

# California Judges Association

## JUDICIAL ETHICS UPDATE

---

February 2010

This is the twenty-eighth *Judicial Ethics Update* from the Judicial Ethics Committee of the California Judges Association. This 2008/09 *Update* highlights areas of current interest from the 408 informal responses to judges' questions concerning the Code of Judicial Ethics provided by the Ethics Committee during the period September 2008 to September 2009.

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 Robert A. Glusman (Butte) and Laura W. Halgren (San Diego) for preparing this *Update*.

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

#### **A. Generally**

1. Judge in civil assignment may suggest several names of possible private mediators to parties, but should not use the referral process to financially benefit the same few mediators. (Canon 2B(2))

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

1. Judge is not disqualified from hearing case when self-represented party, who is unhappy with Judge's rulings, has posted signs to "Recall J." (Canon 3E(1))

2. Family Law Judge who sees a personal therapist is not disqualified from hearing cases when a party sees that therapist, unless the issue of therapy becomes relevant in the case. (Canon E(1))

3. When Judge determines a disclosure should be made, but some of the parties do not appear, the disclosure should be made to the parties who are present and the disclosure should be noted in the file. If no parties are present but a ruling must be made, a written disclosure should be placed in the file to avoid perception of injustice. (Canon 3E(2))

4. Judge is not disqualified from hearing a class action case where Judge would be included in the class so long as Judge opts out of the class or otherwise advises that he/she will never be part of the class. (Canons 3E(1), 3E(2))

5. Judge need not disqualify on criminal cases when adult son is being prosecuted by DA for a felony, so long as Judge concludes he/she can be fair. Judge should disclose the pending matter in all similar cases until the case is over, including the serving of a sentence or period of probation. (Canons 3E(1), 3E(2))

### **C. Reporting Responsibilities**

1. Judge who learns in court proceedings that a witness has engaged in criminal activity or has an outstanding warrant may, but is not required to, inform law enforcement authorities. Judge has no greater reporting responsibilities than an ordinary citizen. If Judge decides to report, he/she should wait until the case is concluded to avoid disqualification issues. (Canons 2A, 3A)

2. Judge should refer attorney to State Bar when it appears the attorney has abandoned his cases and interventions have not helped. (Canon 3D(2))

3. Judge who inadvertently violated 90-day under submission rule and has taken corrective action to prevent future violations through better case tracking should report the matter and the corrective actions taken to the Presiding Judge, but need not self-report to the Commission on Judicial Performance. (Canons 3B(8), 3D(3))

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

1. Judge may not request a deputy sheriff to run criminal background check on a parent in Dependency Court when no security issues are involved as it is an improper ex-parte communication and involves Judge in the investigation of the case. (Canon 3B(7))

2. When Judge discovers the appellate briefs regarding a trial the Judge presided over have a material omission regarding the proceedings, Judge may write a restrained letter to both sides pointing out the omission. Judge should take care not to get embroiled. (Canon 3B(7))

3. Judge may not meet with DDA privately without defense counsel to allow DDA to obtain release of an in-custody pre-arraigned defendant pursuant to a contract to work as an informant. (Canon 3B(7))

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

### **A. Generally**

1. Judge may serve as trustee of trust and executor of will of deceased uncle with whom Judge had a close familial relationship when Judge does not

anticipate any litigation concerning the estate to be filed in Judge's court.  
(Canons 4E(1), 4E(2): Terminology, Cal. Code of Judicial Ethics)

2. Commissioner seeking Governor's appointment as a judge may use his/her official stationery to inform others about the application and to seek support where intended recipients include judges and attorneys who presumably know that Commissioner holds his/her current position. (Canon 2B(2))

3. Judge, who has been working with a teen court program affiliated with a local high school and whose contact has been through a school counselor, may not write a letter to the school board to oppose budget cuts which would have the effect of cutting the counselor's position, but may write a letter expressing Judge's opinion and observations about the counselor's efficacy.  
(Canons 4C(1), 2B, 2B(2)(e))

