



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

350 McAllister Street
San Francisco, CA 94102
(855) 854-5366

www.JudicialEthicsOpinions.ca.gov

CJEO Expedited Opinion¹ 2022-045

[Posted January 4, 2022]

**DISQUALIFICATION OBLIGATIONS FOR PARTICIPANTS IN THE
CALIFORNIA JUDICIAL MENTOR PROGRAM (CJMP)**

I. Question

The Committee on Judicial Ethics Opinions has been asked for guidance regarding disqualification and disclosure obligations for judicial officers participating in the California Judicial Mentor Program (CJMP), a joint program of the executive and judicial branches recently launched by Governor Newsom to enhance diversity among judicial applicants.

¹ The California Supreme Court Committee on Judicial Ethics Opinions (CJEO or committee) 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

Judicial officers participating in the CJMP as mentors should disqualify from hearing matters in which their mentee attorneys appear. The nature of the mentor-mentee relationship created through the CJMP, as detailed below, is such that a reasonable person aware of the facts would have cause to doubt impartiality in a case in which a mentee attorney appears before the mentor judge. Separate from how it may appear to a reasonable observer, a mentor judicial officer may become personally invested in a mentee's success to the point where the judicial officer substantially doubts his or her own capacity to be impartial. For the same reasons, appellate justices acting as mentors to trial court judge mentees should disqualify from hearing matters involving a review of their mentee's adjudicatory decisions. Because the committee advises that judicial officers acting as mentors disqualify from hearing matters in which their mentees appear, we do not reach the question of whether and to what extent trial judge mentors are required to disclose information related to participation in the CJMP.

III. Facts

In July 2021, Governor Gavin Newsom announced the launch of the CJMP, which is described as a joint program of the executive and judicial branches designed to support and encourage qualified candidates of all backgrounds to apply for judicial appointments. The program consists of an Appellate Court Mentor Program and a Trial Court Mentor Program and aims “to demystify the appellate and trial court application process and improve transparency and accessibility for all members of the legal community throughout California, fostering the development of a qualified and diverse judicial applicant pool.” (Office of Governor Gavin Newsom, Governor Newsom Launches California Judicial Mentor Program to Promote a Diverse and Inclusive Judiciary (July 1, 2021) <<https://www.gov.ca.gov/2021/07/01/governor-newsom-launches-california-judicial-mentor-program-to-promote-a-diverse-and-inclusive-judiciary/>> [as of Jan. 3, 2022].) The CJMP is a statewide effort based in part on a successful pilot program that originated in Los Angeles County Superior Court. (Romero, *LA judge*

mentorship is a model for courts around the state, S.F. Daily J. (Dec. 17, 2021) [describing the role of judicial mentorship programs in broadening the judicial applicant base].)

The CJMP involves partnering mentor judicial officers with mentee prospective judicial applicants. Trial court judge mentors are paired with attorneys applying for superior court judgeships. Appellate justices may be paired with either attorneys or trial court judges applying to the appellate bench. Mentors are typically assigned to a mentee for one year, commit to meeting with mentees at least four times per year, and must be generally available to respond to mentees' inquiries. Mentors are expected to provide substantial leadership and guidance to mentees throughout the judicial application process; to share the mentor's personal experiences and advice about the skills and knowledge necessary to become a successful judge; and to encourage and counsel mentees on steps they can take to enhance their chances for appointment to the bench.²

IV. Discussion

The disqualification and disclosure rules for judicial officers are provided in canon 3 of the California Code of Judicial Ethics³ and Code of Civil Procedure sections 170 through 170.5. While the Code of Civil Procedure disqualification statute (statute) expressly applies only to trial court judges, appellate justices are subject to substantially similar disqualification grounds as specified in canon 3E(4), (5), and (6). (CJEO Oral Advice Summary 2018-023 (2018), *Disqualification Responsibilities of Appellate Court Justices*, Cal. Supreme Ct. Com. Jud. Ethics Opns., p. 3 [grounds for disqualification of appellate justices in canon 3 track the statutory requirements for trial judges].)

When making a disqualification determination, judicial officers must be guided by the dual purposes of the disqualification rules, which are to: (1) “promote trust by precluding

² The committee notes that participation in the CJMP has been publicly described as confidential in program-related documents; the committee does not opine on whether participation in the program is confidential as a matter of law.

