

ETHICAL ENCOUNTERS OF THE JUVENILE COURT KIND

Juvenile court judges are the linchpin of the juvenile justice system, responsible for oversight and implementation of the culture, policies, and practices that govern it.¹ Despite their unique and interactive role, juvenile court judges are subject to the same ethical standards that apply to all judges. Neither the California Code of Judicial Ethics² nor the ABA Model Code of Judicial Conduct addresses the specific ethical concerns that arise in the juvenile court landscape. As a result, juvenile court judges often find themselves navigating uncharted ethical terrain. This article and the accompanying interview discuss several common considerations faced by these judges.

Juvenile court judges have the same core duties as any judge—to fairly, promptly, and efficiently dispose of the legal issues before them.³ In addition, juvenile court judges are charged with protecting the well-being and safety of their communities, including individual minors, their families, and the public at large.⁴ Judges must provide for the care, treatment, and guidance of the minor while striving to preserve and strengthen family ties whenever feasible.⁵ In the delinquency context, judges must also ensure juveniles are held accountable for their actions.⁶ Further, juvenile court judges are charged with general oversight and “improv[ing] system performance in a vigorous and ongoing manner,”⁷ and are expected to engage in efforts to improve the law, including by making recommendations regarding civil procedure and developing programs that provide assistance to children.⁸

In fulfilling these functions, juvenile court judges are expected to take on roles and responsibilities that go beyond those required of other judges.⁹ Specifically, juvenile court judges are encouraged to (1) take an active leadership role in the community to determine the community’s needs and develop resources to address those needs, including prevention, intervention, and treatment services; (2) review, order, and enforce services for at-risk children

¹ The Council of State Governments Justice Center, *Courting Judicial Excellence in Juvenile Justice: A 50-State Study* (May 2022), p. 3, <https://csgjusticecenter.org/wp-content/uploads/2022/04/Courting-Judicial-Excellence-in-Juvenile-Justice-A-50-State-Study-2.pdf>.

² The only reference to “juvenile” in the California Code of Judicial Ethics is in the Advisory Committee commentary following canon 4B, which states: “As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and *juvenile* justice” (*italics added*).

³ Cal. Code Jud. Ethics, canon 3B(8).

⁴ Welf. & Inst. Code, § 202; Advisory Com. com., Cal. Stds. Jud. Admin., std. 5.40(e)(11).

⁵ Welf. & Inst. Code, § 202(a).

⁶ *Id.*, § 202(b).

⁷ *Id.*, § 202(d).

⁸ Rothman et al., *California Judicial Conduct Handbook* § 11.3, p. 738.

⁹ Cal. Stds. Jud. Admin., std. 5.40(e); National Council of Juvenile and Family Court Judges, *Enhanced Juvenile Justice Guidelines: Improving Court Practice in Juvenile Justice Cases*, Guiding Principles (2018), www.ncjfcj.org/wp-content/uploads/2019/01/NCJFCJ_Enhanced_Juvenile_Justice_Guidelines_Final.pdf.

and their families; (3) help develop and maintain programs for interagency cooperation, including with law enforcement, community health, social services, and schools; (4) educate the community on the importance of juvenile courts; (5) establish removal and reunification standards for child protection agencies; (6) support development of community services and resources for homeless, truant, and runaway children; and more.¹⁰

The California Standards of Judicial Administration also outline the role of the juvenile *court* separate from that of a juvenile court judge. Juvenile courts should (1) take responsibility for ensuring each child's educational needs are met, including accommodations for children with disabilities or other special needs; (2) provide oversight of participating agencies' (social services, law enforcement, probation officers, schools) duty to investigate, report, and monitor children's educational rights; (3) ensure that "court reports, case plans, assessments, and permanency plans considered by the court address a child's educational entitlements and how those entitlements are being satisfied"; (4) when applicable, join the local educational agency as a party to facilitate coordination of services; and (5) make appropriate orders limiting the educational rights of parents or guardians who are unable or unwilling to participate.¹¹

In light of the additional expectations of juvenile courts and judges, some (people in general? Or courts/judges themselves?) operate under the misconception that juvenile court judges have different or less stringent requirements regarding judicial ethics. However, that is simply not the case. Juvenile court judges are expected to fulfill their affirmative obligations within the confines of California's one-size-fits-all Code of Judicial Ethics.¹² Not surprisingly, this can cause friction and confusion for all parties involved.

