Superior Court of California, County of Orange

Judicial Arbitration Program Guidelines

1. Authority.

These guidelines are subject to the California Rules of Court, Title 3, Division 8, Chapter 2, and Rule 360, Orange County Superior Court Rules.

2. Cases Subject to Judicial Arbitration.

The following cases must be referred to judicial arbitration:

(a) Any unlimited civil case where, in the opinion of the Court, the amount in controversy will not exceed fifty thousand dollars ($50,000) for each plaintiff, shall be referred to arbitration except:

- Cases that include a prayer for equitable relief that is not frivolous or insubstantial;
- Class actions;
- Small claims cases or trials de novo on appeal from the small claims court;
- Unlawful detainer proceedings;
- Family Law Act proceedings except as provided in Family Code section 2554;
- Cases where the court determines that arbitration would not reduce the probable time and expense necessary to resolve the litigation; and
- Cases involving multiple causes of action or a cross-complaint if the court determines that the amount in controversy as to any given cause of action or cross-complaint exceeds fifty thousand dollars ($50,000).

(b) Upon stipulation, any limited or unlimited civil case, regardless of the amount in controversy.

(c) Any at issue limited civil case may be referred to judicial arbitration if the court determines arbitration to be in the best interests of justice.

3. Selection of Arbitrator.

(a) The parties may stipulate to an arbitrator within ten (10) days after the case is referred to arbitration, by submitting a written stipulation for the arbitrator of their choice to the Civil Clerk's office. If the parties select a person who is not on the court's arbitration panel, the person selected must complete a written consent to serve and the oath required for panel arbitrators, and both the consent and the oath must be attached to the stipulation.

(b) If the arbitrator has not been selected by stipulation, the arbitrator will be selected as follows:

(1) Within 15 days after the case has been referred to arbitration, the ADR Administrator must determine the number of clearly adverse sides in the case; in the absence of a cross-complaint bringing in a new party, the analyst may assume there are two sides. A dispute as to the number or identity of sides must be decided by the presiding judge in the same manner as disputes in determining sides entitled to peremptory challenges of jurors.

(2) The ADR Administrator will select at random a number of names equal to the number of sides, plus one, and mail the list of randomly selected names to counsel for the parties.

(3) Each side has 10 days from the date of mailing to file a rejection, in writing, or no more than one name on the list; if there are two or more parties to a side, they must join in the rejection of a single name.

(4) On the expiration of the 10-day period, the ADR Administrator will appoint, at random, one or the persons on the list whose name was not rejected, if more than one name remains.

(5) The ADR Administrator will assign the case to the arbitrator appointed.

(c) If the first arbitrator declines to serve, the ADR Administrator must vacate the appointment of the arbitrator and may either:

(1) Return the case to the top of the arbitration hearing list and appoint a new arbitrator; or

(2) Certify the case to the court.

(d) If the second arbitrator declines to serve or if the arbitrator does not complete the hearing within 90 days of the assignment, including any time due to continuances, the ADR Administrator must certify the case to the court.

(e) If a case is certified to court under either (c) or (d), the court will hold a case management conference. If the inability to hold an arbitration hearing is due to the neglect of lack of cooperation of a party who elected or stipulated to the arbitration, the court may set the case for trial and may make any other appropriate orders. In all other circumstances, the court may reassign the case to arbitration or make any other appropriate orders to expedite disposition of the case.

4. Conflict of Interest.

(a)Within ten (10) days of receiving the assignment, the arbitrator must determine whether any cause exists for his or her disqualification in the case upon any of the following grounds:[1]

(1) The arbitrator has personal knowledge of disputed evidentiary facts concerning the case. An arbitrator shall be deemed to have personal knowledge within the meaning of this paragraph if the arbitrator, or his or her spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person is to the arbitrator's knowledge likely to be a material witness in the case.

(2) The arbitrator has served as a lawyer in the case, or in any other proceeding involving the same issues she or he served as a lawyer for any party in the present proceeding or gave advice to any party in the present case upon any matter involved in the case. An arbitrator shall be deemed to have served as a lawyer in the case if within the past two years:

- A party in the case or an officer, director, or trustee was a client of the arbitrator or a client of a lawyer with whom the arbitrator is or was associated in the practice of law.
- A lawyer in the case was associated in the practice of law with the arbitrator.

