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| OPINION | : | No. 10-804 |
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THE COMMISSION ON JUDICIAL PERFORMANCE has requested an opinion on the following question:

May a judge who has voluntarily retired for disability with the approval of the Commission on Judicial Performance and the Chief Justice of the California Supreme Court be certified to administer oaths under Code of Civil Procedure section 2093(c) and Government Code section 1225?

CONCLUSION

A judge who has voluntarily retired for disability with the approval of the Commission on Judicial Performance and the Chief Justice of the California Supreme Court may not be certified to administer oaths under Code of Civil Procedure section 2093(c) and Government Code section 1225. However, pursuant to a separate statutory scheme, a judge who has voluntarily retired for disability, but who is later found by the Commission on Judicial Performance to be capable of judicial service and is assigned to a court by the Chair of the Judicial Council, may administer oaths while sitting on assignment.

ANALYSIS

An oath or affirmation is a solemn declaration that one's statement is true or that one will be bound to a promise.¹ A person may be required to make an oath or affirmation in a variety of circumstances, such as when called upon to testify as a witness,² or before assuming the duties of a public office.³ A number of statutes authorize various persons to administer oaths or affirmations in different situations.⁴ A judge has authority to administer oaths in proceedings before him or her,⁵ and in all other cases where it may be necessary in the exercise of the court's or the judge's powers and duties.⁶ Judicial officers, along with executive officers and members of the Legislature, also have authority to administer and certify oaths.⁷ In this opinion, we are asked to determine under what circumstances a judge⁸ who has voluntarily retired because of disability may be empowered to administer oaths.

¹ See *Black's Law Dictionary* 922 (Bryan A. Garner ed., abr. 9th ed., West 2010); see also *Bradford v. Bd. of Ed. of City and Co. of San Francisco*, 18 Cal. App. 19, 27 (1912) (oath is attestation that one is bound to perform faithfully and truthfully).

² Evid. Code § 710.

³ See Cal. Const. art. XX, § 3 (held invalid in part by *Vogel v. Los Angeles Co.*, 68 Cal. 2d 18 (1967)); Govt. Code § 1360.

⁴ See e.g. Code Civ. Proc. § 196(a) (jury commissioner assistants); Code Civ. Proc. § 1282.8 (arbitrations); Code Civ. Proc. § 2093(a) (persons empowered to take testimony or decide upon evidence); Code Civ. Proc. § 2093(b) (certified shorthand reporters); Educ. Code § 60 (official matters concerning public schools); Govt. Code § 8205(a)(3) (notaries public); Govt. Code § 11528 (administrative proceedings); Govt. Code § 24057 (county officers deputies); Govt. Code § 40603 (mayors); Govt. Code § 68750 (Commission on Judicial Performance).

⁵ Code Civ. Proc. § 128(a)(7); Code Civ. Proc. § 177 ¶ 4; Code Civ. Proc. § 2093(a).

⁶ See Code Civ. Proc. § 128(a)(7); Code Civ. Proc. § 177 ¶ 4.

⁷ Govt. Code § 1225.

⁸ We use the term "judge" here to refer both to a judge and to a justice.

The Commission on Judicial Performance (Commission)⁹ is the state agency authorized to investigate and act upon matters of judicial misconduct and other conduct prejudicial to the administration of justice.¹⁰ The Commission is vested with the power to disqualify, censure, admonish, remove, or retire judges, subject to review by the California Supreme Court.¹¹ The purposes of Commission proceedings are “protection of the public, ensuring evenhanded and efficient administration of justice, and the maintenance of public confidence in the integrity of the judicial system.”¹²

The Commission has asked us to determine whether judges who take voluntary disability retirement may subsequently be empowered to administer oaths generally, or whether—as is true for other judicial functions—such a judge may only perform oaths while sitting on assignment, after having being reinstated by the Commission for that purpose. We conclude that a judge who has voluntarily retired for disability may not later be empowered to administer oaths generally; but if the judge is found by the Commission to be capable of judicial service and is thereafter assigned to a court by the Chair of the Judicial Council, the judge may administer oaths while sitting on assignment.

