



California Supreme Court Committee on Judicial Ethics Opinions

350 McAllister Street, San Francisco, California 94102

www.JudicialEthicsOpinions.ca.gov

INVITATION TO COMMENT [CJEO *Draft* Formal Opinion 2025-031]

Title

CJEO Draft Formal Opinion 2025-031:
*Disclosure and Disqualification
Considerations Regarding Former Judicial
Mentees in the California Judicial Mentor
Program*

Action Requested

Review and submit comments by
Monday, January 5, 2026

Proposed Date of Adoption or Other Action

To be determined

Prepared by

The California Supreme Court
Committee on Judicial Ethics Opinions

Contact

Jennifer Caballero
Staff Counsel for the California Supreme
Court Committee on Judicial Ethics Opinions
Phone: 415-865-7169
Email: Judicial.Ethics@jud.ca.gov

For information about the committee and its
members, visit the [CJEO website](http://www.CJEO.org)

CJEO Invites Public Comment

The California Supreme Court Committee on Judicial Ethics Opinions (CJEO) has adopted a draft formal opinion and approved it for posting and public comment pursuant to California Rules of Court, rule 9.80(j), and CJEO Internal Operating Rules and Procedures, rule

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

7(d). ([Rule 9.80](#); [CJEO Rules](#).) The public is invited to comment on the draft opinion before the committee considers adoption of an opinion in final form or other action.

CJEO Draft Formal Opinion 2025-031 provides guidance regarding the disclosure and/or disqualification obligations that may arise for former California Judicial Mentor Program mentors when a former mentee appears in a matter before the former mentor; and where a former mentor judge determines that disclosure is required, the draft opinion advises on the duration of the disclosure requirement and how the judge may appropriately tailor the disclosure provided.

After receiving and reviewing comments, the committee will decide whether the draft opinion should be published in its original form, modified, or formally withdrawn. (Rule 9.80(j)(2); CJEO rule 7(d)). Comments are due by **Monday, January 5, 2026**, and may be submitted as described below.

How to Submit Comments

Comments may be submitted: (1) [online](#); (2) by email to Judicial.Ethics@jud.ca.gov; or (3) by regular mail to:

Jennifer Caballero
Staff Counsel
The California Supreme Court Committee on Judicial Ethics Opinions
350 McAllister Street
San Francisco, California 94102

Comments Due by January 5, 2026

At the close of the comment period, or after **January 5**, the committee will post on its [website](#) all comments that are not clearly identified as confidential.

Attachment: CJEO Draft Formal Opinion 2025-031: *Disclosure and Disqualification Considerations Regarding Former Judicial Mentees in the California Judicial Mentor Program*

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.



**CALIFORNIA SUPREME COURT
COMMITTEE ON JUDICIAL ETHICS OPINIONS**

350 McAllister Street
San Francisco, CA 94102
(855) 854-5366
www.JudicialEthicsOpinions.ca.gov

CJEO *Draft* Formal Opinion 2025-031

**DISCLOSURE AND DISQUALIFICATION CONSIDERATIONS REGARDING
FORMER JUDICIAL MENTEES IN THE CALIFORNIA JUDICIAL MENTOR
PROGRAM**

I. Question

The Committee on Judicial Ethics Opinions (CJEO or the committee) received a request for advice that expands on CJEO Expedited Opinion 2022-045, *Disqualification Obligations for Participants in the California Judicial Mentor Program (CJMP)*. The request posed the following questions:

Once a CJMP mentorship has concluded, if a mentee attorney appears in the mentor judge's court, what are the mentor judge's disqualification or disclosure obligations? If the mentor judge must disqualify from hearing the mentee attorney's case, how long does that obligation last? If the mentor judge is not required to disqualify, but must disclose the mentor/mentee relationship, would that disclosure violate the canons on account of CJMP's assurance of confidential participation?

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

II. Advice Provided

This opinion builds upon the guidance provided in CJEO Expedited Opinion 2022-045 (Opinion 2022-45). As previously advised, under the California Code of Judicial Ethics¹ and the California Code of Civil Procedure, judicial officers actively serving as mentors in the California Judicial Mentor Program (CJMP or the program) should disqualify when their attorney mentees, or the adjudicated matters of their trial court judge mentees, appear before them. This conclusion arises from two bases. First, it considers the perspective of a reasonable layperson who, when aware of the CJMP mentorship, would doubt the CJMP mentor's impartiality in proceedings that involve the CJMP mentee. Second, it accounts for the possibility that the CJMP mentor may become personally invested in the mentee's success to the point of partiality. As a supplement to Opinion 2022-45, the committee further advises, largely as a safeguard to CJMP's confidentiality, that judge mentors refrain from disclosing their CJMP participation as the basis for the disqualification, and that all active mentors decline to pursue the litigants' waiver of the disqualification.

Following the conclusion of a CJMP mentorship, the considerations of whether to disqualify or disclose, and how, become more nuanced. The former mentor should first evaluate whether grounds for disqualification exist, such as whether the mentorship produced an actual bias or resulted in an enduring friendship, and if so, the judicial officer would likely need to disqualify. In those circumstances, the same guidance as with an active CJMP mentorship applies regarding disclosure of the basis and waiver. Where only a relationship of professional acquaintances remains at the conclusion of the CJMP mentorship, or a social relationship that would not create the appearance of

¹ All further references to the canon(s) are to the California Code of Judicial Ethics unless otherwise indicated.

impropriety, former mentor judicial officers need not disqualify. In that situation, however, former mentor judges should consider whether disclosure is necessary.

