

Memorandum 96-48

Ethical Standards for Administrative Law Judges: Draft of Recommendation

Attached to this memorandum is a draft of the recommendation on ethical standards for administrative law judges, revised in accordance with Commission decisions at the June meeting.

At the June meeting Commission left unresolved the issue of ALJ participation in political activities; and since the June meeting we have received comments suggesting that some of the general ethical standards be made more concrete. Both these issues are discussed in this memorandum.

Our object is to resolve the outstanding issues so that we can approve a final recommendation for submission to the Legislature.

Political Activities of ALJs

Code of Judicial Ethics, Canon 5, restricts political activities of judges. The tentative recommendation excepted this canon for administrative law judges because, unlike judicial office, the office of administrative law judge is an appointive rather than an elective position. Commentators in support of this provision agreed that Canon 5 should not be applied to administrative law judges, noting that the state *Hatch Act* already acts as a restriction on political activities of state employees.

The general public policy of the state concerning political activities of state employees is clear and is expressed in the state's *Hatch Act*, the provisions of which are intended to supersede all provisions on the subject in the general law of the state. Gov't Code § 3201. No restrictions may be imposed on political activities of state employees except as provided in the Act, which prohibits a state employee from using the employee's position to influence political office. Gov't Code §§ 3203, 3204. "Except as provided in Section 19990 [agency incompatible activity statements], the limitations set forth in this chapter shall be the only restrictions on the political activities of state employees." Gov't Code § 3207.

The State Bar Committee on Administration of Justice, on the other hand, felt that Canon 5 is relevant to administrative law judges (except for the portions of it

relating to candidates for judicial office). “Indeed, the Committee concluded that the principles set forth in the preamble to Canon 5 — that judges should avoid engaging in political activity which may create the appearance of political bias or impropriety to preserve judicial independence and impartiality — are essential to preserving the integrity of the system of administrative adjudication as well.”

At the June meeting the Commission also was concerned about political activity of administrative law judges and the appearance of lack of impartiality. The limitations of the *Hatch Act*, while perhaps satisfactory for state employees generally, may be inadequate as applied to administrative law judges, considering the special status we are seeking to create for them. The Association of California State Attorneys and Administrative Law Judges (ACSA), on the other hand, indicated that it is important for administrative law judges to be able to participate in union political activities, including support and opposition for political candidates.

The Commission raised the possibility of a middle ground for that circumstance, such as to make clear that ACSA as an organization may be involved in political activities but administrative law judges individually would adhere to political activity restrictions in the canons of ethics. Such a provision could look something like this:

11475.40. The following provisions of the Code of Judicial Ethics do not apply under this article:

...

(e) Canons 5B and 5C. The remaining provisions of Canon 5 apply under this article notwithstanding Chapter 9.5 (commencing with Section 3201) of Division 4 of Title 1, relating to political activities of public employees.

...

Comment. Subdivision (e) excepts Canons 5B and 5C, relating to candidacy for judicial office. It reflects the fact that the position of administrative law judge is not an elective office.

The remainder of Canon 5 limits the political activities of administrative law judges even though other public employees might be able to participate in those activities under the *Hatch Act* (Sections 3201-3209). This subdivision is not intended to preclude an administrative law judge or other presiding officer to which this article applies from acting as a leader or office holder in a labor union (as opposed to a political organization), even though the labor union may be actively involved in political campaigns and other political activities, so long as the judge or officer does not

personally make political speeches or engage in other political activities precluded by the Code.

The Commission decided to defer decision on this matter pending further input from ACSA, which we hope to have for the July meeting.

More Concrete Ethical Standards

Professor Gregory Ogden (Exhibit pp. 1-3) suggests that some of the ethical standards are rather general and it might help give guidance to administrative law judges to give them a more concrete context.

First, he suggests that it be noted somewhere in the commentary whether the code of ethics supplements or supersedes other limitations on presiding officer conduct, such as bias. It has never been our intent to make the ethical standards exclusive, and the staff agrees it would be useful to point this out in a Comment:

The Code of Judicial Ethics supplements other standards applicable to conduct of an administrative law judge, including disqualification for bias (Section 11425.40) and disciplinary action for failure of good behavior (Section 19572).

