



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

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**CJEO Formal Opinion 2019-013**

*[Issued March 14, 2019]*

**DISCLOSURE OF CAMPAIGN CONTRIBUTIONS IN TRIAL COURT  
ELECTIONS**

**I. Question Presented**

The Committee on Judicial Ethics Opinions (CJEO) was asked for an opinion on a trial court judge's disclosure obligations related to campaign contributions, including what prompts a judge's disclosure obligations, what information the judge must disclose, how to properly make the disclosure, and when and for how long the judge must disclose relevant campaign contribution information.

**II. Summary of Conclusions**

Judges are required to maintain public confidence in judicial integrity and impartiality in their judicial duties and in all other activities, including judicial campaigns. At the same time, judges may accept campaign contributions from parties, lawyers, and law offices or law firms who may appear before the judge in a matter. To balance this tension, the California Code of Judicial Ethics and the Code of Civil

Procedure set forth mandatory and discretionary campaign-related disqualification and disclosure obligations.

This opinion focuses on a judge’s campaign-related disclosure requirements, which are prompted by certain monetary contributions provided by a party, lawyer, or law office or firm that could cause a person to have reasonable doubts regarding the judge’s impartiality in the matter. If a judge is required to make a disclosure, specific information regarding the campaign contribution and contributor must be conveyed on the record in a manner that avoids solicitation of additional campaign contributions, promotes transparency, and provides the parties and lawyers with easy access to the information. This disclosure requirement begins one week from the judge’s receipt of his or her first campaign contribution and continues for a period of at least two years after the judge takes office. The opinion also advises that other campaign-related assistance provided by a party, lawyer, or law office or firm, such as indirect monetary contributions, aggregate contributions from lawyers in one law office or firm, and roles in the judge’s campaign or relationships to the judge, may also create doubts regarding a judge’s impartiality in a matter and require disclosure.

### **III. Authorities**

#### **A. Applicable Canons<sup>1</sup>**

Canon 2A: “A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

Canon 3: “A judge shall perform the duties of judicial office impartially, competently, and diligently.”

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

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<sup>1</sup> All references to canons and to Advisory Committee commentary are to the California Code of Judicial Ethics unless otherwise indicated.

Canon 3E(2): “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. [¶] (b) Campaign contributions in trial court elections [¶] (i) Information required to be disclosed [¶] In any matter before a judge who is or was a candidate for judicial office in a trial court election, the judge shall disclose any contribution or loan of \$100 or more from a party, individual lawyer, or law office or firm in that matter as required by this canon, even if the amount of the contribution or loan would not require disqualification. Such disclosure shall consist of the name of the contributor or lender, the amount of each contribution or loan, the cumulative amount of the contributor’s contributions or lender’s loans, and the date(s) of each contribution or loan. The judge shall make reasonable efforts to obtain current information regarding contributions or loans received by his or her campaign and shall disclose the required information on the record. [¶] (ii) Manner of disclosure [¶] The judge shall ensure that the required information is conveyed on the record to the parties and lawyers appearing in the matter before the judge. The judge has discretion to select the manner of disclosure, but the manner used shall avoid the appearance that the judge is soliciting campaign contributions. [¶] (iii) Timing of disclosure [¶] Disclosure shall be made at the earliest reasonable opportunity after receiving each contribution or loan. The duty commences no later than one week after receipt of the first contribution or loan, and continues for a period of two years after the candidate takes the oath of office, or two years from the date of the contribution or loan, whichever event is later.”

*Advisory Committee commentary following canon 3E(2)(b): “Code of Civil Procedure section 170.1, subdivision (a)(9)(C) requires a judge to ‘disclose any contribution from a party or lawyer in a matter that is before the court that is required to be reported under subdivision (f) of Section 84211 of the Government Code, even if the amount would not require disqualification under this paragraph.’ This statute further provides that the ‘manner of disclosure shall be the same as that provided in Canon 3E of the Code of Judicial Ethics.’ Canon 3E(2)(b) sets forth the information the judge must disclose, the manner for making such disclosure, and the timing thereof.*

