

Navigating Ethical Challenges for Family Court Judges

Family court judges in California hold uniquely challenging roles. They preside over cases involving the most intimate aspects of people's lives—child custody, domestic violence, spousal support, and the dissolution of marriages. Emotions run high, and litigants are often self-represented, under extreme stress, and skeptical of the judicial process. These dynamics create fertile ground for ethical pitfalls. For judicial officers, awareness and proactive strategies are essential to avoid misconduct and maintain public trust in the judiciary.

In this article, we examine common ethical challenges faced by family law judges and offer practical tips for navigating them.

I. Managing Bias and the Appearance of Bias

Family law cases often involve repeat players: the same attorneys, custody evaluators, therapists, and even litigants. Judges may see the same parties multiple times over the years, particularly in high-conflict custody matters. Over time, a judge may form impressions—positive or negative—about certain litigants, lawyers, or professionals. However, the California Code of Judicial Ethics¹ requires a judge to avoid not only actual bias but also the appearance of bias.²

The following are some helpful tips to that end:

- Be vigilant of creeping bias. After repeated exposure to contentious parties, check in with yourself. Are you becoming impatient with one side? Have you formed fixed ideas that are no longer grounded in evidence?
- Refrain from independent research. It may be tempting to look up past case histories that are not in the current file or public social media profiles of repeat litigants, but this runs afoul of canon 3B(7) of the code.³ Rulings must be based solely on the record before you.

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

² 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"; Terminology: "[I]mpartiality ... mean[s] the absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as the maintenance of an open mind in considering issues that may come before a judge."

³ Canon 3B(7): "Unless authorized by law, a judge shall not independently investigate facts in a proceeding and shall consider only the evidence presented or facts that may be properly judicially noticed. This prohibition extends to information available in all media, including electronic"; CJEO Formal Opinion 2021-016, *Independent*

II. Handling Self-Represented Litigants

Family courts see some of the highest percentages of self-represented parties in California.⁴ These litigants are often unfamiliar with procedural rules and may expect the judge to help them, creating tension between ensuring fairness and maintaining impartiality, as required by the code.⁵

Below are some strategies family court judges can employ:

- Provide clarity while maintaining neutrality. Judges may explain the process or the applicable legal standard without offering legal advice. For example, you can state, “You need to provide evidence regarding the best interests of the child” without suggesting what evidence to submit.⁶
- Use plain language whenever possible. Legal jargon can overwhelm unrepresented parties and exacerbate frustration. Clear, neutral explanations can make proceedings more comprehensible and dignified.⁷
- Many courts provide aid in completing forms and explanation of procedures through family law facilitators.⁸ If this is available in your court, learn the scope

Investigation of Information Contained in Electronic Court Case Management Systems, Cal. Supreme Ct. Com. Jud. Ethics Opn. [A judge may use an electronic case management system to search for information that will assist in the proper performance of judicial duties or to independently investigate facts in a proceeding where the investigation is authorized by law but may not engage in independent investigation of adjudicative facts unless review is permitted by statute, or the facts are subject to judicial notice].

⁴ See, e.g., Judicial Council of Cal., Task Force on Self-Represented Litigants, *Statewide Action Plan for Serving Self-Represented Litigants* (2013), p. 2.

⁵ See Rothman et al., *Cal. Jud. Conduct Handbook* (4th ed., 2017) (Rothman) § 2:28, pp. 96–100 [“From the ethics point of view, in every case in which a judge considers making an accommodation [for a self-represented litigant], the judge must make sure that the accommodation is reasonable, does not impair judicial impartiality and is undertaken in a manner that avoids the perception that the court favors one side over the other”].

⁶ See, e.g., Advisory Com. com. foll. canon 3B(8) [“The obligation of a judge to dispose of matters promptly and efficiently must not take precedence over the judge’s obligation to dispose of the matters fairly and with patience. 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”].

⁷ See Rothman, *supra*, § 2:28, p. 99 [“The lack of knowledge of the legal system by self-represented persons makes it necessary for judges to ensure clear and understandable communications, including, among other things, that: (1) the self-represented litigant is not misled by the court, court staff, or opposing counsel in communication that takes place before the court and (2) verbal instructions, orders, and notices given by the court and staff to unrepresented parties are in clear and understandable language for lay persons, avoiding, when possible, legal jargon”].

⁸ For more information on family law facilitators, see the “Court-based self-help services” webpage on the California Courts Self-Help Guide at <https://selfhelp.courts.ca.gov/court-based-self-help-services>, accessed June 24, 2025.

and how the litigants may access the facilitators so the court and litigants may make the best use of them.

- Be patient. Recognize that emotional stakes are high. Patience goes a long way in preserving confidence in the judiciary.⁹

III. Ex Parte Communication

Ex parte communication is one of the most common ethical pitfalls in family law cases. Emotions frequently spill over into improper communications. Parties may send letters, emails, or social media messages directly to the judge, hoping to influence the outcome. Attorneys may attempt to provide background information when only one side is present. Under canon 3B(7), ex parte communications are generally prohibited unless expressly authorized by law.

