

## MEMORANDUM

TO: California Judicial Officers  
FROM: Stanley S. Bissey, Executive Director  
DATE: January 2017

Enclosed please find the 2015/16 *Judicial Ethics Update*, highlighting matters of interest from the informal responses to judges' questions on the Code of Judicial Ethics provided by the Judicial Ethics Committee from September 2015 to September 2016.

Judges may direct questions on the Code of Judicial Ethics to the current 2016/17 Ethics Committee by writing or calling the CJA office or any Ethics Committee member. The Ethics Committee, as a matter of policy, does not answer inquiries which are moot or raise issues of law. Nor does the Committee respond to questions that involve matters pending before the Commission on Judicial Performance. All opinions of the Committee are advisory only and are based on the Canons in place during 2015/16.

\*Special thanks to Ethics Committee member Aaron Katz, San Diego Superior Court, and Laura Halgren, San Diego Superior Court, for preparing and editing this *Update*.

### **2015/16 Judicial Ethics Committee**

Mary E. Fuller, Chair  
Barbara A. Kronlund, Vice Chair  
Alice Vilardi, Secretary  
Kenneth P. Barnum  
Victoria G. Chaney  
James R. Dabney  
Leonard P. Edwards  
Laura W. Halgren

Aaron H. Katz  
Edward F. Lee  
Lisa B. Lench  
Terri A. Mockler  
Anthony J. Mohr  
Tam Nomoto Schumann  
Elia Weinbach  
Stephanie Sontag, Board Liaison

# California Judges Association

## JUDICIAL ETHICS UPDATE

---

January 2017

### **I. CONDUCT INSIDE THE COURTROOM**

#### **A. Generally**

1. Commissioner may ethically order a defendant to attend a victim impact program as a term of DUI probation even when the program imposes a reasonable charge for attendance. (Canon 2B(2), 4C(3)(d)(iv))

#### **B. Disclosure and Disqualification**

1. Judge who is dating a court interpreter must disclose the relationship if the interpreter's competence becomes an issue in a case pending before judge. (Canon 2B(1), 3E(2))

2. When judge discovers, after taking small claims case under submission, that one of the parties was a client of the law firm where judge was associated over three years ago, but judge did not handle any of client's cases, judge is not disqualified but should disclose. Disclosure must be on the record, but can be accomplished by setting a hearing or making a written disclosure filed and served on the parties. (Canon 3E(1), 3E(2))

3. When judge receives information from the sheriff's department that defendant in a case pending before judge made threats against judge, but judge believes judge can be impartial, judge is not disqualified but should disclose. (Canon 2A, 3E)

4. Judge who endorses an attorney candidate for an open judicial seat or donates to the attorney's campaign must disclose that fact when the attorney appears before judge. (Canon 3E(2), 5A(3))

5. Judge in a civil assignment is not disqualified when judge owns over \$1,500 of stock in the parent company of a corporate party before judge, but should disclose. (Canon 3E(1), 3E(2), 4D)

6. Judge who has been challenged for re-election should disclose when attorneys who have endorsed judge appear before him/her and should also make a disclosure regarding attorneys who are advising judge on the campaign. (Canon 1, 2A, 3E(2)(a), 5)

7. Judge is not disqualified but should disclose when attorney who coaches judge's child's sports team appears before judge. (Canon 3B(1), 3E(1), 3E(2)(a))

8. Judge whose adult child is a law student working as an intern for the DA's office is disqualified from hearing criminal cases the adult child appears on or has worked on. As to other criminal matters involving the DA's office, judge must make a disclosure on the record of the adult child's internship but is not disqualified unless a person aware of the facts might reasonably maintain a doubt that judge would be impartial. (Canon 2A, 3E(1), 3E(2))

