



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

350 McAllister Street, Room 1144A
San Francisco, CA 94102
(855) 854-5366
www.JudicialEthicsOpinions.ca.gov

Compendium of CJEO Opinions and Advice

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I. CJEO Formal Opinions

• **Disclosure of Campaign Contributions by Trial Court Judges**

[CJEO Formal Opinion 2019-013](#) provides guidance to trial court judges regarding campaign contribution disclosures during and following a judicial campaign. Canon 3E(2)(b)(i) of the California Code of Judicial Ethics and Code of Civil Procedure section 170.1, subdivision (a)(9)(C) require a trial court judge to disclose a campaign contribution of \$100 or more from a party, lawyer, or law office or firm in a matter before the judge. The committee advises that a judge also should disclose contributions of \$100 or more from a witness or other person whose credibility the judge will evaluate. Other campaign-related assistance, such as many smaller contributions from individual lawyers in a firm, certain indirect or third party contributions, volunteer work for the judge's campaign, and other relationships to the judge or campaign may also warrant disclosure. In the opinion, the committee provides guidance on the details of a campaign contribution disclosure. A disclosure must include the contributor's or lender's name, the amount and date of each contribution or loan, and the cumulative amount of the contributions or loans. The disclosure must be made on the record and should not create an appearance that the judge is soliciting campaign contributions. The campaign contribution disclosure obligation begins no later than one week after a judge receives his or her first campaign contribution and continues for at least two years after the judge is sworn in or receives the last contribution, whichever is later.

• **Providing Educational Presentations at Specialty Bar Events**

[CJEO Formal Opinion 2018-012](#) advises that a judge may speak about and teach legal subject matters through specialty bar associations, subject to the requirements of the California Code of Judicial Ethics. These requirements include that a judge avoid creating an appearance of bias and

avoid an appearance that the specialty bar association is in a special position to influence the judge. To maintain an appearance of impartiality, the opinion advises that a judge must be equally available to give educational presentations to audiences with opposing interests or views and ensure the frequency of presentations before a particular specialty bar association or type of association does not create an appearance of bias. The opinion also advises a judge should be able to give the same presentation to audience members that represent opposing or competing interests. The presentation must be neutral, presented from a judicial perspective, and avoid coaching or providing a tactical advantage that would benefit the members of one specialty bar association to the disadvantage of members of another. The opinion recommends that a judge should inform event organizers of the judge's ethical obligations and request to review promotional materials describing the presentation before they are circulated. If the promotional materials or title of the presentation create an appearance of bias or influence or fail to accurately reflect the neutral, educational nature of the presentation, the judge has a duty to take corrective action, which may include reprinting corrected materials or giving an oral disclosure at the presentation.

- **Judicial Service on a Nonprofit Charter School Board**

[CJEO Formal Opinion 2017-011](#) advises judges against service on a nonprofit charter school board. The committee examines the nature of charter schools and evaluates whether service on a charter school board is a permissible activity pursuant to canon 4C(3)(b) of the California Code of Judicial Ethics, which allows a judge to serve as an officer of an educational organization not conducted for profit, or whether service on a charter school board constitutes a governmental position that is prohibited by canon 4C(2). The committee also evaluates the risk of automatic resignation from judicial office if a charter school board position is found to be a public office pursuant to article VI, section 17 of the California Constitution. The committee concludes that, based on the unsettled case law regarding whether service on a charter school board is a governmental position or public office, judges are advised against service on a charter school board.

- **Extrajudicial Involvement in Marijuana Enterprises**

[CJEO Formal Opinion 2017-010](#) advises judges against investment in marijuana-related enterprises. The committee examines state and federal laws regarding marijuana and concludes that holding a financial interest in an enterprise involving the sale or manufacture of marijuana that is in compliance with state and local law is still in violation of current federal law. The committee advises that maintaining any interest in an enterprise that involves the cultivation, production, manufacture, transportation or sale of medical or recreational marijuana is incompatible with a judge's obligation pursuant to canon 2A of the California Code of judicial Ethics, which requires a judge to comply with the law. The committee also concludes that a judge's disregard of federal law would create an appearance of impropriety and cast doubt on the judge's ability to act impartially, particularly in marijuana-related cases. Judges are therefore advised against making or maintaining such investments.

- **Judges Meeting with Vendors**

[CJEO Formal Opinion 2018-009](#) examines whether judges may meet with private vendors, including private vendors providing remote alcohol monitoring services to parties under a court order, to discuss services the vendors provide to courts or parties. The opinion provides guidance on how the ethical rules and standards apply depending on whether a meeting with a vendor is for procurement, investigation, or development and promotion of services. The opinion concludes that a judge may meet with private vendors if such meetings are authorized by law, would aid the judge in discharging administrative responsibilities, and would not violate the California Code of Judicial Ethics by creating a conflict of interest, conveying influence or favoritism, advancing the pecuniary interests of others, or involving the judge in business relationships with potential litigants. The opinion recommends that a judge who meets with private vendors obtain assistance from court administrative staff where possible to ensure compliance with administrative rules, public contracting laws, and compliance with the code. The opinion further recommends that when meeting with vendors for purposes of investigating services or products, a judge obtain the approval of their presiding judge or justice and involve court administrative staff. Finally, the opinion cautions that the Standards of Judicial Administration encourage judges in specified assignments to determine and investigate the availability of services for those appearing in their courts, but the standards do not authorize interactions with vendors that would otherwise violate the code.

