



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

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CJEO Formal Opinion No. 2013-001

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REQUESTING ASSISTANCE FROM ATTORNEYS

I. Question Presented

The Committee on Judicial Ethics Opinions (CJEO) has been asked to provide an opinion on whether the following activities are permissible:

May a judge meet with attorneys who practice in the court to discuss the impact of fiscal reductions on the court's budget and request assistance to help communicate to the public and to the Legislature the impacts of proposed budget cuts on the court's operations?¹

¹ The question as originally posed focused on a narrow set of facts: "A presiding judge asks partners of law firms . . . to attend a meeting at which the presiding judge makes a presentation about potential budget cuts and asks the attorneys 'to help the court in whatever way they believe is appropriate.'" The committee concludes that restating

II. Summary of Conclusions

A judge's activities relating to court budgets and appropriations fall within the scope of "measures concerning improvement of the law, the legal system, or the administration of justice." (Cal. Code Judicial Ethics, canon 5D.) As a judicial officer, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice (Advisory Com. commentary, Cal. Code Jud. Ethics, foll. canon 4). Therefore, it is ethical for judges to invite attorneys to attend a meeting at which the judge makes a presentation concerning potential budget cuts to the court(s) and asks the attorneys to assist the court in dealing with the impacts of those cuts. In deciding with whom to meet and what to say, the judge should consider all of the ethical factors generally applicable to meetings with attorneys. The primary factors are whether the manner of the invitation or requests might convey an impression of favor or influence, appear to be coercive, or reasonably lead to disqualification or implicate disclosure requirements.

III. Introduction

In times of fiscal instability and austerity, proposed and actual reductions to the judicial branch budget affect the courts' ability to provide services to attorneys and litigants. Convening a meeting with attorneys to discuss the potential impacts of these budget cuts on court operations is a constructive way for judges to inform and involve those most affected. Speaking with groups of attorneys outside of a court proceeding raises ethical issues that judges must consider and evaluate under the standards of conduct set forth in the California Code of Judicial Ethics. (Rothman, Cal. Judicial Conduct Handbook (3d ed. 2007) §§ 8.31, 10.15-16, pp. 400, 530-531.) This opinion addresses the ethical principles to be considered when convening such meetings.²

the question provides the opportunity for a broader discussion. (Cal. Rules of Court, rule 9.80(i)(1); Cal. Com. Jud. Ethics Opns., Internal Operating Rules & Proc., rule 6(a).)

² The committee has not been asked to opine on the subject of a judge's own activities vis-à-vis the public or members of the executive and legislative branches on issues of potential budget cuts to the court system.

IV. Authorities

A. Applicable Canons³

Terminology: “Law, the legal system, or the administration of justice. When a judge engages in an activity that relates to the law, the legal system, or the administration of justice, the judge should also consider factors such as whether the activity upholds the integrity, impartiality, and independence of the judiciary (Canons 1 and 2A), whether it impairs public confidence in the judiciary (Canon 2), whether the judge is allowing the activity to take precedence over judicial duties (Canon 3A), and whether engaging in the activity would cause the judge to be disqualified (Canon 4A(4)).”

Canon 2: “A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities.”

Canon 2A: “A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge shall not make statements, whether public or nonpublic, that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of judicial office.”

Advisory Committee Commentary following canon 2A: “A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge’s conduct that might be viewed as burdensome by other members of the community and should do so freely and willingly. . . . The test for the appearance of impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality, and competence.”

Canon 2B(1): “A judge shall not allow family, social, political, or other relationships to influence the judge’s judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.”

Canon 4A(4): “A judge shall conduct all of the judge’s extrajudicial activities so that they do not . . . lead to frequent disqualification of the judge.”

Canon 4B: “A judge may speak, write, lecture, teach, and participate in activities concerning legal and nonlegal subject matters, subject to the requirements of this code.”

³ All further references to canons and to Advisory Committee commentary are to the California Code of Judicial Ethics unless otherwise indicated.

Advisory Committee Commentary following canon 4B: “As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice. . . . To the extent that time permits, a judge may do so, either independently or through a bar or judicial association or other group dedicated to the improvement of the law.”

Canon 4C(1): “A judge shall not appear at a public hearing or officially consult with an executive or legislative body or public official except on matters concerning the law, the legal system, or the administration of justice or in matters involving the judge's private economic or personal interests.”

Canon 4C(3)(d)(i): “Subject to the . . . other requirements of this code, . . . a judge . . . shall not personally participate in the solicitation of funds or other fundraising activities”

Canon 5D: “A judge or candidate for judicial office may engage in activity in relation to measures concerning improvement of the law, the legal system, or the administration of justice, only if the conduct is consistent with this code.”

