

February 1994

This is the twelfth Judicial Ethics Update from the Ethics Committee of the California Judges Association. The Update highlights areas of current interest from 232 informal responses, during the period October 1992 to September 1993, to Judges' questions on the Code of Judicial Conduct.

The Ethics Committee, as a matter of policy, does not answer inquiries which it determines to be legal in nature nor does it respond to moot questions or issues pending before the Commission on Judicial Performance. All opinions of the committee are advisory only. Judges may direct questions on the Code of Judicial Conduct to the Ethics Committee by writing or call the CJA office or any Ethics Committee member.

I. Conduct Inside the Courtroom

Generally

A. A judge may not take a leave of absence, in order to relieve the county's fiscal problems, if it might interfere with the judge's disposition of matters assigned to that judge or make it difficult for the judge's court to handle its caseload. (Canon 3).

B. A Municipal Court judge may not refuse to accept Superior Court cases assigned to that judge after unification. (Canons 2A, 3B(1) and (8))

Disclosure & Disqualification

C. A judge is not disqualified from hearing cases involving lawyers whom judge has appointed to act in other cases as uncompensated settlement mediators. This relationship should be disclosed when cases involving those lawyers are heard. (Commentary to Canon 3E)

D. Where a judge received from an attorney a referral fee for a case referred before the judge was appointed to the bench, the judge

must disclose receipt of that fee in those cases in which that attorney appears and the judge must disqualify self if the judge doubts own ability to be fair. (Canon 3E and its Commentary and Canons 4D and 4G)

E. A judge has a duty to disclose in any DUI case the fact the judge's father was recently seriously injured in an accident involving a drunk driver. (Canon 3E)

F. Judges should disqualify themselves in the following cases:

- (1) Any case involving a defense attorney who is supervised by that judge's spouse. (Canons 2A and 3E)
- (2) A case where that judge's personal psychologist is a witness. (Canon 3E)
- (3) A habeas petition where that judge was the trial judge and after the guilty verdict learned additional information confirming the defendant's guilt. (Canon 3E and Commentary)
- (4) Any case involving attorneys for whom that judge's clerk works part time as a paralegal. (Canons 2B, 3A, 3B(1) and 3E)

Reporting Responsibilities

G. If a judge learns of misconduct by a judge of another court then the judge may consider first contacting the offending judge directly or another judge of that court, then, if such action does not prove satisfactory, contact the presiding judge of the offending judge and, eventually, contact the Commission on Judicial Performance. If a judge has probable cause to believe that another Judge has converted a significant amount of court property for personal use then the judge should report this conduct directly to the Commission on Judicial Performance. A judge has an obligation to take or initiate appropriate measures concerning a judge who disobeys the county's anti-smoking ordinance. (Canons 1, 2A, 3B(2), 3D and Commentary)

H. Should a judge learn of misconduct by a federal magistrate, the judge should report it to the U.S. District Judge who supervises the magistrate. (Canon 3D and Commentary)

I. If a judge made a finding in statement of decision that an attorney acted fraudulently, then that judge may send a copy of the decision to the State Bar. (Canon 3D)

J. A judge should report to the presiding judge and the State Bar the unprofessional conduct of an attorney who sent the judge an ex parte, post judgment threatening letter. A judge may also report to the State Bar an attorney who misrepresented to the court a client's need for an interpreter in order to gain an advantage in litigation. (Canons 3B(7)(b) and 3D and 3B Commentary)

K. A presiding judge who has investigated complaints of the District Attorney against a Commissioner, may disclose the results of that investigation to that District Attorney, as well as the defense bar, if such is necessary to properly supervise that Commissioner and if the disclosure is made in a manner that upholds the integrity and impartiality of the judiciary. (Canons 3C(3) and 3D)

Ex parte Communications

L. It is not unethical for a judge to consider a FAX argument on a matter under submission provided there is an indication that the letter was sent to opposing counsel and it also complies with court rules for filing. (Canon 3B(7)(d))

M. When a judge received a post judgment vitriolic critical letter from the losing party in a case not yet final, the judge should not respond lest the judge comment on an impending case, but the judge should cause the clerk to send copies to all counsel and make a record of that fact. (Canons 2A, 3B(4), 3B(7) and 3B(9))

N. A Municipal Court judge may not talk to Superior Court judge in an effort to dissuade the latter from modifying a plea bargain that the municipal court judge had approved. (Canons 2B and 3B(7))

II. Conduct Outside the Courtroom

Generally

A. When a judge learns that someone is using the judge's name and office in soliciting clients, the judge must at a minimum write to that person to demand that the practice cease and that a retraction be

published in the same manner as the original solicitation. (Canons 2A, 2B and 3C(4))

B. A newly appointed judge may sign substitution of counsel forms after that judge takes the oath of office. (Canon 4G)

C. It would be improper for a judge to review and comment to an attorney on the petition for hearing in a matter pending in another court. (Canons 1, 2A, 3B(9), 4G and Commentary to Canon 3B(9))