- **Attending Political Fundraising or Endorsement Events**

[CJEO Formal Opinion 2016-008](#) examines the language of canon 5 of the California Code of Judicial Ethics, which generally prohibits any political activities that create the appearance of political bias, and specifically prohibits public endorsements and personal solicitations for nonjudicial candidates or political parties. Canon 5 also permits activities concerning the law and legal system improvement, so long as those activities are consistent with the code, including the general and specific prohibitions on political activities. Given these prohibitions and permissions, the opinion provides guidance to judges on how to decide whether to (1) attend, (2) speak, or (3) appear as the guest of honor or receive an award at a political fundraising or endorsement event. It also advises judges who are campaigning that they may be introduced and speak on their own behalf or on behalf of another candidate for judicial office, so long as they do not commit to a position on an issue that is likely to come before the courts and they do not endorse or solicit funds for a candidate for nonjudicial office or a political organization. Finally, the opinion advises judges who have accepted a personal invitation to attend a political fundraising or endorsement event to assess the likelihood that their attendance will be known to the event organizers and possibly used to promote the event. If so, judges are advised to make reasonable efforts to ensure that their judicial title will not be used for promotion. Such efforts may include informing promoters in advance of ethical restrictions or reviewing promotional materials.

- **Disqualification for Prior Appearance as a Deputy District Attorney in a Nonsubstantive Matter**

[CJEO Formal Opinion 2015-007](#) discusses the statutory disqualification requirements of a trial judge who appeared in a case as a deputy district attorney for a brief, non-substantive matter such as a

scheduling conference. The opinion concludes that a judge who previously appeared in a case as a deputy district attorney on a nonsubstantive matter—without active participation in the prosecution—is not disqualified to hear the case because such an appearance would not raise a reasonable doubt as to impartiality. Disqualification where there is no perception of impartiality impedes the administration of justice and defeats the purposes of the statute.

- **Judicial Comment at Public Hearings and Consultation with Public Officials and Other Branches of Government**

[CJEO Formal Opinion 2014-006](#) provides guidance to judges about appearing at public hearings and consulting with the other branches of government. The opinion clarifies what comments judges are authorized to make when commenting on matters concerning the law, the legal system, or the administration of justice under canon 4C(1) of the California Code of Judicial Ethics. Judges may comment and consult on the court system or matters of judicial administration, which are inherently within judicial experience and perspective. Judges may also speak about legal matters when their experience and perspective as judges uniquely qualifies them to assist the other branches of the government in fulfilling their responsibilities to the public. The opinion cautions, however, that even when making permitted statements, judges still must take care not to violate any other provisions of the code, for example, by commenting on pending or future proceedings in any court, or by taking a position with respect to the outcome of cases.

- **Accepting Gifts of Little or Nominal Value Under the Ordinary Social Hospitality Exception**

[CJEO Formal Opinion 2014-005](#) discusses small value gifts or de minimis items that are sometimes offered to judges as tokens of esteem or appreciation, such as tickets to local events and food items. The opinion concludes that these items are gifts under the California Code of Judicial Ethics and subject to the absolute ban on gifts from parties, and subject to the ban on gifts from nonparties if they create an appearance of influence, favor, or advantage. The opinion advises that gifts of little or nominal value that are not otherwise banned may be accepted if they are ordinary by community standards, offered for social traditions or purposes, and hospitable in nature.

- **Judicial Screening of Ex Parte Applications for Non-Domestic-Violence Emergency Family Law Orders**

[CJEO Formal Opinion 2014-004](#) provides guidance to family law judges on reviewing applications for non-domestic-violence emergency orders. The opinion concludes that a screening process under a local rule that allowed judges to consider ex parte communications not authorized under the family law rules of court violates canon 3B(7) the California Code of Judicial Ethics. The opinion discusses how requests for waiver of notice can be efficiently identified by court staff so that judges may review those applications and ensure the parties are provided with the protections available under the rules of court.

