

MEMORANDUM

TO: California Judicial Officers
FROM: Stanley S. Bissey, Executive Director
DATE: January 2016

Enclosed please find the 2014/15 *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 2014 to September 2015.

Judges may direct questions on the Code of Judicial Ethics to the current 2015/16 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 2014/15.

*Special thanks to Ethics Committee member Elia Weinbach, Los Angeles Superior Court, Ret., for preparing this *Update*.

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California Judges Association

JUDICIAL ETHICS UPDATE

January 2016

I. CONDUCT INSIDE THE COURTROOM

A. Generally

1. A judge may not serve as a member of an American Indian tribal court which hears and decides disputes between members. Canon 4F
2. A judge may attend oral argument in the Court of Appeal on a case on which judge ruled, but judge should take steps not to appear to be embroiled. Canons 2A, 3B(7), 3B(7)(c), 4A, 4A(1)
3. A judge must inform a court attendant who has received a \$50 gift card from a juror after a jury has been discharged that the gift card cannot be accepted. Canons 2A, 3C(2), 3C(3), 4D(6)

B. Disclosure and Disqualification

1. A judge presiding in a Mental Health Department must disclose a potentially threatening letter received from a litigant whom judge had previously ordered involuntarily detained because there was a substantial likelihood of future litigation involving litigant's mental health. Canon 3B (7)
2. A judge presiding in a law and motion matter brought by an automobile alliance representing most car manufacturers must disqualify self when judge owns more than \$2,000, but less than \$10,000 in common stock of a car manufacturer which is a member of the automobile alliance. Canon 4D
3. A judge who sits on the appellate division should disqualify self if judge knows that affirming a judgment would financially benefit a judicial colleague. Canon 3E(1)
4. A judge who is the owner or beneficial owner of stock in a corporation worth at least \$1500 need not disqualify if the subsidiary of the corporation is a party in a matter before the judge; however, the judge should disclose ownership of stock in the parent corporation. Canons 3E(1), 3E(2), 4D
5. A judge who owns more than \$1500 in the stock of a company must disqualify because the judge has a financial interest in the subject matter of the proceeding if the company is a party to the proceeding. However, after announcing the disqualification, the judge may ask the parties if they wish to waive the disqualification based on the stock ownership and if so waived, the judge may handle the case without divesting the stock. Canons 2A, 3E(1)

6. A judge must disclose his/her reasons for disqualification to the Presiding Judge upon request. Canons 2A, 3A, 3B(1), 3C(2), 3C(4), 3D(1), 3E(1)
7. A judge who retained a law firm to represent judge on a personal matter that has concluded is not required to recuse if the law firm appears on another matter but is required to disclose the representation for a period of two years after the end of the representation. Canon 3E(2)
8. A judge is not disqualified from hearing matters in cases in which a deputy public defender is involved where the deputy public defender had previously been involved in a CJP complaint against the judge, which resulted in judge's agreement to private admonishment, and judge need not disclose the deputy public defender's complaints which related to past conduct. Canons 2A, 3E(2)
9. A judge who is a victim of a crime in a case which is pending is disqualified from presiding over cases of the same type until the judge's case is resolved. With respect to other cases, involving other crimes which are being prosecuted by the same agency, judge must disclose fact that agency is prosecuting a matter in which judge is involved because that would be relevant to the issue of disqualification. Canon 3E
10. A judge whose adult child is a probation officer in judge's county must disclose on the record child's employment in every criminal case in which probation is likely to be involved. Canon 3E(2)
11. A judge, sitting in a criminal assignment, who was a victim of stalking while serving as a Deputy District Attorney is not disqualified from hearing all stalking cases but must disclose because the judge's status as an alleged victim is relevant to the issue of disqualification. Canon 3E
12. A judge who represented a criminal defendant who was convicted of two felonies more than ten years before must recuse in a case where the prior convictions are part of the pending charge: a convicted felon in possession of a firearm. Canon 3B(1)
13. A judge, whose child lives at home, and is a law student who works at law firm which has an active practice before the judge, is disqualified from hearing cases on which the child works. Canons 2A, 3E(1), 3E(2)
14. A judge who is asked to take a jury verdict in a criminal threats matter for another judge who is ill is not obligated to disclose that judge was subject of criminal threats in another matter because act of taking a jury verdict is ministerial. Canon 3E(2)
15. A judge who is handling a case of a publicly-traded corporation and whose adult child lives at home and works for the corporation on a part-time basis should disqualify self from case. Canons 3B(1), 3E(1)

