



California Supreme Court Committee on Judicial Ethics Opinions

350 McAllister Street, San Francisco, California 94102

www.JudicialEthicsOpinions.ca.gov

INVITATION TO COMMENT

[CJEO Draft Formal Opinion 2023-022]

Title

CJEO Draft Formal Opinion 2023-022,
*Guidelines for Presiding Judges When
Transmitting Courtwide Communications to
Colleagues*

Action Requested

Review and submit comments by
March 23, 2023

Proposed Date of Adoption or Other Action

To be determined

Prepared by

The California Supreme Court
Committee on Judicial Ethics Opinions

Contact

Sanna Singer
Committee Staff Attorney
Phone: 415-865-7169
Email: Judicial.Ethics@jud.ca.gov

For information about the committee and its
members, visit the [CJEO website](#)

CJEO Invites Public Comment

The California Supreme Court Committee on Judicial Ethics Opinions (CJEO) has adopted a draft formal opinion and approved it for posting and public comment pursuant to California Rules of Court, rule 9.80(j), and CJEO Internal Operating Rules and Procedures, rule 7(d). ([Rule 9.80](#); [CJEO Rules](#).) The public is invited to comment on the draft opinion before the committee considers adoption of an opinion in final form, or other action.

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

CJEO Draft Formal Opinion 2023-022 provides guidance regarding whether and under what circumstances a presiding judge may send a courtwide communication at the request of an outside entity.

After receiving and reviewing comments, the committee will decide whether the draft opinion should be published in its original form, modified, or formally withdrawn. (Rule 9.80(j)(2); CJEO rule 7(d)). Comments are due by **March 23, 2023**, and may be submitted as described below.

How to Submit Comments

Comments may be submitted: (1) [online](#); (2) by email to Judicial.Ethics@jud.ca.gov; or (3) by regular mail to:

The California Supreme Court Committee on Judicial Ethics Opinions
350 McAllister Street
San Francisco, California 94102

Comments Due by March 23, 2023

At the close of the comment period, or after **March 23, 2023**, the committee will post on its [website](#) all comments that are not clearly identified as confidential.

Attachment: CJEO Draft Formal Opinion 2023-022



**CALIFORNIA SUPREME COURT
COMMITTEE ON JUDICIAL ETHICS OPINIONS**

350 McAllister Street

San Francisco, CA 94102

(855) 854-5366

www.JudicialEthicsOpinions.ca.gov

CJEO Draft Formal Opinion 2023-022

**GUIDELINES FOR PRESIDING JUDGES WHEN TRANSMITTING
COURTWIDE COMMUNICATIONS TO COLLEAGUES**

I. Question

The Committee on Judicial Ethics Opinions (CJEO or committee) has been asked for guidance regarding whether and under what circumstances a presiding judge¹ may send a courtwide communication at the request of an outside entity, such as another

¹ While this opinion relates to presiding judge communications, the same guidance and considerations would apply to associate presiding justices or any other judicial officer with supervisory responsibilities who sends courtwide communications.

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

government entity, a private interest group, or a bar association, consistent with the Code of Judicial Ethics.²

II. Summary of Conclusions

Presiding judges have a general duty to keep the judicial officers of their courts informed of administrative and policy developments related to the law, the legal system, and the administration of justice. Consistent with the code, a presiding judge may send a courtwide communication at the request of an outside entity, such as another government agency, a private interest group, or a bar association, but is advised to keep in mind the following considerations: (1) the substance of the communication must not undermine public confidence in the integrity or impartiality of the judiciary; (2) the communication must not suggest that the outside entity has a special influence over the presiding judge or the court; (3) the communication must not lend judicial prestige to advance anyone's pecuniary or personal interests; (4) the communication must not constitute prohibited political activity; and (5) the communication must not include information relating to a specific pending or impending matter, which may expose a recipient to a prohibited ex parte communication or interfere with a fair trial or hearing.

III. Authorities

A. Applicable Canons

Canon 1: "A judge shall uphold the integrity and independence of the judiciary."

Canon 2: "A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities."

² All further references to the code, canons, terminology, and advisory committee commentary are to the California Code of Judicial Ethics unless otherwise indicated.

Canon 2A: “A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge shall not make statements, whether public or nonpublic, that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of judicial office.”

Advisory Committee commentary following canon 2 and 2A: “*The test for the appearance of impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality, and competence.*”

Canon 2B(1): “A judge shall not allow family, social, political, or other relationships to influence the judge’s judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.”

