



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

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CJEO Oral Advice Summary 2016-019

[Issued December 9, 2016; Updated July 14, 2017]

**ACCEPTING COMPENSATION FOR PERFORMING A MARRIAGE AFTER
JULY 10, 2017**

Oral Advice Update: The oral advice summarized below has been superseded by a subsequent amendment to Family Code section 400 that became effective July 10, 2017. The most recent amendment eliminates the inconsistency with the Code of Judicial Ethics and Penal Code section 94.5, discussed in the oral advice below, and reauthorizes judicial officers in California to accept reasonable compensation for performing marriages on a Saturday, Sunday, or legal holiday. Accordingly, the committee's updated conclusion is that after July 10, 2017, judges may again accept compensation for performing marriages on the weekends or holidays.

[Original Oral Advice Summary]

**ACCEPTING COMPENSATION FOR PERFORMING A MARRIAGE AFTER
JANUARY 1, 2016**

I. Question

May judges continue to accept compensation for performing marriages on weekends and holidays?

II. Oral Advice Provided

Beginning in 2017, judicial officers will be prohibited by law from accepting compensation for solemnizing a marriage. The Legislature recently amended Family Code section 400 to expand the category of those who may perform marriages to include former elected officials, and in doing so, prohibited acceptance of compensation by all those authorized to perform such services. (Fam. Code, § 400, subs. (b)(1) & (2), (c).) This amendment is effective January 1, 2017.

California judges have long been authorized by Family Code section 400 to perform marriages; however, the amendment prohibiting acceptance of compensation is new and conflicts with another statute and the California Code of Judicial Ethics when applied to judicial officers. Canon 4H provides that judges “may receive compensation and reimbursement of expenses as provided by law” for permitted extrajudicial activities. Canon 4H(3) permits judges to accept “fees or other things of value received pursuant to Penal Code section 94.5 for performance of a marriage.” Penal Code section 94.5, which was not simultaneously amended by the Legislature, permits acceptance of a fee by judicial officers for performance of a marriage on a Saturday, Sunday, or legal holiday. Thus, the newly enacted Family Code prohibition on accepting fees is inconsistent with canon 4H and Penal Code section 94.5, and with long-standing practices under those laws. (Com. on Jud. Performance,

Annual Rep. (1992) advisory letter no. 11, p. 14 [judge disciplined for accepting a gift following performance of a wedding on a weekday in violation of Pen. Code, § 94.5]; Rothman, Cal. Judicial Conduct Handbook (2013 Supp.) appen. 13, p. 1 [judges may accept a fee for performing a marriage Saturday, Sunday, or a legal holiday]; Cal. Judges Assn., Formal Opinion No. 5 (1951) pp. 1-2 [acceptance by a judge of a gratuity for the performance of marriage does not violate any constitutional provision or statute]; Cal. Judges Assn., Judicial Ethics Update (1982) par. III.D., p. 4 [a judge may accept a gratuity for the performance of a marriage ceremony on a Saturday, Sunday, or legal holiday].)

In the face of these inconsistencies, judicial officers must nonetheless comply with all statutory law. (Cal. Code Jud. Ethics, canon 2 [a judge shall respect and comply with the law]; *id.*, preamble [canons are to be applied in conformance with constitutional requirements, statutes, other court rules, and decisional law]; *id.*, terminology [“law” means constitutional provisions, statutes, court rules, and decisional law].) Although the Family Code amendment prohibits conduct expressly permitted by the California Code of Judicial Ethics and the Penal Code, judges must comply with the Family Code until such time as it or other laws are conformed.¹ This means that beginning in 2017, judges may no longer accept compensation for solemnizing a marriage while holding office.



This oral advice summary is advisory only (Cal. Rules of Court, rule 9.80(a), (e); Cal. Com. Jud. Ethics Opns., Internal Operating Rules & Proc. (CJEO) rule 1(a), (b)). It is based on

¹ The committee is authorized to provide ethics advice about whether specific judicial conduct would violate the Code of Judicial Ethics or other statutes. (Cal. Rules of Court, rule 9.80 (e).) It is not authorized to provide decisional law reconciling statutory inconsistencies, harmonizing conflicting enactments, or interpreting intended application and enforcement. (See *State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 960 [doctrines regarding judicial interpretation of conflicting statutes hold that later enactments supersede earlier enactments, except that more specific provisions take precedence over more general provisions regardless of when enacted].)

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)).