

## Ethics in the FLFO: References to Relevant Rules

20<sup>th</sup> Annual AB 1058 Child Support  
Training Conference  
August 29-September 1, 2016

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## References for today's workshop

Rules of Professional Conduct  
Code of Ethics for Court  
Employees of California  
Guidelines for the Operation of Family  
Law Information Centers and Family  
Law Facilitators Offices (CRC App. C)  
California Rules of Court  
Judicial Cannon 3

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## Hypo 1 - Competence

- Rules of Professional Conduct 3-110
  - Rule 3-110 Failing to Act Competently (A) A member shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence. (B) For purposes of this rule, "competence" in any legal service shall mean to apply the 1) diligence, 2) learning and skill, and 3) mental, emotional, and physical ability reasonably necessary for the performance of such service. (C) If a member does not have sufficient learning and skill when the legal service is undertaken, the member may nonetheless perform such services competently by 1) associating with or, where appropriate, professionally consulting another lawyer reasonably believed to be competent, or 2) by acquiring sufficient learning and skill before performance is required.
- Code of Ethics, Tenet 3 (and guideline)
  - Employment in the court system is a public trust engendered by the citizens' confidence in the professional knowledge and competency and personal integrity of the officers and employees of the judicial branch. A professional knows every aspect of his or her job and can provide complete, understandable answers to the public's questions.
- Code of Ethics, Tenet 9
  - Provide accurate information as requested in a competent, courteous, and timely manner. Improve personal work skills and performance through continuing professional education and development.

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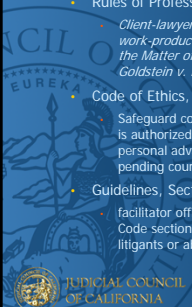
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## Hypo 2- Confidentiality

- Rules of Professional Conduct, 3-100
  - *Client-lawyer confidentiality encompasses the attorney-client privilege, the work-product doctrine and ethical standards of confidentiality. ... (See In the Matter of Johnson (Rev. Dept. 2000) 4 Cal. State Bar Ct. Rptr. 179; Goldstein v. Lees (1975) 46 Cal.App.3d 614 [120 Cal.Rptr. 253].)*
- Code of Ethics, Tenet 4
  - Safeguard confidential information, both written and oral, unless disclosure is authorized by the court, refusing ever to use such information for personal advantage, and abstain at all times from public comment about pending court proceedings, except for strictly procedural matters:
- Guidelines, Section 8
  - facilitator office and his or her staff must at all times comply with Family Code section 10014, and must not make any public comment about the litigants or about any pending or impending matter in the court.



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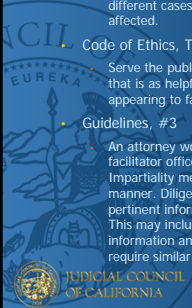
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## Hypo 3- Conflict of Interest

- Rules of Professional Conduct, 3-310
  - Rule 3-310 is not intended to prohibit a member from representing parties having antagonistic positions on the same legal question that has arisen in different cases, unless representation of either client would be adversely affected.
- Code of Ethics, Tenet 7
  - Serve the public by providing accurate information about court processes that is as helpful as possible without taking one side over the other, or appearing to favor one side of a case:
- Guidelines, #3
  - An attorney working in a family law information center or family law facilitator office should perform his or her duties impartially and diligently. Impartiality means delivering services to all eligible litigants in a neutral manner. Diligence requires that the attorney provide the litigants with pertinent information to allow them to bring their matter before the court. This may include appropriate referrals to other resources as well as direct information and assistance at the center or office. The attorney should require similar conduct of all personnel.



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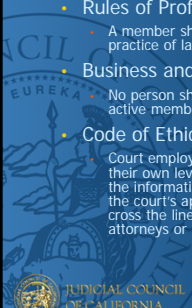
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## Hypo 4- Unauthorized Practice of Law

- Rules of Professional Conduct, 1-300
  - A member shall not aid any person or entity in the unauthorized practice of law.
- Business and Professions Code 6125
  - No person shall practice law in California unless the person is an active member of the State Bar.
- Code of Ethics, Tenet 7
  - Court employees can and should provide information that is within their own level of professional training and experience, so long as the information does not compromise the neutrality of the court or the court's appearance of neutrality. ... They must not, however, cross the line separating court employees, whether licensed attorneys or not, from attorneys practicing law in the community.



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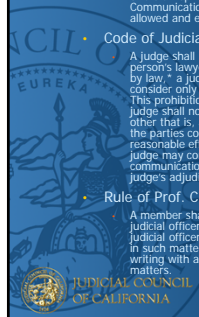
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### Hypo 5 - Ex Parte Communication

- Guidelines, Section 10
  - An attorney working in a family law information center or family law facilitator office and his or her staff should avoid all ex parte communications with a bench officer, except as provided in accordance with Family Code section 10005. In addition, an attorney should avoid all communications with a bench officer in which he or she offers an opinion on how the bench officer should rule on a pending case. Communications about purely procedural matters or the functioning of the court are allowed and encouraged.
- Code of Judicial Ethics, Canon 3 B (7)
  - A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, full right to be heard according to law. Unless otherwise 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. A judge shall not initiate, permit, or consider ex parte communications, or consider other that is, any communications made to or from the judge outside the presence of the parties concerning a pending or impending proceeding, and shall make reasonable efforts to avoid such communications, except as follows: (1) A judge may consult with court personnel or others authorized by law, so long as the communication relates to that person's duty to aid the judge in carrying out the judge's adjudicative responsibilities.
- Rule of Prof. Conduct 5-300
  - A member shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before such judge or judicial officer, except: (1) In open court; or (2) With the consent of all other counsel in such matter; or (3) In the presence of all other counsel in such matter; or (4) In writing with a copy thereof furnished to such other counsel; or (5) In ex parte matters.



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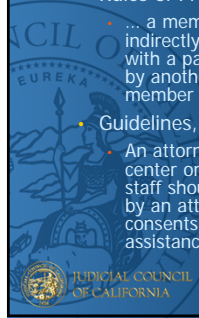
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### Hypo 6 - Represented Parties

- Rules of Professional Conduct, 2-100
  - ... a member shall not communicate directly or indirectly about the subject of the representation with a party the member knows to be represented by another lawyer in the matter, unless the member has the consent of the other lawyer.
- Guidelines, Section 11
  - An attorney working in a family law information center or family law facilitator office and his or her staff should not assist a litigant who is represented by an attorney unless the litigant's attorney consents or the court has referred the litigant for assistance.



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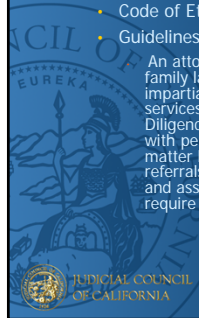
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### Hypo 7 - Impartiality

- Code of Ethics: Tenets 1, 3, 5, 6, 7, 10
- Guidelines, Section 3
  - An attorney working in a family law information center or family law facilitator office should perform his or her duties impartially and diligently. Impartiality means delivering services to all eligible litigants in a neutral manner. Diligence requires that the attorney provide the litigants with pertinent information to allow them to bring their matter before the court. This may include appropriate referrals to other resources as well as direct information and assistance at the center or office. The attorney should require similar conduct of all personnel.



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