

## MEMORANDUM

TO: California Judicial Officers

FROM: Nicole Virga Bautista, Executive Director

DATE: January 2024

Enclosed please find the 2021/2022 *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 October 2021 to September 2022.

Judges may direct questions on the Code of Judicial Ethics to the current 2023/24 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 2021/22.

\*Special thanks to Ethics Committee member Brett Bianco, Los Angeles Superior Court, for preparing this Update.

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# California Judges Association

## JUDICIAL ETHICS UPDATE

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January 2024

### I. CONDUCT INSIDE THE COURTROOM

#### A. Generally

1. Judge may serve as a conservator for a very close friend with whom the judge shares a familial-type relationship. (Canon 4E(1))
2. Judge may not permit a party to pay for a large off-site venue within which to conduct a trial involving a significant number of parties, attorneys, and other participants. (Canon 2A)
3. Judge may not display a rainbow flag on the courtroom wall as a demonstration of the court's inclusivity. (Canon 2A, 3B(5))
4. Judge has an obligation to cooperate with the presiding judge's investigation of alleged misconduct by the judge, notwithstanding the judge's belief that nothing unethical or improper occurred, or the belief that the presiding judge is accusatorial. (Canon 3C(2))
5. Judge may participate in a video celebrating the success of a court diversion program in an effort to garner continuing support from the County but may not be filmed while on the bench wearing a robe. (Canon 2A, 2B, 3B(9), 4A, 4C(1), 4C(3)(d)(ii))

#### B. Disclosure and Disqualification

1. Judge hearing a criminal case in which the victim is a judge from a different jurisdiction is not disqualified and need not disclose the fact that they work on the same committee. (Canon 2A, 3B(1), 3E(2))
2. Judge recusing pursuant to Code of Civil Procedure section 170.1(a)(6)(A) need not state the reasons on the record, but must notify the presiding judge of the recusal. (Canon 3B, 3E)
3. Judge in a criminal assignment whose spouse is a Deputy Public Defender in the same county must disclose, on the record in each case, the spouse's employment. A posted notice or a general announcement at the beginning of each calendar is insufficient. (Canon 1, 3B(1), 3E(1), 3E(2))

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

1. Judge may read letters sent directly from State Prison inmates, requesting resentencing under code provisions allowing such actions, without engaging in impermissible ex parte communication. (Canon 3B(7)(b), 3B(7)(d), 3B(8))
2. In post-trial proceedings wherein jurors are mailed questionnaires to assist in resolving a claim of jury misconduct, Judge may not direct the judicial assistant to call those jurors who failed to return the questionnaire. (Canon 2A, 3B(7), 3B(9))

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

### **A. Generally**

1. In requesting that a bench officer in another county appoint a conservator over a family member, Judge may submit the required application which includes listing the judge's current position as a judge. (Canon 2B(2), 4A)
2. Judge may not accept an award from the District Attorney's Victim/Witness unit, recognizing a person who has shown empathy and understanding towards trauma victims, when advocates from the unit appear in the judge's courtroom. (Canon 2A, 2B(1), 4C(d)(iv), 4D(6))
3. Judge completing a required Senate Judiciary Committee questionnaire for a seat on the federal bench may list the most significant cases heard by the judge, including pending cases, provided that only publicly available facts are disclosed. (Canon 2A, 5B)

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

1. Judge who initiated a community service project and is now contemplating writing a book documenting the project, may not seek donations, grants, or crowdsource funding to offset publishing costs. (Canon 4B)
2. Judge who authored a book on mental health issues may sit for a televised interview about the book, but not in the judge's courtroom. (Canon 1, 2B(2), 4A, 4B)

3. Judge who published a book dealing with well-being and career success for those in the legal field may promote the book on social media, including posting pictures of and quotes from the book, related commentary, and may create a website to promote the book. (Canon 2A, 2B(2), 3B(9), 4D(1)(a), 4B)

