GUIDELINES FOR NEUTRAL EXPERTS TO THE COURT

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1. INTRODUCTION

You have been selected as a neutral expert to assist the court in a dispute involving technical issues outside of the court's experience. You have taken on a role with significant responsibility. Cases in which a neutral is required are generally complex and will require much time and hard work by all involved. Improper behavior on your part could result in a waste of this effort.

Although the use of neutral experts to the court is growing, it is still not a widely accepted practice. Many judges have concerns about the departure from their normal practice limiting private discussions on the merits of a case. And attorneys involved in the litigation may have concerns about your private sessions with the judge and their possible inability to present their point of view on topics covered in such sessions.

Therefore, how you perform as a neutral expert will not only have an impact on the case for which you are serving but also on the future use of neutrals in complex cases.

1.1. PURPOSE OF THE GUIDELINES

These Guidelines are intended to help you perform your duties efficiently and properly. Any concerns you have with regard to these guidelines should be discussed with the judge you are assisting. You should also verify that the court is in full agreement with these Guidelines as some judges may wish to handle certain issues differently than suggested here. Some courts may provide a written document spelling out preferences in use. There will probably be a document specifying agreements between the judge and the attorneys as to the scope of your assignment in the particular case in which you are involved.

At the beginning of the case you may be asked to sign an affidavit that you will abide by certain rules and at the end you may be asked to confirm that you did so.

1.2. HOW YOU MAY BE USED

The judge will instruct you, verbally and/or in writing, on the way you will be used. You may be asked to serve in one or more of the following capacities:

Technical Advisor – The primary use of this type of expert is to help the judge understand the technology. Your job is essentially to be a teacher with a class of one (or two if the judge's law clerk is involved). It is usually best to start with broad concepts, narrow down to specifics only when necessary, and recognize that you may have to explain something a number of times before you hit on the right way to explain it. These discussions are most frequently carried out privately in chambers.

Tutorial Presenter – In this role, the expert gives a lecture on the technology involved in the case – either prior to the trial or as part of the trial. Such lectures are generally open to the parties and may even have to be approved by both sides before being presented to the judge and/or jury. The limited interaction in a presentation may make it more difficult for you to determine whether the judge and jury understand you. Good visual aids that can be referred to later are usually a must.

Independent Investigator – Here the judge will ask you to perform some kind of analysis and report the results. The report may be verbal or written and may be delivered in private or in open court.

Report Writer – Alternatively, the judge may instruct you to put together a report explaining some technical concept or issue, a summary of the technical issues advanced by each side, and/or a comparison of these issues.

Testifying Expert – In this role you will testify in open court, possibly in front of a jury. The attorneys will have the right to cross-examine you. Such an appointment is made in accordance with either Federal Rule of Evidence 706 (Appendix B) or California Evidence Code sections 730 through 733 (Appendix D). This role is rarely used with a jury because it is likely that the jury will give your testimony undue weight if they find out you were selected by the judge.

Master[1] –This is a term that is often used to describe an expert who has been asked to handle a particular assignment by the court. It is usually used in exceptional circumstances and involves the investigation of complicated issues requiring your particular expertise. The assignment will be spelled out in a court order, which will be based on the requirements of Federal Rule of Civil Procedure 53 (Appendix C) or on California Code of Civil Procedure sections 638 *et seq.* (Appendix E). As a master you may have to hold hearings, make findings, issue orders, and/or file a report with the court.

2. BASIC ISSUES

While there are a number of procedural issues that may vary from case to case, there are basic guidelines that apply to any case.

2.1. YOUR ROLE

It is vitally important to realize that you are not here to decide the case (with the limited exception of findings you may be asked to make as a master). That is exclusively the job of the court and/or the jury. Your role is only to assist the judge in making informed decisions. A fundamental rule is not to offer your opinion unless it is requested.

A common task is to explain technical points or to clarify testimony of the experts engaged by the parties. How well you do this depends to a large extent on your innate teaching ability and is not the subject of this document. What is important here is that you avoid showing bias in your explanations and stick to the questions you are asked. If you disagree with an expert, be sure that the judge wants to know your opinion before giving it (see Section 3.1).

The judge may determine that you need to do outside research to deal with the questions presented. Be sure to discuss this with the judge to determine the scope of the research in advance. Under no circumstances should you do independent research without the specific request of the court. Furthermore, you should rarely even suggest a line of research. Remember that a general rule is that it is up to the parties to present the facts and for the judge and/or jury to decide what to do with them.

2.2. DISCUSSIONS WITH COUNSEL

It may be necessary for you to communicate with one or both of the attorneys in the lawsuit. For example, you might have to set up a meeting time, discuss a possible conflict, send invoices for your services, or ask for the status of payment. Except for administrative matters, you should communicate with both parties equally. That means setting up a conference call or sending written communications to both attorneys simultaneously. You can certainly confirm a meeting time or discuss payment with just one party but anything remotely substantive should be done with both. If in doubt, err on the side of dealing with all attorneys equally.

Any discussions about issues in the case should be at the direction of or with the approval of the court. For other communications, you should keep the court informed (such as by sending a copy of any written material).

