Supreme Court of California Committee on Judicial Ethics Opinions
350 McAllister Street, Room 1144A, San Francisco, California 94102-3688
JudicialEthicsOpinions.ca.gov

INVITATION TO COMMENT

[CJEO Draft Formal Opinion 2017-010]

Title
Committee on Judicial Ethics Opinions
Draft Formal Opinion 2017-010;
Extrajudicial Involvement in Marijuana Enterprises

Prepared by
Supreme Court of California Committee on Judicial Ethics Opinions
Hon. Ronald B. Robie, Chair

Action Requested
Review and submit comments by March 1, 2017

Proposed Adoption Date
To be determined

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Summary

The Supreme Court of California Committee on Judicial Ethics Opinions (CJEO) has adopted a draft formal opinion and approved it for posting and public comment pursuant to California Rules of Court, rule 9.80(j)(2) and CJEO Internal Operating Rules and Procedures, rule 7(d). (Rule 9.80; CJEO Rules.) The public is invited to comment on the draft opinion before the committee considers adoption of an opinion in final form.

CJEO Draft Formal Opinion 2017-010 provides guidance on whether a judge may have an interest in a commercial enterprise that involves the sale or manufacture of medical or recreational marijuana. The draft opinion specifically discusses whether the California Code of Judicial Ethics permits a judge to maintain an interest in a marijuana enterprise when federal law criminalizes marijuana. The draft opinion also discusses whether a judge's decision to disregard

certain federal laws for financial gain would create an appearance of impropriety or doubts regarding the judge's ability to act impartially when ruling on matters related to marijuana.

After receiving and reviewing comments, the committee will decide whether the draft opinion should be published in its original form, modified, or withdrawn. (Rule 9.80(j)(2); CJEO rule 7(d).) Comments are due by **March 1, 2017**, and may be submitted as described below.

Comments submitted in response to this Invitation to Comment are confidential communications to the committee and precluded from disclosure under the CJEO rules. (Rule 9.80(h); CJEO rule 5(b).) However, confidentiality may be waived under those rules (Rule 9.80(h)(3); CJEO rule 5(b)(1), (e)) and the committee will post on the CJEO website, at the close of the comment period, any comments submitted with a statement of waiver of confidentiality or consent to disclose. The online comment form provided on the committee's website includes a waiver option.

CJEO Background

The Committee on Judicial Ethics Opinions was established by the Supreme Court of California to provide judicial ethics advisory opinions on topics of interest to the judiciary, judicial officers, candidates for judicial office, and members of the public. (Rule 9.80(a); CJEO rule 1(a).) In providing its opinions and advice, the committee acts independently of the Supreme Court, the Commission on Judicial Performance, the Judicial Council, and all other entities. (Rule 9.80(b); CJEO rule 1(a).) The committee is authorized to issue formal written opinions, informal written opinions, and oral advice on proper judicial conduct under the California Code of Judicial Ethics, the California Constitution, statutes, rules, the decisions of the Supreme Court and the Commission on Judicial Performance, and other relevant sources. (Rule 9.80(e)(1); CJEO rule 1(b)(1).)

The Draft Opinion

The committee has been asked to provide an opinion on the following questions:

> "Is it ethical under the California Code of Judicial Ethics for a judicial officer to have an interest in a commercial enterprise that involves the sale or manufacture of medical or recreational marijuana?"

In the attached draft opinion, the committee examines the canons requiring a judge to comply with the law and avoid impropriety and the appearance of impropriety in all of the judge's activities, including extrajudicial activities. (Cal. Code Jud. Ethics, canon 2, 4.) The draft opinion advises that although medical and recreational marijuana are, to a certain extent, decriminalized under California law, marijuana remains a Schedule I substance under the federal

Controlled Substances Act and the manufacture, possession, and distribution of marijuana, as well as investment of capital into a marijuana-related business, remains a federal crime. Maintaining an interest in marijuana creates is an activity involving impropriety and explicitly violates the obligation to comply with the law. (Canon 2.) Therefore, the draft opinion advises that the obligation to comply with federal law prevents a judge from maintaining an interest in a commercial enterprise that involves the sale or manufacture of medical or recreational marijuana.

The committee further advises that, despite the decriminalization of certain marijuana activities in California, there are still a large number of marijuana-related issues that will be presented in California courts. The draft opinion advises that a reasonable person would doubt that a judge who disregards certain federal laws for his or her own benefit is able to act impartially when ruling on and enforcing marijuana-related California laws. (Canon 2, 4A(1).) The committee concludes that there will be at least an appearance of impropriety and doubt regarding a judge's impartiality when a judge disregards the law to benefit his or her personal interests.

