

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

**FINAL STATEMENT OF REASONS AND  
UPDATED INFORMATIVE DIGEST**

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

**TITLE 8, CALIFORNIA CODE OF REGULATIONS  
Sections 9720.1 - 9723**

The Administrative Director of the Division of Workers' Compensation, pursuant to the authority granted by Labor Code Sections 59, 123.6, 133, and 5307.3, has adopted or amended the following Sections of Article 1.6 of Chapter 4.5, Subchapter 1, of Title 8, California Code of Regulations:

Section 9720.1	Authority
Section 9720.2	Definitions
Section 9721.1	Code of Judicial Ethics
Section 9721.2	Gifts, Honoraria and Travel
Section 9721.11	Requirement for Disclosure
Section 9721.12	Disqualification
Section 9721.13	What are not Grounds for Disqualification
Section 9721.14	Manner of Disclosure
Section 9721.21	Restriction on Investments
Section 9721.31	Financial Interests in Educational Programs
Section 9721.32	Duty to Report Ethics Violations
Section 9721.33	Previously Earned Compensation
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
Section 9723	Miscellaneous Provisions

**UPDATED INFORMATIVE DIGEST**

The Administrative Director incorporates the Informative Digest prepared in this matter. There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Regulatory Action.

## **UPDATE OF INITIAL STATEMENT OF REASONS**

The Administrative Director incorporates the Initial Statement of Reasons prepared in this matter. The purposes and rationales for the regulations as set forth in the Initial Statement of Reasons continue to apply. The proposed regulations changes are summarized below.

### **THE FOLLOWING SECTIONS WERE ADOPTED OR AMENDED FOLLOWING THE PUBLIC HEARING AND CIRCULATED FOR A 15-DAY COMMENT PERIOD (April 3, 2008 – April 21, 2008)**

#### **Modifications to Section 9720.2**

#### **Definitions**

In Section 9720.2 (e) the definition for *financial interest* is modified by excluding ownership in a mutual fund or other common interest fund, unless the judge participates in the management of the fund.

#### **Specific Purpose of Change to Section 9720.2:**

The purpose of the changes to Section 9720.2 is to eliminate disqualification situations where there is a *de minimis* interest because the possible interest is owned through ownership of share in a mutual fund or common investment fund. Code of Civil Procedure section 170.5 makes a similar exception for superior court judges, to exclude ownership interests in mutual funds from causing there to be an interest in securities owned by the fund.

#### **Modifications to Section 9721.11**

#### **Requirement For Disclosure**

Section 9721.11 is modified to make clear that a judge is required to disclose when the judge first becomes aware of the facts required to be disclosed.

Subdivision (a) is modified to limit the amount of time for which judges must disclose that they formerly represented parties to a three year period instead of an unlimited amount of time. This subdivision is also modified to include among former “clients,” individuals who were prospective clients, whom the judge interviewed, and from whom the judge obtained confidential information. The revised section also imposes upon the judge the obligation to use the resources the judge reasonably has available to ascertain the identity of former clients.

#### **Specific Purpose of changes to Section 9721.11:**

The purposes of the changes to section 9721.11 are to clarify when a judge is first required to disclose; to establish a reasonable maximum period of time after which judges no longer have to disclose former clients; and to maximize the accuracy of judges’ disclosure of former clients. Three years was determined to be a reasonable maximum

time period for the disclosure of former clients. Code of Civil Procedure section 170.1 limits to two years the period of disqualification arising from a judge having served as a lawyer for a party. Regulation section 9721.12 requires disqualification if the judge had served as a lawyer for a party within the preceding two years. The duty to disclose the former client relationship should extend for longer than the actual automatic disqualification period, but cannot extend for an infinite 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 had many clients over a long career, many of which the judge may no longer remember. 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* before the phrase, *the judge's spouse*.

### **Specific Purpose of changes to Section 9721.12:**

The purpose of the change to section 9721.12 is to correct the error in syntax.

### **Adoption of Section 9721.14**

### **Manner of Disclosure**

New section 9721.14 is added to specify methods 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.

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. It will often be the case that a newly appointed judge will have represented many clients in the two years before being appointed a judge. Although disclosure is required, having the judge take time to go through a list of former clients before each hearing would not be an effective use of the judge's time. The purpose of disclosure can be accomplished equally well through the provision of a list which the parties may read.

### **Specific Purpose of the adoption of Section 9721.14:**

The purpose of the adoption of section 9721.14 is to clarify how the disclosure of required facts is to be made.

