

Memorandum 96-15

Administrative Adjudication: Code of Ethics for Administrative Law Judges

Background

The Commission has decided to pursue the concept of enacting a code of ethics for administrative law judges. Work on this was deferred until the Supreme Court promulgated its new Code of Judicial Ethics pursuant to Article VI, Section 18 of the California Constitution.

The California Code of Judicial Ethics has now been adopted by the Supreme Court, effective January 15, 1996. See Exhibit pp. 5-26. The Code appears to be readily adaptable to the circumstances of administrative law judges, with a few exceptions:

- Canon 3B(7) provides rules for ex parte communications; the Administrative Procedure Act already covers the matter in some detail.
- Canon 3B(10) relates to juries, which are not used in administrative adjudication.
- Canon 4C includes a provision that prohibits service by a judge in a position that constitutes a public office within the meaning of Article VI, § 17 of the California Constitution; but an administrative law judge is an employee of the executive branch, not the judicial branch.
- Canons 4F and 4G prohibit private employment in alternative dispute resolution or the practice of law; these matters are the subject of each employing agency's incompatible activity rules adopted pursuant to Government Code Section 19990.
- Canon 5 contains provisions concerning political activities for the elective office of a judge; these are not relevant to administrative law judges.
- Canon 6 — enforcement of and compliance with the code of ethics — requires adaptation to executive branch as opposed to judicial branch implementation and enforcement.

The staff has put together a draft statute to establish an administrative adjudication code of ethics based on the Code of Judicial Ethics. See Exhibit pp. 1-4. We have circulated a preliminary version of this draft to a few entities that

have been most interested in the topic in the past. We have taken their comments into account in preparing the draft.

Administrative Law Judges v. Other Hearing Officers

The draft applies only to administrative law judges; it does not apply to other hearing officers. The proposed code of ethics has greatest application to administrative law judges; its application to non-attorney hearing officers, including agency personnel that conduct hearings part time in addition to other agency duties, is problematic. The staff believes limited application is appropriate for now.

The Association of California State Attorneys and Administrative Law Judges has suggested that some minimal standard should apply to non-attorney hearing officers who are not administrative law judges, but does not suggest what that standard might be. The staff thinks that for now it is sufficient to refer in a Comment to Government Code Section 19572, which provides that the following, among others, are cause for discipline of a state employee:

- Incompetency
- Inexcusable neglect of duty
- Dishonesty
- Discourteous treatment of the public or other employees
- Engaging in an employment, activity, or enterprise that is inconsistent, incompatible, or in conflict with the duties of the employee
- Unlawful discrimination
- Other failure of good behavior

It is also worth noting that the proposed code of ethics will not apply to all state administrative law judges, since a number of proceedings are statutorily exempt from the Administrative Procedure Act. The exemptions include Public Utilities Commission, State Board of Equalization, Department of Corrections, Military Department, and certain Public Employment Relations Board and Agricultural Labor Relations Board hearings. Nothing would preclude these agencies from picking up the code of ethics for their administrative law judges, if that appears appropriate. See Gov't Code § 11410.40 (election to apply administrative adjudication provisions).

Workers' Compensation Referees

The draft includes a conforming revision to Labor Code Section 123.6, which provides a code of ethics for workers' compensation "referees" (formerly "judges"). The Association of California State Attorneys and Administrative Law Judges has requested that the title of "judge" be restored to these referees. The staff believes this is a sensitive political issue that the Commission should stay out of.

The draft does, however, apply the administrative law judges' code of ethics to workers' compensation referees. This will at least ensure some consistency of the rules of ethics among state hearing officer classifications that are on the same level and perform the same functions.

Moving Forward

The staff proposes to put the draft into tentative recommendation form and circulate it broadly to our administrative law mailing list for comment.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

Exhibit

ETHICAL STANDARDS FOR
ADMINISTRATIVE LAW JUDGES

An act to add Article 16 (commencing with Section 11475.10) to Chapter 4.5 of Division 3 of Title 2 of the Government Code, and to amend Section 123.6 of the Labor Code, relating to ethical standards of presiding officers in administrative adjudication by state agencies.

