

February 1992

This is the tenth Judicial Ethics Update from the Ethics Committee of the California Judges Association. The Update highlights areas of current interest from more than 181 informal responses rendered since October 1990 to judges' questions on the Code of Judicial Conduct.

The Ethics Committee, as a matter of policy, does not answer inquiries which it determines to be legal in nature. All opinions of the committee are advisory only. Judges may direct questions on the Code of Judicial Conduct to the Ethics Committee by writing or calling the CJA office or any Ethics Committee member.

### **I. Character Reference Letters.**

A. A judge may not voluntarily write a letter or testify at a judge's or attorney's request, in a disciplinary proceeding regarding the judge's or attorney's general character. A judge may do so pursuant to a subpoena or official request from the agency or tribunal involved. Canons 2, 4, & 5; Opinion 40.

B. A judge may not write a factual letter of recommendation to a Board of Supervisors in behalf of an applicant for appointment as district attorney. Canons 2 & 7A(1)(b).

C. A judge may write a letter of recommendation for college admission and a scholarship as long as it reflects factual experience with the applicant, rather than merely a general character reference. The judge can use personally owned judicial letterhead for this purpose, but not government supplied letterhead. Canons 2, 4, & 5; Opinion 40.

D. A judge may not write a letter in support of a friend's request for diversion or a release on one's own recognizance. Canon 2B; Opinion 40.

### **II. Judges as Witnesses.**

A. A judge must respond to an official summons to testify as an expert witness, but should try to dissuade the requesting party from compelling the testimony or move to quash the subpoena because of the availability of non-judicial experts and the interests served by Canon 1. Canons 1 & 2.

### **III. Disqualification.**

A. Judges must disqualify themselves in cases in which they assisted in preparing the search warrant when serving as a prosecutor. The disqualification is not remittable. Canons 3C(1)(b) & 3D.

B. Judges should disqualify themselves in the following cases -- each such disqualification being remittable if done in writing:

Where a party was a recent client of the judge. Canons 3C(1)(b) & (d).

Where the judge is the landlord of one of the attorneys or the prosecutor's investigator jointly owns property with the judge. Canons 3C(1)(c) & 3D.

Where a judge receives a telephone call from another judge attesting to the good character of the defendant whose case the judge has just been assigned to try. Judge should also consider duty to initiate appropriate disciplinary measures. Canons 3A(4), 3B(3), 3C(1) & 3D.

C. Judges do not have to disqualify themselves in the following cases:

Where the defendants are employees of the probation department and related to a clerk employed by the court. The judge should disclose these facts on the record. Canon 3C.

Where one of the attorneys sits as a judge pro tempore in the judge's court. The judge should disclose knowledge of that attorney's service to all parties and other attorneys. Canons 2, 3C(1) & 3D; Opinions 19 & 20.

Where the judge has a home or life insurance policy with a defendant insurance company in the case. (Caveat: Providing the proceeding could not substantially affect the value of the policy.) Canons 3C(1), 3C(1) & 3D.

D. A judge has a duty to disclose to all attorneys information inadvertently heard outside of court regarding an inconsistency in a witness' testimony. If the inconsistency is not de minimis, the judge must disqualify himself or herself. Canon 3C(1)(e).

#### **IV. Political Activity.**

A. A judge may contribute funds to help a candidate for judicial office pay off campaign debt. Canon 7A(1)(c).

B. Political contribution limits do not apply to contributions made by a judge's spouse providing such contributions are truly those of the spouse alone and not those of the judge. The aggregate political contribution limit is measured on a calendar year basis. Canon 7A(1)(c).

C. A judge may not draft, promote, or be listed publicly as supporting a school bond ballot proposal. Canon 5B(2) & 7.

D. A judge may advise and consult with a legislative body or official on matters involving the administration of justice. In so doing the judge should avoid actions which create the appearance of endorsing a legislator or official. Canons 4B, 4C, 5B, 5G(2) & 7.

E. A commissioner may not write a chain letter on court stationery urging an end to apartheid. Canon 7.

## **V. Legal Education.**

Providing the promotion is not conducted so as to impugn the integrity and independence of the judiciary, a judge may permit a for-profit business to use the judge's title to promote legal education programs. Canons 1 & 4A.

### **1991-92 Judicial Ethics Committee**

Alexander H. Williams, III, Chair

Julie Conger, Vice Chair

Vincent McGraw, Secretary

J. Augustus Accurso

J. Michael Byrne

Rodney Davis

Terrence M. Finney

Richard O. Frazee, Sr.

William McKinstry

David M. Rothman

Laurence D. Rubin

Anita Rae Shapiro

John V. Stroud

Howard B. Wiener

Barbara A. Zuniga

Phillip J. Argento, Liaison