D. A presiding judge should not meet with the District Attorney to discuss a complaint filed by that District Attorney with the Commission on Judicial Performance concerning a judge on the presiding judge's court. Because the District Attorney had allegedly advised the press of the investigation, such a meeting would tend to embroil the court in public controversy, detract from the dignity of the court, and might demean the judiciary. (Canons 1, 2A, 3B(2), 3D and 4A(2))

Public Commentary, Publications, Books and Media

E. A judge may assist local newspaper on series of articles on constitutional or other legal rights. (Canon 4B)

F. It is permissible for a judge to participate in a television talk show concerning DUI cases, procedures and sentences. (Opinion 28)

G. A judge may write, for a newspaper, a critical legal analysis of a recent State Supreme Court opinion provided the case is final. (Canons 3B(9), 4A(1) and 4B)

H. A judge may write and speak on legislation that judge introduced before appointment to the bench. (Canons 2B, 4A(1) and 4B)

I. A judge may promote book on legal issues that the judge has authored. However, a judge may not promote a law book written by an attorney. (Canons 2B, 4A, 4B, 4B Commentary, and 4D(2))

J. While a judge may sell the rights to that judge's life story that judge must insure that the presentation does not demean the judiciary or cast doubt on that judge's impartiality. (Canon 4D(1)(a))

K. A judge may write a preface to a law book and receive reasonable compensation that does not exceed what a nonjudicial author would receive. (Canons 2B, 4B, its Commentary and 4H)

L. The role of a judge in a movie may not be played by a judge. (Canons 2A, 2B, 4A(1), 4A(2), and 4D(1)(a))

M. A judge may give an interview to the press concerning ethnic community leaders provided the judge does not comment on pending cases nor address issues which might call into question judge's ability to act impartially. (Canons 2A and 3B(9))

Letters of Recommendation

N. Where a judge testified for defendant pursuant to subpoena, judge may write a factual letter to probation officer as long as the judge does not advocate or recommend a sentence. (Canon 2B and Commentary)

O. A judge may not write letter of recommendation of pardon to the President on behalf of the judge's friend. However, that judge may respond to an official inquiry from responsible government officials. A judge may not write a letter to the sentencing judge concerning two convicted friends of the judge in response to private requests. (Canon 2B and Commentary)

P. Newly awarded Eagle Scouts may be congratulated by a letter on court stationery signed by judge. (Canons 2, 2C and Commentary)

Q. A judge may not write to a foreign government a letter of recommendation in support of a law firm that is seeking to open an office in that country. (Canon 2B, its Commentary and Opinion 40)

Judge as Witness

R. A judge may not identify self as a judge in a trial on that judge's parking ticket. (Canon 2B)

S. When requested by a military court to do so, a judge may testify as a percipient witness, as long as the judge does not give character testimony. (Canon 2B and Commentary)

T. A judge may sign factual affidavit concerning that judge's issuance of a search warrant where that affidavit would be used in civil litigation concerning the execution of the warrant. (Canon 2B and 2B Commentary)

U. It is permissible for a judge to sign, as a percipient witness, a factual declaration for either side in a habeas corpus action provided the judge's current office is not identified. (Canon 4A and Commentary to Canon 2B)

V. A judge may respond to a subpoena to testify before the Grand Jury. (Commentary to Canon 2B)

W. A judge, properly subpoenaed, is not prohibited from testifying in the judge's own court as a percipient witness since Canon 2B does not afford a judge a privilege against testifying in response to an official summons. (Commentary to Canon 2B)

X. A judge may neither appear before nor write to the Parole Board concerning a prisoner the judge prosecuted as a Deputy District Attorney, unless formally requested to do so by the Parole Board. (Canon 2B and Commentary)

Y. It is improper for a judge to testify for a fee as an expert witness in a legal malpractice case. Nor may a judge testify as a paid expert witness on the subject of search warrants in cases where city officials are sued based on the execution of such warrants. (Canons 2, 2A, 2B and Commentary to Canon 2B)

III. Political Activity

A. A judge's spouse may contribute to campaign of spouse's employer, the District Attorney, who is running for office. (Canon 5A(3) and the Commentary to 5A)

B. A commissioner may walk precincts on election day to get out the vote as long as the commissioner is not identified by office, and does not urge people to vote for a particular party, a nonjudicial candidate or a ballot proposition. (Canons 4B and 5A(2))

C. A judge may not have a sign supporting a nonjudicial candidate

placed in front of the home of judge and spouse. (Canon 5A(2) and Commentary to 5)

D. A judge may publicly support a ballot measure to raise taxes to be used to fund the Justice system. However, a judge may not join a committee of law enforcement agencies to support an ordinance to implement a funding bill for the benefit of those agencies since such participation might undermine confidence in the impartiality of the judiciary. (Canons 2A, 4C(2) and 5D)

E. It is impermissible political conduct for a judge to serve on an assembly member's community advisory council since this would give an appearance of political bias and constitute holding office in a political organization. (Canons 4C, 5, and 5A(1))

