



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

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**CJEO Expedited Opinion<sup>1</sup> 2022-048**

*[Posted May 19, 2022]*

**COMMENTING ON OR ENDORSING LEGAL EDUCATION BOOKS  
WRITTEN BY OTHERS**

**I. Question**

The Committee on Judicial Ethics Opinions has been asked: (1) whether a judicial officer may review, critique, or comment on legal education books written by others in a legal publication; and (2) whether a judicial officer who has not contributed to a legal education book

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<sup>1</sup> The California Supreme Court Committee on Judicial Ethics Opinions (CJEO or the committee) issues **Expedited Opinions**, formerly known as **Oral Advice Summaries**, pursuant to California Rules of Court, rule 9.80(i)(1) (eff. Jan. 1, 2021). Expedited Opinions are issued to requesting judicial officers following a discretionary decision by CJEO to address the ethical issues raised in an expedited process that does not include posting draft opinions for public comment, as required for CJEO Formal Opinions. CJEO Expedited Opinions are published in full, without identifying information regarding the requesting judicial officer, to provide information and analysis to the bench and the public regarding judicial ethics.

may provide a written endorsement referencing the judicial officer's title to be used on the book cover.

## **II. Advice Provided**

(1) A judicial officer may review, critique, or comment on legal education books written by others in a legal publication when the primary purpose of doing so is to engage in educational discourse related to the law, the legal system, or the administration of justice. The substance of a judicial officer's review, critique, or commentary must otherwise comply with the canons; for example, the judicial officer must not engage in improper political commentary or undermine the integrity or impartiality of the judiciary.

(2) A judicial officer who has not contributed to a legal education book may not provide a written endorsement referencing the judicial officer's title to be used on the book cover because the primary purpose of such an endorsement is to market or promote the book, which violates the canon prohibition against lending judicial prestige to advance a person's pecuniary or personal interests.

## **III. Discussion**

The California Code of Judicial Ethics<sup>2</sup> generally permits and encourages judges to engage in educational activities, particularly those concerning the law, the legal system, and the administration of justice. (Canon 4B [judges may speak, write, lecture, teach and participate in activities concerning legal and nonlegal subjects, subject to the requirements of the code]; Advisory Com. commentary foll. canon 4B [judicial officers are specially learned in the law and in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice].) At the same time, the code prohibits judges from lending judicial prestige to advance their own or another person's pecuniary or personal interests. (Canon 2B(2) [a judge shall not lend judicial prestige or use judicial title in any manner to advance the

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

pecuniary or personal interests of the judge or others].) Other canons further prohibit the use of title or position for financial gain. (Canon 4D(1)(a) [a judge shall not engage in financial or business dealings that may reasonably be perceived to exploit the judge’s judicial position]; canon 4D(2) [a judge shall not use judicial title, permit others to use the judge’s title, or lend judicial prestige to promote a business or commercial venture].)

Harmonizing these provisions, judicial officers may use their judicial title to review, critique, or comment on legal education books written by others for purposes of contributing to educational discourse, but may not use judicial title to market, promote, or solicit sales of others’ legal education books, as described below.

#### ***A. Reviewing, Critiquing, or Commenting on Legal Education Books***

Judicial officers may use judicial title when reviewing, critiquing, or commenting on legal education books in a legal publication if the primary purpose of doing so is to engage in educational discourse related to the law, the legal system, or the administration of justice. (Canon 4B; Advisory Com. commentary foll. canon 4B.) Discussions regarding legal education books or writings in legal publications, such as legal periodicals or newsletters, have important educational value and contribute to the improvement of the law and legal system. The Rothman treatise suggests that judges may not “promote *or critique* a legal or nonlegal book written by another.” (Rothman et al., Cal. Judicial Conduct Handbook (2020 Supp.) § 9:8, p. 85, italics added.) While the committee agrees that judges may not promote others’ written works, review or critique of legal works is an educational exercise and consistent with the canons. Although a positive review or discussion may incidentally lead to increased sales, the primary purpose of such discussions is educational rather than promotional. (Cal. Judges Assn., Jud. Ethics Com., Advisory Opn. No. 65 (2010) p. 6 (CJA Opn. No. 65) [a judge may write a review of a book written about a historical event for a legal periodical, even though positive comments are likely to be used to market the book where the review is written as an academic exercise and not for commercial purposes; however, a judge may not critique a book written by a friend about the author’s son’s drug use when the judge’s position would likely be exploited due to factors beyond the judge’s control].)

When reviewing, critiquing, or commenting on legal education books or writings, judicial officers must ensure that the substance of their statements otherwise complies with the canons. For example, it would be improper for a judicial officer to comment on a case pending in an appellate court if the judicial officer has personally participated in the case. (Canon 3B(9) [prohibition against publicly commenting on pending cases does not prohibit judges from discussing appellate cases in legal education materials unless the judge has presided over the case or the comment would interfere with a fair hearing].) It would also be improper for a judicial officer to engage in impermissible political commentary or otherwise undermine public confidence in the integrity or impartiality of the judiciary. (Canon 5 [a judge shall not engage in political activity that may create the appearance of political bias or impropriety; canons 1, 2, & 2A [judges must preserve public confidence in the integrity and impartiality of the judiciary in all activities]; CJA Opn. No. 65, *supra*, at p. 3 [even where a judge writes about the law or advocates for changes in the law, the judge must do so in a manner that does not undermine public confidence in the judiciary or cast doubt on the judge’s ability to act impartially].)

