

# Formal Ethics Opinion No. 82

*Political Activity by Judges:  
The Ethical Considerations*

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CALIFORNIA  
JUDGES  
ASSOCIATION

## MEMORANDUM

TO: All CJA Members

FROM: Nicole Virga Bautista  
Executive Director & CEO

DATE: February 2026

SUBJECT: **Formal Ethics Opinion No. 82**

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

### **Opinion No. 82**

#### *POLITICAL ACTIVITY BY JUDGES: THE ETHICAL CONSIDERATIONS*

Judges may direct questions on the Code of Judicial Ethics to the current 2025/26 Ethics Committee by writing or calling the CJA office. 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 Marian F. Gaston, San Diego Superior Court, for preparing this Opinion.

NVB:jmg

# CALIFORNIA JUDGES ASSOCIATION

## Judicial Ethics Committee

### Opinion 82

#### **POLITICAL ACTIVITY BY JUDGES THE ETHICAL CONSIDERATIONS**

##### **I. Introduction**

When a judicial officer ascends to the bench, their freedom within the political sphere is curtailed but does not disappear. As stated in Canon 5:

Judges are entitled to entertain their personal views on political questions. They are not required to surrender their rights or opinions as citizens. They shall not, however, engage in political activity that may create the appearance of political bias or impropriety.

As acknowledged in the Advisory Commentary to Canon 4A, isolation of judges from their communities is neither necessary nor wise. Indeed, judicial officers are in a special position to advocate for changes pertaining to the law, the legal system, or the administration of justice. However, judges often face questions about whether a specific activity would cross the line from permitted and even encouraged behavior, into the realm of impermissible commentary on controversial political issues.

There is a tension between an individual judge's ability to exercise their political rights as a citizen including their right to comment on the law, the legal system and the administration of justice, and the requirement that judges not engage in political activity that creates the appearance of political bias or impropriety. This opinion addresses the principles involved and provides a variety of hypothetical situations related to judicial speech and judicial participation in political activities.

## II. Authority

### Terminology:

An “impending proceeding” is a proceeding or matter that is imminent or expected to occur in the near future.

“Impropriety” includes conduct that violates the law, court rules, or provisions of the California Code of Judicial Ethics, as well as conduct that undermines a judge’s independence, integrity, or impartiality.

“Independence” means a judge’s freedom from influence or control other than as established by law.

“Integrity” means probity, fairness, honesty, uprightness, and soundness of character.

“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(1) (Commentary), 5D, and 5D (Commentary).

A “pending proceeding” is a proceeding or matter that has commenced. A proceeding continues to be pending through any period during which an appeal may be filed and any appellate process until final disposition.

### Canons:

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 is preserved.”

Canon 2: “A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities.”

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. A judge shall not make statements, whether public or nonpublic, 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 2 and 2A (Commentary): “The test for the appearance of impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality, and competence.”

Canon 3A: “All of the judicial duties prescribed by law shall take precedence over all other activities of every judge....”

Canon 3B(2): “A judge shall be faithful to the law regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.”

Canon 3B(9): “A judge shall not make any public comment about a pending or impending proceeding in any court, and shall not make any nonpublic comment that might substantially interfere with a fair trial or hearing.”

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 4A (Commentary): “Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which he or she lives. Expressions of bias or prejudice by a judge, even outside the judge’s judicial activities, may cast reasonable doubt on the judge’s capacity to act impartially as a judge.

Because a judge’s judicial duties take precedence over all other activities...a judge must avoid extrajudicial activities that might reasonably result in the judge being disqualified.”

Canon 4B: “A judge may speak, write, lecture, teach, and participate in activities concerning legal and nonlegal subject matters, subject to the requirements of this code.”

Canon 4B (Commentary): “As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge may do so, either independently or through a bar or judicial association or other group dedicated to the improvement of the law.”

