



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

350 McAllister Street

San Francisco, CA 94102

(855) 854-5366

www.JudicialEthicsOpinions.ca.gov

CJEO Formal Opinion 2021-017

[Issued May 6, 2021]

**PROVIDING CLOSE FAMILY MEMBERS WITH ADVICE
THAT IMPLICATES LEGAL ISSUES**

I. Question

The Committee on Judicial Ethics Opinions (CJEO) has been asked to advise whether and to what extent a judge may ethically provide advice to a member of the judge's family about a matter that implicates legal issues.

II. Summary of Conclusions

Judges are prohibited by the California Constitution and the California Code of

Judicial Ethics¹ from providing legal advice to a family member if by doing so they would be practicing law. Numerous decisions from the state Supreme Court and the Courts of Appeal, collected in the appendix to this opinion, may help judges determine whether advice that they might provide to a family member would be considered legal advice and for that reason would constitute the practice of law. If there is no precedent that would resolve whether advising a family member in a given circumstance would constitute the practice of law, a judge should evaluate whether providing the requested advice would undermine the dual purposes underlying the prohibition on judicial practice of law to ensure the performance of official judicial duties and maintain the integrity of the judiciary. If the judge's advice would not align with these purposes, it is not permissible.

As guidance, the committee concludes that a judge is not permitted to: (1) accept compensation for help with legal matters; (2) neglect official duties in favor of a matter involving a family member; (3) provide advice that would cause a reasonable person to question the judge's independence or integrity; or (4) act, or appear to act, as an advocate.

Even so, a judge may provide limited law-related advice to a family member. Such advice may include statements of law, explanations of court procedures and court rules, and guidance about legal requirements, similar to the kinds of information that a judge would be able to provide a self-represented party appearing at a hearing before the judge. A judge may also provide advice relating to a matter in which the judge is personally involved when the judge is acting in his or her own personal interest or is acting in a representative capacity permitted under the code.

¹ All further references to the code, canons, preamble, terminology, and advisory committee commentary are to the California Code of Judicial Ethics unless otherwise indicated.

III. Authorities

A. Applicable Canons

Preamble: “The canons . . . are to be applied in conformance with constitutional requirements, statutes, other court rules, and decisional law.”

Terminology: “ ‘Member of the judge’s family’ means a spouse, registered domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship.”

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.”

Canon 3B(8): “A judge shall manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law.”

Advisory Committee commentary following canon 3B(8): *“For example, when a litigant is self-represented, a judge has the discretion to take reasonable steps, appropriate under the circumstances and consistent with the law and the canons, to enable the litigant to be heard.”*

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.”

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,

. . .

“(3) interfere with the proper performance of judicial duties, or

“(4) lead to frequent disqualification”

Canon 4G: “**A judge shall not practice law.**” (Boldface added.)

Advisory Committee commentary following canon 4G: “*This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or member of the judge’s family. See [c]anon 2B.*”

Canon 4E(1): “A judge shall not serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary, except for the estate, trust, or person of a member of the judge’s family, and then only if such service will not interfere with the proper performance of judicial duties. A judge may, however, act as a health care representative pursuant to an advance health care directive for a person whose preexisting relationship with the judge would prevent the judge from hearing a case involving that person under [c]anon 3E(1).”

B. Constitutional Provisions, Statutes, and Other Authorities

California Constitution, article VI, sections 9, 17.

Code of Civil Procedure, sections 170.1, subdivision (a)(1), (3) (4) and (5), 170.5 subdivision (b).

Adams v. Commission on Judicial Performance (1995) 10 Cal.4th 866.

Altizer v. Highsmith (2020) 52 Cal.App.5th 331.

Baron v. City of Los Angeles (1970) 2 Cal.3d 535.

Birbrower, Montalbano, Condon & Frank v. Superior Court (1998) 17 Cal.4th 119.

Doan v. Commission on Judicial Performance (1995) 11 Cal.4th 294.

Gilbert v. Chiang (2014) 227 Cal.App.4th 537.

Holloway v. Quetel (2015) 242 Cal.App.4th 1425.

Inquiry Concerning Judge Kleep (2017) 3 Cal.5th CJP Supp. 1.

Inquiry Concerning Saucedo (2015) 62 Cal.4th CJP Supp. 1.

Inquiry Concerning Judge Stanford (2012) 53 Cal.4th CJP Supp. 1.

People v. Merchants' Protective Corp. (1922) 189 Cal. 531.

Public Reproval of Judge Schatz (1989) Com. on Jud. Performance.

State Bar of California v. Superior Court (1929) 207 Cal. 323.

