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**Ethics for
Temporary Judges**

- **PowerPoint**

Ethics for Temporary Judges



Course Outline

- # General Judicial Ethics
- # Disqualification and Disclosure
- # Ex Parte Communications

General Judicial Ethics

Preamble to the Code of Judicial Ethics

■ Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us.

Goal of Canons

*Ensure integrity in the
decision-making process*

Canon 6D

■ Temporary judge, referee, or court-appointed arbitrator

Canon 6D(1)

- ▣ Rules that apply while you are presiding over a particular case

Canon 1

- ▣ Independent and honorable judiciary
- ▣ High standards of conduct
- ▣ Personally observe those standards

Canon 2A

- ▣ Respect and comply with the law
- ▣ Act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary

Canon 3B(3)

- ▣ Require order and decorum

Canon 3B(4)

- ▣ Patient
- ▣ Dignified
- ▣ Courteous

Canon 3B(6)

- ▣ Require lawyers to refrain from bias or prejudice
 - Race, sex, gender, religion
 - National origin, ethnicity, disability
 - Age, sexual orientation, marital status
 - Socioeconomic status, political affiliation
- ▣ Does not preclude legitimate advocacy

Canon 3D(1)

- ⌘ Reliable information that judge has violated code of judicial ethics
- ⌘ Take appropriate corrective action

Hypothetical

⌘ Fifteen minutes before you are to take the bench in traffic court, a judge calls you and asks if you can let her pastor go to traffic school even though he has already attended traffic school within the last year. You know that the judge has violated several ethical rules by speaking with you about doing this. What kind of corrective action do you take, if any?

Hypothetical

- ⌘ Abuse of office
- ⌘ Ex parte communication
- ⌘ Talk to supervising judge

Canon 3D(2)

- Personal knowledge that lawyer has violated rules of professional conduct
- Concludes in a legal decision that lawyer has violated rules of professional conduct
- Take appropriate corrective action

Hypothetical

You're presiding over a custody trial. Despite repeated sustained objections and admonishments by you, one of the attorneys persists in asking embarrassing, irrelevant questions of his opposing party. After the trial, what corrective action do you take concerning the lawyer's conduct?

Hypothetical

Talk to supervising judge.

Canon 6D(2)

- ▣ Rules that apply from appointment as temporary judge to formal termination
- ▣ Rebuttable presumption of formal termination: one year from appointment or date of last hearing

Canon 2B(1)

- ▣ Not allow family, social, political relationships to influence conduct or judgment
- ▣ Not allow others to convey impression of special position to influence judge

Canon 3B(1)

- ▣ Hear and decide all matters assigned unless disqualified

Canon 3B(2)

- ✦ Faithful to the law regardless of partisan interests, public clamor, fear of criticism
- ✦ Maintain professional competence in the law

Hypothetical

- ✦ You've been asked to sit in traffic court. You'd like to run for judge some day but have heard that you won't get the endorsement of the police union if you ever rule against them. What do you do?

Hypothetical

- ✦ Ignore the rumor or decline the assignment.

Hypothetical

⚡ You've been asked to sit in juvenile dependency court because of a last-minute emergency. You know nothing about dependency, but you call a friend who does. She tells you, "No sweat—just follow the agency's recommendations." What do you do?

Hypothetical

⚡ Learn the field or don't take the assignment.

Canon 3B(5)

- ⚡ Judicial duties without bias or prejudice
- ⚡ No sexual harassment

Canon 3B(7)

- # Due process of law
- # No ex parte communications about pending or impending proceeding

Canon 3B(8)

- # Dispose of matters fairly, promptly and efficiently.

- # All of your adjudicative ethical responsibilities apply equally to your administrative duties.

Canon 3C(1) and (2)

- ⌘ No bias or prejudice in administrative duties
- ⌘ Cooperate with judges and court officials

Canon 3C(3)

- ⌘ Staff must observe appropriate standards of conduct
- ⌘ Staff—no bias or prejudice

Canon 3C(5)

- ⌘ No unnecessary appointments
- ⌘ No nepotism, favoritism
- ⌘ Reasonable compensation of appointees

Canon 6D(2)(b)

⚡ No solicitation of memberships or donations from parties or lawyers appearing before judge

Hypothetical

⚡ Can you put a donation box for your son's basketball team on your desk or on the clerk's desk?