9. Judge may serve as a reference in connection with a job application for a prosecutor who regularly appears before judge. If contacted by potential employers, judge may provide an opinion of prosecutor's abilities based on judge's firsthand knowledge. Judge need not disclose that judge has been listed as a reference and/or provided an opinion regarding prosecutor's work when the prosecutor appears before judge. (Canon 2A, 2B(2), 2B (2)(e) 3E(2))

10. Judge who attends an engagement party and wedding for a colleague and an attorney who regularly appears in judge's courtroom must disclose the attendance when attorney makes an appearance before the judge for a reasonable period of time of between six months to one year. (Canon 3E(2), 4D(6)(b), 4D(6)(g))

11. Judge who testified under subpoena on behalf of an attorney at a State Bar disciplinary proceeding and has disclosed this fact for the past two years each time attorney appears in judge's courtroom, may discontinue making the disclosure. (Canon 3E(2))

### **C. Reporting Responsibilities**

1. Judge who is acting as a settlement judge in a family law case where attorneys represent both sides is not required to report to law enforcement judge's conclusion that the parties engaged in tax fraud or evasion. (Canon 2A, 3B(12) & Advisory Committee Commentary)

2. Judge is required to take corrective action when judge receives reliable information that another judge, who is a close friend of a party involved in litigation, may have engaged in the practice of law by assisting the party, appeared to lend the prestige of office to the party and put pressure on the opposing attorney during settlement negotiations. (Canon 3B(12) & Advisory Committee Commentary, 3D(1))

### **D. Ex Parte Communications**

1. When judge is informed by a staff member about a law enforcement investigator's negative comments about a fiduciary who is being investigated for theft, and the fiduciary will be appearing before judge for a suspension hearing, judge must disclose the statement, but may defer doing so until the investigation is concluded. (Canon 3B(7)(a) & Advisory Committee Commentary)

2. Judge should turn down elected DA's request to discuss judge's recent finding of non-prejudicial prosecutorial misconduct because the appeals period on the case has not run. No discussion can occur until the case is final. (Canon 3B(7), 3B(9))
3. When judge receives an unsolicited letter from a juror on a recently completed criminal trial prior to sentencing where the juror comments on deliberations, evidence and the jury's view of defense counsel's incompetence, judge must disclose the entire letter to both sides even though judge does not believe counsel was incompetent. (Canon 3B(7), 3B(7)(d))

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

### **A. Generally**

1. Judge may not bicycle race for a bike shop when judge would wear a shirt bearing the name of the bike shop as this would lend the prestige of judicial office to advance the interests of the shop. (Canon 2B(2))
2. Judge may attend an after-work open house held for judges at a youth-serving non-profit agency to take a tour and to learn about the agency's services. (Canon 4A(1)-(3))
3. Judge may officiate at an out-of-state ceremonial wedding for a couple who are already married, so long as judge ensures that all in attendance know that the ceremony is a reaffirmation of the marriage which has already taken place. Judge may wear the judicial robe while officiating. (Canon 2A, 4A(2))
4. Judge may not attend a law school reception for prospective students who have been admitted to the law school when some have not yet accepted their offers of admission and where one stated purpose of the reception is for recruitment. (Canon 2B(2), 4D(2))
5. Judge's child may apply for a college scholarship offered by the local bar association so long as judge ensures that child does not use judge's position or title in the application. (Canon 2B, 4A)
6. As long as judge is not practicing law or identifying self as a judge, judge may speak with representatives of a condominium association on behalf of judge's mother regarding a dispute over roof repairs. (Canon 4C)
7. Judge, who owns property in a neighborhood with a homeowner's association, may represent self in a personal advocacy capacity regarding judge's disapproval of how the association's clubhouse is being used. (Canon 4C(1))

