WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

CATHERINE ROBBINS, ***Applicant,*** **vs.** **SHARP HEALTHCARE; AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY; and BROADSPIRE SERVICES, INC., Adjusting Agency,** ***Defendants.***	**Case No. SDO 0335934** **OPINION AND ORDER GRANTING PETITION FOR DISQUALIFICATION AND DECISION AFTER DISQUALIFICATION**

The law firm of Trovillion, Inveiss, Ponticello & Demakis (hereinafter, TIPD), representing the defendant, has filed a petition to disqualify Judge William J. Ordas, the workers' compensation administrative law judge (WCJ) assigned to this matter, under Labor Code section 5311 and WCAB Rule 10452. (Cal. Code Regs., tit. 8, § 10452.)[1] The petition alleges that Judge Ordas is biased against TIPD and its attorneys. These allegations are based principally upon past recusal orders of Judge Ordas indicating bias against the firm and its attorneys. Judge Ordas, while acknowledging past bias or the appearance of bias, maintains that, presently, he no longer has any bias against TIPD or any of its attorneys.

On March 24, 2006, we issued a Notice of Intention to take this matter under submission within twenty days, based on the present record, absent (1) the filing of an affidavit from TIPD evidencing present bias beyond the declarations of past bias by Judge Ordas; and/or (2) submission of persuasive authority that once a judge is declared biased, the judge is deemed biased for all time. We also gave TIPD the opportunity to file a response to Judge Ordas's January 27, 2006 Report and Recommendation provided it was filed within the same time frame.

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[1] This is one of multiple cases wherein TIPD has petitioned for disqualification of either Judge Ordas or his spouse, Judge Nikki Udkovich, who also sits as a WCJ at the San Diego District Office of the WCAB.

TIPD has filed a timely response. In addition, applicant's attorney filed a response to TIPD's initial petition and a reply to TIPD's response to our March 24, 2006 Notice of Intention. We deem the matter submitted for a decision.

TIPD alleges that, for over four years, Judge Ordas has issued recusal orders in all matters involving the TIPD law firm, not restricted to specific attorneys in that firm, based on Code of Civil Procedure (CCP) section 170.1(a)(6). TIPD quotes, as an example, the Recusal Order of June 27, 2001 that issued in another matter as follows:

> "… although resisted, this judge has come to the unavoidable conclusion that [he] is biased or prejudiced against certain attorneys and their law firms, so that this judge must disqualify [himself] from all cases involving these attorneys and their law firms. C.C.P. 170.6[(a)](1), 170.1(a)(6)."

TIPD further quotes from this Recusal Order:

> "… because of the manner in which workers' compensation matters are generally handled by the entire firm of attorneys, where any attorney may have substantial involvement with a particular case at any time, which may only become discovered and important during later court proceedings, and could then lead to a recusal during court proceedings, such as trial, the better course is for the judge to disqualify himself from all substantial matters involving each involved attorney's law firm [TIPD] in addition to the involved attorney. In this way there will be no doubt that any potential for lack of impartiality or bias has been prevented by the recusal."

TIPD argues that, pursuant to Labor Code section 5311, WCAB Rule 10452, and CCP sections 170.1(a) and 641, judicial disqualification is the appropriate remedy where there is actual bias or an appearance of bias against either a party or a lawyer in the proceeding. TIPD further argues that: (1) because Judge Ordas has admitted actual bias or prejudice, disqualification is required, (2) personal bias cannot be waived, (3) a person aware of the facts as admitted by Judge Ordas could reasonably doubt that Judge Ordas could remain impartial and unbiased in any matters involving TIPD or any of its attorneys, and (4) the disqualification should apply to all attorneys of TIPD.

In response to the petition for disqualification, Judge Ordas has prepared in a 39-page Report and Recommendation on Petition for Disqualification, dated January 27, 2006, that

appends seven "exhibits." Judge Ordas's Report and Recommendation, together with the documentation attached to it, furnishes much of the factual background for our decision.

We will grant defendant's petition for disqualification. We conclude that bias or the appearance of bias solely against an attorney or law firm, as opposed to the party that the attorney or law firm represents, may be a valid ground for a petition for disqualification of a WCJ. Here, although there is no present *actual* bias by Judge Ordas toward the TIPD, there is an *appearance* of bias sufficient to warrant disqualification.

In granting the petition for disqualification in this case, however, we emphasize that, in the future, disqualification will not be automatic. Instead, future petitions for disqualification will be determined on their merits, on a case by case basis, taking into consideration the principles discussed later in our opinion. (See Section 2, at pp. 20-21, *infra*.)

We also emphasize that, although a judge's bias or prejudice toward an attorney may be grounds for disqualification, not every adverse interaction between a judge and an attorney is sufficient to warrant disqualification.

BACKGROUND

As explained by Judge Ordas in his Report and Recommendation, in the years 2000 and 2001, certain attorneys, including some attorneys from TIPD,[2] acting individually and on behalf of the law firm, took numerous actions against Judge Ordas and his spouse, Judge Udkovich, who both sit as WCJs in the San Diego District Office of the WCAB. The actions, according to Judge Ordas, consisted of various ethics complaints made against Judge Ordas and Judge Udkovich, such as complaints of alleged racial discrimination, yelling at an attorney, and making offensive, improper, condescending, or sarcastic remarks. The accusing attorneys, some still in TIPD's firm, testified against the WCJs and submitted documentation in support of their allegations.[3] Judge Ordas reports that he and Judge Udkovich eventually prevailed in the various actions brought against them.

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[2] At that time the law firm was England, Trovillion, Inveiss & Ponticello.

[3] The details of the various activities are set forth in Judge Ordas's Report and Recommendation.

However, on June 12, 2001, Judges Ordas and Udkovich sent a joint memo to their Presiding Judge stating that, in light of the ethics proceedings, they needed to recuse themselves from cases involving these "attorneys and their law firms" because "bias now exists involving either, or both, Judge Ordas and Judge Udkovich." The memo further stated that "where involvement with certain attorneys and their law firms has resulted in bias by one spouse judge, [then] the other spouse judge must [also] recuse because of the bias, or appearance of bias." According to Judge Ordas's Report and Recommendation, this latter statement flowed from an earlier decision of an Appeals Board panel in *Alejandro Budar vs. Wrought Iron Fence Company* (SDO 248376).

