

## MEMORANDUM

TO: California Judicial Officers  
FROM: Stanley S. Bissey, Executive Director  
DATE: January 2018

Enclosed please find the 2016/17 *Judicial Ethics Update*, highlighting matters of interest from the informal responses to judges' questions on the Code of Judicial Ethics provided by the Judicial Ethics Committee from September 2016 to October 2017.

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 and are based on the Canons in place during 2016/17.

\*Special thanks to Ethics Committee member Aaron H. Katz, San Diego Superior Court, for preparing this Update.

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# California Judges Association

## JUDICIAL ETHICS UPDATE

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January 2018

### I. CONDUCT INSIDE THE COURTROOM

#### A. Generally

1. Commissioner, who does not have an assigned Spanish interpreter available when court commences, may ask the audience in Spanish, by a show of hands, who does not speak English and direct those individuals who raise their hands to sit in a designated area in the courtroom so they can be assisted when a Spanish interpreter arrives. (Canon 3B(8))
2. Judge may inform defendants who appear in his/her courtroom that on the back of the minute order given to all defendants is a Notice to Probationer which lists terms and conditions and privileges of the defendant including “record clearance” instructions. (Canon 1, 2A, 4G)

#### B. Disclosure and Disqualification

1. Judge, who has been on the bench for over eight years, need not recuse from cases involving his/her former firm, however, since judge received his/her last buy-out payment from the firm recently, judge must continue to disclose his/her financial relationship with the firm for a reasonable period of time. (Canon 2, 3E(2), 4D(4))
2. When judge’s former extern passes the bar and makes a court appearance in judge’s courtroom, if judge believes he/she can be fair, judge need not disqualify but must disclose. (Canon 3B(1), 3E(2))
3. Judge, whose spouse owns a substantial amount of stock in one of the parties appearing before the judge, may accept a written waiver of the judge’s disqualification as long as all parties and attorneys sign. (Canon 3E(1))
4. Judge, who makes disclosure that judge’s child is working at a major law firm appearing in front of judge, need not recuse on all of law firm’s cases assigned to judge with the exception of those judge’s child worked on. (Canon 3E(1))
5. Judge, who was a former deputy public defender several years ago, may go on a back- packing trip with former colleagues from the public defenders’ office but must disclose in matters where deputy public defenders who

participated in back packing trip appear. The disclosure would be required for a reasonable time, usually two years. (Canon 3E(2))

6. Judge, who has a family law assignment and intends to file for dissolution of marriage in a court in another county using an attorney from that county, need not disclose his/her personal dissolution action in cases assigned to judge. (Canon 2A, 3E(2))

7. Judge, who works in a small county and presides in criminal court must disclose his/her close relationship with a DA's office victim's advocate when the advocate appears in judge's courtroom on a pending case. (Canon 3B, 3E(1), 3E(2))

8. Judge, who is handling a Juvenile Court assignment, need not disclose judge's prior representation of other members of a lawyer's law firm on estate planning when lawyer files a Pitchess motion on behalf of a minor in a matter pending in judge's court. (Canon 3E(2))

### **C. Ex Parte Communications**

1. Judge, who observes a deputy district attorney engage in several instances of misconduct and reports deputy district attorney to the California State Bar, must not meet with the District Attorney threatening judge with a blanket challenge, to discuss judge's decision to make the report. (Canon 2A, 3B(7), 3F(2))

## **II. CONDUCT OUTSIDE THE COURTROOM**

### **A. Generally**

1. Judge, a long time cooking enthusiast, may participate as an unpaid participant on an episode of a cooking show on TV with the understanding he/she would not be identified as a judge. (Canon 2B(2), 4A, 4D(2))

2. A recently appointed judge, who has a long association with ABOTA, may remain on ABOTA's board of directors even after taking the bench. (Canon 4C(3)(a))

3. Judge may participate as an unpaid contestant on an episode of a cooking show and even accept the prize for winning the contest since the prize would not be considered an impermissible gift. (Canon 4A(2))

4. Since the case is final, judge may be interviewed by a reporter from a local radio station regarding a case judge tried as an attorney several years ago. (Canon 2B(2), 3B(9), 4A, 4B)