Code of Civil Procedure section 2093(c) and Government Code section 1225 enable most former judges to regain the power to administer oaths or affirmations if they meet specified requirements. These provisions do not expressly exclude from their ambit judges who have voluntarily retired for disability. Nevertheless, we construe them as excluding such judges because there are two other statutes (Government Code sections 75060.6 and 75560.6) that govern the circumstances under which a judge who has voluntarily retired for disability may be restored to any judicial capacity—including the

⁹ Established in 1960, the Commission was originally named the Commission on Judicial Qualifications. It was renamed in 1976 (*see* Cal. Proposition 7, approved by voters in November 1976 general election). The composition of the Commission and terms of its members are set forth in California Constitution, article VI, section 8.

¹⁰ *Adams v. Commn. on Jud. Performance*, 8 Cal. 4th 630, 644-645 (1994); *see also* <http://cjp.ca.gov>.

¹¹ Cal. Const. art VI, § 18(b)-(d); *see also Commn. on Jud. Performance v. Super. Ct.*, 156 Cal. App. 4th 617, 621 (2007). If proceedings are brought against a judge or former judge of the Supreme Court, the Commission’s determination “shall be reviewed by a tribunal of 7 court of appeal judges selected by lot.” Cal. Const. art. VI, § 18(f).

¹² *Kloepfer v. Commn. on Jud. Performance*, 49 Cal. 3d 826, 864-865 (1989); *see also* <http://cjp.ca.gov> (“The Commission’s mandate is to protect the public, enforce rigorous standards of judicial conduct and maintain public confidence in the integrity and independence of the judicial system.”).

administration of oaths—and these other statutes contain additional requirements and restrictions. Pursuant to Government Code sections 75060.6 and 75560.6, a judge who has voluntarily retired for disability may be restored to judicial service only after undergoing a medical examination, and once restored may perform judicial functions only while sitting on assignment.

We explain the grounds for our conclusion in greater detail below.

Judges' Retirement Systems

The Constitution requires the Legislature to provide reasonable allowances for the retirement of judges for age or disability.¹³ In 1994, the Legislature adopted a two-tiered system of retirement benefits for judges. Generally speaking, the Judges' Retirement System (JRS) applies to judges elected or appointed to office before November 9, 1994,¹⁴ while the Judges' Retirement System II (JRS II) applies to judges elected or appointed to office on or after November 9, 1994.¹⁵

Disability Retirement for Judges

A judge's disability may lead to retirement in either of two ways. First, pursuant to Government Code section 75060(a), a JRS judge

who is unable to discharge efficiently the duties of his or her office by reason of mental or physical disability that is or is likely to become permanent may, with his or her consent and with the approval of the Chief Justice or Acting Chief Justice and the Commission on Judicial Performance, be retired from office.

As the court of appeal has noted, “[t]his section provides a procedure whereby a judge who is physically or mentally disabled can voluntarily request retirement.”¹⁶ Government Code section 75560.1(a) makes essentially the same procedure available to JRS II judges. For both categories of judges, eligibility for voluntary disability retirement requires either a minimum number of years of judicial service or a disability that arose out of or in the

¹³ Cal. Const. art. VI, § 20.

¹⁴ See Govt. Code §§ 75000-75111.

¹⁵ See Govt. Code §§ 75500-75758.

¹⁶ *Davis v. Commn. on Jud. Qualifications*, 73 Cal. App. 3d 818, 821-822 (1977) (citation omitted).

course of judicial service.¹⁷ A judge's application for a voluntary disability retirement must also be supported by a written statement by a physician or psychiatrist who has personally examined the judge, declaring that the judge is unable to discharge efficiently the duties of the judge's office by reason of a mental or physical disability that is or is likely to become permanent.¹⁸

The second way that a judge's disability may lead to retirement is without the judge's consent. In 1960, the electorate approved a measure that authorized the Supreme Court, on the Commission's recommendation, to remove a judge for specified misconduct, or to retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent.¹⁹ The intent of this provision was to protect the public against "incompetency, misconduct, or non-performance of duties on the Bench."²⁰ The purpose of a proceeding to remove or retire a judge under California Constitution article VI, section 18(d) "is to protect the judicial system and the public which it serves from judges who are unfit to hold office."²¹

In 1994, the voters approved Proposition 190, which transferred the authority to remove a judge or retire a judge for disability to the Commission, and made the Commission's determination subject to discretionary review by the Supreme Court.²²

¹⁷ See Govt. Code § 75061; Govt. Code § 75560.

¹⁸ Govt. Code § 75060(c); Govt. Code § 75560.1(c).