2.3. DISCUSSIONS WITH THE PARTIES THEMSELVES

It may or may not be desirable for you to communicate with technical people of the actual parties involved. If you do, it should be with the concurrence of the judge and/or the attorneys. Meetings with one or parties are normally limited to explanations of technology and not to any legal issues. Counsel will undoubtedly want to participate in any such discussion but their attendance may inhibit a free exchange between you and the engineers. If such discussions do occur, they will undoubtedly cover confidential information and would not normally include technologists from any other party.

[1] This role is often referred to as a Special Master. Under California law, it is called a referee. Masters and referees have powers beyond those of a neutral expert that are not discussed in this document. For more information refer to www.CourtAppointedMasters.org.

Some possibilities are:

Neutral meets with only the technologists – This is generally the most productive environment because there is no need to explain material understood by you and the engineers. Also, the engineers are more likely to give you the facts without feeling constrained. You can only get such meetings if the attorneys are confident you will avoid any discussion of issues in the case or the technology of the other side. Your objective is to gain an understanding of the technology being discussed so you can do your job better and faster.

Neutral meets with the technologists and an expert from the other side – In this case, the other side is allowed to send an expert consultant or witness—not a party individual—to any discussions. There should be agreement beforehand as to whether the expert may just ask questions or join in the discussions and whether the expert may receive documents provided to you.

Neutral meets with technologists and silent attorneys – In this arrangement, counsel for one or more party may be present to observe but not to comment. This may inhibit the technologists and make extracting the information you need more difficult. Also, the attorneys may find it difficult to not speak up and you will need to be firm if they attempt to do so. An alternative to this is to have the discussions transcribed for the attorneys to review later.

Neutral meets with technologists and attorneys – This makes all counsel comfortable but is likely to be the least productive for you. It can also degenerate into arguments between the attorneys if counsel for more than one party is present.

If meeting with the parties is deemed valuable, you will need to work with the attorneys to determine the best way of handling any such discussions. Be sure you listen to their concerns and address them. Meeting alone with technologists is a real possibility if you work with the attorneys and this expert has been very successful at doing so. If you cannot work out a reasonable agreement with counsel, you may have to take the matter to the judge, but this should be a last resort.

2.4. DISCUSSIONS WITH THIRD PARTIES

About the only things you can discuss with outsiders are the fact that you are acting as a neutral, the general nature of your role, and a brief statement of what the case is about. You should never disclose to anyone else (including, for example, a spouse) your opinions, the specifics of any discussions with the judge, how you think the case will come out, things you like and dislike about the attorneys, how you feel about other cases in which a party is involved, and so on and so on. If in doubt, keep quiet or discuss it with the judge. It is far better to be too brief than too loquacious.

If third parties start discussing the case in your presence or even the merits of any of the participants, you should request that they stop or else you should leave. Judges are required to "neither initiate nor consider *ex parte* communications on the merits, or procedures affecting the merits, of a pending or impending proceeding." (Appendix A, Canon 3A(4)) You should be at least this circumspect.

2.5. CONFIDENTIALITY

Even after the case is over, you should be careful how much you divulge. You may have been privy to confidential information and this, of course, must not be released without permission. In most cases you will have been required to sign a confidentiality agreement. But it is usually wise to limit discussions even more broadly. Certainly, you should avoid discussing any logic used by the court to reach decisions and should not publicly express your agreement or lack of agreement with any of the court's decisions.

The court may direct that your reports be sent to the clerk to be placed in the case file. Since these reports will generally contain proprietary information, they will normally be filed under seal. This means that they are not available to the general public and you must not breach this confidentiality.

2.6. OBJECTIVITY

Your role is to assist the court in reaching informed decisions based solely on the facts and the law. The judge expects you to be completely neutral and will probably stop listening to you if you show bias. Therefore, your

personal opinion of the parties, your opinion of the attorneys and their tactics, or the nature of your past or current relationships with the attorneys, expert witnesses, or parties must have no impact on how you fulfill your role. You are required to provide a *neutral* service to both parties. This is true even if there is an imbalance in the payment terms.

2.7. CONFLICTS

To serve as a neutral, you must not have any conflicts of interest with the parties or attorneys. Obvious conflicts are stock ownership or a present or past business relationship with a party or attorney. You must also avoid serving as an expert in another case or doing any other kind of work for one of the law firms[2] or parties. If you are part of a company, the conflicts of everyone in your company will be considered along with your own personal conflicts. If in doubt, ask for guidance from the parties and/or the judge. Not all conflicts (such as some past relationships with participants) will bar you from serving as a neutral, especially if all parties are in agreement. But be sure to disclose all potential conflicts so the judge and/or parties can make an appropriate decision.

You will probably be able to serve as a neutral in another case involving one of the firms or parties but this must be communicated to everyone before committing.

2.8. DISCLOSURES

You must disclose the following as soon as you become aware of them:

Any relationships you have now or have had in the past with anyone involved in the lawsuit.

Any conflicts of interest.

Any work you have done or testimony you have offered in the subject matters involved in the suit.

Any materials you referred to that other than those provided to you by the parties or the court. However, if not specifically instructed, you should ask if you need to report the use of general materials. See Section 3.6 for discussion on this point.

3. PROCEDURAL ISSUES

The handling of procedural issues will depend on the preferences of the judge and the attorneys, the nature of the case, and your role in the proceedings.

