



**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 2023-023

**GUIDELINES FOR HOSTING EDUCATIONAL PRESENTATIONS BY
OUTSIDE SPEAKERS AND GROUPS**

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: April 13, 2023

Subject: Comment on Proposal for Outside Speakers

Dear Commission – I have read the proposed language on the issue regarding outside speakers to the court and I certainly agree with the intent of the restrictions ! However, I have a concern about the requirement that “the presentation does not include improper political activity “ ? My question is what constitutes “improper political activity ?” I am concerned that the restriction is vague as to what can and what cannot be said ? Frankly, I think we can omit the word “improper” – that way there should be NO POLITICAL activity ? Another option could be to say that the presentation does not “solicit, oppose or advocate for a particular political position “ ? Anyway.....this reflects my thoughts on the proposal !

Judge Kelvin D. Filer

Los Angeles Superior Court

Comment 2

Submitted by: Harold Shabo

Received: April 18, 2023

Subject: Submission: Public Comments on CJEO Draft Formal Opinions (2023-023)

The proposal is necessary to preserve public confidence in the courts, especially in light of the political climate that includes political attacks on the judiciary. I therefore support the proposal.

Comment 3

Submitted by: Ben Z.

Received: May 2, 2023

Subject: Submission: Public Comments on CJEO Draft Formal Opinions (2023-023)

Educating our judges is a critical component of having a fair and just system. Only the best educators should be chosen to teach judicial officers.

Many times fellow judges and lawyers are utilized to mentor our judges. Some of these judges and lawyers have done terrible things to our community. Oftentimes, said misconduct results in no discipline.

[REDACTED]

Comment 4

Submitted by: Hon. Barbara Kronlund, San Joaquin County Superior Court

Received: May 4, 2023

Subject: Submission: Public Comments on CJEO Draft Formal Opinions (2023-023)

I support the advice in Draft opinion 2023-023. It's well-written and will be useful to judges.

Thank you,
Barbara Kronlund

Comment 5

Submitted by: Hon. Barbara Kronlund, San Joaquin County Superior Court

Received: May 4, 2023

Subject: Submission: Public Comments on CJEO Draft Formal Opinions (2023-023)

I support this opinion. It will be useful to judges and help them avoid the possible pitfalls with inviting outside speakers to the Court. Well-written opinion.

Minor typo at page 6, 8th line down, the word "administrative" should be "administration", I believe.

Thank you,
Barbara Kronlund

Comment 6

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

Received: May 22, 2023

Subject: Submission: Public Comments on CJEO Draft Formal Opinions (2023-023)

Thank you for the opportunity to comment. The Los Angeles Superior Court generally favors the guidance provided by the Draft Formal Opinion. We have three suggested edits.

In some disciplines and particularly in family law, bench officers need to be educated on topics about which they will regularly be required to make decisions but which fall outside the context of the law, such as psychological and financial matters. Those most knowledgeable about these topics will likely not be judges or lawyers but mental health professionals and accountants, and it is possible that some of those professionals will appear in court as experts or percipient witnesses. Counties without court-affiliated mental health professionals may rely on outside mental health professionals to provide training to bench officers on issues like child custody evaluations. The information provided by these professionals at such training presentations may be essential for bench officers to do their jobs well and are generally not case-specific.

We suggest, when such an outside speaker makes a presentation to bench officers and thereafter appears as a witness in a court proceeding, the bench officer be advised to disclose the fact that the bench officer attended a judicial seminar at which that speaker made a presentation and to disclose the topic. We believe that such a disclosure is consistent with the intent of the opinion to avoid the appearance of impropriety.

For that reason, we suggest three edits (underlined):

(1) Adding in the middle of page 12 at the beginning of the paragraph: “Even if the outside speaker or group is not currently involved in litigation as a party or amicus curiae before the court, it would be improper”

(2) Adding at the end of the first paragraph on page 13: “If a judge attends a court-hosted presentation with an outside speaker who later becomes involved in a proceeding before that judge, for example as an expert or other witness, the judge should consider disclosing the attendance at the presentation and the topic of the presentation.”

(3) Adding at the end of the conclusion on page 13: “and that outside speakers and groups are not involved, or likely to be involved, as parties or amicus curiae in a proceeding pending before the court.”

Comment 7

Submitted by: Marina Meyere on behalf of the Sixth District Court of Appeal

Received: May 26, 2023

Subject: Submission: Public Comments on CJEO Draft Formal Opinions (2023-023)

The Sixth District Court of Appeal offers the attached comment to the CJEO draft opinion on inviting outside speakers for the committee's consideration.

[Text from attachment]:

The Sixth District Court of Appeal presents the following comments for consideration regarding CJEO Draft Formal Opinion 2023-023.

As set out, Draft Formal Opinion 2023-023 creates vague and unrealistic expectations not easily achieved in the real world. The Opinion should be edited to create a distinction between legal scholars and advocates for various organizations. Additionally, the “balance” requirement should be either removed or further defined.

