

California Judges Association  
**OPINION NO. 11**

(Originally issued: February 1962)

**ACTING AS TRUSTEE**

**AUTHORITY:** Canons 2B(2), 4C(3)(c), 4D(1)(a)(b), 4D(2), 4D(3) and 4E

I. Background

A judge has requested an opinion as to the propriety of his serving as a trustee in a real estate trust which is being formulated for the benefit of a teacher's organization. The trust will later offer investment certificates to the public. The judge points out that before any offering of certificates is made, it will be necessary to secure a permit for the issue from the Corporations Commissioner of the State of California. A prospectus will be required in order to secure the permit. In the prospectus the judge will be described as a Judge of the Superior Court and as a former member of a named law firm. The prospectus could later be used in connection with the offering of certificates to the public.

II. Question

Is it contrary to the California Code of Judicial Ethics for a judge to serve as a trustee in a real estate trust and to permit the judge's name and title as a judge to be used in a prospectus which offers investment certificates in a real estate trust to the public?

III. Answer

Yes.

IV. Discussion

It is the opinion of the Committee that the judge could not participate in the real estate trust in the manner as outlined or permit the judge's name and title to be used in a prospectus.

Canon 2B(2) provides in pertinent part:

A judge shall not lend the prestige of judicial office to advance the pecuniary or personal interest of the judge or others;

Canon 4C(3) provides:

(c) A judge shall not serve as an officer, director, trustee, or nonlegal advisor if it is likely that the organization

(i) will be engaged in judicial proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court in which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

Canon 4D. Financial Activities, provides:

- (1) A judge shall not engage in financial and business dealings that
  - (a) may reasonably be perceived to exploit the judge's judicial position, or
  - (b) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to appear before the court on which the judge serves.
- (2) ...A judge shall not participate in, nor permit the judge's name to be used in connection with, any business venture or commercial advertising that indicates the judge's title or affiliation with the judiciary or otherwise lend the power or prestige of his or her office to promote a business or any commercial venture.
- (3) A judge shall not serve as an officer, director, manager, or employee of a business affected with a public interest, including, without limitation, a financial institution, insurance company, or public utility.

Canon 4E. Fiduciary Activities, provides in pertinent part:

- (1) A judge shall not serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary,<sup>1</sup> except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

These canons make it clear that the judge may not serve as a trustee in a real estate trust or allow the judge's name or title to be associated with such a business venture.

This opinion is advisory only. The Committee acts on specific questions submitted, and its opinion is based on facts as set forth in the questions submitted.

COMMITTEE ON JUDICIAL ETHICS  
February, 1962

Note: In rewriting this opinion it has been substantially changed from the original in part because of the changes in the California Code of Judicial Ethics, amended by the Supreme Court of California effective April 15, 1996.

---

<sup>1</sup> Fiduciary includes such relationships as executor, administrator, trustee, and guardian. See Canons 4E, 6B, and 6F (Commentary).