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**BEFORE THE COMMISSION ON JUDICIAL CONDUCT  
OF THE STATE OF WASHINGTON**

In Re the Matter of  
  
The Honorable David S. Keenan  
Superior Court Judge for King County

CJC No. 9608-F-189

**COMMISSION DECISION  
AND ORDER**

**I. INTRODUCTION**

This matter came before the undersigned for a hearing on October 2, 2020, based on the Commission on Judicial Conduct's Statement of Charges alleging that Judge David Keenan violated three sections of the Washington State Code of Judicial Conduct by appearing in advertisements for North Seattle College as a judicial officer.

**II. CHARGES**

Judge Keenan is charged with violating the following Rules.<sup>1</sup>

**Rule 1.1 - Compliance with the Law.** A judge shall comply with the law\*, including the Code of Judicial Conduct.

**Rule 1.2 - Promoting Confidence in the Judiciary.** A judge shall act at all times in a manner that promotes public confidence in the independence\*, integrity\*, and impartiality\* of the judiciary, and shall avoid impropriety and the appearance of impropriety.

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<sup>1</sup> The Code of Judicial Conduct includes asterisks by words and phrases that are specifically defined in the Terminology Section of the Code. For brevity, those definitions are not written out in this opinion.



1           6.       Judge Keenan knew the ad was part of a student recruitment campaign aimed at  
2 increasing enrollment. He knew that increased enrollment would economically benefit the  
3 college.

4           7.       The school sent Judge Keenan a copy of the proposed ad. He had concerns about  
5 the ethics of appearing in the photograph wearing a robe and asked them to use a photo of him  
6 in a coat and tie. After that change, Judge Keenan approved the ad. No other changes occurred.  
7 The language on the ad remained the same.

8           8.       Because of his ethical concerns, Judge Keenan reviewed Canons 1 and 3 and  
9 Ethics Opinion 96-06<sup>2</sup>; however, he did not do any further research. He also did not talk with  
10 anybody about his ethical concerns.

11          9.       Judge Keenan knew that Ethics Opinion 96-06 involved a judge who wanted to  
12 promote a law school.

13          10.      In August 2019, the ad ran on buses in King County, with the following text: “A  
14 Superior Court Judge, David Keenan got into law in part to advocate for marginalized  
15 communities. David’s changing the world. He started at North.” The ad included a photo of  
16 Judge Keenan.

17          11.      The language of the ad can reasonably be read to express a preference or  
18 commitment in favor of marginalized communities.

19          12.      Judge Keenan admitted the ad could confuse the public into thinking that he, as a  
20 judge, advocated for marginalized communities.

21          13.      At the time the ad ran, Judge Keenan was not actively running for office. It was  
22 not an election cycle for his position.

23          14.      The ads could be viewed by a reasonable person as campaign ads for Judge  
24 Keenan.

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25                   <sup>2</sup> The Washington State Supreme Court adopted the current Code of Judicial Conduct on January 1, 2011.  
26 Many of the advisory opinions cited herein predate the adoption of the current code; however, these opinions still  
have value. The weight to be given each opinion varies based on a number of factors. (EAO 96-06 is attached as  
an appendix for ease of reference.)



1 **A. Legal Principles.**

2 The following provisions of the Code of Judicial Conduct (CJC) are particularly relevant  
3 to the charges against Judge Keenan.

4 1. Judges should maintain the dignity of judicial office at all times, and avoid both  
5 impropriety and the appearance of impropriety in their professional and personal lives. They  
6 should aspire at all times to conduct that ensures the greatest possible public confidence in their  
7 independence, impartiality, integrity, and competence. CJC, Preamble [2].

8 2. A judge may be disciplined only for violating a Rule. CJC, Scope [2]

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

11 4. Rule 1.1. Compliance with the Law. A judge shall comply with the law\*,  
12 including the Code of Judicial Conduct.

13 5. Rule 1.2. Promoting Confidence in the Judiciary. A judge shall act at all times  
14 in a manner that promotes public confidence in the independence\*, integrity\*, and impartiality\*  
15 of the judiciary, and shall avoid impropriety and the appearance of impropriety.

16 6. Rule 1.3. Avoiding Abuse of the Prestige of Judicial Office. A judge shall not  
17 abuse the prestige of judicial office to advance the personal or economic interests\* of the judge  
18 or others, or allow others to do so.