Hypothetical

⚡ Improper solicitation

Hypothetical

- ⌘ Can you ask another judge or temporary judge for a donation?

Hypothetical

- ⌘ Proper solicitation

Canon 6D(2)(c)

- ⌘ Cannot accept gift if donor's interests are reasonably likely to come before judge
- ⌘ Discourage members of family from accepting

Hypothetical

⚡ The clerk comes into your chambers with a box of holiday candy that a lawyer has given to the whole staff. What do you do?

Hypothetical

⚡ Improper gift

Canon 6D(5)(b)

⚡ Disclose membership in organizations that invidiously discriminate

- ▣ Rule that applies from the beginning of a case through final appeal

Canon 6D(6)

- ▣ No public comment
- ▣ Pending or impending proceeding
- ▣ No nonpublic comment that might interfere

Canon 6D(6)

- ▣ Require abstention by staff and court personnel
- ▣ Exceptions:
 - (1) Official duties
 - (2) Procedures of the court

Hypothetical

▣ May you speak with your daughter about a case you are hearing?

Hypothetical

▣ Yes, as long as the information isn't confidential and the conversation isn't likely to affect the case.

Hypothetical

▣ Your daughter says she'd like to share your comments with her law school study group. What do you tell her?

Hypothetical

- ⌘ Impermissible public comment

- ⌘ Rule that applies from time of appointment until two years after the particular case is no longer pending in any court

Canon 6D(7)

- ⌘ No gifts if party has come before court
- ⌘ Discourage family members

Hypothetical

⚡ You handled a small claims case involving a local Chevy dealership. About a year later, the dealer's daughter offered your son two tickets to see the Raiders. Can he go?

Hypothetical

⚡ Looks like quid pro quo

Hypothetical

⚡ Can you buy a car from that same dealership?

Hypothetical

- ⌘ No special discount

- ⌘ Rules that apply indefinitely from the time of appointment

Canon 6D(8)(a)

- ⌘ No disclosure of nonpublic information acquired in judicial capacity

Canon 6D(8)(b)

⚡ Do not commend or criticize jurors for their verdict

Canon 6D(8)(c)

⚡ No use of judicial title to advance interests

Exception: qualifications

Hypothetical

⚡ You are pulled over by the CHP after drinking a few beers. Can you tell the officer that you are a temporary judge?

Hypothetical

Abuse of title

Hypothetical

You are buying a new car. Can you tell the salesman that you are a temporary judge?

Hypothetical

Abuse of title

Canon 6D(9)(a) & (b)

- ✦ *May not* use title:
 - On ballot
 - In advertisements
 - On letterhead, cards, etc.
- ✦ *May* use title:
 - In applications
 - Resumes
 - Responses re public service

Hypothetical

- ✦ The *Daily Journal* is doing an article on you. When the reporter asks you to describe your community service, may you say you've served as a temporary judge?

Hypothetical

- ✦ May cite position as temporary judge in response to questions about public service.

Rules that limit conduct as an attorney while serving as a temporary judge

Canon 6D(11)

No representation relating to case without informed written consent of *all parties*

Canon 6D(12)

No employment relating to material confidential information without informed written consent

▣ Ensure integrity in the decision-making process

Disqualification and Disclosure

Canon 3B(1)

▣ A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified.

First decide whether or not to disqualify yourself.

Then decide whether or not to disclose.

Canon 6D(3)

Disqualify yourself in any proceeding in which disqualification is required by law.

Grounds for disqualification

Waiver

Disclosure

Hypotheticals

Personal knowledge of disputed evidentiary facts

Served as a lawyer in the proceeding

Within the last five years has given legal advice to, or served as a lawyer for, a party

- ⌘ Financial interest in the subject matter or a party
- ⌘ Financial interest = ownership of \$1500 or more of stock or bonds
- ⌘ Not mutual funds

- ⌘ Temporary judge or specified family member is a party or an officer, director, or trustee of a party

- ⌘ Lawyer in the proceeding or his or her spouse is a specified member of judge's family
- ⌘ Lawyer in the proceeding is associated with a specified member of judge's family

Canon 6D(3)(a)(viii)

- ▣ Receipt of campaign contribution of \$1,500 or more from a party or lawyer in the matter that is before the court and the contribution was received in anticipation of an upcoming election.

