



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

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

www.JudicialEthicsOpinions.ca.gov

CJEO Expedited Opinion¹ 2023-051

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**EXTRAJUDICIAL SERVICE AS A GOVERNMENT AFFAIRS DIRECTOR FOR
ANOTHER STATE’S ATTORNEY GENERAL**

I. Question

Is it permissible for a retired judicial officer to take a position as the government affairs director for another state’s attorney general while participating in the Temporary Assigned Judges Program in California?

¹ The California Supreme Court Committee on Judicial Ethics Opinions (CJEO or the committee) 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. Facts

The Temporary Assigned Judges Program is an exercise of the Chief Justice's constitutional authority to assign retired judicial officers to fill vacancies on a temporary basis in courts requesting assistance. (Cal. Const., art. VI, § 6, subd. (e) ["The Chief Justice shall seek to expedite judicial business and to equalize the work of judges"].) The judge is an active member who regularly sits on assignment through the temporary assigned judges program.

The inquiry is whether it would be permissible to serve as the government affairs director in another state. It is a compensated position. The government affairs director position would report directly to the state's attorney general and would require the retired judge to act as a liaison between the attorney general, the state's legislative representatives, and other state officers. As part of the position's duties, the retired judge would review and analyze proposed state legislation submitted to the state attorney general and provide feedback to the authors of the proposed legislation concerning textual clarity, completeness, and compliance with statutory and constitutional requirements. The position would also provide administrative, analytical, and professional support in connection with the legislative affairs of the office of the state attorney general. Finally, the government affairs director may draft and review legislative opinions, including opinions authored by deputies within the state attorney general's office regarding prospective legislation, and legal opinions for other state agencies and officers.

III. Advice Provided

The committee advises that it would be improper for a retired judge to hold a position as a government affairs director reporting to the attorney general of another state while simultaneously serving in the temporary assigned judges program in California. The government affairs director position would involve giving legal advice and drafting legal documents and opinions. This constitutes the practice of law, which is impermissible for judicial officers, including retired judges participating in the temporary assigned judges program.²

² While not discussed at length herein, there are other independent grounds under the canons that would render the out-of-state position improper. First, if the laws of the other state are in conflict with the laws of California, such extrajudicial service may give the appearance of impropriety, which could diminish public confidence in the integrity and impartiality of the

IV. Discussion

The California Code of Judicial Ethics³ permits judges to engage in extrajudicial activities, particularly those devoted to the improvement of the law, the legal system, and the administration of justice. (Advisory Com. commentary foll. canon 4A [complete separation of judges from extrajudicial activities is neither possible nor wise]; Advisory Com. commentary foll. canon 4B [judicial officers are specially learned in the law and in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice].) However, any advisory position must be non-legal in nature. (Canon 4C(3)(a) [a judge may serve as an officer or nonlegal advisor or an organization or government agency dedicated to the improvement of the law, legal system, or the administration of justice so long as it does not constitute public office]; canon 4C(3)(b) [a judge may serve as an officer or nonlegal advisor of a non-profit organization, subject to the limitations and other requirements of the code]; Rothman et al., *Cal. Jud. Conduct Handbook* (4th ed. 2017) § 8:80, p. 570 (Rothman).)

In addition, and most relevant here, judges are prohibited from practicing law. (Canon 4G; Advisory Com. com. foll. canon 6C [retired judges in the temporary assigned judges program are bound by canon 4G barring the practice of law].) Retired judicial officers serving in the temporary assigned judges program must carefully navigate the path between what is permitted and what is prohibited by the code. (Canon 6B [retired judges in the temporary assigned judges program are required to comply with all provisions of the code, with exceptions inapplicable to civic organization positions].)

CJEO addressed a similar issue in an expedited opinion in 2019, and its conclusion is instructive. (CJEO Expedited Opinion 2019-031 (2019) *Extrajudicial Service as a Rotary District Youth Protection Officer*.) In that matter, a retired judicial officer who regularly served

judiciary. (Canon 2.) In the same vein, the retired judge may have to take a position on issues reasonably likely to come before California courts. (Canon 2A.) Finally, if the judge were to accept the out-of-state position, it may give the impression of lending the prestige of the judicial office to further the interests of the judge and others, or using one's judicial title for financial gain. (Canons 2B(2), 4D(1), 4D(2).)

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

in the temporary assigned judges program wanted to know if it was permissible to volunteer as a district youth protection officer for the local Rotary Club. (*Id.* at p. 1.) The CJEO advised that the retired judge would not be permitted to serve in this volunteer position because the qualifications included legal experience and the duties included providing advice about the law. (*Id.* at 5.) The opinion further advised that the Rotary district youth protection officer position could result in the judicial officer being called as a witness or participant in proceedings involving the Rotary district youth program, which could undermine the appearance of impartiality and lend the prestige of judicial office. (*Id.*) Finally, CJEO advised that the retired judge's participation in the program could advance the interests of the Rotary Club based on the judge's title and position. (*Id.* at 5-6.)

The prohibition against judges practicing law includes providing legal advice, counsel, and drafting legal documents, whether or not they are prepared in the course of litigation. (Canon 4G; Rothman § 8:80, p. 570 [citing *People v. Merchants Protective Corp.* (1922) 189 Cal. 531, 535, quoting *Eley v. Miller* (1893) 7 Ind. App. 529 [34 N.E. 836, 837]; *Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119, 128].) “In close cases, the courts have determined that the resolution of legal questions for another by advice and action is practicing law.” (CJEO Formal Opinion 2021-017 (2021) *Providing Close Family Members with Advice that Implicates Legal Issues*, pp. 5-8, citing *California v. Superior Court* (1929) 207 Cal. 323, 335 and *Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 543.)

Here, the duties of the government affairs director include reviewing, analyzing, and providing feedback on proposed legislation and whether it complies with statutory and constitutional requirements. The director would also be tasked with both preparing and reviewing legal opinions, including opinions drafted by deputies within the state attorney general's office on prospective legislation. Finally, the director may also draft legal opinions for other state agencies and officers. These duties necessarily implicate the practice of law, which is barred by canon 4G. As such, the committee advises that the retired judge may not serve as the government affairs director for the attorney general in another state.

For the foregoing reasons, the committee advises that it would be improper for the retired judge to accept a position as government affairs director reporting to the attorney general

of another state while simultaneously sitting on assignment in California as a member of the temporary assigned judges program.

V. Conclusion

Extrajudicial service as a government affairs director in another state would not be permitted under the code where, as here, the position includes giving legal advice and drafting legal documents and opinions. This constitutes the practice of law, which is impermissible for judicial officers, including retired judges participating in the temporary assigned judges program. Extrajudicial service in a governmental agency is permitted only where the judicial officer serves as a nonlegal advisor, which is not the case at hand. Accordingly, the committee advises that the retired judge should not accept a position as a government affairs director reporting to the attorney general of another state while simultaneously serving with the temporary assigned judges program in California.



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 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)).