

February 1995

This is the thirteenth Judicial Ethics Update from the Ethics Committee of the California Judges Association. The Update highlights areas of current interest from 237 informal responses, during the period October 1993 to September 1994, 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 write thank you letters to jurors and request their comments regarding how court proceedings were conducted. (Canon 3B(10))

B. Representatives of a television program, not involved in audio or video taping court proceedings, are free to observe court proceedings and to conduct interviews outside of court with participants to the proceedings. (Canons 1, 2A, and 3B(2), (3), (4), (7), and (9))

C. A judge pro tem who presided over a small claims action may not represent one of the parties in a trial de novo of the case. (Canons 2 and 6C)

D. A judge should counsel all court staff not to withhold information, such as being related to a party, from the judge, that if disclosed, might give the appearance of bias or grounds for disqualification. (Canons 3B(5), 3C(2) and 3E)

Disclosure and Disqualification

E. Where a judge has a financial interest in the subject matter or a party in a proceeding, the judge must disclose the interest and disqualify self. The recusal may be waived by the parties via a writing signed by all parties and their attorneys. (Canons 2A and 3E)

F. A judge need not recuse self, upon being told by a party that the judge cannot be fair, if the judge believes self not to be prejudiced against the party, despite the party's prior disqualification of another judge and other judges having recused themselves from the proceedings. (Canons 3B(1) and 3E and its Commentary)

G. Where a party has threatened making a complaint to the Commission on Judicial Performance regarding the judge's handling of a matter pending trial, the judge need not recuse self unless the judge doubts own ability to be fair. The judge should make all parties aware of the threatened action. (Canons 3B(1), (5), and 3E)

Reporting Responsibilities

H. Upon confirming that an attorney was suspended by the State Bar, even for the non-payment of dues, at the time of an appearance in court, the judge should report the attorney to the State Bar for the unauthorized practice of law. (Canon 3D)

I. Upon learning that the judge's court reporter's license had lapsed for a period of time, the judge should require the court reporter to notify all counsel who appeared during such period that the court reporter's license had lapsed. (Canons 2A, 2B, and 3B(7))

II. Conduct Outside the Courtroom

Generally

A. It would be improper for a judge to accept a police offer to fly over the area of a marijuana farm which was the object of a search warrant issued by the judge. (Canons 1, 2A, 2B, 3B(5), and 4A(1), (2), and (3))

B. A judge may participate in the interviewing of applicants for the Public Defender of the county in light of the Court's affirmative

obligation to assure the appointment of competent counsel to indigent defendants. (Canons 2A, 3C(4) and 4A(1))

C. It would be improper for a judge to contract with an unlicensed contractor for a fixed bid contract. (Canons 2A and 4D(1)(a))

D. A judge may not accept tickets to an event from an attorney who appears before the judge, unless the judge pays for the tickets. (Canons 4D(4) and (5))

E. A judge may accept a devise from a family member in excess of \$1,000. (Canon 4D(4)(e))

F. A judge may not act as an executor of the will of a close friend unless the friend occupies a close familial relationship, as defined by the Code of Judicial Conduct, with the judge. (Canon 4E(1) and Terminology Section of the Code of Judicial Conduct)

G. A judge may not accept an appointment to a dispute resolution body to mediate controversies, as this would constitute performing judicial functions in a private capacity. (Canon 4F)

H. A judge may not accept an expense paid trip to attend a seminar from a vendor attempting to market a product or service to the court, as acceptance would have the appearance of impropriety and would create a conflict of interest. (Canons 2A and 4H(1) and (2))

I. A judge may not be a member of a Masonic Lodge, unless the judge determines the Masonic Lodge is a religious organization, and therefore exempt from the Canons. (Canon 2C and Commentary)

Public Commentary, Publications, Books, and Media

J. A judge may not endorse a legal newspaper, as this would lend the prestige of the judge's office to advance the private interests of the newspaper. (Canon 2B and Commentary paragraph 3)

K. A judge may take part in interviews or a panel discussion on high profile cases, provided that the judge limits self to general comments that cannot reasonably be construed as commenting on a pending or impending case. (Canons 2A and 3B(9) and Commentary)

L. A judge may not publicly protest the proposed settlement of a Federal lawsuit. The judge may comment after the settlement becomes final. (Canons 1, 2A, 3B(9) and Commentary, and 4B)

Letters of Recommendation

M. The family members of a judge are not subject to the Code of Judicial Conduct and a family member may write a letter in support of a friend in a child custody dispute. The wife of a judge may use her married name, even if this would cause the family law judge to recognize her as the wife of a judge. (Canon 2B)

Judge as Witness

N. A judge may not write a letter attesting to the character traits of a judge under investigation by the Commission on Judicial Performance unless asked to do so by the Commission. If a judge is subpoenaed to testify by the Commission, the judge may testify by way of written declaration, if acceptable to the Presiding Master. (Canon 2B and Commentary)

III. Political Activities

A. A judge/judicial candidate may be endorsed by a political party. (Canon 5)

B. A judge may use a photograph of the judge wearing a robe, including such a photograph taken while sitting in chambers, in campaign materials. (Canon 2)