Canon 2B(2): “A judge shall not lend the prestige of judicial office or use the judicial title in any manner, including any oral or written communication, to advance the pecuniary or personal interests of the judge or others.”

Canon 3B(7): “A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the full right to be heard according to law. Unless otherwise authorized by law, a judge shall not independently investigate facts in a proceeding and shall consider only the evidence presented or facts that may be properly judicially noticed. This prohibition extends to information available in all media, including electronic. A judge shall not initiate, permit, or consider ex parte communications, that is, any communications to or from the judge outside the presence of the parties concerning a pending or impending proceeding, and shall make reasonable efforts to avoid such communications, except as follows...”

Canon 3B(7)(a): “Except as stated below, a judge may consult with other judges. A judge presiding over a case shall not engage in discussions about that case with a judge who has previously been disqualified from hearing that case; likewise, a judge who knows he or she is or would be disqualified from hearing a case shall not discuss that matter with the judge assigned to the case. A judge also shall not engage in discussions with a judge who may participate in appellate review of the matter, nor shall a judge who may participate in appellate review of a matter engage in discussions with the judge presiding over the case.”

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

Canon 3B(9): “A judge shall not make any public comment about a pending or impending proceeding in any court, and shall not make any nonpublic comment that might substantially interfere with a fair trial or hearing.”

Canon 3C(1): “A judge shall diligently discharge the judge’s administrative responsibilities impartially, on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity of the judiciary.”

Canon 3C(2): “A judge shall maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.”

Canon 3C(4): “A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to ensure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.”

Advisory Committee commentary following canon 4B: *“As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge may do so, either independently or through a bar or judicial association or other group dedicated to the improvement of the law.”*

Canon 4C(2): “A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice.”

Canon 4C(3): “Subject to the following limitations and the other requirements of this code, (a) a judge may serve as an officer, director, trustee, or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice provided that such position does not constitute a public office within the meaning of article VI, section 17 of the California Constitution.”

Canon 4C(3)(d): “[A] judge as an officer, director, trustee, nonlegal advisor, or as a member or otherwise (i) may assist such an organization in planning fundraising and may participate in the management and investment of the organization’s funds. However, a judge shall not personally participate in the solicitation of funds or other fundraising activities, except that a judge may privately solicit funds for such an organization from

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

members of the judge’s family or from other judges (excluding court commissioners, referees, court-appointed arbitrators, hearing officers, temporary judges, and retired judges who serve in the Temporary Assigned Judges Program, practice law, or provide alternative dispute resolution services).”

Advisory Committee commentary following canon 4C(3)(d): “*A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system, or the administration of justice, or a nonprofit educational, religious, charitable, service, or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fundraising mechanism. Solicitation of funds or memberships for an organization similarly involves the danger that the person solicited will feel obligated to respond favorably if the solicitor is in a position of influence or control.*”

Canon 5: “Judges and candidates for judicial office are entitled to entertain their personal views on political questions. They are not required to surrender their rights or opinions as citizens. They shall, however, not engage in political activity that may create the appearance of political bias or impropriety. Judicial independence, impartiality, and integrity shall dictate the conduct of judges and candidates for judicial office.”

Canon 5D: “A judge or candidate for judicial office may engage in activity in relation to measures concerning improvement of the law, the legal system, or the administration of justice, only if the conduct is consistent with this code.”

B. Constitutional Provisions, Statutes, and Other Authorities

California Rules of Court, rule 10.603

People v. Farmer (1989) 47 Cal. 3d 888, 923

Inquiry Concerning Platt (2002) 48 Cal. 4th CJP Supp. 227

Commission on Judicial Performance, *Public Admonishment of Judge Lisa A. Novak* (2018)

Commission on Judicial Performance, *Public Censure of Former Commissioner Joseph J. Gianquinto* (2018)

Commission on Judicial Performance, Annual Report (2013) Advisory Letter 21

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

Commission on Judicial Performance, Annual Report (2008) Advisory Letter 6

Commission on Judicial Performance, Annual Report (2007) Advisory Letter 15

Commission on Judicial Performance, Annual Report (2006) Private Admonishment 5

Commission on Judicial Performance, Annual Report (2020) Private Admonishment 4

CJEO Formal Opinion 2021-018 (2021), *Providing Feedback on Attorney Courtroom Performance*, California Supreme Court Committee on Judicial Ethics Opinions

CJEO Formal Opinion 2018-012 (2018), *Providing Educational Presentations at Specialty Bar Events*, California Supreme Court Committee on Judicial Ethics Opinions

