

California Judges Association

JUDICIAL ETHICS UPDATE

January 2012

3. Judge may accept invitation of local police department to see the equipment that the police department uses to trace cell phone calls and to locate the place from where the cell phone call originates, provided that the purpose of the visit is to learn about the mechanics and engineering of the equipment, and not on the most effective use of the equipment to obtain search warrants. Judge should not attend if Judge has a matter pending before Judge involving the use of this equipment. (Canon 1, 2A, 4A(1))

4. Judge may teach a criminal law class to peace officers provided that Judge does not coach students on courtroom procedures such as giving effective testimony. (Canon 2A, 4A, 4B)

VII. COMMUNITY OUTREACH

1. Court committee of Judge's court may issue a public statement that its mission is to educate citizens and other branches of the government about the needs of the local courts and to encourage other branches of government to advocate for the court's needs to assure the availability of the court to fulfill its function as a branch of government. (Canon 1, 5D, 4C(1), 4A)

2. Judge may serve on panel of judges for Lions Club sponsored high school speech contest on national immigration issues to be held at an Indian tribe casino. (Canon 2A, 2B, 4A, 4B)

3. Judge may host a party for a non-profit organization where there will be a discussion of international affairs, and where there will not be political lobbying or any fundraising. (Canon 4A, 5A and commentary; Terminology)

VIII. ADVICE TO PRESIDING AND ASSISTANT PRESIDING JUDGES

1. Presiding Judge may not permit nonprofit to display a plaque in courthouse recognizing donors, including law firm donors. The plaque's primary purpose is to encourage fundraising, and it is improper to use court facilities for charitable fundraising purposes. Further, the listing of specific donor law firms may both create the impression that donating firms have a special relationship with the court, and a "lack of listing" could be perceived as coercive to law firms that do not chose to contribute to the nonprofit. (Canon 2B(1), 2B(2), 4C(3)(d)(i-v))

2. Supervising Judge (SJ) may set up a meeting with DA's office to discuss the impact on the administration of justice in SJ's court resulting from the blanket filing of 170.6 affidavits against one of the criminal judges in SJ's branch, provided that no particular cases are discussed, there is no appearance of improper influence or retaliation, and representatives of the PD's office are also invited to attend the meeting. (Rothman 3rd Ed. Handbook, section 5.04)

3. Presiding Judge may not permit a law enforcement agency to place a memorial to fallen peace officers in the public portion of the courthouse as this risks creating an appearance of bias towards law enforcement officers by the court. (Canon 1, 2A)

This is the thirtieth *Judicial Ethics Update* from the Judicial Ethics Committee of the California Judges Association. This 2010/11 *Update* highlights areas of current interest from the 385 informal responses to judges' questions concerning the Code of Judicial Ethics provided by the Ethics Committee during the period September 2010 to September 2011.

Judges may direct questions on the Code of Judicial Ethics to the Ethics Committee by contacting the CJA office or any current 2011/12 Ethics Committee member. As a matter of policy, the Ethics Committee does not answer questions 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. Opinions of the Committee are advisory only.

Special thanks to Ethics Committee member Judge Charlene Padovani Kiesselbach, San Francisco Superior Court, for preparing this *Update*.

I. CONDUCT INSIDE THE COURTROOM

A. Generally

1. Judge may permit attorneys for both sides to split the cost of upgraded airfare for juror (where juror can only afford discounted airfare which would cause juror to miss several days of the trial), so as to enable the juror to attend family emergency without being discharged from the jury, and where juror will not be told from whom the reimbursement will come. (Canon 2A, 3B(3), 3B(4), 3B(8))

B. Disclosure and Disqualification

1. Judge, who is to start a trial with Sierra Club as one of the parties, should disclose life membership in Sierra Club, even though Judge has no active involvement in the Sierra Club other than to receive the monthly magazine as part of Judge's life membership. (Canon 2A, 2B, 2C, 3E(2))

2. Judge is not required to disqualify self simply because disgruntled litigant files a complaint against Judge with CJP; Judge is required to disqualify if Judge feels that he/she is actually biased against litigant. However, Judge should disclose the complaint in open court on the record. (Canon 3B(1), 3E(1), (2))

3. Judge must disclose dating relationship on the record where Judge is dating a member of the Public Defender's Office, even though member will not appear

before Judge and has not worked on the case, and even though the relationship is generally known. Judge may merely state that Judge is dating a member of the Public Defender's Office. (Canon 3E(1), 3E(2))