With respect to providing more concrete ethical standards, Professor Ogden suggests a number of alternatives:

- (1) Create a central disciplinary agency which would develop a body of precedential decisions.
- (2) Adapt the standards for judicial disqualification found in Code of Civil Procedure.
- (3) Authorize OAH to adopt regulations defining the general standards or to issue ethics opinions.
- (4) Authorize individual agencies to adopt regulations defining the general standards for their ALJs.

The staff is generally negative towards these suggestions. A significant part of the rationale for applying the Code of Judicial Ethics to administrative law judges is to subject ALJs to the same basic standards as court judges. To authorize interpretive regulations or opinions unique to an individual agency or to ALJs as a group would defeat this purpose. On the other hand, one of the advantages of incorporating the judicial code by reference is that interpretations of it in the courts can be applied to ALJs. The staff would add a Comment pointing out this interrelationship:

It is intended that interpretations of the Code of Judicial Ethics in its application to the judicial system, whether made by court rule or decision, should also be applied in administrative adjudication, to the extent relevant to the circumstances of administrative adjudication. Cf. Section 11475.40 (provisions of Code excepted from application).

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

PEPPERDINE UNIVERSITY

SCHOOL OF LAW

Law Revision Commission
RECEIVED

JUN 20 1996

File: _____

June 17, 1996

Mr. Nat Sterling
Executive Director
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

Re: Ethical Standards for Administrative Law Judges

Dear Nat:

I have read the tentative recommendation on Ethical Standards for Administrative Law Judges. I strongly support the application of the California Code of Judicial Ethics, as adapted, to state administrative law judges in California. The idea of uniform ethical standards that apply to all judges, whether judicial or administrative, is very appealing. I also support the exception of those provisions of the California Code of Judicial Ethics that are not directly applicable to state administrative law judges, such as Canon 5 which concerns political activities of elected judges. Finally, I support the idea of disciplining state ALJ's who violate ethical standards.

However, the application of the Code of Judicial Ethics provisions to state ALJ's may create uncertainty as to what conduct would violate particular standards, such as the impartiality standards of Canon 3. It would be very helpful for state ALJ's for some ethical requirements to be defined clearly including bright line tests for some issues, such as disqualifying financial interests, so that conscientious state ALJ's will have clearer guidance as to what conduct is unethical. An example of a bright line test is the financial interest standard in CCP Section 170.5(b) (more than 1%, or in excess of \$1,500). The California Code of Judicial Ethics is generally a well thought out ethics code. However, it leaves some issues, such as standards for disqualification in Canon 3B(1), unclear as to the governing law that controls ethically. The question remains whether the ethical code incorporates due process of law cases (such as Gibson v. Berryhill, 411 U.S. 564 (1973)), other judicial disqualification case law (such as Andrews v. ALRB, 28 Cal. 3d 781 (1981), discussing disqualification for bias), statutory law governing disqualification (such as CCP Section 170.1, or Gov. Code Sections 11425.40 and 11512(c)), or merely sets a separate ethical standard that is related to but distinct from those other standards. If the Commission believed that all of these sources could be considered by the agency conducting a judicial discipline case, this could be noted in the comments to Section 11475.40.

PAGE TWO

One approach to providing guidance would be to work out specific issues through deciding state ALJ discipline cases. This approach would be incremental, and could work if there were one agency that centrally handled discipline cases, and if that agency published discipline decisions that could be treated as precedents in other judicial discipline cases. If state ALJ discipline is conducted by different agencies, then this approach would work less well, particularly if discipline decisions are not reported. However, OAH could be empowered to centrally report state ALJ judicial discipline decisions so that a body of precedent law could develop over time.

A second approach would be to adapt the standards of judicial disqualification contained in the Code of Civil Procedure for court judges (CCP Sections 170 to 170.9). These could be added to Gov. Code Section 11425.40. The advantage of adding specific standards (such as CCP Section 170.9) is that this would provide some bright line standards for state ALJ's to be guided in their compliance with the California Code of Judicial Conduct provisions applicable to them. This would be especially helpful because the courts, see Andrews, supra, decide the related issue of ALJ disqualification for bias using multiple sources of law, including case law, ethics standards, legislation, and ethics regulations. See also the discussion in California Public Agency Practice Chapter 36, Sections 36.10 to 36.15, on the topic of impartial decision making and bias. This discussion supports the point that multiple sources of law are used to determine judicial disqualification issues.


