



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

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CJEO Expedited Opinion¹ 2021-041

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SERVICE ON A GOVERNMENTAL TASK FORCE

I. Question

May a judge serve as a member of a governmental task force created to address hate crimes with a broad-based agenda, including legal, educational, social, and policy reforms?

¹ The California Supreme Court Committee on Judicial Ethics Opinions (CJEO) issues **Expedited Opinions**, formerly known as **Oral Advice Summaries**, pursuant to California Rules of Court, rule 9.80(i)(1) [eff. Jan. 1, 2021]. Expedited Opinions are issued to requesting judicial officers following a discretionary decision by CJEO to address the ethical issues raised in an expedited process that does not include posting draft opinions for public comment, as required for CJEO Formal Opinions. CJEO Expedited Opinions are published in full, without identifying information regarding the requesting judicial officer, to provide information and analysis to the bench and the public regarding judicial ethics.

II. Advice Provided

When the scope of the stated purposes of a governmental task force is so broad and varied that a judge cannot reasonably limit his or her participation to topics directly related to the law, the legal system, or the administration of justice, a judge may not ethically serve as a member of the task force. However, a judge may assist the task force in other ways, for example, by appearing before, providing information to, or advising the task force on issues within the judicial branch's purview and relating to the judge's experiences and unique perspective as a judge.

III. Facts

A county board of supervisors has created a multi-disciplinary task force to address hate crimes that includes a variety of community stakeholders, such as representatives from the county, a major city, the school board, the district attorney's office, the public defender's office, local law enforcement agencies, and certain nonprofit groups. In its resolution creating the task force, the board also designated the presiding judge of the superior court, or his or her designee,² as a voting member of the task force. The resolution specifies that the task force will be subject to the Ralph M. Brown Act open meetings law and will be supported by county clerk staff.

The stated purposes of the task force are to: (1) develop recommendations to address hate crimes and violence incited by hate speech; (2) develop recommendations to employ existing law, and assess new policies and legislation, to protect against gender-based hate crimes; (3) examine the pathology of hate crimes to develop the best methods and policies to address them; (4) examine and develop recommendations regarding the relationship of firearm accessibility to hate crimes; and (5) recommend educational programs to promote social and cultural change.

As a preliminary matter, the committee notes that based on these facts, the task force is governmental or at least quasi-governmental in nature. Apart from ethical concerns, judges are prohibited from holding "public office" by article VI, section 17, of the California constitution.

² Were the presiding judge to elect to designate another judicial officer, this opinion would apply to that designated judge.

The committee declines to provide a legal opinion regarding whether membership on the task force constitutes public office for constitutional purposes. Assuming for purposes of this opinion that service is not constitutionally barred, the committee provides the following advice about whether a judge may ethically be a member the task force.

IV. Discussion

The Code of Judicial Ethics³ broadly permits extra-judicial conduct relating to the “law, the legal system, or the administration of justice.” (Canons 4B, 4C, and 5D.) Canon 4C(1) prohibits judges from appearing before or officially consulting with an executive or legislative body except on matters relating to the law, the legal system, or the administration of justice, or on matters concerning the judge’s personal economic interests. (Canon 4C(1).) Similarly, canon 4C(2) prohibits judges from accepting appointments to a governmental committee or commission or other governmental position that is “concerned with issues of fact or policy on matters” other than improvement of the law, the legal system, or the administration of justice. Canon 4C(3) permits judges to act as officers and directors of, and non-legal advisors to, organizations and government agencies devoted to the improvement of the law, the legal system, or the administration of justice, provided that such positions do not constitute a public office within the meaning of article VI, section 17, of the California constitution. Finally, canon 5D permits judges to engage in political activity relating to the law, the legal system, and the administration of justice, provided conduct is consistent with the code overall.