¹⁹ See former Cal. Const. art. VI, § 10b (added by Proposition 10, approved by voters on Nov. 8, 1960). As part of a repeal and reenactment of article VI in 1966 (see Proposition 1, approved by voters on Nov. 8, 1966), former article VI, section 10b was superseded by article VI, section 18.

²⁰ Argument in favor of Proposition 10, Ballot Pamphlet for Gen. Election on Nov. 8, 1960, Pt. I, at 15, in Cal. Sec. of State, *Constitutional Arguments with Amendments, 1936-1960*. "Ballot arguments are accepted sources from which to ascertain the voters' intent." *Delaney v. Super. Ct.*, 50 Cal. 3d 785, 801-802 (1990) (citations omitted).

²¹ *McComb v. Commn. on Jud. Performance*, 19 Cal. 3d Spec. Trib. Supp. 1, 9 (1977) (proceeding to retire judge under Cal. Const. art. VI, § 18(d) is not designed for purposes of punishment).

²² Cal. Proposition 190, approved by the voters Nov. 8, 1994, and operative March 1, 1995 (text available in Westlaw, as CA Legis. R.C. 111 (1994)). Derived from Assembly Constitutional Amendment No. 46 (see 1994 Stat. Res. ch. 111), Proposition 190 substantially amended California Constitution article VI, sections 8 and 18. Among other things, these amendments altered the composition of the Commission, expanded the Commission's authority to impose discipline, expanded the Commission's jurisdiction to

Thus, article VI, section 18(d) currently provides that the Commission “may retire a judge for disability that seriously interferes with the performance of the judge’s duties and is or is likely to become permanent.”²³ Upon petition by the judge, the Supreme Court may review the Commission’s determination.²⁴ Although section 18(e) of article VI states that “[a] judge retired by the commission shall be considered to have retired voluntarily,”²⁵

include former judges, and shifted the authority to make rules for the investigation of judges and for proceedings against judges from the Judicial Council to the Commission.

²³ We note that, since 1984, the Commission has also had the power to order an already-retired judge’s “senior judge” status terminated for incapacity or for failure to carry out the duties of the office. *See* Govt. Code § 68701.5. Under the “senior judge” program, which ended on January 1, 1997, retired judges who met specified criteria could be returned to full-time service, as assigned, and could receive full compensation other than retirement allowance for that service. *See* Govt. Code §§ 75028.1-75028.6.

²⁴ California Constitution article VI, section 18(d) provides:

Except as provided in subdivision (f), the Commission on Judicial Performance may (1) retire a judge for disability that seriously interferes with the performance of the judge’s duties and is or is likely to become permanent, or (2) censure a judge or former judge or remove a judge for action occurring not more than 6 years prior to the commencement of the judge’s current term or of the former judge’s last term that constitutes willful misconduct in office, persistent failure or inability to perform the judge’s duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or (3) publicly or privately admonish a judge or former judge found to have engaged in an improper action or dereliction of duty. The commission may also bar a former judge who has been censured from receiving an assignment, appointment, or reference of work from any California state court. Upon petition by the judge or former judge, the Supreme Court may, in its discretion, grant review of a determination by the commission to retire, remove, censure, admonish, or disqualify pursuant to subdivision (b) a judge or former judge. When the Supreme Court reviews a determination of the commission, it may make an independent review of the record. If the Supreme Court has not acted within 120 days after granting the petition, the decision of the commission shall be final.

²⁵ The legislative history of article VI, section 18(e) indicates that the statement that an involuntarily retired judge “shall be considered to have retired voluntarily” means that the involuntarily retired judge shall be entitled to the same retirement allowance and benefits as a judge who voluntarily retires under JRS or JRS II. For example, in 1965, the

retirement for disability under section 18(d), which is initiated by the Commission and not by the judge, is commonly referred to as “involuntary.”²⁶ We follow that practice here.

We stress that many judges with disabilities are fully capable of performing their judicial duties throughout their careers, and take age or service-based retirement. Disability retirement, whether voluntary or involuntary, involves disability that prevents a judge from being able to perform judicial functions effectively.

