

December 1995

This is the fourteenth Judicial Ethics Update from the Ethics Committee of the California Judges Association. The Update highlights areas of current interest from 215 informal responses, during the period October 1994 to September 1995, to judges' questions on the Code of Judicial Conduct.

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 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 Conduct by writing or calling the CJA office or any Ethics Committee member.

## **I. Conduct Inside the Courtroom**

### Generally

A. A judge may not appear on behalf of the court to argue a writ when County Counsel has declined to appear and the Board of Supervisors has refused to appropriate funds for private counsel. (Canons 1, 2A)

B. A judge may not collaborate in respondent's brief even though judge lacks confidence in prosecutor's ability to protect judge's ruling on appeal. (Canons 2A, 3B(5)(9))

C. A newly sworn judge may appear in court on a motion to withdraw as counsel of record where the judge has been unable to obtain a substitution or consent to withdraw from a former client. The judge acts here in his own stead, not as a lawyer, in a proceeding to terminate the practice of law. (Canon 4G)

## Disclosure and Disqualification

D. A judge may participate in a sports group with an attorney while the attorney appears before the judge on a pending case, provided the relationship is disclosed to all participants and the judge neither disqualified self nor was disqualified by anyone. (Canons 2A, 3E)

E. A judge acquainted with husband and wife in pending dissolution must disclose that relationship but need not disqualify self. (Canon 3E)

F. A judge having referred his adult son to an attorney and agreed to pay son's attorney fees, need not disqualify self but must disclose when that attorney or firm member appears before the judge in other cases. (Canon 3E)

G. A judge hearing an unlawful detainer involving a bank realizes during the proceeding that the judge's home mortgage is with the bank. The judge need neither disqualify nor disclose this arm's-length relationship. (Canon 3E commentary)

H. It would be improper for the presiding criminal judge, arrested for a crime, to hear criminal cases or continue with the criminal calendar pending resolution of the judge's case. (Canons 1, 2A, 3E)

I. A judge who receives a letter from a prosecutor which is confidential by law and may be beneficial to a defendant at sentencing must disclose the existence of the letter but need not disqualify, provided the judge is not biased or prejudiced by the letter. (Canon 3E)

J. A judge who retains an interest in a former law firm's pension plan need not disclose the plan to litigants when the plan assets fluctuate daily and the judge has neither knowledge of those assets nor management authority.

K. On receipt of a letter from out-of-state judge seeking leniency for a defendant, the California judge must disclose this unauthorized

ex parte communication, need not disqualify, and should inform sender's presiding judge. (Canons 3B(7), 3D, 3E)

L. A judge who is the target of a blanket CCP 170.6 challenge by the prosecutor may not contact that prosecutor to discuss the circumstances of the challenge. (Canons 3A, 3B(7))

#### Reporting Responsibilities

M. A presiding judge who has received an employee complaint that another judge made an inappropriate sexual remark must take appropriate action which might include discussion with the parties or referral to CJP. (Canon 3D)

N. A judge assigning cases must report a judge who refuses to accept those assignments. (Canons 3C(3), 3D; Calif. Rules of Ct. 532.5)

O. A presiding judge confronted with a judge who keeps matters after being disqualified, threatens a colleague, and refuses a transfer must report that judge to CJP. (Canons 2A & B, 3B(3)(5))

#### Ex parte Communications

P. A judge who receives a letter from a criminal defendant in a pending case should immediately send a copy of that letter to all counsel regardless of the contents of the letter. (Canons 3B(7), 3E)

## **II. Conduct Outside the Courtroom**

#### Generally

A. Informal responses by the Ethics Committee are provided in confidence only to court officers subject to the Canons. Accordingly, judges requesting informal responses should call a committee member personally and not delegate the matter to staff. (Ethics Committee Rules, Rule IIIA)

B. It would be improper for a judge to perform a marriage ceremony for a couple already married unless the public knows the ceremony is not real. (Canons 2A, 2B)