Disclosure of a prior CJMP mentorship presents a delicate situation because of the CJMP's confidential nature. Nonetheless, former mentor judges should consider whether disclosure of the prior mentorship is required. If so, the duration of the disclosure requirement will likely span six months to two years, depending on the mentorship in question. To preserve the CJMP's confidentiality, judges are advised to make a tailored disclosure that excludes the name of the program, the specific position or career inquiries pursued by the CJMP mentee, and the contents of their conversations.

III. Authorities

A. Applicable Canons²

Canon 2A: "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Canon 3B(1): "A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified."

Canon 3E(1): "A judge shall disqualify himself or herself in any proceeding in which disqualification is required by law."

Canon 3E(2)(a): "A judge shall disclose information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification."

Canon 3E(4): "An appellate justice shall disqualify himself or herself in any proceeding if for any reason:

- (a) the justice believes his or her recusal would further the interests of justice; or
- (b) the justice substantially doubts his or her capacity to be impartial; or

² To enhance readability, canon citations herein omit the asterisks (*) contained in the original to denote terms explained in the canons' Terminology section.

(c) the circumstances are such that a reasonable person aware of the facts would doubt the justice's ability to be impartial."

Canon 3E(5): "Disqualification of an appellate justice is also required in the following instances:

(a) The appellate justice has served as a lawyer in the pending proceeding, or has served as a lawyer in any other proceeding involving any of the same parties if that other proceeding related to the same contested issues of fact and law as the present proceeding, or has given advice to any party in the present proceeding upon any issue involved in the proceeding."

Canon 4A: "A judge shall conduct all of the judge's extrajudicial activities so that they do not

- (1) cast reasonable doubt on the judge's capacity to act impartially,
- (2) demean the judicial office,
- (3) interfere with the proper performance of judicial duties, or
- (4) lead to frequent disqualification of the judge.

B. Constitutional Provisions, Statutes, and Other Authorities

Code of Civil Procedure, section 170.

Code of Civil Procedure, section 170.1.

Code of Civil Procedure, section 170.3, subdivision (b)(1)-(2):

"(b)(1): A judge who determines himself or herself to be disqualified after disclosing the basis for his or her disqualification on the record may ask the parties and their attorneys whether they wish to waive the disqualification, except where the basis for disqualification is as provided in paragraph (2). A waiver of disqualification shall recite the basis for the disqualification, and is effective only when signed by all parties and their attorneys and filed in the record.

(b)(2): There shall be no waiver of disqualification if the basis therefor is either of the following:

(A) The judge has a personal bias or prejudice concerning a party.

(B) The judge served as an attorney in the matter in controversy, or the judge has been a material witness concerning that matter."

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

California Rules of Court, rule 10.910(b): “The judge to whose department a cause is assigned for trial or for hearing must accept the assignment unless disqualified or, for other good cause stated to the judge supervising the master calendar, the judge supervising the master calendar determines that in the interest of justice the cause should not be tried or heard before the judge”

United Farm Workers of America v. Superior Court (1985) 170 Cal.App.3d 97.

Castaneda v. Superior Court (2015) 237 Cal.App.4th 1434.

Eith v. Ketelhut (2018) 31 Cal.App.5th 1.

In re Carlos V. (1997) 57 Cal.App.4th 522.

Geldermann, Inc. v. Bruner (1991) 229 Cal.App.3d 662.

Wechsler v. Superior Court (2014) 224 Cal.App.4th 384.

Jolie v. Superior Court (2021) 66 Cal.App.5th 1025.

Commission on Judicial Performance, *Public Admonishment of Judge Shook* (1998).

Commission on Judicial Performance, *Public Admonishment of Judge Bailey*, Inquiry No. 202 (2019).

Commission on Judicial Performance, *Public Admonishment of Judge DiFiglia* (2007).

Mesiwala, *The California Judicial Mentor Program* (Winter 2021) Sac. Law.

California Judges Association, Judicial Ethics Update (April 2000, Mar. 2003, March 2005, Jan. 2018, Jan. 2019, Jan. 2021).

California Judges Association, Formal Ethics Opinion No. 56 (2006).

California Judges Association, Formal Ethics Opinion No. 60 (2008).

California Judges Association, Formal Ethics Opinion. No. 63 (2009).

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

California Supreme Court Committee Judicial Ethics Opinions, CJEO Oral Advice Summary 2018-023 (2018), *Disqualification Responsibilities of Appellate Court Justices*.

California Supreme Court Committee Judicial Ethics Opinions, CJEO Oral Advice Summary 2020-036 (2020), *Appellate Disqualification for Judicial Council Service in Matters Challenging COVID-19 Emergency Rules*.

California Supreme Court Committee Judicial Ethics Opinions, CJEO Expedited Opinion 2021-044 (2021), *Disqualification for Civics Education Activities in Matters Involving School District Mask and Vaccine Mandates*.

California Supreme Court Committee Judicial Ethics Opinions, CJEO Expedited Opinion 2022-045 (2022), *Disqualification Obligations for Participants in the California Judicial Mentor Program (CJMP)*.

California Supreme Court Committee Judicial Ethics Opinions, CJEO Expedited Opinion 2022-046 (2022), *Disqualification When a Judge's Spouse May be a Material Witness*.

California Supreme Court Committee Judicial Ethics Opinions, CJEO Formal Opinion 2013-003 (2013), *Disqualification Based On Judicial Campaign Contributions From A Lawyer In The Proceeding*.

