

## MEMORANDUM

TO: Members, California Judges Association  
FROM: Stanley S. Bissey, Executive Director  
DATE: November 2012

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

Enclosed is the 2011/12 *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 2011 to September 2012.

Judges may direct questions on the Code of Judicial Ethics to the current 2012/13 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 2011/12.

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

### 2011/12 Judicial Ethics Committee

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# California Judges Association

## JUDICIAL ETHICS UPDATE

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November 2012

This is the thirty-first *Judicial Ethics Update* from the Judicial Ethics Committee of the California Judges Association. This 2011/12 *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 2011 to September 2012.

Judges may direct questions on the Code of Judicial Ethics to the Ethics Committee by contacting the CJA office or any current 2012/13 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 2011/12.

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

### I. CONDUCT INSIDE THE COURTROOM

#### A. Generally

1. A judge does not have a duty to inquire into a declaration of a conflict of attorney filed by a public defender based on a suspicion that the public defender is abandoning a case in order to handle a more interesting case. Canons 2A, 3D(2)
2. A judge sitting as a juror in a criminal case may perform normal judicial duties including a misdemeanor calendar. If a case arises during those duties that would require judge to disclose a fact or circumstance known to the judge because of the judge's role as a juror, the judge must disqualify without publicly giving a reason and if the judge learns something about the trial performing the normal judicial duties the judge must notify the trial judge using the procedures established by the trial judge for jurors to communicate with the court or attorneys. If this procedure results in multiple disqualifications, the judge may need to be reassigned to a non-criminal assignment. Canons 1, 2A, 3C(1)

## **B. Disclosure and Disqualification**

1. A judge who previously represented the County and City as an attorney is disqualified from hearing a case if the judge represented the public agencies concerning the factual or legal issues involved in a *Pitchess* motion now before the court. This disqualification can be waived and lasts for a period of two years from the appointment to the bench. Canon 3E
2. Once a judge learns that a party in a case is a party in which the judge owns stock valued in excess of \$1500, the judge must do one of the following: recuse him/herself; make a disclosure and proceed with the case only if there is a written waiver from all of the parties; or sell the interest in the stock and disclose on the record the recent financial divestment. Canons 2A, 3E, 4D(4)
3. A judge may not sign, on behalf of the judge's sibling, an order in response to a petition for a Delayed Certificate of Marriage, as the judge is disqualified under CCP§170.1. Canon 3E(1)
4. A judge whose child has been allowed to study for the bar exam at a local law office must disclose on the record the arrangement whenever an attorney from that law office appears before the judge. Canon 3E(2)
5. A judge who, along with spouse, is the client of an estate planning attorney is disqualified from hearing cases involving the specific attorney and attorneys from the firm even if the firm has a large number of attorneys. The disqualification period lasts during the time the judge and spouse are represented by the attorney plus a reasonable period thereafter, usually 2 years. Canon 3E
6. If a judge whose spouse campaigns for an elected position knows that an attorney appearing before the judge made a significant contribution to the spouse's campaign, the judge must disclose this information. Canons 3E(2), 5A(3)
7. A judge who receives a campaign contribution from a Deputy District Attorney Association or Deputy Sheriff's Association is not required to determine if the DDA, DA or deputy sheriff appearing in a case before the judge is a member of their respective association and disclose the contributions. Canons 3E(2), 5
8. A judge is not required to self-recuse when informed that an attorney on the case has filed a complaint against the judge with CJP, unless the judge believes that he/she cannot be fair. Canon 3B(1)

9. A new judge who was the Public Defender prior to appointment to the bench is disqualified in any case in which he/she personally advised, or in any way represented, the Public Defender's Office concerning the factual or legal issues in the case now before him/her. Canon 3E(1)

10. A judge, who has no social relationship with an attorney other than performing the attorney's wedding, is required to disclose that he/she performed the wedding in any cases in which the attorney appears for a period of at least two years. Canons 2A, 3B(1), 3E(1) &(2)

### **C. Reporting Responsibilities**

1. If a judge has personal knowledge that an attorney has violated the rules of Professional Conduct, the judge must take corrective action which may include reporting the attorney to the State Bar. Canon 3D(2)

2. A judge, who believes that an attorney has a substance abuse problem based upon personal observations, must take corrective action such as a referral to the Other Bar or reporting the attorney to the State Bar. Canon 3D(2)

3. A judge is not required to report that felony charges are pending against an attorney, but if the attorney is convicted, the clerk of the court is required by law to report the record of the attorney's conviction to the State Bar within 48 hours. Canon 3D(2)

4. When a judge learns that an attorney is terminally ill and believes that the treatment the attorney is receiving has affected the attorney to the point that the attorney's clients may suffer due to the attorney's disability, the judge should report the matter to the State Bar. Canon 3D(2)

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

1. A juvenile judge handling a Family Wellness Court cannot participate in informal review hearings or staffing hearings in which only some of the parties and attorneys participate unless all of the parties agree to the ex parte communications with knowledge as to how the information will be used by the judge at future hearings. Canon 3B(7)

