan political arena. Under Colorado's Code of Judicial Conduct, judges are prohibited from engaging in a broad range of political activity, from attending party caucuses to making monetary contributions to political candidates. *See* CJEAB 2008-02, 2005-05. Not only must a judge refrain from actively participating in partisan politics on a large scale, but a judge also faces restrictions on what he or she may do and say when the judge is seeking to retain his or her own seat on the bench. Specifically, Canon 7B(2) provides that "a judge who is a candidate for retention in office should abstain from any campaign activity in connection with the judge's own candidacy unless there is active opposition to his or her retention in office."

In the Board's view, a judge's appearance on a television program answering questions posed by a League representative would constitute forbidden campaign activity within the meaning of Canon 7B(2). Here, only judges standing for retention would be selected to participate in the program, which presumably would air in the weeks or months prior to the election. The judges would be asked questions to help provide viewers with more information about whether or not they should be retained. Viewers watching a judge answer questions on a television program produced specifically to give the voting public background on a judge up for retention might reasonably expect that the judge was seeking an approval vote and might therefore understand that the judge is engaging in campaign activity.

Although the Board is sympathetic to the League's concerns and appreciates its efforts to better educate the public about retention candidates, it would note that there already are ample sources of public information regarding judges standing for retention. For example, as the League itself already observed in proposing the program to the requesting judge, the Our Courts program is an excellent resource. Our Courts is a joint activity of the Colorado Judicial Institute and the Colorado Bar Association that provides nonpartisan information programs to audiences around the state to further public knowledge and understanding of the courts. In addition, the Judicial Performance Commission, a panel of volunteer lawyers and citizens from each district that assesses each judge standing for retention and issues a detailed report culminating in a retention recommendation, holds public hearings regarding each judge and posts its reports and retention recommendation on the judicial branch's website at <http://www.cojudicialperformance.com/>. And of course, Colorado's courts are open to the public, so any interested person is free to observe and assess a judge's conduct in the courtroom for himself or herself. In declining to participate in the television program, the requesting judge may refer the League to these existing sources of information about judges standing for retention.

FINALIZED AND EFFECTIVE by the Colorado Judicial Ethics Advisory Board this 3rd day of June, 2008.