



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 2023-023]

Title

CJEO Draft Formal Opinion 2023-023,
*Guidelines for Hosting Educational
Presentations by Outside Speakers and
Groups*

Action Requested

Review and submit comments by
May 29, 2023

Proposed Date of Adoption or Other Action

To be determined

Prepared by

The California Supreme Court
Committee on Judicial Ethics Opinions

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For information about the committee and its
members, visit the [CJEO website](http://www.CJEO.org)

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This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.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 2023-023 provides guidance regarding factors courts should consider when inviting outside speakers and groups to provide educational presentations to judges and court staff.

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the committee will decide whether the draft opinion should be published in its original form, modified, or formally withdrawn.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 **May 29, 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 May 29, 2023

At the close of the comment period, or after **May 29, 2023**, the committee will post on its [website](#) all comments that are not clearly identified as confidential.

Attachment: CJEO Draft Formal Opinion 2023-023



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

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CJEO Draft Formal Opinion 2023-023

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

I. Question

The Committee on Judicial Ethics Opinions (CJEO or committee) has been asked for guidance regarding factors that courts¹ should consider when the court invites, or court resources are being used to host, outside speakers and groups to provide educational presentations to judges and court staff.

¹ The committee is authorized to provide ethics advice to judicial officers and judicial candidates, as opposed to non-judicial officer court administrators. (California Rules of Court, rule 9.80(a).) This opinion is intended to provide guidance to those judicial officers making decisions about educational content and speakers on behalf of the court.

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II. Summary of Conclusions

The code generally permits and encourages judges to participate in educational activities, and judges are required to maintain professional competence in the law. Courts may provide educational opportunities for judges and court staff, including presentations by outside speakers and groups, on topics relevant to the work of the courts or the judicial branch. To ensure that presentations by outside speakers and groups comply with the Code of Judicial Ethics,² the committee advises that: (1) the presentation does not undermine judicial impartiality; (2) the speakers represent a balance of interests and viewpoints; (3) the presentation does not lend judicial prestige to advance the interests of the outside speaker or group; (4) the presentation does not constitute improper political activity; and (5) the outside speakers or groups are not involved, or likely to be involved, in proceedings before the court.

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.”

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.”

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

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(2): “A judge shall be faithful to the law regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.”

Canon 3B(5): “A judge shall perform judicial duties without bias or prejudice.”

Canon 3B(7): “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(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(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 4A: “A judge shall conduct all of the judge’s extrajudicial activities so that they do not (1) cast reasonable doubt on the judge’s capacity to act impartially.... or (4) lead to frequent disqualification of the judge.”

Canon 4B: “A judge may speak, write, lecture, teach, and participate in activities concerning legal and nonlegal subject matters, subject to the requirements of this code.”

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*

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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(3)(c): “[A] judge shall not serve as an officer, director, trustee, or nonlegal advisor if it is likely that the organization (i) will be engaged in judicial proceedings that would ordinarily come before the judge, or (ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

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

Code of Civil Procedure, section 170.1, subd. (a)(6)(iii)

California Rules of Court, rules 9.80(a), 10.451(a), and 10.481(b)

People v. Freeman (2010) 47 Cal. 4th 993

Wechsler v. Superior Court (2014) 224 Cal. App. 4th 384

United Farm Workers v. Superior Court (1985) 170 Cal. App. 3d 97

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

CJEO Formal Opinion 2014-006 (2014), *Judicial Comment at Public Hearings and Consultation with Public Officials and Other Branches of Government*, California Supreme Court Committee on Judicial Ethics Opinions

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CJEO Expedited Opinion 2021-038 (2021), *Acceptance of Attorney Services from a Law Firm*, California Supreme Court Committee on Judicial Ethics Opinions

CJEO Oral Advice Summary 2017-021 (2017), *Disqualification for Acquaintance with Leaders of an Amicus Curiae*, California Supreme Court Committee on Judicial Ethics Opinions

