

# California Judges Association

## JUDICIAL ETHICS UPDATE

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February 1999

This is the seventeenth Judicial Ethics Update from the Ethics Committee of the California Judges Association. The Update highlights areas of current interest from the more than 300 informal responses, during the period September 1997 to September 1998, 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 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**

#### **Generally**

A. A judge may admonish a lawyer who at sidebar conferences and without justification constantly accuses one of the other attorneys of "misconduct." Canons 3B(3); 3B(4).

B. A judge may allow brochures to be made available in his/her courtroom which contain phone numbers for information and referral programs, hotline numbers, etc., as long as no favoritism is shown toward the providers. Canon 3C(4).

#### **Disclosure and Disqualification**

A. A judge is not disqualified from hearing the case but should disclose information in the following situations:

1. A judge who is a defendant in a vehicle collision litigation may continue to hear collision cases but should disclose the fact in similar cases that come before the judge. Canon 3E.

2. A Deputy Public Defendant now appearing before the judge has previously filed a complaint against the judge with the Commission on Judicial Performance because the judge reprimanded the attorney for tardiness. Canons 3B(1); (5); 3E.
  3. Judge's spouse is a deputy district attorney (spouse will not handle any cases in the Judge's court). Canon 3E.
- B. A judge is disqualified in the following situations:
1. A judge who is applying to be a City Attorney should disqualify self from a complex litigation matter in which the mayor, who will vote on the judge's application, is a shareholder in a small defendant corporation. Canon 3E.
  2. A newly appointed commissioner is disqualified from hearing criminal cases in which commissioner's old law firm represents the defendant. Canon 3E, CCP Section 170.
- C. A judge need not recuse self in the following situations if the judge is satisfied he or she can act impartially:
1. A judge need not disqualify self in a case where a party has threatened to complain to the Commission on Judicial Performance regarding the judge unless the judge doubts his/her ability to be fair. Canon 3E.
  2. The judge knows one or more of the plaintiffs and a defendant in a large construction defect case. The judge should disclose such knowledge. Canon 3E.
  3. The judge made a campaign contribution to the local district attorney who will be called as a witness in a criminal case pending before the judge.
- D. A judge who owns rental property need not disclose that he/she is a landlord when landlord-tenant disputes come before the judge provided judge complies with CCP Section 170.1(a)(6).

### **Reporting Responsibilities**

- A. A judge before whom an attorney has filed a declaration that contains a statement the judge believes to be false must take corrective

action, which may include reporting the matter to the appropriate authority. Canon 3D(2).

B. When a judge who has observed that an attorney, as a result of medical problems and related medications, is unable to represent clients competently, the judge must take appropriate action, which may include conferring with the attorney or reporting the matter to the State Bar. Canon 3D(2).

C. A judge who has previously counseled an attorney about an alcohol problem and now learns that the attorney is using alcohol again should take appropriate action, which may include monitoring the problem, discharging the attorney from cases to which the judge has assigned him/her as defense counsel or reporting the attorney to the State Bar. Canon 3D(2).

D. If a judge has reliable information that another judge has violated provisions of the Code of Judicial Ethics, the judge must take or initiate appropriate corrective action which could include reporting the matter to the Commission on Judicial Performance after first meeting with the offending judge to hear his or her side of the matter. Canon 3D(1).

E. A presiding judge of a court in which a court employee has formally lodged a harassment complaint against one of the judges has an obligation to take or initiate appropriate corrective action if possessed of reliable information that the judge has violated the Code of Judicial Ethics but is not required to report the matter to the Commission on Judicial Performance. Canon 3C(3); 3D.

### **Ex Parte Communications**

A. A trial judge may not notify an appellate court of a case that supports the judge's ruling, even if the case is on point and neither side cited it in its briefs. Canons 3B(7); 3B7(a); Govt. Code 68070.5(a).

B. A judge may discuss with an appellate justice that justice's opinion and legal reasoning in a recent case provided the judge does not have the same case or issue pending in his/her court. Canon 3B(7)(b).

## II. CONDUCT OUTSIDE THE COURTROOM

### Generally

A. A judge may participate in an announcement congratulating a local law school on its accreditation, as long as the law school will not use the announcement for advertising or promotional purposes. Canon 2B(2).