16. A criminal law judge whose close relative is charged with a crime in the judge's county but who is being prosecuted in another county is not disqualified from presiding over cases prosecuted by the district attorney but must disclose the judge's relationship. Canons 1, 2A, 2B(2), 3E(1), 3E(2)
17. A newly appointed Traffic Court judge, who was formerly a deputy district attorney, where deputy district attorneys may appear on various matters, does not have to disqualify self or disclose unless judge made a legal decision, or authorized charges, including actions on prior convictions. Canon 3E
18. A judge who has been invited to attend a party celebrating the election of a new Commissioner does not have to recuse because the party is at the home of attorneys who occasionally appear before the judge nor does the judge have to disclose the fact of the attendance when the hosting attorneys appear before the judge. Canons 3E(1), 3E(2)
19. A judge may not appoint an attorney, who shares office space and rent expenses with the judge's domestic partner, to serve on a court-appointed attorney list on matters that would likely come before the judge. Canons 2A, 3E(1), 3E(2), 4D(1)(b)
20. A judge who has disqualified him/her self from a case and who now believes that the disqualification was done in error may not set aside the disqualification. Canons 2A, 3E(1)
21. A judge who retains a local law firm for personal matters is disqualified in cases where an attorney from the law firm represents a party. Canons 2A, 3E(1)
22. A judge who is on the board of an Inn of Court, composed of judges and attorneys, does not have to disclose or disqualify if an attorney is nominated to serve on the Board provided that the nomination is from the Inn and not from that judge. Canons 2B(1), 2B(2), 4A

C. Reporting Responsibilities

1. A judge who is a director of an organization may, but is not required to, report judge's concerns that a fellow board member may have embezzled funds from the organization. Canon 2
2. A judge who has personal knowledge that a lawyer has gained unauthorized access to criminal history information in connection with a motion for a new trial must take appropriate corrective action, which could include reporting the lawyer to the State Bar, but the judge is not required to report the apparent crime to law authorities. Canon 3D(2)
3. A judge who believes that he/she cannot be fair because of overhearing a private conversation in which a party is accused of lying has no duty to

report a possible crime. The judge, under these circumstances, has the same responsibility as an ordinary citizen. Canons 2A, 3B(7)(d), 3E(1)

D. Ex Parte Communications

1. A PJ who receives a complaint by a litigant in a pending case has a duty to investigate the complaint which may include discussing the matter with the judge and if the complaint is disclosed to the judge it becomes an ex parte communication which the judge would have to disclose. Canon 3B(7)(d)
2. A judge who learns from a lawyer that the lawyer's signature on a stipulation was not his/hers should hold a hearing to notify the other attorney, who signed the stipulation, of the information and give the second attorney an opportunity to be heard as to whether he/she signed both signatures on a stipulation. Canons 3B(7)(d), 3D(2)
3. A judge who receives a flattering personal note from a juror expressing interest in the judge must promptly disclose it to all counsel. Canons 1, 2A, 3B(7)(d)

II. CONDUCT OUTSIDE THE COURTROOM

A. GENERALLY

1. A judge may attend an informal meeting with judge's spouse who is engaged in a wage dispute with spouse's lawyer but only as a support person and only if judge is not identified as a judge. Canons 2A, 2B, 4G
2. A judge who receives a speeding ticket should not consult with a traffic commissioner in regard to the relevant law and local sentencing practices. Canons 2A, 2B
3. A judge who owns a vacation home in a community with a homeowners association may sit on the board of directors of the association but may not sit on the legal committee of the board because it is likely to be perceived that the judge is acting as the legal adviser to the board. Canon 4G
4. A judge may not serve as an executor for the estate of a close friend because the exception in Canon 4E (1) applies only to family members of the judge. Canon 4E(1)
5. A judge may receive reasonable reimbursement for travel, food, and lodging to perform wedding of friend's child but should disclose performance of wedding when friend appears before judge. Canons 4A, 4H(1), 4H(2)
6. A judge cannot contact new admits to a law school and advise the new admits that the law school wants them to attend because this would be

lending the prestige of judicial office to advance the pecuniary interests of the law school. Canons 2B(2), 4D(2)

7. A judge, who was formerly a prosecutor, may receive and award presented to former prosecutors for outstanding service, professionalism, integrity, and dedication. Canons 4A(1), 4A(4)

8. A judge may play almost any role in a legitimate theatrical production without demeaning the judicial office. Canon 4A