California Supreme Court Committee Judicial Ethics Opinions, CJEO Formal Opinion 2015-007 (2015), *Disqualification for Prior Appearance as a Deputy District Attorney in a Nonsubstantive Matter*.

California Supreme Court Committee Judicial Ethics Opinions, CJEO Formal Opinion 2022-019 (2022), *Disqualification and Disclosure Obligations When Coaching Youth Sports*.

Rothman et al., Cal. Jud. Conduct Handbook (4th ed. 2017), sections 7:1, 7:17, 7:18, 7:24, 7:74, 7:75, 7:90, App. G.

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

IV. Background³

As discussed in Opinion 2022-045, the CJMP is a joint program of the executive and judicial branches that is designed “to demystify the appellate and trial court application process and improve transparency and accessibility for all members of the legal community throughout California[.]” (Office of Governor Gavin Newsom, Governor Newsom Launches California Judicial Mentor Program to Promote a Diverse and Inclusive Judiciary (July 1, 2021) <<https://www.gov.ca.gov/2021/07/01/governor-newsom-launches-california-judicial-mentor-program-to-promote-a-diverse-and-inclusive-judiciary/>> [as of _____].) In order to “expand the pool of qualified judicial applicants from diverse legal backgrounds and diverse communities[.]” the CJMP created a mentorship program in which prospective judicial applicants can candidly exchange information regarding the application process with judicial officers. (Mesiwala, *The California Judicial Mentor Program* (Winter 2021) Sac. Law. 14.)

By nature of its administration across multiple counties and regions, the CJMP functions with some variation between the participating courts and appellate districts. The following seeks to provide a high-level summary of the program. Upon a mentee’s acceptance into the CJMP (the qualifications for which vary marginally across the program), the prospective attorney applicants for superior court judgeships are partnered with mentor trial court judges, and the attorneys or trial court judges interested in applying to the appellate bench are paired with mentor appellate justices. (See, e.g., Tri-Counties Judicial Mentor Program website <<https://www.slo.courts.ca.gov/general-information/judicial-mentor-program>> [as of _____]; Superior Court of California, County of San Joaquin website <<https://www.sjcourts.org/california-judicial-mentor-program/>> [as of _____]; California Courts, Courts of Appeal CJMP website

³ To the extent that this opinion’s description of the CJMP conflicts with that reflected in Opinion 2022-045, the present description is intended, with the benefit of additional time and experience, to update and supersede the previous description.

<<https://appellate.courts.ca.gov/programs/california-judicial-mentor-program-appellate>> [as of _____].) The matching process prioritizes the avoidance of conflicts of interest and promotes connections along areas of common legal practice, affinity bar memberships, and other interests. (See, e.g., Tri-Counties Judicial Mentor Program website, *supra*.) Participation in the program is confidential. (*Ibid*; California Courts, Courts of Appeal CJMP website, *supra*.)

In terms of CJMP logistics, some program iterations advertise a year-long commitment with at least four hours of mentorship during the year, but not all predetermine that structure. (Compare Superior Court of California, County of San Joaquin website, *supra*, with California Courts, Courts of Appeal CJMP website, *supra*.) The CJMP sets a broad expectation that mentors will be available to respond to their mentees' inquiries; provide leadership and guidance to mentees as the latter prepare their applications for judicial office; share their personal experiences and advice about how to become a successful judicial officer; and counsel mentees on steps they can take to enhance their chances for appointment to the bench. (See, e.g., CA Judicial Mentor Program - North Bay website <<https://www.napa.courts.ca.gov/general-information/cajmentor>> [as of _____]; California Courts, Courts of Appeal CJMP website, *supra*.) Naturally, the exact substance of those conversations, the level of familiarity reached within the confines of the mentorship, and the depth of any resulting personal relationship will depend upon the individual participants. Upon the submission of an application for judicial appointment, the formal CJMP mentorship ends. (See, e.g., Tri-Counties Judicial Mentor Program website, *supra*.)

V. Discussion

The CJMP endeavors to prevent conflicts of interest through a matching system in which mentees are, for example, paired with judicial officers from outside the prospective mentee's county, or with a judicial officer that has retired from the bench. (See, e.g., Tri-

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

Counties Judicial Mentor Program website, *supra*; California Courts, Courts of Appeal CJMP website, *supra*.) This conflict-conscious administrative approach sets a prudent standard for mentorships that involve judicial officers. Knowledge of that programmatic safeguard, however, does not absolve participating judges of their independent obligation to conduct their extrajudicial activities in a manner that does not cast reasonable doubt on their capacity to act impartially, demean the judicial office, interfere with the proper performance of judicial duties, or lead to frequent disqualification. (Canon 4A.) Before accepting a proposed CJMP mentor role, therefore, a participating judge should carefully consider whether mentoring a particular mentee could conflict with their obligations under canon 4A. If the prospective mentor recognizes the potential for a conflict of interest with a proposed mentorship opportunity, the judge should decline to accept it.

Even the best efforts at conflict screening by CJMP administration and the participating mentors will not be able to prevent all possible circumstances in which the need for disqualification or disclosure could arise. This opinion addresses the disqualification and disclosure issues that may arise from the expectedly rare instances in which former CJMP mentees or their matters appear before the former CJMP mentor.