4. Judge may perform a private wedding for a Jewish couple that includes a blessing in Hebrew which is typically but not always recited by a Rabbi.  
(Canon 2A)

5. Judge may conduct Mandatory Settlement Conferences on days the court is closed due to mandatory closures in neutral law firm's conference room and, by stipulation of the parties, in the conference room of a law firm representing one of the parties to the action. (Canons 2A, 2B(2))

6. Judge may bail out or act as surety for a member of Judge's family in a case involving drug cartels. (Canon 4A(2))

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

1. Judge may be a guest on a radio show to discuss judge's book on "How the Courts Work" and the independence of the judiciary so long as the manner of the promotion does not demean the judicial office. (Canons 2B, 4A, 4B & Comments)

2. An attorney who sits as a temporary judge and who has authored a chapter in a CEB publication may list the job title of "temporary judge" in the mini-bio that accompanies the chapter. The publication is intended only for those in the legal profession and not the general public, and the use of the title relates directly to the attorney's qualification. (Canons 6D(9), 4B & Commentary)

3. Judge may participate with a commercial enterprise in creating, advising, participating and being filmed in a courtroom in a simulated DUI case where other participants include the CHP and an ER physician with scenes of an ambulance ride, tour of an ER and FSTs conducted by an officer. This is an educational product and judge's participation relates solely to the legal aspects of DUI. (Canons 2B(2), 3B(9), 4A, 4B, 4D(2))

4. Judge who writes short fiction, memoirs, etc. not related to the improvement of law, the legal system or the administration of justice, and submits them to various literary journals, sometimes for pay, may not refer to judicial position in the biographical information submitted with the essays for publication. (Canon 2B(2))

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

1. Judge who has a relationship with a loan officer may not provide a reference for a friend wishing to borrow money from the bank nor may Judge allow friend to list Judge as a reference on friend's loan application. (Canon 2B(2))

2. Judge may write a letter of support to try to maintain the court reporting department at the local community college. This support would involve the improvement of the law, the legal system or the administration of justice. (Canon 4B, 4C(3)(d)(ii))

3. Newly-sworn Commissioner may use judicial letterhead in writing both a specific and a general letter of recommendation for Commissioner's former employee of many years as the recommendation is based upon personal knowledge. (Canon 2B(2)(e))

4. Judge may write a letter of recommendation to the Senate Rules Committee regarding an impending Executive Branch appointment, when Judge has personal knowledge of the applicant who worked for Judge for many years. This would not be prohibited "political activity" so long as Judge provides only factual information about appointee. (Canon 2B(2)(e))

5. Judge may not assist a US Attorney in the federal sentencing of a defendant who had been a defendant in Judge's court by writing a report to the federal sentencing judge. (Canon 2B(2))

6. Judge may write a letter to the CJP on a colleague's behalf when judge formerly supervised colleague and the report is in support of colleague's work ethic during the period of supervision. (Canon 2B(2)(b))

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

1. When Judge's son has been assaulted at school, Judge may attend the expulsion hearing at the formal request of the school in lieu of a subpoena, and testify as to the effects of the assault on his/her son and family, but should avoid voluntarily using Judge's title or position in the course of testifying. (Canons 3B(7), 3B(2))

2. Judge who has been subpoenaed must testify before the State Bar Court regarding an attorney's conduct in a case that was formerly pending before Judge and is still pending before a different judge. (Canon 2B(2)(c))

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

1. Judge and other family law judges participated in an educational MCLE training program for Volunteer Legal Service attorneys (VLSC). VLSC is an affiliate of the County Bar Association. In appreciation, the Director of VLSC sent Judge a \$20 gift coupon to Starbucks. Judge may use the coupon. (Canon 4H, CCP 170.9 (i))
2. Judge who is an author for a legal publishing company may donate the compensation for his/her works to the California Judges Foundation without implication of any judicial ethical rules. (Canons 4A, 4B, 4H)
3. Judge may serve as the commencement speaker at a UC campus and may accept travel expense reimbursement for actual travel costs, but may not accept an honorarium. (Canons 4B, 4D(6)(b), 4H)
4. Judge may attend a reception for a highly placed county attorney who is leaving to take a legal position with the Obama administration, where the host of the event is a prominent local plaintiff's firm, as this is both ordinary social hospitality and a bar-related function or activity devoted to the improvement of law, the legal system or the administration of justice. (Canons 4D(6)(a), 4D(6)(d))
5. Judge may attend educational programs offered for free to judges by providers such as Rutter Group and CEB, as Government Code section 82028 (b)(1) deems informational and educational conferences and seminars to not be gifts. (Canons 4D(6)(a), 2B)

