



**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 2021-017

**PROVIDING CLOSE FAMILY MEMBERS WITH ADVICE
THAT IMPLICATES LEGAL ISSUES**

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 to be confidential communications and may be posted on the committee's website for public review at the committee's discretion. (Cal. Rules of Court, rule 9.80(h)(4).

Comment 1

Submitted by: The Hon. Nathan Scott, Judge of the Superior Court of California,
County of Orange, Presiding Judge of the Appellate Division, Civil
Panel

Received: February 3, 2021

Subject: Comment on CJEO Draft Formal Opinion 2021-017

Thank you for the opportunity to comment.

Draft Formal Opinion 2021-017 provides: “A judge is not ethically permitted to: (1) accept compensation for help with legal matters; (2) provide advice that could lead to the judge’s disqualification; (3) neglect official duties in favor of a matter involving a family member; (4) provide advice that would cause a reasonable person to question the judge’s independence or integrity; or (5) act, or appear to act, as an advocate.”

With respect to Points (2) and (4) only, should a judge have greater leeway to provide advice to the judge’s minor child than to the judge’s other relatives? Judges are already disqualified from cases involving their minor children. And reasonable persons would expect all parents, even judges, to provide the best advice possible to their minor children.

The relationship and obligations between a parent and a minor child may set minor children apart from any “other relative or person with whom the judge maintains a close familial relationship.”

Thank you for your work on the Committee and for considering this comment.

Judge Nathan Scott
Orange County Superior Court
Presiding Judge, Appellate Division
Civil Panel, Department C15

Comment 2

Submitted by: Hon. John Monterosso, Judge of the Superior Court of California,
County of Riverside

Received: February 4, 2021

Subject: Comment on CJEO Draft Formal Opinion 2021-017

Overall, the proposed draft opinion is well worded and appropriate. However, it goes too far when opining that the advice given to a close family member should be no different than that given to a self-represented litigant. This implies that a judge must provide only basic, procedural counsel to loved ones who may find themselves in a difficult legal situation. Example: A judge may find themselves having a child who is facing a legal issues, such as an arrest for DUI. It is an impossible task to ask a parent to ignore their role as a parent and divorce themselves from the plight of an adult child by only giving generic guidance. A parent who privately tells their child to take responsibility and plead guilty, or that they should ask for a wet-reckless, is now liable for breaching their ethical duties. The rule seems to give lip service to the "shoulder to lean on" dilemma, but fails to fully address these real-life situations.

Comment 3

Submitted by: The Hon. Barbara A. Kronlund, Judge of the Superior Court of California, County of San Joaquin

Received: February 16, 2021

Subject: Comment on CJEO Draft Formal Opinion 2021-017

Dear CJEO:

I support the adoption of Formal Opinion 2021-017 as a welcome addition to supplement available judicial ethics resources where there is currently no similar opinion. I think judicial officers will find this Opinion to be useful and practical. This thoughtful advice specifically cautions judges to not engage in certain conduct, and also directs judges as to how to analyze what they can and cannot do if they encounter a situation not specifically covered by the specific advice in the opinion.

The only suggestion I have is that the Committee might consider expanding on the examples of what information is included in the language, "...that a nonlawyer might provide a family member in a similar situation...", at page 3, top paragraph, last sentence. Specific, concrete examples in this area might be beneficial.

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 4

Submitted by: Lisa J Wilbur

Received: February 17, 2021

Subject: Comment on CJEO Draft Formal Opinion 2021-017

Many questions remain unanswered related to the following so the comment may not be succinct. Any litigant in any dispute must disclose on record if they are involved in any manner with any judge in a non-professional relationship due to the unknown variable of ex-parte communications and to balance the rights of immigrants, minorities in California. There must be a signed affidavit under the penalty of the judicial officer at issue submitted to the court of non-involvement. The circumstance is of a judge not being legally married to an ethnic immigrant's domestic violence's spouse and outcomes not related to The Rule of Law or the record. Recently issued 2021 Federal Executive Orders against Racism, Xenophobia, dismantling white supremacy, mandates that The State of California must protect the rights of immigrants, ethnic minorities when they marry or intersect with white privileged persons.

Comment 5

Submitted by: Dr. Bryan Borys

Received: March 12, 2021

Submitted on behalf of: Los Angeles Superior Court

Subject: Comment on CJEO Draft Formal Opinion 2021-017

Please accept these comments on behalf of the Los Angeles Superior Court

Comments to the CJEO's Draft Formal Opinion 2021-017

Thank you for the opportunity to comment. In general, we approve of Draft Formal Opinion 2021-017, which provides important guidance on how to resolve requests from family members for advice on matters that implicate legal issues. We have the following comments.

We recommend adding some more specific examples of conduct that is either permissible or not permissible. The Appendix is very helpful but is limited to matters resulting in ethics proceedings or matters cited in Rothman's Handbook. It does not include some common questions family members ask about, such as:

- a. Recommending an attorney;
- b. Being an executor or trustee of an estate or trust or having power of attorney or other legal power to act for a family member;
- c. Providing certain advice in the immediate aftermath of a car accident;
- d. Requesting services for a family member who has limited cognitive or physical capacity, and whether a judge can make such requests;
- e. Giving general thoughts on the reasonableness of medical or attorney invoices.

These examples constitute conduct we think may be permissible for a judicial officer given the guidelines of the Opinion, and guidance from the CJEO while it is addressing this matter would be helpful.

In addition, we suggest the Opinion clarify whether the same guidelines apply when responding to a request from a close friend. If the friend is close enough to result

in recusal from a case involving the friend, it would seem the same principles would apply.

We also suggest the Opinion note that when responding to a request for advice, a judge should preface any remarks with the explanation that the judge is no longer a lawyer and cannot provide legal advice. We find that many friends and family are unaware of this fact.

Thank you for considering these comments.

Bryan Borys, Ph.D.
Director of Research and Data Management
Superior Court of Los Angeles County
111 N. Hill St., Room 105E
Los Angeles, CA 90012

Comment 6

Submitted by: Nicole Bautista, CJA Executive Director and CEO

Received: February 17, 2021

Submitted on behalf of: California Judges Association

Subject: Comment on CJEO Draft Formal Opinion 2021-017

The California Judges Association Ethics Committee has reviewed CJEO Draft Formal Opinion 2021-017 and has the following suggestions.

First, the Ethics Committee (the Committee) would like to see the opinion framed as providing advice that implicates legal issues rather than providing family members with advice that implicates legal issues, since the ethical constraints are the same regardless of who is asking for assistance from the judge.

Second, the Committee would ask that the opinion include advice that the judge inform the inquirer that the judge can no longer practice law, as it is the Committee's observation that most people do not know that judges can no longer provide legal advice. Also, the opinion could suggest that the inquirer be referred to an attorney. The opinion could then provide the established guidance for judges regarding how to handle requests for counsel.

Finally, the Committee would like to see more specific advice such as that contained in the Appendix. The Committee receives many inquiries regarding the ethics of providing support or guidance to family or friends in the context of family court, criminal, and civil proceedings and could provide examples of this.