

Judicial Ethics Update

APRIL 2000

This is the eighteenth Judicial Ethics Update from the Ethics Committee of the California Judges Association. The Update highlights areas of current interest from the more than 250 informal responses, during the period September 1998 to September 1999, to judges' questions on the Code of Judicial Ethics.

The Ethics Committee, as a matter of policy, does not answer questions which it determines to be legal in nature, nor does it respond to moot questions, or to issues pending before the Commission on Judicial Performance. All opinions of the committee are advisory only. Judges may direct questions on the Code of Judicial Ethics by writing or calling the CJA office or any Ethics Committee member.

I. CONDUCT INSIDE THE COURTROOM

Generally

A. A judge may hand out certificates of appreciation and coffee mugs bearing the logo of the court to attorneys who have volunteered as judges pro tem. Canon 2B(2).

B. A judge should wear a judicial robe to preside over a conditional examination pursuant to Penal Code §1335 *et seq.* whether held in or out of the courtroom. Canon 2E.

C. A judge who is engaged to marry a court reporter should request that the court reporter be reassigned to work in another courtroom. Canon 3C(4).

D. A judge should not order an attorney to appear in court on a sacred religious day. Canons 2; 3D(1).

E. When counsel incorrectly understands the maximum sentences which may apply, judge may discuss with counsel possible maximum sentence that could be imposed for the crime charged. Canon 2.

F. The court should not permit counsel to hand out certificates to jurors thanking them for their patience. Canon 3B(10).

G. A judge's clerk about to begin maternity leave may accept a baby gift from jurors.

H. A judge may not instruct counsel on one side as to how to introduce evidence in order to streamline a trial. Canons 3B(7)

Disclosure and Disqualification

A. A judge is not disqualified from hearing the case but should disclose in the following situations:

1. Counsel was a former law student or legal extern of the judge. Canon 3E.

B. A judge is disqualified in the following situations:

1. Any cases involving a criminal defendant a judge prosecuted within the last two years; if more than two years, a judge should consider CCP 170.1(a)(6)(c) and the reasonable person test therein. Canon 3E.

2. A case involving a company in which a judge's spouse has stock in excess of \$2,000 in a profit-sharing account. Canon 3E.

3. All cases involving the lawyer (firm) which judge uses for personal litigation unless there is full disclosure by the judge, and waiver on the record by counsel, and the judge believes there is no bias. Canon 3E.

C. A judge need not disclose information in the following situations:

1. The judge's spouse ran the election campaign of the local District Attorney five years ago. Canon 3E.
2. A party or attorney has contributed to the drug court through a non-profit corporation. Canon 3E.
3. The company providing insurance for all judges in matters pending before the Commission on Judicial Performance is a party. Canon 3E.

D. A judge may review a search warrant for a major corporate banking institution which has issued a credit card to the judge.
Canon 3E.

E. A judge need not require spouse's law firm to provide a list of clients but a judge should disclose any known clients of the firm. Canon 3E.

F. A judge, former County DA, may not be assigned any criminal cases filed or pending while the judge was DA even though judge had no personal knowledge of the cases. Canon 3E

G. Judge should always disclose close personal relationship with attorneys and, if any appearance of impropriety, should recuse self. Canon 3E.

H. The judge, engaged to marry deputy district attorney, must recuse in cases involving fiancée and in other DA cases judge must disclose the relationship. Canon 3E.

Reporting Responsibilities

A. A judge who lost temper and told attorney to "shut up" and later apologized has no duty to self-report to the Commission on Judicial Performance. Canons 3B(4); 3D.

B. If a judge has personal knowledge that an attorney has violated the rules of professional responsibility, the judge is obligated to take appropriate corrective action which may include reporting the matter to the state bar and the district attorney. Canon 3D(2).

C. If judge receives reliable information in trial that a crime has been committed, the judge has the same duty as any other citizen to report crimes and should report significant violations of the law not otherwise known to law enforcement. Canon 2.