A third approach would be to authorize the Office of Administrative Hearings to adopt ethics regulations that would implement the Code of Judicial Conduct, and provide more specific guidance for state ALJ's as to how to comply with judicial ethics standards. The ethics regulations approach has been successfully used by many federal agencies in adopting ethics standards for their specific agencies to comply with the requirements of the federal Ethics in Government Act. (See e.g., General Services Administration ethics standards codified at 41 C.F.R. Part 105-735 (1995). In particular, See 41 C.F.R. Section 105-735.705 (1995) governing performance of duties by GSA ALJ's.) A related suggestion would be to give OAH the authority to issue ethics opinions on judicial ethics questions that have arisen in any state agency that employs ALJ's. OAH should also have authority to conduct judicial ethics training for state ALJ's to implement the application of the Judicial Code to state ALJ's.

A fourth approach would be to have each agency that employed state ALJ's adopt their own judicial ethics regulations. If the employing agency is also the disciplining agency, it may make sense to have that agency adopt ethics regulations for ALJ's who work for that agency.. This approach has been successfully used by federal agencies who are required to adopt ethics regulations that implement the Ethics in Government Act. Many of these federal agency regulations have sections governing ethical conduct by federal ALJ's.

PAGE THREE

In summary, I like the proposal but believe it could be improved through making broad judicial ethics principles more specific and detailed than is currently the case with the Code of Judicial Ethics. Even if bright line tests will not work in all areas, and they will not, more specific guidance can be helpful. This is especially true when state ALJ's are adjusting to the new standards. Judges in California's judicial system have had many years to learn from and adapt to two different codes of judicial ethics. State ALJ's should be given the same opportunity.

Very Truly Yours,

A handwritten signature in cursive script, appearing to read "Gregory L. Ogden".

Gregory L. Ogden
Professor of Law

#N-111

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft

RECOMMENDATION

Ethical Standards for Administrative Law Judges

July 1996

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
(415) 494-1335 FAX: (415) 494-1827

ETHICAL STANDARDS FOR ADMINISTRATIVE LAW JUDGES

Summary of Recommendation

This recommendation proposes to adapt the California Code of Judicial Ethics (1996) to govern the hearing and nonhearing conduct of state administrative law judges. The ethical standards would apply in all proceedings conducted by state administrative law judges, including state adjudicative proceedings that are otherwise exempt from the Administrative Procedure Act. State hearing officers other than administrative law judges would not generally be covered by the new ethical standards, but general statutes governing conduct of state employees would continue to apply to them. A violation of the new ethical standards would be grounds for disciplinary action against the administrative law judge.

ETHICAL STANDARDS FOR ADMINISTRATIVE LAW JUDGES

1 California has led the nation in developing a corps of professional administrative
2 law judges to conduct state administrative adjudication proceedings. California's
3 landmark 1945 Administrative Procedure Act included a central panel of hearing
4 officers, designed to provide competent, professional hearing services for a variety
5 of state agencies.¹ In addition, major state agencies that conduct their own
6 administrative hearings have developed in-house divisions of administrative law
7 judges devoted to the adjudication function.²

8 It is important for the integrity of the state's administrative adjudication system
9 that its administrative law judges adhere to high ethical standards of conduct.
10 Administrative law judges, like all other state employees, are currently subject to
11 disciplinary action on such grounds as:³

- 12 • Incompetency
- 13 • Inexcusable neglect of duty
- 14 • Dishonesty
- 15 • Discourteous treatment of the public or other employees
- 16 • Engaging in an employment, activity, or enterprise that is inconsistent,
17 incompatible, or in conflict with the duties of the employee
- 18 • Unlawful discrimination
- 19 • Other failure of good behavior

20 However, these grounds for disciplinary action are not well-adapted to the
21 circumstances of adjudicative proceedings and administrative law judges.

22 At least one body of California hearing officers is expressly subject to an
23 adjudicative code of ethics. Workers' Compensation Referees must subscribe to
24 the California Code of Judicial Conduct and may not otherwise, directly or
25 indirectly, engage in conduct contrary to that code.⁴ The canons of the California
26 Code of Judicial Conduct admonish a judge to uphold the integrity and
27 independence of the judiciary, to avoid impropriety and the appearance of
28 impropriety in all of the judge's activities, to perform the duties of judicial office
29 impartially and diligently, to conduct the judge's quasi-judicial and other extra-

1. For a description of the California central panel system and its history, see *Administrative Adjudication by State Agencies*, 25 Cal. L. Revision Comm'n Reports 25, 93-98 (1995).

