



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 2016-009]

Title

Committee on Judicial Ethics Opinions
Draft Formal Opinion 2016-009;
Judges Meeting with Vendors

Action Requested

Review and submit comments by
July 8, 2016

Proposed Adoption Date

To be determined

Prepared by

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

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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 2016-009 provides guidance to judges regarding meetings with vendors. The draft opinion specifically discusses whether the California Code of Judicial Ethics permits a judge to meet with a private company providing services to the parties under court order, such as remote alcohol monitoring services. The draft opinion also more broadly examines whether judges may meet with private vendors to discuss services they provide to

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courts or to parties. And finally, the draft opinion discusses specific steps judicial officers may take to avoid potential ethical concerns when meeting with vendors.

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comments, the committee will decide whether the draft opinion should be published in its original form, modified, or withdrawn (rule 9.80(j)(2); CJEO rule 7(d)).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 **July 8, 2016**, 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:

May a judge meet with a private company providing remote alcohol monitoring services to parties under court order?

More broadly, may judges ethically meet with private vendors to discuss services the vendors provide to courts or to parties?

In the attached draft opinion, the committee examines the canons requiring diligent discharge of administrative duties as well as those proscribing conflicts of interest and appearances of impropriety. The draft opinion advises that a judge may meet with private vendors, including a vendor providing remote alcohol monitoring services to parties under court

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order, if a meeting would aid the judge in diligently discharging administrative responsibilities and would not otherwise violate the code. (Cal. Code Jud. Ethics, canon 3C(1).) In order to avoid such a violation, the draft opinion advises judges considering meetings with vendors to take specific steps to prevent lending the prestige of judicial office to a vendor, or conveying the impression that the vendor is in a special position to influence a judge. (Canon 2B(1) & (2).)

In particular, the committee recommends that judges consider having court administrative personnel handle initial communications with vendors, determine the purposes of proposed meetings in advance, attempt to schedule panel meetings with competing vendors, alert other judicial officers who also may have supervisory or administrative responsibilities related to the product or service at issue, and, if possible, gather necessary information for sound decision-making by meeting with vendors in place of judicial officers. In addition, the committee recommends that when judges determine meetings with vendors are necessary for the diligent discharge of their administrative duties, they also have court administrative personnel attend the meetings. (Canon 2B(1) & (2), 3C(1).) If a vendor's products or services are to be used by court personnel only, the committee recommends that others who will likely also use the vendor's product or service be invited to the meeting. (Canon 3C(1), (2) & (3).) If a vendor's products or services are to be used by parties under court order, the committee recommends that judges use caution and confirm that the product or service is not the subject of litigation in the judges' court, and that a person aware of the meeting would not reasonably identify a conflict of interest or entertain a doubt about the judges' impartiality. (Canon 1, 2A, 3C(1), 4D(1)(b).)

Invitation to Comment

The committee invites comment on the attached draft opinion by **July 8, 2016**.
Comments may be submitted:

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

Ms. Nancy A. Black, Committee Counsel
The Supreme Court of California
Committee on Judicial Ethics Opinions
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San Francisco, California 94102

The committee will post on the CJEO website, at the close of the comment period, or after July 8, 2016, those comments submitted with a statement waving confidentiality or consenting to CJEO's public disclosure of the comment.

Attachment: CJEO Draft Formal Opinion 2016-009

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CJEO Draft Formal Opinion 2016-009

JUDGES MEETING WITH VENDORS

I. Question Presented

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

May a judge meet with a private company providing remote alcohol monitoring services to parties under court order?

More broadly, may judges ethically meet with private vendors to discuss services the vendors provide to courts or to parties?