In *Budar*, a defendant had petitioned to disqualify Judge Udkovich, who had been reassigned the case after the defendant had petitioned for automatic reassignment of Judge Ordas under WCAB Rule 10453.[4] The defendant argued that Judge Udkovich should be disqualified because she was the spouse of Judge Ordas, citing CCP section 641(b), which allows a party to object to the appointment of any person as a referee, on the grounds of "[c]onsanguinity or affinity, within the third degree, … to any judge of the court in which the appointment shall be made." The Appeals Board panel in *Budar* agreed that disqualification was justified. The panel held that, where two married WCJs work at the same District Office of the WCAB, and one spouse has been the subject of an automatic challenge under WCAB Rule 10453, CCP section 641(b) provides a valid basis for a petition for disqualification of the other spouse. This is because a person aware of the facts might reasonably entertain a doubt that the non-challenged spouse could be impartial, since either: (1) he or she may have adverse feelings due to the challenge to the spouse; or (2) he or she may feel a need to be overly solicitous towards the challenging party, in order to preserve the appearance of neutrality.

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[4] At that time WCAB Rule 10453 (Cal. Code Regs., tit. 8, § 10453) required the party seeking automatic reassignment to submit a declaration under penalty of perjury, stating that petitioner cannot have a fair, expeditious, inexpensive, unencumbered or impartial trial before the assigned WCJ. The declaration requirement was deleted effective January 1, 2003.

Accordingly, in light of all the above, starting in June 2001, Judges Ordas and Udkovich began recusing themselves from handling trials when these attorneys and law firms were involved, including TIPD. Judges Ordas and Udkovich, however, did not recuse themselves from handling mandatory settlement conferences (MSCs) or other conferences involving these attorneys and their law firms. This is because, according to Judge Ordas's Report and Recommendation, the two WCJs believed that the Code of Judicial Ethics and other provisions of law permitted them to take some actions despite disqualification, such as holding conferences or MSCs.

On August 20, 2001, however, the then Assistant Chief of the Division of Workers' Compensation (DWC), Rich Younkin, sent a Memorandum to Presiding Judge Dietterle of the San Diego District Office. By that Memorandum, the DWC administration determined *as a policy* that, in light of the expressed bias of Judges Ordas and Udkovich against various attorneys and their law firms, these two WCJs could not participate in *any* hearings, including MSCs, involving the attorneys or firms.[5] The memo stated that, because of their stated bias, participation by these two WCJs in any hearings was inadvisable and counter to the mandate of the Canons 2A, 3B(5) and 3E of the Canons for Judicial Ethics, as well as other authorities, including CCP sections 170.1 and 170.6(a)(1). Accordingly, beginning in August 2001, DWC adopted a blanket policy that neither Judge Ordas nor Judge Udkovich would preside over any hearings involving these attorneys or law firms, including TIPD.

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[5] DWC's determination that Judges Ordas and Udkovich should not even handle conferences was subsequently essentially endorsed by an Appeals Board panel in *Stan Morgan v. Builders Staff Corp*. (SDO 264479). In that case, Judge Ordas had set a hearing for August 10, 2001 on the adequacy of a compromise and release (C&R) agreement. However, the applicant's attorney sought reassignment to a different WCJ because of a June 21, 2001 Recusal Order in which Judge Ordas admitted prejudice against the applicant's attorney. By a decision of April 9, 2002, the Appeals Board agreed that the WCJ's confessed prejudice against applicant's attorney's law firm may prevent applicant from getting a fair hearing on adequacy of the C&R. Therefore, the Appeals Board returned the matter to the Presiding Judge for assignment of a new WCJ.

This 2001 policy remained in effect until changed on December 8, 2005, when the Court Administrator of DWC sent an email addressed to Judges Ordas and Udkovich, among other addressees.[6] The email announced a new policy eliminating blanket recusals as follows:

> "I have enjoyed my recent visits to your office and enjoyed meeting with you, talking to you and receiving your correspondence recently. I am taking this opportunity to clarify a few things about workload.
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> "It has recently been brought to my attention that some judges have avoided the trial workload that has now burdened your colleagues to the degree that they needed to address the concern to me. In an email I received from one of the judges in your office it was indicated that there was a large caseload this judge was handling which was disproportionate to that of other judges. Additional time was requested in order to assist in facilitating decisions because inadequate time existed in the regular work week of 40 hours to handle the trial load, MSCs and decision writing. There will **not** be a day and a half for decision writing. I reviewed this email as well as pulled the statistics from the computer data base and docket. I have not done a file audit yet but that will probably take place within the next quarter if necessary. In order to ensure that there is **not** a disproportionate amount of work performed by any one or two judges as they engage in the practice of conducting trials, the main focus of your job description, I want to make this point clear.
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> "There is no policy provision allowing automatic recusal. If a judge has previously exercised recusals in any kind of 'blanket' fashion, that practice is now going to stop – beginning today. If a judge feels that he or she is unable to function as a judge and adhere to the tenets contained within Canon 3(B)(5) – 'A judge shall perform judicial duties without bias or prejudice…' please let me know. I believe that this is a minimum qualification for the position which you hold and one which all of you have the ability to comply with. If any of you feel that you are unable to meet that minimum qualification for the position you hold, please let me know and I will see what other opportunities exist for you within the Division.
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> "If any of you feel that you are unable to adhere to Canon 3(B)(8) – 'A judge shall dispose of all judicial matters fairly…' please advise me as well.
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> "Finally, Policy and Procedure Manual provision 1.45 states that the court reporter shall indicate the start and end times of hearings in the trial minutes. This will be done as well.
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> "I am confident that each of you has great skill and aptitude when it comes to

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[6] As pointed out by Judge Ordas's Report, WCJs are employed by the Administrative Director (AD) of DWC (Lab. Code, §§ 123, 123.5(a)), who has personnel disciplinary power as the head of a department. (Lab. Code, §§ 53, 56, 111(a).) In appointing WCJs, the AD considers the recommendation of the Court Administrator. (Lab. Code, § 5310.) In addition, the Court Administrator supervises the WCJs (Lab. Code, §§ 123.5(a), 123.6(a), 127.5) and enforces the Judicial Ethic rules adopted by the AD. (Lab. Code, § 123.6(a).)