2. The Law Revision Commission estimates that at least 95% of the state's administrative law judges and hearing officers are employed by the adjudicating agencies rather than the Office of Administrative Hearings. Each of the following major adjudicative agencies employs a greater number of administrative law judges or hearing officers than the total number employed by the Office of Administrative Hearings: Board of Prison Terms, Department of Industrial Relations, Department of Social Services, Public Utilities Commission, Unemployment Insurance Appeals Board, Workers' Compensation Appeals Board.

3. Gov't Code § 19572.

4. Lab. Code § 123.6.

1 judicial actives to minimize the risk of conflict with judicial obligations, and to
2 refrain from inappropriate activity.⁵

3 Some of the provisions of the Code of Judicial Conduct are not suited to the
4 circumstances of administrative adjudication. Efforts have been made at the
5 national level to adapt judicial codes to govern the conduct of administrative law
6 judges and provide guidance to them in establishing and maintaining high
7 standards of judicial and personal conduct. These include the American Bar
8 Association's Model Codes of Judicial Conduct for Federal Administrative Law
9 Judges and State Administrative Law Judges, the National Association of
10 Administrative Law Judges' Model Code of Judicial Conduct for State
11 Administrative Law Judges, and the Model Code of Judicial Conduct for State
12 Central Panel Administrative Law Judges.

13 To help maintain the competence and integrity of California's system of
14 administrative adjudication, the Law Revision Commission recommends that
15 California adopt ethical standards for administrative law judges. Although national
16 model codes are available, the Commission recommends that the California
17 standards be based on the new California Code of Judicial Ethics, promulgated by
18 the California Supreme Court effective January 15, 1996.⁶

19 The California Code of Judicial Ethics is sanctioned by Article VI, § 18 of the
20 California Constitution. It replaces the California Code of Judicial Conduct, and
21 has the force of law. By adapting the judicial code to the circumstances of
22 administrative adjudication, we can ensure that the same ethical standards will
23 apply throughout state adjudication, both judicial and administrative. Moreover,
24 uniform judicial and administrative ethical standards will enable each system to
25 benefit from the other's experience under it.

26 The California Code of Judicial Ethics should generally apply to state
27 administrative law judges. However, the following provisions of the Code, which
28 may be appropriate for judges, are inappropriate as applied to administrative law
29 judges:

30 • Canon 3B(7) provides rules for ex parte communications; the Administrative
31 Procedure Act already covers the matter in some detail.⁷

32 • Canon 3B(10) relates to juries, which are not used in administrative
33 adjudication.

34 • Canon 4C limits the right to engage in governmental, civic, and charitable
35 activities, however, administrative law judges are executive branch rather than
36 judicial branch employees, and the range of issues that may come before them is
37 narrowly circumscribed.

38 • Canons 4E, 4F, and 4G prohibit service as a fiduciary or private employment
39 in alternative dispute resolution or the practice of law; these matters are the
40 subject of each employing agency's incompatible activity rules adopted pursuant
41 to Government Code Section 19990.

5. California Judges Association, California Code of Judicial Conduct, Canons 1-5 (1992).

6. A copy of the California Code of Judicial Ethics is attached to this recommendation as an Appendix.

7. Gov't Code §§ 11430.10-11430.70 (operative July 1, 1997), 11513.5 (operative until July 1, 1997).

- 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.

Violation of the ethical standards should be grounds for disciplinary action against an offending administrative law judge. This is consistent with existing law, which provides that “failure of good behavior either during or outside of duty hours which is of such a nature that it causes discredit to the appointing authority or the person’s employment” is grounds for discipline of a state employee.⁸ The Administrative Adjudication Code of Ethics in effect defines “failure of good behavior” for administrative law judges.

The Law Revision Commission would not apply the ethical standards to a presiding officer other than an administrative law judge, at present. Application of the standards to other hearing personnel is problematic, since the presiding officer may be part-time or a lay hearing officer, or even the agency head.⁹ But general principles of appropriate conduct would still apply to non-administrative law judge hearing personnel.¹⁰ And an agency could by regulation make the Administrative Adjudication Code of Ethics applicable to its presiding officers.¹¹

The administrative adjudication provisions of the Administrative Procedure Act do not govern certain state agency hearings.¹² Nonetheless, the proposed Administrative Adjudication Code of Ethics should apply to administrative law judges who preside in these hearings. The ethical integrity of a state administrative law judge is independent of the details of the particular hearing procedure the judge follows.

