

SUPREME COURT COMMITTEE ON JUDICIAL ETHICS OPINIONS
INTERNAL OPERATING RULES AND PROCEDURES

Pursuant to California Rules of Court, rule 9.80(m), the following are the internal operating rules and procedures of the Supreme Court Committee on Judicial Ethics Opinions. (Adopted by the Committee on Judicial Ethics Opinions on January 6, 2012; approved by the Supreme Court on January 25, 2012.)

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Rule 1. Purpose and Scope; Authority; Membership

(a) Purpose and scope

The Committee on Judicial Ethics Opinions was established by the Supreme Court to provide judicial ethics advisory opinions on topics of interest to the judiciary, judicial officers, candidates for judicial office, and members of the public. In providing its opinions and advice, the committee acts independently of the Supreme Court, the Commission on Judicial Performance, the Judicial Council, the Administrative Office of the Courts, and all other entities.

The committee will not provide opinions or advice in matters known by a requester or the committee to be the subject of pending litigation or a pending Commission on Judicial Performance or State Bar disciplinary proceeding.

(b) Authority

The committee is authorized by California Rules of Court, rule 9.80, adopted by the Supreme Court, to provide ethics advice to judicial officers and candidates for judicial office, including formal written opinions, informal written opinions, and oral advice. The committee is also authorized to consider topics for opinions suggested by individuals and entities. California Rules of Court, rule 9.80, and these rules are not intended to prohibit or inhibit individuals from seeking advice from other sources.

The committee is specifically authorized to:

- (1) Issue formal written opinions, informal written opinions, and oral advice on proper judicial conduct under the California Code of Judicial Ethics, the California Constitution, statutes, rules of court, and any other applicable authority;
- (2) Make recommendations to the Supreme Court for amending the Code of Judicial Ethics, the California Rules of Professional Conduct, or California Rules of Court, rule 9.80;
- (3) Make recommendations regarding appropriate subjects for judicial education programs offered by the Center for Judicial Education and Research, the California Judges Association, or other providers.
- (4) Make other recommendations to the Supreme Court as deemed appropriate by the committee or as requested by the Court; and
- (5) Adopt amendments to these internal operating rules and procedures, subject to approval by the Supreme Court.

(c) Membership

The committee consists of 12 members appointed by the Supreme Court, including at least one justice from a court of appeal and one member who is a subordinate

judicial officer employed full-time by a superior court. The remaining members are justices of a court of appeal or judges of a superior court, active or retired. No more than two retired justices or judges may be members of the committee at one time, except if an active justice or judge retires during his or her term, he or she may complete the term. A retired justice or judge committee member may not be an active member of the State Bar of California and may not be engaged in privately compensated dispute resolution activities.

Rule 2. Definitions

The following definitions apply, except where otherwise stated:

- (a) “Committee” or “CJEO” means the Supreme Court Committee on Judicial Ethics Opinions.
- (b) “Chair” means the member of the committee appointed as the chairperson by the Supreme Court pursuant to California Rules of Court, rule 9.80(g).
- (c) “Vice-chair” means the member of the committee appointed as the vice-chairperson by the Supreme Court from the members of the committee pursuant to California Rules of Court, rule 9.80(g).
- (d) “Judicial officer” means anyone who is an officer of the state judicial system, who performs judicial functions, and who is bound to comply with the California Code of Judicial Ethics adopted by the Supreme Court pursuant to the California Constitution, article VI, section 18(m).
- (e) “Judicial candidate” means a person seeking election to or retention of judicial office by election. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support. For purposes of these rules, the term “judicial candidate” includes any “candidate” bound to comply with the California Code of Judicial Ethics adopted by the Supreme Court pursuant to the California Constitution, article VI, section 18(m) .

(f) “Requester” means an individual or entity who makes a request for an opinion or advice or who suggests a topic for the committee to consider as the subject of a formal opinion.

(g) “Committee counsel” means the legal advisor hired by the committee to serve as its staff and maintain the CJEO legal offices pursuant to these rules and as directed by the committee.

(h) “CJA” means the California Judges Association, a voluntary professional association of the state’s judges, and “CJA Ethics Committee” means the California Judges Association Committee on Judicial Ethics.

(i) “CJEO Web site” means *www.JudicialEthicsOpinions.ca.org* , established and maintained by the committee pursuant to California Rules of Court, rule 9.80(n).

(j) “Toll-free CJEO line” means 1-855-854-5366, the toll-free telephone number operated by the committee pursuant to California Rules of Court, rule 9.80(n).

(k) “CJEO e-mail address” means *Judicial.Ethics@jud.ca.gov*, the e-mail address maintained by the committee pursuant to California Rules of Court, rule 9.80(n).

(l) “CJEO Opinion Request Form” means the form approved by the committee for use in making all requests for opinions, directly available on the CJEO Web site or by mail by calling the toll-free CJEO line.

