

Judicial Ethics Update

MARCH 2001

This is the nineteenth Judicial Ethics Update from the Ethics Committee of the California Judges Association. The Update highlights areas of current interest from the more than 290 informal responses, during the period October 1999 to September 2000, 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 to 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.

CONDUCT INSIDE THE COURTROOM

I. Conduct Inside the Courtroom - Generally

- A. A court may enter into a contract with a private vendor who provides services for the court and accept a share of the fees charged the users. Canon 3C(1).
- B. If a judge makes an inappropriate remark from the bench in open court, the judge does not have a duty to self-report to the CJP, but should apologize to the attorneys. Canon 3D(1).
- C. A judge may not distribute a questionnaire to attorneys supplied by a newspaper, at the conclusion of a case. Canons 2B(2); 3C(4).
- D. A judge may not ban from the courtroom a lawyer who has angered the judge or who the judge believes has made false representations. Canon 3D(2).
- E. When a member of a judge's staff is dating an attorney who appears in the judge's court, the judge should remind staff of the importance of maintaining confidence in the integrity of the judiciary and avoiding the appearance of favoritism. Canons 3B(4); 3B(5); 3C(2).
- F. If a judge discusses pending cases with the Presiding Judge and District Attorney, those cases should be reassigned. Canon 3C(3).
- G. An attorney who serves as pro tem judge has duty to comply with certain provisions of the Code of Judicial Conduct. Canon 6D.
- H. A judge may not use court employees for non judicial personal purposes such as sending out thank you letters to other judges. Canon 2.
- I. A judge may tell the supervisor of a juror who is a court employee, that juror has been late several times to the trial. Canons 2A; 2B; 3B(4); 3B(7)(b); 3B(9).

II. Disclosure and Disqualification

- A. A judge is not disqualified from hearing the case so long as the judge can be impartial, but should disclose in the following situations:
 - 1. A judge becomes aware during a case that the law firm which represents one of the parties represents the judge's homeowners association. Canon 3E.
 - 2. A judge becomes aware that a party is insured by the insurance company against whom the judge's spouse has a claim. Canon 3E.

3. Prior to the current assignment, a judge presiding in a Domestic Violence court, was on the board of directors of a non-profit organization that supported victims of domestic violence. Canon 3E.
 4. A judge in a criminal assignment has a romantic relationship with deputy district attorney not appearing in the judge's court. Canons 3E.
 5. A judge has had minimal contacts with deceased victim who was a public figure. Canon 3E.
 6. A judge had prior cohabitating relationship with an attorney in law firm which is appearing before judge. Canon 3E.
 7. A judge receives an inadvertent ex parte communication about the case. Canons 3B(7); 3E.
 8. A retired judge from outside the county has been assigned to a trial where a local judge is the victim. The retired judge had a limited social relationship with victim when assigned to that court in the past year. Canon 3E.
 9. Court reporter informs judge that court reporter knew defendant. Canon 3E.
 10. A judge's step-son is a police officer and judge's spouse is the manager of police academy, in all cases in which police department is a party, witness or has a material interest which will be affected by the decision. Canon 3E.
 11. In civil case where, a judge handled a preliminary hearing involving the incident. Canon 3E.
 12. The court consulted with an attorney about potential representation of the court in a federal appellate matter when the attorney or the attorney's firm appears. Canon 3E.
 13. An attorney serves pro tem in judge's court and a member of the attorney's firm appears before judge. Canon 3E.
 14. An attorney is a tenant in a building in which the judge has a small percentage ownership interest. Canon 3E.
 15. A judge has been named as a defendant by a disgruntled litigant and an attorney has been named as a codefendant. Canon 3E.
 16. A judge's spouse shares office space with attorneys appearing in judge's courtroom. Canon 3E.
- B. A judge is disqualified in the following situations:
1. A party is an insurance company against whom the judge's spouse has a pending claim. Canon 3E.
 2. A party is a brokerage client of judge's spouse. Canon 3E.
 3. A judge, as a deputy district attorney, represented a minor in a dependency proceeding when the case is now before the judge for post permanency planning. Canon 3E.
 4. A judge, as a deputy district attorney, prosecuted a parent for abuse/neglect and the parent is a party in a related dependency proceeding. Canon 3E.
 5. In cases involving an insurance company in which a judge's entire net worth is invested. Canon 3E.
 6. A former client whom judge had represented in criminal matter within the past two years appears in a different criminal case. Canon 3E.
 7. In a contempt proceeding against the Sheriff while the judge, serving as presiding judge, is in negotiation with the

