

# California Judges Association

## JUDICIAL ETHICS UPDATE

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November 2010

This is the twenty-ninth *Judicial Ethics Update* from the Judicial Ethics Committee of the California Judges Association. This 2009/10 *Update* highlights areas of current interest from the 400 informal responses to judges' questions concerning the Code of Judicial Ethics provided by the Ethics Committee during the period September 2009 to September 2010.

Judges may direct questions on the Code of Judicial Ethics to the Ethics Committee by contacting the CJA office or any current 2010/11 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 Laura W. Halgren, San Diego Superior Court, for preparing this *Update*.

### **CONDUCT INSIDE THE COURTROOM**

#### **Generally**

1. When Judge learns that an attorney who appears frequently in Judge's court is seriously ill and had not arranged for another attorney to cover court appearances, thereby prompting some clients to request to appear pro per, Judge must report the attorney's condition to the State Bar. (Canon 3B(8); 3D(2).)

#### **Disclosure and Disqualification**

1. Judge need not disclose in criminal cases a confidential CJP investigation of Judge which was triggered by DA complaints regarding unrelated cases. (Canons 2A; 3E(2))

2. Judge is not disqualified from presiding over trial where commissioner from Judge's court is a witness, but not a party or victim and Judge does not have close relationship with the commissioner. (Canon 3E(1))

3. Judge is not required to disclose de minimis donations Judge made to law school building fund when the university where law school is located comes before Judge in litigation. (Canon 3E(2))

4. When Judge's child, who lives at home, receives an offer to work as a summer associate at a law firm, Judge must disclose the offer when the firm comes before him/her, but need not disqualify unless the child works on the case, or Judge concludes from the facts that a person would reasonably entertain a doubt that Judge would be able to be impartial. Careful scrutiny should be applied because child still lives in Judge's household. (Canon 3E(1)&(2))

5. Judge who hears cases involving drug offenses is not required to disclose the criminal prosecution of an in-law for a low-level drug offense when the case was filed at another courthouse and Judge rarely sees the relative. (Canon 3E(2))

6. When an attorney who is a party in ongoing litigation before Judge files to run against him/her for judicial office, Judge need not recuse unless he/she is unable to maintain objectivity in spite of the filing. Attacks on a judge, whether in the form of filing a lawsuit, making threats, complaining to CJP, organizing a recall, etc. do not necessarily require recusal. (Canon 3B(1), 3E(1)&(2))

7. Judge, who serves as one of several judicial members of a host committee for a judicial election, need not disclose when any attorney who donates at the fundraiser appears before Judge. Because Judge is one of several members on the committee, is not directly soliciting donations from attorneys and is not receiving any benefit from the donation, a person aware of the facts would not reasonably entertain a doubt about Judge's ability to be impartial. (Canon 3E(2))

8. When Judge's court retains the services of an attorney to represent the court in litigation, but Judge is not participating in the management or direction of the lawsuit and was not named in the lawsuit, Judge is not required to disclose the representation when the attorney or members of his firm appear before Judge. (Canon 3E(2))

### **Reporting Responsibilities**

1. Temporary Judge who determines a party in a small claims case committed perjury and submitted false records may refer the party to the DA for possible prosecution, but is not obligated to do so. Any referral should be factual in nature only and should not be made until the case is concluded to avoid disqualification and disclosure issues. (Canons 2, 3B)

2. When Judge executed false salary affidavits due to inadvertent failure to include one case on submitted matters log, but decided the case forthwith when the error was discovered, notified PJ of the situation and took steps to add additional checks to ensure no cases are overlooked in the future, Judge is not required to self-report to CJP. (Canon 3B(8))

### **Ex Parte Communications**

1. When Judge complained to a prosecutor about how another prosecutor from the same office was handling an ongoing trial before Judge, this was an improper ex parte communication. Judge must disqualify him/herself due to the appearance of impartiality, the prohibited nature of the communication and the appearance of embroilment in the case. (Canons 2A, 3B(7)&(9), 3E(1))
2. When Judge received a memo from a court business office clerk describing conduct by a litigant in Judge's court that was related to issues in the case, Judge must disclose the communication to all parties and evaluate whether it prevents Judge from being impartial. (Canons 2A, 3E)

### **CONDUCT OUTSIDE THE COURTROOM**

#### **Generally**

1. Judge, who is a former DDA, may attend a "DA of the Year" award dinner at which Judge's friend will be honored, so long as Judge would similarly attend an event honoring a defense attorney. (Canon 1, 2A, 4A(1))
2. Judge may not be on a weekend rotation list to perform weddings at the courthouse for a fee because this is improper use of court facilities for personal gain. Nor may the court's administrative clerk arrange weekend weddings for a fee at other locations as this is use of court staff for personal gain. (Canons 2A, 2B(2))
3. Judge may not attend annual ceremony organized by DA's Office to honor victims and witnesses for bravery and social conscience when attendees are mostly DA employees. (Canons 2A, 4A)

