

Supreme Court Committee on Judicial Ethics Opinions

350 McAllister Street, Room 1144A, San Francisco, California 94102-3688

<http://www.courts.ca.gov/policyadmin-invitationstocomment.htm>

INVITATION TO COMMENT

SP11-13

Title	Action Requested
Proposed Committee on Judicial Ethics Opinions Internal Operating Rules and Procedures	Review and submit comments by Sept. 230 , 2011
Proposed by	Proposed Effective Date
Supreme Court Committee on Judicial Ethics Opinions Hon. Ronald B. Robie, Chair	October 19, 2011
	Contact
	Nancy A. Black Committee Counsel 415-865-7028 phone 415-865-7075 fax judicial.ethics@jud.ca.gov

Summary

The Supreme Court Committee on Judicial Ethics Opinions (CJEO) proposes internal operating rules and procedures to implement rule 9.80 of the California Rules of Court, and to govern the committee in the performance of its duties. The proposed rules and procedures were adopted by the committee on May 26th, 2011. They provide procedures for ensuring confidentiality, for coordination with the California Judges Association (CJA), and for receiving and responding to requests for opinions and advice. After reviewing comments on these proposed rules and procedures, the committee will make recommendations to the Supreme Court regarding any changes or amendments adopted by the committee. The full text of the proposed CJEO Internal Operating Rules and Procedures (CJEO rules) follow the discussion.

Discussion

The Supreme Court established the Committee on Judicial Ethics Opinions to provide judicial ethics advisory opinions and advice to judicial officers and candidates for judicial office. Acting on the recommendations of the Implementation Committee for the Supreme Court Committee on Judicial Ethics Opinions (<http://www.courts.ca.gov/memo-finalreport-ethicscomm.pdf>), the Supreme Court adopted California Rules of Court, rule 9.80, to govern the committee ([Rule 9.80](#)).

The proposed CJEO Internal Operating Rules and Procedures have not been approved by the Supreme Court and are not intended to represent the views of the court. These proposals are circulated for comment purposes only.

[Committee on Judicial Ethics Opinions](#)). Rule 9.80 gives the committee broad discretion to implement the rule with procedures designed to respond to requests for ethics opinions from the California judiciary and to respond to ethics topics submitted by the public. Under rule 9.80, the committee acts independently of the Supreme Court, the Commission on Judicial Performance, the Administrative Office of the Courts, the Judicial Council, and all other entities (Cal. Rules of Court, rule 9.80(b)).

To provide its services to the judiciary and the public, the committee is required by rule 9.80 to set up a secure Web site and email address, maintain a toll-free phone line, and distribute its formal opinions to members of the branch and all interested parties (Cal. Rules of Court, rule 9.80(k), (n)).

Rule 9.80 specifically directs the committee to adopt rules and procedures to carry out its duties in three significant areas: (1) confidentiality; (2) coordination with the CJA in providing oral advice; and (3) opinion procedures. The proposed CJEO rules and procedures implement rule 9.80 and should be read together with the rule in order to understand the full scope of the proposal.

1. Confidentiality

With the exception of the formal opinions distributed by the committee, all communications to and from the committee are strictly confidential (Cal. Rules of Court, rule 9.80(h); proposed CJEO rule 5(b)). Rule 9.80 provides that establishing confidentiality is critical to encouraging judicial officers and candidates for judicial office to seek authorized ethics advice from the committee, which will promote ethical conduct and fair administration of justice. To implement these policies, rule 9.80 and the proposed CJEO rules prohibit committee members and staff from disclosing any confidential information, including information identifying a judicial officer or candidate, and deem all CJEO records to be confidential and official information within the meaning of the California Evidence Code (Cal. Rules of Court, rule 9.80(h)(1)-(2); proposed CJEO rule 5(b)-(c)). A judicial officer or candidate may waive confidentiality under rule 9.80 but may not waive the confidentiality of the CJEO proceedings (Cal. Rules of Court, rule 9.80(h)(3)).

In adopting the proposed rules and procedures, the committee extended confidentiality to within its own proceedings. Under proposed rule 5(d), the name and identifying information of any judicial officer or candidate is removed at the time a request is made for an opinion or advice. Committee members and staff who are contacted must maintain the confidentiality of the requester within the committee. All of the committee's deliberations will be conducted without identification of the requester, unless confidentiality is waived. Procedures for such a waiver are specified in proposed rule 5(e). Proposed rule 5(b)(1)-(3) further mandates security measures

The proposals have not been approved by the Supreme Court and are not intended to represent the views of the court. These proposals are circulated for comment purposes only.

and requires access restrictions on the files, computers, and all information electronically gathered and maintained by the committee.

2. Coordination with the California Judges Association

Rule 9.80 allows a judicial officer or candidate for judicial office to contact any member of the committee or its staff in person, by phone, or in writing (including by electronic mail) to request oral advice (Cal. Rules of Court, rule 9.80(i)(4)). Recognizing the many years of valuable contributions the California Judges Association has made by offering judges oral advice on its ethics hot line, rule 9.80 authorizes the committee to adopt a revocable policy of referring requests for oral advice to the CJA Ethics Committee (Cal. Rules of Court, rule 9.80(f)).

