

California Rules of Professional Conduct  
Rule 2.4.1  
(Formerly Rule 1-710)

Rule 2.4.1. Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator

A lawyer who is serving as a temporary judge, referee, or court-appointed arbitrator, and is subject to canon 6D of the California Code of Judicial Ethics, shall comply with the terms of that canon.

California Code of Judicial Ethics, Canon 6  
CANON 6. COMPLIANCE WITH THE CODE OF JUDICIAL ETHICS  
Effective: July 1, 2020

**A. Judges.** Anyone who is an officer of the state judicial system and who performs judicial functions including, but not limited to, a subordinate judicial officer,\* a magistrate, a court-appointed arbitrator, a judge of the State Bar Court, a temporary judge,\* or a special master, is a judge within the meaning of this code. All judges shall comply with this code except as provided below.

**ADVISORY COMMITTEE COMMENTARY: Canon 6A**

*For the purposes of this canon, if a retired judge is serving in the Temporary Assigned Judges Program, the judge is considered to “perform judicial functions.” Because retired judges who are privately retained may perform judicial functions, their conduct while performing those functions should be guided by this code.*

**B. Retired Judge Serving in the Temporary Assigned Judges Program.** A retired judge who has filed an application to serve on assignment, meets the eligibility requirements set by the Chief Justice for service, and has received an acknowledgment of participation in the Temporary Assigned Judges Program shall comply with all provisions of this code, except for the following:

4C(2)--Appointment to governmental positions

4E--Fiduciary\* activities

**C. Retired Judge as Arbitrator or Mediator.** A retired judge serving in the Temporary Assigned Judges Program is not required to comply with Canon 4F of this code relating to serving as an arbitrator or mediator, or performing judicial functions in a private capacity, except as otherwise provided in the Standards and Guidelines for Judicial Assignments promulgated by the Chief Justice.

**ADVISORY COMMITTEE COMMENTARY: Canon 6C**

*Article VI, section 6 of the California Constitution provides that a “retired judge who consents may be assigned to any court” by the Chief Justice. Retired judges who are serving in the Temporary Assigned Judges Program pursuant to the above provision are bound by Canon 6B,*

*including the requirement of Canon 4G barring the practice of law. Other provisions of California law,\* and standards and guidelines for eligibility and service set by the Chief Justice, further define the limitations on who may serve on assignment.*

**D. Temporary Judge,\* Referee, or Court-Appointed Arbitrator.** 1 A temporary judge,\* a person serving as a referee pursuant to Code of Civil Procedure section 638 or 639, or a court-appointed arbitrator shall comply only with the following code provisions:

(1) A temporary judge,\* a referee, or a court-appointed arbitrator shall comply with Canons 1 [integrity\* and independence\* of the judiciary], 2A [promoting public confidence], 3B(3) [order and decorum], 3B(4) [patient, dignified, and courteous treatment], 3B(6) [require\* lawyers to refrain from manifestations of any form of bias or prejudice], 3D(1) [action regarding misconduct by another judge], and 3D(2) [action regarding misconduct by a lawyer], when the temporary judge,\* referee, or court-appointed arbitrator is actually presiding in a proceeding or communicating with the parties, counsel, or staff or court personnel while serving in the capacity of a temporary judge,\* referee, or court-appointed arbitrator in the case.

(2) A temporary judge,\* referee, or court-appointed arbitrator shall, from the time of notice and acceptance of appointment until termination of the appointment:

(a) Comply with Canons 2B(1) [not allow family or other relationships to influence judicial conduct], 3B(1) [hear and decide all matters unless disqualified], 3B(2) [be faithful to and maintain competence in the law\*], 3B(5) [perform judicial duties without bias or prejudice], 3B(7) [accord full right to be heard to those entitled; avoid ex parte communications, except as specified], 3B(8) [dispose of matters fairly and promptly], 3B(12) [remain impartial\* and not engage in coercive conduct during efforts to resolve disputes], 3C(1) [discharge administrative responsibilities without bias and with competence and cooperatively], 3C(3) [require\* staff and court personnel to observe standards of conduct and refrain from bias and prejudice], and 3C(5) [make only fair, necessary, and appropriate appointments];

(b) Not personally solicit memberships or donations for religious, service,\* educational, civic, or charitable organizations from the parties and lawyers appearing before the temporary judge,\* referee, or court-appointed arbitrator;

(c) Under no circumstance accept a gift,\* bequest, or favor if the donor is a party, person, or entity whose interests are reasonably likely to come before the temporary judge,\* referee, or court-appointed arbitrator. A temporary judge,\* referee, or court-appointed arbitrator shall discourage members of the judge's family residing in the judge's household\* from accepting benefits from parties who are reasonably likely to come before the temporary judge,\* referee, or court-appointed arbitrator.