Commission on Judicial Performance, Annual Reports for 2010, 1993 and 1992.

CJEO Oral Advice Summary No. 2013-001, *Disclosure When A Judge's Spouse Serves on a City Commission*, California Supreme Court, Committee on Judicial Ethics Opinions Oral Advice Summary.

Rothman et al., California Judicial Conduct Handbook (4th ed. 2017) § 2:28.

California Judges Association, Judicial Ethics Update (Jan. 2016).

Senate Committee on Judiciary, Hearing on Assembly Constitutional Amendment No. 17 (1987-1988 Reg. Sess.) June 28, 1988.

Ballot Pamphlet, General Election (Nov. 4, 1930) argument in favor of Proposition 19, page 24.

IV. Discussion

A. Introduction

It can be hard to resist the human impulse to assist family members when they ask for advice. Whether out of love, obligation, or a sense of responsibility, many parents, children, siblings, and other close family members would not think twice about providing whatever kind of advice they can to another member of their family who needs guidance, even when the advice relates to a legal matter. For a judge, however, the decision

whether to advise a member of the judge's family² on law-related matters can be complicated and often difficult. Family members who are certainly aware of the judge's professional background may expect that, considering the normal instinct to assist loved ones, the judge would draw on his or her legal training and experience to help them. Family members seeking advice may not be aware that a judge, although naturally inclined to help, is prohibited by the Constitution and by the judge's obligations under the code from practicing law on a family member's behalf.³ The Constitution plainly states that "[a] judge of a court of record may not practice law," and the code similarly provides that "[a] judge shall not practice law." (Cal. Const., art. VI, § 17; canon 4G.) Indeed, despite having been admitted and licensed to practice law, judges cease to be members of the bar during their period in office. (Cal. Const., art. VI, § 9.) These restrictions can put judges in an awkward situation of having to decline a request for legal advice or to limit the kind of information and guidance that they can provide family members who come to them with questions about law-related matters. Determining what is permissible advice and what is the prohibited practice of law can be challenging.

² For purposes of this opinion, CJEO adopts that portion of the code's definition of a "[m]ember of the judge's family" to mean "a spouse, registered domestic partner, child, grandchild, parent, or grandparent." Also for purposes of this opinion, however, CJEO is not adopting the portion of the code definition that broadly includes "other relative or person with whom the judge maintains a close familial relationship." (Terminology, citing canons 2B & 4G.) The focus of this opinion is on the natural impulse to assist a close family member who needs legal help. Discussion of broader close relationships is beyond the scope of the opinion, although the analysis below may provide judges with guidance in determining the assistance permissible in those circumstances on an individual basis.

³ For this reason, it is recommended that when asked for legal assistance, judges advise any individual, including a family member, that judges are not permitted to practice law for the reasons discussed in this opinion.

B. Prohibited Practice of Law

Case law may assist judges to determine where they should draw the line about what is permissible when advising family members in a matter that implicates legal issues. The Supreme Court has said that the practice of law “ ‘ “includes legal advice and counsel” ’ ” (*California v. Superior Court* (1929) 207 Cal. 323, 335) and that “[i]n close cases, the courts have determined that the resolution of legal questions for another by advice and action is practicing law ‘if difficult or doubtful legal questions are involved which, to safeguard the public, reasonably demand the application of a trained legal mind’ ” (*Baron v. City of Los Angeles* (1970) 2 Cal.3d 535, 543). Following these decisions, a number of courts have identified specific instances where providing legal advice and other law-related assistance would constitute the law practice. (Appen. A, Cases Defining the Practice of Law.) But the Supreme Court has also noted that the practice of law “does not encompass all professional activities,” and judges are not prohibited from offering their family members all law-related advice. (*Birbrower, Montalbano, Condon & Frank v. Superior Court* (1998) 17 Cal.4th 119, 129.) Some guidance and information, although law-related, may be given by a judge to a family member as discussed below.

In circumstances not already addressed by case law, however, judges may find it hard to determine whether and to what extent they may provide guidance or other information when a family member asks them for advice on a law-related matter. Numerous situations may fall into a gray area. For example, to what extent may a judge help a member of the judge’s family to write a demand letter? When and to what extent may a judge review and comment on a contract involving a family member? May a judge advise a member of the judge’s family about litigation in which the family member is a party or comment on decisions made or actions taken by the attorneys representing the family member? When asked for help in these situations, the natural instinct of judges may be to provide assistance, even when they know that they are limited in the kind of assistance they may provide to family members.

