



# Ethics Fast Charge

**Recharge Your Ethics Batteries!**

22<sup>nd</sup> Annual AB 1058 Child Support  
Training Conference  
November 16, 2018

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## Eight Pillars of Being a Judge

- Awareness of Being a Judge
- Mindfulness in the Courtroom
- The Rule of Law
- Do Not Make Assumptions
- Professional Distance
- Honesty & Integrity
- Righteousness & Courage
- Accountability & Humility





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## California Canons of Judicial Ethics

- Canon 3
- Canon 3B(3)
- Canon 3B(4)
- Canon 3B(7)
- Canon 3B(8) and Commentary





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## Issues Involving Self-Represented Litigants

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## How We Are Evaluated

- Attorneys
  - Knowledgeable
  - Efficient
  - Courtroom control
  - Prepared
  - Consistent
- SRL's
  - Listened to me
  - Ruled in my favor
  - Looked at my evid.
  - Helped me
  - Explained rules

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## Key Factors re: Fairness

1. Treated with respect
2. Had an opportunity to tell their story
3. Understood what was going on
4. Judge was trying to be fair

**"Being heard" more important than outcome.**

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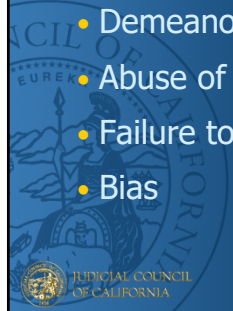
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## Key Issues for Commission on Judicial Performance

- Demeanor
- Abuse of Authority
- Failure to Ensure Rights
- Bias



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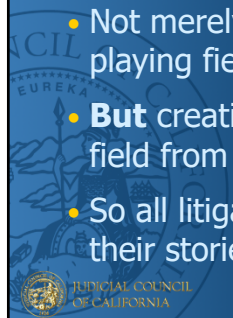
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## Active, Engaged Judges

- Not merely intervening to level playing field
- **But** creating a level playing field from day one
- So all litigants are able to tell their stories and be "heard."



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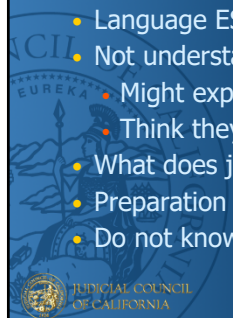
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## Common Problems

- Language ESL and legal terms
- Not understanding concept of service
  - Might expect court to serve
  - Think they can do it themselves
- What does judge need to know
- Preparation of orders
- Do not know next steps



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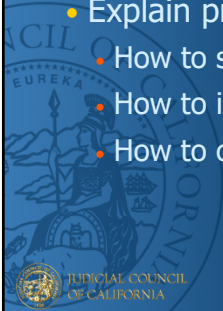
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## What a Judge Can Do

- Explain process:
  - How to subpoena witnesses
  - How to introduce evidence
  - How to object to evidence



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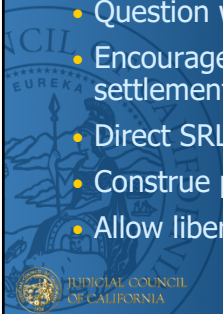
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## What a Judge Can Do

- Question witness
- Encourage, but not coerce, settlement or mediation
- Direct SRL to available resources
- Construe pleadings liberally
- Allow liberal amendment



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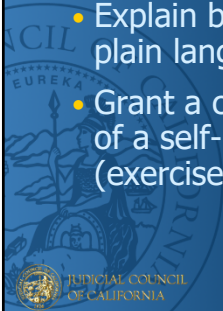
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## What a Judge Can Do

- Explain basis for rulings – plain language
- Grant a continuance on behalf of a self-represented litigant (exercise your discretion)



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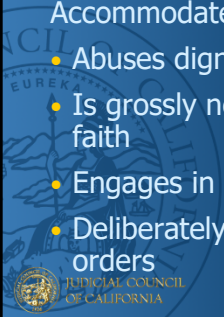
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## What A Judge Is Not Required To Do

Accommodate SRL who:

- Abuses dignity of courtroom
- Is grossly negligent or lacks good faith
- Engages in pattern of delay
- Deliberately fails to comply with orders



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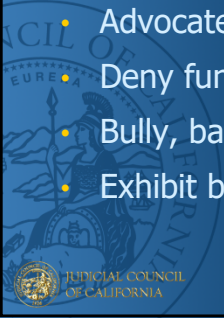
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## What a Judge Cannot Do