An arbitrator who served as a lawyer for or officer of a public agency shall be deemed to have served as a lawyer in the case if he or she personally advised or in any way represented the public agency concerning the factual or legal issues in the case.

[1] Code of Civil Procedure Section 170.1.

(3) The arbitrator has a financial interest in the subject matter of the case or in a party to the case. An arbitrator shall be deemed to have a financial interest within the meaning of this paragraph if:

- A spouse or minor child living in the household has a financial interest.
- The arbitrator or the spouse of the arbitrator is a fiduciary who has a financial interest.

(4) The arbitrator, the arbitrator's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person, is a party to the case or an officer, director, or trustee of a party.

(5) A lawyer or the spouse of a lawyer in the case is the spouse, former spouse, child, sibling, or parent of the arbitrator or the arbitrator's spouse or if such a person is associated in the practice of law with a lawyer in the case.

(6) If, for any reason:

- The arbitrator believes his or her disqualification would further the interest of justice.
- The arbitrator believes there is a substantial doubt as to her or his capacity to be impartial.
- A person aware of the facts might reasonably entertain a doubt that the arbitrator would be able to be impartial.

(7) The arbitrator is biased or prejudiced toward a lawyer in the case.

(b) The arbitrator shall notify the ADR Administrator within ten (10) days of the Notice of Assignment of any grounds for disqualification known to him or her and another arbitrator will be selected.

(c) In addition to any other disclosure required by law, no later than five days before the deadline for parties to file a motion for disqualification of the arbitrator under Code of Civil Procedure section 170.6 or, if the arbitrator is not aware of his or her appointment or of a matter subject disclosure at that time, as soon as practicable thereafter, and arbitrator must disclose to the parties any significant personal or professional relationship the arbitrator has or has had with a party, attorney, or law firm in the instant case, including the number and nature of any proceedings in the past 24 months in which the arbitrator has been privately compensated by a party, attorney, law firm, or insurance company in the instant case for any services, including services as an attorney, expert witness, or consultant or as a judge, referee, arbitrator, mediator, neutral evaluator, settlement facilitator, or other alternative dispute resolution neutral.

(d) A copy of any request by a party for the disqualification of an arbitrator under Code of Civil Procedure section 170.1 or 170.6 must be sent to the ADR administrator.

(e) On motion of an party, made as promptly as possible under Code of Civil Procedure sections 170.1 and 1141.18(d) and before the conclusion of arbitration proceedings, the appointment of an arbitrator to a case must be vacated if the court finds that:

(1) The party has demanded that the arbitrator disqualify herself or himself;

(2) The arbitrator has failed to do so; and

(3) Any of the grounds specified in section 170.1 exists.

The ADR Administrator must return the case to the top of the arbitration hearing list and appoint a new arbitrator.

5. Notice and Setting of Arbitration Hearing.

Within fifteen (15) days of receiving the Selection of ADR Neutral and Party List, the arbitrator must set the time, date, and place of the arbitration hearing and provide each party and the ADR Administrator with a Notice of ADR Session at least 30 days prior to the hearing date. The arbitration hearing must be scheduled not sooner than 35 days and not later than 90 days from the date of referral to arbitration.

The hearing must be set at a convenient date, time and place within the County of Orange, The hearing may not be set on a Saturday, Sunday, or legal holiday without the written stipulation of all parties and the arbitrator. Upon the written stipulation of all parties and the arbitrator, the arbitration hearing may be held at a location outside of Orange County.

If the arbitrator is unable to hold the hearing within the time limitations, a notification shall be submitted to the ADR Administrator and all parties. The ADR Administrator will return the case to the list of cases pending appointment of a new arbitrator pursuant to these guidelines.

6. Continuances.

An arbitration hearing may not be continued beyond the ninety (90) day period except by order of the court for good cause.

An arbitration hearing date may be continued:

- By written stipulation of all counsel with the consent of the arbitrator. The original copy of the stipulation shall be filed with the ADR Administrator. The new hearing date must be set within 90 days of the referral to arbitration.

- By noticed motion, if the desired hearing date is more than 90 days from the referral to arbitration. A written declaration must be submitted with the motion, stating the reason(s) for the extended setting. The motion must be set for hearing before the judge who signed the arbitration referral order.

