

No. 17-613

IN THE
SUPREME COURT OF THE UNITED STATES

—oOo—

..... Linda Shao,
Petitioner,

vs.

Tsan-Kuen Wang
Respondent.

—oOo—

On Petition For A Writ Of Certiorari
To California Court of Appeal Sixth Appellate
District (H040395) based on California Supreme
Court's Denial of July 19, 2017 (S242475)
[Related Petitions pending with this
Court: No. 17-82 and No. 17-256]

Petition for Rehearing

YI TAI SHAO, ESQ.
SHAO LAW FIRM, P.C.
4900 Hopyard Road, Ste. 100
Pleasanton, CA 94588
Telephone: (408) 873-3888
Fax: (408) 418-4070
Petitioner in Pro Per

I. TABLE OF CONTENTS

PETITION FOR REHEARING1

I. THE DIRECT CONFLICT OF INTERESTS OF THE EIGHT JUSTICES WITHOUT CONSIDERING WHETHER JAMES MCMANIS, ESQ. IS INFLUENCING THE JUSTICES2

A. Caperton and Liljeberg are controlling 3

B. this court’s differential treatment 4

C. lack of financial interest disclosure 5

D. Denial of recusal by the challenged justices at this court were criticized by wisconsin supreme court.. 5

E. this court cannot ignore the irregularities of the clerk’s office that took place since September 2017. 6

II. New Facts Supporting Recusal7

A. Chief Justice is an honorary bencher of middle temple in london..... 7

B. mcmanis faulkner law firm and its partners continued their extrajudicial contacts..... 7

C. new facts of actual prejudice..... 10

VERIFICATION13

CERTIFICATE OF COUNSEL14

APPENDIX

	Appendix	App
1	Statutes/Rules/Policies Involved [Table of Contents are on App.1-2]	App .1- 22
2	January 8, 2018's Order to Deny Petition for Writ of Certiorari in 17- 613	App .23
3	January 8, 2018's Order to Deny Petition for Rehearing in 17-256	App .24
4	[PARAGRAPH 3 INDICATED THAT CHIEF JUSTICE IS AN HONORARY BENCHER OF MIDDLE TEMPLE OF LONDON] ABA President William C. Hubbard named as Honorary Bencher at the Middle Temple in London WASHINGTON, June 18, 2015	App .25
5	THE SUPREME COURT HOSTS THE AMERICAN INNS OF COURT CELEBRATION OF EXCELLENCE On October 21, 2017	App .26
6	SANTA CLARA COUNTY BAR ASSOCIATION (SCCBA) INSTALLATION CEREMONY & RECEPTION, hosted by James McManis on January 24 2018	App .27
7	[Recent California Courts' stalling appeal—the Notice of Appeal was filed on October 30, 2017 but there is no such appeal docketed at California	App .28

	Sixth District Court of Appeal— already 3 months!] NOTICE OF APPEL	
8	MEMORANDUM filed on 12/21/2017 in Ninth Circuit case 15-16817 led by Judge J. Wallace	App .29
9	60(b) motion filed on January 4, 2018 to vacate Judge Wallace’s Memorandum in 15-16817	App .32- 37

TABLE OF AUTHORITIES

Cases

<u>Caperton</u>	4
<u>Caperton v. A.T. Massey Coal Company</u> , 556 US 868 (2009)	1, 4
<u>Cheney v. US Dist. Court for the Dist. Of Columbia</u> , 540 US 1217 (2004)	6
<u>Cheney v. US Dist. Court for the Dist. Of Columbia</u> , 541 US 913 (2004) (Scalia J.).....	6
<u>Comer v. Murphy Oil USA</u> , 607 F.2d 1049, 1057 (5 th 2010)	2
<u>Ernest v. US Attorney for the S. Dist. Of Alabama</u> , 474 US 1016 (1985) (J. Powell).....	5
<u>Gravel v. United States</u> , 409 US 902 (1972) (J. Rehnquist)	5
<u>Guy v. United States</u> , 409 US 896 (1972) (J. Blackmun & J. Rehnquist)	6
<u>Hanrahan v. Hampton</u> , 446 US 1301 (1980).....	6
<u>Kerpelman v. Attorney Grievance Comm’n of Maryland</u> , 450 USS 970 (1981) (C.J. Burger)	5
<u>Laird v. Tatum</u> , 409 US 824 (1972).....	5

<u>Liljeberg v. Health Services Acquisition Corp.</u> (US 1988) 486 US 847	4
<u>Liljeberg v. Health Servs. Acquisition Corp.</u> , 486 US 847 (1988).....	1
National Education Assoc. v. Lee County Board of Public Instruction, 467 F.2d 477 (5 th Cir. 1972).....	2
<u>Orion Tire Corp. v. Goodyear Tire & Rubber Co., Inc.</u> , 268 F.3d 1133	14
<u>Serzysko v. Chase Manhattan Bank</u> 409 US 1029 (J. Powell & J. Rehnquist)	5
<u>State v. Allen</u> , 2010 WI 10 (2010).....	7
<u>Tanner v. United States</u> , 483 U.S. 107.....	8
<u>U.S. Fidelity Ins. & Guar. Co. v. Mich. Catastrophic Claims Ass'n</u> , 484 Mich. 1 (Mich. 2009)	7
Statutes	
28 U.S.C.S. §455(b)(1),(4)	2
28 USCS §455	4
Fourteenth Amendment	1
Rule 60(b) of F.R.C.P.	1
the First Amendment	6
Rules	
Canon 3(c)(1) of Code of Conduct for U.S. Judges	4
Canon 4(D)(1) of Code of Conduct for U.S. Judges....	9
Rule 60(b)(6)4	4
Supreme Court Rule	44

PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44, Petitioner respectfully petitions this Court for rehearing of January 8, 2018's Order denying the Petition for Writ of Certiorari. This Petition is based on the extraordinary circumstances of a substantial or controlling effect that the Request for Recusal filed on December 19, 2017 was not decided and therefore the order is **void**. The Due Process Clause of the Fourteenth Amendment requires disinterested judges. The determination of the issues presented by the Request for Recusal is necessary prior to any substantive ruling on the merits of the Petition as required by 28 USC §455. Caperton v. A.T. Massey Coal Company, 556 US 868 (2009)

Just like Caperton, the gifts in the estimated value of \$266,000 to the eight Justices' 38 clerks pose sufficiently substantial risk that absent recusal, the eight Justices would review a Petition affecting the very basic function of their biggest donor, the American Inns of Court. The January 8, 2018 order should be vacated pursuant to Rule 60(b) of F.R.C.P. according to Liljeberg v. Health Servs. Acquisition Corp., 486 US 847 (1988).

Before discovering these financial interests on November 25, 2017, Petitioner only learned that Justice Kennedy and Justice Ginsburg have conflicts of interest arising from the two chapters of the American Inns of Court established in their names. Because of their names are associated with the Inns of Court, this association presented an appearance of bias requiring recusal from ruling on the issues presented in the Petitions, including Petition No. 17-82, 17-256 and 17-613. Neither Justice recused

themselves. Petitioner submits that recusal was required by 28 U.S.C.S. §455(b)(1),(4).

Two Requests for Recusal were filed on Dec.8, 2017 for 17-256 and Dec.19, 2017 for this Petition. Both Petitions were denied on January 8, 2018 but the Justices and this court did not rule on the Requests for Recusal, for the first time in the 225 years' history of this Court. Petitioner submits that the court has a duty to decide Recusal (O'Hair v. Hill, 641 F.2d 307 (5th Cir. 1981) ft.1), which is "absolute" (Comer v. Murphy Oil USA, 607 F.2d 1049, 1057 (5th 2010)) and is constitutionally imposed (National Education Assoc. v. Lee County Board of Public Instruction, 467 F.2d 477 (5th Cir. 1972)).