Invitation to Comment

The committee invites comment on the attached draft opinion by **March 1, 2017**. Comments may be submitted:

- online at http://www.JudicialEthicsOpinion.ca.gov;
- by email to Judicial.Ethics@jud.ca.gov; or
- by mail to:

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Committee on Judicial Ethics Opinions
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The committee will post on the CJEO website, at the close of the comment period, or after March 1, 2017, those comments submitted with a statement waving confidentiality or consenting to CJEO's public disclosure of the comment.

Attachment: CJEO Draft Formal Opinion 2017-010

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CJEO Draft Formal Opinion 2017-010

EXTRAJUDICIAL INVOLVEMENT IN MARIJUANA ENTERPRISES

I. Question Presented

The Committee on Judicial Ethics Opinions has been asked to provide an opinion on the following question:

> "Is it ethical under the California Code of Judicial Ethics for a judicial officer to have an interest in a commercial enterprise that involves the sale or manufacture of medical or recreational marijuana?"

II. Summary of Conclusions

An interest in a commercial enterprise involving the sale or manufacture of marijuana that is in compliance with state and local law is still in violation of federal law pursuant to the Controlled Substances Act. (21 U.S.C. §§ 801-904.) A violation of federal law violates a judge's explicit obligation to comply with the law (canon 2A) and

is an activity that involves impropriety or the appearance of impropriety (canon 2). Moreover, such extrajudicial conduct may cast doubt on a judge's capacity to act impartially. (Canon 4A(1).) Therefore, the committee believes that a judicial officer should not have an interest in a commercial enterprise that involves medical or recreational marijuana.

III. Authorities

A. Applicable Canons[1]

Terminology: "Impartial," "impartiality," and "impartially" mean the absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as the maintenance of an open mind in considering issues that may come before a judge.

…[¶] ….

"Impropriety" includes conduct that violates the law, court rules, or provisions of this code, as well as conduct that undermines a judge's independence, integrity, or impartiality."

…[¶] ….

"Law" means constitutional provisions, statutes, court rules, and decisional law."

Canon 2: "A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities."

Canon 2A: "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

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[1] All further references to canons and to Advisory Committee commentary are to the California Code of Judicial Ethics unless otherwise indicated.

Advisory Committee Commentary following canon 2A: ". . . . A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by other members of the community and should do so freely and willingly. . . . The test for impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality, and competence."

Canon 4A(1): "A judge shall conduct all of the judge's extrajudicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially."

Advisory Committee Commentary following canon 4D(1): ". . . . Participation by a judge in financial and business dealings is subject to the general prohibitions in Canon 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Canon 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1."

B. Other Authorities

Title 18 United States Code sections 1956, 1957, 3282

Title 21 United States Code sections 801-904

Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235 (Dec. 16, 2014) § 538, 128 Stat. 2129, 2217

Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (Dec. 18, 2015) § 542 129 Stat. 2242, 2332-2333

California Constitution Article VI, section 18

California Business and Professions Code, sections 19300-19360

Gonzales v. Raich (2005) 545 U.S. 1

U.S. v. McIntosh (9th Cir. 2016) 833 F.3d 1163

U.S. v. Marin Alliance for Medical Marijuana (N.D. Cal. 2015) 833 F.3d 1163

Ross v. RagingWire Telecommunications, Inc. (2008) 42 Cal.4th 920

Inquiry Concerning Hall (2006) 49 Cal.4th CJP Supp. 146

In re Conduct of Roth (Or. 1982) 645 P.2d 1064

Rothman, California Judicial Conduct Handbook (3d ed. 2007) sections 7.36, 7.57

Colorado Supreme Court Judicial Ethics Advisory Board, Opinion 2014-01

Maryland Judicial Ethics Opinion Request Number 2016-09

Washington Judicial Ethics Advisory Committee Opinion 15-02

Memorandum from James M. Cole, Deputy Attorney General, U.S. Dept. of Justice, Guidance Regarding Marijuana Enforcement, (Feb. 14. 2014)

Memorandum from James M. Cole, Deputy Attorney General, U.S. Dept. of Justice, Guidance Regarding Marijuana Enforcement, (Aug. 29, 2013)