- By written stipulation of all parties, and approval of the court, if the hearing date exceeds 90 days from the referral to arbitration. A written declaration must be submitted with the stipulation, stating the reason(s) for the extended setting. The stipulation must be filed with the ADR Administrator. The stipulation must be titled “Stipulation and Order for Continuance of Arbitration” and shall include, below the attorney signatures, the language “IT IS SO ORDERED,” followed by a date and signature line for the judge.

7. Ex Parte Communication.

An arbitrator must not initiate, permit, or consider any ex parte communications or consider other communications made to the arbitrator outside the presence of all parties concerning a pending arbitration, except as follows:

(a) An arbitrator may communicate with a party in the absence of other parties about administrative matters, such as setting the time and place of hearings or making other arrangements for the conduct of the proceedings, as long as the arbitrator reasonably believes that the communication will not result in a procedural or tactical advantage for any party. When such a discussion occurs, the arbitrator must promptly inform the other parties of the communication and must give the other parties an opportunity to respond before making any final determination concerning the matter discussed.

(b) An arbitrator may initiate or consider any ex parte communication when expressly authorized by law to do so.

No disclosure of any offers of settlement made by any party may be made to the arbitrator prior to the filing of the award.

8. Discovery.

The parties to the arbitration shall have the right to take depositions and to obtain discovery, and to that end may exercise all of the same rights, remedies and procedures, and shall be subject to all of the same duties, liabilities, and obligations as provided by applicable laws and regulations for other cases pending in the Orange County Superior Court[2], except that all arbitration discovery must be completed no later than 15 days prior to the date set for the arbitration hearing unless the court, upon a showing of good cause, makes an order granting an extension of the time within which discovery must be completed.

9. Representation by Counsel.

A party to the arbitration has a right to be represented by an attorney at any proceeding or hearing in arbitration, but this right may be waived. A waiver of this right may be revoked, but if revoked, the other party is entitled to a reasonable continuance for the purpose of obtaining counsel.

10. Absence of a Party.

The arbitration may proceed in the absence of any party who, after due notice, fails to be present and to obtain a continuance. An award must not be based solely on the absence of a party. In the event of a default by the defendant, the arbitrator must require the plaintiff to submit such evidence as may be appropriate for the making of an award.

12. Rules of Evidence at Hearing.

(a) All evidence must be taken in the presence of the arbitrator and all parties, except where any of the parties has waived the right to be present or is absent after due notice of the hearing.

(b) The rules of evidence governing civil cases apply to the conduct of the arbitration hearing, except:

(1) Any party may offer written reports of any expert witness, medical records and bills (including physiotherapy, nursing, and prescription bills), documentary evidence of loss of income, property damage repair bills or estimates, police reports concerning an accident that gave rise to the case, other bills and invoices, purchase orders, checks, written contracts, and similar documents prepared and maintained in the ordinary course of business.

- The arbitrator must receive them in evidence if copies have been delivered to all opposing parties at least 20 days before the hearing.

- Any other party may subpoena the author or custodian of the document as a witness and examine the witness as if under cross-examination.

- Any repair estimate offered as an exhibit, and the copies delivered to opposing parties, must be accompanied by:

[2] For unlimited civil cases, Part 4, Title 3, Chapter 3 of the Code of Civil Procedure. For limited civil cases, Part 1, Title 1, Chapter 5 of the Code of Civil Procedure.

- A statement indicating whether or not the property was repaired, and, if it was, whether the estimated repairs were made in full or in part; and

- A copy of the receipted bill showing the items of repair and the amount paid.

- The arbitrator must not consider any opinion as to ultimate fault expressed in a police report.

(2) The written statements of any other witness may be offered and must be received in evidence if:

- They are made by declaration under penalty of perjury;

- Copies have been delivered to all opposing parties at least 20 days before the hearing; and

- No opposing party has, at least 10 days before the hearing, delivered to the proponent of the evidence a written demand that the witness be produced in person to testify at the hearing. The arbitrator must disregard any portion of a statement received under this rule that would be inadmissible if the witness were testifying in person, but the inclusion of inadmissible matter does not render the entire statement inadmissible.

