



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

350 McAllister Street
San Francisco, CA 94102
(855) 854-5366

www.JudicialEthicsOpinions.ca.gov

CJEO Expedited Opinion 2022-047¹

[Posted May 11, 2022]

**FUNDRAISING BY RETIRED JUDGES ENGAGED IN PRIVATE DISPUTE
RESOLUTION SERVICES**

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. The CJEO Expedited Opinions are published in full, without identifying information regarding the requesting judicial officer, to provide information and analysis to the bench and public regarding judicial ethics.

I. Question

The Committee on Judicial Ethics Opinions (CJEO or committee) has been asked to provide guidance about whether a retired judge who engages in private dispute resolution services, but does not sit by assignment through court-related programs, may participate in fundraising activities to support a law school scholarship established in the judge's name.

II. Advice Provided

Retired judges who are privately retained and do not sit by assignment through the Temporary Assigned Judges Program² or work as temporary judges, referees, or court-appointed arbitrators are not subject to the restrictions on judicial conduct contained in the California Code of Judicial Ethics,³ including the restraints on fundraising. Therefore, those retired private judges are not subject to any code prohibitions related to soliciting funds for educational or charitable organizations or encouraging others to do so.

III. Facts

A retired judge has endowed a scholarship at the judge's law school alma mater. The judge is not serving in the Assigned Judges Program or as a temporary judge, referee, or court-appointed arbitrator, but works as a private judge with a dispute resolution service provider. The judge would like to participate in events that will be sponsored by the law school to raise funds for the scholarship, including a panel for a program during which the organizer from the

² Presiding judges and justices of the trial and appellate courts may make a request to the Assigned Judges Program to issue temporary judicial assignment orders to active or retired judges and justices to cover judicial absences caused by, among other things, illness, disqualification, or calendar congestion in the courts. (Judicial Council of Cal., Fact Sheet: Temporary Assigned Judges Program (2020) p. 1 <https://www.courts.ca.gov/documents/TAJP_Fact_Sheet.pdf> [as of May 2, 2022].)

³ All further references to the code, canons, and advisory committee commentary are to the California Code of Judicial Ethics unless otherwise indicated.

law school intends to suggest that attendees donate to the scholarship fund, and has inquired about whether there are limitations on the ability to do so under the code.

IV. Discussion

An officer of the state judicial system who performs judicial functions must comply fully with the code, but retired judges who do not sit by assignment through the Assigned Judges Program or serve as temporary judges, referees, or court-appointed arbitrators are not required to do so.⁴ (Canon 6A [compliance with the code of judicial ethics required for officers of the state judicial system]; Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 1:66, pp. 52-53 [privately retained judges are not within the groups that are bound by the code]; Cal. Judges Assn., Judicial Ethics Update (Nov. 2012) p. 4 [a retired judge not sitting on assignment is not governed by the canons].) Therefore, retired judges who conduct private dispute resolution services are not prohibited by the code from engaging in fundraising activities, including soliciting donations for educational or charitable organizations and encouraging others to do so.⁵

⁴ Although private judges are not specifically bound by the code, the Advisory Committee commentary to canon 6A urges them to be mindful of the code when performing judicial functions:

For the purposes of this canon, if a retired judge is serving in the Temporary Assigned Judges Program, the judge is considered to ‘perform judicial functions.’ *Because retired judges who are privately retained may perform judicial functions, their conduct while performing those functions should be guided by this code.* (Italics added.)

(Advisory Com. com., foll. canon 6A.)

⁵ Retired judges may be subject to other ethical constraints, which are not applicable to the facts of this opinion. For example, a retired judge who is privately retained and appointed pursuant to the California Constitution, article VI, and the Code of Civil Procedure section 638, subdivision (a) is bound by the rules set out in canon 6D. In addition, a retired judge engaged in arbitration may be subject to separate standards that apply to commercial arbitration proceedings. (Code Civ. Proc. §§ 1281.85–1281.95; Judicial Council of Cal., Ethics Standards for Neutral Arbitrators in Contractual Arbitration (rev. Jan. 1, 2022) <<https://www.courts.ca.gov/26582.htm>> [as of May 2, 2022]).

(Cal. Judges Assn., Judicial Ethics Update (April 2000) p. 8 [a retired judge not sitting on assignment may solicit funds and goods for war refugees at church services]; *id.* [a retired judge who does not have an assignment or accept appointments may solicit funds for charitable organizations].)

V. Conclusion

A retired judge who engages in private dispute resolution services but does not sit by assignment or act as a temporary judge, referee, or court-appointed arbitrator is not bound by the code, and therefore, is not prohibited by the code from engaging in fundraising activities, including participating in events that are intended to raise funds for a law school scholarship and suggesting contributions to the scholarship fund.



This expedited 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)(2); 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 expedited 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)).