

# Judicial Ethics Update

February 2002

This is the twentieth Judicial Ethics Update from the Ethics Committee of the California Judges Association. The Update highlights areas of current interest from the 324 informal responses, during the period October 2000 to September 2001, 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

### A. Generally

1. A judge may write letters to community organizations requesting speakers and informational materials for Jury Appreciation Month. Unsolicited gifts received by the court and intended for prospective jurors may be distributed through the jury commissioner's office.

Canons 3B(10), 4C(3)(d)ii.

2. A judge may personally contact the employer of a juror and request that the juror be paid for the duration of a trial as long as the judge does not improperly use the prestige of the office to exert undue influence over the employer. Canons 1, 2A, 2B(2), 3B(7).

### B. Disclosure and Disqualification

1. Disclosure required when attorney appearing before the judge is representing judge's spouse on a traffic ticket. Canon 3E.

2. Judge must disclose close friendship with an attorney on all cases involving the attorney or attorney's law firm. Canon 3E.

3. A judge is disqualified in all criminal cases that were filed or pending while judge served as the District Attorney of the county where court is located. Canon 3E.

4. A judge need not disclose that an attorney appearing before him or her is the spouse of a fellow bench officer. Canon 3E.

5. A judge who shared office expenses with an attorney before becoming a judge is disqualified in all cases involving that attorney for a two-year period. Canon 3E.

6. A newly appointed judge may not hear a case in which one of the parties was a former client of the judge and the issues in the pending case are the same as those that judge used to handle for the party. If the issues are similar but not the same, disclosure is required and disqualification is not. Canon 3E(1), 3E(2).

### C. Reporting Responsibilities

If a judge who has committed an isolated but serious violation of the Canons of Judicial Ethics, without knowing the behavior was prohibited, takes immediate corrective action upon being informed of the problem, the presiding judge need not report the matter to the Commission on Judicial Performance. Canon 3D(1).

## **D. Ex Parte Communications**

1. Judge must disclose incriminating statement to all parties on the record made by defendant that was overheard by bailiff in the courtroom. Canons 2A, 3B(7), 3E.
2. A judge may discuss a case privately with a deputy district attorney after probation has been terminated because the case is no longer pending. Canon 3B(7).

## **II. CONDUCT OUTSIDE THE COURTROOM**

### **A. Generally**

1. Judge may write a letter to juror's employer using letterhead stationery asking the employer to extend the juror's pay during the completion of a trial as long as the letter is diplomatic and does not threaten or promise any consequence regardless of what the employer decides. Canon 2B(2).
2. Judge may wear robe at a swearing in ceremony at a location outside of the courthouse as long as use is dignified and does not impair public confidence in the judicial office. Canon 2A.
3. Judges may contribute money to a court referee to defray expenses due to a long illness and absence from work. Canon 4D(6)(e).
4. Judge may deliver speech at a specialty lawyers bar association function if available to speak at opposing bar association functions. Canon 4D(1)(a).
5. Judge may act as a moderator at city council candidates' forum but must be careful to maintain neutrality. Canon 5.
6. Judge may not lead pledge of allegiance at fundraiser for a candidate for partisan political office. Canon 5.
7. A judge may conduct a wedding ceremony for a married couple who wish to reaffirm their vows as long as the judge makes mention of the fact that the couple is already married at the ceremony.

Canons 2A, 4A(2).

8. While there is no ethical obligation requiring a court to adopt or maintain the anti-nepotism policy, a court should not have a hiring policy or practice that shows favoritism to the relatives of bench officers. Canons 2B(2), 3C(4), 2A.

### **B. Public Commentary, Publications, Books, Media**

1. A judge may be a featured alumnus in his college alma mater's course catalog, and the catalog may include a picture of the judge in a robe. Canons 2A, 2B(2).
2. A judge may be the guest speaker at a church stewardship dinner and encourage parishioners to become more involved in church activities as long as the judge does not personally solicit funds.

Canons 4C(3)(d)(iv), 4A(1), (2) and (3).

3. A judge may be the keynote speaker at a statewide conference of district attorney investigators as long as the judge does not coach the audience and the content of the speech does not cast doubt on the judge's ability to act impartially. Canons 4A, 4B.

### **C. Letters of Recommendation**

1. Judge may write a letter on behalf of a child for admission to school. Canons 2B(2) and 2B(4).
2. Judge may write a letter on behalf of a friend's son seeking a position with the probation department. Canon 2B(4).
3. A judge may write an unsolicited letter to the State Bar in support of an attorney facing disciplinary charges as long as the letter is limited to factual matters. A character reference may be sent in response to a request from the State Bar. Canon 2B(2).

#### **D. Judge as a Witness**

A judge may not testify as a character witness at a State Bar disciplinary hearing unless subpoenaed. A judge may discuss the requested testimony with the attorney's lawyer prior to receiving a subpoena. Canon 2B(2).

#### **E. Gifts, Discounts, Honoraria**

1. Judge may donate an otherwise prohibited gift to a charitable organization, without claiming it as a charitable contribution, thus invoking the gift exemption of CCP 170.9. Canons 2A, 2B(2), 4C(3)(d)(i), 4D.
2. Judge may participate in bar-related activities and functions at no cost or at a reduced rate if value received does not exceed the monetary limits of CCP 170.9. Canon 4D(6)(a).
3. A judge may not accept a de minimus gift from a party who has come before the court even on an uncontested matter. Canons 4D(5), 4D(6)(d).
4. A judge may accept a free dinner and a plaque from a local bar association even though the event is underwritten by attorneys who will appear in front of the judge and who will be recognized for their donations at the event. The judge need not disclose participation in the event when the attorneys appear. Canons 2, 3E, 4D(6)(a).
5. Judges and court staff may accept a free dinner valued at \$25 from the local bar association as part of a court appreciation night.

