



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

350 McAllister Street, Room 1144A
San Francisco, CA 94102
(855) 854-5366

www.JudicialEthicsOpinions.ca.gov

CJEO Oral Advice Summary No. 2015-012

[Posted August 24, 2015]

**INVITING ATTORNEYS TO PROVIDE LEGAL EDUCATION TO APPELLATE
JUSTICES**

I. Question:

May appellate attorneys be invited to speak on law-related topics at a legal education program held for the justices of the appellate district court where the attorneys practice?

II. Oral Advice Provided:

The California Code of Judicial Ethics¹ permits a presiding justice to invite attorneys to speak on law-related topics at a legal education program held for the justices of the appellate district court where the attorneys practice, so long as precautions are

¹ All further references are to the canons and Advisory Committee commentary in the California Code of Judicial Ethics.

taken to avoid the appearance of impropriety or the diminishment of the public's confidence in the impartiality of the court. (Canon 2A(2) [a judge shall act at all times in a manner that promotes confidence in the integrity and impartiality of the judiciary]; Advisory Comm. Commentary foll. Canon 2A(2) [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 4B [a judge may participate in activities concerning legal subject matters, subject to the requirements of the code]; (Rothman, Cal. Judicial Conduct Handbook (3d ed. 2007) § 6.37, p. 290 (Rothman) [a judge may not participate in an educational program that may cast reasonable doubt on the judge's capacity to act impartially, create the appearance of political bias or impropriety, or involve comment on pending cases that might substantially interfere with a fair trial or hearing]; Cal. Judges Assoc. (CJA) Formal Opinion No. 47 (1997) p. 4 [it is appropriate and desirable for judges to participate educational programs provided by attorneys so long as the judges' participation does not cast reasonable doubt on impartiality or diminish public confidence in the judiciary].)

In the context of an educational luncheon program for appellate justices where a variety of attorneys who practice before the court are invited to speak about current law-related topics, the presiding justice is advised to consider and balance the following precautions to ensure confidence in the impartiality of the court:

- Invite the attorney to discuss legal issues but not specific cases, issues, or controversies pending in the courts. (Rothman, *supra*, § 6.37, p. 290, fnt. 161 [any educational activity must avoid public comment on pending or impending cases]; CJA Op. No. 58 (2006) p. 3 [a judge should never attend an educational program in which specific matters pending before the court are the subject of discussion].)
- Review the curriculum and content of the attorney's remarks before the educational program to ensure that it is not designed to advocate a particular point

of view or the merits of the attorney's cases. (CJA Op. No. 47, *supra*, p. 3 [discussion of legal issues, ideas, and philosophies is appropriate, however, discussion of specific pending cases is not appropriate, whether or not the case is pending before another judge]; CJA Op. No. 58, *supra*, p. 3 [a judge invited to attend an educational program should scrutinize the curriculum and content to ensure that the program is not designed to advocate a particular point of view].)

- Invite attorneys representing opposing positions or parties to speak to the justices or otherwise be available to hear additional viewpoints. (CJA Op. No. 47, *supra*, p. 3 [to offset any perception of partiality, judges participating in educational events with attorneys representing particular viewpoints are advised to be equally available to groups representing opposing viewpoints]; CJA Op. No. 58, *supra*, p. 3 [to dispel any appearance of favoritism, judges should be available to participate in educational programs involving other groups].)
- Prohibit use of the speaking engagement in the attorney's advertising or to otherwise promote the attorney's practice. (Canon 2B(2) [a judge shall not lend the prestige of judicial office or use the judicial title in any manner to advance the interests of others]; CJA Op. No. 47, *supra*, p. 3 [attorney groups providing education to judges may not use the judge in its advertising in such a manner as to make it appear that the judge promotes the goals of the organization].)



This oral advice summary 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 rules 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)).