CJEO Oral Advice Summary 2014-005 (2014), *Disqualification for Membership in an Amicus Curiae*, California Supreme Court Committee on Judicial Ethics Opinions

California Judges Association, Judicial Ethics Committee, Opinion No. 53 (2003)

California Judges Association, Judicial Ethics Update (January 2017)

California Judges Association, Judicial Ethics Update (June 2007)

Rothman et al., California Judicial Conduct Handbook (4th ed. 2017) section 7:57

Geyh et al., Judicial Conduct and Ethics (6th ed. 2020) section 8.02

New York Advisory Committee on Judicial Ethics Opinion No. 22-22(A) (2022)

IV. Discussion

The code 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 [because judges are specially learned in the law, they 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 independently, through bar or judicial associations, or others means].) Moreover, judges have a duty to maintain professional competence in the law and judicial administration. (Canon 3B(2) [judges

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must be faithful to, and maintain professional competence in, the law]; canon 3C(2) [judges must maintain professional competence in judicial administration and cooperate with other judges and court officials in the administration of court business].)

Further, the California Rules of Court recognize the importance of judicial education in maintaining a fair, effective, and efficient judiciary. (California Rules of Court, rule 10.451(a) [judicial branch education for all justices, judges, and subordinate judicial officers, and court personnel is essential to enhance the fair, effective, and efficient administrative of justice and vital to the judicial branch’s long-range strategic plan].) To this end, courts and judicial branch supervisors may provide educational opportunities to judges and court staff. (*Id.* [responsibility for planning, conducting, and overseeing judicial branch education properly resides within the judicial branch].) This may take the form of internal trainings by established judicial branch providers, such as the Center for Judicial Education and Research (CJER), or presentations and panels by outside speakers and groups. (CRC, rule 10.481(b) [the Chief Justice, administrative presiding justices, and presiding judges may approve additional judicial education providers outside of CJER and the courts, provided the content meets certain criteria].) Presentations by outside speakers and groups may cover various topics, provided that the presentation is consistent with the code and “the subject matter is relevant to the work of the courts or the judicial branch.” (*Id.*)

When inviting³ outside speakers and groups to provide educational presentations, courts are advised to consider the following factors to ensure compliance with the code.

³ This opinion is intended to provide guidance for situations where the court invites, hosts, or otherwise provides court resources to support an educational presentation by an outside speaker or group.

A. Undermining Impartiality

First and foremost, the code imparts on all judges a duty to preserve public confidence in the 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 3B(5) [judges shall perform judicial duties without bias or prejudice]; canon 4A(1) [judges shall conduct all extrajudicial activities so that they do not cast reasonable doubt on impartiality]. This duty prohibits not only actual bias, but also creating an appearance of bias. (*People v. Freeman* (2010) 47 Cal.4th 993, 1000-1001 [in the context of judicial disqualification, rules are not only concerned with the due process rights of the parties, but also public confidence in the impartiality of the judiciary, which is why the appearance of bias is itself a ground for disqualification].)

When determining whether an educational presentation by an outside group undermines the appearance of impartiality, the court must be guided by how the activity would objectively appear to an observer. (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]; *Wechsler v. Superior Court* (2014) 224 Cal. App. 4th 384, 391 [the test for the perception of bias in the context of disqualification is an objective one: if a fully informed, reasonable member of the public would fairly entertain doubts that the judge is impartial, the judge should disqualify].) In other words, the court must consider how the court’s hosting of the presentation might appear to the “average person on the street.” (*United Farm Workers v. Superior Court* (1985) 170 Cal. App. 3d 97, 104 [discussing the objective standard in the context of judicial disqualification].)⁴

⁴ The canon 2A test for an appearance of impropriety in a judge’s conduct is nearly identical to the test used for discretionary disqualification in specific matters before the judge. (Advisory Com. com. foll. canons 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 . . . impartiality”]; Code Civ. Proc., § 170.1, subd.