Sheriff's office on a court administrative matter.
Canon 3E.

8. A judge handling the dependency calendar receives confidential material through an advisory position with the grand jury which is adverse to CPS. Canon 3E

9. A judge owns stock valued in excess of \$1,500 in a publicly traded corporation and the corporation or any of its wholly owned subsidiaries, is a party. Canons 3E, 4D(4)

10. A judge will be a witness on subsequent charges against a defendant based on defendant's conduct in judge's courtroom. Canons 2A; 3E.

C. A judge is not disqualified when:

1. An attorney in the matter has complained about judge's conduct to CJP.
Canon 3E.

2. A party in a custody case, filed a federal civil rights lawsuit against judge and others, while case is pending. Canons 3E, 3B(1).

D. A judge need not disclose that the judge and a defendant have the same insurance company. Canon 3B(1).

E. A judge must make reasonable efforts to become informed about the financial interest of judge's spouse, including inquiry about spouse's clients. Canon 3E.

F. A judge should not handle cases involving the county if judge believes a reasonable person would doubt the judge's impartiality when the judge's court and the county are involved in a hostile administrative dispute. Canon 3E.

G. The entire court is disqualified from handling cases of private attorney who has been retained to represent all of the judges in the county. Canon 3E.

III. Disciplinary Reporting Responsibilities

A. A judge who has personal knowledge of the death of a declarant before the date of the purported signature on a declaration submitted by an attorney, has a duty to report the attorney's conduct to the appropriate authorities including not only the State Bar but also the appropriate law enforcement agency. Canon 3D(2).

B. If a commissioner has reliable information that a judge acted improperly by transferring a case to that judge, the commissioner must take or initiate appropriate corrective action which could include talking to that judge. Canon 3D(1).

C. A judge who is aware of the relationship of parties to another judge has no duty to inform that judge of the relationship. Canon 3D(1).

D. A judge must report an attorney suspended by the State Bar if the attorney appears in judge's court during the suspension period. Canon 3D(2).

E. A commissioner has the responsibility to take corrective action to report inappropriate conduct by another commissioner or a judge to the presiding judge or supervising judge. Canon 3D(1).

F. A judge who is aware of a crime committed by a deputy district attorney and has reason to believe the attorney's supervisor will not report it, should report to law enforcement if the crime is a substantial violation of the law and the judge is the only person who has knowledge of the criminal conduct. Canons 2A; 3D(2).

G. A presiding judge should reevaluate the use of and must take appropriate corrective action when a temporary judge

uses that position to gain an advantage:

- a) During a traffic stop;
- b) Advertising in the yellow pages;
- c) Writing articles or teaching such as "how to win";
- d) Use of that position to gain unfair advantage in litigation.

Canons 2B(2); 3D(1); 6D(2).

IV. Ex Parte Communications

A. A judge may consult with Spanish speaking judge or other court personnel to translate material judge had been asked to review in camera. Canon 3B(7)(b).

B. A judge may discuss a case with a member of the appellate panel if the case is final as long as the same issue is not pending on appeal. Canon 3B(7)(b).

C. A judge may not contact the District Attorney with information regarding a case the judge had investigated as a deputy district attorney. Canon 3B(7).

D. A judge should not permit the court bailiff to gather ex parte information from defendants in traffic court to determine the validity of insurance cards. Canons 3B(4); 3B(7).

