

MEMORANDUM

TO: All CJA Members

FROM: Stanley S. Bissey
Executive Director & CEO

DATE: May 2017

SUBJECT: **Formal Ethics Opinion No. 73**

The Judicial Ethics Committee of the California Judges Association has issued the following formal opinions:

Opinion No. 73

“Judicial Letter Writing Supporting Grant Applications”

Judges may direct questions on the Code of Judicial Ethics to the current 2016/17 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.

Special thanks to Ethics Committee member Judge Leonard Edwards, Santa Clara Superior Court, Retired, for preparing this Opinion.

SSB:jmg

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CALIFORNIA JUDGES ASSOCIATION

Judicial Ethics Committee

Opinion No. 73

Judicial Letter Writing Supporting Grant Applications

I. INTRODUCTION

This opinion seeks to assist judges who wish to or are asked to write letters in support of grants or who write letters themselves or for their courts requesting grants. The opinion will address under what circumstances a judge may write such a letter and when it is appropriate under the Code of Judicial Ethics.

II. APPLICABLE AUTHORITY

Canon 1. “An independent, impartial, and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. . . .”

Canon 2A. “. . . A judge shall not make statements, whether public or non-public, that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of judicial office.”

Canon 2B (2). “A judge shall not lend the prestige of judicial office or use the judicial title in any manner, including any oral or written communication, to advance the pecuniary or personal interests of the judge or others”

Canon 4. “A judge shall conduct all of the judge’s quasi-judicial and extrajudicial activities as to minimize the risk of conflict with judicial obligations.”

Canon 4A. “A judge shall conduct all of the judge’s extrajudicial activities so that they do not

- (1) Cast reasonable doubt on the judge’s capacity to act impartially,
- (2) demean the judicial office,
- (3) interfere with the proper performance of judicial duties, or
- (4) lead to frequent disqualification of the judge.”

Canon 4C(3)(d). “a judge as an officer, director, trustee, or nonlegal advisor, or as a member or otherwise

- (i) may assist such an organization in planning fundraising and may participate in the management and investment of the organization’s funds. However, a judge shall not personally participate in the solicitation of funds, or other fundraising activities, except that a judge may privately solicit funds for such an organization from members of the judge’s family or

from other judges (excluding court commissioners, referees, retired judges, court-appointed arbitrators, hearing officers, and temporary judges);

(ii) 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 4D.

(1) “A judge shall not engage in financial and business dealings that

(a) may reasonably be perceived to exploit the judge’s judicial position,…”

Terminology – “law, the legal system, or the administration of justice.” When a judge engages in an activity that relates to the law, the legal system, or the administration of justice, the judge should also consider factors such as whether the activity upholds the integrity, impartiality, and independence of the judiciary (Canons 1 and 2A), whether the activity impairs public confidence in the judiciary (Canon 2), whether the judge is allowing the activity to take precedence over judicial duties (Canon 3A), and whether engaging in the activity would cause the judge to be disqualified (Canon 4A(4)). See Canons 4B (Commentary), 4C(1), 4C(1) (Commentary), 4C(2), 4C(2) (Commentary), 4C(3)(a), 4C(3)(b) (Commentary), 4C(3)(d)(ii), 4C(3)(d)(Commentary), 4D(6)(d), 4D(6)(e), (5A (Commentary), 5D, and 5D (Commentary).

Standard of Judicial Administration, Standard 5.40(e)

CJA Formal Ethics Opinions 41 and 46.

CJA Ethics Updates: December, 1995, Public Commentary, Publications, Books, Media, H; March, 2004, Ex Parte Communications, No.1; April, 2008, C, Letters of Recommendation, No. 2; November, 2010, Fundraising, No. 5; November, 2012, E. Fundraising, No. 5.

David M. Rothman, *California Judicial Conduct Handbook* (3rd Ed. 1999) 8.31, 10.39, 10.42-10:44, 10:47-10.49, 10.53 & 10.54

Leonard P. Edwards, *The Role of the Juvenile Court Judge: Practice and Ethics* (1st Edition, 2012) pages 286-288 and 329-334.

