

INTERVIEW WITH JUDGE ERICA YEW:
JUDICIAL ETHICS IN CALIFORNIA'S COLLABORATIVE COURTS SYSTEM

Judge Erica R. Yew has served on the Santa Clara Superior Court since 2001. Santa Clara County has a robust collaborative court program, in which she plays an instrumental part. Judge Yew was appointed to CJEO in 2019. She also engages in education and community outreach on collaborative courts. She sat down with *The Source* editor Jody Vakili to answer some questions about the unique ethical issues faced by collaborative court judges.

1. For those who may not be familiar, what are collaborative courts?

Collaborative courts, also called problem-solving or treatment courts, promote accountability for youth and adults by combining judicial supervision with services and treatment to help them address the issues that led to their court involvement. Collaborative justice courts have a dedicated calendar, bench officer, and team of justice partners to address specific types of issues (e.g., mental health courts for those with mental illness, drug courts for those with a substance use disorder). In addition, often the team will work with the participant to remove barriers to success and will provide connections for long-term housing, transportation, education, employment, government assistance programs, grants for debt relief or payment of utilities, cellphones and laptops, food, clothing, tattoo removal, subsidized child care, vision, dental and medical care, medication evaluation and management, and much, much more. One of the primary functions of a collaborative court is to bring the participant into the courtroom for regular reviews to keep the participant on track until they are stable and the case can be dismissed or adjudicated with some finality. The courts motivate the participants by building trust and confidence through the provision of the services mentioned above and through incentives. The courts often also use sanctions as additional motivation to keep participants on the path toward recovery and dismissal. Participants often thrive with the care and attention that they receive in treatment court.

2. How do you balance judicial impartiality with the more hands-on collaborative approach required in problem-solving courts?

As judges we need to remember our role and show compassion and empathy for all court users without becoming embroiled. Embroilment can surface as overly caring and getting too involved in the outcome of a litigant's recovery journey or it can show up as upset or anger with a litigant who relapses or reoffends. The path to recovery and health is not a straight line and often not a short one. We all have experienced ups and downs as we try to improve ourselves. I believe that even if a person doesn't graduate from treatment court or get their child back in dependency court, we are planting seeds. Taking a long view approach is also helpful for maintaining impartiality as is being patient with litigants and the process since each person's journey is unique and organic.

3. How do you maintain appropriate boundaries with collaborative court participants while still fostering a supportive environment?

This is something that I've come to with 23 years on the court. I think initially, as a new judge, I felt that I needed to maintain a certain formality in all of my hearings to maintain control of my courtroom and to keep a professional distance. Sometimes, as judges, we divorce our personalities from our in-court persona which can lead to a dry and impersonal experience for the litigants. Recently, at the September 2024 California Judges Association Annual Meeting, we presented a panel of seven litigants from criminal, family, and dependency courts. We had people from multiple ethnic and racial backgrounds. Several had served long prison sentences, and one was convicted of homicide and served his term in San Quentin. They spoke about their court experiences. They shared how difficult and dehumanizing it was for them when the judges did not make eye contact, did not greet them, and did not appear to be prepared for their cases.

I now feel comfortable being myself while in the courtroom. I tend to be polite and warm to everyone and that is the persona that I bring to the courtroom for all of my assignments. In my collaborative court assignment, I think this works to foster a supportive and humane environment. I have also received and provided training on ensuring a trauma-informed court experience for court users. The elements of providing a trauma-informed court experience mirror the elements of providing procedural fairness: respect, transparency, neutrality, being empathetic. We can achieve these goals while maintaining professional and appropriate boundaries.

4. How do you think collaborative courts affect public confidence in the integrity and impartiality of the judiciary?

Doing our jobs ethically ensures public trust and confidence. Earlier this year, the National Center for State Courts released its annual survey on public trust and confidence. Sadly, the survey has shown a ten-year slide in the public's trust in our courts. Interestingly, however, the National Center for State Courts followed up the survey with focus groups. One of the things they learned through the focus groups is that when the focus group members were informed of the work of collaborative courts, their trust in our legal system increased significantly. In fact, 81 percent of the public participating in the focus groups approved of collaborative courts. The work of collaborative courts can present unique ethical challenges for judges, but they can obtain remarkable improvements for individual participants and their families as well as uplift public trust and confidence.

5. What ethical considerations arise for judges when participating in a treatment team alongside prosecutors, defense attorneys, and service providers?