- Advocate for a party
- Deny fundamental rights of SRL
- Bully, badger, demean
- Exhibit bias



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## Hypos/Table Exercises



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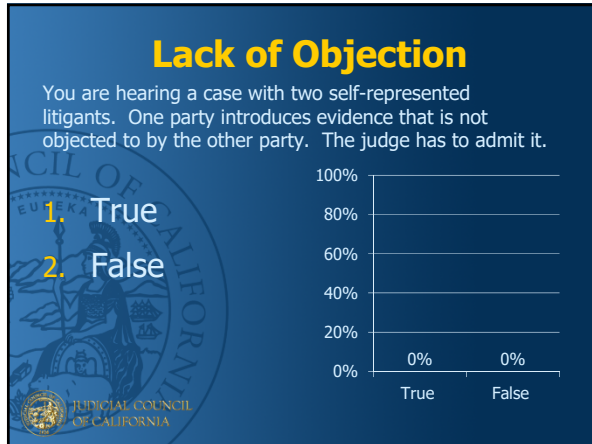
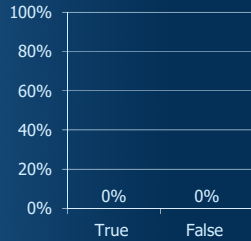
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## Lack of Objection

You are hearing a case with two self-represented litigants. One party introduces evidence that is not objected to by the other party. The judge has to admit it.

1. True
2. False



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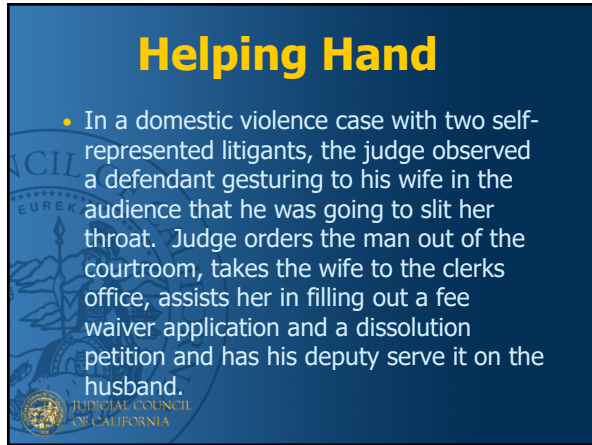
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## Helping Hand

- In a domestic violence case with two self-represented litigants, the judge observed a defendant gesturing to his wife in the audience that he was going to slit her throat. Judge orders the man out of the courtroom, takes the wife to the clerks office, assists her in filling out a fee waiver application and a dissolution petition and has his deputy serve it on the husband.



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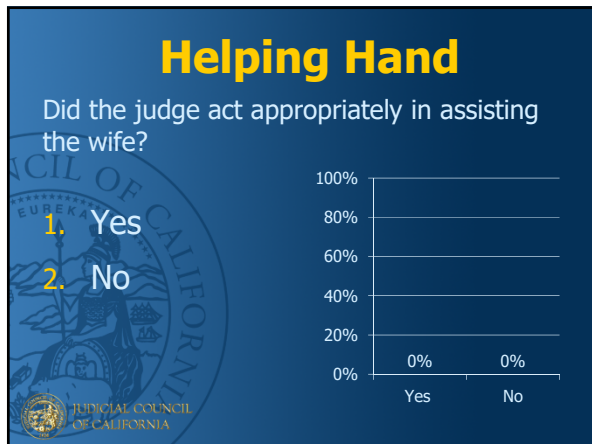
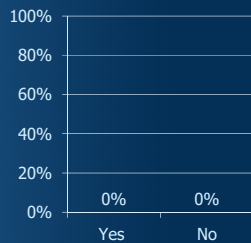
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## Helping Hand

Did the judge act appropriately in assisting the wife?

1. Yes
2. No



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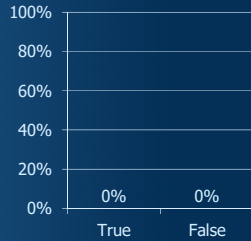
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## Pre-Trial Meetings

A judge may meet with a self-represented litigant and opposing counsel prior to trial to discuss anticipated testimony and evidence, and any objections that might be appropriate.