The people of the State of California do enact as follows:

Gov't Code §§ 11475.10-11475.50 (added). Administrative Adjudication Code of Ethics

SECTION 1. Article 16 (commencing with Section 11475.10) is added to Chapter 4.5 of Division 3 of Title 2 of the Government Code, to read:

ARTICLE 16. ADMINISTRATIVE ADJUDICATION CODE OF ETHICS

11475.10. Application of Code of Judicial Ethics

11475.10. (a) Except as otherwise provided in this article, the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the Constitution for the conduct of judges governs the hearing and nonhearing conduct of the presiding officer in an adjudicative proceeding.

(b) This article does not apply to any of the following persons:

(1) A presiding officer in an adjudicative proceeding exempt from application of this chapter.

(2) A presiding officer other than an administrative law judge.

Comment. Subdivision (a) of Section 11475.10 incorporates the Code of Judicial Ethics for presiding officers in administrative adjudication proceedings. The Code of Judicial Ethics adopted by the Supreme Code is effective January 15, 1996. The incorporation by reference includes subsequent amendments and additions to the Code. Section 9.

Under subdivision (b), the Administrative Adjudication Code of Ethics does not apply to the presiding officer in a proceeding that is statutorily exempt from this chapter. See, e.g., Gov't Code § 15609.5 (State Board of Equalization); Pub. Util. Code § 1701 (Public Utilities Commission). Nor does it apply to a hearing officer other than an administrative law judge. However, other ethical considerations apply to the hearing and nonhearing conduct of these presiding officers. See, e.g., Gov't Code § 19572 (cause for discipline). Moreover, nothing in this section precludes an agency from making the Administrative Adjudication Code of Ethics applicable to its presiding officers by regulation. See Section 11410.40 (election to apply administrative adjudication provisions); see also Labor Code § 123.6 (workers' compensation referees).

11475.20. Terminology

11475.20. For the purpose of this article, the following terms used in the Code of Judicial Ethics have the meanings provided in this section:

- (a) “Appeal” means administrative review.
- (b) “Court” means the agency conducting an adjudicative proceeding.
- (c) “Judge” means the presiding officer in an adjudicative proceeding; related terms, including “judicial”, “judiciary”, and “justice”, mean comparable concepts in administrative adjudication.
- (d) “Law” includes regulation and precedent decision.

Comment. Section 11475.20 provides a general guide to conversion of terminology in the Code of Judicial Ethics for application to administrative adjudication. It is intended to be applied in a manner to effectuate that general purpose without requiring strict or grammatically precise rigidity in the conversion. Likewise, terms not specified in this section should be converted in an appropriate manner to effectuate the general intent of this statute to apply the Code of Judicial Ethics to the circumstances of administrative adjudication.

11475.30. Provisions of Code excepted from application

11475.30. The following provisions of the Code of Judicial Ethics do not apply under this article:

- (a) Canon 3B(7), to the extent it relates to ex parte communications.
- (b) Canon 3B(10).
- (c) Canon 4C, to the extent it prohibits service in a position that constitutes a public office within the meaning of Article VI, Section 17 of the Constitution.
- (d) Canons 4F and 4G.
- (e) Canon 5.
- (f) Canon 6.

Comment. Subdivision (a) of Section 11475.30 excepts the portion of Canon 3B(7) relating to ex parte communications. It reflects the fact that special provisions, and not the Code of Judicial Ethics, govern ex parte communications in administrative adjudication. See, e.g., Article 7 (commencing with Section 11430.10).

Subdivision (b) excepts Canon 3B(10), relating to juries. It reflects the fact that juries are not used in administrative adjudication.

Subdivision (c) excepts the portion of Canon 4C that prohibits service by a judge in a position that constitutes a public office within the meaning of California Constitution, Article VI, § 17. The presiding officer in an administrative adjudication proceeding is an executive branch, not a judicial branch, employee.

