

Title 8, California Code of Regulations
Chapter 4.5, Division of Workers' Compensation
Subchapter 1 - Administrative Director – Administrative Rules

Article 1.6. Ethical Standards of Workers' Compensation ~~Referees~~ Administrative Law Judges;
Enforcement of Standards

§9720.1. Authority.

The rules and regulations contained in Article 1.6 are adopted pursuant to the authority contained in Sections 123.6, 133, and 5307.3 of the Labor Code. This article is designed to enforce the highest ethical standards among workers' compensation ~~referees~~ administrative law judges and to provide all parties with an independent, impartial investigation into allegations of ~~misconduct~~ ethics violations by referees workers' compensation administrative law judges.

Authority cited: Sections 123.6, 133 and 5307.5, Labor Code

Reference cited: Sections 111 and 123.6, Labor Code

§9720.2. Definitions.

For purposes of this Article and Section 123.6 of the Labor Code, the following definitions shall apply:

(a) "Code of Judicial Ethics" ~~shall mean the Code of Judicial Conduct. When the Supreme Court adopts a Code of Judicial Ethics pursuant to Article VI, section 18(m), of the Constitution,~~ "Code" shall mean the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the California Constitution and any subsequent revision thereof.

(b) "Committee" shall mean the Workers' Compensation Ethics Advisory Committee as specified in Section 9722 of these regulations.

(c) "Complaint" shall mean a statement alleging facts that, if true, might constitute ~~misconduct~~ an ethics violation.

(d) "~~Misconduct~~ Ethics violation" shall mean any conduct of a ~~referee~~ workers' compensation administrative law judge that is contrary to the Code of Judicial Ethics or to the other rules of conduct that apply to ~~referees~~ workers' compensation administrative law judges.

(e) "Financial interest" shall mean a legal or equitable interest of either more than one per cent (1%) or a fair market value in excess of two thousand dollars (\$2,000).

(f) "Gift" means any payment or furnishing of value to the extent that consideration of equal or greater value is not given and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person who claims that a payment is not a gift by reason of the giving of consideration has the burden of proving that the consideration received is of equal or greater value. The term "gift" does not include:

(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. No payment for travel or reimbursement for any expenses shall be deemed "informational material."

(2) Gifts which are not used and which, within 30 days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.

(3) Gifts from a judge's spouse, fiancée, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.

(4) Campaign contributions required to be reported under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code.

(5) Gifts of comestible items of nominal value that are not directed to a particular judge, such as holiday baskets of candy or fruit delivered to a District office of the Division, and placed in public areas for consumption by members of the public.

(6) Any devise, inheritance, or other transfer to the judge occurring as a result of death or distribution from an irrevocable trust.

(7) Personalized plaques and trophies with an individual value of less than the amount specified from time to time in Government Code § 82028 (which at the time of this amendment is two hundred fifty dollars (\$ 250)).

(8) Admission to events and refreshments and similar non-cash nominal benefits provided to a judge during the entire event at which the judge gives a speech, participates in a panel or seminar, or provides a similar service, and payments, advances, or reimbursements for actual transportation and any reasonably necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, provided that the lodging and subsistence expenses are limited to the day immediately

preceding, the day of, and the day immediately following the speech, panel participation or seminar, and the travel is within the United States.

(9) Complimentary admission to events and refreshments and similar non-cash nominal benefits, at legal educational events at which the judge is not a speaker or participant in a panel, if:

A. the educational event is open to the public who wish to purchase admission;

B. continuing legal education credits are available for attorneys who attend; and

C. the free admission is offered to all workers' compensation administrative law judges;

“Complimentary admission to events” does not include admission to non-educational functions, such as golf tournaments, excursions, picnics, and dances. “Refreshments” does not include meals other than meals served contemporaneously with an educational presentation, and is limited to those refreshments offered to all who pay admission to the event.

(g) "Honorarium" shall mean any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal or like gathering.

(1) "Honorarium" does not include earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching or writing for a publisher.

(2) For purposes of this article, "teaching" includes presentations to impart educational information to students in bona fide educational institutions, to associations or groups of judges, and to presentations of the State Bar of California or a section of the State Bar of California. An individual is presumed to be engaged in the bona fide profession of teaching in any of the following circumstances:

(A) The individual receives payment for teaching students at a bona fide educational institution.

(B) The individual receives payment for teaching students enrolled in an examination preparation program, such as a bar examination review course.

