

JUN 15 2020

ADMIN. 2020-06-10-02

Jorge Navarrete Clerk

IN THE SUPREME COURT OF CALIFORNIA

Deputy

EN BANC

CALIFORNIA CODE OF JUDICIAL ETHICS

The court, having considered proposed amendments to the California Code of Judicial Ethics and revisions to its Advisory Committee Commentary, as recommended and presented by the Supreme Court Advisory Committee on the Code of Judicial Ethics, and the public responses thereto received following circulation of the proposed material for comment, hereby adopts amendments to Canons 3B(9) and 4C(3)(d)(i) and their related Advisory Committee Commentaries, adopts amendments to Canons 4E(1), and adopts amendments to the Advisory Committee Commentaries following Canons 2B, Canons 5A and 5B(4). The court adopts conforming amendments to Canon 4D(6)(d) without circulation for public comment. The text of the changes to the code and the commentary is attached hereto.

In addition, the court adopts technical amendments to change all references to the “Assigned Judges Program” to the “Temporary Assigned Judges Program” as referenced in Canon 3D(3), Canon 5B(4), the Advisory Committee Commentary to Canon 6A, Canon 6B, Canon 6C, and the Advisory Committee Commentary to Canon 6C.

These amendments to the canons and commentary are effective July 1, 2020.

CANTIL-SAKAUYE*Chief Justice*

CANON 2

A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

A. * * *

B. Use of the Prestige of Judicial Office

(1) - (3) * * *

ADVISORY COMMITTEE COMMENTARY: Canon 2B

A strong judicial branch, based on the prestige that comes from effective and ethical performance, is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. A judge should distinguish between proper and improper use of the prestige of office in all of his or her activities.

As to those communications that are permitted under this canon, a judge must keep in mind the general obligations to maintain high standards of conduct as set forth in Canon 1, and to avoid any impropriety or the appearance of impropriety as set forth in Canon 2. A judge must also be mindful of Canon 2A, which requires a judge to act at all times in a manner that promotes public confidence in the integrity and impartiality of the courts.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of the judge or others. For example, a judge must not use the judicial position to gain advantage in a civil suit involving a member of the judge's family, or use his or her position to gain deferential treatment when stopped by a police officer for a traffic offense.

If a judge posts on social networking sites such as Facebook or crowdsourced sites such as Yelp or TripAdvisor, the judge may not lend the prestige of judicial office to advance the pecuniary or personal interests of the judge or others. For example, a judge may not comment on, recommend, or criticize businesses, products, or services on such sites if it is reasonably likely that the judge can be identified as a judge.

See Canon 4C(3)(d)(iv) prohibiting the use of the prestige of judicial office for fundraising or membership solicitation, but allowing a judge to be a speaker, guest of honor, or recipient of an award for public or charitable service, provided the judge does not personally solicit funds and complies with Canons 4A(1), (2), (3), and (4).

C. * * *

CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY

A. * * *

B. Adjudicative Responsibilities

(1) - (8) * * *

(9) A judge shall not make any public comment about a pending or impending proceeding in any court, and shall not make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of staff and court personnel subject to the judge's direction and control. This canon does not prohibit judges from making statements in the course of their official duties or from explaining the procedures of the court, and does not apply to proceedings in which the judge is a litigant in a personal capacity. In connection with a judicial election or recall campaign, this canon does not prohibit any judge from making a public comment about a pending proceeding, provided (a) the comment would not reasonably be expected to affect the outcome or impair the fairness of the proceeding, and (b) the comment is about the procedural, factual, or legal basis of a decision about which a judge has been criticized during the election or recall campaign. Other than cases in which the judge has personally participated, this canon does not prohibit judges from discussing, in legal education programs and materials, cases and issues pending in appellate courts. This educational exemption does not apply to cases over which the judge has presided or to comments or discussions that might interfere with a fair hearing of the case.

ADVISORY COMMITTEE COMMENTARY: Canon 3B(9)

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. A judge shall make reasonable efforts to ascertain whether a case is pending or impending before commenting on it. This canon does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly.

