



**CALIFORNIA SUPREME COURT
COMMITTEE ON JUDICIAL ETHICS OPINIONS**

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CJEO Informal Opinion Summary No. 2012-001

[Posted August 23, 2013]

**EMPLOYMENT OF AN APPELLATE COURT JUSTICE'S SPOUSE AS A
STAFF ATTORNEY IN THAT JUSTICE'S CHAMBERS**

The Committee on Judicial Ethics Opinions (CJEO) was asked by a presiding appellate justice for an opinion on whether it is a violation of the California Code of Judicial Ethics for a justice to have his or her spouse work as the chambers attorney of that justice, and if so, whether the presiding justice has any reporting duties. An opinion was also sought on whether it is a violation of the Code for the presiding justice to approve the timesheets of a chambers attorney of another justice.

The facts provided were that at the time the attorney was selected by the justice and hired by the court there was no relationship. Within two years a personal relationship developed, resulting in marriage. After the marriage, the attorney worked in the chambers of another justice, but later returned to work in the chambers of the justice-spouse, and remained there for more than eleven years. During that time the Presiding Justice signed that attorney's time sheets.

CJEO opined that, where an intimate personal relationship (including but not limited to marriage) develops between an appellate justice and one of the attorneys assigned to his or her chambers, the continued service of the attorney in that chambers would violate the canons of judicial ethics by failing to avoid nepotism and favoritism, and/or by creating an appearance of impropriety that tends to diminish, rather than promote, public confidence in the integrity and impartiality of the judiciary. (Canons 2, 2A, 2B(1), 3(C)(1), and 3(C)(4)¹.)

This opinion was based, primarily, on the nature of the working relationship between a supervising justice and his or her chambers attorney, and secondarily on the fact that—where there is a marriage—the attorney’s compensation is not insubstantial and inures directly to the benefit of the judge-spouse’s household. In thus concluding, CJEO expressly declined to consider whether any employment laws are implicated, or to consider unique factors that may pertain to a specific employment situation, such as good faith reliance, advice of counsel, or lack of alternative candidates (e.g., in sparsely populated areas).

The committee advised that it was within the discretion of the presiding justice to determine what corrective action would be appropriate, including reporting the matter to the Commission on Judicial Performance. In exercising that discretion, the presiding justice was advised to consider all relevant factors. (See, e.g., Cal. Judges Assoc., Formal Ethics Opinion No. 64 (2009) p. 4).

CJEO concluded there is no ethical dilemma if a presiding justice verifies the time sheet of another justice’s chambers attorney for administrative convenience, for example,

¹ The informal opinion that was issued by the committee in 2012 and this summary are based on canon 3C(4), which was in effect at the time of the of issuance of the informal opinion. The committee notes that effective January 1, 2013, the California Code of Judicial Ethics was amended and former canon 3C(4) was renumbered as canon 3C(5).

where a Division attorney rotates through the justices' chambers. If, however, the presiding justice is not in a position to know whether the attorney was present or absent on the days represented on the time sheet, this would likely constitute a violation of canon 3C(1). If a presiding justice were to sign the timesheet of another justice's attorney to relieve that justice of his or her administrative duties, an ethical concern might arise depending upon the reason for doing so. For example, if a justice has failed or been unable accurately to document the attorney's work days, the presiding justice should not be covering for that justice by signing the attorney's time sheet, but should, instead, be addressing the justice's administrative competence or integrity.



This informal opinion summary is advisory only (Cal. Rules of Court, rules 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)).