

# CALIFORNIA GOVERNMENT CODE

## Provisions pertaining to the Commission on Judicial Performance

### CHAPTER 2.5 COMMISSION ON JUDICIAL PERFORMANCE

#### ARTICLE 1 General Provisions

##### **§ 68701. Definitions**

As used in this chapter, "commission" means the Commission on Judicial Performance provided for in Section 8 of Article VI of the Constitution, "masters" means special masters appointed by the Supreme Court pursuant to rules adopted by the Judicial Council, and "judge" means a judge who is the subject of an investigation or proceeding under Section 18 of Article VI of the Constitution.

##### **§ 68701.5. Retired judge; senior judge status; investigation and termination; maximum salary**

Notwithstanding Section 68701, the Commission on Judicial Performance may investigate the conduct or performance of any retired judge serving on senior judge status pursuant to rules adopted by the Judicial Council. The commission also shall have the power to order a retired judge's senior judge status terminated for incapacity or any failure to carry out the duties of the office, but in no instance shall the salary together with any Judges' Retirement Law allowance paid for service or disability in any year exceed 100 percent of the current salary of the judge's office from which he or she retired.

##### **§ 68702. Officers and employees; experts and reporters; witnesses; legal counsel**

The commission may employ such officers, assistants, and other employees as it deems necessary for the performance of the duties and exercise of the powers conferred upon the commission and upon the masters, may arrange for and compensate medical and other experts and reporters, may arrange for attendance of witnesses, including witnesses not subject to subpoena, and may pay from funds available to it all expenses reasonably necessary for effectuating the purposes of Section 8 and Section 18 of Article VI of the Constitution, whether or not specifically enumerated herein. The Attorney General shall, if requested by the commission, act as its counsel generally or in any particular investigation or proceeding. The commission may employ special counsel from time to time when it deems such employment necessary.

**§ 68703. Expenses**

Each member of the commission and each master shall be allowed his necessary expenses for travel, board, and lodging incurred in the performance of his duties.

**§ 68704. Concurrence of majority in acts of council**

No act of the commission shall be valid unless concurred in by a majority of its members. The commission shall select one of its members to serve as chairman.

**ARTICLE 2**  
**Co-operation of Public Officers and Agencies**

**§ 68725. Assistance and information**

State and local public bodies and departments, officers and employees thereof, and officials and attaches of the courts of this State shall co-operate with and give reasonable assistance and information to the commission and any authorized representative thereof, in connection with any investigations or proceedings within the jurisdiction of the commission.

**§ 68726. Service of process; execution of orders**

It shall be the duty of the sheriffs and marshals in the several counties, upon request of the commission or its authorized representative, to serve process and execute all lawful orders of the commission.

**ARTICLE 3**  
**Investigations and Hearings**

**§ 68750. Oaths; inspection of books and records; subpoenas**

In the conduct of investigations and formal proceedings, the commission or the masters may (a) administer oaths; (b) order and otherwise provide for the inspection of books and records; and (c) issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony relevant to any such investigation or formal proceeding.

The power to administer oaths, to issue subpoenas, or to make orders for or concerning the inspection of books and records may be exercised by a member of the commission or a master, unless the commission shall otherwise determine.

**§ 68751. Scope of process; attendance of witnesses**

In any investigation or formal proceeding in any part of the State, the process extends to all parts of the State. A person is not obliged to attend as a witness in any investigation or

proceeding under this chapter unless the person is a resident within the state at the time of service.

#### **§ 68752. Order compelling witness to attend and testify**

If any person refuses to attend or testify or produce any writings or things required by any such subpoena, the commission or the masters may petition the superior court for the county in which the hearing is pending for an order compelling such person to attend and testify or produce the writings or things required by the subpoena before the commission or the masters. The court shall order such person to appear before it at a specified time and place and then and there show cause why he has not attended or testified or produced the writings or things as required. A copy of the order shall be served upon him. If it appears to the court that the subpoena was regularly issued, the court shall order such person to appear before the commission or the masters at the time and place fixed in the order and testify or produce the required writings or things. Upon failure to obey the order, such person shall be dealt with as for contempt of court.

