



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

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**CJEO Informal Opinion Summary No. 2018-005**

*[Posted June 26, 2018]*

**DISQUALIFICATION FOR SPOUSE’S POLITICAL CAMPAIGN  
SERVICES**

**I. Question Presented**

The Committee on Judicial Ethics Opinions (CJEO) was asked for an opinion on whether a trial court judge must disqualify himself or herself when the judge’s spouse provides political campaign services to reelect the head of a government legal office and attorneys from that office, but not the head of the office, appear as counsel in a proceeding. An opinion was also sought on whether the judge has disclosure obligations if the judge is not disqualified and, if so, the length of time that the judge must disclose the relationship.

## **II. Summary of Conclusions Provided**

Canon 3B(1) of the California Code of Judicial Ethics and Code of Civil Procedure section 170<sup>1</sup> require a judge to hear and decide all matters assigned to the judge, except those in which the judge is disqualified by law. Section 170.1 and canon 3E provide the grounds necessitating disqualification, including where the judge has a financial interest in the proceeding and where the judge is biased or prejudiced in the matter, based on either the judge's subjective belief or an objective belief of a reasonable person aware of the facts. (§ 170.1, subd. (a)(3), (6)(A), (6)(B).)

The committee advised that a judge whose spouse provides campaign services to the head of a government legal office does not have a statutory disqualifying financial interest when attorneys from the government legal office, but not the head of the office, appear as counsel in a proceeding. The spouse's services are provided to the head of the government legal office and not to the government legal office itself, the services are unrelated to the matter before the judge, and the head of the government legal office is not appearing before the judge. Therefore, in most instances, a reasonable person aware of the spouse's campaign services would not doubt the judge's impartiality, and the judge may decline to disqualify himself or herself unless the judge subjectively believes that he or she is unable to act impartially. The committee advised that the judge should evaluate the facts and circumstances surrounding the campaign and the proceeding to determine whether the specific circumstances, such as the source of campaign funds, publicity surrounding the proceeding, and size of the government legal office, could cause a person aware of the facts to reasonably doubt the judge's impartiality. If so, the judge should disqualify himself or herself.

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<sup>1</sup> All further references to canons are to the California Code of Judicial Ethics unless otherwise indicated. All references to section or sections are to the Code of Civil Procedure unless otherwise indicated.

The committee further advised that the spouse’s campaign services to the head of the government legal office is information that is reasonably relevant to the question of disqualification. (Canon 3E(2)(a).) The trial court judge should disclose on the record that the spouse is engaged in campaign services. The judge should continue to disclose the spouse’s campaign services for a reasonable period of time after the spouse’s services end or after the last payment related to the services is received, whichever occurs later.

### **III. Disqualification**

Section 170 and canon 3B(1) obligate a judge to hear and decide all matters unless the judge is disqualified, including those matters that are controversial and may subject the judge to public disapproval and criticism. (Canon 3B(2) [“A judge shall be faithful to the law regardless of partisan interests, public clamor, or fear of criticism”]; *United Farm Workers v. Superior Court* (1985) 170 Cal.App.3d 97, 100, 103 [section 170 reminds judges of their duty to hear cases, which is equally as strong as the duty to disqualify, and protects judges from public criticism by providing a clear statement of their responsibility].) On the other hand, a judge cannot allow relationships to influence the judge’s judicial conduct or judgment, and the canons require a judge to uphold the independence and impartiality of the judiciary at all times. (Canons 1, 2A, 2B(1).) The duty to disqualify is intended to safeguard the integrity and fairness of the judicial process, is concerned with the rights of the parties before the court, and is intended to ensure public confidence in the judiciary. (*People v. Freeman* (2010) 47 Cal.4th 993, 1000-1001.)

Section 170.1 sets forth the grounds for judicial disqualification at the trial court level.<sup>2</sup> A judge is disqualified if any of the grounds specified in section 170.1 are

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<sup>2</sup> This opinion summary focuses on the disqualification and disclosure obligations of trial court judges. “Judge” and “trial court judge” are used interchangeably to refer to a trial court judge. Canon 3E(4) and 3E(5) set forth the standards for recusal of an appellate justice and are substantially similar to the grounds for disqualification pursuant to section 170.1. Appellate justices are not subject to disclosure obligations pursuant to the canons.

present, including, as relevant here, if the judge has a financial interest in the proceeding, is biased or prejudiced in the matter, or if a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. (§ 170.1, subd. (a)(3), (6)(A), (6)(B).)