II. Summary of Conclusions

Courts must routinely do business with private companies to procure goods and services for themselves and to effectuate court orders. In making administrative decisions to engage particular vendors, judges must comply with the California Code of Judicial Ethics in all aspects of the business transactions. The code requires judges to

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“diligently discharge . . . [their] administrative responsibilities impartially, on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity of the judiciary” (canon 3C(1)), and “cooperate with other judges and court officials in the administration of court business.” (Canon 3C(2).)¹

In addition, the code requires that judicial officers also take steps to prevent conflicts of interest and appearances of impropriety. For example, the code proscribes “convey[ing] the impression that any individual is in a special position to influence the judge” (canon 2B(1)), and “lend[ing] the prestige of judicial office or us[ing] the judicial title in any manner, including any oral or written communication, to advance the pecuniary or personal interests of the judge or others.” (Canon 2B(2).) The code also prohibits “participat[ing] in, . . . [or] permit[ing] the judge’s name to be used in connection with, any business venture or commercial advertising that indicates the judge’s title or affiliation with the judiciary[,] or otherwise lend[ing] the power or prestige of his or her office to promote a business or any commercial venture.” (Canon 4D(2).)

Within the bounds of these limitations, the committee concludes that a judge may ethically meet with private vendors, including a private vendor providing remote alcohol monitoring services to parties under court order, if such meetings aid the judge in diligently discharging administrative responsibilities (canon 3C(1)), and would not otherwise violate the code. In particular, judicial officers considering meeting with vendors should take measures to prevent lending the prestige of judicial office to a vendor, or conveying the impression that the vendor is in a special position to influence a judge. (Canon 2B(1) & (2).)

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

The committee recommends that when approached by a vendor for a meeting, judges should enlist the assistance of court administrative personnel in order to help prevent lending the prestige of judicial office to vendors or conveying impressions of improper influence. (Canon 2B(1) & (2), 3C(1).) Specifically, the committee recommends that judges should request that a court administrator, or other non-judicial personnel designated to handle procurement and contracting, step in and handle all initial communications with vendors, determine the purposes of proposed meetings in advance, attempt to schedule panel meetings with competing vendors, alert other judicial officers who also may have supervisory or administrative responsibilities related to the product or service at issue, and gather all necessary information by meeting with vendors in place of judicial officers, if possible. In addition, the committee recommends that if meetings between judicial officers and vendors are ultimately necessary for diligent discharge of administrative responsibilities, judges may request court administrative personnel to attend all such meetings along with judicial officers.

In evaluating prospective meetings with any vendor, the committee also advises judges to determine whether court personnel or parties under court order will be the end users of the vendor's products or services. If a vendor's products or services are to be used *by court personnel only*, the committee recommends that in addition to enlisting the assistance of court administrative personnel to organize and attend meetings as discussed above, judges should instruct the relevant administrators to invite to the meetings appropriate court personnel who will likely also use the vendor's product or service. Inviting as many prospective end users as practicable to give input at meetings is likely to facilitate cooperative, efficient, and impartial determination of the most appropriate product for the court. (Canon 3C(1), (2) & (3).)

If judges are considering meeting with a vendor whose products or services are to be used *by parties under court order*, the committee recommends that in addition to

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enlisting the assistance of court administrative personnel to organize and attend the meeting as discussed above, judges should proceed with heightened caution and confirm both that the product or service is not the subject of litigation in the judges' court, and that a member of the public aware of the facts could not reasonably identify a conflict of interest or entertain a doubt that the judges would continue to be able to act with integrity, impartiality, and competence, if the meeting occurs. (Canon 1, 2A, 3C(1), 4D(1)(b).)

III. Authorities

A. Applicable Canons

Terminology: “‘Require.’ Any canon prescribing that a judge “require” certain conduct of others means that a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Canon[] . . . 3C(3)”

Canon 1: “A judge shall uphold the integrity and independence of the judiciary.”

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. . . .”

Advisory Committee commentary following canon 2A: “. . . . 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 2B(1): “A judge shall not allow family, social, political, or other relationships to influence the judge’s judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.”

Canon 2B(2): “A judge shall not lend the prestige of judicial office or use the judicial title in any manner, including any oral or written communication, to advance the pecuniary or personal interests of the judge or others.”