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

1. Judge may write fiction novels that are not demeaning to the judiciary during non-court hours using non-court resources and is permitted to publish the works under judge's name, without use of the judicial title. (Canon 1, 2A, 2B(2), 4A, 4B)
2. Judge may participate in an interview for a television show regarding a high-profile case that judge handled as a prosecutor before taking the bench when the case is final and judge's title will not be used in the credits or any publicity for the show. (Canon 2B(2), 3B(9), 4A(2))
3. Judge may appear on a faith-based cable network show to discuss how judge's faith helped to form his/her life when no fundraising is involved and judge will not discuss cases or controversial topics. Judge must ensure that his/her title will not appear in the credits or be used to publicize the show. (Canon 2A, 2B(2), 4A(1), 4B)
4. Judge who has written a book on a legal topic may not ask other judges who have read it to write favorable comments to be used in marketing, but may make this request of retired judges who are not sitting on assignment. (Canon 2B(2))
5. Judge need not request removal of judge's name being listed as a "distinguished alum" in a community impact report brochure distributed by judge's former public high school since the brochure is not being used for fundraising purposes and judge would be listed with other distinguished alumnae. (Canon 2A)

## **C. Letters of Recommendation**

1. Judge's spouse may write a letter of support for a relative who is facing sentencing for a crime, so long as spouse purports to express only spouse's views and not those of judge. (Canon 2B(2), 6A)
2. Judge may complete an evaluation form regarding an attorney who frequently appears before judge and who is being considered for a high honor conferred upon outstanding trial lawyers, even though if the attorney receives the award he/she may include it in marketing materials. (Canon 2B(2) & Advisory Committee Commentary)
3. Judge may not write a general letter of recommendation for a real estate broker who did a good job for judge in selling a home, even if judge does not use the judicial title or judicial stationery. (Canon 4D(2))
4. Judge may write a letter of recommendation on court letterhead in support of a college scholarship for a family friend's child when judge has known the child over ten years and spent significant time with the child. (Canon 2B(2)(e))

5. Commissioner may complete a government affidavit form in support of a relative who is applying for a tourist visa in order to visit family members when commissioner is hosting the relative for the visit and the form asks for the host's job title, salary, etc. as this is an official government inquiry for an authorized purpose. (Canon 2B(2)(e))

6. Judge may not write a character reference letter on behalf of an attorney whom judge knows well and is under state bar investigation unless judge is subpoenaed. (Canon 2B(1), 2B(2)(a), 2B(2)(c))

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

1. When a case handled by commissioner as a prosecutor before taking the bench is remanded by the court of appeal for a settled statement, commissioner may meet with the prosecutor now handling the case to discuss factual issues and may supply a declaration regarding the relevant facts, but should not use his/her current title. (Canon 2B(2))

2. When judge is accused of committing fraud on the court over 15 years ago when judge was a prosecutor on a capital case, judge may review the prosecution file in order to refresh recollection before preparing a declaration about the facts regarding his/her actions in the case. (Canon 3B(9))

3. Judge who prosecuted a case as a deputy district attorney that is now final may only provide factual information about the case when contacted by sheriff investigators who are investigating a related case in another county (Canon 2B, 4G)

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

1. Supervising Judge has no ethical responsibilities regarding a flyer publicizing a holiday pot luck party being held in a courtroom when the flyer was circulated to judges, staff and local attorneys and the attendees are requested to bring a dish to share or contribute \$20 toward the party. However, if Supervising Judge has reason to believe the cash contributions will not be fully spent on the party, further inquiry would be required to ensure no improper gift occurs. (Canon 2A, 3C(3), 4D(5), 4D(6))

2. When a specialty bar association gives judge, who is transferring to a new assignment, a painting valued under \$100 to remind judge of the time spent in the previous assignment, judge may accept the gift. (Canon 4D(6)(d))

3. Judge may attend a law school alumni fundraising event when the \$200 tickets for judge and judge's spouse are paid for by close attorney friends who would never appear before judge due to their close relationship. (Canon 2A, 4A, 4D(6)(a))