> legal reasoning. I have spent three days at your District Office, something I have not done anywhere else yet. Each time I have been there I am impressed at the way in which you are able to articulate yourselves to each other, me and parties appearing before you. I have not yet found a reason for anyone to not be able to comply with the simple tenets that are laid out within the Canons.
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> "I understand that some of you may take issue with this. My door is open if you feel you have comments. Feel free to email me to discuss those concerns. Thank you and have a nice weekend."
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> (Underlining and emphasis in original.)

Judge Ordas added in his Report and Recommendation of January 27, 2006 that the Court Administrator directed the temporary Presiding Judge of the San Diego District Office to telephone the attorneys and law firms that had been the subject of prior "blanket" recusals (i.e., the policy of none of their cases being assigned to Judges Ordas and Udkovich) and advise them that cases would now be assigned to those two WCJs.

Judge Ordas also stated in his Report that he and Judge Udkovich "chose, on ethical grounds ... to not acquiesce to" the Court Administrator's December 8, 2005 email. The Report than goes on to state that, "[d]espite the Court Administrator's threatened actions against them, the Judges [i.e., Judges Ordas and Udkovich] maintained the same course of action that they believed was required by the prior [DWC] orders that they were disqualified from [TIPD's] cases," for reasons that had been explained to the Court Administrator in their 33-page memorandum dated December 5, 2005.[7]

This continuance of blanket recusals by the Judge Ordas and Judge Udkovich led to a second email from the Court Administrator, dated December 13, 2005, directed to Judge Ordas, with copies to other judges including Judge Udkovich. In that email the Court Administrator, in referencing his prior email of December 8, 2005, stated:

> "Thank you for your brief email and lengthy memo. It will take me some time to digest the 33 page memo the two of you have drafted. Preliminarily, I note that contrary to the statement you make at page 11—I have not 'ordered' you to 'take actions that are contrary to the law.' I have informed all the San Diego judges that there is no such thing as a blanket recusal policy nor practice. Nothing within the first 15 pages of your 33 page document has

[7] A copy of this memorandum is not part of the record before the Appeals Board.

indicated otherwise to me.

"I also note that this morning it came to my attention that despite my clear memo last week, today Bill [Ordas], you did a blanket recusal in [two] cases. It was reported to me that in these matters where it was a simple act to 'OTOC' – take a matter off calendar when both parties (lien claimant and defendant - neither of whom were parties to your prior disciplinary matter) were in agreement that it should be taken off calendar you chose to recuse yourself. Normally such an act would take approximately .2 hours (12 minutes at most). Instead you used the blanket recusal form to indicate you had knowledge or bias or the appearance of bias might be present because of the applicant's firm. However, upon review of the matter, the attorney from the applicant's firm was not an attorney that was a part of your prior disciplinary matter; and more importantly, since the matter had already resolved, there was no applicant's attorney present at the hearing and there was not going to be the likelihood that the attorney of record, nor any other attorney from the applicant's representatives was going to further appear or participate in the matter that was before you. In fact, the only people appearing this morning were the defense and lien rep. Your refusal to hear the matter to take it off calendar because the parties had resolved it caused [Presiding Judge] Linda Morgan additional time, approximately .3 hours to talk to me and [Associate Chief Judge] Mark Kahn. During that time, the Master Calendar was further delayed (causing the 15 to 20 minute delay for the calendar and the judges awaiting assignments as well as the attorneys and parties present at the office for their hearings). When she returned the file to you, you excused the parties from appearing at the hearing but took no judicial action. It is precisely this type of obstructive conduct that I was addressing in the memo last week which negatively impacts upon the entire San Diego office, not only Linda's calendar, but it pushes a heavier burden onto other judges like England, Ellison, Levy and Hopkins as well. This needs to stop – I can't be plainer than that.

"You stated you are unable to remain unbiased with a select group of individuals based upon prior contacts (their ethics complaints against you and the adverse disciplinary action against you.[ )] Though I believe that should normally not be a problem for a judge, I understand on a case by case basis one may not be capable of dealing fairly with an attorney that was the subject of your rancor. Budar [see p. 4, *supra*] is not binding nor dispositive. The portion you quote states that there is merely a possibility that a WCALJ 'may interpret the challenge as raising a question about…impartiality,' but more importantly, as you know, it is not a published nor reported decision and thus not legal authority and it <u>preceded</u> the current Rule 10453[8] – which allows for the petition of reassignment without having allegations of bias. Thus, Nikki [Udkovich] would not be disqualifiable solely because you were challenged.

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[8] For prior language of WCAB Rule 10453, see previous footnote 5. We also note that under prior WCAB Rule 10453, disqualification was allowed for reasons other than bias, namely, "[t]hat the affiant believes that [s]he cannot have a [fair] [expeditious] [inexpensive] [unencumbered] [impartial] trial before the workers' compensation judge [before whom the case is pending] [to whom the case is assigned]." (Cal. Code Regs., tit. 8, § 10453)

> "In a matter where the parties have already used their petition for automatic reassignment and they still want to disqualify a judge, there are mechanisms for that. I am not going to debate fine points of semantics – the bottom line is that in Nikki's case, and in all judge[s's] case[s] (as you indicate in your memo) 'the petition must set for[th] facts with the same particularity as required…. Allegations of bias … without sufficient factual showing may be ignored (Mackie v. Dyer (1957) 154 Cal. App 2d 395, 399.)' If there are specific facts that each attorney can articulate, or that a judge can articulate as to the grounds for the inability to be fair and unbiased, then I assume your position might have merit. However, if the matters are merely swept aside with a blanket recusal because you at one time had a run in with attorneys from the same firm but not the one appearing in front of you on a particular case, then your position is inappropriate.
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> "I find it unfortunate that you are misconstruing the law on consanguinity. Let's not mix apples and oranges here. CCP §170.1, et seq. applies to Superior Court judges, not WCALJs. A party may have the ability to challenge someone for bias – aside from the petition for automatic reassignment. Rule 10453 came into being in 2003 subsequent to the Budar case and subsequent to the LC§5311 section that references CCP §641. I understand that you are the only married couple within the DWC that had this automatic recusal policy that I have stopped. Again, I return to the portion of last week's memo – impartiality and lack of bias are minimum qualifications for the position which you hold. Aside from cessation of the policy there are other options which I would prefer to refrain from, but among them are transfers to different offices.
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> "If I learn anything additional from a further reading of your memo I will advise you. Thank you."
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> (Underlining in original)