"Making statements in the course of their official duties" and "explaining the procedures of the court" include providing an official transcript or partial official transcript of a court proceeding open to the public and explaining the rules of court and procedures related to a decision rendered by a judge.

The provision allowing a judge to make a public comment about a pending decision that is the subject of criticism during an election campaign applies to all judicial elections, including recall elections. Depending on the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the decision. For purposes of this provision, a recall campaign begins when a judge is served with a notice of intention to circulate a recall petition (see Elec. Code, § 11006), and a judicial election campaign begins when a judge or candidate for judicial office files a declaration of intention of candidacy for judicial office (see Elec. Code, § 8023).

Although this canon does not prohibit a judge from commenting on cases that are not pending or impending in any court, a judge must be cognizant of the general prohibition in Canon 2 against conduct involving impropriety or the appearance of impropriety. A judge should also be aware of the mandate in Canon 2A that a judge must act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. In addition, when commenting on a case pursuant to this canon, a judge must maintain the high standards of conduct, as set forth in Canon 1.

Although a judge is permitted to make nonpublic comments about pending or impending cases that will not substantially interfere with a fair trial or hearing, the judge should be cautious when making any such comments. There is always a risk that a comment can be misheard, misinterpreted, or repeated. A judge making such a comment must be mindful of the judge's obligation under Canon 2A to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. When a judge makes a nonpublic comment about a case pending before that judge, the judge must keep an open mind and not form an opinion prematurely or create the appearance of having formed an opinion prematurely.

(10) - (12) * * *

C. – E. * * *

CANON 4

A JUDGE SHALL SO CONDUCT THE JUDGE'S QUASI-JUDICIAL AND EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

A. – B. * * *

C. Governmental, Civic, or Charitable Activities

(1) - (2) * * *

(3) Subject to the following limitations and the other requirements of this code,

(a) – (c) * * *

(d) a judge as an officer, director, trustee, nonlegal advisor, or as a member or otherwise

(i) may assist such an organization in planning fundraising and may participate in the management and investment of the organization's funds. However, a judge shall not personally participate in the solicitation of funds or other fundraising activities, except that a judge may privately solicit funds for such an organization from members of the judge's family or from other judges (excluding court commissioners, referees, court-appointed arbitrators, hearing officers, temporary judges, and retired judges who serve in the Temporary Assigned Judges Program, practice law, or provide alternative dispute resolution services);

(ii) – (iv) * * *

ADVISORY COMMITTEE COMMENTARY: Canon 4C(3)(d)

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system, or the administration of justice, or a nonprofit educational, religious, charitable, service, or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fundraising mechanism. Solicitation of funds or memberships for an organization similarly involves the danger that the person solicited will feel obligated to respond favorably if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing, or by telephone except in the following cases: (1) a judge may solicit other

judges (excluding court commissioners, referees, court appointed arbitrators, hearing officers, temporary judges, and retired judges who serve in the Temporary Assigned Judges Program, practice law, or provide alternative dispute resolution services) for funds or memberships; (2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves; and (3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

When deciding whether to make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice, a judge should consider whether that conduct would violate any other provision of this code. For a list of factors to consider, see the explanation of "law, the legal system, or the administration of justice" in the Terminology section.

Use of an organization's letterhead for fundraising or membership solicitation does not violate Canon 4C(3)(d), provided the letterhead lists only the judge's name and office or other position in the organization, and designates the judge's judicial title only if other persons whose names appear on the letterhead have comparable designations. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials, and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

D. Financial Activities

(1) – (5) * * *

(6) A judge shall not accept and shall discourage members of the judge's family residing in the judge's household from accepting a gift, bequest, favor, or loan from anyone except as hereinafter set forth. Gifts that are permitted by Canons 4D(6)(a) through (i) may only be accepted if the gift, bequest, favor, or loan would neither influence nor reasonably be perceived as intended to influence the judge in the performance of judicial duties:

(a) – (c) * * *

(d) any gift incidental to a public testimonial, or educational or resource materials supplied by publishers on a complimentary basis for official use, or a discounted or complimentary membership in a bar-related association, or an invitation to the judge and the judge's spouse or registered domestic partner or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system, or the administration of justice;

(e) – (i) * * *

(7) * * *

E. Fiduciary Activities

(1) A judge shall not serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties. A judge may, however, act as a health care representative pursuant to an advance health care directive for a person whose preexisting relationship with the judge would prevent the judge from hearing a case involving that person under Canon 3E(1).