- Disqualification Based on Judicial Campaign Contributions from a Lawyer In The Proceeding**
[CJEO Formal Opinion 2013-003](#) discusses the statute that prohibits trial court judges from hearing cases where one of the lawyers in the case contributed more than \$1,500 to the judge’s campaign. The opinion concludes that disqualification is not mandated by the statute if a lawyer in the proceeding practices law with other lawyers who, collectively, have made campaign contributions exceeding \$1,500 or when a lawyer in the proceeding practices in a private law firm which has made a campaign contribution that exceeds \$1,500. In either circumstance, however, the judge must consider whether those aggregated or law firm contributions might nevertheless cause a reasonable person to doubt the judge’s impartiality for purposes of discretionary disqualification. (Cal. Code Civ. Pro., §§ 170.1, subd. (a)(6)(A) & (a)(9)(A).)
- Disclosure on the Record When There Is No Court Reporter or Electronic Record of the Proceedings**
[CJEO Formal Opinion 2013-002](#) discusses what constitutes an on the record disclosure by a trial judge when there is no court reporter or electronic recording of the proceedings. The opinion concludes that oral and implied disclosures that are not made part of the court record do not satisfy the requirement of on the record disclosures contained in canon 3E(2)(a) of the California Code of Judicial Ethics. In circumstances where there is no court reporter, a judge must take steps to ensure that a document describing the nature of any information being disclosed is made part of the case file and must also make the disclosure orally in open court or otherwise notify the lawyers and parties of the written disclosure. [Cited by *Hayward v. Superior Court* (2016) 2 Cal.App.5th 10, 40, fn. 32, review dismissed and cause remanded *sub nom. Hayward v. S.C. (Osuch)* (2017) 214 Cal.Rptr.3d 291; *id.* at pp. 74-75 (dis. opn. of Richman, J.).]
- Requesting Assistance from Attorneys**
[CJEO Formal Opinion 2013-001](#) discusses meeting with attorneys and requesting their assistance in communicating with the public and the Legislature about the impacts of proposed budget cuts on court operations. The opinion concludes that it is ethical for judges to invite attorneys to attend a meeting at which the judge makes a presentation concerning potential budget cuts to the court(s) and asks the attorneys to assist the court in dealing with the impacts of those cuts. In deciding with whom to meet and what to say, the opinion advises that judges should consider all of the ethical factors generally applicable to meetings with attorneys, including whether the manner of the invitation or requests might convey an impression of favor or influence, appear to be coercive, or reasonably lead to disqualification or implicate disclosure requirements.

II. CJEO Oral Advice Summaries

- Service on a Civil Liberties Program Advisory Panel for the State Library**
[CJEO Oral Advice Summary 2019-028](#) answers a question about whether an appellate justice may accept appointment by the Governor to serve as a member of the California Civil Liberties Public Education Program, an advisory panel of the California State Library. Assuming that there are no

constitutional impediments under article VII, sections 7 and 17 of the California Constitution, oral advice was provided that gubernatorial appointment to the advisory panel is an extrajudicial activity related to the law, the legal system, and the administration of justice, which is an activity that canon 4C of the California Code of Judicial Ethics encourages. The goals of the advisory panel's work also promote the obligations required of judicial officers pursuant to canon 2C, which prohibits membership in organizations that practice invidious discrimination. The justice was advised that he or she may serve on the advisory panel but should continually assess the appropriateness of ongoing service and examine whether the advisory panel's activities are consistent with the obligations of judicial office required by the code.

- **Service on a Nonprofit Advisory Board Involved in Criminal Justice Issues**

[CJEO Oral Advice Summary 2019-027](#) advises that a judge may serve on the advisory board of a nonprofit organization involved in criminal justice issues, as judicial participation in activities involving the law, the legal system, and the administration of justice is encouraged by the California Code of Judicial Ethics. A judge may address matters that fall within the judge's judicial experience, such as providing commentary or consultation regarding revisions of substantive and procedural law if speaking from a judicial perspective, but cannot participate as a legal advisor. The judicial officer must also consider the other code restrictions when evaluating service on an advisory board and continually reassess the appropriateness of ongoing service based on the organization's activities.

- **Soliciting Endorsements from Trial Court Judges for Other Appellate Court Justices Subject to Retention Elections**

[CJEO Oral Advice Summary 2018-026](#) answers a question about whether a presiding appellate court justice may solicit campaign endorsements from superior court presiding judges within the justice's appellate district on behalf of other justices facing retention elections. The presiding justice intends to also ask the presiding judges to solicit endorsements from other trial court judges. Oral advice was provided that a judge may solicit endorsements on behalf of a candidate for judicial office, subject to certain limitations: (1) a judge may not solicit campaign contributions from certain subordinate judicial officers or state court personnel; and (2) if the judge solicits endorsements from anyone else, including other judges, the judge cannot use the prestige of judicial office in a manner that would reasonably be perceived as coercive. A judge must also comply with other obligations within the California Code of Judicial Ethics, including that any solicitation of an endorsement or endorsements will promote judicial independence, integrity, and impartiality. In most instances, these concerns do not prohibit an appellate court justice from soliciting endorsements from trial court judges. They do raise concerns in the narrower question of whether a presiding justice may solicit campaign endorsements from trial court judges within his or her district, due to the presiding justice's supervisory responsibilities related to and leadership position within the court, as well as his or her oversight over trial court decisions. Concerns of coercion and potential harm to judicial independence, integrity, and impartiality prohibit a presiding justice from making the proposed mass solicitation to the trial court presiding judges within his or her appellate district that includes a request that the presiding judges solicit their colleagues on the presiding justice's behalf.

