



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

350 McAllister Street, Room 1144A

San Francisco, CA 94102

(855) 854-5366

[www.JudicialEthicsOpinions.ca.gov](http://www.JudicialEthicsOpinions.ca.gov)

**CJEO Oral Advice Summary No. 2015-010**

*[Posted June 17, 2015]*

**SERVICE BY AN APPELLATE JUSTICE AS A COMPLIANCE OFFICER IN  
PENDING FEDERAL PROCEEDINGS**

**I. Question:**

Does the California Code of Judicial Ethics prohibit a recently nominated Associate Justice of the California Court of Appeal from continuing to serve as a Prison Compliance Officer in pending federal proceedings concerning overcrowding conditions in the California prison system?<sup>1</sup>

**II. Oral Advice Provided:**

The question of whether an appellate justice may serve as a Prison Compliance Officer appointed by a federal court panel in pending federal proceedings involving overcrowding in the California prison system raises both legal issues under the California Constitution and ethical issues under the California Code of Judicial Ethics. The Supreme Court Committee on Judicial

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<sup>1</sup> Limited identifying information is included in this oral advice summary because confidentiality has been waived by the requesting party (Cal. Rules of Court, rule 9.80(h)(3); CJEO rules, rule 5(e)).

Ethics Opinions (CJEO) has no authority to provide legal advice and declines to do so. It is the responsibility of the appellate justice requesting ethical advice from CJEO to obtain a legal opinion about whether simultaneous service is permissible under article 7, sections 7 & 17, of the California Constitution.

Assuming for the purposes of this opinion that there are no constitutional impediments, the question is whether the California Code of Judicial Ethics prohibits a state court appellate justice from serving as a prison compliance officer under court order in federal litigation involving overcrowding in the California prison system.

Simultaneous service would not be strictly prohibited under canons 1 or 2 because a person aware of the federal court position would not have reason to doubt the justice's impartiality or independence in state appellate matters generally. (Cal. Code Jud. Ethics, canons 1 & 2; Advisory Com. commentary, foll. canon 2A [test for appearance of impropriety is whether a person aware of the facts might reasonably entertain doubt that the judge would be able to act with integrity, impartiality, and competence].) More specific canons addressing extrajudicial involvement in governmental activities and the disqualification requirements of appellate justices also do not prohibit simultaneous service, however, those canons raise issues for consideration by the appellate justice during the course of that service.

Federal court appointment as a Prison Compliance Officer is an extrajudicial activity involving the law, the legal system, and the administration of justice, which is excepted from the prohibitions against appearing before public officials or accepting governmental positions in canons 4C(1) & (2). The appropriateness of continuing such an excepted extrajudicial assignment must be assessed by the appellate justice in light of the demands on his time and the potential for interference with his effectiveness and independence. (Advisory Com. commentary, foll. canon 4C(2); Canon 3A [“judicial duties ... shall take precedence over all other activities ....”].)

Similarly, the disqualification canons do not strictly prohibit simultaneous service, however, the potential for disqualification under canon 3E(5)(f)(ii) and the frequency of disqualification under canon 4A(4) must be considered by the appellate justice when assessing the appropriateness of continuing to serve in the federal court Prison Compliance Officer

position. The extent to which the justice might be disqualified based on personal knowledge of disputed evidentiary facts about individuals and circumstances in the California prison system gained while serving as the Prison Compliance Officer is only speculative. Continued service is not precluded until the justice makes such a disqualification decision in a specific matter before him as an appellate justice. (*Kaufman v. Court of Appeal* (1982) 31 Cal.3d 933, 937-940 [each appellate justice decides whether the facts require recusal, subject only to higher court review for bias or unfairness in the appellate proceedings].)



*This oral advice summary is advisory only (Cal. Rules of Court, rule 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 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)).*