Formal Ethics Opinion No. 81

Natural Disasters: The Ethical Considerations

Published by

CALIFORNIA JUDGES ASSOCIATION

MEMORANDUM

TO: All CJA Members

FROM: Nicole Virga Bautista
Executive Director & CEO

DATE: February 2025

SUBJECT: **Formal Ethics Opinion No. 81**

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

Opinion No. 81
NATURAL DISASTERS: THE ETHICAL CONSIDERATIONS

Judges may direct questions on the Code of Judicial Ethics to the current 2024/25 Ethics Committee by writing or calling the CJA office. 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 Members Judge Ruben A. Villalobos, Stanislaus Superior Court, and Judge Terrie E. Roberts, San Diego Superior Court, for preparing this Opinion.

NVB:jmg

CALIFORNIA JUDGES ASSOCIATION

Judicial Ethics Committee

Opinion 81

NATURAL DISASTERS
THE ETHICAL CONSIDERATIONS

I. Introduction

When natural disasters strike, such as fires and earthquakes, judges, their families and court staff are affected, along with their greater communities. Judges can lose their homes, become temporarily displaced, and eventually become involved in litigation. Judges may be offered disaster relief from various sources, including other judges, family, friends and government disaster relief programs. Additionally, judges may wish to become involved in fundraising efforts for others affected by the disaster. This Opinion considers the related ethical implications to these situations.

At the outset, we note this Opinion will provide a summary of relevant Canons and precedents, but it does not address every possible scenario. Additionally, by rule, the Committee can only provide ethics advice. Therefore, this Opinion does not comment on collateral issues, such as financial reporting requirements or legal questions. Except for when specifically mentioned to the contrary, this memo uses the phrase "judge" to include all bench officers subject to the Canons.

Specifically, the Opinion answers the following questions:

1. What can judges do to help disaster victims?
2. Can judges ask family, judges and friends to help disaster victims?
3. Can judges start a GoFundMe account?
4. Can judges ask people at their court to help?
5. Can a judge receive disaster assistance that is generally available to the general public?
6. Can a judge accept money from a GoFundMe account or from an individual?
7. Can a judge ask for monetary assistance from a friend who, based on their preexisting relationship, would not be able to appear in front of the judge pursuant to Canon 3E?

8. Can a judge benefit from monetary and non-monetary donations received by the judge's household member during a disaster?

9. Can a judge advocate on behalf of their own property interest, including speaking before government entities or commencing litigation?

II. Authority

Terminology:

"Gift" means anything of value to the extent that consideration of equal or greater value is not received, and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. See Canons 4D(5), 4D(5) (Commentary), 4D(6), 4D(6)(a), 4D(6)(b), 4D(6)(b) (Commentary), 4D(6)(d), 4D(6)(f), 4D(6)(i), 4D(6)(i) (Commentary), 4D(6) and 4D(7) (Commentary), 4H (Commentary), 5A (Commentary), 5B(4) (Commentary), 6D(2)(c), and 6D(7).

"Impropriety" includes conduct that violates the law, court rules, or provisions of this code, as well as conduct that undermines a judge's independence, integrity, or impartiality. See Canons 2, 2 and 2A (Commentary), 2B (Commentary), 2C (Commentary), 3B(9) (Commentary), 4D(1)(b) (Commentary), 4D(6)(g) (Commentary), 4D(6)(i) (Commentary), 4H, and 5.

"Independence" means a judge's freedom from influence or control other than as established by law. See Preamble, Canons 1, 1 (Commentary), 2C, 4C(2) (Commentary), 4D(6)(a) (Commentary), 4D(6)(g) (Commentary), 4D(6)(i) (Commentary), 4H(3) (Commentary), 5, 5A (Commentary), 5B (Commentary), and 6D(1).

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character. See Preamble, Canons 1, 1 (Commentary), 2A, 2 and 2A (Commentary), 2B (Commentary), 2C (Commentary), 3B(9) (Commentary), 3C(1), 3C(5), 4D(6)(a)(Commentary), 4D(6)(b) (Commentary), 4D(6)(g) (Commentary), 4D(6)(i)

"Member of the judge's family" means a spouse, registered domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Canons 2B(3)(c), 2B (Commentary), 4C(3)(d)(i), 4D(1) (Commentary), 4D(2), 4D(5) (Commentary), 4E(1), and 4G (Commentary).

"Member of the judge's family residing in the judge's household" means a spouse or registered domestic partner and those persons who reside in the judge's household and who are relatives of the judge, including relatives by marriage or persons with whom the judge maintains a close familial relationship. See

Canons 4D(5), 4D(5) (Commentary), 4D(6), 4D(6)(b) (Commentary), 4D(6)(f) and 6D(2)(c).

