



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

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CJEO Expedited Opinion¹ 2026-054

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**REQUEST TO PRESIDING JUDGE TO PROVIDE INFORMATION TO
GOVERNMENT ENTITY RELEVANT TO IMPENDING LITIGATION**

I. BACKGROUND AND QUESTION PRESENTED

A government entity seeks information from current and former presiding judges,² derived from their administrative duties as presiding judges, which may be relevant to impending litigation between the requesting entity and another agency. While the impending litigation pertains to the courts, no courts or judges are expected to be parties to the case. The information sought may include the judges' subjective impressions of certain events or data

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.

² "Current and former presiding judges" will hereafter be referred to as "presiding judges."

related to court operations in addition to purely factual information. Because the information sought arises out of observations made in the course of the presiding judge's administrative duties, any declaration or testimony would necessarily identify them by judicial title and would relate to matters observed in an official capacity. The requesting judge asks the following: What are the ethical considerations a presiding judge must take into account in this scenario?

II. ADVICE PROVIDED

A presiding judge who receives a request from a government entity for information relevant to pending or impending litigation must evaluate that request under the California Code of Judicial Ethics.³ Where a judge is asked to provide information responsive to a subpoena or other compulsory legal process, the code does not provide a privilege against testifying. (Advisory Com. commentary foll. canon 2B.) Where a court is asked to produce judicial administrative records or other public records, such requests are governed by the rule on Public Access to Judicial Administrative Records (PAJAR) and the California Public Records Act (PRA), respectively. (Cal. Rules of Ct., rule 10.500; Gov. Code § 7920.000 et seq.) This opinion does not address these types of requests.

The issue discussed here is whether, in response to a request from a government entity, a presiding judge may *voluntarily* disclose information acquired through their administrative duties as a presiding judge that may be relevant to pending or impending litigation between the requesting entity and another agency. In general, a presiding judge should not voluntarily provide information, impressions, or commentary derived from the judge's administrative duties to only one side of pending or impending litigation.

Such communication may: constitute an improper public or nonpublic comment on a pending or impending proceeding (canon 3B(9)); involve the prohibited disclosure of nonpublic information acquired in a judicial capacity for a purpose unrelated to judicial duties (canon 3B(11)); create an appearance of bias inconsistent with public confidence in the integrity and impartiality of the judiciary (canons 2, 2A); commit the judge with respect to cases,

³ All further references to the code, canons, and terminology are to the California Code of Judicial Ethics.

controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of judicial office (canon 2A); improperly lend prestige of the judicial office (canon 2B(2)); raise concerns regarding impermissible ex parte communication (canon 3B(7)); or deviate from the duty to discharge the judge's administrative responsibilities impartially, without bias, free of conflict of interest, and in a manner that promotes public confidence in the integrity of the judiciary (canon 3C(1)).

A presiding judge should similarly ensure that staff and court personnel do not disclose information or engage in communications that would be improper if undertaken by the judge. (Canon 3B(9) ["[a] judge shall not make any public comment about a pending or impending proceeding in any court, and shall not make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of staff and court personnel subject to the judge's direction and control."])

III. AUTHORITIES

A. *Applicable Canons*

Canon 2: "A judge shall avoid impropriety* and the appearance of impropriety* in all of the judge's activities."

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. A judge shall not make statements, whether public or nonpublic, that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial* performance of the adjudicative duties of judicial office."

ADVISORY COMMITTEE COMMENTARY: Canons 2 and 2A: "The test for the appearance of impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity,* impartiality,* and competence."*

Canon 2B(2): "A judge shall not lend the prestige of judicial office or use the judicial title in any manner, including any oral or written communication, to advance the pecuniary or personal interests of the judge or others. This canon does not prohibit the following:

"(a) A judge may testify as a character witness, provided the judge does so only when subpoenaed.

“(b) A judge may, without a subpoena, provide the Commission on Judicial Performance with a written communication containing (i) factual information regarding a matter pending before the commission or (ii) information related to the character of a judge who has a matter pending before the commission, provided that any such factual or character information is based on personal knowledge.* In commission proceedings, a judge shall provide information responsive to a subpoena or when officially requested to do so by the commission.

“(c) A judge may provide factual information in State Bar disciplinary proceedings and shall provide information responsive to a subpoena or when officially requested to do so by the State Bar.

“(d) A judge may respond to judicial selection inquiries, provide recommendations (including a general character reference relating to the evaluation of persons being considered for a judgeship), and otherwise participate in the process of judicial selection.

