



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

350 McAllister Street
San Francisco, CA 94102
(855) 854-5366

www.JudicialEthicsOpinions.ca.gov

CJEO Draft Formal Opinion 2021-016

**INDEPENDENT INVESTIGATION OF INFORMATION CONTAINED IN
ELECTRONIC COURT CASE MANAGEMENT SYSTEMS**

Public Comments Submitted

Comments from members of the public submitted in response to an Invitation to Comment on a CJEO Draft Formal Opinion are deemed not confidential communications and may be posted on the CJEO website for public review at the committee's discretion. (Cal. Rules of Court, rule 9.80(h)(4).)

Comment 1

Submitted by: Hon. Barbara A. Kronlund, San Joaquin County Superior Court

Received: July 28, 2021

Subject: Comment on CJEO Draft Formal Opinion 2021-016

Dear CJEO Members:

I submit my comments to CJEO Draft Formal Opinion 2021-016, and I understand these are public comments.

My main concern with this Opinion is that I'm still unclear as to what "adjudicative facts" on CMS refers to. I am currently in a Direct Civil assignment, and I have been in this assignment for over 11 years. As the Opinion recognizes, judges routinely access their own CMS as a proper execution of their judicial duties.

I think an easy fix to my confusion would be for CJEO to include specific, concrete examples of what might constitute "adjudicative facts" located on a CMS. And more specifically, if the Committee would give specific examples of impermissible CMS searches, under section IV.C, permissible CMS searches, under section section IV.D, and examples of when review of "adjudicative facts" is either permitted by statutes or are the proper subject of judicial notice.

By providing a few specific, concrete examples of what is being referenced, the Opinion could offer very practical and clear guidance and advice. Of course, CJEO shouldn't attempt to cover every possible scenario, and a caveat, "including by not limited to..." could preface the examples.

Thank you for considering my comments.

Barbara A. Kronlund, Civil Judge
Superior Court, Dept. 10D, San Joaquin County
180 E Weber Ave
Stockton, CA. 95202

Comment 2

Submitted by: Hon. Christine Copeland, Santa Clara County Superior Court

Received: August 9, 2021

Subject: Invitation to Comment (CJEO Draft Formal Opinion 2021-016)

I am a commissioner in Santa Clara County. My current assignment involves small claims. My comments are not made on behalf of my Court. My Court uses Odyssey (Tyler).

The concerns raised are valid- one can learn an awful lot, and likely outside the confines of evidence submitted by the parties, when doing a simple CMS search under a litigant's name. You can see if someone is a "frequent filer," if someone has various criminal cases, restraining orders, etc. All things you would not come to know if you simply had a clerk pulling a single paper file for just the case at issue and on calendar.

However, a simple name search is often very helpful in determining possible related cases, whether an issue has already been adjudicated and/or whether an upcoming hearing in a related case makes continuing my hearing a good idea. For example, sometimes landlords file an eviction case to ask only for possession, and then file a separate small claims case asking for back rent. The self-represented plaintiff/landlord often does not know if their eviction case involves a request for unpaid rent, but I can look up the related eviction case in Odyssey and find out. If it includes an order for unpaid rent, I know that that issue has already been adjudicated and the small claims filing is duplicative or otherwise not permitted.

Whatever your ultimate opinion/guidance is, I ask you take into account CCP 116.520(c): *The court may consult witnesses informally and otherwise investigate the controversy with or without notice to the parties.* This exception allowing independent research pertains to small claims cases only.

I regard checking for the existence of related cases, and looking to see if there are relevant orders from such cases, to be permissible, and often necessary.

Thank you for your consideration.

Comment 3

Submitted by: California Judges Association

Received: August 12, 2021

Subject: Comment on CJEO Draft Formal Opinion 2021-016



CALIFORNIA JUDGES ASSOCIATION
The Voice of the California Judiciary

2520 VENTURE OAKS WAY
SUITE 150
SACRAMENTO CA 95833
PHONE: 916-239-4068
TOLL FREE: 1-866-432-1CJA
FAX: 916-924-7323
WEB: WWW.CALJUDGES.ORG

EXECUTIVE BOARD

HON. THOMAS A. DELANEY
PRESIDENT

HON. RUPERT A. BYRDSONG
VICE PRESIDENT

HON. LINDA H. COLFAR
VICE PRESIDENT

HON. HEATHER MARDEL JONES
SECRETARY TREASURER

HON. B. TAM NEMOTO SCHUMANN
IMMED. PAST PRESIDENT

HON. MICHAEL G. BOWMAN

HON. CARLOS M. CARRERA

HON. BRIAN S. CURREY

HON. TIMOTHY P. DILLON

HON. ROBERT B. FREEDMAN

HON. PATRICIA GARCIA

HON. SCOTT P. HARMAN

HON. VALLI K. ISRAELI

HON. SEAN P. LAFFERTY

HON. ELAINE LU

HON. PAUL M. MARIGONDA

HON. KIMBERLY J. MERRIFIELD

HON. DWAYNE K. MORENO

HON. KIRK H. NAKAMURA

HON. YOLANDA OROZCO

HON. MARIA PUENTE-PORRAS

HON. JAMES R. REILLY

HON. REBECCA S. RILEY

HON. DAVID ROSENBERG

HON. SERGIO C. TAPIA II

HON. THEODORE C. ZAYNER

NICOLE VIRGA BAUTISTA
Executive Director & CEO

CJEO

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

August 9, 2021

Re: CJEO Draft Formal Opinion 2021-016

Dear Justice Robie,

On behalf of the California Judges Association Ethics Committee, I am writing to express our support for CJEO Draft Formal Opinion 2021-016. We are grateful for CJEO's responsiveness to the Committee's concerns and value our collaboration on behalf of the dedicated judicial officers of the State of California.