- Disqualification and Disclosure Duties of a Trial Judge Assigned as an Appellate Justice**
[CJEO Oral Advice Summary 2018-025](#) provides guidance to trial court judge who was assigned to hear a matter in an appellate court regarding the judge's disqualification or disclosure obligations related to: (1) campaign contributions from parties in the appellate matter that the judge received during the judge's recent judicial election; (2) a campaign contribution from a super political action committee that accepted contributions from named parties in the appellate matter; and (3) the judge's membership in an organization devoted to the law, the legal system, and the administration of justice, which includes parties to the appellate matter as other members of the organization. The summary advises that disqualification and disclosure rules apply based on the type of proceeding rather than the judicial officer's formal title or status. Oral advice was provided that a trial court judge serving as an appellate justice pro tempore has the same ethical obligations as an appellate justice and, based on the facts provided by the judge, the judge does not have a mandatory duty to disqualify or disclose. The judge must make a discretionary decision to disqualify in the matter and should consider whether a reasonable person aware of the contributions, which are publicly available in the judge's Fair Political Practices Commission filings, or any other circumstances related to the campaign, would doubt the judge's impartiality in the matter.
- Reporting Misconduct by a Superior Court Research Attorney in a Pending Matter**
[CJEO Oral Advice Summary 2018-024](#) answers a question about whether a presiding justice has an ethical obligation to report a superior court research attorney to the attorney's presiding judge or to the State Bar when the justice determines that the research attorney engaged in misconduct related to an appellate matter. The oral advice was requested while there was sufficient time for a party to petition for a writ of certiorari to the United States Supreme Court. As such, the matter was still pending within the meaning of the California Code of Judicial Ethics and any communication to the attorney's presiding judge regarding the matter would constitute an improper ex parte communication. Oral advice was provided that if the justice had personal knowledge of facts that constituted attorney misconduct, the justice had an affirmative obligation to take appropriate corrective action, which could include reporting the attorney to the State Bar.
- Disqualification Responsibilities of Appellate Court Justices**
[CJEO Oral Advice Summary 2018-023](#) provides guidance on an appellate court justice's disqualification obligations and advises that a justice does not have the same disclosure obligations as a trial court judge. A justice may, but is not required to, disclose information relevant to the question of disqualification. If a justice determines that he or she is disqualified, the justice may request that the parties waive disqualification. A request for waiver should be limited to exceptional circumstances, such as when the appellate court would have difficulty creating a panel without the disqualified justice's participation, and there should be no reasonable doubts concerning the justice's impartiality. If the justice requests or accepts a waiver of disqualification, the request and acceptance should be in writing and made a part of the appellate record. The oral advice also states that where a justice determines that the circumstances that necessitated disqualification are no longer present, the justice may revoke his or her disqualification. The justice

should revoke disqualification only in exceptional circumstances and should consider the circumstances that initially caused the justice's disqualification, if there is an appearance of bias, and the justice's other ethical obligations contained in the California Code of Judicial Ethics. If the justice revokes his or her disqualification, that decision should be in writing and made a part of the appellate record.

- **Disclosure Requirements for a State Bar Court Review Department Judge**

[CJEO Oral Advice Summary 2018-022](#) advises that a State Bar Court Review Department judge is not required to disclose information that is reasonably relevant to disqualification so long as the judge has determined that he or she is not disqualified. In trial court proceedings, a judge must disclose on the record information relevant to disqualification, even if the judge believes there is no actual basis for disqualification. A Review Department proceeding is not a trial court proceeding that requires disclosure. Thus, a Review Department judge is not required to, but may, disclose information that is reasonably relevant to the question of disqualification.

- **Disqualification for Acquaintance with Leaders of an Amicus Curiae**

[CJEO Oral Advice Summary 2017-021](#) advises that an appellate justice may make a discretionary decision to disqualify him or herself when the justice is an acquaintance of leading members of an association that has filed an amicus curiae brief (amicus leaders) in a matter being heard by the justice. In the factual scenario provided, the justice's relationship with the amicus leaders was a professional relationship that included greetings at events and lunches, the most recent such event occurring over two years ago. The justice's acquaintance did not cast reasonable doubt as to the justice's impartiality. Further, because appellate justices are not obligated to make disclosures, the justice has discretion to disclose his or her acquaintance with the amicus leaders.

- **Judicial Service on a Nonprofit Credit Union Advisory Council**

[CJEO Oral Advice Summary 2017-020](#) advises that a judge may not serve on an advisory council of a nonprofit credit union. Judges are prohibited from judge serving "as an officer, director, management, or employee of a business affect with a public interest, including, without limitation, a financial institution." (Cal. Code Jud. Ethics, canon 4D(3).) Such an advisory role could (1) reflect adversely on the judge's impartiality, (2) reasonably be perceived as lending judicial title to the advancement of the credit union's interests, or (3) potentially involve the judge in frequent transactions with a party likely to appear before the court on which the judge serves, all in violation of the code. Support for this conclusion is found in other states with similar canon restrictions. Moreover, the judicial ethics advisory committees in a majority of other states have also concluded that judges may not serve in advisory positions for banking institutions and the judicial ethics advisory committees in several other states have concluded that judges may not serve in positions with nonprofit credit unions.