Subdivision (d) excepts Canons 4F and 4G, relating to private employment in alternative dispute resolution or the practice of law. These matters are the subject of the employing agency’s incompatible activity statement pursuant to Section 19990.

Subdivision (e) excepts Canon 5, relating to political activities. It reflects the fact that the presiding officer in administrative adjudication is not an elective office.

Subdivision (f) excepts Canon 6, which is superseded by Sections 11475.40 (enforcement) and 11475.50 (compliance).

11475.40. Enforcement

11475.40. The presiding officer in an adjudicative proceeding shall comply with the applicable provisions of the Code of Judicial Ethics.

Comment. Section 11475.40 supersedes Canon 6A of the Code of Judicial Ethics. The compliance requirement is not precatory in administrative adjudication, but is mandatory.

Under Government Code Section 19572, a violation of an applicable provision of the Code of Judicial Ethics is grounds for disciplinary action by the employing agency against a presiding officer in an adjudicative proceeding. Appropriate discipline is the responsibility of the agency that employs the presiding officer. Thus if an administrative law judge employed by the Office of Administrative Hearings violates the code of ethics in a hearing conducted for another agency, the Office of Administrative Hearings is the disciplining entity, and not the other agency. An agency may apply appropriate disciplinary procedures. See, e.g., Cal. Code Reg., Tit. 8 §§ 9720.1-9723 (enforcement of ethical standards of workers' compensation referees).

A violation of the code of ethics by the presiding officer is not per se grounds for disqualification, or reversal of a decision, of the presiding officer. But the violation may be indicative of the presiding officer's violation of other procedural requirements. See, e.g., Section 11425.40 (disqualification of presiding officer for bias, prejudice, or interest).

11475.50. Compliance

11475.50. (a) Except as provided in subdivision (b), a person to whom this article becomes applicable shall comply immediately with all applicable provisions of the Code of Judicial Ethics.

(b) A person to whom this article becomes applicable shall comply with Canon 4D(2) of the Code of Judicial Ethics as soon as reasonably possible and shall do so in any event within a period of one year after the article becomes applicable.

Comment. Section 11475.50 supersedes Canon 6F of the Code of Judicial Ethics.

Lab. Code § 123.6 (amended). Workers' compensation referees

SEC. 2. Section 123.6 of the Labor Code is amended to read:

123.6. (a) All workers' compensation referees ~~and settlement conference referees~~ employed by the administrative director shall subscribe to the ~~California Code of Judicial Conduct adopted by the Conference of California Judges~~ Administrative Adjudication Code of Ethics, Article 16 (commencing with Section 11475.10) of Chapter 4.5 of Division 3 of Title 2 of the Government Code, and shall not otherwise, directly or indirectly, engage in conduct contrary to that code.

The administrative director shall adopt regulations to enforce this section. To the extent possible, the rules 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.

(b) 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 referee allowing him or her to accept those payments.

Comment. Section 123.6 is amended to reflect the fact that the California Code of Judicial Conduct adopted by the Conference of California Judges is superseded by the Code of Judicial

Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the Constitution, which is adapted for the presiding officer in administrative adjudication by Government Code Sections 11475.10-11475.50 (administrative adjudication code of ethics).

The reference in subdivision (a) to settlement conference referees is deleted as obsolete; statutory authority for this classification no longer exists.

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SUPREME COURT OF CALIFORNIA

CALIFORNIA CODE OF JUDICIAL ETHICS

Effective January 15, 1996

MISC. 95-8

IN RE: PUBLICATION OF COMMENTARY TO CODE OF JUDICIAL ETHICS

The commentary to the Code of Judicial Ethics adopted by the Supreme Court Advisory Committee on Judicial Ethics shall be published in conjunction with the Code of Judicial Ethics adopted by the Supreme Court.