Judge Ordas explained in his Report and Recommendation that, as a result of later conversations with the Court Administrator and further consideration of the situation, Judges Ordas and Udkovich determined that they are no longer biased against TIPD and the attorneys in the firm. Judge Ordas stated in his Report:

> "As set forth above, on 8/20/01 the DWC-AD ordered Judge Ordas and Judge Udkovich completely disqualified from all cases involving these certain attorneys and their law firms, including petitioner's law firm. The WCAB panel in Morgan [see fn. 5, *supra*] agreed with the need for disqualification and also ordered disqualification of Judge Ordas in that case.
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> "As judges, Judge Ordas and Judge Udkovich <u>were never biased against the parties or persons</u> that these attorneys and law firms represented.
> "At the present time, there was long ago conclusion of the discipline trials, Judge Ordas and Judge Udkovich did not have to be involved with these attorneys for many years, and the passage of time have each contributed to

> remove the bias once held. Despite past events, Judge Ordas and Judge Udkovich are able to put the past aside, to be fair and impartial, and to judge every case based only upon what is presented in that case regardless of which attorney(s) appear in court.
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> "Under the circumstances presented in this situation, the Court Administrator has advised that no person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality, and competence (CJE, Canon 2A, and Advisory Committee Commentary).
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> "The Court Administrator has held that CJE Canon 3B(1) will not be violated and that CJE Canon 3B(5) will not be violated where there is no longer bias or prejudice involving these certain attorneys and their law firms. The Court Administrator has held that where there is a lack of bias Judge Ordas and Judge Udkovich are not required to disqualify themselves under CJE, Canon 3E(1), but that disclosure is required under Canon 3E(2).
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> "Therefore, Judge Ordas and Judge Udkovich believe that they are unencumbered by past bias that led to recusals in 2001 so that now they can act with integrity and impartiality."
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> (Underlining in original.)

As to the facts of the underlying case, applicant alleged industrial injury to her neck, back, left shoulder, left arm, and hand, during the period ending April 27, 2003. In his Report, Judge Ordas explains that, on July 21, 2005, applicant requested an expedited hearing on the issues of medical treatment and temporary disability but the presiding judge denied the request and the case was then set for a conference on August 9, 2005 before Judge Ordas. That conference was subsequently cancelled. However, on TIPD's new request, the matter was set for hearing on February 9, 2006. The notice of hearing went out on January 13, 2006 for an MSC before Judge Ordas.

On January 24, 2006, TIPD filed the petition for disqualification of Judge Ordas for cause. Judge Ordas filed his January 27, 2006 Report and Recommendation on the petition, and we issued our March 24, 2006 Notice of Intention to Submit for Decision Based on Present Record. Responses to this Notice have been received. In its Response, TIPD asserts, among other things, that a WCJ must be disqualified not only where there is actual bias, but also where there is an appearance of bias, such that "the judge's impartiality might be reasonably questioned." The Response then goes on to state:

> "Here, there have been four and one-half years of repeated and unequivocal statements of bias against TIPD by [Judges] Ordas and Udkovich. … A sudden declaration by Judge Ordas that neither he nor Judge Udkovich are biased after receiving the submitted emails from [Court] [A]dministrator Star 'appear' questionable at best. Petitioner contends that at the very least, a reasonable person would conclude that an appearance of bias or impropriety will always continue, and at the very most, that the email edict did not erase the actual bias demonstrated in the four and one-half years of Recusal Orders admitting bias."

DISCUSSION

1. Bias or the appearance of bias solely against an attorney or law firm, as opposed to the party that the attorney or law firm represents, may be a ground for disqualification of a WCJ.

We first examine whether bias or the appearance of bias by a WCJ solely against an attorney or law firm, as opposed to the party that the attorney or law firm represents, may be a ground for disqualification.

Labor Code section 5311 provides that a WCJ may be disqualified per CCP section 641.[9] CCP section 641 lists seven grounds for disqualification.[10] Bias or prejudice against a party is listed as one ground, but not listed is bias or prejudice toward *an attorney or law firm*. Thus, under CCP section 641(g), the bias or prejudice that must be shown is *against a party*, not the party's attorney. (*Hustedt v. Workers' Comp. Appeals Bd*. (1981) 30 Cal.3d 329, 334, fn. 1 [46 Cal.Comp.Cases 1284].)

CCP sections 170.1(a)(6)(B) and 170.6(a)(1) do provide that bias or prejudice against a

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[9] Lab. Code § 5311 provides: "Any party to the proceeding may object to the reference of the proceeding to a particular workers' compensation judge upon any one or more of the grounds specified in Section 641 of the Code of Civil Procedure and the objection shall be heard and disposed of by the appeals board. Affidavits may be read and witnesses examined as to the objection."

[10] CCP § 641 provides: "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."

party's attorney is a ground for disqualification. Nevertheless, as noted by the Court Administrator in his email of December 13, 2005, CCP sections 170.1 and 170.6 directly apply only to judicial officers of the Superior Court, not WCJs. (CCP, §§ 170.5(a) (defining "Judge," for the purposes of sections 170 to 170.5, to mean "judges *of the superior courts*, and court commissioners and referees" (emphasis added)); 170.6(a)(1) (providing that "[n]o judge, court commissioner, or referee *of any superior court* … shall try … nor hear any matter … when it [is] established … that the judge or court commissioner is prejudiced against any party or attorney or the interest of any party or attorney … " (emphasis added)); *Gai v. City of Selma* (1998) 68 Cal.App.4th 213, 230-233 (the disqualification standards for judges set forth in CCP sections 170 et seq. do not apply to administrative hearings).)

However, this does not dispose of the issue of whether a WCJ may be disqualified based upon bias or the appearance of bias against a party's attorney. There are other grounds – established by case law, statute, and regulation – upon which a WCJ may be disqualified.

Preliminarily, due process requires a fair hearing before a neutral, unbiased decision maker, including in administrative proceedings. (*Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1024-1027; e.g. *Withrow v. Larkin* (1975) 421 U.S. 35, 41-47 [95 S.Ct. 1456, 43 L.Ed.2d 712].) Due process is violated where there is even an appearance of bias or unfairness in administrative hearings. (*Haas v. County of San Bernardino*, *supra*, 27 Cal.4th at p. 1034; *Quintero v. City of Santa Ana* (2003) 114 Cal.App.4th 810, 812; *Nightlife Partners v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90; see also, *Yaqub v. Salinas Valley Memorial Healthcare System* (2004) 122 Cal.App.4th 474, 483-486.)