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. (Canon 2A [a judge shall not make public or nonpublic statements 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].) For example, it would be proper for a law professor to discuss the evolution of class action laws. However, it would be improper for a well-known plaintiff-side class action attorney to instruct judges how to draft pro-plaintiff class action decisions in a manner that avoids being overturned on appeal.

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. (Geyh et al., *Judicial Conduct and Ethics* (6th ed. 2020) § 9.05, p. 6 [judges can, by their attendance at some public or private events, create the impression that they support or ascribe to the views of those who host the events, which, under some circumstances may cast doubt on their impartiality or create an appearance of impropriety].)

(a)(6)(iii) [a judge shall be disqualified if for any reason “a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial”].)

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B. Special Influence

As an extension of the duty to ensure public trust, the code prohibits a judge from allowing anyone to influence the judge's judicial decisionmaking or from conveying the impression that anyone is in a special position to influence the judge. (Canon 2B(1) [judges must not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, or convey the impression that any individual is in a special position to influence the judge]; CJEO Expedited Opinion 2021-038 (2021), *Acceptance of Attorney Services from a Law Firm*, Cal. Supreme Ct. Com. Jud. Ethics Opns., p. 3 [even if there is no actual influence, allowing a law firm attorney to work in a justice's chambers casts a shadow of influence, which must be avoided].)

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 particular 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. (CJEO Formal Opinion 2018-012 (2018), *Providing Educational Presentations at Specialty Bar Events*, Cal. Supreme Ct. Com. Jud. Ethics Opns., pp. 2, 7–8 [judges may give educational presentations to specialty bar associations, provided they are equally available to bar associations having opposing interests or viewpoints]; CJA Update (June 2007) p. 3 [a judge may speak with newly hired district attorneys about trial practice provided the judge is available to give similar talks to the public defender's office]; CJA Update (January 2017), p. 10 [judge may address attorneys at the annual conference of the League of California Cities provided the judge does not cast doubt on impartiality and is available to speak to other groups of attorneys with different legal perspectives].)

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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.

C. Lending Prestige

When inviting outside speakers and groups to provide educational presentations, courts are advised to consider whether hosting the presentation will improperly lend judicial prestige to advance the interests of the speaker or group. (Canon 2B(2) [judges shall not lend judicial prestige or title to advance the pecuniary or personal interests of the judge or others].) The prohibition against lending judicial prestige to advance interests is not limited to financial interests. For example, if the court were to host an educational presentation by an outside speaker or group with a particular policy goal or political agenda, the court may impermissibly lend judicial prestige to the extent that speaker or group uses the educational presentation as a platform to advocate for its own goals. In the committee's view, the risk of improperly lending prestige is heightened when the speaker or group is a partisan entity, such as an advocacy organization with a well-known political agenda, as opposed to a neutral think-tank.⁵

⁵ There may be other situations where a court's invitation to an outside speaker or group to present may improperly lend judicial prestige to advance pecuniary or personal interests in violation of canon 2B(2). For example, if a retired judge serving as a private mediator or a private mediation service gave or sponsored an educational presentation to the court, it would be improper for the retired judge or private mediation service to use the prestige associated with presenting to the judiciary to promote business. Depending on the circumstances, such a presentation may also convey the impression that the retired judge or private mediation service has a favored or special position of influence over the judiciary in violation of canon 2B(1).

D. Improper Political Activity

In addition, the committee advises courts to consider whether an educational presentation by an outside speaker or group constitutes improper political activity. Judges are prohibited from engaging in political activity except as it relates to “the law, the legal system, and the administration of justice” and is otherwise consistent with the code. (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]; CJEO Formal Opinion 2014-006 (2014), *Judicial Comment at Public Hearings and Consultation with Public Officials and Other Branches of Government*, Cal. Supreme Ct. Com. Jud. Ethics Opns., p. 7 [judges may advocate only on behalf of the legal system, focusing on court users, the courts, or the administration of justice].)

