



California Supreme Court Committee on Judicial Ethics Opinions

350 McAllister Street, San Francisco, California 94102-3688

www.JudicialEthicsOpinions.ca.gov

INVITATION TO COMMENT

[CJEO Draft Formal Opinion 2022-019]

Title

Committee on Judicial Ethics Opinions
Draft Formal Opinion 2022-019;
Disqualification and Disclosure Obligations
When Coaching Youth Sports

Action Requested

Review and submit comments by
August 1, 2022

Proposed Date of Adoption or Other Action

To be determined

Prepared by

California Supreme Court Committee on
Judicial Ethics Opinions
Hon. Ronald B. Robie, Chair

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Summary

The California Supreme Court Committee on Judicial Ethics Opinions (CJEO) has adopted a draft formal opinion and approved it for posting and public comment pursuant to California Rules of Court, rule 9.80(j), and CJEO Internal Operating Rules and Procedures, rule 7(d). ([Rule 9.80](#); [CJEO Rules](#).) The public is invited to comment on the draft opinion before the committee considers adoption of an opinion in final form, or other action.

CJEO Draft Formal Opinion 2022-019 provides guidance on the disqualification and disclosure obligations of a trial court judge who coaches a youth sports team on which the child of an attorney appearing before the judge plays.

CJEO Draft Formal Opinion 2022-019 has been approved by the committee for posting and public comment but has not been adopted by the committee in final form. The attached draft opinion is circulated for comment purposes only

After receiving and reviewing comments, the committee will decide whether the draft opinion should be published in its original form, modified, or formally withdrawn. (Rule 9.80(j)(2); CJEO rule 7(d)). Comments are due by **August 1, 2022** and may be submitted as described below.

Comments submitted to the committee are not considered to be confidential communications and may be posted on the CJEO website for public review at the committee's discretion. (Rule 9.80(h)(1) & (4).) Any comments that are intended for review by the committee members only must be clearly identified as confidential and will not be posted for public review. All comments the committee receives will be carefully considered by the CJEO members when taking final action on an opinion, which may include approving the opinion as drafted, approving a revised opinion for publication, or formally withdrawing the draft opinion. (Rule 9.80(j)(2).)

CJEO Background

The Committee on Judicial Ethics Opinions was established by the California Supreme Court to provide judicial ethics advisory opinions on topics of interest to the judiciary, judicial officers, candidates for judicial office, and members of the public. (Rule 9.80(a); CJEO rule 1(a).) In providing its opinions and advice, the committee acts independently of the Supreme Court, the Commission on Judicial Performance, the Judicial Council, and all other entities. (Rule 9.80(b); CJEO rule 1(a).) The committee is authorized to issue formal written opinions, informal written opinions, and expedited advice on proper judicial conduct under the California Code of Judicial Ethics, the California Constitution, statutes, rules, the decisions of the Supreme Court and the Commission on Judicial Performance, and other relevant sources. (Rule 9.80(e)(1); CJEO rule 1(b)(1).)

The Draft Opinion

The committee has been asked to provide an opinion about the disqualification and disclosure obligations of a trial court judge who coaches a youth sports team on which the child of an attorney appearing before the judge plays and, if disclosure is required, what facts must be disclosed and how the judge should make the disclosure to mitigate potential security risks to the judge, the attorney, or the attorney's child arising from the disclosure.

In the attached draft opinion, the committee concludes that a trial court judge who volunteers as a coach for a youth sports team is not required to disqualify when an attorney with a child on the judge's team appears on a matter before the court unless other facts exist or arise that would cause a person aware of the facts to reasonably doubt the judge's ability to be impartial. If disqualification is not required, the judge must disclose on the record information reasonably relevant to the judge's decision not to disqualify.

CJEO Draft Formal Opinion 2022-019 has been approved by the committee for posting and public comment but has not been adopted by the committee in final form. The attached draft opinion is circulated for comment purposes only.