Ballot Pamphlet, General Election (Nov. 8, 2016), analysis by the Legislative Analyst

III. Discussion

A. Introduction

Since 1996, more than half of the states have decriminalized and created regulatory schemes for medical marijuana. Most states have made these changes in the past ten years. Even more recently, several states, including California, have gone further, decriminalizing recreational marijuana use. In California, state and local taxes currently collected on medical marijuana likely reach several tens of millions of dollars each year and recreational marijuana could eventually generate tax revenues of $1 billion annually. (Ballot Pamp., Gen. Elec. (Nov. 8, 2016), analysis by the Legislative Analyst,

pp. 92, 97.) The profits to be gained from the marijuana industry in California are substantial and investors are flocking to the lucrative industry.

Despite the rapid decriminalization and new regulation of marijuana across the states, it remains a Schedule I drug pursuant to the Controlled Substances Act. (21 U.S.C. §§ 801-904.) Under federal law, the use, possession, distribution, or manufacture of marijuana remains illegal, even if such conduct otherwise conforms to state law. Because of the financial incentives to enter to the marijuana market, the rapid changes to marijuana law, and the continuing disparity between state and federal law, the committee has been asked to provide guidance on whether a judicial officer may have an interest in a commercial enterprise that involves the sale or manufacture of medical or recreational marijuana. For purposes of this opinion, an interest in a commercial enterprise that involves the sale or manufacture of medical or recreational marijuana includes, but is not limited to, a personal financial investment, private equity fund investments, maintaining shares in a corporation that invests in marijuana, maintaining a real property interest in a commercial property that is leased for marijuana growth or distribution, or a spouse's or registered domestic partner's financial interest.

B. State and Federal Regulation of Marijuana

In 1996, California voters approved Proposition 215 and enacted the Compassionate Use Act, making California the first state to decriminalize limited personal possession or cultivation of marijuana for medical purposes on a physician's recommendation, or possession or cultivation by his or her primary caregiver. (Health & Saf. Code, §11362.5.) In 2004, the Legislature expanded these criminal immunities through the Medical Marijuana Program for the cultivation and possession for sale to specific groups of people. (Health & Saf. Code, §§ 11362.7 et seq.) In 2015, the

Medical Marijuana Regulation and Safety Act[2] was enacted to establish a statewide regulatory system for medical marijuana businesses, governing, among other things, cultivation, processing, transportation, testing and distribution of medical marijuana, and allowing for commercial medical marijuana businesses to operate for profit. (Bus. & Prof. Code, §§ 19300-19360 [enactment of the Medical Marijuana Regulation and Safety Act included additions to other sections of the Business and Professions Code, and the Government Code, Health and Safety Code, Labor Code, Revenue and Taxation Code, and Water Code not applicable to this opinion].) In 2016, California voters approved Proposition 64, allowing for recreational use of marijuana for those twenty-one years old or older. (Health & Saf. Code, §§ 11362.1 et seq.)

California's marijuana laws do not *legalize* medical or recreational marijuana. (*Ross v. RagingWire Telecommunications, Inc.* (2008) 42 Cal.4th 920, 926 [stating that "[n]o state law could completely legalize marijuana for medical purposes because the drug remains illegal under federal law"]; *United States v. McIntosh* (9th Cir. 2016) 833 F.3d 1163, 1179, fn. 5.) Instead, they decriminalize certain marijuana offenses under California law. Under federal law, the manufacture, possession, and distribution of marijuana remains a federal crime. (21 U.S.C. §§ 812, subd. (c), 841, 844. See also *Gonzales v. Raich* (2005) 545 U.S. 1, 32-33 [commerce clause gives Congress authority to prohibit the local cultivation and use of marijuana, despite state law to the contrary, because local use affects the national marijuana market].) An attempt to violate or a conspiracy to commit a violation of the Controlled Substances Act is subject to the same penalties as the underlying offense. (21 U.S.C. § 846.) Any capital placed into a marijuana business not only puts an individual at risk of criminal prosecution, but such

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[2] The Medical Marijuana Regulation and Safety Act was enacted through three bills, Assembly Bill 266, Assembly Bill 243, and Senate Bill 643 in the 2015-2016 legislative session. Each bill was conditioned on enactment of the other two.

assets and investments are subject to forfeiture (*Id*. at §§ 853, 881) and any investment of marijuana profits further violates federal law (*Id*. at § 854). Similarly, financial transactions that involve proceeds generated by marijuana can form the basis for federal prosecution under money laundering statutes, the unlicensed money transmitter statute, and the Bank Secrecy Act. (18 U.S.C. §§ 1956, 1957.)

