

Opinion 08-01
December 1, 2008

Topic: Judge providing training for prosecuting attorneys.

Digest: A judge may speak at a legal education program open only to prosecuting attorneys provided that the judge (1) does not appear to advocate for the state; (2) maintains the impartial, neutral attitude required of judicial officers; (3) does not discuss pending or impending cases; and (4) is available to present similar programs to criminal defense attorneys.

References: Illinois Supreme Court Rules 63A(4)(6) & 64; Committee Commentary to Rule 64; Illinois Judicial Ethics Committee ("IJEC") Op. 94-17 (1994); Missouri Commission on Retirement, Removal and Discipline ("Mo. Comm'n") Op. 179 (2001); United States Judicial Conference Committee on Codes of Conduct ("U.S. Judicial Conference Comm.") Op. 79 (1987, last revised 1998); U.S. Judicial Conference Comm. Op.108 (2008); Utah Judicial Ethics Committee Op. 99-6 (1999).

FACTS

A judge has been invited to present a two-hour training session on "white-collar crime" to prosecuting attorneys in the county in which the judge presides. The judge is assigned to a traffic court where assistant state's attorneys appear daily.

QUESTION

May a judge participate in a training session open only to assistant state's attorneys?

OPINION

Illinois Supreme Court Rule 64 permits a judge to "speak, write, lecture, teach and participate in other activities concerning the law, the legal system, and the administration of justice". These law-related activities are permitted, and indeed encouraged, so long as they do

not interfere with the proper performance of judicial duties or cast doubt on the judge's impartiality or independence. Illinois Supreme Court Rule 64 and accompanying Committee Commentary.

Here, there is no indication that the time devoted to preparing and conducting the two-hour seminar will interfere with the judge's courtroom duties. Therefore, the only issue to be resolved is whether a judge's impartiality is adversely impacted by providing legal education to a group of lawyers who represent a single adversarial component of the criminal justice system.

As previously recognized by the Committee, merely addressing an organization, even an organization with partisan or advocacy interests does not, by itself, imply that the judge endorses the group's goals or agenda. IJEC Op. 94-17 (1994). This is especially true in the context of presenting legal education programs because "society properly expects a judge to supervise and educate members of the bar in the practice of law in the judge's court" U.S. Judicial Conference Comm. Op. 79 (1987, last revised 1998). There is simply no reason to forbid a judge's educational efforts from including in-house training programs conducted by bar associations, state's attorneys, public defenders, attorney generals, and other agencies which employ attorneys to represent a particular interest in litigation. Public suspicion is not aroused by a judge's participation in this type of continuing education program as long as the judge is equally available to participate in similar instructional programs conducted by attorneys who represent opposing or competing interests or parties. Mo. Comm'n Op. 179 (2001) (judge may present educational program for public defenders or prosecutors if the judge is available for similar appearances before competing groups of attorneys); U.S. Judicial Conference Comm. Op. 108 (2008) (judge may participate in training of government attorneys "but should be willing and available to participate in training for interested attorneys representing the other side"); Utah Judicial Ethics Committee Op. 99-6 (1999) (judge may speak on "bench trial basics" to attorney general's staff provided the judge is willing to speak to attorneys who handle cases adverse to the attorney general). Of course, the content of the presentation and the judge's demeanor should reflect the neutrality and impartiality of the judicial office. In other words, the judge must avoid appearing to favor the

state. Finally, the judge must not discuss any pending or impending matters during the presentation. Illinois Supreme Court Rule 63(A) (4) (6).

CONCLUSION

A judge improves the legal system and the administration of justice by sharing his or her knowledge and expertise with members of the bar. Judicial impartiality is not threatened by participation in educational programs sponsored by specialized groups of attorneys provided that the judge is available to speak before competing groups of lawyers and conducts each presentation in a manner consistent with the Illinois Code of Judicial Conduct and the impartiality of the judicial office.