*“‘Contribution’ includes monetary and in-kind contributions. See Cal. Code Regs., tit. 2, § 18215, subd. (b)(3). See generally Government Code section 84211, subdivision (f).*

*“Disclosure of campaign contributions is intended to provide parties and lawyers appearing before a judge during and after a judicial campaign with easy access to information about campaign contributions that may not require disqualification but could be relevant to the question of disqualification of the judge. The judge is responsible for ensuring that the disclosure is conveyed to the parties and lawyers appearing in the matter. The canon provides that the judge has discretion to select the manner of making*

*the disclosure. The appropriate manner of disclosure will depend on whether all of the parties and lawyers are present in court, whether it is more efficient or practicable given the court's calendar to make a written disclosure, and other relevant circumstances that may affect the ability of the parties and lawyers to access the required information. The following alternatives for disclosure are non-exclusive. If all parties are present in court, the judge may conclude that the most effective and efficient manner of providing disclosure is to state orally the required information on the record in open court. In the alternative, again if all parties are present in court, a judge may determine that it is more appropriate to state orally on the record in open court that parties and lawyers may obtain the required information at an easily accessible location in the courthouse, and provide an opportunity for the parties and lawyers to review the available information. Another alternative, particularly if all or some parties are not present in court, is that the judge may disclose the campaign contribution in a written minute order or in the official court minutes and notify the parties and the lawyers of the written disclosure. See California Supreme Court Committee on Judicial Ethics Opinions, CJEO Formal Opinion No. 2013-002, pp. 7-8. If a party appearing in a matter before the judge is represented by a lawyer, it is sufficient to make the disclosure to the lawyer.*

*“In addition to the disclosure obligations set forth in Canon 3E(2)(b), a judge must, pursuant to Canon 3E(2)(a), disclose on the record any other information that may be relevant to the question of disqualification. As examples, such an obligation may arise as a result of contributions or loans of which the judge is aware made by a party, lawyer, or law office or firm appearing before the judge to a third party in support of the judge or in opposition to the judge's opponent; a party, lawyer, or law office or firm's relationship to the judge or role in the campaign; or the aggregate contributions or loans from lawyers in one law office or firm.*

*“Canon 3E(2)(b) does not eliminate the obligation of the judge to recuse himself or herself where the nature of the contribution or loan, the extent of the contributor's or lender's involvement in the judicial campaign, the relationship of the contributor or lender, or other circumstance requires recusal under Code of Civil Procedure section 170.1, and particularly section 170.1, subdivision (a)(6)(A).”*

Canon 5: “A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.”

Canon 5B(4): “In judicial elections, judges may solicit campaign contributions or endorsements for their own campaigns or for other judges and attorneys who are candidates for judicial office. Judges are permitted to solicit such contributions and endorsements from anyone, including attorneys and other judges, except that a judge shall not solicit campaign contributions or endorsements from California state court commissioners, referees, court-appointed arbitrators, hearing officers, and retired judges serving in the Assigned Judges Program, or from California state court personnel. In

soliciting campaign contributions or endorsements, a judge shall not use the prestige of judicial office in a manner that would reasonably be perceived as coercive. See Canons 1, 2, 2A, and 2B.”

*Advisory Committee commentary following canon 5B(4): “Although it is improper for a judge to receive a gift from an attorney subject to exceptions noted in Canon 4D(6), a judge’s campaign may receive attorney contributions.”*

**B. Other Authorities<sup>2</sup>**

Code of Civil Procedure, sections 170.1, subdivision (a)(6)(A)-(B), (9)(A)-(D), 170.9, subdivision (1)(4)

Government Code, section 84211, subdivision (f)

*Caperton v. A.T. Massey Coal Co., Inc.* (2009) 556 U.S. 868

*Inquiring Concerning Kreep* (2017) 3 Cal.5th CJP Supp. 1

*Public Admonishment of Judge Flanagan* (2017)

*Public Admonishment of Judge Walsh* (2016)

*Public Admonishment of Judge Brehmer* (2012)

*Inquiry Concerning Hall* (2006) 49 Cal.4th CJP Supp. 146

*Public Admonishment of Judge Benson* (2006)

