

## MEMORANDUM

TO: California Judicial Officers  
FROM: Nicole Virga Bautista, Executive Director  
DATE: May 2022

Enclosed please find the 2019/20 *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 2019 to September 2020.

Judges may direct questions on the Code of Judicial Ethics to the current 2021/22 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 2019/20.

\*Special thanks to Ethics Committee member Vanessa A. Zecher, Santa Clara Superior Court, for preparing this Update.

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# California Judges Association

## JUDICIAL ETHICS UPDATE

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January 2020

### **I. CONDUCT INSIDE THE COURTROOM**

#### **A. Generally**

1. Judge can affix a small lapel pin on judge's robe as long as the pin does not demean the judicial office or convey a message of bias against a class of persons. (Canon 1, 2A, 3C(1), 3C(3), 4A)

### **B. DISCLOSURE AND DISQUALIFICATION**

1. Judge is disqualified from hearing proceedings in which an individual attorney appears where the attorney contributed \$1500 or more to judge's judicial campaign but judge is not disqualified from hearing proceedings in which a different partner or associate in same attorney's law firm appears. (Canon 3E)

2. Judge who receives messages from litigant at judge's home is not required to recuse from proceedings involving litigant provided that judge can continue to be fair and impartial in the proceedings concerning litigant. (Canon 3B(7)(d))

3. Judge whose adult child is an intern with the County Counsel is disqualified from hearing cases on which the adult child has done work. Judge may hear other County Counsel matters but must disclose fact of adult child's internship until internship ends. (Canon 2A, 3B(1), 3E(1), 3E(2))

4. Judge is not disqualified from proceeding where a litigant has filed a complaint against judge with the CJP, has posted a prolific amount of negative comments about judge on social media and has filed a lawsuit against judge provided that judge can be fair and impartial. (Canon 3B(1), 3B(2))

### **C. Reporting Responsibilities**

1. When judge learns of other criminal conduct by a defendant during a Marsden hearing, the rights and protections afforded a defendant during a Marsden hearing mandate that judge not report other criminal conduct to law enforcement. (Canon 2A)

2. Judge has a duty to take appropriate corrective action (which may include a report to the State Bar) where judge is advised that an attorney in the trial pending before judge has had an ex parte communication with a juror and attorney suggested to juror that service would be a hardship and that juror should ask to be excused. Canon 3D(2).

#### **D. Ex Parte Communications**

1. Judge who was advised by courtroom bailiff that one of the parties appearing in judge's courtroom was disruptive and that bailiff smelled an aroma of alcohol on the disruptive party must disclose that information on the record but need not recuse. (Canon 2A, 3B(7))

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

### **A. Generally**

1. Judge who will be honored at a dinner by a national organization for judge's work with mentally ill persons may invite and purchase dinners for judge's courtroom staff. (Canon 2B(1), 3C(1))

2. Judge who becomes aware that former law firm is using judge's picture on the firm's Facebook page must request that the law firm remove judge's picture from the Facebook page in order to avoid the appearance that judge is lending the prestige of the judicial office to judge's former law firm. (Canon 2A, 2B(1), 2B(2), 4D(2))

3. Judge may not obtain and review a court file on behalf of a friend who is owed victim restitution even where the court case is completed. (Canon 2B(1), 2B(2), 3A)

4. Judge may not attend a "Law Enforcement Appreciation Night" event where only law enforcement officials are invited to attend and a law enforcement badge is required for admission into the event. (Canon 2A, 4A(a))

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

1. Judge may give television interview about case which judge handled as an attorney where case has been finally adjudicated. Judge may be identified as a sitting judge during the interview but judge should take care

that neither the credits for the show nor the publicity for the show use judge's title as a judge. (Canon 2B(2), 3B(9), 4A(2), 4D(1))

2. Judge may give keynote address at a bar association function wherein judge discusses attacks on the judiciary being made by the Executive branch provided that judge's comments relate to the law, the legal system or the administration of justice and are not demeaning to the judicial office. (Canon 2A, 4B)

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

1. Judge may not provide a written letter to the Board of Parole Hearings on behalf of a friend's brother-in-law who murdered friend's sister unless the letter is written pursuant to an official request. (Canon 2B(3))b)

2. Judge may not provide a letter of recommendation for judge's close family member who was expelled from school. (Canon 2B(2), 2B(3))

