

MEMORANDUM

TO: California Judicial Officers
FROM: Nicole Virga Bautista, Executive Director
DATE: January 2019

Enclosed please find the 2017/18 *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 October 2017 to September 2018.

Judges may direct questions on the Code of Judicial Ethics to the current 2018/19 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 2017/18.

*Special thanks to Ethics Committee member Marian Gaston, San Diego Superior Court, for preparing this Update.

2017/18 Judicial Ethics Committee

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California Judges Association

JUDICIAL ETHICS UPDATE

January 2019

I. CONDUCT INSIDE THE COURTROOM

A. Generally

1. When a judge has a cause of action against a physician and medical device manufacturer, the judge may ethically bring a lawsuit in the judge's county and may serve as the main plaintiff and witness. The judge should inform the Presiding Judge that they are planning to file the lawsuit so that the case may be assigned properly. (Canon 2A, 2B(1), 2B(2), 4A, 4D(2))

B. Disclosure and Disqualification

1. Judge was previously the head of the conflict public defender agency in the judge's county. Judge may hear new criminal cases where the judge's former employer is the appointed attorney of record on a new case. (Canon 3E)

2. Judge is newly appointed. Six months prior to the judge's appointment, the judge was an attorney for a deputy public defender who regularly appears on judge's court. For two years after the end of the representation, the judge must disqualify on any case where the deputy public defender appears. (Canon 3E(2))

3. Where a judge owns over \$11,000 of publicly traded stock in a company that is a party in an upcoming case, the judge must divest or disqualify, although the disqualification may be waived by the parties. (Canon 2A, 3E(3)(b))

4. A judge must disclose that an attorney served as an extern in the judge's courtroom for two years after the person worked in the judge's courtroom. (Canon 2A, 3E(2)(a))

5. Following the retirement of a judge's spouse from the District Attorney's office, the judge must continue to disclose the previous employment of the judge's spouse on any criminal case for one year. (Canon 3E(2))

II. CONDUCT OUTSIDE THE COURTROOM

A. Generally

1. A judge may participate in a courthouse contest to see who can walk the most steps. (Canon 4A(2))
2. A judge may attend the retirement celebrations of two employees of the judge's former employer, County Counsel. (Canon 2A, 4A(1))
3. A judge may attend an open house hosted by the firm where the judge's spouse works, when food and drink will be provided and the open house will be attended by a mixture of local attorneys, firm clients, and others. (Canon 2A, 2B(2), 4D)
4. A judge may attend a family court hearing as support for the judge's spouse who is seeking to lower alimony payments. (Canon 2A, 2B(1), 2B(2), 4G and Commentary)
5. A judge may give a victim impact statement at the time of sentencing when the judge's child was the victim of a drinking and driving accident. (Canon 2B(3)(c))

B. Letters of Recommendation

1. A judge may write a letter of recommendation for a college scholarship regarding a person where the judge has known the candidate for over ten years and has personal knowledge of their good qualities. The recommendation letter may be written on judicial stationery. (Canon 2B)

C. Judge as Witness

1. A judge may speak to the attorney for another judge regarding a CJP investigation. (Canon 2B(2)(b) and Commentary)

D. Gifts, Discounts, Honoraria

1. A judge may not accept a gift basket of chocolate and cookies to be distributed to courtroom staff, attorneys, probation officers and others from mental health interns when the interns provide reports to the court. (Canon 2A, 2B(1), 4D(5), 4D(6), (4D)(6)(g) and Definition of "Gift")
2. A judge may attend a Family Law seminar, and accept the lunch that is provided, for free. (Canon 4B, 4D(6)(a))
3. A commissioner who presents at a two-day law conference may accept the dinner between the two days that is paid for by conference funds generated by attendees, and may bring a spouse and children to the dinner, without reimbursing the association sponsoring the conference. (Canon 4D(6)(d))

III. REPORTING RESPONSIBILITIES

- A. A judge may allow a civil settlement that includes an agreement by one party to waive sanctions that were imposed on the opposing party by another judge. (Canon 2A, 3D(1), 3D(2) and Commentary)
- B. A judge who has pled guilty to a Fish and Wildlife infraction does not have to report the violation to CJP, as infractions are not covered by Canon 3B(3). (Canon 2A, 3B(3), 3D(3))
- C. A judge has a duty to report an attorney for filing pleadings in a matter pending before the judge when the judge knows the attorney has been suspended from practicing law by the State Bar. (Canon 3D(2))
- D. Where a judge has been sexually harassed by another judge for years, they have a duty to report the harassing judge to CJP. The harassed judge does not have a duty to self-report the previous years' failure to disclose. (Canon 1, 2A, 4A)
- E. Where, between hearings, an attorney argued with a member of the court's staff and made a profane comment to another attorney about that person in the staff person's presence, and where the staff person then told the judge about the incident, the judge must address the incident with all who were present regarding maintaining appropriate demeanor in court. The judge must also report the matter to the supervising judge or appropriate court administrative supervisor. The judge may report to the attorney's supervisor. (Canon 3B(3), 3B(4), 3C(2), 3D(2))