“(e) A judge may serve as a reference or provide a letter of recommendation only if based on the judge’s personal knowledge* of the individual. These written communications may include the judge’s title and may be written on stationery that uses the judicial title.”

ADVISORY COMMITTEE COMMENTARY: Canon 2B: “A strong judicial branch, based on the prestige that comes from effective and ethical performance, is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. A judge should distinguish between proper and improper use of the prestige of office in all of his or her activities.

“As to those communications that are permitted under this canon, a judge must keep in mind the general obligations to maintain high standards of conduct as set forth in Canon 1, and to avoid any impropriety or the appearance of impropriety* as set forth in Canon 2. A judge must also be mindful of Canon 2A, which requires a judge to act at all times in a manner that promotes public confidence in the integrity* and impartiality* of the courts. [¶] ... [¶]*

“This canon does not afford a judge a privilege against testifying in response to any official summons.”

Canon 3B(7): “... A judge shall not initiate, permit, or consider ex parte communications, that is, any communications to or from the judge outside the presence of the parties concerning a pending* or impending* proceeding, and shall make reasonable efforts to avoid such communications, except as follows: [¶] ... [¶]

“(b) A judge may initiate, permit, or consider ex parte communications, where circumstances require, for scheduling, administrative purposes, or emergencies that do not deal with substantive matters provided:

- (i) “the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and
- (ii) “the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.”

Canon 3B(9): “A judge shall not make any public comment about a pending* or impending* proceeding in any court, and shall not make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require* similar abstention on the part of staff and court personnel subject to the judge’s direction and control. This canon does not prohibit judges from making statements in the course of their official duties or from explaining the procedures of the court, and does not apply to proceedings in which the judge is a litigant in a personal capacity.”

ADVISORY COMMITTEE COMMENTARY: Canon 3B(9): “Although this canon does not prohibit a judge from commenting on cases that are not pending or impending* in any court, a judge must be cognizant of the general prohibition in Canon 2 against conduct involving impropriety* or the appearance of impropriety.* A judge should also be aware of the mandate in Canon 2A that a judge must act at all times in a manner that promotes public confidence in the integrity* and impartiality* of the judiciary. In addition, when commenting on a case pursuant to this canon, a judge must maintain the high standards of conduct, as set forth in Canon 1.”*

“Although a judge is permitted to make nonpublic comments about pending or impending* cases that will not substantially interfere with a fair trial or hearing, the judge should be cautious when making any such comments. There is always a risk that a comment can be misheard, misinterpreted, or repeated. A judge making such a comment must be mindful of the judge’s obligation under Canon 2A to act at all times in a manner that promotes public confidence in the integrity* and impartiality* of the judiciary.”*

Canon 3B(11): “A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information* acquired in a judicial capacity.”

Canon 4C(1): “A judge shall not appear at a public hearing or officially consult with an executive or legislative body or public official except on matters concerning the law, the legal system, or the administration of justice”

ADVISORY COMMITTEE COMMENTARY: Canon 4C(1): “When deciding whether to appear at a public hearing or to consult with an executive or legislative body or public official on matters concerning the law, the legal system, or the administration of justice, a judge should consider if that conduct would violate any other provisions of this code. For a list of factors to consider, see the explanation of “law, the legal system, or the administration of justice” in the Terminology section. See also Canon 2B regarding the obligation to avoid improper influence.”*

California Code of Judicial Ethics, Terminology section:

“ ‘Law, the legal system, or the administration of justice.’ 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 factors such as whether the activity upholds the integrity, impartiality, and independence of the judiciary (Canons 1 and 2A), whether the activity impairs public confidence in the judiciary (Canon 2), whether the judge is allowing the activity to take precedence over judicial duties (Canon 3A), and whether engaging in the activity would cause the judge to be disqualified (Canon 4A(4)). See Canons 4B (Commentary), 4C(1), 4C(1) (Commentary), 4C(2), 4C(2) (Commentary), 4C(3)(a), 4C(3)(b) (Commentary), 4C(3)(d)(ii), 4C(3)(d) (Commentary), 4D(6)(d), 4D(6)(e), 5A (Commentary), 5D, and 5D (Commentary).”

“ ‘Impending proceeding’ is a proceeding or matter that is imminent or expected to occur in the near future. The words ‘proceeding’ and ‘matter’ are used interchangeably, and are intended to have the same meaning. See Canons 3B(7), 3B(7)(a), 3B(9), 3B(9) 37 (Commentary), 4H (Commentary), and 6D(6).”