Based on the rapid decriminalization of medical marijuana by the states, on August 29, 2013, the U.S. Department of Justice issued guidance applicable to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions concerning medical marijuana. (Memorandum from James M. Cole, Deputy Atty. Gen., U.S. Dept. of Justice, Guidance Regarding Marijuana Enforcement, (Aug. 29, 2013).) This federal policy concentrated and, to a certain extent, limited medical marijuana enforcement efforts in accordance with eight priorities.[3] (*Id*. at pp. 1-2.) On February 14, 2014, these policies were clarified and the same priorities were made applicable to financial crimes that are predicated on medical marijuana-related conduct. (Memorandum from James M. Cole, Deputy Atty. Gen., U.S. Dept. of Justice, Guidance Regarding Marijuana Related Financial Crimes (Feb. 14, 2014).) More recently, federal appropriations bills have prohibited the U.S. Department of Justice and

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[3] These priorities include (1) preventing the distribution of marijuana to minors; (2) preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; (3) preventing the diversion of marijuana from states where its legal under state law in some form to other states; (4) preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; (5) preventing violence and the use of firearms in the cultivation and distribution of marijuana; (6) preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; (7) preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and (8) preventing marijuana possession or use on federal property.

Drug Enforcement Agency from spending funds to prevent states' implementation of medical marijuana laws.[4] (Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235 (Dec. 16, 2014) § 538, 128 Stat. 2129, 2217; Consolidated Appropriations Act, 2016, Pub. L. No. 114-113 (Dec. 18, 2015) § 542 129 Stat. 2242, 2332-2333.)

Although medical marijuana regulation is not currently an enforcement priority for the federal government and the federal government is restricted from spending funds to prosecute certain individuals, these priorities could change. "Congress could restore funding tomorrow, a year from now, or four years from now, and the government could then prosecute individuals who committed offenses while the government lacked funding." (*U.S. v. McIntosh* (9th Cir. 2016) 833 F.3d 1163, 1179, fn. 5.) A change in executive branch administration could shift federal attitudes and priorities, which can be prosecuted for up to five years after the offenses occur. (See 18 U.S.C. § 3282.) Moreover, both U.S. Department of Justice memoranda explicitly state that nothing precludes investigation or prosecution, even in the absence of any of the priorities, "in particular circumstances where investigation and prosecution otherwise serves an important federal interest." (Memorandum from James M. Cole, Deputy Atty. Gen., U.S. Dept. of Justice, Guidance Regarding Marijuana Enforcement, (Aug. 29, 2013) p. 4; Memorandum from James M. Cole, Deputy Atty. Gen., U.S. Dept. of Justice, Guidance

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[4] Based on these appropriations bills, the United States District Court for the Northern District of California prohibited the U.S. Department of Justice from enforcing a permanent injunction enjoining a medical marijuana dispensary from distributing marijuana, to the extent the dispensary complied with California law. (*U.S. v Marin Alliance for Medical Marijuana* (N.D. Cal. 2015) 139 F.Supp.3d 1039, *appeal dismissed* (Apr. 12, 2016).) The Ninth Circuit ruled that the U.S. Department of Justice may not use federal funds to continue prosecutions for violations of the Controlled Substances Act where the defendants' conduct was authorized by state law. (*U.S. v. McIntosh* (9th Cir. 2016) 833 F.3d 1163.)

Regarding Marijuana Related Financial Crimes (Feb. 14, 2014) p. 3.) It is also important to note that these federal policies and appropriations bills *do not* address enforcement priorities for recreational marijuana that is decriminalized and regulated by state law. Therefore, an individual who maintains such an interest in a marijuana enterprise that complies with state and local law remains in violation federal law and risks prosecution.

C. Activity Involving Impropriety and the Appearance of Impropriety

As the Code of Judicial Ethics observes, a judge is a highly visible member of government (preamble) and "must expect to be the subject of constant public scrutiny" and "accept restrictions on the judge's conduct that might be viewed as burdensome by other members of the community and should do so freely and willingly" (Advisory Com. Com. foll. Canon 2A). These restrictions extend to a judge's extrajudicial activities, such as maintaining an ownership interest in a business. (Canon 4.)