(3) A temporary judge\* shall, from the time of notice and acceptance of appointment until termination of the appointment, disqualify himself or herself in any proceeding as follows:

(a) A temporary judge\*--other than a temporary judge solely conducting settlement conferences--is disqualified to serve in a proceeding if any one or more of the following are true:

(i) the temporary judge\* has personal knowledge\* (as defined in Code of Civil Procedure section 170.1, subdivision (a)(1)) of disputed evidentiary facts concerning the proceeding;

(ii) the temporary judge\* has served as a lawyer (as defined in Code of Civil Procedure section 170.1, subdivision (a)(2)) in the proceeding;

(iii) the temporary judge,\* within the past five years, has given legal advice to, or served as a lawyer (as defined in Code of Civil Procedure section 170.1, subdivision (a)(2)), except that this provision requires disqualification if the temporary judge\* represented a party in the past five years rather than the two-year period specified in section 170.1, subdivision (a)(2)) for a party in the present proceeding;

**ADVISORY COMMITTEE COMMENTARY: Canon 6D(3)(a)(iii)**

*The application of Canon 6D(3)(a)(iii), providing that a temporary judge\* is disqualified if he or she has given legal advice or served as a lawyer for a party to the proceeding in the past five years, may depend on the type of assignment and the amount of time available to investigate whether the temporary judge\* has previously represented a party. If time permits, the temporary judge\* must conduct such an investigation. Thus, if a temporary judge\* is privately compensated by the parties or is presiding over a particular matter known\* in advance of the hearing, the temporary judge\* is presumed to have adequate time to investigate. If, however, a temporary judge\* is assigned to a high volume calendar, such as traffic or small claims, and has not been provided with the names of the parties prior to the assignment, the temporary judge\* may rely on his or her memory to determine whether he or she has previously represented a party.*

*(iv) the temporary judge\* has a financial interest (as defined in Code of Civil Procedure sections 170.1, subdivision (a)(3), and 170.5) in the subject matter in the proceeding or in a party to the proceeding;*

(v) the temporary judge,\* or the spouse or registered domestic partner\* of the temporary judge,\* or a person within the third degree of relationship\* to either of them, or the spouse or registered domestic partner\* of such a person is a party to the proceeding or is an officer, director, or trustee of a party;

(vi) a lawyer or a spouse or registered domestic partner\* of a lawyer in the proceeding is the spouse, former spouse, registered domestic partner,\* former registered domestic partner,\* child, sibling, or parent of the temporary judge\* or the temporary judge's spouse or registered domestic partner,\* or if such a person is associated in the private practice of law with a lawyer in the proceeding;

(vii) for any reason:

(A) the temporary judge\* believes his or her recusal would further the interests of justice;

(B) the temporary judge\* believes there is a substantial doubt as to his or her capacity to be impartial;\* or

(C) a person aware of the facts might reasonably entertain a doubt that the temporary judge\* would be able to be impartial.\* Bias or prejudice toward an attorney in the proceeding may be grounds for disqualification; or

(viii) the temporary judge\* has received a campaign contribution of \$1,500 or more from a party or lawyer in a matter that is before the court and the contribution was received in anticipation of an upcoming election.

(b) A temporary judge\* before whom a proceeding was tried or heard is disqualified from participating in any appellate review of that proceeding.

(c) If the temporary judge\* has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding prospective employment or service as a dispute resolution neutral, or has been engaged in such employment or service, and any of the following applies:

(i) The arrangement or current employment is, or the prior employment or discussion was, with a party to the proceeding;

(ii) The temporary judge\* directs the parties to participate in an alternative dispute resolution process in which the dispute resolution neutral will be an individual or entity with whom the temporary judge\* has the arrangement, is currently employed or serves, has previously been employed or served, or is discussing or has discussed the employment or service; or

(iii) The temporary judge\* will select a dispute resolution neutral or entity to conduct an alternative dispute resolution process in the matter before the temporary judge,\* and among those available for selection is an individual or entity with whom the temporary judge\* has the arrangement, is currently employed or serves, has previously been employed or served, or is discussing or has discussed the employment or service.

For the purposes of Canon 6D(3)(c), the definitions of “participating in discussions,” “has participated in discussions,” “party,” and “dispute resolution neutral” are set forth in Code of Civil Procedure section 170.1, subdivision (a)(8), except that the words “temporary judge” shall be substituted for the word “judge” in such definitions.

