

January 1997

This is the fifteenth Judicial Ethics Update from the Ethics Committee of the California Judges Association. The Update highlights areas of current interest from 308 informal responses, during the period October 1995 to September 1996, 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 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

Generally

A. A judge starting a long trial may write a letter to an airline concerning problems with non-refundable tickets which a juror or attorney cannot use because of the trial. Canon 2B(1)(4).

B. A judge or a court may furnish police agencies information about probation conditions of defendants such as search and seizure waivers or stay away orders in prostitution cases. Canon 3B(7).

C. The presiding judge may discuss with the District Attorney administrative concerns and solutions when the District Attorney files a blanket challenge against a judge who is a part of team approach in criminal cases. Care should be taken to avoid any criticism of the filing of the affidavits. Canon 3C(3), 3B.

D. A judge may refer a misdemeanor to a program for controlled substance abusers run by a *non-profit* organization on whose board the judge sits. Canon 4C(3).

E. A court may accept grant funds for a commissioner and clerks where the grant has been obtained by the District Attorney as long as the funds flow from the state to the county which then distributes them to the court. The grant does not bind the commissioner to rule in a certain way, only to hear a certain variety of cases.

F. A judge may answer inquiries from other judges regarding appropriate appellate authority for various fact patterns but may not do so for attorneys. Canon 4G.

G. A judge hearing a trial may consult a bankruptcy judge, not involved in the case, concerning the effect of bankruptcy proceedings on the trial as long as the parties are notified of the consultation. Canon 3B(7)(a).

Disclosure and Disqualification

A. A judge elect who is the public defender may continue to serve as such until sworn in and when sworn in may hear family law matters handled by a contract employee of the public defender but not cases which were in the office at the time of taking office. Canon 3E.

B. Judge (A) may notify Judge (B) about facts which Judge (A) learned indicating a possible conflict of Judge (B) in a case pending before Judge (B). Canon 3B(7)(b).

C. A judge, assuming he/she feels he/she can be objective, may sign a search warrant where the facts show that the suspect has used the phone number of a colleague judge in perpetrating his scheme. Canon 3E.

D. A judge who learns of facts from the court's computer system which may be useful to one side or the other in an ongoing trial should disclose this information to all parties in the trial. Canon 3B(7).

E. A new judge who owns, along with former senior partners, a building in which his/her former firm practices may continue to retain ownership unless the former firm appears with any frequency in his/her court in which case the property should be divested in a commercially reasonable manner. Canon 4D(1)(b).

F. A judge is not disqualified from hearing the case but should disclose to the parties information in the following situations:

1. Judge's stepson is an attorney for the public defender, in cases where the public defender represents a party, or where judge's cousin is an attorney for city attorney.
2. An attorney for one of the parties represented the judge ten years ago and judge's spouse prior to marriage, twelve years ago.
3. Victim in a criminal case appears with an attorney who rents office space from judge's attorney spouse and both attorneys' names appear on letterhead although not partners.
4. Recently elected judge should disclose names of attorneys appearing in his/her court who actively participated in the campaign for a reasonable period of time. Need not disclose those who only made financial contributions since FPPC reporting fulfills the disclosure with regard to them.
5. Judge in a high profile case has received anonymous threatening calls at home, which judge believes did not come from either party or at their instigation, concerning possible evidentiary rulings regarding statements of the defendant.
6. Judge's spouse is employed as director of victim services for the District Attorney's Office.
7. Judge was an attorney at one time for one of the witnesses in a case being heard by the judge.
8. Judge's niece represented defendant at the prelim in a case being tried before the judge in Superior Court.

Canon 3B(1), 3E.

G. Judge is disqualified in the following situations:

1. Some of the witnesses in a case are from a law firm where judge's father is a client, including the father's attorney who drew trust documents for a family trust.
2. Judge's spouse, who is an independent secretary/paralegal, has done any work on a case.

3. Attorney for party is a good social friend with whom judge frequently socializes, shares holidays and exchanges gifts.
4. Former firm of judge represents a party. The judge's partnership buy out is to be paid over a period of years, should recuse until the payout is completed.
5. Judge hearing a case involving federal preference polices serves on a national policy setting commission of an anti-defamation organization which organization has taken a position on such preferences.
6. In cases where the county is a party because judge's pension plan from private practice included county bonds in excess of \$1,500 even though less than 1% of corpus of bonds outstanding. (See CCP 170.1, 170.5.)