Canon 4D(6)(a).

6. A judge may accept frequent flyer miles received from credit cards. Canon 4 D (6)(f).
7. A judge may not accept an award from a program which advocates on behalf of victims of sexual assault where the award is given in recognition of the judge's approach to several cases which are now on appeal. Canons 4A(1), 4A(3), 2A.

### **III. Political Activity**

#### **A. Generally**

1. A judge may moderate a debate between City Council candidates if he or she remains neutral throughout the proceedings. Canon 5.
2. A judge who is on approved leave of absence to run for a non-judicial position may identify himself or herself as a judge in campaign literature but may not wear a robe in campaign photographs.

Canons 5A, 4A(2).

#### **B. Judicial Elections**

1. Judge may publicly endorse judicial candidate by appearing in campaign ads using title and wearing robe. Canons 4C(3), 5A.
2. A judge may use judicial stationary to write letters to personal friends asking them to support his or her candidate for judicial office. Canons 5, 5A, 2B.
3. A full time referee who is running for judge may wear robes in campaign photos. Canon 5.
4. A commissioner who is running for judge may wear a robe in campaign photographs. Canon 5A.

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

##### **A. Government Positions**

1. Judge may not sit on board to evaluate candidates for promotion within the Sheriff's Department. Canons 2A, 4A(1).
2. Judge may not sit on the board of trustees for a community college. Canon 4C.
3. Judge may sit on victim witness governing board as long as not involved in lobbying activities or directing payments to any specific charitable organization. Canon 4C(3)(a).
4. A judge may not sit on an oral review board for a position of police commander and review candidates. Canons 4A, 2A.

##### **B. Court Positions**

A judge may not allow a Community Food Bank to place food collection bins inside the courthouse. Canons 3C(2), 2A.

##### **C. Membership**

1. A judge may not sit on the board of directors of an organization that administers drug treatment programs and will make bids with the county to provide Proposition 36 services. Canons 2B(2), 3A, 4C(3)(b), 4C(3)(c), 4C(3)(d)(ii).
2. A judge may continue to be a member of the Board of Directors of a homeowners association which is named as a defendant in a civil lawsuit filed in the judge's county but the judge should not actively participate in the lawsuit. Canons 4C(3)(b), 4G, 2B.

##### **D. Fundraising**

1. Judge may not host fundraiser for charitable organization at own home. Canon 4C(3)(d)(i).
2. Judge may be a speaker at a fundraiser but not be a featured entertainer. Canon 4C(3)(d)(iv).
3. Judge may not solicit funds to run for partisan office until taking a leave of absence from the bench. Canons 2A, 3E, 4A, 6A.
4. A judge who is a member of the board of directors of a non-profit organization may help plan fundraising events, identify prospective donors and help organize a phone bank. The judge may not directly raise money and the judge's name may not be used by others in connection with fundraising. The judge may directly raise money from other judges, but not commissioners or referees. Canons 4C(3)(d)(i), (iv).
5. A commissioner on an approved, unpaid leave of absence is not bound by the Canons of Judicial Ethics during the period of time he or she is on leave and may raise funds for a charity. Canon 6A.

6. A judge's spouse may participate in charitable fundraising activities and the judge may attend related events as long as the judge's name and title are not used. Canon 4C(3)(d)(i).
7. A judge may accept an award from a charitable group at a fundraising lunch. A judge may also accept two free tickets to the lunch. Canons 4C(3)(d)iv, 4D(6)(a).
8. A judge may not request that commissioners and referees contribute or pay dues to a local judges association. Canon 4C(3)(d)(i).

## **V. Business Activities**

1. Judge may receive fees earned for work performed on cases in private practice before taking oath of office but not for work performed afterwards. Judge may share in referral fees which are received by outside counsel for matter referred while judge was in private practice. There must be disclosure of the fee interest when the attorneys owing the fees appear in court. Canons 3E, 4G.
2. After taking the bench, judge may communicate with his former law partners regarding the status of any case being transferred including impressions, conclusions, strategies formulated as of the time judge stopped working on the case. All communications should be in writing and not include legal advice. Resolving financial issues with a former partner is not prohibited. Canons 4A(3), 4G.
3. A retired judge who participates in the Assigned Judges Program may also participate in private judging and may have a telephone listing identifying him or her as a retired judge. Canons 6B, 6C.

## **VI. Educational Activities**

1. Judge may teach law-related classes to law enforcement as long as equally available to the defense. Canons 4A, 4B.
2. A judge may receive compensation for teaching a course during a regularly scheduled lunch hour. Canons 4A(3), 4H.

## **VII. Community Outreach**

1. Judge may moderate an educational symposium but should not take sides on political issues or express opinions that might indicate bias on issues or cases that are likely to come before the court.

Canons 3B(9), 5D.

2. A judge may authorize distribution to jurors of a brochure, generated by the Chamber of Commerce, which contains a map of the area around the courthouse and a list of local shops and restaurants as long as the brochure is not requested by the court.

Canons 2A, 2B, and 4D(1)(a).

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