CALIFORNIA SUPREME COURT COMMITTEE ON JUDICIAL ETHICS OPINIONS

350 McAllister Street, San Francisco, California 94102

www.JudicialEthicsOpinions.ca.gov

INVITATION TO COMMENT

[CJEO *Draft* Formal Opinion 2026-032]

Title
CJEO *Draft* Formal Opinion 2026-032: *Ethical Considerations When Appointing the Spouse of a Judicial Colleague as Minor's Counsel*

Prepared by
The California Supreme Court Committee on Judicial Ethics Opinions

For information about the Committee and its members, visit the CJEO website

Action Requested
Review and submit comments by **Monday August 3, 2026**

Proposed Date of Adoption or Other Action
To be determined

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CJEO Invites Public Comment

The California Supreme Court Committee on Judicial Ethics Opinions (CJEO) has adopted a draft formal opinion and approved it for posting and public comment pursuant

This CJEO Draft Formal Opinion has not been adopted by the Committee in final form and is circulated for comment purposes only.

to California Rules of Court, rule 9.80(j), 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, or other action.

In **CJEO *Draft* Formal Opinion 2026-032**, the committee advises that a judge is not ethically barred from appointing the attorney spouse of another judge as minor's counsel, even though the court will set, and may even pay, the attorney's fees and expenses under rule 5.241 of the Rules of Court.

After receiving and reviewing comments, the committee will decide whether the draft opinion should be published in its original form, modified, or formally withdrawn. (Rule 9.80(j)(2); CJEO rule 7(d)). Comments are due by **August 3** and may be submitted as described below.

How to Submit Comments

Comments may be submitted: (1) online; (2) by email to Judicial.Ethics@jud.ca.gov; or (3) by regular mail to:

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San Francisco, California 94102

Comments Due by August 3, 2026

At the close of the comment period, on or after **August 3**, the Committee will post on its website all comments that are not clearly identified as confidential.

Attachment: *Draft* CJEO Formal Opinion 2026-032: *Ethical Considerations When Appointing the Attorney Spouse of a Judicial Colleague as Minor's Counsel*

CALIFORNIA SUPREME COURT

COMMITTEE ON JUDICIAL ETHICS OPINIONS

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CJEO *Draft* Formal Opinion 2026-032

ETHICAL CONSIDERATIONS WHEN APPOINTING THE SPOUSE OF A JUDICIAL COLLEAGUE AS MINOR'S COUNSEL

I. QUESTION

What are the ethical guidelines a judge must consider when appointing the attorney spouse of a judicial colleague as minor's counsel in a case before that judge?

II. FACTS

A judge sitting in a family law assignment asks if it would be ethical to appoint an attorney who is married to a judicial colleague as minor's counsel in family law matters that come before the requesting judge. When the court appoints an attorney as minor's counsel, the court selects from a list of qualified counsel. The attorney married to the judicial colleague has completed minor's counsel training and is well-qualified to serve in this capacity. Generally, the court determines how the parties will pay for minor's

counsel pursuant to rule 5.421 of the Rules of Court. If the parties cannot afford the fees, the court will pay for the fees at a set rate.

The judicial colleague also sits in a family law assignment at the same courthouse as the requesting judge. Other than the requesting judge and the judicial colleague in question, there are two other judges at the courthouse in family law assignments. On occasion, in situations of disqualification, recusal, or absence, some of the matters before the requesting judge are sent to the judicial colleague to be heard (and vice versa). The requesting judge and the judicial colleague rarely socialize outside work. The requesting judge may have attended one or two events in the past two years that were put on for the entire family law division and their spouses.

III. ADVICE PROVIDED

A judge is not ethically barred from appointing the attorney spouse of another judge as minor's counsel, even though the court will set, and may even pay, the attorney's fees and expenses under rule 5.241 of the Rules of Court.[1] A judge is not required to disqualify unless additional facts raise impartiality concerns, such as a close personal relationship with the judicial colleague and their attorney spouse, a financial interest in the attorney, or a subjective assessment under section 170.1(a)(6) of the Code of Civil Procedure. Disclosure is not required, though a judge may choose to disclose to underscore the integrity and impartiality of the court.

