

124678

STATE OF CALIFORNIA
COMMISSION
ON JUDICIAL
PERFORMANCE
1989 ANNUAL REPORT

COMMISSION ON JUDICIAL PERFORMANCE 1989 ANNUAL REPORT

TABLE OF CONTENTS

INTRODUCTION	i
COMMISSION MEMBERS	ii
I. THE COMMISSION IN 1989: AN OVERVIEW	1
II. RECENT CHANGES IN THE LAW	5
III. SUMMARY OF COMMISSION DISCIPLINARY ACTIVITY IN 1989	7
IV. PUBLIC DISCIPLINE	13
V. PRIVATE DISCIPLINE AND DISPOSITIONS	21
VI. A MISCELLANY OF MISCONDUCT	27
VII. VOLUNTARY DISABILITY RETIREMENT	35
Appendix 1. Governing Provisions	
A. California Constitution, Article VI, Sections 8 and 18	37
B. Rules for Censure, Removal, Retirement or Private Admonishment of Judges	39
C. Commission Policy Declarations	49
D. California Code of Judicial Conduct	53
E. California Government Code Provisions	63
Appendix 2. Case Citations	68
Appendix 3. Flow Charts - Commission Proceedings	69
Appendix 4. Complaint Form	71

124678

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California Judicial
Performance

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INTRODUCTION



This year we note with great sorrow the death of Ben Noble, who served as a public member of the commission since 1984. Mr. Noble was unwaveringly dedicated to the highest standards of judicial performance. He brought a fresh perspective to our deliberations and served with dedication, humor, honesty, and warmth. We will miss him greatly.

January 1990

Arleigh Woods
Chairperson
Commission on Judicial Performance

COMMISSION MEMBERS



HONORABLE ARLEIGH WOODS
Chairperson
Presiding Justice, Court of Appeal
Second Appellate District, Division Four
Los Angeles
Appointed May 1986
Present term expires March 1993



ANDY GUY
Vice Chairperson
Public Member
Lodi
Appointed November 1985
Present term expires
October 1993



**HONORABLE
INA LEVIN GYEMANT**
Judge of the Superior Court
San Francisco
Appointed September 1988
Present term expires
November 1992



**HONORABLE
FRANCISCO F. FIRMAT**
Judge of the Municipal Court
North Orange County
Appointed February 1989
Present term expires
January 1992



P. TERRY ANDERLINI
Attorney Member
San Mateo
Appointed January 1989
Present term expires
December 1990

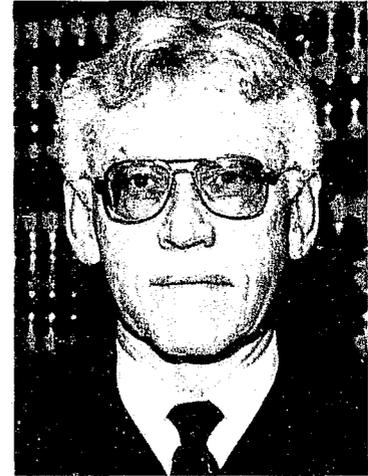
COMMISSION MEMBERS continued



DENNIS A. CORNELL
Attorney Member
Merced
Appointed January 1989
Present term expires
December 1992



**HONORABLE
EUGENE M. PREMO**
Associate Justice
Court of Appeal
Sixth Appellate District
San Jose
Appointed February 1989
Present term expires
November 1990



**HONORABLE
WILLIAM A. MASTERSON**
Judge of the Superior Court
Los Angeles
Appointed February 1989
Present term expires
March 1991

Vacant: One Public Member

COMMISSION STAFF

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Director-Chief Counsel

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Investigating Attorney

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Senior Administrative Assistant

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Supervising Judicial Secretary

KHOI NGOC BUI
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HILARY WINSLOW
Investigating Attorney

JOHN PLOTZ
Staff Counsel

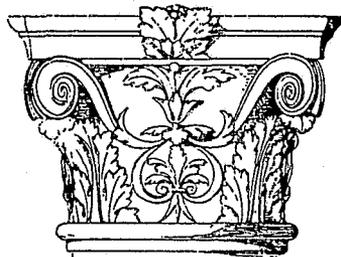
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ELAINE D. SWEET
Judicial Secretary/Administrative Assistant

PAT HATTORI
Judicial Secretary

BARBARA JO WHITEOAK
Judicial Secretary

**I.
THE
COMMISSION
IN 1989:
AN OVERVIEW**



The Commission on Judicial Performance is an independent state agency that handles complaints and problems involving judicial misconduct and disability of state judges. The commission was created in 1960 by additions to the state constitution (Article VI, sections 8 and 18).

There are nine members of the commission: two judges of the courts of appeal, two judges of the superior courts, and one judge of a municipal court, all appointed by the Supreme Court; two attorneys appointed by the State Bar; and two lay citizens appointed by the Governor and approved by a majority of the Senate. Each member serves a term of four years; the terms are staggered. The commission meets approximately eight times a year, usually for a two-day meeting. It employs a staff of twelve.

The commission's primary duty is to investigate charges of wilful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or other improper actions or derelictions of duty. The commission considers a wide variety of judicial misconduct. Rudeness to litigants, lawyers and court staff, gender and ethnic bias, abuse of contempt power, delay of decision, ex parte communications, ticket-fixing, drunkenness, systematic denial of litigants' rights, improper off-bench activities and many other forms of misconduct have claimed the commission's attention. The commission is also concerned with disabilities which seriously interfere with performance of the judge's duties.

A commission case usually begins with a written complaint from a member of the public, most often a litigant or an attorney, but sometimes a concerned citizen. Sometimes another judge or a court employee brings a matter to the commission's attention. All complaints are presented to the commission. The majority of complaints do not on their face state a case of judicial misconduct. These complaints are closed by the commission after staff recommendation. When a complaint does state a case, or even might state a case, the commission orders its staff to make an inquiry into the matter and report at the next meeting. Usually the staff inquiry includes contact with the judge. These letters of inquiry are not intended as

I.
AN OVERVIEW

accusations, but only as requests for information.

After an inquiry, the commission has a range of options. Sometimes the allegations are found to be untrue, exaggerated, or unprovable, in which case the commission closes the case without any action against the judge. If ethically questionable conduct did occur, but it was relatively minor or the judge has recognized the problem, the commission may close the case with an advisory letter under the Rules of Court, rule 904.1. If serious issues remain after inquiry, the commission will order a "preliminary investigation" under rule 904.2. A preliminary investigation may also be ordered without a staff inquiry.

After a preliminary investigation, the commission may close the case without action, defer closing the case in order to observe and review the judge's conduct, issue an advisory letter, or issue a notice of intended private admonishment. With the judge's consent, the commission may issue a public reproof. In the most serious cases, however, the commission will issue a notice of formal proceedings under rule 905. The notice is a formal statement of charges and leads to a hearing, usually before a panel of special masters appointed by the Supreme Court. According to the Constitution, the commission may open hearings to the public if the charges involve moral turpitude, or if the judge requests an open hearing. After the hearing the special masters report their findings to the commission.

After reviewing the report of the special masters, the commission may close the case, impose relatively minor discipline such as an advisory letter or private admonishment, or it may recommend to the Supreme Court that the judge be removed or publicly censured, or involuntarily retired because of a disability. A public reproof is also possible at that juncture.

Two flow charts showing the progress of complaints through the commission are appended at pages 69 and 70. While not a complete overview of the various courses of commission proceedings, they illustrate some of the typical patterns.

In 1989 the commission received 860 complaints. There was investigation of some sort in 147 cases. There were 81 official staff inquiries and 38 preliminary investigations. The commission instituted formal proceedings in five matters and there was one formal hearing. The commission issued 13 private admonishments and 36 advisory letters. A summary of these private communications may be found in Section V of this report. For the first time, the commission issued public reprovals under Article VI, section 18(f)(2), of the Constitution. These went to four judges. The cases are described in Section IV.

I.
AN OVERVIEW

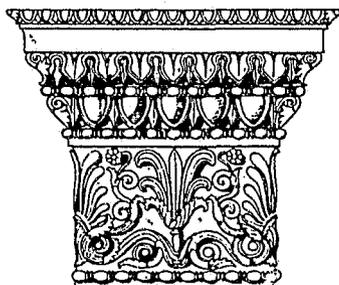
The Supreme Court ordered the removal of Judge Bernard McCullough. The Court ordered the commission to dismiss proceedings against Judge David Press as moot. Acting on the commission's recommendation, the Court suspended Judge Charles D. Boags without pay while his conviction for ticket-fixing is on appeal. These actions are described in Section IV of this report.

Since its beginning, the commission has recommended the removal or involuntary retirement of 14 judges. The Supreme Court has accepted the recommendation in 10 cases and rejected it in two. Two cases are pending at the end of the year. During the 29 years of the commission's existence, many judges have retired or resigned with commission proceedings pending.

The commission also rules on applications for disability retirement by judges. This aspect of the commission's work is discussed in Section VII of this report.

The commission is established and governed by Article VI, sections 8 and 18, of the California Constitution. It is also subject to Government Code sections 68701 through 68755 and Rules of Court 901 through 922. The commission issues its own declarations of existing policy which reflect internal procedures. These statutes, court rules and policy declarations are reprinted in the appendix.

II. RECENT CHANGES IN THE LAW



In 1989 there were no significant changes in the statutes and rules governing the commission, except in the area of confidentiality.

In November 1988, California voters approved constitutional provisions allowing certain formal hearings to be opened to the public (Article VI, § 18(f)(1) and (3)). The Judicial Council then adopted new Rules of Court 907.1 and 907.2 to implement those constitutional sections, effective January 1, 1990.

Rule 907.1 sets out the procedure for a judge who is the subject of formal proceedings to request an open hearing. Rule 907.2 sets out the procedure for the commission to open a hearing when the charges involve moral turpitude, dishonesty, or corruption.

The Judicial Council also adopted changes in the Rules of Court which are merely technical (see amended Rules of Court 904.4, 912, 913, and 918).

. . .

The California Judges Association, a non-governmental organization, amended Canons 3C and 3D of the Code of Judicial Conduct in various ways. Canon 3C concerns disqualification of judges for bias, conflict of interest, and other causes. Canon 3D concerns waiver of disqualification by the parties after a judge has disclosed the basis of disqualification.

These canons — both old and new versions — differ in some respects from the Code of Civil Procedure, sections 170.1 *et seq.*

**III.
SUMMARY OF
COMMISSION
DISCIPLINARY
ACTIVITY
IN 1989**



At the close of 1989, there were 1555 judicial positions within the commission's jurisdiction:

Justices of the Supreme Court	7
Justices of the Court of Appeal	88
Judges of Superior Courts	789
Judges of Municipal Courts	605
Judges of Justice Courts.....	66

► **NEW COMPLAINTS**

The commission considered 860 new complaints about judges within its jurisdiction (i.e., active California judges) in 1989. These complaints named a total of 565 judges. (For court distribution, see Table III-1.)

The commission also considered 30 matters which were carried over from 1988.

► **INVESTIGATED CASES**

When a new complaint is received, there may be some threshold investigation to aid the commission in its review of the matter. In 1989, 147 of the complaints received by the commission warranted at least this minimum level of investigation.

If the commission determines that further investigation should be undertaken, it may authorize a "staff inquiry" pursuant to Rule of Court 904. In 1989, the commission ordered staff inquiries in 81 cases. In 72 of those inquiries, the commission contacted the judge and requested comment on the allegations.

Under Rules of Court 904 and 904.2, a staff inquiry may be followed by a "preliminary investigation" to determine whether formal proceedings should be instituted or any discipline imposed beyond an advisory letter. In 1989, the commission ordered 20 preliminary investigations following staff inquiries. Rules 904 and 904.2 also allow the commission to order a preliminary investigation without first conducting a staff inquiry. In 1989, the commission ordered 18 preliminary investigations without staff inquiries. Altogether, there were 38 preliminary investigations in 1989.

The data given above are summarized in Table III-2.

**III.
SUMMARY OF
DISCIPLINARY
ACTIVITY**

▶ **FORMAL PROCEEDINGS**

In 1989 the commission issued formal charges in five matters, and one formal hearing was held. (See Table III-2.)

▶ **PUBLIC DISCIPLINE**

The Supreme Court, acting upon a recommendation made by the commission in 1988, removed Bernard McCullough from office (*McCullough v. Commission on Judicial Performance* (1989) 49 Cal.3d 186). The commission issued four public reprimands. (See Table III-3 and Public Discipline, Section IV of this report.)

▶ **PRIVATE DISCIPLINE**

Private disciplinary action was taken in 49 cases. In 13 of these cases, the commission issued a private admonishment. Thirty-six of the investigated matters were closed with an advisory letter expressing disapproval of some aspect of the judge's performance or conduct or providing information intended to educate the judge concerning the ethical obligations of the judiciary. (See Table III-3 and Private Discipline, Section V of this report.)

▶ **COMPLAINTS CLOSED WITHOUT DISCIPLINE**

In 1989, the commission closed 782 complaints without discipline.

Of these, the commission closed 746 following initial review and consideration. Many of these complaints were filed by individuals dissatisfied with a judge's rulings on the merits of a particular case.

Another 36 were closed without discipline after a staff inquiry or preliminary investigation.

An additional three complaints warranting investigation were closed because the judge retired or resigned after the investigation commenced. Nine complaints were closed through consolidation with other cases. (See Table III-3.)