MALCOLM M. LUCAS
Chief Justice

CALIFORNIA CODE OF JUDICIAL ETHICS

(1996)

Adopted by the Supreme Court of California
effective January 15, 1996

PREFACE

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

In 1969, the American Bar Association determined that current needs and problems warranted revision of the Canons. In the revision

NOTICE: Court rules and related materials supplied by the courts are included. Since all rules and amendments may not have been supplied, the clerk of the appropriate court should be consulted to determine the current rules.

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process, a special American Bar Association committee, headed by former California Chief Justice Roger Traynor, sought and considered the views of the bench and bar and other interested persons. The American Bar Association Code of Judicial Conduct was adopted by the House of Delegates of the American Bar Association August 16, 1972.

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

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

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

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

The Supreme Court formally adopted this Code of Judicial Ethics effective January 15, 1996.

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

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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 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(46)(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), 4D(2), 4E, 4G, and 5A.

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“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, and one whose purposes are irrevocably dedicated to benefiting and serving the interests of minors, and which maintains its nonprofit status in accordance with applicable state and federal tax laws. See Canon 2C.

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

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

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

“Require.” Any Canon prescribing that a judge “require” certain conduct of others means that a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control. See Canons 3B(3), 3B(4), 3B(6), 3B(8), 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

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

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Advisory Committee Commentary

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

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

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

A judge must not testify as a character witness without being subpoenaed because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. A judge shall provide information in a State Bar disciplinary proceeding or to the Commission on Judicial Performance when officially requested to do so. This Canon does not afford judges a privilege against testifying in response to any official summons.

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

(4) A judge shall not use the judicial title in any written communication intended to advance the personal or pecuniary interest of the judge. A judge may serve as a reference or provide a letter of recommendation only if based on the judge's personal knowledge of the individual. These written communications may include the judge's title and be written on stationery that uses the judicial title.

C. Membership in Organizations. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation.

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

Advisory Committee Commentary

Membership of a judge in an organization that practices invidious discrimination gives rise to a perception that the judge's impartiality is impaired.

Canon 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a

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mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, national origin, or sexual orientation persons who would otherwise be admitted to membership.

Although Canon 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion, national origin, or sexual orientation, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by law * also violates Canon 2 and Canon 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Canon 2A for a judge to arrange a meeting at a club that the judge knows practices such invidious discrimination or for the judge to use such a club regularly. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and 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

This 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.

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(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.

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

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

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

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

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

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

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

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

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

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Advisory Committee Commentary

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

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

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

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

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

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

Advisory Committee Commentary

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

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

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

Advisory Committee Commentary

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

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

Advisory Committee Commentary

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

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

Advisory Committee Commentary

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

C. Administrative Responsibilities

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

(2) A judge shall require * staff and court personnel * under the judge's direction and control to observe appropriate standards of conduct and to refrain from manifesting bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status in the performance of their official duties.

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

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

Advisory Committee Commentary

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

D. Disciplinary Responsibilities

(1) Whenever a judge has reliable information that another judge has violated any provision of the Code of Judicial Ethics, the judge shall

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take or initiate appropriate corrective action, which may include reporting the violation to the appropriate authority.*

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

Advisory Committee Commentary

Appropriate corrective action could include direct communication with the judge or lawyer who has committed the violation, other direct action if available, or reporting the violation to the presiding judge, appropriate authority,* or other agency or body. Judges should note that in addition to the action required by Canon 3D(2), California law imposes additional reporting requirements regarding lawyers.

E. Disqualification. A judge shall disqualify himself or herself in any proceeding in which disqualification is required by law.* In all trial court proceedings, a judge shall disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no actual basis for disqualification.

Advisory Committee Commentary

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, or whenever required by the disqualification provisions of the Code of Civil Procedure.

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

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.

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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.*

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

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

C. Governmental, Civic, or Charitable Activities

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

Advisory Committee Commentary

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

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

Advisory Committee Commentary

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

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

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

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

(b) a judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for profit.