Canon 3E.

H. Judge need not recuse self in the following situations:

1. In a small claim de novo, at the end of the case, a party says he knows judge's spouse, judge does not know the party.
2. Judge, in a case where the charge is making threats against the governor, was appointed by the governor.
3. Member of the Board of Supervisors is charged with DUI.
4. Litigant's spouse is represented by spouse of another family law judge where judge does not have a close association with other family law judge or his/her spouse.

Canon 3E.

I. Judge does not need to disclose that judge's spouse attorney does civil defense work in civil cases where spouse's firm is not involved. Canon 3E.

J. Retired judge, who sits on assignment, may mediate for a non-profit mediation group where judge is a member of the board as long as judge discloses relationship. Canon 3E, 6C.

Reporting Responsibilities

A. Judge who discovers that an attorney under a 30-day suspension from the State Bar has appeared before judge during the 30-day period must report this to the State Bar. Canon 3E(2).

B. A judge who believes an attorney has a substance abuse problem because of missed appearances, improper performance and personal observances has a duty to take action such as referring to the Other Bar and asking attorney to report back a course of action and if uncorrected to report to the State Bar. Canon 3D(2).

C. A Presiding Judge who finds out that an attorney is advertising in yellow pages that he/she is a judge pro tem of judge's court should inform the attorney that this is a violation of the canons and to cease and desist. Canons 2B(2), 6D.

D. Presiding Judge must take some appropriate action where facts indicate a commissioner may have a substance abuse problem. Canons 3C(7), 3D(1).

E. Judge before whom another judge has entered a plea to a DUI must take some corrective action (e.g. referral to a treatment program; reporting to the appropriate supervising judge, etc.). Canon 1, 3D(1), 4A(2).

Ex Parte Communications

A. In a situation where judge has received an enquiry letter from the CJP regarding an alleged ex parte meeting with an attorney in case which is on appeal, it would be improper to contact the attorney to refresh judge's recollection where judge has no recollection of the incident. Canon 3B(7).

B. Judge should not conduct in camera hearing without a defendant's counsel's knowledge where defendant has indicated he may want to cooperate with law enforcement but doesn't want his counsel to know, nor should judge appoint an advisory attorney for defendant. Canons 2A, 3B(7), 3E.

II. CONDUCT OUTSIDE THE COURTROOM

Generally

A. Judge may permit courtroom to be used as backdrop for moot court video to be used as training film for non-lawyer city employees learning about functioning of city attorney office. Canon 4B

B. Judge may solicit letters of recommendation from attorneys and others in seeking elevation to higher court and may seek the endorsement of a police organization and appear before a political group which invited the judge to attend as long as judge makes no comments on pending or impending cases, nor make statements which appear to commit the judge with respect to issues which may come before the court. Canons 3B(9), 5B.

C. Judges may respond to questions raised by other judges concerning judge's advice as to applicable legal authority to certain fact patterns. However, the judge should avoid giving such advice to attorneys who make similar requests. Canon 4G.

D. Efforts to name a new courthouse after a deceased prominent attorney whose former firm is still in existence would appear to place that firm in a favored position with the courts. Therefore, a judge knowing of such efforts should explain the ethical implications of the planned action to naming authorities. Canons 1, 2, & 3.

E. A Pro Tem who has been publicly accused of moral misconduct not amounting to a crime may continue to serve if the matter of which the Pro Tem is accused does not directly reflect on the professional competence of the person, and the Presiding Judge does not believe that continued service will demean the judiciary. Canon 3C, 3D(2).

F. A judge may belong to an organization which promotes voter registration for minorities without regard to political party affiliation, and which encourages eligible persons to apply for citizenship. Canon 5A, 4G.

G. It is permissible for a judge to sign an alumni letter of invitation to an event honoring a judge if the letter is not intended to be for fundraising purposes. Canon 4C.

H. A judge may represent self in trial on a traffic ticket or in a divorce proceeding.

I. A judge may be a contestant on the T.V. game show, “Jeopardy”, but has an obligation to avoid comments regarding pending cases or activities which demean the judicial office. Canon 4H, 4D(2).