- ▣ Interests of justice
- ▣ Bias
- ▣ Reasonable person—doubt impartiality

- ▣ Bias or appearance of bias
vs.
- ▣ Duty to hear and decide all cases

Hypothetical

¶ You are reviewing your calendar for a family court assignment, and you see that one of the attorneys about to appear is someone you really don't like. He is never prepared, is obnoxious to his opponents, and isn't trustworthy. However, you feel you can ignore your personal dislike for him and treat his client fairly. What do you do?

Hypothetical

¶ If you can be impartial, don't recuse yourself.

Dispute Resolution

¶ **Canon 6D(3)(c)**—In current arrangement concerning compensated service as a dispute resolution neutral or has been in discussions about that within the last two years, and the ADR provider is a party or the case involves ADR issues

Appellate Disqualification

‡ **Canon 6D(3)(b)**—A temporary judge before whom a proceeding was tried or heard is disqualified from participating in any appellate review of that proceeding.

Limitations in Family Law and Unlawful Detainer Actions

‡ **Canon 6D(3)(d)(i)**—If hold self out as representing exclusively one side

Limitations in Family Law and Unlawful Detainer Actions

‡ **Canon 6D(3)(d)(ii)**—If represent one side in 90 percent or more of cases

Limitations in Family Law and Unlawful Detainer Actions

Rule 2.818(b)(3)—If one party is self-represented and the other party is represented by an attorney or is an attorney

Limitations—As Attorney

Rule 2.818(b)(1)—If appearing in that courthouse that day as attorney or party

Limitations—As Attorney

Rule 2.818(b)(2)—If presently a party in the court on the same type of case

Waiver

- ‡ **Canon 6D(4)**—Parties may waive
- ‡ Do not induce waiver
- ‡ In writing
- ‡ Signed by all parties and lawyers

Waiver

- ‡ **Rule 2.818(c)(2)**—*No waiver if:*
 - (A) personal bias or prejudice concerning a party;
 - (B) has served as an attorney in the matter;
 - (C) has been a material witness

Late Discovery of Disqualification Grounds

Rule 2.818(d)—When discover grounds for disqualification after rulings made: Disqualify self.

- ‡ Rulings stand.

Notification

Rule 2.818(e)—When decide to disqualify self:

- ✦ Notify supervising judge.
- ✦ Cease participation unless waived.

Requests for Disqualification

✦ **Rule 2.818(f)**—A party may apply to PJ for a withdrawal of the stipulation.

- ✦ PJ determines whether good cause for withdrawal exists.

Disclosure

✦ **Canon 6D(5)(a)**—Disclose information reasonably relevant to issue of disqualification, even if no actual basis for disqualification

Disclosure

‡ **Canon 6D(5)(b)**—Disclose membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

Disclosure

Exceptions:

- ‡ Religious organizations
- ‡ Military organizations
- ‡ Nonprofit youth organizations

Disclosure

‡ **Canon 6D(5)(a)**—Disclose all relationships you or your law firm has now or has had with party, lawyer, or law firm in case

Hypothetical

▣ You're sitting in dependency court. You've seen the mother in one of the proceedings interacting with her child at your child's daycare center.

Hypothetical

▣ Disqualify yourself—material witness.

Hypothetical

▣ A party before you in traffic court was represented by you in an unrelated commercial case four years ago.

Hypothetical

- ⚡ Disqualify yourself—former representation.

Hypothetical

- ⚡ You are in small claims handling a dry-cleaning dispute. You own about \$1000 worth of stock in the dry-cleaning business.

Hypothetical

- ⚡ Do not disqualify—the interest is less than \$1500—unless you really feel you will be biased.
- ⚡ Disclose the stock ownership.

Hypothetical

⚡ Your son's wife works as an associate in a small firm that is appearing before you in family court. Your son's wife has nothing to do with this case.

Hypothetical

⚡ Disqualify yourself—child's spouse associated with lawyer appearing before you.

Hypothetical

⚡ The deputy county counsel in the dependency case you are hearing has appeared before you numerous times, and you hold her in high regard. The defense attorney has threatened in the past to complain to the supervising judge about you.