(C) The individual receives payment for teaching or making a presentation or participating in a panel presentation at an educational program offered by an association or group of judges, or at an educational program of the State Bar of California or of a section of the State Bar of California.

(e) (h) "Referee" "Judge" shall mean a worker's compensation referee administrative law judge and presiding workers' compensation administrative law judge employed by the Administrative Director and supervised by the Court Administrator pursuant to Section 123.5 of the Labor Code. The term shall also include includes Presiding Workers' Compensation Referees, Vocational Rehabilitation Consultants, Regional Managers (Associate Chief Judges) (Claims Adjudication), the Assistant Chief, the Chief Judge, the Court Administrator, the Administrative Director, and any other person, including pro tem referees administrative law judges, and the Administrative Director's designees and state employees, but only while they are exercising judicial or quasi-judicial powers. The term does not include Information and Assistance Officers, Workers' Compensation Compliance Officers (Auditors), nor Disability Evaluation Specialists.

(i) "Previously earned compensation" shall mean legal fees and other compensation to which a workers' compensation administrative law judge may be entitled arising out of the practice of law, engaged in before the judge was appointed to be a judge. Previously earned compensation includes compensation to which the judge was contingently entitled as of the time of appointment, but which became fixed in amount after appointment.

(j) "Spouse" shall include "domestic partner".

(k) "Third degree of relationship" shall mean the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece.

Authority cited: Sections 123.6, 133 and 5307.5, Labor Code

Reference cited: Sections 111 and 123.6, Labor Code

§9721.1. Code of Judicial ~~Conduct~~ or Ethics.

Every ~~referee~~ workers' compensation administrative law judge shall abide by the Code of Judicial Ethics.

Authority cited: Sections 123.6, 133 and 5307.5, Labor Code

Reference cited: Sections 111 and 123.6, Labor Code

§9721.2. Gifts, Honoraria and Travel.

(a) ~~No referee may accept any gift, honorarium or travel that is forbidden to legislators under the Political Reform Act of 1974. No workers' compensation administrative law judge shall accept any gift or favor, the acceptance of which is prohibited by the Code of Judicial Ethics, or the~~

8 C.C.R. §9720.1 - §9723

Ethical Standards for Workers' Compensation Judges

Proposed Regulations (November 23, 2007)

transmission of which is prohibited by the Rules of Professional Conduct of the State Bar of California.

~~(b) No referee may accept any gift, payment, honorarium, travel, meal or any other thing exceeding five dollars in value, the cost of which is significantly paid for by attorneys who practice before the Workers Compensation Appeals Board or by others whose interests have come or are likely to come before the Board, without first obtaining the written approval of the administrative director. Copies of requests and responses shall be forwarded to the Committee for its annual report. For purposes of this section, "attorneys" includes individual attorneys, law firms, and professional associations that include attorneys as members. For purposes of this section, "others whose interests have come or are likely to come before the Board" includes, but is not limited to, any person or entity which is or has been a party or lien claimant in a workers' compensation proceeding, represents a party or lien claimant, provides educational, consulting or other services relating to workers' compensation, otherwise participates in the workers' compensation adjudicatory process or is an association that includes such persons as members or represents their interests.~~

~~(c) This section does not apply to~~

~~(1) gifts, payments, travel, meals or other things of value given to a referee by a family member who does not appear before the referee in question,~~

~~(2) ordinary, modest social hospitality in a private home or attendance at a wedding, graduation or religious ceremony,~~

~~(3) payments, including a division of attorney's fees, made to a referee by the referee's former law firm or other former employer, for services actually rendered prior to the referee's appointment, or (4) union activities of referees~~

(b) No workers' compensation administrative law judge shall accept gifts from any single source in any calendar year with a total value of more than the greater of three hundred ninety dollars (\$390) and the amount specified for that year in regulations of the Fair Political Practices Commission interpreting Government Code § 89503 (currently Regulation §18940.2). This section shall not be construed to authorize the receipt of gifts that would otherwise be prohibited by the Code of Judicial Ethics, Government Code section 19990, ~~No referee may accept any gift, honorarium or travel that is forbidden to legislators under the Political Reform Act of 1974 and any amendment thereto,~~ the Rules of Professional Conduct of the State Bar of California, or any other provision of law.