A. CJMP and Confidentiality

Participation in the CJMP is confidential. (See, e.g., San Mateo County Superior Court website <<https://sanmateo.courts.ca.gov/general-information/judicial-mentor-program>> [as of _____]; California Courts, Courts of Appeal CJMP website <<https://appellate.courts.ca.gov/programs/california-judicial-mentor-program-appellate>> [as of _____].) Of the county and appellate court websites that provide information on the CJMP, some specify that the program's confidentiality applies to the submission of the CJMP application, participation in the program, and/or the contents of the conversations between mentors and mentees. (*Ibid.*) Beyond the written assurances of CJMP confidentiality, prospective applicants or orienting participants may receive similar guarantees from CJMP administrators or their eventual CJMP mentors.

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

These assurances of confidentiality, written or otherwise, provide the foundation for the confidential nature of the program. (See *Castaneda v. Superior Court* (2015) 237 Cal.App.4th 1434, 1451 [“An expectation of confidentiality can arise whenever a communication is made with promises that it will, in fact, be kept in confidence.”].) The available information regarding CJMP’s confidentiality does not indicate, however, that the program’s confidentiality arises as a matter of law. This distinction is relevant in consideration of guidance that a judge may be required to disqualify rather than disclose some information that is confidential by law. (Cal. Judges Assn., Judicial Ethics Update (March 2005) p. 1 [advising recusal by a judge who filed a state bar complaint under confidential terms against an appearing attorney because disclosure is prohibited].⁴)

As discussed in detail below, former CJMP judge mentors may encounter rare instances in which their former CJMP mentees appear before them. In those events, and where the judge determines that disclosure of the former mentorship is required, the judge is advised make a tailored disclosure that honors the CJMP’s confidentiality and conveys only “information that is *reasonably relevant* to the question of disqualification under Code of Civil Procedure section 170.1[.]” (Canon 3E(2)(a) [*italics added*].) Fortunately, existing guidance reflects that disclosures need not be exhaustively detailed to be ethically sufficient. (Rothman et al., Cal. Jud. Conduct Handbook (4th ed. 2017), § 7:74, p. 496 (Rothman or the Handbook) [“canon 3E(2)(a), does not require disclosure of anything and everything necessary to satisfy the insatiable curiosity of litigants and lawyers about the judge in their case. . . . All the possible things that might be of interest to litigants and lawyers are not things which would be considered, in reason, relevant to the question of disqualification . . .”].) Specific instances in which disclosure

⁴ Although not cited in the judicial ethics update, the confidentiality of State Bar investigations arises as a matter of law. See Bus. & Prof. Code, § 6086.1, sub. (b).

is necessary, and the varied details that will be relevant to the question of disqualification, will be discussed in the following sections.

B. Disqualification

Judges have a duty to hear all cases in which they are not disqualified. (Code Civ. Proc., § 170; Canon 3B(1).) As the committee has previously emphasized, “[t]he duty of a judge to sit where not disqualified is equally as strong as the duty not to sit when disqualified.” (CJEO Formal Opinion 2022-019, p. 6 [citing CJEO Formal Opinion 2015-007, p. 5 (quoting *United Farm Workers of America v. Superior Court* (1985) 170 Cal.App.3d 97, 100)].) Appellate justices are subject to substantially similar rules as judges regarding the grounds on which disqualification is necessary. (CJEO Oral Advice Summary 2018-023, p. 3 [the grounds for disqualification of appellate justices in canon 3 largely track the statutory requirements for trial judges]; compare canon 3E(1), (4)-(5) with Code Civ. Proc., § 170.1.)

The Code of Civil Procedure and canons provide mandatory and discretionary grounds for disqualification that judicial officers must consider when making disqualification decisions in each matter before them.⁵ (CJEO Formal Opinion 2022-019, p. 6; CJEO Expedited Opinion 2021-044, p. 4; CJEO Oral Advice Summary 2020-036, p. 4.) If a judicial officer determines that a basis for disqualification has been met, then the judicial officer must disqualify. (Code Civ. Proc., § 170.1 [trial court judge disqualification is required if any specified grounds are met]; canon 3E(1), (4)-(5))

⁵ The terms mandatory and discretionary are used to distinguish between (a) grounds that require disqualification when a judicial officer identifies mandatory criteria set by the statute or code that have been met in any proceeding (mandatory grounds), and (b) grounds that require disqualification when a judicial officer exercises discretion after evaluating whether objective or subjective disqualifying circumstances have been met in any proceeding (discretionary grounds). (CJEO Expedited Opinion 2022-046, p. 3, fn. 3; see *Eith v. Ketelhut* (2018) 31 Cal.App.5th 1, 13-14 [citing CJEO Formal Opinion 2013-003 regarding disqualification and quoting portion of that opinion using the terms “mandatory disqualification” and “discretionary disqualification”].)

[appellate disqualification is required if any specified grounds are met]; Rothman, *supra*, § 7:1, p. 388 [canons governing disqualification for appellate justices parallel Code Civ. Proc., § 170.1 et seq., so appellate justices may look to statutory analysis for guidance].)

i. Active CJMP Mentorship

The committee affirms the conclusion reached in Opinion 2022-045, which advises that, although no mandatory basis for disqualification is implicated by the appearance of a CJMP mentee in a matter presided over by the corresponding CJMP mentor, a discretionary basis for disqualification does arise under that circumstance. This affirmation is reached alongside the recognition of greater variation in the structure and substance of the CJMP and its mentorship relationships than previously acknowledged by Opinion 2022-045. For example, even if a CJMP mentorship is active for less than a year and the participants maintained professional distance rather than fostering a personal connection, the reasonable outside observer may nonetheless have cause to doubt the impartiality of an active CJMP mentor when adjudicating a matter in which the CJMP mentee appears. Additionally, as previously observed, the mentor judicial officer may have in fact developed a personal investment in the mentee's success, such that the judicial officer no longer impartially views the mentee as a legal advocate. Under either circumstance, discretionary disqualification is advised for the duration of the mentorship.