“ ‘Nonpublic information’ means information that, by law, is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order, impounded, or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. Nonpublic information also includes information from affidavits, jury results, or court rulings before it becomes public information. See Canons 3B(11) and 6D(8)(a).”

“ ‘Pending proceeding’ is a proceeding or matter that has commenced. A proceeding continues to be pending through any period during which an appeal may be filed and any appellate process until final disposition. The words “proceeding” and “matter” are used interchangeably, and are intended to have the same meaning. See Canons 2A (Commentary), 2B(3)(a), 3B(7), 3B(9), 3B(9) (Commentary), 3E(5)(a), 4H 19 (Commentary), and 6D(6).”

B. Rules of Court

California Rules of Court, rule 10.500. Public access to judicial administrative records.

California Rules of Court, rule 10.603. Authority and duties of presiding judge.

C. Other Authorities

CJEO Formal Opinion 2014-006: *Judicial Comment at Public Hearings and Consultation with Public Officials and Other Branches of Government*.

California Judges Association, *Judicial Ethics Update* (Nov. 2012).

California Judges Association, *Judicial Ethics Update* (Jan. 2012).

California Judges Association, *Judicial Ethics Update* (Feb. 2010).

California Judges Association, *Judicial Ethics Update* (Apr. 2008).

California Judges Association, *Judicial Ethics Update* (Mar. 2006).

California Public Records Act, California Government Code sections 7920.000 et seq.

IV. DISCUSSION

This opinion discusses the *ethical* parameters in a situation where current and former presiding judges have been asked to voluntarily provide information gathered in the performance of their administrative duties as presiding judges, which may be relevant to impending litigation between the requesting entity and another agency. The opinion does *not* address a presiding judge's legal obligations, such as responding to a subpoena⁴ or a public records request.⁵ Nor does the committee evaluate the disclosure requirements, if any, pursuant to rule 10.603 of the California Rules of Court, which delineates the authority and duties of a presiding judge. Any questions on these matters should be directed to the Judicial Council or the office of court counsel for the presiding judge's court.

⁴ Advisory Com. commentary foll. canon 2B (“[t]his canon does not afford a judge a privilege against testifying in response to any official summons.”)

⁵ See PAJAR (Cal. Rules of Ct., rule 10.500); and PRA (Gov. Code § 7920.000 et seq.)

A. Comment on Pending or Impending Proceeding

Judges are prohibited under the code from making any public comment about a pending⁶ or impending⁷ proceeding and may not make any nonpublic comment that could substantially interfere with a fair trial or hearing. (Canon 3B(9).) The facts provided to the committee do not specify whether the presiding judges' comments would be public or nonpublic. Nor do the facts indicate that the requested information would be provided to both sides of the impending litigation. Privately providing information to only one side in impending litigation could substantially interfere with a fair trial or hearing in the case, as the requesting entity could use the information to its advantage in the litigation.

If, on the other hand, the requesting entity intends to publicly disclose any statements or information provided by the presiding judges, these would be considered public comments. Because a judge may not make any public comment on a pending or impending proceeding, sharing such information would be improper.⁸ (Canon 3B(9).)

B. Other Ethical Considerations

i. Disclosing Nonpublic Information

A judge must also consider canon 3B(11) which provides: "A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information⁹ acquired in a judicial capacity." Although the facts do not conclusively indicate whether the requesting entity's

⁶ A "[p]ending proceeding" is a proceeding or matter that has commenced. A proceeding continues to be pending through any period during which an appeal may be filed and any appellate process until final disposition. The words "proceeding" and "matter" are used interchangeably, and are intended to have the same meaning." (Terminology, p. 6.)

⁷ An "[i]mpending proceeding" is a proceeding or matter that is imminent or expected to occur in the near future. The words "proceeding" and "matter" are used interchangeably, and are intended to have the same meaning." (Terminology, p. 4.)

⁸ Canon 3B(9) does allow judges to "mak[e] statements in the course of their official duties [and] explain[] the procedures of the court."