#### **§ 68753. Depositions**

In any pending investigation or formal proceeding, the commission or the masters may order the deposition of a person residing within or without the state to be taken in such form and subject to such limitations as may be prescribed in the order. If the judge and counsel for the commission do not stipulate as to the manner of taking the deposition, either the judge or counsel may file in the superior court a petition entitled "In the Matter of Proceeding of Commission on Judicial Performance No. \_\_\_\_\_ (state number)," and stating generally, without identifying the judge, the nature of the pending matter, the name and residence of the person whose testimony is desired, and, directions, if any, of the commission or masters, asking that an order be made requiring that person to appear and testify before a designated officer. Upon the filing of the petition, the court may make an order requiring that person to appear and testify. A subpoena for the deposition shall be issued by the clerk and the deposition shall be taken and returned, in the manner prescribed by law for depositions in civil actions. If the deposition is that of a person residing or present within this state, the petition shall be filed in the superior court of the county in which the person resides or is present; otherwise in the superior court of any county in which the commission maintains an office.

#### **§ 68754. Witness fees; mileage**

Each witness, other than an officer or employee of the State or a political subdivision or an officer or employee of a court of this State, shall receive for his attendance the same fees and all witnesses shall receive the same mileage allowed by law to a witness in civil cases. The amounts shall be paid by the commission from funds appropriated for the use of the commission.

## **§ 68755. Costs**

No award of costs shall be made in any proceeding before the commission, masters, or Supreme Court.

## **§ 68756. Access grant to nonpublic records of court proceedings relevant to a judicial performance; petition for public disclosure of records; persons entitled to object**

(a) Notwithstanding any other provision of law, the commission shall be given access, on an ex parte basis, to all nonpublic records of court proceedings, including confidential sealed records and transcripts, relevant to the performance of any judge, former judge, or subordinate judicial officer (hereafter, collectively, judicial officer) within the commission's jurisdiction under Sections 18 and 18.1 of Article VI of the Constitution. The commission shall make a written request to the court in which the proceedings occurred. The court shall file the request under seal. Access to the requested records shall be provided within 15 days of the written request.

(1) If the commission or the judicial officer who is the subject of the commission's investigation or proceeding intends to publicly disclose any nonpublic records or information obtained pursuant to subdivision (a), the commission or judicial officer shall petition the court that granted access to the records or another court that has jurisdiction, for authorization to disclose. The petition, filed under seal, shall identify the records or information to be disclosed and the reason for disclosure. To the extent that it does not unduly lessen the evidentiary value of the records or otherwise defeat the purpose of disclosure, the petitioner shall redact from the records names and other identifying information.

(2) The court shall grant the petition if it determines that there is good cause for disclosure. The court may issue protective orders, including further redaction of names or other identifying information, to the extent that they do not unduly lessen the evidentiary value of the records or otherwise defeat the purpose of disclosure. Within 15 days after the filing of a petition, the court may order the petitioner to give notice of the intended disclosure to any person who may be adversely affected by the disclosure. Any person who has been provided notice pursuant to this section may, within 20 days of service of the notice, file an objection to the intended disclosure with the court and serve the objection on the petitioner.

(3) The court shall grant or deny the petition in whole or in part, stating its reasons therefore, within 15 days of a timely objection, or the expiration of time for filing an objection if no objection is filed, or within 15 days of the filing of the petition for which no notice is required.

(b) Access to, and disclosure of, records under this section shall not be limited by any court order sealing those records.

(c) Persons entitled to file an objection to the intended disclosure shall not include the judge, former judge, or subordinate judicial officer who is the subject of the commission's investigation or disciplinary proceedings, unless he or she was a party or parent, guardian, or conservator of a party in the underlying action. A request or petition filed under this section shall not be considered or ruled on by a judicial officer who is the subject of the commission's investigation or disciplinary proceedings related to the requested information.