CJEO Formal Opinion 2022-020 (2022), *Judicial Consultations with Other Judges*, California Supreme Court Committee on Judicial Ethics Opinions

CJEO Expedited Opinion 2021-042 (2021), *Social Media Posts About the Law, the Legal System, or the Administration of Justice*, California Supreme Court Committee on Judicial Ethics Opinions

CJEO Expedited Opinion 2022-048 (2022), *Commenting on or Endorsing Legal Education Books Written by Others*, California Supreme Court Committee on Judicial Ethics Opinions

CJEO Oral Advice Summary 2019-030 (2019), *Acceptance of a Private Testimonial Dinner and Honors*, California Supreme Court Committee on Judicial Ethics Opinions

California Judges Association, Judicial Ethics Update (Jan. 2017)

California Judges Association, Judicial Ethics Update (Jan. 2016)

Rothman et al., California Judicial Conduct Handbook (4th ed. 2017) sections 6:1-6:7 and 10:18

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

IV. Discussion

Presiding judges may, from time to time, receive requests to forward information to the judicial officers in their court through courtwide email communications. For example, an outside entity, such as another government agency, private interest group, or bar association may wish to inform judges of operational or security issues that may impact the courts, an upcoming educational or professional networking event, opportunities to apply for an award or other recognition, legislative or budget issues affecting the judiciary, or policy developments in the justice system. In general, the code permits and encourages presiding judges to keep their courts informed of events and issues relating to the law, the legal system, and the administration of justice. At the same time, any courtwide email sent by the presiding judge reflects on both the presiding judge and those judicial officers and staff who receive it. For this reason, presiding judges must ensure that their courtwide communications are consistent with the code. Below, the committee provides guidance on the canons most typically implicated and factors to consider when a presiding judge sends a courtwide communication.

A. Presiding Judges' Administrative Duties

Under the California Rules of Court, rule 10.603 (Rule 10.603), presiding judges are responsible for providing administrative oversight to their court. This includes the duty to ensure effective court management, establish court policies consistent with strategic plans and budgets, monitor caseloads and judicial assignments, and respond to complaints. (CRC, rule 10.603(a)-(c); Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) (Rothman) § 6:1-6:7, pp. 338-344 [describing the various duties of presiding and supervising judges].) In addition to providing general guidelines, Rule 10.603 gives presiding judges the authority to “perform all acts necessary” to carry out their duties. (CRC, rule 10.603(b)(1)(G).)

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

In conjunction with Rule 10.603, the code provides that, “[a] judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to ensure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.” (Canon 3C(4).) In addition to supervising judges’ responsibilities, judges at all levels “shall maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.” (Canon 3(C)(2).) Read together, these canons permit presiding judges to send courtwide emails and other communications to judicial officers and staff as may be necessary to ensure the efficient and effective administration of the court.

In addition, judges are broadly permitted to engage in extra-judicial or political activities relating to the law, the legal system, and the administrative of justice. (Advisory Com. com. foll. canon 4B [because they are specially learned in the law, judges are in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice and may do so, to the extent time permits either independently, through a bar or judicial association, or other group dedicated to the improvement of the law]; canon 4C(2) & (3) [judges may accept governmental appointments or serve as officers or directors of organizations relating to the law, the legal system, or the administration of justice]; canon 5D [judges are permitted to engage in political activity relating to the law, the legal system, or the administration of justice, provided conduct is consistent with the code overall].) Therefore, it is appropriate and permissible for presiding judges to share information with their colleagues about upcoming educational events and opportunities within the legal community, as well as updates about legislative and policy developments impacting the courts.

Presiding judges must be mindful, however, that their courtwide communications do not violate other canons prohibiting judges from suggesting bias or special influence, lending judicial prestige to advance someone’s pecuniary or personal interests, engaging

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

in partisan politics, or interfering with pending proceedings, as discussed in more detail below.

B. Judicial Integrity and Impartiality

Before forwarding a communication on behalf of an outside entity, a presiding judge must evaluate whether the substance of the communication is consistent with a judge's duty to uphold the integrity and impartiality of the judiciary. (Canons 1, 2, and 2A [judges must promote public confidence in the integrity and impartiality of the judiciary and avoid impropriety in all activities]; canon 3C(1) [a judge shall diligently discharge administrative responsibilities impartially, without bias or prejudice, in a manner that promotes confidence in the integrity of the judiciary.] When determining whether the communication would undermine judicial integrity or impartiality, the presiding judge must consider how the communication would appear to an objective observer in the context in which it was sent. (Advisory Comm. commentary foll. canon 2A [the test for impropriety is whether a person aware of the facts might reasonably doubt the judge's integrity or impartiality].)