Depending on the circumstances, it may be reasonable for an outside observer to assume the court ascribes to, or may be swayed by, the views of a speaker it decides to host. For this reason, courts are advised to exercise caution when considering speakers that have made political statements on partisan issues, are strongly associated with certain political viewpoints, or have engaged in political or other activities that would cause a person aware of the facts to doubt the impartiality of the judiciary. (Advisory Com. commentary foll. canon 2A.)

E. Pending Proceedings

Lastly, the committee advises that when hosting outside speakers and groups, courts consider the extent to which the speaker or group is involved, or is likely to be involved, in proceedings pending before the court. For example, politically active organizations may be involved in lawsuits, either as parties or amicus curiae, relating to the issues they plan to present. If the court were to host such a presentation, it may create

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the impression that the court is biased in favor of the organization or has pre-decided an issue in its favor. (Canon 2A [judges must promote public confidence in impartiality and shall not make statements suggesting the judge has pre-decided an issue or case].) In addition, depending on the content and format of the presentation, there may be a risk of exposing judges in the audience to ex parte information relating to a pending proceeding or of creating the appearance the judiciary is commenting on a pending proceeding. (Canon 3B(7) [judges shall not initiate, permit, or consider ex parte communications, defined as any communication outside the presence of the parties concerning a pending or impending proceeding]; canon 3B(9) [judges shall not make a public comment on a proceeding pending in any court].)

Even if the outside speaker or group is not currently involved in litigation before the court, it would be improper for the court to host a speaker that is likely to have future litigation before the court that may later require the court or judges in the audience to disqualify.⁶ (Canon 4A(4) [judges shall conduct extra-judicial activities in a manner that does not lead to frequent disqualification].) Because judges have a duty to avoid disqualification, the code prohibits judges from serving in leadership positions in organizations frequently involved in litigation. (Canon 4C(3)(c) [judges shall not serve as an officer, director, trustee, or nonlegal advisor to organizations likely to be engaged in

⁶ In the case of organizations that frequently appear as amicus curiae, the risk of future disqualifications may depend on the nature of the organization and the degree of the court's association with it. (CJEO Oral Advice Summary 2014-005 (2014), *Disqualification for Membership in an Amicus Curiae*, Cal. Supreme Ct. Com. Jud. Ethics Opns., pp. 2-3 [appellate justices have discretion to disqualify when they are members of an organization filing an amicus brief in a pending matter, with factors to consider being the nature of the organization and the justice's level of involvement; CJEO Oral Advice Summary 2017-021 (2017), *Disqualification for Acquaintance with Leaders of an Amicus Curiae*, Cal. Supreme Ct. Com. Jud. Ethics Opns., pp. 2-3 [appellate justice has discretion but is not required to disqualify due to a casual acquaintance with leaders of an amicus curiae when contacts have been limited].)

judicial proceedings that would ordinarily come before the judge or in adversarial proceedings in the court in which the judge is a member].) For the same reason, courts and judges are advised to avoid close public associations with organizations frequently involved in litigation. (Rothman, *supra*, § 7:57, p. 478, citing Cal. Judges Assn., Jud. Ethics Com., Opn. No. 53 (2003) [depending on the nature of the organization, membership in a nonprofit organization that represents a side in litigation may raise a question as to the judge’s capacity to be impartial]; NY Advisory Com. on Jud. Ethics Opn. No. 23-22(A) (2022), pp. 1-2 [a judge may be a regular member of the New York Civil Liberties union, but not on the board of directors, due to the extensive lobbying, advocacy, and litigation activities of the organization].)

V. Conclusion

The code broadly permits and encourages judicial education. To this end, courts may invite outside speakers and groups to provide educational presentations to judges and court staff on issues relevant to the work of the courts or judicial branch. To ensure compliance with the code, courts are advised to ensure that presentations do not undermine judicial impartiality; that presenters represent a balance of viewpoints; that the court is not improperly lending judicial prestige to advance the interests of any outside speaker or group; that presentations do not constitute improper political activity; and that outside speakers and groups are not involved, or likely to be involved, in a proceeding pending before the court.



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

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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).)

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