Rothman et al., California Judicial Conduct Handbook (4th ed. 2017), section 7:56

CJEO Formal Opinion 2013-003 (2013), *Disqualification Based on Judicial Campaign Contributions from a Lawyer in the Proceeding*, California Supreme Court Committee on Judicial Ethics Opinion

CJEO, Formal Opinion 2013-002 (2013), *Disclosure on the Record When There is no Court Reporter or Electronic Recording of the Proceedings*, California Supreme Court Committee on Judicial Ethics Opinions

CJEO Oral Advice Summary 2018-023, *Disqualification Responsibilities of Appellate Court Justices*, California Supreme Court, Committee on Judicial Ethics Opinions Oral Advice Summary

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<sup>2</sup> Admonishments and Inquiries issued by the Commission on Judicial Performance.

California Judges Association, Judicial Ethics Committee, Advisory Opinion No. 48 (1999)

Assembly Committee on Judiciary, Synopsis of Assembly Bill No. 2487 (2009-2010 Reg. Sess.) as amended April 20, 2010

Judicial Council of California, Committee for Impartial Courts, Final Report: Recommendations for Safeguarding Judicial Quality, Impartiality, and Accountability in California (Dec. 2009)

Supreme Court Advisory Committee on the Code of Judicial Ethics, Invitation to Comment No. SP12-01 (2012)

Supreme Court Advisory Committee on the Code of Judicial Ethics, Invitation to Comment No. SP11-08 (2011)

#### **IV. Discussion**

##### **A. Introduction**

With limited exceptions, a judge<sup>3</sup> may accept campaign contributions from anyone, including parties, lawyers, and law offices or firms that may appear before the judge. (Canon 5B(4) [a judge may solicit campaign contributions from anyone, including attorneys, but not certain subordinate judicial officers or state court personnel]; Advisory Com. com. foll. canon 5B(4) [a judge’s campaign may receive attorney contributions]; Code Civ. Proc., § 170.9, subd. (1)(4)<sup>4</sup> [a campaign contribution is not a prohibited gift].) However, if a judge accepts a campaign contribution from a party, lawyer, or law office or firm in a matter, there may be concerns about the judge’s impartiality. (Canon 2A [a

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<sup>3</sup> This opinion focuses on the disclosure obligations of trial court judges. “Judge” is used to refer to a trial court judge. Appellate court justices may also accept campaign contributions and are subject to mandatory and discretionary disqualification for certain campaign contributions, but they are not required to make disclosures. (CJEO Oral Advice Summary 2018-023, *Disqualification Responsibilities of Appellate Court Justices*, Cal. Supreme Ct., Com. Jud. Ethics Oral Advice Summary, p. 3 [appellate court justices do not have disclosures obligations under either the canons or Code Civ. Proc. § 170.1]; canon 3E(4), (5)(j).)

<sup>4</sup> All references to section or sections are to the Code of Civil Procedure unless otherwise indicated.

judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary]; canon 5 [a judge shall not engage in campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary]; Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 7:56, pp. 475-476 (Rothman) [there are many protections regarding contributions to judicial campaigns, but there is still a potential compromise to judicial integrity created by campaign contributions in judicial elections].)

To mitigate against these concerns, there are discretionary and mandatory grounds for disqualification depending on the campaign contribution. A judge must disqualify himself or herself if, in the last six years or in anticipation of an upcoming election, the judge received a campaign contribution in excess of \$1,500 from a party or lawyer in the matter, absent waiver. (§ 170.1, subd. (a)(9)(A), (D); canon 3E(1) [a judge shall disqualify himself or herself in any proceeding in which disqualification is required by law].) A judge is also disqualified if the judge believes there is substantial doubt as to his or her capacity to be impartial or unbiased in the proceeding or if another person aware of a campaign contribution or other campaign-related assistance might reasonably entertain doubts regarding the judge's impartiality. (§ 170.1, subd. (a)(6)(A), (B); Advisory Com. com. foll. canon 3E(2)(b) [canon 3E(2)(b) does not relieve a judge of his or her obligation to disqualify where campaign related circumstances would require disqualification under § 170.1].)