ii. Former CJMP Mentorship

1. Mandatory Grounds

The Code of Civil Procedure and Canon 3E require disqualification without further balancing or consideration of circumstances when, for example, a judicial officer has personal knowledge of disputed evidentiary facts at issue in the proceeding; previously served as a lawyer in the proceeding; or has a financial interest in the subject matter of or a party to the proceeding. (Canon 3E(5)(a)-(d), (f)(ii); Code Civ. Proc., § 170.1, subd. (a)(1)-(3).) Standing alone, a former CJMP mentorship does not implicate

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

any of the mandatory disqualification circumstances under the code or canons. (See canon 3E(1), (3), (5)(a)-(f); Code Civ. Proc., § 170.1, subd. (a)(1)-(5).)

2. Discretionary Grounds

The discretionary grounds for disqualification require a judicial officer to determine whether certain circumstances weigh against hearing a particular matter, namely: (a) whether the interests of justice require disqualification; (b) the judicial officer substantially doubts their capacity to be impartial; or (c) a person reasonably aware of the facts would doubt the judicial officer's ability to be impartial. (Canon 3E(4)(a)-(c); Code Civ. Proc., § 170.1, subd. (a)(6)(A).) When assessing whether a former CJMP mentorship requires discretionary disqualification, judicial officers must recall that disqualification is only appropriate "when lawfully required []." (Rothman, *supra*, § 7:17, p. 413.) For example, if a judge feels uncomfortable about the prospect of deciding a case tried by an attorney whose acquaintance was made outside the courtroom, the applicable canons and Code of Civil Procedure must guide disqualification, rather than any personal discomfort felt by the judge. (Cal. Judges Assn., Formal Ethics Opn. No. 63 (2009) p. 2 [discomfort does not render disqualification a "foregone conclusion."].)

a. Interests of Justice

This basis concerns the judicial officer's subjective belief about whether the interests of justice require disqualification in a certain case. (Rothman, *supra*, App. G, p. 916.) Although the Handbook suggests that a judge's good faith determination to disqualify in the interests of justice would likely not be questioned, it also acknowledged that a clear definition of "interests of justice" is difficult to find. (*Id.* at pp. 916-17.) The Handbook reflects that judges have disqualified on this basis after engaging in improper conduct, such as conducting an improper ex parte communication that prompted the judge's declaration of a mistrial (*In re Carlos V.* (1997) 57 Cal.App.4th 522, 524-25); and where a judge entered into, and later terminated, a contract to sell his home to one of the attorneys appearing before him (*Geldermann, Inc. v. Bruner* (1991) 229 Cal.App.3d 662,

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

664). (Rothman, *supra*, App. G, p. 916.) In both examples, the occurrence of improper judicial conduct underpinned the determination to disqualify in the interests of justice. By contrast, a judicial officer's circumspect provision of professional guidance to a candidate for judicial office does not, by the CJMP's design, entail judicial misconduct. Without the presence of any complicating facts, the interests of justice would not require a former CJMP mentor to disqualify from a case in which a former mentee appears.

Complicating facts, however unlikely, could arise in the confines of the CJMP mentorship. CJMP mentors must consider whether a prior CJMP mentorship expanded beyond the intended purpose of sharing information to demystify the judicial application process. For example, it is possible that one or both CJMP participants could divulge such highly sensitive personal information that the judicial officer would find it challenging to conduct fair proceedings that involved the former CJMP mentee, or to render an adequate disclosure (if required) that would not cause significant embarrassment. If such a circumstance arose, it could be appropriate for the judicial officer to disqualify in the interests of justice until the anomalous sensitivity abated. (Cal. Judges Assn., Formal Ethics Opn. No. 56 (2006) p. 4 [if a required disclosure would "subject the judge to such humiliation that the judge would be unable to conduct a fair hearing[,]” recusal would be appropriate because “the interests of justice are served by transferring a case from a judge who is unable to fairly decide the matter due to the extreme discomfiture of being required to disclose a highly personal matter.”]; see also Cal. Rules of Court, rule 10.910(b) [where disqualification would not typically be necessary, a trial court judge may be relieved from hearing a matter where “for other good cause stated to the judge supervising the master calendar, the judge supervising the master calendar determines that in the interest of justice the cause should not be tried or heard before the judge.”].)

b. Judicial Officer Doubts Impartiality

In a much more straightforward analysis, this basis requires judicial officers to make a subjective determination regarding whether they harbor actual bias or can impartially decide the matter based solely on the law and the facts presented. The CJMP, by design, does not require or invite judicial officer mentors to develop biases for or against their mentees. Each former CJMP mentor should inquire of themselves whether any actual bias toward their former mentee arose during or after the mentorship, and if not, then no disqualification under this basis is required.

c. Reasonable Person's Perspective

This final basis requires an objective analysis of whether “a fully informed, reasonable member of the public would fairly entertain doubts that the judge is impartial,” and if so, the judicial officer must disqualify. (*Wechsler v. Superior Court* (2014) 224 Cal.App.4th 384, 391; *accord, Jolie v. Superior Court* (2021) 66 Cal.App.5th 1025, 1040-1041.) This assessment must occur from the vantage point of the layperson outside of the judicial system, as opposed to the “partisan litigant emotionally involved in the controversy underlying the lawsuit[,]” or the judicial insider who ““accustomed to the process of dispassionate decision making and keenly aware of [a judicial officer’s] [c]onstitutional and ethical obligations to decide matters solely on the merits, may regard asserted conflicts to be more innocuous than an outsider would.”” [citations].” (*Wechsler, supra*, 224 Cal.App.4th at 391.)