#### A. Financial Interest in the Proceeding

A judge is disqualified if the judge has a financial interest in the subject matter of a proceeding or in a party to the proceeding. (§ 170.1, subd. (a)(3)(A).) A judge is deemed to have a financial interest if the judge or the judge's spouse possesses "ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value in excess of one thousand five hundred dollars (\$1,500), or a relationship as director, advisor, or other active participant in the affairs of the party," with certain exceptions. (§§ 170.5, subd. (b); 170.1, subd. (a)(3)(B)(i) [a judge is deemed to have a financial interest if the spouse has a financial interest].)

The fact that the judge's spouse receives a financial benefit from the head of the government legal office, and not the government legal office itself, does not constitute a disqualifying financial interest as the term is defined. (§ 170.5, subd. (b); Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 7:30, p. 429 (Rothman) ["[T]he disqualification statute makes no mention of financial interest in entities other than a party, nor does the statute refer to ownership interests that may be affected by a decision regarding a party"].) The head of the government legal office is not the subject of or a party to the proceeding, so the spouse's anticipated compensation from the head of the government legal office is not a disqualifying financial interest for the judge.

Nor is the spouse a director, advisor, or other active participant in the affairs of the government legal office. While the spouse may be an active participant in the campaign of the head of the government legal office, such activity does not extend to the activities or policy decisions of the government legal office itself. (Cal. Judges Assn., Opn. No. 55 (2006), p. 2 [involvement that would trigger consideration of disqualification is where the

spouse's position requires him or her "to advise on, or actively participate in, the major activities or policy decision of the government entity"].) Therefore, the committee advised that the spouse's financial interest in the head of the government legal office does not necessitate disqualification pursuant to section 170.1, subdivision (a)(3).

## B. Capacity To Be Impartial

Section 170.1, subdivision (a)(6)(A) requires disqualification where a judge is unable to be impartial based on either the judge's subjective belief or the objective belief of a reasonable person. Section 170.1, subdivision (a)(6)(A)(ii) requires disqualification where "[t]he judge believes there is a substantial doubt as to his or her capacity to be impartial." This is an individual determination that a judge makes in each proceeding, which is balanced against the overarching duty to decide a case. No authority has held that a judge erred by failing to recuse on this subjective ground. (Rothman, *supra*, appen. G, p. 917.)

Section 170.1, subdivision (a)(6)(A)(iii) requires disqualification when "[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial." Subdivision (a)(6)(A)(iii) was enacted due to the difficulty in proving that a judge is biased unless the judge admits such bias and disqualifies himself or herself, as well as to promote public confidence in the integrity and impartiality of the judiciary. (*United Farm Workers of America v. Superior Court*, *supra*, 170 Cal.App.3d at p. 103; Rothman, *supra*, appen. G, p. 918.) It strikes a balance between the parties' right to a decision based upon an objective evaluation of the facts and the law, and the public's right to a fair, yet efficient resolution of disputes. (*United Farm Workers of America v. Superior Court*, *supra*, at p. 100; *People v. Freeman*, *supra*, 47 Cal.4th 993, 1000-1001 [section 170.1 is concerned with both the rights of the parties before the court and ensuring public confidence in the judiciary].) Disqualification based on this statutory ground is evaluated under an objective standard: "if a fully informed, reasonable member of the public would fairly entertain doubts that the judge is impartial, the judge should be disqualified." (*Wechsler v. Superior Court* (2014) 224 Cal.App.4th 384, 391.)

