

# Judicial Ethics Update

June 2007

This is the twenty-fifth *Judicial Ethics Update* from the Judicial Ethics Committee of the California Judges Association. This 2005/06 *Update* highlights areas of current interest from the 420 informal responses to judges' questions concerning the Code of Judicial Ethics provided by the Ethics Committee during the period September 2005 to October 2006.

Judges may direct questions on the Code of Judicial Ethics to the Ethics Committee by contacting the CJA office or any 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 Judge Timothy L. Fall, Yolo Superior Court, for preparing this *Update* .

## I. CONDUCT INSIDE THE COURTROOM

### A. Generally

1. Judge may contact a juror's employer, in a non-coercive manner, to request accommodation for the juror (for example, regarding issues of hardship and juror income) with the understanding that the prospective juror will be excused for financial hardship if the request is denied. (Canons 2B(2), 3E(2))

### B. Disclosure and Disqualification

1. Presiding Judge may neither recuse another judge nor the entire bench in a county. (Canon 3E(1))
2. Judge whose close relative (e.g., spouse, child) works at the District Attorney's office in the same county as the judge's court must disclose that employment on the record in every criminal case assigned to the judge. (Canon 3E(2))
3. Presiding Judge may not overrule another judge's decision to recuse. (Canon 3E(1),(2))
4. There is no need for a judge to recuse just because a litigant has filed a federal suit against that judge based on the judge's rulings in the pending case with that litigant. (Canon 3E(1))
5. Where Judge's spouse is an attorney, Judge should disclose that fact whenever Judge is aware that spouse ever brought suit against a party now before the Judge or presently has litigation against any attorney appearing before Judge. (Canon 3E(2))

### C. Ex Parte Communications

1. Judge may write to Court of Appeal to correct mistake in briefs filed by both appellant and respondent (e.g., regarding text of instruction given to jury) as long as copies of the letter are transmitted to all counsel (see Govt C § 68070.5(c)). (Canon 3B(7)(e))

### D. Reporting Responsibilities

1. Judge may report to the Secretary of State suspected notary fraud discovered during trial. Doing so while the action is pending requires disclosure to the parties. (Canons 2A, 3E(2))
2. Judge who has reported an unethical attorney's conduct to the State Bar should cooperate with a request for information from the State Bar's investigator. (Canons 1, 2B(2), 3D(2))

## II. CONDUCT OUTSIDE THE COURTROOM

### A. Generally

1. Judge may serve as chair of a committee devoted to juvenile justice issues where committee membership includes representatives from law enforcement, District Attorney, Public Defender, Probation and the Court. (Canon 4A)
2. Drug Court Judge may not write a letter in support of a conditional use permit to allow a drug treatment program (under contract in the Drug Court) to locate near the courthouse. (Canons 2B(2), 4C(1))
3. Judge who is seeking appointment as a conservator of a family member may request the Court seal all personal information in the file to prevent public viewing of that information. This addresses a legitimate security and personal safety concern for judges. (Canons 2B(2), 4E(1))
4. Judge may not write a letter to a victim compensation board in support of a specific application even if both the prosecutor and defense counsel agreed to the letter. To do so would lend the prestige of the judicial office to aid the pecuniary interest of others. (Canon 2B(2))
5. Judge may not attend functions at spouse's law firm which are designed to solicit new clients. (Canon 4D(1)(a))

### B. Public Commentary

1. Judge may not comment to the media about a capital case Judge handled as a prosecutor where the defendant is now petitioning the Governor for clemency. (Canons 2B(2), 3B(9))

### C. Judge as Witness

1. Judge may not write a letter to a sentencing judge on behalf of Judge's stepson. (Canon 2B(2))

### D. Gifts, Discounts, Honoraria

1. Judge may accept honorary membership in a county bar association, which is effectively a dues waiver. (Canon 4D(6)(a))
2. Judge may receive payment from a foreign government for reasonable and actual expenses incurred in attending a leadership conference in that country, where the object is to hone judicial leadership skills and exchange ideas about leadership. (Canons 4D(6)(b), 4H)
3. Judge may accept free admission from a bar association to a retirement dinner for a fellow judge even though members of the public are charged \$50 each. (Canon 4D(6)(a))

## III. POLITICAL ACTIVITY

1. Where Judge's spouse serves as treasurer of a political party, Judge must inform spouse of Judge's ethical constraints under Canons 2 and 5. Judge must also take precautions to avoid appearance of being either an active or passive participant in spouse's political activities. (Canons 2, 5)
2. Judge active in community group which is organizing an upcoming event may not sign an invitation to be sent out on local politician's letterhead. (Canon 5)
3. Judge may not be the keynote speaker at a fundraiser for a candidate for a non-judicial office. (Canons 5A(2), 4A(1), (2), (3))

## IV. CIVIC AND CHARITABLE ACTIVITIES

### A. Generally

1. Judge about to assume an assignment to a homeless court may not continue to serve on the board of a local homeless shelter.

(Canon 4C(3)(c)(i))

### B. Membership

1. Judge may be a member of ABOTA (American Board of Trial Advocates). (Canon 4A(1))

### C. Government Positions

1. Judge may not accept appointment to a position by a foreign government's consul where the purpose of the position is to develop programs and address issues pertinent to that government's immigrant communities in the United States .

(Canon 4C(2))

2. Retired Judge in the assigned judges program may not accept appointment to the remainder of an unexpired term on the local school board because such appointment is to a public office. (Const. Art. VI, sec. 17; Canon 6B)

3. Judge may not accept a presidential appointment (requiring Senate confirmation) to a federal oversight committee which is not connected to the improvement of the law. (Canon 4C(2))

### D. Fundraising

1. Judge may co-sign, with the president of a women lawyers' group, a letter to other judges urging contributions to build a children's waiting room in Judge's courthouse as long as Judge ensures that the letter will not go to subordinate judicial officers. (Canon 4C(3)(d)(i))

## V. BUSINESS ACTIVITIES

1. Judge may accept reasonable compensation for refereeing youth soccer games. (Canon 4H)

2. Judge may speak at a public hearing on an issue that directly affects property Judge owns as long as Judge takes care not to use the judicial position in the presentation. (Canons 4C(1), 2B(2))

3. Judge may not accept a referral fee from an attorney for a case the judge referred after taking office. (Canons 2A, 2B(2), 4D, 4G, 4H)

## VI. EDUCATIONAL ACTIVITIES

1. Judge may speak to newly hired deputy district attorneys about trial practice as long as Judge is available to give similar talks to the defense bar and public defender's office. (Canon 4A, B)

2. Judge may accept a grant for expenses from the U.S. State Department to speak in a foreign country on criminal procedure reform where the purpose of the State Department's speaker program is to advance America 's interests by informing and influencing international audiences about U.S. policy and society. (Canon 4B, D(6)(b))

3. Judge may teach a political science course at a community college's night program as long as the teaching duties do not interfere with the performance of Judge's judicial duties, involve the use of court resources or cast doubt on Judge's impartiality. Judge may be compensated as long as the amount of compensation does not exceed what a person who is

not a judge would receive for the same activity. (Canons 4A, 4B, 4H)

4. Judge may accept a reasonable fee for teaching a class for an MCLE provider. (Canons 4B, 4H)

## **VII. COMMUNITY OUTREACH**

1. Judge may serve on a committee for a non-profit hospital that advises the hospital's board on community outreach issues. (Canon 4A)

2. Judge may appear in a segment of a local foreign language news program that features exemplary members of the community. (Canons 3B(9), 5)

3. Judge may not accept payment for community outreach activities that take place during regular court hours. (Canon 4D(6))

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