C. A judge may place judge's name on a highway sign and "adopt a highway". (Canons 2B, 4A(1)(2))

D. A judge may attend a law enforcement dinner where the judge will receive an award for being accessible to law enforcement for search warrants and emergency restraining orders. (Canons 2A, 3A(1), 4D(4)(a))

E. A judge may not accept a drawing prize which is conditioned on the judge's participation in a charity sale. (Canon 2B)

F. A judge may not participate in a ribbon-cutting ceremony for a new grocery store but may attend as a member of the general public. (Canon 2B)

G. A judge may not continue to serve as guardian of an unrelated minor where the guardianship arose out of the judge's former law practice. (Canon 4E(1))

#### Public Commentary, Publications, Books, Media

H. A judge may not endorse a state grant request by a sheriff for enhanced enforcement of alcohol laws against minors. (Canons 2A, 4C(1))

I. A judge may speak at a press conference concerning the impact on the justice system of losing legal aid funding. (Canon 4B)

J. A judge may not discuss which pending cases are likely prospects for a television show with the show's producer. (Canon 3B(9)(11))

K. A judge should decline to give a speech to the clients of a stockbroker since the speech would be solely for the benefit of the broker. (Canons 2B, 4B)

L. A judge may not appear at a city council hearing to advocate issues concerning senior housing. (Canon 4C(1))

M. A judge, author of a recently published novel, may permit

the publisher to send "press kits" to legal newspapers within the judge's jurisdiction. (Canons 4B, 4D(2))

N. A judge may attend a specialty bar dinner where skits about particular lawyers and legal issues will be presented. However, the judge should take care in deciding whether to participate in the skits since satire generally directed at the practice may be appropriate while satire aimed at a specific attorney may not. The judge must neither bring the judiciary into disrepute nor draw challenges by performing in a questionable skit. (Canons 2A, 2B, 4A, 4B)

O. A judge may not participate in a televised panel commenting on a notorious pending trial. (Canon 3B(9))

P. A judge may not participate in a legal education series on television which is commercially sponsored. (Canons 2B, 4B)

#### Letters of Recommendation

Q. A judge may not write a reference letter for a friend awaiting federal court sentencing in another state. Similarly, a judge may not write a reference letter for a former client appealing a conviction, the son of friends with charges pending in Juvenile Court, a former bailiff seeking reinstatement at a disciplinary hearing, or an attorney being investigated by the State Bar. (Canon 2B commentary)

R. A judge must not endorse a legal magazine when the endorsement would be used to solicit new subscribers. (Canons 2A, 2B, 4B, 4D(2))

S. A judge may respond on official stationery to a formal request from an agency for a recommendation on behalf of adopting parents.

T. A judge may not voluntarily write a letter of support for a colleague to the CJP. However, a judge may respond to an official inquiry or summons. (Canons 2, 3, 4)

U. A judge may write a letter of recommendation to the JNE Commission on behalf of an attorney found not qualified for the bench. (Canon 2B)

V. A judge may permit another to list the judge as a reference on an application for director of a government agency. (Canon 2B)

#### Judge as Witness

W. A judge may testify when subpoenaed as a percipient witness in a civil action in a trial about allegedly forged records used in a change of plea taken by the judge, in an administrative hearing concerning a former employee, and as a character witness in a State Bar disciplinary hearing. (Canon 2B)

X. A judge may not testify as a paid consultant on legal issues. (Canons 2B, 4G)

#### Gifts, Discounts and Honoraria

Y. A judge may accept wedding gifts which are not disproportionate in value with gifts exchanged on other occasions. (Canon 4D(4)(d))

Z. A judge may accept \$150 "honorarium" for teaching a legal seminar for an MCLE provider because CCP 170.9(3)(I) excludes teaching income from the definition of "honorarium". (Canon 4B)

AA. A judge may not accept a gift or trip from a lawyer when the judge and lawyer do not normally exchange gifts and it exceeds \$250. (Canons 2B, 4D(4)(c))