Sincerely,

Marian Gaston
Ethics Committee, Chair

Comment 4

Submitted by: Hon. Donald Segerstrom, Tuolumne County Superior Court

Received: August 24, 2021

Subject: Invitation to Comment - CJEO Draft Formal Opinion 2021-016

To whom it may concern:

I am writing to comment on the Draft Formal Opinion 2021-016, concerning Independent Investigation of Information contained in Court CMS Systems. The Draft Opinion applies only to civil proceedings. My concern is that juvenile proceedings are technically civil proceedings. In dependency proceedings in particular, the court's over-riding obligation is the best interest of the children involved. Often, a review of the CMS system can provide criminal history information on the parent(s) that would be relevant to the issues that arise in dependency proceedings. While, for example, criminal convictions are matters that generally can be judicially noticed (Evid. Code sec. 452, subd (d).), they may also be "adjudicative facts" that relate to the credibility of the parents, particularly where the conviction(s) involve moral turpitude. Another example would be where a parent denies certain facts in testimony at the dependency proceeding, but admitted those same facts in a probation report (for example) in the criminal proceeding. I'm not sure a statement in a probation report is a proper subject for judicial notice. This creates a dilemma for the judicial officer. In my view, it is resolved by disclosing receipt of those facts to the parties and giving them an opportunity to be heard, but the Draft Formal Opinion does appear to limit the ability of judicial officers in dependency and delinquency proceedings from reviewing the CMS for information that would be very relevant to determining what outcome is in the best interests of the minors. Thank you for the opportunity to comment.

Donald Segerstrom
Judge of the Superior Court
41 West Yaney Avenue
Sonora, CA 95370



THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF TUOLUMNE

Comment 5

Submitted by: Alameda County Superior Court

Received: August 30, 2021

Subject: Public comment on Draft Formal Opinion 2021-016

Good Afternoon,

I am submitting this public comment on Draft Formal Opinion 2021-016 (Opinion) on behalf of the Superior Court of Alameda County (Court). The Court appreciates the opportunity to make this comment.

Initially, we note that the Opinion addresses most of the concerns that the Court had with its previous incarnation, Draft Formal Opinion 2019-014. We have two comments on the current draft.

First, it is unclear why the opinion is limited to non-criminal matters. This court's Comments dated May 1, 2019, on Draft Formal Opinion 2019-014 stated "The Draft Opinion has no explanation why it is limited to non-criminal matters. The Code of Judicial Ethics does not distinguish between criminal and non-criminal matters."

By limiting the opinion to non-criminal matters, the Opinion suggests either (a) that in criminal matters judges *are* permitted to use case management systems to independently investigate adjudicative facts in criminal matters or (b) that in criminal matters judges *are not* permitted to use case management systems for any independent investigation or case management purpose.

The ambiguity is problematic either way. It would be problematic if judges in criminal assignments could independently investigate adjudicative facts given that judges act as independent fact finders on a variety of criminal matters. (E.g., preliminary examinations, probation violations.) It would also be problematic if judges in criminal assignments could not use case management systems for any purpose given that judges might reasonably take judicial notice of judicially noticeable information such as prior convictions and should be able to review the electronic files in related cases to schedule hearings to minimize the burden on defendants, counsel, and the court.

If the CJEO has a separate opinion on Independent Investigation of Information Contained in Electronic Case Management Systems in criminal matters, then it would be very useful to cross reference that opinion.

If the CJEO has a basis for distinguishing between the ethical obligations of judges when presiding over criminal and non-criminal cases, then it would be useful to explain why the draft opinion is limited to non-criminal cases. A reasoned distinction would be useful guidance to judges as they preside over both criminal and non-criminal cases.

Explaining or eliminating the distinction between criminal and non-criminal matters might be particularly relevant to judges who preside over both types of cases. In our Court, we have some judges who are assigned to both criminal and non-criminal matters. In courts with fewer judges, it is possible that many judges are simultaneously assigned to both criminal and non-criminal matters. It could be confusing, if not problematic, if a judge has one set of ethical guidance on the use of the case management system when hearing a family law matter at 9:00 a.m. and a different set of ethical guidance when hearing a criminal preliminary examination at 2:00 p.m.

Second, and of less importance, we suggest including a reference to the vexatious litigant statute (Code of Civil Procedure section 391, et seq.) in footnote 5, which identifies situations where independent judicial investigation is permitted. Most litigants are concerned about only their own case, so the Court initiates many of the vexatious litigant proceedings through orders to show cause. This is an area where the Court's initiative in investigating and raising an issue is permitted. (*In re Shieh* (1993) 17 Cal.App.4th 1154, 1155.) It is also an area where litigants are more likely to assert that a judge acted improperly by initiating the investigation that resulted in the order to show cause why the litigant should not be declared a vexatious litigant.

We thank you for your consideration of these two comments, and for the work on this important issue.

Chad Finke
Court Executive Officer, Jury Commissioner and Clerk of the Courts
Superior Court of California, County of Alameda
1225 Fallon Street Room 209
Oakland, CA 94612