Public Commentary, Publications, Books, Media

A. Judges are limited in what can be said about the OJ Simpson trial. Judges should refrain from discussing the facts of the case and avoid comments which might be seen as impugning the verdict or demeaning the judicial office. Comment concerning procedural elements of the case appear appropriate. Canons 3B(9), (10).

B. Where a judge is also an author of legal books, it is permissible for the judge to appear at events organized by the publisher for the purpose of promoting one of judge’s books. While the publisher’s interests are being promoted, it will also further the individual interests of the judge and the legal community. Canons 2A, 2B, 4B.

C. A judge may sign a petition urging passage of a State Bar proposition which has been put to the vote of the membership. Canons 2A, 3B(9).

D. A judge may not appear in a public service announcement with members of law enforcement concerning the negatives of gang membership. Canons 3A(1), 2A

E. It is permissible for a judge to accept tickets to a play about the judicial system and to agree to participate in a panel discussion about the play after the performance if the judge’s participation in the panel discussion is not advertised. The value of the tickets is reportable if it is over \$50. Canon 4(B).

F. Although judge authored a bill recriminalizing defamation, the judge may not attend a party held to promote the bill since to do so would lend the prestige of the judge’s office to further the interests of those favoring the bill. The judge will also have to avoid hearing any challenge to the legality of the bill if it passes. Canon 2B(2).

G. It would be proper for a judge to appear as a neutral moderator in a program in which various juvenile and criminal law issues will be discussed. Canons 2, 4.

Letter of Recommendation

A. It is proper for a judge to write a letter to a law firm recommending the hiring of the judge's former law clerk. Canons 2,4,5.

B. A judge may write a letter of recommendation in favor of a candidate for judicial appointment. Canon 2B(3).

C. If under the circumstances it is permissible for a judge to write a letter of reference or recommendation, it is also permissible to refer to the judge's title on the stationary used. Canon 2B(4).

D. When writing a letter of recommendation, a judge should take caution to see that what is said is limited to the judge's personal knowledge about the individual and is not a general character reference, unless there is a specific request for such an opinion from the enquiring body. Canon 2B.

Gifts, Discounts and Honoraria

A. If a judge is asked to participate in an educational program reimbursement of registration, meals and lodging costs are not gifts. CCP §170.9.

B. It is permissible to allow a judge's former law firm to host a reception in honor of the judge's appointment to the bench. Canon 4D(4)(a).

C. The acceptance of discounted legal services from a judge's former law firm would be an improper gift if the total discount exceeded \$250 per year and was not part of the buy out of the judge's interest in the firm. Canon 4D(4)(e).

D. A judge may accept legal software and may install the software on a home computer if the software is provided by the software company to the court as a whole and not to the individual judge and the home use is confined to the performance of court work. Canon 4D(4)(a).

E. Unsolicited gifts from attorneys or litigants should either be returned or donated to a charity identified by the party or attorney. The judge should not designate the charity. Canon 3B(7), 4D(4).

F. A judge may accept free membership in a civil bar association if the normal costs for such membership do not exceed \$250 per year. CCP §170.9.

G. The period of disqualification under CCP §170.1 from hearing matters involving a judge's former law firm continues for the period during which the judge retains a financial interest or such interest is being paid out. Canon 3E.

H. A judge and spouse may accept reimbursement for transportation, meals, and lodging to attend a week-long function at a foreign resort sponsored by the local bar association. The judge will participate in 1-2 hour seminars each day. Canon 4D(6)(b).

I. It is proper for judge to accept travel expenses and a fee for teaching a workshop on victim's rights. Canons 4B, 4D(6)(b).

J. A quid pro quo exchange of gifts among friends is permissible under CCP §170.9 even if the value exceeds \$250.

K. A gift received from a significant other valued at more than \$250 must not be accepted despite the statute's exception for gifts from spouses. CCP §170.9

L. Acceptance of a discounted membership to a private, non-discriminatory club is permissible where the same discount is offered to all government employees regardless of their status as a judicial officer. Canon 4D(5).

