

First Supplement to Memorandum 96-78

Ethical Standards for ALJs: Political Activities (Further Comments)

Attached are letters from Jorge Carrillo (Exhibit p. 1) and Nancy O'Brien (Exhibit pp. 2-4), administrative law judges for the California Unemployment Insurance Appeals Board, and from the Association of California State Attorneys and Administrative Law Judges (Exhibit p. 5), relating to ALJ political activity.

Ms. O'Brien points out that CUIAB ALJs are already subject to more stringent limitations on their political activities than most other state employees because the program they administer is federally funded and subject to the federal Hatch Act. She provides us with a summary of the Hatch Act requirements.

Mr. Carrillo and ACSA support the staff suggestion that an administrative law judge be permitted to engage in political activity subject to three key limitations:

- (1) The ALJ must avoid political activity that may create the appearance of political bias or impropriety.
- (2) The ALJ may not be identified as an administrative law judge in connection with political activity. (We would add the qualification that an ALJ who is a candidate for elective office may list that occupation as a means of identification on the ballot.)
- (3) The ALJ may not participate in any political activity that may come before the ALJ.

Mr. Carrillo indicates he is an elected school board member and an active community participant. Many local nonpartisan elections affect school board issues, and his support and involvement in those elections is sought by candidates and considered by community members "not because of my status as an administrative law judge but because of my role as a School Board trustee." In his eight years as an administrative law judge, a matter involving a community issue, official, or agency has never come before him. He supports the limitations on political activity set out above.

ACSA likewise supports those limitations. "If the ethical standards for administrative law judges are interpreted in a practical manner, ALJs working as

state employees will be free to volunteer their services to the communities in which they live”.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

November 6, 1996

Nathaniel Sterling, Executive Director
California Law Revision Commission
4000 Middlefield Road Room D-1
Palo Alto, CA 94303

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Dear Mr Sterling,

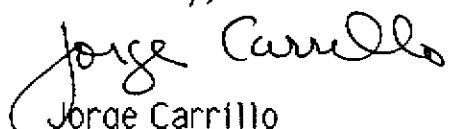
I am an Administrative Law Judge for the California Unemployment Insurance Appeals Board in Sacramento. I share the concerns stated in the letter of October 1, 1996 by the Administrative Law Judges of the CUIAB concerning the application of Canon 5 to administrative law judges.

In particular, I am concerned because I am an elected School Board Member in Davis, California and am an active member of the community. While I am not actively involved in political organizations or activities, I am recognized as a leader in community affairs. Many local nonpartisan elections, such as City Council races, raise issues directly affecting School Board interests. My support and involvement in such elections is actively sought by candidates and is considered by community members, not because of my status as an administrative law judge but because of my role as a School Board trustee. Canon 5, as presently proposed, could be construed to prohibit me from making speeches for or endorsing a candidate in a city council election because it is a "nonjudicial office".

In my eight years as an administrative law judge, I have never been involved, directly or indirectly, with any issue or matter involving the Davis School District or any public official or agency in Davis. If I were to have such a case, I would take the appropriate steps to recuse myself.

I am pleased to see that commission staff recognizes that the concerns underlying Canon 5 are less significant for administrative law judges than for judges. I am in support of the recommendations contained in Memorandum 96-78, dated October 25, 1996, to allow administrative law judges to engage in political activities, subject to key limitations. Please allow my views to be part of the Commission's record and review prior to its deliberations on this most important matter. Thank you.

Sincerely,


Jorge Carrillo
203 Jalisco Pl
Davis, Ca 95616

Nancy O'Brien
20 Parkridge #9
San Francisco CA 94103

November 13, 1996

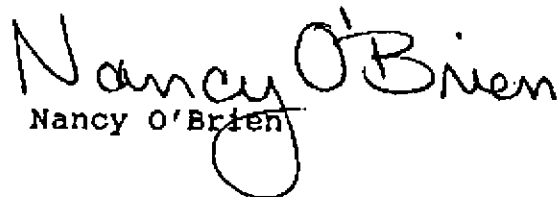
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto CA 94303

Ladies and Gentlemen:

I wish to address a proposal that you are considering that would require the application of the judicial canons in substantial part to administrative law judges. I am an administrative law judge employed by the Unemployment Insurance Appeals Board and I support the previously-submitted remarks of my colleague, Lita Krowech. In addition, I would also like to bring to your attention the fact that the administrative law judges of the Unemployment Insurance Appeals Board are already subject to more stringent limitations than most state employees. This is because the administration of the unemployment insurance program is federally funded and hence subject to the Hatch Act. (Enclosed please find a copy of this election-year's memo from management.) It is also possible that other state employees, perhaps in the Department of Social Services, are also covered by the Hatch Act for the same reason.