1. True
2. False



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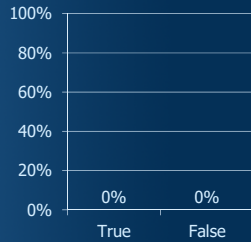
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## Amended Complaint

A judge may give a self-represented litigant multiple opportunities to amend a complaint to state facts sufficient to constitute a valid claim for relief.

1. True
2. False



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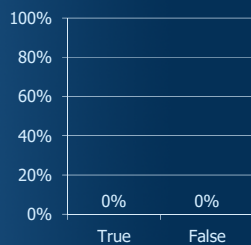
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## Tough Talk

Sometimes its necessary to use strong and evocative language with SRLs

1. True
2. False



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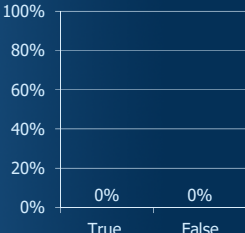
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## Lighten the Mood

Sarcasm is a useful tool to lighten the mood in the tense IV-D courtroom environment.

1. True
2. False



Response	Percentage
True	0%
False	0%

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## Disclosure and Disqualification

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## The Starting Point



- A judge has a duty to decide any proceeding in which he or she is not disqualified.
- CCP Sec. 170, cf: CRC, rule 10.608(1); Canon 3B(1)

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## Hypos/Table Exercises



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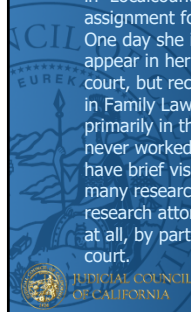
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## Rex the Research Attorney

- Commissioner Sally Subordinate hears the DCSS calendar in Localcounty Superior Court. It's been her sole assignment for 12 years, and she enjoys it very much. One day she is pleasantly surprised to see Rex Research appear in her court. Rex was a research attorney at the court, but recently left to open his own firm, specializing in Family Law. Research attorneys in this court work primarily in the support of the civil department, so Sally never worked with Rex, but she knew him and would have brief visits in the hallway from time to time. Like many research attorneys, the identity and role of research attorney in Localcounty is barely understood, if at all, by parties and counsel who appear before the court.



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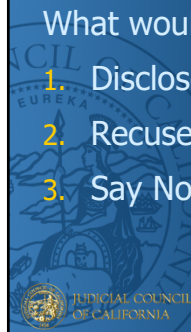
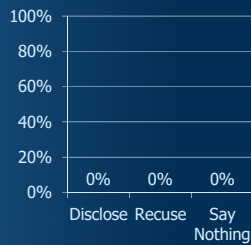
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## Do I Disclose?

What would you do?

1. Disclose
2. Recuse
3. Say Nothing



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## Event Promotions

- Commissioner Connie is hearing the small claims calendar. In the matter of *Event Promotions, Inc. v. John Smith-Doe*, she discloses to the parties that her spouse is on the Board of Directors of Event Promotions. Its representative says he sees no problem with Connie hearing the case. Mr. Smith-Doe says "Listen, Judge, you seem like a good egg to me. I don't have any problem with you hearing the case."




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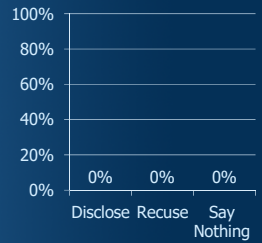
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## Do I Disclose?

What would you do?

1. Disclose
2. Recuse
3. Say Nothing



Response	Percentage
Disclose	0%
Recuse	0%
Say Nothing	0%




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## I Thought You Were Someone Else

- The Hon. Ware A. Rhobe is hearing the DVRO calendar. Parties appear and respondent's counsel makes an oral motion per CCP Sec. 170.6. Ware accepts the disqualification and asks the parties to remain in the audience until an available judicial officer is assigned by the Presiding Judge to hear the case. After the next case is over, respondent's attorney stands and says "Sorry, Your Honor, I was confused between you and Judge Rohnne. I didn't mean to disqualify you and we'd like the matter to proceed before you."




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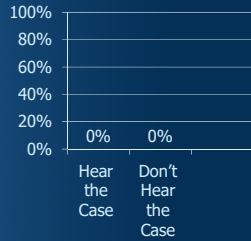
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## Do I Hear the Case?

What would you do?

