

Informal Opinion 19-02

August 16, 2019

Question:

A judge has requested an opinion from the Ethics Advisory Committee on whether he can accept an invitation to speak to law enforcement officials about the topic of integrity.

Answer:

It is the committee's opinion that the judge may not accept the invitation to speak.

Discussion:

A judge has been asked to speak to law enforcement officials about integrity. The judge has been specifically asked to address honesty and integrity in law enforcement investigations and testimony. In addition to police officers and command staff, other city officials and leaders may be invited to attend the presentation. The judge asks whether he may accept the speaking invitation and the judge asks whether the answer would be different if the judge presides over only civil cases.

The Ethics Advisory Committee has addressed this type of issue in the past, but those opinions were issued more than 20 years ago. The committee therefore takes this opportunity to clarify whether the principles and standards articulated in those opinions remain valid in light of a greater emphasis on judicial outreach and the education of community groups. The committee determines that, while judges are encouraged to engage in outreach to improve the legal system overall, the principles and concerns articulated in our prior opinions related to judges interacting with a single component of the legal system remain relevant and the judge may not accept the invitation.

Rule 2.4(C) of the Code of Judicial Conduct prohibits a judge from "convey(ing) or permit(ting) others to convey the impression that any person or organization is in a position to influence the judge." The committee's prior opinions on this issue recognize that when judges make presentations to a group of law enforcement officials, such an appearance may convey the impression that law enforcement officials are in a special position of influence with the judge. In Informal Opinion 90-2, the committee addressed a question similar to the present question. There, the committee noted three considerations in determining whether a judge may accept an invitation of this type. The committee reviews whether the presentation will be to only a single component of the justice system, whether the judge and the participants are from the same geographic area, and the subject of the presentation.

The committee will first address and clarify the consideration about whether the participants are from the same geographic area as the judge. The committee has noted in previous opinions that serving in the same geographic area increases the likelihood the attendees

will appear before the judge. And if a participant subsequently appears before the judge, the participant's prior interaction with the judge may convey the impression the individual is in a special position of influence. The committee now determines that geographical proximity is no longer a relevant consideration in the analysis. The specific individuals with whom the judge interacts are less important than the positions those individuals hold. An individual who has a case before the court and learns the judge recently made a presentation to law enforcement officers could reasonably conclude those officers are in a special position of influence with the judge regardless of whether the law enforcement officer in the individual's case attended the presentation. In answering the current request for guidance, the committee will therefore consider whether the judge will be interacting with only a single component of the justice system and the topic of the presentation.

The judge who has requested the opinion will be interacting with only a single component of the justice system. The invitation is from a member of the local police department and the primary audience will be law enforcement officials. Although other city officials and leaders might be invited, the fact that these others may attend the presentation does not negate the fact that only a single component of those who frequently interact with the court will attend.

The subject of the presentation is also problematic. In Informal Opinion 88-5, the committee determined that a judge may not instruct law enforcement officers about courtroom testimony and demeanor. In Informal Opinion 90-2, the committee noted the intent behind teaching law enforcement officers about courtroom testimony and demeanor is to help them perform more effectively in court and provide guidance on how to be a credible and persuasive witness. The education is specifically for the benefit of those officers, elevating the concern that law enforcement officers would be in a special position of influence with the court.

The judge who has requested the opinion states that if it is a problem to specifically address integrity in investigations and testimony, he could speak more generally about integrity. The topic of integrity certainly has universal applicability, but whether the topic is specifically directed toward investigations and testimony or is discussed more broadly, the judge is being asked to provide guidance and instruction to a group of law enforcement officers because of their positions and professional duties. The officers will be expected to apply the concepts to their professional duties. The topic is therefore not of a type permitted to be taught to a single component of the justice system.

The committee's opinion does not depend on whether the judge presides over criminal cases. Every judge is likely to hear criminal cases at some point in their judicial career. And because the presentation would have occurred while serving as a judge, the perception of influence would remain. Also, judges represent the entire judicial system and there could be a reasonable perception that law enforcement officers are in a position of influence with the judiciary.

In conclusion, a judge may not accept an invitation to speak to law enforcement officials about integrity in their investigations and courtroom presentations, or about integrity in general, even if other city officials are invited to attend the presentation. Judges are encouraged to engage

in judicial outreach, but judges must still consider the nature of the audience and the topics they are asked to discuss.