



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

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CJEO Draft Formal Opinion 2023-024

ACCEPTING INVITATIONS TO LAW FIRM CELEBRATIONS

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 not to be confidential communications and may be posted on the committee's website for public review at the committee's discretion. (Cal. Rules of Court, rule 9.80(h)(4).)

Comment 1

Submitted by: Roger Chan

Received: Friday, May 26, 2023

Subject: Comment on CJEO Draft Formal Opinion 2023-024; Accepting Invitations to Law Firm Celebrations

Comment

Thank you for your work on this draft formal opinion. Is/Should there be any distinction from nonprofit law firms, such as children's, domestic violence prevention, or other nonprofits that hold regular fundraising events that may also recognize that nonprofit law firm's anniversary?

Thanks!

Comment 2

Submitted by: Judge Karin Schwartz

Received: Thursday, June 1, 2023

Subject: CJEO Draft Formal Opinion 2023-024

I write to provide comment with respect to PART IV.A of the draft opinion.

This language may be overbroad and not-reflective of the reality of judge-lawyer relationships. If not addressed, it could chill other conduct that otherwise may be permissible.

“A judicial officer’s presence at such an event may suggest that the judicial officer has a special relationship with the law firm, which may undermine the impartiality of the judiciary or convey the impression that the law firm is in a position to influence the judicial officer’s judicial decisions. “

The language does not take into account the possibility that the judge may have a previous relationship with the firm based on having worked there at some time in the distant past – a relationship that may be too extenuated to support disqualification, but that may support an objective conclusion that attendance does not reflect a “special relationship” suggesting bias. Take, as an example, a judge who worked at a firm decade(s) previously, but otherwise does not maintain any particular contact with the firm. The fact of the distant affiliation, rather than any ongoing “special relationship,” reasonably may motivate the attendance, depending on the facts. The proposed rule cuts too broadly.

The rule would have implications for other events. For example, what if a judge attends a retirement party for an attorney at a firm where he/she was employed in the distant past.

The judge may not have maintained a relationship with the firm that would require his/her disqualification – perhaps only with the honored retiree. As the proposed rule is written, however, such nuances are lost, and may chill otherwise acceptable conduct.

Thank you.

Comment 3

Submitted by: Adrian Driscoll

Received: Tuesday, June 13, 2023

Subject: CJEO Draft Formal Opinion 2023-024; Accepting Invitations to Law Firm Celebrations

I believe this proposed rule is unnecessary and harms our profession. Opportunities for Members of the Bench and the Bar to meet in settings other than a Courtroom are important to the maintenance of a diversified profession, the promotion of civility and professionalism, and a better understanding and appreciation of the respective roles we carry out in our justice system, especially for younger Members of the Bar. All of the Judges I have appeared before have always applied the law to the operative facts before them in an even-handed way, and tried their best in every case, regardless of whether they have become familiar with me through Court appearances, encounters in out of Court settings, or otherwise. Extremely unlikely occurrences of favoritism can be addressed on a case-by-case basis. It is far more important that we stop obsessing about appearances and making up rules to govern everything. The proposal suggests that we are not professionals, and that sends the wrong message to the public. Thank you.
Respectfully, Adrian Driscoll

Comment 4

Submitted by: Dr. Bryan Borys, Director of Research and Data Management

Submitted on behalf of: Los Angeles Superior Court

Received: Friday, June 30, 2023

Subject: CJEO Draft Formal Opinion 2023-024; Accepting Invitations to Law Firm Celebrations

Thank you for the opportunity to comment. We generally agree with the opinion and suggest a clarification about its breadth.

While we agree with the guidance as it relates to a law firm anniversary celebration, we suggest additional guidance about other types of events, including those sponsored (or paid for) in whole or in part by law firms. For example, when a personal friend or former professional colleague of a judge is honored with a retirement dinner, a birthday celebration, a celebration of a new position (such as a position as a judge or other government official), or alas, a memorial service, it is certainly not unusual both for food and drinks to be served and for a law firm to pay for some or all of the expenses of the event. Without clarifying language, the draft formal opinion may be read to prohibit attendance by a judge at almost any event hosted or sponsored by a law firm regardless of the nature of the event. We recognize that Section D of the current draft notes that a judge may attend certain functions hosted by an attorney having a preexisting relationship with the judicial officer warranting disqualification. Our concern is that there may be other functions, not involving such a relationship, that a judge should not be barred from attending.