The opinion provides an approach for a trial judge who coaches youth sports to use in determining whether disqualification or disclosure is necessary in a particular case. When an attorney whose child plays on a team coached by the judge appears before the court, the judge must first determine whether mandatory or discretionary disqualification is required pursuant to the Code of Judicial Ethics and the California Code of Civil Procedure. Importantly, the judge must engage in an objective analysis of whether discretionary disqualification is appropriate because a person aware of the facts would reasonably doubt the judge's ability to be impartial in the case. If the judge concludes that disqualification is not required, the judge must nonetheless disclose on the record information that is reasonably relevant to the judge's determination not to disqualify. The disclosure may be tailored to avoid potential security concerns and the judge may consult with court administrators to address any unique circumstances regarding safety.

Invitation to Comment

The committee invites comment on the attached draft opinion by **August 1, 2022**. Comments may be submitted:

- [online](#);
- by email to Judicial.Ethics@jud.ca.gov; or
- by mail to:

The Supreme Court of California Committee on Judicial Ethics Opinions
350 McAllister Street
San Francisco, California 94102

At the close of the comment period, or after **August 1, 2022**, the committee will post on its website all comments that are not clearly identified as confidential.

Attachment: CJEO Draft Formal Opinion 2022-019

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

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CJEO Draft Formal Opinion 2022-019

**DISQUALIFICATION AND DISCLOSURE OBLIGATIONS WHEN
COACHING YOUTH SPORTS**

I. Question

The Committee on Judicial Ethics Opinions (CJEO or committee) has been asked to provide guidance regarding: (1) the disqualification and disclosure obligations of a trial court judge who coaches a youth sports team on which the child of an attorney appearing before the judge plays; and (2) if disclosure is required, what facts must be disclosed and how the judge should make the disclosure to mitigate potential security risks to the judge, the attorney, or the attorney's child arising from the disclosure.

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II. Summary of Conclusions

A trial judge who coaches a youth sports team on which the child of an attorney plays must determine whether mandatory or discretionary disqualification is required pursuant to the Code of Judicial Ethics and the California Code of Civil Procedure¹ when the attorney appears before the court. If there is no basis for mandatory disqualification, the judge must then consider whether any of three discretionary grounds nonetheless support disqualification. Importantly, a judge must engage in an objective analysis of whether a person aware of the facts would reasonably doubt the judge's ability to be impartial in the case. If the judge concludes that disqualification is not required, the judge must disclose on the record information that is reasonably relevant to the judge's determination not to disqualify. The disclosure may be tailored to avoid potential security concerns and the judge may consult with court administrators to address any unique circumstances regarding safety.

III. Authorities

A. Applicable Canons

Canon 2B(1): "A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge."

Canon 3B(1): "A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified."

¹ All further references to the code, canons, terminology, and advisory committee commentary are to the California Code of Judicial Ethics unless otherwise indicated. All further references to the statute or the disqualification statute are to the California Code of Civil Procedure unless otherwise indicated.

Canon 3E(2)(a): “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.”

Canon 3E(4): “An appellate justice shall disqualify himself or herself in any proceeding if for any reason: (a) the justice believes his or her recusal would further the interests of justice; or (b) the justice substantially doubts his or her capacity to be impartial; or (c) the circumstances are such that a reasonable person aware of the facts would doubt the justice's ability to be impartial.”