(d) A lawyer is disqualified from serving as a temporary judge\* in a family law or unlawful detainer proceeding if in the same type of proceeding:

- (i) the lawyer holds himself or herself out to the public as representing exclusively one side; or
- (ii) the lawyer represents one side in 90 percent or more of the cases in which he or she appears.

**ADVISORY COMMITTEE COMMENTARY: Canon 6D(3)(d)**

Under Canon 6D(3)(d), “one side” means a category of persons such as landlords, tenants, or litigants exclusively of one gender.

- (4) After a temporary judge\* who has determined himself or herself to be disqualified from serving under Canon 6D(3)(a)-(d) has disclosed the basis for his or her disqualification on the record, the parties and their lawyers may agree to waive the disqualification and the temporary judge\* may accept the waiver. The temporary judge\* shall not seek to induce a waiver and shall avoid any effort to discover which lawyers or parties favored or opposed a waiver.

**ADVISORY COMMITTEE COMMENTARY: Canon 6D(4)**

*Provisions addressing waiver of mandatory disqualifications or limitations, late discovery of grounds for disqualification or limitation, notification of the court when a disqualification or limitation applies, and requests for disqualification by the parties are located in rule 2.818 of the California Rules of Court. Rule 2.818 states that the waiver must be in writing, must recite the basis for the disqualification or limitation, and must state that it was knowingly\* made. It also states that the waiver is effective only when signed by all parties and their attorneys and filed in the record.*

- (5) A temporary judge,\* referee, or court-appointed arbitrator shall, from the time of notice and acceptance of appointment until termination of the appointment:
  - (a) In all proceedings, disclose in writing or on the record information as required by law,\* or information that is reasonably relevant to the question of disqualification under Canon 6D(3), including personal or professional relationships known\* to the temporary judge,\* referee, or court-appointed arbitrator, that he or she or his or her law firm has had with a party, lawyer, or law firm in the current proceeding, even though the temporary judge,\* referee, or court-appointed arbitrator concludes that there is no actual basis for disqualification; and
  - (b) In all proceedings, disclose in writing or on the record membership of the temporary judge,\* referee, or court-appointed arbitrator in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation, except for membership in a religious organization.
- (6) A temporary judge,\* referee, or court-appointed arbitrator, from the time of notice and acceptance of appointment until the case is no longer pending in any court, shall not make any public comment about a pending\* or impending\* proceeding in which the

temporary judge,\* referee, or court-appointed arbitrator has been engaged, and shall not make any nonpublic comment that might substantially interfere with such proceeding. The temporary judge,\* referee, or court-appointed arbitrator shall require\* similar abstention on the part of staff and court personnel subject to his or her control. This canon does not prohibit the following:

- (a) Statements made in the course of the official duties of the temporary judge,\* referee, or court-appointed arbitrator; and
- (b) Explanations about the procedures of the court.

(7) From the time of appointment and continuing for two years after the case is no longer pending\* in any court, a temporary judge,\* referee, or court-appointed arbitrator shall under no circumstances accept a gift,\* bequest, or favor from a party, person, or entity whose interests have come before the temporary judge,\* referee, or court-appointed arbitrator in the matter. The temporary judge,\* referee, or court-appointed arbitrator shall discourage family members residing in the household of the temporary judge,\* referee, or court-appointed arbitrator from accepting any benefits from such parties, persons or entities during the time period stated in this subdivision. The demand for or receipt by a temporary judge,\* referee, or court-appointed arbitrator of a fee for his or her services rendered or to be rendered would not be a violation of this canon.

(8) A temporary judge,\* referee, or court-appointed arbitrator shall, from the time of notice and acceptance of appointment and continuing indefinitely after the termination of the appointment:

- (a) Comply with Canon 3B(11) [no disclosure of nonpublic information\* acquired in a judicial capacity] (except as required by law\*);
- (b) Not commend or criticize jurors sitting in a proceeding before the temporary judge,\* referee, or court-appointed arbitrator for their verdict other than in a court order or opinion in such proceeding, but may express appreciation to jurors for their service to the judicial system and the community; and
- (c) Not lend the prestige of judicial office to advance his, her, or another person's pecuniary or personal interests and not use his or her judicial title in any written communication intended to advance his, her, or another person's pecuniary or personal interests, except to show his, her, or another person's qualifications.

(9)(a) A temporary judge\* appointed under rule 2.810 of the California Rules of Court, from the time of the appointment and continuing indefinitely after the termination of the appointment, shall not use his or her title or service as a temporary judge\* (1) as a description of the lawyer's current or former principal profession, vocation, or occupation on a ballot designation for judicial or other elected office, (2) in an advertisement about the lawyer's law firm or business, or (3) on a letterhead, business card, or other document that is distributed to the public identifying the lawyer or the lawyer's law firm.