(c) The limitation of subdivision (b) shall not apply to or limit the following:

(1) Payments, advances, or reimbursements for travel and related lodging and subsistence described in subdivision (d).

(2) Wedding gifts and gifts exchanged between individuals on birthdays, holidays and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value.

(3) A gift from any person whose pre-existing relationship with a judge would disqualify the judge under the Code of Judicial Ethics from hearing a case involving that person.

(d) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence which is reasonably related to a judicial or governmental purpose, or to an issue of state, national, or international public policy, are excluded from the limits prescribed by subdivision (b) if any of the following apply:

(1) The travel is provided by a government, a governmental agency or authority, a foreign government, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

(2) The travel is provided by the California State Bar or a section of the California State Bar, a state bar association, or professional association of judges in connection with testimony before a governmental body or attendance at any professional function hosted by the bar, bar association or professional association of judges, and the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the professional function.

(e) Payments, advances, and reimbursements for travel not described in either subdivision (c) of this Section or subdivision (e)(8) of Section 9720.2 are subject to the limit in subdivision (b).

(f) No workers' compensation administrative law judge shall accept any honorarium unless allowed in writing by the Court Administrator, if either:

(1) the cost of the honorarium is significantly paid for by attorneys who practice before the Workers' Compensation Appeals Board; or

(2) the judge would be required to report the receipt of income or gifts from the source of payment for the honorarium on the judge's statement of economic interests

(g) This section does not apply to any honorarium that is not used and within 30 days after receipt, is either returned to the donor or delivered to the Controller for deposit in the General Fund without being claimed as a deduction from income for tax purposes.

(h) The Court Administrator shall enforce the prohibitions of this section.

(i) Judges may not accept honoraria or travel allowed by the Court Administrator, and not otherwise prohibited by this section in connection with any public or private conference, convention, meeting, social event, or like gathering, the cost of which is significantly paid for by attorneys who practice before the board, unless the Court Administrator, or his or her designee, has provided prior approval in writing to the workers' compensation administrative law judge allowing him or her to accept the payments. This section shall not be construed to authorize the acceptance of an honorarium, as defined by Government Code section 89501, the acceptance of which is prohibited by Government Code section 89502.

(j) Honoraria to give a speech, participate in a panel or seminar, or provide a similar service, are allowed within the meaning of Labor Code section 123.6 where the event is sponsored by one of the following:

A professional association of judges, the State Bar of California, a section of the State Bar of California, a government, a governmental agency or authority, a foreign government, a state, national or local bar association not comprised primarily of either defense or applicant workers' compensation attorneys, a foreign bar association, an international service organization, a bona fide public or private educational institution as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

(k) Upon request by a judge, honoraria and travel reimbursement may be allowed to give a speech, participate in a panel or seminar, or provide a similar service, where the event is sponsored by a person or entity not listed in subdivision (j) of this section.

(l) Payment, provision, or reimbursement for travel in connection with a judge's speech, participation in a panel or seminar, or provision of a similar service, if the event is sponsored by a professional association of judges, the State Bar of California, or a section of the State Bar of California, a government, a governmental agency or authority, a foreign government, a foreign bar association, a bona fide public or private educational institution as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code, is allowed within the meaning of Labor Code section 123.6 for actual transportation and any reasonably necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, provided that the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, panel participation or seminar, and the travel is within the United States.

(m) Payment, provision, or reimbursement for a judge's travel, including actual transportation and related lodging and subsistence, that is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, that is provided by a government, a governmental agency or authority, a foreign government, a bona fide public or private educational institution as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code, is allowed within the meaning of Labor Code section 123.6, and may also be accepted when prior approval of the Court Administrator is not required.

(n) Upon approval by the Court Administrator, payment, provision, or reimbursement for a judge's travel in connection with a speech, participation in a panel or seminar, or provision of a similar service, if the event is sponsored by, or if the payment or reimbursement is to be made by, an association or group of attorneys who practice before the appeals board, will be allowed for the following:

Refreshments and similar non-cash nominal benefits provided to a judge during the entire event at which the judge gives a speech, participates in a panel or seminar, or provides a similar service, actual transportation and any reasonably necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service. Reasonably necessary subsistence is limited to meals and beverages served contemporaneously with a breakfast, dinner, or luncheon speech, panel participation or seminar, and to meals consumed while traveling to or from the activity, limited to the days of necessary travel.