Ex Parte Communications

A. A judge should disclose incidental ex parte contacts with county counsel on status of appeal when case is remanded for determination on attorney's fees request. Canons 3B(7); 3E.

B. If judge is asked by trial attorney to critique attorney's performance after trial, judge may do so only after the matter is finally resolved so as to avoid any appearance of impropriety. Canons 3B(7); 2A.

C. If any person attempts an ex parte communication, the judge should advise that it is improper and disclose the attempted ex parte communication to all counsel. Canon 2B(2); 3B(7).

II. CONDUCT OUTSIDE THE COURTROOM

Generally:

A. A presiding judge may hire an attorney using court funds to file a temporary restraining order for judicial officer

harassed by parent in child custody lawsuit. Canon 3C(4).

B. A judge may call brother's employer to discuss possible civil and/or criminal charges against the brother so long as there is no disclosure of position as judge and the judge is neither practicing law nor mediation. Canons 2B; 4F; 4G.

C. A judge may serve as an executor of the estate of a person with whom he or she has a close familial or romantic relationship. Canon 4E.

D. A judge may attend a dinner honoring a prominent prosecutor so long as he or she would similarly attend an event honoring a prominent defense attorney. Canons 2A; 4A.

E. A judge who observed a heated confrontation between two lawyers outside the courtroom may talk about the observation with the lawyer for the employer of one attorney who was later fired.
Canon 2B.

F. A judge who is fully reimbursed by state or court may charge court-related travel and lodging expenses on a personal credit card that produces frequent flyer mileage or cash rebates and no reimbursement for the value of the personal benefits is required. Canons 1; 2A; 4D(1)(a).

G. A judicial officer should not participate in reclassification or salary negotiation on behalf of court clerks and should leave salary matters to the presiding judge and court executive. Canons 2B(2); 3C(1).

H. A judge should not host a reception for the business community at the local bar association on behalf of the Attorney General. Canons 2A; 2B; 4A, 5A.

I. A judge may not receive compensation for performing a wedding during the evening hours of a weekday. Penal Code §94.5.

J. A judge applying to the Court of Appeal may use official court stationery to ask judges, community members and political persons for letters of recommendations. Canons 2B(2); 2B(4).

K. A judge may provide legislative and political history about enacted or failed legislation on civic issues from a historical knowledge and perspective provided it is not done at a public hearing, before a legislative or executive body, with a public official, nor is politically improper. Canons 4B; 4C(1); 5.

L. A judge who is a member of a Bar Association Committee which provides services to the court, may use service of judicial secretary if said work is related to a judicial function and/or the administration of justice. Canon 2B(2).

M. A judge may not participate in talk show if pending cases are discussed. Canon 2B(1).

N. A judge may use county Internet access and e-mail address to conduct judge's personal business so long as county pays flat monthly fee, and does not entail expenditure of court funds, said use is de minimis and is done on judge's personal time and does not interfere with judicial business. Canon 2B(2).

O. A judge may be guest of honor for public or charitable service provided the judge does not demean the judicial office and does not become involved in any political activity or fund-raising for the event. Canon 4A(2).

P. A judge may receive compensation for weddings performed on weekends, but before public buildings are used for such ceremonies, judge should make certain there is no violation of county policy.
Canon 4E.

Q. A judge may use government or personal stationery to write to other governmental agencies regarding employment after retirement so long as this use of government resources is de minimis.

R. A commissioner may use judicial stationery to write letters to judges and others asking them to write letters to Governor

in

commissioner's quest for judicial appointment. Commissioner may use judicial stationery to write letters asking for endorsements for open judicial seat.

S. If judge is asked to perform marriage ceremony and learns that the parties have been previously married (to each other) and therefore cannot obtain a California license, the judge must advise those in attendance at the ceremony that the ceremony is a reaffirmation, not the actual marriage ceremony. Canon 2A.

