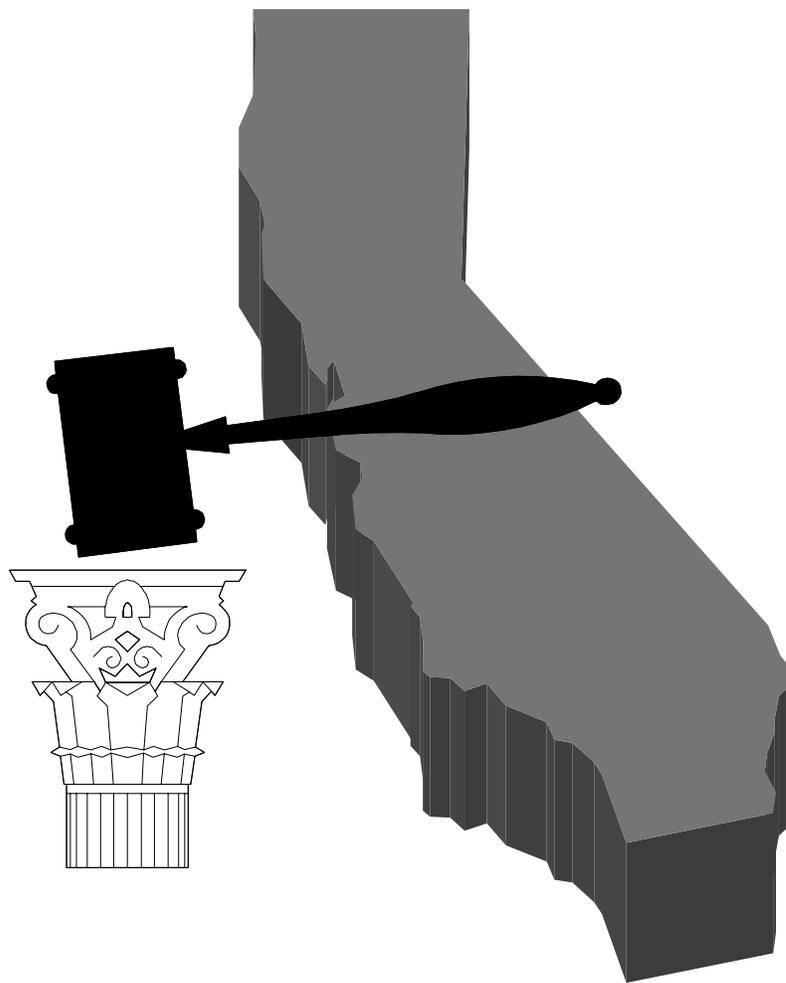


**State of California
Department of Industrial Relations**

**WORKERS' COMPENSATION ETHICS
ADVISORY COMMITTEE**



**2001
ANNUAL REPORT**

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COMMITTEE MEMBERSHIP

C. GORGON TAYLOR, ESQ.

Acting Chair

VICTOR BEAUZAY, ESQ.

Attorney, Workers' Compensation Law

MR. JOSEPH MARKEY

Association Manager,
California Self-Insurer's Association

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Chief Operating Officer
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Workers' Compensation Appeals Board
Santa Ana

MICHAEL McCLAIN, ESQ.

California Workers' Compensation
Institute

Position for Committee Member
Representing Organized Labor is
Currently Vacant

Position for Committee Member From
Outside the Workers' Compensation
Community is Currently Vacant

COMMITTEE STAFF

DESTIE LEE OVERPECK, ESQ.

DWC Staff Attorney

MS. LAURA ZARRY

Administrative Assistant



1. THE ETHICS ADVISORY COMMITTEE: A PROFILE



1. The Ethics Advisory Committee: A Profile

A. The Committee's Functions

The Workers' Compensation Ethics Advisory Committee (EAC) is a state committee independent of the Division of Workers' Compensation, that is charged with reviewing and monitoring complaints of misconduct filed against workers' compensation administrative law judges. As civil servants, workers' compensation administrative law judges are not subject to review by the California Commission on Judicial Performance, the agency which is responsible for investigating misconduct complaints directed at judges serving on the Superior and Appellate courts. The EAC was established on December 1, 1995, and held its initial meeting in April 1996. The Committee's authority and duties are set forth in Title 8, California Code of Regulations, Sections 9720.1 through 9723.

The Committee holds its meetings at regular intervals to review complaints of judicial misconduct and to recommend to the Administrative Director of the Division of Workers' Compensation (DWC) if a complaint warrants a formal investigation by the Administrative Director's staff. When an investigation is conducted by the Administrative Director in reliance on the Committee's recommendation, both the Committee and complainant are informed of the investigation's findings and of any disciplinary or other remedial action pursued.



B. Committee Membership

Pursuant to 8 CCR 9722, the Ethics Advisory Committee is composed of nine members who are appointed by the DWC Administrative Director for four year terms.

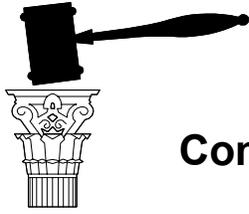
The Committee's composition is reflective of the various constituencies within the California workers' compensation community, and is composed of the following members:

- a member of the public representing organized labor,
- a member of the public representing insurers,
- a member of the public representing self-insured employers,
- an attorney who formerly practiced before the Workers' Compensation Appeals Board and who usually represented insurers or employers,
- an attorney who formerly practiced before the Workers' Compensation Appeals Board and who usually represented applicants (injured workers),
- a presiding judge,
- a judge or retired judge,
- and two members of the public outside the workers' compensation community.

Committee member C. Gordon Taylor, Esq., a former Chairman of the Workers' Compensation Appeals Board, is currently the Acting Chair of the Committee.

The EAC holds meetings approximately four times each year at the DWC Headquarters located at 455 Golden Gate Avenue, Ninth Floor, San Francisco, California, 94102. While EAC meetings are open to the public, when the Committee engages in the review and discussion of actual complaints, the Committee meets in executive session, and that portion of the proceedings are closed to the public.

The Committee is assisted in carrying out its functions by an attorney and secretary on the staff of the Division of Workers' Compensation.



2. Ethical Standards For Workers' Compensation Administrative Law Judges



2. Ethical Standards for Workers' Compensation Administrative Law Judges

Pursuant to Labor Code section 123.5, workers' compensation administrative law judges are appointed by the Administrative Director from an eligibility list of attorneys who have met all qualifications imposed by the State Personnel Board, and who have received passing scores on a competitive civil service examination. Unlike judges in the Superior Courts, who are appointed or elected for specific terms, workers' compensation administrative law judges are designated as non-exempt civil service employees who may only be removed for cause under applicable civil service laws. The terms and conditions of employment for non-supervisory judges is governed by a collective bargaining agreement entered into between the State of California and the California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (CASE). Although previously referred to as "workers' compensation referees", in 1998 the Legislature amended Labor Code section 27, and adopted the new title of "workers compensation administrative law judge", effective January 1, 1999. This change of title did not impact in any manner on the ethical obligations to which judges must adhere.

Currently, workers' compensation administrative law judges must comply with ethical standards imposed by three separate legal authorities: (1) The Code of Judicial Ethics, (2) The Political Reform Act of 1974, and (3) the DWC Ethics Regulations.

A. Code of Judicial Ethics

Under Labor Code section 123.6, workers' compensation administrative law judges are required to adhere to the Code of Judicial Ethics (CJE) (previously entitled the California Code of Judicial Conduct). The CJE was formally adopted by the California Supreme

Court on January 16, 1996. The CJE is divided into six separate canons which address issues such as conflicts of interest, disqualification and recusal, prohibited financial and political activities, ex parte communications with litigants, and judicial conduct towards litigants and court staff.

B. Political Reform Act

Title 8, California Code of Regulations, Section 9721.2(a) provides that no judge "may accept any gift, honorarium or travel that is forbidden to legislators under the Political Reform Act of 1974."

In 1974, California voters approved Proposition 9, which enacted the Political Reform Act of 1974 (codified in Sections 81000, Et Seq. of the Government Code). In 1990, the Legislature expanded the Political Reform Act, by enacting Government Code sections 89500 to 89503.5, which mandated broad restrictions on receipt of honoraria, gifts and travel by judges, elected state and local government officials, and members of specific state commissions. Under Government Code section 89502, payments cannot be accepted for giving speeches or attending conferences, conventions and social events (exceptions were made for activities connected with teaching and the practice of a profession). In addition, Government Code section 89503 prohibits the acceptance of "gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars." Political Reform Act provisions are enforced by the Fair Political Practices Commission.

In compliance with the Political Reform Act, all workers' compensation administrative law judges must file an annual Statement of Economic Interests with the Fair Political Practices Commission.

C. DWC Ethics Regulations

In the 1993, the California Legislature enacted comprehensive workers' compensation reform legislation. One significant component of the reform legislation was Assembly Bill 1252, which amended Labor Code section 123.6 and directed the DWC Administrative Director to adopt ethics regulations which “[t]o the extent possible ... shall be consistent with the procedures established by the Commission on Judicial Performance for regulating the activities of state judges, and, to the extent possible, with the gift, honoraria, and travel restrictions on legislators contained in the Political Reform Act of 1974.” In addition, the reform legislation directed the Administrative Director to require workers' compensation administrative law judges to participate in continuing education, to include courses in ethics and conflicts of interest issues, to further their effectiveness as judges (Labor Code section 5311.5).

In compliance with the 1993 revisions to Labor Code section 123.6, the Administrative Director adopted regulations which established the Ethics Advisory Committee and mandated strict ethical standards for workers' compensation administrative law judges. The ethics regulations, which became effective December 1, 1995, are contained in Title 8, Code of California Code of Regulations, Section 9720.1 et seq.

The ethical standards contained in the DWC ethics regulations are actually more stringent than the standards imposed on Superior Court judges. Title 8, California Code of Regulations, Section 9721.2 states that:

“[N]o judge may accept any gift, payment, honorarium, travel, meal or any other thing exceeding five dollars in value, the cost of which is significantly paid for by attorneys who practice before the Workers' Compensation Appeals Board or by others whose interest have come or are likely to come before the Board, without first obtaining the written approval of the administrative director”

In order to preclude any uncertainty, Section 9721.2 defines, “others whose interests have come or are likely to come before the Board” to include, but not be limited to:

“[A]ny person or entity which is or has been a party or lien claimant in a workers’ compensation proceeding, represents a party or lien claimant, provides education, consulting or other services relating to workers’ compensation, [or] otherwise participates in the workers’ compensation adjudicatory process”

The practical impact of Section 9721.2 is broad and far reaching, since a broad range of activities are precluded. Under Section 9721.2, a judge may not receive an honorarium for delivering a speech to an organization composed of claims administrators or workers’ compensation attorneys. Equally prohibited would be accepting tickets to an athletic event from an insurance carrier’s attorney, gifts of vacation travel from an industrial medical group, or accepting complimentary meals and entertainment from an language interpreting firm.

D. Requests to the Administrative Director for Approval of Gifts, Travel, Meals and Honoraria

Labor Code section 123.6(b) provides that:

“Honoraria or travel allowed by the administrative director or otherwise not prohibited by this section in connection with any public or private conference, convention, meeting, social event, or like gathering, the cost of which is significantly paid for by attorneys who practice before the board, may not be accepted unless *the administrative director has provided prior approval in writing to the workers’ compensation judge* allowing him or her to accept those payments” (emphasis added).

The ethics regulations promulgated by the Division of Workers' Compensation to implement Labor Code section 123.6(b) address not only honoraria and travel, but specifically provide that judges may not accept any *gift, meals or any other thing exceeding five dollars in value* if the item was paid for by attorneys who practice before the Workers' Compensation Appeals Board. It should be emphasized that besides attorneys, Section 9721.2 of the ethics regulations also prohibits judges from accepting gifts, meals, travel, etc. from "others whose interests are likely to come before the Board." Hence, travel, gifts, meals, etc. offered to judges by physicians, medical groups, interpreters, and vocational rehabilitation counselors exceeding five dollars in value cannot be accepted by a judge unless prior written approval has been obtained from the Administrative Director.

Section 9721.2(c) of the ethics regulations provides for exceptions to the prior written approval requirement in certain enumerated situations. A judge is not obligated to obtain prior written approval to accept: (1) Gifts or other things of value received from a family member who does not appear before the judge, (2) "ordinary, modest social hospitality in a private home, or attendance at a wedding, graduation or religious ceremony", or (3) payments, "including a division of attorney's fees", received by the judge from a former employer for services performed before the judge was appointed. In addition, a judge does not require prior approval to engage in labor union activities.

In 2001, the Administrative Director processed a total of 81 requests for advisory ethics opinions or for written approvals to receive gifts, teaching fees, honoraria, or to speak at an educational seminar. The majority of these requests were processed by the Administrative Director within three working days of receipt.

The most common request submitted by DWC employees to the Administrative Director during 2001, sought approval to be a speaker or panelist at an educational seminar or

convention sponsored by an organization within the workers' compensation community. In these situations, no honoraria were offered the employees.

The second most frequently encountered request sought advice on the application of the Code of Judicial Ethics or the DWC ethics regulations to a particular situation. Many judges requested guidance on disclosure and recusal requirements. In addition, numerous approval requests were submitted seeking approval to receive gifts of educational materials, attend educational seminars or courses on a tuition waiver basis, or to accept invitations to social functions hosted by persons or groups within the workers' compensation community.

E. Advisory Opinions Issued by the Administrative Director:

Section 9723(f) grants the Administrative Director authority to issue advisory opinions, on a discretionary basis, in response to a request from a workers' compensation administrative law judge or other interested person concerning the application of the Code of Judicial Ethics or the DWC ethics regulations to a specific situation.

In January 1997, the Administrative Director released three advisory opinions on his own initiative informing the workers' compensation community of the Division's ethics policies. The first advisory opinion defined those DWC employees performing "quasi judicial duties" who would be required to comply with the ethics regulations. The second advisory opinion addressed policies towards judges who self-publish books or who are owners of companies that publish their books. The third advisory opinion, which was issued with the concurrence of the Ethics Advisory Committee, addressed DWC policies regarding judges accepting teaching fees, travel expenses, meals and complimentary admission to educational seminars.



3. Complaint Procedures



3. Complaint Procedures

A. Filing a Complaint

Any person may file a complaint with the Ethics Advisory Committee. Although the Committee requires that complaints be presented in writing, the Committee will accept anonymous complaints.

Under Title 8, California Code of Regulations, Section 9723(e), no civil action or adverse employment action may be initiated or maintained against a person based on statements made to the Ethics Advisory Committee, or to the Administrative Director and his staff, during the course of an ethics investigation. Persons aggrieved by the conduct of a workers' compensation administrative law judge are not limited to, or required to pursue, a complaint before the EAC. Because many individuals prefer to present their particular complaints to the local presiding judge directly responsible for supervising a judge, Section 9722.1(a) of the ethics regulations provides that “[n]othing in these regulations prohibits any person from complaining directly to a presiding judge or to the administrative director. The presiding judge or the administrative director may, but is not required to, refer such complaints to the Committee.”

