

MEMORANDUM

TO: All CJA Members

FROM: Nicole Virga Bautista
Executive Director & CEO

DATE: June 2018

SUBJECT: **Formal Ethics Opinion No. 75**

The Judicial Ethics Committee of the California Judges Association has issued the following formal opinions:

Opinion No. 75

THE LAW, THE LEGAL SYSTEM OR THE ADMINISTRATION OF JUSTICE: COMMUNITY INVOLVEMENT AND MEASURES TO IMPROVE THE LAW

Judges may direct questions on the Code of Judicial Ethics to the current 2017/18 Ethics Committee by writing or calling the CJA office or any Ethics Committee member. The Ethics Committee, as a matter of policy, does not answer inquiries 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.

All opinions of the committee are advisory only.

Special thanks to Ethics Committee member Judge Leonard Edwards, Santa Clara Superior Court, Retired, for preparing this Opinion.

NVB:jmg

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CALIFORNIA JUDGES ASSOCIATION

Judicial Ethics Committee

Opinion No. 75

THE LAW, THE LEGAL SYSTEM OR THE ADMINISTRATION OF JUSTICE: COMMUNITY INVOLVEMENT AND MEASURES TO IMPROVE THE LAW

I. INTRODUCTION

This opinion will discuss the meaning of the phrase “the law, the legal system, or the administration of justice” as it is used in the Code of Judicial Ethics and applied to judicial involvement in the community and judicial measures to improve the law.

The phrase, the law, the legal system, or the administration of justice appears in the terminology portion of the Code of Judicial Ethics, and it appears frequently in the canons.

“Law, the legal system, or the administration of justice.” When a judge engages in an activity that relates to the law, the legal system, or the administration of justice, the judge should also consider factors such as whether the activity upholds the integrity, impartiality, and independence of the judiciary (Canons 1 and 2A), whether the activity impairs public confidence in the judiciary (Canon 2), whether the judge is allowing the activity to take precedence over judicial duties (Canon 3A), and whether engaging in the activity would cause the judge to be disqualified (Canon 4A(4)). See Canons 4B (Commentary), 4C(1), 4C(1) (Commentary), 4C(2), 4C(2) (Commentary), 4C(3)(a), 4C(3)(b) (Commentary), 4C(3)(d)(ii), 4C(3)(d) (Commentary), 4D(6)(d), 4D(6)(e), 5A (Commentary), 5D, and 5D (Commentary).

The definition does not indicate precisely what activities relate to the law, the legal system, or the administration of justice. Rather it advises that when judges engage in such activities they should be careful not to violate specific ethical canons and laws as listed below.

II. APPLICABLE AUTHORITY

Canon 1. “An independent, impartial, and honorable judiciary is indispensable to justice in our society. A Judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. . . .”

Canon 2A. “. . . A judge shall not make statements, whether public or nonpublic, that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of judicial office.”

Canon 2B(1). A judge shall not allow family, social, political, or other relationships to influence the judge’s judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.

Canon 2B(2). “A judge shall not lend the prestige of judicial office or use the judicial title in any manner, including any oral or written communication, to advance the pecuniary or personal interests of the judge or others”

Canon 2C. Membership in Organizations. “A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation. This canon does not apply to membership in a religious organization.”

Canon 3A. Judicial Duties in General. “All of the judicial duties prescribed by law shall take precedence over all other activities of every judge.”

Canon 4A. “A judge shall conduct all of the judge’s extrajudicial activities so that they do not

- (1) cast reasonable doubt on the judge’s capacity to act impartially,
- (2) demean the judicial office,
- (3) interfere with the proper performance of judicial duties, or
- (4) lead to frequent disqualification of the judge.”

Canon 4B. Quasi-Judicial and Avocational Activities. “A judge may speak, write, lecture, teach, and participate in activities concerning legal and nonlegal subject matters, subject to the requirements of this code.”

Canon 4B. Advisory Committee Commentary: “As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge may do so, either independently

or through a bar or judicial association or other group dedicated to the improvement of the law. It may be necessary to promote legal education programs and materials by identifying authors and speakers by judicial title. This is permissible, provided such use of the judicial title does not contravene Canons 2A(2) and 2B. Judges are not precluded by their office from engaging in other social, community, and intellectual endeavors so long as they do not interfere with the obligations under Canons 2C and 4A.”