C. There is no limitation on how far in advance of an election a judge may form an election committee and solicit funds, as long as the judge complies with the Fair Political Practices Commission and Election Laws. (Canons 4A(3) and 4D(1)(a))

D. A judge, who is a candidate for non-judicial office, may take a leave of absence to campaign for election. However, such leave of absence must be without pay. (Canons 1 and 5)

E. A judge may contribute to the campaign of a non-judicial candidate, but should not permit the judge's name to be used in an ad

listing contributors. Such use of the judge's name would be the equivalent of an endorsement of the candidate. (Canons 5A(2) and (3))

F. A judge may not belong to a political action group whose principal purpose is to further the election of candidates to non-judicial offices. (Canon 5A(1), (2), (3) and Commentary)

G. A judge may moderate a candidates' forum in an election for a partisan or non-partisan office, provided the judge's role as moderator is neutral, does not involve endorsing a candidate, and does not detract from the dignity of office or interfere with the performance of judicial duties. (Canons 4A(2) and 5A(3))

H. A judge may write letters to friends supporting local judicial candidates and soliciting funds for such candidates. However, County provided stationery should not be used for such letters. (Canon 5A)

IV. Civic and Charitable Activities

A. A judge may not serve on a governmental board, including the planning commission for a city outside the judge's jurisdiction. (Canon 4C(2))

B. A judge may be a member of the board of directors of a religious organization. (Canons 4B and 4C(3)(b) and Commentary)

C. A judge may attend a fund raising event and accept an award at the event, provided that the judge's name is not used for promoting the event. (Canons 4A and Commentary, 4C(3)(d)(i) & (iv) and Commentary paragraph 3, and 4D(4)(a))

D. While a judge may participate in the planning of a fund raising event, the judge may not publicize the event, permit the judge's name to be used in promoting the event, or participate in the event in any way that might demean the judicial office; e.g. serve as a bartender at the event. (Canons 2B, 4A(2), 4C(3)(d)(i) & (iv))

E. Judges are not permitted to announce to jurors that the jurors are allowed, pursuant to a resolution by the Board of Supervisors, to donate their juror compensation to a particular entity, as this would constitute the personal solicitation of funds. (Canon 4C(3)(d)(iv))

F. A judge may not contact businesses in the community for donations of items necessary for a luncheon to be held in conjunction with a community symposium on drug rehabilitation matters. (Canons 2B and 4C(3)(d)(i) & (iv))

G. A judge may not appear before a local school board, as a representative of a local service club, to request that the board fund a student event. (Canons 2B, 4C(1), and 4C(3)(d)(i))

H. A judge may serve on a committee to cultivate corporate sponsors for an annual civic event, provided that the judge is not identified as a judge, is not involved in fund raising, and the corporate sponsors contacted are not likely to appear before the judge's court. (Canons 4A(2) & (3), 4C(3)(b), 4C(3)(c)(i) & (ii), and 4C(3)(d)(i), (iii) & (iv))

V. Business Activities

A. A judge may accept employment as a document reviewer to determine the accuracy of an English language translation, as long as such work does not interfere with the proper performance of judicial duties and compensation is reasonable. (Canons 4A(3), 4B, 4D(1)(a), 4H and 4H(1))

B. A judge may serve on the board of directors of a non-charitable corporation, provided that the judge's name is not used to promote business or product and such service would not be perceived as an endorsement, demean the judiciary, or involve frequent transactions likely to come before the judge's court. (Canons 4A(2) & (3), 4D(1)(a) & (b), and 4D(3))

VI. Educational Activities

A. A judge may refer to self as "judge" in lecture and teaching materials. A judge may also use "judge" in front of the judge's name on the masthead for a column written for a lawyer's club newspaper. (Canons 2B & Commentary paragraph 2 and 4B & Commentary)

B. A judge may write articles about cases the judge has presided over, in order to raise public awareness of violence in society, as long

as pending or impending cases are not discussed. (Canons 2A, 3B(9) & (10), 4A, and 4B)

C. It would be improper for a judge to volunteer to teach search and seizure to police officers. It is permissible to teach police officers on law, procedure, or practice in response to a request to teach, provided that the judge is available to other non-law enforcement groups, does not simply coach police officers how to win, and does not comment on pending or impending cases. (Canons 2A, 2B, and 4B)

VII. Retired Judges

A. A retired judge, who does not sit on assignment, is not bound by the Canons and may testify at the request of a party to a malpractice case without being subpoenaed. (Canons 6A and 6B)

B. The use of stationery having the county seal, purchased through the county, by a retired judge, who does not sit on assignment, raises no ethical issues, as the judge is not bound by the Canons. (Canons 2B, 6A, and 6B)

C. A retired judge who sits on assignment may not write a letter to a sentencing judge at the request of a defendant or the defendant's attorney. (Canon 2B and Commentary)

D. A retired judge, regardless of availability for assignment, may accept an appointment to a governmental position. (Canons 6B and 4C(2))