The proposed CJEO rules provide that all requests for oral advice will be referred to CJA Ethics Committee, except in those circumstances where: (1) a prior or pending CJEO opinion provides a resolution; (2) an issue raised by a request can be resolved by a statute, rule of court, canon, or other source; or (3) the requester declines to contact the CJA Ethics Committee (proposed CJEO rule 4(a)(1)-(3)). In the circumstance where an issue raised by a request can be resolved by a specific source, the committee will inform the requester of the source but will not provide oral advice and will refer the requester to the CJA Ethics Committee if the cited source does not resolve the issue for the requester (proposed CJEO rule 4(a)(3)).

The proposed CJEO rules also provide that the CJEO will work with the CJA to develop procedures for the exchange of informal responses, without identifying information, on a continuing basis and makes confidential all such communications with the CJA regarding informal advice (proposed CJEO rule 9).

3. Procedures for handling requests for opinions and for responding to those requests

Rule 9.80 requires that requests for formal and informal opinions and submission of topics be made to the committee in writing (Cal. Rules of Court, rule 9.80(i)(1)). Requests must be made in a form approved by the committee and must describe the facts and discuss the issues presented in the request (Cal. Rules of Court, rule 9.80(i)(3); proposed CJEO rule 6(a), (c)). A judicial officer or candidate must disclose to the committee whether the issue is also the subject of pending litigation or disciplinary proceeding (Cal. Rules of Court, rule 9.80(i)(5); proposed CJEO rule 6(e)). The committee will inform requesters that all relevant information must be disclosed and that any response by the committee will be based on the premise that relevant information has been disclosed (Cal. Rules of Court, rule 9.80(j)(5); proposed CJEO rule 6(f)).

The proposals have not been approved by the Supreme Court and are not intended to represent the views of the court. These proposals are circulated for comment purposes only.

Rule 9.80 authorizes the committee to determine whether or not to respond to requests and to determine the form of any response. The committee may decline to respond or may decide to issue a formal opinion, an informal opinion, oral advice, or any combination of these responses (Cal. Rules of Court, rule 9.80(j)(1); proposed CJEO rule 7(b)). An eight member vote is required for adoption of formal written opinions (Cal. Rules of Court, rule 9.80(j)(2); proposed CJEO rule 7(c)). Rule 9.80 directs the committee to adopt procedures for handling and determining requests given these authorizations and requirements (Cal. Rules of Court, rule 9.80(j)(4)).

Under the proposed CJEO rules, the committee must consider all requests for opinions or advice (proposed CJEO rule 7(a)). An executive committee will prioritize the requests and submit them to the committee for a determination on whether or not to respond and the form of the response (proposed CJEO rule 7(a),(b)). Following an eight member vote to prepare a formal or informal opinion, an assigned drafting subcommittee will analyze the issue and prepare a draft opinion for the committee's consideration. Authorized drafts of formal opinions will be posted for comment and the committee will consider the comments before voting on a final version, modification, or withdrawal (proposed CJEO rule 7(d)). Following an eight member vote to adopt an informal opinion, committee counsel will provide it to the requesting party (proposed CJEO rule 7(e)).

All final formal opinions will be posted on the CJEO Web site (proposed CJEO rule 8(a)). Copies will be provided to those requesting an opinion and to other interested parties and entities. Summaries of informal opinions will be periodically posted on the CJEO Web site, and the committee may post summaries of oral advice (proposed CJEO rule 8(b)).

Following are the proposed CJEO rules and procedures:

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

[Proposed]

Pursuant to California Rules of Court, rule 9.80(j), 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 May 26, 2011; approved by the Supreme Court on _____, 2011.) [Dates of amendments to be included as they are adopted and approved.]

Rule 1. Purpose and Scope; Authority; Membership

The proposals have not been approved by the Supreme Court and are not intended to represent the views of the court. These proposals are circulated for comment purposes only.

Rule 2. Definitions

Rule 3. Meetings and Conferences

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

Rule 5. Confidentiality

Rule 6. Opinion Requests

Rule 7. Consideration of Requests; Response Procedures

Rule 8. Opinion Distribution

Rule 9. California Judges Association

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:

The proposals have not been approved by the Supreme Court and are not intended to represent the views of the court. These proposals are circulated for comment purposes only.

(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 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).

The proposals have not been approved by the Supreme Court and are not intended to represent the views of the court. These proposals are circulated for comment purposes only.

(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 [Web site not active yet], 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.

(k) “CJEO e-mail address” means [address to be specified when established], the e-mail address of the committee maintained through the CJEO Web site.

(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.

The proposals have not been approved by the Supreme Court and are not intended to represent the views of the court. These proposals are circulated for comment purposes only.

(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.

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. Upon such determinations, the chair will assign to one committee member the task of communicating the oral advice to the requester.

The proposals have not been approved by the Supreme Court and are not intended to represent the views of the court. These proposals are circulated for comment purposes only.

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.

(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

The proposals have not been approved by the Supreme Court and are not intended to represent the views of the court. These proposals are circulated for comment purposes only.

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 opinion or advice no longer is 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.

The proposals have not been approved by the Supreme Court and are not intended to represent the views of the court. These proposals are circulated for comment purposes only.

(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

The proposals have not been approved by the Supreme Court and are not intended to represent the views of the court. These proposals are circulated for comment purposes only.

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, copies of all “informal responses” issued by CJA, beginning on [date of approval of these rules to be inserted]. “Informal responses” are the written records maintained by the CJA Ethics Committee that contain a recitation of the oral inquiry and the response, but do not include the name of the inquiring judicial officer. All communications and documents regarding opinions and advice of CJA forwarded by CJA to the committee are confidential.

The proposals have not been approved by the Supreme Court and are not intended to represent the views of the court. These proposals are circulated for comment purposes only.