### **III. POLITICAL ACTIVITY**

1. Judge, who contributed over \$500 to a non-judicial political campaign and later became aware of the \$500 contribution limit contained in the Canon of Ethics, should immediately write to the campaign, explain the mistake, and request a refund for the amount over \$500. (Canon 5A(3))
2. Judge may not wear t-shirt proclaiming victory of a non-judicial former candidate. (Canons 4A, 5A)
3. Judge may attend peaceful demonstration protesting passage of Proposition 8 as a passive attendee who will not be identified as a judge. (Canons 4A, 5A)
4. Judge may speak publicly about the effect of a proposition that would negatively impact funding for the court and for services provided to families in the legal system. (Canon 5D)
5. Judge may engage in activities related to protesting court closures, urging reassessment of how Judicial Branch funds are spent, and promoting local control of the courts. Activities may include circulating petitions opposing

court closures, speaking to the media on the impact of court closures, public criticism of how Judicial Branch funds are allocated and forming a new association of judges dedicated to addressing these concerns. Judge should avoid allowing the activities to interfere with performance of judicial duties and should maintain appropriate dignity in order to avoid an appearance of impropriety or inappropriate demeaning of the judiciary. (Canons 4A, 5D)

6. Judge may serve as treasurer of another judge's campaign committee. (Canon 5)

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

##### **A. Government Positions**

1. Judge may not accept a position of Personnel Commissioner for a school district when the duties of the Commission include the hiring and firing of school employees and making decisions as to which employee classifications are and are not exempt. (Canon 4C(1)(2))

2. Judge may not serve on local School Site Council where the duties would include developing and adopting official plans designed to improve student achievement. This is a governmental position not related to law, the legal system, or the administration of justice. (Canon 4C(2))

##### **B. Fundraising**

1. Judge may not serve on an "Honorary Host Committee" for a fundraiser put on by the local bar association for the benefit of the bar's domestic violence project as it appears that the purpose of the host committee is to use Judges' name to raise funds. (Canon 4C(3)(d))

2. While it is permissible for a judge to serve on a committee to organize a fundraiser for judge's child's pre-school, judge may not be listed as a co-chair of the committee as this would both abuse the prestige of judicial office and put judge in a position as being a "draw" for the event. (Canon 4C(3)(d)(i))

3. Judge who is the chair of the local Rotary Club's Golf Committee may not directly ask all members to contribute \$300 for either sponsoring a hole or to cover the cost of their foursome. (Canon 4C(3)(d)(i))

4. A retired judge sitting on assignment may serve on a Community Foundation Collaborative whose purpose is to raise awareness about the judicial system so long as judge does not solicit funds from anyone other than other judges. (Canons 6B, 4C(3)(d)(i))

##### **C. Membership**

1. Judge may be a member of a Women Lawyers' Bar Association dedicated to the advancement of the status of women in the law and be a member of the

Advisory Board when the Association has both male and female members and occasionally files amicus briefs so long as the Advisory Board is not consulted if the Association wishes to file an amicus brief. Judge would be prohibited from discussing pending litigation. (Canons 4C(3), 2A, 2C, 3B(9), 5D)

2. Judge may not serve on the Board of Directors of Standdown, an organization to assist veterans, where components of Standdown include participation in the Homeless Court in judge's jurisdiction and assisting veterans in litigation and resolving outstanding minor warrants. (Canon 4C(3)(c)(ii))

