

(Issued: October 10, 2002)

**JUDICIAL INTERACTION WITH JURORS AND THEIR EMPLOYERS  
BEFORE, DURING AND AFTER TRIAL**

**I. Introduction**

The purpose of this opinion is to provide judges with an overview of the ethical rules governing judicial contact with jurors and their employers before, during and after trial. The opinion addresses three general areas: (1) efforts to make prospective jurors comfortable during the selection process, (2) efforts to intervene with employers and others; and (3) direct communication with jurors. The opinion does not address disciplinary obligations where an attorney or another judge improperly interacts with a juror.

**II. Applicable Authority**

Canon 2A: "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

Canon 2B(2): "A judge shall not lend the prestige of judicial office to advance the pecuniary or personal interests of the judge or others ... "

Canon 2B(4): "A judge shall not use the judicial title in any written communication intended to advance the personal or pecuniary interest of the judge. . . ."

Canon 3B(3): "A judge shall require order and decorum in proceedings before the judge. "

Canon 3B(4): "A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers and of all court staff and personnel under the judge's direction and control. "

Canon 3B(7): "... A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding . . ."

Canon 3B(10): "A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community. "

Canon 4C(3)(d)(ii): "[A judge] . . . may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice. . . ."

Canon 4C(3)(d)(iv): "[A judge] shall not permit the use of the prestige of his or her judicial office for fund raising. . . ."

**III. Applicable Sections From Rothman Handbook**

2.20, 3.19, 3.60, 5.13, 5.70

**IV. Case Law**

*Gonzales v. Commission on Judicial Performance* (1983) 33 Cal.3d 359, 374-375

**V. CJP Annual Reports**

*In re Hintz*, Commission on Judicial Performance, Ann. Rep. (1992), Public Repeal 1, p. 9.

Commission on Judicial Performance, Ann. Rep. (1986), Advisory Letter, p. 5.

Commission on Judicial Performance, Ann. Rep. (1988), Advisory Letter 22, p. 13, Advisory Letter 23, p. 14.

## **VI. Discussion**

### **A. Contacts with Employers and Others:**

It is appropriate and desirable for judges to concern themselves with the needs of jurors and prospective jurors. It is important, however, to refrain from using the prestige of the judicial office to advance the private interests of a juror or anyone else. The tension between appropriate efforts to help jurors and inappropriate use of judicial influence can manifest itself in a number of different ways.

Prospective jurors often want to serve, but are worried that their employer will not pay them. A request from a judge to an employer that a prospective juror be paid for the duration of the trial could be understood as an effort to advance the private interests of the prospective juror.

If, however, the judge determines that the presence of the prospective juror is important and the prospective juror will have to be excused for financial hardship if he or she is not paid, the judge may contact the employer. Although the judge is using the prestige of his or her office to persuade the employer to pay the prospective juror, the persuasion is undertaken to advance the interests of justice and is in connection with an official duty.

This type of communication is appropriate only where the benefit to the prospective juror is secondary to the interests of the court. A judge should analyze each situation individually and make this determination. If the issue arises after the panel is sworn, it is much more likely that the interests of the court predominate.

It is important that the communication be framed as a request, not a demand, and it should be understood at the outset of the conversation that the prospective juror will be excused for financial hardship if the request is denied. It should be clearly understood that there is no threat of a sanction.

A judge should not contact a juror's employer to report anything negative regarding a prospective juror or juror. However, a juror who is a court employee may be reported to his/her supervisor for being late several times, delaying the proceedings.

The sanctity of the voir dire process and the need for candor on the part of prospective jurors make it essential that a judge not contact an employer, or anyone else, regarding comments made by a prospective juror during voir dire.

Judicial communications of this type are optional; a judge has no affirmative ethical duty to assist a prospective juror.

### **B. Juror Appreciation:**

Judges may help facilitate a wide variety of programs designed to ease the burden on prospective jurors. Efforts to make jurors more comfortable as they wait to be called and to provide them with information about local resources can be entirely appropriate. The court itself may purchase and distribute thank you gifts to jurors.