Table III-1
COMPLAINT DISTRIBUTION BY LEVEL OF COURT

	Number of Complaints	Percent of Total	Total Judges in Court
Appeal	26	3.0 %	95
Superior	498	57.9%	789
Municipal	294	34.2%	605
Justice	42	4.9%	66

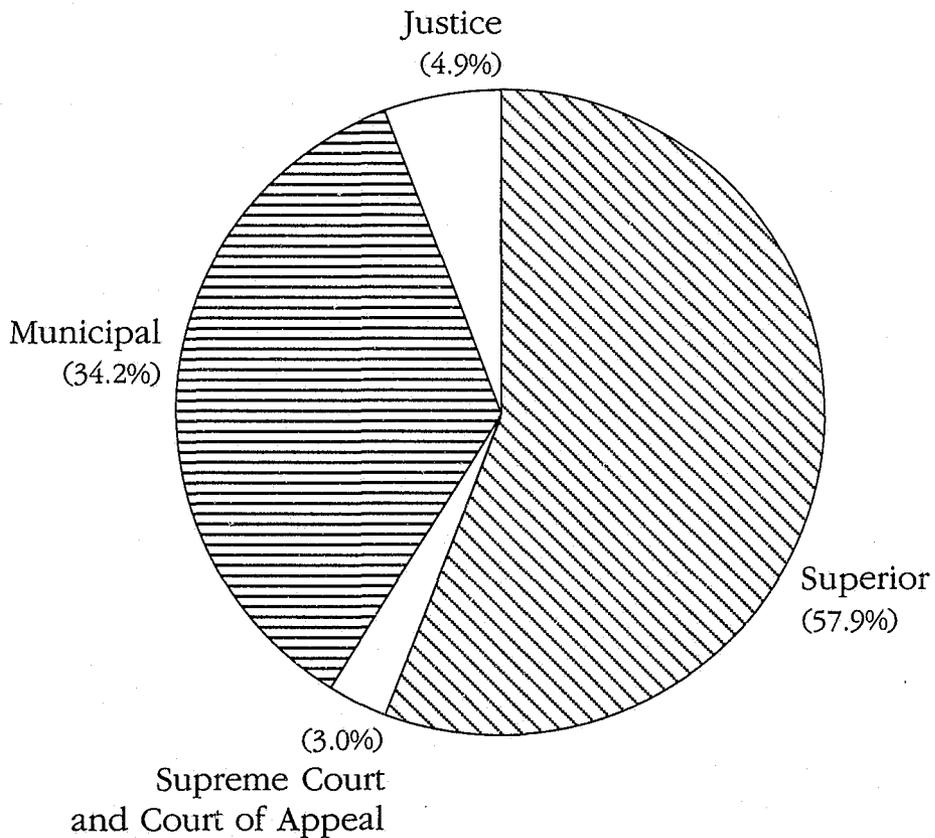


Table III-2
NEW COMPLAINTS

Total number of new complaints on the commission's agenda during 1989	860
Total number of judges complained against	565

Investigatory Actions

Some Investigation	147
Staff Inquiries	81
Preliminary Investigations (Rule 904.2)	38
Number of judges contacted	90

Formal Proceedings

Issuance of Notice of Formal Proceedings	5
Hearings Held	1

**Table III-3
COMPLAINT DISPOSITION**

Total Number of Cases Closed in 1989 **848**

Closed with Disciplinary Action

Removal (<i>Supreme Court</i>)	1
Public Censure (<i>Supreme Court</i>)	0
Public Reprimand (<i>Commission</i>)	4
Private Admonishment (<i>Commission</i>)	13
Advisory Letter (<i>Commission</i>)	36

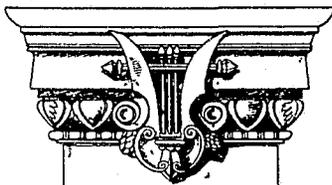
Total **54**

Closed without Disciplinary Action

Closed after initial review	746
Closed after staff inquiry or preliminary investigation	36
Resigned/Retired while under investigation	3
Closed through consolidation with other pending cases	9

Total **794**

IV. PUBLIC DISCIPLINE



In February 1989, acting on the recommendation of the commission, the Supreme Court suspended Judge Charles D. Boags (Beverly Hills Municipal Court) without pay after a jury found him guilty of conspiracy to obstruct justice (Cal. Const., Art. VI, § 18(b)). Essentially, the judge was convicted of fixing parking tickets. If the conviction is reversed on appeal, the suspension will end and the judge will be repaid his lost salary. If the conviction is upheld, the Constitution provides for the judge's removal from office.

In March, the Supreme Court ordered the commission to dismiss proceedings against Judge David Press (Crest Forest Justice Court, San Bernardino County) as moot.

In July, the Supreme Court followed the commission's recommendation that Judge Bernard McCullough (San Benito Justice Court) be removed (*McCullough v. Commission on Judicial Performance* (1989) 49 Cal.3d 186, 260 Cal.Rptr. 557, 776 P.2d 259).

Still pending before the Supreme Court at the end of 1989 were removal recommendations made in 1988 against Judges David Kennick (Los Angeles Municipal Court) and Kenneth Kloepfer (San Bernardino Municipal Court).

In 1989, the commission exercised for the first time its power to reprove a judge publicly. This power is contained in an amendment to the Constitution approved by the voters in 1988:

The Commission on Judicial Performance may, without further review in the Supreme Court, issue a public reproof with the consent of the judge for conduct warranting discipline. The public reproof shall include an enumeration of any and all formal charges brought against the judge which have not been dismissed by the commission. (Art. VI, § 18 (f)(2).)

The four cases in which the commission issued public reprovals are discussed later in this section.

**IV.
PUBLIC DISCIPLINE**

▶ **THE McCULLOUGH CASE**

In ordering the removal of Judge McCullough, the Supreme Court found four instances of wilful misconduct in office.

In one case, the judge directed a jury to find the defendant guilty of a misdemeanor. The Supreme Court held that, "Depriving a criminal defendant of his fundamental right to be tried by a jury manifests disrespect for the constitutional protections of our legal system." (49 Cal.3d at 192.) Addressing the judge's claim that he *believed* he had authority to direct a guilty verdict, the Court quoted an earlier decision: "Petitioner's patent misunderstanding of the nature of his judicial responsibility serves not to mitigate but to aggravate the severity of his misconduct." (*Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359, 369.)

In a second matter, an old friend came to the judge's home the day before his arraignment on a misdemeanor charge. The friend told Judge McCullough about the case and asked the judge to excuse him from appearing the next day. The next day the judge continued the case, without, however, informing the prosecutor. Over the next two years, the judge continued the case twenty times. Finally, the judge simply dismissed the case, also without informing the prosecutor. The Supreme Court called this "a casebook example of wilful misconduct." (49 Cal.3d at 194.)

In two other cases, Judge McCullough proceeded to trial in the absence of defense counsel. In both cases the defendant's attorney telephoned one day before trial to inform the court of a scheduling conflict and to request a continuance. Judge McCullough denied the requests as untimely under Penal Code section 1050(b), which requires continuance motions to be made in writing at least two days before the hearing. The judge then held trial without defense counsel. The Supreme Court determined this was wilful misconduct. The judge should have held a hearing to determine whether there was good cause for the attorneys' failure to comply with the procedural requirements of a continuance motion (*id.*, sect. 1050(d)). More important, if the judge believed there was not good cause, he should have considered imposing sanctions on the attorneys (*id.*, sect. 1050(c)), rather than punishing the defendants by making them go to trial unrepresented. "Judge McCullough allowed his impatience with a defendant's attorney to outweigh a defendant's right to a fair trial and representation of her choice." (49 Cal.3d at 196.)

The Supreme Court also found that Judge McCullough had delayed six years in signing a judgment. This constituted "persistent failure to perform the judge's duties." (49 Cal.3d at 197.) The Court was especially concerned about the matter because the judge did not sign the paper even after public censure (see *McCullough v. Commission on Judicial Performance* (1987) 43 Cal.3d 534). "His failure to respond to our public censure evidences a lack of regard for the Commission, this court, and his obligations as a judge." (49 Cal.3d at 197.)

**IV.
PUBLIC DISCIPLINE**

▶ **THE PRESS CASE**

In April 1988, the commission filed with the California Supreme Court a report containing the commission's findings of fact, conclusions of law, and recommendation of public censure concerning Judge David Press, a judge of the Crest Forest Justice Court District in San Bernardino County.

The commission, after reviewing the transcript of a formal hearing held before three special masters, found that the evidence established four counts of wilful misconduct and five counts of conduct prejudicial to the administration of justice that brings the judiciary into disrepute.

The four counts of wilful misconduct were based on the following incidents:

1. After he was served with an alternative writ of mandate signed by a superior court judge, Judge Press, in open court, accused the deputy public defender who had obtained the writ of making false statements in the writ petition and attempting to defraud the superior court.

2. Judge Press stated in open court that the Public Defender's Office and the District Attorney's Office may have "perpetrated a fraud upon the court" by failing to voluntarily disclose that a defendant who pled guilty pursuant to a plea bargain to driving on a suspended license had received another citation for driving on a suspended license a few days before entering his plea. Judge Press noted that he had already asked both the Public Defender's Office and the District Attorney's Office whether they knew of the new citation when the plea was entered and that both offices had said they did not; nonetheless, he questioned the deputy public defender and deputy district attorney before him about why he had not been informed of the new citation when the plea was entered.

3. Judge Press issued a rule for the Crest Forest Judicial District Court which required members of the clerk's office to contact him for approval before court dockets in cases in which he was involved were shown, copied, given or sent to any interested person. In addition, the rule as interpreted by the clerk's office required that the judge be informed of the date, time and names of the persons requesting to look at court dockets and files, and that such information be memorialized on the official court docket.

4. In open court, Judge Press forbade a deputy public defender, who had just served him with an alternative writ of mandate, from entering behind the counter of the clerk's office. The judge stated that he felt there was some question as to the attorney's ethical conduct, and continued: "I'll stand for no more insolence. I'll not permit you to enter the clerk's office at any time. If you have any business with the clerks, you'll deal with them from across the counter."

**IV.
PUBLIC DISCIPLINE**

The five counts of conduct prejudicial to the administration of justice were based on the following incidents:

1. Judge Press ordered counsel for a defendant appealing a conviction in his court to strike a ground for appeal, because the judge disagreed with certain statements set out in the Amended Engrossed Statement on Appeal prepared by the attorney. The attorney was forced to seek extraordinary relief in order to have his appellate grounds preserved for consideration by the appellate department of the superior court.

2. In a traffic trial, the judge took evidence from the defendant prior to the prosecution's establishment of a prima facie case. After a deputy sheriff testified that he could not remember the traffic citation or the defendant, Judge Press heard testimony from the defendant. The deputy, who stated that the defendant's testimony had refreshed his recollection, then testified, and the defendant was found guilty.

3. In another traffic trial, in similar circumstances, Judge Press took testimony from the defendant before the prosecution had established a prima facie case.

4. In a criminal case, after imposing a probationary sentence on the defendant, Judge Press continued a hearing on possible reimbursement of attorney's fees under Penal Code section 987.8 at six-month intervals for nearly two years, despite the provisions of that statute limiting the time for such a hearing to six months after sentencing and despite the fact that the financial statement submitted at the time of sentencing reflected that the defendant was totally disabled and that his sole source of income was from social security and veteran's benefits.

5. Judge Press ordered a defendant who appeared for a hearing on possible reimbursement of attorney's fees to return with counsel—although he normally did not have defendants appear with counsel at such hearings—for the apparent purpose of bringing counsel before him to answer his inquiries about why he was not made aware of a new citation for driving on a suspended license the defendant had received a few days before pleading guilty on one of the two cases which were the subject of the fee hearing. The defendant failed to appear at the hearing. The judge held a fee hearing in absentia; he ordered the defendant to pay \$200 in attorney's fees in one case, and issued a \$1,000 bench warrant in the other. The issuance of a warrant for the defendant's failure to appear for a fee hearing was not authorized by law. Issuance of the warrant appeared to be a continuation of the judge's efforts to bring the defendant and counsel before the court to answer the judge's inquiries about a possible "fraud upon the court."

**IV.
PUBLIC DISCIPLINE**

The commission's report concerning Judge Press was filed in the Supreme Court on April 8, 1988. Normally, a judge must file a petition in the Supreme Court to modify or reject the commission's recommendation within 30 days; a recommendation of public censure becomes public when the judge has filed his petition or when the time to do so has expired. (Rule 902(a), California Rules of Court.) Judge Press requested and received an extension of time to file his petition in the Supreme Court, and the commission was prevented from making the censure public until he had done so. Before the judge's petition was filed, in June of 1988, he ran as the incumbent against several candidates seeking his judicial seat. No candidate received a majority of the votes; one other candidate won more votes than the judge. That candidate and the judge were slated for a run-off election in November 1988.

After Judge Press filed his petition in the Supreme Court in July 1988, the commission's report and recommendation were made public. Thereafter, in November 1988, Judge Press was defeated in his bid for re-election. In March 1989, the Supreme Court ordered the case dismissed. Since the recommendation was censure and the judge was out of office through the election process, the Court determined not to complete its review of the record and render a decision. In the *Press* matter, the commission performed its function by making public its findings and conclusions, which the voters were then able to consider in making their decision.

► **PUBLIC REPROVALS**

1. The commission publicly reproved Judge Bruce Clark of the Ventura Municipal Court (Art. VI, § 18(f)(2)).

The commission found that Assemblywoman Cathie Wright came to the judge's home and discussed two traffic tickets which her daughter had received. The next day Judge Clark took several unusually lenient actions in connection with the tickets: he struck the requirement that the defendant personally appear in court and he permitted both tickets to be dismissed upon completion of traffic school. He took these actions in chambers and without informing the prosecutor. The commission found that these actions violated Canons 2A and 2B and most especially Canon 3A(4), which forbids consideration of ex parte communications.

The commission imposed a reproof in this case because of Judge Clark's unblemished record, the apparent isolation of the incident, and the judge's recognition that he should have handled the matter differently.

2. The commission publicly reproved Judge Calvin Schmidt of the Harbor Municipal Court in Orange County.

**IV.
PUBLIC DISCIPLINE**

The commission found that the judge twice ordered the release from custody of a defendant who was the stepdaughter of the judge's friend. The first release followed another judge's denial of defendant's motion for an O.R. release or bail reduction. Before the second release, defendant failed to appear in court and had been arrested on new charges. Aggregate bail exceeded \$50,000. The obvious and sole reason for Judge Schmidt's actions was his friendship with defendant's stepfather. The releases were arbitrary and capricious exercises of judicial discretion and undermined public confidence in the integrity and impartiality of the judiciary.

