

# California Judges Association

## JUDICIAL ETHICS UPDATE

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April 2008

This is the twenty-sixth *Judicial Ethics Update* from the Judicial Ethics Committee of the California Judges Association. This 2006/07 *Update* highlights areas of current interest from the 436 informal responses to judges' questions concerning the Code of Judicial Ethics provided by the Ethics Committee during the period October 2006 to September 2007.

Judges may direct questions on the Code of Judicial Ethics to the Ethics Committee by contacting the CJA office or any Ethics Committee member. As a matter of policy, the Ethics Committee does not answer questions which are moot or raise issues of law. Nor does the Committee respond to questions that involve matters pending before the Commission on Judicial Performance. Opinions of the Committee are advisory only.

Special thanks to Judges Dodie A. Harman (San Luis Obispo) and Mary Jo Levinger (Santa Clara) for preparing this *Update*.

### **I. CONDUCT INSIDE THE COURTROOM**

#### **A. Generally**

1. Judge may communicate with a Judge in a neighboring county regarding conflicting trial dates of an attorney to ensure the orderly administration of court business. (Canon 3B(7)(b); 3C(1))

#### **B. Disclosure and Disqualification**

1. Appellate Justice is disqualified from writing an Opinion in a case in which he issued orders as a Superior Court Judge before being elevated. (Canon 3E(5)(f)(i), 3E(4)(c))

2. Judge who has owned offices leased by lawyers now appearing in judge's court must disqualify when the tenant appears before him/her. Judge should extricate self from being the landlord of a lawyer who regularly appears before him/her. (Canon 3E(1), 4A(3), 4D(1)(b), 4D(4))

3. Judge should disclose for two years following conclusion of a CJP proceeding that attorneys appearing before Judge have testified on Judge's behalf in the CJP proceeding. Judge need not disqualify in cases involving the testifying attorneys. (Canon 3E(1), 3E(2))

4. Judge who performs a wedding for the family member of a police officer who frequently appears before the court should disclose for a reasonable period of time (2 years suggested). (Canon 3E(1), 3E(2))

5. Judge is not disqualified simply because a party made a complaint to the CJP about Judge as long as the Judge does not harbor any bias or prejudice against the party and can remain fair and impartial. (Canon 3E(1))
6. Judge is disqualified for a period of two years from hearing cases where Judge's former campaign manager is an attorney appearing before the court. (Canon 3E)
7. Judge should disclose but need not disqualify self where a witness in a trial is an immediate family member of a courtroom clerk. (Canon 3E)
8. Judge while still receiving a divestiture from former law firm must self disqualify on cases where the firm represents a party although the disqualification can be waived. (Canon 3E(1))
9. Judge should disclose for six months the fact that Judge wrote a letter of recommendation regarding employment for a police officer that appears in court. (Canon 3E)
10. Judge must disclose attorney-client relationship between an attorney and Judge's parents where the partner of such attorney appears before the court. (Canon 3E)
11. Judge must disclose that a family member is charged with a similar criminal offense to one pending before the court. If the DDA prosecuting the family member appears in the Judge's court, the Judge should self-disqualify. (Canon 3E(2))

### **C. Reporting Responsibilities**

1. Commissioner has no duty to report adult witness who testifies to misconduct on the stand in Juvenile proceedings where others also have knowledge of the confessed misconduct. (Canon 2A)
2. Where Judge is made aware of criminal conduct during a trial in Judge's courtroom, Judge has the same duty to report as any citizen. If the Judge reports the criminal conduct such reporting should be disclosed to the parties. (Canon 2A, 3E)
3. If a Judge sets aside a final order of contempt there is no need to report the contempt because it did not become final. (Canon 3D(2))

### **D. Ex Parte Communications**

1. Judge may consult with other Judges on issues before the court so long as the Judges involved in the discussion have not been disqualified. (Canon 3B(7)(b))
2. Judge in a multi-defendant case should refrain from speaking in chambers to DDA and DPD of one defendant without the presence of all counsel for all defendants about the culpability of each defendant where Judge will be assigned to hear all co-defendants' cases even if on different time tracks. (Canon 3B(7))
3. In the course of an appeal, Judge may not send letter to Attorney General's Office criticizing AG's brief which concedes trial court error on evidentiary issues. (Canon 2A, 2B(2), 3B(7))

4. Judge should not speak to a discharged juror by telephone and should instead request the juror put his/her concerns in writing so that they may be shared with the parties. (Canon 3B(7))