- **Accepting Compensation For Performing A Marriage After January 1, 2017**
[CJEO Oral Advice Summary 2016-019](#) was superseded by amendment to Family Code section 400, effective July 10, 2017. The committee’s updated conclusion is that judges may again accept compensation for performing marriages on weekends or holidays. The inconsistency with the California Code of Judicial Ethics and Penal Code section 94.5, as discussed in this oral advice summary, was eliminated.
- **Administering the Oath of Office to a Recently Elected District Attorney**
[CJEO Oral Advice Summary 2016-018](#) provides advice that a judge may administer the oath of office to a recently elected district attorney. Judicial officers are among those authorized by law to administer the oath of office required to be taken by all public office holders, which is necessarily an official function of judicial office. While judges must take caution to avoid any activities that might convey an appearance of bias towards individuals or groups that appear before the court, a person aware of the fact that a judge is performing an official function would not entertain doubt as to the judge’s impartiality. Thus, a judicial officer may administer the oath of office at a ceremony to swear in a public official, including a newly elected district attorney, without violating of the California Code of Judicial Ethics.
- **Disqualification for a Prior Appearance as a District Attorney in Another Proceeding**
[CJEO Oral Advice Summary 2016-017](#) discusses the U.S. Supreme Court decision in *Williams v. Pennsylvania* (June 9, 2016) 195 L.Ed.2d 132, and answers a question about whether a judge is disqualified from hearing a criminal matter if the judge served as the prosecutor in a prior conviction alleged as a strike for sentencing enhancement in the current matter. Based on *Williams*, CJEO Formal Opinion 2015-007, and California law, CJEO concludes that the critical factor is whether there are overlapping issues of law or fact between the prior matter and the current matter, which occurs when an alleged prior governs the punishment in the current matter. The committee specifically advised that: (1) a judge is disqualified from hearing a criminal arraignment if the judge served as the district attorney at the preliminary hearing in an alleged prior conviction because such an appearance involves active involvement in the prosecution of a prior that will govern punishment and a person aware of the facts would reasonably doubt impartiality; and (2) if the judge appeared at a nonsubstantive hearing, such as a continuance or other ministerial matter, and did not actively participate in the prosecution of the alleged prior, reasonable doubt as to impartiality would not be likely and disqualification would not be required. As guidance, the committee also explained why the judge’s memory, whether a guilty plea was entered, the length of time since the prior service, and the nature of the hearing in the current matter are not determinative factors.
- **Disqualification of a Pro Tem Appellate Justice Under Active Consideration**
[CJEO Oral Advice Summary 2016-016](#) answers a question about whether a superior court judge who is sitting as a pro tem appellate justice while under active consideration by the Governor for appointment to the Court of Appeal has disqualification obligations in a habeas corpus matter in which the Governor’s decision to affirm, modify, or reverse the parole board is at issue. The

committee advised that the pro tem justice should disqualify himself or herself in those circumstances. In light of the Governor's constitutional authority to review personally all decisions of the parole board granting, denying, revoking, or suspending parole, and in light of the substantial interest a judicial officer under active consideration for permanent elevation to an appellate court may have in maintaining the Governor's favor during service as a pro tem appellate justice, a reasonable person aware of the facts would likely doubt the justice's ability to be impartial.

- **Full Bench Disqualification**

[CJEO Oral Advice Summary 2016-015](#) answers a question about whether a presiding judge may disqualify the entire bench without polling each judge, such as when a local judge's family member is involved in a criminal case. The advice states the ethical rule that each judge decides for himself or herself whether disqualification is required, and therefore, a presiding judge may not decide if another judge should be disqualified. (*Kaufman v. Court of Appeal* (1982) 31 Cal.3d 933, 937-940; Code Civ. Proc., § 170.1, subd. (a)(6)(A)(i)-(iii).) Given this ethical rule, a presiding judge must poll all of the local judges about their individual disqualification before seeking assignment of the matter to a judge from another court under the disqualification statute. (Code Civ. Pro., § 170.8; Cal. Judges Assn., Jud. Ethics Com., Advisory Opn. No. No. 62, p. 3.) However, there are two administrative alternatives for relying on outside judges without polling the local bench. Presiding judges may assign the case to a retired bench officer serving in the local court through the Assigned Judges Program. (Cal. Const., art. VI, § 6(e) [the Chief Justice has authority to assign a retired judge to any court]; Cal. Rules of Court, rule 10.603(a) [presiding judges have authority to make assignments within their court].) Presiding judges also may assign the case to a judge in another county if permitted by a reciprocal assignment order issued by the Chief Justice. (Cal. Const., art. VI, § 6(e) [the Chief Justice has authority to assign any judge to another court within the judicial branch]; Cal. Rules of Court, rule 10.630 [a "reciprocal assignment order" issued by the Chief Justice permits judges in courts of different counties to serve in each other's courts]; Gov. Code, § 69740, subd. (b) [allows presiding judges to agree to hold sessions of court outside of a county while maintaining venue].)