The canons most often implicated in the juvenile justice realm include canon 1, upholding an independent and impartial judiciary; canon 2, avoiding impropriety and the appearance of impropriety; canon 2A, promoting public confidence in the integrity and impartiality of the judiciary; canon 2B, avoid lending the prestige of the judicial office to others, and preventing special relationships from influencing judicial conduct or judgment; canon 3B(7), concerning ex parte communications; canon 4, conducting quasi-judicial and extrajudicial activities so as to minimize risk of conflict with judicial obligations; canon 4B, on speaking, writing, lecturing, teaching, and participating in activities concerning legal and nonlegal subject matters (and specifically, contributing to the improvement of the law, legal system, and administration of justice including juvenile justice); canon 4C, on proper governmental, civic, and charitable engagement; canon 4C(3)(d), regarding solicitation of funds and other fundraising activities; canon 4D, restricting financial and business dealings; and canon 5, avoiding political activity that may create the appearance of political bias or impropriety or undermine the independence, impartiality, and integrity of the judge.

¹⁰ Cal. Stds. Jud. Admin., std. 5.40(e).

¹¹ Cal. Stds. Jud. Admin., std. 5.40(h).

¹² But see Advisory Com. com., Cal. Stds. Jud. Admin., std. 5.40(e)(11) ("The legislative directive to juvenile court judges to 'improve system performance in a vigorous and ongoing manner' (Welf. & Inst. Code, § 202) poses no conflict with traditional concepts of judicial ethics. Active and public judicial support and encouragement of programs serving children and families at risk are important functions of the juvenile court judge that enhance the overall administration of justice").

Juvenile court judges must exercise heightened awareness to avoid ethical pitfalls particular to their judicial role. Some common themes are discussed below.

Ex Parte Communications

Juvenile court judges are expected to regularly interact with their “justice partners,” including Court Appointed Special Advocate (CASA) volunteers, employees, and directors, public defenders and DAs, probation officers, social workers, and organizations such as Children’s Legal Services and Dependency Legal Services.¹³ Juvenile court judges must walk a tightrope between fostering these relationships and conversations and their ethical obligations, including the duty to avoid the appearance of impropriety and to promote public confidence in the integrity and impartiality of the judiciary (canons 2, 2A); the prohibition on ex parte communications (canons 3B(7), 3B(7)(a)); and the duty to conduct extrajudicial and quasi-judicial activities so as to avoid casting doubt on the judge’s capacity to act impartially, demeaning the judicial office, interfering with the proper performance of judicial duties, or frequent disqualification (canons 4, 4A, 4B, 4C(3)).

Juvenile court judges are permitted to meet one-on-one with a CASA volunteer or employee, so long as there is no discussion of individual cases;¹⁴ meet with community partners regarding necessary resources and services for at-risk youth and their families; and attend community programs for juveniles appearing in the juvenile court so long as the judge is unlikely to receive information that would affect the judge’s future decision-making as it pertains to those juveniles.¹⁵ Ex parte communications are also permissible when expressly authorized by law, or when authorized by stipulation of the parties, as can be the case in juvenile court.¹⁶ Juvenile court judges are *not* permitted to meet one-on-one with wards without applicable waivers;¹⁷ request that a sheriff deputy run a criminal background check on a parent in dependency court when there are no imminent security issues;¹⁸ or speak at a planning commission meeting to encourage zoning for a drug treatment center.¹⁹

In addition to ex parte concerns, juvenile court judges’ community outreach duties implicate other ethical concerns such as improperly lending the prestige of the office or advancing others’ pecuniary gain, as discussed below.

¹³ Cal. Rules of Court, rule 5.655.