Hypothetical

- ⚡ Don't disqualify unless you doubt your ability to be fair.
- ⚡ Disclose to all parties about the threat.
- ⚡ No need to disclose or disqualify merely because you hold attorney in high esteem.

Hypothetical

- ⚡ An attorney before you is a tenant in an office building owned by you and your spouse.

Hypothetical

- ⚡ Disqualify yourself—appearance of bias.

Hypothetical

⚡ You and an attorney before you are members of the same local bar association CLE committee. You have been co-counsel in a couple of criminal cases and have had lunch together a few times. However, you feel you can be fair.

Hypothetical

⚡ No need to disqualify yourself if you feel you can be fair.

⚡ Disclose relationship.

Hypothetical

⚡ You are sitting in probate court. An attorney with whom you currently have a family court case as a lawyer appears before you.

Hypothetical

- ⚡ No need to disqualify yourself if you feel you can be fair.
- ⚡ Disclose relationship.

Hypothetical

- ⚡ You've been asked to sit in dependency court. Your main practice consists of criminal cases and court-appointed dependency cases in which you only represent parents.

Hypothetical

- ⚡ No need to disqualify as long as you feel you can be fair.
- ⚡ The limitation re one-sided representation applies only to family court and unlawful detainers.

Hypothetical

- ⚡ You are hearing a custody matter and realize, after you've ruled on several in limine motions and a few objections during trial, that you saw the defendant slap his son at a Little League game. Since you are a material witness, you disqualify yourself and disclose your reason for doing so. Both parties ask to waive the disqualification.

Hypothetical

- ⚡ May not waive if a witness.
- ⚡ Adjourn and notify supervising judge.
- ⚡ All rulings will remain in force.

Ex Parte Communications

Ex Parte Communications

- ⚡ **Canon 3B(7)**—A judge shall not initiate, permit, or consider ex parte communications, that is, any communications to or from the judge outside the presence of the parties concerning a pending or impending proceeding, and shall make reasonable efforts to avoid such communications ...

Ex Parte Communications

- ⚡ No Independent investigations of facts (unless otherwise authorized by law)
- ⚡ Prohibition extends to information available in all media, including electronic

Ex Parte Communications: Exception - *Canon 3B(7)(a)*

- ⚡ Consultation with other judges UNLESS judge is disqualified or would participate in appellate review of the matter

**Ex Parte Communications:
Exception - Canon 3B(7)(a)**

- Consultations with court personnel or others authorized by law
- Make reasonable efforts too avoid receiving factual information

Hypothetical

You are sitting in traffic court. Your clerk passes you a note that says, “I know this defendant. He races his motorcycle up and down my street all the time.” Is this a permitted ex parte communication? What do you do?

Hypothetical

Ex parte—not all parties are present.
Though court personnel, telling you case-specific information is not part of his job.
Educate him about the rule.
Recuse self if cannot ignore communication.

Hypothetical

You are given a file and see that a judge you respect has been disqualified per CCP § 170.6. Can you call him and get his advice on what it's about?

Hypothetical

May not communicate with disqualified judge.

Ex Parte Communications: Exception - *Canon 3B(7)(b)*

■ Scheduling, administrative purposes, emergencies

Hypothetical

- ⚡ A deputy county counsel stops by your chambers to let you know that she will be asking for a continuance in one of her afternoon dependency cases. Is this an ex parte communication? What do you do about it?

Hypothetical

Ex parte communication:

- ⚡ Judge did not initiate the discussion.
- ⚡ No consent.
- ⚡ One side may gain advantage.
- ⚡ Notify other side.

Hypothetical

- ⚡ You are copied on an e-mail from the attorney on one side of a family law case to the attorney on the other side, concerning a discovery dispute. Is this a proper communication? What should you do about it?

Hypothetical

- ⚠ Improper unless invited.
- ⚠ Be careful with e-mail address.
- ⚠ Warn litigants about sending uninvited communication.

Ex Parte Communications: Exceptions -*Canon 3B(7)(c)*

- ⚠ When expressly authorized by law
- ⚠ When authorized by stipulation of the parties

Hypothetical

You are handling a small claims case and would like to do some factual research. Can you do so?

Hypothetical

Outside research in small claims cases is expressly permitted.

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Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us.

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