



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

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CJEO Oral Advice Summary 2018-022

[Issued February 22, 2018]

**DISCLOSURE REQUIREMENTS FOR A STATE BAR COURT REVIEW
DEPARTMENT JUDGE**

I. Question

Is a State Bar Court Review Department judge required to disclose information that is reasonably relevant to the question of disqualification pursuant to canon 3E(2)(a) of the California Code of Judicial Ethics¹ if the judge has determined that he or she is not disqualified from hearing the matter?

II. Oral Advice Provided

Canon 3E(2)(a) requires that in all trial court proceedings a judge disclose information relevant to disqualification, even if the judge believes there is no actual basis

¹ All further references to the canons and to Advisory Committee Commentary are to the California Code of Judicial Ethics unless otherwise indicated.

for disqualification. Canon 3E(2)(a) applies only to trial judges and no rule requires appellate justices to make nondisqualifying disclosures. (Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 7.73, p. 496 (Rothman).) The Advisory Committee Commentary following canon 3E states that “[t]he term ‘appellate justice’ includes justices of both the Courts of Appeal and the Supreme Court.” At issue is whether a State Bar Court Review Department proceeding is a “trial court proceeding[]” within the meaning of the canons. (Canon 3E(2)(a).) To answer the question, a brief overview of the State Bar Court is useful.

The State Bar Court includes a Hearing Department and a Review Department. (Bus. & Prof. Code, §§ 6079.1, 6086.65.) The Hearing Department is the trial level of the State Bar Court, and hearing judges conduct evidentiary hearings on the merits. (*Obrien v. Jones* (2000) 23 Cal.4th 40, 44-45.) The Review Department may review a decision of the Hearing Department at the request of a disciplined attorney or the State Bar. (*Ibid.*) The Review Department independently reviews the record and may adopt findings, conclusions and a decision or recommendation different from those of the hearing judge. (*Ibid.*; Cal. Rules of Court, rule 9.12.)

The Review Department functions as an appellate body, reviewing the determination of a Hearing Department judge, and, therefore, a Review Department judge is not subject to the disclosure obligations of canon 3E(2)(a). A Review Department judge is not required to, but may, disclose any information that may be relevant to disqualification. (Rothman, *supra*, § 7.91, p. 503 [an appellate justice is not prevented from making disclosures where appropriate].)



This oral advice 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)).