Title 9. Rules on Law Practice, Attorneys, and Judges

Division 6
Judicial Ethics Opinions

Rule 9.80. Committee on Judicial Ethics Opinions

(a) Purpose

The Supreme Court has established the Committee on Judicial Ethics Opinions to provide judicial ethics advisory opinions and advice to judicial officers and candidates for judicial office.

(b) Committee determinations

In providing its opinions and advice, the committee acts independently of the Supreme Court, the Commission on Judicial Performance, and all other entities. The committee will rely on the California Code of Judicial Ethics, the decisions of the Supreme Court and of the Commission on Judicial Performance, and other relevant sources in its opinions and advice.

(c) Membership

The committee consists of twelve 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 must be justices of a court of appeal or judges of a superior court, active or retired. No more than a total of two retired justices or judges may serve on the committee at one time, except that if an active justice or judge retires during his or her term, he or she will be permitted to complete his or her term. A retired justice or judge may only serve so long as he or she is not an active member of the State Bar of California and is not engaged in privately compensated dispute resolution activities.

(d) Terms

(1) Except as provided in (2), all full terms are for four years. Members may not serve more than two consecutive full terms. Members will continue to serve until a successor is appointed. Appointments to fill a vacancy will be for the balance of the term vacated. Members who are appointed to fill a vacancy for the balance of a term are eligible to serve two full terms in addition to the remainder of the term for which they were appointed.

(2) To create staggered terms among the members of the committee, the Supreme Court will appoint initial members of the committee as follows:

(A) Three members each to serve a term of five years. The Court may reappoint these members to one full term.

(B) Three members each to serve a term of four years. The Court may reappoint these members to one full term.

(C) Three members each to serve a term of three years. The Court may reappoint these members to one full term.

(D) Three members each to serve a term of two years. The Court may reappoint these members to one full term.

(3) Committee members may not simultaneously serve as members of the Commission on Judicial Performance or the California Judges Association's Judicial Ethics Committee. If a member of the committee accepts appointment to serve on one of these entities, that member will be deemed to have resigned from the committee and the Supreme Court will appoint a replacement.

(e) Powers and duties

The committee is authorized to provide ethics advice to judicial officers and candidates for judicial office, including formal written opinions, informal written opinions, and oral advice. Specifically, the committee is 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, and any other authority deemed appropriate by the committee.

(2) Make recommendations to the Supreme Court for amending the Code of Judicial Ethics or these rules;

(3) Make recommendations regarding appropriate subjects for judicial education programs; and

(4) Make other recommendations to the Supreme Court as deemed appropriate by the committee or as requested by the Court.

(f) Referrals to California Judges Association's Judicial Ethics Committee

The committee may adopt a revocable policy of referring requests for oral advice, with conditions and exceptions as approved by the committee, to the California Judges Association's Judicial Ethics Committee.

(g) Chair and vice-chair

The Supreme Court will appoint a chair, who will serve a term of two years. The Supreme Court may reappoint the chair. The chair may not serve more than two terms as chair. The Supreme Court will also appoint a vice-chair from the members of the committee. The chair is authorized to call meetings as needed, and to otherwise coordinate the work of the committee.

(h) Confidentiality

Communications to and from the committee are confidential except as described herein. Encouraging judicial officers and candidates for judicial office to seek ethics opinions and advice from the committee will promote ethical conduct and the fair administration of justice. Establishing the confidentiality of committee proceedings and communications to and from the committee is critical to encourage judicial officers and candidates for judicial office to seek ethics opinions and advice from the committee. The necessity for preserving the confidentiality of these proceedings and communications to and from the committee outweighs the necessity for disclosure in the interest of justice. Therefore, to promote ethical conduct by judicial officers and candidates for judicial office and to encourage them to seek ethics opinions and advice from the committee, the following confidentiality requirements, and exceptions, apply to proceedings and other matters under this rule:

(1) Notwithstanding any other provision of law, and with the exception of formal written opinions and summaries of informal written opinions and oral advice, all opinions, inquiries, replies, circulated drafts, records, documents, writings, files, communications with staff, and proceedings of the committee are confidential. All communications, written or verbal, from or to the person or entity requesting an opinion or advice are deemed to be official information within the meaning of the California Evidence Code. In addition, all communications and documents regarding opinions or advice of the California Judges Association forwarded by the California Judges Association to the committee are deemed to be confidential information.