Applying this objective standard, in *United Farm Workers v. Superior Court*, *supra*, 170 Cal.App.3d 97, the Court of Appeal determined that no person aware of the facts would reasonably doubt the judge's impartiality where, six years before the judge presided over the matter, the judge's wife worked for one of the parties for two days. The court regarded this as a close issue and based its decision on the absence of a continuing relationship between the party and the judge's spouse that could give rise to a personal or financial interest. (*Id.* at p. 105.) In most instances, there is an appearance of bias necessitating disqualification if the spouse is employed by a nongovernmental entity that is a party to the proceeding. (Cal. Judges Assn., Judicial Ethics Update (2016), I.B.15, p. 2 [a judge should disqualify himself or herself where adult son who lives at home is employed part-time by a corporation that is a party in a matter before the judge].) Conversely, where a spouse is employed by a governmental entity party, the judge is not disqualified unless the spouse is involved in the case before the court. (Rothman, *supra*, § 7:46, p. 464; Cal. Judges Assn., Opn. No. 55, *supra*, p. 2 [advising that disqualification is typically not required where a judge's family member is directly employed by a government entity party].)

Here, the judge's spouse is employed by a nongovernmental entity that is neither a party to nor the subject matter of the proceeding. The spouse receives compensation from the head of a government legal office, not the government legal office itself, and the head of the government legal office is not the subject of the proceeding or a party to the proceeding and does not appear as counsel in the matter. There is no direct connection between the judge or the judge's spouse and the government legal office. Under these circumstances, the committee advised that a person aware of the facts would not reasonably doubt the judge's capacity to be impartial, and the judge may decline to disqualify himself or herself.

There are other factors a judge should consider, however, that may cause a person aware of the facts to reasonably doubt the judge's impartiality. Where the judge does not have a disqualifying financial interest under section 170.1, subdivision (a)(3), the judge must still consider whether there are financial ties to the party that may create an

appearance of bias. For example, if the judge is aware that the head of the government legal office is self-funding the campaign and the spouse's payment is therefore derived exclusively from the candidate's salary, the judge's impartiality might reasonably be questioned as the judge's community property is indirectly attributable to the government legal office. The judge's impartiality is even more likely to be questioned where a judgment against the government legal office could endanger the position of the head of the government legal office. If the proceeding is high profile or likely to garner publicity that could impact the campaign, the judge's impartiality is more likely to be questioned. Whether the judge's conduct in a proceeding would result in the head of the legal office no longer utilizing the judge's spouse for campaign services is, in most instances, highly speculative; however, the judge should still consider whether the nature of the proceeding and the publicity related to the proceeding warrant disqualification. (Cal. Judges Assn., Opn. 55, *supra*, p. 2 [financial consequences to a family member employed by a government entity that receives an adverse judgment so attenuated that no reasonable person would doubt the judge's impartiality]; Rothman, *supra*, § 7:46, pp. 464-465.)

Another factor the judge should consider is the size of the government legal office. If the government legal office is so large that the head of the office has minimal oversight of the attorneys appearing before the judge, there is less of an appearance of doubt that the judge would be impartial. If, however, the government legal office consists of only a few attorneys and the head of the office is involved in the day-to-day supervision of the attorneys or the proceeding, the judge's impartiality may reasonably be questioned.

In sum, the committee advises that, in most instances, a judge is not disqualified from hearing a matter where the judge's spouse provides campaign services to reelection the head of a government legal office when attorneys from that office, but not the head of the office, appear as counsel in a proceeding. The judge should evaluate other factors, such as whether the campaign is entirely or mostly self-funded, the publicity surrounding the proceeding, and the size of the government legal office. Depending on these facts, a reasonable person may doubt the judge's impartiality, requiring disqualification.

#### IV. Disclosure Requirements

Once a trial judge determines that he or she is not disqualified under the Code of Civil Procedure or the canons, the judge must then evaluate whether disclosure is necessary. Disclosure ensures the appearance of impartiality and integrity of decisions as required by canons 1 and 2, provides information that could form a basis for a party to seek recusal, and gives the parties an opportunity to bring to the judge's attention any additional information that the judge is unaware of, which may be relevant to disqualification. (Canons 1 [a judge shall uphold the integrity of the judiciary] & 2 [a judge shall avoid impropriety and the appearance of impropriety]; *People v. Freeman, supra*, 47 Cal.4th 993, 1000-1001 [the grounds for disqualification are concerned with the rights of the parties and ensure public confidence in the judiciary]; Rothman, *supra*, § 7:73, p. 495.) A judge must examine what information is relevant to the question of disqualification and should be disclosed, if any, and how long disclosure is required.

