

## **CJEO Celebrates 10 Years**

This year marks the CJEO's tenth year in operation. The Supreme Court, led by Chief Justice Ronald George, created CJEO and appointed the original 12 judicial officer members in December 2009. However, due to budget constraints, committee operations did not begin until 2011, when committee counsel was hired and CJEO officially opened its doors.

Also in 2011, under the leadership of then newly-appointed Chief Justice Tani Cantil-Sakauye, the Supreme Court approved CJEO's internal operating rules and procedures. These rules carry out the court's delegation of authority to the committee under the California Constitution and California Rules of Court, rule 9.80 (rule 9.80), to provide judicial ethics advice through formal, informal, and expedited opinions, and establish the committee's processes. While these processes are primarily geared toward the issuance of published opinions, the identities of judicial officers requesting advice are kept strictly confidential to encourage members of the bench to seek opinions from CJEO. The goal is to publish opinions, without outside influence or reference to identifying details, that can act as a framework and be applied to different sets of facts.

Chief Justice Cantil-Sakauye believes CJEO's independence, transparency, and adaptability are key to its success. "As an independent body, CJEO plays a critical role not only for the bench, but also for the public, in creating a written body of work on judicial ethics that is understandable, accessible, and evolves as new challenges face the courts."

One of CJEO's initial challenges was how to integrate its mission and mandate with California's existing structure for providing judicial ethics advice, which was primarily through the California Judges Association's (CJA) highly esteemed Ethics Committee. The solution, it turns out, was thoughtful planning and well-oiled collaboration.

Nancy Black, CJEO's Committee Counsel since its inception, recalls the careful work of CJEO's implementation committee, which was chaired by Justice Richard D. Fybel and included other stakeholders from the Supreme Court Advisory Committee on the Code of Judicial Ethics (Advisory Committee), the Commission on Judicial Performance (CJP), and the CJA Ethics Committee.

"In my view, the court's goal in establishing CJEO was never to replace the significant work of the CJA Ethics committee, but rather for CJEO to provide additional and complementary services. This is why it took the implementation committee nearly two years to complete its work. The implementation committee put a great deal of thought and attention into its recommendations to the Supreme Court, which enacted the successful framework we have today."

The two organizations have distinct, but synergistic roles. The CJA ethics committee primarily provides oral advice to individual judges seeking guidance on specific, time-sensitive questions. (See box, "CJA Ethics Committee Hotline.") CJEO's focus is on issuing written opinions on matters of broader concern and interest, which are publicly available on the CJEO website. CJA shares confidential summaries of its oral advice with CJEO, which do not identify individuals or location, but which help CJEO predict trends and often form the basis for future published

opinions. While they may have separate functions, the two organizations have common goals and shared expertise. In fact, many of CJEO's committee members previously served on the CJA ethics committee.

In addition, rule 9.80 authorizes CJEO to provide recommendations to the Supreme Court Advisory Committee on the Code of Judicial Ethics, which advises the court on revisions to the code. While the two committees are sometimes mistaken for each other, they serve very different purposes. The advisory committee works directly with the court to revise the code and provide explanations in the code's commentary. CJEO works independently of the court and provides ethical guidance to judges by interpreting the code and applying it to various factual situations in written opinions.

Similar to ethics committees in other states, CJEO operates under the Supreme Court's delegated authority, but it is completely independent of the court, the Judicial Council, or any other entity. What makes CJEO unique nationwide is the public comment process, which allows members of the public, including individuals, attorneys, entities, and courts, to provide input on draft formal opinions during a 45-day comment period. "California has always been ahead of the curve in judicial ethics, and CJEO's public comment process is a great example of that," said Attorney Black. CJEO was the first among state ethics committees, and remains among the few, to engage the public in issuing formal judicial ethics opinions. In addition, CJEO posts the comments it receives for public review.

Black believes that CJEO's public comment process has been critical in helping to establish CJEO's credibility. "We realized that if judges were going to come to us for advice, it was important that we first established and then maintained trust in the quality of our opinions and in the confidentiality of our procedures. Allowing members of the public to comment on the ethical guidance being provided to judges creates a certain transparency and accountability, which was an important contributor to building that trust."

Justice Ronald Robie and Justice Douglas Miller have been CJEO's chair and vice-chair, respectively, since CJEO began operations. Attorney Black credits much of the committee's effectiveness to their leadership. "Both Justice Robie and Justice Miller are incredibly well-respected in the field of judicial ethics, but beyond that, they are also great facilitators and collaborative writers. It's a deliberative process that results in a collaborative product."

Justice Robie notes that, since its inception, the committee has had a policy of not issuing dissents or concurrences, publishing member vote counts, or identifying individual authors of opinions. "I'm very proud of the way we have structured our opinions, which is that we provide guidelines or a template for judges to use as a resource. They can apply the principles in our opinions to their own situations to help overcome ethical obstacles. For those opinions to be most effective, we felt it was important for the committee to speak with one clear voice."

Any judicial officer may request guidance from CJEO, and any member of the public may suggest ideas for the opinions. CJEO keeps the identities of those requesting advice confidential, even internally among its members, to encourage judges to seek guidance and instill public confidence in the process. While formal opinions typically involve public comment, the

committee may choose to issue expedited opinions on more time-sensitive or discrete issues. Justice Robie explains: “The public comment process takes time, but it’s incredibly beneficial and inevitably results in better formal opinions. However, we also have the option of providing expedited advice, which allows us to be nimble when we’re faced with pressing questions.”

In addition to making all of its opinions publicly available, CJEO also maintains a host of resources for judges and the public on its website, including an Annotated Code of Judicial Ethics (see box, “Did You Know?”), searchable databases of CJEO’s own opinions and the CJP’s disciplinary decisions, any other educational materials. That’s why CJEO is known as ‘The Source’ for judicial ethics in California.

What are CJEO’s goals for its next 10 years? Justice Robie would like to see the committee tackle even more issues. “We have no shortage of questions, a great process, an excellent chief counsel and staff, and a wonderful, dedicated committee that brings an impressive variety of approaches to the work. I’d like to see us increasing our staff, issuing more opinions, and reaching more judges. Basically, a lot more of a good thing.”