B. A judge may compete on a television game show identified as a judge, provided the activity does not demean the judicial office. Canons 4H; 4D(2).

C. A judge may not discuss the judge's views on the inadequacy of existing penalties for certain offenses with a member of the state legislature. Canon 4A(3).

D. A judge may write letters to the Governor or the Legislature expressing the judge's opinion that a viable State Bar is important to the entire justice system and urging compromise on the State Bar Impasse. Canons 4B; 4C(1); 5D.

E. A commissioner may not use his/her bench officer status to request to be excused from jury service. Canons 2A; 2B(2).

F. A commissioner may use court stationery in writing to the governor's appointments secretary regarding his or her application for judicial appointment, but may not use court stationery, court secretarial assistance or court postage to send letters to lawyers asking them to write letters to the governor supporting the commissioner's appointment. Canons 2B(2); 2B(4).

G. The Code of Judicial Ethics does not apply to a judge's spouse; however, a judge should be cognizant of his/her duty to inform family members of the ethical constraints on the judge and discourage family members from conduct inconsistent therewith. Canons 6; 4.

H. A judge who knows that a couple whose wedding the judge is about to perform were actually married several weeks previously must inform the public that the wedding is not official. Canon 2A.

I. The Court may pay for a judge's malpractice insurance. Canon 4H.

J. A judge who recently presided over a large products liability trial that ended in a defense verdict may not attend a party hosted by the defendant's law firm even though the party is unrelated to the verdict and even if the judge obtains consent from the plaintiff. Canons 2A; 4A(1).

K. A judge assigned to a murder preliminary hearing should not make a donation to a memorial fund set up in memory of the victim. Canons 2A; 3E.

L. A judge who worked on an appeal prior to his/her appointment to the bench may not participate in a mock appellate argument or give advice on the appeal after he/she is sworn in as a judge. Canons 1; 2A; 3B(9); 4(F).

M. A judge may administer the oath of office to incoming officers at an annual meeting of the local county bar association. Canon 4B.

N. A judge who was a deputy district attorney prior to his/her appointment, may not further assist in the preparation of a case for trial on which the judge had worked prior to his/her appointment. Canons 4A; 4G.

O. A commissioner should not be on an advisory committee for a Children's Assessment Center if the commissioner hears matters wherein the center's findings are taken into account. Canon 4C(3).

P. A judge may attend a dinner/dance sponsored by a law firm celebrating its anniversary as long as the judge's attendance would not undermine public confidence in the impartiality of the judiciary. Canons 2A; 4A and D.

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

A. A judge may write a book recounting the salient facts of the murder cases over which judge has presided as long as the cases are entirely concluded and as long as the book promotes public confidence in the integrity and impartiality of the judiciary. Canons 2; 3B(9).

B. Even though a judge has been unfairly castigated in the local press for a decision he/she made in a case, the judge may not respond explaining the legal basis for the decision. Canon 5.

C. A judge may speak at a partisan political club on the topic of judicial independence. Canon 5.

### **Letters of Recommendations**

A. A judge may provide a letter of recommendation pertaining to factual matters based on the judge's personal knowledge of the individual in the following situations:

1. On behalf of a California lawyer who is applying for admission to the Nevada Bar. Canon 2B(4).
2. A judge who teaches law school evening classes may write a letter of recommendation on behalf of a student to a law firm that is considering the student for employment. The letter may be written on official stationery. Canon 2B(4).
3. On behalf of a relative who is applying for admission to the Police Academy. Canon 2B.
4. On behalf of a nonprofit drug counseling program that is applying for a Department of Corrections grant, as long as the judge has referred cases to the program and has been satisfied with the results. Canon 4C(3)(d)(ii).
5. At the request of a State Bar Commission conducting an investigation of an attorney who the judge knows and who has had a drinking problem in the past but is in recovery and progressing well. Canon 2B.
6. On behalf of a close personal friend who is applying for a position as trial counsel at the Commission on Judicial Performance. Canon 2B(4).
7. At the request of a friend who is applying for a substitute teacher position. Canon 2B(4).

B. A judge may not write a general letter of recommendation in the following situations:

1. A judge may not give the Franchise Tax Board a character reference for a long-time friend to assist the friend with a tax

problem, even if the letter is not on official stationery or the judge's personal letterhead. Canon 2B(2).

