



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

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CJEO Expedited Opinion¹ 2021-043

[Posted May 18, 2021]

**SERVICE ON THE CALIFORNIA ACCESS TO JUSTICE COMMISSION OR
CHILD WELFARE COUNCIL**

I. Question

The Committee on Judicial Ethics Opinions (CJEO) has been asked whether judicial service on the California Access to Justice Commission or the Child Welfare Council is an ethically permissible activity related to the law, the legal system, or the administration of justice.

¹ The California Supreme Court Committee on Judicial Ethics Opinions (CJEO) issues **Expedited Opinions**, formerly known as **Oral Advice Summaries**, pursuant to California Rules of Court, rule 9.80(i)(1) [eff. Jan. 1, 2021]. Expedited Opinions are issued to requesting judicial officers following a discretionary decision by CJEO to address the ethical issues raised in an expedited process that does not include posting draft opinions for public comment, as required for CJEO Formal Opinions. CJEO Expedited Opinions are published in full, without identifying information regarding the requesting judicial officer, to provide information and analysis to the bench and the public regarding judicial ethics.

II. Advice Provided

Judges are permitted under the California Code of Judicial Ethics² and encouraged by the California Standards of Judicial Administration to serve as members of the California Access to Justice Commission or the Child Welfare Council. Judges may engage in extrajudicial activities related to the law, the legal system, or the administration of justice but should consider other code requirements, such as ensuring public confidence in the judiciary and avoiding involvement in partisan matters. The central goals of both the California Access to Justice Commission and the Child Welfare Council are improving the legal system and enhancing services for court users, rather than broader policy matters that may involve the judiciary in controversies or create the appearance of impartiality.

III. Facts

A. California Access to Justice Commission

The California Access to Justice Commission (Access Commission) is a nonprofit corporation that was originally created in 1996 under the auspices of the California State Bar to ensure equal access to the legal system for all Californians. (The History, Purpose, and Importance of the Access Commission (History) p. 1 <<https://www.calatj.org/wp-content/uploads/2021/01/The-History-Purpose-and-Importance-of-the-Access-Commission.pdf>> [as of May 18, 2021].)³ The Access Commission has two primary roles: (1) “ ‘to provide ongoing leadership in the effort to achieve fuller access to justice in California’ ”; and (2) “ ‘to oversee efforts to increase funding and improve methods of delivery of legal services for the poor and those of moderate income.’ ” (History, at p. 2) The Access Commission has a maximum of 31 authorized directors, which includes representatives appointed by the state executive branch, the state Legislature, the Chief Justice of California, the California Attorney

² All further references to the code, terminology, canons, and advisory committee commentary are to the California Code of Judicial Ethics unless otherwise indicated.

³ This document, the Access Commission’s bylaws, and other background information can be found on the Access Commission’s website at <https://www.calatj.org/> (as of May 18, 2021).

General, the State Bar, and various other legal and nonprofit organizations. (Access Commission Bylaws, art. 3, § 3.4, pp. 5–6 <https://calatj.egnyte.com/dl/85GfGvtnJA/CURRENT_CalATJ_Bylaws.pdf> [as of May 18, 2021].)

The Access Commission’s activities include the following: issuing reports on access gaps; encouraging pro bono participation by the State Bar; supporting programs that ensure access to non-English speakers and people in rural areas; supporting legislation impacting access to justice; and commenting on public policy issues that affect access to justice, such as the disparate impact that court fines and fees have on low and moderate income individuals and the importance of funding the courts. (History, *supra*, at p. 4.) The Access Commission operates through a variety of committees on specific issues, such as outreach, pro bono services, right to counsel, language access, rural access, racial justice, and amicus curiae. (Access Commission Committees <<https://www.calatj.org/committees/>> [as of May 18, 2021].) Certain committees, such as the amicus curiae committee, are limited to members who are not bench officers. (Access Commission, Amicus Curaie Committee <<https://www.calatj.org/committee/amicus-curiae-committee/>> [as of May 18, 2021].)⁴

B. Child Welfare Council

The Child Welfare Council was established by the Child Welfare Leadership and Performance Accountability Act of 2006, codified at Welfare and Institutions Code sections 16540–16545. The Child Welfare Council serves as “an advisory body responsible for improving the collaboration and processes of the multiple agencies and the courts that serve the children and youth in the child welfare and foster care systems.” (Welf. & Inst. Code, § 16540.) The Child Welfare Council is cochaired by the Secretary of the California Health and Human