Advisory Committee Commentary

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

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

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

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

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

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

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

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Advisory Committee Commentary

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

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

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

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

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

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

Advisory Committee Commentary

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

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

D. Financial Activities

- (1) A judge shall not engage in financial and business dealings that
 - (a) may reasonably be perceived to exploit the judge's judicial position, or
 - (b) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to appear before the court on which the judge serves.

Advisory Committee Commentary

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

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to appear either before the judge personally or before other judges on the judge's court. A judge shall discourage members of the judge's family * from engaging in dealings that would reasonably appear to exploit the judge's judicial position or that involve family members in frequent transactions or continuing business relationships with persons likely to appear before the judge. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification.

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

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

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

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

Advisory Committee Commentary

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

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

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

Advisory Committee Commentary

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

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

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

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

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

(a) any gift incidental to a public testimonial, books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's

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spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law,* the legal system, or the administration of justice;

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

Advisory Committee Commentary

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

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

(d) ordinary social hospitality;

Advisory Committee Commentary:

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

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

Advisory Committee Commentary

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

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

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

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

E. Fiduciary Activities

(1) A judge shall not serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other

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

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

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

Advisory Committee Commentary

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

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

F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.*

Advisory Committee Commentary

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

G. Practice of Law. A judge shall not practice law.

Advisory Committee Commentary

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

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

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

(2) Expense reimbursement shall be limited to the actual cost of travel, food, lodging, and other costs reasonably incurred by the judge

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and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

Advisory Committee Commentary

Judges should be aware of the statutory limitations on accepting gifts, 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 which 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;
- (3) Personally solicit funds for a political organization * or nonjudicial candidate; * 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.

Although attendance at political gatherings is not prohibited, any such attendance should be restricted so that it would not constitute an express public

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endorsement of a nonjudicial candidate * or a measure not directly affecting the administration of justice otherwise prohibited by this Canon.

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

Under this Canon, a judge may publicly endorse another judicial candidate.*

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

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

C. Speaking at Political Gatherings. Candidates * for judicial office may speak to political gatherings only on their own behalf or on behalf of another candidate for judicial office.

D. Measures to Improve the Law. Except as otherwise permitted in this Code, judges shall not engage in any political activity, other than in relation to measures concerning the 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

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has received an acknowledgment of participation in the assigned judge 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 4G barring the practice of law. Other provisions of California law, and standards and guidelines for eligibility and service set by the Chief Justice, further define the limitations on who may serve on assignment.

D. Temporary Judge, Referee, or Court-appointed Arbitrator. A temporary judge,* a person serving as a referee pursuant to Code of Civil Procedure section 638 or 639, or a court-appointed arbitrator while actually serving in any of these capacities shall comply with the following provisions of this Code:

1—Integrity and independence of the judiciary

2A, B, C—Public confidence, impartiality of the judiciary, and membership in organizations

3A, B—Judicial duties in general

Adjudicative responsibilities

3C(1), (2), (4)—Administrative responsibilities

3D, E—Disciplinary responsibilities

disqualification

4A, B—Extrajudicial activities in general

4C(3)(c)(i)—Service as an officer, director, trustee, or non-legal advisor

4C(1)—Appearance at public hearings

4C(3)(d)(iii), (iv)—Use of judicial office for fundraising by officer, director, trustee, or non-legal advisor

4D(1)(a)—Financial and business dealings that exploit the judicial position

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4D(5)—Gifts from those who have come or are reasonably likely to come before the judge

5B, C—Statements by candidates for judicial office

Speeches at political gatherings by candidates for judicial office

A person who has been a temporary judge,* referee, or court-appointed arbitrator shall not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto except as otherwise permitted by rule 3-310 of the Rules of Professional Conduct.

Advisory Committee Commentary

A person serving as a temporary judge,* referee, or court-appointed arbitrator is not required to comply with Canon 4D(5). However, this exception does not excuse a judicial officer's separate statutory duty to disclose information that may result in the judicial officer's recusal or disqualification.

E. Judicial Candidate

A candidate * for judicial office should comply with the provisions of Canon 5.

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

Advisory Committee Commentary

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