

California Judges Association

JUDICIAL ETHICS UPDATE

March 2003

This is the twenty-first Judicial Ethics Update from the Ethics Committee of the California Judges Association. The Update highlights areas of current interest from the 400 informal responses, during the period September 2001 to October 2002, 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 to 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

A. Generally

1. A judge, whose assignment included hearing code enforcement matters, may not meet with code enforcement officers to have them explain their work and how court can be of assistance to them.
Canons 1, 2

2. A judge may contact Department of Children & Family Services when judge has learned through a probation report that a child may be the victim of child abuse. Canon 2A

3. Court may not extend an "open invitation" during juror and employer appreciation week to local businesses, public entities, or nonprofit organizations to make presentations to promote their businesses.
Canon 2A, 2B

4. A judge cannot give jurors souvenirs with messages referring to the trial (such as surviving a long trial). Canons 2A, 3B(10), 4A(2)

B. Disclosure and Disqualification

1. A judge is disqualified in a death penalty trial when judge represented the victim's spouse in settling victim's estate.
Canon 3E (2), 3E(1)

2. A judge is not disqualified in the following situations:

- a) A judge may preside over sentencing of a defendant who has filed a complaint with CJP against judge. Canon 3B(1), 3B(2)
- b) A judge should disclose, but need not recuse, where defendant is a low level employee in a large company in which the judge owns substantial shares of stock. Canon 3B(1), 3E(1)
- c) A judge need not disqualify from writing an opinion when a member of a judge's former firm represents one of many parties and judge hasn't worked at the firm for over two years. Canon 3E(1) and 3E(3)
- d) A judge need not recuse but should disclose a family member's illness if a party has the same illness and illness is a pivotal issue in the case. Canon 3E(2)

3. A judge need neither disqualify nor disclose in the following situations:

- a) A judge in a relatively small county need not disclose that judge performed wedding for a daughter of attorney who regularly appears on judge's family law calendar when judge does not have a social relationship with the attorney. Canon 3E (2)
- b) A judge who makes a financial contribution to a fellow judge running for DA does not have to disqualify himself or disclose the contribution when hearing criminal matters. Canon 5A(3)
- c) A judge's ownership of a government bond valued at over \$1500 doesn't mandate disclosure or disqualification if the governmental agency is a party appearing before judge, as CCP 170.1(a)(3) and CCP 170.5(b) are not applicable. (The bond is evidence of a debt of the public entity, not an equitable or legal interest.) If the bond is sizeable and the litigation could affect the bond rating, judge should consider disqualification under CCP 170.1(a)(6), utilizing the reasonable person test. The disqualification is waivable. Canon 2B, 3E
- d) Where a judge serves with an attorney in a professional legal organization and, outside the courtroom only has professional contacts with that attorney, the judge need neither disclose nor recuse when the attorney appears before the judge. Canon 3E(1) and (2)

C. Ex Parte Communications

- 1. A judge, the subject of a blanket 170.6 by District Attorney's Office, may not discuss the disqualification issue with the District Attorney. Canon 3B(7)
- 2. A judge who sits on an arraignment calendar, which the DA's office has chosen not to staff, need not report the substance of any statements made by pro. per. litigant regarding pro. per.'s case. Canon 3B (7)

3. A commissioner may respond to a letter from a victim inquiring as to the nature and qualifications for a commissioner and who will monitor a defendant's probation, but may not respond to specific questions regarding the case. Canon 3B(7)

4. A judge may not have a private conversation with a probation officer on a pending case without agreement of parties. Canon 3B(7)

II. CONDUCT OUTSIDE THE COURTROOM

A. Generally

1. A judge may obtain MBNA credit card issued through California Judges Association which bears the judge's title. Canon 2B(2)

2. A judge may participate in court staff pool to purchase lottery tickets so long as court staff purchases tickets on their own time and purchasing does not violate any local court policies. Canon 4A(2)

3. A judge may purchase a "congratulations ad" at local bar association awards dinner to congratulate a judge who is receiving an award from the bar. Canon 4A

4. A judge may not serve as a volunteer mediator in a situation where judge would not be mediating as part of judicial duties. Canon 4F

5. A judge may not send a transcript of voir dire to a juror's employer. Canon 2B(4)

6. A judge may not file an amicus curiae brief. Canon 4G

7. A woman judge may not belong to a nationwide organization that does not permit male voting members. Canon 2C

8. A sitting commissioner may be a JAG officer in the National Guard and may serve as a hearing officer but not as a counselor giving legal advice. Canon 4C(2), 4G

9. A judge may not participate in a televised workshop dealing with handcrafts where judge's position would be mentioned to advance the interests of a local crafts store. Canon 2(B)(2)

B. Public Commentary, Publications, Books, Media

1. A judge may participate in a panel discussion to address the effects of violence on children. Canon 4A, 4B

2. A judge may direct public inquiries regarding a case the judge has decided to the statement of decision (a public record) and avoid any further public commentary on the case. Canons 3B(9)