Of more direct relevance here, however, is that Labor Code section 123.6(a) requires WCJs to abide by both the Code of Judicial Ethics and the commentary to that Code:

> "All workers' compensation administrative law judges employed by the administrative director and supervised by the court administrator shall subscribe to the Code of Judicial Ethics adopted by the Supreme Court pursuant to subdivision (m) of Section 18 of Article VI of the California constitution for the conduct of judges and shall not otherwise, directly or indirectly, engage in conduct contrary to that code or to the commentary to the

Code of Judicial Ethics."[11]

Canon 1 of the Code of Judicial Ethics provides, in pertinent part:

> "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 shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective."

Canon 2 is entitled: "A judge shall avoid impropriety and the appearance of impropriety in all of the Judges' activities." Canon 2(A) requires, in pertinent part, that a judge shall "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." The Advisory Committee Commentary under Canon 2(A) states, in relevant part:

> "A judge must avoid all impropriety and appearance of impropriety. … The test for the appearance of impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality, and competence."

Thus, the "appearance of impropriety" test, as set forth in Canon 2 and in the Commentary to Canon 2(A), is an objective one, i.e., would a reasonable person with knowledge of the facts entertain doubts concerning the WCJ's impartiality. (*Yaqub v. Salinas Valley Memorial Healthcare System*, *supra*, 122 Cal.App.4th at p. 486; *Hall v. Harker* (1999) 69 Cal.App.4th 836, 841, disapproved on another ground in *Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 346, 349.) This is essentially the same test as that under CCP sections 170.1 and 170.6. (*Christie v. City of El Centro* (2006) 135 Cal.App.4th 767, 776; *Briggs v. Superior Court* (2001) 87 Cal.App.4th 312, 319.)

Canon 3 is entitled: "A judge shall perform the duties of judicial office impartially and diligently." Moreover, Canon 3(E)(1) provides that "[a] judge shall disqualify himself or herself in any proceeding in which disqualification is required by law." The Commentary to this Canon

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[11] See also, *Fremont Indemnity Co. v. Workers' Comp. Appeals Bd*. (*Zepeda*) (1984) 153 Cal.App.3d 965, 974 [49 Cal.Comp.Cases 288] ("[WCJs] are officers of a judicial system performing judicial functions and are 'judges' for the purposes of the Code of Judicial Conduct. As such they are subject to the same rules and constraints in the performance of the duties of their office, and in their adjudicative responsibilities, as are the judges of the other courts of this state.")

states:

> "Canon 3(E)(1) sets forth the general duty to disqualify applicable to a judge of any court. Sources for determining when recusal or disqualification is appropriate may include the applicable provisions of the Code of Civil Procedure, other provisions of the Code of Judicial Ethics, the Code of Conduct for United States Judges, the American Bar Association's Model Code of Judicial Conduct, and related case law."

We do not believe that the provision of Labor Code section 123.6 – mandating that WCJs "shall not ... engage in conduct contrary to the [Code of Judicial Ethics] *or the commentary to* [*that*] *Code*" (emphasis added) – means that, via the commentary to Canon 3(E)(1), all disqualification requirements of the CCP, of the Code of Judicial Ethics, and of federal law are to be imported wholesale and applied to the disqualification of WCJs. In this regard, we point out that Canon 3(E)(1) refers to the "*applicable* provisions" of the CCP. As discussed above, it is only CCP section 641 which is specifically "applicable" to WCJs (Lab. Code, § 5311), while CCP sections 170.1 and 170.6 are specifically applicable only to judicial officers of the Superior Court (see CCP §§ 170.5(a), 170.6(a)(1)) and they are not applicable to judicial officers presiding over administrative proceedings. (*Gai v. City of Selma*, *supra*, 68 Cal.App.4th at pp. 230-233.) Moreover, WCJs obviously are not "United States Judges."

Nevertheless, because WCJs must abide even with the commentary to the Code of Judicial Ethics, then the reference in the commentary to Canon 3(E)(1) to the disqualification provisions of the CCP, the Code of Judicial Ethics, and the Code of Conduct for United States Judges indicates that these provisions may be looked to for guidance, even if they are not directly applicable to WCJs.

As discussed above, CCP sections 170.1(a)(6)(B) and 170.6(a)(1) provide that bias or prejudice against *a party's attorney* is a basis for disqualification of a Superior Court judge. Moreover, CCP section 170.1(a)(6)(A)(ii) and (iii) require disqualification of a Superior Court judge if "[t]he judge believes there is a substantial doubt as to his or her capacity to be impartial" or if "[a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial."

Similarly, Code of Judicial Ethics, Canon 3(E)(5)(f)(iii), provides that "[d]isqualification of an appellate justice is … required" if the justice "has a personal bias or prejudice concerning a party *or a party's lawyer*." (Emphasis added.) Additionally, Canon 3(E)(4)(b) and (c) require disqualification of an appellate justice if "the justice substantially doubts his or her capacity to be impartial" or if "the circumstances are such that a reasonable person aware of the facts would doubt the justice's ability to be impartial."

Accordingly, although these provisions relating to Superior Court judges and appellate justices are not directly applicable to WCJs, they suggest that disqualification of a WCJ based on bias against an attorney – or the appearance of bias against an attorney – may be appropriate in some circumstances.

The Code of Conduct for United States Judges, referred to in the commentary to Canon 3(E)(1), provides further support for this conclusion.

Like CCP section 641, the federal statutes regarding disqualification of federal judges require bias or prejudice *against a party*. (28 U.S.C. §§ 144, 455(b)(1).)[12] Therefore, most federal courts addressing the issue have concluded that bias against the attorney for a party ordinarily is not a sufficient basis for disqualification. (E.g., *Baldwin Hardware Corp. v. Franksu Enterprise Corp*. (Fed. Cir. 1996) 78 F.3d 550, 557-558; *Standing Committee on Discipline v. Yagman* (9th Cir. 1995) 55 F.3d 1430, 1444; *Souder v. Owens-Corning Fiberglas Corp*. (8th Cir. 1991) 939 F.2d 647, 653; *Henderson v. Dept. of Public Safety and Corrections* (5th Cir. 1990) 901 F.2d 1288, 1296; *Panzardi-Alvarez v. United States* (1st Cir. 1989) 879 F.2d 975, 984; *In re Beard* (4th Cir. 1987) 811 F.2d 818, 830; *Hinman v. Rogers* (10th Cir. 1987) 831 F.2d 937, 939.)

