



The State Bar of California

Rule 2.4.1 Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator (Rule Approved by the Supreme Court, Effective November 1, 2018)

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.

Comment

[1] This rule is intended to permit the State Bar to discipline lawyers who violate applicable portions of the California Code of Judicial Ethics while acting in a judicial capacity pursuant to an order or appointment by a court.

[2] This rule is not intended to apply to a lawyer serving as a third-party neutral in a mediation or a settlement conference, or as a neutral arbitrator pursuant to an arbitration agreement. (See rule 2.4.)

**NEW RULE OF PROFESSIONAL CONDUCT 2.4.1
(Former Rule 1-710)
Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator**

EXECUTIVE SUMMARY

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) evaluated current rule 1-710 (Member as Temporary Judge, Referee, or Court-Appointed Arbitrator)¹ in accordance with the Commission Charter. The Commission also reviewed relevant California statutes, rules, and case law relating to the issues addressed by the proposed rules. The result of the Commission’s evaluation is proposed rule 2.4.1 (Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator).

Rule As Issued For 90-day Public Comment

Proposed rule 2.4.1 carries forward current rule 1-710, which clarifies that lawyers are subject to Canon 6D of the Code of Judicial Ethics when acting as a temporary judge, referee, or court-appointed arbitrator. Like the current rule, the proposed rule provides a disciplinary path for lawyers who violate applicable judicial ethics standards. Current rule 1-710 originated from a Supreme Court request sent to the State Bar in 1996, following the Supreme Court’s consideration of a report and recommendation of the Supreme Court Advisory Committee on Judicial Ethics, the body which drafted the California Code of Judicial Ethics that became effective on January 15, 1996. In drafting that Code, the Advisory Committee determined that while standards could be imposed on lawyers serving as temporary judges, the Commission on Judicial Performance lacked disciplinary jurisdiction over the conduct of lawyers. Accordingly, the Supreme Court directed the State Bar to consider a new Rule of Professional Conduct that would permit the Bar to discipline lawyers who violate Canon 6D while acting in a judicial capacity. In response to the Supreme Court’s request, rule 1-710 was developed, adopted by the Board and subsequently approved by the Supreme Court operative March 18, 1999.

In studying the current rule, the Commission determined that no substantive changes were warranted but some amendments are recommended as indicated below.

In the black letter text, minor stylistic revisions are recommended for clarity, including the global substitution of “lawyer” for “member.”

The current second paragraph of the Discussion section to rule 1-710 is recommended to be omitted as unnecessary. There also was concern that retaining it might cause ambiguities in construing other rules.²

A new Comment [3] is recommended to clarify that the rule does not apply to a lawyer serving as a third-party neutral in a mediation or settlement conference or a neutral arbitrator pursuant

¹ There is no direct counterpart to this rule in the American Bar Association Model Rules; however, Model Rule 2.4 generally addresses lawyer conduct as a third-party neutral. Model Rule 2.4 is discussed in the executive summary of proposed rule 2.4.

² The current language states: “Nothing in rule 1-710 shall be deemed to limit the applicability of any other rule or law.” As a general proposition, this is true of every rule and the Commission believes that nothing in the instant rule suggests otherwise so as to justify its retention in proposed rule 2.4.1.

to an arbitration agreement. This comment also provides a cross reference to proposed new rule 2.4 as that rule is intended apply to conduct not within the scope of proposed rule 2.4.1.

Post-Public Comment Revisions

After consideration of comments received in response to the initial 90-day public comment period, the Commission made no changes to the proposed rule and voted to recommend that the Board adopt the proposed rule.

The Board adopted proposed rule 2.4.1 at its November 17, 2016 meeting.

Supreme Court Action (May 10, 2018)

The Supreme Court approved the rule as modified by the Court to be effective November 1, 2018. In the rule and in Comment [1], citation style was revised to conform to the California Style Manual.

**Rule ~~1-710 Member~~ 2.4.1 Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator
(Redline Comparison to the California Rule Operative Until October 31, 2018)**

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

Comment~~Discussion~~

[1] This rule is intended to permit the State Bar to discipline ~~members~~lawyers who violate applicable portions of the California Code of Judicial Ethics while acting in a judicial capacity pursuant to an order or appointment by a court.

[2] This rule is not intended to apply to a lawyer serving as a third-party neutral in a mediation or a settlement conference, or as a neutral arbitrator pursuant to an arbitration agreement. (See rule 2.4.)

~~Nothing in rule 1-710 shall be deemed to limit the applicability of any other rule or law.~~