⁴ Because the amicus curiae committee is involved in filing briefs in active litigation, precluding bench officers from membership ensures compliance with the canons prohibiting judges from commenting on pending matters. (Canon 2A [a judge shall not comment on pending or potential pending matters]; canon 3B(9) [a judge shall not comment on proceedings in any court]; canon 4C(3)(c) [a judge shall not serve as an officer, director, or nonlegal advisor of an organization likely to be involved in proceedings before the judge or frequently engaged in adversarial proceedings in the court of which the judge is a member].)

Services Agency and the designee of the Chief Justice of California. The Child Welfare Council's other members include representatives from various state agencies, nonprofit groups, and other stakeholders. (Welf. & Inst. Code, § 16541, subds. (a)–(p).)

The Child Welfare Council is statutorily responsible for the following activities: issuing advisory reports with recommendations for ensuring coordination and collaboration among various agencies that provide services to children in the welfare or foster care systems; formulating policies for effective administration of child welfare and foster programs; developing data-sharing programs between agencies; and implementing legislative enactments in child welfare and foster care programs and the courts, among other things. (Welf. & Inst. Code, § 16540, subds. (a)–(m).) The Child Welfare Council has several committees on subtopics, such as child development and successful youth transitions, data linkage and information sharing, and behavioral health.⁵ (Child Welfare Council Committee Meeting Information <<https://www.chhs.ca.gov/home/committees/california-child-welfare-council/committee-meeting-information/>> [as of May 18, 2021].)

IV. Discussion

The code broadly permits extrajudicial conduct relating to the law, the legal system, or the administration of justice. (Advisory Com. com. foll. canon 4B [judges are in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice because they are specially learned and experienced in the law]; canon 4C(1) [judges are prohibited from appearing before or officially consulting with an executive or legislative body except on matters relating to the law, the legal system, or the administration of justice, or on matters concerning the judge's personal economic interests]; canon 4C(2) [judges are prohibited from accepting appointments to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than

⁵ Information about the Child Welfare Council's committees, the Child Welfare Council's annual reports, and other background information can be found on the Child Welfare Council's website at <https://www.chhs.ca.gov/home/committees/california-child-welfare-council/> (as of May 18, 2021).

improvement of the law, the legal system, or the administration of justice]; canon 4C(3)(a) [judges are permitted to act as officers and directors of, and nonlegal advisors to, organizations and government agencies devoted to the improvement of the law, the legal system, or the administration of justice, provided that such positions do not constitute a public office within the meaning of art. VI, § 17 of the Cal. Const.];⁶ canon 5D [judges are permitted to engage in political activity relating to the law, the legal system, or the administration of justice, provided conduct is consistent with the code overall].)

The California Standards of Judicial Administration (standards) adopted by the Judicial Council promote judicial engagement in community outreach activities related to the law and administration of justice. For example, the standards specifically encourage judges to “[p]rovide active leadership within the community in identifying and resolving issues of access to justice within the court system.” (Std. 10.5(b)(1).) The standards also encourage family and juvenile court judges to engage in community efforts to enhance services and resources for families and children in the court system (std. 5.30(f)(1), (5), and (7)), and to “[e]xercise a leadership role in the development and maintenance of permanent programs of interagency cooperation and coordination among the court and the various public agencies that serve at-risk children and their families” (std. 5.40(e)(4)). While nonbinding in nature, the standards reflect the Judicial Council’s recommended goals for judges. (Cal. Rules of Court, rule 1.5(c) [standards are guidelines rather than mandatory]; std. 5.30(f) [to the extent it does not interfere with the adjudication process or ethical constraints, family courts are encouraged to engage in certain community-based activities to improve services for children].) These goals are subject to, yet consistent with, the code’s requirements and broad permissions for activities relating to the law, the legal system, or the administration of justice.

⁶ In addition to membership in an “organization or governmental agency” devoted to the improvement of the law, the legal system, or the administration of justice under canon 4C(3)(a), service on the Child Welfare Council may also qualify as an “appointment to a governmental committee or commission or other governmental position” under canon 4C(2). In either case, judicial service is not permitted if it would qualify as “public office” under article VI, section 17 of the California Constitution. (Canon 4C(2) & (3); Advisory Com. com. foll. canon 4C(2).) The committee assumes for purposes of this opinion that service on the Child Welfare Council is not constitutionally barred.