I. THE DIRECT CONFLICTS OF INTERESTS OF THE EIGHT JUSTICES WITHOUT CONSIDERING WHETHER JAMES MCMANIS, ESQ. IS INFLUENCING THE JUSTICES

Based on the objective facts of the eight Justices' substantial financial interests, awards/gifts received from the American Inns of Court and two Justices' names' association with this club presenting substantial personal interest, any reasonable person may believe that the eight Justices are unable to consider impartially as to the issues in the three Petitions (17-82, 17-256 and 17-613) which challenged the legality of the function of this club.

Take this Petition for Writ of Certiorari for example, the "QUESTIONS PRESENTED" included:

"1. Does due process require disqualification of the Court of Appeal where the interested parties have extrajudicial relationship with the Justices of the Court of Appeal who are mostly from the

trial court where the interested parties are also attorneys and quasi-employee(s) for the trial court? How to handle the appeal when there is direct conflicts of interest with the Sixth Appellate District?

2. Should judges who are members of the American Inns of Court be required as a matter of due process to disclose their social relationship with lawyers who are members of the Inns of Court and who are appearing before the judges?

3. Where the Appellate Court has potential conflicts of interests because of attorney-client relationships, long term regular social relationship and colleague relationships with a party, must the Appellate Court disclose potential conflicts of interest and apply neutral standards to their resolution?"

A. CAPERTON AND LILJEBERG ARE CONTROLLING

Caperton v. A.T. Massey Coal Company, 556 US 868 (2009) is the controlling authority. Caperton has similar facts. The issue of Caperton is "whether the *Fourteenth Amendment* was violated when one of the majority justices refused to recuse himself due to receiving large campaign contributions." This Court held that absent recusal, the judge would review a judgment of his biggest donor, which was "a serious, objective risk of actual bias that required recusal." See also, Canon 3(c)(1) of Code of Conduct for U.S. Judges (App.9)

Pursuant to Caperton, actual bias is not necessary, and proof of actual effect on the consideration of the Petitions is not necessary, even if such proof were possible.

Further, pursuant to Liljeberg v. Health Services Acquisition Corp. (US 1988) 486 US 847, vacatur is a

proper remedy to an order made in violation of Rule 60(b)(6) and that the judge should have recused himself pursuant to 28 USCS §455 if a reasonable person knowing the relevant facts would have expected that judge to have been aware of the conflict of interests, even if the judge was not conscious of the circumstances creating the appearance of impropriety.

The Liljeberg test for applying Rule 60(b) vacatur is satisfied here as two Justices' name association with the American Inns of Court were referenced already 7 times in the three Petitions and the financial interests were presented twice by Requests for Recusal.

B. THIS COURT'S DIFFERENTIAL TREATMENT

Justice Rehnquist issued a lengthy opinion in Laird v. Tatum, 409 US 824 (1972) regarding the issue of recusal of himself. Other requests for recusal were denied without stating a reason. E.g., Ernest v. US Attorney for the S. Dist. Of Alabama, 474 US 1016 (1985) (J. Powell), Kerpelman v. Attorney Grievance Comm'n of Maryland, 450 US 970 (1981) (C.J. Burger), Serzysko v. Chase Manhattan Bank 409 US 1029 (J. Powell & J. Rehnquist), Gravel v. United States, 409 US 902 (1972) (J. Rehnquist); Guy v. United States, 409 US 896 (1972) (J. Blackmun & J. Rehnquist), Hanrahan v. Hampton, 446 US 1301 (1980), Cheney v. US Dist. Court for the Dist. Of Columbia, 540 US 1217 (2004); Cheney v. US Dist. Court for the Dist. Of Columbia, 541 US 913 (2004) (Scalia J.)

As discussed above, the duty to decide recusal is absolute and Constitutionally-imposed. Petitioner's request for recusal should be decided under the First Amendment.

C. LACK OF FINANCIAL INTEREST DISCLOSURE

Furthermore, none of the eight Justices made statutory disclosure of the financial interests they and their Clerks have received from the American Inns of Court, as required by 28 U.S.C. §455(c) (App.2) and Guide to Judiciary Policy, Judicial Conference Regulations on Gifts, §620.50. (App.14)

D. DENIAL OF RECUSAL BY THE CHALLENGED JUSTICES AT THIS COURT WERE CRITICIZED BY WISCONSIN SUPREME COURT

The Wisconsin Supreme Court in State v. Allen, 2010 WI 10 (2010) cited U.S. Fidelity Ins. & Guar. Co. v. Mich. Catastrophic Claims Ass'n, 484 Mich. 1 (Mich. 2009), and held that “Caperton has to mean that the challenged justice can’t make the recusal decision alone.” I.d. at P.52.

Wisconsin Supreme Court further criticized this Court’s denial of recusal by the challenged Justices without stating a reason (except in Laird v. Tatum, supra) by stating that:

“Because the Court’s denial of the recusal motion offers no explanation and does not show the reasoning of the justice in deciding the recusal motion, the assumption is that the individual justice’s decision has not been subject to the court review. The failure of the Court to review an individual justice’s decision on recusal motions has been criticized in the legal literature.” See, i.d. at footnote 36.

In Allen, Wisconsin Supreme Court opined that there should be a court’s review regarding the challenged judge’s denials of recusal. It reasoned:

“An examination of recusal practice at the United States Supreme Court reveals that even while the Court has, as a matter of tradition or general practice, left recusal decisions to individual justices, **the Court appears always to have retained jurisdiction over recusal motions and maintained the authority** to guarantee a fully qualified panel of justice. At least once, the members of the Court have, by majority vote, curtailed another sitting justice (Justice William O. Douglas) from participation in the court’s decision.” I.d., at P.35 [emphasis added]

**E. THIS COURT CANNOT IGNORE THE
IRREGULARITIES OF THE CLERK’S OFFICE THAT
TOOK PLACE SINCE SEPTEMBER 2017.**

Judicial council attributed the “Day-to-day responsibility for judicial administration to the individual court.” (App.20) The Clerk is not allowed to tamper with the clerk’s records and refuse to record filing. See, FRCP Rule 79(a)(1), (d) [App.3]; FRAP Rule 45(a)(2)[App.4]; 18 USC §2071.

Such irregularities, apparently influenced by James McManis’s law firm, further constitute felonies of 18 USC §371. In Tanner v. United States, 483 U.S. 107, at Page 128 (1987), this Court held that :

“the fraud covered by the statute "reaches 'any conspiracy for the purpose of impairing, obstructing or defeating the lawful function of **any department of Government.**"[emphasis added]

Therefore, this court cannot ignore the irregularities of the Clerk’s Office.

II. NEW FACTS SUPPORTING RECUSAL

A. CHIEF JUSTICE IS AN HONORARY BENCHER OF MIDDLE TEMPLE IN LONDON

Firstly, Chief Justice John G. Roberts is not only an Honorary Bencher of the Kings' Inn but an Honorary Bencher of Middle Temple in London (App25: ABA's News Release, ¶ 3). Middle Temple of London is the first partner to American Inns of Court (See Request for Recusal, A.020), that is directly related to the Temple Bar Foundation and Temple Bar Scholarship of the American Inns of Court, the source of the financial interests at issue regarding Petitioner's Request for Recusal.

This shows Chief Justice's relationship involved with the substantial financial benefits at issue, and indicates the association of Chief Justice's name with the American Inns of Court as being the Honorary Bencher of the Middle Temple in London and Kings' Inn, partner to the American Inns of Court. This may suggest the "frequency" contacts referred in Canon 4(D)(1) of Code of Conduct for U.S. Judges.