3.1. OPINIONS

One of the more important questions is whether the scope of your assignment includes the offering of opinions and, if so, the timing of them. As an independent investigator, testifying expert, or master you are specifically being asked to offer opinions. If you are acting as a report writer, you may or may not be setting out opinions. Whatever your role, your instructions will spell out the specific areas in which you are to offer opinions.

The other roles are focused on helping the judge understand the technology. In these limited circumstances you will generally be providing explanations and not opinions. However, you will have to be vigilant about keeping any opinions out of your explanations. For example, you can certainly explain how something works but should be careful about expressing any consequences that you think might result out of its operation.

If you are acting in more than one role, say as a technical advisor and as a master, be careful to limit your opinions to those detailed in your master assignment.

But what if you have an opinion that is outside your scope? You think one side is wrong in their argument. Should you tell the judge? Most judges want to know if an expert witness has stated something that is not a generally accepted scientific fact. However, they generally do not want you to provide an unsolicited contradiction of an expert's opinion. You should clarify the judge's desires on this beforehand.

[2] Note the conflict is with the whole firm not just the individual attorney(s) involved.

The judge may instruct you on when to offer unsolicited opinions. If not, you should ask for clarification. Sample questions that might need to be resolved include:

> Should you offer unsolicited opinions or only when requested?
>
> If you believe that someone (*e.g.* an expert for one side) has made an incorrect statement, should you point this out? One possibility is that you should not do so unless the judge brings up the statement in a discussion.
>
> Should you offer an opinion of an expert whom you believe is acting as an advocate and is stretching the truth?
>
> Should opinions you give be communicated to the attorneys?

3.2. NOTES

If you are acting as a technical advisor or acting as an independent investigator providing a verbal report, you will probably be instructed as to whether you are to take notes of your private discussions with the judge. If you are not given specific instructions, you should inquire. Depending on the circumstances of the case and the judge's preferences, no notes may be needed, you will take any notes, or the judge will take notes. Another approach is to have a court reporter record discussions. These notes or transcripts can be given to the attorneys at appropriate intervals so that they can discover the questions that have been covered. As a consequence, they may realize that they need to clarify their positions in certain respects.

If you are asked to take notes, you should prepare them immediately after your session and send a copy to the judge while the discussion is still fresh. In addition to normal corrections or additions to your notes, the judge might want to have you restate something in a way that does not reveal any tentative decisions to the parties.

The notes should only be sent to the attorneys when the judge considers it appropriate to do so. Usually, the notes are disseminated at infrequent intervals and at a time when the judge understands the technical issues sufficiently to form decisions.

Anything contained in the notes is likely to trigger a response by one or both parties. This, of course, will be especially true for statements that favor one party over the other. Even though these responses might attack a position you have taken, you must deal with them carefully and objectively. You may find that the responses alter your opinion (especially if they provide new information). If so, you should communicate this to the judge as soon as you determine that your original opinion was incorrect or incomplete. The judge will probably direct that you reveal the change.

3.3. INTERVIEWS

The attorneys may be given an opportunity to interview you about any private discussions with the judge. The purpose of such an interview is to allow them to discover the subjects covered more fully than disclosed in your notes. They can then clarify issues or challenge your statements in subsequent briefs.

The judge is usually not present for the interview but may ask that it be conducted in the courtroom so that the court can convene if a line of questioning seems inappropriate. There will probably be a court reporter present to transcribe the proceedings. Since you are acting as an agent of the judge, you may not be asked to swear that you will answer truthfully. It will be understood that you are under such a requirement and you should do so.

You need to be careful during the interview to focus on what you told the judge. Attorneys may attempt to use the interview—inappropriately—to find out what the judge is thinking. It is unlikely that you will have a full understanding of the judge's leanings but you must avoid passing along any clues beyond the technical responses that you provided.

You should expect responses from the parties that challenge some of your statements. Again, you must deal with these carefully and objectively and be prepared to alter your position if justified.

3.4. TESTIFYING

Unless you are a court-appointed expert witness as discussed in Section 1.2 above, you will not normally be required to testify. However, it is possible that one or both parties may decide to have you testify at trial. If so,

you will probably be deposed by both sides beforehand. At trial, you can be expected to be questioned and cross-examined by all sides.

3.5. WRITTEN COMMUNICATIONS WITH THE COURT

You may be asked to put an opinion in writing, organize technical points in a meaningful way, do some research, or do some other task that results in you preparing a written document to give to the judge. The judge will probably provide copies of these documents to the parties. In any case, you should assume that all written communications with the judge might be given out. Again, they may result in responses from the attorneys and you must remain neutral even when your statements are being attacked.

These communications may be confidential and you must respect this confidentiality (*see* Section 2.5).

3.6. ACCESS TO MATERIALS

There will likely be substantial written or machine-readable materials in the case that will require your review. Sometimes the judge decides what to provide to you and sometime the parties do. It is not unusual for the attorneys to each provide a set of documents to you that cover the important technical issues. This might also include background material not a part of the official record to help you fully understand the technology involved. For example, you might be given papers or textbooks that would only be of value to you.

If you are generally knowledgeable but not an expert in the particular technology at issue, it will probably be acceptable to obtain public material on your own in order to improve your understanding. It is also probably permissible to use books or papers you already own to refresh your memory. However, you should verify that this is acceptable and determine if you are to notify the parties of any such references you access.