Judge Schmidt also made political contributions from his own campaign funds to non-judicial candidates in patent violation of Canon 7.

3. The commission publicly reprovved Judge Glenda Doan of the Corcoran Justice Court in Kings County.

The commission found that the judge continued the private practice of law while she served on the justice court, as the law then permitted. From the time she became a judge in 1983 through 1986, she received numerous sums of money from a client of her law practice. These sums, which exceeded \$75,000, were not paid for legal services. The judge variously described the money as gifts, loans, and income. She did not advise the client to obtain independent counsel before paying the money, nor did she make the written disclosures required by the State Bar Rules of Professional Conduct, rule 3-300 (formerly rule 5-101). She did not inform the law firm where she worked that she was receiving these sums. She failed to disclose the payments on public Statements of Economic Interests filed in 1985 and thereafter. The commission found that this conduct was conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

In determining that a public reprovval would be adequate discipline, the commission considered that the conduct occurred entirely off the bench. There was no evidence that her performance as a judge was in any way compromised. The judge expressed great remorse. The judge also had a long record of civic service.

4. The commission publicly reprovved Judge John Schatz, Jr., of the Santa Clara County Superior Court.

The commission found that the judge's son had been charged with a crime. On the day his son was to be arraigned in the San Mateo Municipal Court, the judge went to the chambers of the arraigining judge, identified himself as a judge, and proceeded to discuss the case. When a deputy prosecutor entered the room, the judge continued the discussion. The arraignment was continued for a week. At the continued arraignment, which was held before a commissioner, the judge attempted to involve the

**IV.
PUBLIC DISCIPLINE**

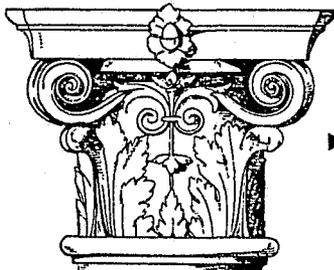
· commissioner in private discussion at the bench and asked him to enter a
· not guilty plea for his son, who did not appear.

· When the Commission on Judicial Performance asked the judge
· whether he had ever approached any other judge or prosecutor about his
· son, the judge falsely answered no. He later said he had misinterpreted the
· commission's question, thinking it was limited to contacts in San Mateo
· County.

· The judge had also met with the Santa Clara District Attorney to discuss
· a pending burglary case. He asked for dismissal of the charge based on his
· son's imminent enlistment in the military. Two days later, the case was
· calendared before a municipal court judge. The judge met in chambers with
· the municipal court judge, a deputy prosecutor, and his son's public
· defender. The court was persuaded to dismiss the charge based on the
· coming enlistment. The son did take some steps in that direction, but
· ultimately did not enlist.

· In determining that a public reproof would be adequate discipline,
· the commission considered the judge's recognition that his conduct was
· inappropriate and his assurance that the conduct would not be repeated.

V.
**PRIVATE
DISCIPLINE AND
DISPOSITION**



In 1989 the commission issued 13 private admonishments and 36 advisory letters.

► **PRIVATE ADMONISHMENTS**

Private admonishments are formally imposed pursuant to California Rules of Court, rule 904.3. The private admonishments imposed in 1989 are summarized below. In order to maintain privacy, it has been necessary to omit certain details. This omission of detail has made some summaries less informative than they otherwise would be; but we think it is better to be vague in these descriptions than to omit them altogether.

A. A judge held several people in contempt on inadequate grounds and without following the statutory procedures.

B. A judge declared a mistrial in the midst of a criminal trial in order to keep an appointment.

C. In a juvenile case, a judge made a grossly improper order which was intended to frighten the child into better behavior. The commission imposed a severe admonishment.

D. During a jury trial, a judge passed a sympathetic note to the victim/witness.

E. In a civil action, the defendant was the judge's close business associate, a fact which was not revealed to the plaintiff. Over plaintiff's vigorous argument, the judge granted a defense motion.

F. Judge #1 wrote to Judge #2 to ask for favorable treatment in the sentencing of a relative of Judge #1. Judge #1 thereby violated Canons 1, 2A, 2B and 3A(4).

G. A judge drove recklessly, thereby committing a misdemeanor. There was a consumption of alcohol in connection with the offense. It was apparently an isolated incident.

H. Angered by an attorney, a judge retaliated by making a judicial ruling adverse to the attorney's client. The same judge improperly jailed a traffic defendant for contempt. The judge frequently berated attorneys in public and before juries, often impugning their integrity. The commission imposed private discipline here because of mitigating circumstances, including the judge's expressed willingness to improve. The admonishment was severe.

**V.
PRIVATE DISCIPLINE
AND DISPOSITION**

I. A judge did not adequately inform a traffic defendant of the defendant's constitutional rights. The judge found defendant guilty of an alleged failure to appear, supposedly on a plea of guilty, although defendant did not in fact plead guilty or waive any constitutional or statutory right. The commission imposed a severe private admonishment.

J. A judge appeared to attempt to influence inappropriately the work of law enforcement officials.

K. A judge became involved in a heated colloquy with a defendant in open court, insulting the defendant and using profanity.

L. A judge failed to file a decision in a small claims appeal for more than nine months. The judge had twice before been privately admonished for failure to dispose of cases promptly.

M. Making inappropriate use of the judge's position of power, a judge engaged in a personal, non-professional relationship with a court employee, for the most part during the business day. This admonishment was severe.

► **ADVISORY LETTERS**

In some cases, the commission will simply advise caution or express disapproval of the judge's conduct. This milder form of discipline is contained in letters of advice or disapproval called "advisory letters" (Rule 904.1). The commission sometimes issues advisory letters when the misconduct is clear but the judge has demonstrated an understanding of the problem and has taken steps to improve. They are also used when the impropriety is isolated or relatively minor.

Thirty-six complaints were closed with advisory letters in 1989.

► **Demeanor**

As usual, the largest category of advisory letters related to demeanor problems, including unnecessary harshness, sarcasm, impatience, name-calling, and a variety of other inappropriate conduct on the bench.

1. A judge believed a lawsuit was frivolous. The judge called the plaintiff's actions "crazy" and made sarcastic remarks to the plaintiff's spouse. The judge believed this was mere "scolding"; but in the commission's view it crossed the line into abuse.

2. A judge was curt and impolite toward a litigant in a small claims appeal. Immediately after rendering judgment against the litigant, the judge ordered the bailiff to search the litigant's wallet for funds to pay the judgment.

3. A judge made sexist remarks in a family law matter.

4. At arraignment, a judge said words to the effect that a defendant was probably guilty. When the defendant insisted on a trial and requested a late court date, the judge said the defendant deserved a harsher

V.
**PRIVATE DISCIPLINE
AND DISPOSITION**

punishment for the defendant's attitude.

5. A judge fell asleep during a court trial, which resulted in a mistrial. The judge expressed regret and described steps being taken to prevent a recurrence.

6. A judge repeatedly belittled an attorney's legal skills in front of a jury.

7. A judge yelled at a small claims litigant for not asking questions properly. When the litigant complained to the judge, the judge replied, "I can yell at you as much as I want to."

8. A judge had outbursts of temper. The judge also relieved appointed counsel for trivial reasons and publicly criticized attorneys on inadequate grounds.

9. A judge yelled an insult at a defendant and spoke inappropriately about the defendant's guilt.

10. A judge shouted at litigants and was otherwise rude to them.
See also, Admonishment H and Advisory Letter 31.

► **Abuse of Contempt Power**

Before sending a person to jail for contempt, or imposing a fine, judges are required to adhere strictly to the procedural requirements contained in the Code of Civil Procedure. Ignorance of those procedures is not a mitigating but an aggravating factor (*Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 533).

11. A judge failed to follow strictly the law of contempt.

12. A judge threatened a court employee with contempt over a minor personnel matter.

13. A judge failed to follow strictly the law of contempt, and found an attorney in contempt for violating an unreasonable policy concerning practice in the judge's court.

See also Admonishments A and H.

► **Delay**

The commission issued advisory letters for failure to decide cases timely. The delay in these cases was over 90 days. But in some circumstances, a shorter delay would be a failure to "dispose promptly of the business of the court" (Canon 3A(5)).

14. A judge delayed 107 days in rendering a decision in a small claims case.

15. A judge delayed 133 days in a family law case, causing hardship to the litigant.

16. A judge delayed seven months after a one-day trial and failed to respond to an attorney's inquiry about the matter.

**V.
PRIVATE DISCIPLINE
AND DISPOSITION**

17. A judge delayed nine months in rendering a decision in a rather simple matter.

See Admonishment L and *McCullough v. Commission on Judicial Performance* (1989) 49 Cal.3d 186.

► **Ex Parte Communications**

Unless expressly allowed by law or expressly agreed to by the opposing party, ex parte communications are improper. Judges often claim that an ex parte ruling would have been the same if the proper procedures had been followed; but the commission does not accept this as an excuse. When a judicial decision is made after an improper communication, there is an appearance of favoritism.

18. The son of a personal friend visited the judge in chambers and requested the judge to vacate a guilty plea which the son had entered before another judge. The judge went into the courtroom and vacated the plea.

19. A defendant in a small claims matter requested a continuance by letter to the judge. The judge granted the continuance, informing the plaintiff only when the plaintiff appeared for trial.

20. On an ex parte application for an order, the moving party had informed the other party of the time and place of the application (Rules of Court, rule 379). When the other party appeared to oppose the application, the judge had already decided the matter and refused to hear any opposition.

See also Public Repeal No. 1 discussed on page 17, and Advisory Letter 32.

► **Rushing Through Calendars Without Adequate Regard for the Rights of Defendants**

The Supreme Court has written that "No more fragile rights exist under our law than the rights of the indigent accused; consequently these rights are deserving of the greatest judicial solicitude." (*Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 286.) While the commission is mindful of the burden imposed by long arraignment and other calendars, it cannot accept constitutional shortcuts.

21. A judge had the practice of taking some guilty pleas with no advisement of rights, taking other guilty pleas with no waiver of rights, and giving inadequate advice to defendants on their right to counsel. In response to the commission's investigation, the judge's attitude was extraordinarily cooperative.

22. A judge imposed obstacles to defendants' exercise of right to counsel. For instance, although the judge would give a mass advisement of rights informing defendants of their right to counsel or appointed counsel, the judge did not give any information on how to exercise that

**V.
PRIVATE DISCIPLINE
AND DISPOSITION**

right, or an opportunity to do so. After being contacted by the commission, the judge's attitude was exceptionally constructive; and the judge took the necessary steps to correct the problem.

See also Admonishment I.

► **Miscellaneous**

And there was a variety of other cases.

23. A judge failed to recognize or take steps to correct serious problems in the clerk's office involving the mis-filing and loss of legal documents. The commission recommended that the judge seek help from the Administrative Office of the Courts.

24. A judge endorsed a candidate for city council, thereby violating Canon 7A(1)(b).

25. A judge used court stationery for a non-judicial purpose: to advertise a person's lecture sponsored by a non-profit organization.

26. A judge served on the board of directors of a certain organization. The service was barred by Canon 5.

27. A judge failed to dissociate from an apparent attempt to influence inappropriately the work of law enforcement officials.

28. A judge violated Canon 7 by the nature of the judge's activity in the local club of a political party.

29. A judge made sexist statements at a dinner speech.

30. A judge castigated and threatened action against a social worker for filing a dependency petition because the judge disagreed with the social worker's evaluation of the case.

31. A judge had a sentencing "policy" that expressly contradicted State policy set forth by statute: the judge refused even to consider sending traffic defendants to traffic school (Veh. Code, § 42500). When a defendant protested, the judge told the defendant to shut up.

32. A judge wrote an unsolicited letter to another judge. The letter was a character reference for a defendant who was to be sentenced. The letter was on court stationery. (See also Admonishment F and Advisory Letter 25.)

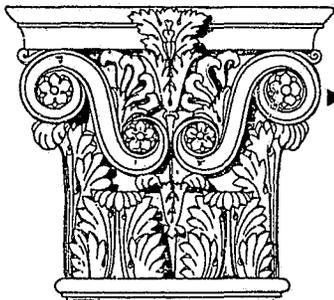
33. A judge exceeded authority by appointing an elected official to the grand jury. When the matter was brought to the judge's attention, the judge was indifferent.

34. A judge kept a sexist picture on the bench and appeared to observers to join courtroom staff in offensive, sexist conversations.

35. A judge sat on an appellate panel that reviewed a conviction for violation of a court order. The court order, although uncontested below, had been signed by the judge.

36. A judge used alcohol inappropriately. The commission monitored the judge for a time (Rules of Court, rule 904.2(d)). The judge took steps to deal with the alcohol problem.

VI. A MISCELLANY OF MISCONDUCT



THE SUPREME COURT SPEAKS ON JUDICIAL DISCIPLINE

▶ Since *Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270; 110 Cal.Rptr. 201; 515 P.2d 1., the Supreme Court has issued more than a dozen opinions about judicial misconduct. What follows is a small selection from the Court's statements on the subject.

▶ The ultimate standard for judicial conduct must be conduct which constantly reaffirms fitness for the high responsibilities of judicial office. (*Geiler v. Commission on Judicial Qualifications, supra*, 10 Cal.3d at 281.)

▶ The purpose of these proceedings is not to punish errant judges but to protect the judicial system and those subject to the awesome power that judges wield. (*Furey v. Commission on Judicial Performance* (1987) 43 Cal.3d 1297, 1320; 240 Cal.Rptr. 859; 743 P.2d 919; see also, *McComb v. Commission on Judicial Performance* (1977) 19 Cal.3d Spec. Trib. Supp. 1, 9; 138 Cal.Rptr. 459; 564 P.2d 1.)

▶ Petitioner has engaged in a course of conduct which has maligned the judicial office and clearly establishes her lack of temperament and ability to perform judicial functions in an even-handed manner. Because it is our duty to preserve the integrity and independence of the judiciary. . . we order Judge Noel Cannon . . . removed from office. (*Cannon v. Commission on Judicial Qualifications* (1975) 14 Cal.3d 678, 707; 122 Cal.Rptr. 778; 537 P.2d 898.)