3. Judge may not voluntarily provide a letter of character reference to the State Bar for an attorney from judge knows well without a subpoena or pursuant to an office request. (Canon 2B(1), 2B(2)(a), 2B(2)(c))

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

1. Judge may testify as a character witness in State Bar proceedings for attorney friend where judge has been subpoenaed. (Canon 2B(3))

2. Judge who observed odd behavior on the part of a bailiff, which affected the courtroom environment may provide factual information concerning judge's observations to the Sheriff's Department investigator who is conducting the internal investigation on behalf of the Sheriff's Department. (Canon 3C)

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

1. Judge is permitted to accept reimbursement from a law school for travel expenses where judge participates in on-campus educational events. (Canon 4B, 4H)

2. Judge is permitted to take advantage of a governmental employee discount given by a restaurant. (Canon 2B(2), 4D6(c))

3. Judge may accept reimbursement for judge's room and board where judge has been named as the Alumni of the Year by judge's alma mater and judge will be giving an address to students about judge's path to becoming a lawyer and a judge. (Canon 4D(6)(e))

### **III. POLITICAL ACTIVITY**

1. Judge may attend the opening of a board of supervisor's campaign for re-election provided that judge does is not a designated speaker at the event and that the judge is not publicly identified as a judge. (Canon 2A, 5, 5A(2), 5A(3))

### **IV. CIVIC AND CHARITABLE ACTIVITIES**

#### **A. Generally**

1. Judge may not participate in a college fair at judge's alma mater to assist in encouraging potential admittees to attend the college. (Canon 2B(2))

#### **B. Government Positions**

1. Judge may not accept appointment to the advisory board of a public university. (Canon 4C(2))

#### **C. Membership**

1. Judge may not serve as a member of the County Fair Board or a Public School Site Council or the public school's after school program as none of these boards concerns the law, legal system or administration of justice. (Canon 4C(2))

#### **D. Fundraising**

1. Judge may serve on a committee of law school alumni for purpose of helping to organize and secure attendance of other alumni at a multi-year alumni event. Judge may be listed on letterhead as a member of the committee if the letterhead will be used in connection with soliciting attendance at the paid alumni event. Judge may not sign a letter or call other alumni seeking attendance at the paid event. (Canon 4D(3)(d), 2A)

### **V. BUSINESS ACTIVITIES**

1. Judge may not be a partner in a partnership which leases property to a business that is involved in CBD oil (and 1% THC). (Canon 2, 2A, 4A(1))

2. Judge may serve as trustee of a multi-generational trust funded by judge's late great-grandparent where judge has a close familial relationship with all of the relatives currently receiving benefits or scheduled to do so in the future and where judge is certain that serving as trustee will not interfere with any judicial duties. (Canon 4E(1), 4E(2))

3. Judge may serve on judge's Homeowners' Board as long as serving does not interfere with judge's judicial duties, does not concern frequent litigation in judge's court, does not require judge to practice law or to fundraise and that judge would not be using the prestige of judge's office to promote its interests. (Canon 4C(3) and commentary)

## **VI. EDUCATIONAL ACTIVITIES**

1. Judge who sits in a prison court may give a presentation about the way the prison court works, the pros and cons of the system, and other general information about the system to a law enforcement association provided that judge does not coach individual members of the association and that no pending cases are discussed and provided that judge will be making a similar presentation to prosecution and defense associations. Judge may also accept lodging reimbursement for the presentation. (Canon 2A, 3B(9), 4B)

2. Judge may participate in a videotaped interview about adoptions for a high school journalism class in judge's courtroom or chambers. (Canon 2A, 2B(2))

## **VII. COMMUNITY OUTREACH**

1. Judge may participate in recruitment of volunteers for CASA but cannot participate in any fundraising on behalf of the organization. (Canon 4C(3)(c), 4C(3)(e))

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

1. PJ may ethically award extra vacation days to on-call after hours judges who have sleepless nights due to a high volume of calls during the night and to those judges who volunteer to cover a week where there is no on duty coverage. (Canon 3A, 3B(1), 3C(1))

2. PJ is permitted to assign new judicial appointees whose previous employment was with the District Attorney or Public Defender offices to criminal assignments. PJ must insure that new appointees have received training with respect to rules on disqualification and disclosure. (Canon 3C(4), 3E)