### ***B. Endorsing Legal Education Books***

While a judicial officer may review, critique, or comment on legal education books for educational purposes, a judicial officer who has not contributed to a legal education book may not provide a book cover endorsement referencing the judicial officer’s title because this lends judicial prestige to advance another person’s pecuniary or personal interest in violation of canon 2B(2).<sup>3</sup> Authors and publishers typically seek written endorsements from high-profile or prestigious individuals, sometimes called ‘book blurbs,’ for the placement on a book cover to market and promote the book for sale. An endorsement from a well-known judge, for example, might suggest to would-be readers that a law-related book is particularly interesting or useful, leading to increased sales. When a judicial officer has not authored, co-authored, or contributed to the book, the primary purpose of such an endorsement is not to identify a contributor by

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<sup>3</sup> This opinion does not address whether it may be permissible to endorse a legal education book without reference to judicial title or position; however, the committee presumes this fact pattern would be unlikely in the case of judicial endorsements of legal education books.

judicial title or engage in an educational exercise, but rather to use the endorsing judicial officer's title to promote sales. The code prohibits lending judicial prestige or using judicial title for this purpose, regardless of whether a book is educational in nature. (CJA Opn. No. 65, *supra*, at p. 5 [a judge not involved in the preparation of a legal education book may not write a testimonial regarding the value of the book for marketing purposes].)

The code provisions governing the use of judicial title with respect to marketing and promoting legal education programs and materials are instructive. The code permits limited references to judicial title for marketing or promoting legal education programs and materials, subject to other canons. The Advisory Committee commentary to canon 4B provides that: "It may be necessary to promote legal education programs and materials by identifying authors and speakers by judicial title. This is permissible, provided such use of judicial title does not contravene [c]anons 2A and 2B." The Advisory Committee commentary to canon 2B adds that: "In contracts for publication of a judge's writings, a judge should retain control over the advertising, to the extent feasible, to avoid exploitation of the judge's office." This means that promoters of legal education programs and materials may use factually accurate descriptions of authors and speakers, including their judicial titles, provided the use of judicial title does not undermine the integrity or impartiality of the judiciary in violation of canon 2A or improperly lend judicial prestige to advance pecuniary or personal interests in violation of canon 2B(2).<sup>4</sup> It also requires judges to exercise control over how others use their judicial title in marketing and promotional materials to ensure that judicial position is not exploited to increase sales.

In the committee's view, however, this does not allow a judicial officer to use judicial title to market, promote, or solicit sales of others' legal educational works. There is a distinction between referencing judicial title to accurately describe biographical information about an author or contributor to legal education materials, which is permissible, and allowing others to leverage one's judicial title to market, promote, or solicit a sale, which is not. (CJA Opn. No.

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<sup>4</sup> For example, it would proper to state in promotional materials that "Judge Jones will be a panel speaker" at a particular legal education event, but improper to use a judge's name in a personal promotional claim, such as: "Judge Jones hopes to see you at this event!"

65, *supra*, at pp. 5–6 [biographical information in the forward of a legal thriller may reference the author’s judicial title; however, a judge may not write a commentary to be included in a book jacket and used for marketing purposes].)<sup>5</sup>

#### IV. Conclusion

Judicial officers may review, critique, and comment on legal education books in legal publications for educational purposes consistent with the advancement of the law, the legal system, or the administration of justice. When doing so, judicial officers must ensure that the substance of their statements otherwise complies with the canon requirements, such as the prohibitions against engaging in improper political commentary or undermining the integrity or impartiality of the judiciary. However, a judicial officer who has not contributed to a legal education book may not provide a written endorsement referencing the judicial officer’s title to be used on the book cover because the primary purpose of such an endorsement is marketing and promotion, which violates the prohibition against lending judicial prestige to advance a person’s pecuniary or personal interest.



*This expedited advice opinion is advisory only. (Cal. Rules of Court, rule 9.80(a), (e); Cal. Supreme Ct. Com. Jud. Ethics Opns. (CJEO), Internal Operating Rules & Proc. 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)). The conclusions expressed in this*

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<sup>5</sup> The degree to which judicial officers may use judicial title to engage in marketing activities related to their own books, whether legal or nonlegal in nature, is beyond the scope of this opinion. However, the committee notes that judge authors have been disciplined for inappropriate use of judicial position or court resources to advance their own books sales. (*Inquiry Concerning Ross* (1998) 48 Cal.4th CJP Supp. 19, 31–32, 45 [judge disciplined for selling his book from chambers and using his bailiff to facilitate sales to attorneys and jurors].)

*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).)*