C. Letters of Recommendation

1. A judge may write a letter on behalf of a law student who worked in courthouse under judge's supervision. Canon 2B(4)

2. A judge may not write a letter on behalf of attorney facing disciplinary action by State Bar unless responding to official State Bar inquiry. Canon 2B(2)

3. A judge may not write a letter on behalf of former client awaiting sentencing. Canon 2B(2)

4. A judge may write a letter to CJP attesting to judicial colleague's good character. Canon 2B(2)

5. A judge may not write a letter for a defendant explaining that although the computer shows a felony arrest, the defendant pled guilty to a misdemeanor. Canon 2B(2)

6. A judge may write a letter to urge continued financial support for a domestic violence program that will benefit the court. Canon 4C(1)

7. A judge may write a letter of recommendation for a grant, based on personal knowledge, for a nonprofit organization that provides classes for parties and their children involved in divorce. Canon 4C(3)(d)(ii)

D. Judge as Witness

1. A judge may sign a declaration to be used at a hearing when judge was a percipient witness to events relevant to the hearing. Canon 2B(2)

2. A judge need not sign a declaration nor issue a minute order explaining the reason for recusal. Canon 2B(2)

E. Gifts, Discounts, Honoraria, Travel Expenses

All advisory opinions are subject to restrictions per CCP 170.9 and reporting requirements on the annual statement of economic interests.

1. A judge may not keep gift certificate given to judge by out-going grand jury. Canon 4(D)6

2. A judge may keep legal textbook given to judge by publisher. Canon 4D(6)(a)

3. A judge may accept concert tickets from former law firm when judge will always recuse from hearing firm's cases. Canon 4(D)(6)(f)
4. A judge may accept a jigsaw puzzle, a de minimis gift, from jury following a long trial after verdict is rendered. Canons 4D(6), 3B(10)
5. A judge may be a member of the board of a small winery located 500 miles away from the judge's court where the judge's involvement with the winery will be minimal and will not interfere with judge's judicial duties. Judge may be reimbursed for travel expenses to attend board meetings. Canons 4C(3)(c), 4H
6. Judge, a board member, may be reimbursed for travel, meals and lodging while attending retreat of nonprofit hospital provided hospital qualifies as tax exempt. Canon 4B, 4D(6)(b), 4H
7. Judge, president of local rotary club, may accept reimbursement for travel, meals and lodging expenses to attend international convention as a delegate. Canon 4H
8. A judge may accept an award given by District Attorney's Office to honor former Deputy District Attorneys for "Outstanding Contribution to Cause of Justice." Canons 1, 2A, 4A(1), 4D(6)(a)
9. Attorney services, performed by a close friend whose appearance would require disqualification, which are rendered free to judge's spouse are a gift to judge but may be accepted. Canon 4D(6)(f)
10. Judge's travel expenses incurred as a member of a nonprofit group promoting understanding/exchanging information in a foreign country may be paid by the organization if it qualifies under Section 503(c)(3) of the Revenue and Taxation Code. Canon 4B, 4D(6)(a), (b)
11. A judge, sitting on traffic calendar, may not attend holiday party given by local CHP and police department traffic officers. Canon 4D(6)

III. POLITICAL ACTIVITY

A. Generally

1. Retired judge, who has elected not to sit on assignment, may sign a ballot statement and use title as a retired judge. Canon 6B, 6C
2. A judge may not endorse local school bond by lending judge's name to the campaign. Canon 5D
3. A judge may speak and take public stance in opposition to a local ballot measure that would take the appointment and retention of the Chief

Probation Officer away from control by the courts and place in hands of Board of Supervisors. Canon 5D

4. A judge may not allow mayoral candidate to use judge's name during campaign and judge may not host fundraiser for candidate. Canon 5A(2)

5. A judge may not sign a ballot statement supporting an ordinance advocating criminal penalties for violation of a law/ordinance. Canons 4A(1), 5D

6. A judge may not allow a nonjudicial candidate to use judge's courtroom for campaign pictures/films. Canon 5

7. A judge may write a letter to the editor explaining ethical rules for judicial candidates. Canons 4B, 5A and Commentaries

8. Judicial candidate who is an attorney may attend fundraising event for nonjudicial candidate so long as judicial candidate attorney does not endorse candidate. Canon 5

B. Judicial Election

1. Judge on behalf of a judicial candidate may write letters to County Bar Association urging support of candidate. Judge may also participate in fundraising, walk precincts and work phone banks on behalf of candidate. Canon 5A, 5C

2. An Appellate Court Justice, standing for retention election, may not respond to a questionnaire received from a special interest group asking for Justice's views on topics such as death penalty, abortion, gay rights, etc. Canon 5B

The committee is aware of the opinion by the United States Supreme Court in Republican Party of Minnesota v. White 122 S. Ct. 2528 (6/27/02). However, unless the California Supreme Court amends Canon 5B, it is still controlling.