5. Judge may serve as a fiduciary for a trust that benefits the parents of judge's godchildren wherein judge has known the family for decades and has a close familial relationship with parents. (Canon 4E(1) and terminology)

6. Judge may participate in an interview by a representative of judge's former law school that will be published in law school's alumni materials but will not be used for the purpose of fundraising. (Canon 2A, 2B(2))

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

1. Judge may participate in an interview for a "true crime" television series regarding a high profile criminal case judge handled as a deputy district attorney many years ago. Judge must not permit judge's name to be used to promote the television episodes. (Canon 2B(2), 3B(a), 4A(2))

2. Judge may not write a letter/op-ed to the newspaper expressing judge's views regarding the current administration even if judge plans on using a nom de plume. (Canon 1, 2A, 2B(2), 3B(9), 4B, 5A(2), 5B)

3. Judge may participate in an interview for a book about character and leadership written by judge's former clerk when judge was head of a U.S. Attorney's office. (Canon 2B, 4A, 4B)

## **C. Letters of Recommendation**

1. Judge may nominate a deputy district attorney for an award for outstanding service by a public lawyer by presenting factual information about the nominee. Judge need not disclose the nomination when the deputy district attorney appears in judge's courtroom. (Canon 2B(2)(e), 4A))

2. Judge, who credits a doctor with saving judge's life, may not write a letter of recommendation in support of doctor's application for Resident Alien Status. (Canon 2B(2)(e))

3. Judge, who has personal knowledge of a family friend's qualities, may write a letter of recommendation on behalf of friend in support of friend's application to become a police officer. (Canon 2B(2)(e))

4. Absent a subpoena to testify, judge may not write a character letter on behalf of an attorney friend facing disciplinary proceedings before the California State Bar. (Canon 2B(2))

5. Without an official request from federal probation, judge may not write a letter attesting to judge's friend's good character to be used at friend's sentencing for financial crimes. (Canon 2B(2), 2B(3))

6. Juvenile court judge may write a letter supporting a grant application regarding an organization judge is very familiar with where the grant would provide services to families appearing in Juvenile Court. (Canon 2B(2), 4A(1), 4A(3), 4C(3)(d)(ii), 4D)

7. Judge may write a recommendation on judge's court stationary for a nanny/housekeeper and use judge's title as long as the recommendation is based on judge's personal knowledge. (Canon 2B(2), 2B(4), 4D(2))

8. Judge may not write a letter attesting the good character and honesty of a psychiatrist whom judge has known for about 30 years in order for the letter to be used at a county proceeding to terminate psychiatrist's employment. (Canon 2B(2)(a))

#### **D. Judge as Witness**

1. Judge, who as an attorney represented a defendant now charged with the death penalty, may provide factual information to defendant's current attorney regarding the probation report received about the defendant during judge's earlier representation of defendant. (Canon 2A, 2B(2))

2. Judge, who was a former prosecutor and criminal defense attorney, may be interviewed by a representative of the district attorney's office to learn specifics regarding whether allegations made by a former client that client was not properly advised regarding the consequences of client's plea are based in fact. If asked, judge may sign a declaration and testify at a hearing regarding the factual details of the advisal. (Canon 2B(2))

#### **E. Gifts, Discounts, Honoraria**

1. Judge, who disqualifies self from cases handled by judge's former firm, may accept a plaque valued at less than \$200.00 bearing the judge's Daily Journal profile. (Canon 4D(6)(d))

2. Judge who is moving his/her residence and has hired a moving and storage company may accept the 5% discount the company offers to all public employees. (Canon 4D(6)(C))

3. Judge may not allow the judge's judicial assistant to collect money offered by attorneys to purchase candy for sitting jurors in a trial in judge's courtroom even though the jurors would not be told who paid for the candy since the collected monies constitute an impermissible gift. (Canon 4D(6))

4. Judge may give a small gift as a gesture of appreciation to the attorney who filled in at the last minute when judge had to cancel judge's participation in judging a moot court competition. (Canon 2A, 4A(1))