Canon 4C(1) Governmental, Civic, or Charitable Activities: “A judge shall not appear at a public hearing or consult with an executive or legislative body or public official except on matters concerning the law, the legal system, or the administration of justice, or in matters involving the judge’s private economic or personal interests.”

Canon 5D Measures to Improve the Law

“A judge or candidate for judicial office may engage in activity in relation to measures concerning improvement of the law, the legal system, or the administration of justice, only if the conduct is consistent with this code.”

5D Advisory Committee Commentary:

“When deciding whether to engage in activity relating to measures concerning the law, the legal system, or the administration of justice, such as commenting publicly on ballot measures, a judge must consider whether the conduct would violate any other provisions of this code. See the explanation of ‘law, the legal system, or the administration of justice’ in the Terminology section.”

CJA Formal Ethics Opinions 22, 31, 46, 61, and 73.

CJEO Formal Opinions 2014-006, 2016-008, 2017-011

Government Code §82028(b)(1)

FPPC Regulation 18942.1(a)

Standards of Judicial Administration Sections 5.30, 5.40, & 10.5.

Rothman, David, California Judicial Conduct Handbook, Fourth Edition, California Judges Foundation, (2017) Sections 8.31, 10.01, 10.03, 10.07, 10.10, 10.11, 10.16, 10.22, 10.23, 10.24, 10.24.5, 10.30, 10.31, 10.34, 10.37, 10.38, 10.39, &; Appendix L.

Edwards, Leonard, *The Role of the Juvenile Court Judge: Practice and Ethics*, California Judges Association, 2012, Part III, Working Off the Bench.

Gray, C., “Nexuses and tangents: The law, the legal system, or the administration of justice,” *Judicial Conduct Reporter*, Vol. 37, No.1, Spring 2015.

MEASURES TO IMPROVE THE LAW (Canons 4B & 5D)

Judges or judicial candidates are encouraged to engage in activities in relation community involvement and measures concerning the improvement of the law, the legal system, or the administration of justice. As Standard of Judicial Administration, Standard 10.5(a) indicates

Judicial participation in community outreach activities should be considered an official judicial function to promote public understanding of and confidence in the administration of justice. This function should be performed in a manner consistent with the California Code of Judicial Ethics.¹

The same standard indicates some of the activities in which judges are encouraged to participate. These include the following: leadership in the community in identifying and resolving issues of access to justice, development of programs to increase public understanding of the courts, obtaining information from the public about how the courts may be more responsive to the public’s needs, public speaking to improve understanding of the court system, and becoming more active in the life of the community to increase public understanding and promote public confidence in the integrity of the court system. Standard of Judicial Administration, Standard 5.40(e) is even more expansive regarding the community involvement of juvenile court judges.

Legal and ethical opinions have indicated that the term “the law, the legal system, or the administration of justice should be defined narrowly. As Rothman indicates, “almost anything that government does can be characterized as related to “the improvement of the law,” the activity must have a direct connection with the legal system. It becomes necessary for judges to examine carefully their involvement in the community and their efforts to improve the law. The hypothetical situations below provide some guidance as to whether a judge’s activity relates to the law, the legal system, or the administration of

¹ Standard of Judicial Administration, Standard 10.5(a).

² Rothman, D., et.al. California Judicial Conduct Handbook, 4th edition, section 10.10.

³ The hypothetical situations are drawn from inquiries by judicial officers to the CJA Ethics Committee and the informal responses by the committee.

justice and when the proposed activity is inconsistent with the Code of Judicial Ethics.

HYPOTHETICAL SITUATIONS³

#1 – The Board of Supervisor has asked a judge to evaluate an interim district attorney and to review public defender applications.

May the judge do either of these?

Yes. The judge would be responding to a public inquiry concerning the quality of professionals critical to the daily operations of the court. This relates directly to the orderly administration of justice and as such involves the law, the legal system, or the administration of justice.

#2 – The judge presides over W&I § 6500 cases dealing with the developmentally disabled. There is a state center for the developmentally disabled in the judge's county, and the judge has noticed that the facility is no longer adequate or suited to house the inmates, many of whom are judicially committed due to criminal offenses.