19 Generally, the public’s perception of judicial integrity and independence may be  
20 adversely impacted by off the bench activities. The activities may give the appearance of  
21 partiality. They may also constitute a “collateral misuse of the judicial office” which “involves  
22 trading upon the dignity, power, and prestige of the judicial office to gain a personal advantage  
23 for the judge or another.” McKoski, *Charitable Fund-Raising by Judges: The Give and Take of*  
24 *the 2007 ABA Model Code of Judicial Conduct*, 2008 Mich. St. L. Rev. 769, 779-81 (2008).<sup>4</sup>

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<sup>4</sup> Although this section is from a different code, the principles are equally applicable here.

1           “The need for the judiciary to avoid the appearance of partiality exists even in the absence  
2 of actual wrongdoing or favoritism. In a democracy, the enforcement of judicial decrees and  
3 orders ultimately depends upon public cooperation. The level of cooperation, in turn, depends  
4 upon a widely held perception that judges decide cases impartially.... Consequently, judges are  
5 called upon to avoid all activity that so much as suggests that their rulings are tempered by  
6 favoritism or self-interest." Alfini, James J.; Lubet, Steven; Shaman, Jeffrey M.; Geyh, Charles  
7 Gardner. *Judicial Conduct and Ethics*, Fifth Edition §10.03 (Kindle Locations 20973-20977).  
8 LexisNexis. Kindle Edition.

9           “‘Advertising’ is defined as the ‘action of drawing the public’s attention to something to  
10 promote its sale’” Ethics Advisory Opinion 20-01 (quoting Black’s Law Dictionary).

11           “...The judicial officer is required to perform judicial duties without bias or prejudice.  
12 The judicial officer must guard against manifesting any bias or prejudice or the appearance of  
13 partiality in any public comments....” Ethics Advisory Opinion 02-12.

## 14 **B. Analysis**

15           We look at the facts and circumstances of each alleged rule violation and we decide each  
16 alleged violation separately. We conclude that each has been proven by clear, cogent and  
17 convincing proof.

### 18 **1. Rule 1.1 – Compliance with the Law**

19           This rule is overarching. A judge who violates any other code provision, will also violate  
20 this one. We conclude that Judge Keenan violated this rule because he violated Rules 1.2 and  
21 1.3. See below for discussion.

### 22 **2. Rule 1.2 - Promoting Confidence in the Judiciary**

23           By allowing and sanctioning the bus ad, Judge Keenan neither promoted public  
24 confidence in the impartiality of the judiciary, nor avoided the appearance of impropriety.  
25 Litigants come from all walks of life. Litigants comprise many diverse groups and people with  
26 different points of view. Litigants can be natural persons or artificial persons, e.g. corporations.

1           The ad in which Judge Keenan appeared does not promote confidence in the judiciary.  
2 It has the appearance of impropriety. The language of the ad reasonably can be read to suggest  
3 that Judge Keenan has a leaning, or preference, and would advocate accordingly for marginalized  
4 communities. He is “changing the world.” A reasonable reader could also infer the same  
5 message from this ad.

6           Such an interpretation of the ad is reasonable. In a series of emails, Judge Keenan  
7 admitted that the ad’s language could cause confusion. “Some of my colleagues alerted me that  
8 they think, among other things, that the language about advocating for marginalized communities  
9 could confuse the public, leading them to think that I’m advocating as a judge, which is  
10 prohibited. Judges have to be neutral. I know what the language means, i.e. that I got into law  
11 to advocate, but given that the ad identifies me as a judge, I can see where some might get  
12 confused.”<sup>5</sup>

13           This decision is in accord with Ethics Advisory Opinion 96-16, which opined that a judge  
14 could attend “A Day of Remembrance” ceremony in honor of domestic violence survivors. But  
15 the opinion cautioned that “his or her mannerisms, actions or speech should not cast doubt upon  
16 the judicial officer’s impartiality to decide any issue that may come before them. The judicial  
17 officer, therefore, should not act as an advocate or in any manner indicate a predisposition as to  
18 how he or she might rule in a domestic violence case.”

19           As noted above, the use of the phrase “advocate for marginalized communities”  
20 juxtaposed with the phrase “he is changing the world” could indicate a predisposed bias by Judge  
21 Keenan in favor of members from marginalized communities. People who are not from those  
22 communities could reasonably be concerned about being treated unfairly by Judge Keenan.  
23 Judge Keenan acknowledged the confusion that could be caused by the use of this language.  
24 That confusion is the result of a reasonable reading of the ad.

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<sup>5</sup> Email from Judge Keenan to college, dated September 4, 2019, admitted by stipulation.

