

January, 1993

This is the eleventh Judicial Ethics Update from the Ethics Committee of the California Judges Association highlighting matters of interest from the 191 informal responses to judges' questions on the Code of Judicial Conduct made from October 1991 through September 1992.

The Ethics Committee, as a matter of policy, does not answer inquiries which it determines to be legal in nature. All opinions of the committee are advisory only. Judges may direct questions on the Code of Judicial Conduct to the Ethics Committee by writing or calling the CJA office or any Ethics Committee member.

CAVEAT: The California Code was substantially revised at the October 5, 1992 Annual Meeting. Judges are therefore cautioned that the Ethics Committee may render a different response to the same question under the new code. Some of the significant changes to the new code are noted in the November/December 1992 *California Courts Commentary*.

I. Fundraising

A. A judge who is on the board of directors of a charitable organization and whose name appears on the letterhead may permit the letterhead to be used in a fundraising letter. (Canon 5B(2); specifically allowed under new Canon 4C(3)(b)(3) - see Commentary to Canon 4(c)(3)(d)(iv))

B. A newly appointed judge may continue to serve as president of a non-profit charitable corporation that raises money for cancer research and publicizes materials raising cancer awareness provided the judge does not personally solicit, does not use title, and does not sign letters relating to fundraising. (Canon 5B(2); New Code: Canon 4C(3))

C. A judge may not be billed as a model in a fashion show which is a fundraiser for a legal secretaries association. A judge may also not offer jurors the option of having their jury service pay donated to one of three designated charities connected to the juvenile court because courts cannot be involved in charitable solicitations. (Canons 4C, 5B(2); Opinion 41; New Code: Canon 4C(3))

II. Letters of Recommendation

A. A judge may write a letter of recommendation for admission to law school for a family friend's son whom the judge knows well, provided the judge uses personal judicial stationery, but should not use government-furnished letterhead. (Canons 2B, 4, 5, Opinion 40, Ethics Update 1992 I(C); New Code: Canons 2B, 4)

B. A judge may write a letter of recommendation to a law firm on behalf of a deputy district attorney based upon personal knowledge of the attorney's professional performance. (Canon 2B, Opinion 40; New Code: Canon 2B)

C. A judge may not send a letter of character recommendation to the California State Bar on behalf of an attorney involved in a disciplinary matter when requested to do so by a friend of the attorney even though the judge has personal knowledge of the lawyer's professional abilities, because the attorney regularly appears before the judge. (Canon 2B, Opinion 40; New Code: Canons 2B, 4B)

III. Testimony by Judges

A. A retired judge who regularly sits on assignment may not testify outside of the judge's jurisdiction as an expert witness on the issue of attorney's fees because in doing so the judge would be lending the prestige of judicial office to advance the private interests of another. (Canons 2A, 2B, Opinion 38; New Code: Canons 2A, 2B)

IV. Disqualification Issues

A. A judge must recuse himself or herself in a law and motion matter in a malpractice action brought against the law firm in which one of the members is the judge's personal lawyer. The recusal, however, is remittable. (Canons 3C(1), 3D; New Code: Canon 3E.)

B. Even though the judge's new spouse is an investigator for the public defender's office, the judge is not required to recuse himself or herself in all cases where the public defender is involved. The judge must, however, disclose the relationship. (Canons 3C, 3D; New Code: Canon 3E)

V. Political Activity

A. During a contested judicial election a judge is required to disclose to litigants and attorneys appearing before the judge whether one or more of the attorneys or litigants have announced support of the judge or have contributed to the judge's campaign. This places the burden on a judge running for re-election to disclose and to remain informed of contributors and announced supporters of the campaign. (Canon 3C(1); New Code: Canon 3E)

VI. Membership in Clubs

A. A judge may not maintain membership in the Masonic Order or the Elks because both are non-religious organizations which exclude women as members. (Canon 2C; New Code: Canon 2C)

B. A newly appointed judge may continue membership in the California Women Lawyers and Women Lawyers of Sacramento County provided that membership in each organization is open to men. (Canon 2C; New Code: Canon 2C)

VII. Services on Boards and Commissions

A. A judge may accept the request of the governor to serve on a committee to review judicial applications on the basis of competence and qualifications. The judge's participation is permitted because it involves the administration of justice, and is not construed as impermissible political activity. (Canons 4B, 4C, 5G, 7A; New Code: Canons 4C, 5A, 2B)

B. A judge may not serve on a police department promotion board in another county because such participation creates an appearance of bias. (Canons 2A, 5G; New Code: Canons 2A, 4C(2))

VIII. Public Appearances

A. A judge may moderate a debate between candidates in a non-partisan election for municipal office provided the judge's role is truly neutral, does not involve endorsing a candidate, and does not detract from the dignity of office or interfere with performance of judicial duties. (Canons 5A, 7A, Ethics Update 1984, IIE; New Code: Canons 4A, 5)

IX. Disciplinary Activity

A. A judge presiding over a preliminary hearing who has heard testimony that an attorney who was consulted by the witness had advised the witness to get rid of the murder weapon, is advised to review the transcript and, if verified, notify the State Bar of the attorney's conduct. (Canon 3B(3); New Code: Canon 3D)

X. Practice of Law

A. A judge in the National Guard who has been called to duty may not engage in the practice of law. (Canon 5F, Opinion 30; New Code: Canon 4G)

B. A judge with considerable experience as a settlement conference judge may handle voluntary settlement conferences after hours, provided the judge does not charge a fee for doing so and the parties understand that the judge is acting in his or her official capacity. A judge may not arbitrate matters for a fee even though the services are rendered after usual working hours. (Canon 5E; New Code: 4F)