Code of Civil Procedure section 2093(c) and Government Code section 1225

We turn now to the statutory provisions that are at the heart of the question. Code of Civil Procedure section 2093(c) provides:

A former judge or justice of a court of record in this state who retired or resigned from office, other than a judge or justice who was retired by the Supreme Court for disability, shall have the power to administer oaths or affirmations, if the former judge or justice requests and receives a certification from the Commission on Judicial Performance that there was no formal disciplinary proceeding pending at the time of retirement or resignation. Where no formal disciplinary proceeding was pending at the time of retirement or resignation, the Commission on Judicial Performance shall issue the certification.

No law, rule, or regulation regarding the confidentiality of proceedings of the Commission on Judicial Performance shall be construed to prohibit the Commission on Judicial Performance from issuing a certificate as provided for in this section.

Government Code section 1225 provides:

California Constitution Revision Commission described the then-existing law (which later became section 18(e)) as providing that a judge could be “retired with benefits” or, if determined to have engaged in misconduct, could be “removed without further salary.” Cal. Const. Rev. Commn., *Second Working Draft, Summary of Existing Judicial Article 5* (Apr. 26, 1965).

²⁶ See e.g. *Davis*, 73 Cal. App. 3d at 822 n. 2 (1977); 2 Witkin Cal. Proc. 5th ch. 2 *Courts* §§ 15, 81 (2008); *State of California, Commission on Judicial Performance — 2010 Annual Report*, 33, 34 (Calif. Commn. on Jud. Performance 2010). We note also that an analysis by the Legislative Counsel of former article VI, section 10b stated that the section would “provide for involuntary retirement of judges for disability.”

Every executive and judicial officer and every Member of the Legislature may administer and certify oaths.

A former judge of a court of record in this state who retired or resigned from office, other than a judge who was retired by the Supreme Court for disability, shall be deemed a judicial officer for purposes of this section, if the former judge requests and receives a certification from the Commission on Judicial Performance that there was no formal disciplinary proceeding pending at the time of retirement or resignation. Where no formal disciplinary proceeding was pending at the time of retirement or resignation, the Commission on Judicial Performance shall issue the certification. No law, rule, or regulation regarding the confidentiality of proceedings of the Commission on Judicial Performance shall be construed to prohibit the Commission on Judicial Performance from issuing a certificate as provided for in this section.

A single bill in 1986 added both the substance of subdivision (c) to Code of Civil Procedure section 2093,²⁷ and the second paragraph of Government Code section 1225 to that section.²⁸ Under both provisions (collectively, the “oath provisions”), certain former judges who have retired or resigned from office may have the power to administer oaths restored, provided there was no formal disciplinary proceeding pending against the judge at the time of the judge’s retirement or resignation.²⁹

However, both oath provisions exclude any judge “who was retired by the Supreme Court for disability” from those who are eligible to be restored to the capacity to administer oaths. The first step in our analysis is to determine whether this exclusion extends to judges who have voluntarily retired for disability. According to established principles of statutory interpretation, our goal “is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, [we] must look first to the words of the statute themselves, giving to the language its usual, ordinary

²⁷ Current subdivision (c) of Code of Civil Procedure section 2093 was originally subdivision (b). *See* 1988 Stat. ch. 1032, § 1 (amending original statute).

²⁸ 1986 Stat. ch. 1418 (Sen. 1789).

²⁹ Adoption of the oath provisions was suggested by a former judge who had resigned and had become the dean of a law school. The dean informed the Legislature that he was sometimes asked to swear in persons who had passed the bar exam or had been elected to public office, but was not authorized to do so under the law as it existed at that time. *See* Assembly Comm. on Jud., Analysis of Sen. 1789 (as amended June 9, 1986), 1985-1986 Reg. Sess. 2 (July 1, 1986).

import . . .³⁰ The words of the statute must be construed in context, and enactments relating to the same subject must be harmonized to the extent possible.³¹ In construing an enactment, “we are not limited to a strict, literal interpretation of its words but we may seek a practical, commonsense construction consistent with the probable intent of the framers.”³² We must avoid constructions that lead to absurd results.³³

The oath provisions echo language that appeared in former article VI, section 18 of the California Constitution, which spoke of a “judge retired by the Supreme Court.”³⁴ As noted above, the oath provisions date from 1986, when the Supreme Court rather than the Commission was empowered to involuntarily retire a judge for a disability that seriously interfered with the judge’s ability to perform judicial duties. Knowing that the overriding purpose of the provision for involuntary disability retirement is protection of the public, we cannot perceive any sensible reason why it should distinguish between a judge who was involuntarily retired by the Supreme Court, and a judge who was involuntarily retired by the Commission.³⁵ We must reject a literal reading of a statute that leads to absurd results. Therefore we construe the oath provisions as excluding all judges involuntarily retired under article VI, § 18(d), whether by the Supreme Court or by the Commission.

