



NEWS RELEASE

Release Number: 12

Release Date: March 3, 2009

JUDICIAL COUNCIL OF
CALIFORNIA
ADMINISTRATIVE OFFICE
OF THE COURTS
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Supreme Court Adopts Rule to Govern New Committee on Judicial Ethics Opinions

New Rule Takes Effect July 1, 2009

San Francisco—The California Supreme Court today announced that it has adopted a new rule governing the practices and procedures to be followed by its new Supreme Court Committee on Judicial Ethics Opinions. The rule appears on the California Courts Web site: <http://www.courtinfo.ca.gov/courts/supreme/comm/documents/title9-rules.pdf>.

In late 2007, the Supreme Court announced that, in accordance with the practice in the vast majority of other state court systems, it would establish the committee to provide advisory opinions and advice on ethics to judicial officers and candidates for judicial office in California. The California Constitution charges the court with adopting the Code of Judicial Ethics, which is intended to govern the conduct of judges, both on and off the bench, and of candidates for judicial office. (<http://www.courtinfo.ca.gov/presscenter/newsreleases/NR47-07.PDF>.)

Chief Justice Ronald M. George stated that the entire court “was very pleased with the recommendations of the Implementation Committee. The committee’s report and proposal recognized both the Supreme Court’s primary judicial ethics responsibility and the valuable historical contributions and experience of the California Judges Association in providing ethics advice to California judges.”

After consultation with the California Judges Association (CJA) and the Commission on Judicial Performance (CJP), the court appointed an Implementation Committee to develop recommendations for procedures and rules to guide the new Ethics Opinions Committee in providing ethics advice and opinions.

(more)

The Implementation Committee was comprised of the seven members of the Supreme Court's Advisory Committee on the Code of Judicial Ethics, and two nominees each from the CJP and the CJA. Justice Richard D. Fybel of the Court of Appeal, Fourth Appellate District, Division Three (Santa Ana), serves as chair of the Court's Advisory Committee and was appointed chair of the Implementation Committee.

After several meetings, the Implementation Committee submitted a unanimous initial report to the court, containing recommendations and a draft rule proposal. The Implementation Committee's recommendations included:

- 1) the Ethics Opinions Committee would be established by Rule of Court as an independent body appointed by the Supreme Court and comprised of 12 judicial officers;
- 2) communications to and by the committee would be confidential, with specified exceptions;
- 3) the formal written opinions of the committee will be published on-line and available to the public;
- 4) both judges and judicial candidates may seek advice; and
- 5) the committee will entertain all suggestions for formal written opinions, but has discretion to write such opinions as it deems appropriate.

The Implementation Committee also recommended that the Ethics Opinion Committee be authorized to provide oral advice and informal and formal written opinions, as defined in the proposed rule of court. Because of the unique role and expertise of the CJA, however, the committee recommended that all requests to the Judicial Ethics Opinion Committee for oral advice would be referred to the CJA's Judicial Ethics Committee as described in the report, although judges and judicial candidates may nonetheless choose to request oral advice from the Ethics Opinion Committee.

The CJA Ethics Committee will regularly report to the Ethics Opinion Committee concerning inquiries and responses, without divulging the name of the individual making the inquiry. The Ethics Opinion Committee requires such full disclosure in order to ensure that it is informed of areas of widespread concern, as well as developing issues and trends, so that it may develop appropriate formal opinions designed to offer guidance in these areas to judges and judicial candidates.

At the court's direction, the Implementation Committee circulated its report and recommendations for public comment. It then fully considered the comments, made a variety of changes, and submitted its unanimous final report and recommendations, along with a draft rule proposal, to the court in early February.

The court unanimously adopted the recommendations and the proposed rule at its administrative conference on February 25, 2009. The committee's final report is available at <http://www.courtinfo.ca.gov/courts/supreme/comm/documents/memo-finalreport-ethicscomm.pdf>.

The new committee is intended to encourage judicial officers and candidates for judicial office to seek ethics advice, and, through written opinions, to provide them with additional guidance for complying with the Code of Judicial Ethics.