M. A fee for giving a speech which is not negotiated or agreed to in advance constitutes an honorarium which is subject to the limits on gifts in CCP §170.9.

N. Attendance at a local law firm's 25th anniversary event open to all judges and attorneys in the community is proper. Canon 2B(2), 4D(6)(d).

O. It is improper for a judge to accept free ticket to a political event which has a value in excess of \$250. Canon 4D(6).

P. Personal use of free Internet service provided to all members of a judge's court is permissible only if the use is de minimis. Canon 4A(2)(3).

Q. A judge may not accept payment of travel expenses to attend the graduation ceremony of a group home to which judge places juvenile offenders.

III. POLITICAL ACTIVITIES

A. While it is proper for a judge to accept a position as the chair of a re-election committee for a judge facing a contested election, the judge should avoid use of courthouse property in performing that role. Canon 5A(3).

B. Both a sitting judge who is a candidate for re-election, as well as sitting judges endorsing the candidate may have their pictures taken posing in robes. Canon 5.

C. A judge involved in an election should use caution against the appearance of undue influence in off-hours solicitation of endorsements or contributions from commissioners. Such solicitations should not be made to senior staff. Canon 5A(3) Commentary.

D. An administrative law judge who does not normally wear a robe should not do so in campaign photos in a Superior Court race. Canon 5B.

E. A candidate for judicial office should not take position on various legal issues posed by a labor organization which supports political candidates. Such questions either ask the candidate to commit with respect to certain issues which could come before the court, or they ask the candidate to comment on pending or impending matters. Canon 5B.

F. It is permissible for a judge to meet privately with a candidate for non-judicial office to discuss campaign strategy. Canon 5.

G. While having a joint campaign headquarters with a non-judicial candidate may save money, the appearance of an implied endorsement prohibits the tactic, even if a sign at the premises disavowing an endorsement is contemplated. Canon 5A(2).

H. A juvenile law referee or commissioner may not refer to him/herself as a “judge” in a campaign for judicial office. Canon 5B.

I. It is proper to accept the endorsement of a special interest group, such as a crimes victim group, since acceptance of an endorsement does not necessarily mean that the group’s goals are endorsed by the judicial candidate. Canon 5.

J. A judge may install new officers of a local Democratic Central Committee, however, care should be taken so that what is said during the appearance is not reasonably construed as an endorsement. Canon 5A, Commentary.

K. A judge may attend a fundraiser for a candidate for DA, but should not speak at the event or engage in activities which give the appearance that the judge is endorsing the candidate. Canon 5A, Commentary.

L. A judge may not fundraise to support a ballot initiative to consolidate all juvenile court facilities, but may speak publicly about it since its purpose concerns court operations. Canon 4C(3)(d).

M. Where a candidate has erroneously listed a judge as an endorser, the judge should send a written request for a retraction. Canon 5A(2).

IV. CIVIC AND CHARITABLE ACTIVITIES

Court Positions

A. Judge should resign from a domestic violence coalition which picketed the courthouse about the handling of a case being heard. Canon 4C(3)(1), 3A(1).

Membership

A. A judge may serve on the board of or be a member of the following organizations with the understanding that he/she may not engage in fund raising nor allow his/her name to be used in fund raising activities:

1. Board of a non-profit racquet/swim club.

2. Board of and president of the Athletic Foundation of a local state university.
3. Grievance committee of a private country club which reports to the board of directors which takes any action that may be required.
4. Chair of a booster organization of the local high school which organization primarily decides how money donated to the organization should be spent.
5. Italian heritage group and may be the Italian Consul's representative when the Consul is unable to attend.
6. College reunion committee.
7. President of the board of a private school.
8. National organizations dedicated to getting women elected to political office and attend their conventions.
9. Board of a non-profit educational public television station.
10. Board of Meals on Wheels.
11. President of Commonwealth Club.
12. Boy Scout board.
13. Non-profit blood bank board.
14. Political club that does not endorse candidates nor solicit funds.
15. Board of Association of Business Trial Attorneys, which is open to both plaintiff and defense attorneys and does not take stands on legislation or lobby.

Canon 4C.

