

## Ethics in the FLFO

20<sup>th</sup> Annual AB 1058 Child Support  
Training Conference  
August 29-September 1, 2016

---

---

---


---

---

---

---

---



## Format for this Class

- Hypotheticals
- Turning Point
- Discussion
- Rules

---

---

---

---

---

---

---

---



## References

- Rules of Professional Conduct
- Code of Ethics for Court Employees of California
- Guidelines for the Operation of Family Law Information Centers and Family Law Facilitators Offices

---

---

---

---

---

---

---

---

### Hypothetical 1

- A litigant comes into the FLFO and tells you that her former spouse is not paying the spousal support that was ordered and she has now heard that he is planning to retire. The court awarded her half of his retirement and she wants to know how to get it. You determine that a QDRO was never done and needs to be submitted quickly to prevent the retirement from being cashed out by her ex-spouse upon his retirement. When you tell the litigant that she needs to get an attorney to prepare the QDRO for her, she bursts into tears and tells you that she has no money to pay an attorney and could not possibly do it on her own. You have never prepared a QDRO before, it is not a service your office provides and you do not know where to start. What do you do?




---

---

---

---

---

---

---

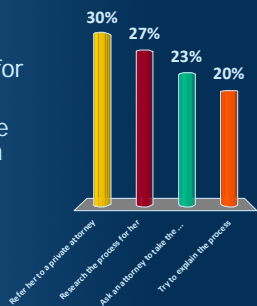
---

---

---

### Hypothetical 1

1. Refer her to a private attorney
2. Research the process for her
3. Ask an attorney to take the case pro bono as a favor to you
4. Try to explain the process




---

---

---

---

---

---

---

---

---

---

### Competence

- Rules of Professional Conduct 3-110
- Code of Ethics, Tenet 3
- Code of Ethics, Tenet 9




---

---

---

---

---

---

---

---

---

---

## Hypothetical 2

While working in the FLFO, a clerk from another area walks a litigant over to your counter and asks if you can explain the service requirements for a guardianship petition. You agree and the clerk leaves you to assist the litigant. Later that day, you are walking out of the courthouse for a break and you see that same clerk. She asks you if you were able to get through to the litigant with the guardianship. You confirm that you assisted the litigant, but the clerk continues to press you for details about your interaction. What should you do?



---

---

---

---

---

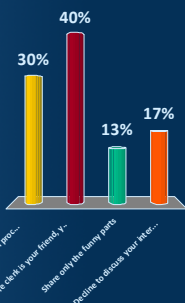
---

---

---

## Hypothetical 2

1. Explain only the legal procedures that you went over with the litigant
2. If the clerk is your friend, you may share with her all of the details of your interaction with the litigant
3. Share only the funny parts
4. Decline to discuss your interaction with the litigant



---

---

---

---

---

---

---

---

## Confidentiality

- Rules of Professional Conduct, 3-100
- Code of Ethics, Tenet 4
- Guidelines, Section 8



---

---

---

---

---

---

---

---

### Hypothetical 3

While triaging litigants in the FLFO you encounter a man who wants to set aside a VDOP that he signed the previous year because he has just learned that someone else may be the father of the child. You then discover that the mother of the child is the teacher's aide in your daughter's second grade class. You have listened to stories from the aid about the trials of being a single parent, and realize that you have probably heard stories about the man in front on you, although never by name. What should you do?



---

---

---

---

---

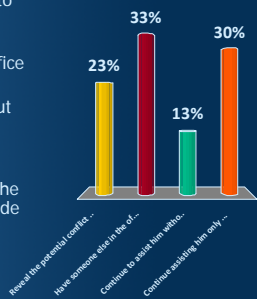
---

---

---

### Hypothetical 3

1. Reveal the potential conflict to him and assist him only if he feels comfortable
2. Have someone else in the office assist him
3. Continue to assist him without revealing that you know the mother of the child
4. Continue assisting him only until you can be certain that he is the person the teacher's aide talked to you about



---

---

---

---

---

---

---

---

### Conflicts of Interest

- Rules of Professional Conduct, 3-310
- Code of Ethics, Tenet 7



---

---

---

---

---

---

---

---

## Hypothetical 4

A court employee who you know has just started attending evening law school classes tells you that she is trying to help a friend reduce his child support. The friend works during court business hours and is not able to come to the FLFO for assistance. She wants you to tell her what forms her friend needs to file and explain what he needs to do to lower his child support. What do you do?