Judges have been disciplined for using court email systems to send messages that fail to promote public confidence in the judiciary or that reflect bias or animus toward particular groups. (Com. on Jud. Performance, Ann. Report (2013) Advisory Letter 21, p. 23 [judge disciplined for, in addition to other misconduct, sending an email to judicial colleagues that failed to promote public confidence in the integrity and impartiality of the judiciary]; Com. on Jud. Performance, Ann. Report (2008) Advisory Letter 6, p. 26 [judge disciplined for using court email to forward satirical email that promoted negative stereotypes to other judicial officers]; Com. on Jud. Performance, Ann. Report (2007) Advisory Letter 15, p. 32 [judge disciplined for circulating an email over the court's computer system that contained offensive material]; Com. on Jud. Performance, Ann. Report (2006) Private Admonishment 5, p. 31 [judge disciplined for sending an email to

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

other judges that gave the appearance of ethnic bias in the discharge of administrative responsibilities].)

Presiding judges are advised to be especially careful about the appearance of impartiality when forwarding emails at the request of one side of the criminal or civil bar. However, this does not mean that forwarding such emails is never permissible. Whether a particular communication is permissible depends on the nature, tone, and circumstances under which it is sent. For example, even though law enforcement officers are typically associated with the prosecution in criminal matters, an objective observer is unlikely to doubt the impartiality of the judiciary because a presiding judge forwarded a memorandum from the sheriff's office advising the court of an anticipated protest that may impact security, traffic, or parking around the courthouse. Similarly, an objective observer may not be concerned about a presiding judge forwarding a flyer from the district attorney's office concerning a holiday toy drive. In contrast, the same observer may suspect judicial bias if the presiding judge were to forward a newspaper editorial by a criminal defense association in favor of lighter sentences for drug-related crimes. The act of forwarding such an editorial may suggest that the presiding judge or the court agrees with the criminal defense association's viewpoint or will be prone to render decisions consistent with it.

As general guidance, a communication is less likely to suggest bias the more it relates to operational or administrative issues, rather than substantive policy matters. (CJEO Expedited Opinion 2021-042 (2021), *Social Media Posts About the Law, the Legal System, or the Administration of Justice*, Supreme Ct. Com. Jud. Ethics Opns., p. 7 [judges' online statements are more likely to be permissible the more they relate to administrative issues, such as court budgets, facilities, and docketing impacts, rather than substantive policies].) In addition, a communication must be "equally applicable to and appropriate to say in the presence of attorneys on opposing sides of the same case." (CJEO Formal Opinion 2021-018 (2021), *Providing Feedback on Attorney Courtroom*

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

Performance, Supreme Ct. Com. Jud. Ethics Opns., p. 8; [when providing feedback to attorneys, judges must not imply a particular affinity or dislike for certain attorneys or parties].)

C. Special Influence

In addition, a presiding judge must consider whether forwarding a communication on behalf of an outside entity will improperly suggest that the outside entity has a special influence over the presiding judge or the court. Judges must not allow “family, social, political, or other relationships to influence the judge’s judicial conduct or judgement, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.” (Canon 2B(1).) Applying one of the examples above, forwarding a newspaper editorial advocating for lighter punishments for drug-related crimes may suggest that the court will be influenced by the editorial when presiding over cases or rendering sentencing decisions in matters involving those crimes. In the civil context, if a presiding judge were to forward a flyer encouraging attendance at an environmental law seminar sponsored by and oriented to environmental plaintiffs’ lawyers, this may suggest that the environmental plaintiffs’ bar has a special relationship with or influence over the presiding judge or the court. However, providing information about non-partisan educational events sponsored by bar associations is consistent with the canons broadly permitting judges to be involved in legal education and community activities. (Advisory Com. com. foll. canon 4B; canons 4C(2) & (3); CJEO Oral Advice Summary 2019-030 (2019), *Acceptance of a Private Testimonial Dinner and Honors*, Supreme Ct. Com. Jud. Ethics Opns., p. 3 [recognizing the importance of judicial involvement in legal community activities]; CJEO Formal Opinion 2018-012 (2018), *Providing Educational Presentations at Specialty Bar Events*, Supreme Ct. Com. Jud. Ethics Opns., pp. 2, 7–8 [judges may give educational presentations to specialty bar

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

associations, provided they are equally available to bar associations having opposing interests or viewpoints].)