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[1] This opinion does not address the ethical considerations for the *process* of selecting an attorney from the list of those qualified to act as minor's counsel, only the question of whether or not they may appoint the attorney spouse of a fellow judge as the same. As with all judicial activities, the process of selecting which attorney shall serve as minor's counsel must be independent, impartial, and avoid impropriety or the appearance of impropriety.

IV. AUTHORITIES

Applicable Canons

Canon 3C(5): "A judge shall not make unnecessary court appointments. A judge shall exercise the power of appointment 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. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees above the reasonable value of services rendered."

Canon 3E(1): "A judge shall disqualify himself or herself in any proceeding in which disqualification is required by law."

Canon 3E(2)(a): "In all trial court proceedings, a judge shall disclose on the record as follows:

> "(a) Information relevant to disqualification. A judge shall disclose information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification.

A. Rules, Statutes, and Other Authorities

California Judges Association, *Judicial Ethics Update* (Mar. 2007).

California Judges Association, *Judicial Ethics Update* (Feb. 2002).

California Judges Association, *Judicial Ethics Update* (Jan. 1998).

California Judges Association, *Judicial Ethics Update* (Jan. 1997).

California Judges Association, *Opinion 63: Disqualification and Disclosure Requirements of a Hearing Judge When a Judicial Colleague (Or the Colleague's Family Member) or an Employee of the Court has an Interest in the Case* (Jul. 2009) (Opinion 63).

California Judges Association, *Opinion 51: Disqualification and Disclosure Requirements Related to Positions in the Legal Community Held by Family Members of Judges* (Sep. 2001) (Opinion 51).

California Rules of Court, rule 5.421. Compensation of counsel appointed to represent a child in a family law proceeding.

Code of Civil Procedure, sections 170-170.9. Disqualification of Judges.

Rothman, et al., *California Judicial Conduct Handbook* (4th ed. 2017) ("Rothman"), sections 6:25, Appointment powers and nepotism; 7:45, Spouse and other family members: Activities as lawyers; and 7:54, Other relationship issues.

V. DISCUSSION

Central to the question of whether a judge may appoint the attorney spouse of a judicial colleague in a case before the judge are concerns regarding the impartiality of the judge, the integrity of the court, and the fairness of the proceedings. To address these concerns, a judge in this circumstance must consider the propriety of appointing the attorney in question; whether the relationship between the judge, their judicial colleague, and/or their colleague's spouse requires disqualification; and if not, whether disclosure is nevertheless required.

A. Court-Appointed Counsel Who May Be Compensated by the Court

Courts are permitted to appoint counsel to represent a minor child in a family law proceeding pursuant to section 3150 of the Family Code. Rule 5.241 of the Rules of Court govern compensation of minor's counsel. The court's duties include determining reasonable compensation and expenses for appointed counsel, as well as the parties' ability to pay. (Id. at subd. (a).) If the court finds that the parties are unable to pay all or part of the attorney's fees, the court must pay the remainder. (Id. at subd. (d).)

Canon 3C(5) states:

> A judge shall not make unnecessary court appointments. A judge shall exercise the power of appointment 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. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of

> appointees above the reasonable value of services rendered. [Asterisks omitted.]

Various authorities have interpreted Canon 3C(5) and determined that a judge may not appoint an attorney who (1) contributed to the judge's campaign, (2) owns property with the judge, (3) is the judge's tenant, or (4) is the judge's friend. (Rothman, et al., *California Judicial Conduct Handbook* ("Rothman") (4th ed. 2017) § 6:25, p. 364.) Neither are judges permitted to unnecessarily appoint attorneys to cases or use appointments to reward or punish attorneys. (*Id*. at pp. 364-365.) The question of whether it is appropriate for a judge to appoint another judge's spouse to a case before them has not been specifically addressed. However, there is nothing to indicate the ethical considerations would be any different in determining the appropriateness of appointing counsel from a court-approved list whether the appointee was or was not the spouse of another judicial officer of that court.