¹⁴ Judge Leonard P. Edwards (Ret.) & Cory Pohley, Director, California CASA, “Court Appointed Special Advocates (CASA) Programs and Judicial Ethics,” Beyond the Bench XXII Conference, Center for Families, Children & the Courts (Dec. 3, 2013).

¹⁵ Cal. Judges Assn., *Judicial Ethics Update* (Nov. 2012), p. 8.

¹⁶ Cal. Code Jud. Ethics, canon 3B(7)(c).

¹⁷ Rothman et al., *California Judicial Conduct Handbook* § 5.2, p. 260 (citing Cal. Judges Assn., *Judicial Ethics Update* (Mar. 2005), p. 2).

¹⁸ Cal. Judges Assn., *Judicial Ethics Update* (Feb. 2010), p. 2.

¹⁹ Cal. Judges Assn., *Judicial Ethics Update* (Apr. 2008), p. 3.

Prestige, Pecuniary Interests, and the Appearance of Impartiality

Another knotty ethical inquiry stems from the expectation that juvenile court judges (1) provide active community leadership in “determining the needs of and obtaining and developing resources and services” for at-risk children and families; (2) “[e]xercise a leadership role in the development and maintenance of permanent programs of interagency cooperation and coordination among the court” and the agencies that serve at-risk children and families; (3) “[t]ake an active part in the formation of a communitywide network to promote and unify public and private sector efforts to focus attention and resources for at-risk children and their families”; and (4) “encourage the development of community services and resources to assist homeless, truant, runaway, and incorrigible children.”²⁰ This is in contrast to judges’ ethical obligations to avoid the appearance of impropriety (canon 2), promote public confidence in the impartiality of the judiciary (canon 2A), avoid improperly lending the prestige of the judicial office or conveying that one may be in a special position to influence the judge (canon 2B(1)), and avoid advancing the pecuniary or personal interests of the judge or others (canon 2B(2)).

In this context, juvenile court judges are permitted to make a public statement asking people to consider becoming foster parents, appear in a video encouraging people to become CASA volunteers, and meet with vendors who provide needed services to dependent children.²¹ Juvenile court judges are also permitted to suggest board members for CASA and other juvenile justice partner organizations;²² be a member of a nonprofit or advisory committee that addresses the needs of juveniles and their families in the community;²³ serve on the board of a nonprofit organization that calls on local communities to provide opportunities to at-risk students,²⁴ or serve on the board of a nonprofit organization established by law to act as an arm of the court in dependency cases.²⁵

Some examples of what juvenile court judges are *not* permitted to do include serving as an officer or nonlegal advisor in an organization that is likely to come before the judge in adversary

²⁰ Cal. Stds. Jud. Admin, std. 5.40(e)(1), (4), (5) & (9).

²¹ CJEO Formal Opn. 2017-09, *Judges Meeting with Vendors* (2017), Cal. Supreme Ct. Com. Jud. Ethics Opns., pp. 7, 11–12, 14–15 (a judge may meet with private vendors, including private vendors providing remote alcohol monitoring services to parties under court order, if such meetings are authorized by law, would aid the judge in discharging administrative responsibilities, and would not violate the Code of Judicial Ethics by creating a conflict of interest, conveying influence or favoritism, advancing the pecuniary interests of others, or involving the judge in business relationships with potential litigants).

²² Judge Leonard P. Edwards (Ret.) & Cory Pohley, *supra* note 14.

²³ Cal. Judges Assn., *Judicial Ethics Update* (Oct. 1989), pp. 2–3 (a judge may accept appointment to a drug abuse advisory committee or other similar board which deals with matters concerning the administration of justice); Cal. Judges Assn., *Judicial Ethics Update* (Dec. 1995), p. 9 (a judge may belong to the governing board of a nonprofit organization that educates about and treats substance abuse problems).

²⁴ Cal. Judges Assn., *Judicial Ethics Update* (Mar. 2001), p. 8.

