

Ethical Standards of Workers' Compensation Administrative Law Judges	RULEMAKING COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
Section 9720.2(h)	<p>Commenter recommends deletion of "vocational rehabilitation consultants" from this section.</p> <p>Commenter states that vocational rehabilitation consultants have not taken the professional responsibility courses that are required of lawyers in law school or the professional responsibility exam required the State Bar Association. Because vocational rehabilitation consultants are not lawyers or judges and do not administer oaths, take sworn testimony, admit evidence, make evidentiary rulings or write formal opinions that are subject to review, commenter believes they should not be included in these regulations.</p>	Adoralida (Dora) Padilla Workers' Compensation Administrative Law Judge Division of Workers' Compensation November 21, 2007 Written Comment	The Administrative Director does not accept this comment. "Vocational rehabilitation consultants" can fall within the definition of "judge," but only while the vocational rehabilitation consultant is actually "exercising judicial or quasi-judicial powers."	No action required.
Section 9721.11 (a)	<p>Commenter states that this subsection will be very difficult if not impossible to comply with for most judges. Former defense attorneys who have practiced in workers' compensation, unless they have worked for the State Compensation Insurance Fund, have over the course of their career represented most of the insurance companies in the market. Further, they have represented many of the self-insured entities in the market as well. It is impossible for most of judges to remember who their represented 20 years ago or even ten years ago. Applicant's attorneys have a somewhat similar problem in remembering who they represented in the past as well.</p>	Neil Robinson Workers' Compensation Administrative Law Judge Division of Workers' Compensation November 21, 2007 Written Comment	The Administrative Director accepts this comment in part.	Amended language was distributed for public comment.

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	<p>Commenter believes that compliance with this rule, as written, will not be possible in the context of worker's compensation practice, especially when defense practitioners have represented such a broad segment of the market.</p> <p>Although commenter understands and appreciates this disclosure requirement, it should, in his opinion be limited to that period 5 years before the judge is appointed. When judges are appointed they can then compile an accurate list of those entities they represented and be better prepared to make those disclosures once appointed.</p> <p>If it is acceptable to place a general disclosure in the courtroom that the judge probably represented a party at some time in the past than there will likely be no issue.</p>			
Section 9721.12(g)	Commenter states that the division should include the word "or" before "the judge's spouse."	George Ferris Workers' Compensation Administrative Law Judge Division of Workers' Compensation November 21, 2007 Written Comment	The Administrative Director accepts this comment.	Amended language was distributed for public comment.
Section 9722(a)	Commenter believes that the Ethics Advisory Committee, as defined in this proposed section, should include either a member of the public representing medical providers or an attorney who formerly represented lien claimants. While commenter does not propose deleting a representative or organized labor, he believes that the interest of medical	Jon C. Brissman November 26, 2007 Written Comment	The Administrative Director does not accept this comment. The Workers' Compensation Ethics Advisory Committee is already a large body, and should not be any larger. The Administrative Director concludes that the current constitution of the Committee, seven of whose	No action required.

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	providers in the workers' compensation system is greater and that representation is justified.		members are from seven different segments of the workers' compensation community, and two public members from the general public, is adequate to ensure that all complaints will be evaluated fairly.	
General Comment	Commenter concurs with the regulations as written.	Christine Coakley Legislative and Regulatory Analyst Boeing December 7, 2007 Written Comment		No action required.
Section 9721.21	<p>Commenter points out that the language in this section states that a "Workers' Compensation Judge may not have an ownership in, ...and may not purchase an interest in, an insurance carrier which either writes policies of workers' compensation insurance to employers in the state of California or is authorized to write policies..." This is defined as either a 1% interest or value in excess of \$2,000.</p> <p>Commenter points out that many judges hold investments which include both "mutual funds" and what are known as "managed money" accounts. Both investment vehicles do not allow the judge to decide what stocks or investments are made within their portfolio. Discretionary authority is granted to money managers. The judge is only aware of such investment when a monthly statement is received. Commenter states that currently judges do not need to disclose those investments in a mutual fund, but are required to disclose those investments in a managed</p>	Paige S. Levy Workers' Compensation Administrative Law Judge January 7, 2008 Written Comment	The Administrative Director accepts this comment in part. The Administrative Director concludes that indirect ownership of an interest in a company through ownership in a mutual fund should not be a prohibited investment.	Amended language was distributed for public comment.

