



# CALIFORNIA JUDGES ASSOCIATION

*The Voice of the Judiciary*

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Ms. Nancy Black  
Committee Counsel  
Supreme Court of California Committee  
on Judicial Ethics Opinions  
350 McAllister Street, Room 1144A,  
San Francisco, California 94102-3688

May 14, 2019

Re: CJEO Draft Formal Opinion 2019-014

Dear Ms. Black,

On behalf of the California Judges Association (CJA) Ethics Committee, CJA respectfully submits the following comments with respect to proposed CJEO Draft Opinion:

(1) The committee agrees that ethical issues related to a Judge's ability to conduct an independent investigation of the Court Case Management Systems is an important topic for the CJEO to consider.

(2) The CJEO Draft Opinion, in its present form, has the potential effect of discouraging judges from searching a court's case management system for information relevant to the efficient and efficacious handling of cases—particularly when a party and/or his or her family have multiple cases across different case types.

(3) Judges in family, juvenile dependency, juvenile delinquency and criminal have an obligation to insure that orders that are being made do not conflict with or unintentionally supersede parallel orders made by a different division. Attorneys and parties are not always the best source of information about existing parallel court orders which come from multiple divisions within the court. Judges in these areas need to be particularly mindful that a litigant is not subject to multiple court orders which make it impossible for the litigant to comply—in other words setting the litigant up for failure.

(4) The concern that a judge's search of a court CMS might provide irrelevant information is well founded. However, this concern is addressed in the same manner that a judge who presides over a court trial or court hearing addresses the same issue related to the presentation of irrelevant evidence. A judge who rules a piece of evidence irrelevant in a court trial or hearing simply sets aside knowledge of that particular piece of evidence and considers only relevant evidence.

(5) Judges are expected to properly perform judicial functions in accordance with the Code of Judicial Ethics. Before undertaking a matter, a judge must assess whether the judge has the ability to remain impartial, avoid embroilment, and avoid any appearance of bias for or against any party or attorney in the proceedings. Presumably, judges will also recognize their duty to disclose the results of any search of the court's CMS to the parties and/or attorneys in the proceeding.

(6) If Judges are required to comply with the proposed CJEO opinion, most, if not all, judges will decline to do any search of a CMS and, in doing so, critical information (which is subject to disclosure as set forth above) will be missed. This has the potential of creating adverse outcomes for the parties and public who use our court system.

(7) If the committee is inclined to adopt the draft opinion, or some iteration of it, then it is respectfully suggested that a number of specific hypothetical situations be added to the text. We are aware that CJEO opinions do not typically include such hypothetical situations, but we believe that in this area hypotheticals and answers to them would greatly assist judges. Hypotheticals and answers would also address some of the nuanced issues addressed above. An excellent exempt of the usefulness of hypotheticals is contained in CJA Ethics Opinions #68.

(8) For the reasons stated above, CJA respectfully recommends that the draft opinion not be published.

Cordially,

A handwritten signature in black ink, reading "Paul A. Bacigalupo". The signature is written in a cursive, flowing style with a small flourish at the end.

Judge Paul A. Bacigalupo  
CJA President