Canon 5: “Judges and candidates for judicial office are entitled to entertain their personal views on political questions. They are not required to surrender their rights or opinions as citizens. They shall, however, not engage in political activity that may create the appearance of political bias or impropriety. Judicial independence, impartiality and integrity shall dictate the conduct of judges and candidates for judicial office.”

Canon 5A(2): “Judges and candidates for political office shall not make speeches for a political organization or candidate for nonjudicial office, or publicly endorse or publicly oppose a candidate for nonjudicial office.”

Canon 5A (Commentary): “Although attendance at political gatherings is not prohibited, any such attendance should be restricted so that it would not constitute an express public endorsement of a nonjudicial candidate or a measure not affecting the law, the legal system, or the administration of justice, otherwise prohibited by this canon.”

Canon 5D: “A judge or candidate for judicial office may engage in activity in relation to measures concerning improvement of the law, the legal system, or the administration of justice, only if the conduct is consistent with this code.”

Other Authority:

ABA Model Code of Judicial Conduct, rule 2.10

American Board of Trial Advocates, Protocol for Responding to Unfair Criticism of Judges

CJA Ethics Committee Opinion 65, Judge as Author

CJA Ethics Committee Opinion 75, The Law, the Legal System or the Administration of Justice: Community Involvement and Measures to Improve the Law

CJA Ethics Committee Opinion 80, Serving on Government Task Forces: The Ethical Considerations

CJEO Formal Opinion 2024-027, Public Comment on a Pending Proceeding in Connection with a Judicial Election or Recall Campaign

### III. Discussion

Of all extrajudicial activities, political activity is one of the most difficult for judges to navigate. This is because on one hand, the canons recognize that judges “are not required to surrender their rights and opinions as citizens,”<sup>1</sup> and are indeed “in a unique position to contribute to the improvement of the law, the legal system and the administration of justice, including revision of substantive and procedural law.”<sup>2</sup> On the other hand, judges must “act at all times in a manner that promotes public confidence in the integrity, and impartiality of the judiciary,”<sup>3</sup> and “not engage in any political activity that may create the appearance of political bias or impropriety.”<sup>4</sup>

Judges are afforded the greatest latitude when commenting on matters concerning the law, the legal system, or the administration of justice. This is the one area of political activity, other than judicial elections, where it is permissible for a judicial officer to use their title to, in effect, speak as a judge. However, even in this realm, any comment must not call into question a judge’s ability to remain fair and impartial. One may advocate for a change in substantive or procedural law, as recognized in the commentary to Canon 4B, but one may not do so in a manner that may lead a listener to reasonably doubt that the judge would follow the law as it stands.

A judge is also prohibited from making statements that give the appearance that the judge is biased in favor of or against any of the parties that appear before them. As stated in Canon 5D: “A judge...may engage in activity in relation to measures concerning improvement in the law, the legal system, or the administration of justice only if the conduct is consistent with this code.” The commentary to Canon 5D further cautions that when considering whether to comment publicly on ballot measures concerning the law, the legal system, or the administration of justice “a judge must consider whether the conduct violates any other provisions of this code.” The commentary to Canon 5D then cites to the definition of “the law, the legal system, or the administration of justice” in the terminology section, where the term is not explicitly defined; rather, the section lists the canons that a judge must consider when engaging in an activity that relates to the law, the legal system, or the administration of justice.

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<sup>1</sup> Canon 5

<sup>2</sup> Commentary to Canon 4B

<sup>3</sup> Canon 2A

<sup>4</sup> Canon 2A

Several CJA Ethics Opinions have addressed judicial participation in matters that relate to the law, the legal system and administration of justice: Opinion 61 (Membership on Advisory Committee to Government or Non-profit Entities), Opinion 65 (Judge as Author), Opinion 75 (The Law, The Legal System or the Administration of Justice: Community Involvement and Measures to Improve the Law), and Opinion 80 (Serving On Government Task Forces: The Ethical Considerations). These opinions do not define the term, but offer numerous examples that are helpful when analyzing whether an activity falls within the term as used in the canons.

