



Disability and Guardianship Project

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September 21, 2018

Commission on Judicial Performance
Ms. Nanci E. Nishimura (Chair)
455 Golden Gate Avenue – Suite 14400
San Francisco, CA 94102

Re: Request to Modify the California Code of Judicial Ethics;
Review by the Committee on Judicial Ethics Opinions

Dear Ms. Nishimura:

Spectrum Institute has just written to the Supreme Court pursuant to the court's jurisdiction under Article VI, Section 18(m) of the Constitution. That provision gives the court authority to establish a Code of Judicial Ethics to regulate the conduct of judges – both on and off the bench.

Based on research we have been conducting over the past six years, we are requesting the Court to modify the Code to clarify that judges may not operate or direct a legal services program involving attorneys who appear before the judges or their courts in individual cases.

The report to the Supreme Court is enclosed. It shows a connection between judicial control of such legal services programs and ethical violations and deficient performance by court-appointed attorneys – resulting in adverse effects to clients with cognitive and communication disabilities.

State and national legal and judicial organizations have taken positions that judges should not be controlling the delivery of legal services. They should be deciding cases, not directing or coaching attorneys on how to advocate in their cases. As the report shows, there are many other options to judicial management of legal services. There are models in Oregon and Massachusetts that provide good examples of other alternatives. Even in Los Angeles County, the superior court and the county board of supervisors have transitioned away from the “old school” method of judicial management of legal services into a new era of independence of such legal services programs in areas such as mental health law, juvenile dependency law, juvenile delinquency law, and criminal law.

The time may come when complaints are filed with this Commission against judges who are directing or managing legal services programs involving attorneys who appear before them in individual cases. Complaints may also be filed against judges who, outside of the courtroom in a specific case, are coaching attorneys on how to represent their clients. If and when such complaints are filed, this report may serve as a resource to assist the Commission in fulfilling its duties to enforce the Code of Judicial Ethics and discipline judges who violate that Code.

Respectfully,

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