



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

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CJEO Draft Formal Opinion 2022-021

**DISQUALIFICATION OBLIGATIONS OF A TRIAL JUDGE BASED ON
PRIOR JUDICIAL INVOLVEMENT IN CRIMINAL TRIAL COURT
PROCEEDINGS**

Public Comments Submitted

Comments from members of the public and entities submitted in response to an Invitation to Comment on a CJEO Draft Formal Opinion are deemed not to be confidential communications and may be posted on the committee's website for public review at the committee's discretion. (Cal. Rules of Court, rule 9.80(h)(4).)

Comment 1

Submitted by: The Hon. Kelvin D. Filer, Los Angeles County Superior Court

Received: November 8, 2022

Subject: Comment

I agree with the draft opinion ! Disqualification should NOT be required ! Otherwise, you would be limiting the judicial resources available when a case is "ready" for trial . Also, conceivably, there might be some "creative " forum shopping by defense counsel to "plant this seed" of potential disqualification by having a client intentionally "fail to appear" on a case early on in the proceedings ?

Comment 2

Submitted by: Judge Barbara A. Kronlund, San Joaquin County Superior Court

Received: November 30, 2022

Subject: Comments on CJEO Draft Formal Opinion 2022-021

Dear CJEO:

I submit my following comments regarding CJEO Draft Formal Opinion 2022-021. Thank you for considering same.

Overall, I agree with this Opinion and feel it is well done.

At page 8, very top couple of sentences, I would consider adding that all but these (3) bases for mandatory disqualification may be waived: (1) Judge has a personal bias or prejudice concerning a party; (2) Judge served as an attorney in the matter in controversy; (3) Judge has been a material witness concerning that matter. CCP Section 170.3(b)(2). See Rothman, (4th Ed.), App. E, page 898-899, and Section 7.24.

I'm a little confused as to what is referenced at page 8, middle of the page at the end of the first full paragraph, "However, if facts unfold at a hearing over which the judge is presiding, and thus within the judge's personal knowledge, disqualification is not required unless the judge is a "material Witness" in a subsequent proceeding relating to the failure to appear. Could CJEO provide an example? This is really not clear or helpful to me as phrased, and I think this language will be a source of confusion to other judges.

At page 9, I recommend that in the second line down in the first full paragraph starting with "However, even if mandatory....", that after"the judge must determine whether disqualification is required "., this be inserted, "**under the discretionary grounds for disqualification**". I think that would add clarity as you are discussing when there is no mandatory DQ under the specific criteria, then the judge must analyze under the "discretionary" or general sections of CCP Section 170.1(a)(6)(A) subdivisions.

At page 10, top partial paragraph there are citations to Kloepfer and Brown cases, with short excerpts in parentheses; I would recommend adding that in those cases,

disqualification was not required, rather than not coming to a conclusion as to why these are being cited here. I assume that's the point, that DQ was not required.

Lastly, at page 11, under No. 3, "Policy Considerations", I am not sure where this is coming from. "Policy considerations" are never discussed in the authorities when analyzing Disqualification and Disclosure issues- the analysis rests on the Code and/or Canons. I don't think this section should be here-I'd eliminate it from the opinion. The authority cited doesn't support that any "policy considerations" should be a factor in a D and D analysis, and it's actually confusing in that it seems to suggest a different standard of ethics is applicable in small counties, but that's not true. In fact, on that same page in the footnote, it's mentioned that there are no separate ethics standards for small courts. Likewise, at page 12, first line, "policy reasons" should be removed if you follow my suggestion. And at page 3, top paragraph, the third point of the Summary of Conclusions should eliminate "policy considerations" as that's irrelevant to the analysis under the authority to analyze Disqualification and Disclosure issues.

Barbara A. Kronlund, Civil Judge
Superior Court, Dept. 10D, San Joaquin County