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Advisory Committee commentary following canon 2B: “. . . . A judge should distinguish between proper and improper use of the prestige of office in all of his or her activities. . . . [¶] A judge must avoid lending the prestige of judicial office for the advancement of the private interests of the judge or others”

Canon 3C(1): “A judge shall diligently discharge the judge’s administrative responsibilities impartially, on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity of the judiciary”

Advisory Committee commentary following canon 3C(1): “In considering what constitutes a conflict of interest under this canon, a judge should be informed by Code of Civil Procedure section 170.1, subdivision (a)(6).”

Canon 3C(2): “A judge shall maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.”

Canon 3C(3): “A judge shall require staff and court personnel under the judge’s direction and control to observe appropriate standards of conduct and to refrain from manifesting bias or prejudice based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation in the performance of their official duties.”

Canon 3C(4): “A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to ensure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.”

Canon 4D(1)(a)-(b): “A judge shall not engage in financial and business dealings that (a) may reasonably be perceived to exploit the judge’s judicial position, or (b) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to appear before the court on which the judge serves.”

Canon 4D(2): “A judge may, subject to the requirements of this code, hold and manage investments of the judge and members of the judge’s family, including real estate, and engage in other remunerative activities. A judge shall not participate in, nor permit the judge’s name to be used in connection with, any business venture or commercial advertising that indicates the judge’s title or affiliation with the judiciary or

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otherwise lend the power or prestige of his or her office to promote a business or any commercial venture.”

B. Other Authorities

California Code of Civil Procedure, section 170.1

California Public Contract Code, sections 1904, 1906

California Rules of Court, rules 10.603 c(6)(D), 10.1004 c(5), 10.1020a, 10.1020 c(6)

Kloepfer v. Commission on Judicial Performance (1989) 49 Cal.3d 826, 838, fn. 6

Wechsler v. Superior Court (2014) 224 Cal.App.4th 384, 391

California Commission on Judicial Performance: Annual Report (2005) advisory letter 8, page 27

Rothman, California Judicial Conduct Handbook (3d ed. 2007) section 6.07

Administrative Office of the Courts, Judicial Branch Contracting Manual, Revised Effective Draft, Jan. 2014

California Code of Ethics for Court Employees, tenet six

California Judges Association: Judicial Ethics Update (1995) III.H; Judicial Ethics Update (2003) I.A.1; Judicial Ethics Update (2010) I.A.1.; Judicial Ethics Update (2012) V.2

Alabama Judicial Ethics Opinion 97-682

Arizona Supreme Court Judicial Ethics Advisory Opinion 09-02

Florida Judicial Ethics Opinion 2012-22

Utah Judicial Ethics Informal Opinion 98-13

Washington Ethics Advisory Committee Opinion 08-07

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V. Discussion

A. Introduction

The committee has been asked whether judges may meet with vendors from private companies providing services such as remote alcohol monitoring to parties under court order. The committee has also been asked to discuss more broadly the ethical considerations that will govern a judge's interactions with all vendors, including vendors providing services directly to courts.

Private companies provide a wide variety of goods and services directly to courts themselves and to effectuate court orders. For example, private companies provide case management systems, legal research products, global positioning systems ("GPS") surveillance technology, anger management courses, anti-theft courses, domestic violence prevention courses, parenting courses, and ignition interlock devices to prevent drunken driving. Because judges must remain impartial and may not advance the pecuniary interests of others, ethical concerns may arise when judges interact directly with vendors, particularly with vendors providing services in response to court orders.

This opinion first discusses how the canons and other rules govern judicial officers' interactions with vendors. It subsequently makes a set of core recommendations for all meetings with vendors. Finally, this opinion offers additional ethical guidance on meetings with vendors providing infrastructure to courts and vendors providing services to parties pursuant to court orders.

B. Ethical and Administrative Rules Governing Interactions with Vendors

Judicial officers must perform their duties—direct and supervisory—in accordance with the canons. Failing to comply with the canons “suggests performance below the minimum level necessary to maintain public confidence in the administration of justice.”

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(Kloepfer v. Commission on Judicial Performance (1989) 49 Cal.3d 826, 838, fn. 6.) Moreover, “[a] judge shall require staff and court personnel under the judge’s direction and control to observe appropriate standards of conduct.” (Canon 3C(3); see also Cal. Code of Ethics for Court Employees, tenet six [requiring court employees to “avoid any appearance of impropriety that diminishes the honor and integrity of the court.”].)