4. Judge may make a presentation to an ethnic bar association on judicial procedures and thereafter join the group at dinner provided at no cost to judge. (Canon 4D(6)(d))
5. Judge may not accept a \$1,000 honorarium for speaking at a college graduation, nor may judge ask the college to direct the sum to a charity of judge's choice. (Canon 4A(1)-(3), 4H(3))
6. Judge who attends a bar activity hosted by the bar association where attorneys are charged but judges attend free of charge, is not receiving an impermissible gift. (Canon 4D(6)(D))

### III. POLITICAL ACTIVITY

1. Judge, who has noticed an increase in mentally ill people coming onto the grounds of judge's church, which is located near a park, is concerned about the state of the park and the need for more mental health services. Judge can write a letter to elected officials as a private citizen on private stationery to express concern. (Canon 2B(2), 4C(1), 5)
2. Commissioner may not publicly take a position on a ballot proposal regarding public funding of a sports stadium, but may sign a petition to put the measure on the ballot so long as commissioner does not use his/her official title. (Canon 2A, 2B(2), 4A, 4C(1), 5A & Advisory Committee Commentary, 5D)
3. Judge who filed a declaration of intention to run for re-election, but was not challenged and therefore will not appear on the ballot and will not form a campaign committee, is not required to take the judicial campaign ethics course, which is required of candidates for judicial office. (Canon 5B(3))
4. Judge who is being challenged for election is permitted to accept a campaign donation from a commissioner on judge's court, so long as judge did not solicit the contribution, and is permitted to provide a lawn sign to commissioner upon request. (Canon 2A, 5)
5. Judge cannot be listed as a sponsor of a fundraising event for a local non-judicial candidate, even if judge's title is not used. However, judge may contribute to the candidate up to the maximum extent allowed. (Canon 2A, 2B(1), 2B(2), 4A(1), 5A(3))
6. As long as judge remains neutral, judge may serve as a moderator of a candidate forum for a mayoral election in the city where judge resides. (Canon 4A, 5A)
7. When judicial candidate receives a questionnaire from a PAC that asks for his/her views on a variety of issues, he/she may answer concerning political views on issues so long as the answers do not commit the candidate as to rulings on matters that would come before the court and do not make

reference to substantive matters or specific cases. The announcement of personal views may subsequently trigger a disclosure requirement if the issue later comes before the candidate as a judge. Judicial candidates are under no obligation to answer the questions, need not respond with oversimplified “yes” or “no” answers and may wish to consider responding by a letter rather than directly answering each question. (Canon 5B(1)(a))

8. When asked by a local service-provider agency, Presiding Judge of the Juvenile Court may co-sign a letter written to the local Board of Supervisors requesting the Board of Supervisors impose a moratorium on collection and subsequently eliminate fines and fees levied against children and families appearing in juvenile court. (Canon 2A, 4A(1), 4C(1), 5D)

9. Judge would violate the canons by writing an op-ed to a local newspaper in support of a judge in another county who is being criticized in the media for a sentence the judge imposed. The proposed letter would include specific references to the actions of the sentencing judge and the still pending case. (Canon 2, 2A & Advisory Committee Commentary, 3B(9) & Advisory Committee Commentary)

10. Judge may donate to a committee established by a judge who is the subject of a recall effort. (Canon 5A and 5A & Advisory Committee Commentary)

#### **IV. CIVIC AND CHARITABLE ACTIVITIES**

##### **A. Generally**

1. Judge may serve as a Boy Scout leader because the Boy Scouts of America has removed all remaining invidious discrimination for membership or participation as a leader or youth member in the BSA and judge’s local troop does not impose any invidious discrimination on leaders. (Canon 2C)

2. Judge who will be honored as an inductee into a county’s Hall of Fame may invite family members and other judges to purchase banquet tickets to attend, but cannot directly invite staff or attorneys to buy tickets. However, judge may supply the names of attorneys and friends so that the Hall of Fame may invite them. (Canon 4C(3)(d)(iv))

