

## MEMORANDUM

TO: California Judicial Officers  
FROM: Stanley S. Bissey, Executive Director  
DATE: December 2014

☞ Please place the *Update* in the pocket part of your *California Judicial Conduct Handbook* by David Rothman.

Enclosed please find the 2013/14 *Judicial Ethics Update*, highlighting matters of interest from the informal responses to judges' questions on the Code of Judicial Ethics provided by the Judicial Ethics Committee from September 2013 to September 2014.

Judges may direct questions on the Code of Judicial Ethics to the current 2014/15 Ethics Committee by writing or calling the CJA office or any Ethics Committee member. The Ethics Committee, as a matter of policy, does not answer inquiries 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. All opinions of the Committee are advisory only and are based on the Canons in place during 2013/14.

\*Special thanks to Ethics Committee member Mary E. Fuller, San Bernardino Superior Court, for preparing this *Update*.

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# California Judges Association

## JUDICIAL ETHICS UPDATE

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December 2014

### I. CONDUCT INSIDE THE COURTROOM

1. A judge who has concerns that his/her reporter may be engaging in the sales of cosmetics or similar personal items, or passing out free samples of such items, has an obligation to control what occurs in the courtroom and should take appropriate action by referring the matter to court administration. Canons 1; 3B(4)

#### A. Generally

#### B. Disclosure and Disqualification

1. An appellate justice whose child becomes a deputy district attorney for a county in the justice's district is not disqualified in all criminal cases but is disqualified from sitting on any case where his/her child appeared, or provided legal advice or services. Canon 3E(4)

2. A judge who has engaged in general discussion about the law with his/her fellow judges is not disqualified to hear a case involving the provisions of the law that have been discussed. Canon 3E(1)

4. A judge who has a substantial doubt whether he/she could be impartial in deciding a case in which a particular witness appears must recuse self in any case where that individual is a witness. Canons 3B(2), 5

5. A judge who is the victim of a criminal threat must disclose that he/she is the subject of such a threat in all cases involving criminal threats while the case against the person making the threat is pending and for a reasonable time thereafter. Canons 2A, 3B(1), 3E(2)

6. A judge who is a member of a homeowner's association that is in litigation must disclose that he/she is a member of an organization that is involved in litigation when a member of the law firm representing the organization or representing the opposing party appears on a matter before the judge. Canons 2A, 3E(2)(a)

7. A judge who, once a case is under submission, realizes that he/she knows a party under circumstances that do not require recusal but do require disclosure, must give notice to all parties and give the parties the opportunity to be heard on the issue of disqualification. Canons 3B(1); 3E

8. A judge who learns that an attorney has filed papers to run against the judge in the next election is not required to recuse in cases involving the attorney unless the judge is now actually prejudiced against the attorney. However, the judge must disclose the fact of the election challenge in any case in which the attorney is appearing. Canons 3B(1); 3E(1); 3E(2); 3E(2)(a) and 3E(2)(b)
9. A judge is disqualified from hearing matters involving father's ownership of stock where father has appointed judge as "agent/attorney in fact." Canons 2A;3E(1);3E(2)(a); 4A(1); 4A(2); 4A(4); 4E(1); 4E(2); 4E(3)
10. A judge who was a former DDA supervisor and who may be called as a witness in an employment lawsuit against the DA is not disqualified from hearing criminal matters and if called as a witness is required to disclose that fact if the DDA who is the plaintiff appears before the judge in a criminal matter. Canon 3E(2)(a)
11. A judge who files a complaint against an officer must disclose that fact in cases where that officer is a witness before the judge. Canon 3B(11); 3 E(2); 3E(3)
12. A judge who is close friends with the brother of a Deputy DA may issue an arrest warrant when the Deputy DA has signed the affidavit in support of the warrant. Canons 2A; 3B(1); 3E(1)
13. A judge convicted of a DUI would be disqualified in any case involving the same arresting officer or prosecuting attorney and would be required to disclose the conviction and probation status in all DUI cases and all cases involving the same prosecuting agency or arresting agency. Canon 3D(2)

### **C. Reporting Responsibilities**

1. A judge hearing a civil trial in which evidence is presented by the parties of tax fraud, may, but is not required to, report the criminal conduct to the appropriate authorities. If the decision is made to report the conduct while the case is still pending before the judge, the judge must disclose the reporting of the conduct to all parties. Canon 3E(2)
2. An appellate justice who concluded in a judicial decision that an attorney has committed misconduct must take appropriate corrective action, which may include a reprimand in a published decision or reporting the violation to an appropriate authority. Canon 3D(2) and Commentary
3. A judge who believes that an attorney has violated the Rules of Professional Conduct is required to take appropriate corrective action. Canon 3D(2)
4. A judge who holds an attorney in contempt and imposes sanctions must report the attorney to the State Bar. Canon 3D(2) B&P §6086.7
5. A judge who learns that a colleague is in violation of the Code of Judicial Ethics, has a responsibility to take corrective action. Canons 1; 2A; 2B(1); 3D(1) and 4D(1)