### **C. Letters of Recommendation**

1. Judge may provide a character reference and factual information to the Commission on Judicial Performance at the request of a judicial colleague who is a close friend in the midst of a CJP investigation. Judge may use their judicial title and official letterhead. (Canon 2B(2)(b), 2B(2)(e))
2. Judge may provide a quote for inclusion in a letter of support for a U.S. Supreme Court nominee written by a specialty bar association. (Canon 1, 2B(2)(d), 5A)
3. Judge may respond to a solicitation for comment from the Board of Parole Hearings regarding a person represented by the judge many years ago in their former capacity as a Deputy Public Defender. (Canon 2B(2)(e) and commentary, 2B(3)(b))

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

1. In lieu of a declaration, Judge may answer questions in a video that will be used for settlement purposes only, regarding the judge's personal knowledge of facts in a lawsuit involving a judicial colleague. (Canon 2A, 2B(2))
2. Judge who intends to personally file a lawsuit in a different county but does not want a personal address on the pleadings may not file pleadings using the judge's court address. (Canon 2B(2), 4G)

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

1. Judge, whose spouse is a partner in a law firm, may attend a sporting event for which the judge's spouse received tickets from a client represented by the firm. Judge need not report the value of the ticket. (Canon 4D(6)(f))
2. Judge may accept travel reimbursement from a specialty bar association in conjunction with an out-of-state conference at which the judge will be an award recipient. (Canon 4A(1), 4D(6)(e), 4H(2))
3. Judge who twice referred a family member to a home improvement contractor may accept a referral payment offered in the normal course of business. (Canon 4D(6))

### III. POLITICAL ACTIVITY

1. Judge may serve as the treasurer for a judicial colleague's election campaign. (Canon 5)
2. Judge who is vacating a judicial seat may pose for a picture, wearing a judicial robe, with an attorney running for election to the judge's seat that will be used in the candidate's campaign materials. (Canon 5B(4))
3. Judge may circulate judicial election nomination papers for signature among colleagues at judges' meetings, in chambers, or in a conference room at the courthouse, during lunchtime or after hours, both individually and on behalf of colleagues who are also up for election. (Canon 5B)
4. Judge may attend events of candidates for non-judicial office, including fundraisers and rallies, but is prohibited from engaging in fundraising and must advise the candidate that the judge's presence and title may not be acknowledged at the event. (Canon 1, 2A, 4A(1), 4A(2), 4A(3), 4C(3)(d)(iv), 5A(2), 5A(3), 5(C))

### IV. CIVIC AND CHARITABLE ACTIVITIES

#### A. Generally

1. Judge may speak at a Red Mass, an annual celebration in the Roman Catholic Church for all members of the legal profession marking the opening of the judicial year. (Canon 2, 4A, 4B)
2. Judge may referee youth and adult sports, and receive a fee for the service. (Canon 4A)
3. Judge may not allow a lawyer's association to create a scholarship in the judge's name when the association would have to solicit donations to fund the scholarship. (Canon 2A, 2B(2), 4A, 4C(3)(d)(iv))

#### B. Government Positions

1. Judge may not serve as a community ambassador for a local public school district, touring schools and commenting on school district policies, facilities, and procedures. (Canon 4C(2))
2. Judge who, prior to being appointed, was elected to serve on the council of a local public school whose duty is to receive money allotted to the school and oversee expenditures must resign from the council. (Canon 4C(2), 4C(3))

### **C. Court Positions**

1. Judge may attend, but may not emcee, a community event honoring police officers for their recent promotions. (Canon 2A, 4A)

### **D. Membership**

1. Judge who refers victims of domestic violence to service organizations that are grantees of a Community Foundation on whose Board of Directors the judge serves may continue to serve on the Board but must recuse from any decision-making with respect to the domestic violence victim organizations. (Canon 2A, 4A)

### **E. Fundraising**

1. Judge, who is a member of a judicial affinity organization, is not in violation of the Code of Judicial Ethics when the organization, which is not subject to the Canons, issues a membership newsletter soliciting contributions to a scholarship fund. (Canon 4C(3)(d)(i))
2. Judge may serve as a Girl Scout troop treasurer, may order and distribute Girl Scout cookies for the troop, may refer acquaintances to the troop website if requested, but may not sell cookies directly except to other judges. (Canon 2B(2), 4C(3)(d)(i))