**CHAPTER 11**  
**JUDGES' RETIREMENT LAW**  
**(Applicable to judges first elected or appointed to judicial office prior to November 9, 1994.)**

**ARTICLE 2**  
**Retirement for Service**

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**§ 75033.2. Conviction of felony involving moral turpitude or committed in course of performing duties; loss of benefits**

A judge who pleads guilty or no contest or is found guilty of a crime committed while holding judicial office which is punishable as a felony under California or federal law and which either involves moral turpitude under that law or was committed in the course and scope of performing the judge's duties, and the conviction becomes final shall not receive any benefits from the Judges' Retirement System, except that the amount of his or her accumulated contributions shall be paid to him or her by the Judges' Retirement System.

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**ARTICLE 3**  
**Disability Retirement**

**§ 75060. Mental or physical disability; consent to and approval of retirement; certificate; filling vacancy**

(a) Any judge who is unable to discharge efficiently the duties of his or her office by reason of mental or physical disability that is or is likely to become permanent may, with his or her consent and with the approval of the Chief Justice or Acting Chief Justice and the Commission on Judicial Performance, be retired from office. The consent of the judge shall be made on a written application to the Commission on Judicial Performance. The retirement shall be effective upon approval by the designated officers, except as provided in subdivision (b). A certificate evidencing the approval shall be filed with the Secretary

of State. Upon the filing of the certificate, a successor shall be appointed to fill the vacancy.

(b) Any judge who dies after executing an application evidencing his or her consent that has been received in the office of the commission and before the approval of both of the designated officers has been obtained shall be deemed to have retired on the date of his or her death if the designated officers, prior to the filling of the vacancy created by the judge's death, file with the Secretary of State their certificate of approval.

(c) No retirement under this section may be approved unless a written statement by a physician or psychiatrist that he or she has personally examined the judge applying for retirement under this section and that he or she is of the opinion that the judge is unable to discharge efficiently the duties of the judge's office by reason of a mental or physical disability that is or is likely to become permanent is presented to the persons having the responsibility to approve or disapprove the retirement.

#### **§ 75060.1. Application of section; claim against state**

Notwithstanding any provision of law to the contrary, every judge retired for disability before or after the effective date of this section shall receive a retirement allowance in an amount that he or she would have received had he or she retired after the effective date of this section. This section does not give any retired judge a claim against the state for any increase in retirement allowance or other benefit for time prior to the effective date of this section.

#### **§ 75060.5. Judges receiving allowances under § 75061; effect of repeal**

Every judge retired under Section 75060, who on the ninetieth day (9/10/57) after the final adjournment (6/12/57) of the 1957 Regular Session of the Legislature is receiving a retirement allowance computed pursuant to Section 75061, shall, notwithstanding the repeal of Section 75061, continue to receive such allowance pursuant to the terms of Section 75061 as if such section were not repealed and shall not receive the retirement allowance provided for by Section 75060.6.

#### **§ 75060.6. Judges receiving allowance; fitness examination; effect**

The Commission on Judicial Performance, in its discretion, but not more often than once every two years, may require any judge who is receiving an allowance under this section and who is under the age of 65 years to undergo medical examination. The examination shall be made by one or more physicians or surgeons, appointed by the Commission on Judicial Performance, at the place of residence of the judge or other place mutually agreed upon. Upon the basis of the examination the commission shall determine whether he or she is still incapacitated, physically or mentally, for service as a judge. If the commission determines, on the basis of the results of the medical examination, that he or she is not so incapacitated, he or she shall be a judicial officer of the state, but shall not exercise any of the powers of a justice or judge except while under assignment to a court

by the Chairman of the Judicial Council. The allowance of the judge shall cease if he or she refuses an assignment while he or she is not so incapacitated. The provisions of Section 68543.5 are applicable to such a judge. The provisions of this section and of Section 75060 are applicable to all judges of courts of record in this state.

**§ 75061. Disability retirement; prerequisites**

(a) Any person who becomes a judge during the period of January 1, 1980, through December 31, 1988, shall not be eligible to be retired for disability unless the judge is credited with at least two years of judicial service or unless the disability is a result of injury or disease arising out of and in the course of judicial service.