2. At the request of a director of a private rehabilitation program who was previously convicted of a felony and is now petitioning for a certificate of rehabilitation and pardon. Canon 2B(2).
3. As a character reference on behalf of a relative to be used in a business transaction. Canon 2B(2).

### **Judge as Witness**

A. In contested disability retirement proceedings, a judge may not, without a subpoena, write a letter to the retirement board attesting to the negative effects of judge's former calendar deputy's workload on the deputy's health. Canon 2B and commentary.

B. A judge may give a declaration to the State Bar in a pending attorney disbarment proceeding regarding the attorneys conduct when appearing before the judge. Canons 2B(2); 3D(2).

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

- A. A judge may accept a gift in the following situations:
1. A newly appointed judge may accept the offer of judge's former law partners to host a reception in honor of judge's investiture. Canon 4D(6)(e).
  2. A judge may accept travel expenses from an organization that is hosting an out-of-state public policy-related conference at which the judge will be a speaker. Canon 4.
  3. A judge may accept "friendship" rate from the judge's attorney, a long-time personal friend, as long as the lawyer gives the same rate to all friends regardless of their official status. Canon 4D.
  4. A judge may attend, at no cost to the judge, an annual dinner put on by a district council of local merchants. Canons 4B; 4D(6)(b).

5. A judge may accept a "free" chaperon ticket to Disneyland from an elementary school where the judge presented a program. Canon 4D.
  6. A judge may accept free accommodations from a close personal friend at a foreign hotel owned by the company for whom the friend works. Canon 4D(6).
  7. A judge may accept a free ticket to a political fund raiser from a close personal friend provided the reasonable value of the dinner itself, as opposed to the cost of the ticket, does not exceed \$250. Canons 4B; 4D(6).
  8. A judge may accept a \$150 gift certificate for CEB products as compensation for participating on a CEB panel. The gift certificate is not a gift or honorarium. Canon 4D(6).
  9. A judge may permit a public high school to pay the judge's travel expenses to another city so that the judge may act as a judge in a mock trial competition in which the high school's team is participating. Canons 4B; 4H.
- B. A judge may not accept a gift in the following situations:
1. A judge may not tell a group before whom he/she gave a speech to donate money to a charity in return for his/her speech. Canons 2B; 4D(6).
  2. A judge must inform his/her courtroom staff that they may not accept holiday gifts from attorneys. Canons 1; 2; 3C; 4D(6).

### **III. POLITICAL ACTIVITY**

A. A judge may publicly support a ballot measure for a tax increase to build a juvenile hall and may chair the committee supporting the measure, provided judge does not personally solicit, sign fund solicitation letters or use the prestige of judicial office to lend support to solicitation by others. Canons 2A; 2B; 4C(D); 5D.

B. A judge who has just won an election challenge may continue receiving contributions to retire the judge's campaign debt, subject to the disclosure requirements of Canon 3E.



C. A judge may not solicit other judges to purchase tickets for a political fund raising event for a nonjudicial candidate. Canon 5A(3).

D. In a retention election, a judge may decline to respond to a questionnaire from a group seeking to learn the judge's judicial philosophy and may use official stationery to state his refusal. Canon 5B.

E. A judge who is being challenged for election may receive campaign contributions from lawyers who regularly appear before the judge, provided the contributions are made to the judge's campaign, not to the judge personally. Canon 5A.

F. During a reelection campaign, the judge may disclose (1) the challenger's misdemeanor conviction, even though appeal of conviction is still pending and (2) challenger's lawsuit against the county and the basis of it. Canons 2; 3B(9); 5B.

G. A judicial candidate may compare his/her qualifications to those of the opponent in campaign literature (although not the voter pamphlet), provided the comparison is accurate and addresses a subject upon which a judge may appropriately comment under the Canons. Canon 5B.

H. A judge who is running for election may list other judges who endorse the judge in his/her campaign literature. Canon 5.

I. A judge is not limited to \$500 in contributions to judicial candidates. Canon 5A(3).

J. A judge can endorse an attorney (non-judge) for judicial office. Canon 5A.

#### **IV. CIVIL AND CHARITABLE ACTIVITIES**

##### **Government Positions**

A. A judge may not serve on a school board ad hoc committee that is charged with recommending the best use of new funds. Canon 4C.