▶ **The Constitution (Art. VI, § 18(c)) speaks of “wilful misconduct in office” and “conduct prejudicial to the administration of justice that brings the judicial office into disrepute.” The Court defines these terms:**

▶ Censure or removal from office is appropriate when a judge engages in wilful misconduct or prejudicial conduct. . . . The charge of wilful miscon-

VI.
A MISCELLANY
OF MISCONDUCT

duct refers to “unjudicial conduct which a judge acting in his judicial capacity commits in bad faith.” . . . The lesser charge of prejudicial conduct comprises conduct which the judge undertakes in good faith but which would nonetheless appear to an objective observer to be unjudicial and harmful to the public esteem of the judiciary. It also refers to unjudicial conduct committed in bad faith by a judge not acting in an official capacity. . . .

When a judge is acting in an official capacity, the critical distinction between wilful misconduct and prejudicial conduct is the presence of bad faith or malice. . . . In *Wenger v. Commission on Judicial Performance*, . . . we enunciated a two-prong test for the determination of bad faith or malice. It must be shown that the judge intentionally “(1) committed acts he knew or should have known to be beyond his power, (2) for a purpose other than faithful discharge of judicial duties.” . . . Both prongs of the *Wenger* test apply an objective, rather than subjective, standard. The objective approach is consistent with our holdings in judicial discipline cases prior to the adoption of the *Wenger* two-prong test. . . . The objective approach is also consistent with Canon 2 of the California Code of Judicial Conduct, which provides that a judge should avoid the “appearance” of impropriety. (*Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 530-531; 247 Cal.Rptr. 378; 754 P.2d 724.)

► Prejudicial conduct must be “conduct prejudicial to the administration of justice *that brings the judicial office into disrepute*.” . . . The italicized words do not require notoriety, but only that the conduct be “damaging to the esteem for the judiciary held by members of the public who observed such conduct.” . . . (*Wenger v. Commission on Judicial Performance* (1981) 29 Cal.3d 615, 622-623, n.4; 175 Cal.Rptr. 420; 630 P.2d 954.)

► It should be emphasized that our characterization of one ground for imposing discipline as more or less serious than the other does not imply that in a given case we would regard the ultimate sanction of removal as unjustified solely for “conduct prejudicial to the administration of justice which brings the judicial office into disrepute.” (*Geiler, supra*, 10 Cal.3d at 284, n.11.)

► **The Court has always been concerned about the appearance of justice. Conduct which *appears* unjust may be wilful misconduct (if it occurs on the bench) or conduct prejudicial (if it occurs off the bench).**

► “[J]ustice must satisfy the appearance of justice.” (Mr. Justice Frankfurter writing for the court in *Offutt v. United States* (1954) 348 U.S. 11, 14 [99 L.Ed.

VI.
A MISCELLANY
OF MISCONDUCT

11, 16, 75 S.Ct. 11].) (*McCartney v. Commission on Judicial Qualifications* (1974) 12 Cal.3d 512, 539; 116 Cal.Rptr. 260; 526 P.2d 268.)

► It is beyond me how it can be argued that such behavior is not “conduct prejudicial to the administration of justice” simply because Judge Stevens otherwise performed his judicial duties “fairly and equitably.” “[J]ustice should not only be done, but should manifestly and undoubtedly be seen to be done.” (*Rex v. Sussex Justices* (1924) 1 K.B. 256, 259 (Lord Hewart).) The administration of justice is prejudiced by the public perception of racial bias, whether or not it is translated into the court’s judgments and orders. (*In re Charles S. Stevens* (1982) 31 Cal.3d 403, 405; 183 Cal.Rptr. 48; 645 P.2d 99 [Kaus, J., concurring].)

► Petitioner vigorously insists that any ethnic or sexual remarks he may have made were made in jest, and that in fact he has never treated ethnic or minority groups unfairly. However, Judge Gonzalez’ subjective intent is not at issue. As a judge he is charged with the obligation to conduct himself at all times in a manner that promotes public confidence and esteem for the judiciary. Particular friends or associates may assure themselves that the judge’s ethnic remarks are made in jest, but such facially blatant ethnic slurs as those Judge Gonzalez uttered from the bench are apt to offend minority members not familiar with petitioner’s views and may be construed by the public at large as highly demeaning to minorities. Regardless of his personal feelings on racial harmony or the propriety of ethnic humor, Judge Gonzalez should have known that his admittedly “salty” courtroom comments were unbecoming and inappropriate. The ethnic slurs uttered from the bench constitute unjudicial conduct by a judge acting in his judicial capacity and are therefore sanctionable as wilful misconduct. . . .

The comment made off the bench regarding the black district attorney’s wife’s miscarriage and the Christmas party Jewish remark pose a less serious threat to public esteem for the integrity of the judiciary. However, as held in *In re Stevens*. . . ethnic and racial epithets uttered in chambers do constitute the lesser offense of conduct prejudicial. . . . Derogatory remarks, although made in chambers or at a staff gathering, may become public knowledge and thereby diminish the hearer’s esteem for the judiciary—again regardless of the speaker’s subjective intent or motivation. The reputation in the community of an individual judge necessarily reflects on that community’s regard for the judicial system. We hold that petitioner’s “one less minority” and inbreeding remarks constitute conduct prejudicial to the administration of justice. (*Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359, 376-377; 188 Cal.Rptr. 880; 657 P.2d 372.)

**VI.
A MISCELLANY
OF MISCONDUCT**

▶ **More important than the appearance of fairness is the reality of fairness.**

▶ [A] judge's prime responsibility is the evenhanded dispensation of justice. . . . (*Furey, supra*, 43 Cal.3d at 1317.)

▶ [I]n indulging his petty animosity toward deputy public defenders, and in culmination of a pervasive course of conduct of overreaching his authority over subordinates, petitioner intentionally committed acts which he knew or should have known were beyond his lawful power. The resulting misconduct entailed the most insidious kind of official lawlessness—disregard for the statutory and constitutional rules by which a society of millions and a heritage of centuries have sought to preserve fundamental fairness within a legal system which cannot escape the inherent imperfections of mankind.

No more fragile rights exist under our law than the rights of the indigent accused; consequently these rights are deserving of the greatest judicial solicitude. The ideal of our legal system is that the judicial should be equated with the just. Such an ideal cannot be achieved if one man clothed with judicial power may ignore with impunity such a basic institutional mandate as the sanctity of the attorney-client relationship merely because the attorneys are young deputy public defenders and their clients are indigent.

It is immaterial whether petitioner's abuse of power resulted in just or unjust treatment for any given defendant. It is undisputed that petitioner bore no ill will towards the individual defendants enumerated in count six. Petitioner's bad faith was directed towards our legal system itself; his arbitrary substitutions of counsel because of his personal beliefs as to the defendants' guilt and his personal hostility to their counsel smacks of an inquisitorial intent to serve imagined truth at the expense of justice. Our adversary system of justice and our elaborate procedure for the prosecution of alleged criminals represents an institutional recognition of the fallibility of the individual. Much as our political system apportions power among jealous branches of government, so within the judicial branch we have striven to disperse the functions of the judicial process among many adverse participants in the hope that the institutions of our legal system will bear a collective capacity for justice and righteousness which no single mortal can achieve. It is this commitment to institutional justice which petitioner's individual conduct threatens to corrupt. Risk of recurrence of such conduct cannot be tolerated. (*Geiler, supra*, 10 Cal.3d at 286.)

**VI.
A MISCELLANY
OF MISCONDUCT**

▶ **The Court, while mindful of the crush of judicial business, has steadfastly refused to accept it as an excuse for the denial of rights.**

▶ [It] does not appear that it was the pressures of her assigned work load which forced her into the improprieties charged and found. It is manifest in any event that a lack in the quality of justice cannot be balanced by the fact that justice, such as it is, is administered in large quantities. (*Cannon, supra*, 14 Cal.3d at 706.)

▶ His stated goal of expediting the adjudication of cases in his court, though laudable, should not blind him to the fundamental elements of a fair criminal proceeding. (*McCullough v. Commission on Judicial Performance* (1989) 49 Cal.3d 186, 195; 260 Cal.Rptr. 557; 776 P.2d 259.)

▶ During the last few years there has been great public concern over the problem of trial court delay and congestion. It may be argued that Judge Geiler was attempting to respond to this crisis in the court system by encouraging pleas of guilty in minor cases which would undoubtedly result in a misdemeanor disposition in the superior court. However, a judge must decide each case on its own individual merits. (*Geiler, supra*, 10 Cal.3d at 285.)

▶ **The Court is also unimpressed by the argument that a particular bit of misconduct is somehow immune from sanction because it was (or was not) legal error.**

▶ The ultimate standard for judicial conduct must be conduct which constantly reaffirms fitness for the high responsibilities of judicial office. *It is immaterial that the conduct concerned was probably lawful. . . .* (*Geiler, supra*, 10 Cal.3d at 281 [emphasis added].)

▶ Petitioner denies the impropriety of any of his entries into the jury room. He cites *People v. Vinson* (1981) 121 Cal.App.3d 80, 84 [175 Cal.Rptr. 123], for the proposition that a private communication between a judge and juror does not necessarily constitute reversible error. However, once again Judge Gonzalez fails to grasp the heart of the matter. He has not been charged with committing reversible error by his actions, nor is this the standard for determining whether his misconduct is sanctionable. Rather, petitioner was charged with having "conducted . . . court business in a manner demonstrating ignorance of and indifference to procedures required by law which are essential to the fair, orderly, and decorous administration of justice." . . . Although informal communications between judge and jury may not result

**VI.
A MISCELLANY
OF MISCONDUCT**

in reversible error if an appeal is in fact taken, for our present purposes it is important to stress that such communications do interfere with the parties' right to the assistance of counsel and do undermine public esteem for the integrity and impartiality of the judicial office. (*Gonzalez, supra*, 33 Cal.3d at 374-375.)

► Judge McCullough admits that he committed the act which formed the basis of the Commission's charge, i.e., that he directed the jury to find Sumaya guilty. . . . [T]he fact that Sumaya's conviction was reversed does not justify or excuse the judge's action. Depriving a criminal defendant of his fundamental right to be tried by a jury manifests disrespect for the constitutional protections of our legal system. (*McCullough, supra*, 49 Cal.3d at 192.)

► As already explained, good faith does not preclude a determination of conduct prejudicial. It is true that a judge should not be disciplined for mere erroneous determination of legal issues, including questions of limitations on the judicial power, that are subject to reasonable differences of opinion. . . . But, as explained, petitioner engaged in collection practices that were clearly improper. . . . (*Gubler v. Commission on Judicial Performance* (1984) 37 Cal.3d 27, 47-48; 207 Cal.Rptr. 171; 688 P.2d 551.)

► **The Court's solicitude for the rights of litigants and attorneys, its mistrust of arrogance and high-handedness, and its rejection of the idea that "mere" legal error cannot be misconduct—all these themes come together when the Court considers abuse of the contempt power. In no other area has the Supreme Court insisted so vehemently on high judicial standards.**

► In contempt proceedings the court is often the prosecutor, judge, and jury. The contempt power is virtually unique in our system of justice because it permits a single official to deprive a citizen of his fundamental liberty interest without all of the procedural safeguards normally accompanying such a deprivation. Petitioner would have done well to recall the words of one of this court's first opinions, a case involving the future Justice Stephen J. Field: "The power [of contempt] is necessarily of an arbitrary nature, and should be used with great prudence and caution. A Judge should bear in mind that he is engaged, not so much in vindicating his own character, as in promoting the respect due to the administration of the laws. . . ." (*People v. Turner* (1850) 1 Cal. 152, 153.) (*Furey, supra*, 43 Cal.3d at 1314.)

**VI.
A MISCELLANY
OF MISCONDUCT**

▶ Those who accept judicial office must expect and endure. . . criticism. As one court aptly stated, “the judge must be long of fuse and somewhat thick of skin.” (*DeGeorge v. Superior Court* (1974) 40 Cal.App.3d 305, 312 [114 Cal.Rptr. 860].) (*Ryan, supra*, 45 Cal.3d at 532.)

▶ “Judges are supposed to be men of fortitude, able to thrive in a hardy climate.” (*Craig v. Harney* (1947) 331 U.S. 367, 376; 91 L.Ed. 1546, 1552; 67 S.Ct. 1249.) (*Furey, supra*, 43 Cal.3d at 1320.)

▶ As to the contempt power, petitioner again failed to make the required written findings and an order. He seems to have learned nothing from the fact that several of his contempt orders had been set aside by higher courts for these procedural defects. . . .

Moreover, we have seen ample confirmation of petitioner’s growing animosity toward Ms. Cuskaden. These incidents do not merely reflect “procedural shortcomings,” as he would have it, but are part of a disturbing pattern of wilful misconduct toward a litigant and courtroom spectator. As the masters noted, he was probably dealing with Ms. Cuskaden in a manner applauded by those who believe her to be a controversial and difficult individual. But a judge’s prime responsibility is the evenhanded dispensation of justice, even for the controversial and difficult persons in society. We thus conclude that in indulging his animosity toward Ms. Cuskaden petitioner was guilty of wilful misconduct in office. (*Furey, supra*, 43 Cal.3d at 1317.)

▶ Petitioner particularly complains of the Commission’s conclusions . . . that she “acted wilfully, maliciously and in bad faith in the exercise of the contempt power and also failed to comply with the provisions of Code of Civil Procedure section 1211” and to the conclusion that “Such conduct constituted wilful misconduct in office.” She contends as to each matter that the Commission seeks to hold her accountable for what is at worst an erroneous judicial ruling and/or decision as distinguished from “judicial misconduct” within the meaning of the pertinent constitutional provisions.

Petitioner completely ignored proper procedures in punishing for a contempt committed in the immediate presence of a court, as provided in Code of Civil Procedure section 1211. This, without more, constituted an act of bad faith in each instance. (*Cannon, supra*, 14 Cal.3d at 693-694.)