B. MCMANIS FAULKNER LAW FIRM AND ITS PARTNERS CONTINUED THEIR EXTRAJUDICIAL CONTACTS

McManis Faulkner law firm, James McManis and Michael Reedy continued their extrajudicial contacts with the judges/justices at all levels including with this court in the past 3 months.

As mentioned in the Petition for Writ of Certiorari ["Petition"], James McManis is an

Honorary Bencher of the Kings' Inn and Master at San Francisco Intellectual Property American Inn of Court. Mr. McManis is the third one receiving the highest honor from the Inns of Court, while Chief Justice is the second one. (See Request for Recusal, A.008) It is without any doubt that Mr. McManis is well-recognized by the American Inns of Court to be one of the "leading American attorneys" who formed and sponsored the Temple Bar Foundation with its main activity being the Temple Bar Scholarship.

As mentioned in the Petition, while Mr. McManis controls the S.F. Bay Area Intellectual Property Inn, Michael Reedy is the President-Elect of the William A. Ingram American Inn of Court of the American Inns of Court ("Ingram Inn"). Presiding Judge Patricia Lucas, Judge Theodore Zayner at Santa Clara County Court, and Justice Patricia Bamattre-Manoukian at California Sixth District Court of Appeal are members at the Executive Committee of the Ingram Inn with Michael Reedy for 10+ years with frequent meetings/meals 14 times a year.

All of these judges/justice contributed to continuing parental deprivation of Petitioner in the underlying family court case (105FL126882). Judge Zayner stalled child custody return from 2011 until 2016; Judge Zayner assigned the custody trial to Judge Lucas who conducted an irregular trial and irregular decision of November 4, 2013 that was likely written by McManis Faulkner law firm.

Judge Lucas further helped McManis Faulkner to stall Petitioner's appeal from her child custody order of 2013 until now for almost four (4) years already by blocking preparation of the records on appeal. Judge Lucas further removed the docket of the family court

case away from the public access from February through about October of 2017 to be “confidential file”.

Justice Bamattre-Manoukian denied Petitions for Writ of Habeas Corpus and denied Petition for writ to challenge recusal denials of Judge Zayner.

McManis Faulkner, LLP published a news dated October 21, 2017: “The Supreme Court Hosts the American Inns of Court Celebration of Excellency” and stated that Michael Reedy was “invited by the American Inns of Court” which was “hosted by Justice Elena Kegan”. (App.26) This private membership-restricted club has been using the highest court to conduct its business. (App.26) While the three Petitions were all pending with this Court, Justice Kegan who is one of the eight Justices has reason to know Michael Reedy.

As for the state court level, McManis Faulkner, LLP’s website published a news that it sponsored the Santa Clara County Bar Association’s [“SCCBA”] Judges’ Night on November 1, 2017. The Judges have been frequently associated with Michael Reedy via the Ingram Inn or being the client of James McManis who received free legal service on their “personal affairs” (Request for Recusal, A.023-35), and the Santa Clara County Court has been McManis Faulker’s client.

It published another news that James McManis hosted the SCCBA’s 2018 Installment Ceremony and Reception, where Judge Patricia Lucas, the Presiding Judge of the Santa Clara County Court, installed the 2018 Officers and 22 Trustee of the SCCBA Board. (App.27) Judge Lucas has frequent extrajudicial contacts with Michael Reedy through the Ingram Inn.

McManis Faulkner, LLP removed the webpage of “Representative Clients” in late May of 2017. The photocopy of the “Representative Clients” is attached as A.176 to the Request for Recusal. Both SCCBA and Santa Clara County Superior Court are their “Representative clients.” SCCBA, having been advised by its attorney James McManis, is the only bar association in the US that failed to follow the ethical rule of Rule 5-300 of California Rules of Professional Conduct. The SCCBA proudly published on its website that “The SCCBA enjoys a unique and special relationship with the judiciary in Santa Clara County, both state and federal.”
<https://www.sccba.com/?page=benchbar>.

1. The public has lost confidence of the integrity of the court by the “cozy” relationship between McManis Faulkner law firm and the courts

Evidence was provided in this Petition and Request for Recusal about such danger of loss of public confidence, including Attorney Meera Fox’s declaration (Petition, A.124-153), McManis Faulkner law firm’s expert witness Carroll Collins, III (Recusal, A.173), Mr. Michael Bruzzone (Recusal, A.193) and Petitioner.

C. NEW FACTS OF ACTUAL PREJUDICE

Thirdly, as commented by Attorney Meera Fox, the “shenanigans continue”. There are new facts showing McManis Faulkner law firm’s continuous manipulating the state Court and the Ninth Circuit. Yet, this Court has ignored the risk of future injustice and denied the Petition for Writ of Certiorari.

As mentioned in the Petition, McManis Faulkner law firm conspired with the California courts to stall

Petitioner's jury trial in 112CV220571 for already 25 months since December 10, 2015 (already passed the 5 years' statute of limitations) and the appeal from the vexatious litigant order for 2.5 years, which are subject of Petition 17-82.

Petitioner's custody appeal (from Presiding Judge Patricia Lucas's order) was stalled by such conspiracies for almost 4 years (H040395) and this Petition is to appeal from the appellate court's denial of the motion to change place of appeal and trial and reverse Judge Lucas's order. Santa Clara County Court, as led by Presiding Judge Lucas, has blocked Petitioner's complete access to the family court (105FL126882) and civil court (112CV220571) and denied all motions to change place of trial.

Presiding Judge Lucas even removed the family case away from the Case Information of the court's website (removed it to become "confidential file") for about 8 months in 2017. (Petition, App.136, ¶31 of Meera Fox's declaration about "conspiracies")

The same irregularities were shown in this Court since September 2017, including delay filing, deterring filing, altering the dockets, creating false notice. On October 25, 2017, on the ensuing morning after this Petition was docketed, Supervising Clerk Jeff Atkins of this Court directed the docketing clerk to return the Petition, to alter the decision date from April 28, 2017 to June 8, 2017 and he said to the docketing clerk that "The Respondent should be "McManis Faulkner, LLP" only and not include James McManis and Michael Reedy." This incident suggests that James McManis, the leading American attorney of the American Inns of Court and this Court's admittee, has influenced Mr. Atkins and disrupted the Clerk's Office's function in violation of 18 USC §371.

In the same scheme, recently, California Sixth District Court of Appeal have not docketed two appeals of Petitioner, one was filed on October 30, 2017 in the family case (See App.28), and another was filed on January 17, 2018 (112CV220571).

17-256 was to appeal from the Ninth Circuit's short Memorandum (1 page or so) in the federal case of Shao v. McManis Faulkner, LLP, James McManis and Michael Reedy, where the district court judge Honorable Lucy H. Koh dismissed the complaint based on defendants' 12b motion and denied recusal by a footnote of the same dismissal order. The Ninth Circuit did not discuss the new facts of undisclosed relationships between USDC Judge Lucy H. Koh's and James McManis.

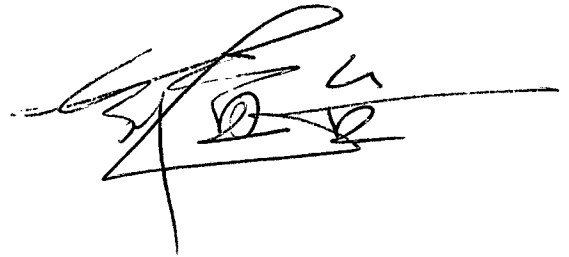
On December 21, 2017, 3 day after "submission", Judge J. Craig Wallace, the inventor of the function of the American Inns of Court, promptly denied the appeal in 15-16817 on December 21, 2017 with another extremely short Memorandum (App.29-31).