Nevertheless, the federal courts occasionally do find a basis for disqualification where the judge is actually or apparently biased against the attorney for a party. This is because a federal judge is also subject to disqualification "in any proceeding in which his [or her] *impartiality might reasonably be questioned*." (28 U.S.C. § 455(a) (emphasis added).) As stated by the United States

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[12] Section 144 applies only to judges conducting proceedings "in a district court," while section 455(b)(1) applies to all federal judges, including appellate judges.

Supreme Court, the question of bias or prejudice is "to be evaluated on an *objective* basis, so that what matters is not the reality of bias or prejudice but its appearance. Quite simply and quite universally, [disqualification] is required whenever 'impartiality might reasonably be questioned.' " (*Liteky v. United States* (1994) 510 U.S. 540, 548 [114 S.Ct. 1147, 127 L.Ed.2d 474].) "The judge does not have to be *subjectively* biased or prejudiced, so long as he *appears* to be so." (*Liteky v. United States, supra,* 510 U.S. at p. 553, fn. 2.)

The Fifth Circuit has held that, "[s]ince the goal of section 455(a) is to avoid even the appearance of impropriety, [disqualification] may well be required even where no actual partiality exists." (*United States v. Bremers* (5th Cir. 1999) 195 F.3d 221, 226.) Accordingly, in a series of cases, the Fifth Circuit has concluded that there is an appearance of impropriety if a judge presides over a case where one of the parties is represented by an attorney who had recently testified against the judge in Judicial Council disciplinary proceedings, i.e., a reasonable person, advised of all the circumstances of the case, would harbor doubts about the judge's impartiality under these circumstances. (*United States v. Bremers*, *supra*, 195 F.3d at pp. 226-227; *United States v. Avilez-Reyes* (5th Cir. 1998) 160 F.3d 258, 259; *United States v. Anderson* (5th Cir. 1998) 160 F.3d 231, 233; see also, *United States v. Ritter* (10th Cir. 1976) 540 F.2d 459, 462 (stating that "if a judge is biased in favor of an attorney, his impartiality might reasonably be questioned in relationship to the party").) Thus, under federal law, bias against an attorney may be grounds for disqualification.

Therefore, to summarize the discussion above, due process requires disqualification of a WCJ where there is even an appearance of bias. Moreover, the Code of Judicial Ethics, by which WCJs are bound, requires a WCJ to avoid even the appearance of impropriety – which is an objective test, i.e., would a person aware of the facts reasonably entertain a doubt that the WCJ would be able to act with impartiality. Further, the commentary to the Code of Judicial Ethics, by which WCJs also are bound, requires WCJs – and the Appeals Board – to consider other sources that may not be directly applicable to WCJs (such as the CCP provisions for Superior Court judges, the Canons applicable to appellate justices, and the federal provisions applicable to United States judges) in determining whether disqualification is appropriate. These other sources suggest

that actual bias against an attorney, or even the appearance of bias against an attorney, may necessitate disqualification.

In accordance with the principles of due process and the provisions of the Code of Judicial Ethics and its commentary – as made applicable to WCJs by Labor Code section 123.6(a) – we conclude that a WCJ's actual bias and/or the "appearance of bias" solely against an attorney or law firm may be grounds for disqualification. We further conclude that there is an "appearance of bias" if a person with knowledge of the facts might reasonably entertain doubts concerning the WCJ's impartiality.

We next turn to whether there is actual bias or the appearance of bias that would justify disqualification of Judge Ordas in this case.

2. While there is no actual bias on the part of Judge Ordas, there is an *appearance of bias* sufficient to justify granting the petition for disqualification.

TIPD has filed a petition for disqualification of Judge Ordas which must be determined by the Appeals Board based upon principles described above.

Is there actual bias? Judge Ordas has stated unequivocally in his Report and Recommendation that he is not presently biased against TIPD or any of its attorneys. There is a presumption that those serving as judges do so with honesty and integrity. (*People v. Chatman* (2006) 38 Cal.4th 344, 364; e.g. also, *Withrow v. Larkin*, *supra*, 421 U.S. at p. 47.) Here, we have no reason to doubt the honesty or integrity of Judge Ordas in his representation that he is no longer biased against TIPD or its attorneys. The representation is accepted. There is nothing in the record which would justify a contrary conclusion. Despite being given the opportunity by our March 24, 2006 notice of intention, TIPD has not come forward with any verified declarations of present actual bias.

Nevertheless, our inquiry cannot end there because actual bias is not the only ground for disqualification. The appearance of bias may be sufficient to require disqualification. As to the appearance of bias, the objective test to be applied is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with impartiality.

Here, Judge Ordas commenced recusing himself in about 2001 whenever attorneys from the law firm of TIPD represented a party in a case assigned to him. These recusals occurred because Judge Ordas indicated he was actually biased – or he recognized the appearance of bias – due to the testimony by certain TIPD attorneys against him in ethics proceedings.[13] Subsequently, DWC established a definite policy that participation in any kind of proceeding by any WCJ who had expressed bias was inadvisable and contrary to the mandate of the Canons for Judicial Ethics. Thus, cases involving TIPD were no longer assigned to Judge Ordas. That policy remained in effect until the Court Administrator's email of December 8, 2005, when blanket recusals were eliminated. In that email, the Court Administrator also stated that the ability to "perform judicial duties without bias or prejudice … is a minimum qualification for the position which you hold" and that "[if] any of you feel that you are unable to meet that minimum qualification for the position you hold, please let me know and I will see what other opportunities exist … within [DWC]." Even then, however, Judge Ordas was reluctant to follow the new policy and instead concluded that he was still obligated to follow the older policy set by DWC in December 2001. But, in a second email of December 13, 2005, that was specifically directed to Judge Ordas (with a copy to Judge Udkovich, among others), the Court Administrator reiterated that there was no automatic recusal policy. In that second email, the Court Administrator stated, "[a]gain, … impartiality and lack of bias are minimum qualifications for the position which you hold." Thus, the Court Administrator's email stated that, if Judge Ordas could not comply the policy of no blanket recusals, "there are other options which I would prefer to refrain from, but among them are transfers to different offices." Shortly thereafter, Judge Ordas stopped recusing himself. He maintained that "the passage of time" had helped to "remove the bias once held," enabling him "to put the past aside" and to be "fair and impartial." He further stated his belief that he was now

[13] The June 12, 2001 joint memo of Judges Ordas and Udkovich said that they needed to recuse themselves from cases involving certain "attorneys and their law firms" because "bias now exists involving either, or both, Judge Ordas and Judge Udkovich." In his June 27, 2001 Recusal Order, Judge Ordas clearly stated that he "is biased" against the attorneys that testified against him, as well as a law firms of those attorneys. Moreover, in his January 27, 2006 Report, Judge Ordas refers to "bias once held" and "past bias" against TIPD. These statements indicate that, at least at one time, there was more than the mere appearance of bias. There was actual bias.