1. Hear the Case
2. Don't Hear the Case



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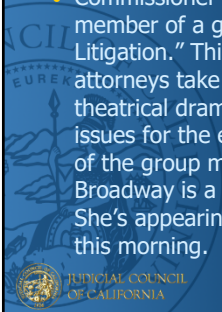
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## Stages of Litigation

- Commissioner Simon Songendance is a member of a group called "Stages of Litigation." This social group of judges and attorneys take turns in teams staging short theatrical dramatizations of various ethical issues for the entertainment and education of the group members. Attorney Betty Broadway is a member of the same group. She's appearing before Comm. Songendance this morning.



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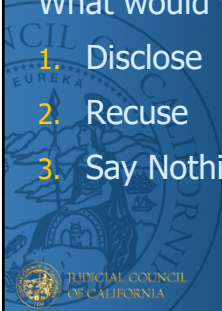
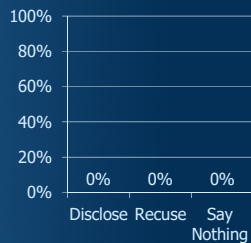
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## Do I Disclose?

What would you do?

1. Disclose
2. Recuse
3. Say Nothing



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## Facebook Friends

- Commissioner Bob Blackacre is a very social fellow. He has many “friends” on Facebook, including some attorneys who had cases pending and appeared regularly before him.




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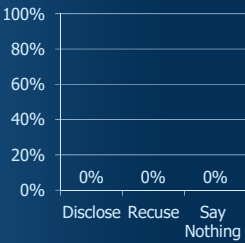
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## Do I Disclose?

What would you do?

- Disclose
- Recuse
- Say Nothing



Response	Percentage
Disclose	0%
Recuse	0%
Say Nothing	0%




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## Cary Congregant

- Commissioner Cary Congregant is a member of Mainstream Church, a prominent religious body in the United States, and regularly attends services at church near his home in Countyseatopolis. On today’s arraignment calendar appears Melvin Malefactor, treasurer of the neighboring parish, charged with embezzlement.




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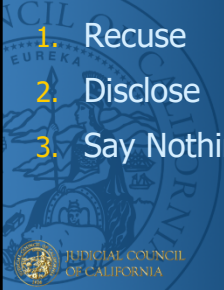
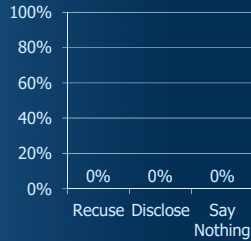
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## Do I Disclose?

What would you do?

1. Recuse
2. Disclose
3. Say Nothing



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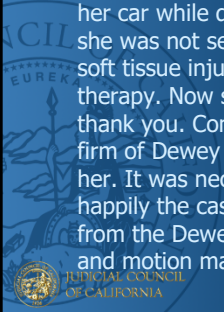
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## Dee Cisie

- Commissioner Dee Cisie was rear-ended in her car while driving to work one day. While she was not seriously injured, she did suffer soft tissue injuries and required physical therapy. Now she's feeling much better, thank you. Commissioner Cisie retained the firm of Dewey Suim & Howe to represent her. It was necessary to file an action, but happily the case settled quickly. An attorney from the Dewey firm is appearing on a law and motion matter.



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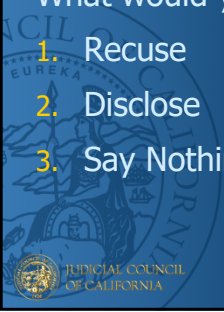
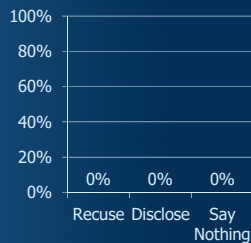
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## Do I Disclose?

What would you do?

1. Recuse
2. Disclose
3. Say Nothing



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## Nationwide Is On Your Side

- Judge A. Judicator hears the misdemeanor arraignment calendar. Six weeks ago burglars broke into his home and stole a number of valuable items. The alleged miscreants were caught and charges are pending, but the missing items were not recovered. Fortunately, Judge Judicator's homeowners insurance promptly paid the loss. "Whew!" quoth he, "I guess Nationwide really was on my side!"



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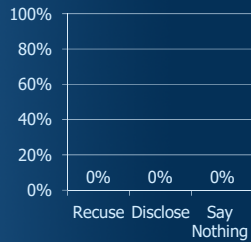
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## Do I Disclose?

What would you do?