The effective date of the rule is July 1, 2009. Given the present fiscal situation, the court intends to wait until it has a clearer picture of available resources before commencing operations by the committee, which initially will be assisted by two staff counsel under the sole direction of the committee.

The membership of the Implementation Committee includes the seven members of the Supreme Court Advisory Committee on the Code of Judicial Ethics: Justice Fybel (chair); Presiding Justice Barbara J. R. Jones of the Court of Appeal, First Appellate District, Division Five; Acting Presiding Justice Laurence D. Rubin of the Court of Appeal, Second Appellate District, Division Eight; Judge Teresa Estrada-Mullaney of the Superior Court of San Luis Obispo County; Judge David Rothman (Ret.) of the Superior Court of Los Angeles County; Judge Brian Walsh of the Superior Court of Santa Clara County; and Ms. Beth J. Jay, Principal Attorney to the Chief Justice, as well as the following members designated by the CJP: Judge Frederick P. Horn of the Superior Court of Orange County and chair of the CJP, and Victoria B. Henley, Director-Chief Counsel of the CJP.

The members designated by the CJA are Presiding Judge James M. Mize of the Superior Court of Sacramento County, former president of the CJA, and Judge Ronni B. MacLaren of the Superior Court of Alameda County, former chair of the CJA's Judicial Ethics Committee.

News media with inquiries may contact Lynn Holton, public information officer, at lynn.holton@jud.ca.gov.

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SUPREME COURT
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MAR - 3 2009

Frederick K. Ohlrich Clerk

Deputy

ADMIN. 2009-2-25

IN THE SUPREME COURT OF CALIFORNIA

ORDER ADOPTING RULE 9.80
OF THE CALIFORNIA RULES OF COURT

Based upon a recommendation of the Implementation Committee for the Supreme Court Committee on Judicial Ethics Opinions, rule 9.80 of the California Rules of Court, as set forth in the attachment hereto, is hereby adopted effective July 1, 2009.

GEORGE

Chief Justice

1 Title 9. Rules on Law Practice, Attorneys, and Judges

2
3 Division 6
4 Judicial Ethics Opinions

5
6 Rule 9.80. Committee on Judicial Ethics Opinions

7
8 **(a) Purpose**

9
10 The Supreme Court has established the Committee on Judicial Ethics
11 Opinions to provide judicial ethics advisory opinions and advice to judicial
12 officers and candidates for judicial office.

13
14 **(b) Committee determinations**

15
16 In providing its opinions and advice, the committee acts independently of the
17 Supreme Court, the Commission on Judicial Performance, and all other
18 entities. The committee will rely on the California Code of Judicial Ethics,
19 the decisions of the Supreme Court and of the Commission on Judicial
20 Performance, and other relevant sources in its opinions and advice.

21
22 **(c) Membership**

23
24 The committee consists of twelve members appointed by the Supreme Court,
25 including at least one justice from a court of appeal and one member who is
26 a subordinate judicial officer employed full-time by a superior court. The
27 remaining members must be justices of a court of appeal or judges of a
28 superior court, active or retired. No more than a total of two retired justices
29 or judges may serve on the committee at one time, except that if an active
30 justice or judge retires during his or her term, he or she will be permitted to
31 complete his or her term. A retired justice or judge may only serve so long as
32 he or she is not an active member of the State Bar of California and is not
33 engaged in privately compensated dispute resolution activities.

34
35 **(d) Terms**

36
37 (1) Except as provided in (2), all full terms are for four years. Members
38 may not serve more than two consecutive full terms. Members will
39 continue to serve until a successor is appointed. Appointments to fill a
40 vacancy will be for the balance of the term vacated. Members who are
41 appointed to fill a vacancy for the balance of a term are eligible to serve
42 two full terms in addition to the remainder of the term for which they
43 were appointed.

1 (2) To create staggered terms among the members of the committee, the
2 Supreme Court will appoint initial members of the committee as
3 follows:

4
5 (A) Three members each to serve a term of five years. The Court may
6 reappoint these members to one full term.