6. A judge who becomes aware that an attorney is being rude and discourteous to administrative and courtroom personnel has a responsibility to take corrective action. Canons 3B(3); 3B(4) and 3D(2)

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

1. A judge, who receives mailed materials from a party after a case has become final, does not have to provide copies to the other parties as this is not an ex parte communication. Canon 3B(7)

2. A judge who receives a communication from the DDA that the officer who just testified had suffered a heart attack receives an ex parte communication and must disclose this information to the defense. Canons 3B(7); 3B(7)(d)

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

### **A. Generally**

1. A retired judge not sitting on assignment is not governed by the Canons of Judicial Ethics. Canon 6A

2. A judge may not give legal advice, answer questions or consult on the law as a means of assisting attorneys in cases pending in other courts. Canons 2A; 2B; and 4G

3. A judge may be a consultant on a law and crime related television program, as long as the consulting work does not interfere with his/her duties as a judge, and the judge may be paid for the consulting work but may not be listed in the credits. Canons 1; 2B(2); 4A; 4D(1)(a)

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

1. A judge may participate in an interview for a television show about a murder case that the judge worked on as a prosecutor before coming to the bench, as long as the case is no longer pending, including any appellate review. Canons 3B(9), 4A, 4B

2. A judge may not attend a conference convened by an advocacy group where pending cases will be discussed, even if the names of the parties are not revealed. Canons 2A; 3B(9)

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

1. A judge may not write a letter of recommendation on behalf of an attorney knowing that the letter will be used in a State Bar Discipline Proceeding, unless officially requested. Canon 2B(2) and 2B(2)(c)

2. A judge sitting in juvenile dependency court may not make a public statement supporting the benefits of a particular program which is to be used on the program's web site. Canons 1; 2; 2B(2); 4A; 4C(1); 4C(3)(d)(iv); 4D(2)

3. A judge may write a letter of recommendation on behalf of an attorney who appears before the judge and who is applying for the position of Commissioner. Canons 2B(2)(e); 3E(2)(a)
4. A judge, who has been asked by a friend to write a letter of recommendation on behalf of the friend's relatives who are unknown to the judge, may not write the letter. Canon 2B(2)(e)
5. A judge may not write a letter of recommendation to the Governor on behalf of a friend who is seeking a pardon. Canon 2B; 3B

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

1. A judge has a duty to cooperate with State Bar investigations and must disclose that he/she has testified at a State Bar hearing involving an attorney who is appearing before him/her. Canons 2B(2)(c) and Commentary; 3B(1); 3D(2); 3E(2)

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

1. A judge may not accept an honorarium for speaking at a commencement. Canon 4H(3)
2. A judge must repay an attorney where the attorney over the judge's objections has paid for the judge's attendance at a fundraising event. Mailing a check with an explanation is one way of doing this. For a reasonable amount of time, the judge must also disclose this incident when the attorney appears before the judge. Canons 4A(1); 4D(5)
3. A judge whose spouse receives a stipend from spouses' employer to attend professional conferences may join that spouse and have the trip paid for using the funds from the stipend. Canon 4D(6)(f)

### **III. POLITICAL ACTIVITY**

1. A judge or Commissioner may use photographs taken in chambers and in robes in campaign literature as long as the taking of the photographs does not interrupt normal court proceedings. Canons 2A and 5
2. A judge may publicly state the reasons why the judge is endorsing a particular judicial candidate. Canon 5A(2)
3. A judge running for election may not ask staff members, even those who have volunteered, to write letters on behalf of the judge's campaign. Canons 2A; 3C(1)
4. A judge running for election may make campaign speeches at partisan political meetings as long as the judge is available to both political groups. Canon 1; 2A; Preamble, 5B(1)(b)
5. A judge who has endorsed a judicial candidate must disclose that endorsement in all cases when the attorney candidate or attorney challenger appears before the judge as an attorney for a party. Canon 3E

6. A judge may host a fundraiser for candidates for judicial election and may pay for the cost of sending invitations to others, including commissioners. The judge should not personally invite staff, commissioners and attorneys who are likely to come before the judge. Canons 2A; 4A(3); 5A(3)
7. A judge must disclose the cost of a fundraiser, hosted by attorneys, if each attorney's in-kind contribution of food and drink is \$100 or more. Canon 3E(2)(b)(i) and Commentary
8. A judge/commissioner is not required to disclose a campaign contribution from the elected DA unless the DA personally appears before the judge/commissioner. Canons 3E(2); 5
9. A candidate for a judicial position may answer questionnaires with the candidate's personal opinions so long as the answers do not commit the candidate to rulings the candidate may make on matters in the future. Canon 5B(1)(a)
10. A judge who has been challenged for re-election may discuss cases that are final and past all appeal periods. Canons 2A; 3B(9) and Commentary; 5B(1)(a)