(b) This canon does not prohibit a temporary judge\* appointed under rule 2.810 of the California Rules of Court from using his or her title or service as a temporary judge\* on an application to serve as a temporary judge,\* including an application in other courts, on an application for employment or for an appointment to a judicial position, on an individual resume or a descriptive statement submitted in connection with an application for employment or for appointment or election to a judicial position, or in response to a request for information about the public service in which the lawyer has engaged.

(10) A temporary judge,\* referee, or court-appointed arbitrator shall comply with Canon 6D(2) until the appointment has been terminated formally or until there is no reasonable probability that the temporary judge,\* referee, or court-appointed arbitrator will further participate in the matter. A rebuttable presumption that the appointment has been formally terminated will arise if, within one year from the appointment or from the date of the last hearing scheduled in the matter, whichever is later, neither the appointing court nor counsel for any party in the matter has informed the temporary judge,\* referee, or court-appointed arbitrator that the appointment remains in effect.

(11) A lawyer who has been a temporary judge,\* referee, or court-appointed arbitrator in a matter shall not accept any representation relating to the matter without the informed written consent of all parties.

(12) When by reason of serving as a temporary judge,\* referee, or court-appointed arbitrator in a matter, he or she has received confidential information from a party, the person shall not, without the informed written consent of the party, accept employment in another matter in which the confidential information is material.

**ADVISORY COMMITTEE COMMENTARY: Canon 6D**

*Any exceptions to the canons do not excuse a judicial officer's separate statutory duty to disclose information that may result in the judicial officer's recusal or disqualification.*

*E. Judicial Candidate. A candidate for judicial office\* shall comply with the provisions of Canon 5.*

**F. Time for Compliance.** A person to whom this code becomes applicable shall comply immediately with all provisions of this code except Canons 4D(4) and 4E and shall comply with Canons 4D(4) and 4E as soon as reasonably possible and in any event within a period of one year.

**ADVISORY COMMITTEE COMMENTARY: Canon 6F**

*If serving as a fiduciary\* when selected as a judge, a new judge may, notwithstanding the prohibitions in Canon 4E, continue to serve as a fiduciary\* but only for that period of time necessary to avoid adverse consequences to the beneficiary of the fiduciary\* relationship and in no event longer than one year.*

**G.** (Canon 6G repealed effective June 1, 2005; adopted December 30, 2002.)

**H. Judges on Leave Running for Other Public Office.** A judge who is on leave while running for other public office pursuant to article VI, section 17 of the California Constitution shall comply with all provisions of this code, except for the following, insofar as the conduct relates to the campaign for public office for which the judge is on leave:

2B(2)--Lending the prestige of judicial office to advance the judge's personal interest

4C(1)--Appearing at public hearings

5--Engaging in political activity (including soliciting and accepting campaign contributions for the other public office).

**ADVISORY COMMITTEE COMMENTARY: Canon 6H**

*These exceptions are applicable only during the time the judge is on leave while running for other public office. All of the provisions of this code will become applicable at the time a judge resumes his or her position as a judge. Conduct during elections for judicial office is governed by Canon 5.*

Credits

(As amended, eff. April 15, 1996; March 4, 1999; Dec. 30, 2002; Jan. 1, 2005; July 1, 2006; Jan. 1, 2007; Jan. 1, 2008; Jan. 1, 2013; Jan. 21, 2015; Jan. 21, 2016; July 1, 2020.)

Notes of Decisions (2)

Footnotes

1

Reference should be made to relevant commentary to analogous or individual canons cited or described in this canon and appearing elsewhere in this code.

Code of Jud. Ethics, Canon 6, CA ST J ETHICS Canon 6

California Rules of Court, California Rules of Professional Conduct, and California Code of Judicial Ethics are current with amendments received through June 15, 2021. California Supreme Court, California Courts of Appeal, Guidelines for the Commission of Judicial Appointments, Commission on Judicial Performance, and all other Rules of the State Bar of California are current with amendments received through June 15, 2021.

Additional Resources:

Link to complete annotated Code of Judicial Ethics:

([https://www.courts.ca.gov/documents/ca\\_code\\_judicial\\_ethics.pdf](https://www.courts.ca.gov/documents/ca_code_judicial_ethics.pdf))

State Bar of California Judicial Ethics page (which in turn contains links to the Code, the Supreme Court Ethics Committee opinions, and a variety of other helpful resources:

([www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Judicial-Ethics](http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Judicial-Ethics))

California Judges Association CJA Ethics:

(<https://www.caljudges.org/EthicsOpinion.asp>)