Examples of misconduct by a judge which may be properly presented to the Committee include: Prohibited ex parte communications with litigants, excessive delays in issuing decisions, a failure by the judge to disclose to the parties a financial interest in a case, expressions of racial or gender prejudice, displays of harassment, profanity or rudeness towards litigants, accepting gifts or favors from litigants, and intoxication while performing judicial duties.

The EAC has adopted an official complaint form for use by the public, and a sample is contained in the appendix to this report. While use of the complaint form is not mandatory, its use is encouraged since the form contains helpful examples of judicial misconduct, and it advises complainants that a decision by a judge which contains legal error does not constitute an ethical violation. Because a complaint can ultimately result in an adverse personnel action being initiated against a judge, the complaint form contains a notice advising complainants that it is unlawful to knowingly make a false or fraudulent material statement.

To further assist persons who may have complaints of misconduct involving other individuals within the workers' compensation system, the complaint form provides the names and addresses of those regulatory agencies responsible for investigating complaints of misconduct involving attorneys, claims administrators, Qualified Medical Evaluators, and other physicians.

Generally, a Committee case is opened with a letter from an injured worker, an attorney, or lien claimant who has been a party to a proceeding before the Workers' Compensation Appeals Board. After a complaint is received, the Committee's staff attorney reviews the complaint to ascertain if it concerns a workers' compensation administrative law judge or other DWC employee. While Labor Code section 123.6 only required the Administrative Director to adopt ethics regulations for the Division's judges, the ethics regulations which were ultimately adopted are more encompassing and define the term "referee" to include "all persons performing judicial or quasi-judicial duties" (8 CCR 9720.2).

In January 1997, the Administrative Director issued an Advisory Opinion, which defined those DWC employees who would be considered "judges" for purposes of the ethics regulations. It was determined that, due to the quasi-judicial nature of their job duties, rehabilitation consultants, DWC compliance officers (auditors), and DWC staff counsel would be required to comply with the ethics regulations.

Although workers' compensation compliance officers (auditors) and rehabilitation unit consultants must adhere to the Division's ethics regulations since they perform "quasi-judicial" duties, the EAC has limited its focus to reviewing complaints involving the conduct of judges only. Accordingly, any complaints alleging misconduct on the part of auditors or rehabilitation unit consultants are forwarded to the Presiding Judge in the office where the employee is posted.

All complaints concerning judges are entered in the official log and assigned a case number and file folder. The complainant is then advised in writing that his or her complaint has been received, and that it will be presented to the Committee at the next scheduled meeting. The written reply informs the complainant of the history and functions of the EAC, and further advises that follow-up correspondence will be sent explaining the Committee's recommendation.

Every complaint received by the EAC which involves allegations of misconduct by a judge is formally reviewed by the Committee. In order to assure objectivity in its deliberations and recommendations, the Committee has adopted a policy requiring that the names of the complainant, the judge in question, as well as the specific WCAB office where the alleged misconduct occurred, be expunged from the complaints reviewed at each meeting.

As in all prior years since the inception of the EAC, the majority of complaints received during 2001, were submitted by injured workers. Numerous injured workers addressed their dissatisfaction with the decision reached by the judge concerning the amount of workers' compensation benefits to which they were entitled. Additionally, many complaints focused on the alleged misconduct of attorneys, claims administrators, and physicians. Because a significant number of injured workers submit complaints that allege legal or factual errors by judges, the information flyer furnished with the EAC complaint form reminds complainants that legal errors made by judges do not constitute

judicial misconduct (Canon 1, Code of Judicial Ethics). Complainants alleging legal errors are further advised to seek assistance concerning the filing of a timely Petition for Reconsideration.

Unfortunately, many complaints contain conclusory statements and lack an adequate discussion of the circumstances surrounding the alleged misconduct. Moreover, few complaints furnish supporting evidence of misconduct. Conclusory and unsubstantiated complaints alleging that a judge "does not give employers a fair day in court " or that the judge "conspired with the insurance adjuster to deny me benefits" are generally not helpful to the Committee.

All complaints which fail to allege facts that might constitute judge misconduct, are forwarded to the Administrative Director with a recommendation that no further action be taken on the complaint. The complainant is then advised in writing that the Committee has considered the complaint and, inasmuch as no misconduct was either alleged or established, the Committee has decided that no further action is appropriate.

B. Investigation by the Administrative Director

Where a complaint makes allegations, which if true would constitute misconduct by a judge, the Committee will recommend that the Administrative Director conduct an investigation. Should a complaint substantially allege criminal conduct, invidious discrimination, sexual harassment, or other serious acts that might require immediate action, it is referred to the Administrative Director on a priority basis. Normally, the investigation of a complaint is conducted by the DWC regional manager responsible for the WCAB district office where the judge in question is employed. The course of the investigation is monitored by the DWC Assistant Chief. During the investigation, the WCAB case file may be reviewed, witnesses may be interviewed and statementized, and additional information may be solicited from the complainant. Should the investigation disclose facts establishing improper, fraudulent, or unprofessional conduct on the part of

other parties to the workers' compensation case, such as an attorney or physician, the findings are reported to the State Bar of California, the Medical Board, or other appropriate disciplinary forum.

Pursuant to Section 9722.1(f) of the ethics regulations, the Administrative Director is required to inform a judge of the nature of a complainant's allegations, and afford the judge the opportunity to submit a response. As provided by Government Code section 19574.5, the Administrative Director has the option of placing a judge on leave of absence for up to 15 days during the pendency of the investigation should the complaint allege misappropriation of public funds or property, drug addiction, immorality, or "acts which would constitute a felony or a misdemeanor involving moral turpitude." Any disciplinary action taken against a judge by the Administrative Director is in the form required by Government Code sections 19574 or 19590(b). The right of the Administrative Director under 8 CCR 9720.1 et seq. to enforce ethical standards among judges does not replace or reduce a judge's procedural rights under the State Civil Service Act. Furthermore, the rights and obligations of the Administrative Director and judges concerning the probationary period mandated by Government Code sections 19170 through 19180 are not affected.

When the Administrative Director's staff has completed its investigation, the Committee is briefed on the investigation's findings, as well as any disciplinary or other remedial action pursued.



4. COMPLAINT DIGEST



4. Complaint Digest

A. Complaint Statistics

During the year 2001, with 150 Workers' Compensation Administrative Law Judges and 26 Presiding Workers' Compensation Administrative Law Judges employed at 25 district offices in California, the Ethics Advisory Committee received 22 complaints concerning workers' compensation administrative law judges (See Table 1 at Page 27).

The last Committee meeting conducted in 2001 was held on October 8, 2001. By that time, the Committee had received 17 of the 22 complaints that were submitted in 2001.

With regard to two of the complaints, the Committee determined that an insufficient showing of misconduct had been demonstrated by the complainant to warrant further investigation and action by the Administrative Director. These two complaints essentially alleged that the judges' decisions contained legal errors. This type of complaint, even if later established to have merit, does not constitute judicial misconduct pursuant to Canon 1 of the Code of Judicial Ethics.

Investigations were completed in four of the complaints filed in 2001. The Committee determined that in one of the complaints, the investigation revealed no ethical violations. However, in the other three complaints, the Committee found that the investigations revealed that ethical violations had occurred. The judges named in those three complaints were counseled.

The Committee recommended that the Administrative Director conduct a formal investigation in the remaining eleven cases it reviewed in 2001. Finally, the five complaints that were filed after the October 8, 2001 Committee meeting will be reviewed by the Committee at its first meeting in 2002.

The following groups within the workers' compensation community filed the 22 complaints filed during 2001:

- | | |
|--|---------------|
| ▪ Injured Workers | 14 Complaints |
| ▪ Applicant Attorneys Practicing Before the WCAB | 1 Complaint |
| ▪ Defense Attorneys Practicing Before the WCAB | 2 Complaints |
| ▪ Claims Administrators | 1 Complaint |
| ▪ Lien Claimants or Their Attorneys | 4 Complaints |

During the year 2001, the Committee also completed inquiries in fourteen cases that had been filed in 2000.

B. Disposition of Complaints investigated by the Administrative Director on the recommendation of the Ethics Advisory Committee

Of the seventeen complaints reviewed by the EAC in 2001, the Committee recommended that the Administrative Director conduct fifteen investigations. By December 31, 2001, eleven of the fifteen cases were still under investigation, and four investigations had been completed.

Complaints filed during 2001 for which investigations have been completed:

- 1) An injured worker alleged unspecified misconduct about the judge handling his case.

An investigation by the Administrative Director's staff did not find any violations of the California Code of Judicial Ethics or of the Division's Ethical Standards of Workers' Compensation.

- 2) An injured worker complained that during an in chambers conference with the judge, the judge yelled at him, then refused to speak to anyone and, finally, ordered the parties out of his chambers.

Following the investigation, the judge was counseled with regard to his inappropriate actions. A neutral information and assistance officer was assigned to assist the injured worker and the injured worker's case was set before another judge.

- 3) An attorney alleged that a judge violated the due process of law by issuing two orders without affording the defendants the opportunity to be heard.

The complaint was investigated. It was determined that notices of intention were not issued in the two situations described in the complaint. The judge was appropriately counseled on the use of notices of intention before issuance of interim orders.

- 4) A lien claimant submitted a complaint alleging that the judge was rude and improperly conducted three separate matters concerning lien claims.

The regional manager investigated the allegations. The defense attorney who was present at one of the hearings was interviewed. He stated that the judge did not

engage in personal attacks or betray a pre-disposition relative to the lien. However, a review of the record did indicate that an unnecessary second mandatory settlement conference was held and the lien claimant was given no opportunity to submit points and authorities prior to the issuance of the Findings and Orders. It was determined that the complaint had merit and the judge was counseled.

Complaints filed during 2001 which are still under active investigation:

- 1) An attorney for a lien claimant alleged that the judge violated Canon 3(B)(9) by making a disparaging public comment about his client. He also asserts that the judge violated Canon 3(E) by failing to disqualify himself on the basis that he is bias against the lien holder.
- 2) A complaint filed by an applicant alleged that the judge allowed the defense attorney to violate the applicant's rights by attaching to the Compromise and Release an addendum that the applicant did not understand. Applicant asserted that he will need future psychotherapy and medical care. However, the addendum releases the applicant's future medical care.
- 3) An injured worker complained that that a judge misunderstood or did not clearly hear the testimony at the hearing, and that the Judge's Findings and Orders were, therefore, not based on the record. The complainant asserted that the judge acted unethically in failing to verify the facts and correct the record. The complainant also asserted that the judge made rude comments about the fact that the applicant was not represented by counsel and about the applicant's ignorance of the law.
- 4) A claims administrator alleged that a judge acted with bias against the defendant by providing for 67% disability and requiring liens to be paid in full in a case where the defendant had denied liability. The complaint alleged that the Findings and Award

failed to state why the liens should be paid in full and failed to fully describe the basis for the permanent disability award.

- 5) An applicant's attorney complained that in three instances concerning the same case, the judge made incorrect findings concerning awards for psychiatric care. In one, the judge based the decision on a medical legal report, which indicated that the doctor had not considered a previous psychiatric injury. In another, the judge relied on law that came into effect after the date of the injury. In the third, the judge denied the award despite the defense QME confirming the disability.
- 6) A complaint filed by an injured worker alleged that a judge showed favoritism to the defense by allowing excessive time to submit points and authorities before issuing his findings.
- 7) A lien claimant complained that the judge followed improper procedures requiring him to try the lien claims before the main issues were resolved, before he had filed a Declaration of Readiness, and without holding a mandatory settlement conference first.
- 8) An applicant alleged that the judge dismissed the applicant's attorney without his consent. He also alleged that a witness at trial committed perjury, and the judge interfered with his right to cross-examine the witness.
- 9) A complaint filed by an injured worker alleged that the judge assigned to her case only held informal telephone hearings, which never resulted in official records. The complainant asserted that the judge did not hold formal hearings. The applicant complained that the judge did not retain control over his court and did not enforce his own orders. The applicant further complained that trial was improperly delayed.

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- 10) An applicant alleged that the judge lied by characterizing her as crying in the courtroom. The judge ordered the applicant out of the courtroom allegedly because the applicant was so upset. Also, the applicant alleged that the judge allowed a witness who was lying to testify.
 - 11) An injured worker who resides out of state complained that the judge required her to return to California for an IME, even though doctor reports had already been obtained. She also alleged that the judge did not allow her adequate time to retain an attorney before trial.

Complaints filed during 2000 for which investigations were completed in 2001:

- 1) An attorney complainant alleged that the judge was rude and verbally abusive because the attorney had returned a few minutes late from a trial recess. The judge allegedly threatened the attorney with contempt and, despite the fact that opposing counsel as well as two witnesses had traveled a considerable distance to attend the trial, refused to resume the trial that day. The parties were instead ordered to obtain a new trial date.

Following a detailed investigation, the judge in question was afforded a formal counseling session where he was admonished for his inappropriate actions.

- 2) An injured worker complainant alleged that the judge assigned to adjudicate his case refused to recuse himself, despite the fact that the judge, while an attorney in private practice, had previously represented the complainant in a prior workers' compensation case, and had been discharged by the complainant at that time as his attorney of record.

As part of the investigation, the judge was interviewed. He stated that he did not recall previously acting as the injured worker's attorney, and that all of his former legal files had been destroyed. There was no indication that the judge's former representation of the injured worker was brought to his attention before he issued the notice of intention to dismiss the case due to inactivity. The injured worker did not appear before the judge, and a different judge conducted the mandatory settlement conference and trial. Therefore, it was the recommendation of the Committee that the Administrative Director take no further action on the complaint.

- 3) An attorney alleged that during the course of a Mandatory Settlement Conference the judge became angry and insulting since he disagreed with the actions the attorney had taken to resolve a medical lien. The attorney stated that the judge shouted at her and referred to her using a derogatory term.

After reviewing the investigation report for this complaint, the Committee determined that the complaint had merit. The judge was counseled.

- 4) A hearing representative submitted a complaint alleging that the judge, in contravention of Labor Code § 5700, had refused to allow him to represent an injured worker at trial on the basis that the complainant was not a member of the California Bar. In addition, the complainant alleged that the judge engaged in a pre-trial ex parte discussion with the defense attorney.

The Regional Manager performed an investigation of the allegations. After reviewing the investigative findings, the Committee determined that no specific ethical violations occurred.

- 5) An injured worker complainant alleged that the judge engaged in an ex parte discussion with the defense attorney and refused the complainant's request that

certain stipulations regarding temporary disability benefits be noted in the minutes of hearing.