- **Judicial Membership in a Church-Sponsored Boy Scouts of America Troop**

[CJEO Oral Advice Summary 2015-014](#) discusses whether a judge may continue to be a scoutmaster of a local Boy Scouts of America (BSA) troop that is sponsored by the judge's church after the amendment to canon 2C of the California Code of Judicial Ethics becomes effective in January, 2016, and the "youth organization" exemption is eliminated from the ban on membership in organizations that practice invidious discrimination. The committee declined to provide an opinion as to whether the requesting judge's troop, or any BSA troop, has a bona fide open-membership policy or is dedicated to shared religious values. The judge was advised that he must investigate his troop's policies, practices, and values of common interest to the troop members. The judge was advised that canon 2C, effective January, 2016, will permit the judge's membership in his church-sponsored BSA troop if he is satisfied that the troop does not exclude members based on sexual orientation, or if he is satisfied that the troop is an organization dedicated to the preservation of religious values of legitimate common interest to the troop members. (Canon 2C; Advisory Com. commentary, foll.

canon 2C.) The judge was also advised that his challenges to the constitutionality of the canon 2C amendment are legal questions beyond the scope of CJEO's authority and are nonetheless moot given the advice provided.

- **Judicial Membership in a Boy Scouts of America-Sponsored Eagle Scout Alumni Group**
[CJEO Oral Advice Summary 2015-013](#) discusses whether a judge may be a member of a local Boy Scouts of America (BSA) after the amendment to canon 2C of the California Code of Judicial Ethics becomes effective in January, 2016, and the "youth organization" exemption is eliminated from the ban on membership in organizations that practice invidious discrimination. Oral advice was provided that membership will not be prohibited because the current BSA policy precludes invidious discrimination on the basis of sexual orientation for non-unit-serving volunteers such as eagle scout alumni members. The fact that BSA's policy may result in discriminatory practices by some chartering organizations in the selection of local troop leaders does not prohibit membership in a BSA-sponsored eagle scout alumni organization that does not discriminate. (Rothman et al., Cal. Judicial Conduct Handbook (3d ed. 2007) § 10.25, pp. 539-540 [a judge to be a member of a local group that does not discriminate against women even if the group is part of a national or international organization that allows invidious discrimination based on gender], citing Cal. Judges Assn., Jud. Ethics Com., Advisory Opn. No. 34, pp. 3-4 [where an organization has made a formal decision to end discriminatory membership practices, but those previously excluded have not in fact yet been admitted, the judge who wishes to remain a member must hold a conscious belief that the open-membership policy is bona fide and will be implemented in the ordinary course of events].)
- **Inviting Attorneys to Provide Legal Education to Appellate Justices**
[CJEO Oral Advice Summary 2015-012](#) discusses whether appellate attorneys may be invited to speak on law-related topics at a legal education program held for the justices of the appellate district court where the attorneys practice. Oral advice was provided that a presiding justice is permitted to invite attorneys to speak on law-related topics at a legal education program held for the justice of the appellate district court where the attorneys practice, so long as precautions are taken to avoid the appearance of impartiality or diminish the public's confidence in the impartiality of the court. The presiding justice was advised to consider the following precautions to ensure confidence in the impartiality of the court: (1) invite the attorney to discuss legal issues but not specific cases, issues, or controversies pending in the courts; (2) review the curriculum and content of the attorney's remarks before the educational program to ensure that it is not designed to advocate a particular point of view or the merits of the attorney's cases; (3) invite attorneys representing opposing positions or parties to speak to the justices or otherwise be available to hear additional viewpoints; and (4) prohibit use of the speaking engagement in the attorney's advertising or to otherwise promote the attorney's practice.
- **Use of Judicial Title on a Scholarship Fund**
[CJEO Oral Advice Summary 2015-011](#) discusses whether a law school may name a scholarship after a sitting judicial officer and raise donations to fund the scholarship in the judge's name. Oral advice

was provided that canons 2B(2) & 4C(d)(i) of the California Code of Judicial Ethics preclude a judge from allowing his or her name to be used in any manner that involves a fundraising activity for the direct benefit of another, including the use of judicial title in scholarship fundraising activities. While naming a scholarship after a judge is an honor, the solicitation of donations to fund the scholarship will necessarily use the judge's name in a manner that amounts to personal solicitation that is prohibited under canon 4C(d)(iv). In the event that the honor is bestowed without the judge's prior authorization, the judge is advised to take reasonable steps to correct the impermissible use of judicial title for fundraising activities.