### **Modifications to Section 9721.21**

### **Restriction on Investments**

Section 9721.21 is modified by adding subdivision (f) 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. The section generally provides that judges may not own interests in insurance companies which write, or are authorized to write, policies of workers' compensation insurance in California. Judges must also dispose of any such interests which they own when the regulation becomes effective. The purpose of these obligations is to reduce the incidence of disqualification which may arise in the course of the assignment of cases to a judge. The Code of Judicial Ethics requires judges to avoid business relationships which are likely to require disqualification. A judge who owns stock in a corporation may not be aware that the corporation also owns an interest in a workers' compensation carrier. The indirect interest in the insurance carrier is also likely to be remote in a situation where there is an intervening owner. It is reasonable to except from the concept of ownership in an insurance company, indirect ownership through another company which owns an insurance company.

This subdivision also provides that it would not affect a judge's disqualification or disclosure obligation in regard to such a company.

### **Specific Purpose of changes to Section 9721.21:**

The purpose of the changes to Section 9721.21 is to clarify that a judge is not required to dispose of an interest in a corporation which owns an insurance carrier.

### **Modifications to Section 9721.32**

### **Duty to Report Ethics Violations**

The proposed modification to this section called 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." Because the section imposes an affirmative duty on judges, it should be reasonably certain when the duty arises. The regulation change leaves it to the judge to determine if the information that comes to the attention of the judge is competent and reliable, rather than measuring the reliability and competence of information by an absolute standard.

### **Specific Purpose of changes to Section 9721.32:**

The purpose of the change to Section 9721.32 is to make the section less ambiguous, and to make it easier for a judge to decide whether corrective action should be taken.

### **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.

### **Specific Purpose of changes to Section 9722:**

The purpose of the change to Section 9722 is to conform the regulation to the practice of the Committee. The Committee does not communicate with the public or with judges, but its actions are communicated by the Administrative Director or the 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. Because the complaints made to or considered by the Committee involve serious charges which have the potential of needlessly harming the reputations of judges who have not acted improperly, it is important that the Committee's actions remain confidential. The vast majority of the complaints considered by the Committee result in Committee recommendations that no ethical violations have been identified in the complaint. When the Committee does determine that ethical violations may have occurred, it is important that the Committee's recommendations be kept confidential while further investigation is undertaken by the Administrative Director or the Court Administrator. Because judges are civil service employees, should the Administrative Director or the Court Administrator commence disciplinary action because of an investigated complaint of an ethical violation, the disciplinary action is subject to the provisions of the Government Code which require some confidentiality.

### **Specific Purpose of changes to Section 9722.1:**

The purpose of the addition of subdivision (e) is to ensure that actions of the Committee are confidential.

### **Modifications to Section 9722.2**

### **Investigation and Action by the Administrative Director or Court Administrator**

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. The Committee's deliberative and investigative processes are to remain confidential. Because the Committee is only an advisory body, it does not make decisions, but only recommendations. The complainant is not a party in an adjudicatory proceeding, and has neither a right to appeal recommendations of the Committee, nor a right to know the discrete bases for its recommendations. Because any subsequent disciplinary proceedings are pursuant to the Government Code, neither the complainant nor the public are necessarily entitled to learn the outcome of such proceedings.

### **Specific Purpose of changes to Section 9722.2:**

The purpose of the change is to make specific what is to be reported to the complainant.

### **UPDATE OF MATERIAL RELIED UPON**

No additional documents beyond those identified in the Initial Statement of Reasons were relied upon by the Administrative Director except that public comments received were taken into consideration when finalizing the regulations.

### **LOCAL MANDATES DETERMINATION**

- Local Mandate: None. The proposed regulations will not impose any new mandated programs or increased service levels on any local agency or school district.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None. The proposed amendments do not apply to any local agency or school district.
- Other nondiscretionary costs/savings imposed upon local agencies: None.

## **CONSIDERATION OF ALTERNATIVES**

The Division considered all comments submitted during the public comment periods, and made modifications based on those comments to the regulations as initially proposed. The Administrative Director has now determined that no alternatives proposed by the regulated public or otherwise considered by the Division of Workers' Compensation would be more effective in carrying out the purpose for which these regulations were proposed, nor would they be as effective as and less burdensome to affected private persons and businesses than the regulations that were adopted.

## **SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO CONCERNING THE REGULATIONS ADOPTED**

The summaries and responses to comments of each organization or individual which were received during the 45-day comment period and the 15-day comment period are contained in the rulemaking file and are incorporated by reference herein. No comments were received during the 15-day comment period.

The public comment periods were as follows:

Initial 45-day comment period on proposed regulations: November 23, 2007 through January 7, 2008.

A 15-day comment period on modified text: April 3, 2008 through April 21, 2008.