9. A judge who has a romantic relationship with a subordinate judicial officer must inform the presiding judge of the relationship if the judge has supervisory authority over the subordinate judicial officer and refrain from voting on any employment issues that pertain to subordinate judicial officers in that county. Canons 2B(2), 3C(1), 4A

B. Public Commentary, Publications, Books, Media

1. A judge may write a blurb for a book on a non-legal subject, written by someone whom the judge has known for years, with the understanding that judge's title will not be used in the blurb and judge will not be identified as a judge. Canons 2B(2), 4A, 4D(2)

2. A judge may share his/her general observations with supervisors in the DA's office but may not make specific suggestions as to how deputies could be more effective advocates because this could be perceived as coaching one side that appears before the judge and provided that the judge would make himself/herself available to give similar feedback if asked by the other side. Canons 2A, 3E(2)

3. In response to criticism from the community, a judge may issue a factual statement setting out the charges on which a defendant was convicted, the punishment imposed, and the fact that both sides agreed that probation was appropriate in the case in response to criticism in the community re the sentence. Canons 3B(9), 4B

4. A judge may be interviewed and speak generally about the issues of mentally ill defendants in the criminal justice system, advocate for improved training and resources, but may not speak or comment about any impending case. Canons 3B(9), 4B

5. A judge may be interviewed and act as a consultant for a video production company about two murder cases that the judge prosecuted against a defendant while the judge was a prosecutor. If interviewed, the judge may be identified as a sitting judge, but the judge should take care that neither the credits nor the publicity use the judge's title as a judge. Canons 2B(2), 3B(9), 4A(2), 4D(1)

6. A judge may not write an opinion about a case pending in another jurisdiction and distribute it to the judge's friends, with permission for them

to forward it to others, even if the judge asks that the judge's identity remain anonymous. Canons 2A, 3B(9)

C. Letters of Recommendation

1. A judge may not write a letter on behalf of someone who works with the court (not court staff) who is attempting to regain custody of a child absent a formal request from the court or a formal subpoena. Canon 2B(2)
2. A judge may not accept an honorarium for writing a letter of recommendation for a prospective faculty member. Canons 2B(2)(e), 4 H
3. A judge may not write a letter in connection with a juvenile court proceeding, pending in another state, attesting to the good character of a litigant whom judge has known since the litigant was a child. Canon 2B(2)
4. A judge who is acquainted with a lawyer facing a disciplinary proceeding and who was formerly a partner of the lawyer may not write a character reference to the State Bar unit handling the matter but may provide factual information to the State Bar in response to a subpoena or when officially asked to do so by the State Bar. Canons 2B(1), 2B(2)(c)
5. An appellate justice whose colleague has a case pending before the Commission on Judicial Performance may write a character reference letter based on personal knowledge to the CJP. Canon 2B(2)(b)

D. Judge as Witness

1. As long as the interview is limited to judge's factual observations of an employee, judge can be interviewed by the public defender's office in regard to an employee who worked on judge's ranch and who is currently charged with felonies. Canon 2B(2)
2. A judge may sign a declaration on behalf of a former client, whom the judge represented while an attorney, providing factual information which details the number of hours, the judge's fees (as an attorney), and the reasonableness of the rates and fees provided the judge does not state the judge's current position. Canons 2A, 2B(2)

E. Gifts, Discounts, Honoraria

1. A judge may attend, participate, and pay for monthly bar luncheons where law firms act as sponsors and need not disclose that fact if attorneys in sponsoring law firms appear before the judge. Canons 3E(2)(a), 4D(6)(d)
2. A judge may attend a bar function where certain law firms are covering the cost of food and drink and where the judge is attending for free. The

provision of the food and drink is not a gift to the judge but to the bar association and the judge does not have to disclose if any of the sponsoring law firms appear before the judge. Canons 3E(2)(a), 4D(6)(d)