(2) – (3) * * *

F.– H. * * *

CANON 5

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY

* * *

A. Political Organizations

(1) - (3) * * *

ADVISORY COMMITTEE COMMENTARY: Canon 5A

This provision does not prohibit a judge or a candidate for judicial office from signing a petition to qualify a measure for the ballot, provided the judge does not use his or her official title.

Although attendance at political gatherings is not prohibited, any such attendance should be restricted so that it would not constitute an express public endorsement of a nonjudicial candidate or a measure not affecting the law, the legal system, or the administration of justice otherwise prohibited by this canon.

Subject to the monetary limitation herein to political contributions, a judge or a candidate for judicial office may purchase tickets for political dinners or other similar dinner functions. Any admission price to such a political dinner or function in excess of the actual cost of the meal will be considered a political contribution. The prohibition in Canon 5A(3) does not preclude judges from contributing to a campaign fund for distribution among judges who are candidates for reelection or retention, nor does it apply to contributions to any judge or candidate for judicial office.

Under this canon, a judge may publicly endorse or oppose a candidate for judicial office. Such positions are permitted because judicial officers have a special obligation to uphold the integrity, impartiality, and independence of the judiciary and are in a unique position to know the qualifications necessary to serve as a competent judicial officer.

Although family members of the judge or candidate for judicial office are not subject to the provisions of this code, a judge or candidate for judicial office shall not avoid compliance with this code by making contributions through a spouse or registered domestic partner or other family member.

B. Conduct During Judicial Campaigns and Appointment Process

(1) - (4) * * *

ADVISORY COMMITTEE COMMENTARY: Canon 5B(4)

Regarding campaign contributions for a judge's own campaign, see Canon 3E(2)(b) and accompanying Commentary addressing disclosure of campaign contributions. See also Code of Civil Procedure section 170.1, subdivision (a)(9), which provides that a judge is disqualified if the judge has received a campaign contribution exceeding \$1,500 from a party or an attorney in the proceeding. Although it is improper for a judge to receive a gift from an attorney subject to exceptions noted in Canon 4D(6), a judge's campaign may receive attorney contributions. See also Government Code section 8314, which prohibits any elected state or local officer from using public resources, including buildings, telephones, and state-compensated time, for a campaign activity. Under section 8314, subdivision (b)(2), "campaign activity" does not include "the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities."

Even though it is permissible for a judge to solicit endorsements and campaign funds for attorneys who are candidates for judicial office, the judge must be cautious. Such solicitation may raise issues of disqualification and disclosure under Code of Civil Procedure section 170.1, subdivision (a), and Canon 3E. Even if the judge is not disqualified, disclosure may be required under Canon 3E(2)(a). For example, a judge who has solicited campaign funds or endorsements for a candidate who is an attorney must consider disclosing that solicitation in all cases in which the attorney candidate appears before the judge. The judge should also consider Canon 4A(1) and Canon 4A(4), which require a judge to conduct extrajudicial activities so they do not cast reasonable doubt on the judge's capacity to act impartially or lead to frequent disqualification.

"Judicial elections" includes recall elections.

C. – D. * * *

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A judge must avoid lending the prestige of judicial office for the advancement of the private interests of the judge or others. For example, a judge must not use the judicial position to gain advantage in a civil suit involving a member of the judge's family, or use his or her position to gain deferential treatment when stopped by a police officer for a traffic offense.

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See Canon 4C(3)(d)(iv) prohibiting the use of the prestige of judicial office for fundraising or membership solicitation, but allowing a judge to be a speaker, guest of honor, or recipient of an award for public or charitable service, provided the judge does not personally solicit funds and complies with Canons 4A(1), (2), (3), and (4).