2. A juvenile judge may issue a protective custody warrant ex parte as this is an ex parte communication permitted by law. Canons 3B(7), 3B(7)(e), 2A

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

### **A. Generally**

1. A temporary judge may not include the fact of serving as a temporary judge in any law firm or business advertisement including a biography on a law firm web site. Canons 1, 2, 6D(9)(a)
2. A judge may accompany his/her daughter at a juvenile traffic court hearing as a parent. The judge should avoid referring to his/her judicial position. The judge should notify his/her presiding judge prior to the date set for the appearance and should consider the requirements of disclosure and disqualification. Canons 2B(4), 4
3. A judge may perform a re-affirmation of wedding vows provided that the judge states publicly that the ceremony is a re-affirmation of the vows. Canons 2A, 2B, 4A(2)&(3)
4. A judge sitting in a criminal assignment may not attend an awards breakfast honoring local law enforcement officers hosted by the Chamber of Commerce and police department. Canons 2A, 4A
5. A judge may not appear in a video promoting a non-profit program that provides services to the court but may attend graduation ceremonies for individuals the judge has referred to the program. Canons 2B(2), 4C(3)(d)(i)
6. A judge may not act as a representative payee for a disabled friend as this would put the judge in the position of being a fiduciary which is prohibited by the Canons. Canon 4E(1)
7. A retired judge not sitting on assignment is not bound by the Canons. Canon 6A

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

1. A judge may write and publish a book on health and wellness and may include the fact that the judge is a judge in the author biography, but neither the judicial title nor position can be used to market the book. Canons 2B(2), 4D(2)

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

1. A judge may not write a letter on behalf of a law firm to authorities in Hong Kong vouching for the law firm's good standing, as that would be lending the prestige of the office to further the interests of the law firm. Canon 2B(2)
2. A retired judge sitting on assignment may not endorse an attorney's law practice as that is using the prestige of the office to advance the interests of the attorney. Canons 1, 2B(2), 4A

3. A judge may not write a letter of recommendation unless the judge believes that he/she personally knows the person and can write the recommendation based on that personal knowledge. If personal knowledge exists, the letter may be on judicial stationery. Canon 2B(2)(e)
4. A judge may not write a letter on behalf of a relative or friend charged with a crime to the sentencing officer unless asked to do so by that judge. Canons 2B(2), 2B(3)
5. A judge may not write a letter on behalf of a past client to the Parole Board. Canon 2B(3)
6. A judge may not write a letter or testimonial on behalf of a service that assisted the judge in a recent election. Canons 2A, 2B(2)

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

1. A judge who represented a defendant in a death penalty trial prior to appointment may, but is not required to, furnish a declaration about percipient recollections and impressions at the time of representation that bear on the defendant's competency to stand trial, but should not express an opinion about the defendant's state of mind or competency to stand trial. The judge should not use his/her title or refer to his/her judicial position in the declaration. Canons 2A, 2B(2)

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

1. A judge may attend an educational activity out-of-state sponsored by Northwestern Law School in which the program will pay for transportation, hotel and food. Under these circumstances the judge must consider CCP §170.9 and GC §89506. Canons 4D(6)(b), 4H(2)
2. A juvenile judge may not accept an invitation to attend a CASA fundraiser as the guest of CASA. Canon 4D(6)
3. A judge may accept the gift of a trip from a relative or close personal friend whose appearance or interest in a case would require disqualification. Canon 4D(6)(f)
4. A judge may accept a \$200 referral fee from a mortgage broker based on a referral to that broker where the fee is a customary fee in the industry and the broker will not appear in the judge's court. Canon 2
5. A judge may not accept a role model award from a specific law firm. Canons 1, 2A, 2B(1) & (2), 4A(1), 4C(3)(d)(iv)

6. A judge may not accept the free use of a cabin from an attorney even though the judge and attorney are members of a running group and the attorney makes the cabin available to all members of the group, as this is not ordinary social hospitality. Canon 4D(6)

### **III. POLITICAL ACTIVITY**

1. A commissioner or judge who is running for election may contact colleagues but should minimize the use of courthouse resources and make sure that the activity does not interfere with courthouse duties. Calls may be made by private phone to chamber phones requesting the colleague to return the call to the private phone and isolated and informal personal contact to arrange a meeting during non-court hours would be permitted. Canons 2A, 4A(3), 5A

2. A judge may comment publicly on the death penalty proposition as a measure concerning the improvement of the law, the legal system or the administration of justice, however, must take great care to avoid the appearance of prejudging or bias with respect to issues that could later come before the court. Canons 5B, 5D, 4B Commentary

3. A judge may write letters to elected officials in his/her private capacity objecting to political decisions, however, the judge may not make public statements on controversial social and political issues. Canon 5

4. A judge may use the judge's court address in filling out a political contribution form. Canons 5A(3), 4D(1), 2B

5. A judge may not appear in an election campaign video for a friend running for mayor. Canons 5A(2), 2B(2)

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

#### **A. Generally**

1. A judge who sits on the board of directors for a 501(c)(3) entity may be listed on the letterhead of the organization using the judge's title, as long as others persons who appear on the letterhead have comparable designations. Canon 4C(3)(d) Commentary