Canon 3E(5): “Disqualification of an appellate justice is also required in the following instances: (a) The appellate justice has served as a lawyer in the pending proceeding . . . ; (b) . . . (i) a party to the proceeding, or an officer, director or trustee thereof, either was a client of the justice when the justice was engaged in the private practice of law or was a client of a lawyer with whom the justice was associated in the private practice of law; or (ii) a lawyer in the proceeding was associated with the justice in the private practice of law; (c) The appellate justice represented a public officer or entity and personally advised or in any way represented that officer or entity concerning the factual or legal issues in the present proceeding in which the public officer or entity now appears; (d) The appellate justice, his or her spouse or registered domestic partner, or a minor child residing in the household, has a financial interest or is either a fiduciary who has a financial interest in the proceeding, or is a director, advisor, or other active participant in the affairs of a party. . . . ; (e) (i) The justice or his or her spouse or registered domestic partner, or a person within the third degree of relationship to either of them, or the spouse or registered domestic partner thereof, is a party or an officer, director, or trustee of a party to the proceeding, or (ii) a lawyer or spouse or registered domestic partner of a lawyer in the proceeding is the spouse, registered domestic partner, former spouse, former registered domestic partner, child, sibling, or parent of the justice or of the justice's spouse or registered domestic partner, or such a person is associated in the private practice of law with a lawyer in the proceeding; (f) The justice (i) served as the judge before whom the proceeding was tried or heard in the lower court, (ii) has personal knowledge of disputed evidentiary facts concerning the proceeding, or (iii) has a personal bias or prejudice concerning a party or a party's lawyer;”

Canon 3E(6): “It shall not be grounds for disqualification that the justice: (a) Is or is not a member of a racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of such a group; (b) Has in any capacity expressed a view on a legal or factual issue presented in the proceeding, except as provided in Canon 3E(5)(a), (b), or (c); or (c) Has as a lawyer or public official participated in the drafting of laws or in the

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effort to pass or defeat laws, the meaning, effect, or application of which is in issue in the proceeding unless the judge believes that his or her prior involvement was so well known as to raise a reasonable doubt in the public mind as to his or her capacity to be impartial.”

B. Constitutional Provisions, Statutes, and Other Authorities

Code of Civil Procedure, section 170

Code of Civil Procedure, section 170.1, subdivision (a)(1)-(6)

Jolie v. Superior Court (2021) 66 Cal.App.5th 1025

Wechsler v. Superior Court (2014) 224 Cal.App.4th 384

United Farm Workers of America v. Superior Court (1985) 170 Cal.App.3d 97

Inquiry Concerning Wasilenko (2005) 49 Cal.4th CJP Supp. 26

CJEO Formal Opinion 2015-007 (2015), *Disqualification for Prior Appearance as a Deputy District Attorney in a Nonsubstantive Matter*, California Supreme Court Committee on Judicial Ethics Opinions

CJEO Informal Opinion Summary 2012-003 (2012), *Disqualification and Disclosure: University Representation of a Party in a Matter Before a Justice Employed by the University*, California Supreme Court Committee on Judicial Ethics Opinions

CJEO Expedited Opinion 2021-044 (2021), *Disqualification for Civics Education Activities in Matters Involving School District Mask and Vaccine Mandates*, California Supreme Court Committee on Judicial Ethics Opinions

CJEO Oral Advice Summary 2020-036 (2020), *Appellate Disqualification for Judicial Council Service in Matters Challenging COVID-19 Emergency Rules and Orders*, California Supreme Court Committee on Judicial Ethics Opinions

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

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CJEO Oral Advice Summary 2017-021 (2017), *Disqualification for Acquaintance with Leaders of an Amicus Curiae*, California Supreme Court Committee on Judicial Ethics Opinions

Rothman et al., California Judicial Conduct Handbook (4th ed. 2017) sections 1:13, 7:1, 7:65, 7:74, 7:75, Appendix G

California Judges Association, Judicial Ethics Committee Advisory Opinion No. 45 (1997)

California Judges Association, Judicial Ethics Update (Jan. 2017)

IV. Discussion

A. Introduction

Judges are encouraged to be active in their communities and coaching a youth sports team is a rewarding way to do so. A judge coaching a team and an attorney with a child on the team may establish a social relationship and if the attorney appears in court before the judge, the judge must examine whether canon 3 of the California Code of Judicial Ethics and California Code of Civil Procedure section 170.1 require disqualification on any mandatory or discretionary grounds. If the judge determines that there is no basis for disqualification, the code requires the judge to disclose on the record facts that are reasonably related to the disqualification decision. The disclosure may be tailored to meet the purposes of the disclosure rules and to guard against potential security risks.