1 In arriving at our conclusion, we considered the impact of the ad on the viewer by  
2 substituting other groups for “marginalized communities” such as “divorced fathers,” “victims,”  
3 “those accused of sex offenses,” and “landlords.” Substituting these other groups in the ad  
4 illustrates the likely impact of the ad’s language on public perception of a judge’s conduct of  
5 court proceedings. If the ad Judge Keenan approved is acceptable, then it must also be acceptable  
6 for another judge to be in an ad that says the judge got into the law, in part, to advocate for  
7 “divorced fathers,” or “those accused of sex offenses,” or “crime victims,” or “landlords,” and  
8 then he went to North Seattle College, and now, he is changing the world.

9 Our legal system is an adversarial one. All sides want fairness from the judges. They  
10 also want the appearance of fairness. Based on the ad, a litigant who appeared in Judge Keenan’s  
11 court against a member of a marginalized community could reasonably have concerns about  
12 being at a disadvantage before this judge. Judge Keenan admitted as much. The appearance of  
13 lacking impartiality is evident. The ad does not promote confidence in the judiciary.

14 Although we applaud Judge Keenan’s work in the areas of diversity, racial equality,  
15 access to justice, and fairness, Judge Keenan’s appearance in the ad, along with the  
16 accompanying language, clearly violates the prohibition against the appearance of impropriety.<sup>6</sup>

### 17 **3. Rule 1.3 - Avoiding Abuse of the Prestige of Judicial Office**

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

20 It is undisputed that the ad using Judge Keenan’s title and photograph advanced, or was  
21 intended to advance, the economic interests of the college. The ad aimed at increasing student  
22 enrollment which, in turn, would advance the economic interests of the college. Judge Keenan  
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24 <sup>6</sup> We note that the benevolence of the cause is something we do not consider. In Opinion 02-20, the Ethics  
25 Advisory Committee opined that a judicial officer could not participate using the judicial title and robe in an  
26 initiative to encourage women to get mammograms. In so interpreting the former code, the opinion states that  
“using the judicial officer’s title and robe will lend the prestige of the judicial officer to advance the private interests  
of the nonprofit health care organization which performs these procedures.” The opinion further discussed the fact  
that the health care organization routinely appears in court as a litigant and the judicial officer should not be  
associated with it.

1 abused the prestige of his office by using his title as “Judge” to promote the college. The abuse  
2 occurred because promoting a college, other than a law school, is not a traditional judicial  
3 function. In addition, the abuse of the prestige of judicial office becomes clearer based on the  
4 fact the college did not ask Judge Keenan to help promote the college until he became a judge.  
5 The college wanted the prestige of Judge Keenan’s office to help it increase student enrollment  
6 and income.

7 Judge Keenan argues that his actions were permitted because the ad would encourage  
8 people to go to law school after attending the college. We specifically find that this argument  
9 and the accompanying testimony from Judge Keenan lacks credibility.

10 The connections between having students enroll at North Seattle College because they  
11 may thereafter attend law school is too tenuous or strained to be persuasive in this context. If  
12 we adopted such an argument, it would open the flood gates to allow judges to promote any  
13 activity that could possibly encourage students to attend law school.

14 Judge Keenan argues that Ethics Advisory Opinion 96-06 permits his actions. We  
15 disagree. That opinion opined that a judicial officer could appear in a law school video that  
16 would be sent to prospective law students. It further opined that a judge could “speak and  
17 participate in other activities concerning the law, the legal system, and the administration of  
18 justice” and appear in a law school video sent to prospective law students. CJC Canon 4(A).<sup>7</sup>

19 The opinion is clearly limited to law schools. “The judicial officer may contribute to the  
20 improvement of the legal system and the administration of justice by assisting law schools in  
21 recruiting the most qualified individuals into the legal profession.” Ethics Advisory Opinion 96-  
22 06. The opinion does not allow a judge to promote every type of school to which a student may  
23 be recruited. It is expressly confined to law schools. It is clear this opinion considered the  
24 tension between the ethical violation of using the prestige of the judicial office to advance the  
25 private interests of others with the judicial officer’s ethical ability to contribute to improving the

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26 <sup>7</sup> This version of the Code has been superseded by the adoption of the new Code of Judicial Conduct in  
January 2011.

1 legal system and the administration of justice by assisting law schools. The opinion is not a carte  
2 blanche invitation for judicial officers to assist all schools or all causes.

3 Judge Keenan also argues that Rules 3.1 and 3.7 allowed him to appear in the ad. We  
4 disagree.

5 First, Judge Keenan is not charged with violating either of those rules. Second, Rule 3.1  
6 explicitly prohibits a judicial officer from participating “in activities that would undermine the  
7 judge’s... impartiality\*....” Rule 3.1(C). That tenet is the basis of our finding a violation of  
8 Rule 1.2. Third, Rule 3.7 has no language that would allow a judge to violate the appearance of  
9 impropriety or use the prestige of his office to advance the economic interests of another. All of  
10 the Code of Judicial Conduct rules must be read and harmonized together.

