

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

**NOTICE OF MODIFICATION OF TEXT OF
PROPOSED REGULATIONS**

Subject Matter of Regulations: Ethical Standards For Workers' Compensation Judges

NOTICE IS HEREBY GIVEN that the Administrative Director of the Division of Workers' Compensation (hereinafter "Administrative Director"), exercising the authority vested in the Administrative Director by Labor Code sections 59, 123.6, 133, and 5307.3, proposes to modify the text of the following proposed amendments to Article 1.6 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations:

Section 9720.2	Definitions
Section 9721.11	Requirement for Disclosure
Section 9721.12	Disqualification
Section 9721.14	Manner of Disclosure
Section 9721.21	Restriction on Investments
Section 9721.32	Duty to Report Ethics Violations
Section 9722	The Workers' Compensation Ethics Advisory Committee
Section 9722.1	Commencing an Investigation
Section 9722.2	Investigation and Action by the Administrative Director or Court Administrator

PRESENTATION OF WRITTEN COMMENTS AND DEADLINE FOR SUBMISSION OF WRITTEN COMMENTS

Members of the public are invited to present written comments regarding this proposed modification. **Only comments concerning the proposed modification to the text of the regulation will be considered and responded to in the Final Statement of Reasons.**

Written comments should be addressed to:

Maureen Gray, Regulations Coordinator
Department of Industrial Relations
Division of Workers' Compensation
Post Office Box 420603
San Francisco, CA 94142

The Division's contact person must receive all written comments concerning the proposed modifications to the regulations no later than 5:00 p.m. on Monday, April 21, 2008.

Written comments may be submitted by facsimile transmission (FAX), addressed to the contact person at (510) 286-0687. Written comments may also be sent electronically (via e-mail), using the following e-mail address: dwcrules@dir.ca.gov

Due to the inherent risks of non-delivery by facsimile transmission, the Administrative Director suggests, but does not require, that a copy of any comments transmitted by facsimile transmission also be submitted by regular mail.

Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.

AVAILABILITY OF TEXT OF REGULATIONS AND RULEMAKING FILE

Copies of the original text, the modified text with modifications clearly indicated and the entire rulemaking file, are currently available for public review during normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, at the offices of the Division of Workers' Compensation. The Division is located at 1515 Clay Street, 17th Floor, Oakland, California. Please contact the Division's regulations coordinator, Ms. Maureen Gray, at (510) 286-7100 to arrange to inspect the rulemaking file.

FORMAT OF PROPOSED MODIFICATIONS

Proposed Text Noticed for 45-Day Comment Period:

Deletions from the original codified regulatory text noticed for the 45-comment period are indicated by single strike-through, thus: ~~deleted language~~.

Additions to the original codified regulatory text noticed for the 45-comment period are indicated by single underlining, thus: deleted language.

Proposed Text Noticed for This 15-Day Comment Period on Modified Text:

Deletions from the proposed revisions noticed for the 45-day comment period are indicated by strike-through underlining: ~~deleted language~~

Additions to the regulatory text noticed for the 45-day comment period are indicated by double underlining: added language.

Newly proposed deletions from the original codified regulatory text noticed for the 45-comment period are indicated by double strike-through: ~~~~deleted language~~~~.

Newly proposed additions to the original codified regulatory text noticed for the 45-comment period are indicated by double underlining: added language.

SUMMARY OF PROPOSED CHANGES

Modifications to Section 9720.2 Definitions

In subdivision (e), the definition of "financial interest" was modified to include a provision relating to ownership in mutual funds and other pooled investment vehicles. The revised definition provides that ownership of an interest in a mutual fund or other pooled investment vehicle is not within the definition of "financial interest" unless the judge participates in the management of the fund.

Modifications to Section 9721.11 Requirement for Disclosure

The beginning sentence is revised to clarify that disclosure is to be made when the judge first becomes aware of the facts to be disclosed.

Subdivision (a) is revised to limit the period of time for which judges must disclose that they formerly represented parties to three years instead of an unlimited period of time. A judge who was formerly an applicant's attorney may have had hundreds of clients per year, and is not likely

to remember or even recognize many of them, especially for periods many years in the past. Similarly, a judge who was formerly a defense attorney may have many clients over a long career, many of which the judge may no longer remember. The subdivision is also revised to include among former “clients,” individuals who were prospective clients, whom the attorney interviewed, and from whom the attorney may have obtained confidential information. The revised section also imposes upon the judge the obligation to use the resources the judge reasonably has available to him to ascertain the identity of former clients. An attorney being newly hired as a judge should be able to use computer resources at his office to establish a list of clients for future disclosure should the need arise. The calendar clerk or other DWC office clerk can prevent most such former clients’ cases from being assigned to the judge, so that the disclosure problem should rarely arise.

Modifications to Section 9721.12 Disqualification

In subdivision (a)(9), a typographical error is corrected by inserting the words “or to.”

New Section 9721.14 Manner of Disclosure

Subdivision (a) is added to require that, except for former representation more than two years in the past, disclosure is to be made on the record. This reiterates a requirement of the Code of Judicial Ethics. A different provision in the regulations provides that a judge is disqualified from participating in a case in which the judge had represented one of the parties within the past two years.

Subdivision (b) is added to provide for disclosure by posting a list of former clients whom the judge had not represented for more than two years. To protect the privacy of employee workers' compensation claimants, a list of former clients who were employee workers' compensation claimants would be made available, but not posted where it would be visible to the public.

Modifications to Section 9721.21 Restriction on Investments

Subdivision (f) is added to clarify that a judge's ownership interest in a corporation which owns a workers' compensation insurance carrier is not an ownership interest in the insurance carrier itself. Some large corporations own subsidiary insurance carriers. This subdivision also provides that it would not affect a judge’s disqualification or disclosure obligation in regard to such a company.

Modifications to Section 9721.32 Duty to Report Ethics Violations

The proposed section provided for a judge to take corrective action for improper conduct of which a judge became aware through competent and reliable information. This is changed to information which the judge “reasonably believes to be competent and reliable.”

Modifications to Section 9722 The Workers’ Compensation Ethics Advisory Committee

Subdivision (f) provided that the Committee would hold certain information confidential from public disclosure, but could disclose the information to the workers' compensation judge who was the subject of the investigation, if the judge were entitled to the information. This is changed to provide that the Administrative Director or Court Administrator, and not the Committee, could disclose the information to the judge. It is the Administrative Director or Court Administrator, and not the committee, who actually deals with the judge in any disciplinary matter which may arise out of the investigation of an ethical complaint. Pursuant to

subdivision (c), the committee's role is to report to and make recommendations to the Administrative Director and Court Administrator.

Modifications to Section 9722.1 Commencing an investigation

Subdivision (e) is added to clarify that the Committee's reports and recommendations on individual complaints are to remain confidential, except that, pursuant to subdivision (c) of section 9722.2, the complainant may be informed whether an ethical violation was found to have occurred, and whether any disciplinary action was taken.

Modifications to Section 9722.2 Investigation and Action by the Administrative Director

Subdivision (c) is revised to clarify that the complainant will not be informed of the entire results of an investigation, but only whether or not an ethical violation was found, and whether or not corrective action was taken.