Both Memorandums failed to discuss any issues for appeal and ignored new facts of McManis Faulkner law firm's conspiracies with the courts (App.32-37), by way of alleging that news facts could not be considered, in conflicts with the Ninth Circuit's long lasting rule to allow new facts in Reply stage for 12b dismissals. E.g., Orion Tire Corp. v. Goodyear Tire & Rubber Co., Inc., 268 F.3d 1133

Sarcastically, while Petitioner's 28 USC §455 motion specified to transfer appeal to a court without influence of the American Inns of Court, the designer of the American Inns of Court led the appellate panel to deny appeal.

CONCLUSION The Order of Jan. 8, 2018 is void. Rehearing should be granted.

Dated: February 1, 2018
/S/ Yi Tai Shao
Yi Tai Shao, Esq., in pro per
SHAO LAW FIRM, P.C.

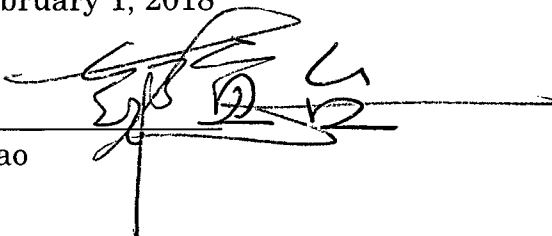
A handwritten signature in black ink, appearing to be 'Yi Tai Shao', written over a horizontal line.

4900 Hopyard Road, Ste. 100
Pleasanton, CA 94588
Tel. No.: (408) 873-3888
Fax No.: (408) 418-4070
attorneylindashao@gmail.com

VERIFICATION

The undersigned declares under the penalty of perjury under the laws of the U.S. that the foregoing is true and accurate to the best of her knowledge.


Dated: February 1, 2018



Yi Tai Shao

CERTIFICATE OF COUNSEL

I hereby certify that this petition for rehearing is presented in good faith and not for delay.

A handwritten signature in black ink, appearing to read 'Yi Tai Shao', written over a horizontal line.

Yi Tai Shao, Esq., in pro per
SHAO LAW FIRM, P.C.
4900 Hopyard Road, Ste. 100
Pleasanton, CA 94588
Tel. No.: (408) 873-3888
Fax No.: (408) 418-4070
attorneylindashao@gmail.com

STATUTES/RULES/POLICIES INVOLVED

I..... CONSTITUTION AND STATUTES AND
FEDERAL RULES..... 3

1. CONST. ART. III, 3

2. CONSTITUTION, FIRST AMENDMENT:..... 3

3. Constitution, Fourteen Amendment§1:..... 3

4. 28 USCS §455..... 3

5 F.R.C.P. RULE 5(D) (4). 4

6 F.R.C.P. RULE 60(B) AND (D) 4

7. F.R.C.P. Rule 79 (Records Kept by the Clerk) ... 5

8. FRAP RULE 45 (CLERK'S DUTIES)..... 6

9 BANKRUPTCY R.5003..... 6

10 18 USCS § 371..... 7

11. 18 U.S. CODE § 2071..... 7

II..... CODE OF CONDUCT FOR UNITED
STATES JUDGES..... 7

1. CANON 1: A JUDGE SHOULD UPHOLD THE
INTEGRITY AND INDEPENDENCE OF THE
JUDICIARY..... 8

2. CANON 2: A JUDGE SHOULD AVOID
IMPROPRIETY AND THE APPEARANCE OF
IMPROPRIETY IN ALL ACTIVITIES 8

3. CANON 2A. 9

4. CANON 2B..... 9

5. CANON 3: A JUDGE SHOULD PERFORM
THE DUTIES OF THE OFFICE FAIRLY,
IMPARTIALLY AND DILIGENTLY 10

6. CANON 4: A JUDGE MAY ENGAGE IN
EXTRAJUDICIAL ACTIVITIES THAT ARE
CONSISTENT WITH THE OBLIGATIONS OF
JUDICIAL OFFICE 12

III.GUIDE TO JUDICIARY POLICY VOL 2A:
CODES OF CONDUCT CH 3: CODE OF
CONDUCT FOR JUDICIAL EMPLOYEES.. 14

1. § 310.30 DEFINITIONS..... 14

App.2

2. CANON 2: A JUDICIAL EMPLOYEE SHOULD
AVOID IMPROPRIETY AND THE APPEARANCE
OF IMPROPRIETY IN ALL ACTIVITIES..... 14

3.CANON 3: A JUDICIAL EMPLOYEE SHOULD
ADHERE TO APPROPRIATE STANDARDS IN
PERFORMING THE DUTIES OF THE OFFICE ... 14

IV. GUIDE TO JUDICIARY POLICY VOL 2 C:
§ 620 JUDICIAL CONFERENCE
REGULATIONS ON GIFTS & HONORARIA

..... 15

1. § 620.25 DEFINITION OF GIFT..... 15

2. § 620.30 SOLICITATION OF GIFTS BY A
JUDICIAL OFFICER OR EMPLOYEE 16

3. § 620.35 ACCEPTANCE OF GIFTS BY A
JUDICIAL OFFICER OR EMPLOYEE;
EXCEPTIONS..... 16

4. § 620.45 ADDITIONAL LIMITATIONS 18

5. § 620.50 DISCLOSURE REQUIREMENTS ... 18

6. § 1020.30 PROHIBITION ON RECEIPT OF
HONORARIA 18

V. JUDICIAL ADMINISTRATION
[HTTP://WWW.USCOURTS.GOV/ABOUT-
FEDERAL-COURTS/JUDICIAL-](http://www.uscourts.gov/about-federal-courts/judicial-administration)

ADMINISTRATION 20

INDIVIDUAL COURTS 20

§1420.10 ADMINISTRATIVE OFFICE..... 21

VI RULE 5-300 OF CALIFORNIA RULES OF
PROFESSIONAL CONDUCT..... 21

I.

**CONSTITUTION AND STATUTES AND
FEDERAL RULES**

1. **CONST. ART. III**, The judicial Power of the United States, shall be vested in one supreme Court....

2. **CONSTITUTION, FIRST AMENDMENT:** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom...to petition the Government for a redress of grievances.

3. **CONSTITUTION, FOURTEEN AMENDMENT§1:** ...NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

4. **28 USCS §455** Disqualification of justice, judge, or magistrate [magistrate judge]:
(a) Any justice,... of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
(b) He shall also disqualify himself in the following circumstances:
(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

.....

App.4

(4) He knows that he, individually, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

.....

(c) A judge should inform himself about his personal and fiduciary financial interests.....

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes ... appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

.....

(e) No justice, judge, or magistrate [magistrate judge] shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b).

Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

5. F.R.C.P. RULE 5(D) (4): "Acceptance by the Clerk. The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice."

6. F.R.C.P. RULE 60(B) AND (D)

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

App.5

- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

.....

(d) Other Powers to Grant Relief. This rule does not limit a court's power to:

- (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

...

- (3) set aside a judgment for fraud on the court.

7. F.R.C.P. Rule 79 (Records Kept by the Clerk)

(a) Civil Docket.

(1) In General. The clerk must keep a record known as the "civil docket" in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States. The clerk must enter each civil action in the docket.

(2) Items to be Entered. The following items must be marked with the file number and entered chronologically in the docket:

(A) papers filed with the clerk;...

(3) Contents of Entries ; Jury Trial Demanded. Each entry must briefly show the nature of the paper filed or writ issued,...

(c) Indexes; Calendars. Under the court's direction, the clerk must:

- (1) keep indexes of the docket ...

(d) Other Records. The clerk must keep any other records required by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

8. FRAP RULE 45 (CLERK'S DUTIES) states in relevant part that:

(a) General Provisions.

(1) Qualifications. The circuit clerk must take the oath and post any bond required by law. Neither the clerk nor any deputy clerk may practice as an attorney or counselor in any court while in office.

(2) When Court Is Open. The court of appeals is always open for filing any paper, issuing and returning process, making a motion, and entering an order. ...