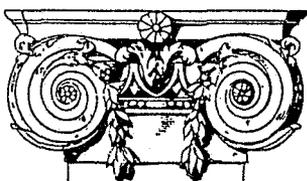
▶ [I]gnorance of proper contempt procedures, without more, constitute[s] bad faith. . . . Judge Ryan should have known, or should have researched,

**VI.
A MISCELLANY
OF MISCONDUCT**

the proper contempt procedures in this matter. His failure to do so constituted bad faith under the *Wenger* two-prong test. (*Ryan, supra*, 45 Cal.3d at 533.)

► Moreover, even if the conduct of the public defenders was clearly contemptuous, petitioner's vehement expressions of personal hostility were absolutely improper. A judge must not, as previously noted, place the defense of his own character above his obligation to promote respect for the law in adjudicating contempts of court. . . . If petitioner thus could not vent his personal animosity in the face of contemptuous conduct, he certainly could not do so in the face of any disrespect attendant to the public defender's affidavit of prejudice policy. No matter how provocative are the personal attacks or innuendos by lawyers against a judge, the judge simply "should not himself give vent to personal spleen or respond to a personal grievance" because "justice must satisfy the appearance of justice." (Mr. Justice Frankfurter writing for the court in *Offutt v. United States* (1954) 348 U.S. 11, 14. . . admonishing judges to "banish the slightest personal impulse to reprisal" in protecting the authority of the court.) (*McCartney, supra*, 12 Cal.3d at 538-539.)

**VII.
VOLUNTARY
DISABILITY
RETIREMENT**



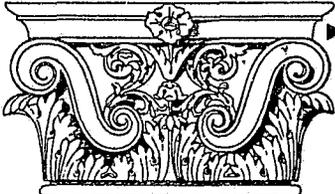
In addition to its duties as an investigator of judicial misconduct, the commission reviews applications for disability retirement by judges. See Government Code sections 75060-75064, which are reprinted in the appendix to this report. Before taking effect, a disability retirement must be approved by the commission and the Chief Justice.

In 1989 seven disability retirement applications were approved. Two others were denied. One was still pending at the end of the year.

The commission continues to seek badly needed reform in this area.

Appendix 1. GOVERNING PROVISIONS

A. CONSTITUTION OF CALIFORNIA



CONSTITUTION OF CALIFORNIA

Article VI, Sections 8 and 18

► SEC. 8.

(a) The Commission on Judicial Performance consists of 2 judges of courts of appeal, 2 judges of superior courts, and one judge of a municipal court, each appointed by the Supreme Court; 2 members of the State Bar of California who have practiced law in this State for 10 years, appointed by its governing body; and 2 citizens who are not judges, retired judges, or members of the State Bar of California, appointed by the Governor and approved by the Senate, a majority of the membership concurring. Except as provided in subdivision (b), all terms are 4 years. No member shall serve more than 2 4-year terms.

Commission membership terminates if a member ceases to hold the position that qualified the member for appointment. A vacancy shall be filled by the appointing power for the remainder of the term. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing power.

(b) To create staggered terms among the members of the Commission on Judicial Performance, the following members shall be appointed, as follows:

(1) The court of appeal member appointed to immediately succeed the term that expires on November 8, 1988, shall serve a 2-year term.

(2) Of the State Bar members appointed to immediately succeed terms that expire on December 31, 1988, one member shall serve for a 2-year term.

► SEC. 18.

(a) A judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging the judge in the United States with a crime punishable as a felony under California or federal law, or (2) a recommendation to the Supreme Court by the Commission on Judicial Performance for removal or retirement of the judge.

(b) On recommendation of the Commission on Judicial Performance or on its own motion, the Supreme Court may suspend a judge from office without salary when in the United States the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that

A.
CONSTITUTION
OF CALIFORNIA

law. If the conviction is reversed suspension terminates, and the judge shall be paid the salary for the judicial office held by the judge for the period of suspension. If the judge is suspended and the conviction becomes final the Supreme Court shall remove the judge from office.

(c) On recommendation of the Commission on Judicial Performance the Supreme Court 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, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of the judge's current term that constitutes wilful 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. The Commission on Judicial Performance may privately admonish a judge found to have engaged in an improper action or dereliction of duty, subject to review in the Supreme Court in the manner provided for review of causes decided by a court of appeal.

(d) A judge retired by the Supreme Court shall be considered to have retired voluntarily. A judge removed by the Supreme Court is ineligible for judicial office and pending further order of the court is suspended from practicing law in this State.

(e) A recommendation of the Commission on Judicial Performance for the censure, removal or retirement of a judge of the Supreme Court shall be determined by a tribunal of 7 court of appeal judges selected by lot.

(f) If, after conducting a preliminary investigation, the Commission on Judicial Performance by vote determines that formal proceedings should be instituted:

(1) The judge or judges charged may require that formal hearings be public, unless the Commission on Judicial Performance by vote finds good cause for confidential hearings.

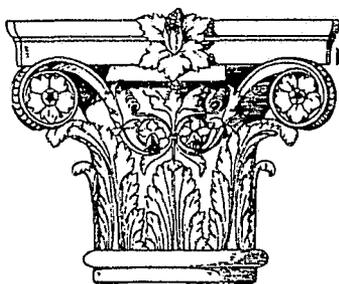
(2) The Commission on Judicial Performance may, without further review in the Supreme Court, issue a public reproof with the consent of the judge for conduct warranting discipline. The public reproof shall include an enumeration of any and all formal charges brought against the judge which have not been dismissed by the commission.

(3) The Commission on Judicial Performance may in the pursuit of public confidence and the interests of justice, issue press statements or releases or, in the event charges involve moral turpitude, dishonesty, or corruption, open hearings to the public.

(g) The Commission on Judicial Performance may issue explanatory statements at any investigatory stage when the subject matter is generally known to the public.

(h) The Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings.

**B.
CALIFORNIA
RULES OF
COURT**



▶ **Title III Miscellaneous Rules**
▶ **DIVISION I**
▶ **RULES FOR CENSURE, REMOVAL, RETIREMENT OR PRIVATE
ADMONISHMENT OF JUDGES**

TABLE OF CONTENTS

Page

Rule 901.	Interested Party.....	40
Rule 902.	Confidentiality of Proceedings	40
Rule 903.	Defamatory Material	40
Rule 903.5.	Response by Judge; Medical Examination.....	40
Rule 904.	Commencement of Commission Action	40
Rule 904.1	Advisory Letter after Staff Inquiry	41
Rule 904.2.	Preliminary Investigation	41
Rule 904.3.	Private Admonishment	41
Rule 904.4.	Notice Requirements	41
Rule 904.5.	Demand for Appearance after Notice of Private Admonishment	41
Rule 904.6.	Use and Retention of Commission Records	41
Rule 905.	Notice of Formal Proceedings	42
Rule 906.	Answer	42
Rule 907.	Setting for Hearing Before Commission or Masters	42
Rule 907.1.	Judge's Request for Open Hearing	42
Rule 907.2.	Commission Order for Open Hearing	42
Rule 907.5.	Discovery Procedures	43
Rule 908.	Hearing	44
Rule 909.	Evidence	44
Rule 910.	Procedural Rights of Judge	44
Rule 911.	Amendments to Notice or Answer	44
Rule 912.	Report of Masters	44
Rule 913.	Objections to Report of Masters	45
Rule 914.	Appearance Before Commission	45
Rule 915.	Extension of Time	45
Rule 916.	Hearing Additional Evidence	45
Rule 917.	Commission Vote	45
Rule 918.	Record of Commission Proceedings	45
Rule 919.	Certification and Review of Commission Recommendation.....	46
Rule 920.	Review of Commission Proceeding Resulting in Private Admonishment	46
Rule 921.	Proceedings Involving Censure, Removal or Retirement of a Judge of the Supreme Court	46
Rule 922.	Definitions.....	46

B.
CALIFORNIA RULES OF COURT

► **Rule 901. Interested Party**

A judge who is a member of the commission or of the Supreme Court may not participate as such in any proceedings involving his own censure, removal, retirement or private admonishment.

► **Rule 902. Confidentiality of Proceedings**

(a) Except as provided in this rule, all papers filed with and proceedings before the commission, or before the masters appointed by the Supreme Court pursuant to rule 907, shall be confidential until a record is filed by the commission in the Supreme Court. Upon a recommendation of censure, all papers filed with and proceedings before the commission or masters shall remain confidential until the judge who is the subject of the proceedings files a petition in the Supreme Court to modify or reject the commission's recommendation or until the time for filing a petition expires.

Information released by the commission under this subdivision in proceedings resulting in a recommendation of censure shall make appropriate reference to a petition for review in the Supreme Court filed by the judge, if any is filed, to the end that the public will perceive that the commission's recommendation and findings are wholly or partly contested by the judge.

(b) The commission may release information regarding its proceedings under the following circumstances:

(1) If a judge is publicly charged with involvement in proceedings before the commission resulting in substantial unfairness to him, the commission may, at the request of the judge involved, issue a short statement of clarification and correction.

(2) If a judge is publicly associated with having engaged in serious reprehensible conduct or having committed a major offense, and after a preliminary investigation or a formal hearing it is determined there is no basis for further proceedings or recommendation of discipline, the commission may issue a short explanatory statement.

(3) When a formal hearing has been ordered in a proceeding in which the subject matter is generally known to the public and in which there is broad public interest, and in which confidence in the administration of justice is threatened due to lack of information concerning the status of the proceeding and the requirements of due process, the commission may issue one or more short announcements confirming the hearing, clarifying the procedural aspects, and defending the right of a judge to a fair hearing.

(4) If a judge retires or resigns from judicial office following institution of formal proceedings, the commission may, in the interest of justice or to maintain confidence in the administration of justice, release information concerning the investigation and proceedings to a public entity.

(5) Upon completion of an investigation or proceed-

ing, the commission shall disclose to the person complaining against the judge that after an investigation of the charges the commission (i) has found no basis for action against the judge, (ii) has taken an appropriate corrective action, the nature of which shall not be disclosed, or (iii) has filed a recommendation for the censure, removal, or retirement of the judge. The name of the judge shall not be used in any written communication to the complainant unless the record has been filed in the Supreme Court.

► **Rule 903. Defamatory Material**

The filing of papers with or the giving of testimony before the commission, or before the masters appointed by the Supreme Court pursuant to rule 907, shall be privileged in any action for defamation. No other publication of such papers or proceedings shall be so privileged, except that the record filed by the commission in the Supreme Court continues to be privileged.

► **Rule 903.5. Response by Judge; Medical Examination**

A judge shall, within such reasonable time as the commission may prescribe, respond to the merits of a letter from the commission sent either before or during a preliminary investigation. A judge shall, upon showing of good cause found by two-thirds of the membership of the commission and within such reasonable time as the commission may prescribe, submit to a medical examination ordered by the commission. The examination must be limited to the conditions stated in the showing for good cause. No examination by a specialist in psychiatry may be required without the consent of the judge.

► **Rule 904. Commencement of Commission Action**

(a) (Receipt of verified statement) Upon receiving a verified statement alleging facts indicating that a judge is guilty of wilful misconduct in office, persistent failure or inability to perform the duties of office, 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 that the judge has a disability that seriously interferes with the performance of the duties of office and is or is likely to become permanent, or that the judge has engaged in an improper action or a dereliction of duty, the commission shall

(1) in an appropriate case, determine that the statement is obviously unfounded or frivolous and dismiss the proceeding;

(2) if the statement is not obviously unfounded or frivolous, make a staff inquiry to determine whether sufficient facts exist to warrant a preliminary investigation; or

(3) if sufficient facts are determined in the course of a staff inquiry or otherwise, make a preliminary investigation to determine whether formal proceedings should

B.
CALIFORNIA RULES OF COURT

be instituted and a hearing held.

(b) (Investigation without verified statement) The commission without receiving a verified statement may make a staff inquiry or preliminary investigation on its own motion.

(c) (Notification of disposition at the judge's request) Upon written request from a judge who is the subject of a proceeding before the commission, the commission shall notify the judge in writing of the disposition of the proceeding if

(1) the judge's request to the commission specifically describes the underlying incident giving rise to the proceeding;

(2) the pendency of the proceeding has become generally known to the public; or

(3) the judge has received written notice of the proceeding from someone who is not associated with the commission.

► **Rule 904.1. Advisory Letter after Staff Inquiry**

At any time during the course of a staff inquiry, the commission may determine that a judge's conduct does not constitute a basis for further proceedings and may terminate the inquiry by issuing a confidential advisory letter to the judge. Before the commission issues an advisory letter, the judge shall be notified of the inquiry, the nature of the charge, and the name of the person making the verified statement or, if none, that the inquiry is on the commission's own motion. The judge shall be afforded a reasonable opportunity in the course of the inquiry to present such matters as the judge may choose. A reasonable time for a judge to respond to an inquiry letter shall be 20 days from the date the letter was mailed to the judge unless the time is extended for good cause shown.

If the staff inquiry does not disclose sufficient cause to warrant issuance of a confidential advisory letter or further proceedings, the commission shall terminate the staff inquiry and notify the judge in writing.

► **Rule 904.2. Preliminary Investigation**

(a) (Notice) If the commission commences a preliminary investigation, the judge shall be notified of the investigation, the nature of the charge, and the name of the person making the verified statement or, if none, that the investigation is on the commission's own motion, and shall be afforded a reasonable opportunity in the course of the preliminary investigation to present such matters as the judge may choose.

(b) (Termination of investigation) If the preliminary investigation does not disclose sufficient cause to warrant further proceedings, the commission shall terminate the investigation and notify the judge.

(c) (Advisory letter) At any time after notice of a preliminary investigation and a reasonable opportunity to respond has been given to the judge, the commission may determine that the judge's conduct does not consti-

tute a basis for further proceedings and may terminate the investigation by issuing a confidential advisory letter to the judge.

(d) (Observation and review) The commission may defer termination of the investigation for a period not to exceed two years for observation and review of a judge's conduct.

► **Rule 904.3. Private Admonishment**

If the preliminary investigation discloses good cause, the commission may issue a notice of intended private admonishment to the judge by certified or registered mail. The notice shall include a statement of facts found by the commission and the reasons for the proposed admonishment. The notice shall also contain advice as to the judge's right to an appearance before the commission to object to the private admonishment and, if the commission does not withdraw its intention to admonish the judge privately after an appearance, the requirement of a hearing under the provisions governing initiation of formal proceedings.