The instant opinion addresses political activity more broadly to help judges determine which types of political activity are permissible and which are not. Whether judges are addressing matters that relate to the “law, the legal system or the administration of justice” or engaging in personal political activity, many of the same canons apply. Judges are reminded that, regarding purely political activity, Canon 5A prohibits any activity that would constitute an express public endorsement of a nonjudicial candidate or a measure.

No matter the context, judges must always be mindful of the overriding principle behind the Canons of Judicial Ethics: ensuring public confidence in the integrity and impartiality of the judicial decision-making process. As stated in the Preamble, “Intrinsic to this code are the precepts that judges, individually and collectively, must respect and honor the judicial office as public trust and strive to enhance and maintain confidence in our legal system.” These principles are embodied in the directive of Canon 1 that 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 is preserved;” the directive of Canon 2A that a judge shall “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary;” and the directive of Canon 4A that a judge “shall conduct all the judge’s extrajudicial activities so that they do not...cast reasonable doubt on the judges capacity to act impartially.” When analyzing a judge’s right to engage in the political process, these standards are the guide.

Regarding personal political activity unrelated to measures to improve the law, the legal system, or the administration of justice, judges must consider whether engaging in the activity would amount to a public endorsement of a nonjudicial candidate or to a measure unrelated to the law, the legal, system, or the administration of justice. This issue often arises in the context of political fundraising dinners or rallies. The commentary to Canon 5A expressly states that the provisions of Canon 5A prohibiting political activity, including publicly endorsing or opposing a candidate for nonjudicial office, do not prohibit attendance at a political gathering. However, “any such attendance should be restricted so that it would not constitute an express public endorsement of a nonjudicial candidate or measure not affecting the law, the legal system, or the administration of justice....” Mere attendance at a political gathering by itself

does not constitute an express public endorsement, but actions like being formally recognized as an attendee cross the line into impermissible political activity.

A separate concern is that a judge must avoid conduct that would lead to “frequent disqualification” as directed by Canon 4A. A judge has a duty to hear all matters in which they are not disqualified. As stated in Canon 3A, “All of the judicial duties prescribed by law shall take precedence over all other activities of every judge.” One should not read this to mean that a judge may never engage in conduct that could possibly lead to disqualification. To say a judge must avoid any conduct that could lead to disqualification would mean, for example, that a judge could never own stock in a company doing business within the judge’s jurisdiction valued at more than fifteen hundred dollars, which is clearly not the case. In weighing this factor, a judge must consider the likelihood of frequent disqualification.

There is a tension in the canons between the rights of judges to participate in the political process as citizens and the suggestion that judges seek opportunities to improve the law, the legal system, or the administration of justice, and the need to ensure public confidence in the integrity of the judicial process. The next section of this opinion provides a variety of hypothetical scenarios in an effort to assist judges in distinguishing between proper and improper activities.

#### **IV. Hypotheticals**

Judges are reminded to review Formal Opinions 41 (Fundraising) and 42 (Fundraising Among Judges). For an individual question regarding the ethical implications of a natural disaster, judges should call the CJA Ethics Hotline at (866) 432-1252 for a prompt response tailored to the particular situation.

*1. May a judicial officer volunteer at a non-partisan voter registration event for minority voters?*

Yes. While judges are not permitted to engage in voter registration drives at partisan political events, judges may participate in voter registration events that are not affiliated with a political party or candidate. Such participation would not violate Canon 5A since it cannot be construed as an express public endorsement for any nonjudicial candidate or any measure not related to the law, the legal system, or the administration of justice.

*2. May a judge teach citizenship classes that address United States history and laws, where representative test questions are “How many members are there in the House of Representatives?” and “Name rights guaranteed by the First Amendment,” and where no politics will be discussed?*

Yes. This type of activity is expressly permitted by Canon 4B and does not violate any other canon.