Judges may be able to delegate meetings with vendors if appropriate court administrators can gather all necessary information for judges to make sound decisions regarding particular products and services. Judges, however, cannot delegate ultimate decision-making with respect to the engagement of any particular vendor and may need to interface with vendors, if the product at issue is to be used primarily by judges themselves or, if direct investigation by judges is necessary for diligent discharge of administrative responsibilities related to cases or matters before the judges.² Canon 3C(1) requires a judge to “diligently discharge the judge’s administrative responsibilities impartially, on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity of the judiciary[.]” Judge Rothman observes that the “phrase ‘diligently discharge’ does not simply mean to act quickly and carefully.” (Rothman, Cal. Judicial Conduct Handbook (3d ed. 2007) § 6.07, p. 261) [“Rothman”].) Rather, “[t]hese words require that a judge perform the duties to high standards, with ethical grounding.” (*Ibid.*) Moreover, the code also requires cooperation among judges in assuring that procurement is done ethically and appropriately. Canon 3C(2) requires judges to “maintain professional competence in judicial administration, and . . . cooperate with other judges and court officials in the

² For example, judges working on family law cases may wish to use products provided by vendors to calculate spousal and child support. Those judges may wish to evaluate directly the efficacy of such products because they have the most detailed knowledge about their specific cases and needs.

administration of court business[,]” and canon 3C(4) requires judges “with supervisory authority for the judicial performance of other judges . . . [to] take reasonable measures to ensure . . . the proper performance of their other judicial responsibilities.”

Other canons also underscore the importance of maintaining the public’s confidence in all aspects of judicial decision-making, including decisions to meet with and engage vendors. Canon 1, for example, requires a judicial officer to “uphold the integrity and independence of the judiciary.” Canon 2B(1) proscribes allowing “family, social, political, or other relationships to influence . . . judicial conduct or judgment,” and specifically prohibits “convey[ing] or permit[ting] others to convey the impression that any individual is in a special position to influence the judge.” Other canons proscribe using judicial office to gain pecuniary advantage for oneself or others. Canon 4D(1)(a) prohibits a judge from “[]engag[ing] in financial and business dealings that [] may reasonably be perceived to exploit the judge’s judicial position[.]” Canon 2B(2) prohibits a judge from “[]lend[ing] the prestige of judicial office or us[ing] the judicial title in any manner, including any oral or written communication, to advance the pecuniary or personal interests of the judge or others.” The Advisory Committee commentary following canon 2B further instructs that “[a] judge should distinguish between proper and improper use of the prestige of office in all of his or her activities” and “must avoid lending the prestige of judicial office for the advancement of the private interests of the judge or others.”

Read together, canons 1, 2B(1), 2B(2), 3C(1), 4(D)(1)(a), and the Advisory Committee commentaries following canon 2B(2) and 3C(1) require a judicial officer to be mindful of the possibility that a vendor may use interactions to gain advantage in a competitive market, whether or not that judicial officer intended the vendor to do so. Moreover, the Advisory Committee has instructed that “[i]n considering what constitutes a conflict of interest under this canon, a judge should be informed by Code of Civil

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Procedure section 170.1, subdivision (a)(6).” (Advisory Com. commentary, Cal. Code Jud. Ethics, foll. canon 3C(1)). Consequently, the test for conflict of interest “is an objective one: if a fully informed, reasonable member of the public would fairly entertain doubts that the judge is impartial” (*Wechsler v. Superior Court* (2014) 224 Cal.App.4th 384, 391), a conflict of interest is present.