The judge asks if the judge may write a letter to the State Department of Developmental Disability and the State Department of Mental Health chronicling the judge's observations and requesting that these departments take action to provide a safer and more secure facility for the developmentally disabled.

Yes. The judge may consult with both of these governmental agencies by contacting these agencies. The judge is in a unique position to comment on the effectiveness of the judge's orders regarding developmentally disabled clients. The topic involves the law, the legal system, or the administration of justice.

#3 – The judge is developing a software program to assist courtroom lawyers and judges in the jury selection process.

May the judge do this and use the judge's name and title in the marketing and sales of the program?

Yes. This software program will increase the efficiency of work conducted by both judges and attorneys as they administer justice. It contributes to the improvement of the law, the legal system, or the administration of justice.

#4 – Courtroom security experts have invited the judge to speak at an out-of-town gathering at a conference regarding courthouse and judicial security.

May the judge give the speech?

Yes. Courtroom security is essential to the proper functioning of the judicial branch. Courtroom security impacts access to justice and the safety of the court, court staff, and those who appear in court. The judge's speech involves the law, the legal system, or the administration of justice.

#5 – May a judge make a public service television announcement to encourage persons to become foster parents?

Yes. The announcement is an effort by the court to outreach to the community as the juvenile court judge has legal responsibility for the children appearing in the juvenile court who are dependents and wards of the court, and these children often need foster homes. Such an announcement is proper so long as the judge does not do anything to demean the judicial office or make any statements that would undermine the public's confidence in the integrity and impartiality of the judiciary.

#6 – May the judge accept a discount to attend a mediation program at Pepperdine University?

Yes. Mediation skills can improve case outcomes and assist the orderly processing of cases appearing in court. This can also be considered training for the judge. The mediation program is related to the improvement of the law, the legal system, or the administration of justice.

#7 – California Women Lawyers is considering establishing a judicial discount for life-time membership.

The judge asks if it would be ethical for a judge to receive enrollment at this reduced rate.

Yes. This organization works to improve the legal system. While this is a gift, it is proper for the judge to accept the discount since the organization works to improve the law, the legal system, or the administration of justice.

#8 – The Presiding Judge has asked a judge to oversee the selection of the county grand jury. The judge has written a letter to send out to possible candidates asking them to consider service on the grand jury.

The judge asks if the judge may send the letter.

Yes. The Grand Jury is a judicial body, an instrumentality of the courts. This letter directly relates to the legal requirement that the court convene a Grand Jury. The letter pertains to the law, the legal system, or the administration of justice.

#9 – The judge believes that the re-apportionment of fault in certain personal injury cases will result in improvements to the administration of civil justice. May a judge appear before a legislative committee to support proposed legislation that would accomplish that purpose?

Yes. A judge may address a legislative committee regarding pending legislation about how fault is apportioned in negligence suits when the judge is concerned that the current law inhibits settlements and increases litigation. The judge would be explaining the impact the legislation would have on court operations. This activity relates to the law, the legal system or the administration of justice.

#10 – May a judge testify before a county legislative body about the need for indigent legal services in the county?

Yes. Criminal courts must have access to attorneys who represent indigent defendants. A judge may address the county legislative body about the need for adequate indigent defense services. This issue involves improvement of the law, the legal system, or the administration of justice.

#11 – May a judge inform the legislature of the importance of a center that provides a safe place for parents to have monitored visitation with their children?

Yes. This issue is relevant in many family and juvenile law cases when the court orders monitored visitation for a parent and the parent's children. Such a center enables the judge to see that the judge's orders for supervised visitation are fulfilled. Such advocacy by the judge involves the improvement of the law, the legal system, or the administration of justice.

#12 – The judge has written a book on useful methods to keep kids out of trouble. A library on the east coast has asked the judge to speak at the library and offered to pay the judge's travel expenses. The judge asks whether the judge can accept the reimbursement.

Yes. The topic of the judge's speech and necessary travel relates to the law, the legal system, or the administration of justice. Neither the activity, nor acceptance of reimbursement from this source would cast doubt on the judge's ability to be impartial. However, the judge must use the judge's vacation time for such a trip unless authorized by the Presiding Judge as

the judge would be away from the judge's court.

