

California Judges Association

JUDICIAL ETHICS UPDATE

May 2009

This is the twenty-seventh *Judicial Ethics Update* from the Judicial Ethics Committee of the California Judges Association. This 2007/08 *Update* highlights areas of current interest from the 395 informal responses to judges' questions concerning the Code of Judicial Ethics provided by the Ethics Committee during the period September 2007 to September 2008.

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 Judge Daniel J. Buckley (Los Angeles) for preparing this *Update*.

I. CONDUCT INSIDE THE COURTROOM

A. Generally

1. Judge should not place a black ribbon on the American flag in his courtroom as a sign of respect for a former bailiff who was killed in the line of duty. Such conduct could reasonably be interpreted as a bias by the judge in support for the law enforcement community. (Canons 2A, 3B(5))

B. Disclosure and Disqualification

1. Judge who is the subject of a CJP investigation need not disclose that attorneys appearing before Judge has prepared declarations at the request of Judge's personal attorney. (Canon 3E(2))

2. Judge who owns rental property managed by J's spouse need not disclose when assigned an unlawful detainer case, absent other facts connecting the Judge to the litigants or property. (Canon 3E(2))

3. Judge who owns stock with a fair market value of over \$1500 in the parent company of a party need not disqualify in cases involving subsidiaries of the party if judge does not believe a judgment against the subsidiary would substantially affect the value of Judge's investment in the parent company. (Canon 3E(1))

4. Judge who subscribes to the court's state-provided health insurance program need not disqualify when that program's carrier is a party before Judge, unless Judge has a disputed claim with the carrier. (Canon (3E))
5. Judge need not disqualify or disclose in a case where a child of the Judge's colleague is the assigned deputy district attorney. (Canons 3B(1), 3E)
6. Judge must disqualify in a CEQA case in which the city is a defendant when the City Attorney was an active fundraiser for Judge's on-going campaign. (Canon 3E(2))

C. Reporting Responsibilities

1. Commissioner has no greater obligation to report an alleged crime than an ordinary citizen when during the course of a contested criminal hearing the Commissioner learned that the defendant and his mother were illegal aliens. (Canons 2 and 3)

D. Ex parte Communications

1. Post-trial discussions with jurors without counsel are discouraged because they may devolve into (or be interpreted as) discussions regarding the substance of the case, which would make them ex parte communications. (Canons 3B(7), 2A)

II. CONDUCT OUTSIDE THE COURTROOM

A. Generally

1. Judge may give parental advice to the Judge's child involved in a divorce but must avoid the practice of law. Judge may not "ghost write" motions on behalf of the child. (Canon 4G)
2. Judge may not be featured on a website which is intended to promote the school from which the Judge graduated. (Canon 2B(2))
3. Judge may appear on a television show so long as the Judge does not demean the judicial office and avoids a show where contestants must identify their occupations and talk about their work. (Canons 2B(2), 4A(2))
4. Judge may not permit Judge's photograph or quote to be used on a web page whose purpose is to attract new members to the local bar association and its CLE programs. (Canons 2B(2), 4C(3)(d)(iv) and commentary)
5. Judge should not participate in an elementary school outreach program organized by the District Attorney's office when only judges are recruited and no public defenders or private lawyers are involved. Judge's participation would give the appearance of a special relationship with the DA's office. (Canons 3E(1), 4A)

6. Judge may not call students who have received admission to the Judge's law school to encourage them to attend the school and also should not attend Open Houses for law school recruitment. (Canons 2B(2), 4D(2))
7. Judge may not serve as an arbitrator in an uninsured/underinsured motorist binding arbitration. (Canon 4F)
8. Judge may discuss with current prosecutor impressions and conclusions about a case which the Judge tried as a Deputy District Attorney, and has come back for retrial, but should take care not to give legal advice or discuss present or future pretrial or trial tactics. (Canon 4G)
9. Judge may not serve as a mediator in a lawsuit pending in federal court. (Canon 4F)