"Subordinate judicial officer." A subordinate judicial officer is, for the purposes of this code, a person appointed pursuant to article VI, section 22 of the California Constitution, including, but not limited to, a commissioner, referee, and hearing officer. See Canons 3D(3), 4G (Commentary), and 6A.

Canons:

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 is preserved."

Canon 2A: "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

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 3E(1): "A judge shall disqualify himself or herself in any proceeding in which disqualification is required by law."

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, 4) lead to frequent disqualification of the judge."

The advisory commentary under Canon 4A provides:

"Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which he or she lives. Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions that may do so include inappropriate use of humor or the use of demeaning remarks. *See* Canon 2C and accompanying Commentary. Because a judge's judicial duties take precedence over all other activities (*see* Canon 3A), a judge must avoid extrajudicial activities that might reasonably result in the judge being disqualified."

"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 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): "A judge shall not appear at a public hearing or officially 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 4C(3)(d)(i): "A judge as an officer, director, trustee, nonlegal advisor, or as a member or otherwise, may assist such an organization in planning fundraising and may participate in the management and investment of the organization's funds. However, a judge shall not personally participate in the solicitation of funds or other fundraising activities, except that a judge may privately solicit funds for such an organization from members of the judge's family or from other judges (excluding court commissioners, referees, court-appointed arbitrators, hearing officers, temporary judges, and retired judges who serve in the Temporary Assigned Judges Program, practice law, or provide alternative dispute resolution services)."

The advisory commentary under Canon 4D provides:

"A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to appear either before the judge personally or before other judges on the judge's court. A judge shall discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position or that involve family members in frequent transactions or continuing business relationships with persons likely to appear before the judge."

Canon 4D(5): "Under no circumstance shall a judge accept a gift, bequest, or favor if the donor is a party whose interests have come or are reasonably likely to come before the judge. A judge shall discourage members of the judge's family residing in the judge's household from accepting similar benefits from parties who have come or are reasonably likely to come before the judge."

The advisory commentary under Canon 4D(5) provides:

"Because a gift, bequest, or favor to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household." For a definition for household and family, see endnote.

Canon 4D(6):"A judge shall not accept and shall discourage members of the judge's family residing in the judge's household from accepting a gift, bequest, favor, or loan from anyone except as hereinafter set forth. Gifts that are permitted by Canons 4D(6)(a) through (i) may only be accepted if the gift, bequest, favor, or loan would neither influence nor reasonably be perceived as intended to influence the judge in the performance of judicial duties:

(a) a gift, bequest, favor, or loan from a person whose preexisting relationship with the judge would prevent the judge under Canon 3E from hearing a case involving that person;

(b) a gift for a special occasion from a relative or friend, if the gift is fairly commensurate with the occasion and the relationship;

[. . .]

(c) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

[. . .]

(f) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or registered domestic partner or other member of the judge's family residing in the judge's household, including gifts, awards, and benefits for the use of both the spouse or registered domestic partner or other family member and the judge;"

Canon 6A: "Anyone who is an officer of the state judicial system and who performs judicial functions including, but not limited to, a subordinate judicial officer, a magistrate, a court appointed arbitrator, a judge of the State Bar Court, a temporary judge, or a special master, is a judge within the meaning of this code…"

Other Authority:

CJA Ethics Formal Opinion 41 (Fundraising) and Opinion 42 (Fundraising Among Judges)

California Judicial Conduct Handbook "Rothman" (4th ED.) Appendix H

Public Admonishment of Judge Quall and Censure of Judge Hyde. See Rothman §10.44, page 721.

Code of Civil Procedure § 170.9(l)(3)

Commission on Judicial Performance Gift Limitation: The gift limitation amount in CCP § 170.9 is adjusted by the CJP annually to reflect changes in the Consumer Price Index. According to the CJP, the gift limitation amount will be adjusted again in 2025 once the Consumer Price Index becomes available. (https://cjp.ca.gov/gift_limit/). As of February 23, 2023, the Commission adopted the gift limitation amount of $530.00. Therefore, pursuant to CCP § 170.9 and the CJP gift limitation, judges may accept a single source gift limit not to exceed the annual amount of $530.00 unless the gift, bequest, favor, or loan is from a person whose preexisting relationship with a judge would prevent the judge from hearing a case involving that person. *See* Code of Civil Procedure § 170.9(l)(3).

III. Discussion

1. What can judges do to help disaster victims?

Judges can, without ethical limitation, donate to those in need of disaster relief. Our names and titles can even be used on a donor roll, as long as similar titles are used for non-judicial donors. (Rothman 10:50). The only ethical concern to keep in mind is that we always have a duty to conduct ourselves in a way that would not lead to frequent disqualification. (Canon 4A(4)).