(3) The deposition of any witness may be offered by any party and must be received in evidence, subject to objections available by law, notwithstanding that the deponent is not "unavailable as a witness" within the meaning of Evidence Code section 240 and not exceptional circumstances exist, if:

- The deposition was taken in the manner provided for by law or by stipulation of the parties and within the time provided for in these guidelines; and

- Not less than 20 days before the hearing the proponent of the deposition delivered to all opposing parties notice of intention to offer the deposition in evidence.

The opposing party, upon receiving he notice, may subpoena the deponent and, at the discretion of the arbitrator, either the deposition may be excluded from evidence or the deposition may be admitted and the deponent may be further cross-examined by the subpoenaing party.

(c) The attendance of witnesses at arbitration hearings may be compelled through the issuance of subpoenas. It is the duty of the party requesting the subpoena to modify the form of the subpoena so as to show that the appearance is before an arbitrator and to give the time and place set for the arbitration hearing.

At the discretion of the arbitrator, nonappearance of a properly subpoenaed witness may be a ground for an adjournment or continuance of the hearing.

If any witness properly served with a subpoena fails to appear at the arbitration hearing or, having appeared, refuses to be sworn or to answer, proceedings to compel compliance with the subpoena on penalty of contempt may be had before the superior court as provided in the Code of Civil Procedure section 1991.

(d) The delivery of a document or notice may be accomplished manually or by mail in the manner provide in Code of Civil Procedure section 1013. If service is by mail, the times prescribed for delivery of documents, notices and demands are increased by five days.

13. Conduct of the Hearing.

(a) The arbitrator has the following powers:

(1) To administer oaths or affirmations to witnesses;

(2) To make adjournments upon the request of a party or upon his or her own initiative when deemed necessary;

(3) To permit testimony to be offered by deposition;

(4) To permit evidence to be offered and introduced as provided in these guidelines;

(5) To rule upon the admissibility and relevancy of evidence offered;

(6) To invite the parties, on reasonable notice, to submit arbitration briefs;

(7) To decide the law and facts of the case and make an award accordingly;

(8) To award costs, not to exceed the statutory costs of the suit; and

(9) To examine any site or object relevant to the case.

(b) The arbitrator may, but is not required to, make a record of the proceedings.

Any records of the proceedings made by or at the direction of the arbitrator are deemed the arbitrator's personal notes and are not subject to discovery, and the arbitrator must not deliver them to any party to the case or to any other person, except to an employee using the records under the arbitrator's supervision or pursuant to a subpoena issued in a criminal investigation or prosecution for perjury.

No other record may be made, and the arbitrator must not permit the presence of a stenographer or court reporter or the use of any recording device at the hearing, except as expressly permitted by this paragraph.

14. The Award.

(a) The award must be in writing and signed by the arbitrator. It must determine all issues properly raised by the pleadings, including a determination of any damages and an award for costs if appropriate. The arbitrator is not required to make findings of fact or conclusions of law.

(b) Within 10 days after the conclusion of the arbitration hearing, the arbitrator must file the award with the clerk, with proof of service on each party to the arbitration. On the arbitrator's application in cases of unusual length or complexity, the court may allow up to 20 additional days for the filing and service of the award. Within the time for filing the award, the arbitrator may file and serve an amended award.

15. Arbitrator's Fees.

(a) Upon the filing of a timely award, the arbitrator will receive the sum of $150.00 for each case as a fee for services rendered on the case. When two or more cases arise out of the same transaction and are heard at the same hearing, they shall be considered as one case for purposes of determining the arbitrator's fees.

(b) The arbitrator's fee statement must be submitted to the ADR Unit promptly upon the completion of the arbitrator's duties and must set forth the title and number of the cause arbitrated, the date of the arbitration hearing(s), and the date the award or settlement was filed.

(c) When the arbitrator has devoted a substantial amount of time to a case that was settled without a hearing, the arbitrator may request fees for her or his services by filing a Notice of Settlement signed by the parties or their counsel. If the arbitrator has not had a notice signed by counsel, he or she may submit a verified ex parte application for arbitrator's fees concurrently with the fee statement.

(d) On the arbitrator's verified ex parte application presented concurrently with the fee statement, the court may, for good cause, set a greater fee than that provided by these guidelines, if the arbitration proceeding was of unusual duration or difficulty.

(e) The arbitrator may request the payment of arbitrator's fees by a verified ex parte application when the award was not timely filed.