7
8 (B) Three members each to serve a term of four years. The Court may
9 reappoint these members to one full term.

10
11 (C) Three members each to serve a term of three years. The Court
12 may reappoint these members to one full term.

13
14 (D) Three members each to serve a term of two years. The Court may
15 reappoint these members to one full term.

16
17 (3) Committee members may not simultaneously serve as members of the
18 Commission on Judicial Performance or the California Judges
19 Association’s Judicial Ethics Committee. If a member of the committee
20 accepts appointment to serve on one of these entities, that member will
21 be deemed to have resigned from the committee and the Supreme Court
22 will appoint a replacement.

23
24 **(e) Powers and duties**

25
26 The committee is authorized to provide ethics advice to judicial officers and
27 candidates for judicial office, including formal written opinions, informal
28 written opinions, and oral advice. Specifically, the committee is authorized
29 to:

30
31 (1) Issue formal written opinions, informal written opinions, and oral
32 advice on proper judicial conduct under the California Code of Judicial
33 Ethics, the California Constitution, statutes, and any other authority
34 deemed appropriate by the committee.

35
36 (2) Make recommendations to the Supreme Court for amending the Code
37 of Judicial Ethics or these rules;

38
39 (3) Make recommendations regarding appropriate subjects for judicial
40 education programs; and

41
42 (4) Make other recommendations to the Supreme Court as deemed
43 appropriate by the committee or as requested by the Court.

1 **(f) Referrals to California Judges Association’s Judicial Ethics Committee**

2
3 The committee may adopt a revocable policy of referring requests for oral
4 advice, with conditions and exceptions as approved by the committee, to the
5 California Judges Association’s Judicial Ethics Committee.

6
7 **(g) Chair and vice-chair**

8
9 The Supreme Court will appoint a chair, who will serve a term of two years.
10 The Supreme Court may reappoint the chair. The chair may not serve more
11 than two terms as chair. The Supreme Court will also appoint a vice-chair
12 from the members of the committee. The chair is authorized to call meetings
13 as needed, and to otherwise coordinate the work of the committee.

14
15 **(h) Confidentiality**

16
17 Communications to and from the committee are confidential except as
18 described herein. Encouraging judicial officers and candidates for judicial
19 office to seek ethics opinions and advice from the committee will promote
20 ethical conduct and the fair administration of justice. Establishing the
21 confidentiality of committee proceedings and communications to and from
22 the committee is critical to encourage judicial officers and candidates for
23 judicial office to seek ethics opinions and advice from the committee. The
24 necessity for preserving the confidentiality of these proceedings and
25 communications to and from the committee outweighs the necessity for
26 disclosure in the interest of justice. Therefore, to promote ethical conduct by
27 judicial officers and candidates for judicial office and to encourage them to
28 seek ethics opinions and advice from the committee, the following
29 confidentiality requirements, and exceptions, apply to proceedings and other
30 matters under this rule:

- 31
32 (1) Notwithstanding any other provision of law, and with the exception of
33 formal written opinions and summaries of informal written opinions
34 and oral advice, all opinions, inquiries, replies, circulated drafts,
35 records, documents, writings, files, communications with staff, and
36 proceedings of the committee are confidential. All communications,
37 written or verbal, from or to the person or entity requesting an opinion
38 or advice are deemed to be official information within the meaning of
39 the California Evidence Code. In addition, all communications and
40 documents regarding opinions or advice of the California Judges
41 Association forwarded by the California Judges Association to the
42 committee are deemed to be confidential information.

1 (2) Members of the committee or its staff may not disclose outside the
2 committee or its staff any confidential information, including
3 identifying information, obtained by the committee or its staff
4 concerning an individual whose inquiry or conduct was the subject of
5 any communication with the committee or its staff.

6
7 (3) A judicial officer or candidate for judicial office may waive
8 confidentiality; any such waiver must be in writing. If the judicial
9 officer or candidate making the request for an opinion or advice waives
10 confidentiality or asserts reliance on an opinion or advice in judicial or
11 attorney discipline proceedings, such opinion or advice no longer is
12 confidential under these rules. Notwithstanding any waiver, committee
13 deliberations and records are confidential.

