

Title	Communications With Corrections Officials (amend Cal. Code Jud. Ethics, canon 2B)
Summary	This proposed amendment would clarify the circumstances under which a judge may communicate with corrections officials. It would add the Board of Parole Hearings and the Office of the Governor as entities with which a judge may communicate, and provides that a judge may initiate communications with these entities if the judge presided over the underlying criminal case.
Source	Supreme Court Advisory Committee on the Code of Judicial Ethics
Staff	Mark Jacobson, 415-865-7898, mark.jacobson@jud.ca.gov
Discussion	<p>Currently, canon 2B(3) provides that a judge is not permitted to “initiate communications with a sentencing judge or a probation or corrections officer, but may provide them with information for the record in response to an official request.”</p> <p>The committee first considered whether this part of the canon should be clarified and expanded so that it applies to the Department of Corrections and Rehabilitation, which includes the Board of Parole Hearings (BPH), and the Governor, who is involved in clemency matters, in addition to probation departments. The committee concluded that a judge has an important role in determinations regarding parole and pardon requests if the judge presided over the underlying trial or some other aspect of the case.</p> <p>The committee was informed by staff from the BPH and the Governor’s Office that they routinely seek input from judges who presided over the cases. The BPH is required by statute to notify the judge and the attorneys involved in the case when the board is considering parole suitability, and the board must consider any information submitted by the judge or any other person. (Pen. Code, § 3042.) Regarding the Governor’s Office, when an application is made to the Governor for a pardon or commutation of sentence, the Governor may require the judge who presided over the trial or the prosecutor to submit a summary of the facts proved at the trial and any other facts related to the propriety of granting or denying the application, together with a recommendation. (Pen. Code, § 4803.)</p>

Because this input is welcomed and is authorized by law, the committee concluded there appears to be no reason to require an official request before a judge may send a letter to the Governor or the BPH. Indeed, there have been circumstances under which the trial court judge does not receive official notification of a request for a pardon or parole as required by statute. Therefore, the committee concluded that canon 2B(3) should be amended to add the BPH and the Governor's Office as entities with which a judge may communicate, and to clarify when a judge may initiate communications with corrections officials.

In April 2007, the committee circulated for comment proposed amendments to canon 2B(3) that would have added the BPH and the Governor's Office as entities with whom a judge may communicate, and would have provided that a judge may initiate communications with these entities under certain circumstances. The amendments provided that the judge must have served as a judge in the underlying proceeding or as counsel for one of the litigants. After considering comments, the committee decided not to recommend the proposed amendments to the Supreme Court. The committee concluded that only the judge who presided over the case should be permitted to initiate communications with corrections officials. This limitation prevents the appearance that the judge who had been an attorney in the proceeding was again acting as an advocate. In addition, Penal Code sections 3042 and 4803 appear to contemplate input from the judge who presided over the criminal case. Therefore, the committee concluded that the proposed amendments should be modified to permit a judge to initiate communications with the BPH or the Governor's Office only if the judge presided over the underlying criminal case or if the matter concerns a member of the judge's family. The modification removes language allowing a judge who served as counsel in the underlying case to initiate communications with the BPH or the Governor's Office.

The text of the proposed amendments to canon 2B(3) is attached.

Attachment

Canon 2B of the California Code of Judicial Ethics would be amended to read:

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) ***

(2) ***

(3) A judge shall not initiate communications with a sentencing judge or an official of a probation or corrections officer, but may provide them with information for the record in response to an official request. department, the Board of Parole Hearings regarding parole, or the Office of the Governor regarding pardon or commutation of sentence, but may provide them with information for the record in response to an official request. However, a judge may initiate such communication under the following circumstances or when authorized by law:

(a) The judge may initiate communications with the Board of Parole Hearings regarding parole if he or she served as the judge of the superior court before whom the prisoner was tried and convicted;

(b) The judge may initiate communications with the Office of the Governor regarding pardon or commutation of sentence if he or she was the judge of the court before which the conviction was had;

(c) A judge may initiate communications with an a probation or corrections officer official of a probation department, the Board of Parole Hearings regarding parole, or the Office of the Governor regarding pardon or commutation of sentence concerning a member of the judge's family, provided the judge is not identified as a judge in the communication.

ADVISORY COMMITTEE COMMENTARY

A strong judicial branch, based on the prestige which comes from effective and ethical performance, is essential to a system of government in which the judiciary functions independently of the executive and legislative

1 *branches. Judges should distinguish between proper and improper use of*
2 *the prestige of office in all of their activities.*

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

8 *As to the use of a judge's title to identify a judge's role in the*
9 *presentation and creation of legal education programs and materials, see*
10 *Commentary to Canon 4B. In contracts for publication of a judge's*
11 *writings, a judge should retain control over the advertising, to the extent*
12 *feasible, to avoid exploitation of the judge's office. As to the acceptance of*
13 *awards, see Canon 4D(6)(c) and Commentary.*

14 *This Canon does not afford judges a privilege against testifying in*
15 *response to any official summons.*

16 *See also Canons 3D(1) and 3D(2) concerning a judge's obligation*
17 *to take appropriate corrective action regarding other judges who violate*
18 *any provision of the Code of Judicial Ethics and attorneys who violate any*
19 *provision of the Rules of Professional Conduct.*

20 *This Canon does not preclude internal discussions among judges*
21 *regarding the application of substantive or procedural provisions of law to*
22 *any pending criminal or civil case.*

23 *The language in Canons 2B(3)(a) and (b) parallels the statutory*
24 *language in Penal Code sections 3042(a) and 4803, respectively.*

25
26 C. ***

Item SP08-03 Response Form

Title: Communications With Corrections Officials (amend Cal. Code Jud. Ethics, canon 2B)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

Please **write** or **fax** or [respond using the Internet](#) to:

Address: Ms. Camilla Kieliger,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102

Fax: (415) 865-7664 **Attention:** Camilla Kieliger

Internet: <http://www.courtinfo.ca.gov/invitationstocomment/commentform.htm>

DEADLINE FOR COMMENT: 5:00 p.m., Friday, February 15, 2008

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee.
All comments will become part of the public record of the council's action.*