

California Judges Association

**OPINION NO. 36**

(Originally issued: September 19, 1987)

**PHOTOS OF JUDGES WEARING ROBES**

**AUTHORITY:** Canons 2 and 4B

I. Background

The Committee on Judicial Ethics has received a variety of inquiries concerning situations in which judges may properly wear robes or furnish to the public photographs of themselves wearing robes.

II. Questions

1. A judge asks whether the judge may properly wear a robe while participating in a public education program involving a public health matter. The judge also asks whether the judge's name and photograph may be included in the program of the event.

2. A judge asks whether a photograph of the judge wearing a robe may be included in materials advertising a legal education program in which the judge will be a participant, sponsored by a private organization whose business it is to provide legal education programs.

3. A judge who sits on the board of directors of a nonprofit mental health agency has asked whether a photograph of the judge in a robe may be included in the newsletter of the agency.

III. Answer

The answer to the first part of question 1 is, it would be improper for the judge to wear a robe during the program. As to the second part of question 1, and questions 2 and 3, it would be proper for the judge to allow the judge's name and photograph to be included in advertising, the program and the newsletter.

IV. Discussion

Canon 2A provides in pertinent part "A judge shall respect and comply with the law<sup>1</sup> and shall act at all times in a manner that promotes public confidence in the integrity...of the judiciary." The robe is a symbol of official judicial action. Improper wearing of a robe diminishes public confidence in the integrity of the judiciary in violation of Canon 2A. As a general rule, and subject to narrow exceptions such as moot court, the robe should be worn only while a judge is conducting official judicial duties. Participation in the public education program identified in the first question is not such an official duty; therefore, it is inappropriate for the judge to wear a robe during the program.

A portrait photograph of a judge wearing a robe is different from the actual wearing of the robe. In a portrait photograph, the robe merely furnishes a convenient way to identify the subject of the photograph as a judge. If it is appropriate for a judge to identify himself or herself as a judge, there is no ethical prohibition on the judge's furnishing a portrait photograph of the judge wearing a robe.

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<sup>1</sup> Law denotes court rules as well as statutes, constitutional provisions, and decisional law. See Canons 1 (Commentary), 2A, 2C (Commentary), 3A, 3B(2), 3B(7), 3E, 4B (Commentary), 4C, 4D(6)(a)-(b), 4F, 4H, and 5D.

Since identification of the judge by official title is clearly appropriate in the first and third questions, furnishing a photograph of the judge wearing a robe is equally appropriate.

Finally, we think the judge in the second question may properly allow use of the photograph to advertise the legal education program. Canon 2B forbids judges from lending the prestige of their office to advance the private interests of others. However, Canon 4B states in relevant part that “A judge may speak, write, lecture, teach, and participate in other activities concerning legal and nonlegal subject matters, subject to the requirements of this Code.” And the official Commentary to Canon 4B says, “As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge may do so either independently or through a bar or judicial association or other group dedicated to the improvement of the law.”

We conclude any danger of lending the prestige of the office to advance private interest is outweighed by the interest of the bench and bar in having judges, identified as such, participate in legal educational programs produced by private organizations dedicated to the improvement of the law. Since there is no ethical bar to the judge’s participation, or to the judge’s identification as a judge, there is no ethical bar on the use in the circumstances of a portrait photograph of the judge wearing a robe.

This opinion is advisory only. The Committee acts on specific questions submitted, and its opinion is based on facts as set forth in the questions submitted.

COMMITTEE ON JUDICIAL ETHICS  
September 19, 1987