► **Rule 904.4. Notice Requirements**

All notices of a staff inquiry, preliminary investigation, or intended private admonishment shall be addressed to the judge at the judge's last known residence or, if that address is not easily ascertainable by the commission, to the judge at chambers or at any other address the judge may designate. If the notice relates to a staff inquiry, the notice shall be given by first-class mail. If the notice relates to a preliminary investigation or intended private admonishment, the notice shall be given by prepaid certified mail return receipt requested.

► **Rule 904.5. Demand for Appearance after Notice of Private Admonishment**

(a) (Judge's demand for appearance) Within 15 days after mailing of a notice of an intended private admonishment, the judge may file with the commission a written demand for an appearance before the commission to object to the intended private admonishment.

(b) (Commission action after appearance) After the appearance, the commission may

(1) withdraw the private admonishment and terminate the proceeding, with or without an advisory letter; or

(2) advise the judge that the commission has rejected the objections to the intended admonishment and that the judge may either withdraw opposition and accept the private admonishment or continue opposition and request a formal hearing, with or without further preliminary investigation; or

(3) make further preliminary investigation; or

(4) institute formal proceedings.

► **Rule 904.6. Use and Retention of Commission Records**

(a) (Use of records outside the limitation period) Commission records of complaints against a judge shall

B.
CALIFORNIA RULES OF COURT

not be used for any purpose if the complaints (1) relate to actions occurring more than six years prior to the commencement of the judge's current term and (2) did not result in issuance of an advisory letter, private admonishment, censure, or removal of the judge.

(b) (Records disposition program) The commission shall adopt a records disposition program designed to dispose of those records which cannot be used for any purpose under this rule or which are no longer necessary for the performance of its duties.

► **Rule 905. Notice of Formal Proceedings**

(a) After the preliminary investigation has been completed, if the commission concludes that formal proceedings should be instituted, the commission shall without delay issue a written notice to the judge advising him of the institution of formal proceedings to inquire into the charges against him. Such proceedings shall be entitled:

"BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE INQUIRY CONCERNING A JUDGE, NO. _____."

(b) The notice shall specify in ordinary and concise language the charges against the judge and the alleged facts upon which such charges are based, and shall advise the judge of his right to file a written answer to the charges against him within 15 days after service of the notice upon him.

(c) The notice shall be served by the personal service of a copy thereof upon the judge, but if it appears to the chairman of the commission upon affidavit that, after reasonable effort for a period of 10 days, personal service could not be had, service may be made upon the judge by mailing, by prepaid certified or registered mail, copies of the notice addressed to the judge at his chambers and at his last known residence.

► **Rule 906. Answer**

Within 15 days after service of the notice of formal proceedings the judge may file with the commission an original and 11 legible copies of an answer, which shall be verified and shall conform in style to subdivision (c) of rule 15 of the Rules on Appeal. The notice of formal proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no motion or demurrer shall be filed against any of the pleadings.

► **Rule 907. Setting for Hearing Before Commission or Masters**

On filing or on expiration of the time for filing an answer, the commission shall order a hearing to be held before it concerning the censure, removal, retirement or private admonishment of the judge. In place of or in addition to a hearing before the commission, the commission may request the Supreme Court to appoint three special masters to hear and take evidence in the matter, and to report to the commission. On a vote of two-thirds of the members of the commission and with the consent

of the judge involved, the commission may request the Supreme Court to appoint one special master in place of three special masters. Consent of the judge shall be defined as (i) written agreement by the judge or counsel of record, or (ii) failure to object in writing within 30 days of notice of intention to request the appointment of one special master.

Special masters shall be judges of courts of record. When there are three special masters, not more than two of them may be retired judges from courts of record. The commission shall set a time and place for hearing before itself or before the masters and shall give notice of the hearing by mail to the judge at least 20 days before the hearing.

► **Rule 907.1. Judge's Request for Open Hearing**

With the answer or, if no answer is filed, before expiration of the time for filing an answer, the judge may file with the commission a written request that the formal hearing be open to the public. The commission shall review and consider the written request, and shall order that an open hearing be held unless the commission by vote finds good cause for a confidential hearing. The commission shall notify the judge by mail of its action on the judge's request for an open hearing within 60 days after the request is filed.

► **Rule 907.2. Commission Order for Open Hearing**

(a) (Notice to the judge and examiners of preliminary determination that charges may meet constitutional criteria) If the judge has not requested an open hearing in accordance with these rules, the commission shall determine whether the proceeding may meet the constitutional criteria for opening hearings to the public. If the commission makes the preliminary determination that the proceeding may meet the constitutional criteria, then it shall notify the judge and the examiner of its determination within 30 days after the filing of the answer or, if none is filed, within 30 days after expiration of the time for filing an answer. The notice shall advise the judge and the examiner of the right to submit written arguments on whether any of the charges involves moral turpitude, dishonesty, or corruption, and on whether opening the hearing would be in the pursuit of public confidence, and in the interests of justice. The arguments shall be submitted to the commission and served on the opposing party within 30 days after mailing the notice.

(b) (Commission determination on the nature of the charges) After considering the written arguments submitted, the commission shall determine whether any charge in the notice of formal proceedings involves moral turpitude, dishonesty, or corruption.

(c) (Commission determination on opening the hearing) If the commission finds that no charge in the notice of formal proceedings involves moral turpitude, dishonesty, or corruption, the commission shall order that the

B.
CALIFORNIA RULES OF COURT

hearing remain confidential.

If the commission finds that any charge in the notice of formal proceedings involves moral turpitude, dishonesty, or corruption, the commission shall proceed to a determination of whether opening the formal hearing would be (1) in the pursuit of public confidence, and (2) in the interests of justice.

The commission shall not order that a formal hearing be open to the public unless the commission finds that opening the hearing would be both in the pursuit of public confidence and in the interests of justice.

(d) (Notice to the judge and the examiner of the commission's determination on opening the hearing) The commission shall mail to the judge and the examiner copies of its order that the hearing be open or confidential within 30 days after the last date for submission of written arguments under these rules.

►Rule 907.5. Discovery Procedures

(a) (Exclusive procedures) The procedures in this rule shall constitute the exclusive procedures for discovery. Discovery may be obtained only after a written notice of formal proceedings is issued.

(b) (Applicability to both parties) The examiners and the judge are each entitled to discovery from the other in accordance with these procedures.

(c) (Discovery requests) All requests for discovery, except a request to take the deposition of a witness to be called at the hearing, must be made in writing to the opposing side within 30 days after service of the answer to the written notice of formal proceedings or within 30 days after service of the written notice of formal proceedings if no answer has yet been filed, or within 15 days after service of any amendment to the notice.

(d) (Inspection and copying) The following items may be inspected or copied by the side requesting discovery:

(1) the names, and if known, the business addresses and business telephone numbers of persons the opposing side then intends to call as witnesses at the hearing;

(2) the names, and if known, the business addresses and business telephone numbers of those persons who may be able to provide substantial material information favorable to the judge. Substantial material information favorable to the judge is evidence bearing directly on the truth of the charges or relevant to the credibility of a witness intended to be called;

(3) all statements about the subject matter of the proceedings, including any impeaching evidence, made by any witness then intended to be called by either side;

(4) all statements about the subject matter of the proceedings made by a person named or described in the notice, or amendment to the notice, other than the judge when it is claimed that an act or omission of the judge as to the person described is a basis for the formal proceeding;

(5) all investigative reports made by or on behalf of the commission, the examiners, or the judge, about the subject matter of the proceeding;

(6) all writings, including reports of mental, physical, and blood examinations, then intended to be offered in evidence by the opposing side;

(7) all physical items of evidence then intended to be offered in evidence;

(8) all writings or physical items of evidence which would be admissible in evidence at the hearing.

(e) (Compliance with request) If either side receives a written request for discovery in accordance with these procedures, the side receiving the request shall have a continuing duty to provide discovery of items listed in the request until proceedings before the masters are concluded. When a written request for discovery is made in accordance with these rules, discovery shall be provided within a reasonable time after any discoverable items become known to the side obligated to provide discovery.

(f) (Depositions) After initiation of formal charges against the judge, the commission or the masters shall order the taking of the deposition of any person upon a showing by the side requesting the deposition that the proposed deponent is a material witness who is unable or cannot be compelled to attend the hearing. If a deposition is ordered, the procedures stated in Government Code section 68753 shall be followed. The side requesting the deposition shall bear all costs of the deposition.

(g) (Failure to comply with discovery request) If any party fails to comply with a discovery request as authorized by these procedures, the items withheld shall be suppressed or, if the items have been admitted into evidence, shall be stricken from the record. If testimony is elicited during direct examination and the side eliciting the testimony withheld any statement of the testifying witness in violation of these discovery procedures, the testimony shall be ordered stricken from the record. Upon a showing of good cause for failure to comply with a discovery request, the masters may admit the items withheld or direct examination testimony of a witness whose statement was withheld upon condition that the side against whom the evidence is sought to be admitted is granted a reasonable continuance to prepare against the evidence, or may order the items or testimony suppressed or stricken from the record. The commission may, upon review of any hearing, order any evidence stricken from the record for violation of a valid discovery request if the evidence could have been ordered stricken by the masters for violation of a valid discovery request.

(h) (Applicable privileges) Nothing in these procedures shall authorize the discovery of any writing or thing which is privileged from disclosure by law or is

B.
CALIFORNIA RULES OF COURT

otherwise protected or made confidential as the work product of the attorney. Statements of any witness interviewed by the examiners, by any investigators for either side, by the judge, or by the judge's attorney shall not be protected as work product.

(i) (Definition of statement) For purposes of these procedures, "statement" shall mean either (1) a written statement prepared by or at the direction of the declarant or signed by the declarant, or (2) an oral statement of the declarant which has been recorded stenographically, mechanically, or electronically, or which has been videotaped, transcribed, or summarized in writing.

► **Rule 908. Hearing**

(a) At the time and place set for hearing, the commission, or the masters when the hearing is before masters, shall proceed with the hearing whether or not the judge has filed an answer or appears at the hearing. The examiner shall present the case in support of the charges in the notice of formal proceedings.

(b) The failure of the judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for censure, removal, retirement or private admonishment. In accordance with Evidence Code section 913, no inference shall be drawn from the exercise of the privilege not to respond to questions on grounds of self-incrimination or the exercise of any other Evidence Code privilege, or of any other recognized privilege, as to any matter in issue or to the credibility of the judge. In accordance with Evidence Code section 413, in reviewing the evidence and facts in the case against the judge, the commission may consider the judge's failure to explain or deny evidence or facts in the case or any willful suppression of evidence if that is the case, unless the failure or suppression is due to the judge's exercise of any legally recognized privilege.

(c) The proceedings at the hearing shall be reported by a phonographic reporter.

(d) When the hearing is before the commission, not less than five members shall be present when the evidence is produced.

► **Rule 909. Evidence**

(a) (Applicable law and agreed statement) The California Evidence Code shall be applicable to all hearings before the commission or masters. Oral evidence shall be taken only on oath or affirmation. The examiner or the judge may propose to the other party an agreed statement in place of all or a part of the testimony. An agreed statement shall not foreclose argument to the commission or masters.

(b) (Prior disciplinary action) Any prior disciplinary action may be received in evidence to prove that conduct is persistent or habitual or to determine what action should be taken or recommendation made following the finding of facts constituting grounds for

private admonishment, censure, removal or retirement.

► **Rule 910. Procedural Rights of Judge**

(a) In formal proceedings involving his censure, removal, retirement or private admonishment, a judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. He shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers, and other evidentiary matter.

(b) When a transcript of the testimony has been prepared at the expense of the commission, a copy thereof shall, upon request, be available for use by the judge and his counsel in connection with the proceedings, or the judge may arrange to procure a copy at his expense. The judge shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at his expense.

(c) Except as herein otherwise provided, whenever these rules provide for giving notice or sending any matter to the judge, such notice or matter shall be sent to the judge at his residence unless he requests otherwise, and a copy thereof shall be mailed to his counsel of record.

(d) If the judge is adjudged insane or incompetent, or if it appears to the commission at any time during the proceedings that he is not competent to act for himself, the commission shall appoint a guardian ad litem unless the judge has a guardian who will represent him. In the appointment of such guardian ad litem, preference shall be given, whenever possible, to members of the judge's immediate family. The guardian or guardian ad litem may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent, and whenever these rules provide for serving or giving notice or sending any matter to the judge, such notice or matter shall be served, given, or sent to the guardian or guardian ad litem.

► **Rule 911. Amendments to Notice or Answer**

The masters, at any time prior to the conclusion of the hearing, or the commission, at any time prior to its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby.

► **Rule 912. Report of Masters**

(a) (Proposed report) Within 20 days after the conclusion of the hearings before masters, they shall prepare

B.
CALIFORNIA RULES OF COURT

and transmit to the parties a proposed report which shall contain a brief statement of the proceedings had and their findings of fact and conclusions of law with respect to the issues presented by the notice of formal proceedings and the answer thereto, or if there be no answer, their findings of fact and conclusions of law with respect to the allegations in the notice of formal proceedings. The proposed report may also contain an analysis of the evidence and reasons for the findings or conclusions.

(b) (Statement of objections) Within 15 days after mailing the copy of the proposed masters' report, the examiner or the judge may file with the masters four legible copies of a statement of objections to the proposed report. The objections and grounds shall be specific and shall be supported by reference to the book and page number of the transcript of the proceeding and by citation of authorities.

(c) (Amending the report) Following receipt of any objections, the masters may amend the proposed report in any manner warranted by the record and applicable rules of law and transmit within 10 days their report to the commission. In the absence of objections, their report shall be transmitted to the commission at the expiration of the time for filing objections.