⁹ "'Nonpublic information' means information that, by law, is not available to the public. Nonpublic information may include, *but is not limited to*, information that is sealed by statute or court order, impounded, or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. Nonpublic information also includes information from affidavits, jury results, or court rulings before it becomes public information." (Terminology, p. 6. (emphasis added).)

inquiry would specifically seek nonpublic information, a presiding judge would only be permitted to disclose it for purposes related to “judicial duties.” (*Ibid.*) A presiding judge’s duties, as set out in rule 10.603 of the California Rules of Court, do not appear to encompass a duty to share information with a government entity related to pending or impending litigation. As noted above, the legal interpretation of rule 10.603 is beyond the scope of this ethics opinion. Notwithstanding, a presiding judge should not share any nonpublic information with a government entity unless expressly provided for in the rules or required by law. This also applies to a former presiding judge who no longer sits in that assignment and therefore no longer holds those duties.

ii. Ex Parte Communication

Presiding judges may not provide information to a government entity if doing so would result in an ex parte communication. The code defines ex parte communications as “any communications to or from a judge outside the presence of the parties concerning a pending or impending proceeding.” (Canon 3B(7).) Communication between a presiding judge and a requesting entity concerning an impending proceeding, if conducted outside the presence of the parties, would constitute an ex parte communication. (*Ibid.*) “A judge may initiate, permit, or consider ex parte communications, where circumstances require, for . . . administrative purposes . . . provided [¶] the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and [] the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.” (Canon 3B(7)(b)(i)-(ii).) In the context of a presiding judge responding to an information request that is, by all indications, apparently intended for receipt by only one party to impending litigation, it is unlikely that the judge could reasonably believe the requesting party would not enjoy a procedural or tactical advantage from that information. As a result, such ex parte communication would be improper.

iii. Use of the Prestige of Judicial Office

Canon 2B(2) states, “A judge shall not lend the prestige of judicial office or use the judicial title in any manner, including any oral or written communication, to advance the pecuniary interests of the judge or others.” Nevertheless, the canon does allow a judge to (a)

testify as a character witness in response to a subpoena; (b) provide, without a subpoena, written communication to the Commission on Judicial Performance relating to factual information relevant to a matter pending before the commission, or character information based on personal knowledge, or information responsive to a subpoena from the commission; and (c) provide factual information in State Bar disciplinary proceedings (but only in response to a subpoena or other official request). (Canon 2B(2)(a)-(c).)

Canon 2B(2) has been interpreted to allow a judge to provide information or testimony relevant to pending or impending litigation under limited circumstances. However, where a judge is not providing information responsive to a subpoena or other official request, the judge must generally avoid using their title or otherwise identifying themselves as a judge in this context. (See, e.g., Cal. Judges Assn., *Judicial Ethics Update* (Nov. 2012) p. 5 [a judge who represented a defendant in a death penalty trial may provide a declaration about percipient recollections and impressions during representation, but should not express an opinion about the defendant's state of mind, and should not use their title in the declaration]; Cal. Judges Assn., *Judicial Ethics Update* (Jan. 2012) p. 4 [a judge may write a letter to a former client's auditors giving factual information about potential litigation during the time that the judge represented the client, provided the judge identifies himself or herself in the letter as former counsel, not as a judge; and, a judge may testify as a percipient witness but should not identify themselves as a judge unless asked]; Cal. Judges Assn., *Judicial Ethics Update* (Feb. 2010) p. 4 [a judge may testify as a fact witness but should not volunteer information about their position as a judge in the course of testifying].) In the facts provided, however, the requesting judge notes that it would not be possible to separate the information sought by the requesting entity from the title of presiding judge. Therefore, these exceptions would not apply.

If a judge receives a subpoena or is subject to another compulsory legal process, the judge should respond as required by law and consistent with the canons. (Advisory Com. commentary foll. canon 2B ["[t]his canon does not afford a judge a privilege against testifying in response to any official summons."]) Where sworn testimony is requested without a subpoena, a judge should still require one to dispel any impression of impartiality. (See Cal. Judges Assn., *Judicial Ethics Update* (Apr. 2008) p. 4 ["[a] [j]udge may testify or submit a

declaration in federal court on a habeas claim as a percipient witness, having been the trial judge, but should request the declaration be done pursuant to a subpoena to avoid the appearance of favoritism”]; Cal. Judges Assn., *Judicial Ethics Update* (Mar. 2006) p. 2 [[s]hould testimony at a deposition or trial be needed, [the] [j]udge should require a subpoena to avoid the appearance of lending the prestige of office to either side.”])