3. A judge may attend an annual bar association Judge's Night and accept the offer of a meal. The meal is a permissible gift. Canon 4D(6)(d)
4. A judge and the judge's staff may accept personalized coffee cups given to them by a volunteer unpaid mediator, who is not an attorney and has helped the judge with certain types of settlement conferences. Canons 1, 2A, 2B(1), 3C(3), 4A, 4D(6)(g)
5. The use by judges of the sheriff's shooting range and of ammunition provided is not a gift. Canons Terminology "Gift"
6. A judge may accept an all-expenses paid trip sponsored by a cultural foundation of a foreign country as long as the foundation is not a party that would appear before the judge and as long as the reimbursement is limited to the reasonable costs of transportation and lodging. Canons 4A, 4D(5), 4D(6)(e), 4H
7. A judge who addressed a law school class in a court visit may accept a fruit basket from the professor who arranged the visit as this would be considered normal social hospitality. Canon 4D(6)(g)
8. A judge, the judge's staff, and the bailiff assigned to the judge cannot accept food items offered by attorneys who represent parties but may participate in potluck lunches where they contribute food items along with attorneys who represent parties in the judge's courtroom. Canons 3B(4), 4D(6), 4D(6)(g) and definition of Gift
9. A judge may have the judge's former law firm host the judge's enrobing reception. Canon 4D(6)(a)
10. A judge may attend a private bar association's educational program where there is a charge for attorneys but not for judges. Canon 4D(6)(e)

F. Community Outreach

1. A juvenile court judge may write on court stationery urging employees of a local school district to consider serving as foster parents. Canons 2A, 4A
2. A judge may wear a robe at a graduation ceremony in a program for children whose parents are going through divorce. Canons 2A, 4A, 4B
3. A judge may write a letter in support of education for minorities as part of an event designed to validate education as a viable option for minorities. Canon 4B
4. A judge may volunteer as a screener for a community legal affair sponsored by a bar association and direct attendees to a table where

volunteer attorneys provide free legal consultations in various areas of the law provided that judge will not be giving any advice or analysis. Canons 4A, 4G

III. Political Activity

1. A judge may continue service on the board of a lawyer referral service but may not continue as a member/delegate to the Conference of California Bar Associations. Canons 2A, 2B, 4A(1), 4C(3)(c)(i), 4C(3)(c)(ii), 4D(1)(b), 6
2. A juvenile court presiding judge may sign a letter to the legislature supporting a bill to enable foster youth to receive educational benefits they do not currently receive. Canons 1, 2A, 2B(2), 4A(1), 4C(1), 5D
3. A judge should discourage a spouse from hosting a fundraiser for a candidate for a non-judicial office; should not allow his/her name to be used in any of the proceedings including notices of the event, and should not be present in the home when the event takes place. Canons 1, 2B(1), 2B(2), 4A(1), 5, 5A
4. A judge may not attend a meeting of the city council and speak on judge's friend's behalf where friend has applied for a vacant position on the city council. Canons 2B(2), 5A(2)
5. Retired judges can use the designation "Retired Judge" in stationery. Canon 6A
6. A judge may appear at a public hearing and speak to an advisory land use body on a proposal that may affect the value of judge's property provided that the judge takes care not to refer to or use the judge's position in the judge's presentation to the advisory body. Canons 2B(1), 2B(2), 4C(1)
7. A retired judge, who does not participate in the Assigned Judges Program and does not sit as a court-ordered arbitrator, may endorse a non-judicial candidate and allow the endorsement to appear in the candidate's campaign materials. Canon 6

IV. CIVIC AND CHARITABLE ACTIVITIES

A. Generally

1. A judge may moderate a panel discussion, including state-wide elected officials, city council member and a member of a leadership foundation. Canons 1, 2A, 2B, 4B, 5
2. A judge may serve as the President of the board of trustees of an all-girls private school. Canons 1, 2A, 2C, 4A(1), 4A(2)

3. A judge may serve as an officer of an organization devoted to the administration of justice but may not solicit work for the organization which receives fees for its services. Canons 4A, 4C(3)(d)(i)
4. A judge may accept a paid position as a judicial outreach liaison to develop judicial training programs relating to drunk driving issues. Canons 4A and 4C(2)
5. A retired judge, sitting as an assigned judge may accept a paid part-time position as a scholar in residence at a local university. Canon 6B
6. A judge may ask the federal government and/or nonprofits for grants to defray the travel costs of foreign judges to learn how to conduct jury trials. Canons 2B(2), 4A, 4C(3)(d)(ii)
7. A judge may attend a meet and greet event sponsored by a local political party chapter as long as the judge does not endorse the political party or any non-judicial candidate. Canons 2A, 5A(2)
8. A judge may not belong to a golf club open for membership only to one gender even if the club does occasionally open to the other gender for limited events. Canons 2A, 2C
9. A judge's spouse may contribute to a sheriff's support group provided that the judge's spouse solely makes the decision to do so. Canons 2A, 2B(2)
10. A judge may appear in a video used to encourage volunteers for an organization that advocates for children who appear in court proceedings provided that no fund-raising is involved. Canons 2A, 4A and Advisory Committee Commentary to Canon 4A, 4C(3)(d)(ii), 4C(3)(d)(iii), 4C(3)(d)(iv) and Advisory Committee Commentary to 4C(3)(d).

