



**CALIFORNIA SUPREME COURT  
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**CJEO Oral Advice Summary 2018-026**

*[Issued November 2, 2018]*

**SOLICITING ENDORSEMENTS FROM TRIAL COURT JUDGES FOR OTHER  
APPELLATE COURT JUSTICES SUBJECT TO RETENTION ELECTIONS**

**I. Question Presented:**

May a presiding justice (PJ) of a Court of Appeal contact superior court presiding judges within the PJ's appellate district to solicit campaign endorsements for other appellate court justices facing retention elections. When soliciting the presiding judges, the PJ also intends to ask each presiding judge to solicit endorsements from every judge on the presiding judge's trial court on behalf of the justices seeking retention.

## II. Oral Advice Provided:

Subject to certain restrictions, canon 5B(4) of the California Code of Judicial Ethics<sup>1</sup> permits a judge to solicit campaign contributions or endorsements for his or her own campaign and on behalf of other judges and attorneys who are candidates for judicial office. Judges are uniquely knowledgeable about the necessary and ideal qualifications of a judge based on their own experience on the bench. Judges also have particular knowledge about the qualifications of certain judicial candidates based on their personal experience as colleagues or from participating in review of their work. (Advisory Com. com. foll. canon 5A [judges are in a unique position to know the qualifications necessary to serve as a competent judicial officer].) Based on a judge's unique position to evaluate candidates, the judiciary and public benefit when a judge endorses a qualified candidate. Moreover, if a judge who is already endorsing a candidate based on the candidate's qualifications can solicit and obtain additional endorsements from other judges who similarly believe the candidate is well qualified, there is a greater likelihood that a highly qualified candidate will be retained or elected. Electing or retaining highly qualified judges promotes the integrity of and public confidence in the judiciary. (Canon 1 [an honorable judiciary is indispensable to justice in our society].)

There is a blanket prohibition on certain campaign-related solicitations, as well as two additional limitations a judge must consider. A judge is prohibited from soliciting campaign contributions or endorsements from certain subordinate judicial officers<sup>2</sup> or from California state court personnel in all circumstances. (Canon 5B(4).) When soliciting campaign endorsements from anyone else, including other judges, a judge may not use the prestige of judicial office in a manner that would reasonably be perceived as coercive and the solicitation must conform to the other obligations within the code, including that any such activity promote judicial independence, integrity, and impartiality. (Canons 2A [judges must act at all times in a

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

<sup>2</sup> Specifically, canon 5B(4) prohibits solicitation of campaign endorsements from California state court commissioners, referees, court-appointed arbitrators, hearing officers, and retired judges serving in the Assigned Judges Program.

manner that promotes public confidence in the integrity and impartiality of the judiciary], 2B(1) [judges must not convey that any individual is in a special position of influence], 3 [judicial duties must take precedence over all other activities], 5 [judicial independence, impartiality, and integrity must dictate the conduct of judges engaged in political activity].)

There is a risk that anyone a judge solicits for a campaign endorsement will feel obligated to make the endorsement, regardless of whether the request is made by the judicial candidate or on behalf of the judicial candidate. This risk may be greater and there may be a perception of coercion when the soliciting judge is in a position of influence or control over the person being solicited. For this reason, canon 5B(4) prohibits judges from soliciting campaign endorsements from certain subordinate judicial officers and court staff in all circumstances. (Advisory Com., Invitation to Comment SP18-08 (2018) p. 3 [a court employee or subordinate judicial officer would likely feel pressure to endorse a judge's campaign].) The concerns that justify this blanket prohibition on soliciting certain subordinate judicial officers and court staff do not similarly support a blanket prohibition on appellate court justices soliciting trial court judges. The relationship between an appellate court justice and a trial court judge differs from the relationship between a judge and a subordinate judicial officer or other court staff. Appellate court justices do not supervise the work of trial court judges in an employer-employee context. They do not have influence or control over trial court judges in the manner that trial court judges may control subordinate judicial officers and court staff. As such, a blanket prohibition is not justified.

Any judicial officer soliciting an endorsement must also consider the other two limitations on solicitation of campaign endorsements; whether the particular solicitation creates a perception of coercion and whether it could cause doubts regarding judicial independence, integrity, or impartiality. Both these concerns are heightened in the narrower question of whether a PJ may solicit campaign endorsements from trial court presiding judges in the PJ's district, especially where the solicitation also requests the presiding judges to solicit endorsements from other judges on the presiding judge's court.

A PJ has additional supervisory responsibilities related to the court. (See, e.g., canon 3C(4) [a judge with supervisory authority shall take reasonable measures to ensure other judges

properly perform their judicial responsibilities].) At a minimum, these responsibilities demonstrate that the PJ is in a leadership position and creates a perception that any request by the PJ will be seriously considered and most likely followed by other justices and trial court judges, including presiding judges. Therefore, a PJ should be cognizant of his or her heightened leadership position when soliciting endorsements to avoid the perception that the solicited judge was coerced to make an endorsement based on the PJ's position within the court.

The PJ should also consider whether the proposed solicitation could create doubts regarding the independence, integrity, or impartiality of the judiciary. (Canon 1 [a judge shall uphold the integrity and independence of the judiciary].) Appellate courts oversee trial court decisions, and a trial court judge may have a case that is pending review by the appellate court justice soliciting an endorsement. If an appellate court justice solicits an endorsement for his or her own campaign or for another candidate for judicial office while actively reviewing the trial court judge's decision, a reasonable person aware of this fact could doubt the justice's capacity to be impartial in that matter. (Canon 3E(4)(c) [disqualification required in circumstances where a reasonable person aware of the facts would doubt a justice's ability to be impartial].) These concerns of impartiality are again compounded when the solicitation is made by a PJ who has supervisory authority over all of the cases within his or her appellate district or division.

The proposed mass solicitation by the PJ to every trial court presiding judge to endorse the justices seeking retention with the additional request that the presiding judge solicit every trial court judge on the PJ's behalf heightens the concerns of coercion and impartiality to a degree that is impermissible. Looking at the solicitation from the perspective of the solicited trial court judge or a reasonable person aware of the solicitation, the solicitation is from a presiding judge, the solicitation seeks an endorsement of every appellate court justice facing a retention election, and the solicitation originally came from the PJ on behalf of those justices. Also, the solicitation asks for an endorsement of each justice seeking retention without evaluating a justice's individual qualifications. The proposed mass solicitation uses the prestige of the PJ's office in a manner that would reasonably be perceived as coercive and is prohibited by canon 5B(4). It would also result in an overall decrease in the perceptions of judicial independence, integrity, and impartiality.



*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)).*