3. *May a judicial officer attend or participate in a Law Day event celebrating judicial independence, a fearless and independent legal profession, and the rule of law as a cornerstone of a just and democratic society?*

Yes. Judges are permitted and encouraged to speak to schools, religious organizations, and community groups about the Constitution including the Bill of Rights, the separation of powers and the role of checks and balances, and the importance of the rule of law to a functional economy and healthy democracy. Judges are also permitted to attend non-partisan events honoring the same. See Canon 4B and commentary.

4. *May a judicial officer sign a letter written by the American Bar Association, alumni from their law school, a former law firm, or an affinity bar association criticizing Executive Orders that are subject to ongoing litigation?*

No. Doing so would violate the Canon 3B(9) prohibition against public comment on pending cases. Similarly, writing a letter or opinion piece criticizing or praising a law firm for its response to Executive Orders that are the subject of ongoing litigation is prohibited.

5. *May a judicial officer serve on the board of a non-profit that files amicus briefs opposing the President's policies and that has organized protests against those policies?*

No. While Canon 4C(3)(a) permits Judges to serve on the boards of non-profits devoted to improvement of the law, the legal system, or the administration of justice, that provision is expressly subject to “the other requirements of this code.” Here, participation would give rise to the appearance of bias prohibited by Canon 4A(1).

6. *May a judicial officer participate in political marches, walks, or rallies?*

The answer to this question depends on a variety of factors. On the one hand, the commentary to Canon 5A states that that provision does not prohibit attendance at political “gatherings” so long as the participation is “restricted so that it would not constitute an express public endorsement of a nonjudicial candidate or measure not related to the law, the legal system, or the administration of justice.” Attendance must also not give rise to an appearance of bias under Canons 2A and 4A.

The CJA Ethics Committee has approved attending the 2016 Women’s March that was marketed as being in support of women’s rights. The Committee has also approved attendance at anti-war rallies and at a rally in support of gay marriage. In each case, the inquiring judge had determined that the events were not likely to result in mass arrests that would come before the court. Participants were cautioned not to identify themselves as judicial officers and to act merely as

passive participants. Making speeches and holding signs were not permissible.<sup>5</sup>

It would be improper to attend a march or rally where it is likely that participants would engage in lawless behavior leading to arrests that would appear in the judge's court (e.g. rallies organized by groups openly calling for civil disobedience.) Likewise, it would be impermissible for a judge to attend a rally addressing issues likely to come before the court on which the judge sits.

CJEO Formal Opinion 2020-014 reminds judges to examine the official title of any demonstration or rally, its stated mission, its sponsors, and its organizers. Judges should also take reasonable efforts to determine the messages that will be delivered by other participants and the risks that the demonstration or rally might depart from its original mission. The CJEO opinion notes that, practically speaking, this may be difficult to decide. When in doubt, a call to the Ethics Committee hotline would be prudent.

*7. May a judicial officer participate in town halls organized by the Judicial Fairness Coalition or at similar events addressing threats to the independent judiciary, including issues like death threats to judges and their families, impeachment efforts directed at judges by parties who dislike a judge's ruling, and public ad hominem attacks on judges made by politicians and other public figures?*

Yes. A judge may provide information about current events including attacks on judges, may strongly denounce death threats and swatting<sup>6</sup>, and may condemn their effect on the independence of the judiciary. Doing so would be in defense of judicial independence and would not give rise to any appearance of impropriety or bias under Canons 1 and 2A.

*8. Aside from town halls, may a judge speak out regarding attacks on the integrity of the judicial branch and about threats to and harassment of judicial officers (e.g. pizza deliveries and swatting), and comment on the danger this conduct poses not only to the safety of judges and their families, but also to the*

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<sup>5</sup> The committee was unable to reach consensus on whether it would be proper to attend the "No Kings" marches. To some, the advertised purpose of the marches rendered it an overtly political rally against the policies of the president and the president himself. Therefore, attendance would give rise to the appearance of political bias in violation of Canon 5A. Others believed that the emphasis of the march was support for the rule of law and that so long as the judge believed the march would be peaceful, attendance would be proper.