III. INITIAL OBSERVATIONS

The Code of Judicial Ethics permit judges to write letters in support of grants. Such support letters are an exception to the rule that judges are not to participate in fundraising. [Canons 2B(2) & 4C(3)(d)(i)]. Support letters must relate to a grant that concerns “the law, the legal system, or the administration of justice.” A judge should consider several factors before writing a letter in support of a grant request.

First, the judge should gather as much information as possible about the nature of the grant, which other persons and agencies are writing support letters, and who will benefit from the grant. In other words, how will the grant monies or

benefits be allocated?

Second, the judge should determine whether the grant involves the law, the legal system, or the administration of justice. While there is no definition of this phrase, the hypothetical situations contained in this opinion may give some guidance to the judge. If the judge determines the grant application does not involve the law, the legal system, or the administration of justice, the judge may not write the letter.

Third, if the judge sends the letter to the grant applicant, the judge should insist that the letter be used only for the application process and not for any other purpose.

Fourth, there is a distinction between a support letter for a grant written by a non-court entity, and a grant application by the judge on behalf of the Superior Court. This opinion will separate the two in the hypothetical situations that follow.

Fifth, there is no distinction between a private or a public entity applying for a grant. The judge may write a support letter for either type of grant applicant so long as the grant involves the law, the legal system, or the administration of justice.

IV. DEFINITION OF “THE LAW, THE LEGAL SYSTEM, OR THE ADMINISTRATION OF JUSTICE”

The phrase “the law, the legal system, or the administration of justice” occurs frequently in the Canons. Understanding the phrase’s meaning will be of use to judges making decisions about their off-the-bench activities. However no definition is contained in the Code of Judicial Ethics. The Terminology section does not contain a definition, nor do the ABA Canons of Ethics.

The Terminology section of the Canons defines “the law.” “Law’ means constitutional provisions, statutes, court rules, and decisional law. See Canons 1 (Commentary), 3A, 3B(2), 3B(7)(c), (Commentary) 4F, and 4H.” The Terminology section of the Canons does not define “the legal system, or the administration of justice.” It simply lists the Canons that are relevant to the phrase.

It appears that the drafters of the Canons concluded that the terms were well understood by legal practitioners and did not need further definition. This opinion will not attempt a definition of the phrase. Instead the opinion will attempt to clarify the phrase by analyzing hypothetical situations where the term has been used in California law. Using this approach the opinion will hopefully provide guidance as to the meaning of the phrase.

V. APPLICATION TO VARIOUS SITUATIONS

A. SUPPORT LETTER FOR GRANTS

1. *The CASA Director (Court Appointed Special Advocates) asks the Presiding Judge of the Juvenile Court to write a letter in support of CASA's grant application to National CASA for money and training. The grant would permit the local CASA program volunteers and staff to receive training from National CASA and money to defray expenses for the training.*

May the judge write such a letter?

Yes. CASA programs support the children appearing in juvenile dependency court. They also provide information to the judge about the needs of the child. As such the program relates to the law, the legal system, or the administration of justice. Moreover, writing the letter is consistent with the juvenile court judge's obligation to "developing resources and services for at-risk children and families."¹

2. *The local probation department asks the Presiding Judge of the Superior Court to write a letter to the U.S. Department of Justice in support of a grant the probation department seeks to train probation officers regarding the relationship between state and federal criminal proceedings. The training would take place in Washington, D.C. and would enable local probation staff to work more closely with federal agents in the supervision of convicted criminals.*

May the judge write such a letter?

Yes. The probation department serves the Superior Court in a number of ways, providing information and reports regarding convicted criminals and supervising persons placed on probation by the court. The proposed training will improve the effectiveness of this supervision. This grant relates to the law, the legal system, or the administration of justice.

3. *The Court Executive would like the Presiding Judge of the Superior Court to write a letter to Apple Computers asking for new computers for all of the judges and staff in the Superior Court. The Court Executive says that this will increase the productivity of everyone in the court system.*

May the judge write such a letter?

No. This letter appears to be a form of inappropriate fund-raising, an activity prohibited by the Canons. Moreover, such a letter to a private corporation appears to demean the status of the court, and if the corporation provided computers, would make it appear that it had a special relationship with the court.