An investigation was performed by the Regional Manager. After reviewing the investigative findings, the Committee determined that no specific ethical violations occurred.

- 6) A claims administrator alleged that during the course of protracted case proceedings, a judge exhibited a persistent pattern of bias towards the injured worker. Furthermore, it is alleged that the judge acted in excess of his authority by attempting to order the claims administrator to provide temporary disability benefits while all medical reports indicated the claimant's condition was permanent and stationary. As a result of the judge's repeated conduct, the claims administrator felt compelled to enter into an unfavorable settlement in order to dispose of the case.

An investigation was performed by the Regional Manager, who interviewed the attorneys involved and the judge. After reviewing the investigative findings, the Committee determined that there were no specific ethical violations.

- 7) A physician alleged that a judge had acted with bias and arbitrariness by imposing sanctions for the physician's purported failure to comply with a claims administrator's subpoena duces tecum. In addition the judge allegedly ordered the physician to appear before the Appeals Board for failure to submit a medical report. The complaint asserted that the judge's behavior evinced an "undisguisedly pro-defense stance."

Following an investigation by the Administrative Director's staff, it was determined that there was no abuse of discretion in the judge's ordering the claimant's

appearance to produce medical records following the issuance of a subpoena duces tecum.

- 8) An injured worker's complaint alleged that the judge prepared a Minutes of Hearing and Summary of Evidence that contained numerous inaccuracies and a distorted version of the issues and testimony presented at trial.

The investigation did not disclose any violations of the California Code of Judicial Ethics, or of the Division's Ethical Standards of Workers' Compensation Judges. Further, the investigation did not find any indication that the judge improperly evaluated the evidence that was presented in the case.

- 9) A law firm alleged that a judge approached an attorney associate from their firm and initiated a heated ex parte conversation concerning statements a partner in the firm had made in a declaration in support of a Petition for Reconsideration. In the course of the conversation, the judge allegedly became overly agitated and threatened to report the partner to the District Attorney's office for allegedly making false statements in the declaration. In addition, the judge allegedly commented in a loud and emotional tone, in the presence of various attorneys who were appearing on other matters, that when handling future cases involving the law firm, the judge would be certain not to award attorneys fees exceeding ten percent.

Following the investigation of this complaint, appropriate disciplinary action was taken and the judge was admonished. Additionally, the Department of Industrial Relations instituted an adverse action, which was resolved by mutual agreement.

- 10) An injured worker with a hearing impairment alleged that a judge refused her request for reasonable accommodation of her disability since he conducted a Mandatory Settlement Conference without providing a sign language interpreter or
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computer aided transcription equipment. In addition, during the course of the conference, the judge allegedly posed to the complainant several inappropriate questions which were intended to "intimidate and harass" the complainant, and which demonstrated the judge's bias in favor of the claims administrator.

An investigation conducted by the Administrative Director's staff did not find evidence of misconduct by the judge.

- 11) An injured worker complained that the judge assigned to hear his case, as well as the presiding judge in that office, demonstrated a pattern of permitting settlement of workers' compensation cases on terms that were prejudicial to injured workers. In particular, the two judges allegedly allowed State Disability Insurance (SDI) liens to be settled in a manner that did not direct that the injured workers' SDI accounts be reimbursed. In addition, it was alleged that the trial judge awarded an excessive fee to the complainant's attorney, erred in not allowing the complainant to present certain witnesses at trial, and refused to permit the complainant to be represented concurrently by his attorney of record as well as a non attorney co-worker.

An investigation by the Regional Manager included a review of the court documents and documents provided by the applicant. The documents did not support a claim of misconduct.

- 12) An injured worker's complaint alleged that the presiding judge had manifested favoritism towards the insurance carrier since the presiding judge refused to grant the injured worker's request for automatic reassignment of his case to a new workers' compensation judge, pursuant to Board Rule 10453. Apparently, the presiding judge had ruled that the injured worker had not filed his request for reassignment within the mandated five day period after he had been informed of the identity of the judge.

An investigation did not find any indication that the judge acted improperly by refusing to grant the applicant's request for automatic reassignment pursuant to WCAB rule §10453. Further, even if the allegations that the judge's decision contained legal errors, the allegations would not constitute ethical violations. Canon 1 of the Code of Judicial Ethics provides that a judicial decision later determined to be incorrect legally is not itself an ethical violation.

- 13) An injured worker's complaint alleged that the judges refused to decide and intentionally delayed decisions, thereby neglecting their duties. A review of the record demonstrated that the case had been ordered off calendar to allow the applicant to be examined by three agreed medical examiners, and that therefore, the case was not submitted. Thus, the 90-day timeframe set forth in Labor Code Section 123.5(a) was not applicable.

The injured worker also alleged that the judge intentionally misstated the record in the Report and Recommendation on petition for Removal. A review of the record failed to discern any evidence establishing that the judge engaged in such misconduct.

The injured worker requested that the judge be disqualified from the case, and the Committee advised that it does not have the authority to order the disqualification of a judge. Finally, the injured worker raised issues concerning legal error, which, even if later established to have merit, do not constitute judicial misconduct pursuant to Canon 1 of the Code of Judicial Ethics.

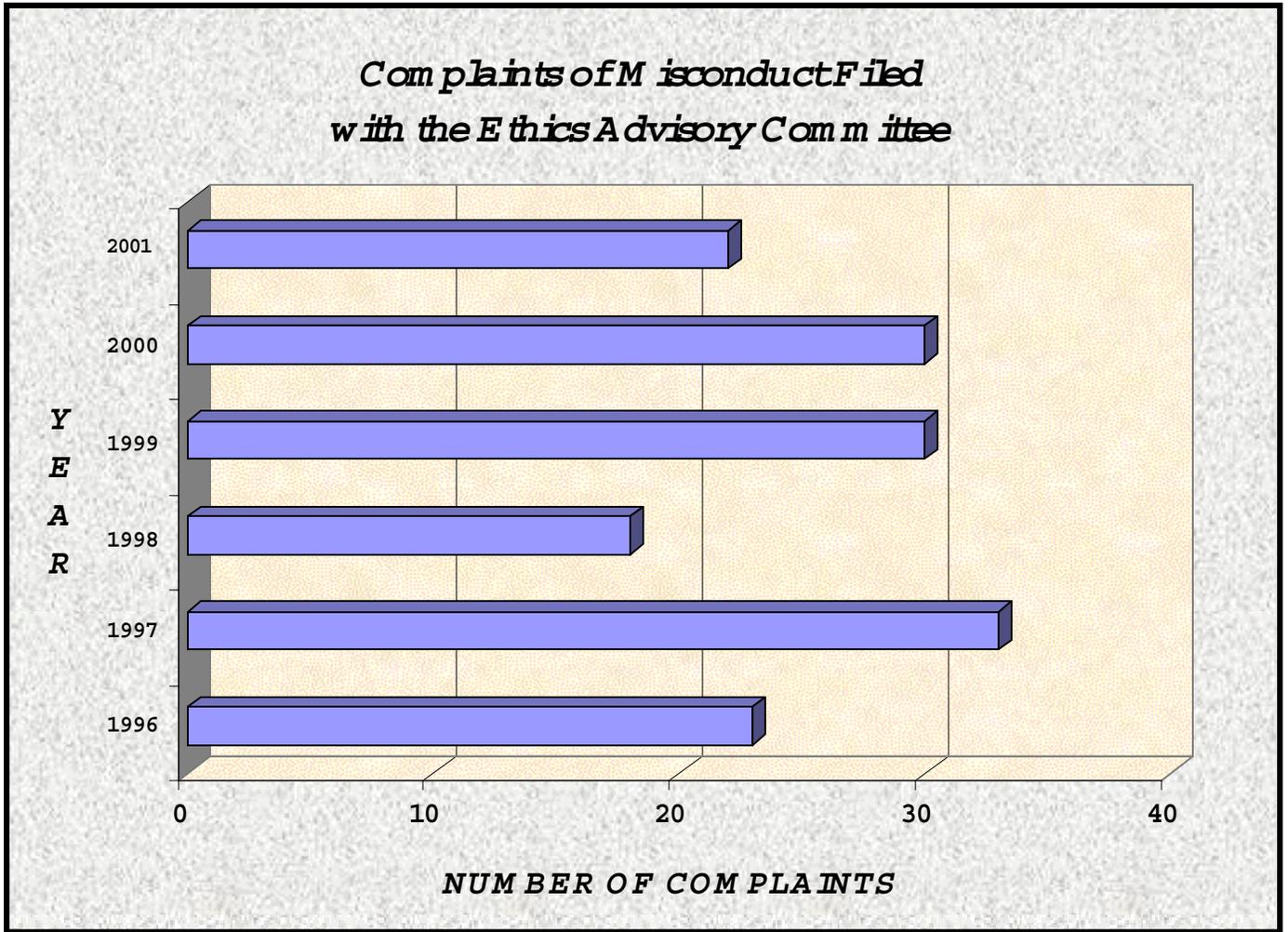
- 14) A complaint filed by an injured worker asserted that the judge engaged in an ex parte communication with the defense attorney.

Following an investigation by the Administrative Director's staff, it was determined that the judge had a conversation with the defense attorney regarding the status of the case. As it is improper and a violation of the Code of Judicial Ethics Canon 3B(7)(d) for judges to engage in ex parte communications, the judge was counseled with regard to his inappropriate actions.

C. Complaints filed in 2001 that will be presented to the Committee in 2002

- 1) An injured worker alleged that the judge improperly ruled against his interests and improperly awarded excessive attorney fees.
- 2) A lien claimant complained that after being reassigned to several judges in one morning, the judge who eventually heard the matter was belligerent and rude.
- 3) An applicant alleged that he was discriminated against due to his race and national origin. The complainant alleges that the judge issued orders that do not comply with the Labor Code and regulations.
- 4) An applicant alleged that the judge removed records from the WCAB file and then made false statements about the records contained in the WCAB file. These actions allegedly resulted in the applicant being denied vocational rehabilitation.
- 5) An injured worker complained that his motion for change of venue should have been granted and that case has been pending for too long.

TABLE 1





APPENDIX 1.

Ethics Regulations: Title 8, California Code of Regulations, §9720.1 et seq.



TITLE 8. INDUSTRIAL RELATIONS
DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS
CHAPTER 4.5. DIVISION OF WORKERS' COMPENSATION
SUBCHAPTER 1. ADMINISTRATIVE DIRECTOR--ADMINISTRATIVE RULES
ARTICLE 1.6. ETHICAL STANDARDS OF WORKERS' COMPENSATION
REFEREES; ENFORCEMENT OF STANDARDS

§ 9720.1. Authority.

The rules and regulations contained in Article 1.6 are adopted pursuant to the authority contained in Sections 123.6, 133, and 5307.3 of the Labor Code. This article is designed to enforce the highest ethical standards among workers' compensation referees and to provide all parties with an independent, impartial investigation into allegations of misconduct by referees.

Note: Authority cited: Sections 123.6, 133 and 5307.3, Labor Code.
Reference: Sections 111 and 123.6, Labor Code.

§ 9720.2. Definitions

For purposes of this Article and Section 123.6 of the Labor Code, the following definitions shall apply:

- (a) "Code" shall mean the Code of Judicial Conduct. When the Supreme Court adopts a Code of Judicial Ethics pursuant to Article VI, section 18(m), of the Constitution, "Code" shall mean the Code of Judicial Ethics and any subsequent revision thereof.
- (b) "Committee" shall mean the Workers' Compensation Ethics Advisory Committee as specified in Section 9722 of these regulations.
- (c) "Complaint" shall mean a statement alleging facts that, if true, might constitute misconduct.
- (d) "Misconduct" shall mean any conduct of a referee that is contrary to the Code or to the other rules of conduct that apply to referees.
- (e) "Referee" shall mean a worker's compensation referee employed by the administrative director pursuant to Section 123.5 of the Labor Code. The term includes Presiding Workers' Compensation Referees, Regional Managers (Claims Adjudication), the Assistant Chief, the Administrative Director and any other person, including pro tem referees and state employees, while they are exercising judicial or quasi-judicial powers.

Note: Authority cited: Sections 123.6, 133 and 5307.3, Labor Code.

Reference: Sections 111 and 123.6, Labor Code.

§ 9721.1. Code of Judicial Conduct or Ethics

Every referee shall abide by the Code.

Note: Authority cited: Sections 123.6, 133 and 5307.3, Labor Code.

Reference: Sections 111 and 123.6, Labor Code.

§ 9721.2. Gifts, Honoraria and Travel

(a) No referee may accept any gift, honorarium or travel that is forbidden to legislators under the Political Reform Act of 1974.

(b) No referee may accept any gift, payment, honorarium, travel, meal or any other thing exceeding five dollars in value, the cost of which is significantly paid for by attorneys who practice before the Workers Compensation Appeals Board or by others whose interests have come or are likely to come before the Board, without first obtaining the written approval of the administrative director. Copies of requests and responses shall be forwarded to the Committee for its annual report. For purposes of this section, "attorneys" includes individual attorneys, law firms, and professional associations that include attorneys as members. For purposes of this section, "others whose interests have come or are likely to come before the Board" includes, but is not limited to, any person or entity which is or has been a party or lien claimant in a workers' compensation proceeding, represents a party or lien claimant, provides educational, consulting or other services relating to workers' compensation, otherwise participates in the workers' compensation adjudicatory process or is an association that includes such persons as members or represents their interests.

(c) This section does not apply to (1) gifts, payments, travel, meals or other things of value given to a referee by a family member who does not appear before the referee in question, (2) ordinary, modest social hospitality in a private home or attendance at a wedding, graduation or religious ceremony, (3) payments, including a division of attorney's fees, made to a referee by the referee's former law firm or other former employer, for services actually rendered prior to the referee's appointment, or (4) union activities of referees.

Note: Authority cited: Sections 123.6, 133 and 5307.3, Labor Code.

Reference: Sections 111 and 123.6, Labor Code.

§ 9721.2. Gifts, Honoraria and Travel

(a) No referee may accept any gift, honorarium or travel that is forbidden to legislators under the

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(c) This section does not apply to (1) gifts, payments, travel, meals or other things of value given to a referee by a family member who does not appear before the referee in question, (2) ordinary, modest social hospitality in a private home or attendance at a wedding, graduation or religious ceremony, (3) payments, including a division of attorney's fees, made to a referee by the referee's former law firm or other former employer, for services actually rendered prior to the referee's appointment, or (4) union activities of referees.

Note: Authority cited: Sections 123.6, 133 and 5307.3, Labor Code.
Reference: Sections 111 and 123.6, Labor Code.

§ 9721.32. Duty to Report Misconduct

When circumstances warrant, a referee shall take or initiate appropriate disciplinary measures against a referee, lawyer, party, witness, or other person who participates in the workers' compensation process for unprofessional, fraudulent or other improper conduct of which the referee becomes aware.