#### **Public Commentary, Publications, Books, Media**

1. Judge may write theater and film reviews for commercial publications. (Canon 4B)

#### **Letters of Recommendation**

1. Judge may not write a letter to the court describing the good character of a family friend who is facing criminal charges in another county. (Canon 2B(2)&(3))
2. Judge may not provide a written recommendation for a mortgage broker who provided good service to Judge when such letter would be posted on a website and a person reading it would be able to determine it was written by a judge. (Canons 2B(2), 4D(2))
3. Judge may write a letter of recommendation on judicial stationery for an applicant for appointment to the Citizens' Redistricting Commission when Judge has personal knowledge of the applicant's qualifications. (Canon 2B(2)(e))

4. Judge may write a letter in support of the nomination of DDA as Prosecutor of the Year, so long as the letter is based on Judge's personal knowledge, the information is factual and Judge avoids advocacy. (Canon 2B(2)(e).)

#### **Judge as Witness**

1. Judge may not testify as a character witness for Judge's bailiff in a civil proceeding unless Judge is subpoenaed. (2B(2)(a))

2. Judge, who prosecuted a high-profile case before appointment to the bench, may not write a letter to the Parole Board opposing the defendant's parole when asked to do so by the current prosecutor or the victim's family. However, Judge may respond to any request for input from the Parole Board. (Canon 2B(3))

3. Retired Judge in the Assigned Judges Program, may not provide a good character reference letter for an attorney who is facing State Bar disciplinary proceedings, unless requested from the State Bar. (Canon 2B(2)(a) & (c))

#### **Gifts, Discounts, Honoraria**

1. Judge may attend ABOTA sponsored Judge's Night hosted cocktail hour and dinner which is also sponsored by a private mediation firm as this is a bar-related function. (Canon 4D(6)(a))

2. Payment by ABOTA of its judicial members' ABOTA dues of \$100/year during time that judges are donating a portion of their salary back to courts is a permitted gift. ABOTA membership is an activity devoted to the improvement of the law, legal system or administration of justice. (Canon 4D(6)(a)&(H)(2))

3. Neither Judge nor Judge's staff members may keep handmade gifts from attorney who regularly appears in Judge's courtroom. (Canon 2A, 4D(6))

4. Judge may join close personal attorney friend at vacation home owned by friend's employer even though friend will pay for Judge's room. Judge would be required to disqualify on friend's cases due to nature of their relationship and there are no limits on gifts to judges from close personal friends. (Canon 4D(6)(f))

5. At retirement reception, Judge may accept a gift certificate for \$350 from an attorney who appeared before Judge for many years. A special occasion gift constitutes ordinary social hospitality and, as the attorney will no longer be appearing before Judge, there is no appearance of impropriety. (Canon 4D(6)(d))

## **POLITICAL ACTIVITY**

1. Commissioner who is running for judicial seat may have a photograph taken in his/her courtroom for campaign materials. However, if non-judicial candidates are refused access to the courthouse for political photographs by court administration, Commissioner should consider the appearance of special privilege that could attach to such use. (Canons 2A, 5)
2. Judge may speak on behalf of attorney candidate for judicial office and host fundraiser for the candidate, but should exercise caution in soliciting from lawyers who may appear in his/her court or from subordinate judicial officers. (Canons 5A(3) and commentary, 5C)
3. Judge may serve as the moderator of a voter forum involving non-judicial candidates when his/her role is limited to fielding questions from voters and ensuring that all candidates have equal time. (Canons 4A, 5A and commentary to 5A, 5D)
4. Judge in a contested judicial election may mail fundraising letters to judicial colleagues at their work addresses when he/she does not have their home addresses. This use of public resources is incidental and minimal. (Canon 5A)
5. Judge may not physically distribute campaign fundraiser flyers for a colleague in an upcoming judicial election to other judges in the courthouse as it is improper to engage in campaign activities inside the courthouse. (Canons 4A, 5)
6. Judge may be the guest of another at a fundraiser for DA candidate but should take care that he/she is not introduced by title at the event and should not do anything that would be construed as a public endorsement. Judge should disclose the attendance and any contribution made by Judge if the candidate appears before Judge as an attorney. (Canon 5A(3), 3E(2))
7. Judge may use Facebook as part of his/her judicial campaign. (Canon 5)

## **CIVIC AND CHARITABLE ACTIVITIES**

### **Generally**

1. Judge may swear in a new firefighter at the local fire station in an after-hours ceremony. Judge may wear his/her robe for this official judicial duty. (Canon 2A)
2. Judge may not join the advisory board of CASA (Court Appointed Special Advocates) as CASA engages in adversary proceedings in the court. (Canon 4C(3)(c)(ii))