One additional consideration, however, is whether the issue of attorney compensation alters the ethical landscape. A judge may not select or appoint an attorney with whom the judge has a financial relationship. (Rothman, *supra*, § 6:25, p. 365.) The question is whether such a relationship exists here. Payment guidelines for court-appointed counsel vary from county to county, district to district. Generally, court-appointed counsel may be paid by the state, county, or a non-profit organization, depending on the program(s) utilized by that court.[2] Compensation for minor's counsel, on the other hand, is governed by rule 5.421 of the Rules of Court, wherein the court

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[2] See, e.g., San Diego County Office of Assigned Counsel < https://www.sandiegocounty.gov/content/sdc/oac.html> [as of June 17, 2026]; California Courts of Appeal, Court-Appointed Counsel Program https://appellate.courts.ca.gov/programs/court-appointed-counsel-program [as of June 17, 2026]; Criminal Court Appointed Attorneys Program (CAAP) < https://www.acbanet.org/build-your-practice/criminal-court-appointed-attorneys-program/> [as of June 17, 2026].

itself "determine[s] the reasonable sum for compensation and expenses for counsel." (*Id*. at subd. (a).) In addition, if the court determines that the parties are unable to pay in part or in full, the court will pay counsel directly. (*Ibid*.)

While the court has discretion to determine *who* pays minor's counsel, the *amount* of compensation is generally dictated by court order or other applicable fee schedule that includes hourly rates and flat fees for various services.[3] Further, if the court determines that the parties are unable to pay, the attorney is paid with court funds designated for this purpose; it is not as if the judge pays from their own pocket. As such, the judge has no personal financial relationship with minor's counsel that could undermine public confidence in the integrity of the judiciary.

Based on the foregoing, the judicial colleague married to the attorney on the court appointed counsel list may not appoint their *own* attorney spouse to represent a minor in the case before them; the shared financial interest is just one of many grounds, noted above. However, as long as there is no bias, prejudice, conflict of interest, nepotism, or favoritism, there is no reason a judge would be ethically prohibited under canon 3C(5) from appointing the attorney spouse of a judicial colleague as minor's counsel, even though the court is charged with determining the amount of compensation and ability to

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[3] See, e.g. Superior Court of California, County of Los Angeles, *The Family Law Supervising Judge's Standing Order re: Appointment of Minor's Counsel* (Aug. 27, 2024) https://lascpubstorage.blob.core.windows.net/cpw/LIBSVCAdminFinance-11-2022SJ00700.pdf [as of June 17, 2026]; Superior Court of California, County of San Bernardino, *Appointed Attorney Fee Schedule* (Jun. 26, 2024) p. 3 < https://sanbernardino.courts.ca.gov/system/files/forms-filing/appointedattorneyfeeschedule.pdf> [as of June 17, 2026]; Superior Court of California, County of San Diego, Form SDSC D-137 (Rev. 9/22), *Declaration and Order for Payment of Attorney's Fees and Costs of Minor's Counsel* <https://www.sdcourt.ca.gov/sites/default/files/sdcourt/generalinformation/forms/familyandchildrenforms/d137.pdf> [as of June 17, 2026]; Superior Court of California, County of Solano, *Billing Guidelines: Court Appointed Counsel Pursuant to FC 3150* (Nov. 18, 2025) < https://solano.courts.ca.gov/system/files/general/billing-guidelines-cac-fc3150-rev11-18-25.pdf> [as of June 17, 2026].

pay, and may itself compensate the attorney with court funds where the parties are deemed unable to pay as described above.