<sup>6</sup> In this context, swatting refers to the act of making a false emergency report with the goal of triggering a significant law enforcement response to a specific address. Such false reports can lead to chaos and create the risk of injury or death.

*independence of the judiciary required under the Constitution, for example in newspaper articles and letters to the editor?*

Yes. General remarks concerning judicial independence are not only appropriate but are encouraged in this context. There is nothing in the Canons that prohibits judges from speaking out about threats to judges and the impact of threats, harassment, and the like.

*9. May a judge write a letter to the editor of a local newspaper defending a colleague who has been attacked as being “soft on crime,” and “catering to criminals,” when, as a result of the criticism, the colleague has been getting credible threats to kill them and their two children, resulting in the colleague having deputy sheriffs escorting their children to school and stationed at their house? The judge would like to discuss in the letter how these types of criminal threats can impact judicial independence and should never be tolerated. The inquiring judge also wishes to dispute that the colleague is soft on crime.*

Yes, so long as there is no comment on pending or impending cases and avoids comments that give the appearance that the judge is biased. There is nothing impermissible about a judge saying publicly that they are aware that a colleague has been under attack, and that in their opinion, that judge is intelligent, fair, and thoughtful, with a reputation on the bench for fairness.

Judicial officers are reminded that when they or a colleague are facing a recall effort or contested election, they *may* comment on pending cases pursuant to Canon 3B(9), as long as the comments would not reasonably be expected to affect the outcome or impair the fairness of the proceeding, and the comments are about the procedural, factual, or legal basis of a decision about which a judge has been criticized during the election or recall campaign. A judge who would like to speak or write in defense of a colleague is cautioned to consult that colleague first, before addressing the issues publicly.

*10. May a judge express the same concerns in #7, 8, and 9 above on social media, i.e., YouTube, Tik Tok, or Instagram?*

The Canons apply to commentary on social media just as they apply to statements made in daily life. Judicial officers are reminded that posting on social media platforms can lead to ethical challenges if a judge is not careful about controlling the content that is posted on their accounts by others. Judges are referred to Ethics Opinion 66 for a more detailed analysis.

*11. May a judicial officer appear on a panel that will discuss immigration law reform?*

A judge may appear on a panel that discusses current law, proposed reforms, changes to immigration law over time, and challenges to the immigration system. A judge may also appear on a panel that, in a neutral fashion, addresses the status of laws passed by Congress and Executive Orders issued by the

President, and court cases that relate to immigration. *See* Canon 4B and Commentary.

*12. May a judicial officer appear on a panel that will discuss immigration law reform, where it is anticipated that other panelists will criticize a prominent politician's rhetoric on immigration?*

No. A judge may not appear as a speaker on a panel where other panelists will criticize particular politicians. To do so deviates from advocacy for improvement in the law, the legal system, and the administration of justice, and constitutes prohibited political activity. *See* Canon 5.

*13. May a judicial officer write an opinion piece criticizing the President's character and values, or criticizing the Governor's policies and calling them a name?*

No. Judges may advocate for or against specific laws as long as they do not commit themselves to issues or cases likely to come before them, and as long as they do not cross the line into appearing biased. In addition, judges may not publicly criticize specific politicians in personal terms since that would express public opposition to a nonjudicial candidate. *See* Canon 5A and commentary.

## **V. Conclusion**

Judges are not permitted to make statements or engage in behavior that conveys the appearance of political bias or impropriety. Outside this limitation, however, judges have broad latitude.

As outlined in the hypotheticals above, the canons do not prohibit judges from publicly criticizing threats to judges and the destructive impact of such threats on the independence of the judiciary, nor do they bar a judge from publicly opining that a colleague is fair so long as there is no comment on pending or impending cases and so long as the judge does not, as a result of their comments, appear to be biased.

Importantly, judges are explicitly allowed and even encouraged to discuss the law, the legal system, and the administration of justice. As such, judges are permitted to provide civics education and may accept speaking engagements at which a judge may stress the vital importance of the Constitution, including the Bill of Rights, and may vigorously promote the rule of law and the separation of powers.

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