

Educational Outreach Guidelines
for Federal Judges and Nonjudicial Court Employees

Prepared and Approved by the Judiciary Division of the Federal Bar Association
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The mission of the Federal Bar Association (FBA) is to strengthen the federal legal system and the administration of justice by serving the interests and needs of the federal practitioner, the federal judiciary, and the public they serve. With the assistance of outside counsel, the FBA's Government Relations Committee monitors legislation and educates members of the legislative and executive branches about issues affecting the federal legal system and the administration of justice. **Engagement from the broader membership, including federal judges and nonjudicial court employees, is essential.** The experiences and insights of federal judges and nonjudicial court employees can be highly relevant and informative for legislators; however, the prospect of "lobbying" or direct advocacy to government officials can raise questions about what is and is not permitted by the governing codes of conduct. The following guidelines may assist in educational outreach.

Educational outreach activities conducted on the FBA member's own time and in an individual capacity -- including participation in Capitol Hill Day and one-on-one or group meetings, calls, or correspondence with members of Congress -- are encouraged. The current legislative priorities include federal judgeships and caseloads, Article I Immigration Courts, funding for the federal courts, and judicial security and implementation of the Daniel Aderl Judicial Security and Privacy law.

When speaking to Congress in an individual capacity, a judge or judicial branch employee who is opining on legislation or similar public policy matters should make clear to the audience in what role he/she is speaking --by stating that he/she is not providing the views of the Judicial Conference of the United States or of a particular circuit or district. Of course, this would not apply to judges or staff who have been specifically authorized to speak to Congress on a particular topic.

Federal Judges

- To the extent that a judge's time permits, and impartiality is not compromised, judges are actively encouraged to contribute to the law, the legal system, and the administration of justice, including revising substantive and procedural law and improving criminal and juvenile justice, either independently or through a bar association, judicial conference, or other organization dedicated to the law.¹
- A judge may appear before a legislative or executive body or official, at a public hearing or in private consultation, with respect to matters concerning the law, the legal system, and the administration of justice, if it would generally be perceived that a judge's judicial experience provides special expertise in the area.²

¹ See Code of Conduct for United States Judges, Commentary to Canon 4 (Mar. 12, 2019).

² See Code of Conduct for United States Judges, Canon 4A(2).

- Examples include “matters relating to court personnel, budget, equipment, housing, and procedures. These matters are all vital to the judiciary’s housekeeping functions and the smooth operation of the dispensation of justice generally.”³
- “[T]o qualify as an acceptable law-related activity, the activity must be directed toward the objective of improving the law, the legal system, or administration of justice, and not merely utilizing the law or the legal system as a means to achieve an underlying social, political, or civic objective.” The clearest examples of permissible law-related activities are those addressing the legal process. However, “activities directed toward substantive legal issues, where the purpose is to benefit the law and legal system itself rather than any particular cause or group, may be permissible.”⁴
- Because of Canon 2A’s provision that a judge should act at all times in a manner that promotes public confidence in the impartiality of the judiciary, judges should exercise caution when considering participation in law-related activities concerning highly controversial subjects.⁵
- Federal judges may make recommendations to public fund-granting agencies about projects and programs concerning the law, the legal system, and the administration of justice.⁶
- With regard to matters *not* concerning judicial administration, a judge may appear at a public hearing before or consult with an executive or legislative body or official only to the extent that it would generally be perceived that a judge’s judicial experience provides special expertise in that area.⁷
- If a judge’s participation is sought for some reason other than his or her judicial expertise, the activity is less likely to be permissible.⁸ In other words, legislative appearances by a judge are generally permissible only where the subject matter reasonably may be considered to merit the attention and comment of a judge as a judge, and not merely as an individual. The subject matter should also not include legislation aimed at political issues or matters that may spawn litigation likely to come before the judge⁹
- Consider whether the beneficiary of the activity is the law or legal system itself. A permissible activity “serves the interests generally of those who use the legal system,

³ Guide to Judiciary Policy, Vol. 2B, Ch. 2 (“Advisory Op.”), No. 50: Appearance Before a Legislative or Executive Body or Official (June 2009).

⁴ See Advisory Op. No. 93: Extrajudicial Activities Related to the Law (June 2009).

⁵ Id.

⁶ See Code of Conduct for United States Judges, Canon 4A(3).

⁷ See Code of Conduct for United States Judges, Canon 4A(2); Advisory Op. No. 50.

⁸ See Advisory Op. No. 93.

⁹ Id. (referencing Advisory Op. No. 50 (suggesting that a judge should not testify before a legislative committee on social legislation)).

rather than the interests of any specific constituency, or enhances the prestige, efficiency or function of the legal system itself.”¹⁰

- Close questions should be answered by evaluating how closely related the substance of the activity is to the court’s principal mission of delivering unbiased, effective justice to all.¹¹
- Although judges are prohibited from engaging in any political activity, this prohibition does not prevent a judge from engaging in the above-described activities.¹² “Political activity” generally relates to actions on behalf of any party, political committee, or candidate for political office and is outside the scope of any FBA government relations activity.
- Before deciding to engage in a law-related activity that may have political overtones, a judge should consider whether participating in such activity would compromise the judge’s independence or would create an appearance of impropriety or partiality.¹³
- Judges should restrict political activities to those that are most directly related to the law and legal process.¹⁴

Nonjudicial Court Employees

The Judicial Conference has approved a Code of Conduct for Judicial Employees, which applies to all employees of the judicial branch, including interns, externs, and other volunteer court employees.¹⁵

- Like judges, nonjudicial court employees must avoid outside activities that present a risk of conflict with their official duties or create the appearance of impropriety.¹⁶
- As long as the outside activities do not detract from the dignity of the court, interfere with the performance of official duties, or adversely reflect on the operation and dignity of the court or employee’s office, a judicial employee may participate in civic, charitable, professional, and educational activities.

¹⁰ Id.

¹¹ Id.

¹² See Code of Conduct for United States Judges, Canon 5.

¹³ See Advisory Op. No. 93.

¹⁴ Id.

¹⁵ The Code of Conduct for Judicial Employees does not apply to Supreme Court Justices, federal judges, or employees of the United States Supreme Court, or the Administrative Office of the U.S. Courts as each of these groups has its own codes and standards. See Guide to Judiciary Policy, Vol. 2A, Ch. 3, Sec. 310.10(b).

¹⁶ Guide to Judiciary Policy, Vol. 2, Pt. A, Ch. 3), Canon 4.

- If the outside activities concern the law, the legal system, or the administration of justice, the judicial employee should first consult with their appointing authority to determine whether the proposed activity is permissible.¹⁷
- Judicial employees should refrain from inappropriate political activity, but participation in the nonpolitical activities of a civic, charitable, religious, professional, educational, cultural, avocational, social, fraternal, or recreational organization is permissible.¹⁸

¹⁷ Id., Canon 4A.

¹⁸ Advisory Op. No. 92.