14
15 (i) **Opinion requests**

16
17 (1) The committee may issue formal written opinions on any subject it
18 deems appropriate. Any person or entity may suggest to the committee,
19 in writing, topics to be addressed in a formal written opinion.

20
21 (2) Only judicial officers and candidates for judicial office may request
22 informal written opinions and oral advice.

23
24 (3) A judicial officer or candidate for judicial office requesting a written
25 opinion, formal or informal, must submit the request in writing,
26 including by electronic mail. The request must be in a form approved
27 by the committee and must describe the facts and discuss the issues
28 presented in the request. The identity, organizational affiliation, and
29 geographic location of persons requesting opinions are confidential.

30
31 (4) A judicial officer or candidate for judicial office requesting oral advice
32 may communicate in person, in writing (including by electronic mail),
33 or by telephone to committee staff or any member of the committee.

34
35 (5) A judicial officer or candidate for judicial office requesting an opinion
36 or advice must disclose to the committee whether the issue that is the
37 subject of the inquiry is also the subject of pending litigation involving
38 the inquiring judicial officer or candidate or a pending Commission on
39 Judicial Performance or State Bar disciplinary proceeding involving the
40 inquiring judicial officer or candidate.

1 **(j) Consideration of requests**

- 2
- 3 (1) The committee will determine whether a written request for an opinion
4 should be resolved with a formal written opinion, an informal written
5 opinion, oral advice, or any combination thereof. The committee may
6 decline to issue an opinion or advice.
- 7
- 8 (2) Eight members must vote affirmatively to adopt a formal written
9 opinion. After the committee authorizes a formal written opinion and
10 before it becomes final, it will be posted in draft form on the committee
11 Web site and made available for public comment for at least 45 days,
12 unless the committee in its discretion decides such an opinion should
13 be issued in final form in less time or with no prior notice. After the
14 public comment period has expired, the committee will decide whether
15 the opinion should be published in its original form, modified, or
16 withdrawn. Eight members must vote affirmatively to modify or
17 withdraw a formal written opinion.
- 18
- 19 (3) Informal written opinions and oral advice will be decided by vote of the
20 committee members. The committee will adopt procedures concerning
21 the number of votes required to issue an informal written opinion or
22 oral advice.
- 23
- 24 (4) The committee will adopt procedures concerning the handling and
25 determination of requests for opinions or advice.
- 26
- 27 (5) The committee will inform the inquiring judicial officer or candidate for
28 judicial office that he or she must disclose all relevant information and
29 that any opinion or advice issued by the committee is based on the
30 premise that the inquiring judicial officer or candidate has disclosed all
31 relevant information.
- 32
- 33 (6) The committee will confer in person, in writing, including by electronic
34 mail, by telephone, or by videoconference as often as needed to
35 conduct committee business and resolve pending requests.

36

37 **(k) Opinion distribution**

- 38
- 39 (1) The committee will, upon final approval of a formal written opinion,
40 ensure distribution of the opinion, including to the person or entity who
41 requested the opinion, all California judicial officers, and other
42 interested persons.

1 (2) The committee's informal written opinions and written confirmation of
2 oral advice will, upon approval by the committee, be provided to the
3 inquiring judicial officer or candidate for judicial office.

4
5 (3) The committee will post all formal written opinions on the committee's
6 Web site. The committee may post summaries of its informal written
7 opinions and of oral advice on the committee's Web site.

8
9 (4) The committee will maintain records of committee determinations and
10 opinions at the committee's office.

11
12 **(l) Withdrawn, modified, and superseding opinions**

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14 The committee may withdraw, modify, or supersede an opinion at any time.

15
16 **(m) Internal operating rules**

17
18 The committee will adopt procedures, subject to approval by the Supreme
19 Court, to implement this rule.

20
21 **(n) Web site, e-mail address, and toll-free telephone number**

22
23 The committee will maintain a Web site, e-mail address, and toll-free
24 telephone number.