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	<p>money account.</p> <p>Commenter proposes that the restriction on investments not apply to any investment in which the Judge does not have control or decision making authority.</p>			
General Comment	Commenter concurs with the regulations as written.	Marie W. Wardell Claims Operation Manager State Compensation Insurance Fund January 7, 2008 Written Comment		No action required.
Section 9720.2(f)	<p>Recommendation</p> <p>... The term "gift" does not include:</p> <p>(1) Informational material such as books, reports, pamphlets, calendars, periodicals, cassettes and discs, or free or reduced-price admission, tuition, or registration, for informational conferences or seminars <u>that are directly related to the judicial function</u>. No payment for travel or reimbursement for any expenses shall be deemed "informational material."</p> <p>Discussion: While it is implicit that legally related and work related training materials are to be exempt from the restrictions on gifts, this clarification is necessary to avoid any unintended expansive interpretation.</p>	Michael McClain General Counsel and Vice President California Workers' Compensation Institute January 7, 2008 Dated January 15, 2008 Received Written Comments	The Administrative Director disagrees with the conclusions of commenter. The Division has not observed any evidence that there has been a problem with judges receiving books, periodicals, or free admission to seminars. The restrictions imposed by these regulations are similar to the restrictions imposed by upon superior court judges. The Code of Judicial Ethics also applies, and its canons should cover the receipt of any free books, periodicals and free admission to educational events which may be questionable.	
Section 9720.2(g)(2) and 9721.31	For a judge, teaching or writing books, articles, and training materials that provide an interpretation of the laws that the judge administers or are directly related to the	Michael McClain General Counsel and Vice President California Workers'	The Administrative Director disagrees with the conclusions of commenter. Restrictions on, and allowance of, judges' teaching or	No action required.

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	<p>judicial function can pose a difficult ethical problem. Commenter states that these regulations should not establish or imply any exemption from the Code of Judicial Ethics relating to activities like publishing or teaching, no matter how legitimate the setting.</p> <p>It may be entirely appropriate for a WCALJ to teach a class in Tort law at the university level. Conversely, in a similar setting, a sitting judge could violate the code by using a pending case as an example and disclosing how he intends to rule on the issues. Or an article on the new apportionment laws could advise how to avoid or subvert the statutes.</p> <p>Even in the context of an award or a judicial opinion, a judge can overstep his or her ethical obligations. The Supreme Court ruled in Oberholzer v. Commission on Judicial Performance, 20 Cal.4th 371, that a judge could be disciplined for legal error, if the error is committed in bad faith, out of bias, or because he intentionally chose to disregard the law.</p> <p>To the extent that the regulations imply that writing, teaching, or similar activities might create a "safe harbor" or some sort of presumption to protect WCALJs from a fair application of the Code of Judicial Ethics, the regulation should be revised and clarified. As with publication (section 9721.31), it may be appropriate for these activities to be approved, in advance, by the Court Administrator or the Administrative Director.</p>	<p>Compensation Institute January 7, 2008 Dated January 15, 2008 Received Written Comments</p>	<p>writing, are similar to the provisions of the Code of Judicial Ethics. The Administrative Director concludes that the overriding provisions of the Code of Judicial Ethics are adequate to restrict judges from engaging in improper practices while engaged in teaching or writing.</p> <p>The Administrative Director does not disagree that a judge would breach the Code of Judicial Ethics by acting out of actual bias, or by intentionally refusing to follow the law. However, such actions are already proscribed by the Code of Judicial Ethics.</p>	

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Section 9721.12(c)	<p>Recommendation</p> <p>(10) The judge believes that recusal would further the interests of justice or believes there is a substantial doubt as to his or her capacity to be impartial.</p> <p>(11) The judge has actual bias against or in favor of an attorney for a party and the judge has a substantial doubt as to his or her capacity to be impartial.</p> <p>Discussion: If a WCALJ harbors a doubt as to his or her ability to remain impartial in a case, for whatever reason, commenter believes that the judge should be disqualified.</p>	Michael McClain General Counsel and Vice President California Workers' Compensation Institute January 7, 2008 Dated January 15, 2008 Received Written Comments	The Administrative Director disagrees with the suggestions of commenter. The word phrase <i>substantial doubt</i> was used, instead of merely the word <i>doubt</i> , because this subdivision was intended to parallel Code of Civil Procedure section 170.1(a), applicable to superior court judges, which uses the same terminology as does this subdivision of the regulation.	No action required.
Section 9721.12(c)	<p>Recommendation</p> <p>(c) Disqualification for the following circumstances cannot be waived:</p> <p>(1) The judge, the judge's spouse, a relative of either within the third degree of relationship, or spouse of such relative, is likely to be a material witness</p> <p>(2) The judge served as a lawyer in the case</p> <p><u>(3) Actual Bias.</u></p> <p>Discussion: Bias is a sufficient factor to require mandatory disqualification and as bias subverts the impartiality of the process, it should not be subject to a waiver by the parties.</p>	Michael McClain General Counsel and Vice President California Workers' Compensation Institute January 7, 2008 Dated January 15, 2008 Received Written Comments	The Administrative Director disagrees with the suggestions of commenter. "Actual bias" would have to be disclosed by the judge. When any relevant fact is disclosed, any of the parties may seek the disqualification of the judge. The Administrative Director concludes that if actual bias were disclosed, unless it should be very trivial, a party would object and seek disqualification. Additionally, a judge with a significant bias should recuse, and all judges remain bound by the duty to recuse if the judge has a substantial doubt as to the ability to remain impartial.	No action required.
General Comment	Commenter is an injured worker who is concerned about how the proposed regulations	Royal Glaude Injured Worker	Commenter does not identify problems with the text, nor suggest	No action required.

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	<p>will affect his case.</p> <p>Commenter seeks clarification regarding the term "misconduct" and "referee" and how they pertain to the proposed regulations.</p>	<p>January 7, 2008 Oral Testimony Public Hearing</p>	<p>any changes.</p>	