(b) Any person who becomes a judge on or after January 1, 1989, shall not be eligible to be retired for disability unless the judge is credited with at least four years of judicial service or unless the disability is a result of injury or disease arising out of and in the course of judicial service.

**§ 75062. Felony charges or convictions; effect on disability retirement application**

A judge who applies for disability retirement and against whom there is pending a criminal charge of the commission of, or who has been convicted of, a felony under California or federal law (allegedly committed or committed while holding judicial office), prior to the approval of the application:

(a) Shall be presumed not to be disabled and this presumption is a presumption affecting the burden of proof.

(b) Shall, in a disability retirement proceeding before the commission, be subject to the standard of proof of clear and convincing evidence sufficient to sustain a claim to a reasonable certainty.

(c) Shall support the application with written statements described in subdivision (c) of Section 75060 from each of at least two physicians or two psychiatrists.

**§ 75063. Judicial misconduct; effect on disability retirement application**

A judge against whom there is pending a disciplinary proceeding which could lead to his or her removal from office or who has been removed from office for judicial misconduct, prior to the approval of his or her application for disability retirement:

(a) Shall be presumed not to be disabled and this presumption is a presumption affecting the burden of proof.

(b) Shall, in a disability retirement proceeding before the commission, be subject to the standard of proof of clear and convincing evidence sufficient to sustain a claim to a reasonable certainty.

(c) Shall support the application with written statements described in subdivision (c) of Section 75060 from each of at least two physicians or two psychiatrists.

**§ 75064. Defeat at election; effect on disability retirement application**

A member who is defeated at an election and who either had submitted, prior to the date of the election, an application for disability retirement or submits, on or after the date of the election, an application for disability retirement:

(a) Shall be presumed not to be disabled and this presumption is a presumption affecting the burden of proof.

(b) Shall, in a disability retirement proceeding before the commission, be subject to the standard of proof of clear and convincing evidence sufficient to sustain a claim to a reasonable certainty.

(c) Shall support the application with written statements described in subdivision (c) of Section 75060 from each of at least two physicians or two psychiatrists.

**ARTICLE 4**

**EMPLOYMENT OF RETIRED JUDGES**

**§ 75080. Termination or diminution of disability allowance; post-retirement law practice or employment; compensation reports**

(a) If, after retirement for disability, a retired judge engages in the practice of law or other gainful occupation, the retirement allowance otherwise payable to him or her shall continue and shall not be reduced, except as provided in this section.

(b) If a retired judge becomes entitled to any salary for assignment to a court by the Chairperson of the Judicial Council after retirement under Section 75060, the retirement allowance otherwise payable to him or her shall, during the time he or she is entitled to receive that salary or other compensation, be reduced by the amount of that salary or compensation.

(c) Except as provided in subdivision (d), if a judge who is retired for disability engages in the practice of law or any other gainful occupation in which the compensation earned in any month when combined with the judge's allowance exceeds 75 percent of the salary payable to the judge holding the judicial office to which the retired judge was last elected or appointed, the retirement allowance otherwise payable to the judge shall be reduced by the amount of any earnings in excess of that amount. The judge shall report the compensation earned during each month to the board by the eighth day of the following month.



(d) If a judge who is retired for disability engages in the practice of law or other gainful occupation that requires the discharge of duties substantially similar to those duties that he or she was found, pursuant to Section 75060, to be unable to discharge efficiently because of his or her mental or physical disability, the retirement allowance otherwise payable to him or her shall cease permanently.

(e) Persons affected by this section shall report all compensation earned in a form and manner required by the Board of Administration of the Public Employees' Retirement System under penalty of perjury. The board shall have the authority to require these persons to grant the board permission to request wage information for the purposes of verifying the reported compensation earned. The Employment Development Department shall report compensation in a form and manner required by the board in accordance with Section 1798.24 of the Civil Code. The board shall reimburse the Employment Development Department for the costs that the department incurs in searching for and providing that information.

(f) When a person described in subdivision (c) reaches the age at which he or she would have been eligible for retirement, pursuant to Section 75025, had he or she not incurred the disability, his or her retirement allowance shall be made equal to the amount it would be if not reduced under that subdivision, and shall not again be modified for any cause.