(o) When prior approval of the Court Administrator is not required, payment or reimbursement for travel in connection with a speech, participation in a panel or seminar, or provision of a similar service, if the event is sponsored by a professional association of judges, the State Bar of California, or a section of the State Bar of California, a government, a governmental agency or authority, a foreign government, a foreign bar association, an international service organization, a bona fide public or private educational institution as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code, may be accepted for actual transportation and any reasonably necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, provided that the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, panel participation or seminar, and the travel is within the United States.

Authority cited: Sections 123.6, 133 and 5307.5, Labor Code

Reference cited: Sections 111 and 123.6, Labor Code

8 C.C.R. §9720.1 - §9723

Ethical Standards for Workers' Compensation Judges

Proposed Regulations (November 23, 2007)

§9721.11 Requirement for Disclosure

A judge shall disclose any and all of the following to all parties or attorneys in a case:

- (a) That the judge served as a lawyer for a party at any time before the present action.
- (b) That the judge provided legal advice on the specific issue presently at bar to a party involved in the instant action or proceeding.
- (c) That within the past two years, a party, officer, director, or trustee of a party was a client of the judge or of a lawyer with whom the judge was associated in private practice, as an employee or on a contract basis.
- (d) That a lawyer, associate of the lawyer in private practice, or spouse of a lawyer in the proceeding is a spouse, former spouse, child, sibling, or parent of the judge or of the judge's spouse.
- (e) That the judge has, as a lawyer or public official, participated in the drafting of enacted laws or actively participated in the effort to pass or defeat laws, the meaning, effect, or application of which is in issue in the proceeding. "Actively participated" means the judge has engaged in lobbying, or made other substantial efforts to change law. Mere membership in an organization which advocates or has advocated change in law does not constitute active participation.
- (f) Any information that the workers' compensation administrative law judge believes would be relevant to the issue of disqualification, such that a person aware of the facts might reasonably entertain a doubt as to the workers' compensation administrative law judge's ability to be impartial.
- (g) Any situation known to the judge, disclosure of which is required by the Code of Judicial Ethics.
- (h) That the judge has a disputed workers' compensation claim against a party.

Authority cited: Sections 123.6, 133 and 5307.5, Labor Code

Reference cited: Sections 111 and 123.6, Labor Code

§9721.12 Disqualification

(a) A judge is disqualified in a workers' compensation case if any of the following is true:

- (1) The judge has personal knowledge of disputed evidentiary facts.
- (2) The judge served as lawyer for a party in the past two years.
- (3) The judge has actual bias in favor of or against any party and the judge has substantial doubt as to his or her capacity to be impartial.
- (4) Because of physical impairment, the judge is unable to perceive evidence or properly conduct proceedings.
- (5) Within the past two years, the judge served as a lawyer for an officer, director, trustee of a party.
- (6) Within the past two years, the judge was associated in private practice, as an employee or on a contract basis, with a lawyer in the proceedings.
- (7) The judge, the judge's spouse, or minor child of the judge, personally or as a fiduciary, has a financial interest in the subject matter in a proceeding or in a party to the proceeding, or has a relationship of director, advisor, or active participant to a party to the proceeding.
- (8) 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.
- (9) A party to the action before the judge, or the party's spouse, is related within the third degree of relationship to either the judge the judge's spouse.
- (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.
- (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. A judge is not disqualified as to other members or associates in a law firm, or as to the law firm itself, solely because of actual bias against or in favor of individual attorneys in or associated with the firm. Actual bias in favor of or against an attorney does not in itself create the appearance of bias as to a law firm of which the attorney is a member or associate. A doubt of a person aware of the facts that a judge could be impartial towards a law firm or other members or associates of a law firm, based only on knowledge of a judge's bias in favor of or against an individual attorney or attorneys, is not a doubt which is reasonably entertained. If the workers' compensation appeals board, on a petition for disqualification alleging bias against or in favor of an attorney, determines that a judge is disqualified because of the appearance of bias or because a person aware of the facts might reasonably entertain a doubt that the judge could be impartial, it shall not be presumed, as to a law firm of which the attorney is a member or associate, or as to other members or associates of the law firm:

A. that there is the appearance of bias; or

B. that a person aware of the facts might reasonably entertain a doubt that the judge could be impartial.

(b) The parties may waive the disqualification of a judge after written disclosure of the facts constituting a ground of disqualification. A judge who believes he or she is disqualified shall recuse or shall state in writing the basis of disqualification. All waivers shall be in writing and shall be made part of the file, or shall be made on the record. The judge may ask the parties and their attorneys whether they wish to waive the disqualification. The judge may not request the parties or attorneys to waive the disqualification. The parties and any attorney for the employee shall execute any waiver. An attorney for a party other than the employee may execute the waiver on behalf of the attorney's clients. Such a waiver shall state that the attorney has advised the client of the disqualification information, and that the client has agreed to waive the disqualification.