If a judge is not disqualified by a campaign contribution, the judge remains subject to the extensive disclosure requirements expressed in canon 3E(2) and section 170.1, subdivision (a)(9)(C).<sup>5</sup>

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<sup>5</sup> This opinion does not advise on California's election campaign reporting laws, which create other obligations for candidates for judicial office. Failure to comply with these laws is itself a violation of the canons and may result in discipline. (Canons 2A, 3B(2), 5; see, e.g., *Public Admonishment of Judge Benson* (2006) [admonished for violations of the Political Reform Act as found by the Fair Political Practices Commission]; *Public Admonishment of Judge Brehmer* (2012) [admonished for violations of the Political

## **B. What Prompts Disclosure Obligations**

There are two types of campaign-related assistance that a judge is required to disclose. First, a judge who is or was a candidate for judicial office has an ethical and statutory duty to disclose any campaign contribution or loan of \$100 or more if the contribution or loan was made by a party, individual lawyer, or law office or firm in the matter. Canon 3E(2)(b)(i) requires disclosure of any campaign contribution of \$100 or more. Section 170.1, subdivision (a)(9)(C) requires that a judge disclose any contribution that is required to be reported by Government Code section 84211, subdivision (f), which currently requires that any campaign contribution of \$100 or more is reported in a campaign statement. This \$100 disclosure threshold applies to both monetary and in-kind contributions, such as discounted goods or services or use of office space or equipment. (Advisory Com. com. foll. canon 3E(2)(b); Cal. Judges Assn., Jud. Ethics Com., Advisory Opn. No. 48 (1999), p. 6 [examples of in-kind contributions include accounting services and materials for use in signage and campaign literature].)

Second, a judge must disclose any other type of campaign-related assistance that may create an appearance of bias. This duty arises from the requirement that a judge disclose any information relevant to the question of disqualification, even if the judge believes there is no actual basis for disqualification. (Canon 3E(2)(a).) When evaluating whether the judge should make the disclosure, the analysis should be based on whether a reasonable person aware of the campaign-related assistance would have doubts regarding the judge's impartiality. (§ 170.1, subd. (a)(6)(A)(iii) [disqualification is required where a person aware of the facts might reasonably entertain a doubt that the judge would be

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Reform Act as found by the Fair Political Practices Commission and other violations of the Political Reform Act found by the Commission on Judicial Performance]; *Public Admonishment of Judge Flanagan* (2017) [admonished for violations of the Political Reform Act as found by the Fair Political Practices Commission]; *Inquiry Concerning Kreep* (2017) 3 Cal.5th CJP Supp. 1, 14-18, [censured for violating provisions of the Political Reform Act]; *Inquiry Concerning Hall* (2006) 49 Cal.4th CJP Supp. 146, 154-165 [removal from office for violating campaign finance and disclosure laws].)



able to be impartial].) The following examples of indirect monetary contributions, aggregate contributions from lawyers in one law office or firm, and roles in the campaign or relationships to the judge illustrate when additional disclosures are necessary.

Indirect monetary contributions are contributions or loans that the judge is aware of or reasonably should be aware of<sup>6</sup> that are made by a party, lawyer, or law office or firm that appears before the judge to a third party in support of the judge or in opposition to the judge's opponent. (Advisory Com. com. foll. canon 3E(2)(b).) For example, if the judge is aware that a party appearing before the judge contributed to a political action committee (PAC) that is exclusively raising funds on behalf of the judge or in opposition to the judge's opponent, the judge should disclose this contribution. Similarly, if a PAC supports several candidates or causes, the judge is aware that a party made a contribution to the PAC that was directed to be used for the benefit of the judge, and the PAC will use the funds as directed by the party, the judge should disclose the party's PAC contribution. A judge should also consider whether to disclose when the judge is aware of a contribution from a nonparty who has an interest in the outcome of the proceeding. (See, e.g., *Caperton v. A.T. Massey Coal Co., Inc.* (2009) 556 U.S. 868, 884-887 (*Caperton*) [party's executive contributed to a candidate for judicial office's campaign committee, a PAC that negatively targeted the candidate's opponent, and made other independent expenditures in support of the candidate's campaign, raising an intolerable appearance of bias that required recusal under the Due Process Clause].)

