The Recorder

Ethics Committee: Judge Need Not Step Aside Because of Acquaintance's Amicus Brief

An official committee that confidentially gives guidance to California judges on ethical questions has advised that an appellate justice has no obligation to step off a case where a prior professional acquaintance filed an amicus curiae brief.An official committee that confidentially gives guidance to California judges on ethical questions has advised that an appellate justice has no obligation to step off a case where a prior professional acquaintance filed an amicus curiae brief.

The Supreme Court Committee on Judicial Ethics Opinions (CJEO), a 12-member group of current and former judicial officers, on Nov. 2 issued a summary of oral advice that it gave a California appellate justice who asked if disqualification obligations kick in when a justice is acquaintances with leading members of associations urging for a particular outcome in a case.
In the underlying case, the CJEO noted the judge in question had a relationship with an amicus author that was limited to greetings at events and the occasional lunch meeting, but nothing within the past two years.

“The justice has discretion to decline to disqualify,” said the CJEO’s brief summary. “The Code of Judicial Ethics obligates an appellate justice to make a discretionary decision to disqualify if the circumstances are such that a reasonable person aware of the facts would doubt the justice’s ability to be impartial.”
The CJEO pointed back to a 2014 oral advice summary where it stated an appellate justice need not be disqualified when a nonprofit organization he or she is a member of files an amicus brief.
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The looming pension crisis

If we continue to "kick the can down the road," we do so at our own peril: Budgets could be slashed, services curtailed and taxes raised, and individuals and municipalities could suffer greatly.

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As far back as 2005, the then-treasurer of Orange County described California public-sector pensions as a "ticking time bomb." In 2011, California's Little Hoover Commission advised the governor and state Legislature that California pension plans were dangerously underfunded as the result of overly generous benefit promises, wishful thinking and an unwillingness to plan prudently. It warned that, "Unless aggressive reforms are implemented now, the problem will get far worse, forcing counties and cities to severely reduce services and lay off employees to meet pension obligations."

Despite significant media attention, this issue -- unlike other "hot button" issues such as water distribution, mass transportation, public education, climate change and prison reform -- seems to have failed to penetrate the mass consciousness of engaged citizens as something that requires significant and immediate attention. However, if we continue to "kick the can down the road," we do so at our own peril: Budgets could be slashed, services curtailed and taxes raised, and individuals and municipalities could suffer greatly.

California leads the nation in pension underfunding. The numbers are staggering. Currently, the state government has approximately $464.4 billion in unfunded liabilities -- the difference between resources that will be available in the state's pension fund and what will be owed to retiring employees. To provide some context, on an inflation-adjusted basis, that figure represents nearly two-thirds the cost to the U.S. of the entire Vietnam War. Nationally, state and local governments are carrying $4 trillion to $6 trillion in unfunded pension liabilities. That exceeds the combined military expenditures for every war, save World War II, fought by the U.S. since 1775. The California Public Employee Retirement System (CalPERS) and the California State Teacher's Retirement System (CalSTRS) have reported a combined $136 billion in unfunded pension liabilities. Los Angeles County alone has $7 billion in unfunded liabilities, and San Francisco's burden is $2.3 billion. This particular bomb will not be easy to defuse. "The severe underfunding of public pension plans will not be fixed easily or fast," says my RAND Corporation colleague James Hosek. "There is no silver bullet."