16. Trial de Novo.

(a) Within 30 days after the arbitration award is filed, any party may request a trial de novo by filing a request for trial, with proof of service of a copy upon all other parties in the case. A request for trial filed after the parties have been served with a copy of the award by the arbitrator, but before the award has been filed, is valid and timely filed. The 30-day period within which to request trial may not be extended.

(b) Upon the timely filing of a request for trial de novo after arbitration the case shall be returned to the judge who signed the original arbitration referral order. The case must proceed as provided under an applicable case management order. If no pending order provides for the prosecution of the case after a request for trial de novo after arbitration, the court must promptly schedule a case management conference.

(c) The case shall be tried as though no arbitration proceedings had occurred. No reference may be made during the trial to the arbitration award, to the fact that there had been arbitration proceedings, to the evidence adduced at the arbitration hearing, or to any other aspect of the arbitration proceedings, and none of the foregoing may be used as affirmative evidence, or by way of impeachment, or for any other purpose at the trial.

(d) No discovery shall be permissible after an arbitration award in cases where a trial de novo has been granted, except by stipulation or by leave of court upon a showing of good cause.

(e) If a party has requested a trial de novo after arbitration, the request may not be withdrawn except by a written instrument, signed by counsel for all parties appearing in the case, expressly agreeing that a nonappealable judgment may be entered on the arbitration award.

17. Costs of Trial.

(a) If the judgment upon the trial de novo is not more favorable in either the amount of damages awarded or the type of relief granted for the party electing the trial de novo than the arbitration award, the court shall order that party to pay the following nonrefundable costs and fees, unless the court finds in writing and upon motion that the imposition of these fees would create such a substantial economic hardship as not to be in the interests of justice:

(1) To the court, the compensation actually paid to the arbitrator, less any amount paid pursuant to subparagraph (4).

(2) To the other party or parties, all cost specified in Code of Civil Procedure section 1033.5, and the party electing the trial de novo shall not recover his or her costs.

(3) To the other party; or parties, the reasonable costs of the services of expert witnesses, who are not regular employees of any party, actually incurred or reasonably necessary in the preparation of the trial of the case.

(4) To the other party or parties, the compensation paid by the other party or parties to the arbitrator pursuant to Code of Civil Procedure section 1141.28(b).

(b) Those costs and fees, other than the compensation of the arbitrator, shall include only those incurred from the time of election of the trial de novo.

(c) If the party electing the trial de novo has proceeded in the action in forma pauperis and has failed to obtain a more favorable judgment:

(1) The costs imposed under subparagraphs (a)(2) and (a)(3) shall be imposed only as an offset against any damages awarded in favor of that party.

(2) The costs under subparagraph (a)(1) shall be imposed only to the extent that there remains a sufficient amount in the judgment after the amount offset under subparagraph (c)(1) has been deducted from the judgment.

(d) Nothing in these guidelines shall prohibit an arbitration award in excess of $50,000. However, no party electing a trial de novo after such award shall be subject to the provisions of this section regarding costs.

19. Entry of Award.

(a) The clerk must enter the award as a judgment immediately upon the expiration of 30 days after the award is filed if not party has, during that period, served and filed a request for trial as provided in these guidelines.

(b) Promptly upon entry of the award as a judgment, the clerk must mail notice of entry of judgment to all parties who have appeared in the case and must execute a certificate of mailing and place it in the court's file in the case.

(c) The judgment so entered has the same force and effect in all respects as, and is subject to all provisions of law relating to, a judgment in a civil case or proceeding, except that it is not subject to appeal and it may not be attacked or set aside except as provided in section 20 below. The judgment so entered may be enforced as if it had been rendered by the court in which it is entered.

20. Vacating Judgment on Award.

(a) A party against whom a judgment is entered under an arbitration may, within six months after its entry, move to vacate the judgment on the ground that the arbitrator was subject to a disqualification not disclosed before the hearing and or which the arbitrator was then aware, or upon one of the grounds set forth in Code of Civil Procedure sections 473 or 1286.2(a)(1), (2), and (3), and on no other grounds[3].

[3] § 473 relates to relief from judgment taken by mistake, inadvertence, surprise or excusable neglect and vacating a default judgment. § 1286(a) in relevant part requires the vacation of the award if the court finds that: (1) the award was procured by corruption of other undue means; (2) there was corruption in any of the arbitrators; or (3) the rights of the party were substantially prejudiced by the misconduct of a neutral arbitrator.