1. Failure to Comply with the Law

Participation in extrajudicial activities is subject to the general prohibition in canon 2 against activities involving impropriety or the appearance of impropriety. (Advisory Com. Com. foll. canon 4D(1).) Impropriety includes conduct that violates the law. (Terminology, "impropriety.") Moreover, canon 2A explicitly states that a judge must respect and comply with the law, which is defined to include statutes generally. (Canon 2A; terminology, "law"; Advisory Com. Com. foll. canons 1, 4A.) Nothing in the code limits compliance to only state law. The California Constitution also obligates a judge to comply with the law. A judge may be disqualified from acting as a judge when subject to a pending indictment or an information charging a judge with a crime punishable as a felony under California or federal law. (Cal. Const., art. VI, § 18, subd. (a).) If the judge is convicted, and if the conviction becomes final, the judge is removed from office. (*Id*. art. IV, § 18, subd. (c).)

Maintaining an ownership interest in a commercial enterprise that involves the sale or manufacture of marijuana is a crime under the Controlled Substances Act that potentially subjects a judge to federal prosecution. Therefore, having an interest in a marijuana business is an extrajudicial activity that fails to comply with the law and involves impropriety in violation of the code. Discipline can be imposed for a violation of the canon 2A obligation to comply with the law, whether or not the judge is prosecuted or convicted of a criminal offense. (*Inquiry Concerning Hall* (2006) 49 Cal.4th CJP Supp. 146 [judge disciplined under canon 2A for violating several provisions of the Political Reform Act during her reelection campaign, even though the criminal case was dismissed based on resolution of the disciplinary matter]; *In re Conduct of Roth* (Or. 1982) 645 P.2d 1064, 1070 [proof of unlawful conduct, not a conviction, supports a finding that a judge failed to comply with the law].) Thus, judicial involvement in a commercial marijuana business that violates federal law is unethical regardless of the likelihood of prosecution.

This conclusion is consistent with judicial ethics advisory opinions from states that have similarly decriminalized marijuana. Maryland, which permits medical marijuana use, and Washington and Colorado, which permit both medical and recreational marijuana use, prohibit judicial involvement with marijuana.

In Maryland, the judicial ethics committee concluded that a judicial appointee may not grow, process, or dispense medical cannabis. (Maryland Judicial Ethics Opinion Request Number 2016-09.) The Maryland Code of Conduct for Judicial Appointees, Rule 18-201.1, formerly Rule 1.1 of Rule 16-814, requires a judicial appointee to comply with the law. (Md. R Judges Rule 18-201.1.) As in California's canon 2A, nothing limits the Maryland rule to compliance with Maryland law. Therefore, the committee opined, "as long as federal laws make the possession, use, manufacturing and/or distribution of marijuana (cannabis) illegal, a judicial appointee may not participate in the growing,

processing or dispensing of the substance, regardless of the intended purpose." (Maryland Judicial Ethics Opinion Request Number 2016-09, pp. 1-2.) The committee went further, stating "[e]ven if the Congress enacted federal legislation analogous to Health General §§ 13-33-6 et seq., [exempting growers, processors and dispensers licensed by the state of Maryland from arrest, prosecution or administrative penalty] a proposal by a judicial appointee to act as a medical cannabis grower, processor and dispenser might raise concerns with other provisions of the Code, for example, Rule 1.2 'Promoting Confidence In The Judiciary.' We need not address these issues at this juncture, however." (*Id*. at fn. 2 [capitalization of the canon title omitted].)

In Washington, the judicial ethics advisory committee concluded that it was a violation of the code for a judge to allow a court employee to maintain an extra-curricular medical marijuana business, which remains illegal under federal controlled substances laws. (Washington Judicial Ethics Advisory Committee Opinion 15-02.) After examining a judge's duty to direct the conduct of court employees, the committee concluded:

> [E]ven if owning a medical marijuana business may comply with the state statutory scheme, possessing, growing, and distributing marijuana remains illegal under federal law for both recreational and medical use. See Controlled Substances Act, 21 U.S.C. §§ 801-904. Although the Code does not generally prohibit a court employee from engaging in outside businesses or employment, operating a business in knowing violation of law undermines the public's confidence in the integrity of the judiciary in violation of CJC 1.2, and is contrary to acting with fidelity and in a diligent manner consistent with the judge's obligations under the Code.

(*Id*., p. 2.)

