

Appendix C

Guidelines for the Operation of Family Law Information Centers and Family Law Facilitators Offices

(1) *Independence and integrity*

An attorney and other staff working in a family law information center or family law facilitator office should, at all times, uphold the independence and integrity of the center or office in conjunction with its role within the court and the legal system.

(2) *Role as representative of the court*

An attorney and other staff working in a family law information center or family law facilitator office should recognize that they are representatives of the court and, as such, should avoid all acts of impropriety and the appearance of impropriety at all times.

(3) *Impartiality and diligence*

An attorney working in a family law information center or family law facilitator office should perform his or her duties impartially and diligently. Impartiality means delivering services to all eligible litigants in a neutral manner. Diligence requires that the attorney provide the litigants with pertinent information to allow them to bring their matter before the court. This may include appropriate referrals to other resources as well as direct information and assistance at the center or office. The attorney should require similar conduct of all personnel.

(4) *Respect and patience*

An attorney working in a family law information center or family law facilitator office should be aware of the social and economic differences that exist among litigants and maintain patience with and respect for the litigants who seek the services of the center or office. The attorney should require similar conduct of all personnel. However, if a litigant becomes unruly or disruptive, the attorney may ask the litigant to leave the center or office.

(5) *Bias and prejudice*

An attorney working in a family law information center or family law facilitator office should assist the litigants who seek assistance without exhibiting bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors, and should require similar conduct of all personnel.

(6) *Competent legal information*

An attorney working in a family law information center or family law facilitator office and his or her staff should provide the litigants who seek assistance with procedural and legal information and education so that the litigants will have increased access to the court. Family law information centers and family law facilitator offices are not intended to replace private counsel.

(7) *Full notification of limits of service*

An attorney working in a family law information center or family law facilitator office should ensure that conspicuous notice is given, as set forth in Family Code section 10013, that no attorney-client relationship exists between the center or office, or its staff, and the family law litigant. The notice should include the advice that the absence of an attorney-client relationship means that communications between the party and the family law information center or family law facilitator office are not privileged and that the services may be provided to the other party. Additionally, the family law information center must use *Family Law Information Center Disclosure* (form FL-945) or provide similar notice. The family law facilitator office must use *Office of the Family Law Facilitator Disclosure* (form FL-940) or provide similar notice of the warnings set forth in Family Code section 10015.

(8) *Public comment*

An attorney working in a family law information center or family law facilitator office and his or her staff must at all times comply with Family Code section 10014, and must not make any public comment about the litigants or about any pending or impending matter in the court.

(9) *Gifts or payments*

An attorney working in a family law information center or family law facilitator office and his or her staff should not accept any gifts, favors,

bequests, or loans from the litigants whom they assist, since this may give the appearance of impropriety or partiality—except for nominal gifts such as baked goods, as allowed by local rules.

(10) *Communications with bench officer*

An attorney working in a family law information center or family law facilitator office and his or her staff should avoid all ex parte communications with a bench officer, except as provided in accordance with Family Code section 10005. In addition, an attorney should avoid all communications with a bench officer in which he or she offers an opinion on how the bench officer should rule on a pending case. Communications about purely procedural matters or the functioning of the court are allowed and encouraged.

(11) *Communications with represented litigants*

An attorney working in a family law information center or family law facilitator office and his or her staff should not assist a litigant who is represented by an attorney unless the litigant’s attorney consents or the court has referred the litigant for assistance.

Advisory Committee Comment

These guidelines are promulgated as directed by former Family Code section 15010(f). They are intended to guide the attorneys providing assistance in family law information centers and family law facilitator offices created by Family Code sections 10000–10015.

These guidelines are not intended to be exclusive. Attorneys who work in the family law information centers and family law facilitator offices are also bound by the State Bar Act, the Rules of Professional Conduct, local and state court employee rules, and relevant opinions of the California courts to the extent that they apply.