In light of the ethical pitfalls inherent in interfacing with vendors, judicial officers should consult with appropriate colleagues within their courts and take full advantage of the presence and expertise of appropriate administrative personnel when approached by vendors. Because courts require a variety of products and services from the private sector in order to conduct day-to-day operations, presiding trial court judges are charged with “[a]pprov[ing] procurements, contracts, expenditures, and the allocation of funds in a manner that promotes the implementation of state and local budget priorities and that ensures equal access to justice and the ability of the court to carry out its functions effectively.” (Cal. Rules of Court, rule 10.603 c(6)(D).) “[T]he presiding judge may delegate these duties to the court executive officer” while “ensur[ing] that the court executive officer performs such delegated duties consistent with the court's established budget.” (*Ibid.*) In a reviewing court, “[t]he administrative presiding justice supervises the administration of the court's day-to-day operations. . . .” (Cal. Rules of Court, rule 10.1004 c(5).) “A reviewing court may employ a clerk/administrator” (Cal. Rules of Court, rule 10.1020a) who “negotiates contracts on the court's behalf in accord with established contracting procedures and applicable laws. . . .” (Cal. Rules of Court, rule 10.1020 c(6).)

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California Public Contract Code (“PCC”) section 1904 provides that with limited exceptions,³ “[a]ll judicial branch entities shall comply with the provisions of th[e] code that are applicable to state agencies and departments related to the procurement of goods and services, including information technology goods and services.” Pursuant to PCC section 1906, the Judicial Council has published and adopted a “Judicial Branch Contracting Manual incorporating procurement and contracting policies and procedures that must be followed by all judicial branch entities.” (See Admin. Off. of Courts, Judicial Branch Contracting Manual (“Judicial Branch Contracting Manual”) [Revised Effective Draft, Jan. 2014.]⁴ Moreover, PCC section 1906 also provides that “each judicial branch entity shall adopt a local contracting manual for procurement and contracting for goods or services by that judicial branch entity[,]” and that “[t]he policies and procedures in the [local contracting] manuals shall be consistent with th[e] public contracting] code and substantially similar to the provisions contained in the State Administrative Manual and the State Contracting Manual.”

In general, a “Procurement and Contracting Officer at each judicial branch entity (“JBE”) is responsible for “all procurement and contracting within the JBE[,]” for “ensur[ing] that all procurement and contracting activities within the JBE comply with applicable procurement laws[,]” for providing “the necessary resources to ensure that all staff are properly qualified and trained in all aspects of the procurement process,” and for “[o]verse[ing] development of the [l]ocal [c]ontracting [m]annual.” (Judicial Contracting

³ See PCC section 19204(c) (construction, acquisition, lease or renovation of trial court facilities).

⁴ The Judicial Branch Manual does not apply to construction, acquisition, lease or renovation of facilities other than trial court facilities, agreements between superior court and the sheriff for court security services, and court interpreters providing services as independent contractors. (Manual, “Introduction,” pp. 5-6.)

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Manual, “Purchasing Authority,” pp. 5-6.) Other relevant personnel may include a Buyer, Americans with Disabilities Act Coordinator, Disabled Veteran Business Enterprise Advocate, Procurement-Card Coordinator, Protest Hearing Officer, Protest Appeals Officer, and Payment Officer. (*Id.* at pp. 5-7.) While “[i]n some JBEs, especially smaller superior courts, one individual may perform several of these roles[. . .]. . . [d]ifferent employees must be responsible for procurement activities and payment approval.” (*Id.* at p. 5.) “Most [j]udicial [b]ranch [e]ntity []procurements are competitive, and require the use of [s]olicitation [d]ocuments, advertising, and [b]ids[,]” as set out. (Judicial Branch Contracting Manual, “Procurement Planning,” p. 3; see also “Competitive Solicitation Overview;” “Step-by-Step Guide for the Procurement of Non-IT Goods;” “Step-by-Step Guide for the Procurement of Non-IT Services;” Step-by-Step Guide for the Procurement of IT Goods and Services.”)⁵ Read together, the canons and numerous judicial branch administrative rules highlight the importance of enlisting the assistance and expertise of judicial branch administrative staff when approached by vendors.