8. Gov’t Code § 19572(t).

9. Cf. Gov’t Code § 11405.80 (“presiding officer” defined), operative July 1, 1997.

10. See discussion at note 3, *supra*.

11. See Section 11410.40 (election to apply administrative adjudication provisions).

12. See, e.g., Gov’t Code § 15609.5 (State Board of Equalization), operative July 1, 1997; Pub. Util. Code § 1701 (Public Utilities Commission), operative July 1, 1997.

PROPOSED LEGISLATION

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.

Gov't Code §§ 11475.10-11475.60 (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 article

11475.10. (a) This article applies to all of the following persons:

(1) An administrative law judge. As used in this subdivision, "administrative law judge" means an incumbent of that position as defined by the State Personnel Board for each class specification for Administrative Law Judge.

(2) A presiding officer to which this article is made applicable by statute or regulation.

(b) This article applies notwithstanding a general provision that this chapter does not apply to some or all of a state agency's adjudicative proceedings.

Comment. Section 11475.10 limits application of the Administrative Adjudication Code of Ethics to specified classes of hearing officers. See Section 11475.20 (application of Code of Judicial Ethics).

Subdivision (a)(1) includes not only an administrative law judge who presides at a hearing but also a supervisory or management level administrative law judge or chief administrative law judge, whose function may relate directly or indirectly to the adjudicative process.

This article does not apply to an agency head or hearing officer who presides in an administrative adjudication but who is not an administrative law judge, absent a special statute or regulation. See subdivision (a)(2). However, other ethical considerations apply to the hearing and nonhearing conduct of state agency presiding officers. See, e.g., Section 19572 (cause for discipline).

The Administrative Adjudication Code of Ethics is made applicable by statute to workers' compensation referees. Lab. Code § 123.6. An agency may make the Administrative Adjudication Code of Ethics applicable to its non-administrative law judge presiding officers by regulation where this article would not otherwise apply. See Section 11410.40 (election to apply administrative adjudication provisions); see also Section 11405.80 ("presiding officer" defined).

Under subdivision (b), the Administrative Adjudication Code of Ethics applies to an administrative law judge even though the proceedings in which the administrative law judge presides might otherwise be statutorily exempt from this chapter. See, e.g., Section 15609.5 (State Board of Equalization); Pub. Util. Code § 1701 (Public Utilities Commission).

§ 11475.20. Application of Code of Judicial Ethics

11475.20. 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

1 nonhearing conduct of an administrative law judge or other presiding officer to
2 which this article applies.

3 **Comment.** Section 11475.20 applies the Code of Judicial Ethics in administrative adjudication.
4 For the persons to which this article applies, see Section 11475.10 (application of article).

5 The Code of Judicial Ethics adopted by the Supreme Code is effective January 15, 1996. The
6 incorporation by reference includes subsequent amendments and additions to the Code. Section 9.

7 **§ 11475.30. Terminology**

8 11475.30. For the purpose of this article, the following terms used in the Code of
9 Judicial Ethics have the meanings provided in this section:

10 (a) “Appeal” means administrative review.

11 (b) “Court” means the agency conducting an adjudicative proceeding.

12 (c) “Judge” means administrative law judge or other presiding officer to which
13 this article applies; related terms, including “judicial”, “judiciary”, and “justice”,
14 mean comparable concepts in administrative adjudication.

15 (d) “Law” includes regulation and precedent decision.

16 **Comment.** Section 11475.30 provides a general guide to conversion of terminology in the
17 Code of Judicial Ethics for application to administrative adjudication. It is intended to be applied
18 in a manner to effectuate that general purpose without requiring strict or grammatically precise
19 rigidity in the conversion. Likewise, terms not specified in this section should be converted in an
20 appropriate manner to effectuate the general intent of this statute to apply the Code of Judicial
21 Ethics to the circumstances of administrative adjudication.

22 **§ 11475.40. Provisions of Code excepted from application**

23 11475.40. The following provisions of the Code of Judicial Ethics do not apply
24 under this article:

25 (a) Canon 3B(7), to the extent it relates to ex parte communications.