3. Judge may become a member of a “Leadership Prayer Breakfast Committee” where the fee charged for attendance at the breakfast is used solely to cover the cost of the breakfast and judge would not be involved in fundraising. (Canon 4C(3)(b), 4C(d))

4. Judge may wear judge’s robe while swearing in newly elected members of the school board. (Canon 2A, 4B)

##### **B. Government Positions**

1. Judge may accept appointment by the Board of Supervisors to a commission charged to review the custodial processes, procedures and protocols at county jail facilities since the topic relates to improvement of the law, legal system or administration of justice and the judge's service on the commission would not interfere with judge's duties or give rise to frequent disqualification. (Canon 4C(2))

### **C. Membership**

1. Judge may serve on the board of the American Board of Trial Advocates, so long as judge does not participate in fundraising, except with judicial colleagues. Travel to national meetings is also permitted so long as it does not adversely impact judge's court assignment. (Canon 2A, 4A(3), 4C(3) & Advisory Committee Commentary)

2. Judge may serve as an officer of an organization that promotes education and civic responsibility among young African-American men, but may not ask an attorney who specializes in non-profit organization law to provide pro bono assistance to the group. (Canon 2A, 2C, 4C(3)(b))

3. Judge, who is a member of the Inns of Court, may send out a letter and membership application to fellow sitting judges explaining the benefits of Inns of Court membership and encouraging judges to join. (Canon 4C(3)(a), 4C(3)(d)(iii), 4C(3)(d)(iv) & Advisory Committee Commentary.

### **D. Fundraising**

1. Judge may not co-sign a letter to a Congressional Representative requesting use of surplus space in a military installation for purposes of housing homeless veterans as the use of the shelter itself does not concern the law, the legal system or the administration of justice. (Canon 4C(3)(d)(i))

2. When newspaper erroneously reported that judge, who was scheduled to speak to a charitable group, was doing so to "raise funds for the charity," judge should contact the newspaper and the charity to advise them of the rules that permit judge to speak, but not to raise funds, and to request a correction. Judge should also ensure that other promotional materials comply with the Canons. (Canon 4C(3)(d)(iv))

3. Judge may not be a judge in a charity fundraiser food and wine contest amongst local restaurants as judge would be directly involved in fundraising activity and would be lending the prestige of office to the restaurants who are selected as winners. (Canon 2B(2), 4C(3)(d)(i), 4C(3)(d)(iv), 4D(2))

4. Judge who is chair of the board of trustees of a private school may write the welcome letter for an annual fundraising event, which will be included in a tribute book given to attendees, so long as no reference to raising funds is contained in the letter. (Canon 2B(2), 4C(3)(d))

5. Judge who overcame a serious illness may allow a support group for victims of that disease to use judge's story in educational materials, but may not permit the group to use judge's story as part of a grant application or for fundraising. (Canon 2A, 4D)

## **V. BUSINESS ACTIVITIES**

1. Judge is permitted to file a small claims action in judge's county, but should advise the Presiding Judge of the filing so that arrangements can be made for the matter to be heard by a judge who will not be disqualified. (Canon 2B(2), 4G & Advisory Committee Commentary)

2. Judge who will be retiring soon and joining a commercial arbitration/mediation firm cannot permit the firm to offer judge's name as a potential future arbitrator/mediator until judge has officially retired, because the act of offering judge's name to potential clients may bring judge's prestige to the firm. (Canon 2B(2), 4D(1)(a), 4D(2))

3. Retired judge who is sitting on assignment can be a trustee for a friend's estate because there is an exception for retired judges from the usual prohibition of such activity. (Canon 4E, 6B)

4. Judge may work as an Uber or Lyft driver after normal judicial hours as long as the activity does not interfere with the judge's judicial duties or lend the prestige of the judicial office to the business activity. (Canon 2A, 2B(2), 4A, 4D(1))

