

Supreme Court Advisory Committee on the Code of Judicial Ethics

350 McAllister Street, San Francisco, California 94102-3688

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INVITATION TO COMMENT

SP12-01

Title	Action Requested
Proposed Amendments to Canon 3E(2) of the Code of Judicial Ethics	Review and submit comments by February 21, 2012
Proposed by	Proposed Effective Date
Supreme Court Advisory Committee on the Code of Judicial Ethics Hon. Richard D. Fybel, Chair	Concurrent with other amendments to the Code of Judicial Ethics
	Contact
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Summary

The Supreme Court Advisory Committee on the Code of Judicial Ethics (committee) seeks public comment on the proposed adoption in canon 3E(2) of new disclosure requirements pertaining to campaign contributions to candidates for judicial office. The committee previously requested public comment on draft amendments addressing this topic in May 2011. Based on the comments, the committee has now revised the proposed language with a view toward simplifying the disclosure requirements consistent with the Political Reform Act (Gov. Code, § 81000 et seq.) and Code of Civil Procedure section 170.1(a)(9).

Discussion

The proposed adoption of new canon 3E(2)(b) is based on recent legislation (Code Civ. Proc., § 170.1(a)(9)) that requires disclosure of campaign contributions from a party or lawyer appearing before a judge in an amount that would be reportable under the Political Reform Act (Gov. Code, § 84211(f)). That amount currently is \$100 or more. Code of Civil Procedure section 170.1(a)(9)(C) provides that “[t]he manner of disclosure shall be the same as that provided in Canon 3E of the Code of Judicial Ethics.”

This legislation was, in turn, based on a recommendation by the Judicial Council’s Commission for Impartial Courts (CIC). In the CIC’s view, mandatory disclosure by judges of all contributions of \$100 or more would enhance public trust and confidence in an impartial judiciary without the need for contribution limits. For example, if the public knows that an affected litigant will be told of—and presumably have the chance to act on—a contribution made

to a judge by the litigant's opponent or another interested party, the public will be assured that money given to judges will not result in biased decisions.

In an effort to effectuate section 170.1(a)(9)(C), the committee circulated for public comment a draft canon addressing disclosure of campaign contributions made (1) directly to the candidate or the candidate's campaign committee, and (2) indirectly to a third party either in support of the candidate or in opposition to the candidate's opponents (known as "independent expenditures"). The draft canon also addressed logistical issues such as how, when, and for how long the disclosures must be made.

The committee reviewed several comments stating that the proposed disclosure requirements were too complicated, burdensome, and costly. After discussing the comments, the committee decided not to recommend the original version of the proposed amendments to the Supreme Court. The revised version still requires a judge to disclose contributions on the record, and it states that a judge must make reasonable efforts to obtain current contribution information. But the committee has eliminated the requirement that judges disclose all independent expenditures of which they have actual knowledge. Instead, the committee has noted in the commentary that a judge may be required under canon 3E(2)(a) to disclose independent expenditures of which the judge is aware if the contributions to a third party are relevant to the question of disqualification.

As to the method of disclosure, the committee proposes several changes to the original version that was circulated for public comment. The revised version clarifies that a judge may satisfy the disclosure requirement by either (1) stating on the record the name of the contributor, the cumulative amount of that contributor's contributions, and the date(s) of the contribution(s), or (2) posting a written list of contributions on the door or wall outside the courtroom and notifying the litigants that such a list is posted. The revised version also provides that if the judge chooses to comply by posting a list, the judge must set forth certain specified information in the list. In addition, the new version provides prefatory language for the notice.

As to updating the list, the substantive provisions have not been changed, but the committee has changed the language slightly to clarify that judges must update the list weekly until 16 days before the election. During that final 16-day period, the disclosures must be updated daily. This is consistent with state reporting requirements for candidates for public office.

Regarding how long a trial court judge must continue to disclose, the committee has modified the language to provide that disclosures must be made at the earliest reasonable opportunity, but no later than one week after receipt of the first contribution. Then, as in the original proposal, the required disclosure period would continue for a minimum of two years after the date on which the judge takes the oath of office or two years from the date of the contribution, whichever is later. This time period is consistent with California Judges Association Formal Opinion #48.

The proposed commentary explains the purpose of the disclosure requirement. It also states that if a judge chooses to disclose by posting a list, the judge must disclose any new contributions known to the judge that were received since the posting of the last list.

As noted above, the commentary cautions that a judge may be required to disclose known independent expenditures on the judge's behalf under canon 3E(2)(a). That part of the commentary sets forth additional information that may require disclosure under canon 3E(2)(a), including a pledge to make a contribution, the relationship or role of a party or lawyer to the campaign, or substantial aggregate contributions from lawyers in one law office or firm.

In the revised version, the committee suggests that a judge keep a copy of all written lists posted pursuant to canon 3E(2)(b)(ii).

Finally, as in the original version, the commentary notes that a judge may have disqualification obligations under Code of Civil Procedure section 170.1.

Canon 3 of the California Code of Judicial Ethics would be amended to read:

CANON 3

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

A.–D. ***

E. Disqualification and Disclosure

(1) A judge shall disqualify himself or herself in any proceeding in which disqualification is required by law.*

(2) In all trial court proceedings, a judge shall disclose on the record as follows:

(a) Information relevant to disqualification

A judge shall disclose information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification.

