

Judicial Ethics Update

March 2006

This is the twenty-fourth *Judicial Ethics Update* from the Judicial Ethics Committee of the California Judges Association. This 2004/05 Update highlights areas of current interest from the 374 informal responses to judges' questions concerning the Code of Judicial Ethics provided by the Ethics Committee during the period from October 2004 to September 2005.

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.

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I. CONDUCT INSIDE THE COURTROOM

A. Generally

1. Where court policy requires the court to distribute a list of all ADR providers in the jurisdiction when referring a case to arbitration or mediation, the court may create a centralized location in each courthouse where pamphlets and information booklets furnished by the ADR providers are available for distribution, and judicial officers may refer parties to the centralized location for information on the available programs. (*Canons 2A, 2B*)

B. Disclosure and Disqualification

1. Judge who, as a Deputy District Attorney, shared office space with DDA who now appears before Judge, but with whom Judge has had no contact in the intervening 8-1/2 years, is not disqualified and need not disclose given the time that has elapsed. (*Canons 2A, 3B, 3E*)

2. Where Commissioner in a small court is married to a Sheriff's Deputy who is the investigating officer on search and arrest warrants, other judicial officers are not disqualified to hear cases where Commissioner's spouse testifies or is the investigating officer but should disclose the relationship between the testifying deputy and Commissioner. (*Canon 3E*)

3. Appellate Justice whose staff attorney is married to a Deputy Attorney General is not disqualified to hear AG cases, but Appellate Justice should ensure that the staff attorney is not assigned to work on spouse's cases. (*Canon 3E(4)*)

4. Judge, who has a same-sex partner, is not required to disclose this fact in a case involving a claim of sexual orientation discrimination. (*Canon 3E(2), Cal. Civ. Proc. Code §§170.2(a), 170.1(a)(6)(A)(iii)*)

C. Ex Parte Communications

1. Where a party declined to stipulate to Commissioner, Commissioner may discuss the case and its general subject matter, on which Commissioner is an acknowledged expert, with the judge to whom the case was subsequently assigned. A refusal to stipulate to a commissioner is not the equivalent of an affidavit under Code of Civil Procedure Section 170.6. (*Canon 3B(7)(b)*)

2. Where Appellate Justice reverses trial judge's decision and remands the case for new trial, which is pending, Appellate Justice and trial judge may not discuss reasons for reversal even though appellate matter is final. Because the retrial is still pending, neither Appellate Justice nor trial judge may comment on it. (*Canon 3B(9)*)

D. Reporting Responsibilities

1. Presiding Judge who knows that a judge in PJ's court has willfully refused to comply with a jury summons despite PJ's admonitions to do so has two obligations: (1) schedule a sanctions hearing pursuant to statute, arranging for a judge assigned by the Judicial Council to conduct the hearing; and (2) report the judge to the Commission on Judicial Performance in light of judge's willful and deliberate defiance of PJ's admonitions. In addition to violating the law, the judge has brought the judiciary into disrepute, created an overt appearance of impropriety, failed to uphold high standards of personal conduct, and impaired public confidence in the integrity of the judiciary. (*Canons 3D, 3C(1), 3B(2), 1, 2A*)

2. Where Judge permits a defendant to withdraw his guilty plea due to incompetence of counsel, and if Judge determines that the attorney has "intentionally, recklessly, or repeatedly failed to perform legal services with competence" (Rule of Prof. Conduct 3-110), Judge must take appropriate corrective action, which would include reporting the conduct to the State Bar. See *also* Cal. Bus. & Prof. Code §6086.7. (*Canon 3D*)

II. CONDUCT OUTSIDE THE COURTROOM

A. Generally

1. Judge who was a victim of a tire-slashing and believes the perpetrator may have appeared in Judge's court may inform investigators of any information Judge has concerning the suspect's identity. Judge should not, however, ask Judge's clerk to research the court's computerized case management system to identify the possible suspect as someone who previously appeared in Judge's court. (*Canon 2A*)

B. Letters of Recommendation

1. Appellate Justice may not write a character reference for a friend's son who has been charged with a felony, even if Appellate Justice does not identify self as a justice and does not use official stationery. (*Canon 2B(2)*)

2. Judge may not write a letter that will go into a pre-sentencing report for the son of Judge's friend. (*Canon 2B(2)*)

3. Judge may write a letter on behalf of a non-profit methadone clinic in support of continued authorization for the clinic to provide service to the community where Judge has visited the clinic and is personally aware of the service it provides to the community and to defendants appearing in court. (*Canon 4C(3)(d)(ii)*)

4. Judge who presides in drug court may write a letter of support to the Department of Labor for a drug program to which Judge refers defendants. (*Canons 2B(2), 4C(3)(d)(ii)*)

C. Judge as Witness

1. Judge may voluntarily be interviewed by party to litigation involving City, where Judge was a member of City Council before taking the bench and has knowledge of the facts, but Judge should be available to other side as well. Should testimony at a deposition or trial be needed, Judge should require a subpoena to avoid the appearance of lending the prestige of office to either side. (*Canon 2B(2)*)

D . Gifts, Discounts, Honoraria

1. Commissioner should pay attorney friend for services rendered to obtain settlement for Commissioner in civil case even though friend has refused to accept payment. While Canon 4D(6)(f) may permit Commissioner to accept a gift from a friend who could not appear before him/her, the exception to the monetary limitation on gifts from a single source for persons "whose preexisting relationship with a judge would prevent the judge from hearing a case involving that person" contained in Civil Procedure Code Section 170.9(b)(3) applies to judges only. Commissioner may accept a reduction in fees up to the annual monetary limitation on gifts from a single source applicable to commissioners, set forth in Government Code Section 89503 (currently \$360). (*Canon 4(D)(6)(f), Cal. Gov't Code §89503*)