B. Judge may not serve on the board of or be a member of:

1. A pro-environment group which has talked of ticketing violators of various ordinances and lobbying the Board of Supervisors to increase bail ordinances.
2. An oversight committee for a Sheriff's Office grant.
3. A children's planning council established by the Board of Supervisors to plan, coordinate and evaluate the effectiveness of children's programs where the county would be divided into districts and council would prioritize plans for each district. May attend meetings.
4. A city advisory board formed to deal with disputes between agencies regarding how fees are to be split.
5. A committee supporting the passage of a local bond issue for libraries.
6. A committee to recommend adjustments to local high school attendance boundaries.
7. A nonprofit corporation which represents a cooperative venture of probation, schools and the community to target at risk students which corporation contracts with for profit groups to which judge may refer youths.
8. A masonic organization unless judge is satisfied that it is a religious organization or does not invidiously discriminate in light of the criteria set forth in Canon 2C.
9. Board of Trustees of a local community college district.
Canon 4C.

C. A female judge may join female only health spa. Canon 2C.

D. A judge may not become involved in an anti-gang organization for which a prominent musical performer was ordered by the judge to perform community service during the time the performer is on probation nor may the judge accept a t-shirt and cap from the organization. Canon 2.

E. Judge may be a Board member of an Inn of Court and may run for president against a non-judge attorney but may not sign a letter requesting members to pay dues. Canon 4C.

Fund Raising

A. Judge may not sell scrip, which are gift certificates for various stores which church pays \$9 for a \$10 certificate and makes \$1 on each sale, even by standing, without identifying self as judge, outside the church. Canon 4C(3)(d).

B. A judge may be involved in planning a fund raising event but may not permit his/her name to be used in any way to solicit funds, except from other judges. Canon 4C(d)(1).

C. May not be a “judicial waiter” for a bar sponsored fund raiser. Canon 4C.

D. Judge’s spouse may hold a fund raiser for a service club at the family home as long as invitation, etc. do not involve judge or use judge’s name. Canon 4(1).

E. May not allow a private school to raffle off a day in judge’s court. Canon 4C.

F. When a police organization lists a judge, unbeknownst to the judge, as being on a “Special Guest List” in a solicitation for a political fund raiser, judge must send an appropriate letter to the organization requesting them to clarify to those to whom the solicitation was sent, that judge has no part in the solicitation. Canon 5A.

G. A judge may not do fund raising for jail chaplain since judge is not exercising a duty of church office for a church of which judge is a member. Canons 4C, 4D.

H. Judge may be finemaster at his/her service club where all members agree that a certain total amount will be paid by each member per year and finemaster only assesses when amounts will be paid and the “fining” is primarily entertainment. Canon 4C.

I. Judge may not be involved in fund raising for a juvenile court facility which will partly be funded by private donations but may support a ballot proposition which will generate funds for the facility. Canon 4C.

V. BUSINESS ACTIVITIES

- A. A judge may serve on the board of a private, for profit law school. Canon 4C.
- B. A judge may serve as an advisor for a movie about some murders that judge prosecuted prior to being a judge and judge's name, but not title, may be used in the credits. Canon 4D.
- C. A judge may not contribute funds to a wedding counselor who refers people to judge for weekend weddings; nor can a judge participate in a bridal fair.
- D. A judge may not advertise in yellow pages to perform weddings even if not using name or title. Canon 2B.
- E. A judge who does weekend weddings and is offered a fee may suggest payment to a favorite charity. Canon 4C.
- F. A judge may not act as a fiduciary even for an old and dear friend and may not remain as one after taking the bench. Canon 4E.
- G. A judge may collect fees for services performed prior to assuming bench. Canon 4.
- H. A judge may not do neighborhood, non-paid mediation work. Canon 4F.

VI. EDUCATIONAL ACTIVITIES

- A. Judge may address MADD workshop to explain court procedures to victims of DUI drivers but must be careful not to allow self to be associated with the group's agenda. Canon 4B.
- B. Judge may comment on cases pending before appellate courts when participating in educational programs. Canon 3B(9).
- C. Judge may be on a speakers panel about effective expert witness testimony at a CPA Conference which will be open to anyone who cares to attend. Canon 4B.
- D. Judge may participate in a mock proceeding to be made available to non-profit groups for training in conflict resolution procedures. Canon 4B.