

MEMORANDUM

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

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

Enclosed please find the 2012/13 *Judicial Ethics Update*, highlighting matters of interest from the 420 informal responses to judges' questions on the Code of Judicial Ethics provided by the Judicial Ethics Committee from September 2012 to October 2013.

Judges may direct questions on the Code of Judicial Ethics to the current 2013/14 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 2012/13.

*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

March 2014

This is the thirty-second *Judicial Ethics Update* from the Judicial Ethics Committee of the California Judges Association. This 2012/13 *Update* highlights areas of current interest from the 420 informal responses to judges' questions concerning the Code of Judicial Ethics provided by the Ethics Committee during the period September 2012 to October 2013.

Judges may direct questions on the Code of Judicial Ethics to the Ethics Committee by contacting the CJA office or any current 2013/14 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 and are based on the Canons in place during 2012/13.

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

I. CONDUCT INSIDE THE COURTROOM

A. Generally

B. Disclosure and Disqualification

1. A judge who applies for the position of Chief of Police must disclose that fact in any criminal case and would be disqualified in any case involving that law enforcement department. Canons 2A; 3E(1); 3E(2)
2. When a judge is a witness to a criminal assault in the courtroom by a defendant, the judge is not disqualified to continue to hear the underlying case but would be disqualified from hearing any case arising from the assault. If there is a request that the new assault be admitted as evidence in the underlying case (EC§1103), that motion should be heard by another judge and if granted then the judge/witness would be disqualified from trying the underlying case. If it is not admitted there is still no disqualification. Canons 3B(1); 3E(1)

3. A judge is disqualified from handling cases where one party is represented by an attorney who is “of counsel” at the law firm of the judge’s spouse. Canon 3E(1) CCP§170.1(a)(5)
4. A judge who served on the appellate department panel that denies writ review to a party is not automatically disqualified to hear the underlying case when reassigned to a trial court. Canon 3B(1)
5. A judge who is named in a lawsuit against the court, but who has no involvement in the management or direction of the lawsuit, is not disqualified when an attorney from the suing law firm appears on unrelated cases before the judge. The judge should disclose the fact in any unrelated matter where the attorney representing the court or the suing party or a member of a law firm working on the lawsuit appears as attorney of record. Canons 3E(1); 3E(2)
6. A judge who, when an attorney, represented the adult son of another attorney after the attorney referred his son, should disclose that fact in any case in which the attorney appears, for a reasonable period which is usually for a period of two years after the representation ends. Canons 3E(1); 2(a)
7. A judge should disclose that a close personal friend is a member of the law firm that represents one of the parties appearing before the judge. Canons 3B(1); 3E(1); 3E(2)
8. A judge, if disqualified from hearing a case, is disqualified from all aspects of the case, including signing search and arrest warrants. Canon 3B(1)
9. A judge who handles probate matters is disqualified from hearing any cases that have been assigned to a probate referee who is married to the judge’s sister, where the referee oversees the accounting of the inventory and appraisal of assets to an estate, as it is likely that the referee will be a material witness in proceedings before the judge in a dispute. Canon 3E
10. A judge whose spouse is a Deputy District Attorney Supervisor, with responsibility for case management and prosecutorial policy decisions for a specific unit in the DA’s Office, is disqualified from hearing cases prosecuted by the special unit. Canon 3E
11. A judge whose spouse is a Deputy District Attorney is disqualified in any case where the spouse is the assigned prosecutor, has litigated a pretrial matter, filed the case or has advised on the legal issues in the case. Canon 3E

12. A judge who was married to a batterer over 30 years ago and who believes that he/she can be fair is not required to disclose this relationship in dependency trials involving allegations of domestic violence. Canon 3E(1); 3E(2)
13. A judge whose child was molested over 30 years ago and who believes that he/she can be fair is not required to disclose this incident in criminal child molestation cases. Canons 2A; 3E(2)(a)
14. A judge is not disqualified from hearing a case because a party has filed a letter of complaint with the CJP or filed a lawsuit against the judge, as long as the judge is not biased or prejudiced. The judge should disclose the fact that the party filed the complaint to all parties. Canons 3B(1); 3E(2)
15. A judge should disclose that a Deputy District Attorney asked the judge to perform the Deputy's wedding whenever the Deputy appears in the judge's court, for the period before the wedding and for a reasonable period which would be two years. Canons 3B(1), 3E

