

Leg. Prog.

July 2, 1998

**Memorandum 98-51****1998 Legislative Program**

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Attached to this memorandum is a chart showing the status of bills in the Commission's 1998 legislative program and other items of interest. This memorandum supplements the chart as to a few matters. We will make any necessary updates at the meeting

**AB 1683 (Kuykendall) — Uniform TOD Security Registration Act**

This bill was amended to incorporate the Commission's recommended language protecting the community property interest of a surviving spouse.

**AB 2164 (Wayne) — Administrative Law Judge Code of Ethics**

Changes from the Commission's recommendation made by the Legislature include:

(1) The bill imposes on administrative law judges (in addition to the code of ethics) the same gift, honorarium, and travel restrictions that otherwise apply to elected state officials.

(2) The bill requires workers compensation referees to subscribe to the Code of Judicial Ethics, without the adjustments provided for other administrative law judges.

Revised Commission Comments that reflect amendments made during the legislative process are attached.

**AB 2801 (Assem. Jud. Comm.) — Inheritance Involving Stepparent or Foster Parent**

The recommendation on inheritance involving a stepparent or foster parent has been amended into the Assembly Judiciary Committee's omnibus probate bill — AB 2801.

**SB 2139 (Lockyer) — Trial Court Unification**

The bill has been amended to incorporate the Commission's recommended statute revisions. The Commission needs to finalize its report to the Legislature on this matter. For further information, please refer to Memoranda 98-47 and 98-48.

## **Telecommunications Deregulation**

AB 1973 (Campbell) would have required the Public Utilities Commission to report annually to the Legislature on telecommunications deregulation “in consultation with the Law Revision Commission”. The June 18 amendment to the bill removes the obligation of PUC to consult with the Law Revision Commission:

Section 316.5 is added to the Public Utilities Code to read:

316.5. In order to enhance fair competition and promote deregulation in the telecommunications industry, the commission, ~~in consultation with the Law Revision Commission~~, shall submit a report to the Legislature, on or before October 31 of each year, that includes all of the following:

(a) A report on the status of competition in the telecommunications marketplace.

(b) A report on significant changes that have occurred in the telecommunications marketplace in the previous year.

(c) A review of any statutes that might impede or discourage competition in, or deregulation of, the telecommunications marketplace.

(d) Recommendations to the Legislature on statutes that should be amended, repealed, or enacted to enhance and reflect the competitive telecommunications environment or promote the orderly deregulation of the telecommunications industry, or both of those things.

(e) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

The staff has no first-hand information about this change.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

**STATUS OF 1998 COMMISSION LEGISLATIVE PROGRAM  
AND OTHER BILLS OF INTEREST**

(as of July 2, 1998)

AB 707 (Ackerman): Real Property Covenants (includes First Rule in  
Spencer's Case and Statute of Limitations)  
AB 1094 (Assem. Jud. Comm.): Response to Demand for Production of  
Documents in Discovery  
AB 1683 (Kuykendall): Uniform TOD Security Registrtrion Act  
AB 2164 (Wayne): ALJ Code of Ethics

AB 2801 (Assem. Ju. Comm.): Step and Foster Child Inheritance  
SB 177 (Kopp): Best Evidence Rule  
SB 2063 (Kopp): Business Judgment Rule  
SB 2139 (Lockyer): Trial Court Unification  
SCR 65 (Kopp): Continuing Authority to Study Topics

Bill Status		AB 707	AB 1094	AB 1683	AB 2164	AB 2801	SB 177	SB 2063	SB 2139	SCR 65
Introduced		2/26/97	2/27/97	Jan 16	Feb 19	Mar 9	1/22/97	Feb 20	Feb 20	Jan 14
Last Amended		Mar 4	June 17	June 16	June 4	June 30	5/5/97	Mar 23	June 30	
First House	Policy Committee	Jan 14	Jan 16	Mar 3	May 5	Apr 22	Jan 14	Failed	Apr 14	Mar 13
	Fiscal Committee	—	—	—	—	May 14	—		May 4	Apr 20
	Passed House	Jan 22	Jan 26	Mar 12	May 18	May 21	Jan 22		May 14	Apr 30
Second House	Policy Committee	Mar 18		June 23	June 9		June 9		June 30	June 9
	Fiscal Committee	—	—	—	—		—			July 1
	Passed House	Mar 26			June 18		June 18			
Concurrence		Mar 30			June 22		—			—
Governor	Received	Apr 1			June 24		June 23			—
	Approved	Apr 6								—
Chaptered by Secretary of State	Date	Apr 7								
	Chapter #	14								

• Unless otherwise noted, all dates are in 1998

[date]: scheduled

—: not applicable

## AB 2164 (WAYNE) — ETHICAL STANDARDS FOR ADMINISTRATIVE LAW JUDGES

### Revised Law Revision Commission Comments

#### § 11475.10. Application of article

**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

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

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

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).

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). See also Section 11475.50 & Comment (enforcement). These requirements are also in addition to the requirements pursuant to Chapter 9.5 (commencing with Section 89500) of Title 9, applicable to designated employees of state agencies, including administrative law judges and other presiding officers.

#### § 11475.40. Provisions of Code excepted from application

**Comment.** Section 11475.40 adapts the Code of Judicial Ethics for application to administrative law judges. Some provisions of the Code of Judicial Ethics, although not

excepted by this section, may be minimally relevant to an administrative law judge. See, e.g., Canon 3C(4) (administrative responsibilities).

Subdivision (a) of Section 11475.40 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 Canon 3D(3), which requires a judge who is criminally charged to report that fact to the Commission on Judicial Performance. This duty is not relevant to administrative law judges, who are not under the jurisdiction of the Commission on Judicial Performance.

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

Subdivision ~~(d)~~ (e) 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)~~ (f) applies the introductory portion of Canon 5 to an administrative law judge or other presiding officer, but not Canons 5A-5D. Under this provision an administrative law judge or other presiding officer must avoid political activity that may create the appearance of political bias or impropriety. This would preclude participation in political activity related to an issue that may come before the administrative law judge or other presiding officer.

Subdivision ~~(e)~~ (f) 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 appearing at a public hearing or officially consulting with an executive or legislative body or public official in matters concerning the judge's private economic or personal interests, or to otherwise engage in political activities relating to salary, benefits, and working conditions. Cf. Section 11475.70 (collective bargaining rights not affected).

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

## **§ 11475.50. Enforcement**

**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.

Appropriate discipline under ~~subdivision (b)~~ this section 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 (1996) (enforcement of ethical standards of workers' compensation referees). It should be noted that a person may also institute disciplinary proceedings directly before the State Personnel Board with the consent of the board. Gov't Code § 19583.5; 2 Cal. Code Regs. § 51.9 (1996).

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).

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

**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. ~~The Code of Judicial Ethics is adapted for administrative law judges by Government Code Sections 11475.10-11475.70 (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.