(b) The motion must be heard upon notice to the adverse parties and to the arbitrator, and may be granted only upon clear and convincing evidence that the grounds alleged are true, and that the motion was made as soon as practicable after the moving party learned of the existence of those grounds.

21. Settlement of Case.

If the case is settled, each plaintiff or other party seeking affirmative relief must notify the arbitrator and the court as required by section 3 of these guidelines.

22. Arbitration not Pursuant to Rules and Guidelines.

These guidelines do not prohibit the parties to any civil case or proceeding from entering into arbitration agreements under part 3, title 9 of the Code of Civil Procedure. Neither the ADR Committee nor the ADR Administrator may take any part in the conduct of an arbitration under an agreement not in conformity with these rules except that the administrator may, upon joint request of the parties, furnish the parties to the agreement with a randomly selected list of at least three names of members of the appropriate panel of arbitrators.

23. Administration of Judicial Arbitration Program.

(a) The Alternative Dispute Resolution (ADR) committee is responsible for:

(1) Appointing the panels of arbitrators provided for in section 24;

(2) Removing a person from a panel of arbitrators;

(3) Establishing procedures for selecting an arbitrator; and

(4) Reviewing the administration and operation of the arbitration program periodically and making recommendations to the Judicial Council as the committee deems appropriate to improve the program, promote the ends of justice, and serve the needs of the community.

(b) The Chief Executive Officer shall serve as the ADR Administrator, supervise the selection of arbitrators for the cases on the arbitration hearing list, and generally supervise the operation of the arbitration program, and may employ such staff as are necessary to fulfill this responsibility.

24. Panels of Arbitrators.

(a) The court will have a panel of arbitrators for personal injury cases, and such additional panels as the presiding judge, may, from time to time, determine are needed.

(b) The panels of arbitrators must be composed of active or inactive members of the State Bar, retired court commissioners who were licensed to practice law before their appointment as commissioners, and retired judges. A former California judicial officer is not eligible for the panel of arbitrators unless she or he is an active or inactive member of the State Bar.

(c) The ADR committee is responsible for determining the size and composition of each panel of arbitrators. The personal injury panel, to the extent feasible, must contain an equal number of those who usually represent plaintiffs and those who usually represent defendants.

(d) Each person appointed to an arbitration panel serves as a member of the panel at the pleasure of the ADR committee. A person may be on arbitration panels in more than one county. An appointment to a panel is effective when the person appointed:

(1) Agrees to serve;

(2) Certifies that he or she is aware of and will comply with applicable provisions of canon 6 of the Code of Judicial Ethics and these guidelines;

(3) Files an oath or affirmation to justly try all matters submitted to her or him; and

(4) Agrees to serve as an arbitrator on a pro bono or modest-means basis in at least one case per year, not to exceed eight (8) hours, if requested by the Court.

(e) Lists showing the names of panel arbitrators available to hear cases will be available for public inspection at the Civil Clerk's Office at the Central Justice Center and online.

2007 California Rules of Court

California Code of Judicial Ethics

(excerpts applicable to arbitrators)

Terminology

Terms explained below are noted with an asterisk (*) in the Canons where they appear. In addition, the Canons in which terms appear are cited after the explanation of each term below.

"Appropriate authority" denotes the authority with responsibility for initiation of the disciplinary process with respect to a violation to be reported. See Commentary to Canon 3D.

"Candidate." A candidate is a person seeking election for or retention of judicial office by election. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election to nonjudicial office, unless on leave of absence. See Preamble and Canons 2B(3), the preliminary paragraph of 5, 5A, 5B, 5C, and 6E.

"Court personnel" does not include the lawyers in a proceeding before a judge. See Canons 3B(4), 3B(7)(b), 3B(9), and 3C(2).

"Fiduciary" includes such relationships as executor, administrator, trustee, and guardian. See Canons 4E, 6B, and 6F (*Commentary*).

"Law" denotes court rules as well as statutes, constitutional provisions, and decisional law. See Canons 1 (*Commentary*), 2A, 2C (*Commentary*), 3A, 3B(2), 3B(7), 3E, 4B (*Commentary*), 4C, 4D(6)(a)-(b), 4F, 4H, and 5D.