When analyzing whether serving as a member of an organization or government agency is permissible, judges must determine whether service falls within the meaning of the phrase, “the law, the legal system, or the administration of justice,”⁷ which is not defined with specificity in the code but requires consideration of other code obligations.⁸ This requires a careful analysis of the facts. Nearly every topic can be described as relating to the law in some fashion, particularly in the governmental context. As Judge Rothman observes, “almost anything that government does can be characterized as related to ‘improvement of the law,’ ” and therefore service on a governmental commission “must have a direct connection with the legal system” or be limited to “only those matters dealing with the administration of justice.” (Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 10:10, p. 681 (Rothman)).

For instance, the committee has previously advised that “matters relating to purely administrative issues, such as court budgets, facilities, and docketing impacts, fall within the core of matters relating to the law, the legal system, and administration of justice.” (CJEO Expedited Opinion 2021-041 (2021), *Service on a Governmental Task Force*, Cal. Supreme Ct. Com. Jud. Ethics Opns., p. 4 (CJEO Expedited Opinion 2021-041); CJEO Formal Opinion 2013-001 (2013), *Requesting Assistance from Attorneys*, Cal. Supreme Ct. Com. Jud. Ethics Opns., pp. 2, 5 [budget cuts impact access to justice and are directly related to the law, the legal system, and administration of justice].) However, as matters move from the procedural to the more substantive end of the policy spectrum, judicial involvement may impermissibly “ ‘encroach[] into the political (policy making) domain of the other branches’ ” of government.

⁷ In addition to being an organization devoted to the improvement the law, the legal system, or the administration of justice, the Access Commission is also an “educational . . . or civic organization not conducted for profit” under canon 4C3(b), which permits judges to serve as officers or directors of nonprofit organizations, whether or not related to the law, subject to other requirements of the code.

⁸ Although the phrase, “the law, the legal system, or the administration of justice” is included in the Terminology section of the code, it is not defined. Instead, the Terminology section states that when a judge engages in an activity that relates to the law, the legal system, or the administration of justice, the judge should also consider other code requirements, such as upholding public confidence in the judiciary, not allowing extrajudicial activities to take precedence over judicial duties, and disqualification. (Cal. Judges Assn., Jud. Ethics Com., Opn. No. 75 (2018), p. 1 [acknowledging that the phrase is not precisely defined in the code].)

(CJEO Expedited Opinion 2021-041, *supra*, p. 4, quoting CJEO Formal Opinion 2014-006 (2014), *Judicial Comment at Public Hearings and Consultation with Public Officials and Other Branches of Government*, Cal. Supreme Ct. Com. Jud. Ethics Opns., pp. 2–3, 7–9 (CJEO Formal Opinion 2014-006) [judges testifying before the legislature should limit testimony to areas within the judiciary’s expertise and made from the judicial branch’s unique perspective])⁹; Rothman, *supra*, § 11:3, pp. 736–737 [judges must draw a distinction between inappropriate involvement with other branches of government in political matters as opposed to appropriate involvement in matters concerning the law, the legal system, or the administration of justice].)

This does not mean, however, that only administrative or procedural matters fall within the safe harbor of extrajudicial activities relating to the law, the legal system, or the administration of justice. Judicial engagement in substantive policy matters may fall within the law, the legal system, or the administration of justice if the primary focus is to benefit the court system and its users as a whole rather than favoring partisan causes or groups. (CJEO Formal Opinion 2014-006, *supra*, p. 7 [the clearest examples of permissible activities are those addressing the legal process; however, comment and consultation about substantive legal issues is also permissible where the purpose is to benefit the law and the legal system itself rather than any particular cause or group].)