3.7. ATTENDANCE AT HEARINGS

During the preliminary stages before trial, a multitude of issues arise requiring the judge's understanding of the underlying technology sufficiently to make informed decisions. Pre-trial activities, therefore, are a frequent time during which neutral experts are used.

For each issue to be decided, the parties will submit written *briefs* that explain their positions. The judge will then normally hold one or more *hearings* so that the parties can present their arguments in person. If technical issues are involved, you may be asked to read briefs or to attend hearings. If you do attend a hearing, it is highly unlikely that you will be expected to say anything (unless, of course, the hearing is for you to tutor the court). You should speak only when spoken to unless otherwise instructed. Even if you think the judge has misunderstood something or you have a burning question, you should probably not interrupt the proceedings. You can always clarify the issues when back in chambers. You may wish to discuss this with the judge beforehand.

You may find that one or more of the attorneys will indulge in name-calling in their pre-hearing briefs or their remarks at the hearing. You must ignore these kinds of attacks no matter how offensive you find them. Remember that your job is to help the judge understand the technical issues and not be concerned with the personalities involved.

3.8. REVIEWING ORDERS

The decisions reached by the court during the pre-trial activities are given to the parties as *orders*. The judge may ask you to proofread some of the orders for technical accuracy before they are released. It is important that you restrict your comments to the areas of your expertise. You should certainly point out where you think technical issues are presented incorrectly or where you have suggestions as to how a technical matter could be better expressed. However, it is not your job to critique the decisions themselves or the logic behind them. They are, after all, based primarily on legal principles and you are serving as a technical expert, not as a legal advisor. You must set aside any feelings about what you consider a "fair" resolution of the matter. The court's job is to decide the case based on the governing law.

Of course, the draft order is confidential and the conclusions must not be revealed to anyone before the order is filed. If the order is filed under seal, you may not discuss it with any unprivileged person.

3.9. PAYMENT FOR YOUR SERVICES

Neutral experts are normally paid for their time although there are occasions when they serve *pro bono*. If you are being paid, you will be instructed on how to submit invoices. The normal way is to submit the bill to both parties and have them each pay half. Alternatively, some other ratio may be selected or you may be told to submit invoices to one individual (perhaps even the judge) who will arrange payment.

No matter how you bill the parties, you should determine if the court should be sent a copies of the invoices. You should be careful in the billing entries to avoid disclosure of details of discussions with the judge or any confidential matters.

3.10. RETURN OF MATERIALS

You will undoubtedly receive confidential materials in the course of your assignment. Clearly, you must protect those materials and not divulge them to any unauthorized person. At the end of your involvement, you need to gain agreement on what to do with these materials. The author of these guidelines suggests to the attorneys that all materials (including any e-mail communications) be kept for six months. At the end of that time counsel are asked if confidential materials should be destroyed, returned, or continue to be kept.

APPENDIX A: CODE OF CONDUCT FOR UNITED STATES JUDGES[3]

CANON 1

A JUDGE SHOULD 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 should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2

A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

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

B. A judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A judge should not lend the prestige of the judicial office to advance the private interests of others; nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

C. A judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.

CANON 3

A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE IMPARTIALLY AND DILIGENTLY

The judicial duties of a judge take precedence over all other activities. In performing the duties prescribed by law, the judge should adhere to the following standards:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to and maintain professional competence in the law, and should not be swayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings.

(3) A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of those subject to the judge's control, including lawyers to the extent consistent with their role in the adversary process.

(4) A judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte communications on the merits, or procedures affecting the merits, of a pending or impending proceeding. A judge may, however, 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. A judge may, with consent of the parties, confer separately with the parties and their counsel in an effort to mediate or settle pending matters.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should avoid public comment on the merits of a pending or impending action, requiring similar restraint by court personnel subject to the judge's direction and control. This proscription does not extend to

[3] This along with commentary can be found at http://www.uscourts.gov/guide/vol2/ch1.html

public statements made in the course of the judge's official duties, to the explanation of court procedures, or to a scholarly presentation made for purposes of legal education.

B. Administrative Responsibilities.

(1) A judge should diligently discharge the judge's administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require court officials, staff, and others subject to the judge's direction and control, to observe the same standards of fidelity and diligence applicable to the judge.

(3) A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer.

(4) A judge should not make unnecessary appointments and should exercise that power only on the basis of merit, avoiding nepotism and favoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.

(5) A judge with supervisory authority over other judges should take reasonable measures to assure the timely and effective performance of their duties.

C. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which:

(a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness;

(c) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding;

(d) the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(e) the judge has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

(2) A judge should keep informed about the judge's personal and fiduciary financial interests, and make a reasonable effort to keep informed about the personal financial interests of the judge's spouse and minor children residing in the judge's household.

(3) For the purposes of this section:

(a) the degree of relationship is calculated according to the civil law system; the following relatives are within the third degree of relationship: parent, child, grandparent, grandchild, great grandparent, great grandchild, sister, brother, aunt, uncle, niece and nephew; the listed relatives include whole and half blood relatives and most step relatives;

(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(d) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation.