“Member of the judge’s family” denotes a spouse, registered domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Canons 2B(2), 4D(1) (*Commentary*), 4D(2), 4E, 4G (*Commentary*), and 5A.

“Member of the judge’s family residing in the judge’s household” denotes a spouse or registered domestic partner and those persons who reside in the judge’s household who are relatives of the judge including relatives by marriage, or persons with whom the judge maintains a close familial relationship. See Canons 4D(5) and 4D(6).
"Nonprofit youth organization" is any nonprofit corporation or association, not organized for the private gain of any person, whose purposes are irrevocably dedicated to benefiting and serving the interests of minors and which maintains its nonprofit status in accordance with applicable state and federal tax laws. See Canon 2C.

"Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to information that is sealed by statute or court order,

impounded, or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Canon 3B(11).

"Political organization" denotes a political party, political action committee, or other group, the principal purpose of which is to further the election or appointment of candidates to nonjudicial office. See Canon 5A.

“Registered domestic partner” denotes a person who has registered for domestic partnership pursuant to state law or who is recognized as a domestic partner pursuant to Family Code section 299.2.

“Temporary Judge.” A temporary judge is an active or inactive member of the bar who, pursuant to article VI, section 21 of the California Constitution, serves or expects to serve as a judge once, sporadically, or regularly on a part-time basis under a separate court appointment for each period of service or for each case heard. See Canons 4C(3)(d)(i), 6A, and 6D.

"Require." Any Canon prescribing that a judge "require" certain conduct of others means that a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Canons 3B(3), 3B(4), 3B(6), 3B(8) (*Commentary*), 3B(9), and 3C(2).

“Subordinate judicial officer.” A subordinate judicial officer is, for the purposes of this Code, a person appointed pursuant to article VI, section 22 of the California Constitution, including, but not limited to, a commissioner, referee, and hearing officer. See Canon 6A.

CANON 1

A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective. A judicial decision or administrative act later determined to be incorrect legally is not itself a violation of this Code.

ADVISORY COMMITTEE COMMENTARY

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law and the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violations of this Code diminish public confidence in the judiciary and thereby do injury to the system of government under law.*

The basic function of an independent and honorable judiciary is to maintain the utmost integrity in decision making, and this Code should be read and interpreted with that function in mind.

CANON 2

A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

A. Promoting Public Confidence

A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

ADVISORY COMMITTEE COMMENTARY

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by other members of the community and should do so freely and willingly.
The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge.
The test for the appearance of impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality, and competence.
See also Commentary under Canon 2C.

B. Use of the Prestige of Judicial Office

(1) A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.

CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

B. Adjudicative Responsibilities

(1) A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified.

ADVISORY COMMITTEE COMMENTARY

Canon 3B(1) is based upon the affirmative obligation contained in the Code of Civil Procedure.

(2) A judge shall be faithful to the law* regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.*

(3) A judge shall require* order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require* similar conduct of lawyers and of all court staff and personnel* under the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (1) bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, or (2) sexual harassment.

(Canon 3B (5) amended effective December 22, 2003.)

(6) A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status against parties, witnesses, counsel, or others. This Canon does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status or other similar factors are issues in the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, full right to be heard according to law.* A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding, except as follows:

(a) A judge may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(b) A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(c) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(d) A judge may initiate ex parte communications, where circumstances require, for scheduling, administrative purposes, or emergencies that do not deal with substantive matters provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(e) A judge may initiate or consider any ex parte communication when expressly authorized by law* to do so.

ADVISORY COMMITTEE COMMENTARY

The proscription against communications concerning a proceeding includes communications from lawyers, law professors, and other persons who are not participants in the proceeding, except to the limited extent permitted by the exceptions noted in Canon 3B(7).

This Canon does not prohibit a judge from initiating or considering an ex parte communication when authorized to do so by stipulation of the parties.

This Canon does not prohibit court staff from communicating scheduling information or carrying out similar administrative functions.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file an amicus curiae brief.

A judge must not independently investigate facts in a case and must consider only the evidence presented, unless otherwise authorized by law. For example, a judge is statutorily authorized to investigate and consult witnesses informally in small claims cases.*

(8) A judge shall dispose of all judicial matters fairly, promptly, and efficiently.