Importantly, the analysis of this basis pertains to a distinctly different moment in time than in Opinion 2022-045. At this relevant point in time, the CJMP mentorship has ended and the former CJMP mentor is no longer “committed to and work[ing] toward an appearing mentee’s success[.]” (*Id.* at p. 5.) Absent that active commitment, it appears far less likely that a fully informed, reasonable member of the public would consider the former CJMP mentor to be “personally invested in his or her mentee’s success” to the detriment of impartiality, or to perceive the former CJMP mentee to be “in a position of

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

special influence” over the former mentor’s decisionmaking. (See *id.*) Instead, the former CJMP mentorship would be reasonably compared to other former professional mentorship or educational relationships for which disqualification is not typically advised. (See Cal. Judges Assn. Judicial Ethics Update (Jan. 2018) p. 1 [when a judge’s former extern passes the bar and makes a court appearance in the judge’s courtroom, the judge need not disqualify if able to be fair]; Cal. Judges Assn. Judicial Ethics Update (Mar. 2003) p. 2 [the fact that a judge has only a professional relationship with an attorney does not normally require the judge to recuse when the attorney appears before the judge’s court]; Cal. Judges Assn. Judicial Ethics Update (April 2000) p. 1 [a judge is not disqualified from hearing a case when counsel was a former law student or legal extern of the judge].)

Although not a scripted component of the program, it is possible that a CJMP mentorship could foster an enduring social relationship between mentor and mentee. In that circumstance, the pertinent disqualification analysis would shift from evaluating a former professional mentorship program to a current social relationship or friendship. If the former mentor and mentee maintained a close personal relationship from which the appearance of impropriety arose, then the judicial officer should consider disqualification for the duration of the disqualifying relationship. (See Cal. Judges Assn., Formal Opinion No. 63, *supra*, pp. 3-4 [where a hearing judge and their judicial colleague “know one another well” or are friends, the judge should recuse from a case in which the judicial colleague has an interest]; Cal. Judges Assn. Judicial Ethics Update (April 2000) p. 2) [a judge should recuse if there is any appearance of impropriety regarding a judge’s close personal relationship with an attorney]; see also Com. Jud. Performance, *Public Admonishment of Judge Shook* (1998), p. 3 [finding a violation of canon 3E based on the judge’s failure to disqualify from cases involving an attorney with whom the judge had a social relationship that might reasonably call the judge’s impartiality into question].)

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

iii. Disclosure of the Basis for Disqualification⁶

Once a judge has determined that disqualification is necessary, the judge is not required to disclose the reason(s) for the disqualification determination to the presiding judge unless the latter requests them; or to disclose the reason(s) on the record, even if the disqualification occurred on the record. (Rothman, *supra*, § 7:18, p. 415; Cal. Judges Assn. Judicial Ethics Update (Jan. 2021) p. 1.) The Handbook advises that, although it is generally a good practice for a judge to disclose the reasons for disqualification to the litigants, it is also appropriate for a judge to refrain from that disclosure to protect the judge's personal privacy and to broadly discourage any potential hesitancy for judges to disqualify when necessary. (See Rothman, *supra*, § 7:18, p. 415.) Due to the confidential nature of participation in the CJMP, and absent a general requirement to disclose the reasons for disqualification, the committee advises that judges refrain from disclosure of their participation in the CJMP as the basis for disqualification unless faced with a specific requirement to disclose.

iv. Waiver of Disqualification⁷

The Handbook advises that, once a judge determines that disqualification is required, the judge must next consider whether it is appropriate to exercise their discretionary authority to seek the litigants' waiver of the disqualification. (Rothman, *supra*, §§ 7:17, 7:24, pp. 414, 418; see also Code Civ. Proc., § 170.3, subd. (b)(1)-(2).) A judge is prohibited from seeking waiver if the disqualification arises from the judge's personal bias or prejudice concerning a party, prior service as an attorney in the matter or

⁶ The committee notes that Opinion 2022-045 did not address the issue of a judge's disclosure of the basis for disqualification. The inclusion of that discussion here, as it relates to a current CJMP mentorship, is intended to supplement the prior decision.

⁷ The committee acknowledges that Opinion 2022-045 did not address the question of whether a judicial officer should seek a waiver of disqualification. The present discussion of waiver, in the context of a current CJMP mentorship, is intended to supplement the prior decision.

controversy, or former role as a material witness concerning the matter.⁸ (Code Civ. Proc., § 170.3, subd. (b)(2).) If a permissible basis for waiver arises and the judge pursues it, then the judge must recite, on the record, the basis for the disqualification. (Code Civ. Proc., § 170.3, subd. (b)(1).)

Where the disqualification arises from a current CJMP mentor's consideration of a reasonable layperson's doubt in the judge's impartiality, or perception of the attorney mentee's special influence over the mentor, seeking waiver of the disqualification is not advised. This guidance arises from the practical consideration of how much detail the judge would need to reveal to dissuade a litigant's concerns of partiality or undue influence, and the tension between that degree of description and CJMP confidentiality. Imagine, for example, what judges would need to explain to disavow that they are "invested" in their mentees' career success, not to mention the detrimental effect this may have on the effectiveness of the remaining period of mentorship. Conversely, if in the interest of maintaining CJMP confidentiality, the judge adheres to a tailored disclosure, the unveiling of an active-yet-nondescript mentorship may raise more concerns than it quells. Therefore, in the expectedly rare circumstances that CJMP attorney mentees appear before their CJMP mentors, the judges should decline to seek waiver of the resulting disqualification. (See Canon 2A [a judge must "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."].)