#13 – The judge has been invited to participate in the 3rd Organization for Economic Co-Operation and Development Forum on “Statistics, Knowledge and Policy” which will focus on Charting Progress, Building Visions, Improving Life. The program will be in South Korea and will be funded both by organizational and corporate sponsors, and travel expenses will be paid by the organizers.

The judge asks if the judge may attend.

Yes. The judge may attend, but the judge cannot accept reimbursement for travel expenses as this conference does not directly involve the law, the legal system, or the administration of justice. The judge must attend on the judge's own time and the judge's own resources.

#14 – The Director of the local Court Appointed Special Advocates (CASA) has asked the juvenile court judge to speak at a fundraiser to benefit CASA. The judge would explain how CASA operates and the assistance CASA volunteers provide to the court and the dependent children they serve. The judge would not make any solicitation for funds.

The judge asks whether the judge may make such a speech at a fundraiser.

Yes. CASA volunteers are court-appointed advocates for children appearing in the juvenile dependency court. The judge's speech would describe the role that CASA volunteers play in the court system. CASA volunteers assist the court in many ways and the judge would be encouraging their continued participation in the court process. This is a subject involving the improvement of the law, the legal system, or the administration of justice. However, the judge may not solicit funds for the CASA organization.

#15 – A newly appointed judge was teaching a class to at-risk juveniles before becoming a judge. The judge now sits in a misdemeanor calendar. The judge asks whether the judge can continue to teach the class.

Yes. A judge may teach about non-legal topics subject to the requirements of the code of ethics. Moreover, this class relates to youth who either are or may soon be before the juvenile court. The judge's class may prevent some youth from engaging in delinquent activity. The class involves the law, the legal system, or the administration of justice.

#16 – The judge has written a scholarly article describing the history,

development and current power of the California Correctional Peace Officer's Association (CCPOA). The tone of the article is highly critical both of the CCPOA, the recent administrations in Sacramento, and the "tough on crime" movement.

The judge asks if the judge may submit the article for publication.

No. While judges are encouraged to write on topics relating to the law, the legal system, or the administration of justice, the judge must balance this mandate with the requirement that all of the judge's extrajudicial activities be conducted so as not to cast reasonable doubt upon the judge's capacity to remain impartial. Moreover, this article may result in the judge becoming embroiled in political controversy.

#17 – The presiding judge has been approached by the publisher of a local business type magazine who wishes to supply each member of the court with a free subscription to the magazine.

May the presiding judge authorize this?

No. The magazine's content is not related to the law, the legal system, or the administration of justice. As such this would be a prohibited gift.

#18 – The judge is a member of ABOTA (American Board of Trial Advocates). The local chapter has volunteered to pay the national and local ABOTA dues for all judicial members in the judge's country during the time that judges are donating a portion of their salary back to the courts.

The local and national dues total \$100 a year. Is this an impermissible gift?

No. As ABOTA membership is an activity devoted to the improvement of the law, the legal system, or the administration of justice, the gift exception would apply. Further, as ABOTA membership extends both to the plaintiff and defense bars, the judge's impartiality would not be compromised.

#19 – A legislator asks the judge to appear before a legislative committee and support the legislator's bill that would increase penalties for domestic violence crimes.

May the judge make such an appearance?

No. This is a policy issue within the exclusive purview of the legislature.

Moreover, such testimony would make it appear that a judge has pre-judged certain types of cases.

#20 – A judge has been asked by two police departments in his jurisdiction to sit on an advisory board that distributes grant money for anti-terror equipment. May the judge participate?

No. While this activity involves the law, legal system and administration of justice, it creates the appearance that the judge has a special relationship with law enforcement and thus compromises the appearance of impartiality.

III. CONCLUSION

The phrase “the law, the legal system, or the administration of justice” appears numerous times throughout the Code of Judicial Ethics. As the hypothetical situations reveal, determining whether a judge can take certain actions to improve the law while off the bench involves a number of considerations. In most situations if the action involves the law, the legal system, or the administration of justice, the judge may take the proposed action. However, the judge must also consider whether the activity might reflect adversely upon a judge’s impartiality, whether the activity might interfere with the performance of a judge’s judicial duties, and whether other mandates within the Code of Ethics would prohibit such action.

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