In such cases, where precedent may not provide adequate clarity about what is permissible, judges weighing the nature and extent of advice they are able to provide family members are guided by the original rationales for the prohibition on judicial practice of law. Initially, the prohibition was thought to ensure that judges would conserve their time and focus their energy on their judicial duties, rather than becoming distracted by the competing demands of a law practice. Thereafter, the prohibition was increasingly considered necessary to keep the judiciary above reproach or suspicion by eliminating the opportunity for fraud and the potential for undisclosed conflicts of interest that might arise if a judge were representing private clients as a lawyer. (*Gilbert v. Chiang* (2014) 227 Cal.App.4th 537, 549-550.)⁴ During the legislative debate prior to the most recent amendment of the constitutional prohibition in 1988, the Senate Judiciary Committee confirmed that the reasons judges are prohibited from practicing law have remained the same: “to avoid conflict of interest and to ensure that other duties do not distract from their performance as judicial officials.” (Sen. Com. on Judiciary, Hearing on Assem. Const. Amend. No. 17 (1987-1988 Reg. Sess.) June 28, 1988, p. 3.)

Before helping a family member with a law-related matter, judges should evaluate whether the advice or assistance they would give is consistent with or contrary to either of the two purposes behind the prohibition on judicial practice to ensure performance of judicial duties and to avoid potential conflicts of interest. If the advice or assistance would undermine either purpose, it is not constitutionally permitted.

⁴ The earliest prohibition on judicial practice of law was added to the California Constitution in the 19th century and applied only to a judge’s activities in court. In 1930, the Constitution was amended by popular referendum to extend the prohibition on law practice to a judge’s conduct both in and out of court. The ballot argument in favor of the expansion of the 1930 amendment noted that “[c]itizens will not feel properly confident of justice if they know their judges are advising or aiding corporations, groups, or individuals in a legal capacity, on the side, in spare time [; n]o matter how innocent the practice, it is liable to vicious abuse.” (Ballot Pamp., Gen. Elec. (Nov. 4, 1930) argument in favor of Prop. 19, p. 24.)

C. What Constitutes Impermissible Legal Advice and Permissible Law-related Advice

As noted, judges are not permitted to advise their family members in law-related matters if the advice would undermine the dual purposes behind the prohibition to ensure the performance of official judicial duties and maintain the integrity of the judiciary by avoiding conflicts of interest.⁵ (*Gilbert v. Chiang* (2014) 227 Cal.App.4th 537, 550.) As a result, it would be impermissible for judges to advise a family member while acting as an advocate on behalf of either the family member or a particular legal position. (*Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 907 (*Adams*) [judge disciplined for suggesting that a close friend file a particular motion]; Com. on Jud. Performance, 1992 Ann. Rep., p. 13 [judge admonished for advising a relative and negotiating a settlement on their behalf].) Similarly, it would not be permissible for judges to accept compensation for their advice, provide assistance that could lead to disqualification, neglect official duties in favor of matters involving family members, or engage in activities that would cause a reasonable person to question their independence or integrity. (Canons 4A(1), (3) and (4), 4H.)

Keeping these prohibitions in mind, judges are permitted to provide family members with certain limited advice about law-related matters. Specifically, a judge is

⁵ The risk that a judge would undermine the purpose of the prohibition to ensure the performance of judicial duties is reduced when providing law-related advice to a family member because judges are generally disqualified when a close family member is a party, the judge has a financial interest in the matter, or the judge has personal knowledge of disputed evidentiary facts concerning the proceeding. (Code Civ. Proc., §§ 170.1, subd. (a)(1), (3), (4) & (5), 170.5, subd. (b); canons 3E(4), 3E(5)(d), (e), (f)(iii), (i); CJEO Oral Advice Summary No. 2013-001, *Disclosure When A Judge's Spouse Serves on a City Commission*, Cal. Supreme Ct., Com. Jud. Ethics Opns., p. 2.) However, because the constitutional and code prohibitions on practicing law apply to all judicial conduct and are not limited to presiding over case matters, disqualification alone does not make advice that constitutes the practice of law otherwise permissible.

permitted to provide a family member with general legal information, including, for example, statements of law, explanations of court procedures and court rules, and guidance about legal requirements, similar to the kinds of information that judges often provide to self-represented parties appearing before them. (Canon 3B(8) [judges must provide due process to all litigants]; Advisory Com. commentary foll. canon 3B(8) [judges have the discretion to take reasonable steps, appropriate under the circumstances and consistent with the law and the canons, to enable self-represented litigants to be heard]; *Holloway v. Quetel* (2015) 242 Cal.App.4th 1425, 1435 (*Quetel*) [judges must ensure self-represented litigants a fair hearing without assuming or appearing to assume the role of advocate]; Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 2:28, pp. 98-100 (Rothman) [interpreting these authorities from an ethics point of view, judges are permitted to explain court procedures, inform a party of the process for securing witnesses, and even inform a party of missing elements of proof or other legal requirements].)⁵