F. The filing of a Fair Political Practices Commission statement of contributors to a judge's campaign is generally sufficient disclosure to persons appearing before that judge. The document should not be prominently displayed in the courthouse. However, further disclosure is required if a person appearing before judge is not only a campaign contributor but is also active on the campaign committee. (Canons 3E and 5A(3) and Commentary to 5A)

IV. Civil and Charitable Activities

Government Positions

A. A judge may not join Sheriff's search and rescue team since it would impair impartiality. (Canon 4A(1))

B. It would be improper for a judge to accept an appointment to a commission affiliated with a state government department in an area unrelated to the law. (Canon 4C(2))

C. It is improper for a judge to permit the judge's home to be used by law enforcement for surveillance of suspects. (Canon 2A)

D. A judge may serve on the Commission on Uniform State Laws provided that it does not interfere with judicial duties. (Canons 4A(3), 4B and 4C(2))

E. It is proper for a judge to accept expense paid trip from local organization to study a foreign court system provided the prestige of the judge's office is not being used to advance the interests of private parties and the activities are not demeaning to the judiciary. And a judge may serve as a consultant to a foreign government on the administration of justice and be reimbursed for expenses in reasonable amounts provided the service would not reflect adversely on the judge's impartiality and would not interfere with the judge's performance of duties. (Canons 2B, 4A, 4B, 4C(1), 4C(2), 4D(5) 4D(4)(a) and 4H(2) and Opinion 38)

F. A judge should not join an advisory board of a drug program to whom that judge regularly refers criminal defendants. (Canons 2B, 2B Commentary, 4C(3)(c)(i, ii, and iii)

G. A judge may not sit on local school district committee to review applications for the new superintendent. (Canons 4C(2))

H. It is improper for a judge to serve on a local hospital's bio-ethics committee making decisions on whether to take patients off life-support systems because such cases have a tendency to be litigated in that judge's court and the hospital is a likely party. (Canon 4C(3)(c) and Commentary)

Membership

I. A judge may not serve as honorary trustee of a criminal courts bar association whose bylaws and practice limit membership to defense counsel since such a position would cast doubt on the judge's impartiality. (Canon 4A(1))

J. It is permissible for a judge to receive an award from an organization of professional women which admits male members provided the award function is not a fund raiser. (Canons 2C, 4C(3)(d)(iv) and Commentary)

K. Before joining a service club which currently has no male members but whose by-laws do not prohibit men from joining, judge should determine the reason for the absence of male members and other membership criteria and should join only if judge determines club is not engaged in invidious discrimination. (Canon 2C and Commentary)

L. A judge who is a member of an organization which does not allow homosexual members must determine whether the organization engages in invidious discrimination prohibited by law and should resign if judge so determines. In making this determination, judge should consider factors in Ethics Opinion 34. If judge determines continued membership is ethical, then judge must disclose membership in those cases where such information might be relevant to possible disqualification. (Note: This informal response was given prior to the vote of the CJA membership on an amendment to Canon 2C which would have added “sexual orientation” to the canon.) (Canons 2, 2A, 2C and 3E and Commentary)

M. A judge may not be a member of an exclusively men’s historical society since the fact that a companion organization only admits women does not cure this group’s discriminatory practices against women. (Canon 2C and Commentary and Opinion 34)

Fund Raising

N. It is proper for a judge to write a letter to other judges (but not commissioners or other court employees) soliciting funds for an injured former bailiff. (Canon 4C(3)(d)(i))

O. A judge may not participate as a card dealer at the local bar association fund raising event because it would involve judge in direct fund raising and would tend to demean the judicial office. (Canons 4C3(d)(1), 4A(2) and Opinion 41)

P. It is improper for a judge, who is president of a nonprofit charity, to seek, on behalf of that charity, donation of surplus office space from businesses. (Canon 4C(3)(d)(i))

Q. A judge may assist in planning fund raising activities regarding the county law library and may make recommendations concerning grant applications but judge may not personally solicit funds except from other judges. (Canons 4C(2), 4C(3)(a) and 4C(3)(d) and Commentary to 4C)

R. It is improper for a judge to be listed as guest of honor at golf tournament that raises funds for a juvenile court program. (Canon 4C3(d)(1) and Opinion 41)

S. The home of a judge may not be used as the venue for a bar association fund raiser. (Canons 2B and 4C(3)(d))

Business Transactions

T. A judge may lease building to the county even though Public Defenders who appear before the judge may occupy it, since under the terms of the lease judge will have no direct relationship with that office. (Canons 3E, 4A(1) and 4D(1)(b) and Commentary to 4D)

U. Service on the Board of a publicly held corporation is proper only if judge is satisfied that it would not be perceived as an endorsement, demean the judiciary or require the judge regularly to disqualify self. (Canons 2B, 3A, 4A(2), 4D(1)(a), 4D(1)(b) and 4D(3))

V. While a judge may retain a real estate license for personal investment purposes only, the judge must conduct transactions so as to minimize disqualifications and may not lend the prestige of the office to private interests nor undermine public confidence in the integrity of the judiciary. (Canons 2B, 4D(1) and 4D(3))