Smaller contributions that are less than \$100 or aggregate contributions or loans from lawyers in one law office or firm may also warrant disclosure. (Advisory Com. com. foll. canon 3E(2)(b).) For example, if the judge is aware of numerous \$99 contributions from lawyers employed by a large law firm that appears before the judge and these contributions are a significant portion of the judge's campaign contributions, the judge should disclose the contributions. (See CJEO Formal Opinion. 2013-003

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<sup>6</sup> Within this section, the use of the term "aware" includes "aware" or "reasonably should be aware."

(2013), *Disqualification Based on Judicial Campaign Contributions from a Lawyer in the Proceeding*, Cal. Supreme Ct. Com. Jud. Ethics Opns., p. 11 [the \$1500 campaign contribution threshold for disqualification does not apply to aggregated contributions from multiple individuals who practice law together or are from the same law firm].) Conversely, if lawyers employed in a three-person law firm each contribute \$99 and this amount is a small portion of the judge's campaign contributions, the contributions alone would not require disclosure. Essentially, if the smaller contributions frustrate the purposes of the disclosure or disqualification requirements — to promote public confidence in the impartiality of the judiciary — a judge should consider whether, at a minimum, these smaller contributions warrant disclosure. (Canon 2A [a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary]; canon 3 [a judge shall perform the duties of judicial office impartially].)

A judge should disclose when a party, lawyer, or law office or firm that appears before the judge has or had a role in the campaign or a relationship to judge. (Advisory Com. com. foll. canon 3E(2)(b).) For example, a judge should disclose if the party, lawyer, or members of the law office or firm participated in canvassing, phone banking, or provided other volunteer services. Relatedly, if a party, lawyer, or law office or firm has or had a relationship to the judge or the judge's campaign and the judge determines such relationship does not necessitate disqualification, the judge should still disclose. (*Ibid.* [canon 3E(2)(b)'s disclosure requirements do not eliminate a judge's obligation to disqualify pursuant to § 170.1].)

Finally, any monetary or in-kind contribution or other campaign-related assistance that would necessitate disclosure if made by a party, lawyer, or law office or firm should also be disclosed if made by a witness in a proceeding where the judge will evaluate the witness's credibility, such as a bench trial. A reasonable person aware of the witness's contribution or campaign-related assistance could find that a judge lacked impartiality when evaluating witness's credibility. (Cal. Judges Assn., Jud. Ethics Com., Advisory Opn. No. 48, *supra*, at p. 6.)

### **C. What Information to Disclose**

A judge must disclose certain information regarding a campaign contribution and the contributor as required by canon 3E(2)(b) and section 170.1, subdivision (a)(9)(C).

Canon 3E(2)(b) sets forth all of a judge's ethical obligations regarding campaign contribution disclosures in trial court elections. It is divided into three subparagraphs: subparagraph (i) sets forth the contribution amount that creates a disclosure obligation — \$100 or more — and the information that a judge must disclose. (Canon 3E(2)(b)(i).) Subparagraph (ii) sets forth the manner of a judge's disclosure. (Canon 3E(2)(b)(ii).) Subparagraph (iii) sets forth the timing of the disclosure, including when the disclosure obligation begins and for how long a judge must continue to make campaign contribution disclosures. (Canon 3E(2)(b)(iii).)

Relevant here, subparagraph (i) states that where a judge receives a campaign contribution or loan of \$100 or more from a party, lawyer, or law office or firm, the judge must disclose: (1) the name of the contributor or lender; (2) the amount of each contribution or loan; (3) the cumulative amount of the contributor's contributions or lender's loans; and (4) the date of each contribution or loan. (Canon 3E(2)(b)(i).)

Section 170.1, subdivision (a)(9)(C) also sets forth obligations regarding campaign contribution disclosures, stating that “[t]he judge shall disclose any contribution from a party or lawyer in a matter that is before the court that is required to be reported under subdivision (f) of Section 84211 of the Government Code, even if the amount would not require disqualification under this paragraph. The manner of disclosure shall be the same as that provided in Canon 3E of the Code of Judicial Ethics.”