IV. POLITICAL ACTIVITY

- A. A judge may make a \$500 donation to an attorney friend who is running for mayor so long as the judge tells to attorney not to use the judge's name in any connection with the mayoral campaign, and so long as the judge has not contributed over \$500 to any other non-judicial candidate, party, or political organization in the calendar year. (Canon 5A(3))
- B. A retiring judge may write an op-ed endorsing an attorney who will run for the judge's seat even before the attorney has formally announced a campaign. Judges may publicly support candidates for judicial office, and the attorney is considered a candidate for judicial office as soon as they authorize solicitation or acceptance of contributions or support. (Canon 5A(2), and Definition of "Candidate")
- C. A judge may publicly support, donate to and campaign for a judge who is the target of a recall. (Canon 5A and Commentary)

D. Without identifying as a judge, a judge may attend a “March for Our Lives” rally being held for the stated purpose of “demand[ing] that their [kids’ and families’] lives and safety become a priority and that we end gun violence and mass shooting in our school today.” (Canon 2A, 4A, 5) [Lench #190]

E. A judge may moderate a debate between candidates for District Attorney in a hotly contested race. (Canon 4A, 5A)

F. A judge may attend the election night party of the District Attorney, a personal friend, provided the judge is careful not to take actions that a reasonable person might believe indicate that the judge has endorsed the candidate (such as saying a few words to the crowd or being identified as a supporter). (Canon 4A, 4D(6)(e), 4H and Commentary)

V. CIVIC AND CHARITABLE ACTIVITIES

A. Generally

1. A judge may co-chair the attendance committee for the judge’s college reunion where the judge will be responsible for encouraging former classmates to attend and no fundraising is involved. (Canon 4C(3)(d))

2. A judge may serve on the board of directors of the judge’s law school as long as the judge does not participate in fund raising. (Canon 4C(3)(a))

B. Fundraising

1. At a fund-raising dinner for a charitable organization a judge may introduce the chair of the organization, an attorney who is a longtime friend of the judge, where there has been no publicity concerning the judge having a role in the program and the judge will not ask for donations. (Canon 4A(1),(2) and (3), 4C(3)(d)(iv))

2. A judge may not serve as master of ceremonies at a fund raiser for a religious non-profit that assists middle and high school-aged children. (Canon 4C(3)(d)(iv))

3. Judge is an alumnus of a university where the judge received an academic scholarship. The judge may not allow the alumni association to showcase the judge in a fundraising letter which is intended to support similar scholarships. (Canon 2B(2), 4C(3)(d)(iv))

4. A judge may attend a retirement party in the judge’s honor where the party is hosted by a local bar association, the bar association will charge attendees to cover the costs of the party, and any excess funds collected will be donated to a charity of the bar association’s choosing. (Canon 4C(3)(d)(iv))

C. Membership

1. A judge may purchase a premium level membership in a local specialty bar that would provide the judge with complimentary admission to the specialty bar's events and would result in the judge's name being featured, along with similar members, on the bar's social media, in the periodic newsletters, and in a plaque being installed in the organization's headquarters, so long as the judge only allows their title to be used if others have comparable designations by their names. (Canon 4C(3)(d) and Commentary)

VI. BUSINESS ACTIVITIES

A. If a commissioner's spouse is hired by a medical marijuana business that compensates the spouse both with a salary and stock, the commissioner may not own any interest in the business even through a community property interest. (Canon 2A)

VII. EDUCATIONAL ACTIVITIES

A. A judge may teach a class about unlawful detainer litigation to a mixed group of judges and attorneys who represent various parties in the landlord-tenant community. (Canon 4A, 4B)

B. A judge may develop and teach a class about the United States Constitution to law enforcement officers when the class would address the Constitution's history and major cases but not substantive criminal law or procedure, and when the judge would be available to teach the class to non-law enforcement groups. (Canon 4B)

VIII. COMMUNITY OUTREACH

A. A judge of a mental health court may not discuss a case that is ongoing in the judge's court to illustrate the difficulties encountered in accessing treatment, even when all counsel in the case are willing to let the judge discuss the case without using the patient's name. (Canon 3B(9))

B. A judge may present an award to the winner of an art contest sponsored by a non-profit organization that educates students about the dangers of distracted driving and driving under the influence. (Canon 2A, 4A)

IX. ADVICE TO PRESIDING AND ASSISTANT PRESIDING JUDGES

A. Upon learning that, during court hours, a judge asked for signatures from court employees regarding the judge's reelection petition, the Presiding Judge must take corrective action. (Canon 2A, 3C(3), 3D(1))

B. If all parties consent, the Presiding Judge may allow a pro-adoption non-profit agency to film a live adoption when the film will not be used for fund raising. (Canon 2B(2), 4A, 4D(2))

C. Upon a request from the State Board of Parole, the Presiding Judge may provide factual information about a case that is available from court files and, based on that information, may provide a recommendation regarding the defendant, where the judge who handled the case is not available. (Canon 2B(3)(b))