ADVISORY COMMITTEE COMMENTARY

The obligation of a judge to dispose of matters promptly and efficiently must not take precedence over the judge's obligation to dispose of the matters fairly and with patience. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to require that court officials, litigants, and their lawyers cooperate with the judge to that end.*

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information* acquired in a judicial capacity.

ADVISORY COMMITTEE COMMENTARY

This Canon makes it clear that judges cannot make use of information from affidavits, jury results, or court rulings, before they become public information, in order to gain a personal advantage.

C. Administrative Responsibilities

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require* staff and court personnel* under the judge's direction and control to observe appropriate standards of conduct and to refrain from manifesting bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status in the performance of their official duties.

(4) A judge shall not make unnecessary court appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees above the reasonable value of services rendered.

ADVISORY COMMITTEE COMMENTARY

Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, court reporters, court interpreters, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Canon 3C(4).

D. Disciplinary Responsibilities
(1) Whenever a judge has reliable information that another judge has violated any provision of the Code of Judicial Ethics, the judge shall take or initiate appropriate corrective action, which may include reporting the violation to the appropriate authority.*

(2) Whenever a judge has personal knowledge that a lawyer has violated any provision of the Rules of Professional Conduct, the judge shall take appropriate corrective action**.**

ADVISORY COMMITTEE COMMENTARY
Appropriate corrective action could include direct communication with the judge or lawyer who has committed the violation, other direct action if available, or a report of the violation to the presiding judge, appropriate authority, or other agency or body. Judges should note that in addition to the action required by Canon 3D(2), California law imposes additional reporting requirements regarding lawyers.*

CANON 4

A JUDGE SHALL SO CONDUCT THE JUDGE'S QUASI-JUDICIAL AND EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

A. Extrajudicial Activities in General

A judge shall conduct all of the judge's extrajudicial activities so that they do not

(1) cast reasonable doubt on the judge's capacity to act impartially;

(2) demean the judicial office; or

(3) interfere with the proper performance of judicial duties.

ADVISORY COMMITTEE COMMENTARY

Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of a classification such as their race, sex, religion, sexual orientation, or national origin. See Canon 2C and accompanying Commentary.

CANON 6

COMPLIANCE WITH THE CODE OF JUDICIAL ETHICS

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, magistrate, court-appointed arbitrator, judge of the State Bar Court, temporary judge, and 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

For the purposes of this Canon, if a retired judge is serving in the 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.

(Canon 6A amended effective January 1, 2005.)

C. Retired Judge as Arbitrator or Mediator

A retired judge serving in the 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 Judges Serving on Assignment* promulgated by the Chief Justice.

ADVISORY COMMITTEE COMMENTARY

In California, 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 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

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, referee, or court-appointed arbitrator shall comply with Canons 1 [integrity and independence of the judiciary], 2A [promoting public confidence], 3B(3) [order and decorum] and (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 (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 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] and (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] and (8) [dispose of matters fairly and promptly], 3C(1)[discharge administrative responsibilities without bias and with competence and cooperatively], (2) [require staff and personnel to observe standards of conduct and refrain from bias and prejudice] and (4) [make only fair, necessary, and appropriate appointments];

(b) 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;

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

(d) 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.

(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 the parties or their lawyers might reasonably consider 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 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, religion, national origin, or sexual orientation, except for membership in a religious or an official military organization of the United States and membership in a nonprofit youth organization so long as membership does not violate Canon 4A [conduct of extrajudicial activities].

(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 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 for public information 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 shall not be a violation of this Canon.

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

(a) Comply with Canons 3(B)(11) [no disclosure of nonpublic information acquired in a judicial capacity] (except as required by law); and

(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.

(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 shall 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

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.

(Canon 6D amended effective January 1, 2007; adopted effective January 15, 1996; previously amended effective April 15, 1996, March 4, 1999 and July 1, 2006.)

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(2) and 4F and shall comply with these Canons as soon as reasonably possible and shall do so in any event within a period of one year.

ADVISORY COMMITTEE COMMENTARY

If serving as a fiduciary when selected as a judge, a new judge may, notwithstanding the prohibitions in Canon 4F, continue to serve as 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. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Canon 4D(2), continue in that activity for a reasonable period but in no event longer than one year.*

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