Where the disqualification determination arises from a current CJMP mentor's actual partiality based on their personal investment in a mentee's success, the Handbook cautions against a judge seeking a waiver:

⁸ The committee notes that, apart from addressing an appellate justice's authority to seek waiver of a disqualification arising from the justice's prior receipt of a campaign contribution of \$5,000 or more from a litigant before the appellate court (canon 3E(5)(j)), the law and canons are not settled regarding the application of waiver principles to appellate justices.

Where the judge determines that a relationship requires disqualification, the parties and counsel may, if they wish, waive the disqualification in writing (except in the three circumstances described above). The judge, however, needs to be cautious in such circumstances. Events may occur in the course of the proceedings that cannot be fully anticipated at the time of waiver and could affect the impartiality of judicial actions and decisions. The issue is not only whether the judge will be able to be tough on a friend, but also what happens when the judge is faced with having to render an extremely favorable ruling in favor of the friend: ‘Will I hold back doing the right thing for fear of how it will look to give my pal a big judgment including huge punitive damages?’ Visualize dropping the axe on your friend’s opponent in the case before considering whether to accept the waiver. Did this visualization cause some hesitancy?

(Rothman, *supra*, § 7:24, p. 418.) Even where CJMP mentors may not specifically consider themselves “friends” of their CJMP mentees, the Handbook’s counsel applies, because the partiality that arises from any personal investment in a mentee’s professional success may garner unforeseen strains on judges’ neutral decisionmaking.

Last, where the disqualification determination arises from former CJMP mentors and mentees developing a friendship or other close personal relationship, the same advice applies against seeking waiver of the disqualification. (Rothman, *supra*, § 7:24, p. 418.)

C. Disclosure

i. Disclosure of Former CJMP Mentorship⁹

When trial court judges determine that there are no mandatory or discretionary grounds for disqualification, they must still disclose on the record information that is reasonably relevant to the question of disqualification under Code of Civil Procedure

⁹ As discussed above, the committee affirms the conclusion of Opinion 2022-045, which advised that an active CJMP mentor should disqualify, as a matter of discretion, from a matter in which their CJMP mentee appears. For that reason, the committee does not reach the issue of whether trial judges must disclose an active CJMP mentorship.

section 170.1.¹⁰ (Canon 3E(2)(a).) Reasonably relevant information generally includes any facts that the judge considered when deciding not to disqualify. (Rothman, *supra*, § 7:75, p. 500 [the definition of “relevant” requires objectivity about whether the information may reasonably prove or disprove a matter].) Appellate justices, however, are not bound the disclosure rules. (Canon 3E(2) [limiting disclosure rules to trial proceedings]; Rothman, *supra*, § 7:90, pp. 502-503 [acknowledging that disclosure for appellate justices is complicated by the fact that a justice may not appear before the parties until after a case has been fully briefed].)

Acknowledging that each CJMP mentorship will be as unique as its participants, the available program information reflects a baseline experience of legal professionals seeking career advancement through guidance from judicial officers with real-world experience and insight. This sort of relationship, characterized by expertise-based instruction, is similar to other professional mentorships and educational relationships for which disclosure is commonly recommended. (See Cal. Judges Assn. Judicial Ethics Update (Jan. 2018) p. 1 [when a judge’s former extern passes the bar and makes a court appearance in the judge’s courtroom, the judge must disclose]; Cal. Judges Assn. Judicial Ethics Update (April 2000) p. 1 [a judge should disclose when counsel was a former law student or legal extern of the judge].)

There is a wide variation in actual mentorship experiences. As previously noted, a CJMP mentorship could result in an enduring friendship between the former mentor and mentee. In those instances, the judge should disclose the personal relationship. (Cal. Judges Assn. Judicial Ethics Update (April 2000) p. 2 [judge should always disclose

¹⁰ In a proceeding that is being reported or electronically recorded, an oral disclosure on the record is appropriate; and if the proceeding is not so reported or recorded, then the judge must prepare, or have prepared, a written disclosure document to be filed. (See CJEO Formal Opinion 2013-002.)

close personal relationships with attorneys].) Even where former CJMP mentors consider their relationship with former mentees to be more professional than social, the social component of that relationship may nonetheless be relevant to the question of disqualification and should be disclosed. (See Com. Jud. Performance, *Public Admonishment of Judge Bailey*, Inquiry No. 202 (2019) pp. 12-13 [discipline included the judge’s failure to disclose a relationship with an attorney, despite a finding that the relationship was “more professional than social,” where “the totality of these circumstances was reasonably relevant to disqualification and required disclosure[]”]; see also Com. Jud. Performance, *Public Admonishment of Judge DiFiglia* (2007), pp. 1-2 [discipline included the judge’s failure to disclose a personal relationship with an attorney who appeared before him, which included the judge accepting gifts from the attorney, golfing together, and socializing].)

Conversely, it is also possible that the mentorship relationship involved few contacts, little exchange of personal information, or simply mirrored the kind of professional acquaintance that a judge and attorney would regularly hold within the legal profession. In those circumstances, a judge may reasonably decide that no disclosure is necessary. (See Cal. Judges Assn. Judicial Ethics Update (Mar. 2003) p. 2 [the fact that a judge and an attorney are members of the same professional legal organization, or that the judge has only a professional relationship with the attorney, does not normally require the judge to disclose when the attorney appears before the court].)

