

The Ethics Advisory Committee (EAC) is appointed by the Chief Justice of the state Supreme Court under General Rule 10, and consists of judges from the Court of Appeals, superior court, courts of limited jurisdiction, an attorney, and the Administrator of the Courts. This is the designated body to advise judicial officers on the application of the Code of Judicial Conduct. The Ethics Advisory Committee issues formal advisory opinions that are circulated publicly by the Administrative Office of the Courts. The opinions are available at a searchable Web site at www.courts.wa.gov, under 'Programs and Organizations.'

The Commission on Judicial Conduct (CJC) is separate from the EAC. The CJC is a constitutionally-created, independent agency of the judicial branch of state government which enforces the Code of Judicial Conduct, pursuant to WA State Const. Art IV, §31. Although EAC opinions are not binding on the CJC, a judge's compliance with an opinion by the EAC shall be considered as evidence of the judge's good faith. GR 10(b). The CJC has a searchable website at www.cjc.state.wa.us.

STATE OF WASHINGTON
ETHICS ADVISORY COMMITTEE
OPINION 09-5

Question

May a judicial officer have an internet blog where the judicial officer would post an essay and people would be able to comment and the judicial officer respond to those comments?

The judicial officer would like to create a Web site dedicated to promoting “a more fair, just and benevolent society.” It would work like a regular “blog” in that an essay would be posted and people would be able to comment and the judge would respond to those comments.

Answer

As noted in the Comment to Canon 4, judicial officers are specially learned in the law and they are in a unique position to contribute to the improvement of the law, the legal system and the administration of justice. To the extent that their time permits, they are encouraged to do so within the parameters permitted by the Code of Judicial Conduct. Similarly, judges should be encouraged to improve public understanding of the law. This answer assumes that the judge will limit his or her comments to the area of the law, the legal system and the administration of justice.

The Code of Judicial Conduct does not specifically prohibit a judge from blogging on the internet. CJC Canon 4(A) permits judicial officers to write concerning the law, the legal system and the administration of justice provided that activity does not cast doubt on the capacity to decide impartially any issue that may come before them. Even though a judicial officer may post an internet blog that activity, in addition to the limitations of Canon 4(A), will also be subject to the limitations of Canon 2(A) and Canon 3. That is, a

judicial officer should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary and judicial duties must take precedence over all of a judicial officer's activities.

Even though a judicial officer may post a blog on the internet, caution should be exercised as to how that blog is used and comments responded to in order to make sure that the judicial officer's impartiality is not called into question or the action does not impair the judicial officer's ability to decide impartiality issues that come before the judicial officer. For instance, the judicial officer should consider the impression that may be conveyed when responding to comments that are posted on the blog and how to tailor those comments to avoid any impression that the judicial officer's impartiality might be called into question. The judicial officer should also consider whether readers might perceive that the judge's impartiality is impaired by the volume and content of the comments received.

If the judicial officer does post a blog, the judicial officer may want to consider posting a disclaimer that the opinions expressed are only those of the author and should not be imputed to other judges. The judicial officer may also want to consider outlining constraints to which judicial officers are subject such as commenting on pending cases or discussing cases with persons appearing before the judicial officer's court in order to avoid ex parte communication. If possible, the judicial officer should review a response before allowing it to be published on the blog or alternatively, regularly monitor the responses to make sure that the thread of the discussion does not change from that permitted by Canon 4.