3. Judge may serve on the Board of Directors of a community nonprofit organization that provides shelter and supportive services to homeless families in the county in which judge presides so long as such service does not interfere with the performance of judge's judicial duties, the organization will not be involved in judicial proceedings that ordinarily come before the judge nor be frequently engaged in adversary proceedings in the court of which judge is a member, and judge does not engage in fundraising for the organization. (Canons 4A(3), 4C(3)(b))

4. Drug Court judge who regularly refers defendants to participate in 12-step programs such as Alcoholics Anonymous may serve as a Class A delegate on the National Board of Alcoholics Anonymous, when judge would have no interaction with the local AA meetings in which the defendants participate. (Canon 4A)

## **V. BUSINESS ACTIVITIES**

1. Judge who owns commercial building in a small county may not rent space to attorney who will appear regularly before other judges in the county, but Judge may rent to a non-attorney tenant who may then sub-lease to the attorney. Judge would no longer be in a business relationship with the attorney. (Canon 4D(1)(b))

2. Judge, who will retire soon and plans to join an ADR provider, may answer questions from lawyers about Judge's future plans, but should avoid the appearance of promoting or soliciting business. In response to media inquiries, Judge may not reveal the name of the ADR provider until after Judge retires. (Canons 1, 2A, 2B(2), 3A, 4A, 4D(1)(a))

3. Retired Judge who sits on assignment may not create a website to advertise his/her availability to perform weddings for a fee. (Canons 2B(2), 4D(1)(a), 6B)

## **VI. EDUCATIONAL ACTIVITIES**

1. Judge may conduct training for law enforcement officers on legal and procedural issues, but should avoid coaching officers or offering advice that

may cast doubt on judge's ability to act impartially. (Canons 2A, 4A(1), 4B)

2. Drug Court Judge may teach a course at a local university on issues related to drugs, but should take care not to discuss pending or impending cases. However, Judge may discuss cases and issues pending in appellate courts if Judge did not personally participate in the case and the discussion would not interfere with a fair hearing. (Canon 3B(9), 4B)

3. Judge may write an article for a civil defense bar publication providing a neutral presentation of court procedures and structure. Judge is willing to write parallel article for plaintiff's bar publication if requested. (Canons 3B(9), 4B)

## **VII. COMMUNITY OUTREACH**

1. Judge may appear in video on behalf of non-profit organization for purpose of educating public about at-risk youth when judge will be providing factual information and will not be wearing robe. Video will not be used for fundraising. (Canons 2B(2), 4A, 4B, 4D(2))

2. Judge may appear as an actor playing the role of a judge in a video being produced by a church to educate church members and the public about domestic violence issues. Judge will not be identified as an actual judge, nor will judge's name or office be used to publicize the video. (Canons 2A, 2B(2), 4A, 4B)

3. Judge may sit on board of nonprofit organization that provides services to probationers, parolees and at-risk youth so long as organization does not make litigation decisions or engage in advocacy. (Canons 2A, 4A, 4C(3)(b)(c))

4. Judge may not sit on board of nonprofit legal aid organization that conducts monthly free legal clinics. (Canons 2A, 4A, 4C(3)(c))

5. Judge may use court e-mail system to alert fellow bench officers to upcoming bar association events and to organize tables for bar dinners. (Canon 2B(2))

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

1. When a judge of Presiding Judge's court is the victim of a crime and wishes to address the sentencing court about the impact of the crime, the Presiding Judge may not disqualify the entire court, but may poll the other judges to determine if any will not self-disqualify. (Canon 2A, 3E(1), Opinion 62)

2. Presiding Judge may sit on a committee to select a conflicts panel of attorneys for the county where the committee includes a county administrator,

county finance administrator, county counsel, and the chief probation officer.  
(Canon 3C(1), Opinion 61)

3. Court may sponsor outreach program for clergy and lay ministers of all faiths to educate them about the legal system and specialty courts with the goal of enabling clergy to make appropriate referrals for legal help to congregants who are in legal crisis. (Canons 2A, 4A, 4B)