26 (b) Canon 3B(10).

27 (c) Canon 4C.

28 (d) Canons 4E(1), 4F, and 4G.

29 (e) Canon 5.

30 (f) Canon 6.

31 **Comment.** Section 121475.40 adapts the Code of Judicial Ethics for application to
32 administrative law judges. Some provisions of the Code of Judicial Ethics, although not excepted
33 by this section, may be minimally relevant to an administrative law judge. See, e.g., Canon 3C(4)
34 (administrative responsibilities).

35 Subdivision (a) of Section 11475.40 excepts the portion of Canon 3B(7) relating to ex parte
36 communications. It reflects the fact that special provisions, and not the Code of Judicial Ethics,
37 govern ex parte communications in administrative adjudication. See, e.g., Article 7 (commencing
38 with Section 11430.10).

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

41 Subdivision (c) excepts Canon 4C, relating to governmental, civic, or charitable activities. An
42 administrative law judge is not precluded from engaging in activities of this type, except to the
43 extent the activities may conflict with general limitations on the administrative law judge’s
44 conduct. See, e.g., Canon 4A (extrajudicial activities in general).

Subdivision (d) excepts Canons 4E(1), 4F, and 4G, relating to fiduciary activities, private employment in alternative dispute resolution, and 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 an administrative law judge is not an elective office.

Subdivision (f) excepts Canon 6, which is superseded by Sections 11475.50 (enforcement) and 11475.60 (compliance).

§ 11475.50. Enforcement

11475.50. (a) An administrative law judge or other presiding officer to which this article applies shall comply with the applicable provisions of the Code of Judicial Ethics.

(b) A violation of an applicable provision of the Code of Judicial Ethics by an administrative law judge or other presiding officer to which this article applies is cause for discipline by the employing agency pursuant to Section 19572.

Comment. Section 11475.50 supersedes Canon 6A of the Code of Judicial Ethics. The compliance requirement is not precatory in administrative adjudication, but is mandatory.

Under Section 19572, a violation of an applicable provision of the Code of Judicial Ethics is grounds for disciplinary action by the employing agency against an administrative law judge. Appropriate discipline is the responsibility of the agency that employs the administrative law judge. 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., 8 Cal. Code Regs. §§ 9720.1-9723 (enforcement of ethical standards of workers' compensation referees).

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

§ 11475.60. Compliance

11475.60. (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 11475.60 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.

1 The administrative director shall adopt regulations to enforce this section. To the
2 extent possible, the rules shall be consistent with the procedures established by the
3 Commission on Judicial Performance for regulating the activities of state judges,
4 and, to the extent possible, with the gift, honoraria, and travel restrictions on
5 legislators contained in the Political Reform Act of 1974.

6 (b) Honoraria or travel allowed by the administrative director or otherwise not
7 prohibited by this section in connection with any public or private conference,
8 convention, meeting, social event, or like gathering, the cost of which is
9 significantly paid for by attorneys who practice before the board, may not be
10 accepted unless the administrative director has provided prior approval in writing
11 to the workers' compensation referee allowing him or her to accept those
12 payments.

13 **Comment.** Section 123.6 is amended to reflect the fact that the California Code of Judicial
14 Conduct adopted by the Conference of California Judges is superseded by the Code of Judicial
15 Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of
16 the Constitution. The Code of Judicial Ethics is adapted for administrative law judges by
17 Government Code Sections 11475.10-11475.60 (administrative adjudication code of ethics).

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

APPENDIX

CALIFORNIA CODE OF JUDICIAL ETHICS

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

TERMINOLOGY

“Appropriate authority” denotes the authority with responsibility for initiation of the disciplinary process with respect to a violation to be reported.

“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.

“Court personnel” does not include the lawyers in a proceeding before a judge.

“Fiduciary” includes such relationships as executor, administrator, trustee, and guardian.

“Law” denotes court rules as well as statutes, constitutional provisions, and decisional law.

“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.

“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.

“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.

“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.

“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.

“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.

“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.

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.

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.

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.

(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.

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.

(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.

(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.

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

(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.

(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.

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

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.

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 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.

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.

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.

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.

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.

(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.

(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.

(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.

(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).

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.

(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.

(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.

(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. The 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.

(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 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;

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

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.

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

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

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.

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.

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 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.

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

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.

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.