- **Service by an Appellate Justice as a Compliance Officer in Pending Federal Proceedings**
[CJEO Oral Advice Summary 2015-010](#) discusses whether a recently nominated Associate Justice of the California Court of Appeal may continue serving as a Prison Compliance Officer in pending federal proceedings concerning overcrowding conditions in the California prison system. The appellate justice was advised that CJEO has no authority to provide legal advice and it is the justice's responsibility to obtain a legal opinion about whether simultaneous service is permissible under article 7, sections 7 & 17, of the California Constitution. With regard to the ethics issues, and assuming there are no constitutional impediments for purposes of providing oral advice, the justice was advised that simultaneous would not be strictly prohibited under canons 1 & 2 of the California Code of Judicial Ethics because a person aware of the federal court position would not have reason to doubt the justice's impartiality or independence in state appellate matters generally. Similarly, continued service would not be precluded under canons 3E(5)(f)(ii) & 4A(4) until the justice makes a disqualification decision in a specific matter before the justice.
- **Prohibition on Fundraising While a Subordinate Judicial Officer**
[CJEO Oral Advice Summary 2014-009](#) discusses whether a subordinate judicial officer may engaging in fundraising activities as the Chief Justice of a sovereign nation's tribal court and judicial system. Oral advice was provided that a commissioner is prohibited from fundraising for a tribal court or tribal justice system while employed as a state court subordinate judicial officer, even if the funds are solicited without use of state court judicial title.
- **Application of the Rule of Necessity**
[CJEO Oral Advice Summary 2014-008](#) discusses whether an appellate justice may author an opinion deciding an issue on appeal that would disqualify all sitting and retired appellate justices. Oral advice was provided that the rule of necessity permits a sitting justice to decide a constitutional question about public employment during the remainder of a retired judge or justice's judicial term. [Cited in *Gilbert v. Chiang* (2014) 227 Cal.App. 4th 537, 543.]
- **Judicial Review of Ex Parte Applications for Family Law Contempt Orders**
[CJEO Oral Advice Summary 2014-007](#) discusses a request to clarify whether a CJEO Formal Opinion regarding ex parte applications for emergency family law orders applies to ex parte applications for family law contempt orders. Oral advice was provided that CJEO Formal Opinion 2014-004 is

expressly limited to ex parte emergency orders and not to contempt orders, which are governed by laws pertaining to general civil and family law contempt proceedings. A legal opinion interpreting the contempt statutes was not provided.

- **Disqualification for Membership in a Specialty Women’s Bar Association**
[CJEO Oral Advice Summary 2014-006](#) discusses whether judges or justices who are members of a specialty women’s bar association dedicated to the advancement of women in law and society are disqualified from hearing matters involving female litigants, such as family law matters. Oral advice was provided that disqualification is not required because a person aware of the women’s bar association’s mission and membership would reasonably conclude that its male and female judicial members share an interest in the goal of advancing women’s participation in law and society as attorneys and judges. Such an aware person would not reasonably doubt a judicial member’s ability to be impartial towards female litigants.
- **Disqualification for Membership in an Amicus Curiae**
[CJEO Oral Advice Summary 2014-005](#) discusses the disqualification obligations of an appellate justice who is a member of a regional, environmental, non-profit organization that has filed an amicus curiae brief in a matter being heard by the justice. Oral advice was provided that disqualification was not required because a person aware of the fact that the non-profit organization filed an amicus brief and was not a party would have no reason to doubt the justice’s ability to be impartial in deciding *the interests of the parties*.
- **Use of a Testimonial Letter to Promote a National Bar Association Program**
[CJEO Oral Advice Summary 2014-004](#) discusses whether a judge may serve as signatory to a testimonial letter for a national bar association program that coordinates judicial internships for law students. Oral advice was provided that a judge may sign a testimonial letter using judicial letterhead that will be mailed directly to sitting federal and state judges. However, the letter may not be sent to law firms as part of program materials intended to solicit funds because the letter could reasonably be perceived as part of that solicitation even if the letter does not request funds or otherwise seek to raise money for the program. The testimonial letter may be posted on the national bar association’s website as part of informational material available to all viewers, including judges, law firms, and the public, but may not be posted on an area of the website devoted to solicitation and funding.
- **Fundraising Among Judges for a Civics Education Project of a Nonprofit National Legal Association**
[CJEO Oral Advice Summary 2013-003](#) discusses whether a judicial officer may engage in direct, individual solicitation of money from other judges to fund a civics education project by a nonprofit national legal association. Oral advice was provided that an appellate justice may solicit funds from other judges to fund the civics education project of a nonprofit association devoted to the improvement of the law, the legal system, and the administration of justice. However, an appellate

justice may not solicit trial judges within the justice's appellate district because of ethical concerns about the use of superior judicial office.