(b) Records.

(1) The Docket. The circuit clerk must maintain a docket and an index of all docketed cases in the manner prescribed by the Director of the Administrative Office of the United States Courts. The clerk must record all papers filed with the clerk and all process, orders, and judgments.

....

(3) Other Records. The clerk must keep other books and records required by the Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, or by the court.

9. BANKRUPTCY R.5003:

(a) Bankruptcy dockets. The clerk shall keep a docket in each case under the Code and shall enter thereon each judgment, order, and activity in that case as prescribed by the Director of the Administrative Office of the United States Courts. The entry of a judgment or order in a docket shall show the date the entry is made.

10. 18 USCS § 371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

11. 18 U.S. CODE § 2071

(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. As used in this subsection, the term "office" does not include the office held by any person as a retired officer of the Armed Forces of the United States.

II.

**CODE OF CONDUCT FOR UNITED STATES
JUDGES**

**1. CANON 1: A JUDGE SHOULD UPHOLD
THE INTEGRITY AND INDEPENDENCE
OF THE JUDICIARY**

An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

COMMENTARY

Deference to the judgments and rulings of courts depends on public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn on their acting without fear or favor. Although judges should be independent, they must comply with the law and should comply with this Code. Adherence to this responsibility helps to maintain public confidence in the impartiality of the judiciary. Conversely, violation of this Code diminishes public confidence in the judiciary and injures our system of government under law.

The Canons are rules of reason. They should be applied consistently with constitutional requirements, statutes, other court rules and decisional law, and in the context of all relevant circumstances. The Code is to be construed so it does not impinge on the essential independence of judges in making judicial decisions.

**2. CANON 2: A JUDGE SHOULD AVOID
IMPROPRIETY AND THE APPEARANCE
OF IMPROPRIETY IN ALL ACTIVITIES**

(A) Respect for Law. A judge should respect and comply with the law and should act at all times

in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(B) Outside Influence. A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge.

3. CANON 2A. An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct. A judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen. Because it is not practicable to list all prohibited acts, the prohibition is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code.

4. CANON 2B.

¶2: A judge should avoid lending the prestige of judicial office to advance the private interests of the judge or others. For example, a judge should not use the judge's judicial position or title to gain advantage in litigation involving a friend or a

member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office.

5. CANON 3: A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE FAIRLY, IMPARTIALLY AND DILIGENTLY

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

(A) Adjudicative Responsibilities.

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

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

.....

(4) A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law.

(5) A judge should take appropriate action upon learning of reliable evidence indicating the likelihood that a judge's conduct contravened this Code or a lawyer violated applicable rules of professional conduct.

(C) Disqualification.

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

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

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

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

(4) Notwithstanding the preceding provisions of this Canon, if a judge would be disqualified because of a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the judge (or the judge's spouse or minor child) divests the interest that provides the grounds for disqualification.

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

Commentary:

CANON 3A(4). The restriction on ex parte communications concerning a proceeding includes communications from lawyers, law teachers, and others who are not participants in the proceeding. A

judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities. A judge should make reasonable efforts to ensure that law clerks and other court personnel comply with this provision.

CANON 3C. Recusal considerations applicable to a judge's spouse should also be considered with respect to a person other than a spouse with whom the judge maintains both a household and an intimate relationship.

**CANON 4: A JUDGE MAY ENGAGE IN
EXTRAJUDICIAL ACTIVITIES THAT ARE
CONSISTENT WITH THE OBLIGATIONS
OF JUDICIAL OFFICE**

.....However, a judge should not participate in extrajudicial activities that detract from the dignity of the judge's office, interfere with the performance of the judge's official duties, reflect adversely on the judge's impartiality, lead to frequent disqualification, or violate the limitations set forth below.

.....

(C)A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

(D) Financial Activities.

(1) A judge ... should refrain from financial and business dealings that exploit the judicial position or involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge may serve as an officer, director, active partner, manager, advisor, or employee of a

business only if the business is closely held and controlled by members of the judge's family.

(3) As soon as the judge can do so without serious financial detriment, the judge should divest investments and other financial interests that might require frequent disqualification.

(4) A judge should comply with the restrictions on acceptance of gifts and the prohibition on solicitation of gifts set forth in the Judicial Conference Gift Regulations.

.....

(H) Compensation, Reimbursement, and Financial Reporting. A judge may accept compensation and reimbursement of expenses for the law-related and extrajudicial activities permitted by this Code if the source of the payments does not give the appearance of influencing the judge in the judge's judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

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

(2) Expense reimbursement should be limited to the actual costs of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or relative. Any additional payment is compensation.

(3) A judge should make required financial disclosures, including disclosures of gifts and other things of value, in compliance with applicable statutes and Judicial Conference regulations and directives.

Commentary

Canon 4D(1), (2), and (3). Canon 3 requires disqualification of a judge in any proceeding in which the judge has a financial interest, however small. Canon 4D requires a judge to refrain from

engaging in business and from financial activities that might interfere with the impartial performance of the judge's judicial duties. Canon 4H requires a judge to report compensation received for activities outside the judicial office

III.

**GUIDE TO JUDICIARY POLICY VOL 2A:
CODES OF CONDUCT CH 3: CODE OF
CONDUCT FOR JUDICIAL EMPLOYEES**

1. § 310.30 DEFINITIONS

(a) Member of a Judge's Personal Staff

As used in this code in canons 3F(2)(b), 3F(5), 4B(2), 4C(1), and 5B, a member of a judge's personal staff means a judge's secretary or judicial assistant, a judge's law clerk, intern, extern, or other volunteer court employee, and a courtroom deputy clerk or court reporter whose assignment with a particular judge is reasonably perceived as being comparable to a member of the judge's personal staff.

**2. CANON 2: A JUDICIAL EMPLOYEE
SHOULD AVOID IMPROPRIETY AND THE
APPEARANCE OF IMPROPRIETY IN ALL
ACTIVITIES**

A judicial employee should not engage in any activities that would put into question the propriety of the judicial employee's conduct in carrying out the duties of the office. A judicial employee should not allow family, social, or other relationships to influence official conduct or judgment. A judicial employee should not lend the prestige of the office to advance or to appear to advance the private interests of others. A judicial employee should not use public office for private gain.

**3. CANON 3: A JUDICIAL EMPLOYEE
SHOULD ADHERE TO APPROPRIATE**

**STANDARDS IN PERFORMING THE
DUTIES OF THE OFFICE**

In performing the duties prescribed by law, by resolution of the Judicial Conference of the United States, by court order, or by the judicial employee's appointing authority, the following standards apply:

A. A judicial employee should respect and comply with the law and these canons. A judicial employee should report to the appropriate supervising authority any attempt to induce the judicial employee to violate these canons. Note: A number of criminal statutes of general applicability govern federal employees' performance of official duties. These include:

- 18 U.S.C. § 201 (bribery of public officials and witnesses);.....

IV.

**GUIDE TO JUDICIARY POLICY VOL 2 C: § 620
JUDICIAL CONFERENCE REGULATIONS ON
GIFTS & HONORARIA**

1. § 620.25 DEFINITION OF GIFT

“Gift” means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other similar item having monetary value but does not include:

- (a) social hospitality based on personal relationships;
- (b) modest items, such as food and refreshments, offered as a matter of social hospitality;
- (c) greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;
- (d) loans from banks and other financial institutions on terms that are available based on factors other than judicial status;

- (e) opportunities and benefits, including favorable rates and commercial discounts, that are available based on factors other than judicial status;
- (f) rewards and prizes given to competitors in contests or events, including random drawings, that are open to the public and that are available based on factors other than judicial status;
- (g) scholarships or fellowships awarded on the same terms and based on the same criteria applied to other applicants and that are based on factors other than judicial status;
- (h) anything for which market value is paid by the judicial officer or employee; and
- (i) any payment, compensation, or reimbursement the acceptance of which is permitted by the Regulations of the Judicial Conference Concerning Outside Earned Income, Honoraria, and Outside Employment.