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(9) A judge shall not make any public comment about a pending or impending proceeding in any court, and shall not make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of staff and court personnel subject to the judge's direction and control. This canon does not prohibit judges from making statements in the course of their official duties or from explaining the procedures of the court, and does not apply to proceedings in which the judge is a litigant in a personal capacity. In connection with a judicial election or recall campaign, this canon does not prohibit any judge from making a public comment about a pending proceeding, provided (a) the comment would not reasonably be expected to affect the outcome or impair the fairness of the proceeding, and (b) the comment is about the procedural, factual, or legal basis of a decision about which a judge has been criticized during the election or recall campaign. Other than cases in which the judge has personally participated, this canon does not prohibit judges from discussing, in legal education programs and materials, cases and issues pending in appellate courts. This educational exemption does not apply to cases over which the judge has presided or to comments or discussions that might interfere with a fair hearing of the case.

ADVISORY COMMITTEE COMMENTARY: Canon 3B(9)

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"Making statements in the course of their official duties" and "explaining the procedures of the court" include providing an official transcript or partial official transcript of a court proceeding open to the public and explaining the rules of court and procedures related to a decision rendered by a judge.

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Although this canon does not prohibit a judge from commenting on cases that are not pending or impending in any court, a judge must be cognizant of the general prohibition in Canon 2 against conduct involving impropriety or the appearance of impropriety. A judge should also be aware of the mandate in Canon 2A that a judge must act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. In addition, when commenting on a case pursuant to this canon, a judge must maintain the high standards of conduct, as set forth in Canon 1.

Although a judge is permitted to make nonpublic comments about pending or impending cases that will not substantially interfere with a fair trial or hearing, the judge should be cautious when making any such comments. There is always a risk that a comment can be misheard, misinterpreted, or repeated. A judge making such a comment must be mindful of the judge's obligation under Canon 2A to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. When a judge makes a nonpublic comment about a case pending before that judge, the judge must keep an open mind and not form an opinion prematurely or create the appearance of having formed an opinion prematurely.

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A. – B. * * *

C. Governmental, Civic, or Charitable Activities

(1) - (2) * * *

(3) Subject to the following limitations and the other requirements of this code,

(a) – (c) * * *

(d) a judge as an officer, director, trustee, nonlegal advisor, or as a member or otherwise

(i) may assist such an organization in planning fundraising and may participate in the management and investment of the organization's funds. However, a judge shall not personally participate in the solicitation of funds or other fundraising activities, except that a judge may privately solicit funds for such an organization from members of the judge's family or from other judges (excluding court commissioners, referees, ~~retired judges~~, court-appointed arbitrators, hearing officers, ~~and temporary judges, and retired judges who serve in the Temporary Assigned Judges Program, practice law, or provide alternative dispute resolution services~~);

(ii) – (iv) * * *

ADVISORY COMMITTEE COMMENTARY: Canon 4C(3)(d)

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system, or the administration of justice, or a nonprofit educational, religious, charitable, service, or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fundraising mechanism. Solicitation of funds or memberships for an organization similarly involves the danger that the person solicited will feel obligated to respond favorably if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing, or by telephone except in the following cases: (1) a judge may solicit other

judges (excluding court commissioners, referees, ~~retired judges~~, court-appointed arbitrators, hearing officers, ~~and~~ temporary judges and retired judges who serve in the Temporary Assigned Judges Program, practice law, or provide alternative dispute resolution services) for funds or memberships; (2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves; and (3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

When deciding whether to make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice, a judge should consider whether that conduct would violate any other provision of this code. For a list of factors to consider, see the explanation of "law, the legal system, or the administration of justice" in the Terminology section.

