



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

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CJEO Oral Advice Summary 2017-021

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**DISQUALIFICATION FOR ACQUAINTANCE WITH LEADERS OF AN
AMICUS CURIAE**

I. Question

Does an appellate justice have disqualification obligations when the justice is an acquaintance of leading members of associations that have filed an amicus curiae brief in a matter being heard by the justice?

The question is asked by an appellate justice hearing an appeal in which an amicus curiae brief was filed on behalf of multiple associations. The justice is not a member of any association but was acquainted with leaders of the associations through professional activities approximately four to five years before becoming a judicial officer. The

justice's acquaintance with the leaders was limited to greetings at events and an occasional lunch but nothing more personal and nothing within the last 2 years.

II. Oral Advice Provided

The justice has discretion to decline to disqualify. The Code of Judicial Ethics obligates an appellate justice to make a discretionary decision to disqualify if the circumstances are such that a reasonable person aware of the facts would doubt the justice's ability to be impartial. (Cal. Code Jud. Ethics, canon 3E(4)(c).)

In appellate proceedings, an *amicus curiae* is not a party to the action, but rather a person or entity that applies for permission to file a brief to assist the court in deciding the matter. (Cal. Rules of Court, rule 8.200(c); *In re Veterans' Industries, Inc.* (1970) 8 Cal. App. 3d 902, 916 [not being a party to the action, an *amicus curiae* has limited powers and no right to appeal where its views are ignored].) Thus, the committee concluded in CJEO Oral Advice Summary 2014-005 that a reasonable person would not doubt a justice's ability to be impartial in deciding *the interests of the parties* in circumstances where the justice was a member of an organization that had filed an *amicus* brief. (CJEO Oral Advice Summary 2014-005, *Disqualification for Membership in an Amicus Curiae*, Cal. Supreme Ct., Com. Jud. Ethics Opns., p. 3.)

A similar conclusion applies in the circumstances of a justice's acquaintance with members or leaders of an association that has filed an *amicus curiae* brief. (Rothman, Cal. Judicial Conduct Handbook (3d ed. 2007) § 7.51, p. 356 [disqualification not required for mere acquaintanceship, but moves closer to being required for social relationships within the inner circle of the judge's intimate friends].) Here, greetings at events and lunches that occurred over two years ago with individuals the justice knew

professionally before taking the bench are not social relationships that would otherwise cause reasonable doubt as to impartiality.

The committee advises that the justice may decline to disqualify. Because appellate justices are not obligated to make disclosures, the justice also has the discretion to decide whether or not to disclose the acquaintance with amicus leaders. (Rothman, *supra*, § 7.73, p. 382, § 7.90, p. 389).



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 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)).