

JUDICIAL ETHICS UPDATE

March 2004

This is the twenty-second Judicial Ethics Update from the Ethics Committee of the California Judges Association. The Update highlights areas of current interest from the 382 informal responses, during the period October 2002 - November 2003, 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. Judge may use court e-mail to invite colleagues to attend the Red Mass, a de minimis use of court e-mail system. Canon 2A

2. Judge may allow Deputy District Attorney to use judge's courtroom when not in session to familiarize witness with courtroom testimony proceedings provided the judge makes courtroom available for the defense for the same purposes. Canon 2B(1)

3. Judge may not independently select a specific private judge and order the parties to participate in mediation and/or arbitration before that judge and require parties to make payment to private judge for services.

Canons 2A, 3C(4), 4D(2)

4. Judge who is chair of Criminal Justice Section of county bar association may use court e-mail to send notice to affiliated bar associations about upcoming criminal law seminar. Canon 2A

B. Disclosure and Disqualification

1. Newly appointed Judge assigned to a Prop. 36 calendar may not preside over any cases where judge was involved in as a Deputy District Attorney. Canon 3E

2. Judge should disclose fact that deputy district attorneys' children attend local private school in classroom being taught by judge's spouse in each case where those deputy district attorneys appear in judge's court. Canon 3E

3. Judge, whose spouse is building contractor and does business with attorneys who appear in judge's court should disclose that relationship to opposing counsel. Canon 3E

4. Judge should disqualify self from probate matters where attorney who represents judge in judge's own estate planning matters appears before the judge except for uncontested matters. Canon 3E

5. Judge may not serve as mediator/facilitator /special master in a case that has been removed to federal court. Canons 3A, 4A, 4F

6. Judge is not disqualified in following situations:

(a) Clerical employee of the court is being prosecuted for theft which involves alteration of court files. Canon 3E

(b) Commissioner prior to taking the bench took a group trip that also included County Counsel who regularly appears in Commissioner's court. Commissioner should disclose trip and socialization but need not recuse. Canon 3E

(c) Judge who sat on appellate panel denying defendant's appeal may hear subsequent probation violation on that matter but should disclose that judge sat on appellate panel. Canon 3E

C. Ex Parte Communications

1. Judge may not participate in an ex parte communication with District Attorney's office where District Attorney wishes to have a defendant released to work with authorities on a criminal investigation regarding conduct of defendant's attorney. Canon 3B(7)

2. Judge may provide District Attorney office with written evaluation of deputies appearing in judge's court provided the judge does not discuss pending cases and makes it known judge is available for similar evaluations by other defense counsel. Judge should not discuss any evidentiary or legal issues if appeal process has not been completed. Canons 3B(7)

3. Judge may provide evaluation of a private practice attorney who has concluded trial in judge's court and judge makes evaluation service available to opposing counsel. Judge should not discuss any evidentiary or legal issues if appeal process has not been completed. Canons 3B(7)

II. CONDUCT OUTSIDE THE COURTROOM

A. Generally

1. Judge and family members may participate in National Arts Program exhibit contest where prizes will be awarded and winners will have their art displayed at courthouse. Canon 1, 4A

2. Judge may not represent spouse in employment litigation. Canon 4G

3. Judge may not privately mediate dispute involving classmates of judge's son even if the mediation is informal and without pay.

Canons 4F, 4G

4. Judge may not participate in a group involved with distribution of grant monies for education concerning the victims of domestic violence. The group only concerns itself with the victims and does not address any defense issues. Canons 2A, 4A

5. Commissioner may use judicial stationery to update PDQ for submission to Governor's Office regarding judicial appointment.

Canon 2B(4)

6. Judge may participate in a County Bar Association program entitled "Get to know your Judges" where a judge is invited to an afternoon social at a law office. All judges and members of the bar are invited to attend. Canons 2A, 2B, 3A, 3E, 4A, 4B, 4D(5), 4D(6)

7. Judge may attend Red Mass religious ceremony even though cases involving alleged clergy-abuse have been coordinated in judge's county. Judge will not be involved in any litigation concerning alleged clergy-abuse. Canon 2(A)

8. Judge may not attend anniversary celebration of a defense firm where invitations have only been sent to the defense bar and plaintiff's bar have not been invited. Canon 2A

B. Public Commentary, Publications, Books, Media

1. Judge may appear on cable television to discuss judge's home and garden. Judge may be identified as judge so long as appearance does not demean judicial office. Canons 4A(2), 2B(2)

2. Judge may give sermon at judge's non-denominational church on subject of child abuse and will not address judge's view on any crime and will be general in nature. Judge will not be identified in the sermon as a judge or allow title to be used in any capacity. Canons 4(A), 4(B)

3. Judge may appear on public radio and discuss topic of terrorism and the law but may not discuss any pending cases. Canon 4B

4. Judge may write letter to a national magazine which ranks law schools urging magazine to give consideration to factoring in number of students who enter fields in public interest and community law.

