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May 21, 2018

Nancy Black, Committee Counsel
California Supreme Court Committee on
Judicial Ethics Opinions
350 McAllister Street
San Francisco, CA 94102
via email: Judicial.Ethics@jud.ca.gov

Subject: Comment on Draft Formal Opinion 2018-012

Dear Ms. Black:

The California Academy of Appellate Lawyers submits these comments on the draft opinion referenced above. The Academy's membership includes over 100 lawyers from diverse practices with substantial experience in California's appellate court system. The Academy has a vital interest in ensuring that the rules governing appellate practice promote efficient and fair administration of justice.

The Academy holds three meetings each year at which judicial guests participate in MCLE programs both as speakers and attendees. These sessions are not oriented toward any class of litigants, and diversity of opinion is manifest. The goal of the Academy's educational programs is to promote expertise in the practice of appellate law without addressing substantive issues or practice areas.

Having reviewed the draft opinion, we support its conclusions and are confident that the presentations at our meetings comply with the draft guidelines. However, one point may merit clarification. The draft opinion cautions against presentations that "promote one-sided interests, such as district attorney or public defender associations and plaintiff-oriented or defense-oriented associations." Draft Opinion at 5. As we read the opinion, it also cautions against "coaching" or providing a "tactical advantage" in a similarly one-sided manner that would favor particular substantive interests. *Id.* at 8. The draft opinion distinguishes such one-sided coaching from discussion of "proper procedures, trial or appellate techniques," neutral discussions of "black letter law," and "best practices and ... tips to avoid common errors." *Id.* at 8-9.

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Reading the opinion as a whole, it is evident that improper coaching would favor one side or another in substantive matters or on particular disputed issues. This distinction is not as clear in the introductory Summary of Conclusions. There is a sentence on page 2 that reads “The content of the presentation must be neutral, presented from a judicial perspective, and avoid coaching or providing a tactical advantage to the audience.” To avoid confusion, we suggest adding an additional sentence: “Discussing proper procedures, trial and appellate techniques, and black-letter law is acceptable; coaching in one-sided ways, such as how to select a jury to favor plaintiffs or defendants, is not.” Our intention is to have the Summary of Conclusions track the body of the draft opinion and specifically to summarize the paragraph at pages 8-9.

We appreciate the opportunity to provide comments to the Committee.

Very truly yours,



Susan Brandt-Hawley
President