1. Compliance would place an unreasonable burden on speakers and the courts.

In Section A. Undermining Impartiality, the draft opinion states, “In the committee’s view, the average person on the street would expect judges to engage in educational activities relevant to the work of the judicial branch, including inviting presentations by outside speakers and groups having a variety of views on different topics. However, such presentations are subject to the requirements of the code, such as the duty to preserve public confidence in the impartiality of the judiciary. (Canons 1, 2, and 2A.) While nothing prohibits outside speakers and groups from expressing their own viewpoints, the presentation must not be conducted in a manner that suggests the judiciary is expressing a view on, or has pre-decided, any issue before the court.” It goes on to state, “To avoid the appearance of impropriety, the committee advises courts to ensure that the content, format, and circumstances of presentations by outside speakers and groups do not imply that the judiciary is aligned with, or biased in favor of, the outside speaker or group on any question before the court.”

This court often invites outside speakers to the court to provide judicial education. During the pandemic, the managing attorney of this court curated a series of remote presentations by legal scholars from around the country, which was offered to all the districts around the state. The well received programs were attended by hundreds of justices and legal staff and provided an important bonding opportunity for the justices of the courts of appeal. As the court has no budget for speaker’s fees, most often these are law professors speaking free of charge on their field of expertise.

The opinion, as written puts this practice into question. Would we now need to require the speaker to present a detailed outline of the presentation in advance for vetting? Would we need to strike any topic that may suggest that the speaker has a particular viewpoint or opinion? It is unlikely that any speaker, agreeing to present free of charge would agree to such conditions, and it may come across as onerous, insulting and possibly violative of their free speech rights.

2. *The expectation that speakers represent a balance of interests is unrealistic and could lead to undesirable unexpected consequences.*

In Section B. Special Influence, the opinion sets out an expectation that speakers represent a balance of interests and viewpoints, stating, “To avoid the impression of special influence, the committee advises that educational speakers represent a balance of interests and viewpoints. By hosting speakers having different interests and viewpoints, the court avoids the suggestion that any speaker has a favored position with, or special access to, the judiciary. This is consistent with the committee’s previous advice that when judges themselves choose to be presenters, they make themselves equally available to audiences representing opposing sides.” This section goes on to recommend, that, “This balance may be achieved in various ways. For example, if the court is hosting a single day educational panel, it might invite speakers representing different perspectives to participate in the same panel. If the court were hosting a series of discussions, it might select a series of speakers representing different viewpoints to present at subsequent sessions.”

Individual speakers cannot be expected to present a balance of interests and viewpoints. The draft ethics opinion states, “For example, it would be proper for a law professor to discuss the evolution of class action laws.” Law professors are not likely to be “balanced” because they are often scholars who write and lecture, so need to express opinions. Even law professors presenting a summary about a “neutral” topic, such as a summary of recent Supreme Court opinions, may have viewpoints grounded in their experience and expertise that may not be “balanced.” Take the abortion decision from the Supreme Court’s 2022 term. A speaker summarizing that opinion could speak about what position each justice took, but the point of inviting scholars to speak is to hear their analysis of such opinions. Any analysis will include the speaker’s viewpoints which may not be “balanced.” Would a court be expected to direct the speaker to avoid presenting any viewpoint that was not balanced?

Inviting multiple speakers to represent different perspectives may create more issues that it would resolve. On many topics, opposing viewpoints may not be acceptable under current moral or social values. Some examples from recent presentations.

- A law professor, who is also an advocate for refugees, spoke about the evolution of refugee law and current refugee practices, which she felt were moving in a negative direction. Under this ethics opinion, would the court be required to invite a speaker who advocated against refugee rights?

- A law professor who specializes in the voting rights act presented about the problems with the US Supreme Court's treatment of the Voting Rights Act. To present a "balanced" view, would a court need to also invite someone who advocated against voting rights?
- A very well know dean of a prestigious law school discussed the abortion decision by the US Supreme Court. Assuming a court knew in advance, that this professor disapproved of the decision, and would express that view, would a court be required to invite a speaker who advocated for the abolition of abortion rights?

The ethics opinion as written creates a vague and unrealistic standard. Every speaker of interest has a viewpoint, which may not easily be ascertained in advance and even if known, could not necessarily be controlled without jeopardizing a court's ability to entice such speakers to present for free.

Creating panels to "balance" perspectives on topics of current interest may require a court to invite speakers with viewpoints offensive under current social and moral norms.

Finally, the opinion leaves open the question of whether a court who invited one speaker who expressed a particular viewpoint would then need to invite a speaker with an opposing viewpoint to "balance" the scales.

As written the opinion would stifle a court's ability to invite scholars to provide judicial education. A distinction should be drawn between legal scholars and advocates for various organizations. Additionally, the requirement of "balance" should be either removed or further defined with more precise examples.