Canon 4B

C. Letters of Recommendation

1. Judge may write letter to Health Department recommending that drug treatment facility, to which Judge refers defendants, receive Prop 36 funding. Canon 4C(3)(d)(ii)

2. Judge may write letter on judicial stationery in support of CPA applying for probate referee position where judge is very familiar with CPA's abilities and competence for position. Canon 2B(4)

D. Judge as Witness

1. Judge, who has been subpoenaed to appear in State Bar disciplinary proceeding, may present written statement in lieu of appearance if such procedure is approved by the State Bar. Canon 2B(2)

2. Judge has a friend who is contesting a parking ticket and judge is a percipient witness regarding the parking incident. Judge may write a declaration to be used in trial by declaration provided judge does not mention judge's position. Canon 2B(2)

3. Judge may respond to written questionnaire from court investigator relating to fitness of judge's friends to be awarded custody of a child. Judge may respond to questionnaire but should not use judge's title. If asked to testify judge should require subpoena.

Canons 2B(2), (4)

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. Judge who was recently sworn in and received gifts and congratulatory letters may write thank you letters on judicial stationery. Canon 2B(4)

2. Judge, at no cost, may attend family law refresher course put on by provider whose business is providing such programs.

Canons 4B, 4D(6)(a)

3. Family law court judge may accept donation of used computers to be used in conference rooms for attorneys and parties to be used to compute child support obligations. Canon 2A

4. Judge may not accept reimbursement for travel and registration expenses to attend annual convention for drug court professionals to be paid by a treatment provider who performs contract work in judge's assigned drug court. Canons 4D(5), 2A, 4A
5. Judge may accept registration, travel and lodging expenses from Local Inns of Court to attend American Inns of Court national convention. Canon 4D(6)(b)
6. Commissioner who sits in a dependency court may attend Court Appointed Special Advocates (CASA) fundraiser luncheon but may not accept the luncheon as a gift from CASA. Canon 4D(5)
7. Judge sits as trustee for law library and each month there is a trustee's dinner paid for by law library funds. Judge may attend and accept payment for dinner. Canon 4D(6)(b)
8. Commissioner may not accept an honorarium for giving college commencement speech or request the honorarium be given to alumni association. Canon 4D(6)
9. Judge may accept complimentary membership in American Board of Trial Advocates (ABOTA). Canon 4D(6)(a)
10. Judge cannot attend at no cost a fundraiser for District Attorney re-election. Canons 2A, 4D(5)
11. Judge may accept reimbursement for lodging, transportation and stipend for teaching law courses to Canadian judges. Canon 4D(6)

III. Political Activity

A. Generally

1. Newly appointed judge may not allow community members to hold fundraiser for governor, using judge's name, to thank Governor for appointing judge to the bench. Canon 5D
2. Judge may attend Democratic Lawyers Club endorsement luncheon for both judicial and nonjudicial races but may not allow judge's name to be used as an endorsement for nonjudicial candidate. Canon 5, 5A(2)
3. Judge may not be honored at a fundraiser for a nonjudicial candidate. Canon 5
4. Judge may attend local Democratic Club to speak regarding experiences as a recent judicial appointee. Judge may not endorse any Democratic candidates. Canons 4A, 5A(2)
5. Judge may participate in an anti-war rally provided judge does not take leadership role or draw attention to self as member of judiciary. Canon 5
6. Judge may not attend fundraiser for board of supervisor candidate being hosted by judge's spouse at judge's home. Canon 5A
7. Judge may attend fundraiser and contribute to campaign of city council person provided judge does not let

attendance be construed as a public endorsement. Canon 5, 5A(2), 5A(3)

8. Retired judge who sits on assignment may not, in support of nonjudicial candidate, give political speeches or publicly endorse candidate or personally solicit campaign funds nor donate to political candidate's campaign in excess of \$500.00 per calendar year.