Note: Authority cited: Sections 123.6, 133 and 5307.3, Labor Code.
Reference: Sections 111 and 123.6, Labor Code.

§ 9722. The Workers' Compensation Ethics Advisory Committee

(a) There shall be a Workers' Compensation Ethics Advisory Committee consisting of nine members appointed by the administrative director:

(1) a member of the public representing organized labor,

- (2) a member of the public representing insurers,
- (3) a member of the public representing self-insured employers,
- (4) an attorney who formerly practiced before the Workers' Compensation Appeals Board and who usually represented insurers or employers,
- (5) an attorney who formerly practiced before the Workers' Compensation Appeals Board and who usually represented applicants,
- (6) a presiding referee,
- (7) a referee or retired referee,
- (8) and (9) two members of the public outside the workers' compensation community.

Members shall serve for a term of four years. However, to create staggered terms, the first term of members in odd-numbered categories above shall be two years. The administrative director shall designate a chairperson.

(b) The Committee shall meet as necessary to carry out its responsibilities under this article. State employees shall meet on state time and at state expense.

(c) The Committee may do the following:

- (1) Receive complaints made against referees,
- (2) Forward those complaints to the administrative director with a recommendation to investigate or not to investigate,
- (3) Monitor the outcome of complaints, and
- (4) Make reports and recommendations to the administrative director, the legislature and the public concerning the integrity of the workers' compensation adjudicatory process. The Committee shall make a public report on or before February 15 of each year, summarizing the activities of the Committee in the previous calendar year. The report shall not contain personally identifiable information concerning complainants or referees, unless the information is already public.

(d) The administrative director shall make staff available to the Committee to assist it in carrying out its functions.

(e) The Committee may receive information that is not available to the public. The Committee shall hold such information strictly confidential from public disclosure. However, this rule of

confidentiality shall not prevent the Committee from disclosing information to the referee, if the referee is otherwise entitled to the information.

Note: Authority cited: Sections 123.6, 133 and 5307.3, Labor Code.

Reference: Sections 111 and 123.6, Labor Code.

§ 9722.1. Commencing an Investigation

(a) Any person may file a complaint with the Committee. The Committee may require complaints to be filed in a particular form. Nothing in these regulations prohibits any person from complaining directly to a presiding referee or to the administrative director. The presiding referee or the administrative director may, but is not required to, refer such complaints to the Committee.

(b) The Committee shall review the complaint. The Committee may make brief, informal inquiries to obtain information needed to clarify the complaint.

(c) If the Committee determines that the complaint does not allege facts that might constitute misconduct, or if the complaint is merely conjectural or conclusory, obviously unfounded, or stale, or alleges only isolated legal error by the referee, the Committee shall forward the complaint to the administrative director with a recommendation not to proceed with the complaint.

(d) If the Committee determines that the complaint might have merit, the Committee shall refer the complaint to the administrative director. Complaints against the administrative director shall be referred to the Director of Industrial Relations.

(e) Complaints making substantial allegations of criminal conduct, invidious discrimination, sexual harassment, or other serious acts that might require the administrative director's immediate attention, shall be referred forthwith to the administrative director. All other complaints shall be referred to the administrative director within 60 days.

(f) During the course of the investigation, the administrative director shall inform the referee of the nature of the charges. The referee shall have the opportunity to submit a response. A referee who has been informed of the charges shall also be informed of the outcome of the investigation.

Note: Authority cited: Sections 123.6, 133 and 5307.3, Labor Code.

Reference: Sections 111 and 123.6, Labor Code.

§ 9722.2. Investigation and Action by the Administrative Director

(a) Upon receiving a complaint from the Committee, the administrative director shall investigate

whether a referee has engaged in misconduct.

(b) If the administrative director determines after investigation that the complaint is unfounded or insufficient to justify discipline or other action, the administrative director shall so inform the complainant and the Committee.

(c) If the administrative director determines after investigation that misconduct has occurred, he or she shall take appropriate disciplinary or other action against the referee. The administrative director's action shall be in the form required by Government Code section 19574 or section 19590(b).

(d) The administrative director shall provide the Committee with a copy of his or her decision and shall inform the complaining party of the outcome of the investigation.

Note: Authority cited: Sections 123.6, 133 and 5307.3, Labor Code.

Reference: Sections 111 and 123.6, Labor Code.

§ 9723. Miscellaneous Provisions

(a) This article does not replace or diminish the procedural rights of a referee under the State Civil Service Act. Documentation of unfounded or unsustainable complaints or complaints which warrant no further investigation shall not be retained in the employee's personnel file.

(b) This article does not replace or diminish the authority of the administrative director to investigate allegations of misconduct, to impose appropriate discipline, or to take any other action authorized by law.

(c) Nothing in this article shall affect the rights and obligations of the administrative director and referees concerning the probationary period under Government Code sections 19170 through 19180.

(d) Pursuant to Government Code section 19574.5, the administrative director may place a referee on leave of absence pending investigation of the accusations listed in that section.

(e) No civil action may be maintained against any person, or adverse employment action taken against a person by any employer, public or private, based on statements presented by the person in proceedings under this section.

(f) A referee or other interested person may request the administrative director to issue an advisory opinion on the application of the Code or other rules to a particular situation. The administrative director may, in his or her sole discretion, issue an advisory opinion. The administrative director may issue an advisory opinion on his or her own initiative.

Note: Authority cited: Sections 123.6, 133 and 5307.3, Labor Code.
Reference: Sections 111 and 123.6, Labor Code.



APPENDIX 2.

California Code of Judicial Ethics



APPENDIX

DIVISION II. California Code of Judicial Ethics

Amended by the Supreme Court of California effective December 13, 2000;
previously amended effective March 4, 1999

Preface

Preamble

Terminology

Canon 1. A judge shall uphold the integrity and independence of the judiciary.

Canon 2. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

Canon 3. A judge shall perform the duties of judicial office impartially and diligently.

Canon 4. A judge shall so conduct the judge's quasi-judicial and extrajudicial activities as to minimize the risk of conflict with judicial obligations.

Canon 5. A judge or judicial candidate shall refrain from inappropriate political activity.

Canon 6. Compliance with the code of judicial ethics.

PREFACE

1
2
3 Formal standards of judicial conduct have existed for more than 50 years.
4 The original Canons of Judicial Ethics promulgated by the American Bar
5 Association were modified and adopted in 1949 for application in California by the
6 Conference of California Judges (now the California Judges Association).

7
8 In 1969, the American Bar Association determined that current needs and
9 problems warranted revision of the Canons. In the revision process, a special
10 American Bar Association committee, headed by former California Chief Justice
11 Roger Traynor, sought and considered the views of the bench and bar and other
12 interested persons. The American Bar Association Code of Judicial Conduct was
13 adopted by the House of Delegates of the American Bar Association August 16,
14 1972.

15
16 Effective January 5, 1975, the California Judges Association adopted a new
17 California Code of Judicial Conduct adapted from the American Bar Association
18 1972 Model Code. The California code was recast in gender-neutral form in 1986.

19
20 In 1990, the American Bar Association Model Code was further revised after
21 a lengthy study. The California Judges Association again reviewed the model code
22 and adopted a revised California Code of Judicial Conduct on October 5, 1992.

23
24 Proposition 190 (amending Cal. Const., art. VI, § 18(m), effective March 1,
25 1995) created a new constitutional provision that states, "The Supreme Court shall
26 make rules for the conduct of judges, both on and off the bench, and for judicial
27 candidates[*] in the conduct of their campaigns. These rules shall be referred to as
28 the Code of Judicial Ethics."

29
30 The Supreme Court formally adopted the 1992 Code of Judicial Conduct in
31 March 1995, as a transitional measure pending further review.

32
33 The Supreme Court formally adopted the Code of Judicial Ethics effective
34 January 15, 1996.

35
36 The Supreme Court formally adopted amendments to the Code of Judicial
37 Ethics, effective April 15, 1996. The *Advisory Committee Commentary* is published
38 by the Supreme Court Advisory Committee on Judicial Ethics.

* Terms with an asterisk (*) are defined in the Terminology section.

PREAMBLE

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to this code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible member of government under the rule of law.

The Code of Judicial Ethics ("Code") establishes standards for ethical conduct of judges on and off the bench and for candidates for judicial office. The Code consists of broad declarations called Canons, with subparts, and a Terminology section. Following each Canon is a Commentary section prepared by the Supreme Court Advisory Committee on Judicial Ethics. The Commentary, by explanation and example, provides guidance as to the purpose and meaning of the Canons. The Commentary does not constitute additional rules and should not be so construed. All members of the judiciary must comply with the Code. Compliance is required to preserve the integrity of the bench and to ensure the confidence of the public.

The Canons should be read together as a whole, and each provision should be construed in context and consistent with every other provision. They are to be applied in conformance with constitutional requirements, statutes, other court rules, and decisional law. Nothing in the Code shall either impair the essential independence of judges in making judicial decisions or provide a separate basis for civil liability or criminal prosecution.

The Code governs the conduct of judges and judicial candidates* and is binding upon them. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, requires a reasoned application of the text and consideration of such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

TERMINOLOGY

Terms explained below are noted with an asterisk (*) in the Canons where they appear. In addition, the Canons in which terms appear are cited after the explanation of each term below.

"Appropriate authority" denotes the authority with responsibility for initiation of the disciplinary process with respect to a violation to be reported. See Commentary to Canon 3D.

"Candidate." A candidate is a person seeking election for or retention of judicial office by election. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election to nonjudicial office, unless on leave of absence. See Preamble and Canons 2B(3), the preliminary paragraph of 5, 5A, 5B, 5C, and 6E.

"Court personnel" does not include the lawyers in a proceeding before a judge. See Canons 3B(4), 3B(7)(b), 3B(9), and 3C(2).

"Fiduciary" includes such relationships as executor, administrator, trustee, and guardian. See Canons 4E, 6B, and 6F (*Commentary*).

"Law" denotes court rules as well as statutes, constitutional provisions, and decisional law. See Canons 1 (*Commentary*), 2A, 2C (*Commentary*), 3A, 3B(2), 3B(7), 3E, 4B (*Commentary*), 4C, 4D(6)(a)-(b), 4F, 4H, and 5D.

"Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Canons 2B(2), 4D(1) (*Commentary*), 4D(2), 4E, 4G (*Commentary*), and 5A.

"Member of the judge's family residing in the judge's household" denotes a spouse and those persons who reside in the judge's household who are relatives of the judge including relatives by marriage, or persons with whom the judge maintains a close familial relationship. See Canons 4D(5) and 4D(6).

"Nonprofit youth organization" is any nonprofit corporation or association, not organized for the private gain of any person, whose purposes are irrevocably dedicated to benefiting and serving the interests of minors and which maintains its

1 nonprofit status in accordance with applicable state and federal tax laws. See Canon
2 2C.

3
4 "Nonpublic information" denotes information that, by law, is not available to
5 the public. Nonpublic information may include but is not limited to information that
6 is sealed by statute or court order, impounded, or communicated in camera; and
7 information offered in grand jury proceedings, presentencing reports, dependency
8 cases, or psychiatric reports. See Canon 3B(11).

9
10 "Political organization" denotes a political party, political action committee,
11 or other group, the principal purpose of which is to further the election or
12 appointment of candidates to nonjudicial office. See Canon 5A.

13
14 "Temporary Judge." A temporary judge is an active or inactive member of
15 the bar who serves or expects to serve as a judge once, sporadically, or regularly on
16 a part-time basis under a separate court appointment for each period of service or
17 for each case heard. See Canons 4C(3)(d)(i), 6A, and 6D.

18
19 "Require." Any Canon prescribing that a judge "require" certain conduct of
20 others means that a judge is to exercise reasonable direction and control over the
21 conduct of those persons subject to the judge's direction and control. See Canons
22 3B(3), 3B(4), 3B(6), 3B(8) (*Commentary*), 3B(9), and 3C(2).

CANON 1

**A JUDGE SHALL UPHOLD THE INTEGRITY
AND INDEPENDENCE OF THE JUDICIARY**

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective. A judicial decision or administrative act later determined to be incorrect legally is not itself a violation of this Code.

ADVISORY COMMITTEE COMMENTARY

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law and the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violations of this Code diminish public confidence in the judiciary and thereby do injury to the system of government under law.*

The basic function of an independent and honorable judiciary is to maintain the utmost integrity in decision making, and this Code should be read and interpreted with that function in mind.

CANON 2

A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

A. Promoting Public Confidence

A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

ADVISORY COMMITTEE COMMENTARY

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by other members of the community and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge.

The test for the appearance of impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality, and competence.

See also Commentary under Canon 2C.

B. Use of the Prestige of Judicial Office

(1) A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.

(2) A judge shall not lend the prestige of judicial office to advance the pecuniary or personal interests of the judge or others; nor shall a judge testify voluntarily as a character witness. A judge shall not 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. A judge may initiate communications with a probation or corrections

1 **officer concerning a member of the judge's family,* provided the judge is not**
2 **identified as a judge in the communication.**

3
4 *ADVISORY COMMITTEE COMMENTARY*

5 *A strong judicial branch, based on the prestige which comes from effective*
6 *and ethical performance, is essential to a system of government in which the*
7 *judiciary functions independently of the executive and legislative branches. Judges*
8 *should distinguish between proper and improper use of the prestige of office in all*
9 *of their activities.*

10
11 *A judge must avoid lending the prestige of judicial office for the*
12 *advancement of the private interests of the judge or others. For example, a judge*
13 *must not use the judicial position to gain advantage in a civil suit involving a*
14 *member of the judge's family;* or use his or her position to gain deferential*
15 *treatment when stopped by a police officer for a traffic offense.*

16
17 *As to the use of a judge's title to identify a judge's role in the presentation*
18 *and creation of legal education programs and materials, see Commentary to Canon*
19 *4B. In contracts for publication of a judge's writings, a judge should retain control*
20 *over the advertising, to the extent feasible, to avoid exploitation of the judge's*
21 *office. As to the acceptance of awards, see Canon 4D(6)(c) and Commentary.*

22
23 *A judge must not testify as a character witness without being subpoenaed*
24 *because to do so may lend the prestige of the judicial office in support of the party*
25 *for whom the judge testifies. A judge may provide information on behalf of a lawyer*
26 *or a judge involved in disciplinary proceedings, and shall provide information to*
27 *disciplinary bodies when officially requested to do so. This Canon does not afford*
28 *judges a privilege against testifying in response to any official summons.*

29
30 *This Canon does not preclude internal discussions among judges regarding*
31 *the application of substantive or procedural provisions of law to any pending*
32 *criminal or civil case.*

33
34 **(3) A judge may respond to judicial selection inquiries, provide**
35 **recommendations (including a general character reference, relating to the**
36 **evaluation of persons being considered for a judgeship) and otherwise**
37 **participate in the process of judicial selection.**

38
39 **(4) A judge shall not use the judicial title in any written communication**
40 **intended to advance the personal or pecuniary interest of the judge. A judge**
41 **may serve as a reference or provide a letter of recommendation only if based on**
42 **the judge's personal knowledge of the individual. These written communications**

1 may include the judge's title and be written on stationery that uses the judicial
2 title.

