



**CALIFORNIA SUPREME COURT
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CJEO Oral Advice Summary 2019-028

[Posted February 14, 2019]

**SERVICE ON A CIVIL LIBERTIES PROGRAM
ADVISORY PANEL FOR THE STATE LIBRARY**

I. Question:

Does the California Code of Judicial Ethics permit an Associate Justice of the California Court of Appeal to accept appointment by the Governor to serve on an advisory panel for the California State Library (State Library)?¹ The appointment will be to an advisory panel for the California Civil Liberties Public Education Program (Civil Liberties Program), which is a state-

¹ Limited identifying information is included in this oral advice summary because confidentiality has been waived by the requesting party. (Cal. Rules of Court, rule 9.80(h)(3); Cal. Supreme Ct. Com. Jud. Ethics Opns., Internal Operating Rules & Proc., rule 5(e).)

funded grant program to sponsor educational projects about the internment of Japanese Americans during World War II, as well as other civil rights violations and injustices perpetrated on the basis of race, national origin, immigration status, religion, gender, or sexual orientation. The Civil Liberties Program also sponsors the development of public educational activities and materials to ensure that the events surrounding the internment of Japanese Americans during World War II will be remembered, illuminated, and understood.

II. Oral Advice Provided:

As the Supreme Court Committee on Judicial Ethics Opinions (CJEO) has concluded in the past, the question of whether an appellate justice may serve in an advisory capacity to another branch of government raises both legal issues under the California Constitution and ethical issues under the California Code of Judicial Ethics.² (CJEO Oral Advice Summary 2015-010 (2015), *Service by an Appellate Justice as a Compliance Officer*, Cal. Supreme Ct. Com. Jud. Ethics Opns., p. 1.) CJEO has no authority to provide legal advice and declines to do so. (*Id.* at pp. 1-2.) It is the responsibility of an appellate justice requesting ethical advice from CJEO to independently determine the legal question of whether simultaneous service is permissible under article 7, sections 7 and 17, of the California Constitution. (CJEO Oral Advice Summary 2015-010, *supra*, at pp. 1-2.)

Assuming for the purposes of this opinion that there are no constitutional impediments, the question is whether the code permits an appellate justice to serve by gubernatorial appointment on an advisory panel for the State Library, where the purpose of the panel is to make recommendations to the State Library regarding grants to develop programs to educate the public about the internment of Japanese American citizens during World War II.

The code makes clear that judicial officers may engage in extrajudicial activities, including pursuits in civic organizations dedicated to the law, the legal system, or the administration of justice. (Canon 4B [judges may participate in activities concerning legal subjects that are

² All further references to the code, canons, or advisory committee commentary are to the California Code of Judicial Ethics unless otherwise indicated.

consistent with the requirements of the code]; canon 4C(1) [judges may appear before or officially consult with the a legislative body on matters concerning the law, the legal system, or the administration of justice]; canon 4C(3)(a) [judges may serve as a nonlegal advisor to an organization devoted to the improvement of the law, the legal system, or the administration of justice]; canon 4C(3)(b) [judges may serve as a nonlegal advisor to a nonprofit charitable or civic organization].)

The code's encouragement of extrajudicial activities related to the law, the legal system, and the administration of justice is also present in exceptions to restrictions on governmental appointments and consultations. (Canon 4C(1) [consulting with an executive or legislative body prohibited except on matters concerning the law, the legal system or the administration of justice]; canon 4C(2) [appointment prohibited to a governmental committee or position concerned with issues of fact or policy on matters other than the law, the legal system, or the administration of justice].)

It is clear that gubernatorial appointment to the Civil Liberties Program advisory panel is an extrajudicial activity involving the law, the legal system, and the administration of justice. The advisory panel was legislatively established to make recommendations regarding grants to educate and inform the public about civil rights violations and civil liberties injustices perpetrated on the basis of race, national origin, immigration status, religion, gender, or sexual orientation as well as the internment of Japanese Americans during World War II. (Ed. Code § 13015(c).) These goals not only involve the law and the administration of justice, they are also in accord with similar goals in the code. (Canon 2C [judicial membership prohibited in organizations that invidiously discriminate on the basis of race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, or sexual orientation].)

Thus, acceptance of the appointment is permissible under the code, which also requires the appellate justice to continually assess the appropriateness of ongoing service. (Advisory Com. com., foll. canon 4C(3)(c) [it is necessary for judicial officers to regularly examine the activities of organizations they serve due to the changing nature of some organizations and their relationship to the law].) Those considerations generally include whether the permissible activity might nonetheless detract from the dignity of office (canon 1), reflect adversely on the

justice's impartiality (canons 1 & 2), commit the justice with respect to the outcome of cases (canon 2A), interfere with the performance of duties (canon 3A), comment on pending or impending cases (canon 3B(9)), or lead to frequent disqualification (canon 4A(4)). (Cal. Code Jud. Ethics, Terminology, "Law, the legal system, or the administration of justice.")

In the case of this advisory panel, CJEO does not believe service would lead to frequent disqualification because a person aware of the educational activities of the Civil Liberties Program would have no reason to doubt the justice's impartiality or independence in appellate matters generally. As such, continued service would not be precluded unless the justice makes disqualification decisions related to advisory panel activities in specific appellate matters before the justice. (*Kaufman v. Court of Appeal* (1982) 31 Cal.3d 933, 937-940 [each appellate justice decides whether the facts require recusal, subject only to higher court review for bias or unfairness in the appellate proceedings].)

In sum, accepting appointment by the Governor to serve on an advisory panel for the Civil Liberties Program is permissible under the Code of Judicial Ethics so long as the appointed appellate justice determines on a continuing basis that serving is otherwise consistent with the obligations of judicial office.



This oral advice summary 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 summary 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).)