2. § 620.30 SOLICITATION OF GIFTS BY A JUDICIAL OFFICER OR EMPLOYEE

A judicial officer or employee shall not solicit a gift from any person who is seeking official action from or doing business with the court or other entity served by the judicial officer or employee, or from any other person whose interests may be substantially affected by the performance or nonperformance of the judicial officer's or employee's official duties.

3. § 620.35 ACCEPTANCE OF GIFTS BY A JUDICIAL OFFICER OR EMPLOYEE; EXCEPTIONS

(a) A judicial officer or employee shall not accept a gift from anyone who is seeking official action from or doing business with the court or other entity served by the judicial officer or employee, or from any other person whose interests may be substantially affected by the performance or

nonperformance of the judicial officer's or employee's official duties.

(b) Notwithstanding this general rule, a judicial officer or employee may accept a gift from a donor identified above in the following circumstances:

(1) the gift is made incident to a public testimonial and is fairly commensurate with the occasion;

(2) the gift consists of books, calendars, tapes, or other resource materials supplied on a complimentary basis for official use;

(3) the gift consists of an invitation and travel expenses, including the cost of transportation, lodging, and meals for the officer or employee and a family member to attend a bar-related function, an educational activity, or an activity devoted to the improvement of the law, the legal system, or the administration of justice;

(4) the gift is from a relative or friend, if the relative's or friend's appearance or interest in a matter would in any event require that the officer or employee take no official action with respect to the matter, or if the gift is made in connection with a special occasion, such as a wedding, anniversary, or birthday, and the gift is fairly commensurate with the occasion and the relationship;

.....

(7) the gift is incident to the business, profession or other separate activity of the officer or employee or the spouse or other family member of an officer or employee residing in the officer's or employee's household, including gifts for the use of both the spouse or other family member and the officer or employee (as spouse or family member), so long as the gift is of the type customarily provided to others in similar circumstances and is not offered or enhanced because of the judicial officer's or employee's official position; or

(8) the gift (other than cash or investment interests) is to a judicial officer or employee other than a judge or a member of a judge's personal staff and has an aggregate market value of \$50 or less per occasion, provided that the aggregate market value of individual gifts accepted from any one person under the authority of this subsection shall not exceed \$100 in a calendar year.

4. § 620.45 ADDITIONAL LIMITATIONS

Notwithstanding the provisions of § 620.35, no gift may be accepted by a judicial officer or employee if a reasonable person would believe it was offered in return for being influenced in the performance of an official act or in violation of any statute or regulation, nor may a judicial officer or employee accept gifts from the same or different sources on a basis so frequent that a reasonable person would believe that the public office is being used for private gain.

5. § 620.50 DISCLOSURE REQUIREMENTS

Judicial officers and employees subject to the Ethics in Government Act of 1978 and the instructions of the Financial Disclosure Committee of the Judicial Conference of the United States must comply with the Act and the instructions in disclosing gifts.

6. § 1020.30 PROHIBITION ON RECEIPT OF HONORARIA

(a) No judicial officer or employee shall receive any honorarium while that individual is a judicial officer or employee.

(b) "Honorarium" means a payment of money or anything of value (excluding or reduced by travel expenses as provided in 5 U.S.C. App. §§ 505(3) and (4)) for an appearance, speech or article by a judicial officer or employee, provided that the following shall not constitute an honorarium:

- (1) Payment for a series of related appearances, speeches or articles, provided that the subject matter is not directly related to the officer's or employee's official duties and that the payment is not made because of the officer's or employee's status with the Government. Guide to Judiciary Policy, Vol. 2C, Ch. 10 Page 6
 - (2) Compensation received for teaching activity, provided that in the case of covered senior employees such teaching activity is approved pursuant to § 1020.35 hereof.
 - (3) Awards for artistic, literary or oratorical achievement made on a competitive basis under established criteria.
 - (4) Compensation for any performance using an artistic, athletic, musical, or other skill or talent or any oral presentation incidental thereto, provided that the subject matter is not directly related to the officer's or employee's official duties and further provided that the opportunity is not extended because of the officer's or employee's official position.
 - (5) Compensation for any writing more extensive than an article.
 - (6) Compensation for works of fiction, poetry, lyrics, script or other literary or artistic works.
 - (7) A suitable memento or other token in connection with an occasion or article, provided that it is neither money nor of commercial value.
- (c) Any honorarium which, except for § 1020.30(a) hereof, might be paid to a judicial officer or employee, but which is paid instead on behalf of such officer or employee to a charitable organization described in section 170(c) of the Internal Revenue Code of 1986, shall be deemed not to be received by such individual for purposes of that subsection so long as such payment does not exceed \$2,000 and is

not made to a charitable organization from which such individual or a parent, sibling, spouse, child, or dependent relative of such individual derives any direct financial benefit separate from and beyond any general benefit conferred by the organization's activities. However, no payment may be made to a charitable organization under this subsection if the judicial officer or employee would be prohibited from receiving and retaining the honorarium by any applicable standards of conduct other than § 1020.25(a) or § 1020.30(a) (for example, where an appearance, speech or article is prepared as part of official duties).

V.

**JUDICIAL ADMINISTRATION
[HTTP://WWW.USCOURTS.GOV/ABOUT-
FEDERAL-COURTS/JUDICIAL-
ADMINISTRATION](http://www.uscourts.gov/about-federal-courts/judicial-administration)**

INDIVIDUAL COURTS

Day-to-day responsibility for judicial administration rests with each individual court. By statute and administrative practice, each court appoints support staff, supervises spending, and manages court records.

The chief judge of each court oversees day-to-day court administration, while important policy decisions are made by judges of a court working together. The clerk of court is the executive hired by the judges of the court to carry out the court's administrative functions. The clerk manages the court's non-judicial functions according to policies set by the court and reports directly to the court through the chief judge. Among a clerk's many functions are:

- Maintaining court records and dockets

-
- Sending official court notices and summonses
- Providing courtroom support services

§1420.10 ADMINISTRATIVE OFFICE

(C) AO EMPLOYEES

- (1) Employees should observe high standards of conduct so that the integrity and independence of the judiciary are preserved. AO Code of Conduct, § 220 (General Principles).
- (2) Employees should respect and comply with the law, AO policies, and these ethical standards, and should avoid impropriety and the appearance of impropriety in all activities. AO Code of Conduct, § 220(a).
- (3) Employees may become aware of potential fraud, waste, or abuse through interactions with court units or federal defender organizations (FDOs). This information may arise through the normal transaction of business, during audits or reviews, or in the course of other contact. (A) Employees must report potential fraud, waste, or abuse to the Office of the Deputy Director. See: Reporting Allegations of Fraud Waste or Abuse.

VI RULE 5-300 OF CALIFORNIA RULES OF PROFESSIONAL CONDUCT

- (A) A member shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal unless the personal or family relationship between the member and the judge, official, or employee is such that gifts are customarily given and exchanged. ...
- (B) A member shall not directly or indirectly communicate

App.22

with or argue to a judge or judicial officer upon the merits of a contested matter pending before such judge or judicial officer, except:

- (1) In open court; or
 - (2) With the consent of all other counsel in such matter; or
 - (3) In the presence of all other counsel in such matter; or
 - (4) In writing with a copy thereof furnished to such other counsel; or
 - (5) In ex parte matters.
- (C) As used in this rule, "judge" and "judicial officer" shall include law clerks, research attorneys, or other court personnel who participate in the decision-making process.
- (Amended by order of Supreme Court, operative September 14, 1992.)