3 4 C. Membership in Organizations

5
6 A judge shall not hold membership in any organization that practices
7 invidious discrimination on the basis of race, sex, religion, national origin, or
8 sexual orientation.

9
10 This Canon does not apply to membership in a religious organization or
11 an official military organization of the United States. So long as membership
12 does not violate Canon 4A, this Canon does not bar membership in a nonprofit
13 youth organization.*

14 15 *ADVISORY COMMITTEE COMMENTARY*

16 *Membership of a judge in an organization that practices invidious*
17 *discrimination gives rise to a perception that the judge's impartiality is impaired.*
18 *This Canon exempts membership in religious and military organizations and,*
19 *subject to Canon 4A, does not bar membership in nonprofit youth organizations.**
20 *These exemptions are necessary because membership in United States military*
21 *organizations is subject to current valid military regulations, and religious beliefs*
22 *are constitutionally protected. Membership in nonprofit youth organizations* is not*
23 *barred to accommodate individual rights of intimate association and free*
24 *expression.*

25
26 *Canon 2C refers to the current practices of the organization. Whether an*
27 *organization practices invidious discrimination is often a complex question to which*
28 *judges should be sensitive. The answer cannot be determined from a mere*
29 *examination of an organization's current membership rolls but rather depends on*
30 *how the organization selects members and other relevant factors, such as whether*
31 *the organization is dedicated to the preservation of religious, ethnic, or cultural*
32 *values of legitimate common interest to its members, or whether it is in fact and*
33 *effect an intimate, purely private organization whose membership limitations could*
34 *not be constitutionally prohibited. Absent such factors, an organization is generally*
35 *said to discriminate invidiously if it arbitrarily excludes from membership on the*
36 *basis of race, religion, sex, national origin, or sexual orientation persons who*
37 *would otherwise be admitted to membership.*

38
39 *Although Canon 2C relates only to membership in organizations that*
40 *invidiously discriminate on the basis of race, sex, religion, national origin, or*
41 *sexual orientation, a judge's membership in an organization that engages in any*
42 *discriminatory membership practices prohibited by law* also violates Canon 2 and*
43 *Canon 2A and gives the appearance of impropriety. In addition, it would be a*

1 *violation of Canon 2 and Canon 2A for a judge to arrange a meeting at a club that*
2 *the judge knows practices such invidious discrimination or for the judge to use such*
3 *a club regularly. Moreover, public manifestation by a judge of the judge's knowing*
4 *approval of invidious discrimination on any basis gives the appearance of*
5 *impropriety under Canon 2 and diminishes public confidence in the integrity and*
6 *impartiality of the judiciary in violation of Canon 2A.*

CANON 3

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

A. Judicial Duties in General

All of the judicial duties prescribed by law* shall take precedence over all other activities of every judge. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities

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

ADVISORY COMMITTEE COMMENTARY

Canon 3B(1) is based upon the affirmative obligation contained in the Code of Civil Procedure.

(2) A judge shall be faithful to the law* regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.*

(3) A judge shall require* order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require* similar conduct of lawyers and of all court staff and personnel* under the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.

ADVISORY COMMITTEE COMMENTARY

A judge must refrain from speech, gestures, or other conduct that could reasonably be perceived as sexual harassment.

1 **(6) A judge shall require* lawyers in proceedings before the judge to**
2 **refrain from manifesting, by words or conduct, bias or prejudice based upon**
3 **race, sex, religion, national origin, disability, age, sexual orientation, or**
4 **socioeconomic status against parties, witnesses, counsel, or others. This Canon**
5 **does not preclude legitimate advocacy when race, sex, religion, national origin,**
6 **disability, age, sexual orientation, socioeconomic status or other similar factors**
7 **are issues in the proceeding.**

8
9 **(7) A judge shall accord to every person who has a legal interest in a**
10 **proceeding, or that person's lawyer, full right to be heard according to law.* A**
11 **judge shall not initiate, permit, or consider ex parte communications, or**
12 **consider other communications made to the judge outside the presence of the**
13 **parties concerning a pending or impending proceeding, except as follows:**

14
15 **(a) A judge may obtain the advice of a disinterested expert on the law***
16 **applicable to a proceeding before the judge if the judge gives notice to the**
17 **parties of the person consulted and the substance of the advice, and affords the**
18 **parties reasonable opportunity to respond.**

19
20 **(b) A judge may consult with court personnel* whose function is to aid**
21 **the judge in carrying out the judge's adjudicative responsibilities or with other**
22 **judges.**

23
24 **(c) A judge may, with the consent of the parties, confer separately with**
25 **the parties and their lawyers in an effort to mediate or settle matters pending**
26 **before the judge.**

27
28 **(d) A judge may initiate ex parte communications, where circumstances**
29 **require, for scheduling, administrative purposes, or emergencies that do not**
30 **deal with substantive matters provided:**

31
32 **(i) the judge reasonably believes that no party will gain a**
33 **procedural or tactical advantage as a result of the ex parte communication, and**
34

35 **(ii) the judge makes provision promptly to notify all other parties**
36 **of the substance of the ex parte communication and allows an opportunity to**
37 **respond.**

38
39 **(e) A judge may initiate or consider any ex parte communication when**
40 **expressly authorized by law* to do so.**

41
42 *ADVISORY COMMITTEE COMMENTARY*

1 *The proscription against communications concerning a proceeding includes*
 2 *communications from lawyers, law professors, and other persons who are not*
 3 *participants in the proceeding, except to the limited extent permitted by the*
 4 *exceptions noted in Canon 3B(7).*

5
 6 *This Canon does not prohibit a judge from initiating or considering an ex*
 7 *parte communication when authorized to do so by stipulation of the parties.*

8
 9 *This Canon does not prohibit court staff from communicating scheduling*
 10 *information or carrying out similar administrative functions.*

11
 12 *An appropriate and often desirable procedure for a court to obtain the*
 13 *advice of a disinterested expert on legal issues is to invite the expert to file an*
 14 *amicus curiae brief.*

15
 16 *A judge must not independently investigate facts in a case and must consider*
 17 *only the evidence presented, unless otherwise authorized by law.* For example, a*
 18 *judge is statutorily authorized to investigate and consult witnesses informally in*
 19 *small claims cases.*

20
 21 **(8) A judge shall dispose of all judicial matters fairly, promptly, and**
 22 **efficiently.**

23
 24 **ADVISORY COMMITTEE COMMENTARY**

25 *The obligation of a judge to dispose of matters promptly and efficiently must*
 26 *not take precedence over the judge's obligation to dispose of the matters fairly and*
 27 *with patience. A judge should monitor and supervise cases so as to reduce or*
 28 *eliminate dilatory practices, avoidable delays, and unnecessary costs. A judge*
 29 *should encourage and seek to facilitate settlement, but parties should not feel*
 30 *coerced into surrendering the right to have their controversy resolved by the courts.*

31
 32 *Prompt disposition of the court's business requires a judge to devote*
 33 *adequate time to judicial duties, to be punctual in attending court and expeditious*
 34 *in determining matters under submission, and to require* that court officials,*
 35 *litigants, and their lawyers cooperate with the judge to that end.*

36
 37 **(9) A judge shall not make any public comment about a pending or**
 38 **impending proceeding in any court, and shall not make any nonpublic comment**
 39 **that might substantially interfere with a fair trial or hearing. The judge shall**
 40 **require* similar abstention on the part of court personnel* subject to the**
 41 **judge's direction and control. This Canon does not prohibit judges from making**
 42 **statements in the course of their official duties or from explaining for public**
 43 **information the procedures of the court, and does not apply to proceedings in**

1 which the judge is a litigant in a personal capacity. Other than cases in which
 2 the judge has personally participated, this Canon does not prohibit judges from
 3 discussing in legal education programs and materials, cases and issues pending
 4 in appellate courts. This educational exemption does not apply to cases over
 5 which the judge has presided or to comments or discussions that might interfere
 6 with a fair hearing of the case.

7
 8 *ADVISORY COMMITTEE COMMENTARY*

9 *The requirement that judges abstain from public comment regarding a*
 10 *pending or impending proceeding continues during any appellate process and until*
 11 *final disposition. This Canon does not prohibit a judge from commenting on*
 12 *proceedings in which the judge is a litigant in a personal capacity, but in cases such*
 13 *as a writ of mandamus where the judge is a litigant in an official capacity, the judge*
 14 *must not comment publicly.*

15
 16 **(10) A judge shall not commend or criticize jurors for their verdict other**
 17 **than in a court order or opinion in a proceeding, but may express appreciation**
 18 **to jurors for their service to the judicial system and the community.**

19
 20 *ADVISORY COMMITTEE COMMENTARY*

21 *Commending or criticizing jurors for their verdict may imply a judicial*
 22 *expectation in future cases and may impair a juror's ability to be fair and impartial*
 23 *in a subsequent case.*

24
 25 **(11) A judge shall not disclose or use, for any purpose unrelated to**
 26 **judicial duties, nonpublic information* acquired in a judicial capacity.**

27
 28 *ADVISORY COMMITTEE COMMENTARY*

29 *This Canon makes it clear that judges cannot make use of information from*
 30 *affidavits, jury results, or court rulings, before they become public information, in*
 31 *order to gain a personal advantage.*

32
 33 **C. Administrative Responsibilities**

34
 35 **(1) A judge shall diligently discharge the judge's administrative**
 36 **responsibilities without bias or prejudice and maintain professional competence**
 37 **in judicial administration, and shall cooperate with other judges and court**
 38 **officials in the administration of court business.**

39
 40 **(2) A judge shall require* staff and court personnel* under the judge's**
 41 **direction and control to observe appropriate standards of conduct and to**
 42 **refrain from manifesting bias or prejudice based upon race, sex, religion,**

1 national origin, disability, age, sexual orientation, or socioeconomic status in the
2 performance of their official duties.

3
4 (3) A judge with supervisory authority for the judicial performance of
5 other judges shall take reasonable measures to ensure the prompt disposition of
6 matters before them and the proper performance of their other judicial
7 responsibilities.

8
9 (4) A judge shall not make unnecessary court appointments. A judge
10 shall exercise the power of appointment impartially and on the basis of merit. A
11 judge shall avoid nepotism and favoritism. A judge shall not approve
12 compensation of appointees above the reasonable value of services rendered.

13
14 *ADVISORY COMMITTEE COMMENTARY*

15 *Appointees of a judge include assigned counsel, officials such as referees,*
16 *commissioners, special masters, receivers, and guardians, and personnel such as*
17 *clerks, secretaries, court reporters, court interpreters, and bailiffs. Consent by the*
18 *parties to an appointment or an award of compensation does not relieve the judge*
19 *of the obligation prescribed by Canon 3C(4).*

20
21 **D. Disciplinary Responsibilities**

22
23 (1) Whenever a judge has reliable information that another judge has
24 violated any provision of the Code of Judicial Ethics, the judge shall take or
25 initiate appropriate corrective action, which may include reporting the violation
26 to the appropriate authority.*

27
28 (2) Whenever a judge has personal knowledge that a lawyer has violated
29 any provision of the Rules of Professional Conduct, the judge shall take
30 appropriate corrective action.

31
32 (3) A judge who is charged by prosecutorial complaint, information, or
33 indictment or convicted of a crime in the United States, other than one that
34 would be considered a misdemeanor not involving moral turpitude or an
35 infraction under California law, but including all misdemeanors involving
36 violence (including assaults), the use or possession of controlled substances, the
37 misuse of prescriptions, or the personal use or furnishing of alcohol, shall
38 promptly and in writing report that fact to the Commission on Judicial
39 Performance.

40
41 *ADVISORY COMMITTEE COMMENTARY*

42 *Appropriate corrective action could include direct communication with the*
43 *judge or lawyer who has committed the violation, other direct action if available, or*

1 *a report of the violation to the presiding judge, appropriate authority,* or other*
2 *agency or body. Judges should note that in addition to the action required by*
3 *Canon 3D(2), California law imposes additional reporting requirements regarding*
4 *lawyers.*

5
6 **(Canon 3D (3) amended effective March 4, 1999; previously amended**
7 **effective June 19, 1997; adopted effective January 15, 1996.)**

8
9 **E. Disqualification.**

10
11 **(1) A judge shall disqualify himself or herself in any proceeding in which**
12 **disqualification is required by law.**

13
14 **(2) In all trial court proceedings, a judge shall disclose on the record**
15 **information that the judge believes the parties or their lawyers might consider**
16 **relevant to the question of disqualification, even if the judge believes there is no**
17 **actual basis for disqualification.**

18
19 **(3) An appellate justice shall disqualify himself or herself in any**
20 **proceeding if for any reason: (i) the justice believes his or her recusal would**
21 **further the interest of justice; or (ii) the justice substantially doubts his or her**
22 **capacity to be impartial; or (iii) the circumstances are such that a reasonable**
23 **person aware of the facts would doubt the justice's ability to be impartial.**
24 **Disqualification is required in the following instances:**

25
26 **(a) The appellate justice has appeared or otherwise served as a lawyer in**
27 **the pending matter, or has appeared or served as a lawyer in any other matter**
28 **involving any of the same parties if that other matter related to the same**
29 **contested issues of fact and law as the present matter.**

30
31 **(b) Within the last two years, (i) a party to the proceeding, or an officer,**
32 **director or trustee thereof, either was a client of the justice when the justice was**
33 **engaged in the private practice of law or was a client of a lawyer with whom the**
34 **justice was associated in the private practice of law; or (ii) a lawyer in the**
35 **proceeding was associated with the justice in the private practice of law.**

36
37 **(c) The appellate justice represented a public officer or entity and**
38 **personally advised or in any way represented such officer or entity concerning**
39 **the factual or legal issues in the present proceeding in which the public officer**
40 **or entity now appears.**

41
42 **(d) The appellate justice, or his or her spouse, or a minor child residing**
43 **in the household, has a financial interest or is a fiduciary who has a financial**

1 interest in the proceeding, or is a director, advisor, or other active participant
 2 in the affairs of a party. A financial interest is defined as ownership of more
 3 than a 1 percent legal or equitable interest in a party, or a legal or equitable
 4 interest in a party of a fair market value exceeding one thousand five hundred
 5 dollars. Ownership in a mutual or common investment fund that holds securities
 6 does not itself constitute a financial interest; holding office in an educational,
 7 religious, charitable, fraternal or civic organization does not confer a financial
 8 interest in the organization's securities; and a proprietary interest of a
 9 policyholder in a mutual insurance company or mutual savings association or
 10 similar interest is not a financial interest unless the outcome of the proceeding
 11 could substantially affect the value of the interest. A justice shall make
 12 reasonable efforts to keep informed about his or her personal and fiduciary
 13 interests and those of his or her spouse and of minor children living in the
 14 household.