## **II. CONDUCT OUTSIDE THE COURTROOM**

### **A. Generally**

1. Where Judge has won a door prize at a bar dinner for which full ticket price has been paid, Judge may keep the prize in that it is unrelated to Judge's status. (Canon 4D(1))

2. Judge may not speak at a Planning Commission meeting to encourage zoning for a drug treatment center. (Canon 4C(1), 2B(2))

3. Judge should resign as trustee of a living trust where the judge is likely to become engaged in contested proceedings in the court on which Judge serves. (Canon 4A(3), 4E(2))

4. Where Judge's judicial profile photograph is being used by the Daily Journal in an advertisement for the newspaper's online judicial database, Judge should communicate to the publisher directly or through management of Judge's court the objection to such use. (Canon 2B(2))

5. Judge who is criminal division supervisor may send a letter to the Board of Supervisors, signed by other willing judges, explaining the reasons why a fee increase for appointed counsel is necessary. (Canon 4C(1), 2B(2) and Penal Code 987.2)

### **B. Public Commentary, Publications, Books and Media**

1. Judge's title may not be used in credits as author of a screenplay and Judge may not host or participate in fundraising events to solicit financing for the production of the screenplay. (Canon 2B(2), 4B, 4C(3)(d), 4D(2))

2. Judge may give a legal education presentation at the State Bar convention and discuss a case currently being briefed and argued before the Supreme Court if the Judge was not personally involved in the case. (Canon 3B(9))

3. Commissioner should not appear on a show sponsored and formatted by law enforcement thereby suggesting that law enforcement has special access to the Commissioner. (Canon 2A, 2B, 4A(1))

### **C. Letters of Recommendation**

1. Judge may write a letter of recommendation for an investigator of the District Attorney's Office, where Judge used to work, in reference to the investigator's application for Chief of Police, as long as the letter is based on Judge's personal knowledge of the applicant. The letter may be on Judge's official stationery. (Canon 2B(4))

2. Judge must immediately direct a rehabilitation group to remove a letter written by Judge from its website and not further reproduce or circulate the

letter for any purpose other than in support of the group's original grant application which was the original purpose of the letter. Judge should send copies of the corrective letter to attorneys and judges known to have received the letter. (Canon 4C(3)(d)(ii))

3. Judge may not write a letter of recommendation for a clerk in support of her application for a personal home loan since Judge would have no personal knowledge regarding clerk's credit worthiness. (Canon 2B(2))

#### **D. Judge as Witness**

1. Judge, who was one of the trial attorneys in a case now on appeal, may submit a declaration as a percipient witness, being careful not to identify self as a judge since Judge's current position has no bearing on the substance of the declaration. (Canon 2A, 2B(2), 4A))

2. Appellate Justice may write a letter providing mitigating evidence in a CJP proceeding where Appellate Justice was subpoenaed and is on the witness list when both sides stipulated to accept a letter of support to the Commission in lieu of testimony. (Canon 2B(2))

3. Judge may testify or submit a declaration in a federal court on a habeas claim as a percipient witness, having been the trial judge, but should request the declaration be done pursuant to a subpoena to avoid the appearance of favoritism. (Canon 2A)

#### **E. Gifts, Discounts, Honoraria**

1. Judge may not receive compensation for a wedding performed on a "non-holiday" Friday even if the Judge takes a vacation day. (Canon 2A)

2. Judge may be honored at a celebration of Judge's new assignment by the family law and probate attorneys groups since the event is a public testimonial and the specialty bars involved represent all sides of litigation. (Canon 2A, 4D(6)(a))

3. Judge may accept an invitation from The Rutter Group to attend a family law continuing education course free as an activity devoted to the improvement of the law, the legal system or the administration of justice. (Canon 4D(6)(a), 2B)

### **III. POLITICAL ACTIVITY**

#### **A. Generally**

1. Judges are permitted to raise funds for other judges and are not precluded from contributing to a campaign fund for distribution among judges who are candidates for reelection. (Canon 5A(3) and Commentary)

2. Judge may administer oath of office to newly elected officers of a local political party's Central Committee. (Canon 5A)

3. Judge may join the Lincoln Club, a club of active Republicans; however Judge must be careful not to accept leadership role and must not engage in any political fundraising or endorsing of candidates. (Canon 5, 5A)

