

January 1998

This is the sixteenth Judicial Ethics Update from the Ethics Committee of the California Judges Association. The Update highlights areas of current interest from 250 informal responses, during the period October 1996 to September 1997, 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 may not allow an attorney to video tape a commercial in the judge's courtroom. Canons 2B(1)(2).

Disclosure and Disqualification

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

1. The judge has reported conduct of one party's attorney to the State Bar.
2. The judge is married to a police officer. (Disclosure must be made in all cases involving the officer's department. Disqualification is necessary only if the officer is involved in the case or will be affected by the ruling.)
3. One party's attorney recently represented the court in a writ proceeding.

4. A peace officer unsuccessfully attempted to discuss a pending sentencing matter with the judge.
5. The attorney for one side has played a significant role in the judge's election campaign.
6. The attorney for one side represented the judge in recent years. (Recusal is not necessary if attorney/client relationship is terminated.)
7. The judge is acquainted with the parents of the homicide victim or parents of the minor charged with murder.
8. The judge is a social friend of the attorney representing one party and after the case has concluded, the judge and attorney will be vacationing together along with several other social friends. (Disclosure should include extent of relationship.)
9. An attorney, prior to being assigned to the judge's court, has made unsolicited contributions to charity in the name of the judge's wife.

Canon 3E.

B. A judge is disqualified in the following situations:

1. A party complains to the CJP, sends a copy of the complaint to the judge and the judge believes the party's remarks have impacted on his or her ability to be impartial.
2. The attorney representing one party rents a house from the judge.
3. Arraignment proceedings where the judge was a witness to a crime in the vicinity of the courthouse.

Canon 3E.

C. A judge need not recuse self in the following situations if the judge is satisfied he or she can act impartially:

1. In documents filed with the court, the attorney for one side has filed false and libelous statements about the judge.

2. The attorney for one party is the spouse of a colleague judge.
3. The judge's son is a law clerk in the District Attorney's Office, but took no part in the case assigned to the judge.

Canon 3E.

D. A judge need not disclose information in the following situations:

1. The judge has a close personal relationship with a prosecuting attorney who has no involvement in the particular case.
2. The judge's son is a prosecuting attorney who has no involvement in the particular case.
3. The judge contributed to the judicial campaign of a candidate who defeated the attorney appearing before the judge.
4. An attorney appearing before the judge contributed to the judge's judicial campaign. (FPPC filing constitutes adequate disclosure.)
5. The City or County is a party and the judge, a retired City or County employee, will be eligible for City or County pension in the future. (Provided the case does not concern the pension plan.)

Canon 3E.

E. A judge, hearing testimony from a witness that is inconsistent with testimony given by the witness in an earlier unrelated case, should advise both counsel of the situation. Canon 3E.

F. A judge hearing the construction defect calendar should not accept an invitation to serve on a panel and receive travel and lodging expenses from building contractors since acceptance may cause the judge to be disqualified in certain cases. Canon 3E.

Reporting Responsibilities

A. A judge, upon learning that the attorney had resigned from the State Bar prior to the attorney's appearance before the judge, has a duty to report the conduct to the State Bar. Canon 3D(2).

B. A judge contacted by CJP investigators may not disclose to the judge under investigation, information learned from the investigators, but may share with the investigated judge any information he or she knows about the incidents being investigated. Canon 2B.

C. A judge must take appropriate action when he or she has personal knowledge that a lawyer has violated any provision of the Rules of Professional Conduct even if the knowledge was obtained during an in camera hearing to determine if the lawyer has a conflict of interest. Canon 3D(2).

D. A presiding judge must take appropriate corrective action upon discovering that a commissioner has endorsed a candidate for nonjudicial office in violation of Canon 5A. Canons 3D(1), 5A, 6.

E. Appropriate corrective action probably requires contacting the State Bar when a judge learns that a suspended attorney has continued to practice law by filing documents with the court as attorney of record. Canon 3D(2).

Ex Parte Communications

A. A sentencing judge who receives a letter from a victim claiming that the convicted assailant is violating probation and placing her in fear should not contact the victim who is a potential witness of the probation violation/ However, a judge should disclose the letter to the District Attorney and probationer's attorney even if the victim asked that the contents of the letter be confidential. Canon 3B(7).

B. A judge cannot confer ex parte with the probation officer regarding the defendant's performance on diversion, even if the attorneys are invited to the conference and choose not to attend. However, the parties may stipulate to the judge proceeding without them. Canon 3B(7).

II. CONDUCT OUTSIDE THE COURTROOM

Generally

A. A judge may not initiate contact with the Court, District Attorney or Probation Department on behalf of the probationer acquaintance charged with a new offense. Canon 2B(2).