3. A judge may not collect signatures on a petition in lieu of a filing fee for a judicial colleague in the courthouse during court hours. Canon 5

4. Judge may allow name to be used as a "drawing card" for fundraising for judicial candidate. Canon 5A(3)

**IV. CIVIC AND CHARITABLE ACTIVITIES;
COMMUNITY OUTREACH**

A. Membership Permitted

1. A judge may serve on National Federal Legal Services Board, a nonprofit organization that creates policies and regulations for legal services at the national level, provided it does not constitute a "public office" (Cal. Constitution Article VI § 17). Canon 4C(3)(a)

2. A judge may organize and assume leadership role in a committee to promote naming of public buildings, streets and structures after famous women provided judge does not engage in fundraising. Canons 2C, 4A, 4C(3)(b), 4C(3)(c)

3. A judge may serve on board of Center for Study of Hate Crimes sponsored by California State University System to develop a regional educational organization. Canon 4C(3)(c)

4. A juvenile court judge may be a member of nonprofit group to "mobilize the community against substance abuse." Canon 4A, 4B, 4C(3)(b)

5. A commissioner may serve on board of a nonprofit group dedicated to provide artwork for new family law center but may not be involved in, or allow judge's name to be used for, fundraising purposes. Canon 4C(3)(d)(i)

6. A judge may sit on a parents' advisory committee to assist in selection of new school principal. Canon 4B, 4C(2)

7. A judge may serve on committee that promotes program for at risk youth. Canon 4B

B. Membership Not Permitted

1. A judge may not be a member of a review team that investigates domestic violence deaths. Canons 2A, 2B, 3B(9), 4A(1), 4C(3)(c)

2. A judge may not serve on a board where the board or the entities the Board serves appear regularly in court in adversary proceedings. Canon 4C(3)(c).

3. A judge may not serve on board of religious organization the purpose of which is to be an independent advisory committee to make recommendations relating to action to be taken regarding clergy members accused of sexual misconduct. Canons 1A, 2A, 2B(2), 4C(3)(c)(ii) and 4G

4. A judge may not be on a Board of Regents for Certified Fraud Specialists whose purpose is to train specialists to assist and promote "fighting the war on fraud." Canons 2A, 2B(2), 4A(1), 4C(3)(c)(ii)

5. A judge may not participate on attorney advisory panel to assist in long-term planning for law enforcement agencies. Canon 2A, 2B(2), 4A(1)

6. A judge may not sit on advisory board of Salvation Army Rehabilitation Center because the board specifically deals with matters that come before judge's court, even if not personally before judge. Canons 2B(2), 3A, 4C(3)(c), 4C(3)(d)(ii)

C. Other Activities

1. A judge may organize a team for "Race for the Cure" for cancer research but may not solicit funds (i.e., registration fee or donation) for the team from anyone other than fellow judges. Canon 4C(3)(d)(i), (iii)

2. A judge may lead parade in his community for opening of county fair. Canons 4A, 2B

3. A judge may tour domestic violence women's shelter but may not participate in candlelight vigil. Canon 4A(1)

4. A judge may wear robe and participate in "Read-A-Thon" at local elementary school. Canons 4B, 2A

5. A judge may appear in an educational film explaining the role of the courts in society but may not appear in a film promoting a private organization. Canons 2A, 2B(2), 4A(1), 4B, 4D(1)(a), 4D(2)

6. A court may permit an informational film on the area surrounding the courthouse prepared by the Chamber of Commerce to be shown in the jury assembly room. Canons 2A, 2B, 4D(2)

7. Retired judge, sitting on assignment, may not preside over a special meeting of an athletic organization called to review possible removal of board member where judge would be giving legal advice. Canon 4G

V. FUNDRAISING

1. A judge may not be personally involved in fundraising activities at children's school. Canon 4C(3)(d)(iv)

2. A judge may not sign a letter requesting local dentists to donate their time to free dental care clinics for children. Canon 4C(3)(d)(i)(iv)

3. Judge, a board member of a local charity foundation, may not make public service announcements where judge would be identified, the purpose of which is to solicit donations. Canon 4C(3)(d)(i), 4D(1)(a)

4. A judge may not write a letter on behalf of school attended by judge's children to obtain grants. Canon 4C(3)(d)(ii)

VI. BUSINESS/EDUCATIONAL ACTIVITIES

A. Business Activities - Generally

1. Retired judge, who occasionally sits on assignment, may perform a wedding on a Friday and may accept compensation for doing so provided judge is not sitting on assignment that day. Canon 4H

2. A judge who owns property downtown may participate in downtown improvement district. Canon 4C(3)(b), 4D(2)

3. A judge may not serve as co-executor of a deceased friend's estate. Canon 4E(1)

4. A judge who is preparing to retire and engage in private judging may take initial steps to set up judge's private judging business but may not directly, or indirectly, promote the business while still on the bench. A judge may schedule postretirement ADR sessions if contacted by attorneys during noncourt time and if done without using court facilities. Canons 2B, 4A, 4D

B. Educational

1. A judge may be a member of a paralegal curriculum advisory panel for a local junior college. Canon 4B

2. A judge may lecture to a criminal justice class taught by a Deputy District Attorney who regularly appears before judge. Canon 4A(1), 4B