²⁵ Cal. Judges Assn., *Judicial Ethics Update* (Dec. 1995), p. 9 (citing canon 4C(3)(a)–(c)).

proceedings;²⁶ promoting a legal book written by another judge or attorney;²⁷ writing a letter of recommendation on behalf of a person who appeared before the judge as a juvenile;²⁸ or publicly “liking” a vendor, organization, or establishment on social media sites.²⁹

These issues frequently overlap with the prohibition against judges soliciting or raising funds, as discussed further below.

Fundraising

The ethical issue of fundraising and solicitation of funds is inherent in the job description of a juvenile court judge. These judges are required to be leaders in their communities in determining needs and obtaining resources for at-risk children;³⁰ helping build a communitywide network that unites private and public sector efforts to provide attention and resources to at-risk children and families;³¹ and encouraging the development of community resources to serve homeless, truant, runaway, and “incorrigible” children.³²

The Advisory Committee comment to standard 5.40(b)(2) of the Standards of Judicial Administration states: “The juvenile court is an integral part of the justice system. It is only through the constant exertion of pressure to maintain resources and the continuous education of court-related personnel and administrators that the historic trend to minimize the juvenile court can be contained.” However, these imperatives must be carried out within the ethical parameters of the California Code of Judicial Ethics, including the restraints on soliciting members, funds, or engaging in other fundraising activities (canon 4C(3)(d)(i), (ii)).

Juvenile court judges may write letters in support of grant applications by organizations that aid children;³³ speak at a fundraiser for a CASA or other program for at-risk youth;³⁴ or appear in a video encouraging viewers to become CASA volunteers, which will be shown at a CASA fundraiser.³⁵ In addition, a juvenile court judge in the position of officer, director, trustee, or

²⁶ CJEO Oral Advice Summary 2019-031, *Extrajudicial Service as a Rotary District Youth Protection Officer* (2019), Cal. Supreme Ct. Com. Jud. Ethics Opns., p. 3.

²⁷ Cal. Judges Assn., *Judicial Ethics Update* (Feb. 1994), p. 4.

²⁸ Cal. Judges Assn., Formal Ethics Opn. No. 40, *Letters of Recommendation: Character Testimony* (Sept. 24, 1988), pp. 2–3 (such a letter would inject the prestige of office into the job application process and would serve to advance the private interest of another).

²⁹ Cal. Judges Assn., Formal Ethics Opn. No. 78, *Online Social Networking II: The Ethical Implications of Writing Online Reviews and of Using the Like Function on Social Network Platforms* (Jan. 2020), pp. 6–7.

³⁰ Cal. Stds. Jud. Admin., std. 5.40(e)(1).

³¹ *Id.*, std. 5.40(e)(5).

³² *Id.*, std. 5.40(e)(9).

³³ Cal. Judges Assn., Formal Ethics Opn. No. 73, *Judicial Letter Writing Supporting Grant Applications* (May 2017), pp. 4–6, 8.

³⁴ Cal. Judges Assn., Formal Ethics Opn. No. 75, *The Law, the Legal System, or the Administration of Justice: Community Involvement and Measures to Improve the Law* (June 2018), p. 8.

³⁵ Cal. Judges Assn., Formal Ethics Opn. No. 72, *Judicial Participation in Video Presentations* (2016), p. 5.

nonlegal advisor of a charitable, service, or civic nonprofit organization “may assist [the] organization in planning fundraising and may participate in the management and investment of the organization’s funds,” so long as they do not personally participate in the solicitation of funds or other fundraising activity (except private solicitation of funds from family members or other judges).³⁶ A judge may also solicit funds from an organization to fund a study of the county’s juvenile justice system, providing that it is not a public solicitation.³⁷

Juvenile court judges are not permitted to lend the prestige of their office for fundraising or membership solicitation, but they are allowed 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.³⁸ But juvenile court judges must proceed with caution and always consider whether their actions to drum up resources for the juvenile justice system are otherwise in line with their ethical obligations under the code.³⁹

There is also considerable overlap between the ethical rules on avoiding the appearance of impropriety, ex parte communications, public statements, lending prestige of the judicial office, advancing personal or pecuniary interests of the judge or another, soliciting funds and fundraising, engaging in permissible civic and political activity, and advocating for changes in the law, legal system, or administration of justice.