C. Recommendations for All Meetings with Vendors

The need to meet with vendors may arise in the course of a judicial officer’s diligent discharge of administrative responsibilities. (Canon 3C(1).) All judicial officers must, however, remain mindful of their additional ethical duties to uphold public

⁵ “In certain circumstances, Judicial Branch Entities (JBEs) may procure non-IT goods, non-IT services, and IT goods and services without going through a competitive process.” (Judicial Branch Contracting Manual, “Non-Competitively Bid Procurements,” p. 3.) Those circumstances include “[p]urchases under \$5,000; [e]mergency purchases; [p]urchases from governmental entities; [l]egal services; [c]ertain [l]everaged [p]rocurement [a]greements []; [p]urchases from a business entity operating a Community Rehabilitation Program []; [l]icensing or proficiency testing examinations; [s]ubvention and local assistance contracts; and [s]ole source.”

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confidence in the integrity of judicial decision-making and to prevent appearances of impropriety when participating in such meetings. (Canons 1, 2A, 2B(1), 2B(2), 3C(1), 3C(3), 4D(1), 4D(2).) Therefore, the committee recommends that when judges are approached by vendors for meetings, they should in turn request that a court's Procurement and Contracting Officer or other administrator step in and handle all communications with vendors, determine the purposes of meetings in advance, alert other judicial officers who may also have supervisory or administrative responsibilities related to the product at issue, attempt to schedule panel meetings with competing vendors, and gather all necessary information by meeting with the vendors in lieu of judicial officers where possible. Even if competing vendors are unavailable or unwilling to meet together, the practice of extending invitations contemporaneously to a number of competing vendors demonstrates a court's impartiality and helps to minimize any appearance of bias or favoritism in inviting bids. Moreover, the committee recommends that judicial officers request that at least one appropriate non-judicial administrator or other court staff attend any meetings between judicial officers and vendors, should such meetings be necessary for the diligent discharge of judicial officers' administrative responsibilities. (See canon 3C(1).)

In any event, judges must refrain from meeting with vendors or allowing court administrators to meet with vendors if such meetings themselves or the particular circumstances of such meetings would convey or permit others to convey the impression that the vendor is in a special position to influence a judge or judges. (Canons 2B(1) & (2).) Judges must also refrain from meeting with vendors if a meeting would result in the lending of the prestige of judicial office to the vendor, or if a fully informed reasonable member of the public would identify a conflict of interest or doubt a judge's impartiality. (Canon 2B(2); *Wechsler*, 224 Cal.App.4th at 391; canon 3C(1); advisory com. commentary, foll. canon 3C(1); canon 2(A); advisory com. commentary, foll. canon 2A.)

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D. Meeting with Vendors Providing Services to Courts

“Judges engage in administrative or management work on their courts as presiding judges, supervising judges, or members of court executive committees or other court committees[,]” and therefore “are called upon to enter into contracts with providers of goods and services to the court or in other ways make decisions that could provide financial benefit to others.” (Rothman, *supra*, § 607, pp. 260-61.) In particular, judges may be called upon to meet with vendors offering on-line legal research tools, books, or systems designed to allow court personnel to manage a court’s caseload. Judges and their legal staff may sometimes be better equipped than administrators or other non-legal personnel to evaluate the desirability of particular goods or services. In order to mitigate possible ethical concerns, the committee recommends that judges considering meetings with vendors providing goods or services to courts should enlist the assistance of a court administrator, as discussed above (*supra* at pp. 9-10), and in addition, instruct the court administrator setting up the meetings to invite appropriate court personnel who will likely also use a vendor’s product or service. (Canon 3C(1), (2) & (3).)

Meetings with vendors who provide court infrastructure may raise ethical problems if judicial officers are engaging in discussions for the benefit of vendors or other private parties rather than for the benefit of their courts and overall administration of law. A judge may not, for example, “set up a meeting at the courthouse for the representative of a legal publishing company to meet with the judges to promote publishing company’s products. . . .” (California Judges Association (“CJA”) Judicial Ethics Update (Jan. 2012) V.2., p. 7 [citing canons 2A, 2B(2), 4A, 4D(1)(a), 4D(2)]), or “accept an expense paid trip to attend a seminar from a vendor attempting to market a product or service to the court,” because “acceptance would have the appearance of impropriety and would create a conflict of interest.” (CJA Judicial Ethics Update (Feb. 1995) III.H., p. 3 [citing canons 2A and 4H(1) and (2)].) Nor may a judge “participate[] in

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the decision to enter into a financial transaction on behalf of the court with an individual who [i]s a close personal friend of the judge and with whom the judge ha[s] financial ties.” (Commission on Judicial Performance, Ann. Rep. (2005), advisory letter 8, p. 27 [citing canon 3C].)

