



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

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CJEO Oral Advice Summary No. 2014-008

[Posted July 1, 2014]

APPLICATION OF THE RULE OF NECESSITY

I. Question:

Does the rule of necessity permit a sitting appellate justice to author an opinion deciding an issue on appeal that would disqualify all sitting and retired appellate justices?

The question was asked by an appellate justice assigned to author an opinion involving the issue of whether article VI, section 17, of the California Constitution prohibits judges and justices from accepting any form of public employment during the remainder of their term of office.¹

¹ Limited identifying information is included in this oral advice summary because confidentiality has been waived by the appellate justice's reliance on, and reference to, this advice in a published appellate opinion (Cal. Rules of Court, rule 9.80(h)(3); CJEO rules, rule 5(e); *Gilbert v. Chiang* (2014) 227 Cal.App.4th 537).

II. Oral Advice Provided:

Under the ‘rule of necessity,’ a judge is not precluded from adjudicating a cause because of a disqualifying financial interest if there is no judge or court available to hear and resolve the cause. (*Olson v. Cory* (1980) 27 Cal.3d 532, 537; *People v. Superior Court (Mudge)* (1997) 54 Cal.App.4th 407, 410.) The California Code of Judicial Ethics recognizes the rule of necessity in the Advisory Committee commentary to canon 3E (Cal. Code Jud. Ethics, Advisory Com. commentary foll. canon 3E). In view of the fact that all sitting and retired California appellate justices have an interest in *Gilbert v. Controller of the State of California*, which involves the issue of whether article VI, section 17, of the California Constitution prohibits judges and justices from accepting any form of public employment during the remainder of their term of office, the rule of necessity applies and the requesting justice is qualified to determine the issues before the justice’s appellate panel and author an opinion in the matter.



This oral advice summary 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)).