15
 16 (e) The justice or his or her spouse, or a person within the third degree of
 17 relationship to either of them, or the spouse thereof, is a party or an officer,
 18 director or trustee of a party to the proceeding, or a lawyer or spouse of a
 19 lawyer in the proceeding is the spouse, former spouse, child, sibling, or parent
 20 of the justice or of the justice's spouse, or such a person is associated in the
 21 private practice of law with a lawyer in the proceeding.

22
 23 (f) The justice (i) served as the judge before whom the proceeding was
 24 tried or heard in the lower court, (ii) has a personal knowledge of disputed
 25 evidentiary facts concerning the proceeding, or (iii) has a personal bias or
 26 prejudice concerning a party or a party's lawyer. The justice's spouse or a
 27 person within the third degree of relationship to the justice or his or her spouse,
 28 or the person's spouse, was a witness in the proceeding.

29
 30 (g) A temporary or permanent physical impairment renders the judge
 31 unable properly to perceive the evidence or conduct the proceedings.

32 *ADVISORY COMMITTEE COMMENTARY*

33 *Canon 3(E)(1) sets forth the general duty to disqualify applicable to a judge*
 34 *of any court. Sources for determining when recusal or disqualification is*
 35 *appropriate may include the applicable provisions of the Code of Civil Procedure,*
 36 *other provisions of the Code of Judicial Ethics, the Code of Conduct for United*
 37 *States Judges, the American Bar Association's Model Code of Judicial Conduct,*
 38 *and related case law.*

39
 40
 41 *The introductory paragraph to Canon 3E(3) sets forth the general standards*
 42 *for recusal of an appellate justice. The term "appellate justice" includes justices of*
 43 *both the Courts of Appeal and the Supreme Court. Generally, the provisions*

1 concerning disqualification of an appellate justice are intended to assist justices in
2 determining whether recusal is appropriate and to inform the public why recusal
3 may occur.

4
5 *However, the rule of necessity may override the rule of disqualification. For*
6 *example, a judge might be required to participate in judicial review of a judicial*
7 *salary statute, or might be the only judge available in a matter requiring judicial*
8 *action, such as a hearing on probable cause or a temporary restraining order. In*
9 *the latter case, the judge must promptly disclose on the record the basis for possible*
10 *disqualification and use reasonable efforts to transfer the matter to another judge*
11 *as soon as practicable.*

12
13 ***Canon 3E amended effective December 13, 2000; previously amended effective***
14 ***June 19, 1997, and March 4, 1999.***

CANON 4

A JUDGE SHALL SO CONDUCT THE JUDGE'S QUASI-JUDICIAL AND EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

A. Extrajudicial Activities in General

A judge shall conduct all of the judge's extrajudicial activities so that they do not

- (1) cast reasonable doubt on the judge's capacity to act impartially;**
- (2) demean the judicial office; or**
- (3) interfere with the proper performance of judicial duties.**

ADVISORY COMMITTEE COMMENTARY

Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of a classification such as their race, sex, religion, sexual orientation, or national origin. See Canon 2C and accompanying Commentary.

B. Quasi-judicial and Avocational Activities

A judge may speak, write, lecture, teach, and participate in activities concerning legal and nonlegal subject matters, subject to the requirements of this Code.

ADVISORY COMMITTEE COMMENTARY

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. To the extent that time permits, a judge may do so, either independently or through a bar or judicial association or other group dedicated to the improvement of the law.**

1 It may be necessary to promote legal education programs and materials by
 2 identifying authors and speakers by judicial title. This is permissible, provided such
 3 use of the judicial title does not contravene Canons 2A and 2B.

4
 5 Judges are not precluded by their office from engaging in other social,
 6 community, and intellectual endeavors so long as they do not interfere with the
 7 obligations under Canons 2C and 4A.

8
 9 **C. Governmental, Civic, or Charitable Activities**

10
 11 **(1) A judge shall not appear at a public hearing or officially consult with**
 12 **an executive or legislative body or public official except on matters concerning**
 13 **the law,* the legal system, or the administration of justice or in matters**
 14 **involving the judge's private economic or personal interests.**

15
 16 *ADVISORY COMMITTEE COMMENTARY*

17 *See Canon 2B regarding the obligation to avoid improper influence.*

18
 19 **(2) A judge shall not accept appointment to a governmental committee or**
 20 **commission or other governmental position that is concerned with issues of fact**
 21 **or policy on matters other than the improvement of the law,* the legal system,**
 22 **or the administration of justice. A judge may, however, serve in the military**
 23 **reserve or represent a national, state, or local government on ceremonial**
 24 **occasions or in connection with historical, educational, or cultural activities.**

25
 26 *ADVISORY COMMITTEE COMMENTARY*

27 *Canon 4C(2) prohibits a judge from accepting any governmental position*
 28 *except one relating to the law,* legal system, or administration of justice as*
 29 *authorized by Canon 4C(3). The appropriateness of accepting extrajudicial*
 30 *assignments must be assessed in light of the demands on judicial resources and the*
 31 *need to protect the courts from involvement in extrajudicial matters that may prove*
 32 *to be controversial. Judges shall not accept governmental appointments that are*
 33 *likely to interfere with the effectiveness and independence of the judiciary, or which*
 34 *constitute a public office within the meaning of the California Constitution, article*
 35 *VI, section 17.*

36
 37 *Canon 4C(2) does not govern a judge's service in a nongovernmental*
 38 *position. See Canon 4C(3) permitting service by a judge with organizations devoted*
 39 *to the improvement of the law,* the legal system, or the administration of justice*
 40 *and with educational, religious, charitable, fraternal, or civic organizations not*
 41 *conducted for profit. For example, service on the board of a public educational*
 42 *institution, other than a law school, would be prohibited under Canon 4C(2), but*

1 *service on the board of a public law school or any private educational institution*
2 *would generally be permitted under Canon 4C(3).*

3
4 **(3) Subject to the following limitations and the other requirements of this**
5 **Code,**

6
7 **(a) a judge may serve as an officer, director, trustee, or nonlegal advisor**
8 **of an organization or governmental agency devoted to the improvement of the**
9 **law,* the legal system, or the administration of justice provided that such**
10 **position does not constitute a public office within the meaning of the California**
11 **Constitution, article VI, section 17;**

12
13 **(b) a judge may serve as an officer, director, trustee, or nonlegal advisor**
14 **of an educational, religious, charitable, fraternal, or civic organization not**
15 **conducted for profit;**

16
17 *ADVISORY COMMITTEE COMMENTARY*

18 *Canon 4C(3) does not apply to a judge's service in a governmental position*
19 *unconnected with the improvement of the law,* the legal system, or the*
20 *administration of justice. See Canon 4C(2).*

21
22 *Canon 4C(3) uses the phrase, "Subject to the following limitations and the*
23 *other requirements of this Code." As an example of the meaning of the phrase, a*
24 *judge permitted by Canon 4C(3) to serve on the board of a fraternal institution may*
25 *be prohibited from such service by Canon 2C or 4A if the institution practices*
26 *invidious discrimination or if service on the board otherwise casts reasonable doubt*
27 *on the judge's capacity to act impartially as a judge.*

28
29 *Service by a judge on behalf of a civic or charitable organization may be*
30 *governed by other provisions of Canon 4 in addition to Canon 4C. For example, a*
31 *judge is prohibited by Canon 4G from serving as a legal advisor to a civic or*
32 *charitable organization.*

33
34 *Service on the board of a homeowners' association or a neighborhood*
35 *protective group is proper if it is related to the protection of the judge's own*
36 *economic interests. See Canons 4D(2) and 4D(4). See Canon 2B regarding the*
37 *obligation to avoid improper use of the prestige of a judge's office.*

38
39 **(c) a judge shall not serve as an officer, director, trustee, or nonlegal**
40 **advisor if it is likely that the organization**

41
42 **(i) will be engaged in judicial proceedings that would ordinarily**
43 **come before the judge, or**

1
2 **(ii) will be engaged frequently in adversary proceedings in the**
3 **court of which the judge is a member or in any court subject to the appellate**
4 **jurisdiction of the court of which the judge is a member;**
5

6 *ADVISORY COMMITTEE COMMENTARY*

7 *The changing nature of some organizations and of their relationship to the*
8 *law* makes it necessary for the judge regularly to reexamine the activities of each*
9 *organization with which the judge is affiliated to determine if it is proper for the*
10 *judge to continue the affiliation. Some organizations regularly engage in litigation*
11 *to achieve their goals or fulfill their purposes. Judges should avoid a leadership*
12 *role in such organizations as it could compromise the appearance of impartiality.*
13

14 **(d) a judge as an officer, director, trustee, or nonlegal advisor, or as a**
15 **member or otherwise**
16

17 **(i) may assist such an organization in planning fund raising and**
18 **may participate in the management and investment of the organization's funds,**
19 **but shall not personally participate in the solicitation of funds or other fund-**
20 **raising activities, except that a judge may privately solicit funds for such an**
21 **organization from other judges (excluding court commissioners, referees,**
22 **retired judges, and temporary judges*);**
23

24 **(ii) may make recommendations to public and private fund-**
25 **granting organizations on projects and programs concerning the law,* the legal**
26 **system, or the administration of justice;**
27

28 **(iii) shall not personally participate in membership solicitation if**
29 **the solicitation might reasonably be perceived as coercive or if the membership**
30 **solicitation is essentially a fund-raising mechanism, except as permitted in**
31 **Canon 4C(3)(d)(i);**
32

33 **(iv) shall not permit the use of the prestige of his or her judicial**
34 **office for fund raising or membership solicitation but may be a speaker, guest of**
35 **honor, or recipient of an award for public or charitable service provided the**
36 **judge does not personally solicit funds and complies with Canon 4A(1), (2), and**
37 **(3).**
38

39
40 *ADVISORY COMMITTEE COMMENTARY*

41 *A judge may solicit membership or endorse or encourage membership efforts*
42 *for an organization devoted to the improvement of the law,* the legal system, or the*
43 *administration of justice, or a nonprofit educational, religious, charitable,*

1 fraternal, or civic organization as long as the solicitation cannot reasonably be
 2 perceived as coercive and is not essentially a fund-raising mechanism. Solicitation
 3 of funds for an organization and solicitation of memberships similarly involve the
 4 danger that the person solicited will feel obligated to respond favorably to the
 5 solicitor if the solicitor is in a position of influence or control. A judge must not
 6 engage in direct, individual solicitation of funds or memberships in person, in
 7 writing, or by telephone except in the following cases: (1) a judge may solicit other
 8 judges (excluding court commissioners, referees, retired judges, court-appointed
 9 arbitrators, and temporary judges*) for funds or memberships; (2) a judge may
 10 solicit other persons for membership in the organizations described above if neither
 11 those persons nor persons with whom they are affiliated are likely ever to appear
 12 before the court on which the judge serves; and (3) a judge who is an officer of such
 13 an organization may send a general membership solicitation mailing over the
 14 judge's signature.

15
 16 Use of an organization letterhead for fund raising or membership
 17 solicitation does not violate Canon 4C(3)(d), provided the letterhead lists only the
 18 judge's name and office or other position in the organization, and designates the
 19 judge's judicial title only if other persons whose names appear on the letterhead
 20 have comparable designations. In addition, a judge must also make reasonable
 21 efforts to ensure that the judge's staff, court officials, and others subject to the
 22 judge's direction and control do not solicit funds on the judge's behalf for any
 23 purpose, charitable or otherwise.

24
 25 **D. Financial Activities**

26
 27 **(1) A judge shall not engage in financial and business dealings that**

28
 29 **(a) may reasonably be perceived to exploit the judge's judicial position,**
 30 **or**

31
 32 **(b) involve the judge in frequent transactions or continuing business**
 33 **relationships with lawyers or other persons likely to appear before the court on**
 34 **which the judge serves.**

35
 36 **ADVISORY COMMITTEE COMMENTARY**

37 *The Time for Compliance provision of this Code (Canon 6F) postpones the*
 38 *time for compliance with certain provisions of this Canon in some cases.*

39
 40 *A judge must avoid financial and business dealings that involve the judge in*
 41 *frequent transactions or continuing business relationships with persons likely to*
 42 *appear either before the judge personally or before other judges on the judge's*
 43 *court. A judge shall discourage members of the judge's family* from engaging in*

1 *dealings that would reasonably appear to exploit the judge's judicial position or*
 2 *that involve family members in frequent transactions or continuing business*
 3 *relationships with persons likely to appear before the judge. This rule is necessary*
 4 *to avoid creating an appearance of exploitation of office or favoritism and to*
 5 *minimize the potential for disqualification.*

6
 7 *Participation by a judge in financial and business dealings is subject to the*
 8 *general prohibitions in Canon 4A against activities that tend to reflect adversely on*
 9 *impartiality, demean the judicial office, or interfere with the proper performance of*
 10 *judicial duties. Such participation is also subject to the general prohibition in*
 11 *Canon 2 against activities involving impropriety or the appearance of impropriety*
 12 *and the prohibition in Canon 2B against the misuse of the prestige of judicial office.*

13
 14 *In addition, a judge must maintain high standards of conduct in all of the*
 15 *judge's activities, as set forth in Canon 1.*

16
 17 **(2) A judge may, subject to the requirements of this Code, hold and**
 18 **manage investments of the judge and members of the judge's family,* including**
 19 **real estate, and engage in other remunerative activities. A judge shall not**
 20 **participate in, nor permit the judge's name to be used in connection with, any**
 21 **business venture or commercial advertising that indicates the judge's title or**
 22 **affiliation with the judiciary or otherwise lend the power or prestige of his or**
 23 **her office to promote a business or any commercial venture.**

24
 25 **(3) A judge shall not serve as an officer, director, manager, or employee**
 26 **of a business affected with a public interest, including, without limitation, a**
 27 **financial institution, insurance company, or public utility.**

28
 29 *ADVISORY COMMITTEE COMMENTARY*

30 *Although participation by a judge in business activities might otherwise be*
 31 *permitted by Canon 4D, a judge may be prohibited from participation by other*
 32 *provisions of this Code when, for example, the business entity frequently appears*
 33 *before the judge's court or the participation requires significant time away from*
 34 *judicial duties. Similarly, a judge must avoid participating in any business activity*
 35 *if the judge's participation would involve misuse of the prestige of judicial office.*
 36 *See Canon 2B.*

37
 38 **(4) A judge shall manage personal investments and financial activities so**
 39 **as to minimize the necessity for disqualification. As soon as reasonably possible,**
 40 **a judge shall divest himself or herself of investments and other financial**
 41 **interests that would require frequent disqualification.**