(c) Disqualification for the following circumstances cannot be waived:

(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

(2) The judge served as a lawyer in the case.

Authority cited: Sections 123.6, 133 and 5307.5, Labor Code

Reference cited: Sections 111 and 123.6, Labor Code

§9721.13 What Are not Grounds for disqualification

The following factors do not in themselves disqualify a judge:

(a) That the judge is or is not a member of a racial, ethnic, religious, gender, or sexual orientation classification, and the proceedings involve the rights of a person of the same classification.

(b) That the judge has, in any capacity, expressed a view on a legal or factual issue presented in the proceeding, except if the judge has formed or expressed an unqualified opinion or belief as to the merits of the particular action before the judge.

(c) That the judge has a policy of insurance with an insurance company that is a party or is a carrier of a party in the proceeding, unless the judge also has a pending claim or dispute with the insurance company.

(d) That the judge has a currently disputed or recently finalized workers' compensation claim against a party.

Authority cited: Sections 123.6, 133 and 5307.5, Labor Code

Reference cited: Sections 111 and 123.6, Labor Code

§9721.21 Restriction on Investments

(a) A workers' compensation administrative law judge may not have an ownership interest in, either in his individual capacity or as a fiduciary, 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 of workers' compensation insurance to employers in the state of California.

(b) A workers' compensation administrative law judge who, as of the date this regulation becomes effective, has an interest in an insurance company described in subdivision (a), shall dispose of the interest or terminate the fiduciary relationship within one year of the date this regulation becomes effective.

(c) A workers' compensation administrative law judge who acquires an interest in an insurance company described in subdivision (a) through gift, inheritance or devise, or by becoming a fiduciary for a person, estate, or trust which has an interest in such an insurance company, shall dispose of the acquired interest or terminate the fiduciary relationship within one year.

(d) Upon application by a workers' compensation administrative law judge who acquired an interest in an insurance company described in subdivision (a) through gift, inheritance or devise, or by becoming a fiduciary for a person, estate, or trust which has an interest in such an insurance company, and upon the showing of hardship to the judge or to the person, trust, or estate for whom the judge is serving as fiduciary, the Administrative Director may grant an extension of time to dispose of the acquired interest or to terminate the fiduciary relationship or may grant an exemption if the value of the interest is de minimus.

(e) The obligation of a workers' compensation administrative law judge under the California Code of Judicial Ethics to "manage personal investments and financial activities so as to minimize the necessity for disqualification" includes the obligation not to acquire or hold investments in self-insured employers who are reasonably likely to be defendant employers in cases at the district office where the judge is usually employed.

Authority cited: Sections 123.6, 133 and 5307.5, Labor Code

Reference cited: Sections 111 and 123.6, Labor Code

§9721.31 Financial Interests in Educational Programs

(a) A referee workers' compensation administrative law judge may not have an ownership interest in, nor may the referee workers' compensation administrative law judge receive a percentage of revenue or any other contingent economic interest relating to, educational programs servicing the workers' compensation community.

(b) As used in this section, "percentage of revenues or any other contingent financial interest" does not include:

(1) Unusual and customary royalties or residuals paid by commercial publishers in the normal course of business, provided that the publisher does not appear before the referee workers' compensation administrative law judge in question.

(2) Usual and customary royalties or residuals earned by a workers' compensation administrative law judge who self-publishes or owns the company that publishes his or her work, provided that the book is not available for purchase or delivery at any office of the Division of Workers' Compensation and is not sold or distributed by any Division of Workers' Compensation employee on behalf of the workers' administrative law judge. Any workers' compensation administrative law judge who self-publishes or owns the company that publishes his or her work has the responsibility to submit to the Court Administrator, or his or her designee, for approval a proposed plan that complies with this subdivision. If there is no Court Administrator, then the workers' compensation administrative law judge shall submit the proposed plan to the Administrative Director.