##### A. Relevance

The disclosure requirement is broader than the disqualification requirement. A judge must disclose on the record “information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification.” (Canon 3E(2)(a).) Information that is reasonably relevant to the question of disqualification includes any information a judge relies on when deciding whether he or she is disqualified. (Rothman, *supra*, § 7:75, p. 500 [“relevant” as used in canon 3E(2)(a) refers to the definition in Evidence Code section 210 – the information should have a tendency in reason to prove or disprove something].)

The fact that a family member is an employee of a private law firm or a government legal office appearing before the court, even where the family member has no involvement in the case, is relevant to the question of disqualification and should be disclosed. (Rothman, *supra*, § 7:45, pp. 459, 462; Com. on Jud. Performance, Ann. Rep.

(2016), Advisory Letter 10, p. 28 [judge failed to disclose relative's employment with the district attorney's office when attorneys appeared before the judge]; Com. on Jud. Performance, Ann. Rep. (2005), Advisory Letter 15, p. 25 [judge failed to disclose that his teenage child was employed as a "go-fer" by a law firm while the law firm frequently appeared before the judge].) Similarly, if the spouse works for an agency, such as a police department, that is involved in an investigative capacity in a case but the spouse is not personally involved in the case, that fact should be disclosed. (Rothman, *supra*, § 7:46, p. 464.)

The committee advised that the parties or lawyers would consider the spouse's campaign services as similarly relevant to the question of disqualification in a matter. Although the judge's spouse has no direct connection to the government legal office, the spouse receives financial compensation from the head of the government office who has ultimate authority over those attorneys that appear before the judge. Therefore, the committee advised that the judge should disclose on the record the spouse's campaign services while the spouse is engaged in providing such services. (Canon 3E(2)(a); CJEO Formal Opn. 2013-002 (2013) [advising a judge how to make a disclosure on the record when there is no court reporter or electronic record].)

## B. Duration of Disclosure

Neither the canons nor section 170.1 set a specific timeframe for disclosure of information that is relevant to disqualification, except as it relates to campaign contributions. Canon 3E(2)(b)(iii) requires a trial court judge to disclose campaign contributions that the judge received no later than one week after the receipt of the first contribution or loan and for two years after the judge takes the oath of office, or two years from the date of the contribution or loan, whichever is later. Section 170.1, subdivision (a)(2)(B) and (8)(A) set timeframes relevant to disqualification, requiring that a judge disqualify himself or herself unless at least two years have elapsed from when the judge served as a lawyer in the proceeding or from when the judge participated in discussions regarding prospective employment as a dispute resolution neutral,

respectively. Based on these provisions, a two-year timeframe has become the benchmark for other disclosure obligations. (Cal. Judges Assn., Opn. No. 60 (2008), p. 3 [suggesting that two years is a reasonable period of time to disclose and may serve as a benchmark].)

The committee advised that the judge should disclose the spouse's campaign services for a reasonable period of time from when the spouse's services end or from when the spouse receives final payment from the head of the government legal office, whichever occurs later. Depending on the facts surrounding the spouse's campaign services and the matter before the judge, including the degree of the head of the government legal office's involvement in the proceeding, the degree of the spouse's involvement in the campaign, the source of the campaign funds, the publicity surrounding the proceeding, and the size of the government legal office, the judge's disclosure obligations may be shorter or longer than the two-year benchmark. Disclosure for a reasonable period of time achieves the objectives of ensuring the appearance of impartiality and integrity of decisions, providing an opportunity to hear from the parties and to determine whether the disclosure raises other issues that the judge might want to consider, and providing information that could form a basis for a party to seek recusal. (Canons 1 & 2; Rothman, *supra*, § 7:73, p. 495.)

## **V. Conclusion**

A judge has a duty to decide all matters assigned to the judge, except where disqualified by law. The committee advised that, in most instances, a judge whose spouse provides campaign services to the head of a government legal office may decline to disqualify himself or herself when attorneys from that office, but not the head of the office, appear before the judge. The judge should disqualify himself or herself if the judge believes that he or she is unable to act impartially. The committee further advised that a trial court judge should disclose the fact that the spouse is providing campaign services to the head of the government legal office. The judge should continue to

disclose the spouse's campaign services for a reasonable period of time from when the spouse's services end or from when the final payment is received, whichever occurs later.



*This informal opinion summary 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)).*