Government Code section 84211, subdivision (f), cited in section 170.1, subdivision (a)(9)(C), sets forth the information that must be disclosed in a candidate's campaign statement pursuant to the Political Reform Act of 1974. It requires that if the cumulative amount of contributions or loans received from a person is \$100 or more and received during the period covered by the campaign statement, the campaign statement must include: (1) the contributor's full name; (2) the contributor's street address; (3) the contributor's occupation; (4) the name of his or her employer, or if self-employed, the name of the business; (5) the date and amount received for each contribution during the

period covered by the campaign statement and whether the contribution was a monetary contribution, in-kind contribution of goods or services, or a loan; and (6) the cumulative amount of contributions. (Gov. Code, § 84211, subd. (f).)

As is apparent, Government Code section 84211, subdivision (f) requires a candidate to disclose more information in a campaign statement than a judge is required to disclose pursuant to canon 3E(2)(b)(i). This difference requires a determination of whether the reference to Government Code section 84211, subdivision (f) in section 170.1, subdivision (a)(9)(C) requires that a judge disclose all of the information that must be reported in a campaign statement or whether the reference is only to express that campaign contributions of \$100 or more must be disclosed. Taking into account the statutory language and construction of section 170.1, subdivision (a)(9)(C), the timing of the amendments to this section and canon 3E(2)(b), and the purpose of campaign contribution disclosure, it is the committee's view that a judge is only required to disclose the items listed in canon 3E(2)(b)(i) to comply with section 170.1, subdivision (a)(9)(C).

The first sentence of section 170.1, subdivision (a)(9)(C) requires that a judge “disclose *any contribution* from a party or lawyer in a matter that is before the court that is required to be reported under” Government Code section 84211, subdivision (f). (Italics added.) The second sentence of section 170.1, subdivision (a)(9)(C) requires that “[*t*]he *manner of the disclosure* shall be the same as” canon 3E. (Italics added.) As organized, the reference to Government Code section 84211, subdivision (f) in the first sentence defines the contributions which must be disclosed, those that are \$100 or more, and not the details of the contribution itself. (§ 170.1, subd. (a)(9)(C).) The reference to canon 3E in the second sentence establishes that the canon controls the manner of disclosure, which encompasses all the details of the campaign contribution disclosure including the information that a judge must disclose. (*Ibid.*; canon 3E(2)(b)(i)) [titled “Information required to be disclosed”].) The timing of the amendments to section 170.1 that added subdivision (a)(9) and to canon 3E(2), and the intent of campaign contribution disclosure, further support the committee's view that only the information listed in canon 3E(2)(b)(i) must be disclosed.

In 2009, the California Judicial Council's Commission for Impartial Courts recommended mandatory disclosure of any campaign contribution of \$100 or more in an effort to enhance public trust and confidence in an impartial judiciary without imposing campaign contribution limits. (Jud. Council of Cal., Com. for Impartial Courts, Final Report: Recommendations for Safeguarding Judicial Quality, Impartiality, and Accountability in California (Dec. 2009) pp. 32-34.) The Legislature responded to this report and other concerns regarding campaign spending and judicial impartiality by adopting section 170.1, subdivision (a)(9), establishing mandatory disqualification and disclosure obligations based on certain campaign contributions, effective January 1, 2011. (Assem. Com. on Judiciary, Synopsis of Assem. Bill No. 2487 (2009-2010 Reg. Sess.) as amended Apr. 20, 2010, pp. 1, 3-7.) Although not made explicit in the statute's legislative history, it appears that the Legislature intended that the details of a campaign contribution disclosure, including what information a judge must disclose, and how, when, and for how long to make a disclosure, would be addressed by subsequent amendments to canon 3E. This is supported by both the reference to canon 3E in section 170.1, subdivision (a)(9)(C) and the fact that shortly after the amendments were adopted, the Supreme Court Advisory Committee on the Code of Judicial Ethics proposed canon 3E(2)(b) "to effectuate Code of Civil Procedure section 170.1(a)(9)(C)." (Sup. Ct. Advisory Com. on the Code of Jud. Ethics, Invitation to Comment No. SP11-08 (2011) pp. 14-15; Sup. Ct. Advisory Com. on the Code of Jud. Ethics, Invitation to Comment No. SP12-01 (2012) pp. 1-2.) Canon 3E(2)(b) was adopted by the California Supreme Court, effective January 1, 2013.