C. Reporting Responsibilities

1. A judge must report an attorney to the State Bar, with notice to the attorney, if granting a motion to withdraw a defendant's guilty plea is based on ineffective assistance of counsel. Canon 3D; Rules of Professional Responsibility 3-110; B&P section 6086.7

D. Ex Parte Communications

1. A judge handling the sentencing on a defendant is required to disclose to all counsel that while attending a seminar this same defendant spoke about a new sheriff's department educational program as well as to disclose what the defendant had to say. Canons 3B(7);3E(2)
2. A judge who receives a letter of complaint from an attorney should disclose the contents of the letter to all parties. Canons 3B(1); 3B(7); 3B(8)
3. A judge who engages in a conversation with a receiver appointed to manage a business, engages in an ex parte communication and must disclose the conversation to all parties. Canon 3B(7)(a)
4. A judge who receives a letter from a juror after trial and before ruling on a motion for a new trial, which expressed that reaching the decision was difficult, must disclose the communication to all counsel. Canon 3B(7)(d)

II. CONDUCT OUTSIDE THE COURTROOM

A. Generally

1. A judge may attend a dinner-dance fundraiser for the County Law Enforcement and Fire Protection Council and the judge is not required to disclose attendance when an agency supported by the Council appears before the judge. Canons 1; 2A; 4A; 3E(2)
2. A judge may accompany the judge's sister to a hearing before the Labor Board as a support person only. Canons 2A; 4G
3. A judge may participate in an anonymous survey on judicial perceptions of criminal behavior that employs hypothetical case studies which does not commit the judge with respect to cases, controversies, or issues that could come before the court. Canons 3B(9); 5B(1); 5 D
4. A judge may appear on her/his own behalf to appeal a denial of a permit to build a patio. Canon 4G Commentary

B. Public Commentary, Publications, Books, Media

1. A judge may not ask for volunteers from those individuals placed on probation, to participate in a reality TV program designed to follow individuals on probation. Canons 2B(2); 3B(9); 4D(1); 4D(2)
2. A judge may write a law review article about drug court, criminal realignment and a community court project unique to the judge's court. Canons 2A; 4A; and 4B
3. A judge may participate in a panel sponsored by a bar association on changes in the law including recent United States Supreme Court opinions that effect the law so long as he/she avoids discussion about specific cases pending before him/her and avoids making suggestions on how he/she would rule on issues that come up. Canons 3B(9); 4B

C. Letters of Recommendation

1. A judge may not write an unsolicited recommendation to a defendant's parole officer. Canon 2B(2); 2B(3)
2. A judge may write a letter of recommendation, on judicial letterhead, on behalf of a college application of a person who the judge knows personally. Canon 2B(2)(e)
3. A judge may write a letter of recommendation to a grant-funding organization for the Public Law Center in support of a grant to provide legal services to indigent litigants. Canons 2A; 4C(3)(d)(ii)

4. A judge may not write a character letter on behalf of someone who is now before a board facing discipline, absent a subpoena. Canon 2A, 2B(2)(a); 2B(2)(e)

D. Judge as Witness

1. A judge who is contacted telephonically by an investigator from the CJP, about the conduct of another judge, is not required to respond, but may do so. The judge would only be required to respond to the CJP if served with a subpoena, or if the judge is officially requested by CJP to respond. Canon 2B(2)(b)

E. Gifts, Discounts, Honoraria

1. A judge may accept a judge of the year award from a specialty bar. Canon 4C(3)(d)(iv)

2. A judge may accept a week stay in a vacation home owned by a close personal friend. Canon 4D(6)(f)

3. A judge may accept the grand prize in a contest sponsored by a newspaper and open to all subscribers, however, may not agree to appear in any of the newspaper social media about the prize. Canons 1, 2A, 2B(2), 3E, 4A(2), 4D(5), 4D(6)(c)and 6A

4. A judge may not accept an award for work in domestic violence, from a non-profit agency that is aligned only with one side of domestic violence issues as this may cast doubt on the judge's impartiality. Canons: 2A; 2B(2); 4A(1); 4C(3)(d)(iv)

5. A newly appointed judge may accept and attend a dinner party hosted by two close friends on the evening of the swearing-in ceremony. Canons 4D(6); 3E(1)