D. Lending Prestige to Advance Interests

When sending courtwide communications on behalf of outside entities, a presiding judge must also be cautious not to lend judicial prestige to advance anyone's pecuniary or personal interests. (Canon 2B(2) [judges must not lend judicial prestige or use judicial title in any manner to advance the pecuniary or personal interests of the judge or others]; Com. on Jud. Performance, Ann. Report (2020) Private Admonishment 4, p. 54 [judge admonished for using court email, which included the judge's title, to advance a personal interest].) For example, it would be improper for a presiding judge to circulate an advertisement for goods or services for sale, even if they relate to the law, the legal system, or the administration of justice. (CJEO Expedited Opinion 2022-048 (2022), *Commenting on or Endorsing Legal Education Books Written by Others*, Supreme Ct. Com. Jud. Ethics Opns., pp. 4-5 [judge may not use judicial title to promote a book written by a friend or colleague, even if the book is law-related].)

It would also be improper for a presiding judge to use the court email system to engage in fundraising for the presiding judge's own friends and family or on behalf of others. (Canon 4C(3)(d)(i) [judges shall not personally participate in the solicitation of funds or other fundraising activities, except that a judge may privately solicit funds from family members or judges who are not subordinate judicial officers].) For instance, it would be improper to circulate a flyer for a fundraiser to benefit a school or a charitable organization. Such conduct would not fall within the exception to the general fundraising prohibition for private fundraising among one's colleagues because a courtwide email is not private and would reach subordinate judicial officers and staff, which may have the appearance of being coercive. (Advisory Com. commentary foll. canon 4C(3)(d) [the purpose of the general fundraising prohibition is to prevent the danger that the person

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

being solicited will feel obligated to respond favorably if the solicitor is in a position of influence or control].)

As discussed above, a presiding judge may be asked to circulate information about bar association events, which in some cases have admittance fees to cover the cost of meals; this raises the question of whether by circulating the information a presiding judge is lending prestige to advance the bar associations' pecuniary interest. In the committee's view, disseminating such information is permissible, as the educational value of such events is an overriding factor and any pecuniary benefit to the bar association is incidental. (CJEO Expedited Opinion 2022-048, *supra*, at p. 5 [while a judge writing a positive review of a legal education book may incidentally lead to increased sales, the primary purpose of the review is educational and therefore permissible]; Rothman, *supra*, § 10:18, p. 689 [judicial title may be used to promote legal education programs because the importance of judges contributing to the law, the legal system, and the administration of justice far outweighs any arguable use of the prestige of office to advance the pecuniary interests of others].)

However, a presiding judge must be cautious not to add any commentary that may be interpreted as coercive or imply that attendance is required in order stay in the presiding judges' favor, particularly when circulating flyers that will reach subordinate judicial officers and staff. (Canon 4C(3)(d)(i); Cal. Judges Assn., Judicial Ethics Update (CJA Update) (Jan. 2017) p. 7 [judge may not directly invite staff or attorneys to purchase tickets for a banquet at which the judge will be honored but may supply names for the banquet organizer to invite them]; CJA Update (Jan. 2016) p. 9 [commissioner may not sell dinner tickets to non-judicial officers to honor a judge who is retiring]; *id.* at p. 11 [judge who serves on a nonprofit board may not solicit others to purchase tickets to a dinner and concert, except for members of the judge's family and other judges].)

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

E. Political Activity

Presiding judges must also ensure that any courtwide communication does not constitute improper political activity. Judges are prohibited from engaging in political activity unless it relates to the law, the legal system, or the administration of justice and does not violate any other canons. (Canon 5 [judges shall not engage in political activity that may create the appearance of political bias or impropriety; canon 5D [judges may engage in activity relating to measures concerning improvement of the law, the legal system, or the administration of justice provided the activity is consistent with the code].)