B. A judge may not accept an appointment to serve on an official citizen committee that is charged with making recommendations to the City Council concerning the problems of the homeless. Canon 4C.

C. A judge can be on a State Advisory Board working with a program run by CYA and UC Davis to recommend expenditure and allocation of funds to certain geographic areas, provided the Board is not a governmental entity. Canons 4A, 4C.

### **Membership**

A. A judge may serve on the board of, or be a member of, the following organizations, provided the judge does not engage in fundraising or allow his or her name to be used in fundraising activities and the organization does not appear frequently in judge's court:

1. A judge may be a member of the executive committee of the county bar association and may be the chairperson of one of its substantive law sections. Canon 4C.
2. Board of Directors of a nonprofit organization which provides preschool funding and education for inner city children. Canon 4C(3); 4G.
3. A Christian Legal Society which accepts members from all areas of the bar as well as judges but by definition seeks as members those of the Christian Faith. Canons 2C; 4C.

B. A judge may not serve on the Board of, or be a member of, the following organizations:

1. A nonprofit Police Athletic League sponsored by a local police agency to provide recreational opportunities for disadvantaged youth. Canon 4A; 4C.
2. A Family Violence Council whose by-laws state one of its purposes is to develop legislation. Canons 2A; 4A; 5.

C. A recently elevated Superior Court judge who, while a Municipal Court judge, was a board member of a non-profit organization that is frequently engaged in litigation in the Superior Court must resign from the board immediately. Canon 4C.

## **Fundraising**

A. A judge may be listed as a honored guest on invitations to a fundraising dinner and silent auction for the judge's alma mater, as long as the judge does not actively solicit funds. Canon 4C.

B. A judge may be the object of a "roast" at a fundraising event as long as the nature of the roast does not demean the judicial office. Canon 4A.

C. A judge may not be listed as the chair of a fundraising dinner/auction on an invitation that solicits the purchase of tickets to the dinner/auction. Canon 4C.

D. A judge may be listed as a reference for a local legal aid society when it applies for a grant, as long as the grant is for legal programs. Canon 4B.

E. A judge may not be sponsored by the local Rotary Club to participate in a fundraising walk/run, although judge may be sponsored by fellow judges. Canon 4C.

F. A judge's name may not be listed on a solicitation letter for a Boy Scout fundraising committee. Canons 2C; 4C.

G. A judge may not sign a fundraising letter which will be sent to philanthropic groups and the general public to raise funds for the peer court program. Canon 4C.

H. A judge may not use official stationery to urge the mayor to open a public facility for a charitable fundraiser. Canons 2B; 4.

I. A judge may not contribute items to the local bar association for a silent auction where the donations will not be treated anonymously. Canon 4C.

## **V. Business Activities**

A. A judge may accept a referral fee (percentage of recovery) in a case the judge referred to another attorney before becoming a judge. If the attorney later appears before the judge, the judge should disclose receipt of the fee. Canons 3E; 4D.

B. A judge may participate in a fee arbitration to collect fees owed to the judge on a case the judge handled as an attorney before becoming a judge. Canon 4G.

C. A judge who has designed a computer program that would improve the administration of justice may market the program to legal publishers and may use privately printed stationery bearing the judge's title to conduct the judge's marketing activities. Canon 2B(4).

D. A judge who is about to retire may not, prior to the judge's retirement, (1) send announcements describing his/her alternate dispute resolution business or (2) permit an ADR group that the judge will be joining to advertise the judge's impending membership. Canon 2B.

E. A judge may be a member of a corporate board of directors provided the corporation is not a business affected with a public interest; the judge's title is not used in connection with any business venture; the judge does not permit his or her title or affiliation with the judiciary be used to promote the business; and the corporation does not engage in litigation in the judge's court. Canon 2B; 4D.

F. A judge may not maintain his/her ownership in a mediation service acquired before assuming the bench. Canon 4D.

## **VI. Educational Activities**

A. A family law judge may write a magazine article describing the issues family law judges are called upon to decide and may be compensated for doing so. Canons 4B; 4D(1)(9); 4H.

B. A judge may attend a series of educational seminars and meetings put on by local police department to explain how the police department works. Canon 4A.

C. A judge may appear and portray a judge in a program put on by the California Highway Patrol to educate students on the dangers of driving. Canon 4B.