B. Disqualification

Next, we look to the disqualification statute and related canons to determine whether anything there would prevent a judge from appointing the attorney spouse of a judicial colleague as minor's counsel. "A judge has a duty to decide any proceeding in which he or she is not disqualified." (Code Civ. Proc., § 170.) "A judge shall be disqualified if any one or more of the following are true: [¶] … [¶] (3)(A) The judge has a financial interest in the subject matter in a proceeding or in a party to the proceeding. (B) A judge shall be deemed to have a financial interest within the meaning of this paragraph if: (i) A spouse or minor child living in the household has a financial interest. (ii) The judge or the spouse of the judge is a fiduciary who has a financial interest. [¶] … [¶] (5) A lawyer or a spouse of a lawyer in the proceeding is the spouse, former spouse, child, sibling, or parent of the judge or the judge's spouse or if such a person is associated in the private practice of law with a lawyer in the proceeding. (6)(A) For any reason: (i) The judge believes his or her recusal would further the interests of justice. (ii) The judge believes there is a substantial doubt as to his or her capacity to be impartial. (iii) A person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. (B) Bias or prejudice toward a lawyer in the proceeding may [also] be grounds for disqualification." (Code Civ. Proc., § 170.1, subd. (a)(3), (5)-(6).) Canon 3E(1) reinforces section 170.1 with the requirement that a judge must disqualify in any proceeding in which disqualification is required by law. The canon and disqualification statute make clear that the judge married to the court-appointed attorney would not be permitted to appoint their attorney spouse to represent a party to a case in his or her courtroom and would need to disqualify from any case involving their attorney spouse.

The question, then, is whether a different conclusion is reached when the attorney is married to *another* judge on the court. The California Judges Association (CJA) has

addressed similar issues several times and has generally found that a judge need not disqualify if an attorney before them is married to a fellow judge, so long as the relationship is within the realm of a professional contact, and the judge believes they can act impartially. (Cal. Judges Assn., *Opn. 51*, pp. 2-3 [The mere fact that a judge's family member is appearing before another judge does not create a reasonable doubt that the judge can be fair and impartial. However, if the nature of the relationship goes beyond professional contacts and 'a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial,' recusal would be required."]; Cal. Judges Assn., *Judicial Ethics Update* (Jan. 1998) p. 3 [So long as a judge believes they can act impartially, they need not recuse because "[t]he attorney for one party is the spouse of a colleague judge."]; Cal. Judges Assn., *Judicial Ethics Update* (Jan. 1997) pp. 3-4 [a judge is not required to recuse where a "[l]itigant's spouse is represented by spouse of another family law judge where [the] judge does not have a close association with [the] other family law judge or his/her spouse."])

Disqualification is not a given simply because an attorney in the case before the court is the spouse of a judicial colleague. (See, Cal. Judges Assn., *Opn. No. 63*, p. 2.) A judge may disqualify where they have *substantial* doubt as to their own ability to be impartial, or if a person aware of the facts could *reasonably* doubt the judge's ability to be impartial. (Code Civ. Proc., § 170.1, subd. (a)(6)(ii), (iii).) The judge must undertake this analysis on a case-by-case basis. Important considerations include whether there is a close relationship between the judge and the judicial colleague (and/or their spouse), and whether the judge and the judicial colleague work in such close physical proximity that it creates the appearance of a close relationship, whether or not one actually exists (e.g., on a very small court where all of the judges know each other well). (Cal. Judges Assn., *Opn. No. 63*, *supra*, pp. 3-4.) A judge must also bear in mind the words of Judge Rothman: "The practical need for there to be a judge who can hear cases requires rational

limits on the grounds for disqualification without impairing the need to ensure fairness." (Rothman, *supra*, § 7:3, p. 391.)

Here, the requesting judge notes that, including him and the judicial colleague, there are four family law judges at their courthouse. However, the requesting judge and the judicial colleague very rarely socialize outside of work, and have only attended one or two events together in the past two years that were put on for the entire family law division and their spouses. In this context, it is unlikely a person aware of the facts would reasonably doubt the requesting judge's ability to act impartially.

Finally, we revisit the issue of "financial interest" in the context of disqualification. A judge is required to disqualify when the judge has a "financial interest in the subject matter in a proceeding or in a party to the proceeding." (Code Civ. Proc., § 170.1, subd. (a)(3)(A).) "A judge shall be deemed to have a financial interest within the meaning of this paragraph if: [¶] (i) [a] spouse or minor child living in the household has a financial interest[; or] [¶] (ii) [t]he judge or the spouse of the judge is a fiduciary who has a financial interest." (*Id.* at subd. (a)(3)(B); see also Rothman, *supra*, § 7:30, pp. 425-432 [discussing financial interest disqualification in detail].) As discussed above, the requesting judge has no personal financial interest in the attorney in question. So long as that is the case, financial interest disqualification under section 170.1(a)(3) does not prevent a judge from appointing the attorney spouse of a judicial colleague as minor's counsel in a case before the judge.