(m) “CJEO Suggested Topic Form” means the form approved by the committee for use in submitting judicial ethics topics for consideration, directly available on the CJEO Web site or by mail by calling the toll-free CJEO line.

(n) “CJEO Confidentiality Waiver Form” means the form approved by the committee for use when a judicial officer or candidate for judicial office waives confidentiality pursuant to California Rules of Court, rule 9.80(h)(3), and rule 5(b) of these internal operating rules and procedures. This form is directly available on the CJEO Web site or by mail by calling the toll-free CJEO line.

(o) “Disciplinary proceedings” means any formal or informal matters that are being conducted by the Commission on Judicial Performance or the State Bar, including hearings, inquiries, and investigations.

Rule 3. Meetings and Conferences

(a) The chair will call committee meetings as needed, preside over those meetings, appoint subcommittees as needed, and otherwise coordinate the work of the committee. In the absence of the chair, the vice-chair will act as chair and will otherwise perform such duties as assigned by the chair.

(b) The committee should meet in person at least twice a year and, at the discretion of the chair, may confer either in writing, including electronic mail, by telephone, by videoconference, or by other available electronic means as often as needed to conduct committee business and resolve pending opinion requests.

Rule 4. Referrals to California Judges Association Committee on Judicial Ethics

(a) All requests for oral advice will be referred to the California Judges Association Committee on Judicial Ethics, with the following exceptions:

- (1) A definitive answer to the request appears to be found in the resolution of an issue by the CJEO in a pending or prior formal or informal opinion;
- (2) The requester declines to contact the CJA Judicial Ethics Committee; or
- (3) When the request raises an issue that can be resolved by a statute, rule of court, canon, or other source, the committee will inform the requester of the particular source that may resolve the issue but will not provide oral advice. If the cited source does not resolve the issue for the requester, the committee will refer the requester to the CJA Ethics Committee.

(b) At its discretion, the committee will determine whether an exception applies and the oral advice to be given. Both determinations will be made by agreement of no fewer than three committee members who will serve on a rotating basis. Any serving member may request full committee discussion and vote on a determination, to be held at a time and by such means as determined by the chair. Upon such determinations, the chair will assign to one committee member the task of communicating the oral advice to the requester.

Rule 5. Confidentiality

(a) For purposes of this rule, “committee” includes committee members and their staff, committee counsel, and any additional staff hired by the committee.

(b) Pursuant to California Rules of Court, rule 9.80(h), all committee communications are confidential except as described in these rules. To ensure confidentiality, the following apply:

(1) All records of the committee, including all opinions, inquiries, replies, circulated drafts, documents, writings, files, communications with staff, and proceedings of the committee must be maintained as confidential and must not be disclosed outside of the committee unless confidentiality is waived or is otherwise provided for under these rules.

(2) All information electronically gathered by the committee, including on computers and electronic devices, on the CJEO Web site, in the CJEO e-mail accounts, and in the electronic files and e-mail accounts of the committee, must be maintained as confidential using available electronic security applications and other means, including password protections and access restrictions.

(3) The CJEO office, file cabinets, and computers must be maintained using security measures to restrict access and protect confidentiality as provided in these rules.

(4) All communications and documents regarding the opinions and advice of CJA forwarded by CJA to the committee pursuant to CJEO rule 9 are confidential as provided in these rules.

(c) The committee must not disclose outside the committee any confidential information obtained or developed by the committee, including identifying information concerning an individual whose inquiry or conduct has been the subject of any communication.

(d) The committee must not disclose within the committee any identifying information concerning an individual whose inquiry or conduct is the subject of

any communication with the committee. In order to fulfill this mandate, the following procedures apply:

(1) Upon receipt of a request for an opinion or advice, committee counsel must assign a number to the request and remove the requester's name and identifying information. The committee members will deliberate and respond to the request under the procedures provided in these rules without identification of the requester.

(2) Any person who learns the identity of the requester through direct contact with the requester or through number assignment and identification removal must maintain the confidentiality of the identifying information of the requester within the committee unless confidentiality is waived or is otherwise provided for under these rules.

(3) If the requester is an entity, such as CJA or the Commission on Judicial Performance, the requester's name need not be removed, but if the request includes identifying information concerning an individual, that information must be removed and maintained as confidential.

(e) A judicial officer or candidate for judicial office may waive confidentiality; any such waiver must be in writing using the CJEO Confidentiality Waiver Form, which is available on the CJEO Web site or by mail by calling the toll-free CJEO line. If the judicial officer or candidate making the request for an opinion or advice waives confidentiality or asserts reliance on an opinion or advice by the committee in judicial or attorney discipline proceedings, such request and opinion or advice no longer are confidential under these rules. Notwithstanding any waiver, committee deliberations and records are confidential.