³ All further references to the code and canons are to the California Code of Judicial Ethics unless otherwise indicated.

judges from presiding in those circumstances where there is a reasonable doubt as to impartiality”; and (2) “further the administration of justice by requiring judges to preside where there is no reasonable doubt as to impartiality.” (CJEO Formal Opinion 2015-007 (2015), *Disqualification for Prior Appearance as a Deputy District Attorney in a Nonsubstantive Matter*, Cal. Supreme Ct. Com. Jud. Ethics Opns., pp. 9, 10.)

As this committee has previously advised, the grounds for disqualification of judicial officers generally fall into two categories: mandatory and discretionary.⁴ Mandatory grounds require judicial officers to disqualify when certain facts are present, for example, when the judicial officer is closely related to a party (canon 3E(5)(e); Code Civ. Proc., § 170.1, subd. (a)(4) & (5)) or has personal knowledge of disputed facts in the case (canon 3E(5)(f)(ii); Code Civ. Proc., § 170.1, subd. (a)(1)). In addition, a judicial officer must disqualify on discretionary grounds when the judicial officer: (a) believes that the interests of justice require it; (b) substantially doubts his or her capacity to be impartial; or (c) believes that a reasonable person aware of the facts would doubt the judicial officer’s ability to be impartial. (Canon 3E(4)(a)–(c); Code Civ. Proc., § 170.1, subd. (a)(6)(A).) The reasonable person test for disqualification requires an objective analysis: “if a fully informed, reasonable member of the public would fairly entertain doubts that the judge is impartial, the judge should be disqualified.” (*Wechsler v.*

⁴ See CJEO Expedited Opinion 2021-044 (2021), *Disqualification for Civics Education Activities in Matters Involving School District Mask and Vaccine Mandates*, California Supreme Court Committee on Judicial Ethics Opinions, page 4 and CJEO Oral Advice Summary 2020-036 (2020), *Appellate Disqualification for Judicial Council Service in Matters Challenging COVID-19 Emergency Rules and Orders*, California Supreme Court Committee on Judicial Ethics Opinions, page 4. All grounds for disqualification, once met, require a judicial officer to disqualify under the code and statute. (Canon 3E(4)–(5) [appellate disqualification is required if any specified grounds are met]; Code Civ. Proc., § 170.1 [trial court disqualification is required if any specified grounds are met].) The terms *mandatory* and *discretionary* are used to distinguish between (a) grounds that require disqualification when a judicial officer identifies mandatory criteria set by the statute or code that has been met in any proceeding (*mandatory grounds*), and (b) grounds that require disqualification when a judicial officer exercises discretion after evaluating whether objective or subjective disqualifying circumstances have been met in any proceeding (*discretionary grounds*). (CJEO Oral Advice Summary 2020-036, *supra*, at p. 4; *Eith v. Ketelhut* (2018) 31 Cal.App.5th 15–17).

Superior Court (2014) 224 Cal.App.4th 384, 391 (*Weschler*); accord, *Jolie v. Superior Court* (2021) 66 Cal.App.5th 1040–1041.)

A. Disqualification

Because mentorship through the CJMP implies an inherently close and influential relationship, judicial officers should disqualify from hearing matters in which their mentee attorneys appear on discretionary grounds. In the committee’s view, the nature of a mentor-mentee relationship formed through the CJMP is such that a reasonable observer would doubt a judicial officer’s impartiality in cases involving the judicial officer’s mentee. As described by program documents, the CJMP requires a substantial commitment of a judicial officer’s time, envisions an open line of communication with mentees, and involves substantive conversations about the mentor’s personal experience with the aim of helping mentees reach their goal of becoming a judge. Based on how the program is designed and a common understanding of what mentorship entails, a reasonable person would have cause to doubt the impartiality of a mentor judicial officer who has committed to and works towards an appearing mentee’s success. A CJMP mentor-mentee relationship may also suggest that a mentee is in a position of special influence or could influence the judicial officer’s judicial decisionmaking, which must be avoided. (Canon 2B(1) [a judge shall not allow family, social, political, or other relationships to influence the judge’s judicial conduct or judgment, or convey or permit others to convey the impression that any individual is in a special position to influence the judge].) Regardless of the actual amount or quality of contact between a judicial officer and mentee, a judicial officer must consider and be guided by how participation in the CJMP “ ‘looks to the average person on the street.’ ” (*United Farm Workers of America v. Superior Court* (1985) 170 Cal.App.3d 97, 104.)