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B. Disqualification Determination

Judges have a duty to hear all cases from which they are not disqualified.² (Canon 3B(1) [judicial officers have a duty to serve unless disqualified]; Code Civ. Proc., § 170 [trial court judges have an affirmative obligation to serve unless disqualified].) Indeed, “[t]he duty of a judge to sit where not disqualified is equally as strong as the duty not to sit when disqualified.” (CJEO Formal Opinion 2015-007 (2015), *Disqualification for Prior Appearance as a Deputy District Attorney in a Nonsubstantive Matter*, p. 5 [quoting *United Farm Workers of America v. Superior Court* (1985) 170 Cal.App.3d 97, 100].)

As the committee has previously advised, the code and statute provide mandatory and discretionary grounds for disqualification and judges must make a disqualification decision in each matter before them. (CJEO Expedited Opinion 2021-044 (2021), *Disqualification for Civics Education Activities in Matters Involving School District Mask and Vaccine Mandates*, p. 4; CJEO Oral Advice Summary 2020-036 (2020), *Appellate Disqualification for Judicial Council Service in Matters Challenging COVID-19 Emergency Rules and Orders*, p. 4.) If a judge determines that a basis for disqualification has been met, the judge must disqualify. (Code Civ. Proc., § 170.1 [trial court disqualification is required if any specified grounds are met]; Canon 3E(4)-(5) [appellate disqualification is required if any specified grounds are met].)

² The disqualification statute applies to trial court judges, but appellate justices are subject to substantially similar rules as specified in canons 3E(4), (5), and (6). (CJEO Oral Advice Summary 2018-023 (2018), *Disqualification Responsibilities of Appellate Court Justices*, p. 3 [the grounds for disqualification of appellate justices in canon 3 largely track the statutory requirements for trial judges]; Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 7:1, p. 388 [the canons governing disqualification for appellate justices parallel Code Civ. Proc., § 170.1 et seq., so appellate justices may look to analysis of the statutory rules for guidance].)

The mandatory grounds for disqualification in the statute or canons require disqualification without further balancing or consideration of circumstances. (Code Civ. Proc., § 170.1(a)(1)-(5); Canon 3E(5)(a)-(f).)³ The judge's position as a coach of a youth sports team does not require mandatory disqualification when an attorney with a child on the team appears in matters before the judge. The committee assumes that there are no additional facts that would require mandatory disqualification, such as a financial interest or personal knowledge of disputed facts in the case. Accordingly, the judge must next consider whether discretionary grounds nonetheless support disqualification.

The discretionary grounds for disqualification require a judge to make subjective and objective assessments to determine whether certain circumstances weigh against hearing a particular matter. Specifically, a judge must consider whether for any reason: (a) the judge believes that disqualification is required in the interests of justice; (b) the judge substantially doubts his or her capacity to be impartial; or (c) a person aware of the facts would reasonably doubt the judge's ability to be impartial. (Code Civ. Proc., § 170.1, subd. (a)(6)(A); Canon 3E(4)(a)–(c).) The first basis for discretionary disqualification concerns the judge's subjective belief about whether the interests of justice require disqualification in a certain case, rather than whether the judge has the capacity to fairly decide the matter. (Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) App. G, pp. 916-917 (Rothman) [a judge's good faith belief that the interests of justice require disqualification would not be questioned].) The second basis addresses actual bias and requires the judge to make a subjective determination as to

³ The specific grounds for mandatory disqualification are contained in the statute and code. (Code Civ. Proc., § 170.1, subd. (a)(1) [judge has personal knowledge of disputed facts in the case]; Code Civ. Proc., § 170.1, subd. (a)(2) [judge previously served as a lawyer, or, in certain situations, was affiliated with lawyers in the case]; Code Civ. Proc., § 170.1, subd. (a)(3) [judge has a financial interest in the outcome of the case]; Code Civ. Proc., § 170.1, subd. (a)(4) & (5) [judge is closely related to a party or lawyer in the case]; Canon 3E(5)(a)-(f).)

whether he or she can impartially decide the matter based solely on the law and the facts presented. If a judge determines that disqualification is not required on either of these subjective grounds, the judge must also consider whether a person aware of the facts would reasonably doubt the judge's ability to be impartial.