Advocating for Changes in the Law, Legal System, or Administration of Justice

As noted above, juvenile court judges are charged with general oversight and “vigorous and ongoing” improvements to system performance, including by making recommendations regarding civil procedure and the development of programs that provide assistance to children.⁴⁰ Judges in general are “in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice.”⁴¹ This is especially true for judges in the juvenile court. However, these contributions must not run astray of the other canons, including refraining from any political activity that may create the appearance of political bias or impropriety and the duty to uphold the independence, impartiality, and integrity of the judiciary.⁴²

The following are several examples of this tension between juvenile court judges’ affirmative duties and their ethical obligations: A presiding judge of the juvenile court is permitted to sign a letter to the California Legislature supporting a bill that would facilitate education benefits for

³⁶ Cal. Code Jud. Ethics, canon 4C(3)(a), (b) & (d)(i); Cal. Judges Assn., *Judicial Ethics Update* (Feb. 1994), p. 9.

³⁷ Cal. Judges Assn., *Judicial Ethics Update* (Nov. 1990), p. 1.

³⁸ Cal. Code Jud. Ethics, canon 4C(3)(d)(iv).

³⁹ CJEO Formal Opn. 2016-008, *Attending Political Fundraising or Endorsement Events* (2016), Cal. Supreme Ct. Com. Jud. Ethics Opns.

⁴⁰ Rothman et al., *California Judicial Conduct Handbook* § 11.3, p. 738.

⁴¹ Advisory Com. com., Cal. Code Jud. Ethics, canon 4B.

⁴² Cal. Code Jud. Ethics, canon 5.

foster youth.⁴³ A juvenile court judge may also publicly back a ballot measure to raise taxes to fund the construction of a juvenile hall or more generally to raise resources for the juvenile justice system.⁴⁴ In contrast, a judge may not sign a petition circulated by a children's rights organization to influence the Department of Children and Family Services and the dependency court.⁴⁵

As with all of the scenarios discussed above, when a judge engages in activity related to the law, the legal system, or the administration of justice, the judge must also contemplate “whether the activity upholds the integrity, impartiality, and independence of the judiciary (Canons 1 and 2A), whether the activity impairs public confidence in the judiciary (Canon 2), whether the judge is allowing the activity to take precedence over judicial duties (Canon 3A), and whether engaging in the activity would cause the judge to be disqualified (Canon 4A(4)).”⁴⁶

Juvenile court judges have a great deal of power and influence over the workings of juvenile justice systems, as well as how that system operates in the community. But as the saying goes, with great power comes great responsibility. Luckily, there are many resources available, and juvenile court judges can arm themselves with knowledge. At the end of the day, says juvenile court Judge Robert J. Trentacosta: “If you make decisions based on what is best for the youth and the community, you are on the right path.”

⁴³ Cal. Judges Assn., *Judicial Ethics Update* (Jan. 2016), p. 8.

⁴⁴ Cal. Judges Assn., *Judicial Ethics Update* (Feb. 1999), p. 8 (a judge may also chair the committee supporting the measure so long as the judge does not personally solicit, sign fund solicitation letters, or use the prestige of the judicial office to lend support to solicitation by others); *Judicial Ethics Update* (Feb. 1994), p. 7 (“However, a judge may not join a committee of law enforcement agencies to support an ordinance to implement a funding bill for the benefit of those agencies since such participation might undermine confidence in the impartiality of the judiciary”).

⁴⁵ Cal. Judges Assn., *Judicial Ethics Update* (Mar. 2001), p. 8.

⁴⁶ Cal. Code Jud. Ethics, Terminology, “Law, the legal system, or the administration of justice” (citing canons 4B (Commentary), 4C(1), 4C(1) (Commentary), 4C(2), 4C(2) (Commentary), 4C(3)(a), 4C(3)(b) (Commentary), 4C(3)(d)(ii), 4C(3)(d) (Commentary), 4D(6)(d), 4D(6)(e), 5A (Commentary), 5D, and 5D (Commentary)).