B. A judge may answer questions of a police agency investigating alleged improper conduct of a peace officer in obtaining a search warrant from the judge. Canon 3B(9).

C. A judge may not serve as an informal mediator between school superintendent and school board. Canon 4F.

D. A judge may participate in a specialty bar dinner skit as long as the performance does not bring the judiciary into disrepute. Canons 1, 2A, 4A.

E. A judge may use his or her title in letters soliciting information and material for historical exhibit on the law at a county museum. Canon 4B.

F. A judge may participate in a band at a local festival. Canon 4A.

G. A judge may attend a peace officer's charity dinner benefiting widows and orphans of peace officers. Canon 4.

H. A judge at a public ceremony may swear-in public officials and the officers of an unofficial group of students and teachers being formed to promote a "no drugs on campus" policy. The judge may wear a robe. Canon 4B.

I. A judge may use court stationery and stamps to write to discharged jurors expressing gratitude and asking for voluntary comments to questions regarding the facility, staff and judge. Canon 3B(10).

J. A judge may request a court secretary to send notices of County Judges Association meetings provided the clerical assistance is occasional and does not conflict with other duties. Canons 4A, 4B.

Public Commentary, Publications, Books, Media

A. A judge may write regular articles for newspapers about legal procedures and be pictured in his or her robe. Canon 4.

B. A judge may inform the public that specified laws mandate certain sentences and may give examples of resulting sentences, but a judge may not communicate views regarding the fairness of the law or fairness of the consequences. Canon 5D.

C. A judge may not author a chapter of a book designed to aid attorneys regularly representing one side in criminal or civil cases, such as District Attorneys or plaintiffs' attorneys. Canons 2A, 4A(1), 4B.

D. A judge may write and receive a fee for an article regarding corporate law to be published in a magazine available to the general public. Canons 3B9, 4A, B, D, G, H, 5D.

E. A judge may talk to a reporter writing a story about a local attorney who has appeared before the judge, and the judge may discuss specific cases if they are no longer pending or on appeal. Canon 3B(9).

F. While a judge may not comment on a pending or impending proceeding in any court, a judge may explain the legal system and procedures pertaining to a pending case. Canon 3B(9).

Letters of Recommendation

A. A judge may provide a letter of recommendation pertaining to factual matters based on the judge's personal knowledge of the individual in the following situations:

1. At the request of defense counsel for an attorney friend involved in State Bar disciplinary proceedings. The judge may provide a character reference only if the request originates with the inquiring body.
2. At the request of an attorney friend for her admittance to the State Bar.
3. At the request of the judge's clerk who is applying for a job with the United States District Court.
4. At the request of an attorney who is applying for elevation on the defense panel.

5. At the request of a friend applying for a position on the water board.
6. At the request of a friend whose child is applying for college.
7. At the request of a non-profit mediation service in connection with an application for a grant, indicating the judge's experience with the program and that the program would be on a list of mediation services available to litigants.
8. At the request of an adoption agency on behalf of a friend involved in adoption proceedings.
9. At the request of the Board of Prison Terms on behalf of a former client.

Canons 2B(2), 2B(3), 2B(4).

B. A judge may not write a general letter of recommendation in the following situations:

1. At the request of a stock broker, attesting to the stock broker's performance.
2. At the request of the court executive officer, a retired judge serving on assignment may not write a character reference letter to the District Attorney in a neighboring county to persuade the District Attorney not to file a criminal complaint against a relative of the executive officer.
3. At the request of a non-profit corporation that provides social services and court liaison services to Indian children and their families, to use in applications for grants.

Canons 2B(2), 2B(4).

C. A judge may write a general character reference letter at the request of a commissioner who is seeking a judgeship. Canon 2B(3).

Judge as Witness

A. A judge may testify on behalf of an acquaintance who is a parole officer defendant in a criminal case only if subpoenaed.

B. A judge must respond to an official inquiry of the State Bar regarding an attorney who tried a case in the judge's court, and may provide a statement to the State Bar and/or testify at the State Bar hearing.

C. A judge may not sign a declaration for use in State Bar proceedings at the request of a Deputy District Attorney, regarding conduct of the attorney in a trial, now on appeal, over which the judge presided. The judge shall provide information at the request of the State Bar.

Canon 2B(2).

Gifts, Discounts, Honoraria

- A. A judge may accept a gift in the following situations:
1. A judge may accept tickets for the judge and spouse costing \$200 each to attend a charitable dinner from a longtime friend of both, since the amount of the gift is within the CCP 170.9 limits.
 2. A judge may accept a pen valued at \$250 from a close attorney friend who does not appear before the judge.
 3. Upon retirement, a judge may accept gifts at a public testimonial retirement party from private law firms, provided the judge will not be sitting on assignment after retirement.
 4. A newly appointed judge may accept a plaque from the State Chamber of Commerce at a dinner as a gift incident to a public testimonial, but should resign from the Board of Directors.
 5. A judge may attend a seminar offered by a local law school and may accept a waiver of the \$1,500 tuition charged other attendees.
 6. A court may accept a fax machine from the Family Law Section of the County Bar for use in family law cases and may accept a fax machine from the Sheriff for use in a judge's home to receive search warrants, provided machines are used only for official business.