It would seem that restrictions on our political activities are already sufficient.

Thank you for your consideration.


Nancy O'Brien

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

M E M O R A N D U M

To: Chief ALJ, FO
Chief ALJ, AO
Administrative Officer
ISD Manager

✓ Date: May 1, 1996

From:  Pam Boston, Labor Relations
Administrative Services

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Re: Incompatible Political Activities

As this is an election year in California, many questions are arising throughout the workforce regarding employee activities that are associated with the electoral process and the extent to which employees and the Department may become involved with this process.

Political concern, involvement and voting are important functions of citizenship. Nevertheless, State law prohibits certain kinds of political activity by state employees, and federal law (the Hatch Act) additionally limits the political activities of state employees. The purpose of this memo is to clarify which activities are prohibited and which are acceptable.

Under the Hatch Act, employees are prohibited from the following:

- o Using official authority, or influence for the purpose of interfering with, or accepting the result of, an election or a nomination for office.
- o Directly or indirectly coercing, attempting to coerce, command or advise a state or local officer to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes.
- o Being a candidate for partisan elective public office. Nonpartisan candidacies are permitted under Federal law C.F.F. 151.122.

Under the Hatch Act, employees may:

- o Be a member in such organizations as the Mexican-American Political Association, Young Republicans, Young Democrats, etc.
- o Express opinions on political subjects and candidates.

- o Attend and participate in political rallies and conventions.
- o Sign nominating petitions in support of individuals who wish to become candidates for office.
- o Make voluntary contributions to political organizations, provided such contributions are not made in a state or federal building or to some other officer or employee of the Department, or to any other officer or employee who is subject to the Hatch Act.
- o Wear political badges or buttons or display political stickers on private automobiles, in private offices or in employee lounges. However, to assure that no member of the public will believe political bias is being exercised for or against him/her, employees who have direct contact with the public are prohibited from making any partisan display as such wearing a political badge or button during business hours in any area in which any member of the public is likely to observe such display.
- o Participate in nonpartisan political activities, such as supporting or opposing ballot propositions, and supporting or opposing a candidate for, or becoming a candidate for, nonpartisan office.
- o Accept appointment to or stand for election to a county or state party committee.

Employees who engage in any of the activities cited above must do so during their own time. Employees may not use state time facilities, equipment, postage, supplies, security badge, identification card, prestige or influence of a state office or equipment for private gain or advantage of an employee, or the private gain of another.

All employees are responsible for adherence to these restrictions on political activities. An employee who is in doubt as to whether any particular political activity is prohibited should submit a written statement of the circumstance to Manager, Personnel Services through normal supervisory channels. He/She should do this before proceeding to engage in the activity. Any employee of the Department who violates these provisions restricting political activities may be subject to adverse action and to criminal penalties where applicable.

Should you have any questions, feel free to contact me at (916) 263-3456 or CALNET 435-3456.

cc: Executive Director
Chief Counsel
Personnel Officer



ASSOCIATION OF CALIFORNIA STATE ATTORNEYS
AND ADMINISTRATIVE LAW JUDGES

November 8, 1996

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Nathaniel Sterling
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

RE: Ethical Standards for ALJs

Dear Mr. Sterling:

In response to memorandum 96-78 dated October 25, 1996, ACSA supports your recommendation regarding Canon 5 as it applies to administrative law judges (ALJs). We support the concepts expressed in Judge Krowech's letter to the Commission. As you may recall, ACSA has expressed concern that administrative law judges should not be overly regulated just to comply in concept with the standards of constitutional judges. If the ethical standards for administrative law judges are interpreted in a practical manner, ALJs working as state employees will be free to volunteer their services to the communities in which they live by being able to participate in the activities enumerated in the attached letter to memorandum 96-78.

We will have a representative from ACSA at the CLRC meeting on November 15 if any commission member has questions regarding this issue. In advance we appreciate your recommendation and look forward to its adoption by the commission.

Sincerely,

John E. Sikora
Labor Relations Consultant

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