1. Recuse
2. Disclose
3. Say Nothing



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## Cannon 3E(2)

- Required to disclose information relevant to the question of disqualification even if judge believes no basis for disqualification



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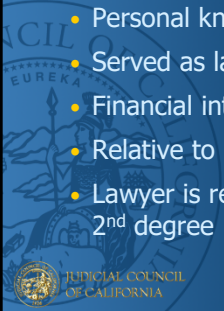
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## CCP 170.1 Disqualification

- Personal knowledge of disputed facts
- Served as lawyer
- Financial interest in subject matter
- Relative to 3<sup>rd</sup> degree a party
- Lawyer is relative or former relative to 2<sup>nd</sup> degree



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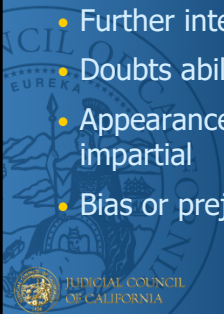
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## CCP 170.1(6)

- Further interest of justice
- Doubts ability to be impartial
- Appearance of inability to be impartial
- Bias or prejudice towards a lawyer



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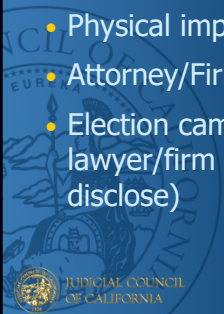
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## CCP 170.1 (con't)

- Physical impairment
- Attorney/Firm prospective employer
- Election campaign contribution from lawyer/firm (\$1500 recuse, less disclose)



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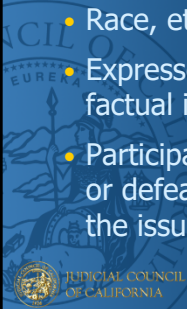
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## CCP 170.2 Not Grounds

- Race, ethnicity, religion, gender
- Expressed a view on any legal or factual issue to be presented
- Participated in drafting, supporting or defeating legislation related to the issues in case



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## Confused?



**USE THE *GUIDE TO THE DECISION-MAKING PROCESS*, APPENDIX E TO THE HANDBOOK**

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## Gifts



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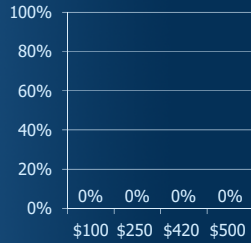
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## Gifts

What is the Gift Limit in 2018?

1. \$100
2. \$250
3. \$420
4. \$500



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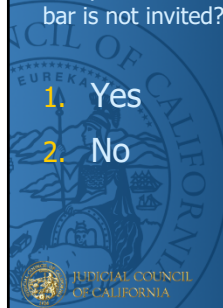
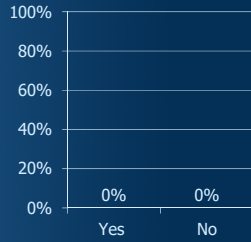
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## Holiday Season

You are invited to a holiday party at DCSS's office. Can you attend the party if the private family law bar is not invited?

1. Yes
2. No



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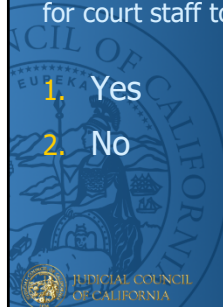
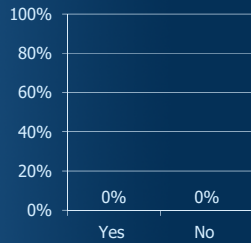
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## After a Long Trial...

A law firm delivers an edible arrangement for court staff to enjoy. May you partake?

1. Yes
2. No



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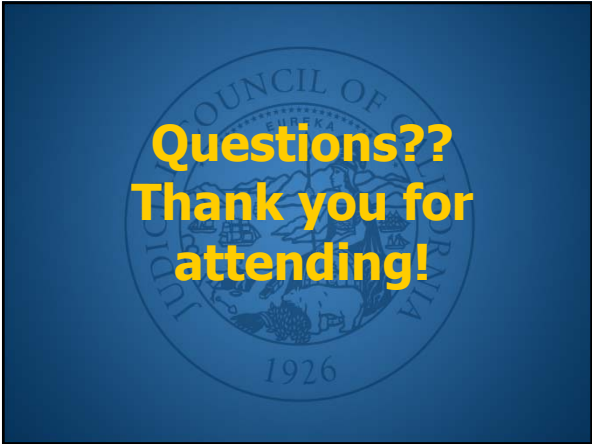
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