11 Judge Keenan argues that he, “used his title but did not abuse it.” Resp. Hearing Brief at  
12 1. We disagree. Judge Keenan is charged with abusing the prestige of judicial office to advance  
13 the economic interests of another. We conclude that Judge Keenan abused the prestige of his  
14 office by using his title as “Judge” to promote the college and advance its economic interests.

## 15 16 **V. DISCIPLINE**

17 “Whether discipline should be imposed should be determined through a reasonable and  
18 reasoned application of the Rules. The relevant factors for consideration should include the  
19 seriousness of the transgression, the facts and circumstances that existed at the time of the  
20 transgression, including the willfulness or knowledge of the impropriety of the action, the extent  
21 of any pattern of improper activity, whether there have been previous violations, and the effect  
22 of the improper activity upon the judicial system or others.” CJC, Scope [6].

23 Judge Keenan is a fifty-year-old judge with no prior disciplinary history. Judge Keenan  
24 has been a judicial officer for approximately four years. There is no indication that his actions  
25 in this case were done with malice, bad faith, or ill-intent. Judge Keenan has worked as a peer  
26 mentor with the Superior Court Judges’ Association. He has served on a variety of judicial and

1 legal committees on diverse topics including education, racial justice, and access to justice.  
2 This sanction takes into consideration all the violations of the Code of Judicial Conduct that we  
3 have concluded Judge Keenan committed.

4 We impose a sanction because the Washington State Constitution requires us to do so  
5 after we conclude that a violation has occurred. Upon the completion of a hearing, this  
6 commission “shall either dismiss the case, or shall admonish, reprimand, or censure the  
7 judge....” Article IV, Section 31, paragraph 4, Washington State Constitution. In addition, the  
8 applicable rules require that we impose discipline unless the case is dismissed, which occurs if  
9 no violations are found. Commission on Judicial Conduct Rules of Procedure (CJCRP), Rule  
10 24(c).

11 Having determined that Judge Keenan has violated the Code, we next determine the  
12 appropriate discipline. Both disciplinary counsel and Judge Keenan’s counsel recommend that  
13 in the event there is a violation, the sanction should be an admonishment. We agree.

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**ORDER**

Based on the foregoing Decision, the Commission finds that Judge Keenan has violated Canon 1, Rules 1.1, 1.2, and 1.3 of the Code of Judicial Conduct and issues an admonishment.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

*Ruth E. Reukauf*

\_\_\_\_\_  
Ruth Reukauf, Presiding Officer

*Robert Alsdorf*

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Robert Alsdorf

*Kristian E. Hedine*

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Kristian Hedine

*Ramon Alvarez*

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Ramon Alvarez

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Rich Melnick

*Wanda Briggs*

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Wanda Briggs

*Michael Tate*

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Michael Tate

ORDER

Based on the foregoing Decision, the Commission finds that Judge Keenan has violated Canon 1, Rules 1.1, 1.2, and 1.3 of the Code of Judicial Conduct and issues an admonishment.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Ruth Reukauf, Presiding Officer

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Robert Alsdorf

\_\_\_\_\_  
Kristian Hedine

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Ramon Alvarez

*Rich Melnick*  
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Rich Melnick

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Wanda Briggs

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Michael Tate



# State of Washington

## Ethics Advisory Committee

### Opinion 96-06

#### Question

May a judicial officer appear on a law school's video which is sent to prospective students describing the law school?

Prior to being appointed to the bench the judicial officer was a faculty member at the law school for seven years and as such participated in the last video. The judicial officer is also a graduate of the law school and one of two female superior court judges on the bench in the county in which the law school is located. The judicial officer will be speaking about the experiences she had as both a student and a faculty member and the quality of education at the law school.

#### Answer

CJC Canon 4(A) provides that judicial officers may speak and participate in other activities concerning the law, the legal system, and the administration of justice. Therefore, a judicial officer may appear in a law school video which is sent to prospective students. The judicial officer may be identified as a judicial officer; the comments of the judicial officer should be based on the personal experiences and observations of the judicial officer while the judicial officer was a student and/or faculty member at the law school.

Appearance in the video does not fall under CJC Canon 2(B) which prohibits a judicial officer from using the prestige of the judicial office to advance the private interests of others. The judicial officer may contribute to the improvement of the legal system and the administration of justice by assisting law schools in recruiting the most qualified individuals into the legal profession.

The Supreme Court adopted a new Code of Judicial Conduct effective January 1, 2011. In addition to reviewing the ethics advisory opinions, the following should be noted:

CJC 3.1  
CJC 1.3