In addition to considering how a reasonable person aware of all facts might perceive the mentor-mentee relationship formed through the CJMP, a judicial officer must also evaluate his or her own subjective state of mind. In the course of mentoring an attorney through the CJMP, a judicial officer may become personally invested in his or her mentee’s success to the point where the judicial officer can no longer impartially view the mentee as a legal advocate. As Judge Rothman advises in his treatise, in deciding what type of a relationship might require

disqualification or disclosure, a judge must “[p]ause and think” carefully about whether the judge would have difficulty finding against the party with whom the judge has the relationship. (Rothman et al., *Cal. Judicial Conduct Handbook* (4th ed. 2017) (Rothman), § 7:75, p. 500.) If a judicial officer substantially doubts his or her ability to be impartial, the judicial officer must disqualify.

In this sense, mentor-mentee relationships created through the CJMP are distinct from situations where a judicial officer is a member of the same professional organization or educational program as an attorney, such as a bar association or the Inns of Court. Merely having a professional relationship or acquaintanceship with an attorney is typically not enough to warrant disqualification. (*Wechsler, supra*, 224 Cal.App.4th at p. 393 [because virtually all judges are drawn from the ranks of the legal profession, prior professional or casual social relationships are not dispositive in disqualification motions]; Rothman, *supra*, § 7:32, p. 433 [the fact that a judge and attorney are members of the same professional legal organization, or that the judge has only a professional relationship with the attorney, does not normally require recusal or disclosure].) However, CJMP mentor-mentee relationships entail more than moving in the same professional circles; they involve, by design, building a one-on-one relationship over time with the specific goal of advancing the mentee’s career. This level of individual connection and the role of a mentor as a personal advisor runs the risk of undermining public confidence in a judicial officer’s impartiality in cases involving the mentee. (Canons 1, 2, and 2A [judges must preserve public confidence in the integrity and impartiality of the judiciary in all activities].)

For these same reasons, appellate justices acting as mentors through the CJMP should disqualify both from hearing matters in which their mentee attorneys appear and from matters that involve reviewing adjudicatory decisions of their mentees who are trial judges.

B. Disclosure

When a trial judge determines that disqualification is not required in a matter, the judge must disclose on the record all facts “reasonably relevant” to the decision not to disqualify. (Canon 3E(2)(a); CJEO Informal Opinion Summary 2018-005 (2018), *Disqualification for*

Spouse's Political Campaign Services, Cal. Supreme Ct. Com. Jud. Ethics Opns., p. 8 [the circumstances requiring disclosure are broader than those requiring disqualification].) Appellate justices, however, are not bound the disclosure rules. (Canon 3E(2) [limiting disclosure rules to trial proceedings]; Rothman, *supra*, § 7:90, pp. 502–503 [acknowledging that disclosure for appellate justices is complicated by the fact that a justice may not appear before the parties until after a case has been fully briefed].)

As discussed above, in the committee's view, participation in the CJMP as a mentor necessitates disqualification from matters involving mentees due to the frequent and substantial contact between mentors and mentees and the inherently close and influential relationship associated with that mentorship. Because the committee advises that judicial officer mentors disqualify from hearing matters involving their mentees, we do not reach the question of whether and to what extent trial judges must disclose facts related to participation in the CJMP.

V. Conclusion

Judicial officers acting as mentors in the CJMP should disqualify from hearing matters in which their mentee attorneys appear. Mentorship through the CJMP implies a close and influential relationship that would cause a reasonable person to doubt the judicial officer's impartiality in matters in which the judicial officer's mentee appears. Through mentorship, judicial officers may also become personally invested in their mentee's success to the point where the judicial officers substantially doubt their own capacity to be impartial. For these same reasons, appellate justices acting as mentors to trial court judge mentees should disqualify from hearing matters involving a review of mentees' adjudicatory decisions. Because the committee advises that judicial officers participating in the CMJP disqualify from hearing matters involving their mentees, the committee does not reach the question of whether or to what extent trial judge mentors must disclose information related to participation in the CJMP.



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).)