B. Letters of Recommendation

1. Judge may write a letter of recommendation for an attorney whom the Judge knows well in support of attorney's application as a certified specialist. (Canons 2B(3); 2B(4))
2. Judge who has personal knowledge of the services rendered to juvenile participants by an entity may be used as a reference in that entity's bid for a contract renewal. (Canon 4C(3)(d)(ii))
3. Judge may write a letter to the Governor to support the judicial application of an attorney appearing before the Judge. The Judge should disclose when that attorney appears in the Judge's courtroom. (Canons 2B(3), 5A Commentary)
4. Judge may write a letter on behalf of a long-time acquaintance to document the fact that the acquaintance and his wife have been living as husband and wife for many years in support of visa and/or citizenship requirements, given that the Judge is not aware of any judicial proceedings. (Canon 2B(4))

C. Judge as Witness

1. Judge who prosecuted a defendant twenty years ago may be interviewed by a prosecutor who is prosecuting a new case against the same person, but may only provide factual information about the old case. (Canons 2B(2), 3B(9))
2. Judge may not write a letter to other judges to support a person's efforts to expunge criminal convictions. (Canon 2B(2))

D. Gifts, Discounts, Honoraria

1. Judge may accept a discount for products and services that is made available to all California State Employees. (Canon 4D)

2. Judge may accept the gift of free legal representation from an attorney who is such a close personal friend that Judge would disqualify self from that attorney's cases. Judge must disclose if members of the attorney's firm appear before the Judge. (Canons 2B(2), 3B(9))

III. POLITICAL ACTIVITY

1. Judge who prevailed in a contested retention election must make required campaign-related disclosures concerning contributors to the campaign for one year. (Canon 3E(2))

2. A candidate for judicial office may respond to requests to complete questionnaires as long as the candidate makes clear the views expressed are the candidate's personal opinions and none of the questions put the candidate in the position that an answer would appear to commit him/her as to future rulings on cases, controversies, or issues that would come before the court. (Canon 5B(1))

3. There are no limits on the amount a Judge may contribute in an election for a judicial office. (Canon 5A(3))

IV. CIVIC AND CHARITABLE ACTIVITIES

A. Generally

1. Judge may participate in a community prayer breakfast and say a prayer. (Canon 2A)

2. Judge who has a criminal assignment may not receive an award from an advocacy group for victims of violence. (Canon 4A, 2A)

3. Judge may accept an invitation to "judge" a video contest sponsored by a non-profit organization whose mission is to educate others about global climate change. There will not be any sales or promotions of any product or service. (Canons 2A, 2B(1), 2B(2), (4))

4. Judge should not participate in a symposium hosted by the Sheriffs Department and a local school to discuss gangs, drugs, and violence if members of the defense bar will not attend. (Canons 2A, 4A)

B. Membership

1. Judge may assist the Judge's homeowners association in litigation but may not provide any legal advice or abuse the prestige of the office to advance the interest of the Judge or the association. (Canons 4C(3)(b) and commentary, 4G)

2. Judge may be a participant and leader of a neighborhood watch. (Canon 4A, 4B)

C. Fundraising

1. A women lawyers association may establish and exclusively fund a scholarship in the Judge's name with no other contributions to the scholarship fund to be sought or accepted. (Canons 4D(6), 4C(3)(d)(i))
2. Judge may not staff a concession booth at a fundraiser (e.g., selling beverages as part of the fundraising). (Canon 4C(3)(d)(i))

V. BUSINESS ACTIVITIES

1. Retired Judge who is not sitting on assignment may advertise the Judge's mediation services as a "Retired Judge." Retired Judge is not subject to the Canons. (Canons 6A, 6B)
2. Judge may serve as executor of an aunt's estate where Judge does not anticipate that any litigation concerning the estate will be filed in the court on which Judge sits. (Canons 4E(1), 4E(2))

VI. EDUCATIONAL ACTIVITIES

1. Family Law Judge may participate on a family law panel presented by a nonprofit CLE provider which has attached to its invitation a series of testimonials from other judges around the country who have participated in similar programs. Judge need not take a vacation day. (Canon 4B)

VII. COMMUNITY OUTREACH

1. Judge may not receive an award from Mothers Against Drunk Drivers (M.A.D.D.) based on the Judge's participation and contribution of time to the local schools' alcohol awareness programs because receiving an award from a partisan advocacy group would call Judge's impartiality into question. (Canons 1, 2A, 4A(1))

VIII. ADVICE TO PRESIDING/ASSISTANT PRESIDING JUDGES

1. Presiding Judge has a duty to ensure that a judge does not frequently leave the courthouse early. (Canon 3B(8))