



# NEWS RELEASE

Release Number: 12

Release Date: March 3, 2009

JUDICIAL COUNCIL OF  
CALIFORNIA  
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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](mailto:lynn.holton@jud.ca.gov).

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SUPREME COURT  
**FILED**

MAR - 3 2009

Frederick K. Ohlrich Clerk

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ADMIN. 2009-2-25

**IN THE SUPREME COURT OF CALIFORNIA**

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ORDER ADOPTING RULE 9.80  
OF THE CALIFORNIA RULES OF COURT

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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**

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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**

13  
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.