



**CALIFORNIA SUPREME COURT
COMMITTEE ON JUDICIAL ETHICS OPINIONS**
350 McAllister Street, Room 1144
San Francisco, CA 94102
(855) 854-5366
www.JudicialEthicsOpinions.ca.gov

CJEO Expedited Opinion¹ 2021-040

[Posted February 23, 2021]

**ACCEPTANCE OF CAMPAIGN CONTRIBUTIONS DONATED BY A
COURT EMPLOYEE POLITICAL ACTION COMMITTEE TO A
JUDICIAL POLITICAL ACTION COMMITTEE**

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I. Question

Court reporters, clerks and other employees of a superior court have formed a political action committee (Employee PAC) that collects voluntary contributions from court employees. The Employee PAC has offered to donate funds to a political action committee that supports the campaigns of active superior court judges facing an election challenge (Judicial PAC). The individual judges are not made aware of the identity of employees who contributed to the Employee PAC or the amount of the individual's donation. A judge has asked whether the judge may accept a donation from the Judicial PAC, which includes funds originating from the Employee PAC.

II. Advice Provided

A judge may accept a donation of funds from a Judicial PAC that accepted Employee PAC donations, provided that (1) the initial contributions from court employees to the Employee PAC as well as the subsequent contribution from the Employee PAC to the Judicial PAC were each unsolicited; and (2) there was no judicial coercion of court employees.

III. Discussion

a. Soliciting contributions

Although the canons² generally allow judges to solicit and accept campaign contributions under specified circumstances, the one categorical exception to this general rule is the prohibition on soliciting judicial campaign contributions from California state court personnel. (Canon 5B(4); Rothman et al., Cal. Judicial Conduct Handbook (2020 supp.) § 11.60, p. 116.) This prohibition includes both direct solicitations by a judge to court employees as well as indirect solicitations of court employees made by or to third parties. (CJEO Oral Advice Summary No. 2018-026, *Soliciting Endorsements from Trial Court Judges for Other Appellate Court Justices Subject to Retention Elections*, Cal. Supreme Ct. Com. Jud. Ethics Opns., p. 4 (CJEO Oral Advice Summary No. 2018-026) [applying solicitation rules to requests for

² All further references to canons, the code, and to advisory committee commentary are to the California Code of Judicial Ethics unless otherwise indicated.

endorsement made indirectly].) For that reason, judges as well as entities affiliated with judges such as a Judicial PAC are prohibited from soliciting both court employees and entities affiliated with court employees such as an Employee PAC. As a result, judges cannot accept contributions from a Judicial PAC if the Judicial PAC or any judge solicited either the court employees who contributed to the Employee PAC or the Employee PAC itself. Conversely, a judge may accept a contribution from a Judicial PAC if there was no solicitation of court employees either directly or through the Employee PAC, provided that there was also no coercion of court employees, as explained in the next section.

b. Coercing contributions

Judges are not permitted under any circumstance to use the prestige of judicial office in a manner that is, or that would reasonably be perceived to be, coercive. (Canons 1, 2, 2A, 2B & 5B(4).) A judge's position of influence or control over court employees might give rise to a risk that an employee-initiated donation is, or is perceived to be, the result of coercion. The potential for coercion depends on factors including the nature and length of the relationships judges have with court employees, the size of the court, both numerically and geographically, the frequency and proximity in which particular judges and court employees work together, and whether contributions are designated for specific judicial campaigns or instead are intended to benefit all judges equally. For example, in a small court with only one location and relatively few court employees, where long term work assignments with single judges are commonplace, there may be some risk that a judge could ascertain which individuals contributed funds to the Employee PAC for the judge's benefit, even when their identities have not been disclosed by the Employee PAC. In that case, judges may need to exercise particular caution that court employees do not feel pressured to contribute. Conversely, there may be less such risk in larger courts where court employees are not assigned to a single judge, judges and court employees are spread out in multiple courthouses, and employee contributions are not directed to any specific campaigns. In either circumstance, to the extent possible, ensuring that the identities of court employees who

donate to an Employee PAC remain unknown to the judges of the court greatly reduces the risk of coercion.³

A judge cannot accept a campaign contribution from a Judicial PAC which received funds from an Employee PAC if the judge knows, or reasonably should know, that a judge coerced either the initial donation from court employees to the Employee PAC or the subsequent donation of funds from the Employee PAC to the Judicial PAC. However, a judge may accept such a campaign contribution where there is no judicial solicitation or coercion involved in either (1) the initial contribution by employees to the Employee PAC or (2) the subsequent donation by the Employee PAC to the Judicial PAC. (Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 11.54, pp. 774–775; CJEO Oral Advice Summary No. 2018-026, *supra*, at p. 4–5; Cal. Judges Assn., Judicial Ethics Update (Jan. 2017) § III.2, p. 6 [judge may accept an unsolicited campaign donation from a commissioner on judge’s court].)⁴

IV. Conclusion

The inquiring judge may accept the campaign contribution from a Judicial PAC that accepted Employee PAC donations where there was no judicial solicitation of either the court employees who initially donated the funds to the Employee PAC or of the Employee PAC that

³ The risk of coercion increases if the identities of the employees who donate to an Employee PAC are disclosed or otherwise made known to the judges of the court, or if their identity can be ascertained somehow. In that case, coercion can be perceived if a judge fosters warm relationships with court employees known to have contributed to an Employee PAC while keeping those who have not at a distance, or treating non-contributors with any disrespect or disdain. Similarly, if a presiding judge discharges his or her administrative duties of court supervision or management in a manner that is consistently more favorable to known contributors to an Employee PAC, employees may feel pressured to contribute.

⁴ There may be circumstances in which judges are required to disclose campaign contributions originating from a court employee that pass through an Employee PAC to a Judicial PAC before being paid to the judge’s campaign at the direction of the Employee PAC. CJEO Oral Advice Summary No. 2018-025, *Disqualification and Disclosure Duties of a Trial Judge Assigned as an Appellate Justice*, Cal. Supreme Ct. Com. Jud. Ethics Opns., p. 3 [noting that disclosures might be required when a party contributes to a super PAC that donates to a judge’s campaign].)

donated to the Judicial PAC, as long as the judge does not know, or have reason to know, that either donation was coerced.



This expedited opinion is advisory only. (Cal. Rules of Court, rule 9.80(a), (e); Cal. Supreme Ct. Com. Jud. Ethics Opns. (CJEO), Internal Operating Rules & Proc. 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)(2); CJEO rules 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)). The conclusions expressed in this expedited opinion are those of the committee and do not necessarily reflect the views of the California Supreme Court or any other entity. (Cal. Rules of Court, rule 9.80(b); CJEO rule 1(a).)