Authority cited: Sections 123.6, 133 and 5307.5, Labor Code

Reference cited: Sections 111 and 123.6, Labor Code

§9721.32. Duty to Report ~~Misconduct~~ Ethics Violations.

When circumstances warrant, a referee workers' compensation administrative law judge shall take or initiate appropriate corrective action, which may include reporting to the appropriate authority, in respect to ~~disciplinary measures against a referee workers' compensation administrative law judge, lawyer, party, witness, or other person who participates in the workers' compensation process for~~ engages in unprofessional, fraudulent or other improper conduct of which the referee workers' compensation administrative law judge becomes aware through personal knowledge or based upon competent and reliable information.

Authority cited: Sections 123.6, 133 and 5307.5, Labor Code

Reference cited: Sections 111 and 123.6, Labor Code

§9721.33. Previously Earned Compensation.

A Workers' Compensation Administrative Law Judge may receive previously earned compensation.

Authority cited: Sections 123.6, 133 and 5307.5, Labor Code

Reference cited: Sections 111 and 123.6, Labor Code

§9722. The Workers' Compensation Ethics Advisory Committee.

(a) There shall be a Workers' Compensation Ethics Advisory Committee consisting of nine members appointed by the ~~a~~Administrative ~~d~~Director or by his/her designee:

- (1) a member of the public representing organized labor,
 - (2) a member of the public representing insurers,
 - (3) a member of the public representing self-insured employers,
 - (4) an attorney who formerly practiced before the Workers' Compensation Appeals Board and who usually represented insurers or employers,
 - (5) an attorney who formerly practiced before the Workers' Compensation Appeals Board and who usually represented applicants,
 - (6) a presiding ~~referee~~ workers' compensation administrative law judge,
 - (7) a ~~referee~~ workers' compensation administrative law judge or retired ~~referee~~ workers' compensation administrative law judge,
 - (8) and (9) two members of the public outside the workers' compensation community.
- Members shall serve for a term of four years. However, to create staggered terms, the first term of members in odd-numbered categories above shall be two years. The ~~a~~Administrative ~~d~~Director shall designate a chairperson.

(b) The Committee shall meet as necessary to carry out its responsibilities under this article. State employees shall meet on state time and at state expense.

(c) The Committee may do the following:

- (1) Receive complaints made against ~~referees~~ workers' compensation administrative law judges,
- (2) Forward those complaints to the ~~a~~Administrative ~~d~~Director or Court Administrator with a recommendation to investigate or not to investigate,
- (3) Monitor the outcome of complaints, and
- (4) Make reports and recommendations to the ~~a~~Administrative ~~d~~Director, the Court Administrator, the legislature and the public concerning the integrity of the workers' compensation adjudicatory process. The Committee shall make a public report on or before ~~February~~ April 15 or each year, summarizing the activities of the Committee in the previous calendar year. The report shall not contain personally identifiable information concerning

complainants or ~~referees~~ workers' compensation administrative law judges, unless the information is already public.

(d) The ~~a~~AAdministrative ~~d~~Director shall make staff available to the Committee to assist it in carrying out its functions.

(e) The Committee may receive information that is not available to the public. The Committee shall hold such information strictly confidential from public disclosure. However, this rule of confidentiality shall not prevent the Committee from disclosing information to the ~~referee~~ workers' compensation administrative law judge, if the ~~referee~~ workers' compensation administrative law judge is otherwise entitled to the information.

Authority cited: Sections 123.6, 133 and 5307.5, Labor Code

Reference cited: Sections 111 and 123.6, Labor Code

§9722.1. Commencing an Investigation.

(a) Any person may file a complaint concerning an ethics violation by a workers' compensation administrative law judge with the Committee. The Committee or the Administrative Director may require complaints to be filed in a particular form. Nothing in these regulations prohibits any person from complaining directly to a presiding ~~referee~~ workers' compensation administrative law judge, the Chief Judge, the Court Administrator or to the ~~a~~AAdministrative ~~d~~Director. The presiding ~~referee~~ workers' compensation administrative law judge, the Chief Judge, and Court Administrator or the ~~a~~AAdministrative ~~d~~Director may, but is not required to, refer such complaints to the Committee.

(b) The Committee shall review the complaint. The Committee may make ~~brief, informal~~ inquiries to obtain information needed to clarify the complaint and/or to obtain additional information necessary to determine if the complaint might have merit.