App.23

**[NOTICE OF ENTRY OF ORDER-DENIAL OF
PETITION FOR WRIT OF CERTIORARI IN
17-613]**

January 8, 2018

Ms. Linda Shao
4900 Hopyard Road, Suite 100
Pleasanton, CA 94588-7101

Re: Linda Shao
v. Tsan-Kuen Wang
No. 17-613

Dear Ms. Shao:

The Court today entered the following order
in the above-entitled case:
The motion of Mothers of Lost Children for leave to
file a brief as *amicus curiae* is granted. The petition
for a writ of certiorari is denied.

Sincerely,
/s/ Scott S. Harris
Scott S. Harris, Clerk

App.24

**[NOTICE OF ENTRY OF ORDER-DENIAL
OF PETITION FOR REHEARING in 17-256]**
January 8, 2018

Ms. Linda Shao
4900 Hopyard Road, Suite 100
Pleasanton, CA 94588-7101

Re: Linda Shao
v. McManis Faulkner, LLP
No. 17-256

Dear Ms. Shao:

The Court today entered the following order in
the above-entitled case:
The petition for rehearing is denied.

Sincerely,
/s/ Scott S. Harris
Scott S. Harris, Clerk

[PARAGRAPH 3 INDICATED THAT CHIEF JUSTICE IS AN HONORARY BENCHER OF MIDDLE TEMPLE OF LONDON]

ABA President William C. Hubbard named as Honorary Bencher at the Middle Temple in London

WASHINGTON, June 18, 2015 — American Bar Association President William C. Hubbard was called to the Bench as a Master of the Honourable Society of the Middle Temple in London. ... [omitted].

The Middle Temple is one of the four Inns of Court in London exclusively entitled to call their student members to the English Bar as barristers. The Inn is governed by its Masters (also known as Benchers), who are elected from senior members of the bar and judiciary. Of the Inn's roughly 600 Benchers, the majority are Queen's Counsel, senior barristers appointed by the Crown for their eminence as advocates.

Honorary Benchers, such as Mr. Hubbard, **include Chief Justice John G. Roberts Jr.**, British Prime Minister, David Cameron, individuals involved in the arts and members of the Royal Family – currently Prince William, Duke of Cambridge. Sir Walter Raleigh and the great English legal scholar William Blackstone also were Benchers. Five members of Middle Temple signed the Declaration of Independence, seven were signatories to the United States Constitution.

.....[omitted]

https://www.americanbar.org/news/abanews/aba-news-archives/2015/06/aba_president_willia.html

McManis Faulkner, LLP (website)
Event

**THE SUPREME COURT HOSTS THE
AMERICAN INNS OF COURT CELEBRATION
OF EXCELLENCE**

OCTOBER 21, 2017

[photo of Michael Reedy and his wife in front of the
US Supreme Court]

The American Inns of Court Celebration of Excellence is held annually at the Supreme Court of the United States to honor individuals who have contributed their talent, time, energy, and resources to furthering the ideals of the American Inns of Court. **Michael Reedy, President elect of the Honorable William A. Ingram Inn of Court was invited to attend.** The black-tie event began with a reception, followed by the awards presentation in the Court Room and dinner in the Great Hall. **The Honorable Elena Kagan hosted** this year's event. The A. Sherman Christensen Award, the Lewis F. Powell, Jr. Award for Professionalism and Ethics, the Sandra Day O'Connor Award for Professional Service and the Warren E. Burger Prize were presented.

App.27

McManis Faulkner, LLP (website)
Event

**SANTA CLARA COUNTY BAR
ASSOCIATION
(SCCBA) INSTALLATION CEREMONY &
RECEPTION**

Jan. 24, 2018

**McManis Faulkner hosted the Santa Clara
County Bar Association (SCCBA) 2018
Installation Ceremony and Reception.** The
Presiding Judge of the Superior Court officially
installed the 2018 Officers and 22 Trustees of the
SCCBA Board. Outgoing President Kate Wilson
received the President's Award for her leadership.
In addition, The Salsman Award was presented.

[Recent California Courts' stalling appeal—the Notice of Appeal was filed on October 30, 2017 but there is no such appeal docketed at California Sixth District Court of Appeal—already 3 months!]

E-FILED
10/30/2017 10:09 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
2005-1-FL-126882
Reviewed By: C. Chubonie

Santa Clara County Superior Court
Petitioner: Yi Tai Shao aka Linda Shao
Respondent: Tsan-Kuen Wang
Case No.: 105FL126882

Notice of Appeal

NOTICE IS HEREBY GIVEN that (name):Yi Tai Shao aka Linda Shao appeals from the following judgment or order in this case, which was entered on (date): 8/31/2017

X An order or judgment under Code of Civil Procedure, § 904.1 (a)(3)-(13)
Date: October 30, 2017
Christopher W. Katzenbach
/s/ Christopher W. Katzenbach

[Filed with the Ninth Circuit on **December 21, 2017** in 15-16817; Docket Entry 133-1]

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

YI TAI SHAO, AKA Linda Yi Tai Shao, as a proxy for classes to be certified under Counts X, XI, XXIV, the class to be certified under Count XI, the class to be certified under Count XXIV, the class to be certified under Count XXVI,

Plaintiff-Appellant,

v.

TSAN-KUEN WANG; et al.,

Defendants-Appellees.

MEMORANDUM

Appeal from the United States District Court for the Northern District of California William B. Shubb, District Judge, Presiding

Submitted December 18, 2017

Before WALLACE, SILVERMAN, and BYBEE,
Circuit Judges

Yi Tai Shao, AKA Linda Yi Tai Shao, appeals pro se from the district court's judgment dismissing her action alleging various federal and state law claims stemming from state-court custody proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal

for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), for lack of subject matter jurisdiction under Rule 12(b)(1), and for judgment on the pleadings under Rule 12(c). *Arrington v. Wong*, 237 F.3d 1066, 1069 (9th Cir. 2001). We affirm.

The district court properly dismissed Shao's claims against defendants who are judges as barred by judicial immunity. *See Mireles v. Waco*, 502 U.S. 9, 10-12(1991) (per curiam) (the only exceptions to judicial immunity are if the actions were not taken in the judge's judicial capacity or if there is a complete absence of jurisdiction); *Ashelman v. Pope*, 793 F.2d 1072, 1075-76 (9th Cir. 1986) (en banc) (judges are immune from suit for acts performed in their official capacity); *see also* 42 U.S.C. § 1983 (barring injunctive relief against a judicial officer "unless a declaratory decree was violated or declaratory relief was unavailable").

The district court properly dismissed Shao's federal claims against the Attorney General of California on the basis of Eleventh Amendment immunity *See Seven Up Pete Venture v. Schweitzer*, 523 F.3d 948, 952-53 (9th Cir. 2008) (describing Eleventh Amendment immunity and the *Ex Parte Young* exception); *Snoeck v. Brussa*, 153 F.3d 984, 986-987 (9th Cir. 1998) ("[A] generalized duty to enforce state law or general supervisory power over the persons responsible for enforcing the challenged provision will not subject an official to suit." (internal citation and quotation marks omitted)).

The district court did not abuse its discretion in dismissing Shao's complaint without leave to amend because amendment would be futile. *See*

Serra v. Lappin, 600 F.3d 1191, 1195, 1200 (9th Cir. 2010) (setting forth standard of review).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983 n.2 (9th Cir. 2009); *Acosta-Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1993) (issues not supported by argument in pro se appellant's opening brief are waived).

We do not consider documents and facts that were not presented to the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990).

All pending motions and requests are denied.

AFFIRMED.

**[Filed with the Ninth Circuit on Jan. 4, 2018 in
15-16817; Docket Entry 134-1]**

YI TAI SHAO, AKA Linda Yi Tai Shao,
Plaintiff - Appellant,

vs.