"unencumbered by past bias" and that "now [he] can act with integrity and impartiality." Because Judge Ordas is no longer recusing himself in matters involving TIPD, this has led to multiple petitions for disqualification, including in this case.

Using the objective test for the appearance of bias discussed above, we conclude that a reasonable person with knowledge of the facts might reasonably entertain a doubt about Judge Ordas's impartiality.

In 2001, Judge Ordas began recusing himself from proceedings involving TIPD attorneys because of actual bias – or, at least, the appearance of bias. Shortly thereafter, the administration of DWC established a policy that cases involving TIPD would not be assigned to Judge Ordas. Then, in December 2005, the Court Administrator rescinded this policy of blanket refusals. At the same time, the Court Administrator stated that he would "see what other opportunities exist for [Judge Ordas] within [DWC]" and that he would consider options of "transfers to other offices" if Judge Ordas felt that he could not perform duties at the San Diego District Office without bias. Thereafter, Judge Ordas declared that he had "put … aside" and was now "unencumbered" by his former bias against TIPD and its attorneys, such that he could be "fair and impartial" in cases involving them.

In light of the warnings from the Court Administrator about "other opportunities" within DWC and about "transfers to other offices", a reasonable person might conclude that the representation of no current bias or prejudice by Judge Ordas could have been motivated, consciously or unconsciously, by a desire to protect his position with DWC as a WCJ at the San Diego District Office. Accordingly, there is the appearance of bias. Therefore, we will grant the petition for disqualification herein and disqualify Judge Ordas in this case.

But, our conclusion in this regard should *not* be construed as implying that a petition for disqualification will be automatically granted whenever TIPD or one of its attorneys represents a party in a future case assigned to Judge Ordas.

As discussed above, Judge Ordas's Report denies any actual bias against either TIPD or

any of its attorneys at the present time. TIPD has not come forward with any evidence of current actual bias. Moreover, there is a presumption that a judicial officer is acting without bias. (*People v. Chatman*, *supra*, 38 Cal.4th at p. 364; e.g. also, *Withrow v. Larkin*, *supra*, 421 U.S. at p. 47.) Therefore, we are not granting the current petition for disqualification on the basis of *actual* bias. Instead, we are granting because there is an *appearance* of bias. The appearance of bias exists because a reasonable person aware of the facts might conclude that Judge Ordas's declaration of no current bias arises from a wish to keep his job – in the face of the Court Administrator's admonitions – and not because he in fact no longer harbors any bias against TIPD or its attorneys.

This *appearance* of bias will not necessarily exist indefinitely or exist at all times. For example, the *appearance* of bias might pass after a time. (Cf. *United States v. Avilez-Reyes*, *supra*, 160 F.3d at p. 259 (finding an appearance of impropriety where a federal judge continued to preside over cases involving attorneys who had *recently* testified against him, but endorsing a Judicial Council Order precluding the judge's participation in such cases for a period of only *three years*).) Similarly, after the passage of time, the *appearance* of bias might not extend to *all* TIPD attorneys. (Cf. *United States v. Vadner* (5th Cir. 1998) 160 F.3d 263, 264 (Fifth Circuit held that disqualification is not warranted merely because one of the parties is represented by an attorney working in the same office with lawyers who had testified against the judge in disciplinary proceedings, i.e., there is no "inherent and pervasive specter of impartiality … any time a lawyer from the same office appears in [the judge's] court"); *Trevino v. Johnson* (5th Cir. 1999) 168 F.3d 173, 178-179 (Fifth Circuit held that disqualification is not warranted where one of the parties is represented by an attorney who merely had been subpoenaed to testify at the judge's disciplinary proceedings, but never actually testified).)

Accordingly, in the future, TIPD may elect to file petitions for disqualification against Judge Ordas, but disqualification will not be automatic. TIPD will either have to establish *actual* bias or it will have to establish the *appearance* of bias, i.e., circumstances that might lead a reasonable person to doubt his impartiality. In either event, TIPD will have to support any petition(s) with affidavits or declarations, under penalty of perjury, specifying in detail the basis

for the alleged bias or appearance of bias. (Lab. Code, § 5311; Cal. Code Regs., tit. 8, § 10452; see *People v. Ladd* (1982) 129 Cal.App.3d 257, 261 (an unverified statement of disqualification is formally defective and may be disregarded); *Mackie v. Dyer* (1957) 154 Cal.App.2d 395, 399 (allegations in a statement charging bias and prejudice of a judge must set forth specifically the facts on which the charge is predicated; a statement containing nothing but conclusions and setting forth no facts constituting a ground of disqualification may be ignored.)[14]

Based on the above, we will grant the petition for disqualification of Judge Ordas in the present case, and as our Decision After Disqualification, order Judge Ordas disqualified from hearing this case, and return the matter to the Presiding Judge for reassignment of the case to a new WCJ other than Judge Ordas.

We observe that, if this matter happens to be reassigned to Judge Udkovich, then defendant may elect, but may choose not, to file a new petition for disqualification, including on the basis of the *Budar* decision, discussed above. As noted above, in *Budar*, an Appeals Board panel concluded that, if two married WCJs work at the same District Office of the WCAB, and if one spouse has been disqualified under Labor Code section 5311 and WCAB Rule 10452 – or has been automatically challenged under WCAB Rule 10453 – then CCP section 641(b) provides a valid basis to petition for disqualification of the other spouse. If such a petition for disqualification is filed, it will be determined on its merits.

3. Although a judge's actual or appearance of bias toward an attorney may be grounds for disqualification, not every adverse interaction between a judge and an attorney is sufficient to warrant disqualification.