In Colorado, the judicial ethics advisory board concluded that it is a violation of the code for a judge to engage in the personal recreational or medical use of marijuana in private, and in a manner compliant with the Colorado Constitution and related state and local laws. (Colorado Supreme Court Judicial Ethics Advisory Board, Opinion 2014-01,

p. 1.) The board found that "because activities conducted in Colorado, including medical marijuana use, are subject to both state and federal law . . . , for an activity to be 'lawful' in Colorado, it must be permitted by, and not contrary to, both state and federal law. Conversely, an activity that violates federal law but complies with state law cannot be 'lawful' under the ordinary meaning of that term." (*Id*., p. 2.)

As these opinions advise and the canons state, to maintain an interest in a commercial enterprise that involves the sale or manufacture of medical or recreational marijuana is not lawful and violates the obligations expressed in canon 2. Therefore, it is the committee's opinion that a judge violates his or her ethical obligations if the judge maintains an interest in a commercial enterprise involving marijuana.

2. Judge's Capacity to Act Impartially

An interest in a commercial marijuana enterprise may also create an appearance of impropriety and cast doubt on a judge's ability to act impartially. (Canon 2 [requiring judges to avoid impropriety and its appearance in all activities]; Advisory Com. Com. foll. canon 2A [test for impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with independence, integrity, and impartiality]; terminology, "impropriety" [includes conduct that undermines a judge's impartiality].) Canon 4A(1) also explicitly requires a judge to conduct all extrajudicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially.

A judge must disqualify himself or herself when a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. Judges "are expected to honestly examine their lives, thoughts, experiences, relationships and biases and not to sit on a case unless they have determined that none of these things will stand in the way of rendering fair and impartial justice." (Rothman, California Judicial Conduct Handbook (3d ed. 2007) § 7.36, p. 335.) Even if a judge determines that owning an

interest in a commercial marijuana enterprise will have no bearing on his or her ability to be impartial, if "a reasonable mind (not the mind of a particular lawyer or party) would conclude that there is an objective doubt that the judge would be able to remain impartial regardless of the judge's professional efforts to put aside his or her bias," then the judge should disqualify himself or herself. (*Id.* § 7.57, p. 366.)

The decriminalization of certain marijuana activities in California has not eliminated state criminal investigation and prosecution for numerous marijuana crimes, such as driving under the influence and possession of large quantities of marijuana, as well as the variety of civil matters that may arise from the marijuana industry, including civil violations of state marijuana regulations, zoning, licensing, seizure or forfeiture of assets, employment disputes, landlord-tenant disputes, and contract disputes. A reasonable person could conclude that a judge who disregards applicable marijuana laws for his or her own benefit is unable to act impartially anytime the judge rules on a marijuana-related matter. For example, it may appear to a reasonable person that a judge who owned an interest in a marijuana business would be unable to act impartially in evaluating a forfeiture of assets that were earned through a marijuana business. There will always be at least an appearance of impropriety and doubts regarding impartiality when a judge decides to disregard a law to benefit his or her personal interest. Therefore, it is the committee's opinion that a judge cannot maintain an interest in a commercial marijuana enterprise. To do so would create an appearance of impropriety and cast doubt on a judge's ability to act impartially.

IV. Conclusion

It is the committee's opinion that maintaining any interest in a commercial enterprise that involves the cultivation, production, manufacture, transportation or sale of medical or recreational marijuana is incompatible with a judge's obligations to follow the law under canon 2. Such conduct is an activity involving impropriety that fails to comply

with federal law and puts a judge at risk for federal prosecution. Despite the limited decriminalization of medical and recreational marijuana, there will continue to be a bounty of marijuana-related matters in the courts. Moreover, a reasonable person could easily find that a judge's disregard of federal law creates an appearance of impropriety and casts doubt on the judge's ability to act impartially, particularly in marijuana-related cases. Therefore, the committee concludes that an interest in a marijuana related business creates an appearance of impropriety, casts doubt on a judge's ability to act impartially, and is incompatible with a judge's obligations under canon 2 and canon 4A(1).

This opinion is advisory only (Cal. Rules of Court, rule 9.80(a), (e); Cal. Com. Jud. Ethics Opns., Internal Operating Rules & Proc. (CJEO) rule 1(a), (b)). It is based on facts and issues, or topics of interest, presented to the California Supreme Court Committee on Judicial Ethics Opinions in a request for an opinion (Cal. Rules of Court, rule 9.80(i)(3); CJEO rule 2(f), 6(c)), or on subjects deemed appropriate by the committee (Cal. Rules of Court, rule 9.80(i)(1); CJEO rule 6(a)).