CONDUCT OUTSIDE THE COURTROOM

V. Conduct Outside the Courtroom - Generally:

A. A commissioner who is a member of the Board of Directors of the California Court Commissioners Association may use court time and stationery to handle correspondence and duties related to the association. Canons 4A(3); 4B.

B. A judge who is on the board of directors of a private high school, may attend and participate in a meeting to discuss a matter which may be referred to law enforcement for possible prosecution. Canon 2A.

C. A judge may play in a charity golf tournament with the District Attorney. Canon 4D(6)(d).

D. A judge may attend a family camping trip sponsored by the Sierra Club unless it is likely the Sierra Club would appear before the judge. Canons 2A; 4A; 4B and commentary.

E. A judge may appear as a contestant on the game show "21" and be identified as a judge, but may not be a contestant on the show "Survivor". Canons 2B(2); 4A(2); 4A(3); 4D(1)(a); 4(D)(2).

F. A judge may attend and be listed as on the Committee of Honor for a traveling exhibition of Spanish Folk Art. Canon 4A(1).

G. A judge may appear in a cameo role at a daughter's dance production if the role is not demeaning to the judicial office and if the judge is not identified as a "judge". Canons 4A(2); 2B(2).

H. A judge should not perform a wedding for a child of a plaintiff in a pending case. Canon 2A.

I. A judge may accept an award from the police department for "dedicated services" if there is nothing about the award that would reasonably lead to the impression that the group is in a special position to influence the judge. Canons 2B(1);

4D(5); 4(D)(6)(a).

J. A judge may take home books which are being replaced and would be put in the trash. Canon 2B(2).

VI. Civic And Charitable Activities; Community Outreach

A. Membership

1. A judge may join an alumni group of Navy Seals even if there are not any female members. Canon 2C.

2. A judge may join a group whose sole purpose is to request the board of supervisors to erect a memorial to Vietnam veterans but should not personally appear to promote the issue. Canons 4C(1); 4C(3)(d).

3. It is improper for a judge to join the Sheriff's Search & Rescue team as a sworn or unsworn peace officer. Canons 2A; 4A.

4. Retired judge, sitting on assignment virtually full time, may be involved in the organization of a nonprofit drug rehabilitation center and serve on the Board of Directors. The judge may be listed on the letterhead which is used for fund raising and may make decisions regarding expenditures but should not be involved in fund raising. The judge must not be involved in any cases where the program may come before the court. Canons 4C(b); 4C(d).

5. A judge may serve as the President of a Chamber of Commerce. Canon 4C(3)(b).

6. A judge may participate in a Domestic Violence Task Force that includes representatives from all sides as long as the group is not engaged in legislative advocacy. Canons 4A; 4B Commentary; 4C(3)(a).

7. A judge should not serve on the board or be involved in the request for federal funds of a nonprofit organization that coordinates community groups providing intensive family services. Canons 4C(3)(c)(i); 4C(3)(d)(i).

8. A judge may serve on the board of an organization to rally local communities to provide opportunities for at risk high school students (America's Promise). The prestige of judge's office may not be used to further the goals of the organization and the judge may not participate in any fund raising. Canons 4A; 4C.

B. Fundraising

1. A judge may not serve as the auctioneer at a fund raising event for a nonprofit law school, even if only identified as "Professor". Canon 4C(3)(d)(iv).

2. Judge may not serve as a celebrity waiter at fund raiser. Canon 2B(2).

3. A judge may not be named as the contributor of a "guided tour of the courthouse" for a silent auction item at a fund raising event. If the judge's name is not mentioned, the judge may arrange for or conduct the tour. Canons 4C; 4D.

4. A judge may judge costumes at a fund raiser if the circumstances are not demeaning to the judicial office and the judge's name is not publicized.
Canon 4C(3)(d)(iv).