C. Disclosure

As to the issue of disclosure, the guidance is slightly less clear. In all trial court proceedings, a judge must disclose on the record information reasonably relevant to the question of disqualification even if the judge believes there is no basis for the same. (Canon 3E(2)(a).) The California Judges Association previously advised "[a] judge need not disclose that an attorney appearing before him or her is the spouse of a fellow bench officer." (Cal. Judges Assn., Judicial Ethics Update (Feb. 2002) § I.B.4, p. 1.) It would

follow, then, that the judge would not be required to disclose the relationship prior to appointing the attorney spouse. However, CJA has also found that disclosure is recommended, if not required, in several similar situations. (Cal. Judges Assn., Judicial Ethics Update (Mar. 2007) § I.B.2, p. 1 ["Where [a] Commissioner in a small court is married to a Sheriff's Deputy who is the investigating officer on search and arrest warrants, other judicial officers are not disqualified to hear cases where Commissioner's spouse testifies or is the investigating officer but should disclose the relationship between the testifying deputy and Commissioner."]; *Opn. 51*, *supra*, at p. 3 ["Canon 3E does not require the disclosure of the "mere" fact that a judge's family member is appearing before another judge. However, Canon 3E generally requires disclosure on the record of information relating to contacts with the judge and judge's family member that go beyond professional contacts, because the parties or their lawyers might consider this information relevant to the question of disqualification."])

The *California Judicial Conduct Handbook* explicitly queries, "Should judges disclose when the spouse of another judge on the court appears in a proceeding as counsel?" (Rothman, *supra*, § 7:54, p. 472-73.) Rothman disagrees with the implication in Opinion 51 that a judge should disclose where the spouse of another judge on the court is a government attorney who regularly appears before the court. (*Ibid*.) Rothman asserts that a judge's spouse appearing before another judicial officer is the same as any other personal relationship that judicial officer might have with an attorney appearing in their court. Disclosure is not required solely because the attorney is a member of another judge's family, unless the relationship between the attorney and the judicial officer extends beyond the professional context. (*Id*. at p. 473; see also, § 7:51, p. 467 ["The test for disqualification and disclosure involving social friendship is similar to the test for a dating relationship: Is the relationship that of a mere 'acquaintance,' in which case even disclosure is questionable, or is the person within the inner circle of the judge's intimate friends, such that disqualification is required?"]; but see § 7:52, p. 469 ["Where the *party,*

witness, or victim is a fellow judge or a family member of a fellow judge, there would at least be a perception of bias, or a reasonable doubt that any judge on the same court would be able to maintain impartiality"] italics added [note that attorney is not on this list].) Ultimately, "[t]here is no basis to disclose simply because a lawyer appearing in court is a family member of another judge in the courthouse unless there is something more, i.e., there is a relationship beyond the professional happenstance." (*Id.* at § 7:54, p. 473.) In light of this guidance, the committee advises that disclosure here is not required. Nevertheless, "disclosure cannot hurt," as it helps ensure public trust that the court is committed to transparency and openness. (*Ibid.*)

VI. CONCLUSION

The committee concludes that a judge may, consistent with applicable ethical obligations, appoint the attorney spouse of a judicial colleague to serve as minor's counsel, even though the court will determine, and may pay, counsel's fees and expenses under rule 5.241 of the California Rules of Court, provided no additional circumstances warrant disqualification (e.g., a relationship beyond a professional acquaintance, a personal financial interest in the attorney, or a subjective assessment under section 170.1(a)(6)). Disclosure here is not required, but is always permitted, and may help dissuade any concerns regarding the public perception of the judge's ability to be impartial.