BB. A judge may accept discounts on airfare, cruises, ice skating time, and hotel accommodations which are available to the general public, and not offered because of judicial status. A judge may also accept gifts from the judge's immediate family. (Canon 4D(4)(b); CCP 170.9(1)(3))

CC. A new judge's former associates plan a luncheon for the judge where each attender will be assessed \$1-\$2 for a gift which may exceed \$250 total value. The new judge may accept this gift because it is actually 200 separate gifts of \$1-\$2 each. (Canon 4D(4)(a-d))

DD. A judge may accept an overnight stay on a friend's boat because it is the type of hospitality customarily exchanged with the

friend during the friendship. (Canon 4D(4)(c))

EE. A judge may accept travel expenses incurred while serving the board of a closely held corporation because such expenses are incidental to performance of the director's duties. (CCP 170.9(1))

FF. A judge must decline an invitation to a three-day facilities inspection trip hosted by the Metropolitan Water District. (Canon 4(d)(4); CCP 170.9(e))

GG. A judge may accept on behalf of the court, computer programs and other appropriate items given to the court and not to a specific judge. These may include paintings and even stain glass window restorations. The test is whether the gift is for the benefit of the court and is not a personal gift made to the judge. (Canons 2B, 4D(4); CCP 170.9)

HH. A judge may accept a new nameplate which is presented by all counsel in a case since the value is de minimus and the gift is in the nature of a testimonial plaque. (Canon 4D(4))

II. A lawyer offers to host a judge at an expensive dinner presented by a specialty bar. Only one judge from each of several counties will be invited and each will be the guest of a different lawyer. The judge should decline as this is not ordinary social hospitality and is not open to the entire bench. (Canons 2A, 4D(4), 4A(1))

JJ. A judge may attend an expensive out-of-state business meeting of the judge's spouse at the expense of the spouse's employer because the judge receives this gift from spouse and not as a result of judicial office. All other spouses of attendees are similarly invited. (Canon 4D(4)(b))

KK. While commissioners and referees are not specifically governed by CCP 170.9, they are governed by the Canons and would be well advised to adhere to the restrictions of the code.

### **III. Political Activities**

A. A judge may solicit funds for, speak on behalf of, at any

event, including a fund raiser, and endorse and seek endorsements for a candidate for judicial office. This is true even if the candidate the judge is supporting is an attorney running for the seat of a colleague or a judicial candidate in another county. (Canon 5A(1))

B. A judge or commissioner running for judicial office may have his or her photo taken in robes in court for use in the campaign. Of course such activity must not disrupt normal court proceedings and any costs involved must be reimbursed to the county. (Canon 5)

C. A judge may not join a group, which will charge annual dues, which plans to ensure the best representation in Congress and the Legislature. (Canon 5A(3))

D. A judge should not allow his house to be used for a fund raiser for a non-judicial candidate even when it is the judge's spouse who is hosting the fund raiser. (Canon 5A & 5D)

E. A judge may not campaign for a candidate for non-judicial office even in another state, even when he/she is not identified as a judge. (Canon 5A(2))

F. A judge may not be the M.C. of a political fund raising dinner for a non-judicial candidate. (Canons 2B, 4C(3)(d)(i), 5A(2))

G. A judge may contribute to the "Retire the debt" campaign of a recently elected District Attorney but should be aware of the limits of Canon 5A(3) and Canons 2A and 3B. (Canons 2A, 2B, 5A(3))

#### **IV. Civic and Charitable Activities**

##### Court Positions

A. A judge may not belong to a civilian "search and rescue" squad administered by the Sheriff. (Canon 2A)

B. A judge may serve on a commission, appointed by the City Council, to develop plans for a community center. (Canons 4C(2), 6B)

## Membership

C. A judge may not be a member of a political group whose stated purpose is the election of members of one sex to local, statewide and national office, the majority of which are non-judicial. A member must pay annual dues of \$25.00 to belong. Such dues are considered an "assessment" as used in Canon 5A(3).  
(Canons 2C, 4A, 5A(1)(2)(3))