Requiring disclosure of a contributor's address, occupation, and employer in all circumstances, as required by Government Code section 84211, subdivision (f), would also do little to advance public trust and confidence in an impartial judiciary. In most instances, it will be sufficient for a party to know that the opposing party, lawyer, or law office or firm contributed to the judge's campaign and the amounts and dates of any contributions. In those instances where a contributor's address, occupation, or employer would be relevant to the question of disqualification, a judge is still obligated to make a

disclosure. (Canon 3E(2)(a) [a judge shall disclose information that is reasonably relevant to the question of disqualification under § 170.1].) For example, if a lawyer appearing before a judge made a campaign contribution of \$100 or more and other lawyers in the same law firm also made significant contributions to the judge's campaign, disclosure of the lawyer's employer could be relevant to the question of disqualification because it would assist a party in knowing the total amount of contributions from a particular law firm. (CJEO Formal Opinion 2013-003 (2013), *supra*, at p. 11 [a judge who receives contributions from multiple individuals from the same law firm must determine whether a person aware of the aggregated contributions would reasonably entertain doubts concerning the judge's impartiality].)

Therefore, based on section 170.1, subdivision (a)(9)(C)'s plain language and construction, the timing of the amendments, and the purpose of campaign contribution disclosure, it is the committee's view that compliance with section 170.1, subdivision (a)(9)(C) does not require that a judge always disclose a contributor's address, occupation, or employer as required by Government Code section 84211, subdivision (f). To comply with section 170.1, subdivision (a)(9)(C) and canon 3E(2)(b)(i), the judge must disclose the following information:

- the contributor's or lender's full name;
- the amount of each contribution or loan;
- the date of each contribution or loan; and
- the cumulative amount of the contributor's contributions or lender's loans.

(Canon 3E(2)(b)(i).)

A judge is still required to disclose any other information that may be relevant to the question of disqualification. (Canon 3E(2)(a); § 170.1, subd. (a)(6)(A)(iii) [disqualification is required where a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial].) This may include information outside of this list and, in particular, information related to non-monetary campaign assistance. For example, if a judge receives or received volunteer assistance from a party

or lawyer appearing before the judge, the time commitment and type of work provided would be relevant to the question of disqualification and should be disclosed.

**D. How to Disclose**

A judge has discretion to select the manner of disclosure so long as the judge follows two requirements. (Canon 3E(2)(b)(ii); § 170.1, subd. (a)(9)(C) [the manner of disclosure shall be the same as canon 3E].) First, a judge must make the campaign contribution disclosure on the record to the parties and lawyers appearing in the matter. (Canon 3E(2)(b)(ii); CJEO Formal Opinion 2013-002 (2013), *Disclosure on the Record When There is no Court Reporter or Electronic Record of the Proceedings*, Cal. Supreme Ct. Com. Jud. Ethics Opns., pp. 8-9 [a judge may make an on the record disclosure orally in open court when there is a court reporter or an electronic recording of the proceeding, but if a court reporter or electronic recording is unavailable, the judge must ensure that any disclosures become a part of the written record of the proceeding].) Second, when making the disclosure, the judge must avoid the appearance that he or she is soliciting campaign contributions. (Canon 3E(2)(b)(ii).)

When selecting the appropriate manner of disclosure, a judge should also consider the purpose of disclosure – to provide transparency and to promote public confidence in the independence and impartiality of the judiciary. (*Public Admonishment of Judge Walsh* (2016) p. 3 [failure to disclose campaign contributions can give rise to public distrust in the independence and impartiality of the judiciary]; *Public Admonishment of Judge Brehmer* (2012) p. 4 [the integrity of the judicial campaign process and the judiciary is harmed when the public is deprived of information regarding sources of campaign contributions and amounts of campaign expenditures].) The disclosure should be effective and efficient, and provide the parties and lawyers with easy access to the information. (Advisory Com. com. foll. canon 3E(2)(b); Rothman, *supra*, at § 7:56, p. 474 [the theme of canon 3E(2)(b) is to require robust and effective disclosure of campaign contributions].)