## **VI. EDUCATIONAL ACTIVITIES**

1. Judge may not accept a teaching position with a public entity since the judge would be required to leave court during normal business hours in order to teach the class and as such would not be in accordance with the California Constitution. (Canon 2A, 4A(3), 4B; Cal. Const., art. VI, sec. 17)

2. Judge may make a MCLE presentation to a law firm regarding the court's ADR volunteer program as long as the judge is willing to make similar presentations to other firms. (Canon 2A, 4A(1), 4B)

3. Judge may preside over a mock trial exercise for child psychiatry fellows at a local graduate school, which is designed to provide the students with courtroom experience as witnesses. (Canon 4B)

4. Judge may offer brown bag lunches for volunteer attorneys who staff the court's conservatorship clinic, which assists self-represented litigants who are filing conservatorship cases, where judge would discuss best practices and promote question-answer sessions on the topic. Judge would not need to disclose if one of the attorneys appears before judge. (Canon 2A, 3B(7), 4A(3), 4C(3)(e) & Advisory Committee Commentary)

5. Judge, who is a former prosecutor may teach Evidence Based Practices to a criminal defense association and custody credits to a prosecution association as long as the teaching does not include coaching on courtroom techniques or advocate for one position or another on unsettled areas of the law and does not interfere with the judge's judicial duties or utilize court resources. (Canon 1, 2A, 3B(9),4A, 4B)

## **VII. COMMUNITY OUTREACH**

1. Judge may attend a chamber of commerce dinner meeting to accept an award for public service. The award is specifically given for judge's service to the community as a prosecutor and service to the local bar association prior to becoming a judge. (Canon 4C(3)(d)(iv))

2. Judge may address attorneys at an annual conference of the League of California Cities so long as judge does not coach the audience or cast doubt on judge's impartiality and judge makes him/herself available to speak to other groups of attorneys with different legal perspectives. (Canons 2A, 4A)

3. Judge, who has a civil assignment, may attend a mixer sponsored by the Consumer Attorneys of California, a plaintiff's organization, honoring all civil judges in judge's county. (Canon 1, 2A, 4A)

4. Judge may serve on a task force which is not part of a governmental agency that sets up programs to present to school districts to enhance civics education. (Canon 4C(3))

5. Judge assigned to juvenile court may appear in a film asking members of the community to volunteer for a program where the trained volunteers provide support to minors who have cases in the juvenile justice system. (Canons 2A, 4A(1), 4A(2), 4C(3)(d)(ii) & Advisory Committee Commentary to 4C(3)(e))

6. Judge, among other justice stakeholders, may speak at a community forum sponsored by the Human Relations Commission of judge's county about the criminal justice system and its impact on the residents of judge's county. (Canon 2A, 4A, 4B)

7. Judge may speak at non-political Martin Luther King, Jr. event attended by other elected officials as well as other similar community events as long as judge's participation does not interfere with the performance of judge's duties. (Canon 3B(9), 4A, 4B)

## **VIII. ADVICE TO PRESIDING AND ASSISTANT PRESIDING JUDGES**

1. Presiding Judge may speak to members of the Board of the Supervisors on behalf of the judges urging the supervisors to continue the county's participation in the judges' benefit plan. (Canon 4C(1))

2. When Presiding Judge's court is co-sponsoring with the county bar association and other justice partners a memorial event for recently deceased members of the court, and the bar association solicits donations from law firms to help underwrite the event, the donor law firms may be listed in the program which also lists the court as a sponsor. (Canons 2A, 2B(1), 4C(3)(d) (iv))

3. After receiving three declarations regarding intemperate and discourteous remarks made by a judge in open court, presiding judge has a duty to investigate the allegations which may include contacting the attorney on the opposing side. If presiding judge believes the judge acted improperly, presiding judge should take appropriate corrective action. (Canon 2A, 3B(1), 3B(4), 3C(4), 3D(1))