Authorities in other states have also recommended that judges exercise caution and enlist the help of court executives or administrators when facing the prospect of interaction with vendors seeking to provide infrastructure to courts. The Alabama Judicial Inquiry Commission, for example, advised that a judge serving as a member of an Administrative Office of Courts committee exploring the use of courtroom and case management technology “may participate in testing any technology obtained” but “should not . . . be involved in the solicitation or procurement of the donated technology” to be used in the testing process. (Alabama Judicial Ethics Opinion 97-682, p.1.) As the Alabama Commission further observed, “[w]ith respect to the solicitation of donations of hardware, software, and training, the judge should not directly solicit such donations. Such solicitations are more appropriately handled by the administrative branch of the court system.” (*Ibid.*)

The Washington Ethics Advisory Committee has advised that “[a] judicial officer, whose court is contemporaneously negotiating with a vendor for a contract, should not attend an event if the judicial officer is aware that the vendor is a significant contributor to the event because it creates an appearance of a conflict of interest and undermines the public confidence in the integrity of the judiciary.” (Washington Ethics Advisory Committee Opinion 08-07; p.1.) In response to a judge who, with the chief judge’s approval, wished to “appear and speak in support of a specific software funding request to the county commission, which provides funding for judicial technology and software in the county where the judge sits[,]” a majority of the Florida Supreme Court Judicial Ethics Advisory Committee “advise[d] the judge not to support or endorse a particular

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software provider or software product in order to avoid violating Canon 2B’s prohibition against lending the prestige of the judicial office to advance the private interests of another.”⁶ (Florida Judicial Ethics Opinion 2012-22, pp.1, 3.) The Florida Committee further observed that while “a judge is permitted to address, with the entity responsible for funding judicial software needs, the pros and cons of disparate software providers and software products, based upon the judge’s experience and expertise regarding those needs” discussions are prohibited “if the judge is in any way motivated by a desire to lend the prestige of the judge’s office to advance the private interests of a particular vendor” (*Id.* at p. 3.)

E. Meeting with Vendors Providing Services to Parties Pursuant to Court Order

Alcohol monitoring services, private mediation services, interlock systems, GPS tracking, and defensive driving programs are just a few of examples of the many ways that private, profit-driven organizations help give effect to judicial officers’ rulings. Judges may wish to ensure the quality of the services offered to parties in order to diligently discharge administrative responsibilities. (See canon 3C(1).) However, judges considering meeting with vendors who provide services to parties should exercise heightened caution and take additional steps to ensure compliance with the canons.

Heightened caution and additional steps are appropriate for three primary reasons. First, because neither judges themselves nor chambers personnel rely on these services as they would case management or legal research services, and because appropriate agencies

⁶ Canon 2B(2) of the Florida Code of Judicial Conduct provides in pertinent part, “[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.”

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often provide lists of licensed or approved vendors for the punitive and rehabilitative services at issue here, rationales for interactions between judges and vendors of this kind may be less compelling.⁷ Moreover, because the services at issue here are linked to court orders, improper meetings with vendors in this area may especially cast doubts upon “the integrity and independence of the judiciary” (canon 1) and damage “public confidence in the integrity and impartiality of the judiciary.” (Canon 2A.)

Second, judges should consider whether equipment or services to be used pursuant to court order may become the subject of litigation. As the Arizona Supreme Court Judicial Ethics Advisory Committee has observed, because “[e]quipment used in law enforcement may become the subject of litigation[,] it would be inappropriate for [a] judge or judicial staff to have received prior court-only training on the use and reliability of such equipment. ” (Arizona Supreme Court Judicial Ethics Advisory Opinion 09-02, p.1 [recommending that judges and judicial employees refrain from attending a court-only demonstration of training offered by a vendor for new technology or equipment, such as photo enforcement.]) (See also canon 4D(1)(b).)