The final basis for discretionary disqualification is an objective standard that requires an analysis of whether “a fully informed, reasonable member of the public would fairly entertain doubts that the judge is impartial,” and if so, the judge must disqualify. (*Wechsler v. Superior Court* (2014) 224 Cal.App.4th 384, 391; accord, *Jolie v. Superior Court* (2021) 66 Cal.App.5th 1025, 1040-1041.) This analysis is not based on the judge's personal view of his or her impartiality, but, at the same time, the “litigants' necessarily partisan views [do] not provide the applicable frame of reference.” (*United Farmworkers, supra*, 170 Cal.App.3d 97, 104 [a judge should consider how participation in each case would appear to the “average person on the street”].) In the committee's view, discretionary disqualification is not required under this objective standard when a judge simply coaches a youth sports team that includes the child of an attorney appearing before the court because the coaching activity itself would not cause a person to reasonably doubt the judge's ability to be impartial in a case involving the attorney, primarily given the attenuated relationship between the nonlegal purpose of the judge's coaching obligation and the legal matters that come before the judge. (CJEO Informal Opinion Summary 2012-003 (2012), *Disqualification and Disclosure: University Representation of a Party in a Matter Before a Justice Employed by the University*, p. 2 [a justice need not disqualify from hearing a case in which a party was represented by a law school clinic at the university where the justice taught an undergraduate course because the link between the university and the justice was too remote and unrelated to give a person reasonably sufficient doubt as to impartiality]; Cal. Judges Assn., Ethics Opn. No. 45 (1997), *Disclosure Requirements Imposed by Canon 3E Pertaining to*

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Judicial Disqualification, pp. 4-5 [disqualification is not required based on a judge's active membership in a sports or social group with an attorney who appears before the judge]; Cal. Judges Assn., Judicial Ethics Update (Jan. 2017), p. 1 [disqualification is not required when an attorney appears before the court who coaches a sports team on which the judge's child plays].)

This conclusion could change if there were other facts demonstrating that the coaching position created a close social relationship between the judge and the attorney that would cause a person to reasonably doubt the judge's impartiality. For instance, if the attorney served as the team parent for the sports team and had close and frequent interactions with the judge regarding the team or if the families of the team members, including the attorney, regularly met for meals with the judge after team practices, a person aware of these facts might reasonably form the impression that the judge and the attorney had a more significant social relationship that would cause the judge to favor the attorney or to be in a position to be influenced by the attorney. As another example, if the attorney volunteered as an assistant coach for the judge's sports team or provided uniforms or other sports gear as a team sponsor, a person might reasonably believe that the attorney was in a special position to influence the judge. (Canon 2B(1) [a judge shall not convey the impression that any individual is in a special position to influence the judge].) These kinds of individualized factual assessments reflect the type of objective discretionary analysis that the judge must undertake when determining whether disqualification is required based on the nature and duration of the coaching relationship.

The size of the county in which a judge sits does not change the disqualification analysis but does inform the judge's assessment of whether discretionary disqualification is required. The code imposes identical standards throughout the state, and "a judge's ethical duties are the same irrespective of population statistics." (*Inquiry Concerning Wasilenko* (2005) 49 Cal.4th CJP Supp. 26, 46; Rothman, *supra*, § 1:13, p. 12; § 7:65, p.

490.) In a small county, the attorneys and judges will probably have closer contact with each other and court users, both professionally and socially, than in a larger county. (Rothman, *supra*, § 7:65, at p. 490 [judges in a small community will probably know, and have social and professional relationships with, the local lawyers and citizens].) Although the assessment of the discretionary grounds for disqualification is the same regardless of the size of the county, the application may differ where individuals within that county, including the judges and attorneys, are likely to be acquainted. Here, a particular attorney is more likely to regularly appear before a judge in a small county, which is one of many factors that the judge should consider when determining whether a person would reasonably doubt the judge’s impartiality, but does not change the committee’s advice that discretionary disqualification is not required based solely on the coaching position.