B. Other Authorities

Government Code, sections 68106.2, 77000 et seq.

California Rules of Court, rules 10.101(a)-(d), 10.601(b)(4), (5), 10.603(c)(6), and 10.1004(c)(6).

California Judges Association, Ethics Committee Advisory Opinions 33, 41, and 42.

Rothman, California Judicial Conduct Handbook (3d ed. 2007) sections 8.31, 10.15-16.

V. Discussion

A. Judges and the Court Budgeting Process

The effective administration of justice depends on a fully functional court system. A court's efficacy and the adequacy of access it affords to the public are measured by many factors, but primarily depend upon a level of funding that will support the operation of a sufficient number of courtrooms and court programs, including adequate staff resources and facilities, without charging exorbitant fees to court users. Because budget

cuts can dramatically affect access to justice, a judge's activities relating to court budgets and appropriations concern the law, the legal system and the administration of justice.

Budgeting within the judicial branch is complex and involves all three branches of government. Various laws, policies, and procedures govern this process. (See, e.g., Gov. Code, §§ 68502.5, 68502.7, 77000 et seq.; Cal. Rules of Court, rules 10.101(a)-(d), 10.601(b)(4), (5), 10.603(c)(6), 10.1004(c)(6).) Because of the complexity of the budget process, there are many avenues that might be pursued to prevent, reduce, or mitigate the impact of potential cuts. These actions might take place in the court or community on a local level; they may involve advocacy at the administrative level; they may involve communications with the executive and legislative branches. In sum, there are a number of activities attorneys might pursue in order to assist a court facing budget cuts.

The California Code of Judicial Ethics recognizes that judges are in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice (Advisory Com. commentary, foll. canon 4B). Several canons explicitly permit judges to speak, appear in public, and engage in activities related to the improvement of the law, the legal system, or the administration of justice, so long as these activities are consistent with the other requirements of the code (canons 4B, 4C(1), 5D).

Court budget shortfalls directly affect the ability of courts to provide access to justice. In the committee's opinion, it is permissible and appropriate for a judge to invite lawyers to a meeting to provide information about budget cuts and their potential impact on the administration of justice and to request help in reducing the cuts or ameliorating the impacts. (Canon 5D; Cal. Rules of Court, rule 10.603(c)(8); Cal. Stds. Jud. Admin., std. 10.5.)

B. Ethical Factors

While judges are free to speak to and associate with attorneys, they must comply with the ethical standards set forth in the California Code of Judicial Ethics. The code requires judges to uphold the integrity and independence of the judiciary (canon 1) and to avoid impropriety and the appearance of impropriety in all of the judge's activities

(canon 2). As the Supreme Court Advisory Committee on the California Code of Judicial Ethics provides, in the commentary to canon 2A, “[a] judge must expect to be the subject of constant public scrutiny . . . [and] must therefore accept restrictions on the judge’s conduct that might be viewed as burdensome by other members of the community and should do so freely and willingly The test for the appearance of impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality, and competence.” (Advisory Com. commentary, foll. canon 2A.) When meeting with attorneys to discuss budget implications, the judge must consider whether the invitations and requests might (1) convey impropriety or the appearance of impropriety, (2) convey an impression of favor or influence, or (3) reasonably lead to disqualification.

1. Impropriety or the Appearance of Impropriety

It is the committee’s opinion that the California Code of Judicial Ethics does not prohibit judges from asking attorneys to ‘help the court.’ (See, *ante*, fn. 1.) Because many attorneys appear in court, however, any solicitation for help directed to attorneys must avoid any suggestion that the attorneys will (1) be disadvantaged if they do not provide assistance or (2) will gain special favor or influence by providing assistance or (3) both. Even the appearance of coercion or favor must be avoided.

A judge who acts in a manner that creates the appearance of favoring or coercing attorneys undermines public confidence in the integrity and impartiality of the judiciary. In presenting information and requesting assistance, a judge may not hint of retribution or bias against an attorney or firm for not acquiescing in the request or otherwise place pressure on an attorney to assist. The distinction between an “ask” and a “lean” may be subtle and highly fact dependent. Under no circumstances should a judge engage in actual pressure, intimidation, retribution, or abuse of power.

Assuming the request is not coercive, it would be permissible, for example, to ask attorneys to write an op-ed piece or engage in outreach and community education on the impact of the budget cuts on their clients and on the community.