Problems may arise when materials originate from sources other than the court. Judges must be careful not to use the prestige of judicial office to benefit individual businesses. In addition, judges must be careful not to directly or indirectly request donations or discounts for jurors. It is also important to be

aware that court staff is bound by the same rules when contacting providers of juror amenities. A judge may not direct or allow an employee of the jury commissioner's office to do what a judge may not do.

This does not mean that judges are prohibited from communicating with individual business owners or the local chamber of commerce. It simply means that any communication should be executed in a way that does not suggest that the court is requesting a favor or offering a benefit.

A judge may send letters to community organizations seeking speakers and informational materials to be distributed to jurors. In addition, unsolicited gifts for jurors as well as unsolicited brochures from chamber of commerce type organizations including maps of the area and lists of restaurants and shops may be distributed by the jury commissioner to jurors. An unsolicited brochure identifying local merchants willing to provide a discount to jurors may be similarly distributed.

A judge, however, may not contact local restaurants to request a discount for jurors. If an individual business or business association develops such a program independently, the jury office may make prospective jurors aware of the program.

A county museum may, on its own volition, offer free passes to prospective jurors in the hope that the jurors will purchase regular memberships.

The restrictions on judges and court staff do not extend to local bar associations or other organizations which might be interested in coordinating these kinds of programs. A bar association may approach a movie studio, for example, and request first run movies for the jury to view during the evening when the jury is sequestered.

### **C. Trial Contact with Jurors:**

Private communications between a judge and jurors "interfere with the parties' right to the assistance of counsel and . . . undermine public esteem for the integrity and impartiality of the judicial office." *Gonzales v. Commission on Judicial Performance* (1983) 33 Cal.3d 359, 375. Clearly, a judge should never have a private conversation with a juror before the verdict is rendered, absent a stipulation by the parties. A judge should not enter the jury deliberation room without the presence of counsel. Similarly, the rather benign act of meeting with jurors without the parties or a court reporter to discuss scheduling is improper.

Judges have been disciplined for violating Canon 3B(3) by being abusive to jurors.

In one case, a bailiff received a "packet" from a juror during a trial, which was placed in the file without being opened. The packet contained stream of consciousness rambling of the juror during trial as well as a revelation regarding alcohol consumption during lunch. In such a case, the judge should photocopy the contents of the packet and send it to counsel for both sides (including appellate counsel) explaining how it got in the file and the circumstances of it being opened.

A judge who receives partial verdicts during a trial should not examine them until the jury has concluded the rest of its deliberations. This improperly invades the secrecy of the deliberative process and is contrary to CALJIC Nos. 17.47 and 17.50.

A court should not offer jurors the option of having their jury service pay donated to charity, even if the charity involves the administration of justice.

### **D. Posttrial Contact with Jurors:**

Judges sometimes wish to meet with jurors after trial to discuss ways to improve the process. Such meetings present significant risks. Any discussion regarding the substance of the case is improper because the case is still pending until the posttrial issues and appeal are resolved. If there is an allegation

of juror misconduct, any juror may become a witness. The best practice is not to talk to jurors off the record at all. At a minimum any discussion should take place in the presence of both counsel.

A judge may never suggest to a jury that he or she agrees or disagrees with the verdict. Judges may only thank the jury for its service to the court and community. Moreover, a judge may not reveal evidence which had been suppressed or reveal information about the defendant's prior record that was not received during the trial.

It is permissible for a judge to write a thank you letter to jurors and solicit constructive criticism of how the court proceedings are conducted, including having the jurors fill out a questionnaire with comments regarding the proceedings and court personnel.

Judges should avoid social contact with jurors until the expiration of the deadline to move for a new trial on the ground of juror misconduct, or, if such a motion is made, until the matter has been decided and the decision is final.

A judge should be careful of giving any mementos to the jury which in any way makes light of their services or the court.

A judge may accept a token gift from jurors. The judge may consider putting the item on display in the jury assembly room.

**2001/2002 Judicial Ethics Committee**

October 10, 2002