4. *The substance abuse treatment provider in the judge's Criminal Drug Court is applying for a grant to pay for rehabilitative services to support the clients appearing in that court. The services include housing, mental health*

1 *Standard of Judicial Administration, Standard 5.40(e).*

treatment, transportation to and from court hearings, and the salary of one treatment provider.

May the judge write a letter supporting this grant application?

Yes. These services are directly related to the Drug Court operation. The Drug Court is a court administered program designed to rehabilitate offenders. These services relate to the law, the legal system, or the administration of justice. They will likely improve outcomes for the defendants appearing in the Drug Court and reduce recidivism.

5. *The county social services agency is applying to SAMHSA (Substance Abuse and Mental Health Services Administration) for a training grant. The Superior Court is proposing to create a Family Drug Treatment Court (FDTC), and the grant would provide training to social workers who will work in the FDTC.*

May the judge write a letter supporting this grant application?

Yes. Social workers are important professionals working in the Family Drug Treatment Court. This grant application will benefit the court's efforts to create an effective FDTC and relates to the law, the legal system, or the administration of justice.

6. *The local Junior League has submitted a grant request to its National Chapter asking for money to supply books for foster children who appear in the Superior Court's juvenile dependency court.*

May the juvenile court judge write a letter supporting this grant application?

Yes. Many juvenile courts provide books to dependent children who appear in court. This grant will directly benefit those children over whom the court has legal responsibility, and therefore involves the law, the legal system, or the administration of justice.

7. *The County Center for Dispute Resolution Settlement, a non-profit organization that assists self-represented clients on small claims matters using mediation and settlement techniques, asks the judge to write a letter to the Board of Supervisors supporting their funding for the upcoming year.*

May the judge write a letter supporting this request for continued funding?

Yes; this organization supports the court by assisting litigants understand the legal process and by resolving many of their cases, thus reducing the court's caseload. This request involves the law, the legal system, or the administration of justice.

8. *The local chapter of CORE (Career Opportunities for Reentry) which provides employment training and support services for women parolees asks the judge to write a support letter for a grant they are seeking.*

May the judge send such a letter?

Yes. Parolees are at great risk of re-offending and returning to the court. This

organization will assist parolees in their efforts to live a law-abiding life. It involves the law, the legal system, or the administration of justice.

9. *The judge wrote a grant support letter for a local faith-based program for a grant to create a rehabilitation center for defendants on probation for substance abuse. The judge discovered that the letter was later posted on the web and that it has been used for other purposes.*

Are there ethical issues related to the posting and other use of the judge's letter?

Yes. The judge should immediately instruct the local program to remove the letter from their website and to admonish staff to refrain from further dissemination of the letter.

10. *The judge is asked to write a support letter for a grant request that would enable foreign judges (Chinese) to visit the United States and learn about our legal system.*

May the judge write such a support letter?

Yes. Interchange between local judges and judges from foreign country may result in the identification of better procedures and practices. This letter involves the law, the legal system, or the administration of justice.

11. *The Presiding Judge of the Superior Court has been asked to write a letter to the House Judiciary Committee in support of the probation department's request for specialized training for their operations.*

May the judge write such a letter?

Yes. The probation department serves the court in many ways, and the training will help probation officers better serve the court. This letter involves the law, the legal system, or the administration of justice.

12. *The judge has been asked to send a support letter for a grant requesting funding to create a restorative justice proposal which would benefit the juvenile court.*

May the judge write such a letter?

Yes. Restorative justice is an innovative approach to the handling of juvenile delinquency cases. It is a new concept and several California juvenile courts are using this approach. This letter involves the law, the legal system, or the administration of justice.

13. *The judge has been asked to write a letter to support grant funding for Kids Turn, a program that supports children in child custody cases appearing in the Family Court.*

May the judge write such a letter?

Yes. California courts have recognized that the children in contested divorce cases often suffer trauma as the result of the legal proceedings. This program offers supports for these children and, as such, relates to the law, the legal system, or the administration of justice.

14. *The judge is asked to write a support letter for a grant sought by local law enforcement and prosecution to improve their response time to elder abuse in the community.*

May the judge write such a letter?