Here are some ways judges can help prevent ex parte communication from occurring:

- Establish clear protocols.¹⁰ At the start of a case, instruct parties and attorneys on proper communication channels and reiterate that one-sided communication with the court is not permitted.
- Do not read unsolicited materials. If you receive an email or letter from a party outside of formal filings, do not consider its contents. Have your clerk or courtroom staff handle such communications appropriately.
- Address ex parte attempts on the record. If improper communication occurs, disclose it in open court and allow the opposing side to respond if necessary.

IV. Managing Courtroom Decorum

Judicial demeanor and decorum are some of the most prevalent grounds for judicial discipline.¹¹ This is particularly true in family law cases, which often involve deeply

⁹ See Rothman, *supra*, § 2:28, p. 99 [“The judge has a duty to see to it that the judge, staff, and others in the courtroom observe appropriate demeanor in dealing with all who come before the court, including self-represented litigants. Impatience and/or discourtesy toward self-represented persons is improper”].

¹⁰ Rothman, *supra*, § 5:12, p. 12 [“Judge should discuss [I think we should add with whom] ex parte communications, as well as protocol for handling such communications with bailiff, clerk, and other staff members”].

¹¹ See, e.g., Cal. Com. Jud. Performance, *2023 Annual Report*, p. 19 [demeanor/decorum was the second-most prevalent type of conduct resulting in discipline, with 10 acts of misconduct]; Cal. Com. Jud. Performance, *2022 Annual Report*, p. 18 [demeanor/decorum was the most prevalent type of conduct resulting in discipline, with seven acts of misconduct]; Cal. Com. Jud. Performance, *2021 Annual Report*, p. 17 [demeanor/decorum was the most prevalent type of conduct resulting in discipline, with nine acts of misconduct].

personal conflicts. Parties may interrupt, raise their voices, or display anger or distress. While canon 3B(4) requires judges to be patient, dignified, and courteous, it also requires maintaining control of the proceedings.

Here are some helpful tips to maintain dignity and decorum in the family law courtroom:

- Set expectations early. Explain courtroom rules regarding speaking order, interruptions, and respectful conduct.¹²
- Use breaks strategically. If tempers flare, consider short recesses to allow parties to cool down.
- Model calm behavior.¹³ Maintaining your own composure helps de-escalate tense situations.
- Maintain professional distance and avoid becoming embroiled.¹⁴

V. Remember Your Role

Family court judges often see struggling families in crisis. The desire to help is natural, but judges must remember their role. Canon 3 prohibits judges from assuming functions that compromise impartiality or interfere with the proper performance of their duties.

Below are some ways judges can establish appropriate boundaries:

- Rely on the record. Your rulings must be based on evidence and law, not personal views on what might best “fix” a family dynamic.
- Use available resources. When appropriate, refer parties to court services, such as family court services mediators or parenting classes, rather than crafting your own interventions.

¹² Rothman, *supra*, § 4:8 [“The process of establishing control of a courtroom includes not only making it clear at the beginning that the court enforces local and statewide rules concerning practices and procedures in trial courts, but also communicating any expectations ... regarding how the courtroom is to be run. Such an advisement at the outset of proceedings sends a clear message that a certain level of conduct is expected and will be enforced”].

¹³ Rothman, *supra*, § 1:43, p. 40 [“A productive response [to disruptive courtroom behavior] includes one that is professional and judicious, free of attitude. It is one that is calm and controlled and, most important, does not allow a loss of focus on the goals and objectives of the matter before the judge”]; Rothman, *supra*, § 7:60, p. 484 [“Judges must “maintain[] calm in the storm. A judge must remain fair and impartial, calm and dispassionate, in the face of personal attacks or disruptive tactics”].

¹⁴ Rothman, *supra*, Appendix A, p. 977 [“Embroidment is the process by which a judge surrenders impartiality. In doing so, the judge becomes a party to the quarrel, involved rather than impartial and losing professional distance. Once a judge becomes embroiled in a matter, fairness, impartiality, and the integrity of decisions leave the courtroom”].

- Recognize your limits. You are not a therapist, counselor, or child advocate. Your role is to apply the law fairly and impartially.

VI. Conclusion

Family court judges perform critical work in some of the most emotionally charged cases in the judicial system. The ethical challenges inherent in this work are real and persistent. By remaining vigilant about bias, maintaining strict adherence to rules on ex parte communication, balancing fairness with efficiency when dealing with self-represented litigants, and staying firmly within the judicial role, judges can avoid ethical missteps and safeguard public confidence in the integrity and impartiality of the judiciary.

As always, when in doubt, consult the code, review Rothman, seek guidance from judicial ethics advisory committees such as CJEO and the California Judges Association (CJA), or confer with judicial colleagues as permitted by canon 3B(7)(a). The work is difficult, but with mindfulness and care, family law judges can navigate these ethical challenges while delivering justice to those who need it most.