Edward Davila, et al.
Defendants - Appellees.

**APPELLANT'S MOTION TO VACATE THE
MEMORANDUM PURSAUNT TO FEDERAL
RULE OF CIVIL PROCEDURE RULE 60(b)(6);
REQUEST FOR EN BANC DECISION ON THIS
MOTION**

To the Honorable Judges of the Court of
Appeals For The Ninth Circuit:

MOTION

On November 21, 2017, Judge J. Wallace issued a short Memorandum consisting of 34 lines. The first page of the Memorandum contained 2 lines, second page contained 18 lines and the third page, 14 lines. The two pages' short Memorandum for this Appeal has suggests likelihood of prejudice of this Circuit against Appellant. There are totally only 34 lines where all key issues for this appeal were omitted and the 28 USC §455 motion was omitted from reference, when 28 USC 455 motion should be ruled separately as the first instance.

All major issues were not discussed in the Memorandum. Before assigning to Judge Wallace, the Ninth Circuit has determined to all Appellant's Motion for Judicial Notice and 5 Supplements as well as two declarations of Appellant made pursuant to Rule 1006, to be considered along with the

appeal. Yet, Judge Wallace simply used one sentence to deny all of these pleadings. He wrote "All pending motions and requests are denied."

**THE SHORT 34 LINES' MEMORANDUM
JUSTIFIES ISSUANCE OF A WRIT OF
ERROR**

The Memorandum consisted in substance only 2 pages of conclusions of issues without analysis which justify issuance of a writ of error (Cuyahoga River Power Co. v. Northern Realty Co., 244 U.S. 300, 37 S. Ct. 643 (1917).

**THE SHORT MEMORANDUM SHOULD BE VOID
PURSUANT TO RULE 60 OF F.R.C.P.**

In Liljeberg v. Health Services Acquisition Corp. (US 1988) 486 US 847, the Supreme Court held that vacatur is a proper remedy to an order made in violation of Rule 60(b)(6). At Page 864 of its Opinion, the Supreme Court Court further stated that

"in determining whether a judgment should be vacated for a violation of § 455 (a), it is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process. We must continuously bear in mind that "to perform its high function in the best way 'justice must satisfy the appearance of justice.'"

In re Murchison. 349 U.S. 133. 136. 99 L. Ed. 942, 75 S. Ct. 623 (1955)"

Rule 60(b)(6) is satisfied as a reasonable person reading the 28 USC 455 motion will expect that Judge Wallace knew he had conflicts of interest. Judge Wallace's name was referenced three times in the motion. The title of the motion is

“APPELLANT’S MOTION TO CHANGE PLACE OF APPEAL TO ANOTHER CIRCUIT WHERE IT DOES NOT PROMOTE THE AMERICAN INNS OF COURT AND HAS NO CONNECTION WITH MCMANIS FAULKNER, LLP PURSUANT TO 28 USC §455” Appellant was asking to move the venue of appeal to **“another Circuit where it does not promote the American Inns of Court”** and Judge Wallace is an aggressive promoter of the American Inns of Court since 1977 (See Exhibit A) and actually the designer of the function of the American Inns of Court. (See Exhibit B)

The Opening Brief, the Motion for Judicial Notice and the 1006 Declarations discussed the evidence of conspiracies led by the major financial supporter of the American Inns of Court, James McManis, Michael Reedy and the William A. American Inn of Court.

In Page 11 of the 28 USC §455 motion, Appellant mentioned that two questions were presented in Petition for Writ of Certiorari of 17-256 as below:

1. Should judges who are members of William A. Ingram American Inns of Court and San Francisco Intellectual Property American Inn of Court be required as a matter of due process to disclose their social relationship with lawyers who are members of the Inns of Court and who are appearing before the judges?
2. Where the Appellate Court has potential conflicts of interests because of regular social relationship with a party by way of American Inn of Court, must the Appellate Court disclose potential conflicts of interest and apply neutral standards to their resolution?

The new facts raised by the Appellant in this appeal proceeding was to amend the complaint to join James McManis, Michael Reedy and McManis Faulkner law firm and assert their conspiracies with the existing Appellees/Defendants Judge Theodore Zayner and Judge Patricia Lucas, where McManis Faulkner law firm's connections with the two judges are by way of their long term regular social relationship through the William A. Ingram American Inn of Court and McManis Faulkner law firm has been a major financial supporter of the Inns. Michael Reedy is the President-Elect of the William A. Ingram American Inn of Court. Michael Reedy, Judge Patricia Lucas and Judge Theodore Zayner are all members of the Executive Committee of the William A. Ingram American Inn of Court for more than 10 years.

Therefore, a reasonable person will expect Judge Wallace should have noticed the existence of appearance of bias and prejudice in adjudicating Appellant's appeal, 455b motion, motion for judicial notice and Rule 1006 declarations. Therefore, pursuant to Liljeberg v. Health Services Acquisition Corp. (US 1988) 486 US 847, the Memorandum should be vacated.

**EN BANC DECISION ON THIS MOTION IS
RESPECTFULLY REQUESTED AS BEING
EXTREMELY IMPORTANT**

There is nothing more important than to have an impartial court. In *Williams v. Pennsylvania*, ___U.S.___, 136 S. Ct. 1899, 1903 (2016), the Supreme Court restated the principle that its "precedents set forth an objective standard that requires recusal when the likelihood of bias on the part of the judge 'is too high to be constitutionally tolerable.'" Actual bias is not the standard; the appearance of bias is sufficient to mandate

disqualification under the Constitution. "The Court asks not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, 'the average judge in his position is "likely" to be neutral, or whether there is an unconstitutional 'potential for bias.'" *Williams v. Pennsylvania, supra*, 126 S.Ct. at 1905.

The scope of disqualification required by the Fourteenth Amendment includes cases where a judge has a "direct, personal, substantial, pecuniary interest in reaching a conclusion against [a party] in his case."

Aetna Life Ins. Co. v. Lavoie, 475 U.S. 813, 822, 106 S. Ct. 1580, 1585 (1986), quoting from *Tumey v. Ohio*, 273 U.S. 510, 523 (1927) Such Constitutionally-required impartiality is not limited to situations of pecuniary gain.

In *Williams*, this danger arose when the judge was the former prosecutor of the criminal defendant appearing before him. Other cases present similar situations. See *Johnson v. Mississippi*, 403 U.S. 212, 215-216, 29 L. Ed. 2d 423, 91 S. Ct. 1778 (1971) (*per curiam*) (judge violated due process by sitting in a case in which one of the parties was a previously successful litigant against him); *In re Murchison*, 349 U.S. 133, 137-139, 99 L. Ed. 942, 75 S. Ct. 623 (1955) (judge violated due process by sitting in the criminal trial of defendant whom he had indicted). A biased decisionmaker is constitutionally unacceptable and "our system of law has always endeavored to prevent even the probability of unfairness." *Winthrow v. Larkin*, 421 U.S. 35, 47, 95 S.Ct. 1456, 1464 (1975) quoting from *In re Murchison, supra*, at 136.

Judges and the Court have a duty to disclose conflicts of interest. Canon 2A of Code of Conduct for US Judges states that "An appearance of

impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges." In *Schmitz v. Zilveti*, 20 F.3d 1043 (9th Cir.1994), the Circuit reversed a judgment made based on an arbitration decision, where the arbiter failed to disclose conflicts of interest.

This case presents a situation calling the impartiality of the judges into question. Therefore, Appellant moves to vacate the Memorandum of November 21, 2017.

Dated: January 4, 2018

Respectfully submitted,

SHAO LAW FIRM, PC

By:/s/ Yi Tai Shao

Attorney for Appellant and in pro per