



Ohio Board of Professional Conduct

OPINION 2022-08

Issued October 7, 2022

Judge Attendance at Exclusive Training for Members of Law Enforcement and Prosecutors

SYLLABUS: A judge should not attend a training course that is offered by a law enforcement agency and open exclusively to judicial officers, prosecutors, and members of law enforcement.

The Board recommends prospective application of this advisory opinion.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.



Ohio Board of Professional Conduct

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APPLICABLE RULES: Jud.Cond.R. 1.2, 2.4, 2.11

QUESTION PRESENTED:

Whether a judge may attend a training course regarding speed detection devices that is offered by a state law enforcement agency and open exclusively to judicial officers, prosecutors, and members of law enforcement.

OPINION:

Background

A judge has inquired about attending an advertised training course offered by a statewide law enforcement agency. The course is offered exclusively to fulltime judges, prosecutors, and members of law enforcement. The purpose of the course is to familiarize attendees with the theory, technical, and operational aspects of speed measuring devices. The seven-hour course is also designed to assist the attendees in gaining an understanding of the training and operational requirements for the effective operation of

speed measuring devices. Portions of the course will cover “practical judicial information including admissibility, judicial notice and testimony pertaining to Speed Measuring Devices.” Ohio State Highway Patrol 2022 Training Calendar.¹ Instructors for the course are certified in using and repairing speed measuring devices. Written materials are provided to attendees and the course is approved for continuing legal education credit by the Supreme Court of Ohio Commission on Continuing Legal Education.

Analysis

A judge’s attendance at the training course detailed above may impact perceptions of the judge’s independence, integrity, and impartiality.

The information communicated during the training course has the potential to provide both one-sided and biased perspectives of the underlying legal issues related to speed detection devices. N.Y. Jud. Adv. Op. 14-20 (presentation to judges by child abuse expert was one-sided); Jud.Cond.R. 1.2. Unique access to information regarding the proper operation and reliability of speed measuring devices, areas that are frequently challenged by defense counsel at trial, may cause a reasonable person to question the judge’s impartiality in future litigation involving the devices. *See* Jud.Cond.R. 1.2, 2.11.

A judge’s attendance at the training course also creates the appearance of a close and improper alignment with law enforcement or prosecutorial interests that can erode the public’s confidence in an independent and impartial judiciary and give rise to an appearance of impropriety. N.Y.Jud.Adv.Op. 94-31 (1994) (judges’ attendance at law enforcement sponsored seminar on substance detection devices creates appearance of impropriety); Az. Adv. Op. 03-08 (2003) (judges should not attend seminars or training programs sponsored by or presented at a law enforcement agency in which officers might discuss new devices, technologies, or police procedures); Jud.Cond.R. 1.2. A judge’s independence may be further compromised by his or her attendance because the necessary separation between judicial duties and law enforcement activities is not properly maintained. This is particularly apparent and most concerning when the course, using law enforcement instructors, provides training to judges about the “admissibility,

¹ <https://www.statepatrol.ohio.gov/doc/2022TrainingCalendar.pdf>. Retrieved May 27, 2022.

judicial notice and testimony pertaining to Speed Measuring Devices” – evidentiary issues that are within the exclusive purview of judges.

In order to maintain public confidence in the judiciary, a judge must be vigilant to not permit others, including the sponsors of training or continuing legal education courses, to convey an impression that the sponsor is in a special position to influence the judge. Jud.Cond.R. 2.4. The fact that the speed measuring device training course is available exclusively to judges and prosecutors may suggest to the public that the course sponsor is in a unique position to have an impact on the future decision-making of judges. Consequently, confidence in the judiciary may be eroded if a judge’s decision-making is perceived to be subject to outside influence through a judge’s attendance at the training. Jud.Cond.R. 2.4, cmt.[1].

Because the training course on speed measuring devices is offered by law enforcement, is open exclusively to law enforcement members, judges, and prosecutors, and offers a law-enforcement perspective, the Board concludes that a judge should not attend the course under these circumstances.