1 **(5) Under no circumstance shall a judge accept a gift, bequest, or favor if**
2 **the donor is a party whose interests have come or are reasonably likely to come**
3 **before the judge. A judge shall discourage members of the judge's family**
4 **residing in the judge's household* from accepting similar benefits from parties**
5 **who have come or are reasonably likely to come before the judge.**

6
7 *ADVISORY COMMITTEE COMMENTARY*

8 *In addition to the prohibitions set forth in Canon 4D(5) regarding gifts,*
9 *other laws may be applicable to judges, including, for example, Code of Civil*
10 *Procedure section 170.9 and the Political Reform Act of 1974 (Gov. Code, § 81000*
11 *et seq.).*

12
13 *Canon 4D(5) does not apply to contributions to a judge's campaign for*
14 *judicial office, a matter governed by Canon 5.*

15
16 *Because a gift, bequest, or favor to a member of the judge's family residing*
17 *in the judge's household* might be viewed as intended to influence the judge, a*
18 *judge must inform those family members of the relevant ethical constraints upon the*
19 *judge in this regard and discourage those family members from violating*
20 *them. A judge cannot, however, reasonably be expected to know or control all of the*
21 *financial or business activities of all family members residing in the judge's*
22 *household.**

23
24 *The application of Canon 4D(5) requires recognition that a judge cannot*
25 *reasonably be expected to anticipate all persons or interests that may come before*
26 *the court.*

27
28 **(6) A judge shall not accept and shall discourage members of the judge's**
29 **family residing in the judge's household* from accepting a gift, bequest, favor,**
30 **or loan from anyone except as hereinafter provided:**

31
32 **(a) any gift incidental to a public testimonial, books, tapes, and other**
33 **resource materials supplied by publishers on a complimentary basis for official**
34 **use, or an invitation to the judge and the judge's spouse or guest to attend a**
35 **bar-related function or an activity devoted to the improvement of the law,* the**
36 **legal system, or the administration of justice;**

37
38 **(b) advances or reimbursement for the reasonable cost of travel,**
39 **transportation, lodging, and subsistence which is directly related to**
40 **participation in any judicial, educational, civic, or governmental program or**
41 **bar-related function or activity, devoted to the improvement of the law,* the**
42 **legal system, or the administration of justice;**
43

1 *ADVISORY COMMITTEE COMMENTARY*

2 *Acceptance of an invitation to a law-related function is governed by Canon*
3 *4D(6)(a); acceptance of an invitation paid for by an individual lawyer or group of*
4 *lawyers is governed by Canon 4D(6)(d).*

5
6 **(c) a gift, award, or benefit incident to the business, profession, or other**
7 **separate activity of a spouse or other member of the judge’s family residing in**
8 **the judge's household,* including gifts, awards, and benefits for the use of both**
9 **the spouse or other family member and the judge, provided the gift, award, or**
10 **benefit could not reasonably be perceived as intended to influence the judge in**
11 **the performance of judicial duties;**

12
13 **(d) ordinary social hospitality;**

14
15 *ADVISORY COMMITTEE COMMENTARY*

16 *Although Canon 4D(6)(d) does not preclude ordinary social hospitality*
17 *between members of the bench and bar, a judge should carefully weigh acceptance*
18 *of such hospitality to avoid any appearance of bias. See Canon 2B.*

19
20 **(e) a gift for a special occasion from a relative or friend, if the gift is**
21 **fairly commensurate with the occasion and the relationship;**

22
23 *ADVISORY COMMITTEE COMMENTARY*

24 *A gift to a judge, or to a member of the judge's family residing in the judge's*
25 *household,* that is excessive in value raises questions about the judge's impartiality*
26 *and the integrity of the judicial office and might require disqualification of the*
27 *judge where disqualification would not otherwise be required. See, however, Canon*
28 *4D(6)(f).*

29 **(f) a gift, bequest, favor, or loan from a relative or close personal friend**
30 **whose appearance or interest in a case would in any event require**
31 **disqualification under Canon 3E;**

32
33 **(g) a loan in the regular course of business on the same terms generally**
34 **available to persons who are not judges;**

35
36 **(h) a scholarship or fellowship awarded on the same terms and based on**
37 **the same criteria applied to other applicants.**

38
39 **E. Fiduciary Activities**

40
41 **(1) A judge shall not serve as executor, administrator, or other personal**
42 **representative, trustee, guardian, attorney in fact, or other fiduciary,* except**

1 for the estate, trust, or person of a member of the judge's family,* and then only
2 if such service will not interfere with the proper performance of judicial duties.

3
4 (2) A judge shall not serve as a fiduciary* if it is likely that the judge as a
5 fiduciary* will be engaged in proceedings that would ordinarily come before the
6 judge, or if the estate, trust, or minor or conservatee becomes engaged in
7 contested proceedings in the court on which the judge serves or one under its
8 appellate jurisdiction.

9
10 (3) The same restrictions on financial activities that apply to a judge
11 personally also apply to the judge while acting in a fiduciary* capacity.

12
13 *ADVISORY COMMITTEE COMMENTARY*

14 *The Time for Compliance provision of this Code (Canon 6F) postpones the*
15 *time for compliance with certain provisions of this Canon in some cases.*

16
17 *The restrictions imposed by this Canon may conflict with the judge's*
18 *obligation as a fiduciary.* For example, a judge shall resign as trustee if detriment*
19 *to the trust would result from divestiture of trust holdings the retention of which*
20 *would place the judge in violation of Canon 4D(4).*

21
22 **F. Service as Arbitrator or Mediator**

23
24 **A judge shall not act as an arbitrator or mediator or otherwise perform**
25 **judicial functions in a private capacity unless expressly authorized by law.***

26
27 *ADVISORY COMMITTEE COMMENTARY*

28 *Canon 4F does not prohibit a judge from participating in arbitration,*
29 *mediation, or settlement conferences performed as part of his or her judicial duties.*

30
31 **G. Practice of Law**

32
33 **A judge shall not practice law.**

34
35 *ADVISORY COMMITTEE COMMENTARY*

36 *This prohibition refers to the practice of law in a representative capacity and*
37 *not in a pro se capacity. A judge may act for himself or herself in all legal matters,*
38 *including matters involving litigation and matters involving appearances before or*
39 *other dealings with legislative and other governmental bodies. However, in so*
40 *doing, a judge must not abuse the prestige of office to advance the interests of the*
41 *judge or member of the judge's family.* See Canon 2B.*

42
43 **H. Compensation and Reimbursement**

1
2 **A judge may receive compensation and reimbursement of expenses as**
3 **provided by law* for the extrajudicial activities permitted by this Code, if the**
4 **source of such payments does not give the appearance of influencing the judge's**
5 **performance of judicial duties or otherwise give the appearance of impropriety.**
6

7 **(1) Compensation shall not exceed a reasonable amount nor shall it**
8 **exceed what a person who is not a judge would receive for the same activity.**
9

10 **(2) Expense reimbursement shall be limited to the actual cost of travel,**
11 **food, lodging, and other costs reasonably incurred by the judge and, where**
12 **appropriate to the occasion, by the judge's spouse or guest. Any payment in**
13 **excess of such an amount is compensation.**
14

15 *ADVISORY COMMITTEE COMMENTARY*

16 *Judges should be aware of the statutory limitations on accepting gifts,*
17 *including honoraria.*

CANON 5

**A JUDGE OR JUDICIAL CANDIDATE*
SHALL REFRAIN FROM INAPPROPRIATE
POLITICAL ACTIVITY**

Judges are entitled to entertain their personal views on political questions. They are not required to surrender their rights or opinions as citizens. They shall, however, avoid political activity that may create the appearance of political bias or impropriety. Judicial independence and impartiality should dictate the conduct of judges and candidates* for judicial office.

A. Political Organizations

Judges and candidates* for judicial office shall not

(1) act as leaders or hold any office in a political organization;*

(2) make speeches for a political organization* or candidate* for nonjudicial office or publicly endorse or publicly oppose a candidate for nonjudicial office; or

(3) personally solicit funds for a political organization* or nonjudicial candidate;* or make contributions to a political party or political organization* or to a nonjudicial candidate in excess of five hundred dollars in any calendar year per political party or political organization* or candidate,* or in excess of an aggregate of one thousand dollars in any calendar year for all political parties or political organizations* or nonjudicial candidates.*

ADVISORY COMMITTEE COMMENTARY

The term "political activity" should not be construed so narrowly as to prevent private comment.

This provision does not prohibit a judge from signing a petition to qualify a measure for the ballot without the use of the judge's official title.

In judicial elections, judges are neither required to shield themselves from campaign contributions nor are they prohibited from soliciting contributions from anyone including attorneys. Nevertheless, there are necessary limits on judges facing election if the appearance of impropriety is to be avoided. Although it is improper for a judge to receive a gift from an attorney subject to exceptions noted in Canon 4D(6), a judge's campaign may receive attorney contributions.

1
2 *Although attendance at political gatherings is not prohibited, any such*
3 *attendance should be restricted so that it would not constitute an express public*
4 *endorsement of a nonjudicial candidate* or a measure not directly affecting the*
5 *administration of justice otherwise prohibited by this Canon.*

6
7 *Subject to the monetary limitation herein to political contributions, a judge*
8 *may purchase tickets for political dinners or other similar dinner functions. Any*
9 *admission price to such a political dinner or function in excess of the actual cost of*
10 *the meal shall be considered a political contribution. The prohibition in Canon*
11 *5A(3) does not preclude judges from contributing to a campaign fund for*
12 *distribution among judges who are candidates for reelection or retention, nor does*
13 *it apply to contributions to any judge or candidate* for judicial office.*

14
15 *Under this Canon, a judge may publicly endorse another judicial*
16 *candidate.* Such endorsements are permitted because judicial officers have a*
17 *special obligation to uphold the integrity and impartiality of the judiciary and are*
18 *in a unique position to know the qualifications necessary to serve as a competent*
19 *judicial officer.*

20
21 *Although members of the judge's family* are not subject to the provisions of*
22 *this Code, a judge shall not avoid compliance with this Code by making*
23 *contributions through a spouse or other family member.*

24
25 **B. Conduct During Judicial Campaigns**

26
27 **A candidate* for election or appointment to judicial office shall not (1)**
28 **make statements to the electorate or the appointing authority that commit or**
29 **appear to commit the candidate* with respect to cases, controversies, or issues**
30 **that could come before the courts, or (2) knowingly misrepresent the identity,**
31 **qualifications, present position, or any other fact concerning the candidate* or**
32 **his or her opponent.**

33
34 **C. Speaking at Political Gatherings**

35
36 **Candidates* for judicial office may speak to political gatherings only on**
37 **their own behalf or on behalf of another candidate for judicial office.**

38
39 **D. Measures to Improve the Law**

40
41 **Except as otherwise permitted in this Code, judges shall not engage in**
42 **any political activity, other than in relation to measures concerning the**
43 **improvement of the law,* the legal system, or the administration of justice.**

CANON 6

COMPLIANCE WITH THE CODE OF JUDICIAL ETHICS

A. Judges

Anyone who is an officer of the state judicial system and who performs judicial functions, including, but not limited to, a magistrate, court commissioner, referee, court-appointed arbitrator, judge of the State Bar Court, temporary judge,* or special master, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

ADVISORY COMMITTEE COMMENTARY

For the purposes of this Canon, if a retired judge is serving in the assigned judges program, the judge is considered to "perform judicial functions." Because retired judges who are privately retained may perform judicial functions, their conduct while performing those functions should be guided by this Code.

B. Retired Judge Serving in the Assigned Judges Program

A retired judge who has filed an application to serve on assignment, meets the eligibility requirements set by the Chief Justice for service, and has received an acknowledgment of participation in the assigned judges program shall comply with all provisions of this Code, except for the following:

- 4C(2) Appointment to governmental positions
- 4D(2) Participation in business entities and managing investments
- 4E Fiduciary* activities

C. Retired Judge as Arbitrator or Mediator

A retired judge serving in the assigned judges program is not required to comply with Canon 4F of this Code relating to serving as an arbitrator or mediator, or performing judicial functions in a private capacity, except as otherwise provided in the Standards and Guidelines for Judges Serving on Assignment promulgated by the Chief Justice.

ADVISORY COMMITTEE COMMENTARY

In California, article VI, section 6 of the California Constitution provides that a "retired judge who consents may be assigned to any court" by the Chief Justice. Retired judges who are serving in the assigned judges program pursuant to the above provision are bound by Canon 6B, including the requirement of Canon

1 *4G barring the practice of law. Other provisions of California law, and standards*
 2 *and guidelines for eligibility and service set by the Chief Justice, further define the*
 3 *limitations on who may serve on assignment.*

4
 5 **D. Temporary Judge*, Referee, or Court-appointed Arbitrator¹**

6
 7 **A temporary judge, a person serving as a referee pursuant to Code of**
 8 **Civil Procedure section 638 or 639, or a court-appointed arbitrator shall comply**
 9 **only with the following Code provisions:**

10
 11 **(1) A temporary judge, referee or court-appointed arbitrator shall comply**
 12 **with Canons 1 [integrity and independence of the judiciary], 2A [promoting**
 13 **public confidence], 3B(3) [order and decorum] and (4) [patient, dignified, and**
 14 **courteous treatment], 3B(6) [require lawyers to refrain from manifestations of**
 15 **any form of bias or prejudice], 3D(1) [action regarding misconduct by another**
 16 **judge] and (2) [action regarding misconduct by a lawyer], when the temporary**
 17 **judge, referee or court-appointed arbitrator is actually presiding in a proceeding or**
 18 **communicating with the parties, counsel, or court personnel while serving in the**
 19 **capacity of a temporary judge, referee or court-appointed arbitrator in the case.**

20
 21 **(2) A temporary judge, referee or court-appointed arbitrator shall, from**
 22 **the time of notice and acceptance of appointment until termination of the**
 23 **appointment:**

24
 25 **(a) Comply with Canons 2B(1) [not allow family or other relationships to**
 26 **influence judicial conduct], 3B(1) [hear and decide all matters unless**
 27 **disqualified] and (2) [be faithful to and maintain competence in the law], 3B(5)**
 28 **[perform judicial duties without bias or prejudice], 3B(7) [accord full right to be**
 29 **heard to those entitled; avoid ex parte communications, except as specified] and**
 30 **(8) [dispose of matters fairly and promptly], 3C(1)[discharge administrative**
 31 **responsibilities without bias and with competence and cooperatively], (2)**
 32 **[require staff and personnel to observe standards of conduct and refrain from**
 33 **bias and prejudice]and (4) [make only fair, necessary, and appropriate**
 34 **appointments];**

35
 36 **(b) Not lend the prestige of judicial office to advance his, her, or another**
 37 **person’s pecuniary or personal interests and not use his or her judicial title in any**
 38 **written communication intended to advance his, her, or another person’s pecuniary**
 39 **or personal interests, except to show his, her, or another person’s qualifications;**
 40

¹ Reference should be made to relevant commentary to analogous or individual Canons cited or described in this Canon and appearing elsewhere in this Code.