If a judge is advising a family member in connection with a matter in which the judge is personally involved or the judge's personal interests are implicated, such advice

⁵ The analogy to self-represented litigants is not to the canon 3B(8) general duty to provide all litigants with due process; it is to the discretion recognized in the advisory committee commentary to 3B(8) about the reasonable steps under the law and canons that may be taken to ensure self-represented litigants are heard without the judge appearing to practice law. (Canon 3B(8); Advisory Com. commentary foll. canon 3B(8); *Quetel*, *supra*, 242 Cal.App.4th at p.1435.) It is also to Judge Rothman's interpretation of those authorities as permitting judges to explain court procedures and provide self-represented litigants with information about legal processes and requirements from an ethics point of view. (Rothman, *supra*, § 2:28, pp. 99-100). The practical value of this analogy, however, is that judges who often hear matters involving self-represented litigants are practiced at exercising that discretion and determining what law-related advice they may provide without advocating or practicing law, which is the same discretion this committee concludes judges are permitted to exercise when advising family members outside of the courtroom setting.

is permissible.⁶ (Advisory Com. commentary foll. canon 4G [judges may act for themselves in all legal matters].) Additionally, a judge is more likely permitted to provide law-related advice where the judge does not appear publicly on behalf of the family member or act as an advocate, and the advice given to the family member is limited to the kind and quality of information that a nonlawyer might provide in a similar situation. (*Altizer v. Highsmith* (2020) 52 Cal.App.5th 331, 341 [acting in a clerical capacity or as a scrivener is not the unauthorized practice of law].) In general, assisting a family member in these circumstances would not impair a judge from fulfilling the judge's official duties or create an undisclosed conflict of interest.

D. Determining What Advice is Permissible

While each circumstance must be determined based on the specific facts involved, the examples described above may assist in deciding whether to provide a family member with law-related advice. The most obvious risks arise in the context of a family member asking a judge for advice about active litigation in which the family member is involved, whether as a party or otherwise. In providing a family member with support in a nonlegal manner, the judge must avoid the risk of engaging in the practice of law by offering advice on legal issues in the case, providing or offering to provide research on any legal issues in the case, or in any way acting or appearing to act as an advocate arguing on behalf of the family member. (Canons 2B(1), (2) & 4G; *Doan v. Commission on Judicial Performance* (1995) 11 Cal.4th 294, 320-321, 336-337 [judge's offer to conduct legal research constituted the practice of law].) These restrictions on the practice

⁶ In addition, canon 4E(1) permits judges to serve as an executor, administrator, trustee, guardian, attorney in fact, or other fiduciary or personal representative of a family member, so long as such service (i) will not interfere with the proper performance of judicial duties, (ii) is not likely to come before the judge, or (iii) is not likely to come before the judge's court or appellate district. These permissions and limitations are in line with the guidance provided in this opinion and would not be prohibited as the practice of law.

of law prohibit any substantive involvement by a judge in the prosecution, defense, or settlement of any litigation on behalf of a member of the judge's family.⁷ In addition, a judge who actively assists a family member involved in litigation runs the risk of violating the prohibition against improper ex parte communications by commenting on pending or impending cases. (Canons 3B(7) & (9); *Inquiry Concerning Judge Stanford* (2012) 53 Cal.4th CJP Supp. 1, 13-14, 21 [judge's discussion of a speeding ticket with his son-in-law constituted ex parte communication]; *Doan, supra*, at pp. 318-319 [judge's discussion of criminal charges filed against her gardener was an improper ex parte contact].) In sum, a judge is only permitted to offer limited assistance to a family member involved in litigation. Beyond providing moral support, the judge risks violating constitutional and code prohibitions against practicing law.

Judges should also exercise caution when asked for law-related advice in other contexts as well. For example, if a family member asks for help drafting a demand letter, a judge could agree to assist with clerical tasks such as proofreading the letter or acting as a scrivener to fill in the blanks of an incomplete draft with information that the family member provides or that is generally known. But if asked to advise on what to include in the letter or how to write it, a judge must consider the likelihood that providing such guidance would put the judge in the role of an advocate, either on behalf of the family member or of a legal position that advances the interests of the family member, and for that reason would be impermissible. (*Adams, supra*, 10 Cal.4th at pp. 906-908 [providing an issue analysis constituted the practice of law]; *Quetel, supra*, 242 Cal.App.4th at p. 1434.)