Public Commentary, Publications, Books, Media

A. A judge may consent to use of training materials prepared by judge while an attorney so long as he or she is not identified as the source. Canons 2A; 4A(1); 4B.

B. A retired judge who sits on assignment may write a letter to the editor of a local newspaper criticizing security plans for the courthouse provided it does not demean the judicial office or have political overtones. Canons 4B; 4A(2); 5.

C. A judge may write a book review for publication so long as the judge monitors the use of the review to avoid lending the prestige of judicial office to advance a private interests of others. A judge may not write book jacket blurb for a novel which would be used by the publisher to assist in selling the novel. Canons 2B(2); 4B(2).

D. A judge may not be talk show host (on non-legal or non-judicial issues) in that the activity would lend the prestige of judicial office to private enterprise and might demean the judicial position since the judge would have no control over the subject matter. Canons 2B(1), (4); 4A(2).

E. Judge as coeditor of a treatise will receive royalty on sales of the treatise. Judge's current position can be identified on the dust jacket and publicity about the treatise. Canon 4A

Letters of Recommendations

A. A judge may provide a letter of recommendation pertaining to factual matters based on the judge's personal knowledge of the individual in the following situations:

1. On behalf of an attorney or law firm to an insurance carrier evaluating employment by the carrier to represent judges in matters before the Commission on Judicial Performance. Canon 2B(2).
2. At the request of the California Association of Realtors regarding the qualifications of an attorney applying for a position on a private attorney referral panel used by the Association. Canon 2B(2).
3. On behalf of an attorney who volunteers as judge pro tem on small claims and traffic matters for similar work in an adjoining county. Canon 2B(2).
4. On behalf of a local deputy public defender who is applying to the Board of Supervisors for position as Chief Public Defender. Canon 2B(4).
5. On behalf of a friend with a felony record applying for possible employment if based on personal knowledge and so long as not a general character reference and may use stationery bearing judge's title. Canon 2B(4).

B. A judge may not write a general letter of recommendation in the following situations:

1. To a probation officer in support of the son of a very good friend in sentencing matter. Canon 2B.
2. On behalf of a person a judge has sentenced stating no objection to granting the person a license as a bail bondsman. Canon 2B.

3. On behalf of a friend who is a defendant in a criminal proceeding. Canon 2B(2).
4. On behalf of physician being investigated for medical malpractice. Canon 2B(2).
5. On behalf of a friend charged with a crime as to whether or not, in judge's opinion, the friend is not a flight risk. Canon 2B.

Judge as Witness

- A. A judge may testify or respond by letter as a character reference in response to a subpoena sent by defense attorney for a sentencing hearing in another county. Canon 2B(2).
- B. A judge may sign an affidavit describing pretrial proceedings in a matter in which the judge represented a defendant twenty-five years ago and for which no transcript of the proceedings can be found. Canon 2B(2).
- C. A judge may meet with county attorneys who are defending an employment discrimination lawsuit by employees of whom the judge was critical while serving as a prosecutor. Canon 2B(4).
- D. A judge may provide declaration to counsel representing another judge before CJP regarding how the judge knows the judge under investigation and the judge's general opinion of that judge. Canon 2B(2).
- E. If judge is asked for information regarding matter that judge handled while in practice, judge may review file and may write letter including relevant documents giving factual information but should not opine about matters and should recommend that former client obtain an attorney should further involvement be required. Canons 2A; 2B.
- F. A judge may not sign a declaration attesting to the ability and competence of an attorney who is involved in litigation with attorney's insurance company, but may testify or submit written testimony if subpoenaed. Canon 2B(2).
- G. A judge, who had been counsel of record, may provide factual information regarding unreported in-camera conference that occurred during a trial and may sign the stipulation as to said facts so long as identified as "trial counsel of record" and not as a judge. Canon 4G.