Where disclosure of a former CJMP mentorship is required, judges are reminded of the confidential nature of the CJMP and advised to tailor their disclosures to only “information that is *reasonably relevant* to the question of disqualification under Code of Civil Procedure section 170.1[.]” (See Canon 3E(2)(a) [*italics added*]; see also (Rothman, *supra*, § 7:75, p. 500 [the definition of “relevant” requires objectivity about whether the information may reasonably prove or disprove a matter].) As advised above, a confidentiality-conscious, tailored disclosure will exclude the name of the program

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

(CJMP), the specific position or career inquiries pursued by the CJMP mentee, and the content of any conversations that arose during the mentorship. The remaining details to disclose will depend on the individual mentorship and the relationship resulting from it. Notably, if the judge is disclosing a friendship or other close personal relationship, that disclosure need not mention the relationship's genesis in the CJMP. (See Rothman, *supra*, § 7:74, p. 496 [observing that canon 3E(2)(a) “does not require disclosure of anything and everything necessary to satisfy the insatiable curiosity of litigants and lawyers about the judge in their case.”].) Where judges decide that a tailored disclosure of the CJMP mentorship is merited when former CJMP mentees appear in their courtrooms, that disclosure could include reference to a “former professional mentorship,” the judges’ provision of “career advice/guidance” to the mentees, or a similar generalized characterization of the mentorship conferred during their particular CJMP relationship.

ii. Duration of Disclosure Requirement

The substantive basis for the disclosure determination will dictate the duration of the disclosure requirement. Where the disclosure arises from a former CJMP mentorship that adhered to the program’s central purpose of demystifying the judicial application process, the resulting relationship between the former mentor and mentee is one of professional acquaintances. In that circumstance, a tailored disclosure for a period of two years after the mentorship is advisable. (See Cal. Judges Assn., Formal Ethics Opn. No. 60 (2008) p. 5 [recommending a judge disclose for a period of two years where a former law student (regarding the judge’s role as a part time law professor) appears as a lawyer or party, and where the contacts between the two are neither social nor continuing]; Cal. Judges Assn. Judicial Ethics Update (Jan. 2019) p. 1 [a judge must disclose that an attorney served as an extern in the judge’s courtroom for two years after the attorney worked in the judge’s courtroom].)

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

Where the disclosure pertains to an enduring personal relationship between the former mentor and mentee, which includes ongoing social contacts between the two, a disclosure period of two years is also recommended. (See Cal. Judges Assn. Judicial Ethics Update (Jan. 2018) pp. 1-2) [judge, who was a former deputy public defender several years ago, may go on a back-packing trip with former colleagues from the public defenders' office but must disclose for a reasonable amount of time, usually two years, in matters where deputy public defenders who participated in back-packing trip appear].) If the former mentor and mentee maintain a primarily professional relationship, and in only an isolated post-mentorship event engaged in more a personal social contact, existing guidance suggests that the judge need only disclose the social contact for six months following the social event. (See Cal. Judges Assn. Formal Opn. No. 60, *supra*, p. 4.)

VI. Conclusion

Disqualification and disclosure determinations arising from CJMP mentorships will require careful consideration by the judicial officers serving in this program. Although variation in each individual mentorship may require an approach that differs from the advice provided in this opinion, a generalized set of considerations establishes the following guidance. Active CJMP mentors should disqualify when their mentees or their matters appear in the judicial officers' court, and as a safeguard to the CJMP's assurance of confidentiality, CJMP mentors should refrain from disclosing the CJMP mentorship as the basis for the disqualification, and from pursuing the litigants' waiver of the disqualification.

Following the conclusion of a CJMP mentorship, a judicial officer should first evaluate whether grounds for disqualification exist, such as the CJMP mentorship having produced an actual bias or resulting in an enduring friendship, and if so, the judicial officer would likely need to disqualify. If disqualification is necessary, the former CJMP mentor should refrain from disclosing the CJMP mentorship as the basis and refrain from seeking waiver of that disqualification. Where only a relationship of professional

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.

acquaintances remains at the conclusion of the CJMP, or a social relationship that would not create the appearance of impropriety, the judicial officer need not disqualify. Former mentor judges, however, should consider whether a tailored disclosure is necessary. If so, the disclosure should be carefully tailored to protect CJMP confidentiality and meet the judge's obligations under canon 3E(2)(a). The duration of the disclosure requirement will likely span six months to two years, depending on the specific circumstances.



This opinion is advisory only (Cal. Rules of Court, rule 9.80(a), (e); Cal. Com. Jud. Ethics Opns., Internal Operating Rules & Proc. (CJEO) rule 1(a), (b)). It is based on facts and issues, or topics of interest, presented to the California Supreme Court Committee on Judicial Ethics Opinions in a request for an opinion (Cal. Rules of Court, rule 9.80(i)(3); CJEO rule 2(f), 6(c)), or on subjects deemed appropriate by the committee (Cal. Rules of Court, rule 9.80(i)(1); CJEO rule 6(a)). The conclusions expressed in this opinion are those of the committee and do not necessarily reflect the views of the California Supreme Court or any other entity. (Cal. Rules of Court, rule 9.80(b); CJEO rule 1(a)).

This CJEO Draft Formal Opinion has not been adopted by the committee in final form and is circulated for comment purposes only.