3. Judge may speak before women's club that is affiliated with a political party regarding the mechanics of judicial elections, focusing on law and procedure. (Canons 2A, 4A(1) & B)

### **Government Positions**

1. Retired judge who sits on assignment may serve on a governmental council that advises the Board of Supervisors on issues involving seniors. Retired judges are exempt from the prohibition of a judge serving on a governmental committee that is not directly related to the law, legal system or administration of justice. (Canons 4A(1), 4C(2), 6B)

### **Fundraising**

1. Judge may accept honor for public service at a "friend-raiser" event that will involve fundraising for sponsoring organizations. Judge should not personally solicit funds or engage in conduct that appears to lend prestige of the office to the sponsoring groups. (Canons 2A, 2B(2), 2C, 4C(3)(d)(iv))

2. Judge and other judges may use judge's fund money to donate to CASA as a memorial to a judicial officer's recently deceased father. (Canon 4C(3)(d)(i))

3. Commissioner may organize a charity golf tournament for judicial officers and their family members and may solicit judicial officers to participate in the event, but should not specifically solicit the family members. However, family members who voluntarily request to participate may do so. (Canon 4C(3)(d)(i))

4. Judge may not co-chair fundraising dinner committee for organization that provides drug rehabilitation services for children when Judge would be listed on the dinner invitations as the co-chair. (Canon 4C(3)(d)(iv))

5. Criminal Supervising Judge may write a letter to Board of Supervisors on behalf of Public Defender's Office to request funding so long as the letter relates to the law, legal system and administration of justice. (Canon 4C(3)(d)(ii))

### **Membership**

1. Judge who has a domestic violence assignment may not sit on the board of a non-profit agency that provides services to domestic violence victims, including assistance in obtaining restraining orders and accompanying victims to court. (Canons 2A, 4A(1))

### **BUSINESS ACTIVITIES**

1. Judge may sign a contract to join a law firm as "of counsel" before retirement, but should caution the law firm not to announce the relationship until after Judge retires. (Canons 2A, 2B(2), 4D(1))

2. Judge-elect, who won election in June, may continue to practice law and appear in court until assuming office in January. (Canon 2A)

3. Judge with a direct calendar civil assignment, which involves many ADR referrals, who is considering retirement may not meet with an ADR representative to gather information about the company as this would indicate interest in possible employment and would lead to disqualification in many cases falling within CCP 170.1(a)(8)(A)(i-iv). (Canons 1, 2A, 4A)

### **EDUCATIONAL ACTIVITIES**

1. Judge may teach a non-legal philosophy-related course at a local Christian college during non-court hours. (Canons 3A, 4A(3), 4B, 4C(b))

2. Judge may teach a week-long legal course at a conference sponsored by a non-profit organization and may be paid a stipend so long as Judge takes vacation time for the absence and the stipend is reasonable and similar to what a non-judicial officer would receive. (Canons 4A(3), 4B, 4H, 4H(1))

### **COMMUNITY OUTREACH**

1. Judge may not participate on crisis response team that will do outreach to the community in which DV homicides occur to provide crisis counseling and resource information. (Canons 2A, 2B, 4A(1)&(3))

### **ADVICE TO PRESIDING/ASSISTANT PRESIDING JUDGES**

1. PJ may meet with PD and a representative of the DA's office to discuss PD's blanket challenge of a judicial officer. No pending cases may be discussed and PJ should be careful to prevent the meeting from being perceived as an effort by the court to intimidate or discourage the PD from exercising rights under CCP sec. 170.6. (Canons 3B(7), 3B(9))

2. PJ should take appropriate corrective action when a judge consistently leaves work early. If progressive steps of oral admonishment, written reprimand and monitoring do not deter the conduct, PJ must report the matter to the CJP. (Canons 3C(3), 3D(1))

3. PJ should take appropriate corrective action when he/she learns that an attorney candidate for judicial office who serves as a temporary judge is using the designation "Temporary Judge" on campaign literature. Such corrective action should include advising the attorney to stop using the designation and, depending on attorney's response, reviewing the attorney's suitability to continue on the temporary judge panel or referring to the State Bar. (Canons 2B(2), 3D(2), 6D(9))

4. PJ should take appropriate corrective action when he/she learns that judge on the court has been teaching a course for compensation at a state college during court hours without taking vacation time. Appropriate action may include having the judge disgorge the funds earned improperly and directing judge to refrain from teaching for compensation during court hours. (Canons 1, 2A, 3A, 4A(3))

5. PJ should not assist local charity by arranging for placement of food collection bins in public areas of courthouse. Any decision to place bins in non-public work areas should be up to court administrators, not PJ, as this would be tacit solicitation of court employees by a judicial officer. (Canons 2A, 2B(2), 4C(3)(d)(i))

### **2009/10 Judicial Ethics Committee**

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