Third, judges should also consider whether a possible communication with or about a private organization providing services to parties could reasonably “be perceived as allowing the organization to convey the impression that [it is] in a special position of influence.” (Utah Judicial Ethics Informal Opinion 98-13, p. 2 [concluding that a juvenile court judge should not write a letter of recommendation on behalf of a private counseling service seeking a federal grant]; see also canon 2B(1).) Because of the highly competitive nature of many industries providing services to parties under court orders, some vendors may seek advantage among parties by mentioning meetings with judges.

⁷ The California Department of Motor Vehicle’s provides, for example, a link to a list of licensed ignition interlock device installers on its website.

When considering meetings with vendors providing goods or services to parties under court order, the committee therefore recommends that in addition to promptly enlisting the assistance of administrative personnel and seeing that supervising judges or other judges with responsibilities related to the vendors' products or services are notified of the possible meetings (*supra* at pp. 11-12), judges should confirm that the product or service is not the subject of litigation in the judge's court and that a member of the public aware of the facts could not reasonably identify a conflict of interest or entertain a doubt that judges in the court would continue to be able to act with integrity, impartiality and competence if the meetings were to occur.

VI. Conclusions

Judges may need to meet with vendors in order to diligently discharge their administrative duties. (Canon 3C(1).) Therefore, the committee concludes that judges may ethically meet with private vendors, including a private company providing remote alcohol monitoring services to parties under court order, if a meeting is necessary for sound administrative decision-making (canon 3C(1)) and would not otherwise diminish the public's confidence in the integrity and impartiality of the judiciary. (Canons 1, 2B(1), 2B(2), 3C(1), 4(D)(1)(a).)

When considering interactions with vendors, proper involvement of court administrators, court staff, and additional judicial officers can mitigate many ethical concerns, regardless of the goods or services and end users at issue. Moreover, numerous rules pertaining to contracting within the judicial branch specifically require the involvement of court administrators and other staff. The committee recommends that in order to help mitigate potential ethical problems when approached by vendors, judges should request that a court administrator, or other non-judicial personnel designated to handle procurement and contracting, step in and handle all communications with vendors,

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determine the purposes of proposed meetings in advance, attempt to schedule panel meetings with competing vendors, alert other judicial officers who also may have supervisory or administrative responsibilities related to the product or service at issue, and meet with vendors instead of judicial officers, if possible. (*Ibid.*) Should meetings between judicial officers and vendors be necessary for the for the diligent discharge of judicial officers' administrative responsibilities (canon 3C(1)), the committee recommends that judicial officers request that at least one appropriate non-judicial administrator or other court staff attend the meetings. (Canons 1, 2B(1), 2B(2), 3C(1), 4(D)(1)(a).)

Interactions between judicial officers and vendors providing court infrastructure such as legal research services may present fewer ethical concerns than interactions with vendors providing punitive or rehabilitative services to those under a court's jurisdiction. When approached by vendors providing court infrastructure, judges should nevertheless enlist the assistance of a court administrator, as discussed above, and also instruct the court administrator setting up the meetings to invite appropriate court personnel who will likely also use a vendor's product or service. ((Canon 3C(1), (2) & (3).)

Interactions with vendors providing services to parties could raise difficult ethical questions about the integrity or impartiality of court orders involving punitive or rehabilitative services. Consequently, the committee recommends that in addition to enlisting the assistance of court administrative personnel to organize and attend meetings as discussed above, judges considering meeting with vendors providing services to parties should confirm both that the product or service is not the subject of litigation in the court, and that a member of the public aware of the facts could not reasonably identify a conflict of interest or entertain a doubt that they would continue to be able to act with integrity, impartiality, and competence, if the meeting occurs. (Canon 1, 2A, 3C(1), 4D(1)(b).)

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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)).

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