(g) A judge who is retired for disability or becomes entitled to any salary for assignment to a court by the Chairperson of the Judicial Council after retirement under section 75060 shall not be eligible to receive service credit in another public retirement system or under this chapter or to be reinstated to this system.

The Legislature reserves the right to increase or reduce the benefits prescribed by this section as it may find appropriate.

## **CHAPTER 11.5**

### **JUDGES' RETIREMENT SYSTEM II**

**(Applicable to judges first elected or appointed to judicial office on or after  
November 9, 1994.)**

#### **ARTICLE 4**

#### **DISABILITY RETIREMENT**

##### **§ 75560. Eligibility**

No judge shall be eligible to be retired for disability unless the judge is credited with at least five years of judicial service or unless the disability is a result of injury or disease arising out of and in the course of judicial service.

**§ 75560.1. Mental or physical disability; consent to and approval of retirement; certificate; filling vacancy**

(a) Any judge who is unable to discharge efficiently the duties of his or her office by reason of mental or physical disability that is or is likely to become permanent may, with his or her consent and with the approval of the Chief Justice or Acting Chief Justice and the Commission on Judicial Performance, be retired from office. The consent of the judge shall be made on a written application to the Commission on Judicial Performance, signed by the judge or a family member or legal representative acting on the judge's behalf. The retirement shall be effective upon approval by the designated officers, except as provided in subdivision (b). A certificate evidencing the approval shall be filed with the Secretary of State. Upon the filing of the certificate, a successor shall be appointed to fill the vacancy.

(b) Any judge who dies after executing an application evidencing his or her consent that has been received in the office of the commission and before the approval of both of the designated officers has been obtained shall be deemed to have retired on the date of his or her death if the designated officers, prior to the filing of the vacancy created by the judge's death, file with the Secretary of State their certificate of approval.

(c) No retirement under this section may be approved unless a written statement by a physician or psychiatrist that he or she has personally examined the judge applying for retirement under this section and that he or she is of the opinion that the judge is unable to discharge efficiently the duties of the judge's office by reason of a mental or physical disability that is or is likely to become permanent is presented to the persons having the responsibility to approve or disapprove the retirement.

**§75560.4. Disability retirement allowance**

(a) A judge who retires for disability shall receive a retirement allowance in an amount equal to the lower of the following:

(1) The benefit factor under subdivision (d) of Section 75522 multiplied by the judge's final compensation on the effective date of the disability retirement multiplied by the number of years of service the judge would have been credited if the judge's service had continued to the age the judge would have first been eligible to retire under subdivision (a) of Section 75522.

(2) Sixty-five percent of the judge's final compensation on the effective date of the disability retirement.

(b) Notwithstanding subdivision (a), the retirement allowance of a judge who retires for disability shall equal 65 percent of the judge's final compensation on the effective date of the disability retirement regardless of the judge's age or length of service, if the Commission on Judicial Performance determines that the disability is predominantly a result of injury arising out of and in the course of judicial service.

#### **§ 75560.6. Judges receiving allowance; medical examination; effect**

The Commission on Judicial Performance, in its discretion, but not more often than once every two years, may require any judge who is receiving an allowance under this article and who is under the age of 65 years to undergo medical examination. The examination shall be made by one or more physicians and surgeons, appointed by the Commission on Judicial Performance, at the place of residence of the judge or other place mutually agreed upon. Upon the basis of the examination the commission shall determine whether he or she is still incapacitated, physically or mentally, for service as a judge. If the commission determines, on the basis of the results of the medical examination, that he or she is not so incapacitated, he or she shall be a judicial officer of the state, but shall not exercise any of the powers of the justice or judge except while under assignment to a court by the Chairperson of the Judicial Council. The allowance of the judge shall cease if he or she refuses an assignment while he or she is not so incapacitated. Section 68543.5 is applicable to the judge.

#### **§ 75562. Felony charges or convictions; effect on disability retirement application**

A judge who applies for disability retirement and against whom there is pending a criminal charge of the commission of, or who has been convicted of, a felony under California or federal law, allegedly committed or committed while holding judicial office, prior to the approval of the application:

(a) Shall be presumed not to be disabled and this presumption is a presumption affecting the burden of proof.