The authorities that govern attorney conduct in California apply to all California attorneys regardless of the capacity in which they are acting in a particular matter. (*Libarian v. State Bar* 25 Cal.2d. 314 (1944).) “Permission” not to comply with these authorities may not be given by the State Bar. (*Sheffield v. State Bar* 22 Cal.2d. 627 (1943).)

Thus, California attorneys, regardless of the capacity in which they are performing in a particular matter, must conform their conduct to the governing California authorities. However, because the disciplinary authorities are activity-specific, not all authorities apply in all instances. For example, a transactional attorney who never appears in court is not likely to be at risk of violating the rules that govern court appearances. The transactional attorney is not immune from those rules; the nature of his or her practice simply minimizes the impact of those rules upon the services he or she performs. Thus, although center and facilitator attorneys will not be immune from the governing authorities, certain rules and requirements will apply more directly to the nature of the services being provided than will others.

Just as the Rules of Professional Conduct are activity-specific in general professional practice, so are center and facilitator office attorneys. Although the Rules of Professional Conduct and related authorities will apply generally, and will apply directly when the attorney is representing clients in an attorney-client relationship, they will not directly be invoked when a center or facilitator attorney provides assistance to a nonclient in a court-based program that does not, by definition, represent “clients.”

To the extent that the above-mentioned Family Code sections establish by law that there is no attorney-client relationship or privilege for services provided by a family law information center or family law facilitator office, the Rules of Professional Conduct that specifically address the attorney-client relationship and the conduct of that relationship would not be invoked if the attorney were providing services within the scope of those sections. However, the Rules of Professional Conduct would govern attorneys employed by centers or facilitator offices who also continued to maintain a law practice and worked with actual clients in an attorney-client relationship.

Although center and facilitator office attorneys are not exempt from the Rules of Professional Conduct, the employing court may promulgate guidelines for the services provided by a center or facilitator office that are more applicable to the center or office than are some of the Rules of Professional Conduct, however, any such restrictions must still be fully consistent with the Rules of Professional Conduct. The principles set forth in the California Code of Judicial Ethics are often more applicable to the centers and facilitator offices and are consistent with the Rules of Professional Conduct. Those principles form the basis for the guidelines contained in these standards. The court may enforce these guidelines through its employee disciplinary process for court employees. Following are the areas of the Rules of Professional Conduct where these guidelines provide standards that are more applicable to the role of the family law information center or family law facilitator office as an entity of the court.

Rule 2-100 (Communication With a Represented Party)—see proposed guideline 11 (Communication with represented litigants).

Rule 2-400 (Prohibited Discriminatory Conduct in a Law Practice)—see proposed guideline 5 (Bias and prejudice);

Rule 3-110 (Failing to Act Competently)—see proposed guidelines 3 (Impartiality and diligence) and 6 (Competent legal information);

Rule 3-120 (Sexual Relations With Client)—see proposed guideline 2 (Role as representative of the court);

Rule 3-200 (Prohibited Objectives of Employment)—see proposed guideline 2 (Role as representative of the court);

Rule 3-210 (Advising the Violation of Law)—see proposed guideline 2 (Role as representative of the court);

Rule 3-320 (Relationship With Other Party’s Lawyer)—see proposed guideline 2 (Role as representative of the court);

Rule 4-300 (Purchasing Property at a Foreclosure or a Sale Subject to Judicial Review)—see proposed guideline 2 (Role as representative of the court);

Rule 4-400 (Gifts From Client)—see proposed guideline 9 (Gifts or payments);

Rule 5-120 (Trial Publicity)—see proposed guideline 8 (Public comment);

Rule 5-220 (Suppression of Evidence)—see proposed guideline 2 (Role as representative of the court);

Rule 5-300 (Contact With Officials)—see proposed guideline 10 (Communications with bench officers);

Rule 5-310 (Prohibited Contact With Witnesses)—see proposed guideline 2 (Role as representative of the court); and

Rule 5-320 (Contact With Jurors)—see proposed guideline 2 (Role as representative of the court).