5. Judge may contribute to a memorial fund established in the memory of the spouse of a research attorney employed by judge's court. (Canon 2B(1))
6. Judge, a former assistant United States Attorney, may attend a reunion of other former assistant United State Attorneys hosted by a civil litigation firm. (Canon 4D(6)(d), 4D(6)(g))
7. Provided the lodging and subsistence is limited to the day before, day of and the day after, judge may accept travel costs, room and board to speak to students, teachers and parents at a high school on the east coast about judge's background, achieving goals and serving on the bench. (Canon 4D(6)(e))
8. Judge may accept a leadership award from a specialty bar association given at an event with the understanding judge will not promote the event or engage in fundraising. (Canon 2A, 4A, 4C(3)(d), 4D(6)(d))
9. Judge, who has been selected to participate in a controlled medical study for a medical condition, may take part in the study and may accept the minimal compensation offered as well as the free medicines. (Canon 4A, 4H)
10. Judge may accept an all-expenses paid trip to the Super Bowl offered by a close friend since judge would never preside over any matter involving the friend. (Canon 4D(6)(a))
11. Judge may accept airline passes as a gift from a close personal friend who is an airline pilot. (Canon 4D(6)(a))
12. Juvenile court judge may attend a memorial along with other judges and receive, as ordinary social hospitality, a lunch paid by the spouse of the attorney who passed away even though spouse is also an attorney who appears occasionally in juvenile court. (Canon 2A, 2B, 4A, 4D(6) and commentary and appendix G)

### **III. REPORTING RESPONSIBILITIES**

1. Judge, who observes a Deputy District Attorney making inappropriate comments to the jury during trial and where the case is reversed on appeal because of those comments, must report DDA's conduct to the California State Bar. (Canon 3D(1), 3D(2))
2. Judge has a duty to report an attorney to the State Bar when attorney refuses to appear at trial and judge sets an OSC re sanctions as a result of attorney's refusal and after attorney fails to appear again, judge removes attorney, appoints new counsel, and notices attorney of the OSC which attorney also fails to attend. (Canon 3D(2))

#### **IV. POLITICAL ACTIVITY**

1. Judge may participate in the Million Women March as long as judge is merely a passive participant in the march and does not identify self as a judge. (Canon 2A, 4A, 5)
2. Judge may serve as an honorary host committee member for a fundraising event for a candidate for an open judicial seat provided judge exercises caution requesting donations from attorneys who are appearing or regularly appear before the judge. (Canon 5A(3) and commentary)
3. Judge may administer the oath of office to judge's close friend who was recently elected to the city council. (Canon 2, 4A, 5A)
4. Judge may write a letter to the local assembly person suggesting legislation should be drafted in order to correct inequities in a civil code section. (Canon 2A)

#### **V. CIVIC AND CHARITABLE ACTIVITIES**

##### **A. Generally**

1. Judge may present an award to elected officials at an ethnic minority bar association annual dinner. (Canon 2A, 4A)
2. Judge may chair a bar association by-law revision committee. (Canon 46)
3. Judge, who will conduct interviews on his/her own time on behalf of the university, may interview high school seniors who are applying to judge's former university. (Canon 4A, 4C)
4. Judge, who was recently sworn in, may continue to serve as a board member of a nonprofit theater company but may not directly participate in soliciting funds for the theater company. (Canon 4C(3)(b)(d))
5. Judge may join a steering committee for a 40th reunion of judge's law school and, along with other committee members, may be identified by title in a letter inviting class members to the reunion but may not be involved in direct fundraising activities. (Canon 4C(3)(4) and commentary)
6. Judge may allow his/her former high school to name a legal studies program after judge wherein the program helps students consider a career in the legal field and judge may also permit judge's name and photo to be used in the high school website advertising the program as long as no fundraising is involved in the endeavor. (Canon 2A, 4B)
7. As long as judge does not participate in fundraising and determines that the particular Boy Scout council does not invidiously discriminate

based on sexual orientation, judge may serve as president of the local Boy Scout council. (Canon 2C, 4C(3)(c), 4 C(3)(d)(i), (iii), (iv))