7. A judge may attend a judicial education program at the National Judicial College for which all expenses are paid from a grant to the college from a construction trade association, as the college alone is responsible for course content and issuance of scholarships.
8. A judge may participate in a golf tournament as a guest of the corporate employer of the judge's spouse where the corporation does not appear before the judge and where golf is a benefit incident to the employment activity of the judge's spouse.
9. A judge may accept the offer of a non-profit organization, which is trying to establish democratic institutions, to attend an all expense-paid conference in Germany, provided the organization qualifies under CCP 170.9(e)(2).

Canon 4D(6), CCP 170.9

B. A judge may not accept a gift in the following situations:

1. A judge may not accept tickets to a professional football game in a preferred location from the principal of a corporate party who appears before the court even if the judge pays the face price of the ticket.
2. A judge may not accept an airline ticket from a private software company to travel overseas to make a presentation at an international conference regarding the county's software system that was co-developed by the software company.

Canon 4D(6), CCP 170.9

III. POLITICAL ACTIVITIES

A. A judge may be listed as co-host on an invitation to a judicial election fundraiser. Canon 5A(3).

B. A judge may not solicit contributions from other judges for the benefit of an anti-Prop 209 organization. Canon 5D.

C. A judge must demand a public retraction from a campaign manager for a congressional candidate where the judge's name was inadvertently included in a mailing as a supporter of the candidate. Canon 5A(2).

D. A judge may not allow his or her name to be listed in a voter pamphlet or advertisement as a supporter of a ballot argument to pass a special tax for a park district, nor may the judge write a letter to the editor of a newspaper supporting the measure. Canons 2B(2), 5D.

E. A judge, who is the chairperson of a hospital board in another county, may meet with sponsors of an initiative that will adversely affect the hospital, but may not publicly oppose the initiative. Canons 4C, 5D.

F. A judge may not write a letter to Assembly members supporting legislation involving matters that may come before the judge for review and which are not directly connected to the administration of justice. Canons 3B(9), 4A(3), 4C(3)(c)(1).

G. A judge may not participate in a political action committee, nor may a judge maintain membership in a local political club that has yearly dues of \$1,500. Canon 5A. (revised language –errata from April 98.)

H. A judge may contribute to the re-election campaign of the District Attorney, and may attend a fundraising event, but may not make a speech or do anything that has the appearance of endorsing the candidate. The judge does not have to disclose the contribution to the defense in criminal cases. Canons 2A, 3E, 5A(2), 5A(3).

I. A judge may address a political party group on the subject of court operations. Canons 5A, 5C.

J. A judge may write letters to county officials in support of a new regional law library as part of a sales tax ballot measure. . Canon 5D.

K. A judge may appear in a family picture in campaign literature for the judge's spouse who is running for city council, providing the judge's title is not used and the picture is not part of the endorsements. Canons 2B(2), 5A.

IV. CIVIC AND CHARITABLE ACTIVITIES

Government Positions

A. A commissioner may not serve on an assembly member advisory commission to review legislation or to suggest possible pilot programs in the criminal justice system. Canons 4D, 5, 5A(1).

B. A judge may not accept appointment from a city council to serve on a housing commission. Canon 4C.

C. A judge may not participate on an ad hoc advisory committee formed by the board of supervisors to investigate complaints about the medical and mental health care provided to prisoners in the county jail. Canons 3B(1), 4A, 4G.

Court Positions

A. A commissioner who is an officer of the California Commissioners Association may use court computers to perform association duties during court hours provided the activity does not interfere with the proper performance of judicial duties. Canons 3, 4C(2).

Membership

A. A judge may serve on the board of, or be a member of, the following organizations, provided the judge does not engage in fundraising nor allow his or her name to be used in fundraising activities:

1. Board of a non-profit organization that provides referrals for community service when ordered as a part of a sentence, administers programs, and reports to the court. Canons 4A, 4C(3).
2. President of a Lions Club, provided the club is unlikely to be involved in judicial proceedings before the judge. Canons 4C(3)(b), 4C(3)(c), 4C(3)(d).
3. Member of an ad hoc advisory panel to the Building Industry Association to recommend community organizations deserving of college scholarship grants. Canon 4C(3)(b).
4. Member of the Boy Scouts as a Boy Scout Master.