If a judge who was involuntarily retired for disability is barred from receiving certification to administer oaths, what of a judge who has *voluntarily* retired for disability under Government Code section 75060 or 75560.1? Unlike involuntarily retired judges, such judges are not expressly excluded from receiving certification under the oath provisions. Ordinarily, when a statute specifies certain exceptions to a general rule, other exceptions are not to be implied or presumed.³⁶ However, this principle is not applicable

³⁰ *Dyna-Med, Inc. v. Fair Empl. & Hous. Commn.*, 43 Cal. 3d 1379, 1386-1387 (1987).

³¹ *Id.* at 1387; *Lungren v. Deukmejian*, 45 Cal. 3d 727, 735 (1988).

³² *Provigo Corp. v. Alcoh. Bev. Control App. Bd.*, 7 Cal. 4th 561, 567 (1994); *see also Lungren*, 45 Cal. 3d at 735 (letter of law should not prevail over spirit).

³³ *Provigo Corp.*, 7 Cal. 4th at 567 (rejecting “plain meaning” construction where it led to absurdity); *see also Dempsey v. Market St. Ry. Co.*, 23 Cal. 2d 110, 113 (1943) (“literal construction which will lead to absurd results should not be given if it can be avoided”).

³⁴ *See* former art. VI, § 18(d) (in effect when oath provisions were enacted).

³⁵ Although the authority to retire judges without their consent shifted to the Commission in 1995, the Commission has not yet had to exercise that authority. Indeed, we are informed that only two judges have been involuntarily retired since 1960.

³⁶ *Wildlife Alive v. Chickering*, 18 Cal. 3d 190, 195 (1976) (citations omitted); *see also*

when its operation contradicts clearly expressed legislative intent.³⁷ We believe that is the case here, because there is a separate statutory scheme, which was already in existence when the oath provisions were enacted, that governs the circumstances under which a judge who has voluntarily retired for disability may be restored to judicial powers. We believe that this other statutory scheme, set forth in Government Code sections 75060.6 and 75560.6, clearly evinces a legislative intent that judges who voluntarily retire for disability may not later be certified to administer oaths under the general oath provisions, but rather may only regain that power as provided for by the restoration scheme.

Government Code sections 75060.6 and 75560.6

Government Code section 75060.6 provides, with respect to JRS judges who have voluntarily retired for disability:

The Commission on Judicial Performance, in its discretion, but not more often than once every two years, may require any judge who is receiving an allowance under this section and who is under the age of 65 years to undergo medical examination. The examination shall be made by one or more physicians or surgeons, appointed by the Commission on Judicial Performance, at the place of residence of the judge or other place mutually agreed upon. Upon the basis of the examination the commission shall determine whether he or she is still incapacitated, physically or mentally, for service as a judge. If the commission determines, on the basis of the results of the medical examination, that he or she is not so incapacitated, he or she shall be a judicial officer of the state, but shall not exercise any of the powers of a justice or judge except while under assignment to a court by the Chairman of the Judicial Council. The allowance of the judge shall cease if he or she refuses an assignment while he or she is not so incapacitated.³⁸

Government Code section 75060.6 dates back to 1957. Government Code section 75560.6, which was added in 1994 when JRS II was implemented, establishes an

People v. Standish, 38 Cal. 4th 858, 870 (2006) (presence of express exceptions ordinarily implies that additional exceptions are not contemplated).

³⁷ *Wildlife Alive*, 18 Cal. 3d at 195 (citations omitted).

³⁸ Assignment under Government Code sections 75060.6 and 75560.6 is distinguishable from assignment under California Constitution article VI, section 6. Subdivision 6(e) of article VI allows the Chief Justice “to expedite judicial business and to equalize the work of judges” by assigning judges to other courts, and provides that a “retired judge who consents may be assigned to any court.”

identical process, and identical conditions, for reinstating JRS II judges who have voluntarily retired for disability.