## **B. Fundraising**

1. Judge may serve on the board of a private school as long as judge does not participate in fundraising for the school. (Canon 4C(3))
2. Judge may accept an award presented to the judge at a fundraiser for a nonprofit organization that serves at-risk youth with an understanding judge will not participate directly in fundraising at the event. (Canon 2B(2)), 4C(3)(d)(iv))
3. Judge, who attends a fundraiser for women veterans, may lead the audience in the pledge of allegiance since such an action would not be reasonably expected to increase donation to the veteran's organization. (Canon 4C(3)(d)(iv), 4A(1), (2), (3), (4))

## **C. Membership**

1. Judge may accept an invitation to join an advisory board of a local hospital where board has no governing, fiduciary or fundraising responsibilities but serves as a liaison between the hospital and the community to help hospital respond to community needs. (Canon 2A, 4C(3)(c) and commentary)

## **VI. BUSINESS ACTIVITIES**

1. With the exception of commissioners and referees, judge may extend an invitation to judicial colleagues to attend an after-work-hours presentation of an investment opportunity by a family member at the family member's home. (Canon 2A, 2B(2), 4D(1), 4D(4))
2. Judge may serve as a trustee for father's estate and accept fees for serving in this capacity. (Canon 4E(1), 4E(3), 4H)
3. Judge may not serve as an executor to a colleague's estate. (Canon 4E(1))
4. Judge may not permit a law school to use a video of the judge swearing in a new admittee to the bar since video would be used as a marketing tool for the law school. (Canon 2B(2))
5. Judge may receive referral fee for settled case that judge worked on while in private practice. (Canon 1, 2A)
6. Judge, who was an incorporated sole practitioner prior to being sworn in, may accept fee payments for work done prior to becoming a judge. (Canon 4G)

Judge may not blurb a book written by judge's friend regardless of whether judge does or does not use judge's title. (Canon 2B(2) and commentary)

## **VII. EDUCATIONAL ACTIVITIES**

1. Judge may attend a legal training sponsored by a private organization that advocates for at-risk youth and provides training to judges and attorneys as long as attendance at the training does not cast a reasonable doubt on the judge's capacity to act impartially, demean the judicial office, interfere with the proper performance of judicial duties, create the appearance of bias or impropriety, or involve the judge in political activity. (Canon 3B(2) 4A)
2. Dependency judge may accept an invitation to make a presentation about dependency proceedings to a local law firm that does not practice in dependency court and may accept a free lunch and free parking while making the presentation. (Canon 2A, 4A(3), 4D(6)(e))
3. Judge may provide judicial education to other judges which includes lessons learned from a case judge handled now pending before the California Supreme Court as long as commenting on the case would not interfere with a fair hearing on the case if it is returned to the judge for further hearings. (Canon 3B(7)(b), 4A(1), 4B)
4. Judge may serve as a moderator of a discussion/debate regarding a new rule of professional conduct related to prosecutorial discovery obligations even though it is possible that the debate among deputy public defenders, private criminal defense attorneys and deputy district attorneys in attendance may become contentious. (Canon 2A, 4A, 4B)
5. Judge, who regularly speaks to various local groups about the law and is willing to make presentations to firms who are interested, may speak to a group of associates at spouse's current and judges former law firm regarding judge's perspective from the bench. (Canon 2A, 2B, 4A(1), 4B)

## **VIII. COMMUNITY OUTREACH**

1. Judge may participate in a District Attorney-organized community outreach program to visit local schools and discuss the juvenile justice system in which other legal professionals including prosecutors and deputy public defenders would be in attendance. (Canon 2A)
2. Commissioner may join an advisory board for a nonprofit educational foundation and assist in planning fundraising events but may not participate in the solicitation of funds or fundraising activities. (Canon 4C(3)(b), 4C(3)(d)(i))

## **IX. ADVICE TO PRESIDING AND ASSISTANT PRESIDING JUDGES**

1. Assistant presiding judge may not invite an inspirational speaker, who has pending matters before the court as a party, to address the annual bench meeting in assistant presiding judge's county. (Canon 2A)
2. Presiding Judge may meet with justice partners privately to discuss purely administrative matters, however, the better practice is to have regular meetings with all justice partners in order to discuss administrative issues. (Canon 1, 2A, 3B(7)(b), 3B(7)(c), 3B(7)(d), 3C(1))
3. Assistant presiding judge's adult child who is in final year of law school may participate in two-unit law school externship for a judicial colleague. (Canon 2A, 2B)

