



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

350 McAllister Street, Room 1144A

San Francisco, CA 94102

(855) 854-5366

www.JudicialEthicsOpinions.ca.gov

CJEO Informal Opinion Summary No. 2012-003

[Posted August 23, 2013]

**DISQUALIFICATION AND DISCLOSURE: UNIVERSITY REPRESENTATION
OF A PARTY IN A MATTER BEFORE A JUSTICE EMPLOYED BY THE
UNIVERSITY**

The Committee on Judicial Ethics Opinions (CJEO) was asked by an appellate court presiding justice for an opinion as to what an associate justice's disqualification and disclosure duties were, if any, where the associate justice was employed by a university, and the university, its staff, and students under university supervision, represented a party appearing before the associate justice. An opinion was also sought as to the presiding justice's reporting or corrective action duties, if any.

The committee was specifically asked to address circumstances in which an associate justice had decided not to disclose or disqualify in a matter pending before the justice where a clinical program at a university's law school represented a party and the justice was employed for compensation by the same university to teach an undergraduate law-related course.

The committee concluded that disqualification was not required under canon 3E(4)(c) of the California Code of Judicial Ethics. In the absence of facts showing a substantive relationship between the justice's teaching and the law school clinic, the committee concluded that an aware person would not reasonably doubt the justice's impartiality. The committee also concluded that because disclosure is not required for appellate justices, there was no violation of a duty to disclose. Thus, the presiding justice had no duty to report or seek corrective action.

In reaching these conclusions, the committee was guided by *Stanford University v. Superior Court* (1985) 173 Cal.App.3d 403, decisions from other jurisdictions, and other persuasive authorities. (*Stanford, supra*, 173 Cal.App.3d at pp. 407-409; *Fairley v. Andrews* (2006) 423 F.Supp.2d 800, 820 (N.D. Ill.); *Williams v. Viswanathan* (2001) 65 S.W.3d 685, 692 (Tex. App.); *U.S. v. Moskovits* (1994) 866 F.Supp. 178, 181-182 (E.D. Pa.); Rothman, Cal. Judicial Conduct Handbook (3d ed. 1997) § 7.73, pp. 381-382.) The committee noted that the university itself was not a party, nor was the justice's teaching opportunity dependent upon the outcome of the appeal, leaving only employment by the university as a link between the matter and the justice. The committee concluded that the link between the university and the justice was too remote and unrelated to give a reasonable person sufficient doubt as to the justice's impartiality and disqualification was not required.

In addressing disclosure, the committee noted that although there is no requirement for disclosure by appellate justices, each justice must decide for himself or herself whether the facts require disclosure for the purpose of reaffirming the public's trust in the integrity and impartiality of the judicial system. (Rothman, *supra*, § 7.90, at p. 389.) That decision, like a disqualification decision, must be made solely by the justice involved. (*Kaufman v. Court of Appeal* (1982) 31 Cal.3d 933, 937-940.) In the facts provided, the justice had decided not to disclose the university employment and that decision did not violate the Code of Judicial Ethics.



This informal opinion summary is advisory only (Cal. Rules of Court, rules 9.80(a), (e); Cal. Com. Jud. Ethics Opns., Internal Operating Rules & Proc. (CJEO) rule 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 rule 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)).