## **V. BUSINESS ACTIVITIES**

1. Judge may operate a for-profit business assisting judges who are up for election with all necessary paperwork and filing. (Canon 2A, 2B(2), 4A(3), 4D(1), 4D(2), 5B)
2. Judge may not gather information from alternative dispute resolution providers concerning private sector employment options without implicating Code of Civil Procedure section 170.1(a)(8)(A). Judge may not meet with ADR providers in chambers or use court facilities to arrange post-retirement employment, and if a provider is selected, Judge must immediately recuse from any case in which the provider is involved. (Canon 2B(2), 3A, 3E(1), 3E(2)(a), 4A(4), 4D(1), 4D(2))

## **VI. EDUCATIONAL ACTIVITIES**

1. Judge may accept a teaching position offered by a public school district to coach a high school sports team, provided the employment does not interfere with the judge's judicial duties. (Canon 4A, 4H)

2. Judge may not appear on a podcast hosted by an attorney who appears before the judge to discuss settlement topics specifically related to the judge's department, where the podcast is hosted on the attorney's law practice website and has an extremely small viewership. (Canon 2A, 2B(1), 2B(2), 4A, 4D(2))
3. Judge may teach legal update and subject matter classes, with or without compensation, to law enforcement groups, provided the courses involve substantive law and procedure and do not constitute coaching. Judge must be available to teach others as well. (Canon 2A, 4B, 6E)

## **VII. REPORTING RESPONSIBILITIES**

1. Judge may contact the County regarding concerns related to inadequate and incompetent legal representation by the Public Defender's Office, notwithstanding the fact that information supporting the concerns was provided to the judge in a confidential Marsden hearing. (Canon 3C(1), 3D)
2. Judge who received reports from several traffic offenders that a citing police officer may be scamming defendants is not obligated to report the officer since the judge is not the only person aware of the alleged criminal conduct. (Canon 2A)
3. Judge presiding over a family law case may report concerns to Child Protective Services where parents' drug history, failure to drug test, lack of cooperation resulting in withdrawal from representation by minor's counsel, and other information suggests that neither parent is an appropriate custodial parent. (Canon 2A)
4. Judge must take appropriate corrective action, which may include reporting to the State Bar, when the judge personally observes an attorney engaging in erratic courtroom behavior and has concerns that the attorney is under the influence of drugs or alcohol. (Canon 3D(2), 3B(7))

## **VIII. COMMUNITY OUTREACH**

1. Judge may meet with business groups who have invited the judge and local prosecutors to discuss rising crime levels and explain court practices and procedures related to the creation of a bail schedule and pretrial release of misdemeanants, provided the Public Defender is also invited. (Canon 2A, 3B(7))



2. Judge may moderate a public panel discussion of internment camps in the U.S. during World War II, sponsored by a prosecutors' association, where speakers will share personal stories of living in the camps, discuss bias, racism, and prejudice towards Japanese Americans at that time, and comment on the case of *Korematsu v. United States*. (Canon 4A, 4B)

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

1. Presiding Judge may not become directly involved in contentious labor negotiations between the Court Executive Officer and a court labor union. (Canon 2A, 2B(2), 3C(1))
2. Supervising Judge has a duty to take further corrective action, which could include a report to the Presiding Judge or Commission on Judicial Performance, when initial efforts at corrective action were ineffective and the involved judge's attitude was negative and unapologetic. (Canon 3B(1), 3B(7), 3C(4), 3D)
3. Presiding Judge and Assistant Presiding Judge may serve as officers for a political action committee formed to support incumbent judges who are facing an election challenge. (Canon 5A and commentary)
4. Supervising Judge of Criminal may attend a memorial service for a police officer killed in the line of duty and may allow other judges on the court to attend. (Canon 2A, 3E(1))
5. There is no ethical prohibition against Judge holding hearings and making rulings remotely as opposed to being physically present in the courthouse. (Canon 3B(8))