---

---

---

---

---

---

---

---

## Hypothetical 4

1. Explain the legal process to the employee and confirm that she understands sufficiently to explain it to her friend
2. Provide copies of written instructions that she can share with her friend, but do not attempt to answer specific questions
3. Tell her to have her friend contact the office directly if he wants assistance
4. Ask her to bring in her friend's forms so you can review them before she files them



---

---

---

---

---

---

---

---

## Unauthorized Practice of Law

- Rules of Professional Conduct, 1-300
- Business and Professions Code 6125
- Code of Ethics, Tenet 7



---

---

---

---

---

---

---

---

## Hypothetical 5

A FL judge comes over to "visit" often in the afternoons after calendar is over – just for maybe 15-20 minutes, to chat. One day, during your visit, she brings up the fact that a specific attorney was in front of her for a contested judicial mediation; she does not understand how he can effectively practice law, because he appears to have no skill and no ability to make a legal argument. You know this attorney (after working with him while in private practice), and also have a poor impression of him. What do you do?



---

---

---

---

---

---

---

---

## Hypothetical 5

1. Share with the judge your own impressions of this attorney
2. Listen to the judge without providing any comment
3. After the judge leaves, warn the attorney of the negative impression his actions are having on the judge
4. Ask for more details so you will have a better understanding of the problem the judge has observed



---

---

---

---

---

---

---

---

## Ex Parte Communication

- Guidelines, Section 10
- Code of Judicial Ethics, Canon 3 B (7)



---

---

---

---

---

---

---

---

## Hypothetical 6, part a

It is the responsibility of your staff to triage the customers before you meet with them. Part of the triage process is to make sure the party is not represented. You are speaking with a customer who wants to modify his child support, and shows you a dissomaster calculation "his attorney" prepared for him, but he is "no longer working with him." What do you do?



---

---

---

---

---

---

---

---

## Hypothetical 6, part a

1. Assume the triage was done properly and ignore the comment
2. Confirm that the attorney has withdrawn from the case before continuing
3. Refer him back to his attorney for assistance
4. Re-run the calculation to make sure the attorney did it properly



---

---

---

---

---

---

---

---

## Hypothetical 6, part b

Same fact pattern – after determining this customer does in fact still have an attorney of record, what do you do?



---

---

---

---

---

---

---

---

## Hypothetical 6, part b

1. Refer him to his attorney
2. Refer him to the State Bar
3. Inquire further to find out if there is a good reason why he does not want to go back to the attorney
4. Help him to prepare a Substitution of Attorney form



---

---

---

---

---

---

---

---

## Represented Parties

- Rules of Professional Conduct, 2-100
- Guidelines, Section 11



---

---

---

---

---

---

---

---

## Hypothetical 7

A Customer comes into the FLFO wanting to modify her child visitation. She has brought her new boyfriend with her, who is a social acquaintance of yours. He sees you, says "Hi!" tries to give you a hug, asks you about your partner, if you are still living in the same place, etc. All this is done in front of all of the other waiting customers. When it is his girlfriend's turn to be seen, you are the one who will be speaking with her. What do you do?



---

---

---

---

---

---

---

---



## Hypothetical 7

1. Assist her as you would anyone else
2. Ask the boyfriend to take seat in the lobby before you assist her
3. Ask another person in the office to assist her
4. Assist her out of the hearing and sight of the other litigants waiting in the lobby

0% 0% 0% 0%

Assist her as you would any...  
Ask the boyfriend to take seat...  
Ask another person in the of...  
Assist her out of the hearing...

JUDICIAL COUNCIL OF CALIFORNIA

---

---

---

---

---

---

---

---

## Impartiality

- Code of Ethics: Tenets 1, 3, 5, 6, 7, 10
- Guidelines, Section 3

JUDICIAL COUNCIL OF CALIFORNIA

---

---

---

---

---

---

---

---

## Contact Us

Rachel McKenzie  
Santa Cruz Superior Court  
[Rachel.McKenzie@santacruzcourt.org](mailto:Rachel.McKenzie@santacruzcourt.org)

Lollie Roberts  
Sacramento Superior Court  
[RobertsL@saccourt.ca.gov](mailto:RobertsL@saccourt.ca.gov)

JUDICIAL COUNCIL OF CALIFORNIA

---

---

---

---

---

---

---

---