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State Bar will check ethics of lawyers running for judgeships

By Don J. DeBenedictis

The State Bar intends to examine the campaign materials of every lawyer who ran for judge this year to ensure none violated attorney ethics rules during their races.

"We need to make sure that lawyers know their duty to obey the Rules of Professional Conduct does not apply only within the courtroom," State Bar Executive Director Joseph L. Dunn said Wednesday evening in a talk to an Orange County bar group.

"The First Amendment does not relieve a lawyer in a campaign" of his duties under the ethics rules, Dunn said.

'I think it's always good to make sure candidates express truthfully their qualifications.' - Tara M. Flanagan

He said the first-ever investigations should begin soon after November balloting concludes. More than 60 lawyers ran for judicial posts in June.

The idea for the project comes from State Bar President Jon B. Streeter, who said there have been a few complaints about recent campaigns, although he would not identify any.

Calling the integrity of California judicial elections "an issue of great importance," Streeter said he sees "a need for stepped-up vigilance to ensure those lawyers who run are playing by the rules."

Streeter said the bar is just beginning its planning and hasn't yet determined the process it will use.

Dunn said he believes the bar's vetting of campaign materials will be "very controversial," but two recent candidates said they support the plan.

"I think it's a terrific idea," said Andrew R. Wiener, a former member of the city ethics commission in Oakland who lost a June run for a judgeship in Alameda County. "It seems to me there needs to be more active oversight of judicial elections." He added he would support requiring candidates to disclose detailed resumes, similar to applying for a gubernatorial appointment to the bench.

Tara M. Flanagan, the Oakland family lawyer who won the Alameda post, also endorsed the bar proposal. "I think it's always good to make sure candidates express truthfully their qualifications," she said.

Dunn and Streeter said lawyer candidates might draw scrutiny for misstating their qualifications or making false statements about opponents. A lawyer also could run afoul of the rules by promising to rule a particular way in a certain type of case or by showing disrespect to the courts or a judge.

Under a 1997 amendment to the bar Rules of Professional Conduct, lawyers running for judgeships have to obey the same ethics rules as judges in elections.

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Friday, September 21, 2012

Criminal

San Francisco judge hits technology company with massive fine for fixing prices

A federal judge ordered AU Optronics Corp. to pay a \$500 million fine for its role in a price-fixing scheme that inflated the cost of liquid crystal display screens, matching the largest fine ever against a company in an antitrust case.

Judges and Judiciary

State Bar will check ethics of lawyers running for judgeships

The State Bar intends to examine the election campaign materials of every lawyer who ran for judge this year to in search of ethical violations.

Alternative Dispute Resolution

John R. DiCaro

Former medical malpractice lawyer John R. DiCaro says ADR reduces 'mortal combat' of the legal system

Litigation

Judge signals he'll dismiss film financier's suit against firms

A Los Angeles Superior Court judge has indicated he will dismiss film financier David Bergstein's suit against two law firms.

Mergers & Acquisitions

Dealmakers

A roundup of recent mergers and acquisitions and financing activity and the lawyers involved.

Personal Injury & Torts

Plaintiffs' lawyer sued in bathroom spying flap

A bizarre case involving a veteran plaintiffs' lawyer who **LEGALLY SPEAKING**  restrooms has taken another litigious turn.

Large Firms

Environmental lawyer joins Alston & Bird from Manatt

Atlanta-based Alston & Bird LLP has added a new partner to its environmental and land development practice group at the firm's Los Angeles office, the firm announced Thursday.

Solo and Small Firms

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Canon 5 of the Code of Judicial Ethics orders judges and judicial candidates to "refrain from inappropriate political activity."

Under the canon, a candidate may not make promises about how he or she would rule on cases or "knowingly, or with reckless disregard for the truth, misrepresent the identity, qualifications, present position, or any other fact concerning the candidate or his or her opponent."

While the State Bar has jurisdiction over the ethics of lawyers running for the bench, the Commission on Judicial Performance oversees judges, including former lawyers who have taken the bench, according to Victoria B. Henley, the commission's director.