(d) (Transcript) When the findings and conclusions support the grounds alleged for censure, removal, retirement or private admonishment, the report shall be accompanied by an original and four copies of a transcript of the proceedings before the masters. In other cases, if a transcript is needed to prepare the report, a majority of the masters may, with the consent of the commission, order the transcript prepared at the expense of the commission.

(e) (Copy of report to judge) Upon receiving the report of the masters, the commission shall promptly mail a copy to the judge.

► Rule 913. Objections to Report of Masters

Within 15 days after mailing of the copy of the masters' report to the judge, the examiner or the judge may file with the commission an original and 15 legible copies of a statement of objections to the report of the masters. The objections and grounds shall be specific and shall be supported by reference to the book and page number of the transcript and all reasons in opposition to the findings as sufficient grounds for censure, removal, retirement, or private admonishment. The statement shall conform in style to subdivision (c) of rule 15 and, when filed by the examiner, a copy shall be sent by first-class mail to the judge.

► Rule 914. Appearance Before Commission

If no statement of objections to the report of the masters is filed within the time provided, the commission may adopt the findings of the masters without a hearing. If such statement is filed, or if the commission in the absence of such statement proposes to modify or

reject the findings of the masters, the commission shall give the judge and the examiner an opportunity to be heard orally before the commission, and written notice of the time and place of such hearing shall be mailed to the judge at least 10 days prior thereto.

► Rule 915. Extension of Time

(a) (In general) The chairperson of the commission may extend for a period not to exceed 30 days, except for good cause, the time for each of the following: filing of an answer, commencing a hearing before the commission, transmitting the masters' proposed report to the parties, filing with the masters a statement of objections to the proposed report of the masters, transmitting the masters' report to the commission, and filing with the commission a statement of objections to the report of the masters. The presiding master may similarly extend the time for commencing a hearing before masters.

(b) (To obtain reasonable discovery) The chairperson of the commission or the presiding master may extend the time for commencing the hearing upon a showing of good cause to permit either party to obtain reasonable discovery as provided in these rules.

► Rule 916. Hearing Additional Evidence

(a) The commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent by mail to the judge at least 10 days prior to the date of hearing.

(b) In any case in which masters have been appointed, the hearing of additional evidence shall be before such masters, and the proceedings therein shall be in conformance with the provisions of rules 908 to 914, inclusive.

► Rule 917. Commission Vote

If the commission finds good cause, it shall privately admonish the judge or recommend to the Supreme Court the censure, removal or retirement of the judge. The affirmative vote of five members of the commission who have considered the record and report of the masters and who were present at any oral hearing as provided in rule 914, or, when the hearing was before the commission without masters, of five members of the commission who have considered the record, and at least three of whom were present when the evidence was produced, is required for a private admonishment or a recommendation of censure, removal or retirement of a judge or for dismissal of the proceedings.

► Rule 918. Record of Commission Proceedings

The commission shall keep a record of all proceedings concerning a judge. The commission's determination shall be entered in the record and notice of the determination shall be mailed to the judge. In all formal proceedings, the commission shall prepare a transcript

B.
CALIFORNIA RULES OF COURT

of the testimony and of all proceedings and shall make written findings of fact and conclusions of law.

► Rule 919. Certification and Review of Commission Recommendation

(a) Upon making a determination recommending the censure, removal or retirement of a judge, the commission shall promptly file a copy of the recommendation certified by the chairman or secretary of the commission, together with the transcript and the findings and conclusions, with the Clerk of the Supreme Court and shall immediately mail the judge notice of the filing, together with a copy of the recommendation, findings, and conclusions.

(b) A petition to the Supreme Court to modify or reject the recommendation of the commission for censure, removal or retirement of a judge may be filed within 30 days after the filing with the Clerk of the Supreme Court of a certified copy of the recommendation complained of. The petition shall be verified, shall be based on the record, shall specify the grounds relied on and shall be accompanied by petitioner's brief and proof of service of three copies of the petition and of the brief on the commission. Within 45 days after the petition is filed, the commission shall serve and file a respondent's brief. Within 15 days after service of such brief the petitioner may file a reply brief, of which three copies shall be served on the commission.

(c) Failure to file a petition within the time provided may be deemed a consent to a determination on the merits based upon the record filed by the commission.

(d) The rules adopted by the Judicial Council governing appeals from the superior court in civil cases, other than rule 26 relating to costs, shall apply to proceedings in the Supreme Court for review of a recommendation of the commission except where express provision is made to the contrary or where the application of a particular rule would be clearly impracticable, inappropriate, or inconsistent.

► Rule 920. Review of Commission Proceeding Resulting in Private Admonishment

(a) (Mailing of notice of entry) Upon making a determination to privately admonish a judge following a hearing, the commission shall enter the private admonishment in its records and shall immediately mail to the judge (1) a copy of the admonishment, (2) a copy of a notice stating that an admonishment has been entered in the records of the commission, and reciting the date of its entry and the date of mailing of the notice, and (3) a copy of the findings and conclusions.

(b) (Petition for review) A judge seeking review of the commission's action shall serve and file a petition for review in the Supreme Court within 30 days after mailing of the notice of entry of the private admonishment in the records of the commission. The petition shall be verified and include proof of the delivery or mailing of three

copies of the petition to the commission. Within 20 days after the filing of the petition the commission shall transmit to the Clerk of the Supreme Court the original record, including a transcript of the testimony, briefs, and all original papers and exhibits on file in the proceeding. If the petition is denied, the Clerk of the Supreme Court shall return the transmitted materials to the commission.

(c) (Answer to petition) The commission may serve and file an answer within 30 days after the filing of the petition.

(d) (Contents of petition and answer) Except as provided in these rules, the petition and answer shall, insofar as practicable, conform to rules 15 and 28. Each copy of the petition shall contain (1) a copy of the admonishment, (2) a copy of the notice of entry of the admonishment in the records of the commission, (3) a copy of the findings of fact and conclusions of law, and (4) a cover which shall bear the conspicuous notation "PETITION FOR REVIEW OF PRIVATE ADMONISHMENT (RULE 920)" or words of like effect.

(e) (Disposition of petition for review) Review in the Supreme Court may be granted by an order signed by at least four judges and filed with the Clerk. Denial of review may be evidenced by an order signed by the Chief Justice and filed with the Clerk. If no order is made within 60 days after the filing of the petition, or any extension of that period, the petition shall be deemed denied and the Clerk shall enter a notation in the register to that effect. The Supreme Court may for good cause extend the time for granting or denying the petition for a period not to exceed an additional 60 days.

(f) (Review applicable only after hearing) No review shall be had in the Supreme Court of a private admonishment issued without a hearing.

► Rule 921. Proceedings Involving Censure, Removal or Retirement of a Judge of the Supreme Court

(a) Immediately upon filing of a commission recommendation involving censure, removal or retirement of a judge of the Supreme Court, the Clerk of the Supreme Court shall select, by lot, seven court of appeal judges who shall elect one of their number presiding justice and perform the duties of the tribunal created under Article VI, section 18(e) of the Constitution. This selection shall be made upon notice to the commission, the judge, and his counsel of record in a proceeding open to the public. No court of appeal judge who has served as a master or a member of the commission in the particular proceeding or is otherwise disqualified may serve on the tribunal.

(b) The Clerk of the Supreme Court shall serve as the clerk of the tribunal.

► Rule 922. Definitions

In these rules, unless the context or subject matter otherwise requires:

B.
CALIFORNIA RULES OF COURT

(a) "Commission" means the Commission on Judicial Performance.

(b) "Judge" means a judge of any court of this state or a retired judge who has elected to serve on senior judge status.

(c) "Chairman" includes the acting chairman.

(d) "Masters" means the special master or special masters appointed by the Supreme Court upon request of the commission.

(e) "Presiding master" means the master so designated by the Supreme Court or, if no designation is made, the judge first named in the order appointing masters.

(f) "Examiner" means the counsel designated by the commission to gather and present evidence before the masters or commission with respect to the charges against a judge.

(g) "Shall" is mandatory and "may" is permissive.

(h) "Mail" and "mailed" include ordinary mail and personal delivery.

(i) The masculine gender includes the feminine gender.

(j) As used in rule 919, "Supreme Court" includes the tribunal of court of appeal judges created pursuant to Article VI, section 18(e) of the Constitution.

► **CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE
POLICY DECLARATIONS AS OF DECEMBER 1989**

► **TABLE OF CONTENTS**

Page

PREAMBLE50
 TITLE50
 DEFINITIONS50

► **DIVISION I. INVESTIGATION PROCEDURE**

1.1 Staff Inquiry50
 1.2 Authorization for Staff Inquiry Between Meetings50
 1.3 Inquiry Letter50
 1.4 Authorization for Inquiry Letters and 904 Letters,
 Between Meetings, in Certain Types of Situations50
 1.5 Authorization for Inquiry Letter When There Has
 Been Direct Communication with the Judge50
 1.6 904 Letter50
 1.7 Time Limits for Judge's Response to
 Inquiry and 904 Letters50
 1.8 [Deleted]
 1.9 Interviews and Statements50
 1.10 Consent, Preservation51
 1.11 Investigation Subpenas51
 1.12 Expediting Subpena Enforcement51

► **DIVISION II. FORMAL PROCEEDINGS**

2.1 Opposition to Private Admonishment; Statement of
 Objections, Appearance, Withdrawal of Opposition51
 2.2 [Deleted]
 2.3 Pre-Hearing Conference51
 2.4 Agreed Statement51
 2.5 Investigator or Agent at Hearing51
 2.6 Proposed Findings and Conclusions51

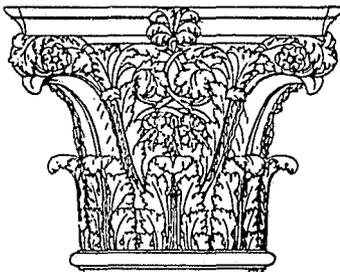
► **DIVISION III. MISCELLANEOUS**

3.1 Anonymous Complaints51
 3.2 Setting Regular and Special Meetings51
 3.3 Preparation of Annual Report51
 3.4 Availability52
 (1) Declarations Reflecting Internal and Operational Detail52
 (2) Declarations Implementing and Clarifying Procedures52
 3.5 Election of Chairperson and Vice-Chairperson52
 3.6 Policy Declarations52
 3.7 [Deleted]
 3.8 Removed from Active Calendar52
 3.9 Criminal Prosecution Arising Out of a Commission
 Investigation52
 3.10 Staff Authorization for Media Announcements52
 3.11 [Deleted]

► **DIVISION IV. DISABILITY RETIREMENT APPLICATIONS**

4.1 Disability Applications: Confidentiality52
 4.2 Disability Applications: Medical Consultants52
 4.3 Re-examination of Judges Retired for Disability52

**C.
POLICY
DECLARATIONS**



C.
POLICY DECLARATIONS

► **PREAMBLE**

The compelling force of necessity for (1) uniformity and continuity of procedure and (2) equitable, expeditious resolution of recurrent and detailed issues of procedure, authorize the formulation and engrossment of a single, yet amendable document, containing policy declarations detailing commission policies, procedures and practices. These policy declarations shall reflect internal procedural detail neither duplicative of nor inconsistent with constitutional mandate, statutes, or Judicial Council rules. These policy declarations shall be based upon concepts of utility, experience, and fair hearing of matters before the commission.

► **TITLE**

These policy declarations shall be known and may be cited as the Policy Declarations of the Commission on Judicial Performance.

► **DEFINITIONS**

HEARING means a formal proceeding before the commission or three special masters pursuant to rule 905 et seq., to inquire into and based upon charges against the judge issued after full investigation, the judge's answer and legal evidence received, pursuant to rule 905 et seq.

APPEARANCE means an opportunity for a judge to informally contest imposition of an admonishment in argument before the commission based on the proceedings which resulted in the issuance of a notice of intended admonishment and the judge's statement.

DEMAND means a notice in writing of a judge's rejection of an intended private admonishment.

DESIGNATED OFFICER OR OFFICERS means an individual or individuals designated by the commission to carry out a specific commission function, and may be a commission member or members, a special master or masters or the commission director.

► **DIVISION I.**

INVESTIGATION PROCEDURE

► **1.1 Staff Inquiry**

The commission may direct staff to make inquiry to determine a) whether or not there are sufficient facts to warrant a preliminary investigation under rule 904 and, b) what other disposition is appropriate. This may but need not include writing to the judge (inquiry letter).

► **1.2 Authorization for Staff Inquiry Between Meetings**

Upon approval of the chairperson or acting chairperson, there may be an appropriate inquiry as soon as possible in each case which on its face appears to require such inquiry.

► **1.3 Inquiry Letter**

As part of a staff inquiry, allegations of claimed mis-

conduct may be furnished the subject judge so that the judge has an opportunity to supply 1) information about factual aspects of claimed misconduct and 2) other relevant comment. The purpose is to assist the commission in making a decision regarding further action. An inquiry letter may, but need not, precede a letter written pursuant to rule 904.

► **1.4 Authorization for Inquiry Letters and 904 Letters, Between Meetings, in Certain Types of Situations**

Upon approval by the chairperson or acting chairperson, and two other members, staff may institute inquiry letters and preliminary investigations between meetings. This authority is designed for clear cases and is to be exercised judiciously. Staff may institute without approval inquiry letters in ninety-day delay cases which are clear on their face and adequately supported.

► **1.5 Authorization for Inquiry Letter When There Has Been Direct Communication with the Judge**

Upon approval of the chairperson or vice-chairperson, staff may institute an inquiry letter between meetings upon receipt of a complaint when it appears that the complaint may have merit and there has already been direct communication of the complaint to the judge, the form of the letter to reflect the apparent direct communication.

► **1.6 904 Letter**

After commencement of a preliminary investigation under rule 904 but before issuance of a notice of formal proceedings, the commission shall provide to the subject judge written notice of the investigation with a statement of the nature of the charges, and shall afford the judge a reasonable opportunity to present such matters as he may choose.

► **1.7 Time Limits for Judge's Response to Inquiry and 904 Letters**

Pursuant to rules 903.5 and 904.1, a reasonable time for a judge to respond to the merits of an inquiry letter or letter under rule 904 shall be twenty (20) days from the date the letter was mailed to the judge. A fifteen (15) day extension may be granted in the discretion of staff. Any further extension not to exceed thirty (30) days may be granted by the chairperson for good cause.