Canons 5, 5A, 6A, 6B

9. Judge may not be a master of ceremonies for group abolishing use of nuclear weapons. Canon 5D

B. Judicial Election

1. Commissioner, a candidate for judicial position, may not send out campaign literature that identifies Commissioner as a "tough judge". Canon 5B

2. Deputy District Attorney running for judicial seat may point out misrepresentations made by an opponent Deputy District Attorney, whom he supervises, regarding duties and responsibilities of opponent within the District Attorney's Office. Canon 5

3. Judicial candidate who sits part-time on a contractual basis as judge pro tem may not wear robe in photo for campaign literature. Canon 5(B)

4. Commissioner running for judicial seat may use the word "honorable" in campaign literature. Canon 5B

IV. Civic and Charitable Activities; Community Outreach

A. Membership Not Permitted

1. Judge may not sit on board of a Community Based Organization which administers the court's alternative sentencing program and provides other community based workers. Canon 4C(3)(a)(b)

2. Judge may not be member of the Assistance League, a women only philanthropic organization that has no religious connections.

Canon 2C

3. Judge may not participate as board member of "Friends of Child Advocates" which serve the needs of abused and neglected children because the organization frequently appears in court on such matters.

Canon 4C(3)(c)(ii)

4. Judge may not be member of the Asian-American Peace Officers' Association. Canon 2C

5. Judge may not be a member of the Free Masons, which discriminates based on gender. Canon 2C

6. Commissioner may not be member of Republican Women's Club, which discriminates based upon gender. Canon 2C

B. Other Activities

1. Judge may not cut ribbon in ribbon ceremony for new shopping center. Canon 2B(2)
2. Judge should not speak or be master of ceremonies at candlelight vigil for domestic violence group. Canons 2A, 4A(1)
3. Judge may, at the request of Board of Supervisors, participate as a speaker at Town Hall meetings to address community violence prevention efforts. The Town Hall meetings will have participation from law enforcement, prosecution and defense bar. Canon 4B
4. Judge may work as an usher at sporting event complex for special events provided the activity neither demeans nor interferes with judicial duties. Canon 4(A)
5. Judge may participate in luncheon promoted by Court Appointed Special Advocates (CASA) to educate business and community leaders regarding CASA and to encourage volunteers to participate. Canon 4A
6. Commissioner may speak to director and staff of a family outreach center to explain how domestic violence cases are processed. Canons 4A, 4B
7. Judge may participate in campaign entitled "California Campaign for Libraries" to encourage people to use local libraries. Campaign does not involve fundraising. Canons 4B, 4C
8. Judge may hand out awards/certificates of appreciation at the request of a nonprofit organization to Vietnamese community members, which would include law enforcement officers as recipients.

Canons 4A, 4B

9. Judge may participate in countywide march of civil leaders to celebrate Martin Luther King Day. Canons 2A, 4A

V. Fundraising

1. Judge may not serve on an honorary committee fundraiser, which would use judge's name in soliciting donations to develop playground for disabled children. Canons 4C(3)(d)(iv), 2B(2)
2. Judge may participate in local bar association planning committee for golf tournament provided neither judge's name nor position is utilized for purposes of fundraising or solicitation.

Canon 4C(3)(d)(i)

3. Judge may use county e-mail to solicit other judges for donations to assist county mock trial team with expenses to attend national mock trial competition. Canon 4C(3)(d)(i)
4. Judge may not write letter of recommendation for local charity to support application for grant monies. Canon 4C(3)(d)(iv)

5. Judge may send fundraising/membership solicitation brochure for American Constitution Society to other judges but not to subordinate judicial officers. Canon 4C(3)(d)(i)

6. Commissioner may not allow courtroom to be used as collection site for a toy fundraiser for juveniles who appear in Commissioner's courtroom. Canons 2A, 4C(3)(d)(i)

VI. Business/Educational Activities

A. Business Activities - Generally

1. Judge involved in the wine making business may participate in interview regarding attorneys and judges involved in the wine making business provided the interview does not promote the judge's private business and does not demean judicial office.

Canons 2B(2), 4A, 4D(1)(a)

2. Judge, member of a farmer's co-op, may not participate in an interview with trade magazine for co-op where the purpose of the interview is to promote the business interests of the co-op. Canon 4D(2)

3. Judge may be secretary of a closely held corporation provided the corporation does not use judge's position to promote its business interests and the position does not interfere with judicial duties.

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

4. Judge may file suit regarding fee arrangement agreement with judge's former partner. Judge should advise Presiding Judge when litigation is filed. Canon 4G

5. Judge may not use personal stationery, which bears judicial title to contact businesses concerning patent judge has acquired.

Canons 2(B)(2), 4D(1)(a)

6. Judge may not use court e-mail that identifies judge as a judicial officer on private business matters. Canon 2B(2)(4), 4D(6)(9)

B. Educational

1. Judge may serve on committee of The National Bar Association that monitors multi-state professional responsibility examination.

Canon 4C(3)(a)

2. Family law judges may attend and participate in a day-long seminar as part of continuing legal education for the family law bar in judges' community. Canon 4B

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