Generally speaking, it is within the Commission's sole authority to initiate the evaluation process described in Government Code sections 75060.6 and 75560.6 (collectively, the "restoration statutes").³⁹ In 1997, however, the Commission approved Policy Declaration 5.6,⁴⁰ which permits a judge who has voluntarily retired for disability to initiate an evaluation process in order to apply for restoration to judicial capacity.⁴¹

A critical component in the procedure established by the restoration statutes is the medical examination, which the Commission uses to determine whether or not a retired

³⁹ The restoration statutes enable the Commission to prevent a judge who has completely recovered from his or her disability "from continuing to draw a substantial income for not working when he or she is again capable of working and is needed." *Davis*, 73 Cal. App. 3d at 823 (citing Govt. Code § 75060.6).

⁴⁰ The Commission's Policy Declarations "detail the Commission's internal procedures and existing policies." http://www.cjp.ca.gov/governing_provisions.htm.

⁴¹ Commission Policy Declaration 5.6 provides, in relevant part:

(1) An application for restoration to capacity must be in writing, executed by the judge, and be accompanied by one or more medical reports sufficient to establish that the judge is no longer mentally or physically incapacitated and is capable of discharging efficiently the duties of judicial office.

(2) When a judge submits an application for restoration to capacity, the commission will advise the judge if the certifying physician's report or other medical documentation supporting the application is inadequate, and will give the judge thirty (30) days to supply more complete data.

(3) Following receipt of a complete application, the commission may request review of medical reports and documents by independent consultants and/or medical examiners. One or more independent medical examinations may be requested within one hundred twenty (120) days of the first commission meeting after receipt of complete medical records. This time may be extended for good cause. If an independent medical examination is conducted, the commission will provide a copy of the examiner's report to the judge.

Policy Declaration 5.6 also provides a timeline for the Commission to approve or deny the application.

In other ways, Commission Policy Declaration 5.6 parallels the restoration statutes.

judge is still incapacitated for service.⁴² If the medical examination shows that the retired judge still lacks the capacity to serve, the former judge is not eligible for restoration to any judicial powers. This effect is fully consistent with the policy of protecting the public from unfit judges, regardless of whether the judges recognized their incapacity and retired voluntarily, or were involuntarily retired. On the other hand, a retired judge who has been shown by medical examination to be no longer incapacitated may be called back to judicial service, by being assigned to a court by the Chair of the Judicial Council. A restored judge may exercise judicial powers, including the power to administer oaths,⁴³ but only “while under assignment” and as encompassed within the assignment. A restored judge is not vested with judicial powers, such as the power to administer oaths, while on “stand-by” status.⁴⁴

Oath Provisions and Restoration Statutes as Part of Entire Statutory Scheme

In a situation like this one, where we are construing provisions that are scattered among multiple codes, it is especially important not to seize on isolated phrases in one statute or another, but to remember that enactments relating to the same subject must be harmonized to the extent possible.⁴⁵

To that end, we note that the authority granted by the oath provisions issues from the fact that administering oaths is among the normal powers and duties of a functioning judge.⁴⁶ Neither of the oath provisions requires any medical evaluation as a prerequisite to receiving certification to administer oaths. Thus, if these provisions were construed to apply to judges who have voluntarily retired for disability, they would effectively negate the medical examination requirement of the restoration statutes with respect to the power to administer oaths. This would subvert the policy of protecting the public from judges whose disabilities make them unfit for judicial office.⁴⁷ Construing the oath provisions to

⁴² See Govt. Code § 75060.6; Govt. Code § 75560.6.

⁴³ See e.g. Code Civ. Proc. § 128(a)(7); Code Civ. Proc. § 177 ¶ 4; Code Civ. Proc. § 2093(a).

⁴⁴ See *Pickens v. Johnson*, 42 Cal. 2d 399, 406 (1954) (assignment vests judicial powers in a retired judge only during assignment; upon expiration of assignment, judge resumes status as retired judge).

⁴⁵ *Dyna-Med*, 43 Cal. 3d at 1387; *Lungren*, 45 Cal. 3d at 735.

⁴⁶ See Govt. Code § 1225 (“former judge . . . shall be deemed a judicial officer for purposes of this section”).

⁴⁷ We are informed that, since 1966, more than 240 judges have voluntarily retired for disability under Government Code sections 75060(a) and 75560.1(a). We are further

apply to judges who have voluntarily retired for disability would also undercut the restoration statutes' express limitations on the circumstances under which restored judges may administer oaths.