1 (c) Not personally solicit memberships or donations for religious, fraternal,
2 educational, civic, or charitable organizations from the parties and lawyers
3 appearing before the temporary judge, referee, or court-appointed arbitrator;
4

5 (d) Under no circumstance accept a gift, bequest, or favor if the donor is a
6 party, person, or entity whose interests are reasonably likely to come before the
7 temporary judge, referee, or court-appointed arbitrator. A temporary judge,
8 referee, or court-appointed arbitrator shall discourage members of the judge's
9 family residing in the judge's household from accepting benefits from parties who
10 are reasonably likely to come before the temporary judge, referee, or court-
11 appointed arbitrator.
12

13 (e) Disqualify himself or herself in any proceeding in which disqualification
14 is required by law;
15

16 (f) In all proceedings, disclose in writing or on the record information as
17 required by law, or information that the temporary judge, referee or court-
18 appointed arbitrator believes the parties or their lawyers might consider relevant to
19 the question of disqualification, even where it is believed that there is no actual
20 basis for disqualification; and
21

22 (g) In all proceedings, disclose in writing or on the record membership in
23 any organization that practices invidious discrimination on the basis of race, sex,
24 religion, national origin, or sexual orientation, except for membership in a religious
25 or an official military organization of the United States and membership in a
26 nonprofit youth organization so long as membership does not violate Canon 4A
27 [conduct of extrajudicial activities].
28

29 (3) A temporary judge, referee, or court-appointed arbitrator, from the
30 time of notice and acceptance of appointment until the case is no longer pending in
31 any court, shall not make any public comment about a pending or impending
32 proceeding in which the temporary judge, referee, or court-appointed arbitrator
33 has been engaged, and shall not make any nonpublic comment that might
34 substantially interfere with such proceeding. The temporary judge, referee or
35 court-appointed arbitrator shall require similar abstention on the part of court
36 personnel subject to his or her control. This Canon does not prohibit the following:
37

38 (a) Statements made in the course of the official duties of the temporary
39 judge, referee or court-appointed arbitrator; and
40

41 (b) Explanations for public information about the procedures of the court.
42

1 (4) From the time of appointment and continuing for two years after the
2 case is no longer pending in any court, a temporary judge, referee or court-
3 appointed arbitrator shall under no circumstances accept a gift, bequest, or favor
4 from a party, person, or entity whose interests have come before the temporary
5 judge, referee or court-appointed arbitrator in the matter. The temporary judge,
6 referee or court-appointed arbitrator shall discourage family members residing in
7 the household of the temporary judge, referee or court-appointed arbitrator from
8 accepting any benefits from such parties, persons or entities during the time period
9 stated in this subdivision. The demand for or receipt by a temporary judge, referee
10 or court appointed arbitrator of a fee for his or her services rendered or to be
11 rendered shall not be a violation of this Canon.

12
13 (5) A temporary judge, referee or court-appointed arbitrator shall, from
14 time of notice and acceptance of appointment and continuing indefinitely after the
15 termination of the appointment:

16
17 (a) Comply with Canons 3(B)(11) [no disclosure of nonpublic information
18 acquired in a judicial capacity] (except as required by law);

19
20 (b) Not commend or criticize jurors sitting in a proceeding before the
21 temporary judge, referee or court-appointed arbitrator for their verdict other than
22 in a court order or opinion in such proceeding, but may express appreciation to
23 jurors for their service to the judicial system and the community.

24
25 (6) A temporary judge, referee or court-appointed arbitrator shall comply
26 with Canon 6D(2) until the appointment has been terminated formally or until
27 there is no reasonable probability that the temporary judge, referee or court-
28 appointed arbitrator will further participate in the matter. A rebuttable
29 presumption that the appointment has been formally terminated shall arise if,
30 within one year from the appointment or from the date of the last hearing scheduled
31 in the matter, which ever is later, neither the appointing court nor counsel for any
32 party in the matter has informed the temporary judge, referee or court appointed
33 arbitrator that the appointment remains in effect.

34
35 (7) A lawyer who has been a temporary judge, referee, or court-appointed
36 arbitrator in a matter shall not accept any representation relating to the matter
37 without the informed written consent of all parties.

38
39 (8) When by reason of serving as a temporary judge, referee, or court-
40 appointed arbitrator in a matter, he or she has received confidential information
41 from a party, the person shall not, without the informed written consent of the
42 party, accept employment in another matter in which the confidential information
43 is material.

1
2 *(Canon 6D amended effective March 4, 1999.)*

3
4 *ADVISORY COMMITTEE COMMENTARY*

5 *Any exceptions to the Canons do not excuse a judicial officer's separate*
6 *statutory duty to disclose information that may result in the judicial officer's recusal*
7 *or disqualification.*

8
9 **E. Judicial Candidate**

10
11 **A candidate* for judicial office shall comply with the provisions of**
12 **Canon 5.**

13
14 **F. Time for Compliance**

15
16 **A person to whom this Code becomes applicable shall comply**
17 **immediately with all provisions of this Code except Canons 4D(2) and 4F and**
18 **shall comply with these Canons as soon as reasonably possible and shall do so in**
19 **any event within a period of one year.**

20
21 *Canon 6D amended effective March 4, 1999; previously amended effective April*
22 *15, 1996; adopted effective January 15, 1996.*

23
24 *ADVISORY COMMITTEE COMMENTARY*

25 *If serving as a fiduciary* when selected as a judge, a new judge may,*
26 *notwithstanding the prohibitions in Canon 4F, continue to serve as fiduciary* but*
27 *only for that period of time necessary to avoid adverse consequences to the*
28 *beneficiary of the fiduciary relationship and in no event longer than one year.*
29 *Similarly, if engaged at the time of judicial selection in a business activity, a new*
30 *judge may, notwithstanding the prohibitions in Canon 4D(2), continue in that*
31 *activity for a reasonable period but in no event longer than one year.*



APPENDIX 3.
Complaint Form





DEPARTMENT OF INDUSTRIAL RELATIONS
WORKERS' COMPENSATION ETHICS ADVISORY COMMITTEE

Complaint About a Workers' Compensation Administrative Law Judge
(Labor Code §123.6 and Title 8, Cal. Code Regs. §9722.1)

Date: _____

Your name: _____ Your telephone number: _____

Your address: _____

Your attorney's name (if any): _____

Your attorney's telephone number: _____

Judge's name: _____

Name of your case and WCAB case number: _____

In the space below, please specify exactly what action or behavior
of the judge you believe is an ethical violation.
Please provide relevant dates and the names of others present.
Use additional sheets if needed.

It may be a felony to make or cause to be made any knowingly false or fraudulent material statements in support of, or in opposition to, any claim for workers' compensation benefits. Your signature below indicates that you have read and understood the above statement.

Date: _____ Signature: _____

Return to: Department of Industrial Relations
Workers' Compensation Ethics Advisory Committee
P.O. Box 420603
San Francisco, CA 94142

Note: Filing a complaint with the Ethics Advisory Committee is NOT a Petition for Reconsideration or Appeal of an Award or Order.

Judges and Judicial Ethics

All Workers' Compensation Administrative Law Judges must follow the California Code of Judicial Ethics. A copy of the Code is available for inspection at any Workers' Compensation Appeals Board office. A copy of the Code may be obtained for the cost or reproduction (\$2.00) by writing to:

Division of Workers' Compensation
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Please make you \$2.00 check or money order payable to "Division of Workers' Compensation."

If you have evidence that a Worker's Compensation Administrative Law Judge has violated the Code of Judicial Ethics, you may complain either to:

The Presiding Workers' Compensation Judge
at the Workers' Compensation Board district office
where the judge is employed;

or to:

Workers' Compensation Ethics Advisory Committee
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142

The Workers' Compensation Ethics Advisory Committee is an independent state committee. The Committee receives and monitors complaints against Workers' Compensation Administrative Law Judges.

Complaints must be in writing and must allege **specific conduct** which violates the Code. If you wish, you may use a complaint form which is available free at every Appeals Board office.

Examples of Code violations are abusive conduct (e.g. threats, harassment, profanity), expressions of bias or prejudice, accepting a payment or gift from a litigant, intoxication, etc.

A ruling by a judge – no matter how wrong that ruling is – is not by itself an ethical violation. If you think the Judge made a wrong decision in your case, you should consult with a lawyer or an Information & Assistance Officer. You may have the right to file a petition for reconsideration or to seek some other legal remedy to correct the wrong ruling.

Note: Filing a complaint with the Ethics Advisory Committee is NOT a Petition for Reconsideration or Appeal of an Award or Order.

If you have a complaint against

An Attorney

Complaints against attorneys -- either your own or your opponent's -- may be addressed to:

The State Bar of California
555 Franklin Street
San Francisco, CA 94102
(800) 843-9053

An Insurance Company

Department of Insurance or Audit Unit

Department of Insurance
Claims Service
300 So. Spring Street
Los Angeles, CA 90013
(800) 927-4357
(213) 987-8921

Division of Workers' Compensation
Audit Unit
2424 Arden Way, Suite 305
Sacramento, CA 95825
(916) 263-2710

A Physician

Medical Board of California or Industrial Medical Council

Department of Consumer Affairs
Medical Board of California
1426 Howe Avenue
Sacramento, CA 95825
(800) 633-2322
(Toll Free Complaint Line)

If your complaint concerns a Qualified Medical Evaluator (QME):

Industrial Medical Council
P. O. Box 8888
So. San Francisco, CA 94128
(800) 794-6900



APPENDIX 4.

Directory of Division of Workers' Compensation Offices



**DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION**



HEADQUARTERS - SAN FRANCISCO

455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102-3660
(415) 703-4600

Mailing Address:

P. O. Box 420603
San Francisco, CA 94142-0603

RICHARD GANNON
Administrative Director

GEORGE MASON
Chief Deputy Administrative Director

WORKERS' COMPENSATION APPEALS BOARD OFFICES

ANAHEIM

1661 North Raymond Avenue, Room 200
Anaheim, CA 92801-1162

ELLEN L. FLYNN, *Presiding Workers'
Compensation Administrative Law Judge*

BAKERSFIELD

1800 30th Street, Suite 100
Bakersfield, CA 93301-1929

EVELYN DAPREMONT, *Acting Presiding Workers'
Compensation Administrative Law Judge*

EUREKA

100 "H" Street, Suite 202
Eureka, CA 95501-0421

ANDREW NASH, *Acting Presiding Workers' Compensation Administrative Law Judge*

FRESNO

2550 Mariposa Street, Suite 4078
Fresno, CA 93721-2280

STEPHEN WEBSTER, *Presiding Workers' Compensation Administrative Law Judge*

GOLETA

6755 Hollister Avenue, Suite 100
Goleta, CA 93117-3018

ROBERT EBENSTEIN, *Acting Presiding Workers' Compensation Administrative Law Judge*

GROVER BEACH

1562 Grand Avenue
Grover Beach, CA 93433-2261

MICHAEL LE COVER, *Acting Presiding Workers' Compensation Administrative Law Judge*

LONG BEACH

300 Oceangate Street, Suite 200
Long Beach, CA 90802-4339

JOSEPH REBECK, *Presiding Workers' Compensation Administrative Law Judge*

LOS ANGELES

320 West 4th Street, 9th Floor
Los Angeles, CA 90013-1105

JAMES CASTRANOVA, *Presiding Workers' Compensation Administrative Law Judge*

OAKLAND

1515 Clay Street, 6th Floor
Oakland, CA 94612-1401

KENNETH PETERSON, *Presiding Workers' Compensation Administrative Law Judge*

OXNARD

2220 East Gonzales Road, Suite 100
Oxnard, CA 93030

LARRY GREENBLATT, *Presiding Workers' Compensation Administrative Law Judge*

POMONA

435 W. Mission Blvd., Suite 100
Pomona, CA 91766-1601

ROBERT WELCH, *Presiding Workers' Compensation Administrative Law Judge*

REDDING

2115 Akard Avenue, Suite 15
Redding, CA 96001-2796

MICHAEL HURLEY, *Presiding Workers' Compensation Administrative Law Judge*

RIVERSIDE

3737 Main Street, Suite 300
Riverside, CA 92501-3337

ELENA JACKSON, *Presiding Workers' Compensation Administrative Law Judge*

SACRAMENTO

2424 Arden Way, Suite 230
Sacramento, CA 95825-2403

JOEL HARTER, *Presiding Workers' Compensation Administrative Law Judge*

SALINAS

1880 North Main Street, Suite 100
Salinas, CA 93906-2016

THOMAS CLARKE, *Acting Presiding Workers' Compensation Administrative Law Judge*

SAN BERNARDINO

464 West 4th Street, Suite 239
San Bernardino, CA 92401-1411

DENNIS ZIMMERMAN, *Presiding Workers’
Compensation Administrative Law Judge*

SAN DIEGO

7575 Metropolitan Road, Suite 202
San Diego, CA 92108-4402

KEITH DIETTERLE, *Presiding Workers’
Compensation Administrative Law Judge*

SAN FRANCISCO

455 Golden Gate Avenue, 2nd Floor
San Francisco, CA 94102-3660

Mailing Address:

P. O. Box 429003
San Francisco, CA 94142-9003

SUSAN HAMILTON, *Presiding Workers’
Compensation Administrative Law Judge*

SAN JOSE

100 Paseo de San Antonio, Room 241
San Jose, CA 95113-1482

ANDREW COHEN, *Presiding Workers’
Compensation Administrative Law Judge*

SANTA ANA

28 Civic Center Plaza, Room 451
Santa Ana, CA 92701-4070

BILL WHITELEY, *Regional Manager (S)*
ALLAN BASS, *Presiding Workers’ Compensation
Administrative Law Judge*

SANTA MONICA

2701 Ocean Park Boulevard, Suite 220
Santa Monica, CA 90405-5212

FRANKLIN KAYE, *Presiding Workers’
Compensation Administrative Law Judge*

SANTA ROSA

50 “D” Street, Suite 420
Santa Rosa, CA 95404-4760

DAVID APPLEN, *Presiding Workers’
Compensation Administrative Law Judge*

STOCKTON

31 East Channel Street, Room 344
Stockton, CA 95202-2393

BERTRAM COHEN, *Presiding Workers’
Compensation Administrative Law Judge*

VAN NUYS

6150 Van Nuys Boulevard, Suite 110
Van Nuys, CA 91401-3373

MARK KAHN, *Regional Manager (C)*
LINDA MORGAN and SAM SOSNA, *Presiding
Workers’ Compensation Administrative Law
Judge*

WALNUT CREEK

175 Lennon Lane, Suite 200
Walnut Creek, CA 94598-2422

CHRISTOPHER HAMILTON, *Acting Presiding
Workers’ Compensation Administrative Law
Judge*