Gifts, Discounts, Honoraria

- A. A judge may accept a gift in the following situations:
 1. A judge may accept travel expenses from a foreign government for an educational mission of community leaders who will be meeting with foreign government officials interested in police and justice systems. Canon 4D(6)(b); CCP 170.9.
 2. A judge may receive compensation for judging an all day moot court competition on a weekday when a vacation day is taken.
Canon 4H; CCP 170.9(g),(h),(i).
 3. A judge may accept travel expenses from a foreign government to attend workshops and lead discussions on leadership with participants from all walks of life. Canon 4D(6)(b); CCP 170.9.
 4. A judge may accept tickets, flight and hotel accommodations from owner of sports team where the owner's adult child is a close friend and the judge would disqualify self in handling cases involving the owner or owner's family. Canon 4D(6)(f); CCP 170.9(b)(3).
 5. A retiring judge who will be sitting on assignment may accept a retirement gift at a public testimonial and should report the gift on the FPPC economic interest form, even if no single donation to the gift exceeds \$50. Canon 4D(6)(a); CCP 170.9(a).
 6. A judge need not discourage family members from accepting reimbursement for expenses to attend bar association seminar in distant state. Canon 4D(6).

7. A judge may accept a gift in excess of \$250 from a close personal friend who does not appear before the judge because of that relationship and must report the gift on the judge's annual Statement of Economic Interest filing. Canons 4D(5), 4D(6)(f); CCP 170.9(l) and (b) (3).

B. A judge may not accept a gift in the following situations:

1. A judge may not accept from the Board of Control a poster which is an advertisement for the Victims of Crime program. Canons 2A; 4A(1).

2. A judge may not accept coffee mugs from Mothers Against Drunk Driving. Canons 2A; 4A(1).

3. A judge may not accept free legal services from attorney representing judge on a challenge to county residency requirements for Superior Court judges. Canon 4D; CCP 170.9.

4. Neither judge nor judge's staff may accept any gifts, including candy from attorneys or others who have business before the court. Canons 2; 3C(2); 4D(6).

C. New judge's former law firm may sponsor reception to follow judge's induction using old firm name in invitations since sent out before judge's swearing in. Judge is still a practicing attorney at the time of the invitations. If invitations sent out after induction, then invitations may not include old firm name. Canon 4D (b).

III. POLITICAL ACTIVITY

A. A judge may write a letter to the Legislature regarding a bill proposing an option to replace court reporters with electronic recording. Canon 4C(1).

B. A judge may be a member and pay dues in the club of a political party but may not hold office or conduct open political activity or fundraising. Canon 5A.

C. A judicial officer may attend a campaign kickoff for a person who will be announcing an intention to run for the California Assembly but may not be introduced. Canon 5A(2).

D. A retired judge who is available for assignment may not publicly endorse a candidate for non-judicial office. Canons 6B; 5A(2).

E. A judge may moderate a debate among candidates running for district attorney to be held in his or her house of worship. Canon 5A(2).

F. A commissioner running for judge may have a campaign brochure photograph taken in court while wearing robe so long as normal court proceedings are not disrupted and any costs incurred by the county are reimbursed. Canon 5.

G. A judge may not make political contributions in excess of \$500 per candidate or \$1,000 aggregate in a calendar year, but this does not prevent judge's spouse from making contributions even though community property and attending a political dinner/fund-raiser, the admission price to the dinner in excess of the actual cost of the meal shall be considered a political contribution. Canons 5; 5A(3).

H. A judge may allocate the \$1,000 non-judicial limitation to as many candidates as desire so long as no candidate or organization receives more than \$500. Canon 5A(3).

I. Judge, former legislator, may not be further involved in legislation or consult with legislators or others except on legislation and other matters concerning the law, the legal system, or the administration of justice or in matters involving the judge's private economic or personal interest. Judge must avoid political activity that may create the appearance of

political bias. Judge must not engage in any political activity other than in relation to measures to improve the law, the legal system and the administration of justice. Canons 4C(1); 5; 5D.