We emphasize that although a judge's actual bias or appearance of bias toward a party's attorney may be a ground for a petition for disqualification, not every adverse interaction between a judge and an attorney will be sufficient to establish bias or the appearance of bias.

A judge's disagreement with an attorney's legal arguments, and even erroneous rulings by

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[14] Where disqualification is sought, due process does not mandate that the judge submit to cross-examination regarding his judicial role, actions, and demeanor. (*Garcia v. Superior Court* (1984) 156 Cal.App.3d 670, 681-682.)

a judge, ordinarily are not sufficient to establish bias or prejudice against the attorney. (E.g., *People v. Guerra* (2006) 37 Cal.4th 1067, 1112; *People v. Samuels* (2005) 36 Cal.4th 96, 115; *Andrews v. Agricultural Labor Relations Bd*. (1981) 28 Cal.3d 781, 795; *McEwen v. Occidental Life Insurance Co.* (1916) 172 Cal. 6, 11.) Similarly, a judge's disagreement with an attorney's interpretation of the evidence or assessment of the credibility of witnesses generally does not establish bias. (*Kreling v. Superior Court* (1944) 25 Cal.2d 305, 312; *Moulton Niguel Water Dist. v. Colombo* (2003) 111 Cal.App.4th 1210, 1219-1220.) Further, a judge's mere frustration or irritation with an attorney does not suggest bias or prejudice. (*Hernandez v. Superior Court* (2003) 112 Cal.App.4th 285, 303; *Scott v. Family Ministries* (1976) 65 Cal.App.3d 492, 502 & 509; see also, *Offutt v. United States* (1954) 348 U.S. 11, 17 [75 S.Ct. 11, 99 L.Ed. 11] ("a modicum of quick temper … must be allowed even judges").) Even a judge's critical remarks to an attorney usually do not establish bias. (*People v. Brown* (1993) 6 Cal.4th 322, 336.)

On the other hand, bias or prejudice may be established where a judge is so personally embroiled with an attorney as to call into question the judge's capacity for impartiality. (See *In re Buckley* (1973) 10 Cal.3d 237, 256 & fn. 24; *Offutt v. United States*, *supra*, 348 U.S. at pp. 16-17.) Other standards may also apply. (See *Charron v. United States* (Fed.Cir. 1999) 200 F.3d 785, 788 (disqualification warranted where a judge's bias or prejudice against a party's attorney becomes so pervasive that "the client's rights are likely to be affected"); *Baldwin Hardware Corp. v. Franksu Enterprise Corp*. (9th Cir. 1996) 78 F.3d 550, 557-558 (disqualification warranted where a judge's bias or prejudice against a party's attorney results "in material and identifiable harm to that party's case"); *In re Betts* (Bkrtcy.N.D.Ill. 1994) 165 B.R. 233, 238 (in order to warrant disqualification, any "apparent antagonism or animosity towards counsel must be of such character and intensity as to warrant a reasonable belief that the judge might not be able to impartially consider arguments in the case before the court").)

Under no circumstances, however, can a party's *unilateral and subjective perception* of an appearance of bias afford a basis for disqualification. (*Haas*, *supra*, 27 Cal.4th at p. 1034; *Andrews, supra,* 28 Cal.3d at p. 792 (questioned on other grounds by *Hass*, *supra*, 27 Cal.4th at

pp. 1032-1034.)[15] Otherwise, we would have "a system in which disgruntled or dilatory litigants can wreak havoc with the orderly administration of dispute resolving tribunals." (*Haas*, *supra*, 27 Cal.4th at p. 1034, quoting from *Andrews*, *supra*, 28 Cal.3d at p. 792; see also, *Standing Committee on Discipline v. Yagman*, *supra*, 55 F.3d at 1443-1444 (attorney cannot force recusal or disqualification of a judge by engaging in harsh and intemperate criticism of or personal attacks on the judge).)

We also observe that, if there is a basis to disqualify a WCJ, there also may be a basis for recusal. We emphasize, however, that a WCJ should never recuse himself or herself lightly. As our appellate courts have repeatedly stated:

> Judicial responsibility does not require shrinking every time an advocate asserts the object and fair judge *appears* to be biased. The duty of a judge to sit where not disqualified is equally as strong as the duty not to sit when disqualified. (*United Farm Workers of America v. Superior Court* (1985) 170 Cal.App.3d 97, 100 (italics in original; underscoring added); accord: *People v. Carter* (2005) 36 Cal.4th 1215, 1243; *Briggs v. Superior Court* (2001) 87 Cal.App.4th 312, 319; *Flier v. Superior Court* (1994) 23 Cal.App.4th 165, 170.)

And:

> [A] … judge has certain powers and duties to perform. Upon assuming his office he takes and subscribes to an oath that he will support the State and Federal Constitutions and that he will faithfully discharge the duties of his office as a judge … to the best of his ability. … One of those duties is to hear and determine causes presented to him unless in a particular cause he is disqualified or unable to act. He may not evade or avoid that duty. In proceedings too numerous to need citation of authority a … judge has been required to discharge that duty when no good cause appeared to justify a refusal to act." (*Austin v. Lambert* (1938) 11 Cal.2d 73, 75.)

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For the foregoing reasons,

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[15] See also, *In re Betts*, *supra*, 165 B.R. at p. 238 ("A judge is not disqualified … merely because a litigant has transformed his fear of an adverse decision into a fear that the judge will not be impartial.").)

IT IS ORDERED that the petition for disqualification filed by Trovillion, Inveiss, Ponticello & Demarkis is hereby **GRANTED.**

IT IS FURTHER ORDERED that as the Appeals Board's Decision After Disqualification, Workers' Compensation Administrative Law Judge Ordas is hereby **DISQUALIFIED** from hearing the case identified as SDO 0335934, and this case is **RETURNED** to the Presiding Workers' Compensation Administrative Law Judge for reassignment to a new Workers' Compensation Administrative Law Judge, other than Judge Ordas.

WORKERS' COMPENSATION APPEALS BOARD

/s/ James C. Cuneo

I CONCUR,

/s/ Merle C. Rabine

/s/ Janice Jamison Murray

DATED AND FILED IN SAN FRANCISCO, CALIFORNIA
9/26/06

SERVICE BY MAIL ON SAID DATE TO ALL PARTIES AS SHOWN ON THE OFFICIAL ADDRESS RECORD.

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