(4) Notwithstanding the preceding provisions of this Canon, if a judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

D. Remittal of Disqualification.

A judge disqualified by the terms of Canon 3C(1), except in the circumstances specifically set out in subsections (a) through (e), may, instead of withdrawing from the proceeding, disclose on the record the basis of disqualification. If the parties and their lawyers after such disclosure and an opportunity to confer outside of the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

CANON 4

A JUDGE MAY ENGAGE IN EXTRA-JUDICIAL ACTIVITIES TO IMPROVE THE LAW, THE LEGAL SYSTEM, AND THE ADMINISTRATION OF JUSTICE

A judge, subject to the proper performance of judicial duties, may engage in the following law-related activities, if in doing so the judge does not cast reasonable doubt on the capacity to decide impartially any issue that may come before the judge:

A. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. A judge may appear at a public hearing before, or otherwise consult with, an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice to the extent that it would generally be perceived that a judge's judicial experience provides special expertise in the area. A judge acting pro se may also appear before or consult with such officials or bodies in a matter involving the judge or the judge's interest.

C. A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in planning fund-raising activities and may participate in the management and investment of funds, but should not personally participate in public fund-raising activities. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice. A judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority. A judge shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

D. A judge should not use to any substantial degree judicial chambers, resources, or staff to engage in activities permitted by this Canon.

CANON 5

A JUDGE SHOULD REGULATE EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL DUTIES

A. Avocational Activities. A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the judge's office or interfere with the performance of the judge's judicial duties.

B. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

(3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

C. Financial Activities.

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judicial position, or involve the judge in frequent transactions with lawyers or other persons likely to come before the court on which the judge serves.

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as an officer, director, active partner, manager, advisor, or employee of any business other than a business closely held and controlled by members of the judge's family. For this purpose, "members of the judge's family" means persons related to the judge or the judge's spouse within the third degree of relationship calculated according to the civil law system, any other relatives with whom the judge or the judge's spouse maintains a close familial relationship, and the spouse of any of the foregoing.

(3) A judge should manage investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other financial interests that might require frequent disqualification.

(4) A judge should not solicit or accept anything of value from anyone seeking official action from or doing business with the court or other entity served by the judge, or from anyone whose interests may be substantially affected by the performance or nonperformance of official duties; except that a judge may accept a gift as permitted by the Judicial Conference gift regulations. A judge should endeavor to prevent a member of a judge's family residing in the household from soliciting or accepting a gift except to the extent that a judge would be permitted to do so by the Judicial Conference gift regulations.

(5) For the purposes of this section "members of the judge's family residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

(6) A judge should report the value of any gift, bequest, favor, or loan as required by statute or by the Judicial Conference of the United States.

(7) A judge is not required by this Code to disclose his or her income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

(8) Information acquired by a judge in the judge's judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge's judicial duties.

D. Fiduciary Activities. A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties. "Member of the judge's family" means any relative of a judge by blood, adoption, or marriage or any other person treated by a judge as a member of the judge's family.

As a family fiduciary a judge is subjected to the following restrictions:

(1) The judge should not serve if it is likely that as a fiduciary the judge will be engaged in proceedings that would ordinarily come before the judge or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to the judge in his or her personal capacity.

E. Arbitration. A judge should not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

F. Practice of Law. A judge should not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

G. Extra-judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice, unless appointment of a judge is required by Act of Congress. A judge should not, in any event, accept such an appointment if the judge's governmental duties would interfere with the performance of judicial duties or tend to undermine the public confidence in the integrity, impartiality, or independence of the judiciary. A judge may represent the judge's country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

H. Chambers, Resources, and Staff. A judge should not use judicial chambers, resources, or staff to engage in activities permitted by this Canon, except for uses that are de minimis.

CANON 6

A JUDGE SHOULD REGULARLY FILE REPORTS OF COMPENSATION RECEIVED FOR LAW-RELATED AND EXTRA-JUDICIAL ACTIVITIES

A judge may receive compensation and reimbursement of expenses for the law-related and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in the judge's judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement should be limited to the actual costs of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or relative. Any payment in excess of such an amount is compensation.

C. Public Reports. A judge should make required financial disclosures in compliance with applicable statutes and Judicial Conference regulations and directives.

CANON 7

A JUDGE SHOULD REFRAIN FROM POLITICAL ACTIVITY

A. A judge should not:

(1) act as a leader or hold any office in a political organization;

(2) make speeches for a political organization or candidate or publicly endorse or oppose a candidate for public office;

(3) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions.

B. A judge should resign the judicial office when the judge becomes a candidate either in a primary or in a general election for any office.

C. A judge should not engage in any other political activity; provided, however, this should not prevent a judge from engaging in the activities described in Canon 4.

COMPLIANCE WITH THE CODE OF CONDUCT

Anyone who is an officer of the federal judicial system authorized to perform judicial functions is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. Part-time Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

(1) is not required to comply with Canons 5C(2), D, E, F, and G, and Canon 6C;

(2) except as provided in the Conflict-of-Interest Rules for Part-time Magistrate Judges, should not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, or act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

B. Judge Pro Tempore. A judge pro tempore A judge pro tempore is a person who is appointed to act temporarily as a judge or as a special master.

(1) While acting as such, a judge pro tempore is not required to comply with Canons 5C(2), (3), D, E, F, and G, and Canon 6C; further, one who acts solely as a special master is not required to comply with Canons 4C, 5B (except the first sentence thereof), 5C(4), and 7.