III. POLITICAL ACTIVITY

1. A Commissioner, who learns of a development project less than one mile from his/her home, may speak at a public hearing in opposition to the development but may not volunteer that he/she is a bench officer. Canon 2B; 4C(1)

IV. CIVIC AND CHARITABLE ACTIVITIES

A. Generally

1. A judge may participate in planning a community event at which panelists will discuss various opinions on the issue of genetically modified organisms, as it is a civic educational event. Canons 4B; 5D

2. A judge sitting in a criminal assignment may attend a fundraiser supporting a “Fallen Officer Memorial” and the families of “fallen officers.” The judge is not required to disclose the fact that the judge attended the event. Canon 2A; 4A(1); 4C(3)(d)

B. Government Positions

C. Court Positions

D. Membership

1. A judge may be a member of a Police Athletic League scholarship committee that functions to decide which youth members should be granted a college scholarship. Canons 1; 2A; 2C; 3E(2), 4 A(3) 4C(3) 4G; 5; 5 D

2. A judge may not be a member of a non-profit organization that seeks to plan and establish a Family Justice Center for victims, where there is no participation by defense counsel as this would amount to victim-advocacy by the judge. Canons 2A; 4A

E. Fundraising

1. A judge whose spouse solicits funds for a charity without including a personal solicitation by judge is not in violation of the Canon prohibiting fundraising. Canon 4C(3)(d)(iv)

2. A judge may not personally participate in fundraising activities, including acting in the role of a judge of a pot sticker eating contest or acting as MC for the event. Canons 2B(2); 4A(2); 4C(3)(d)(i); 4C(3)(d)(iv)

3. A judge who is active in an organization that raises funds may not contact persons who have given money for the sole purpose of thanking them for their contributions as this is so closely aligned with the solicitation that it becomes prohibited fundraising. Canons 2B; 4C(3)(d)(i)

4. A judge may not distribute an organization’s literature designed to raise funds and recruit sponsors for the organization as this is fundraising that is prohibited. Canons 2B; 4C

5. A judge may attend a fundraising event to raise money to pay for therapy for children involved in Family Court. Canon 4C(d)(iv)

6. A judge may attend a Sheriff’s Department charity golf tournament that is open to the public. Canons 2A, 2B, 4A, 4C(3)(d)

V. BUSINESS ACTIVITIES

1. A judge who is leaving the bench must make sure that the law firm that the judge is joining does not use the judge's title while the judge is still a judge. Canon 2B(2);4D(2)

2. A judge may not agree to be a trustee for a family trust where the position of trustee may interfere with the proper performance of judicial duties. Canon 4E(1), 2A, 3A(1)

3. A judge sitting on a Probate Calendar may not purchase an automobile from a trust in a case appearing before the judge. Canons 1; 2A; 2B;4A(1); 4D(1)(a)(b)

VI. EDUCATIONAL ACTIVITIES

1. A judge may not accept the offer of an expert to provide a seminar for the judges on a subject that the expert often testifies about in the judge's court. Canons 2B(2); 3B(5); 4A(1)

VII. COMMUNITY OUTREACH

1. A judge may install officers for a local chapter of the NAACP, a civil rights organization that is open to people of all races. Canons 2A; 4A

VIII. ADVICE TO PRESIDING AND ASSISTANT PRESIDING JUDGES

1. An Assistant Presiding Judge who learns that a trial judge has ordered the attorneys in a case to take the jurors and the court staff to lunch, including paying for transportation, is required to take corrective action which may include reporting the judge's conduct to the CJP. Canons 2A; 3B(8); 3D(1)

2. A Presiding Judge may assign a new judge whose spouse is an assistant DA with indirect management obligations over misdemeanor matters, to a misdemeanor calendar, however, the new judge must disclose in all criminal cases that his/her spouse is an assistant DA. Canon 3D(2)

3. A Presiding Judge, who is informed by the Court Executive Officer that a newly elected judge was verbally upset with a court manager over the judge's spouse being unable to calendar a matter in court in a timely manner, has an obligation to investigate the complaint and take appropriate action if necessary. Canons 2B(1); 3B(4); 3B(5); 3C(2)

4. An Assistant Presiding Judge may require a judge to document sick time when the APJ is aware that prior Presiding Judges have spoken to the judge about leaving early and have required the judge to take vacation and the APJ is now aware that the judge continues to leave early but is out of vacation and is now claiming illness. Canons 3C(4); 3D(1)