B. Government Positions

1. A judicial officer may not serve on a city planning commission that is responsible for developing and recommending plans, development proposals, and zoning ordinances. Canons 4C(1), 4C(2), 6A.

C. Fundraising

1. A recently elected commissioner may not sell retirement dinner tickets to non-judicial officers to honor a judge who has retired. Canon 4D(1)(a)
2. A judge who is a board member of a 501(c)(3) non-profit may send out thank you notes to persons who have contributed to the charity even though the card may lead to contributions in the future. Canons 4A(1), 4C(3)(b), 4C(3)(d)(i)

3. A judge may speak with an editor of judge's law school alma mater magazine and comment on a story about a scholarship fund that the judge established, the judge's reasons for starting the fund, the criteria for selecting recipients of funds, whether the judge would encourage others to establish scholarship funds, and the advice judge would give to students who seek scholarships. Canons 2A, 2B, 4C(3)(d)(i), 4C(3)(d)(iv)

V. BUSINESS ACTIVITIES

1. A judge cannot serve as the executor of a friend's will. Canon 4E(1)

2. A judge may not send out announcements that judge is commencing a private dispute resolution service prior to judge's retirement date. Canons 2B(2), 4A, 4D(1)(a)

3. A judge should avoid financial transactions with the head of an agency/ law firm whose lawyers regularly appear in judge's court. Canons 4D(4), 4D(1)(b)

4. An assigned judge may not participate in privately compensated dispute resolution activities. Canons 4F, 6C

5. A newly appointed judge, in the process of winding down a law practice, may write checks on the law firm's account to pay outstanding obligations. Canon 4G

6. A judge, who does not identify self as a judge, may teach yoga after hours for a fee but not inside the courthouse. Canons 2A, 2B(2), 3A, 4A, 4D(1)

7. A judge may serve as an off-screen technical advisor for a film as long as the judge is not identified in the credits. Canon 2B

8. A judge, as potential buyer of a house in a hot market, may not write a letter to the seller, including judge's title and occupation, and explaining "who judge is" and why judge wants to buy the house. Canon 2B(2)

9. A judge is entitled to receive referral fees on cases which the judge referred to attorneys while in private practice and before becoming a judge. Canon 4D

10. A judge may not be videotaped in the judge's work-out clothes by a non-profit fitness center, associated with a public university, where the videotape will be used to recruit additional members even though the judge will not be identified as a judge in the videotape. Canon 2B(2)

VI. EDUCATIONAL ACTIVITIES

1. A judge may attend training by a non-governmental organization on the subject of the Sovereign Citizen Movement. Canons 2A, 4A(1), 4A(2), 5D

2. A judge, who is going to retire and is going to join a private mediation group after judge's retirement, may participate in a private mediation study group, consisting of other mediators, retired judges, attorneys and non-attorney mediators, while judge is still acting as a judge to discuss subjects pertinent to mediation prior to retirement as long as no pending cases are discussed with the group. Canons 2A, 2B(2), 3E, and 4B

3. A Family Law judge, who presides over cases of an organization that provides free legal advice to indigent individuals in Family Law cases may give the keynote address to attorney volunteers in a training session sponsored by the same organization provided that the judge is not involved in fund raising. Canons 2A, 4A, 4B

4. A judge may not teach a course to police cadets regarding how they should present themselves as witnesses and what factors influence a court in receiving the cadet's testimony. Canons 2A, 4A(1)

VII. COMMUNITY OUTREACH

1. A judge may serve on the board of a 501(c)(3) corporation and participate as chair of a ticketed dinner/concert event, but may not solicit others to buy tickets and attend other than family members and other judges. Canons 2B(1), 2B(2), 4C(3)(b), 4C(3)(d)(iii), and 4D(1)(A)

VIII. ADVICE TO PRESIDING AND ASSISTANT PRESIDING JUDGES

1. A Presiding Judge should not try to persuade a judge to reduce the amounts paid to defense counsel in a Penal Code section 987 fund request. Canon 3C(3)

2. A Presiding Judge may not write and publish a letter to the community, in response to intense community backlash, explaining why a sentence imposed by a judge was appropriate under the circumstances. Canons 2A, 3B(9)

3. A Presiding Judge may invite the Sheriff to speak to supervising judges about leadership. Canons 2A, 3C(1)