Canons 2C, 4A.

5. Member of a legislative committee of the Child Diabetes Foundation, based on the judge's personal involvement as the parent of a diabetic child. Canon 4C.
6. Member of a local theatre board of directors. Canon 4C(3)(b).
7. Board of trustees of the county bar association and editorial board of the bar magazine concerning court developments. Canon 4C.

B. A judge may not serve on the board of, or be a member of, the following organizations:

1. Committee appointed by the president of a state university to discuss and evaluate the impact of Prop. 209 on the university. Canon 4C(2).
2. Board of a local development authority with the power of eminent domain. Canon 4C(2).
3. Board of the State Chamber of Commerce. Canons 2B, 4A(1).
4. Member or judicial advisor of a local prosecutor's association formed to promote policies to revitalize the city. Canons 2A, 3E, 5A(1).
5. Member of a committee to oversee the expenditure of grant money given to a local police department by federal government. Canon 3B(1).
6. Member of the National Women's Political Caucus, based on its policy of not endorsing any male candidates. Canon 2C.
7. Board of Directors of a Police Foundation. Canons 4A(1), 4C(3)(c)(1).

8. Member of the Family Violence Council whose legislative subcommittee proposes, supports or opposes measures that would be enforced or applied in the judge's court.
Canons 2A, 2C, 4A, 4C, 5.

Fundraising

- A. A judge who is on the board of a non-profit hospital may permit the judge's name to be included in a brochure announcing a fundraiser honoring the judge. Canon 4C(3)(d)(iv).
- B. A judge may not be a model at a charity fashion show. Canon 4C(3)(d)(iv).
- C. A judge may not write a testimonial concerning a non-profit children's shelter corporation which letter would accompany a fundraising letter from the corporation. Canons 2B, 4C(3)(d)(iv).
- D. A judge and the judge's spouse may show their award-winning kitchen renovation as part of a fundraising home tour for an architectural society, provided there is no indication that the judge is a judge. Canon 4C(3)(d).
- E. A judge may be a special guest speaker at a fundraising event benefiting a women's scholarship fund, and the invitation may so announce, provided the judge does not personally solicit funds. Canons 2C, 4C(3)(d)(iv).
- F. A judge may solicit other judges to contribute to a charity and may send the solicitation through the courthouse mail system, provided the clerical assistance is moderate and there is no interference with the performance of judicial duties. Canons 4A, 4B, 4C.
- G. The daughter of a judge may solicit contributions to defray costs of travel of an all-star sports team, provided the daughter does not solicit from attorneys or parties who appear before the judge. Canon 4D(5).
- H. A judge who is on the governing board of the judge's church, may not make a "pitch" before the congregation for the Sunday

collection, nor may a judge be a member of the dues committee of the judge's temple, unless the judge considers these tasks the practice of the judge's religion. Canon 4C(3)(d)(1).

I. A judge may serve on a bench/bar committee that is sponsoring a bike ride with judges and lawyers to raise funds for county bar charities, provided the judge does not actively engage in fundraising

or personally solicit persons other than judges.
Canons 2B(2), 4C(3)(b), 4C(3)(d).

J. Judges' names may not appear on a foundation letterhead used to solicit funds for a law library ballot measure, targeted to law firms that regularly appear before some of the judges. Canons 4A(1), 4C(3).

V. BUSINESS ACTIVITIES

A. A retired judge who accepts assignments may serve as the executor of the estate of a friend, unless such service would interfere with the proper performance of judicial duties. Canons 4E, 6B.

B. A judge may serve as the trustee of a living trust for the estate of a deceased person with whom the judge maintained a close family-like relationship. The trust and property are outside of the judge's jurisdiction. Canons 4E(1), 4E(2).

C. A judge may work as a technical advisor on a TV pilot, provided the judge's role does not demean the judiciary and there is no indication in the credits that the judge is a judge. Canon 4A.

D. A newly appointed judge may not continue to serve as a reserve police officer in another county. Canons 2A, 4A(1).

E. A judge may serve on the board of a local group of businessmen who make investments outside the county, provided the board is not a commercial corporation and investments will neither subject the judge to frequent recusals nor create an appearance of impropriety. Canons 3B(2), 4D(1).

VI. EDUCATIONAL ACTIVITIES

A. A judge may teach a class on the law in another state to attorneys and judges, and may accept compensation for the judge's time and reimbursement for expenses. Canons 4B, 4D(6)(b), 4H.

B. A judge may participate on a steering committee named by the DA to plan a seminar on teenage pregnancy and the victimization of women, for members of the community, attorneys, deputy district attorneys and members of law enforcement, and may participate in the program, provided the judge's role is confined to explaining legal proceedings. Canons 4A, 4C(3), 5D.