Rule 6. Opinion Requests

(a) The committee will issue formal written opinions on any subject it deems appropriate. Any person or entity may suggest, in writing, a topic for the committee to consider as the subject of a formal opinion. Topics must be submitted using the CJEO Topic Suggestion Form, which is available on the CJEO Web site or by mail by calling the toll-free CJEO line.

(b) Only judicial officers and candidates for judicial office may request informal written opinions and oral advice.

(c) Any judicial officer or candidate for judicial office may request a formal or informal written opinion from the committee. Requests must be submitted using the CJEO Opinion Request Form, which is available on the CJEO Web site or by mail by calling the toll-free CJEO line. The committee will consider only written requests for formal and informal opinions; the requests must describe the facts and discuss the issues presented in the request. The request should include citation to any constitutional provisions, statutes, rules of court, canons, advisory opinions, case law, or other authorities relevant to the request.

(d) A judicial officer or candidate for judicial office requesting oral advice may communicate in person, in writing (including by electronic mail), or by telephone with committee staff or any member of the committee, who must refer the request to the chair.

(e) A judicial officer or candidate for judicial office requesting an opinion or advice must disclose to the committee whether the issue that is the subject of the request is also the subject of:

(1) Pending litigation;

(2) A pending Commission on Judicial Performance disciplinary proceeding;

(3) A pending State Bar disciplinary proceeding; or

(4) An inquiry to, or an opinion provided by or pending from, the CJA Ethics Committee.

(f) The committee will inform an inquiring judicial officer or candidate for judicial office that he or she must disclose all relevant information as described in these rules and that any opinion or advice issued by the committee will be based on the premise that all relevant information has been disclosed, including whether another inquiry has been made and has been completed or is pending.

Rule 7. Consideration of Requests; Response Procedures

(a) The committee must consider all requests for an opinion. An executive committee consisting of the chair, vice-chair, and two additional members appointed by the chair will review all requests and organize them into two lists comprised of high priority requests and other requests. The executive committee will present both lists to the committee for consideration. The executive committee may perform additional duties as directed by the chair.

(b) The committee will determine whether a request for an opinion should be accepted or declined, and if accepted, whether the committee will provide a formal written opinion, an informal written opinion, oral advice, or any combination of the discretionary options for response provided in these rules. If the committee decides to proceed by way of oral advice, the request shall be referred to the three-member oral advice subcommittee.

(c) Eight members of the committee must vote affirmatively to prepare a formal or informal written opinion. Upon a vote to proceed, the chair will appoint a subcommittee of four members, including at least one court of appeal justice, to analyze the issue and draft an opinion for consideration by the entire committee.

(d) Eight members of the committee must vote affirmatively to adopt a draft formal written opinion drafted by a subcommittee. The draft opinion will be posted and the public will be given notice and an opportunity to comment for at least 45 days on the CJEO Web site, unless the committee in its discretion decides an opinion should be issued in final form in less time or with no prior notice and opportunity to comment. After the public comment period has expired, the committee will decide whether the opinion should be published in its original form, modified, or withdrawn. Eight committee members must vote affirmatively on the final version of the opinion or to withdraw a formal written opinion.

(e) Eight members of the committee must vote affirmatively to adopt an informal written opinion. After the committee adopts an informal written opinion, it will be distributed to the requesting judicial officer or candidate for judicial office by committee counsel.

Rule 8. Opinion Distribution

(a) The committee will, upon final adoption of a formal written opinion, distribute the opinion to all California judicial officers and other interested persons and entities by posting it on the CJEO Web site and by providing copies to the person or entity who requested the opinion,. Committee counsel will maintain a list of interested persons and entities who request receipt of distributed CJEO opinions. The committee may withdraw, modify, or supersede an opinion at any time.

(b) The committee will periodically post summaries of its informal written opinions on the CJEO Web site and may, in its discretion, post summaries of its oral advice.

(c) Committee counsel must maintain records of committee determinations and opinions at the CJEO office.

Rule 9. California Judges Association

The CJEO, working with the California Judges Association and its Ethics Committee, will develop procedures for the delivery to CJEO, on a continuing and timely basis, summaries of all “informal responses” issued by CJA. “Informal responses” are the written records maintained by the CJA Ethics Committee that contain a recitation of the oral inquiry and the response. The summaries provided by CJA to CJEO will not include the name of the inquiring judicial officer but will contain: (1) a full description of the inquiry; (2) all of the relevant circumstances; (3) a full description of the answer provided; (4) the reasoning in support of the answer; and (5) any relevant information that would be helpful to CJEO. CJA will begin providing CJEO with summaries on the date of the approval of these rules. After six months of such deliveries, CJEO will evaluate whether the information provided is sufficient to enable it to meet its responsibilities, including determining which topics merit formal written opinions. At that time, CJEO will report to the Supreme Court on its evaluation and may propose any amendments necessary to these rules to reflect the policies and procedures it determines are needed to provide the full scope of service intended by the court. All communications and documents regarding opinions and advice of CJA forwarded by CJA to the committee are confidential.