

CJEO: SUPPORTING APPELLATE JUSTICES

Readers of *The Source* know CJEO has created handy, one-stop webpage resources focused on [social media](#), [judicial campaigns and elections](#), and [presiding and supervising judges](#). But did you know that CJEO has a new tool aimed at providing support and practical guidance to appellate justices? The [Resources for Appellate Justices](#) webpage provides materials of interest to appellate justices, such as CJEO opinions involving conduct by appellate justices, as well as materials of general interest, including an overview of disqualification rules specific to appellate justices. The webpage also provides helpful information for trial court judges serving in appellate divisions of superior courts per California Rules of Court, [rule 8.800](#) et seq. (Click [here](#) to read more.)

Unless you are an appellate justice or have an appellate practice, you may not be aware of the California Supreme Court's decision in *Kaufman v. Court of Appeal* (1982) 31 Cal.3d 933, which substantially impacted the rules governing appellate disqualification. In *Kaufman*, the Court held that statutory disqualification procedures for trial judges do not apply to appellate justices. Following legislative change in response to *Kaufman*, the procedural and substantive rules governing appellate disqualification were not specified either by statute or the Code of Judicial Ethics. It was not until 2000 that the California Supreme Court first published canons in the Code of Judicial Ethics establishing the grounds, but not the procedures, for appellate disqualification. Later, California Rules of Court, [rule 8.208](#) set out additional information to help appellate justices determine whether to disqualify.

Moreover, appellate justices are not required to make disclosures. A disclosure requirement would be complex, since appellate justices do not have contact with the parties until a hearing date, well after the briefs have been read and a tentative decision discussed. (Rothman et al., California Judicial Conduct Handbook § 7:90, pp. 502–503.)

CJEO has issued many advisory opinions responding to inquiries from, or involving conduct by, appellate justices that address disqualification and other issues specific to appellate courts. These opinions are listed on the Resources for Appellate Justices webpage in a convenient table format. For example:

- [CJEO Oral Advice Summary 2018-023](#), *Disqualification Responsibilities of Appellate Court Justices* [addressing the impact of *Kaufman* on appellate disqualification]
- [CJEO Oral Advice Summary 2020-037](#), *Judicial Obligations Relating to Social Media Comments by Appellate Court Staff* [advising that a justice who becomes aware that a staff member has used social media to post a comment that violates the canons should immediately take steps to remedy the ethical violation]
- [CJEO Expedited Opinion 2022-045](#), *Disqualification Obligations for Participants in the California Judicial Mentor Program (CJMP)* [advising that appellate justices acting as mentors to trial court judge mentees should disqualify from hearing matters involving a review of a mentee's adjudicatory decision]

The Resources for Appellate Justices webpage also notes opinions that may assist supervising appellate justices respond to ethical questions from colleagues. For example:

- [CJEO Expedited Opinion 2021-042](#), *Social Media Posts About the Law, the Legal System, or the Administration of Justice* [advising that judges may use social media to make comments relating to the law, the legal system, or the administration of justice but should carefully consider whether doing so would be permissible under the code]
- [CJEO Formal Opinion 2021-017](#), *Providing Close Family Members With Advice That Implicates Legal Issues* [advising that judicial officers may not provide legal advice to a family member if doing so would constitute practicing law, but they may provide limited law-related advice to a family member]
- [CJEO Formal Opinion 2020-014](#), *Judicial Participation in Public Demonstrations and Rallies* [judges may not participate in a public demonstration or rally if participation might undermine the public's confidence in the judiciary, the event relates or is likely to relate to a case pending before a court, relates to an issue that is likely to come before the courts, or is reasonably likely to give rise to litigation and the judge's attendance might lead to disqualification; participation would or is likely to cause a violation of the law; participation would create the appearance of speaking on behalf of, or lending the prestige of office to, a political candidate or organization; or participation would interfere with the proper performance of judicial duties]

By collecting information relating to appellate justices in one user-friendly location on its [website](#), CJEO offers helpful ethics resources to judicial officers across the branch.