

MEMORANDUM

TO: California Judicial Officers
FROM: Nicole Virga Bautista, Executive Director
DATE: May 2022

Enclosed please find the 2020/21 *Judicial Ethics Update*, highlighting matters of interest from the informal responses to judges' questions on the Code of Judicial Ethics provided by the Judicial Ethics Committee from October 2020 to September 2021.

Judges may direct questions on the Code of Judicial Ethics to the current 2021/22 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 2020/21.

*Special thanks to Ethics Committee member Vanessa A. Zecher, Santa Clara Superior Court, for preparing this Update.

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California Judges Association

JUDICIAL ETHICS UPDATE

January 2021

I. CONDUCT INSIDE THE COURTROOM

A. Generally

1. Judge may sign a group get well card for an attorney who regularly appears on Judge's calendars with a neutral message of good thoughts and wishes for a speedy recovery. (Canon 2A, B(1))

B. Disclosure and Disqualification

1. Commissioner appointed three years ago no longer needs to disclose prior employment as a Deputy District Attorney absent a reason to do so in particular matter. (Canon 3E(2))

2. Judge is not disqualified in writ proceedings involving issues related to COVID-19 in the County jail where Judge lost a close family member to COVID-19, J believes J can be fair and impartial and Judge intends to disclose the loss to counsel and litigants. (3E(1), 3E(2)(a))

3. Judge, who is the victim of criminal threats with a criminal case pending, must disclose that fact in all criminal threat cases while the case is pending and for two years after the case is concluded. Judge must disclose in any case with the same attorneys involved in the criminal threats matter while the case is pending and for two years after the case is concluded. (Canon 3E(1), 3E(2))

4. Judge is disqualified in matters where attorneys who refer cases to Judge's attorney spouse appear. (Canon 2A, 3E, 4D))

5. Judge is not disqualified but must disclose in matters where Judge's former opponent in a judicial race appears on a matter before Judge. (Canon 3E(1), 3E(2)(a))

6. Judge, who recuses on the record, is not required to state the specific reason for the recusal on the record unless Judge seeks a waiver of the disqualification, but Judge is required to disclose the general reason to the Presiding Judge upon request. (Canon 3E(2))

7. Judge who owns \$60,000.00 worth of stock in a company which is the defendant in a class action assigned to Judge is disqualified. (Canon 3E)

C. Reporting Responsibilities

1. Judge, who has reliable information that attorney is suspended from the practice of law and where attorney appears on a matter before Judge while the suspension is active, has a duty to report that fact to the State Bar. (Canon 3D(2))
2. Judge, who neglected to take the oath of office to start Judge's new term and who immediately took the oath of office once it was brought to Judge's attention is not required to report the oversight to the CJP as Judge has taken appropriate corrective action by immediately taking the oath of office upon being notified of the oversight. (Canon 3D(1))

D. Ex Parte Communications

1. Commissioner who is advised by bailiff that litigant in a matter pending before Commissioner took papers from opposing litigant without permission after bailiff reviewed video footage from the courtroom, is required to disclose to both parties what the bailiff told Commissioner. (Canon 3B(7))

II. CONDUCT OUTSIDE THE COURTROOM

A. Generally

1. Judge may serve as the social security representative payee for a relative with whom Judge maintains a close familial relationship. (Canon 4E(1))
2. Judge's name may not be used in connect with Judge's prior law firm, including on letterhead or on the door, for any period of time following Judge's swearing in as a judge. (Canon 2B(2))
3. Judge, who has over 1300 Facebook friends including attorneys, must keep trace of Judge's Facebook friends and disclose when any appear in a case before Judge and Judge must take steps to insure that Judge is familiar with Facebook privacy settings and how to use and modify them. (Canon 2A, 2B(1), 2B(2), 3B(7), 3B(9), 3E(1), 3E(2), 4A, 4A commentary))
4. Judge may serve as the executive of uncle's estate as Judge had a close familial relationship with Judge's uncle. (Canon 4D(4), 4E(1))
5. Judge is not required to wear a judicial robe at a weekend wedding. (Canon 2A)
6. Judge, who was recently appointed, may accept a nomination as "California Attorney of the Year" for J's work as an attorney. (Canon 1, 2A, 4A)

B. Public Commentary, Publications, Books, Media

1. Judge, who would use Judge's name but not Judge's title, may not write a review on Amazon for sibling's book where the purpose of the review is to promote the book to organizations which are considering the book for an award as the review is not being written as a critical or scholarly exercise but rather to promote the book. (Canon 2B(2))
2. Judge, who has written a book on mindfulness and wellbeing in the legal profession, may use Judge's title when publishing the book and appearing at speaking events and may receive monetary compensation for speaking at engagements related to the book. (Canon 2A, 2B(2), 4B, 4D(2), 4H(3))
3. Judge may not be interviewed in Judge's chambers for a documentary about Judge's father. (Canon 2B(2))