(b) Campaign contributions in trial court elections

(i) Information required to be disclosed

A judge who is or was a candidate for judicial office in a trial court election shall disclose any contribution from a party, individual lawyer, or law office or firm, in a matter that is before the judge that is required to be reported to the Fair Political Practices Commission under Government Code section 84211(f)(1), (5), and (6), even if the amount would not require disqualification. Pursuant to these provisions, the disclosure shall consist of the name of the contributor, the cumulative amount of the contributor's contributions, and the date(s) of the contribution(s). The judge shall make reasonable efforts to obtain current information regarding contributions received by his or her campaign and shall disclose the required information on the record.

(ii) Methods of disclosure

The judge shall disclose the required information on the record to the parties or the lawyers in the matter by stating:

(a) the required information, or

1 (b) that a written list of all contributions to the judge's campaign reported to the
2 Fair Political Practices Commission is posted outside the courtroom and, if
3 feasible, on the court's website.
4

5 If the judge elects to make the disclosure by reference to the list of contributions, the
6 judge shall cause a list containing the required information, alphabetized by contributor
7 name, to be posted prominently on the door or wall outside the judge's courtroom and, if
8 feasible, on the court's website. The list shall substantially contain the following
9 prefatory language:

10
11 NOTICE TO ALL PARTIES AND LAWYERS HAVING MATTERS BEFORE
12 JUDGE/SUBORDINATE JUDICIAL OFFICER _____ (name)_____

13
14 JUDGE/SUBORDINATE JUDICIAL OFFICER _____ (name)_____ IS/WAS A
15 CANDIDATE FOR OFFICE OF JUDGE OF THE _____
16 SUPERIOR COURT IN THE ELECTION TO BE HELD/HELD
17 _____ 20_____.
18

19 Canon 3E(2)(b) of the California Code of Judicial Ethics and section 170.1(a)(9)
20 of the California Code of Civil Procedure require judicial officers to disclose all
21 contributions of \$100 or more to the judicial officer's campaign for election to the
22 superior court made by a party, individual lawyer, or law office or firm, in a matter
23 before that judicial officer. The list below identifies, in alphabetical order, the
24 names of contributors who have made a cumulative contribution of \$100 or more
25 to the judicial officer's campaign for the election held/to be held _____ 20
26 ____, followed by the amount of the contribution and the date(s) of the
27 contribution(s).
28

29 This list was last updated on _____ 20_____.
30

31 _____
32 [signature of judge/subordinate judicial officer]
33

34 (iii) Timing of disclosures
35

36 The judge shall update the written list at least once per week until 16 days immediately
37 preceding the election in which the judge is a candidate. During that 16-day period, the
38 list shall be updated once per court day. Following the election, the list shall be updated
39 weekly if a contribution requiring disclosure has been made during that week. Where the
40 candidate was not a judge preceding the election in which he or she was a candidate, the
41 list shall be posted on the first day the judge presides in a courtroom.
42

43 Disclosures shall be made at the earliest reasonable opportunity, but no later than one

1 week after receipt of the first contribution, and continue for a period of two years after
2 the candidate takes the oath of office, or two years from the date of the contribution,
3 whichever event is later.

4
5 ADVISORY COMMITTEE COMMENTARY

6 Allowing the judge the option of disclosing campaign contributions by notifying
7 the parties and lawyers on the record of the posting of a written list is designed to assure
8 that litigants and lawyers appearing before a judge during and after a judicial campaign
9 have easy access to information about campaign contributions that could affect the
10 fairness and impartiality* of the judge without requiring the judge to make extensive
11 disclosures in every instance in open court.

12 If the judge chooses to make campaign contribution disclosures by posting a list,
13 the judge shall also disclose on the record any new contributions known to the judge that
14 were received since the posting of the most recent list.

15 In addition to the disclosure obligations set forth in Canon 3E(2)(b), a judge must
16 make any other disclosures relating to the judge's election campaign that are required by
17 Canon 3E(2)(a), of which the judge is aware, such as substantial contributions by a
18 party, ~~or~~ lawyer, or law office or firm appearing before the judge made to a third party in
19 support of the judge or in opposition to the judge's opponent, a pledge of a contribution,
20 the relationship or role of the contributing party, lawyer, or law office or firm to the
21 campaign, or substantial aggregate contributions from lawyers in one law office or firm.
22 Canon 3E(2)(b) does not eliminate the obligation of the judge to recuse where the nature
23 of the contribution or other circumstance requires recusal under Code of Civil Procedure
24 section 170.1, and particularly section 170.1(a)(6)(A).

25 The judge should retain a copy of all written lists posted pursuant to Canon
26 3E(2)(b)(ii).

27
28 (3)–(5) ***

Item SP12-01 Response Form

Title: Proposed Amendments to Canon 3E(2) of the Code of Judicial Ethics

- 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: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: www.courts.ca.gov/policyadmin-invitationstocomment

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DEADLINE FOR COMMENT: 5:00 p.m., Tuesday, February 21, 2012
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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.