We propose that the title of Section D be changed to “Special Circumstances” (taking out the word “Disqualification” in the heading) and that the following final paragraph be added to this section:

“In addition, the nature of the function may be relevant to the ethical considerations and to whether it is permissible to attend such an event. Law firms will sometimes host celebrations that are more personal in nature, rather than promoting or celebrating the law firm itself as in the case of the law firm anniversary celebration. For example, a law firm may host or sponsor a memorial service, a retirement dinner, a celebration for a new position (such as a position as a judge or other government official), or a birthday celebration for a friend or former colleague of a judicial officer. A judge deciding whether to attend such a function should consider all the facts and circumstances surrounding such an event, including whether the judge’s attendance would compromise the public confidence in the impartiality of the judiciary, suggest that a lawyer or law firm is in a special position to influence a judicial officer, or otherwise interfere with the integrity of the judiciary or violate the Code of Judicial Ethics.”

This addition is consistent with the Advisory Committee comment to Canon 4(A) that “complete separation” from extrajudicial activities “is neither possible nor wise” and a judge “should not

become isolated from the community.” Also, the Advisory Committee comment to Canon 4(B) states that judges “are not precluded” from “engaging in other social, community, and intellectual endeavors so long as they do not interfere with the obligations under Canons 2C and 4A.”

Comment 5

Submitted by: Judge Barbara A. Kronlund, San Joaquin County Superior Court, and
Judge Terri Mockler, Contra Costa Superior Court

Received: Monday, July 3, 2023

Subject: CJEO Draft Formal Opinion 2023-024; Accepting Invitations to Law Firm Celebrations

Thank you for the opportunity to comment on this important opinion. We, the undersigned, disagree with the Summary of Conclusions on page 1, Sec. II, and Conclusion, on page 12, Sec. V, as presently phrased.

This opinion categorically advises that a judicial officer (JO) “may not accept” the invitation in question. In doing so, the opinion makes certain assumptions that are not clear from the question and may or may not be correct assumptions. Such assumptions are: 1) that the purpose of the 50th anniversary of the firm is to solicit business; and 2) that only select judges are invited as opposed to the entire bench in the area. Additionally, the opinion relies too heavily on Rothman and other secondary sources as opposed to grounding the analysis on the Canons of Judicial Ethics.

As opposed to categorically prohibiting attendance, a better approach is to advise JOs to engage in an analysis under the Canons, like the analysis JOs are required to engage in when determining if they are disqualified from hearing a case. The opinion does suggest such an analysis, “[w]hen considering whether to accept such an invitation, the judicial officer is advised to consider whether it would implicate any of the following canons[], such as the Canons related to Bias or Special Influence, Lending Prestige of Office, and Gifts”. However, the opinion concludes that after engaging in that analysis, the answer is always going to be the JO cannot attend. This conclusion does not follow from the facts contained in the initial inquiry and the undersigned hope the Committee will consider revising the opinion.

A better approach for this opinion is to set forth the factors a JO must consider in evaluating whether to attend a law firm function such as this one. The only facts known in the question are that it is a 50th anniversary of a law firm and some JOs have been invited. As a 50th anniversary happens only once, it is likely a once in a lifetime type of milestone event. It’s not the annual Christmas party, or annual client-wooing cocktail party & dinner. This appears to be, a large celebration, likely open to many people, where the theme isn’t conducting business, but celebrating the accomplishments of staying relevant and functioning for half a century. Under these facts, if true, it seems ethically permissible for a JO to attend the event.