(b) Shall, in a disability retirement proceeding before the commission, be subject to the standard of proof of clear and convincing evidence sufficient to sustain a claim to a reasonable certainty.

(c) Shall support the application with written statements described in subdivision (c) of Section 75560.1 from each of at least two physicians or two psychiatrists.

#### **§ 75563. Judicial misconduct; effect on disability retirement application**

A judge against whom there is pending a disciplinary proceeding that could lead to his or her removal from office or who has been removed from office for judicial misconduct, prior to the approval of his or her application for disability retirement:

(a) Shall be presumed not to be disabled and this presumption is a presumption affecting the burden of proof.

(b) Shall, in a disability retirement proceeding before the commission, be subject to the standard of proof of clear and convincing evidence sufficient to sustain a claim to a reasonable certainty.

(c) Shall support the application with written statements described in subdivision (c) of Section 75560.1 from each of at least two physicians or two psychiatrists.

**§ 75564. Defeat at election; effect on disability retirement application**

A member who is defeated at an election and who either had submitted, prior to the date of the election, an application for disability retirement or submits, on or after the date of the election, an application for disability retirement:

(a) Shall be presumed not to be disabled and this presumption is a presumption affecting the burden of proof.

(b) Shall, in a disability retirement proceeding before the commission, be subject to the standard of proof of clear and convincing evidence sufficient to sustain a claim to a reasonable certainty.

(c) Shall support the application with written statements described in subdivision (c) of Section 75560.1 from each of at least two physicians or two psychiatrists.

**ARTICLE 6**

**EMPLOYMENT OF RETIRED JUDGES**

**§ 75580. Termination or diminution of disability allowance; post-retirement law practice or employment; compensation reports**

(a) If a judge who is retired for disability engages in the practice of law or other gainful occupation that requires the discharge of duties substantially similar to those duties that the judge was found, pursuant to Section 75560.1, to be unable to perform due to mental or physical disability, the retirement allowance otherwise payable to him or her shall cease permanently, except as provided in this section.

(b) If a retired judge becomes entitled to any salary for assignment to a court by the Chairperson of the Judicial Council after retirement for disability, the retirement allowance otherwise payable shall, during the time he or she is entitled to receive that salary or other compensation, be reduced by the amount of that salary or compensation.

(c) A judge who is retired for disability may, without loss or reduction in allowance, engage in the practice of law or any other gainful occupation that does not require the discharge of duties substantially similar to those duties the judge was found, pursuant to Section 75560.1, to be unable to perform due to mental or physical disability, other than a public office, as long as the compensation earned in any month when combined with the judge's allowance does not exceed 75 percent of the salary payable to the judge holding the judicial office to which the retired judge was last elected or appointed, and the retirement allowance otherwise payable to the judge shall be reduced by the amount if

any earning in excess of that amount. The judge shall report the compensation earned during each month to the board by the eighth day of the following month.

(d) Persons affected by this section shall report all compensation earned in a form and manner required by the board under penalty of perjury. The board shall have the authority to require these persons to grant the board permission to request wage information for the purposes of verifying the reported compensation earned. The Employment Development Department shall report compensation in a form and manner required by the board in accordance with Section 1798.24 of the Civil Code. The board shall reimburse the Employment Development Department for the costs that the department incurs in searching for and providing that information.

(e) When a judge affected by subdivision (c) reaches the age at which the judge would be eligible to retire for services pursuant to Section 75522 had the judge not retired for disability, the judge's retirement allowance shall be made equal to the amount it would be if not reduced pursuant to this section, and may not again be modified for any cause.

(f) A judge who is retired for disability pursuant to this chapter or becomes entitled to any salary for assignment to a court by the Chairperson of the Judicial Council after retirement for disability pursuant to this chapter is not eligible to receive service credit in another public retirement system or pursuant to this chapter or to be reinstated to this system.

(g) The Legislature reserves the right to increase or reduce the benefits prescribed by this section as it may find appropriate.

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