

**Rule 2.4.1 [1-710] Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator  
(Commission's Proposed Rule Adopted on November 13 – 14, 2015 – Clean Version)**

A lawyer who is serving as a temporary judge, referee, or court-appointed arbitrator, and is subject to Canon 6D of the 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 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.

**PROPOSED RULE OF PROFESSIONAL CONDUCT 2.4.1**  
**(Current Rule 1-710)**  
**Lawyer as Third-Party Neutral**

**EXECUTIVE SUMMARY**

The Commission for the Revision of the Rules of Professional Conduct (“Commission”) has evaluated current rule 1-710 (Member as Temporary Judge, Referee, or Court-Appointed Arbitrator)<sup>1</sup> in accordance with the Commission Charter, with a focus on the function of the rule as a disciplinary standard, and with the understanding that the rule comments should be included only when necessary to explain a rule and not for providing aspirational guidance. 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 Third-Party Neutral). This proposed rule has been adopted by the Commission for submission to the Board of Trustees for public comment authorization. A final recommended rule will follow the public comment process.

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.<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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.

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 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.

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**Comment**

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**Rule 2.4.1 [1-710] ~~Member~~ Lawyer as Temporary Judge, Referee,  
or Court-Appointed Arbitrator  
(Redline Comparison of the Proposed Rule to Current California Rule)**

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

**Comment~~Discussion~~**

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

[1] This Rule is intended to permit the State Bar to discipline ~~members~~lawyers who violate applicable portions of the 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.