It is also the committee’s opinion that asking attorneys to write or meet with legislators on the court’s behalf is not prohibited by the California Code of Judicial Ethics, so long as the request is not coercive, does not appear to place a lawyer in a special position of influence, and does not create the appearance of either situation if a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality, and competence. (See canons 2A, 2B(1); Discussion, *ante*, at pt.V.B.)

2. Conveying the Impression of Special Influence

Canon 2B(1) provides that “[a] judge shall not ... convey or permit others to convey the impression that any individual is in a special position to influence the judge.” Accordingly, we state the obvious: there must not be, as a result of the judge’s request for assistance, any appearance of an attorney’s—or a group of attorneys—special influence that could result in favorable rulings, trial assignments, or procedural advantages. One way a judge might avoid the appearance of favoritism is by prefacing any request with the caveat that help is sought from anyone willing to volunteer, but without any expectations or benefits attached. A person hearing this caveat would be less likely to infer that special benefits in the courtroom were being offered.

Given a judge’s limited time and resources, he or she can only meet with so many people. When deciding whom to invite to meetings in which assistance is requested, a judge must carefully consider whether a person aware of the facts might reasonably entertain doubt as to the judge’s impartiality (Advisory Com. commentary, foll. canon 2A). In any given county, such considerations will differ based on many factors, including the size of the county, the number of firms in the county, and the number of judges. A judge should evaluate the circumstances to determine whether the invitation might be perceived as conveying favor.

3. Avoiding Disqualification and Disclosure

A judge must avoid extrajudicial activities that might reasonably result in the judge being disqualified. (Canon 4A(4); Advisory Com. commentary, foll. canon 4A.) Consideration must therefore be given to whether any of the invited lawyers have cases

currently pending or impending before the judge, and whether that fact would require disqualification or disclosure in those matters.

4. Other Considerations

The committee considered whether a judge's request to write to or meet with legislators is akin to fundraising because it is asking lawyers to donate their time or services to the court instead of their money. The committee concludes that such activities are distinguishable and not prohibited. Fundraising traditionally involves the solicitation of funds, such as donations or contributions, to civic or charitable activities (canon 4C(3)(d)(i)). A suggestion that attorneys write to or meet with an elected representative, however, is not a request for a donation of money or gifts. Rather, it encourages an individual's participation in the political process. The budgeting process for the judicial branch is inherently political and there are few, if any, nonpolitical means to influence that process. (See Discussion, *ante*, at pt. V.A.) Attorneys' advocacy may potentially benefit the court or judicial branch financially, but the Legislature remains the source of the funds rather than any individual donor. Moreover, such political activity is not only in the court's interest but also in the attorneys' interest in maintaining effective access to justice.

The committee also considered whether a judge's time spent requesting attorneys to write or speak to legislators could be regarded as the use of judicial resources on grassroots lobbying. (*Miller v. Miller* (1978) 87 Cal.App.3d 762, 768-770 [absent legislative authority, expenditure of public funds to influence the public to lobby legislative bodies is prohibited].) Canon 3A requires that a judge's prescribed duties must take precedence over all other activities. So long as judges faithfully perform their assigned duties, meeting with attorneys about budget impacts is an extrajudicial activity. As such, any requests for attorney assistance with legislative advocacy would not amount to a prohibited use of judicial resources.

VI. Conclusions

Significant reductions to a court's budget, or to the budget of the judicial branch as a whole, can have a severe impact on the ability to provide effective administration of justice and access to the courts. A judge's activities relating to those budgets and appropriations fall within the scope of "measures concerning improvement of the law, the legal system, or the administration of justice." (Canon 5D.) It is the committee's opinion that inviting groups of attorneys in the community to meet and discuss how they might assist the court in dealing with the impact of budget reductions is permissible judicial conduct. In so doing, judges must consider whether the invitation or the request would violate any other requirements of the Code of Judicial Ethics. When determining whom to invite and what to ask, a judge should be mindful of (1) the appearance of impropriety, (2) the impression of special influence, and (3) the potential for disqualification and disclosure. With these standards in mind, judges will be able to conduct the analysis necessary to make ethical decisions.



This opinion is advisory only (Cal. Rules of Court, rules 9.80(a), (e); Cal. Com. Jud. Ethics Opns., Internal Operating Rules & Proc. (CJEO) rules 1(a), (b)). It is based on facts and issues, or topics of interest, presented to the California Supreme Court Committee on Judicial Ethics Opinions in a request for an opinion (Cal. Rules of Court, rule 9.80(i)(3); CJEO rules 2(f), 6(c)), or on subjects deemed appropriate by the committee (Cal. Rules of Court, rule 9.80(i)(1); CJEO rule 6(a)).