4. Judge, who ran successful re-election campaign, must do the following for six years after the election: Judge is required to disqualify if Judge received a donation in excess of \$1500 from a party or lawyer in the proceeding; Judge is required to disclose on the record if Judge received a donation between \$100 and \$1499. (Canon 3E(1), 3E(2); CCP 170.1(a)(9))

5. Judge, who presides over a truancy court, is not required to recuse where Judge, after learning that one of the wards made threats about Judge, reported threat to Sheriff's Office, and where Judge believes that Judge can remain fair and has made a disclosure to all parties. (Canon 3E(1))

6. Judge must disclose the fact of Judge's donation to a legal foundation in any case in which the legal foundation appears for a period of two years from the date of the donation. Judge may attend a public fundraising dinner where Judge and other donors will be honored. (Canon 2A, 3E(2), 4A(1)-(3))

7. Judge does not need to repeat Judge's disclosure that Judge received a campaign contribution from attorney in case before Judge when opposing party, who was a self-represented litigant when Judge made disclosure, is now represented by counsel. (Canon 3E(2))

C. Reporting Responsibilities

1. Judge is not required to report physical attack by defendant in case before Judge, where defendant attacked and threatened defendant's attorney outside of courtroom and Judge only learned about this later. Under these circumstances, Judge has the same responsibility to report criminal activity as an ordinary citizen, and may, but is not required to, report, unless Judge is the only person who knows of the criminal activity. (Canon 2A, 3B(5))

2. Judge is not required to report to law enforcement or to State Bar that paralegal in Judge's community is practicing law by giving legal advice to self-represented litigants. Judge has the same obligation to report criminal activity as does an ordinary citizen, and may, but is not required to, report, unless Judge is the only person who knows of the criminal activity. (Canon 2A, 3D(3))

3. Supervising Judge, who has received complaints from attorneys and litigants about Commissioner's demeanor in the courtroom and statements made by Commissioner outside of the courtroom, has duty to investigate the facts after being directed to so investigate by Assistant Presiding Judge. (Canon 3C(1), 3C(3), 3D(1), 6(A))

4. Judge does not have a duty to report attorney to the State Bar where Judge merely suspects that attorney previously assisted in legal representation of one

2. Judge may accept position on board of an ethnic chamber of commerce whose mission it is to promote trade and business between California and the ethnic country of origin, provided that Judge is not involved in soliciting business or otherwise lends the prestige of Judge's judicial office to the enterprise. (Canon 4C(3)(b))

D. Fundraising

1. Judge may give an interview as alum of college sorority for publication in sorority's regularly published newsletter in which newsletter an annual gift giving campaign will be announced. (Canon 2B, 4B, 4C(3)(d)(iv))

2. Judge may not ask friends and acquaintances (other than other judges) to donate items for silent auction fundraiser conducted by local volunteer legal services corporation. (Canon 4C(3)(D)(i))

V. BUSINESS ACTIVITIES

1. Judge may sell to Judge's former law partners Judge's interest in company organized by Judge's former law firm when Judge was attorney at the firm, and Judge may receive payment for the interest sold. The payment is neither an improper gift, nor does it involve receiving payment for the practice of law occurring after Judge took the bench. However, acceptance of the payment from the law firm may raise disclosure and disqualification issues. (Canon 4D, 4H, 4G)

2. Judge may not set up a meeting at courthouse for representative of legal publishing company to meet with the judges to promote publishing company's products. (Canon 2A, 2B(2), 4A, 4D(1)(a), 4D(2))

3. Judge is not required to opt out of a class action case where Judge is within the class of individual plaintiffs. (Canon 2A, 2B)

4. Judge may speak at bar-sponsored legal education program where attendees are charged a fee to attend, and where a videotape of the program may be viewed for a fee. (Canon 4B and Advisory Committee Commentary)

VI. EDUCATIONAL ACTIVITIES

1. Judge may speak at free event open to all interested attorneys on the topic of the future of complex litigation at Judge's court, where event is sponsored by local charity that raises funds for legal services of indigents, and where venue is at campus of large company that will be a party in several complex civil cases before Judge. (Canon 4B)