The Advisory Committee commentary to canon 2B additionally advises, “As to those communications that are permitted under this canon, a judge must keep in mind the general obligations to maintain high standards of conduct as set forth in Canon 1, and to avoid any impropriety or the appearance of impropriety as set forth in Canon 2. A judge must also be mindful of Canon 2A, which requires a judge to act at all times in a manner that promotes public confidence in the integrity and impartiality of the courts.”

iv. Public Hearings and Official Consultations

While canon 4C(1) prohibits judges from appearing at public hearings as a general matter, it excepts from its purview a judge’s appearance at public hearings, or official consultations with an executive or legislative body or public official on “matters concerning the law, the legal system, or the administration of justice.” (Canon 4C(1); Cal. Supreme Ct. Com. on Jud. Ethics Opns., Formal Opinion No. 2014-006: *Judicial Comment at Public Hearings and Consultation with Public Officials and Other Branches of Government* (2104) pp. 2, 5 [the exception broadly permits comment and consultation concerning the court system or matters of judicial administration, as well as legal matters when the subject of the appearance or consultation is one with respect to which the judge’s experience and perspective *as a judge* gives them unique qualifications to assist the other branches of the government in fulfilling their responsibilities to the public.]) Based on the limited facts provided to the committee here, it would appear that the information requested will not be within the context of a public hearing or official consultation. Accordingly, this exception is unlikely to apply. Even if a particular matter falls within the exception, however, a judge must still ensure that the statements made in the appearance or consultation do not violate any other provisions of the code. (Advisory Com. commentary foll. canon 4C(1).)

v. Duty to Remain Impartial

In addition to the ethical guidelines contained in canons 2B(2) (lending prestige of judicial office), 3B(7) (ex parte communication), 3B(9) (commenting on a pending or impending proceeding), 3B(11) (disclosing nonpublic information), and 4C(1) (public hearings and official consultations), judges must heed their overarching obligation to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary,” and “not make statements, whether public or nonpublic, that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of judicial office.” (Canon 2A.) Providing information and/or commentary to a requesting entity on one side of pending or impending litigation suggests a lack of impartiality, and may also run the risk of committing the judge with respect to cases, controversies, or issues that are likely to come before the courts. Therefore, such communication should be avoided.

C. Requests for Information Directed to Staff

Finally, the committee has been asked to address a presiding judge’s ethical obligations where court staff is asked to provide declarations, testimony, or other factual information acquired in the course and scope of their employment, in connection with impending litigation. Canon 3B(9) reads, “A judge shall not make any public comment about a pending or impending proceeding in any court, and shall not make any nonpublic comment that might substantially interfere with a fair trial or hearing. *The judge shall require similar abstention on the part of staff and court personnel subject to the judge’s direction and control.*” (Emphasis added.) Accordingly, a presiding judge should not permit any court staff to make any public comment on a pending or impending proceeding, make a nonpublic comment that might substantially interfere with a fair trial or hearing, or engage in conduct that the presiding judge is prohibited from doing themselves.

V. CONCLUSION

When a government entity requests information from a presiding judge that may relate to pending or impending litigation against another agency, the judge must proceed with careful

attention to the ethical constraints imposed by the code. Although the information sought may arise from the judge's administrative responsibilities, voluntarily providing information, impressions, or commentary to one side of pending or impending litigation raises significant ethical concerns.

In most circumstances, a presiding judge should decline such requests. Providing information to one party may constitute an improper public or nonpublic comment about a pending or impending proceeding (canon 3B(9)); may involve disclosure of nonpublic information obtained in a judicial capacity for purposes unrelated to judicial duties (canon 3B(11)); may create the appearance that the judge favors one side of the dispute, thereby undermining public confidence in the integrity and impartiality of the judiciary (canons 2, 2A); may commit the judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of judicial office (canon 2A); and may also implicate the prohibition against ex parte communications (canon 3B(7)). The exceptions contained in canons 3B(9) (making statements in the course of official duties or explaining the procedures of the court), 2B(2) (providing a declaration or testimony without identifying oneself as a judge), and 4C(1) (appearing at a public hearing or officially consulting with an executive or legislative body or public official) are inapplicable to the facts at hand. Likewise, a presiding judge therefore should not voluntarily submit a declaration, testimony, or other sworn statement for the benefit of one party to the litigation. If, however, the presiding judge receives a subpoena or other lawful summons, the judge may respond as required by law, subject to any applicable statutory restrictions and limitations on the disclosure of protected information. (Canon 2B(2).)

Presiding judges must additionally ensure that court personnel adhere to the same general principles. A presiding judge cannot allow court personnel to provide information or commentary that would be impermissible if made by the judge. (Cal. Rules of Court, rule 10.500; Gov. Code § 7920.000 et seq.)



This expedited advice opinion is advisory only. (Cal. Rules of Court, rule 9.80(a), (e); Cal. Supreme Ct. Com. on 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)).