The determining factor here is whether the task force’s activities fall within the scope of the law, the legal system, or the administration of justice. The resolution lies in determining the meaning of this phrase, which is not defined with specificity in the code.⁴ Because judges are

³ All further references to the code, terminology, canons, and advisory committee commentary are to the California Code of Judicial Ethics unless otherwise indicated.

⁴ Although the phrase, “the law, the legal system, or the administration of justice” is listed in the Terminology section of the code, it is not defined. Instead, the Terminology section states that when a judge engages in an activity that relates to the law, the legal system, or the administration of justice, the judge should also consider his or her ethical obligations under multiple enumerated and described canons. Cal. Judges Assn., Jud. Ethics Com., Opn. No. 75

especially learned and experienced in the law, the code permits and encourages judges to engage in activities that will improve the law and legal system. (Advisory Com. com. foll. canon 4B [judges are in a unique position to contribute to the improvement of the law, including revision of the law and improvement of criminal justice].) However, nearly every topic can be described as relating to the law in some fashion, particularly in the governmental context. (See Rothman et al., *Cal. Judicial Conduct Handbook* (4th ed. 2017) § 10:10, p. 681 (Rothman) [because almost anything the government does can be characterized as relating to the improvement of the law, a direct connection to the legal system or more narrow participation may be required].) When participating in governmental activities, Judge Rothman explains that judges must “draw a distinction between inappropriate involvement with the legislative and executive branch in ‘political’ matters as opposed to appropriate involvement in matters concerning the law, the legal system, or the administration of justice.” (Rothman, *supra*, § 11:3, p. 736.) Recognizing the importance of the separation of powers between the branches of government, Rothman urges that “[t]he boundary of this limitation should not be stretched.” (*Id.* at p. 738.)

Determining whether something relates to the law, the legal system, or the administration of justice requires a careful analysis of the facts. This committee has previously advised that matters relating to purely administrative issues, such as court budgets, facilities, and docketing impacts, fall within the core of matters relating to the law, the legal system, and administration of justice. (CJEO Formal Opinion 2013-001 (2013), *Requesting Assistance from Attorneys*, Cal. Supreme Ct. Com. Jud. Ethics Opns., pp. 2, 5 [describing court budget cuts as directly impacting access to justice and therefore clearly related to the law, the legal system, and administration of justice].) However, as matters move from the procedural to the more substantive end of the policy spectrum, judicial involvement may impermissibly “encroach[] into the political (policy making) domain of the other branches” of government. (CJEO Formal Opinion 2014-006 (2014), *Judicial Comment at Public Hearings and Consultation with Public Officials and Other Branches of Government*, Cal. Supreme Ct. Com. Jud. Ethics Opns., pp. 2–3, 7–9 (CJEO Formal Opinion 2014-006) [advising that when testifying before the legislature,

(2018), p. 1 (CJA Opn. No. 75) [acknowledging that the phrase is not precisely defined in the code].)

judicial advocacy should focus on court users and legal system impacts as a whole rather than “particular causes or groups”]⁵; CJA Opn. No. 75, *supra*, p. 9 [a judge may not testify before a legislative committee to support increased domestic violence penalties, which is a policy issue within the exclusive purview of the legislature and may make it appear that a judge has prejudged certain types of cases].)

In this case, the task force is pursuing a broad-based agenda to address hate crimes, which involves not only legal reforms, but also educational, social, and policy changes. Certain task force activities fall squarely within the law, the legal system, or the administration of justice, such as developing recommendations for using existing law, or drafting new legislation, to better address gender-based crimes. (Canons 4C(2) & 5D.) However, other activities, such as examining the pathology of hate crimes to develop the best methods and policies to address them, and examining the relationship with firearms accessibility, are broader matters concerning the “wisdom or morality” of certain policies not directly linked to the courts. (CJEO Formal Opinion 2014-006, *supra*, p. 8.) Some of these policies may be the subject of significant debate, and a judge’s involvement could potentially compromise public confidence in the impartiality of the judicial branch. (Advisory Com. com. foll. canon 4C(2) [when assessing whether to accept extra-judicial assignments, judges need to protect the courts from becoming involved in matters that may prove to be controversial and should not accept government appointments that interfere with judicial independence].)