Henley said the commission has disciplined roughly 30 judges for campaign activity over the years, including removing Santa Barbara Judge Diana R. Hall from the bench for knowingly filing false campaign disclosure statements and publicly admonishing Butte County Judge Stephen E. Benson for violating campaign finance laws while a lawyer candidate.

Henley said she supports the bar's plan. "It's really not fair that judges get disciplined, but lawyers don't," she said. "It gives lawyers the feeling they get a pass here."

But a lawyer discipline expert and an election law expert questioned how far the State Bar could reach to enforce ethics rules in an election campaign. Although Dunn said the First Amendment doesn't trump the rules for lawyers, the U.S. Supreme Court ruled 10 years ago that a judge's free speech rights can overcome judicial rules. In *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), the justices struck down a rule that prohibited judicial candidates from taking stands on controversial issues.

Pasadena discipline defense attorney Michael E. Wine said a State Bar Court panel ruled in 1997 that a lawyer cannot be disciplined for making disparaging, out-of-court statements about judges. But he said he does not recall any lawyers being disciplined for campaign activities.

Richard L. Hasen, an expert in election law at UCI School of Law, said courts have been split on how much government can police false election statements. If the bar attempted to discipline a lawyer candidate for false or disrespectful campaign statements, Hasen said in an email, "It would not surprise me to see a lawyer raise a First Amendment defense, and I do not know how well such a challenge would fare."

But Dunn and Streeter said it's important the bar try. "We want lawyers to know that we have jurisdiction over their campaign behavior," Dunn said.

Streeter added, "We want to send the message very clearly that we are watching."

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<h1 style="margin: 0;">LEGALLY SPEAKING</h1> 		Conversations with the most interesting lawyers in the world
 <p>OUR GUEST: HAROLD KOH Harold Hongju Koh, Legal Adviser of the Department of State since June 2009, is one of the country's leading experts on international law. Since 1985 he has taught at Yale Law School, where he is the Martin R. Flug '55 Professor of International Law (on leave) and where he served for five years as Dean. Koh has authored or co-authored eight books, published more than 170 articles, testified often before Congress, and litigated numerous cases involving international law.</p>	<p>AUGUST 30TH 5:30 p.m. UC Hastings Law</p> <p>FREE ADMISSION CLE credit available, inquire at location.</p> <p>more info ..</p>	

atmosphere and democratic culture among its lawyers and grooming younger attorneys to assume future leadership roles in the firm.

Law Practice

Median first-year associate salaries dip to \$145,000

The national median salary for first-year associates at law firms with more than 700 lawyers sank to \$145,000 in 2012 for the first time since 2007, according to a report released Thursday by the National Association for Law Placement Inc.

Government

Court projects face further budget pruning

In order to conserve enough money to build one or more frozen courthouse projects, a subcommittee of the Court Facilities Working Group is seeing what costs projects have left that can still be trimmed

Congressman introduces legislation to kill new LA federal courthouse

The bill says any project that does not break ground by Nov. 1 and doesn't require federal judges to share courtrooms would have to get reapproved by Congress.

Law Practice

Dewey settlement plan falls under attack

Detractors took their shots in court at a potential \$71.5 million partner settlement plan during the latest Dewey & LeBoeuf LLP bankruptcy hearing held Thursday in New York.

U.S. Court of Appeals for the 9th Circuit Divided 9th Circuit panel approves Facebook privacy settlement

A divided federal appeals court panel approved a \$9.3 million class action settlement between Facebook Inc. and users angered at alleged intrusions on their privacy by the site's now-defunct Beacon feature on Thursday.

Judges and Judiciary

Timing running out to confirm judges

The Administrative Office of the U.S. Courts has designated all three judge vacancies in the Central District as emergencies because of the substantial caseloads. By **Carl Tobias** of the University of Richmond

Perspective

Review: 1998 production hits home in 2012

Written in 1997 and first produced in Toronto in 1998, the play's similarity to the August shootings in Milwaukee is eerie. By **Alan Friedenthal**

Letter to the Editor

Mediation should never be compelled

Contractually obligating parties to mediate serves only the ADR industry, not the parties. By **Louis A. Lipofsky**