(2) Members of the committee or its staff may not disclose outside the committee or its staff any confidential information, including identifying information, obtained by the committee or its staff concerning an individual whose inquiry or conduct was the subject of any communication with the committee or its staff.

(3) A judicial officer or candidate for judicial office may waive confidentiality; any such waiver must be in writing. If the judicial officer or candidate making the request for an opinion or advice waives confidentiality or asserts reliance on an opinion or advice 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.

(i) Opinion requests

(1) The committee may issue formal written opinions on any subject it deems appropriate. Any person or entity may suggest to the committee, in writing, topics to be addressed in a formal written opinion.

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

(3) A judicial officer or candidate for judicial office requesting a written opinion, formal or informal, must submit the request in writing, including by electronic mail. The request must be in a form approved by the committee and must describe the facts and discuss the issues presented in the request. The identity, organizational affiliation, and geographic location of persons requesting opinions are confidential.

(4) A judicial officer or candidate for judicial office requesting oral advice may communicate in person, in writing (including by electronic mail), or by telephone to committee staff or any member of the committee.

(5) 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 inquiry is also the subject of pending litigation involving the inquiring judicial officer or candidate or a pending Commission on Judicial Performance or State Bar disciplinary proceeding involving the inquiring judicial officer or candidate.

(j) Consideration of requests

(1) The committee will determine whether a written request for an opinion should be resolved with a formal written opinion, an informal written opinion, oral advice, or any combination thereof. The committee may decline to issue an opinion or advice.

(2) Eight members must vote affirmatively to adopt a formal written opinion. After the committee authorizes a formal written opinion and before it becomes final, it will be posted in draft form on the committee Web site and made available for public comment for at least 45 days, unless the committee in its discretion decides such an opinion should be issued in final form in less time or with no prior notice. 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 members must vote affirmatively to modify or withdraw a formal written opinion.

(3) Informal written opinions and oral advice will be decided by vote of the committee members. The committee will adopt procedures concerning the number of votes required to issue an informal written opinion or oral advice.

(4) The committee will adopt procedures concerning the handling and determination of requests for opinions or advice.

(5) The committee will inform the inquiring judicial officer or candidate for judicial office that he or she must disclose all relevant information and that any opinion or advice issued by the committee is based on the premise that the inquiring judicial officer or candidate has disclosed all relevant information.

(6) The committee will confer in person, in writing, including by electronic mail, by telephone, or by videoconference as often as needed to conduct committee business and resolve pending requests.

(k) Opinion distribution

(1) The committee will, upon final approval of a formal written opinion, ensure distribution of the opinion, including to the person or entity who requested the opinion, all California judicial officers, and other interested persons.

(2) The committee's informal written opinions and written confirmation of oral advice will, upon approval by the committee, be provided to the inquiring judicial officer or candidate for judicial office.

(3) The committee will post all formal written opinions on the committee's Web site. The committee may post summaries of its informal written opinions and of oral advice on the committee's Web site.

(4) The committee will maintain records of committee determinations and opinions at the committee's office.

(l) Withdrawn, modified, and superseding opinions

The committee may withdraw, modify, or supersede an opinion at any time.

(m) Internal operating rules

The committee will adopt procedures, subject to approval by the Supreme Court, to implement this rule.

(n) Web site, e-mail address, and toll-free telephone number

The committee will maintain a Web site, e-mail address, and toll-free telephone number.

Rule 9.80 adopted effective July 1, 2009.