

Proposed Rule 2.4.1 [RPC 1-710] “Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator”

(Draft #5, 6/23/07)

Summary: Proposed Rule 2.4.1 carries forward current California Rule 1-710, which clarifies that lawyers are subject to Canon 6D of the Code of Judicial Ethics, when they act as temporary judges, etc.

Comparison with ABA Counterpart	
Rule	Comment
<input type="checkbox"/> ABA Model Rule substantially adopted <input type="checkbox"/> ABA Model Rule substantially rejected <input type="checkbox"/> Some material additions to ABA Model Rule <input type="checkbox"/> Some material deletions from ABA Model Rule <input checked="" type="checkbox"/> No ABA Model Rule counterpart	<input type="checkbox"/> ABA Model Rule substantially adopted <input type="checkbox"/> ABA Model Rule substantially rejected <input type="checkbox"/> Some material additions to ABA Model Rule <input type="checkbox"/> Some material deletions from ABA Model Rule <input checked="" type="checkbox"/> No ABA Model Rule counterpart

Primary Factors Considered

Existing California Law

Rule

RPC 1-710.

Statute

Case law

State Rule(s) Variations (In addition, see provided excerpt of selected state variations.)

Other Primary Factor(s)

Rule Revision Commission Action/Vote to Recommend Rule Adoption

(14 Members Total)

Approved on 10-day Ballot, Less than Six Members Opposing Adoption

Vote (see tally below)

Favor Rule as Recommended for Adoption 8
Opposed Rule as Recommended for Adoption 0
Abstain/Not Voting 1

Approved on Consent Calendar

Approved by Consensus

Minority/Dissenting Position Included on Model Rule Comparison Chart: Yes No

Stakeholders and Level of Controversy

No Known Stakeholders

The Following Stakeholders Are Known:

Very Controversial – Explanation:

Moderately Controversial – Explanation:

Not Controversial

COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL CONDUCT

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

October 2009

(Draft rule following consideration of public comment.)

INTRODUCTION:

Proposed Rule 2.4.1 has no ABA Model Rule counterpart. This Rule currently exists as California Rule 1-710, which clarifies that lawyers are subject to Canon 6D of the Code of Judicial Ethics when they act as temporary judges, referees, or court-appointed neutrals. The Rule also requires compliance with Canon 6D, and provides a disciplinary path for lawyers who violate the Canon.

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 CA 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 and adopted by the Board of Governors and subsequently approved by the Supreme Court.

* Proposed Rule 2.4.1, Draft 5 (6/23/07).

<p align="center"><u>No Comparable ABA Model Rule</u> (Text provided is current California Rule 1-710)</p>	<p align="center"><u>Commission's Proposed Rule*</u> Rule 2.4.1 Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator</p>	<p align="center"><u>Explanation of Changes to the California Rule of Professional Conduct</u></p>
<p>A member who is serving as a temporary judge, referee, or court-appointed arbitrator, and is subject under the Code of Judicial Ethics to Canon 6D, shall comply with the terms of that canon.</p>	<p>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.</p>	<p>There is no ABA Model Rule counterpart to proposed Rule 2.4.1. This Rule currently appears as California Rule 1-710, and the Commission recommends that it be carried over into the new rules. The Commission recommends only a few changes be made to current rule 1-710 to conform to California rule drafting style.</p>

* Redline/strikeout showing changes to the ABA Model Rule

<p align="center"><u>No Comparable ABA Model Rule</u> (Text provided is current California Rule 1-710)</p>	<p align="center"><u>Commission's Proposed Rule*</u> Rule 2.4.1 Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator Comment</p>	<p align="center"><u>Explanation of Changes to the California Rule of Professional Conduct</u></p>
<p>This rule is intended to permit the State Bar to discipline members 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.</p>	<p>[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 or quasi-judicial capacity pursuant to an order or appointment by a court.</p>	<p>Comment [1] is based on paragraph 1 of the Discussion to current rule 1-710. The only substantive change recommended is the expansion of the comment to make clear the rule covers lawyers acting in "quasi-judicial" capacities as well as acting as temporary judges.</p>
<p>Nothing in rule 1-710 shall be deemed to limit the applicability of any other rule or law. (Added by order of the Supreme Court, operative March 18, 1999.)</p>	<p>[2] Nothing in this Rule shall be deemed to limit the applicability of any other rule or law.</p>	<p>Comment [2] is based on paragraph 2 of the Discussion to current rule 1-710. The Commission recommends that it be carried over into the new rule. No substantive changes are recommended to comment [2].</p>
	<p>[3] 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.</p>	<p>Comment [3] is a new comment, and has been included to cross-reference new Rule 2.4 relating to lawyers who are acting as third party neutrals.</p>

* Redline/strikeout showing changes to the ABA Model Rule

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

(Comparison of the Current Proposed Rule to the initial Public Comment Draft)

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 or quasi-judicial capacity pursuant to an order or appointment by a court.
- [2] Nothing in this Rule shall be deemed to limit the applicability of any other rule or law.
- [3] 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.

Rule ~~1-710-Member~~2.4.1 Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator
(Comparison of the Current 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.

~~Discussion:~~COMMENT

- [1] This ~~rule~~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 or quasi-judicial capacity pursuant to an order or appointment by a court.
- [2] Nothing in ~~rule 1-710~~this Rule shall be deemed to limit the applicability of any other rule or law. ~~(Added by order of the Supreme Court, operative March 18, 1999.)~~
- [3] 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.

Rule 2.4.1 Lawyer as Temporary Judge, Referee, or Court-Appointed Arbitrator
(Commission's Proposed Rule – 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 or quasi-judicial capacity pursuant to an order or appointment by a court.
- [2] Nothing in this Rule shall be deemed to limit the applicability of any other rule or law.
- [3] 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.

**Rule 2.4.1 Lawyers as Temporary Judge, Referee, or Court-Appointed Arbitrator.
[Sorted by Commenter]**

**TOTAL = 2 Agree = 1
Disagree = 1
Modify = 0
NI = 0**

No.	Commentator	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	COPRAC	A	Y		Supports as drafted	No action needed
2	Feldman, Phillip	D	N		Lawyers who serve as part time judges and referees should be treated the same as their full time brethren and answer to the same regulatory body	No change. Lawyers who serve only as part-time judges, referees, etc., should be subject to the disciplinary authority of the body that regulates lawyers: The State Bar of California.

¹ A = AGREE with proposed Rule D = DISAGREE with proposed Rule M = AGREE ONLY IF MODIFIED NI = NOT INDICATED