We find no evidence that the Legislature has intended to water down the restoration statutes in this way. It must be assumed that the Legislature was aware of Government Code 75060.6 when it deliberated the bill that added the oath provisions in 1986.⁴⁸ The Legislature made no change to Government Code 75060.6 when it enacted the oath provisions, both of which exclude judges who were "retired by the Supreme Court for disability."⁴⁹ "The failure of the Legislature to change the law in a particular respect when the subject is generally before it and changes in other respects are made is indicative of an intent to leave the law as it stands in the aspects not amended."⁵⁰

Furthermore, the Legislature again enacted restoration provisions identical to those in Government Code section 75060.6 *after* it enacted the oath provisions, when it enacted Government Code section 75560.6 in 1994 as part of the establishment of JRS II. We can conceive of no reason why the Legislature would treat JRS II judges differently from JRS judges with respect to their capacity to be restored to the power to administer oaths. Therefore we think that this sequence of events demonstrates that—far from intending the 1986 oath provisions to make silent changes to the decades-old restoration procedures⁵¹—the Legislature intended in 1994 to continue fully the restoration procedures for all judges who have voluntarily retired for disability under either system.⁵²

informed that a number of such judges have applied to the Commission for certification to administer oaths, pursuant to the oath provisions, despite medical determinations that their disabilities render them "unable to discharge efficiently the duties" of judicial office.

⁴⁸ 1986 Stat. ch. 1418 (Sen. 1789); *see Estate of McDill*, 14 Cal. 3d 831, 837 (1975) ("It is assumed that the Legislature has in mind existing laws when it passes a statute.")

⁴⁹ Code Civ. Proc. § 2903(c); Govt. Code § 1225.

⁵⁰ *Estate of McDill*, 14 Cal. 3d at 837-838 (citations omitted).

⁵¹ *Cf. In re Michael G.*, 44 Cal. 3d 283, 293 (1988) (later statute controls over earlier enacted statute, to extent of actual conflict).

⁵² One technique of statutory interpretation that might be thought to bear on the relationship between the oath provisions and the restoration statutes is that, when two contrary statutes apply to the same subject matter, the more specific provision will generally govern as against a general provision. *See* Code Civ. Proc. § 1859; *Miller v. Super. Ct.*, 21 Cal. 4th 883, 895 (1999). It could be argued that the oath provisions deal with the specific judicial power of administering oaths, while the restoration statutes deal with judicial powers in general, and thus the oath provisions should prevail. On the other

Moreover, as our Supreme Court reminds us, all presumptions are against repeal by implication.⁵³ In the absence of an express declaration of legislative intent, an implied repeal will be found only when there is no rational basis for harmonizing two statutes, and the statutes are so irreconcilable that the two cannot have concurrent operation.⁵⁴ As a corollary to the presumption against implied repeal, “statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible.”⁵⁵ We must avoid a statutory interpretation that cancels out related provisions, and if a statute is amenable to two alternative interpretations, the one that leads to the more reasonable result will be followed.⁵⁶

We do not find the oath provisions and the restoration statutes to be irreconcilable. It is true that, if read in isolation, the oath provisions seem to exclude from their scope only those judges who were involuntarily retired for disability, and those who were facing disciplinary proceedings at the time of their resignation or retirement. But we do not read statutes in isolation. Rather, we “should construe every statute with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness.”⁵⁷ Statutes are to be blended together, even when they are in different codes.⁵⁸ When we read the oath provisions and the restoration statutes together with an eye to harmonizing them, we can see that it made sense for the Legislature to expressly

hand, it could be argued with equal force that the oath provisions deal with former judges generally, while the restoration statutes deal specifically with judges who have voluntarily retired for disability, and thus the restoration statutes should prevail. Because both the oath provisions and the restoration statutes contain specific and general elements, we do not find a presumption that “the specific prevails over the general” to be at all helpful in resolving the question presented here. *See Garcia v. McCutchen*, 16 Cal. 4th 469, 478 (1997) (declining to apply rule when it was arguable which statute was specific and which was general). In addition, the rule is inapplicable when statutes can be harmonized. *Id.* We believe that to be the case here.

⁵³ *E.g. Garcia*, 16 Cal. 4th at 476-477.