There are a lot of areas that can present pitfalls. Considerations can arise in countless ways, including: receiving ex parte communications about litigants; being too close or enmeshed

with the team members; becoming embroiled with the litigants; mismanaging grant funds and other resources; improper fund-raising; improper referrals to treatment programs that are closely identified with the bench officer (if not financially benefitting the bench officer); forgetting one's role and aligning too much with justice partners and as a result devaluing relationships with court personnel; becoming self-involved and egotistical, and as a result forgetting ethical bounds where the bench officer remands or incarcerates people too often or keeps the litigant involved in court proceedings post the expiration of probation; making improper demands upon justice partners and county resources; becoming enmeshed with legislative or executive branch representatives, and more.

6. What steps do you take to make sure all participants understand and adhere to the ethical rules regarding ex parte communication?

I asked one of our research attorneys to prepare a lunchtime training about the rational for and identification of ex parte communications for the collaborative team members. She did a fabulous job creating a jeopardy game that made the training both fun and informative. I also consistently remind people, justice partners and court participants, about the prohibition against sharing ex parte information with me.

7. How do you facilitate collaboration amongst the treatment team, particularly larger teams with numerous egos and conflicting viewpoints or approaches?

I bring a lot a food! I'm only half joking about the food. I also try to ensure that everyone is respectful of each other. I express gratitude for everyone's contribution to ensure everyone feels acknowledged and valued as a contributor. I try to have people initially resolve their differences without judicial intervention. I feel it is important for the team members to work things out as equals, rather than me coming in and pulling rank, because it leads to a more collaborative and cooperative environment.

8. How do you handle confidentiality issues when privy to treatment information that may not typically be available to a judge?

This is a great question since I do learn about a participant's recent and past Welfare and Institutions Code section 5150 episodes, their adherence to medications, and more. In all of our collaborative calendars, the team members who are privy to this information obtain signed releases of information from all participants before sharing this information with the court and team members. If a participant does not sign the release of information, or retracts their consent, then the treatment team member will not provide the information to me or the team. In addition to releases of information signed by the participants for release of information obtained by the in-court assessors, the third-party treatment programs also obtain consents so they can provide written status reports to the court.

9. What ethical challenges arise when balancing therapeutic goals with traditional notions of justice and accountability?

One of the greatest challenges arises when attorneys appear and they are unfamiliar with collaborative courts. Often, they can be too punitive, too impatient, or too unrealistic. With high volume calendars, it is challenging to educate these attorneys since there are so many complex components to how a treatment court functions and explaining all of it can take a great deal of time. It is, however, imperative to do so since educating the attorney informs the participant which is necessary for the participant's success. Sometimes these attorneys have many questions or wish to debate their philosophic views of treatment court. Speaking on the point of the ethical challenge that arises in this situation, and being completely frank, I'd say it is maintaining one's patience with what seems to be an undue consumption of time.

10. Is there any parting advice you'd give regarding collaborative court assignments, based on your many years of experience?

I think judges do their best work when they are healthy physically and emotionally. It's important to acknowledge the toll a collaborative court assignment can have on a judge, as you are absorbing other people's stories and hardships day-in and day-out, year after year. I recently spoke with several collaborative court judges who left the assignment after many years, and they remarked that they felt so much lighter now that they were no longer carrying this stress. One judge didn't appreciate the change until she realized her blood pressure went down! Collaborative court judges should take steps to mitigate the effects of vicarious trauma. This includes safeguarding their personal health and wellness – including occupational, physical, social, intellectual, emotional, and spiritual wellness. The California Judges Association website includes a [Mindfulness and Wellness](#) page with many resources to support judges and the information is largely available to all bench officers, even non-CJA members.¹

¹ Several other organizations also provide information and resources for judicial health and wellness. For example, the National Council of Juvenile and Family Court Judges has created a "Judicial Wellness-Connection-Leadership Initiative" that has resources and annual programs for judges to manage their wellness and self-care <<https://www.ncjfcj.org/judicial-wellness-initiative/>> [as of Nov. 4, 2024]. In July 2022, in conjunction with the National Judicial Task Force to Examine State Courts' Response to Mental Illness, the National Center for State Courts published "Judicial Wellness," which is a compendium of scientifically tested and evidence based well-being strategies <https://www.ncsc.org/_data/assets/pdf_file/0040/79699/Judicial-Wellness.pdf> [as of Nov. 4, 2024]. See also, Swenson, et al., *Stress and Resiliency in the U.S. Judiciary* (2020) J. Prof. Lawyer, American Bar Association <https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/journal-of-the-professional-lawyer-2020.pdf> [as of Nov. 4, 2024]. And in 2025, Berkeley Judicial Institute is hosting a five-part series entitled "Cultivating Healing and Health in the Judiciary" <<https://www.law.berkeley.edu/research/bji/events/chhj/>> [as of Nov. 4, 2024].