C. Letters of Recommendation

1. Judge may write a letter of support for a peace officer's application to become police chief based upon J's personal knowledge of the applicant. The letter is limited to Judge's describing attributes that make the applicant a good candidate for the position without urging that the applicant be appointed. (Canon 2B(2)(e))
2. Judge may not write a letter on behalf of Judge's close friend who is facing criminal charges to either the sentencing judge or to the medical board even if Judge does not use Judge's title. (Canon 2B(2), 2B(3)(a))

D. Judge as Witness

1. Judge who handled a murder case as a prosecutor may speak with the current prosecutor regarding the facts of the case in conjunction with a pending transfer motion. (Canon 2A, 2B, 3B(9))

E. Gifts, Discounts, Honoraria

1. Judge may give holiday gifts to Judge's staff provided that the gifts are neither elaborate nor expensive. (Canon 2A, 2B(1))
2. Judge who was awarded "Judge of the Year" from a local bar association does not need to pay for the cost of tickets for close friends and family provided by the bar association for the dinner at which Judge received the award. (Canon 4D(6)(d))

III. POLITICAL ACTIVITY

1. Judge may contribute up to \$500.00 per calendar year to a candidate running for District Attorney but Judge may not informally introduce the candidate to other individuals who may be of assistance to the candidate. (Canon 2B(2), 4A, 5A(3))

IV. CIVIC AND CHARITABLE ACTIVITIES

A. Generally

1. Judge who is assigned to Juvenile Justice and Dependency matters may make a monetary contribution to CASA and a service organization that supports delinquent youths but Judge must disclose all non-minimal contributions (Canon 2A, 3E, 2(a), 4(a)(1), 4A(4), 4B))

B. Government Positions

1. Judge may not serve on a County Hate Crime Task Force which will develop recommendations about how to address hate crimes and speech in the community, the use of existing state and federal laws to protect against hate crimes, how to examine the pathology of hate crimes and implementation of school based programs to promote change in the community as the Task Force will deal with policy issues which may be outside of the scope of the law, legal system and administration of justice.

C. Membership

1. Judge may join the Board of Trustees of Judge's alma mater, a private non-profit college provided that the position would not include any fundraising on Judge's part or lead to frequent disqualification by Judge. (Canon 1, 2A, 2C, 4A(1), 4A(2), 4C(3)(b))

2. Judge may serve as a board member for a 501c3 charity which has been organized to encourage and provide speech and debate training in underserved communities and secondary schools where several board members are lawyers but where neither the attorneys nor their law firms would appear in matters before Judge. (Canon 4C(3))

3. Commissioner who sits in a traffic court assignment, may not serve as a committee member of a Traffic Safety Committee where the purpose of the committee is to manage traffic safety issues (i.e., where to install speed bumps and other traffic flow issues) even when the committee is in a different city. (Canon 4A, 4C)

D. Fundraising

1. Judge who is fundraising among sitting judges and retired judges (not commissioners) to endow a law school scholarship for a deceased judge may ask other judges to contribute to the scholarship but Judge may not solicit funds from retired judges who participate in the Assigned Judges Program, practice law, or who provide ADR services. (Canon 4C(3)(d)(i))
2. Judge who serves as a trustee for the public law library in Judge's county may write a letter to the Chairs of the state legislative committees in support of increased funding for public law libraries around the state as public law libraries assist litigants in addressing their legal needs and are directly involved in the law, legal system and the administration of justice. (Canon 2A, 2B(2), 4C(3)(a), 4C(3)(d))
3. Commissioner may solicit donations from other subordinate judicial officers for a law school scholarship. (Canon 4C(3)(d)(i))
4. Judge, who was selected for a fellowship in law school, may not consent to a publication of Judge's profile in a law school publication which will highlight successful former Fellows as the law school publication will also seek to raise funds to support the fellowship program. (Canon 2B(2), 4C(3)(d))

V. BUSINESS ACTIVITIES

1. Judge may not put automated message on Judge's former law firm email which states that Judge is leaving the law firm for a new position as a judge. (Canon 2B(2))

VI. EDUCATIONAL ACTIVITIES

1. Judge may attend an education program focusing on implicit bias in human services. (Canon 2A, 4A)
2. Judge may partner with a local junior college to create a program from minority and disadvantage communities with the hope of inspiring students who would not ordinarily consider pursuing a legal career to do so by observing program presenters from similar backgrounds. (Canon 2A, 4A)

VII. COMMUNITY OUTREACH

1. Judge may make use of court resources and facilities for judicial affinity associations (i.e., Asian Judges Association, Latino Judges Association). (Canon 2A)

VIII. ADVICE TO PRESIDING AND ASSISTANT PRESIDING JUDGES

1. Presiding judge must take reasonable measures, which could include speaking with each judge, to ensure the proper performance of judicial responsibilities where two judges are in extreme conflict over the schedule for one judge moving into the other judge's chambers. (Canon 3A, 3B(4), 3C(4))
2. Assistant Presiding Judge and other judges may encourage local lawyers, who are thought to be good candidates for a judicial appointment, to apply for appointments. (Canon 2B2(d))