(2) A person who has been a judge pro tempore should not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

C. Retired Judge. A retired judge who is retired under 28 U.S.C. §§ 371(b) or 372(a), or who is recalled to judicial service, should comply with all the provisions of this Code except Canon 5G, but the judge should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G. All other retired judges who are eligible for recall to judicial service (except those in Territories and Possessions) should comply with the provisions of this Code governing part-time judges. A senior judge in the Territories and Possessions must comply with this Code as prescribed by 28 U.S.C. § 373(c)(5) and (d).

APPENDIX B: FEDERAL RULE OF EVIDENCE 706[4]

Court Appointed Experts

(a) Appointment.

The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties, and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless the witness consents to act. A witness so appointed shall be informed of the witness' duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of the witness' findings, if any; the witness' deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.

(b) Compensation

Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions and proceedings involving just compensation under the fifth amendment. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

(c) Disclosure of appointment

In the exercise of its discretion, the court may authorize disclosure to the jury of the fact that the court appointed the expert witness.

(d) Parties' experts of own selection.

Nothing in this rule limits the parties in calling expert witnesses of their own selection.

[4] This can be found at http://www.uscourts.gov/rules/Evidence_Rules_2007.pdf

APPENDIX C: FEDERAL RULE OF CIVIL PROCEDURE 53[5]

Masters

(a) Appointment

(1) Scope.

Unless a statute provides otherwise, a court may appoint a master only to:

(A) perform duties consented to by the parties;

(B) hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted by:

(i) some exceptional condition; or

(ii) the need to perform an accounting or resolve a difficult computation of damages; or

(C) address pretrial and posttrial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district.

(2) Disqualification.

A master must not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge under 28 U.S.C. Â§ 455, unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

(3) Possible Expense or Delay.

In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.

(b) Order Appointing a Master.

(1) Notice.

Before appointing a master, the court must give the parties notice and an opportunity to be heard. Any party may suggest candidates for appointment.

(2) Contents.

The appointing order must direct the master to proceed with all reasonable diligence and must state:

(A) the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53(c);

(B) the circumstances, if any, in which the master may communicate ex parte with the court or a party;

(C) the nature of the materials to be preserved and filed as the record of the master's activities;

(D) the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; and

(E) the basis, terms, and procedure for fixing the master's compensation under Rule 53(g).

(3) Issuing.

The court may issue the order only after:

(A) the master files an affidavit disclosing whether there is any ground for disqualification under 28 U.S.C. Â§ 455; and

(B) if a ground is disclosed, the parties, with the court's approval, waive the disqualification.

(4) Amending.

[5] This can be found at http://www.uscourts.gov/rules/civil2007.pdf

The order may be amended at any time after notice to the parties and an opportunity to be heard.

(c) Master's Authority.

(1) In General.

Unless the appointing order directs otherwise, a master may:

(A) regulate all proceedings;

(B) take all appropriate measures to perform the assigned duties fairly and efficiently; and

(C) if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence.

(2) Sanctions.

The master may by order impose on a party any noncontempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

(d) Master's Orders.

A master who issues an order must file it and promptly serve a copy on each party. The clerk must enter the order on the docket.

(e) Master's Reports.

A master must report to the court as required by the appointing order. The master must file the report and promptly serve a copy on each party, unless the court orders otherwise.

(f) Action on the Master's Order, Report, or Recommendations.

(1) Opportunity for a Hearing; Action in General.

In acting on a master's order, report, or recommendations, the court must give the parties notice and an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions.

(2) Time to Object or Move to Adopt or Modify.

A party may file objections to — or a motion to adopt or modify — the master's order, report, or recommendations no later than 20 days after a copy is served, unless the court sets a different time.

(3) Reviewing Factual Findings.

The court must decide de novo all objections to findings of fact made or recommended by a master, unless the parties, with the court's approval, stipulate that:

(A) the findings will be reviewed for clear error; or

(B) the findings of a master appointed under Rule 53(a)(1)(A) or

(C) will be final.

(4) Reviewing Legal Conclusions.

The court must decide de novo all objections to conclusions of law made or recommended by a master.

(5) Reviewing Procedural Matters.

Unless the appointing order establishes a different standard of review, the court may set aside a master's ruling on a procedural matter only for an abuse of discretion.

(g) Compensation.

(1) Fixing Compensation.

Before or after judgment, the court must fix the master's compensation on the basis and terms stated in the appointing order, but the court may set a new basis and terms after giving notice and an opportunity to be heard.

(2) Payment.

The compensation must be paid either:

(A) by a party or parties; or

(B) from a fund or subject matter of the action within the court's control.

(3) Allocating Payment.

The court must allocate payment among the parties after considering the nature and amount of the controversy, the parties' means, and the extent to which any party is more responsible than other parties for the reference to a master. An interim allocation may be amended to reflect a decision on the merits.

(h) Appointing a Magistrate Judge.

A magistrate judge is subject to this rule only when the order referring a matter to the magistrate judge states that the reference is made under this rule.

APPENDIX D: CALIFORNIA EVIDENCE CODE SECTIONS 730-733[6]

730. When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required.

The court may fix the compensation for these services, if any, rendered by any person appointed under this section, in addition to any service as a witness, at the amount as seems reasonable to the court.