VII. Public Commentary

A. Although a judge may respond to a request from the media regarding an incident (not a pending case) during judge's term as the District Attorney, the judge is advised to contact the CJA Media Response Team (CJA MRT). Canons 1; 2A; 4A; 5.

B. A judge may not comment on the removal of a recalcitrant juror. Canon 3(B)(9).

C. A judge may not respond to newspaper articles that are critical of sentencing. Canon 3B(9).

D. A judge may inform the public regarding mandated sentences but may not discuss personal opinions about the laws. Canons 5D; 4B; 3B(9).

E. A judge may discuss a sentencing issue if the case is no longer pending or impending in any court. Canons 3B(9); 5B.

F. A judge may not discuss the issues of a case reversed by the Supreme Court which is remanded for further proceedings but may describe the process by which the Supreme Court frequently resolves conflicts between conflicting appellate decisions. Canons 3B(9); 5B.

G. A judge may respond to a grand jury report as long as no mention is made of pending or impending cases. Canons 3B(9); 5; 5D.

VIII. Letters of Recommendations

A. Retired judges, not sitting on assignment, are not restricted in writing letters to probation officers. Canons 6A; 6B; 6C; 6D.

B. Letters of recommendation, based on personal knowledge, may be written on judicial stationery:

1. For a friend seeking to adopt a child;
2. In support of a nonprofit mediation service for a grant application;
3. For judge's bailiff who is applying for an investigator's position;
4. For a law school applicant;
5. For a candidate for the position of Public Defender; and/or
6. For an attorney seeking an appointment to the JNE commission.

Canons 2B(4); 4C(3)(d)(ii).

C. Unless in response to an official request, a bench officer may not write a letter on behalf of an individual:

1. To the Board of Prisons;
2. For a hearing before the Parole Board; and/or
3. To be presented at a felony sentencing.

Canon 2B(2).

IX. Judge as Witness

A. A judge subject to a blanket 170.6 disqualification, by the public defender, should not testify in front of the board of supervisors regarding the renewal of the public defender's contract. Canons 4A; 3B(9).

B. A judge may submit a declaration based on personal knowledge:

1. Regarding services rendered and fees for a lengthy probate case handled prior to appointment to the bench;
2. In response to an official request as a percipient witness to an incident; and/or

3. Responding to a subpoena regarding the competence of a psychologist based on the judge's experience in a family court proceeding.

Canon 2B.

C. A judge who has personal knowledge of the individual, may testify in response to an official request:

1. Before the State Bar in a disciplinary proceeding as a character witness;
2. On behalf of a disbarred attorney at a reinstatement hearing; and/or
3. As a percipient witness, in an out of state proceeding.

Canon 2B(2).

D. A letter may not be written stating a wedding performed by the judge was "not extravagant" to be used by the couple on the issue of setting support payments to husband's former wife. Canon 2B.

X. Gifts, Discounts, Honoraria

(All advisory opinions are subject to restrictions per CCP 170.9 and reporting requirements on the annual Statement of Economic Interest.)

A. A judge may accept gifts or attend events under the following circumstances: Canons 4D(5) & (6)b:

1. A reception to honor the judge's election or appointment to the bench given by the Latino Lawyers Association, District Attorney's Office or former coworkers;
2. Expenses for an out of town wedding; Canon 4H
3. A gift from a person not likely to come before the court; Canons 4D(6) (d) & (e)
4. Holiday gift of wine;
5. Gift certificate from students (in class taught by judge);
6. A trip including lodging and travel on a private plane for an out of state visit with a long time friend;
7. Tickets for family to attend a professional ball game from family friend;
8. Legal services from close friend who is also named as a defendant in a malicious prosecution case.

B. A judge may not accept:

1. Holiday gifts from an attorney who appears before the judge;
2. Complimentary tickets from a major airline to members of a board of directors which exceed limit of CCP Section 170.9 and are also prohibited by Article XII, section 7 of the California Constitution. Canon 4D(5).