(c) If the Committee determines that the complaint does not allege facts that might constitute ~~misconduct~~ an ethics violation, or if the complaint is merely conjectural or conclusory, specious, obviously unfounded, or stale, or alleges only ~~isolated~~ legal error by the ~~referee~~ workers' compensation administrative law judge, the Committee shall forward the complaint to the ~~a~~AAdministrative ~~d~~Director or Court Administrator with a recommendation not to proceed with the complaint.

(d) If the Committee determines that the complaint might have merit, the Committee shall refer the complaint to the ~~a~~AAdministrative ~~d~~Director or Court Administrator. Complaints against the ~~a~~AAdministrative ~~d~~Director or Court Administrator shall be referred to the Director of Industrial Relations.

~~(e) Complaints making substantial allegations of criminal conduct, invidious discrimination, sexual harassment, or other serious acts that might require the administrative director's~~

~~immediate attention, shall be referred forthwith to the administrative director. All other complaints shall be referred to the administrative director within 60 days.~~

~~(f) During the course of the investigation, the administrative director shall inform the referee of the nature of the charges. The referee shall have the opportunity to submit a response. A referee who has been informed of the charges shall also be informed of the outcome of the investigation.~~

Authority cited: Sections 123.6, 133 and 5307.5, Labor Code

Reference cited: Sections 111 and 123.6, Labor Code

§9722.2. Investigation and Action by the Administrative Director or Court Administrator.

(a) Upon receiving a complaint from the Committee, the ~~a~~Administrative d~~Director or Court Administrator~~ shall investigate whether a ~~referee workers' compensation administrative law judge has engaged in misconduct committed an ethics violation.~~

~~(b) If the administrative director determines after investigation that the complaint is unfounded or insufficient to justify discipline or other action, the administrative director shall so inform the complainant and the Committee.~~

~~(c)~~ (b) If the ~~a~~Administrative d~~Director or Court Administrator~~ determines after investigation that misconduct has occurred, he or she shall take appropriate disciplinary or other action against the ~~referee workers' compensation administrative law judge.~~ The ~~a~~Administrative d~~Director's or Court Administrator's~~ action shall be in the form required by Government Code section 19574 or section 19590(b), or other applicable laws governing the ethics violation.

~~(d)~~ (c) The ~~a~~Administrative d~~Director or Court Administrator~~ shall provide the Committee with a copy of his or her decision and shall inform the complaining party of the outcome of the investigation.

Authority cited: Sections 123.6, 133 and 5307.5, Labor Code

Reference cited: Sections 111 and 123.6, Labor Code

§9723. Miscellaneous Provisions.

(a) This article does not replace or diminish the procedural rights of a ~~referee workers' compensation administrative law judge~~ under the State Civil Service Act. Documentation of unfounded or ~~unsustained unsubstantiated~~ unsubstantiated complaints ~~or complaints which warrant no further investigation~~ shall not be retained in the employee's personnel file.

(b) This article does not replace or diminish the authority of the ~~a~~Administrative d~~Director or Court Administrator~~ to investigate allegations of ~~misconduct~~ ethics violations, to impose appropriate discipline, or to take any other action authorized by law.

(c) Nothing in this article shall affect the rights and obligations of the ~~a~~Administrative ~~d~~Director or Court Administrator and ~~referees~~ workers' compensation administrative law judges concerning the probationary period under Government Code sections 19170 through 19180.

(d) Pursuant to Government Code section 19574.5, the ~~a~~Administrative ~~d~~Director or Court Administrator may place a ~~referee~~ workers' compensation administrative law judge on leave of absence pending investigation of the accusations listed in that section.

~~(e) No civil action may be maintained against any person, or adverse employment action taken against a person by any employer, public or private, based on statements presented by the person in proceedings under this section.~~

~~(f)~~ (e) A ~~referee~~ workers' compensation administrative law judge or other interested person may request the ~~a~~Administrative ~~d~~Director or Court Administrator to issue an advisory opinion on the application of the Code or other rules to a particular situation. The ~~a~~Administrative ~~d~~Director or Court Administrator may, in his or her sole discretion, issue an advisory opinion. The ~~a~~Administrative ~~d~~Director or Court Administrator may issue an advisory opinion on his or her own initiative.

Authority cited: Sections 123.6, 133 and 5307.5, Labor Code

Reference cited: Sections 111 and 123.6, Labor Code