Judges can also volunteer and be an active part of a nonprofit organization set up to help disaster victims, including a nonprofit organization that includes fundraising within its mission. (*Rothman* §10:42, Canon 4C(3)(d)(i)). The judge can even be involved in the planning of fundraisers, so long as the judge does not personally become involved in the solicitation of funds. *"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 4A advisory commentary). *Furthermore, "complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives."* (Canon 4A advisory commentary). Thus, a judge can volunteer

with a non-profit organization set up to help people affected by the fires. Further, judges may assist with disaster cleanup, and may personally collect clothing, blankets and other non-monetary donations from other judges and family members. Judges cannot personally solicit such items from subordinate judicial officers or retired judges sitting on assignment. (Canon 4C(3)(d)(i) and Rothman 10:45).

For any permissible fundraising, judges must be mindful to not use court resources for any solicitations, except use of a work email may be considered de minimis for fundraising from judges (not including retired judges sitting on assignment or subordinate judicial officers) relating to a judicial organization. However, if not acting within a judicial organization, but individually or with another group of judges, judges should use their personal email. *Public Admonishment of Judge Quall and Censure of Judge Hyde* (*Rothman* 10:44).

Judges should remember Rothman's admonition that there is no such thing as a "really worthy charity" exception. (Rothman § 10:42). Certainly, a public campaign to raise funds for our court staff and judges affected by a disaster is a worthy cause; however, such involvement by judges would be prohibited by the Canons. *See* Canon 4C(3)(d)(i)). *Rothman* §10:42 and *Rothman* §10:44 for a list of examples of prohibited fundraising by judges.

2. Can judges ask family, other judges and friends for monetary and non-monetary assistance for disaster victims?

Judges can solicit disaster relief funds, as well as non-monetary assistance, clothing, blankets, toiletries, etc. from their families and from other judges, for themselves, for court staff, for fellow judges, for family, or friends. Judges cannot solicit from staff, retired judges sitting on assignment, subordinate judicial officers or members of the public. (*Rothman* 10:42 and Canon 4C(3)(d)(i)). Although the Canons and *Rothman* do not specifically address solicitation from a friend with whom the judge has a pre-existing relationship, who would not be able to appear before the judge pursuant to Canon 3E, it would seem that a judge could ask this special friend for monetary contributions, as well as non-monetary contributions. Because Canon 3E assumes a special pre-existing relationship between the judge and the friend, the judge asking the friend to contribute certainly would not be perceived as influencing the judge in the performance of their judicial duties, since the friend will never appear before the judge. However, the judge would want to be mindful of the fact that asking the friend to contribute funds may make the friend feel unduly pressured by the judge asking for a monetary contribution.

3. Can judges start a GoFundMe account?

Yes, if the judge has the ability to limit the donations to the judge's family members and other judges, excluding subordinate judicial officers or

retired judges sitting on assignment for money. Because the very nature of a GoFundMe account lends itself to anonymous donations being given to the account with little to no ability for the judge to ensure that the funds are coming from family members and other judges, excluding subordinate judicial officers or retired judges sitting on assignment for money, the judge should only start a GoFundMe account if the judge can control and monitor who is actually contributing to the GoFundMe account, in order to stay within the judge's ethical boundaries.

4. Can judges ask people at their court to help?

Yes. They can only ask other judges (excluding subordinate judicial officers and retired judges sitting on assignment) at their court to help. (*Rothman* §10:42, Canon 4C(3)(d)(i)).

The next five questions consider the ethical implications of judges receiving disaster relief donations. In answering the next three questions, the Committee must look at the issue of a judge receiving donations through the lens of a "gifts" analysis:

5. Can a judge receive disaster assistance that is available to the general public?

A judge can receive any benefit or opportunity, loan, or discount that is otherwise available to the general public because the assistance would not be perceived as intending to influence the judge in the performance of their duties. (Canon 4D(6)(c)). This would include receiving any monetary or non-monetary federal, state, or local disaster assistance. This would also include receiving disaster aid from non-governmental organizations such as a place of worship, as long as the assistance is equally available to other victims of the disaster.

6. Can a judge accept money from a GoFundMe account or from an individual?

It depends. Normal restrictions on receiving gifts still apply. Under CCP § 170.9, if the source of the funds is a person with whom the judge has a pre-existing relationship that would normally cause the judge to disqualify, then there is no limit on how much the judge can accept.[1] However, if the judge cannot perform an analysis under the rules limiting gifts because the sources of the donations are unknown, the judge cannot conclude that an exception to the gift limitations applies. *See* Code of Civil Procedure § 170.9(l)(3).

1 By rule, the Committee does not comment on FPPC reporting concerns, but judges should also be mindful of FPPC implications. For further guidance, *see* https://www.fppc.ca.gov/learn/guidance-for-filing-officers-.html

7. Can a judge ask for monetary assistance from a friend who, based on their preexisting relationship, would not be able to appear in front of the judge pursuant to Canon 3E?