4. Judge may speak at a monthly meeting of a local Democratic Club about Judge's election as part of Black History Month as long as Judge does not endorse the Democratic Party or any candidates for nonjudicial office. (Canon 4A, 5A(2))
5. Judge's spouse may endorse non-judicial political candidates; however Judge should ensure that Judge's name is not used and should discourage use of lawn signs and bumper stickers placed upon property that does not belong exclusively to spouse. (Canon 2 and 5 and Commentary)
6. Judge's spouse may purchase tickets to a political fundraiser using community property funds so long as Judge's spouse makes a separate decision to do so. It is not the source of the money that matters, but the source of the decision. (Canon 5A(3))
7. Judge may allow his/her name to be used to support a ballot measure that relates to the administration of justice (jail bond in this instance). (Canon 5D)

#### **IV. CIVIC AND CHARITABLE ACTIVITIES**

##### **A. Generally**

1. Judge may speak at the annual conference of the National Alliance for Drug Endangered Children and may accept payment for the reasonable cost of travel, transportation, lodging and subsistence which is directly related to the giving of the speech. (Canon 4D(6)(b), 4H)
2. Judge may have his/her name and title on the letterhead as an advisor to a non-profit youth organization where others listed on the letterhead all have their positions listed. (Canon 4C(3)(d) and Commentary)

##### **B. Membership**

1. Judge may join the National Charity League even though it excludes boys because it is a nonprofit youth organization. (Canon 4A, 2C)
2. Judge may sit on the Board of Directors of a Regional Center that is a non-profit agency providing housing and counseling services to adults who are developmentally disabled. (Canon 4C(3)(b) and (c))

##### **C. Fundraising**

1. Judge may serve on a "Development Committee" to establish policy regarding fundraising as long as the judge does not participate in the solicitation of funds and the judge's name and title are not used in the solicitation of funds. (Canon 4C(3)(d)(ii) and (iv))
2. A contribution of an item for auction at a fundraiser may be made by a judge as long as the donor stays anonymous even after the item has been presented. (Canon 4C(3)(d)(i); 2B(1))
3. Judge may not serve on an Honorary Dinner Committee as fundraiser for Judge's law school alma mater. (Canon 4C(3)(d)(iv))

4. A Judge may not order a criminal defendant to make a payment to a local non-profit organization (with certain statutory exceptions) from a list provided by the court. (Canon 2B(2); 4C(3)(d)(i) and (iv))

#### **V. BUSINESS ACTIVITIES**

1. Judge may act as agent-in-fact under a power of attorney for Judge's out-of-state elderly mother to hire legal counsel to represent her. (Canon 4E(1), 4E(2))

2. Judge who has authored a book about his/her life as a judge may not ask judicial colleagues to write book jacket comments to promote sales. (Canon 2B(2))

3. Retired judge sitting on assignment may run for Board of local homeowners' association. (Canon 4C(3)(b), Commentary; Canon 6B)

#### **VI. EDUCATIONAL ACTIVITIES**

1. Judge may give a keynote speech at a conference of group home providers and foster care parents who care for sexually exploited children, to educate attendees on services for their wards and the court's involvement in providing, referring and monitoring services. (Canon 4B)

#### **VII. COMMUNITY OUTREACH**

1. Presiding judge may co-sign a letter with county bar president and director of legal services, with whom county bar has partnered, urging county bar members to volunteer for pro bono service. (Canon 4B)

2. Judge may participate in community forum on handling of gang cases by law enforcement and the courts as long as representatives of the defense as well as prosecution are included and judge does not comment publicly on a pending case and avoids statements that would impair impartiality. (Canon 4A(1))

3. A judge may serve as a master of ceremonies at a chamber of commerce dinner that has a silent auction and may introduce the auctioneer so long as judge leaves the stage during the auction. (Canon 4C(3)(d)(iv), 4A)

#### **VIII. ADVICE TO PRESIDING/ASSISTANT PRESIDING JUDGES**

1. Presiding judge has duty to report judge to CJP when learning the judge modified a speeding ticket without proper authority. (Canon 3D(1))

2. Presiding judge may invite both DA and PD to a meeting to discuss "blanket" 170.6 challenges filed by one office as long as the discussion addresses only administrative matters and not specific cases. (Canon 3B(7)(d), 3C)

3. Where judge's spouse or child is a party to a case, presiding judge should poll the entire bench to determine if any judge believes himself or herself not disqualified. (Canon 3B(1))

4. Assistant presiding judge who is made aware by other judges of statements of bias from the presiding judge must take corrective action by counseling presiding judge. (Canon 3D(1), 3B(5))