C. Disclosure Obligations

When a trial court judge determines that there are no mandatory or discretionary grounds for disqualification, the statute requires the judge to disclose on the record information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1.⁴ (Canon 3E(2)(a).) Reasonably relevant information includes any facts that the judge considered when deciding not to disqualify. (Rothman,

⁴ Although not bound by the disclosure rules, an appellate justice also has the option of disclosing certain facts on the record within the justice’s ability and discretion. (Canon 3E(2) [limiting disclosure rules to trial proceedings]; Rothman, *supra*, § 7:90, p. 502–503 [acknowledging that disclosure for appellate justices is complicated by the fact that a justice may not appear before the parties until after a case has been fully briefed]; CJEO Oral Advice Summary 2017-021 (2017), *Disqualification for Acquaintance with Leaders of an Amicus Curiae*, p. 3 [an appellate justice has discretion to disclose an acquaintance with the leaders of organizations that filed amicus curiae briefs].)

supra, § 7:75, p. 500 [the definition of ‘relevant’ requires objectivity about whether the information may reasonably prove or disprove a matter].)

Here, the information relevant to disqualification that must be disclosed includes the facts that the judge coaches a youth sports team and that the attorney’s family member plays on the team that the judge coaches. The judge should also disclose any other reasonably relevant information relating to the coaching obligation, such as whether the relationship between the judge as the coach and the attorney as a parent created close social ties related to the judge’s coaching position, including the general nature and frequency of any travel or meals that the judge may have shared with the attorney, or whether the judge engages with the attorney on social media about the team. Disclosure should also include, for example, relevant information about whether the judge has other social or professional connections to the attorney that, when coupled with the coaching relationship, would indicate a close social relationship. However, the judge need not disclose exhaustive details relating to the coaching responsibilities, such as the location or frequency of the practices and games, the type of sport, or the age of the players. In short, the judge must ensure disclosure of all information that was reasonably relevant to the judge’s decision not to disqualify and may state that disqualification was not required because the social relationship with the attorney as part of the judge’s coaching position is not of such a length or closeness to create an appearance of bias or influence.

D. Security Concerns

A judge may be concerned that disclosure on the record could endanger the security of the judge, the attorney, or the attorney’s child. However, the code does not require disclosure of every detail of a social relationship. As Judge Rothman explains:

Code of Judicial Ethics, canon 3E(2)(a), does not require disclosure of anything and everything necessary to satisfy the insatiable curiosity of litigants and lawyers about the judge in their case. Like everyone else

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who lives in the real world, judges have a variety of life experiences and emotions. All the possible things that might be of interest to litigants and lawyers are not things which would be considered, in reason, relevant to the question of disqualification of a judge under Code of Civil Procedure section 170.1 (particularly subdivision (a)(6)(A)) and 170.5, and Code of Judicial Ethics, canon 3E(2)(a).

(Rothman, *supra*, § 7:74, p. 496.) Disclosure of general information relating to the judge's coaching position that does not specify identifying facts or locations will minimize potential security risks and fulfill the purposes of the disclosure rules. Any unique security concerns that cannot be eliminated or mitigated by a disclosure in general terms may be addressed with court administrators to ensure safety as well as to satisfy the disclosure requirement.

V. Conclusion

A trial court judge who volunteers as a coach for a youth sports team is not required to disqualify when an attorney with a child on the judge's team appears on a matter before the court unless other facts exist or arise that would cause a person aware of the facts to reasonably doubt the judge's ability to be impartial. If disqualification is not required, the judge must disclose on the record information reasonably relevant to the judge's decision not to disqualify. The extent of the required disclosure may be tailored to mitigate potential security risks to the judge, the attorney, or the attorney's child, and, if necessary, the judge may consult court administrators to address unique security circumstances.



This draft opinion 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

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Court, rule 9.80(i)(3); CJEO rule 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)).)

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