The broad scope of the task force’s activities would make it difficult or impossible for a judge to participate as a member for all purposes while attempting to adhere to the ethical boundary between matters directly related to the law and social, moral, or policy imperatives. It is not reasonable to expect a judge acting as a task force member to bifurcate issues or limit involvement to permissible topics and discussions, particularly when many of the task force’s activities concern matters beyond law. Nor is it reasonable to expect members of the public to

⁵ As one example, the committee described a proposed constitutional amendment to replace the death penalty with life without parole and advised that a judge could ethically comment before the Legislature about dysfunction in the current system from the judicial branch perspective, but that advocacy regarding the wisdom or morality of the death penalty as a policy matter would be improper. (CJEO Formal Opinion 2014-006, *supra*, p. 8.)

make the distinction between permissible and impermissible activities, even if a judge could limit his or her involvement, and therefore the judge’s membership may create the perception of impropriety. (Advisory Com. com. foll. canon 2 and 2A [the test for impropriety is whether a person aware of the facts might reasonably entertain a doubt that a judge would be able to act with integrity, impartiality, and competence].) For these reasons, the committee advises that a judge may not be a member of the task force.⁶ (Cal. Judges Assn., Judicial Ethics Update (Dec. 2014) § IV.B, p. 5 [advising that a judge should not be a member of a county task force formed in response to an incident involving a minority teenager with the goal of reviewing options for a citizen review board and community policing].)

As an alternative to service as a member, however, a judge may ethically assist and contribute to the task force in other ways, such as by appearing before, providing information to, or advising the task force on discrete issues relating to the law, the legal system, and the administration of justice. (Canon 4C(1); CJEO Formal Opinion 2014-006, *supra*, pp. 7–9.) By advising the task force on specific issues within the judicial branch’s purview, a judge is able to lend unique expertise about the law, the legal system, and the administration of justice while ensuring impartiality and compliance with the code. (*Id.* at p. 9 [testifying before or assisting another branch of government is more likely to fall within the scope of the law, the legal system,

⁶ The committee recognizes that judges may ethically serve as members of governmental bodies with a narrow focus directly related to the law, the legal system, and the administration of justice, provided that: (1) membership does not constitute public office for constitutional purposes; and (2) membership does not raise other ethical concerns, such as casting doubt on impartiality, interfering with or taking precedence over judicial duties, or leading to frequent disqualification. (CJEO Oral Advice Summary 2015-010 (2015), *Service by an Appellate Justice as a Compliance Officer in Pending Federal Proceedings*, Cal. Supreme Ct. Com. Jud. Ethics Opns., pp. 2–3 [ethically permissible for a judge to accept appointment as a federal prison compliance officer]; CJEO Oral Advice Summary 2019-028 (2019), *Service on a Civil Liberties Program Advisory Panel for the State Library*, Cal. Supreme Ct. Com. Jud. Ethics Opns., pp. 3–4 [ethically permissible for a judge to serve on a state library board concerning educational programs about Japanese internment and other civil rights violations]; Cal. Judges Assn., Jud. Ethics Com., Opn. No. 61 (2008), pp. 3–4 [providing examples of ethically permissible membership on governmental bodies, such as serving on an advisory committee on international law or a committee to advise the Attorney General on how the Bureau of Identification might better serve the courts].)

or the administration of justice when a judge is being asked to do so based on his or her experiences and unique perspective as a judge].)

V. Conclusion

In the committee's view, a judge may not ethically be a member of a governmental task force when the stated purposes of the task force are so broad and varied that a judge cannot reasonably limit his or her participation to topics directly related to the law, the legal system, or the administration of justice. A judge may, however, assist the task force in other ways, such as appearing before, providing information to, or advising the task force on discrete issues within the judicial branch's purview.



This expedited advice 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)(3); 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 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).)