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

### **A. Generally**

#### **B. Government Positions**

1. A judge may not accept appointment to a County Task Force created in response to a law enforcement incident involving a minority teenager, and which has as its goal reviewing options for a citizen review board and community policing. Canons 4C(3); 6B
2. A judge may not accept an appointment to a State School Attendance Review Board (SARB). Canons 4C(2); 3

#### **C. Court Positions**

#### **D. Membership**

1. A judge may act as the chairperson for a non-profit organization that has as a main activity the raising of funds in order to support the purpose of the organization, as long as the judge is not personally involved in the fundraising. Canons 2C; 4A; 4C(3)
2. A retired judge sitting on assignment may not be a member of a Court Appointed Special Advocate (CASA) Board of Directors. Canons 2; 4A; 4C(3)(c); and Advisory Committee Comment to canon 4C(3)(a) &(b)

3. A judge may become a member of the National Women's Political Caucus, a bipartisan group open to all genders which endorses only women candidates for office. Canon 2C and Advisory Committee Comment
4. A judge may join a LinkedIn Group for the Inns of Court. Canons 2A; 4A and Commentary

### **E. Fundraising**

1. A judge who is a member of a non-profit organization may not accompany other members to meetings with prospective donors in which the other members would ask for donations, nor may the other members disclose that the judge referred the member to the prospective donor. Canons 1, 2B, 4A, 4C(3)(c)(i), 4C(3)(c)(ii), 4C(3)(d)(i) and 4C(3)(d)(iv)
2. A judge must take steps to prohibit staff from fundraising in the courtroom. Canon 4C(3)(d)(iv)
3. A judge may not lend the judge's name to a fundraising flyer on behalf of a local law enforcement officer who is suffering a medical condition. Canons 2B; 4C(3)(d)(iv)
4. A judge may not participate as a host of a dinner for a church fundraising effort where individuals bid to attend the dinners. Canons 4C(3)(d)(i); 4C(3)(d)(iv)
5. A judge may be the keynote speaker at a fundraising event as long as the judge does not solicit funds. Canon 4A; 4C(3)(d)(iv)

### **V. BUSINESS ACTIVITIES**

1. A judge may engage in the business of being a life coach without using a judicial title and may have a business card for the life coaching business. Canons 2A, 2B(2), 3A, 4D(1)
2. A judge who is about to retire and intends to take up mediation may not permit the mediation firm to advertise the anticipated participation of the judge until the judge is officially retired. Canons 2B(2); 2B(4); 4D(1)(a); 4D(2)
3. A judge who has developed a software program that calculates fines and fees may sell the program and use his/her title in the marketing of the program. Canons 2B(2) and commentary; 4B

### **VI. EDUCATIONAL ACTIVITIES**

1. A judge may speak on a legal subject to members of an organization of criminal defense lawyers, as long as the judge is also available to speak to an organization of prosecutors. Canons 2A, 2B(1), 3E(1), 3E(2), 4A, 4B, 4H
2. A judge may not speak at a symposium sponsored by a law firm for the benefit of the law firm's clients. Canons 2A; 2B(1); 4A(1); 4B; 4H

3. A judge may not participate in training officers to testify in criminal proceedings. Canon 4B
4. A judge may participate in a program developed to address juvenile justice reform and accept reimbursement for the reasonable expenses for travel, lodging and subsistence for the day before, the day of, and the day immediately after the activities related to the improvement of the law, the legal system and the administration of justice. Canons 2A; 3A; 4A(3); 4B; 4C(3)(a); 4D(6)(e); 4H

## **VII. COMMUNITY OUTREACH**

1. A judge may attend Cub Scout-parent activities; however, the judge should be careful not to knowingly and publicly approve of any invidious discrimination which would diminish public confidence in the integrity and impartiality of the judiciary. Canons 2A, 2C
2. A judge may talk to a political club about the impact of current reductions in the state budget on local court operations. Canon 4B
3. A judge may talk to an organization of law enforcement officers and prosecutors about the importance of honesty and integrity in law enforcement. Canons 4A(1); 4B; 2A
4. Family Law judicial officers may present an annual award to a family law practitioner for dedicated and meritorious service to the family law bench and bar. Canons 2B(1); 2B(2); 4B
5. A judge may speak on the role of the courts in the community to a local Scout group and serve as a counselor for a Scout attempting to earn a merit badge. Canons 3B; 4B

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

1. The judges of a court may, on their own or in conjunction with the local bar, honor and thank a local legislator who has been active in support of the judiciary. Canons 1; 2A; 2B(2); 4A(1); 4A(2) 4A(3); 4C(1) and 4D
2. A PJ should take action to remove a judge from a criminal assignment when that judge has been arrested for a DUI, as the judge is disqualified from hear determine if the judge has violated the Canons. Canons 3D(1); 3C(4); 3E(1); 3E(2); 4A(4)