2. Judge may use Judge's courtroom after hours to hold a moot court session for the trial advocacy law school class that Judge teaches, provided that Judge's court and county do not have rules prohibiting this use of a courtroom. (Canon 2A, 2B(2), 4A(3), 4B)

4. In the situation where Judge discovers after the campaign is over that Judge's name has been listed as an endorser of Judge's friend who ran for a non-judicial elected office, Judge satisfies Judge's ethical obligations if Judge immediately contacts friend and explains that Judge cannot endorse political candidates and asks friend to make sure that this does not happen again in the future. (Canon 5A(2))

5. Judge may not serve as a volunteer on a phone bank to call voters and ask them to vote for political candidate, even though judge will not identify self by name or position. (Canon 2A, 4A(1) and (2), 5A, 6A)

IV. CIVIC AND CHARITABLE ACTIVITIES

A. Generally

1. Judge may give a talk about Judge's background and experience and path to the judiciary at non-profit community center event. (Canon 4C(3)(d)(iv))

2. Judge, who has recently begun a juvenile assignment, may not continue on board of directors of nonprofit that operates programs for families and juveniles, including counseling and advice regarding dependency court, and which issues progress reports to the dependency court on the families and juveniles. (Canon 4C(3)(c)(i))

3. Judge may serve as a member of the board of regents of a private non-profit college. (Canon 4C(3)(b))

4. Judge may accept position of trustee of a private Catholic school. (Canon 4C(2) commentary; 4C(3)(b))

B. Government Positions

1. Judge, who has a criminal assignment, may not participate on committee to interview and vet candidates for police chief. (Canon 2A, 4A(1), 4C(1)(2); CCP 170.1(a)(6))

2. Judge may not serve on working group for the Attorney General's Office to identify civil rights enforcement issues regarding youth, as this involves advice to law enforcement on how to enforce the law. (Canon 3A, 4A, 4C(2), 4C(3)(a), 4C(3)(c))

3. Retired Judge who sits on assignment may serve on an unpaid citizens' advisory committee which will make recommendations only to a local governmental board to assist the board in its decision-making. (Canon 4A(1), 4C(2), 6B)

C. Membership

1. Judge, who has a juvenile assignment, may not serve on CASA board, as CASA is engaged in adversary proceedings before Judge. (Canon 4C(3)(c)(ii))

of the jurors in trial before Judge, and neither attorney nor the juror disclosed any relationship. (Canon 3D(2))

5. Judge is not required to report litigant's failure to report income on tax return, where Judge learns of litigant's failure to do so through litigant's testimony in court proceedings before Judge, since others are also aware of litigant's testimony. (Canon 3D(2))

6. Judge is required to take appropriate corrective action where Judge has personal knowledge that attorney is in violation of the Rules of Professional Conduct by failing to file responses to motions despite numerous continuances and with no explanation other than attorney is having personal problems. Appropriate corrective action may include counseling attorney (with other counsel present to avoid ex parte communication), or reporting to the State Bar. (Canon 3D(2))

D. Ex Parte Communications

1. Attorney's unsolicited demands and complaints about Judge to Judge's reporter, which Judge's reporter later told Judge about, are not improper ex parte contacts implicating Judge. However, Judge should disclose on the record the ex parte communication by attorney with reporter. (Canon 3B(7)(b))

II. CONDUCT OUTSIDE THE COURTROOM

A. Generally

1. Judge may privately advise adult child concerning litigation that adult child is involved in, provided that Judge does not engage in advocacy or the practice of law, or allow Judge's status as a judge to be used to adult child's advantage. (Canon 2B(1), 4E(1), 4G)

2. Judges in Dependency Court may compile and provide a list of neutral pro bono attorneys whom self-represented foster and adoptive parents may contact for information purposes only about the process of court required post-adoptive contact mediations. (Canon 2A, 2B(2), 3C(4))

3. Judge may not perform a wedding anniversary affirmation of vows in the style of a popular comedy routine as this would be demeaning to the judicial office. (Canon 2A)

B. Public Commentary, Publications, Books, Media

1. Judge may develop software program to assist judges and attorneys in the courtroom in the jury selection process. Judge may use name and judicial title in marketing and sales of the program since the software program contributes to the law, the legal system and the administration of justice. (Canon 2A, 2B(2) and commentary, 4A, 4B, 4D(1)(a), 4D(2))