Use of an organization's letterhead for fundraising or membership solicitation does not violate Canon 4C(3)(d), provided the letterhead lists only the judge's name and office or other position in the organization, and designates the judge's judicial title only if other persons whose names appear on the letterhead have comparable designations. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials, and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

D. Financial Activities

(1) – (5) * * *

(6) A judge shall not accept and shall discourage members of the judge's family residing in the judge's household from accepting a gift, bequest, favor, or loan from anyone except as hereinafter set forth. Gifts that are permitted by Canons 4D(6)(a) through (i) may only be accepted if the gift, bequest, favor, or loan would neither influence nor reasonably be perceived as intended to influence the judge in the performance of judicial duties:

(a) – (c) * * *

(d) any gift incidental to a public testimonial, or educational or resource materials supplied by publishers on a complimentary basis for official use, or a discounted or complimentary membership in a bar-related association, or an invitation to the judge and the judge's spouse or registered domestic partner or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system, or the administration of justice;

(e) – (i) * * *

(7) * * *

E. Fiduciary Activities

(1) A judge shall not serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties. A judge may, however, act as a health care representative pursuant to an advance health care directive for a person whose preexisting relationship with the judge would prevent the judge from hearing a case involving that person under Canon 3E(1).

(2) – (3) * * *

F.– H. * * *

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* * *

A. Political Organizations

(1) - (3) * * *

ADVISORY COMMITTEE COMMENTARY: Canon 5A

This provision does not prohibit a judge or a candidate for judicial office from signing a petition to qualify a measure for the ballot, provided the judge does not use his or her official title.

Although attendance at political gatherings is not prohibited, any such attendance should be restricted so that it would not constitute an express public endorsement of a nonjudicial candidate or a measure not affecting the law, the legal system, or the administration of justice otherwise prohibited by this canon.

Subject to the monetary limitation herein to political contributions, a judge or a candidate for judicial office may purchase tickets for political dinners or other similar dinner functions. Any admission price to such a political dinner or function in excess of the actual cost of the meal will be considered a political contribution. The prohibition in Canon 5A(3) does not preclude judges from contributing to a campaign fund for distribution among judges who are candidates for reelection or retention, nor does it apply to contributions to any judge or candidate for judicial office.

Under this canon, a judge may publicly endorse or oppose a candidate for judicial office. Such endorsements positions are permitted because judicial officers have a special obligation to uphold the integrity, impartiality, and independence of the judiciary and are in a unique position to know the qualifications necessary to serve as a competent judicial officer.

Although family members of the judge or candidate for judicial office are not subject to the provisions of this code, a judge or candidate for judicial office shall not avoid compliance with this code by making contributions through a spouse or registered domestic partner or other family member.

B. Conduct During Judicial Campaigns and Appointment Process

(1) - (4) * * *

ADVISORY COMMITTEE COMMENTARY: Canon 5B(4)

Regarding campaign contributions for a judge's own campaign, see Canon 3E(2)(b) and accompanying Commentary addressing disclosure of campaign contributions. See also Code of Civil Procedure section 170.1, subdivision (a)(9), which provides that a judge is disqualified if the judge has received a campaign contribution exceeding \$1,500 from a party or an attorney in the proceeding. Although it is improper for a judge to receive a gift from an attorney subject to exceptions noted in Canon 4D(6), a judge's campaign may receive attorney contributions. See also Government Code section 8314, which prohibits any elected state or local officer from using public resources, including buildings, telephones, and state-compensated time, for a campaign activity. Under section 8314, subdivision (b)(2), "campaign activity" does not include "the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities."

Even though it is permissible for a judge to solicit endorsements and campaign funds for attorneys who are candidates for judicial office, the judge must be cautious. Such solicitation may raise issues of disqualification and disclosure under Code of Civil Procedure section 170.1, subdivision (a), and Canon 3E. Even if the judge is not disqualified, disclosure may be required under Canon 3E(2)(a). For example, a judge who has solicited campaign funds or endorsements for a candidate who is an attorney must consider disclosing that solicitation in all cases in which the attorney candidate appears before the judge. The judge should also consider Canon 4A(1) and Canon 4A(4), which require a judge to conduct extrajudicial activities so they do not cast reasonable doubt on the judge's capacity to act impartially or lead to frequent disqualification.

"Judicial elections" includes recall elections.

C. – D. * * *