Appearance of Bias and Lending Prestige of the Office

When a JO is engaging in an analysis under Canons 1,2, 2A, 4A (1) & 2B (1), it is appropriate for the JO to consider whether attendance might reasonably suggest that the JO is biased in favor of the law firm. The opinion states at page 6, this is a consideration, “In the committee’s view, attending a law firm’s 50th anniversary celebration may suggest that a judicial officer has a special relationship or close association with the law firm[]”, (emphasis added) but then goes on to conclude that a JO is categorically ethically prohibited from attending a celebration under these circumstances.

Such a conclusion seems to conflict with long-time advice that JOs can attend Law Day, Bar Association Committee meetings and Annual meetings; Inns of Court; and teach Civics

education in classrooms, all side-by-side with lawyers from the legal community. These events have long been considered ethically permissible as community outreach. Under the test of whether a person aware of the facts might reasonably doubt the judge's integrity or impartiality (Code of Civil Procedure section 170.1(a)(6)(A)(iii)), the answer has consistently been "very unlikely". Similarly, on the bare facts known in the inquiry here, the answer should also be "very unlikely". If there are other relevant facts NOT contained in the inquiry, an invited judge would be wise to ask more questions of the law firm, before accepting such invitation. Such questions include: 1) WHO will attend; 2) WHAT is the cost and value of the food & beverages; 3) are there other perks or gifts being given to attendees, and if so, WHAT and what is the value? 4) Is there an advertisement, invitation, or something similar, which the judge can and should see and consider.

All the issues just outlined above also apply to the analysis under whether the JO's attendance at the celebration would lend judicial prestige to advance the law firm's interests under Canon 2B (2). Here, the Committee assumes that such law firm celebrations "are typically attended by clients, or prospective clients, and are generally geared toward promoting the law firm as a business." Rather than speculate about what the celebration is about, the JO should and can simply ask the law firm these very questions. It's important to remember that not all counties possess 600 judges on the roster; some have only 1 or 2. The same applies to the number of lawyers and law firms in various counties. There are different "local cultures and customs" which vary county to county. It seems presumptuous to state as fact that these law firm celebrations are always publicity stunts for clients when that may be far from the truth.

It appears the Committee assumes all events sponsored by law firms are for business purposes. The Committee cites with disapproval a 2010 CJA response to an inquiry about attending a law firm celebration for a political appointment of one of its lawyers. The CJA Ethics Committee opined it was ethically permissible to attend as the celebration was a social event. (February 2010 CJA Ethics Update) Moreover, years prior to that, in 1994 (and again in 1996), the CJA Ethics Committee authored Formal Opinion 43 which addressed the issue of judges attending social events sponsored by lawyers or law firms. CJA Formal Opinion 43 sets forth an analysis, grounded in the Canons of Judicial Ethics, for judges to conduct for themselves prior to attending such events. The question posed at the outset of this CJEO opinion is essentially the same question posed back in the 1990's and requires the same analysis. It is baffling to say the least why events that were permissible to attend in the 1990's are not permissible to attend in 2023.

Gifts

Canon 4D(6) prohibits a JO from accepting gifts from any party appearing before, or "reasonably likely" to appear before, the JO. That is true, and it's a forever ban on accepting gifts, but it's not relevant to this opinion since the complimentary food & beverages are complimentary to everyone who attends the anniversary celebration and, therefore, would qualify under the ordinary social hospitality exception of 4D(6)(g).

The Committee cites Canon 4D(6)(i), noting that, "While there is an exception to the gift prohibition for "nominal" gifts, this exception does not apply to gifts from lawyers or law firms". However, the remaining part of Sec. (i) states, "unless one or more of the exceptions in this canon applies", and it appears 4D(6)(g), (which permits an exception to the "no gift rule" for gifts that qualify as ordinary social hospitality), applies to the 50th anniversary celebration in question here. However, the analysis does not end there. Assuming for the moment that the complimentary food and beverages qualify as ordinary hospitality, a judge must still "...carefully weigh acceptance of such hospitality to avoid any appearance of impropriety or bias or any

appearance that the judge is misusing the prestige of judicial office....and should also consider whether acceptance would affect the integrity, impartiality, or independence of the judiciary.” (See Advisory Committee Commentary to Canon 4D(6)(g).)