As another example, a judge would be permitted to assist a family member asking for help with an employment offer by discussing standard business terms included in the offer, such as the amount of compensation, location of the position, or hours required. It

⁷ As noted at page 12, *ante*, a judge may act on his or her own behalf in connection with litigation that also involves a member of the judge's family. (Advisory Com. commentary foll. canon 4G.)

may also be permissible for a judge to provide generalized, abstract information about provisions usually included in a standard employment offer. But before discussing any of the law-related terms actually included in an offer or advising the family member on terms that may be missing from it, a judge should evaluate whether such advice would cross the line into advocacy or negotiation and therefore constitute the practice of law.

V. Conclusion

Judges are prohibited by the California Constitution and California Code of Judicial Ethics from practicing law. Based on the purposes of the constitutional prohibition, case law interpreting the practice of law, and the provisions of the code, the committee concludes that judges may not: (1) accept compensation for help with legal matters; (2) neglect official duties in favor of a matter involving a family member; (3) provide advice that would cause a reasonable person to question judicial independence or integrity; or (4) act, or appear to act, as an advocate.

Within these constraints, however, judges may provide limited law-related advice to a family member that does not constitute the practice of law. Such advice may include statements of law, explanations of court procedures and court rules, and guidance about legal requirements, similar to the kinds of information that judges are permitted and experienced in providing to a self-represented party appearing before them. Judges may also provide advice relating to a matter in which they are personally involved when acting in their own personal interests or acting in a representative capacity as permitted under the code.

It is often difficult for judges to assess whether and to what extent their advice to family members in law-related matters might constitute the practice of law. The examples and guidance provided may help judges evaluate whether specific advice they have been asked to give a family member is permissible and how they may assist family members generally in matters involving the law.



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 summary 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)).

Appendix A - Cases Defining the Practice of Law

Acts That Are Clearly Prohibited as the Practice of Law

- a. Performing professional services in a court proceeding (*People v. Merchants' Protective Corp.* (1922) 189 Cal. 531, 535) (*Merchants' Protective*);
- b. Preparing a legal instrument or contract (*Merchants' Protective, supra*, 189 Cal. at p. 535);
- c. Assuming the role of an advocate (*Holloway v. Quetel* (2015) 242 Cal.App.4th 1425, 1434);
- d. Assisting in the preparation of settlement conference briefs (*Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 906-908 (*Adams*) [including drafting an “issue analysis” that was incorporated almost verbatim into a brief]);
- e. Advising the filing of a particular motion (*Adams, supra*, 10 Cal.4th at pp. 906-908 [including reviewing and approving of the motion]);
- f. Attempting to negotiate a dismissal of son's criminal matters (*Public Reproval of Judge Schatz* (1989) Com. on Jud. Performance, pp. 1-3);
- g. Negotiating the settlement of a claim on behalf of a relative (Com. on Jud. Performance, 1992 Ann. Rep., p. 13);
- h. Providing advice about potential penalties and defenses to an alcohol-related citation (*Inquiry Concerning Saucedo* (2015) 62 Cal.4th CJP Supp. 1, 11-12, 42-43; see *id.* at p. CJP Supp. 12 [including writing a letter that detailed the potential penalties for the offense, identified several potential defenses to the charge, and said that if a further notice to appear was issued, he would “ ‘find out and let [Tovar's son] know how Fresno County handles minor in possession of alcohol cases whether filed as infractions or misdemeanors’ ”]);
- i. Offering to conduct legal research (*Doan v. Commission on Judicial Performance* (1995) 11 Cal.4th 294, 320-321, 336-337 [including reviewing trial transcripts and briefs]);
- j. Offering unsolicited advice to defendants on what they should tell potential employers about indictments against them (*Inquiry Concerning Judge Kreep* (2017) 3 Cal.5th CJP Supp. 1, 35);

- k. Attending the deposition of a fiancée where the parties were aware of the judge's position, which created the appearance that the judge was acting as a legal advocate and was using the prestige of office to benefit the deponent (Com. on Jud. Performance, 2010 Ann. Rep., p. 25).

Some Examples of Acts That Are Permitted

- a. Directing a person to community resources for finding a lawyer (Advisory Com. commentary foll. canon 3B(8); Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 2:28 (Rothman));
- b. Explaining court procedures (Advisory Com. commentary foll. canon 3B(8); Rothman, *supra*, § 2:28);
- c. Informing a party of the process for securing witnesses (Advisory Com. commentary foll. canon 3B(8); Rothman, *supra*, § 2:28);
- d. Informing a party of missing elements of proof or other legal requirements (Advisory Com. commentary foll. canon 3B(8); Rothman, *supra*, § 2:28).