IV. CIVIC AND CHARITABLE ACTIVITIES

Government Positions

A. A retired judge sitting on assignment may apply for a seat on a state board such as Youthful Offender Parole Board, Adult Parole Board or Board of Prison Terms. Canon 6D.

Membership

A. A judge may serve on the board of, or be a member of, the following organizations, provided the judge does not engage in fundraising or allow his or her name to be used in fundraising activities and the organization does not appear frequently in judge's court, and provided that such service does not interfere with judicial duties:

1. A local Committee of Honor for invitations to traveling art exhibition provided the corporate sponsor's involvement is attenuated. Canon 4C(3)(d)(iv).
2. A homeowners association if related to protection of a judge's personal economic interests. Canon 4C(3)(b).
3. The Boy Scouts. Canon 2C.
4. A director or head of a family charitable foundation. Canon 4C(3)(b).

B. A judge may not serve on the board of, or be a member of, the following organizations:

1. A board which writes amicus briefs in that it may appear that the judge is engaged in the practice of law, would also impair the competence and the impartiality of the judiciary and would cast doubt on the judge's capacity to act impartially and, if a member, should resign. Canons 2A; 4A; and 4G.
2. A committee coordinating police summer games since involvement could reflect adversely on the appearance of impartiality. Canon 4A(1).

C. A judge who is a volunteer director of a local Boy Scouts Council should not participate in an investigation or interview of witnesses to an alleged sexual assault. Canons 4C(3); 4G.

D. A judge should not endorse an organization which advocates liberal sentencing for drug offenders. Canons 4A(1); 2A.

E. A judge may serve as a lay advocate in the Catholic Church to advise individuals seeking marriage annulment, including interviewing and counseling and preparation of briefs to church tribunal. Canons 2B; 4G.

F. A judge who is a president of the alternative dispute resolution subcommittee of the local bar association may present an award for excellence in preventative law to the City Attorney whose deputies prosecute cases in judge's court when judge had no direct role in selecting award recipient. Canons 2B; 2A; 4C(3)(a); 4C(3)(d).

Fundraising

A. A commissioner may solicit funds from judicial officers for a reward for information leading to the arrest and conviction of suspect in murder of judicial officer. Canons 4C(3)(d)(i); 2A.

B. A presiding judge should contact the bar association to change an advertisement for a legal aid fundraiser which indicated stories of courtroom experience and other personal background information for each member of the judiciary would be shared with attendees and should send a letter memorializing the fact that the bench did not approve the

advertisement before it was sent. Canons 2B(2); 4B.

C. A judge may be a guest of honor at a fundraising event for a public service organization to which the judge regularly sentences misdemeanants to perform community service provided judge does not directly engage in fundraising. Canon 4D(6)(a).

D. A judge who chairs a national association of judges which will hold a major judges' conference which requires funding may have the association set up a committee of friends, consisting mostly of lawyers, to raise money for the event provided judge does not personally solicit funds. Canons 4C(2)(a); 4C(3)(d)(i).

E. A court may receive contributions for its drug court program through a non-profit corporation dedicated to preventing illegal drug use. Canon 4C(3)(d).

F. A retired judge who is not on assignment may solicit funds and goods for war refugees at church service. Canons 6A; 4C(3)(d)(i).

G. A judge who was quoted in a county bar publication encouraging attendance to benefit the County Law Library at a fundraising dinner should write a letter to the county bar publication withdrawing the quotation and emphasizing that judge does not wish to engage in fundraising. Canons 4C(3)(d)(i),(iv).

H. A judge may not be listed as the honorary co-chair of a fundraising dinner for the Boy Scouts where judge's former law partner is being given special award. Canon 4C(3)(d)(iv).

I. A judge who is a past president of an organization may consent to being included in a tribute book to honor all former presidents of the organization with tributes or greetings from individuals or organizations who will pay to have their tribute or greeting in the book. Canon 4C(3)(d)(iv).

J. A retired judge who has been appointed as a special master may solicit funds for a law school from other judges but may not do general fundraising to other classmates. Canons 6D; 4C(3)(d)(i).