D. A judge may join the Women Lawyers of California, which, despite its name, does not discriminate in its membership; but a judge may not belong to a plaintiff's lawyers bar association.  
(Canons 4B, 4C(3)(a))

E. A judge may sit on the board of an organization established by statute and court rule to act as an arm of the court in dependency cases. It does not charge for its services. (Canon 4C(3)(a)(b)(c))

F. A judge may be on the board of a local civic light opera association or of a private non-profit school but may not participate in fund raising. (Canon 4C(3)(6))

G. A judge may belong to a Domestic Violence Council, a non-profit corporation with representatives from the Courts, District Attorney, Public Defender, Police etc. The organization promotes public awareness and education. Likewise, a judge may belong to the governing board of a non-profit organization that educates about and treats substance abuse problems.

H. A judge may not be on the board of an organization that provides sentencing alternatives to the Court and to which the Court regularly refers defendants. (Canon 4C(3)(c))

I. A judge may not belong to an organization of community leaders focusing on drug and alcohol problems because some of its functions include introducing and endorsing legislation, making currently legal acts illegal, and/or increasing penalties for existing criminal acts. (Canons 2A, 4A(1), 4B)

J. A judge may judge a contest between neighborhoods at an organized "National Night Out". The event is tied in with

"Neighborhood Watch" and is not a fund raiser. (Canon 4B)

K. A judge who hears drunk driving cases may not attend or speak at a MADD candlelight vigil. (Canon 4A(1))

L. A judge may serve as the chair of a committee to select a new director for a charitable organization and may negotiate with a major auto manufacturer a commercial lease for signs on the property of a charitable organization. (Canon 4C(3)(6))

M. A judge may be listed as a sponsor for a non-fund raising annual awards dinner for a for-profit mediation dinner. (Canon 2B)

N. A judge who is a member of a community-wide committee may allow his name to appear on an invitation to a prayer breakfast where the cost to attend equals the cost of the breakfast and no excess funds are raised. (Canon 4C(3)(b)(d))

### Fund Raising

O. A judge may spearhead a drive to develop a "Delancy Street" program in this judge's county even though it would entail large scale fund raising. The judge may be involved in planning the fund raising but may not solicit, except from other judges, and may not permit his/her name to be used on the letterhead used in the fund raising. (Canon 4C(d)(i))

P. A judge may not offer a BBQ dinner prepared by him/her to be auctioned off at a charitable fund raising event where the judge's name will be publicized. (Canons 2B, 4C(3)(iv))

Q. A judge may not allow his/her name to be used in promoting fund raising for a charitable organization. The judge may assist by being an unlisted organizer, worker or attendee. (Canons 2B, 4C(3)(d)(iv))

R. A judge is the chair of a pro-youth organization made up of police and community leaders. The judge may write a letter to the Board of Supervisors asking for their approval of a \$50,000.00 grant. (Canon 4C(1))

S. A judge may not write "thank you" letters for cash contributions to a local organization which helps the juvenile court. (Canon 4C(3)(d)(i)(iv))

T. A local public service organization which provides a mediation service utilized by the courts puts on a fund raising dinner at which the judge will be honored. When a flyer is sent out, without the judge's knowledge and consent, using the judge's name to sell tickets and promote the event, the judge should immediately demand that the organization send another flyer with the same general circulation indicating the judge is not participating in the fund raising. (Canon 4C(3)(d)(iv))

U. A judge may allow his/her name to be listed as a committee member on an invitation to a fellow judge's retirement so long as it is a non-fund raising event. (Canons 4B, 4C(3)(d)(iv))

## **V. Business Activities**

A. A judge may become a partner in a travel agency and work as an agent. The judge may receive discounts on travel tickets that are normally available to any travel agent and such discounts are not gifts within the meaning of CCP 170.9. (Canon 4A(2), 4A(3) 4D(1)(a)(b))

B. A judge may not perform services as a private mediator. (Canon 4F)

## **VI. Educational Activities**

A. A judge who has taught classes at a for-profit law school should not allow the school to use a quote from the judge in its promotional material. (Canon 2B)