- **Attending a Private Foundation Meeting to Speak about National and State Civics Education Work**
[CJEO Oral Advice Summary 2013-002](#) discusses whether a judicial officer may meet with the board of a private foundation to discuss national and state civics education and a project the judicial officer is developing with a national legal association. Oral advice was provided that a judicial officer may meet with the board of the private foundation to discuss matters concerning the law, the legal system, or the administration of justice.
- **Disclosure when a Judge's Spouse Serves on a City Commission**
[CJEO Oral Advice Summary 2013-001](#) discusses the disclosure requirements when a judge's spouse has been appointed as a city utility commissioner and the judge hears cases involving the city. Oral advice was provided that disclosure is required when a judge's spouse has been appointed as an unpaid commissioner of a city utility and the judge hears cases involving the city. Disqualification would be required when the city is a party only if the judge's spouse were employed by the city or if the spouse had a relationship with the city as a director, advisor or other active participant in city affairs. Disqualification would not be required if the judge's spouse is not a city employee nor an active participant in the affairs of the city itself.

III. CJEO Informal Opinion Summaries

- **Disqualification for Spouse's Political Campaign Services**
[CJEO Informal Opinion Summary 2018-005](#) advises that, in most instances, a reasonable person aware that the judge's spouses is providing political campaign services to reelect the head of a government legal office and that attorneys from that office, but not the head of the office, appear as counsel in the proceeding, would not doubt the judge's impartiality. Therefore, the informal opinion concludes that the judge may decline to disqualify himself or herself unless the judge subjectively believes that he or she is unable to act impartially. The judge should also evaluate the facts and circumstances surrounding the campaign and the proceeding to determine whether there are specific circumstances, such as the source of campaign funds, publicity surrounding the proceeding, and size of the government legal office, that could cause a person aware of the facts to reasonably doubt the judge's impartiality and necessitate disqualification. The informal opinion also advises that the spouse's campaign services to the head of the government legal office constitute information that is reasonably relevant to the question of disqualification. A trial court judge should disclose this information on the record while the spouse is engaged in such services, and should continue to disclose this information for a reasonable period of time after the spouse's services end or after the last payment related to the services is received, whichever occurs later.

- Judicial Appearance in an Educational Documentary**

[CJEO Informal Opinion Summary 2014-004](#) discusses whether judges may appear in an educational documentary being produced for public television that focuses on justice systems in California, where the judges would appear in the documentary in a minor or secondary capacity, be interviewed, and be identified by judicial title but not wear robes, except in any filmed court proceeding. The informal opinion concluded that an appearance in the described documentary film would not justify a reasonable suspicion that the prestige of office was being utilized to promote a commercial product. The informal opinion further advised that judges are permitted to appear in filmed interviews in which they explain their work with the courts, including discussing court procedures and legal issues that would promote public understanding and confidence in the administration of justice. However, they may not answer questions in such a way that discusses the substance of pending cases, creates the appearance of political bias or prejudgment, or otherwise reveals facts from confidential proceedings. The informal opinion also concluded that trial court proceedings could be filmed as permitted under California Rules of Court, rule 1.150, and any applicable local rules.
- Disqualification and Disclosure: University Representation of a Party in a Matter Before a Justice Employed by the University**

[CJEO Informal Opinion Summary 2012-003](#) discusses a justice's disqualification and disclosure duties where the justice is employed by a university that represents a party appearing before the justice. The informal opinion concluded that disqualification was not required where a clinical program at a university's law school represented a party and the justice was employed by the same university to teach an undergraduate law-related course. A person aware of the fact that there was no substantive relationship between the justice's teaching and the law school clinic would not reasonably doubt impartiality. Because disclosure is not required for appellate justices, there was no duty to disclose.
- Assignment and Disqualification of a Judge when Counsel for a Party is The Landlord Of The Law Firm that Employs the Judge's Spouse**

[CJEO Informal Opinion Summary 2012-002](#) discusses whether a presiding judge was required to refrain from assigning cases to a judicial officer where counsel for a party is the landlord of the law firm that employs the judicial officer's spouse as an associate attorney, and if not, whether the judicial officer must disqualify him or herself in such cases. The informal opinion concluded that a court is not required to refrain from assigning cases to a judicial officer at the request of a law firm, or under any circumstances, until the judicial officer has made a personal determination that he or she is disqualified to hear an assigned matter and notifies the presiding judge. The informal opinion also concluded that the judge in question was not required to disqualify because a person aware of the facts would not reasonably doubt the judge's ability to be impartial where there was no direct connection, whether social, financial, or otherwise, between the judge or the spouse and the landlord-law firm.

- **Employment of an Appellate Court Justice's Spouse as a Staff Attorney in that Justice's Chambers**
[CJEO Informal Opinion Summary 2012-001](#) discusses whether an appellate court justice's spouse may work as the justice's chambers attorney and whether a presiding justice may approve the time sheets of a chambers attorney of another justice. The informal opinion concluded 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 California Code of Judicial Ethics by failing to avoid nepotism and favoritism and by creating an appearance of impropriety. The informal opinion also concluded that a presiding justice may verify the time sheet of another justice's chambers attorney for administrative convenience, so long as the presiding justice is in a position to know whether the attorney was present or absent on the days represented on the time sheet.