K. A retired judge who does not have an assignment or accept appointments may solicit funds for charitable organizations. Canon 6A.

V. BUSINESS ACTIVITIES

A. A judge should not rent property to a court employee who may be testifying on custody and visitation recommendations before the judge. Canons 4D(1)(b); 4D(4); 4A; 2A.

B. A judge may permit his or her courtroom to be used to show how a complex computer program for court cases works by designer of program so long as judge is not actively promoting the product. Canons 2B(2); 4B.

C. A judge may not accept paid employment as proofreader of transcripts in another court for court reporter. Canon 4D(3).

D. A judge may not become Amway agent (bring in new recruits) in that this would bring the prestige of the judicial office to the business activity. Canons 2B(2); 4D(1) (1).

E. A judge may not accept position on television program since this would lend prestige of judicial office to a commercial venture. Canons 4D(1)(a); 2B.

F. A judge who is about to retire may not use accrued vacation time before retirement to engage in private judging activity because the judge is still an active judge until actual date of retirement. Canon 4G.

G. A judge must avoid financial dealings that would involve judge in a continuing business relationship with lawyers likely to appear before the judge. Canon 4D.

VI. EDUCATIONAL ACTIVITIES

- A. A judge may not attend a seminar that espouses one side of an action for the purpose of ensuring that one side wins or is purely to advance the purposes of the seminar sponsor. Canons 2A; 2B; 4A(1).
- B. A judge may use court staff to prepare course materials for seminar on proper courtroom conduct, presented to attorneys, judges, district attorneys and public defenders. Canon 4B.
- C. A judge may receive compensation for teaching in an educational program with US AID to human rights advocates about laws on domestic violence including issues on evidence.
Canons 4B; 4H.
- D. A judge may present a law related program to private law firms, public legal offices (e.g., DA, PD), partisan and non-partisan bar associations and inns of court so long as judge is available to all other law firms and judge does not convey the impression that the firm or law office is in a special position to influence the judge and so long as the program is not intended to coach one side in litigation. Canons 2; 4B.
- E. A judge may preside over practice sessions of mock trial competitions (e.g. Constitutional rights foundation, law school and high school moot courts) and may participate as a judge in actual competition. Canons 4A; 4B.
- F. A judge may accept reimbursement for costs of airfare, lodging and meals in attending out-of-state educational meeting of attorneys. Canons 4B; 4D(6); CCP§ 170.9.

VII. COMMUNITY OUTREACH ACTIVITIES

- A. A judge may wear a judicial robe to address a grade school class about the judicial branch of government. Canons 2; 4A.
- B. A judge may ride in a community parade provided the event is neither political nor a fundraiser. Canons 4B; 5A; 5D.
- C. A judge may develop a program to encourage local restaurants to offer discounts to jurors but may not make a direct solicitation. A judge may not contact restaurants for the purpose of soliciting discounts or lunches for jurors, nor may the jury commissioner or clerk do so at the direction of the judge in that there may be an appearance of impropriety. However, a judge may approach Chamber of Commerce or community leaders to discuss and develop programs of incentives as part of community outreach programs. Canons 2A; 2B.
- D. A judge may teach policymakers in state government about problems of the homeless and may be paid and reimbursed for expenses by university. Canon 4H.
- E. A judge may appear on a national television show to explain how domestic violence court works. Canon 4B. [#236]
- F. A judge may not join a county domestic violence council that seeks sponsors for legislation. Canons 2A; 4A; 4C(3)(a), (b).
- G. A judge need not reimburse for telephone use for FAX transmissions from chambers FAX for activities for CJA committee membership, community public service organizations and teaching for compensation at law school, so long as the usage is de minimus as to the latter two. Canon 4A(2); 4A(3); 6A.
- H. A judge may be a member of the State Bar Ethnic Minority Relations Committee. Canons 4A; 4C(3)(a); 4C(3)(c); 3B(9).

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