Nothing in this section shall be construed to permit a person to perform any act for which a license is required unless the person holds the appropriate license to lawfully perform that act.

731. (a) In all criminal actions and juvenile court proceedings, the compensation fixed under Section 730 shall be a charge against the county in which such action or proceeding is pending and shall be paid out of the treasury of such county on order of the court.

(b) In any county in which the board of supervisors so provides, the compensation fixed under Section 730 for medical experts in civil actions in such county shall be a charge against and paid out of the treasury of such county on order of the court.

(c) Except as otherwise provided in this section, in all civil actions, the compensation fixed under Section 730 shall, in the first instance, be apportioned and charged to the several parties in such proportion as the court may determine and may thereafter be taxed and allowed in like manner as other costs.

732. Any expert appointed by the court under Section 730 may be called and examined by the court or by any party to the action. When such witness is called and examined by the court, the parties have the same right as is expressed in Section 775 to cross-examine the witness and to object to the questions asked and the evidence adduced.

733. Nothing contained in this article shall be deemed or construed to prevent any party to any action from producing other expert evidence on the same fact or matter mentioned in Section 730; but, where other expert witnesses are called by a party to the action, their fees shall be paid by the party calling them and only ordinary witness fees shall be taxed as costs in the action.

[6] This may also be found at http://www.leginfo.ca.gov/cgi-bin/displaycode?section=evid&group=00001-01000&file=730-733

APPENDIX E: CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638-645.2[7]

638. A referee may be appointed upon the agreement of the parties filed with the clerk, or judge, or entered in the minutes, or upon the motion of a party to a written contract or lease that provides that any controversy arising therefrom shall be heard by a referee if the court finds a reference agreement exists between the parties:

(a) To hear and determine any or all of the issues in an action or proceeding, whether of fact or of law, and to report a statement of decision.

(b) To ascertain a fact necessary to enable the court to determine an action or proceeding.

(c) In any matter in which a referee is appointed pursuant to this section, a copy of the order shall be forwarded to the office of the presiding judge. The Judicial Council shall, by rule, collect information on the use of these referees. The Judicial Council shall also collect information on fees paid by the parties for the use of referees to the extent that information regarding those fees is reported to the court. The Judicial Council shall report thereon to the Legislature by July 1, 2003. This subdivision shall become inoperative on January 1, 2004.

639. (a) When the parties do not consent, the court may, upon the written motion of any party, or of its own motion, appoint a referee in the following cases pursuant to the provisions of subdivision (b) of Section 640:

(1) When the trial of an issue of fact requires the examination of a long account on either side; in which case the referees may be directed to hear and decide the whole issue, or report upon any specific question of fact involved therein.

(2) When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect.

(3) When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of the action.

(4) When it is necessary for the information of the court in a special proceeding.

(5) When the court in any pending action determines that it is necessary for the court to appoint a referee to hear and determine any and all discovery motions and disputes relevant to discovery in the action and to report findings and make a recommendation thereon.

(b) In a discovery matter, a motion to disqualify an appointed referee pursuant to Section 170.6 shall be made to the court by a party either:

(A) Within 10 days after notice of the appointment, or if the party has not yet appeared in the action, a motion shall be made within 10 days after the appearance, if a discovery referee has been appointed for all discovery purposes.

(B) At least five days before the date set for hearing, if the referee assigned is known at least 10 days before the date set for hearing and the discovery referee has been assigned only for limited discovery purposes.

(c) When a referee is appointed pursuant to paragraph (5) of subdivision (a), the order shall indicate whether the referee is being appointed for all discovery purposes in the action.

(d) All appointments of referees pursuant to this section shall be by written order and shall include the following:

(1) When the referee is appointed pursuant to paragraph (1), (2), (3), or (4) of subdivision (a), a statement of the reason the referee is being appointed.

(2) When the referee is appointed pursuant to paragraph (5) of subdivision (a), the exceptional circumstances requiring the reference, which must be specific to the circumstances of the particular case.

(3) The subject matter or matters included in the reference.

[7] This may also be found at http://www.leginfo.ca.gov/cgi-bin/displaycode?section=ccp&group=00001-01000&file=638-645.2

(4) The name, business address, and telephone number of the referee.

(5) The maximum hourly rate the referee may charge and, at the request of any party, the maximum number of hours for which the referee may charge. Upon the written application of any party or the referee, the court may, for good cause shown, modify the maximum number of hours subject to any findings as set forth in paragraph (6).

(6) (A) Either a finding that no party has established an economic inability to pay a pro rata share of the referee's fee or a finding that one or more parties has established an economic inability to pay a pro rata share of the referee's fees and that another party has agreed voluntarily to pay that additional share of the referee's fee.

A court shall not appoint a referee at a cost to the parties if neither of these findings is made.

(B) In determining whether a party has established an inability to pay the referee's fees under subparagraph (A), the court shall consider only the ability of the party, not the party's counsel, to pay these fees. If a party is proceeding in forma pauperis, the party shall be deemed by the court to have an economic inability to pay the referee's fees. However, a determination of economic inability to pay the fees shall not be limited to parties that proceed in forma pauperis. For those parties who are not proceeding in forma pauperis, the court, in determining whether a party has established an inability to pay the fees, shall consider, among other things, the estimated cost of the referral and the impact of the proposed fees on the party's ability to proceed with the litigation.