C. A judge's spouse is not bound by the canons or CCP 170.9 and may accept a referral fee on a PI case. Canon 4D(6) (C).

D. A judge's children may accept gifts for special occasions which need not be reported.

Canons 4D(5); 4D(6)(e).

E. Baby gifts to a judge are deemed a gift for a special occasion and may be accepted.

Canon 4D(b)(6).

F. As a result of a lot line adjustment, a judge will receive a small amount of property which the neighbor insists is a gift. Since the preexisting relationship would prevent the judge from hearing a case involving the neighbor, the land may be accepted. Canon 4D(6)(f) .

G. A judge may be a guest at a Criminal Courts bar association dinner, or a defense specialty bar association dinner.

Canon 4D(6)(b).

H. A judge may accept a trip from the Mexican government to participate in a conference with US and Mexican judges.

Canon 4D(6)(b).

XI. Political Activity

A. Political Activity - Generally

1. A judge may not sign a petition circulated by a children's rights organization to influence the Department of Children Services and the dependency court. Canon 4(A); (B); 5.

2. Political activity should not be conducted in the courthouse using court time and resources. Canons 5D; 2.

3. A judge may attend the national convention of a political party with a friend as an observer. Canon 5A.

4. If a judge determines a proposition concerns the improvement of the law, the legal system or the administration of justice, then a judge may speak in opposition to the proposition, make public comment, list name in newspaper ad indicating opposition and contribute money within the applicable limits; however, a judge should avoid the appearance of prejudging or bias with respect to issues that could later come before the judge. Canon 5D.

5. A judge may address a group of minority delegates at a national political party convention but should take care that there is no implied endorsement by that political party. Canon 5A.

6. A judge may testify on behalf of proposed legislation that involves the law, legal system or administration of justice but should eschew any appearance of lobbying. Canons 4C(1); 5D.

7. A retired judge who does not serve on assignment may campaign for candidate for non-judicial office and should use "Retired" after name. Canons 6A; 6B; 5A(2); 5A(3).

8. Attorney judicial candidate who serves as a pro tem judge may not use a photograph in a robe in campaign literature. Canon 5B.

9. A judge who is a judicial candidate, may use the courtroom after hours or on weekends to film videotape campaign ads for television and may wear a robe in the videotape. Canons 5A; 4C(3)(d)(iv).

10. A judge on leave of absence running for non-judicial office may identify self as judge but should avoid using title or status in any way which would demean judicial office and may not use gavel as logo. Canons 5A; 4A(2).

11. Disclosure of judicial campaign contributions applies to referees seeking judicial office. Canon 6A.

12. A judicial candidate may not state "core values", take public positions or respond to surveys or questions which relate to pending cases or issues which may come before judge in any court, such as death penalty, abortion, three strikes, or victims rights. Canons 3B(9); 5B.

13. A judge should not participate in a conference when it will be linked to the goals or views on political issues held by the conference organizer. Canons 4A(1); 2B(2); 5.
14. An attorney candidate for judicial office may wear a campaign button for self. Canons 5A; 5B.
15. A candidate for judicial office may place an ad in newsletters of political parties indicating candidacy for judicial office. Canon 5.
16. A judge may act in support of political goals that directly relate to improvement of the judicial system such as jail construction or renovation of juvenile detention facility. Canons 5; 4A; 4C.
17. A judicial candidate may not participate in a walk/vigil sponsored by an advocacy support group but may attend normal social/political functions and attend educational workshops. Canons 2A; 4A; 4B; 5A.

B. Political Activity Involving Family Members

1. A judge should discourage spouse from hosting fund raiser for non-judicial candidate in their home and should not be present if it is held there. Canon 5A.
2. A judge's spouse should not put a lawn sign in the yard of the family residence, supporting a candidate in a District Attorney election. Canon 5.
3. A judge may not drive a vehicle registered only to spouse when the vehicle displays a bumper sticker for candidate for non-judicial office. Canons 5A; 5B.
4. A judge and spouse may attend a \$500 per person political fund raiser so long as decision is joint and the judge is not unilaterally directing the total contribution. Canon 5A(3).

