

RESOLUTION 7-02-2002

DIGEST

Code of Judicial Ethics: Applicability to Temporary Judges, Arbitrators and Referees
Amends Code of Judicial Ethics, Canon 6, to define formal and informal termination of the duties of temporary judges, court-appointed arbitrators and referees.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

Reasons :

This resolution amends Code of Judicial Ethics, Canon 6, to define formal and informal termination of the duties of temporary judges, court-appointed arbitrators and referees. This resolution should be approved because, until their appointments are terminated, attorneys serving as temporary judges, arbitrators or referees are bound by strict ethical duties and may unwittingly violate them.

Canon 6, at subdivision D, sets forth the ethical rules applicable to temporary judges, referees and court-appointed arbitrators. During their term of service, those appointees are prohibited from, inter alia, personally soliciting donations for civic or charitable organizations, or accepting gifts, from the parties and lawyers who are reasonably likely to appear before them. (Canon 6.D.(2)(c) & (d).) But the canon does not clearly define when or how those appointments are terminated. As a result, an attorney might serve one day as temporary judge and, six months later, assuming that the appointment has expired, violate the canon by soliciting a donation for a civic organization from an attorney who had appeared before him or her. This danger discourages attorneys from providing much needed public service, which in turn reduces the number of judges pro tems and impairs the ability of the courts to handle ever-increasing caseloads.

This resolution sets forth a definite procedure for formal termination. While it requires courts to create and use a termination form, this is a small burden compared to the potential chill on attorney volunteerism.

SECTION/COMMITTEE REPORTS

The State Bar Committee on Alternative Dispute Resolution

Recommendation: APPROVE IN PRINCIPLE

Reasons :

The California State Bar Committee on Alternative Dispute Resolution recommends that the Conference of Delegates "Approve in Principle" Resolution No. 07-02-2002. The Committee recognizes the need to finalize the termination of appointment for temporary judges, referees and court appointed arbitrators. However, the proposed language creates unnecessary confusion by making a distinction between "formal" and "informal" termination. The Committee believes this distinction should be eliminated. Furthermore, the addition of the word "either" suggests that termination of an appointment is limited to only the two methods suggested (i.e. "either" by a writing from the court or by passage of time). The Committee views this to be too restrictive. It

precludes other modes of termination such as a declaration by the appointee in the final order that the case is closed, a recusal by the appointee, or a time limit set in the original order of appointment.

For the above stated reasons, the Committee recommends that the proposed Resolution be "Approved in Principle" with the following amendments. The amendments proposed by the Committee allow for termination of appointment by the court, as well as by rebuttable presumption after the passage of time, but do not preclude other modes of termination. Additionally, the Committee's proposed language removes all references to "formal" or "informal" termination.

The Committee recommends that the language in Canon 6 read as follows:

(6) A temporary judge, referee or court-appointed arbitrator shall comply with Canon 6D(2) until the appointment has been terminated by the court 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 terminated shall arise if, within one year from the appointment or from the date in the last hearing scheduled in the matter, which ever 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.

(Proposed new language in bold and underlined.)

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that the Judicial Council amend California Rules of Court, Appendix, Division II, Canon 6 to read as follows:

- 1
- 2 [Subdivisions A through C remain unchanged.]
- 3
- 4 D.
- 5 A temporary judge, a person serving as a referee pursuant to Code of Civil
- 6 Procedure section 638 or 639, or a court-appointed arbitrator shall comply only with the
- 7 following Code provisions:
- 8
- 9 [Subdivision (1) remains unchanged.]
- 10 (2) A temporary judge, referee or court-appointed arbitrator shall, from the time
- 11 of notice and acceptance of appointment until termination of the appointment:
- 12 (a) Comply with Canons 2B(1) [not allow family or other relationships to
- 13 influence judicial conduct], 3B(1) [hear and decide all matters unless disqualified] and
- 14 (2) [be faithful to and maintain competence in the law], 3B(5) [perform judicial duties
- 15 without bias or prejudice], 3B(7) [accord full right to be heard to those entitled; avoid ex
- 16 parte communications, except as specified] and (8) [dispose of matters fairly and
- 17 promptly], 3C(1) [discharge administrative responsibilities without bias and with
- 18 competence and cooperatively], (2) [require staff and personnel to observe standards of

19 conduct and refrain from bias and prejudice]) and (4) [make only fair, necessary, and
20 appropriate appointments];

21 (b) Not lend the prestige of judicial office to advance his, her, or another person's
22 pecuniary or personal interests and not use his or her judicial title in any written
23 communication intended to advance his, her, or another person's pecuniary or personal
24 interests, except to show his, her, or another person's qualifications;

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

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

34 (e) Disqualify himself or herself in any proceeding in which disqualification is
35 required by law;

36 (f) In all proceedings, disclose in writing or on the record information as required
37 by law, or information that the temporary judge, referee or court-appointed arbitrator
38 believes the parties or their lawyers might consider relevant to the question of
39 disqualification, even where it is believed that there is no actual basis for disqualification;
40 and

41 (g) In all proceedings, disclose in writing or on the record membership in any
42 organization that practices invidious discrimination on the basis of race, sex, religion,
43 national origin, or sexual orientation, except for membership in a religious or an official
44 military organization of the United States and membership in a nonprofit youth
45 organization so long as membership does not violate Canon 4A [conduct of extrajudicial
46 activities].

47 [Subdivisions (3) through (5) imposing obligations not affected by this
48 amendment remain unchanged.]

49 (6) A temporary judge, referee or court-appointed arbitrator shall comply with
50 Canon 6D(2) until the appointment has been terminated either formally by the court or
51 informally because until there is no reasonable probability that the temporary judge,
52 referee or court-appointed arbitrator will further participate in the matter. A rebuttable
53 presumption that the appointment has been informally terminated shall arise if, within
54 one year from the appointment or from the date of the last hearing scheduled in the
55 matter, which ever is later, neither the appointing court nor counsel for any party in the
56 matter has informed the temporary judge, referee or court appointed arbitrator that the
57 appointment remains in effect. Formal termination shall occur upon written notice of
58 termination from the court to the temporary judge, referee or court-appointed arbitrator.

59
60 [Subdivisions (7) and (8) remain unchanged.]

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego County Bar Association

STATEMENT OF REASONS

Existing Law: Temporary judges, referees, and court-appointed arbitrators are subject to significant and burdensome rules originally intended to govern career judges. These obligations last for a period of at least one year after their appointment and even longer if the case continues beyond the original hearing or trial.

The Problem: The Canons of Judicial Ethics do not provide a mechanism for courts to "formally" terminate the obligations of temporary judges, referees or court-appointed arbitrators. Worse, the Canons mis-characterize the conditions under which a rebuttable presumption of termination arises as a "formal" termination when it is, in fact, an informal or de facto termination. Consequently, these well-meaning attorneys who keep the judicial system operating smoothly are burdened with the ethical obligations of career judges although they are practicing attorneys for unduly long periods of time.

This Resolution: This resolution would provide the simple and clear mechanism of written notice of termination after the 30-day appeal period lapses for courts to formally terminate appointments of volunteer attorneys and properly characterize the rebuttable presumption as an "informal" termination.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute, or rule.

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