2. Judge may write letter to editor of local newspaper in response to article critical of court system provided that response does not involve the merits of specific pending or impending judicial proceedings. Judge is advised to contact the CJA's Response to Criticism Committee for input with respect to the letter to the editor before Judge sends it. (Canon 3B(9), 4B)

3. Judge may participate in a conference on contemporary public issues that will be filmed and later televised provided that Judge's title is not used and that Judge refrains from any comments or discussions that would violate the canons of ethics. (Canon 2B(2), 3B(9), 4A, 4B, 4D(2))

C. Letters of Recommendation

1. Judge may write letter of recommendation on behalf of attorney who is seeking employment with the District Attorneys' Office in Judge's county based on Judge's personal knowledge of attorney. (Canon 2B(2)(e))

2. Judge may not write letter of recommendation in support of law school's proposed program for law students to assist parties in lawsuits for a fee, as this would be using Judge's title to support a business venture. (Canon 2B(2) and 4D(2))

3. Judge may write letters of recommendation for both an individual and for an organization to receive State Bar awards where Judge is familiar with both the individual and the organization and is able to write the letters based on Judge's personal knowledge. (Canon 2B(2), 2B(2)(e), 4C(3)(d)(ii))

D. Judge as Witness

1. Newly-appointed Judge may write letter to former client's auditors giving purely factual information about potential litigation during the time that Judge represented former client, provided that Judge does not identify self as a judge, but only as counsel for former client during the relevant time period. (Canon 2A, 2B(2))

2. Judge, who witnessed an accident, may give interview to civil attorney's investigator about what Judge observed as a percipient witness. (Canon 2B(2))

3. Judge may testify at sibling's trial as a percipient witness, but should not identify self as a judge unless asked about it. Best practice is to require a subpoena first, but it is not necessary. (Canon 2A, 2B(2), 4A)

4. Judge may not write letter to State Bar in support of friend's character where friend is an attorney being investigated by State Bar for breach of professional responsibility. (Canon 2B(2)(a), (c))

5. Judge, a former criminal defense attorney who represented client in murder case, may provide information up to the time that Judge stopped working on the case to mitigation specialist in response to mitigation specialist's request for information as part of client's current habeas proceedings. (Canon 4G)

E. Gifts, Discounts, Honoraria

1. Judge may keep token gift from jurors consisting of a used paperback copy of a work of legal fiction, which is inscribed by jurors and given to Judge after verdict has been recorded, and Judge has shown all counsel the gift. (Canon 2A, 3B(7))

2. Judge may keep token gift of picture, painted by juror and given to Judge after discharge of jury. (Canon 4D(6))

3. Judge may accept invitation from Judge's spouse to attend spouse's work-related dinner worth about \$1,000 per ticket with tickets paid by spouse's company. (Canon 4D(6)(c))

4. Judge may not receive an honorarium for a speech before a local historical group. (Canon 4H)

5. Judge may purchase chairs for personal use at the discount offered in normal course of business to Judge's court and that is available for all judicial officers and employees of the court, and for which Judge is reimbursing the court in the amount of the actual cost of the chairs to the court. (Canon 2A, 3C(2))

6. Judge may keep raffle prize of two airline tickets that Judge won after purchasing tickets at fundraiser, as this is a prize from a legitimate contest and is not a gift to Judge from a transportation company. (Canon 4D(6))

7. Assuming that it was a legitimate random drawing of business cards and not a gift to Judge, Judge may keep prize of a weekend stay at a resort that Judge won in a drawing; however, Judge is cautioned that Judge should not use Judge's judicial business cards for drawings. (Canon 4D(6))

III. POLITICAL ACTIVITY

1. Judge may not write a newspaper article about the harmful effects of marijuana urging voters to not pass pending legislation when Judge has not yet sentenced defendant in criminal prosecution involving medical marijuana. (Canon 2A, 4A(1), 5D)

2. Judge may serve on local citizens committee advocating change in law regarding the disclosure of the names of minors who are victims of sexual assault. Judge may use title as a judge in publicly advocating for the legislation. (Canon 2A, 2B, 4A, 5A, 5D)

3. Judge may administer the oath of office to the local Republican Central Committee, provided that Judge cautions persons introducing Judge to not associate Judge with the cause of the party, and provided that Judge does not associate self with the cause of the party in Judge's remarks at the ceremony. (Canon 5, 5A)