

**Colorado Supreme Court
Judicial Ethics Advisory Board (C.J.E.A.B.)**

**C.J.E.A.B. ADVISORY OPINION 2008-3
(Finalized and Effective May 9, 2008)**

ISSUE PRESENTED

The Colorado County Attorney's Association has invited the requesting judge to speak at an educational conference for County and City Attorneys addressing legal issues in dependency and neglect cases. Although the seminar is not technically a closed meeting, because Respondent Parents' Counsel and Guardians ad litem occasionally attend the sessions, for practical purposes, it is a de facto closed group. Suggested topics include evidentiary issues and trial strategy. The judge notes that he is willing to make the same or a similar presentation to groups of attorneys that represent other sides in dependency and neglect cases. The judge asks two questions: (1) May the judge provide training directed to a group of attorneys that represents only one side in dependency and neglect proceedings? And, if so, (2) May the judge present to such a group regarding evidentiary issues and/or trial tactics?

CONCLUSIONS

The judge may present to a closed group on the topic of evidentiary issues. The Board would caution the judge to avoid presenting on a topic such as trial strategy.

The judge may present to a closed group if:

- (1) The judge is amenable to training advocates adverse to the position of the conference host; and.
- (2) The judge refrains from giving legal advice, showing bias, or making comment on pending or impending cases.

APPLICABLE CANONS OF THE CODE OF JUDICIAL CONDUCT

Canon 1 broadly sets forth that a judge should uphold the integrity and independence of the judiciary.

Canon 2 provides that a judge should avoid impropriety and the appearance of impropriety in all of the judge's activities. In particular, Canon 2(A) specifies that a judge's conduct at all times should promote public confidence in the integrity and impartiality of the judiciary.

Canon 3 requires that a judge perform the duties of office impartially and diligently, always aware that judicial duties take precedence over all other activities. Specifically, Canon 3(A)(9) states that a judge shall perform judicial duties without bias or prejudice.

Canon 4 encourages judges to participate in quasi-judicial activities to improve the law, the legal system, and the administration of justice, subject to the proper performance of judicial duties.

Canon 4(A) lists speaking, lecturing and teaching as acceptable forms of participation in such educational activities.

DISCUSSION

Canon 4 encourages Colorado judges to speak, lecture and teach concerning the law, the legal system, and the administration of justice. Thus, as a general rule, a judge is urged to engage in the kind of activity at issue in this request. Canon 4, however, also provides that a judge should be careful that his or her quasi-judicial activities do “not compromise his or her capacity to decide impartially any issues that may come before the judge.” In addition, Canon 2 requires a judge to avoid impropriety or the appearance of impropriety and to act in a manner that “promotes public confidence in the integrity and impartiality of the judiciary.” Therefore, the issue before the Board is whether the judge should decline this teaching invitation because the conference sponsor, the County Attorneys Association, represents only one side in dependency and neglect cases and because the conference attendees will, for the most part, be county and city attorneys who only represent one side in these cases. Would the judge’s participation in this teaching opportunity give the appearance of impropriety or suggest partiality on the part of the judge?

After reviewing ethics opinions from other states, the Board agrees with the approach taken by the Utah Judicial Ethics Advisory Committee where it considered a similar request. There, a judge was invited to speak at a CLE conference sponsored by the Attorney General’s Office on the subject of “Bench Trial Basics.” The Committee wrote:

The judge may therefore accept the invitation from the Attorney General’s Office under the following conditions:

- 1) the judge is willing and available to accept invitations from groups of attorneys who represent other components of the legal system in cases involving the Attorney General’s Office;
- 2) the judge does not give legal advice;
- 3) the judge does not comment on pending cases; and
- 4) the judge does not offer opinions that would indicate biases or a prejudgment of certain types of cases.

Utah Informal Opinion 99-6 (September 23, 1999).

The Utah Advisory Committee reasoned that a judge’s training a group of attorneys that represented only one component of the legal system did not create an appearance of partiality so long as the judge was willing to accept invitations to speak from other groups of attorneys who represent other sides. In addition, the Utah Committee noted that there was no appearance of impropriety in such a teaching role “because attorneys can discern the judge’s role in the education process.” This Board agrees with the Utah Committee’s reasoning and conclusion.

In addition, the judge asks whether he may speak on the topics of trial strategy or evidentiary issues in dependency and neglect cases. In his request, the judge notes that he is uncomfortable

with the topic of trial strategy and the Board agrees with the judge and cautions him to avoid such a topic. Presenting on trial strategy to a group of attorneys who only represent one side in a certain type of case may suggest bias or partiality on the part of the judge because it gives the appearance that the judge is promoting the Department of Social Services' position over the position of respondent parents or their children. On the other hand, the Board does not believe that such a concern arises if the judge speaks on a more neutral topic, such as evidentiary issues in dependency and neglect cases, so long as the judge is discussing evidence law in general rather than specific tactics to gain advantage at trial.

FINALIZED AND EFFECTIVE by the Colorado Judicial Ethics Advisory Board this 9th day of May, 2008.

Judge Habas does not participate in this opinion.