⁵⁴ *Id.* at 477.

⁵⁵ *Dyna-Med*, 43 Cal. 3d at 1387.

⁵⁶ *Lungren*, 45 Cal. 3d at 735 (1988) (citations omitted).

⁵⁷ *Ford & Vlahos v. ITT Com. Fin. Corp.*, 8 Cal. 4th 1220, 1234 (1994) (quoting *Clean Air Constituency v. Cal. St. Air Resources Bd.*, 11 Cal. 3d 801, 814 (1974)); *see also* 81 Ops.Cal.Atty.Gen. 51, 54 (1998).

⁵⁸ 81 Ops.Cal.Atty.Gen. at 54; *Meninga v. Raley’s, Inc.*, 216 Cal. App. 3d 79, 90 (1989).

exclude *involuntarily* retired judges when it enacted the oath provisions, because no other statutory or constitutional provision explicitly addressed the question of whether such judges could be restored to any judicial capacity.⁵⁹ But, since the Legislature had already separately provided for the means by which judges who have *voluntarily* retired for disability may be restored to judicial capacity, there was no need to address the status of those judges in the oath provisions.

We note that the oath provisions themselves manifest an intent to prevent unfit judges (and judges whose fitness is in question) from administering oaths, by excluding involuntarily retired judges (and judges facing formal disciplinary proceedings at the time of retirement or resignation).⁶⁰ By reading the oath provisions as incorporating the medical safeguards of the restoration statutes rather than as carving out a silent exception to the restoration statutes—we maintain the integrity of all the statutes,⁶¹ and recognize the essential consistency of their purposes.

Finally, we recognize that the Commission itself has concluded that a judge who has voluntarily retired for disability may not be certified to administer oaths under Code of Civil Procedure section 2093(c) or Government Code section 1225, and that Government Code sections 75060.6 and 75560.6 provide the exclusive means by which a judge who has voluntarily retired for disability may be restored to judicial capacity. The Commission has a key role to play in the administration of all four of the aforementioned statutes, and it is the agency that has primary responsibility for protecting the public from the misconduct or incapacity of judges. Although agency interpretations of law are not necessarily binding on others,⁶² agency interpretations of statutes that the agency administers, and in the area in which the agency has expertise, are entitled to

⁵⁹ The Legislature appears to have provided no path to restoration for judges involuntarily retired under California Constitution article VI, section 18(d).

⁶⁰ See Code Civ. Proc. § 2093(c); Govt. Code § 1225.

⁶¹ See *Garcia*, 16 Cal. 4th at 477 (statute authorizing dismissal of action for violation of fast-track rules did not repeal other statute prohibiting dismissal for violations attributable to party's attorney; fast-track statute interpreted as incorporating safeguards of other statute).

⁶² *Yamaha Corp. of Am. v. St. Bd. of Equalization*, 19 Cal. 4th 1, 4 (1998).

deference.⁶³ Here, we believe that the Commission's interpretation of these statutes reinforces our conclusion.⁶⁴

Accordingly, we conclude that judge who has voluntarily retired for disability with the approval of the Commission on Judicial Performance and the Chief Justice of the California Supreme Court may not be certified to administer oaths under Code of Civil Procedure section 2093(c) and Government Code section 1225. However, pursuant to a separate statutory scheme, a judge who has voluntarily retired for disability, but who is later found by the Commission on Judicial Performance to be capable of judicial service and is assigned to a court by the Chair of the Judicial Council, may administer oaths while sitting on assignment.

⁶³ *Spanish Speaking Citizens' Found., Inc. v. Low*, 85 Cal. App. 4th 1179, 1214-1215 (2000).

⁶⁴ The California Public Employees' Retirement System (CalPERS), the agency that administers JRS and JRS II, informed our office by letter dated October 7, 2010 that "administering oaths could impact a judge's right to continue receiving benefits under the disability retirement system." The CalPERS letter cites Government Code sections 75080 and 75580, both of which provide that, if a judge who is retired for disability engages in the practice of law or other occupation that requires the discharge of duties substantially similar to those duties that the judge was found to be unable to discharge efficiently because of his or her mental or physical disability (other than in the context of sitting on assignment), the retirement allowance shall cease. The operation of Government Code sections 75080 and 75580 is beyond the scope of this opinion, but the issue is likely of significance to judges who have voluntarily retired for disability.