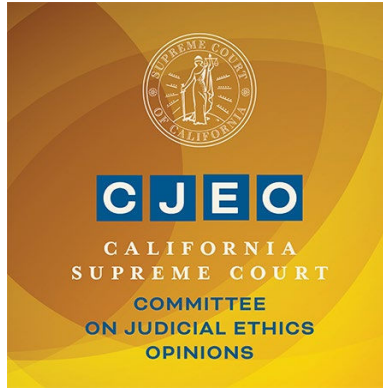




**CALIFORNIA SUPREME COURT
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CJEO Draft Formal Opinion 2023-022

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

Public Comments Submitted

Comments from members of the public submitted in response to an Invitation to Comment on a CJEO Draft Formal Opinion are deemed nonconfidential communications and may be posted on the CJEO website for public review at the committee's discretion. (Cal. Rules of Court, rule 9.80(h)(4).)

Comment 1

Submitted by: Hon. Kelvin D. Filer, Los Angeles County Superior Court

Received: February 8, 2023

Subject: Submission: Public Comments on CJEO Draft Formal Opinions (2023-022)

I certainly agree with the proposed drat/opinion !! I feel that Presiding Judges should have the discretion to communicate with all of us on these matters which could conceivably impact the court ! In fact, the only change that I would suggest is that i really feel there should be language included that the Presiding Judges are ENCOURAGED to have these communications with the other judges as this would foster an atmosphere of transparency !

Comment 2

Submitted by: Dr. Bryan Borys on behalf of Los Angeles County Superior Court

Received: February 28, 2023

Subject: Submission: Public Comments on CJEO Draft Formal Opinions (2023-022)

Thank you for the opportunity to comment. In general we approve of Draft Formal Opinion 2023-022. We have the following comments and proposed edits to paragraphs on pages 10 and 11 of the Draft Formal Opinion.

1. The first paragraph of page 10 of the Draft Formal Opinion discusses a presiding judge forwarding a newspaper editorial. Such an editorial could have a particular point of view on a controversial issue or could relate to a less divisive topic such as an operational or administrative issue. The forwarding of a newspaper editorial therefore could raise potentially more serious issues than forwarding an invitation or other information from an outside entity. For this reason, and depending on the nature of the editorial, the CJEO may wish to consider including language along the following lines:

“If the presiding judge determines that forwarding a newspaper editorial is appropriate, the presiding judge should consider including prefatory language such as: ‘The presiding judge believes the editorial might be of general interest but expresses no position on the views expressed in the editorial.’”

2. The conclusion to be drawn from the examples on page 11 of the Draft Formal Opinion is not clear. The paragraph under the heading “Special Influence” includes the following statements: “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.”

The first sentence relates to “encouraging attendance” and the second sentence relates to “providing information.” Does this mean that encouraging attendance is not allowed, but providing information is? The first sentence refers to a bar association affiliated with a particular point of view, while the second sentence refers to “non-partisan educational events.” Does this mean that the presiding judge may not forward information about bar associations that have a particular point of view, but may forward information about “non-partisan” events? And how does one define “non-partisan”?

To the extent the Draft Formal Opinion means to say presiding judges can provide information about bar or educational events (whether partisan or non-partisan) but should

not encourage attendance at bar or educational events, we recommend revising the opinion to say so more plainly by revising the paragraph to state: “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. Such encouragement would be improper. However, providing information about events sponsored by bar associations is consistent with the canons broadly permitting judges to be involved in legal education and community activities.”

If, however, the Draft Formal Opinion means to ensure that presiding judges take these issues into account but retain discretion to encourage attendance, we suggest the following alternate language to replace these two sentences: “In the civil context, a presiding judge should consider whether forwarding a flyer encouraging attendance at an environmental law seminar sponsored by and oriented to environmental plaintiffs’ lawyers suggests that the environmental plaintiffs’ bar has a special relationship with or influence over the presiding judge or the court. In general, providing information about educational events sponsored by bar associations is consistent with the canons broadly permitting judges to be involved in legal education and community activities. In all such communications, the presiding judge should be careful to avoid the appearance of a special relationship with any organization and ensure such communications are equally available to bar associations having opposing interests or viewpoints.”

Thank you for considering these comments.