C. Endorsements

1. A judge may pose with a candidate for judicial office for a campaign picture in front of the courthouse and may wear a robe. Canon 5A.
2. A judge may not be interviewed about a candidate for non-judicial office as it could be construed as an endorsement. Canons 4A; 5A(2).
3. A judge may endorse a judicial candidate on court letterhead and may write letters to friends urging them to support and vote for a candidate for judicial office. Canon 5A.
4. A judge may be listed as a supporter of a judicial candidate on a candidate mailer. Canons 5A(2); 3.
5. A judge may attend a fund raiser for a candidate for district attorney but should avoid any activity at the event which might appear to be a public endorsement of the candidate and should not accept a free ticket. Canons 5; 4D(6).
6. A judge may purchase articles from a political candidate's campaign store as long as the articles are not used in a way which appears to endorse the candidate; judge should not display articles in courtroom or chambers. Canon 5.
7. A judge may publicly endorse judicial candidates, including spouse. Canon 5.
8. A county voluntary judges organization may endorse judicial candidates. Canon 5A(2).
9. An attorney candidate for judge may appear on a political party slate mailer as long as there is a disclaimer that the candidate is not endorsing non-judicial candidates who also appear on the mailer. Canon 5A.
10. A judge may not permit a photograph with a non-judicial candidate to appear in the candidate's campaign literature.

Canon 5A.

XII. Business/Educational Activities

A. Business Activities - Generally

1. Although judge plans to retire shortly, judge may not publicize judge's intention to be involved with an ADR provider prior to retirement. Canon 2B(2).
2. A part time traffic referee may not list that position in a yellow page advertisement for his/her criminal law defense practice. Canon 6D(2)(b).
3. When divesting oneself of a business interest, a judge may give the interest to judge's children (not living with judge) or convert the interest to options that could not be exercised until retirement. Canons 4D(2); 4D(4).
4. A temporary commissioner may not list that experience in a brochure advertising the availability of the temporary commissioner for ADR. Canons 2B; 6D(2)(b).
5. A judge may purchase a house from an old friend in an arm's length transaction. Canons 2A; 4D.
6. A new judge should move with all deliberate speed to work out a buy out of judge's interest in a law partnership. Canon 4D.
7. A judge may serve on an advisory board of a start up web company as a consultant on contemporary trends, but not as a legal advisor. Canons 4; 4A; 4D.
8. An attorney who occasionally appears in a judge's court may rent the judge's Hawaiian condo for the market value, in an arm's length transaction. Canon 4(D)(2).
9. A judge who owns an office building, may not rent office space to a nonprofit provider who regularly prepares reports for the judge for juvenile drug court defendants. Canon 4(D)(1)(b).

B. Weddings

1. A judge may perform a wedding for a fee on the Friday after Thanksgiving, which is a judicial holiday. Penal Code 94.5.
2. A judge may not pay or receive a referral fee for wedding referrals. Canons 2B, 4D(1).
3. A judge may not advertise via a web site or print media to solicit business to perform weddings for a fee. Canon 2B.

C. Educational Activities

1. While on a leave of absence, a judge may participate in a think tank involved in research, speaking and grant writing and may evaluate restorative justice options. The judge's expenses may be reimbursed. Canons 3A; 4A(3); 4H.
2. A judge may not promote programs at a local public university. Canon 2B(2).

D. Publications, Books Media

1. A judge may not critique a book for inclusion on the jacket but may do an independent review. Canons 2B(2); 4B(2).
2. A judge should not participate in a TV show regarding a trial handled while the judge was a DDA. Canons 4D(2);

3B(9); 2A.

3. A judge may not write a "tell all" book about a police agency where judge was formerly employed. Canons 2; 4A(1); 4(A)(3).

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