(e) In any matter in which a referee is appointed pursuant to paragraph (5) of subdivision (a), a copy of the order appointing the referee shall be forwarded to the office of the presiding judge of the court. The Judicial Council shall, by rule, collect information on the use of these references and the reference fees charged to litigants, and shall report thereon to the Legislature by July 1, 2003. This subdivision shall become inoperative on January 1, 2004.

640. (a) The court shall appoint as referee or referees the person or persons, not exceeding three, agreed upon by the parties.

(b) If the parties do not agree on the selection of the referee or referees, each party shall submit to the court up to three nominees for appointment as referee and the court shall appoint one or more referees, not exceeding three, from among the nominees against whom there is no legal objection. If no nominations are received from any of the parties, the court shall appoint one or more referees, not exceeding three, against whom there is no legal objection, or the court may appoint a court commissioner of the county where the cause is pending as a referee.

(c) Participation in the referee selection procedure pursuant to this section does not constitute a waiver of grounds for objection to the appointment of a referee under Section 641 or 641.2.

640.5. It is the intent of the Legislature that the practice and cost of referring discovery disputes to outside referees be thoroughly reviewed. Therefore, in addition to the requirements of subdivision (e) of Section 639, the Judicial Council shall collect information from the trial courts on the use of referees in discovery matters pursuant to either Sections 638 and 639. The collected data shall include information on the number of referees, the cost to the parties, and the time spent by the discovery referee. The Judicial Council shall report thereon to the Legislature by July 1, 2003.

641. A party may object to the appointment of any person as referee, on one or more of the following grounds:

(a) A want of any of the qualifications prescribed by statute to render a person competent as a juror, except a requirement of residence within a particular county in the state.

(b) Consanguinity or affinity, within the third degree, to either party, or to an officer of a corporation which is a party, or to any judge of the court in which the appointment shall be made.

(c) Standing in the relation of guardian and ward, conservator and conservatee, master and servant, employer and clerk, or principal and agent, to either party; or being a member of the family of either party; or a partner in business with either party; or security on any bond or obligation for either party.

(d) Having served as a juror or been a witness on any trial between the same parties.

(e) Interest on the part of the person in the event of the action, or in the main question involved in the action.

(f) Having formed or expressed an unqualified opinion or belief as to the merits of the action.

(g) The existence of a state of mind in the potential referee evincing enmity against or bias toward either party.

641.2. In any action brought under Article 8 (commencing with Section 12600) of Chapter 6, Part 2, Division 3, Title 3 of the Government Code, a party may object to the appointment of any person as referee on the ground that the person is not technically qualified with respect to the particular subject matter of the proceeding.

642. Objections, if any, to a reference or to the referee or referees appointed by the court shall be made in writing, and must be heard and disposed of by the court, not by the referee.

643. (a) Unless otherwise directed by the court, the referees or commissioner must report their statement of decision in writing to the court within 20 days after the hearing, if any, has been concluded and the matter has been submitted.

(b) A referee appointed pursuant to Section 638 shall report as agreed by the parties and approved by the court.

(c) A referee appointed pursuant to Section 639 shall file with the court a report that includes a recommendation on the merits of any disputed issue, a statement of the total hours spent and the total fees charged by the referee, and the referee's recommended allocation of payment. The referee shall serve the report on all parties. Any party may file an objection to the referee's report or recommendations within 10 days after the referee serves and files the report, or within another time as the court may direct. The objection shall be served on the referee and all other parties.

Responses to the objections shall be filed with the court and served on the referee and all other parties within 10 days after the objection is served. The court shall review any objections to the report and any responses submitted to those objections and shall thereafter enter appropriate orders. Nothing in this section is intended to deprive the court of its power to change the terms of the referee's appointment or to modify or disregard the referee's recommendations, and this overriding power may be exercised at any time, either on the motion of any party for good cause shown or on the court's own motion.

644. (a) In the case of a consensual general reference pursuant to Section 638, the decision of the referee or commissioner upon the whole issue must stand as the decision of the court, and upon filing of the statement of decision with the clerk of the court, judgment may be entered thereon in the same manner as if the action had been tried by the court.

(b) In the case of all other references, the decision of the referee or commissioner is only advisory. The court may adopt the referee's recommendations, in whole or in part, after independently considering the referee's findings and any objections and responses thereto filed with the court.

645. The decision of the referee appointed pursuant to Section 638 or commissioner may be excepted to and reviewed in like manner as if made by the court. When the reference is to report the facts, the decision reported has the effect of a special verdict.

645.1. (a) When a referee is appointed pursuant to Section 638, the referee's fees shall be paid as agreed by the parties. If the parties do not agree on the payment of fees and request the matter to be resolved by the court, the court may order the parties to pay the referee's fees as set forth in subdivision (b).

(b) When a referee is appointed pursuant to Section 639, at any time after a determination of ability to pay is made as specified in paragraph (6) of subdivision (d) of Section 639, the court may order the parties to pay the fees of referees who are not employees or officers of the court at the time of appointment, as fixed pursuant to Section 1023, in any manner determined by the court to be fair and reasonable, including an apportionment of the fees among the parties. For purposes of this section, the term "parties" does not include parties' counsel.

645.2. The Judicial Council shall adopt all rules of court necessary to implement this chapter.