Therefore, it is permissible for a presiding judge to disseminate information relating to legislation directly impacting the courts, but impermissible to use the court email systems to engage in partisan politics. (Com. on Jud. Performance, *Public Censure of Former Commissioner Joseph J. Gianquinto* (2018), pp. 33-34 [judge disciplined for making online statements relating to presidential policies, immigration, racial issues, and political views; *In re Kwan* (Utah 2019) 443 P.3d 1228, 1232, 1237-1239 [judge suspended for social media posts extensively criticizing a sitting president, among other ethics violations].) As this committee has previously advised, “the distinction between permissible statements concerning the law, the legal system, or the administration of justice and prohibited political statements may not be a bright line.” (CJEO Expedited Opinion 2021-042, *supra*, at p. 7.) However, communications are more likely to be permissible the more they relate to administration or operational impacts rather than substantive policies not directly linked to the courts. (*Id.* at p. 8.) For example, a presiding judge may circulate a neutral update on legislation affecting court budgets but may not disseminate a position paper from an outside entity espousing a certain political view on substantive policy issue.

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

F. Pending Matters

Finally, presiding judges must refrain from sending any courtwide communication that specifically relates to a pending or impending matter. This is due to the risk that such a communication may expose a recipient judicial officer to information that constitutes an ex parte communication or that might interfere with a fair trial or hearing. (Canon 3B(7) [judges shall not consider ex parte communications, defined as any communication to or from the judge outside the presence of the parties, concerning a pending or impending proceeding]; canon 3B(9) [judges shall not make public comments about pending or impending proceedings or non-public comments that might substantially interfere with a fair trial or hearing].)

While there is an exception to the ex parte rule for judges to consult with their colleagues, a courtwide information ‘blast’ is unlikely to qualify as consultation. (Canon 3B(7)(a) [a judge may consult with other judges on matters, except for judges who are disqualified or may be involved in appellate review of the matter]; Com. on Jud. Performance, *Public Admonishment of Judge Lisa A. Novak* (2018), pp. 7-9 [judge disciplined for, in addition to other misconduct, making indiscriminate comments at a judges’ meeting about the credibility of a witness, which was not done for consultative purposes and implied bias and embroilment].) In addition, disseminating information about a pending or impending matter may interfere with the recipient judge’s duty to avoid such information. (Canon 3B(7)(a) [in any discussion with judges or court personnel, a judge shall make reasonable efforts to avoid receiving factual information that is not part of the record or an evaluation of that factual information]; CJEO Formal Opinion 2022-020 (2022), *Judicial Consultations with Other Judges*, Supreme Ct. Com. Jud. Ethics Opns., p. 2 [judicial consultation is broad permission that may include a discussion of the facts or legal issues in a case; however, judges must make reasonable efforts to avoid receiving facts outside the record in their own matters].)

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

Whether or not a particular communication relates to a pending or impending proceeding is a fact-specific inquiry. A general comment that does not specify any particulars of a matter, or the parties or witnesses involved in a matter, does not “concern[] a pending or impending proceeding” (canon 3B(7)) and therefore does not constitute an ex parte communication. (*Inquiry Concerning Platt* (2002) 48 Cal. 4th CJP Supp. 227, 245, fn. 4 [a general procedural inquiry does not become an ex parte communication until or unless it is linked to a specific case]; *People v. Farmer* (1989) 47 Cal. 3d 888, 923, disapproved on separate grounds [collegial interchanges on abstract legal matters are not improper].) For example, disseminating information about a Judicial Council form change that may affect pending juvenile matters is permissible because it is a procedural issue relating to all juvenile matters rather than any particular matter, party, or litigant. However, it would be improper for a presiding judge to widely circulate a news article about specific juvenile matter pending before the court.

V. Conclusion

Under the code, it is necessary and permissible for presiding judges to disseminate information for the efficient and effective administration of the court. At the request of outside entities, presiding judges may circulate information related to the law, the legal system, and the administration of justice but must ensure that any courtwide communications do not undermine the integrity or impartiality of the judiciary, suggest that any outside entity is in a position of special influence, lend judicial prestige to advance someone’s pecuniary or personal interest, engage in partisan politics, or relate to a specific pending or impending matter.



This opinion is advisory only (Cal. Rules of Court, rule 9.80(a), (e); Cal. Com. Jud. Ethics Opns., Internal Operating Rules & Proc. (CJEO) rule 1(a), (b)). It is based on facts and issues, or topics of interest, presented to the California Supreme Court Committee on Judicial Ethics Opinions in a request for an opinion (Cal. Rules of Court, rule 9.80(i)(3); CJEO rule 2(f), 6(c)), or on subjects deemed appropriate by the committee (Cal. Rules of Court, rule 9.80(i)(1); CJEO rule 6(a)). The conclusions expressed in this opinion are those of the committee and do not necessarily reflect the views of the California Supreme Court or any other entity. (Cal. Rules of Court, rule 9.80(b); CJEO rule 1(a).)

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.