#### **B. Government Positions**

1. The prohibition against accepting governmental appointments does not apply to retired judges sitting on assignment. Canons 2A, 6B, 4C(2), 4C(3)(a)

#### **C. Court Positions**

## **D. Membership**

1. A judge may serve on the board of directors of a non-profit organization that provides services for veterans where the organization does not engage in advocacy in court on behalf of veterans. Canons 4A, 4C(3)
2. A judge may not serve on the board of a drug recovery organization where individuals that attend the recovery programs are doing so under court orders and may appear before the judge in the future. Canons 1, 2A, 2B(2), 4A(1), 4C(3)(c)(i)
3. A judge may not play in a sports league that discriminates based on race. Canons 2A, 2C

## **E. Fundraising**

1. A judge may not send an e-mail to family members and close friends recommending they support a particular charity. Canons 4C(3)(d)(i), 2B(2)
2. A judge may not be an honorary host for a non-profit fundraising party. Canons 2B(2), 4C(3)(d)(i)
3. A judge whose daughter is a Girl Scout may assist the daughter to load and unload Girl Scout Cookies for a fundraiser and stand near the cookie sale table as long as the judge does not personally sell the cookies. Canon 4C(3)(d)(i)
4. A judge may not personally request donations to a specific charity in lieu of flowers upon the death of a family member. The judge may indicate that the family would like a donation to a charity of the donor's choosing in lieu of flowers or direct individuals to speak to other family members. Canon 4C3(d)(i)
5. When an organization uses a judge's name in its fundraising efforts, the judge has a duty to contact the organization and request it to halt the use of the judge's name and to notify everyone who received the information that it was done without the judge's permission and that judges are prohibited from engaging in fundraising. Canon 4C(3)(d)(i)
6. A judge, who becomes aware that a fellow judge is acting as an auctioneer at a charitable fundraiser which is a prohibited activity under the Canons, must take appropriate action which could include counseling the judge or reporting the situation to the PJ. Canons 3D(1), 4C(3)(d)(i), 4C(3)(d)(iv)
7. A judge may attend a fundraising dinner along with the judge's spouse who holds a leadership position in the charitable organization holding the fundraising event. Canons 4C(3)(d)(iii) and (iv)

## **V. BUSINESS ACTIVITIES**

1. A judge may invest in a yogurt store and be involved in making management decisions. The judge must make sure that his/her title is not used in connection with the sales and publicity. Canons 1, 2A, 4A(3), 4D(1) and (2)
2. A judge should not consider investing in a shopping center in which a party to a law suit before the judge would be a tenant. Canons 3E(1), 4D(1)(b), 4D(4)

## **VI. EDUCATIONAL ACTIVITIES**

1. A judge may not speak as part of a panel at an event held at a law firm where the firm's clients are the only law clients invited as this lends the prestige of the judicial office to a specific law firm. Canons 2B, 4B
2. A judge may participate on a panel on a specific legal topic such as class certification, as long as the discussion is open to all attorneys. Canons 4A, 4B
3. A judge may attend a program presented by an employment lawyers association that is open to all attorneys. Canon 4A(1)

## **VII. COMMUNITY OUTREACH**

1. A juvenile judge may attend community programs for juveniles appearing in the juvenile court unless the judge is likely to receive information that would affect the judge's future decisions involving the juveniles attending the program. If the judge inadvertently receives material *ex parte* the judge must disclose that information or disqualify from further decisions involving the juvenile involved. Canons 4A(1), 3B(7)
2. A judge may wear the judicial robe at an elementary school show-and-tell rally where the intention of the program is to educate the children about the job of being a judge. Canons 2A, 4A, 4B
3. A judge may receive a "Judge of the Year" award presented by a specialty bar association at a dinner where the presenter has no cases pending before the judge. Canons 2A, 4A, 4D(6)(a)
4. A judge may not administer the "Dr. Seuss" oath to children at a for-profit business bookstore as this lends the prestige of the office to advance the pecuniary interests of the bookstore. Canons 2B(1), 4D(2)
5. A judge may not preside over a mock trial/training program designed to teach law enforcement officers how to testify more effectively. Canons 1, 2A, 4A(1)

## VIII. ADVICE TO PRESIDING AND ASSISTANT PRESIDING JUDGES

1. When a judge fails to respond to counseling by Presiding Judge for questionable ethical behavior, the Presiding Judge should report the judge to the CJP. Canons 2A, 2B(1)&(3), 3B(7), 3C(3), 3D(1)
2. A Presiding Judge who does not have personal knowledge of an attorney's violations of the rules of Professional Conduct may, but is not required to, take corrective action based on an investigation done at the request of the Presiding Judge. Canon 3D(2)
3. A Presiding Judge who learns of complaints against a judge made by court personnel has a duty to investigate the complaints and take appropriate action if necessary. Canons 2A, 3B(4), 3D(1)
4. When a Supervising Judge learns that a judge had intentionally delayed declaring a conflict in order to avoid disclosing information to the parties, the Supervising Judge has a duty to take appropriate corrective action which could include counseling and/or reporting the judge to the CJP. Canon 3E(1)