The Committee dismisses the idea that the food and beverages to be provided at the anniversary celebration constitute ordinary social hospitality. The draft opinion states, “[e]ven if gifts incident to a law firm’s 50th anniversary celebration did fall within the exception for ordinary social hospitality, a judicial officer may not accept them if they would “reasonably be perceived as intended to influence the judge in the performance of judicial duties. (Canon 4D (6).” The opinion then goes on to list expensive, tangible “gifts” to targeted judges, which is not contained in the facts of the initial inquiry. A reasonable assumption, based on the question posed, is that the law firm is inviting many more people to its 50th anniversary celebration than just the judge in question. Common sense dictates that attending the celebration would not “reasonably be perceived as intended to influence the judge in the performance of judicial duties”, and therefore should be permitted under the Canons of Judicial Ethics.

Underlying the entire draft opinion is the assumption that the law firm celebration has primarily a business purpose. There is nothing in the question presented stating the celebration is for business purposes, and it is only speculation at this point. It is just as likely this 50th anniversary milestone event is simply a recognition of the firm’s continued existence for half a century, and that would involve primarily a social purpose. The opinion cites examples where events sponsored by lawyers or law firms do constitute ordinary hospitality and JOs may ethically attend. Nonetheless, the opinion concludes here “[h]owever, a law firm’s 50th anniversary celebration, absent additional facts, would not fall within this category”, which seems to turn the rule on the head. Rather, because there are no contrary facts, attending this celebration is permissible unless and until additional facts to the contrary are shown to exist.

As this opinion notes (page 10, FN 2), law firms have increasingly hosted law student mixers and events to promote diversity in the legal profession; and judges and justices, both appellate and California Supreme Court justices, routinely attend these events. Law firms routinely sponsor mock trial competitions, and a host of other events, including Law Day. All the criticisms noted by the Committee in the present draft opinion can be made against judges attending these other law firm sponsored events, because someone might believe the motivating reason for the event is to drum up business, or someone might believe the event is a boondoggle to influence the judge in the performance of judicial duties.

To conclude, this draft opinion’s Conclusion (Sub. V at page 12) is based on a set of assumptions that are not included within the question presented. The biggest assumption made is that the 50th anniversary party is primarily for business purposes. The question presented simply asks: “whether a judicial officer may accept an invitation from a law firm to attend its 50th anniversary celebration, which will take place at the law firm’s offices and include complimentary food and beverages”. On these facts alone, the conclusion should be, given these circumstances, attendance would not violate the Canons of Judicial Ethics. It may be that additional facts may make attendance improper for some judicial invitees but rather than concluding no judicial officer can attend, the draft opinion should advice each invitee to conduct a personal analysis under the Canons to determine if attendance is permissible for them. Such advice would be consistent with the advice provided in CJA’s Formal Opinion 43.

The CJA Ethics Committee issued Formal Opinion 43 in 1994. It was slightly revised and reissued in 1996. Instead of the categorical prohibition against attending events sponsored by lawyers or law firms, as advised in the present draft opinion, CJA Formal Opinion 43 sets forth a

well-reasoned analysis grounded in the Canons of Judicial Ethics. CJA Opinion 43 requires an invited judge to conduct an analysis which takes into consideration Canons 2,2A, 2B, 4A,4D(5), and 4D(6). The analysis requires the judge to find out the purpose of the event, who is invited, who must pay and who doesn't, how is the event advertised, and other such questions pertaining to the judge's ethical duties. The advice provided back in 1996 rests on solid principles and does not advise that judges always can attend or that they can never attend. CJA Formal Opinion 43 has been followed by JOs for many years now and one wonders why the current draft opinion is even necessary. Moreover, the present draft opinion conflicts with CJA Formal Opinion 43 and will create confusion for JOs who receive such invitations. It is the hope of the undersigned that this Committee will revise the conclusion of this draft opinion to be more in accord with the advice in CJA Formal Opinion 43.