No. This grant appears only to benefit law enforcement and creates the appearance of partiality on the part of the judge.

15. *The judge has been asked to write a letter praising a local school which the judge's children attend. The letter will be a part of a number of letters used for a grant application.*

May the judge write such a letter?

No. This letter does not fall within the coverage of the law, the legal system, or the administration of justice.

16. *The judge has been asked to write a letter to the health department recommending that a drug treatment facility receive money coming from Proposition 36 funds. The judge frequently uses this facility to benefit drug abusing clients appearing in the judge's court.*

May the judge write such a letter?

Yes. If the drug treatment facility is important to the operation of the judge's court, the judge may write this letter. The operation of the drug treatment facility involves the law, the legal system, or the administration of justice.

17. *May the judge write a support letter to the Board of Supervisors urging the Board to provide funding for the Center for Child Protection?*

Yes. The Center for Child Protection would streamline the processing of child abuse and neglect cases and have an impact on the ways in which these children are handled before they come to court. The Center would likely provide the court with better health and forensic data about these children. Support for the Center involves the law, the legal system, or the administration of justice.

18. *The judge has been asked to write a letter to solicit funds for the rehabilitation of a historic Carnegie Library.*

May the Judge write such a letter?

No, as this does not involve the law, the legal system, or the administration of justice.

19. *The judge has been asked to write a support letter to the Joan Kroc Foundation to fund a community center which would provide job training, education, youth recreational activities which would benefit criminal probationers and juvenile wards attempting to rehabilitate.*

May the judge write such a letter?

Yes, if the judge concludes that this Foundation is serving the youth who appear in the judge's court, the judge may write this letter. This is related to the law, the legal system, or the administration of justice.

20. *The judge has been asked to write a letter supporting a parenting program grant application to sponsor a Fatherhood Conference.*

May the judge write such a support letter?

No. This is not closely related to the law, the legal system, or the administration of justice.

21. *A number of judges signed a letter attesting to the excellence of the State Bar Diversity program.*

Can that letter be used as a part of a grant application?

Yes, but only if the judge and all other signatories agree.

22. *The judge is on the governing committee for the local Community Services Project that administers the county's victim-witness program. The governing committee is composed of representatives from several justice partner agencies including the district attorney, public defender, probation, and law enforcement. The judge has been asked to write a letter in support of the Project's application for a state grant. The grant money would be used, in part, for the services provided by the Project including counseling crime victims, addressing gang violence, and providing information on restitution to the court.*

Is writing such a letter ethical?

Yes, this organization represents a broad spectrum of justice system participants and the grant monies involve the law, the legal system, or the administration of justice.

B. LETTERS REQUESTING GRANTS

23. *The Presiding Judge would like to write a grant application for funds to start a Drug Court. Grants are available from several federal agencies.*

May the judge write a grant application?

Yes. However, the judge should consider whether writing the grant application would “interfere with the proper performance of judicial duties.”² If the judge concludes that it would interfere, the judge could assign the task to the Court Executive.

24. *The Judge would like to write a grant request to a funder for the creation of a peer court.*

May the judge write such a grant request?

Yes. Peer courts are widely used in California. They benefit at-risk youth and educate youth about the court process. This creation of this court falls within the purview of the law, the legal system, or the administration of justice.

25. *May the judge write a letter to the local City Council asking the Council to renew funding for a youth program when the judge’s spouse works for that program?*

No, this would create a conflict of interest and the youth program is not closely related to the law, the legal system, or the administration of justice.

VI. CONCLUSION

Judges are often asked to write support letters for grant applications. This is understandable as judicial recommendations carry great weight in the community. Such letters are ethical so long as the grant the agency is seeking involves matters relating to the law, the legal system, or the administration of justice. Further, judges may write applications for grants to benefit the Superior Court directly, again so long as the grant involves matters relating to the law, the legal system, or the administration of justice.

There is one caution. If the letter is being sent to the grant applicant as opposed to the grant funder, the judge should request that the letter not be used for any other purpose. Refer to hypothetical situation #9 for an example of how these letters might be used for other purposes than those that the judge intended.

2 Canon 4A(3)

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