III. POLITICAL ACTIVITY

1. Judge may join a Steering Committee to defeat a recall effort against a sitting judge, may solicit campaign funds from anyone to defeat the recall effort, may contribute funds to a PAC in any amount for the challenged judge, may have his/her name placed on the "host committee list" of a fundraiser, and may make a dignified response against the recall effort. Limits on the amount of contributions, endorsement and public fundraising from others are all inapplicable to judicial elections. If Judge joins the Steering Committee, Judge should disclose membership (a) when an active committee member appears before Judge as a party or a lawyer, or (b) when Judge knows that a person or entity has contributed funds to defeat the recall directly as a result of Judge's solicitation and that person/entity appears as a party or attorney. (*Canons 2, 3B(9), 3E, 5 and Commentary*)

2. Judge may not be a cook at a fundraiser for a friend who is running for District Attorney because it is a political, as opposed to a charitable, event. (*Canons 2A, 2B(2), 4C, 5*)

3. Judge whose name was used without Judge's permission on a flier as a sponsor for a fundraising event for a Congressman should send a letter to the sponsoring organization advising that Judge has not authorized use of Judge's name, prohibiting future use of Judge's name and, if possible, requesting that the organization clarify to the recipients of the flier that Judge took no part in the solicitation. (*Canon 5*)

IV. CIVIC AND CHARITABLE ACTIVITIES

A. Generally

1. Judge should not participate in a CHP-administered demonstration of the effects of alcohol ingestion upon motor skills and abilities where Judge would be asked to imbibe alcohol. (*Canon 4A*)
2. Judge may deliver the invocation at a prayer breakfast to be attended by community leaders. (*Canon 4C(3)(d)*)
3. Judge's name and title may be included in a list of endorsements for a non-fundraising dinner for Campus Crusade for Christ where the names and titles of other community leaders, including the mayor, will also be listed. (*Canon 4C(3)(d)(iv)*)

B. Government Positions

1. Judge may not join a local police department committee that reviews funding requests for the department. (*Canon 4A(1)*)
2. Judge may not sit on police department advisory boards which distribute grant money for anti-terror equipment. (*Canons 4A, 4C(2)*)

C. Fundraising

1. Judge may write letter to County Board of Supervisors urging funding for Center for Child Protection because activity relates to the law, legal system and administration of justice. (*Canon 4C(3)(d)(ii)*)
2. Judge may assist local Rotary Club in cooking and helping set up for a fundraising event as long as Judge does not solicit funds. (*Canon 4C(3)(d)(ii)*)
3. Judge who chairs Advisory Board of Salvation Army in Judge's jurisdiction may write letter on behalf of the Board, using judicial letterhead, to a major foundation in support of funding for a community center which provides programs that interface with Judge's court. (*Canon 4C(3)(d)(ii)*)
4. Judge may be a speaker at a "National Day of Prayer" observation sponsored by several churches in Judge's community where Judge will not personally solicit funds, although other speakers will. (*Canons 4A(1), (2), (3), 4C(3)(d)(iv)*)

V. EDUCATIONAL ACTIVITIES

1. Judge may attend judicial symposium on "Critical Issues in Construction Defects Litigation" sponsored by the American Enterprise Institute and the Brookings Joint Center for Regulatory Studies to be held in Washington , D.C. , where the invitation promises "balanced educational programs." Judge may also accept free tuition, materials, group meals, hotel accommodation for the two days of the symposium, and transportation reimbursement, as long as the source of such payments, if different from the sponsors, does not give the appearance of influencing Judge's performance of judicial duties or otherwise give the appearance of impropriety. (*Canons 2A, 4D(6)(a), (b), 4H*), *Cal. Civ. Proc. Code §170.9(e)(1)*)

2. Domestic Violence Presiding Judge should not permit domestic violence support group to meet privately with the domestic violence judges for the purpose of educating the judges on the group's perception that the judges are not adequately protecting the safety of domestic violence victims. (*Canon 2A*)

3. Judge may accept invitation of large law firm to be a mock trial judge for firm training purposes as long as Judge is also available to other law firms and is satisfied that the facts involved in the mock trial are not patterned on any case pending or impending in Judge's jurisdiction or on any case being handled by the law firm. If lawyers from the firm appear on cases in Judge's court, Judge should disclose participation in the mock trial program. (*Canons 4A, 4B*)

4. Traffic Commissioner may not speak to Traffic Division police officers about testifying in traffic cases and what Commissioner expects from them in court. (*Canon 4A*)

VI. COMMUNITY OUTREACH

1. Judge may serve on an ad hoc committee of parents being formed by the principal of public school attended by Judge's child to interview candidates for a teaching position where the purpose is to obtain parental input and the school district is rarely involved in litigation. (*Canon 4A*)

2. Judge may chair a committee of fellow Rotary Club members who will select a "community hero" to be recognized at a "Public Safety and Community Appreciation Breakfast" co-chaired by the District Attorney and several local law enforcement agencies where most if not all nominees will be from law enforcement agencies, as long as Judge's participation is confined to selecting the award recipient, the members of the committee are not identified at the Breakfast, and Judge does not participate in planning or sponsoring the Breakfast. As Chair, Judge may send out nomination forms to law enforcement and other agencies. (*Canon 4A*)

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