With these purposes in mind, it is the committee's view that, if all of the parties and lawyers are present, the most transparent, effective, and efficient way to make a

disclosure is for the judge to state the required information orally and on the record. In some instances, however, the circumstances may make an oral disclosure impracticable, such as the number of parties and lawyers in a particular matter, the absence of some of the parties or lawyers from court, or the court's calendar. The Advisory Committee commentary following canon 3E(2)(b) provides useful examples of appropriate manners of disclosure in these circumstances.

Where an oral disclosure is impracticable, it may be appropriate for a judge to provide the parties and lawyers with the required information another way. If all or some of the parties are not present in court, a judge may disclose the campaign contribution in a written minute order or in the official court minutes and notify the parties and the lawyers of the written disclosure. (Advisory Com. com. foll. canon 3E(2)(b).) Or, a judge may state orally on the record in open court that the parties and lawyers may obtain the required contribution information at an easily accessible location in the courthouse, and provide an opportunity for the parties and lawyers to review the available information. (*Ibid.*) The fact that campaign contribution information is available at an accessible location in the courthouse does not negate a judge's obligation to be aware of campaign contributions that are relevant to the particular matter. The committee acknowledges that the sheer number of contributions may make it difficult for a judge to track the identity of the contributors and the amounts contributed. Still, a judge has an ethical obligation to be aware of these contributions and how they may be relevant to a proceeding to ensure that the contributions themselves or the contributions coupled with other factors would not require the judge to disqualify. (Canon 3E(2); § 170.1, subd. (a)(6)(A).)

The committee further advises that during the campaign, a judge should make continuing on-the-record disclosures to the parties and lawyers in the matter, as the judge may receive ongoing campaign contributions from previous and new contributors that are relevant to the matter. By reminding the parties and lawyers on the record that the judge has received additional campaign contributions and providing the parties with an opportunity to review new campaign contributions, the judge continues to promote



transparency regarding his or her contributions, instilling confidence in the independence and impartiality of the judiciary.

#### **E. When and How Long to Disclose**

The disclosure obligation begins one week after receipt of the first campaign contribution. (Canon 3E(2)(b)(iii).) During an active campaign, a judge should disclose a campaign contribution at the earliest reasonable opportunity after receiving a contribution or loan. (*Ibid.*) The committee advises that, in most circumstances, if a judge reviews his or her campaign contributions on a weekly basis and makes relevant disclosures, the judge fulfills this requirement. An additional disclosure should occur each time a judge receives an additional contribution from a party or lawyer appearing before the judge.

Once the campaign ends, the disclosure obligation endures for two years after the judge takes the oath of office or from the date of the contribution or loan, whichever is later. (Canon 3E(2)(b)(iii).) The two-year timeframe mandated by canon 3E(2)(b)(iii) is the minimum duration of disclosure required by the canons. If a campaign contribution by a party or lawyer appearing before the judge remains relevant to the question of disqualification and if a person aware of the contribution could reasonably have doubts regarding the judge's impartiality the judge should continue to disclose the contribution. (Canon 3E(2)(a); § 170.1, subd. (a)(6)(A)(iii).)

#### **V. Conclusion**

A judge should be familiar with the kinds of campaign contributions the judge receives, the amounts and dates of the contributions, and basic knowledge related to the contributor. A judge should also be aware of other campaign-related assistance that may require disclosure. Ultimately, the information disclosed and the manner of disclosure should avoid an appearance that the judge is soliciting additional campaign contributions, provide transparency regarding campaign contributions or campaign-related assistance, and promote public confidence in both the integrity of the judge's campaign and the

judge's impartiality in the matter before him or her, even where a party, lawyer, law office or firm may have contributed to the judge's campaign.



*This opinion is advisory only (Cal. Rules of Court, rule 9.80(a), (e); Cal. 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).)*