Judges can ask for monetary and non-monetary help from family members and judges, other than subordinate judicial officers or retired judges sitting on assignment. As to asking for monetary help from friends, Canon 4C(3)(d)(i) limits a judge's ability to solicit only from family and other judges, other than subordinate judicial officers or retired judges sitting on assignment. Because Canon 3E assumes a special pre-existing relationship between the judge and the friend, the judge asking the friend to contribute certainly would not be perceived as influencing the judge in the performance of their judicial duties, since the friend will never appear before the judge. However, the judge would want to be mindful of the fact that asking the friend to contribute funds may make the friend feel unduly pressured by the judge asking the friend for a monetary contribution. If a friend with whom the judge has a preexisting relationship and thus who would be unable to appear before the judge pursuant to Canon 3E, were to provide monetary help to the judge, the judge would not be precluded from *accepting* the monetary help from the friend. Additionally, the judge would not be precluded from asking a friend falling under this category, for non-monetary help, i.e., having a place to stay during the disaster, accepting clothing, toiletries, blankets, a cooked meal or an offer to run an errand or to care for the judge's pet(s).

8. Can a judge benefit from monetary and non-monetary donations received by the judge's household member during a disaster?

The general rule is that judges cannot receive gifts. Certain statutes and Canons provide exceptions for gifts judges can receive, or, perhaps more relevant to disaster relief, define items or money as outside the definition of a "gift" based on the relationship between the judge and the donor.

The advisory commentary under Canon 4D provides:

> "A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to appear either before the judge personally or before other judges on the judge's court. A judge shall discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position or that involve family members in frequent transactions or continuing business relationships with persons likely to appear before the judge."

The advisory commentary under Canon 4D(5) provides:

> "Because a gift, bequest, or favor to a member of the judge's family residing in the judge's household might be viewed as intended to influence the

judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household."

However, a judge must be mindful of Canon 4D(6):

"A judge shall not accept and shall discourage members of the judge's family residing in the judge's household from accepting a gift, bequest, favor, or loan from anyone except as hereinafter set forth. Gifts that are permitted by Canons 4D(6)(a) through (i) may only be accepted if the gift, bequest, favor, or loan would neither influence nor reasonably be perceived as intended to influence the judge in the performance of judicial duties:

(a) a gift, bequest, favor, or loan from a person whose preexisting relationship with the judge would prevent the judge under Canon 3E from hearing a case involving that person;

(b) a gift for a special occasion from a relative or friend, if the gift is fairly commensurate with the occasion and the relationship;

[. . .]

(f) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or registered domestic partner or other member of the judge's family residing in the judge's household, including gifts, awards, and benefits for the use of both the spouse or registered domestic partner or other family member and the judge;"

Therefore, a judge can accept disaster assistance given to the judge's household member if the assistance would neither influence the judge nor reasonably be perceived as intended to influence the judge in the performance of their judicial duties.

9. Can a judge advocate on behalf of their own property interest, including speaking before government entities or commencing litigation?

None of a judge's ethical obligations divest the judge of their right to advocate for themselves and for their families, as long as they do so in a way that is consistent with the Canons. For example, a judge can be involved in litigation regarding their real property and can attend and speak at public meetings to represent their personal property interests. (Canon 4C(1)). Inasmuch as the judge's personal property interests are affected, the judge can also advocate collectively and in organizations such as homeowner's associations. (CJA Updates: April 2008 V.3 and April 2000 IV.A.2).

IV. Conclusion

Judges are reminded to review Formal Opinions 41 (Fundraising) and 42 (Fundraising Among Judges). For an individual question regarding the ethical implications of a natural disaster, judges should call the CJA Ethics Hotline at (866) 432-1252 for a prompt response tailored to the particular situation.

2024-25 JUDICIAL ETHICS COMMITTEE

Hon. Brett Bianco – *Chair*

Hon. Renee C. Reyna – *Vice-Chair*

Hon. Albert T. Harutunian III – *Ex-Officio*

Hon. Marian F. Gaston – *Board Liaison*

Hon. Terri A. Mockler – *Board Liaison*

Hon. Daniel L. Alexander

Hon. Victoria G. Chaney

Hon. James R. Dabney

Hon. Lupe C. Garcia

Hon. Candice Garcia-Rodrigo

Hon. Patricia L. Kelly

Hon. Timothy Martella

Hon. Anthony J. Mohr

Hon. Terrie Roberts

Hon. Tam Nomoto Schumann

Hon. Ruben A. Villalobos

Hon. Vanessa Zecher

California Judges Association
2520 Venture Oaks Way, Suite 150, Sacramento, CA 95833
(916) 239-4068 Toll Free (866) 432-1CJA (1252)
www.caljudges.org

California Judges Association
2520 Venture Oaks Way
Suite 150
Sacramento, CA 95833