Here, both the Access Commission and the Child Welfare Council are examples of organizations primarily focused on improving services to court users, which has a “direct connection with the legal system.” (Rothman, *supra*, § 10:10, p. 681). The Access Commission seeks to equalize access to the legal system for all litigants regardless of income level, language barriers, or geographical barriers. The Child Welfare Council’s objective is to improve services for children involved with, or at risk of involvement with, the child welfare system and the foster care system, “with an emphasis on collaboration among the state’s multiple child serving agencies and the courts.” (Child Welfare Council, 2018–2019 Annual Report, p. 4.). The

⁹ As one example, the committee referring to a proposed constitutional amendment to replace the death penalty with life without parole advised that a judge could comment before the Legislature about dysfunction in the current system from the judicial branch perspective, but that advocacy regarding the wisdom or morality of the death penalty as a policy matter would be improper. (CJEO Formal Opinion 2014-006, *supra*, p. 8.)

central goal of both organizations is improving the legal system for its users rather than “broader matters concerning . . . policies not directly linked to the courts.” (CJEO Expedited Opinion 2021-041, *supra*, p. 5.)¹⁰

In addition, judicial membership in either organization is unlikely to involve the court in controversies or create the perception of impartiality. With respect to the governmental task force examined in CJEO Expedited Opinion 2021-041, the committee noted that its broad and varied agenda included issues that went beyond the law, the legal system, or the administration of justice, and that may be the subject of significant debate. (CJEO Expedited Opinion 2021-041, *supra*, p. 5.) This may improperly draw the court into controversies or compromise public confidence in the impartiality of the judiciary. (*Ibid.*; Advisory Com. com. foll. canon 4C(2) [when assessing whether to accept extrajudicial assignments, judges need to protect the courts from becoming involved in matters that may prove to be controversial and should not accept government appointments that interfere with judicial independence].) Here, in contrast, the Access Commission and Child Welfare Council are nonpartisan organizations pursuing such goals as systemic improvements for low-income litigants, children, and families interacting with the courts, and would not cause a reasonable person to doubt the impartiality or independence of judges serving as members. Judicial membership in these organizations is not only permitted under the code, but expressly encouraged by the standards, which recommend that judges take a

¹⁰ This opinion addresses the permissibility of the Access Commission and Child Welfare Council based on how they are currently described in publicly available materials but notes that the organizations’ purposes may evolve over time. Judges have a duty to monitor the activities of organizations of which they are members to ensure ongoing compliance with the code. (Advisory Com. com. foll. canon 4C(3)(c) [the changing nature of some organizations and their relationship to the law makes it necessary for judges to regularly reexamine the activities of organizations with which they are affiliated to ensure that continued affiliation is proper].) The committee advises that judges monitor not only the general activities of the organizations of which they are members, but also the activities of each subcommittee or workgroup to which they are members or prospective members to determine whether membership is precluded by any of the canons.

leadership role in improving access to justice and services for children and at-risk youth. (Std. 5.30, 5.40, and 10.5.)¹¹

V. Conclusion

Judges may serve as members of the Access Commission or the Child Welfare Council, which are organizations devoted to the improvement of the law, the legal system, and the administration of justice. The central focus of both organizations is improved access and services for court users, such as low-income litigants, children, and families, rather than broader policy matters that may be the subject of controversy or that would create the appearance of impartiality. Judicial involvement in these organizations is permitted under the code and encouraged by the standards of judicial administration.



This expedited advice opinion is advisory only. (Cal. Rules of Court, rule 9.80(a), (e); Cal. Supreme Ct. Com. Jud. Ethics Opns. (CJEO), Internal Operating Rules & Proc. 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 rules 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

¹¹ The committee has recognized that judicial membership is permissible on other types of organizations and governmental bodies “with a narrow focus directly related to the law, the legal system, and the administration of justice,” provided membership does not raise ethical concerns under other canons. (CJEO Expedited Opinion 2021-041, *supra*, p. 6, fn. 6, citing CJEO Oral Advice Summary 2015-010 (2015), *Service by an Appellate Justice as a Compliance Officer in Pending Federal Proceedings*, Cal. Supreme Ct. Com. Jud. Ethics Opns., pp. 2–3 [a judge may accept appointment as a federal prison compliance officer]; CJEO Oral Advice Summary 2019-028 (2019), *Service on a Civil Liberties Program Advisory Panel for the State Library*, Cal. Supreme Ct. Com. Jud. Ethics Opns., pp. 3–4 [a judge may serve on a state library board concerning educational programs about Japanese internment and other civil rights violations]; see also Cal. Judges Assn., Jud. Ethics Com., Opn. No. 61 (2008), pp. 3–4 [providing examples of permissible membership on governmental bodies, such as serving on an advisory committee on international law or a committee to advise the Attorney General on how the Bureau of Identification might better serve the courts].)

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)).)