► **1.8 [Deleted]**

► **1.9 Interviews and Statements**

In the course of a staff inquiry or investigation, persons questioned or interviewed to ascertain the validity of allegations shall be admonished that the inquiry or investigation is confidential under the California Constitution and Rules of Court (this does not restrict the informant's communication with the subject judge). When it appears that there may be use of the elicited information in connection with possible testimony, or discovery, the person providing the information shall be

C. POLICY DECLARATIONS

so advised.

► 1.10 Consent, Preservation

Consent to mechanical recording may be obtained from interviewees. Statements and interviews may be transcribed and preserved, and may be submitted to interviewees for signature and verification.

► 1.11 Investigation Subpenas

Commission investigation subpoenas may issue upon application to the commission chairperson stating the name, address and title, if any, of the person from whom information is sought, and whether or not a statement under oath is to be taken.

► 1.12 Expediting Subpena Enforcement

Upon a person's failure or refusal to attend or testify or produce any writings or things pursuant to a commission subpoena, the commission may order the person to appear at a special hearing before a designated officer or officers to show cause why the commission should not 1) petition the superior court pursuant to Government Code section 68752 for an order requiring the person to appear before the court and testify or produce the required writings or things; or 2) take other appropriate measures to enforce the subpoena.

► DIVISION II.

FORMAL PROCEEDINGS

► 2.1 Opposition to Private Admonishment; Statement of Objections, Appearance, Withdrawal of Opposition

A demand for an appearance after notice of private admonishment under rule 904.5 may include a written statement of the judge's objections, both legal and factual, to the commission's findings. The statement may include points and authorities in support of any legal arguments, and verified statements in opposition to the commission's factual findings. A statement of objections shall be filed with the commission within twenty (20) days after filing of a demand for an appearance.

An appearance under rule 904.5 is a judge's opposition in person with or without counsel to informally contest imposition of the private admonishment in argument before the commission. Argument shall be limited to oral presentation by the judge not to exceed twenty (20) minutes.

If, after the appearance, the commission advises the judge pursuant to rule 904.5(b)(2) that the commission has rejected the objections to the intended admonishment and that the judge may either withdraw opposition and accept the private admonishment or continue opposition and request a formal hearing, the period within which the judge may withdraw opposition to the admonishment is fifteen (15) days after the mailing of the post-appearance notice.

► 2.2 [Deleted]

► 2.3 Pre-Hearing Conference

Staff may propose and coordinate a pre-hearing conference to be held not later than two (2) weeks prior to a hearing. The masters may determine whether pre-hearing conference orders need be in writing.

► 2.4 Agreed Statement

An agreed statement under rule 909(a) may be offered in place of all or part of the evidence after notice of formal proceedings. Appropriate conditions concerning a recommendation of discipline may be included. The examiner and commission staff may discuss with the respondent judge or counsel a proposed final disposition which may encompass recommendation of limited discipline or dismissal of charges upon conditions including resignation or retirement.

► 2.5 Investigator or Agent at Hearing

The examiner and the respondent may each have present at the hearing one investigator or agent who has participated in the investigation or preparation for the hearing. That an investigator or agent may become a witness at the hearing shall not disqualify her/him from being present pursuant to this paragraph.

► 2.6 Proposed Findings and Conclusions

The masters may invite the examiner and respondent to submit proposed findings of fact and conclusions of law at the conclusion of the hearing.

► DIVISION III.

MISCELLANEOUS

► 3.1 Anonymous Complaints

Staff will evaluate anonymous complaints for merit; if a complaint is deemed sufficiently meritorious, it will be placed on the oversight agenda for consideration by the commission as to whether or not it should be docketed.

► 3.2 Setting Regular and Special Meetings

(1) Commission practice for setting regular meetings will consist of these steps: At the commission's organizational meeting in January of each year, staff will propose a choice of dates for each meeting for the calendar year. By commission action at each subsequent meeting, one proposed or tentative date will be approved for one or more of the following meetings.

(2) A special meeting shall be called (a) upon not less than five (5) days notice by the chairperson or acting chairperson, or (b) upon notice of request of not less than three members.

► 3.3 Preparation of Annual Report

The annual report will be prepared as follows: Staff will prepare and circulate a draft report in advance of the last commission meeting of each calendar year. After the commission passes on the draft report and makes any suggestions, staff will revise the draft report in accordance therewith and will submit the report in final form to the chairperson for signature during January of each year for the preceding calendar year.

C.
POLICY DECLARATIONS

► **3.4 Availability**

(1) Declarations of commission policy which reflect internal and operational detail will be provided upon request or expression of interest to anyone.

(2) Certain declarations of commission policy which implement and clarify procedures for judges who become subject to rule 904, et seq., will be provided to any judges who are affected and their counsel and to anyone requesting or expressing interest in the subject matter.

► **3.5 Election of Chairperson and Vice-Chairperson**

At the first meeting of each calendar year the commission shall organize itself for the conduct of business for the ensuing year and shall select a chairperson and vice-chairperson.

► **3.6 Policy Declarations**

When there is commission approval for staff to draft a policy declaration, any proposed enactment, amendment or repeal shall be submitted to each commissioner at least thirty (30) days immediately preceding the meeting at which a vote is taken.

► **3.7 [Deleted]**

► **3.8 Removed from Active Calendar**

When a matter is removed from the active calendar, it shall be placed on the commission agenda periodically as required by the circumstances and subject to active consideration at the discretion of the commission.

► **3.9 Criminal Prosecution Arising Out of a Commission Investigation**

In an appropriate case, the commission will refer for prosecution evidence of alleged criminal activity of a judge which first becomes known during the course of a commission investigation.

A Deputy Attorney General assigned as examiner shall advise the commission of the existence of any apparent criminal activity justifying prosecution for commission consideration.

Should a conflict arise with respect to the examiners'

representation, the commission will consider the appointment of other counsel in place of the Attorney General.

► **3.10 Staff Authorization for Media Announcements**

When the director believes an announcement pursuant to rule 902(b) (1), (2), (3) or (4) is desirable in a particular proceeding, he shall so advise the chairperson who, following consultation with two other members, may authorize the announcement.

► **3.11 [Deleted]**

► **DIVISION IV.**

DISABILITY RETIREMENT APPLICATIONS

► **4.1 Disability Applications: Confidentiality**

The commission shall treat as confidential any information which is presented to the commission by a judge for retirement purposes, except that the fact that an application has been filed and has been approved or rejected may be revealed.

► **4.2 Disability Applications: Medical Consultants**

The commission may arrange with the University of California Medical Centers and/or other qualified medical practitioners for medical consultants to provide independent medical examinations for disability retirement applicants, to assist the commission as necessary in evaluating disability retirement applications under Government Code section 75060 and for re-evaluation under Government Code section 75060.6.

► **4.3 Re-examination of Judges Retired for Disability**

When approving a request for disability retirement, the commission shall decide on a case-by-case basis whether and when the judge shall be required to be re-examined pursuant to Government Code section 75060.6. Notwithstanding such decision, a judge retired for disability may be required to undergo re-examination pursuant to Government Code section 75060.6.

**D.
CALIFORNIA
CODE OF
JUDICIAL
CONDUCT**

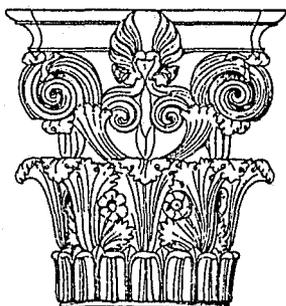


TABLE OF CONTENTS

Page

PREFACE	54
PREAMBLE	54
Canon 1 Judges should uphold the integrity and independence of the judiciary	55
Canon 2 Judges should avoid impropriety and the appearance of impropriety in all their activities	55
Canon 3 Judges should perform the duties of their office impartially and diligently	55
Canon 4 Judges may engage in activities to improve the law, the legal system, and the administration of justice	58
Canon 5 Judges should regulate their extra-judicial activities to minimize the risk of conflict with their judicial duties	59
Canon 6 Compensation and expense reimbursement for quasi-judicial and extra-judicial activities	60
Canon 7 Judges should refrain from political activity inappropriate to their judicial office	60
COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT	61
EFFECTIVE DATE OF COMPLIANCE	61

According to the Supreme Court, the Code of Judicial Conduct "might usefully be consulted to give meaning to the constitutional standards." (*Spruance v. Commission on Judicial Qualifications* (1975) 13 Cal.3d 778, at p. 796.)

D.
CALIFORNIA CODE OF
JUDICIAL CONDUCT

► **PREFACE**

Formal standards of judicial conduct have existed for more than fifty years. The original Canons of Judicial Ethics were modified and adopted in 1949 for application in California by the Conference of California Judges (California Judges Association).

In 1969 the American Bar Association determined the current needs and problems warranted revision of the Canons. In the revision process, a special American Bar Association committee, headed by former California Chief Justice Roger Traynor, sought and considered the views of the bench and bar and other interested persons. The American Bar Association Code of Judicial Conduct was adopted by the House of Delegates of the American Bar Association August 16, 1972.

The California Code of Judicial Conduct is adapted from the American Bar Association Code of Judicial Conduct of 1972 and supersedes all prior Canons. The Code was adopted on September 10, 1974, and became effective January 1, 1975.

Revisions of the Code are made by vote of the membership of the California Judges Association by plebiscite or at its Annual Business Meeting.

This edition includes all revisions made through the Association's 1989 Annual Meeting. The Code was re-cast in gender-neutral form in 1986.

Note: Sections designated as "Commentary" were adopted from the original ABA Code. Sections designated as "California Commentary" were adopted by the California Judges Association.

► **PREAMBLE**

The California Judges Association, mindful that the character and conduct of a judge should never be objects of indifference, and that declared ethical standards should become habits of life, adopts these principles which should govern the personal practice of members of the judiciary. The administration of justice requires adherence by the judiciary to the highest ideals of personal and official conduct. The office of judge casts upon the incumbents duties in respect to their conduct which concern their relation to the state, its inhabitants, and all who come in contact with them. The Association adopts this Code of Judicial Conduct as a proper guide and reminder for justices and judges of courts in California and for aspirants to judicial office, and as indicating what the people have a right to expect from them.

D.
CALIFORNIA CODE OF JUDICIAL CONDUCT

► **CANON 1**

Judges should uphold the integrity and independence of the judiciary

An independent and honorable judiciary is indispensable to justice in our society. Judges should participate in establishing, maintaining, and enforcing, and should themselves observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

► **CANON 2**

Judges should avoid impropriety and the appearance of impropriety in all their activities

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

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

C. It is inappropriate for a judge to hold membership in any organization, excluding religious organizations, that practices invidious discrimination on the basis of race, sex, religion or national origin.

► **Commentary:** *Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. Judges must avoid all impropriety and appearance of impropriety. Judges must expect to be the subject of constant public scrutiny. Judges must therefore accept restrictions on their conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.*

The testimony of judges as character witnesses injects the prestige of their office into the proceeding in which they testify and may be misunderstood to be an official testimonial. This Canon, however, does not afford judges a privilege against testifying in response to an official summons.

► **California Commentary:** *Membership in an organization that practices invidious discrimination may give rise to perceptions by minorities, women and others, that the judge's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather depends on the history of the organization's selection of members and other relevant factors.*

► **CANON 3**

Judges should perform the duties of their office impartially and diligently

The judicial duties of a judge take precedence over all other activities. The judge's judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

► **A. Adjudicative Responsibilities.**

(1) Judges should be faithful to the law and maintain professional competence in it. Judges should be unswayed by partisan interest, public clamor, or fear of criticism.

(2) Judges should maintain order and decorum in proceedings before them.

(3) Judges should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom judges deal in their official capacity, and should require similar conduct of lawyers, and the staff, court officials, and others subject to their direction and control.

► **Commentary:** *The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.*

(4) Judges should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law, and except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. Judges, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before them if they give notice to the parties of the person consulted and the substance of the advice, and afford the parties reasonable opportunity to respond.

► **Commentary:** *The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding except to the limited extent permitted. It does not preclude judges from consulting with other judges, or with court personnel whose function is to aid judges in carrying out their adjudicative responsibilities.*

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

(5) Judges should dispose promptly of the business of the court.

► **Commentary:** *Prompt disposition of the court's business requires judges to devote adequate time to their duties, to be punctual in attending court and expeditious in determining matters under submission.*

D.
CALIFORNIA CODE OF JUDICIAL CONDUCT

tion, and to insist that court officials, litigants and their lawyers cooperate with the judges to that end.

(6) Judges should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to their direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

► **Commentary:** "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by DR 7-107 of the Code of Professional Responsibility.

(7) Unless otherwise provided by law or by the California Rules of Court or Standards, judges should prohibit broadcasting, televising, recording, or taking photographs in the courtroom during sessions of court or recesses between sessions, and also prohibit such activities in areas immediately adjacent thereto if such activities disturb or are likely to disturb the court proceedings, except that judges may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration;

(b) the broadcasting, televising, recording or photographing of investitive, ceremonial, or naturalization proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceeding;

(ii) the parties have consented, and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproduction;

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

(d) Judges should comply with any additional and more restrictive requirements of applicable statutes and California Rules of Court.

► **Commentary:** Temperate conduct of judicial proceedings is essential to the fair administration of justice. The recording and reproduction of a proceeding should not distort or dramatize the proceeding.

► **B. Administrative Responsibilities.**

(1) Judges should diligently discharge their administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other

judges and court officials.

(2) Judges should require their staff and court officials subject to their direction and control to observe the standards of fidelity and diligence that apply to them.

(3) Judges should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which they may become aware.

► **Commentary:** Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary body.

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

► **Commentary:** Appointees of judges include officials such as attorneys, referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve judges of the obligation prescribed by this subsection.

► **C. Disqualification.***

(1) Judges should disqualify themselves in a proceeding in which their disqualification is required by law, or their impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party;

► **California Commentary:** CCP Section 170.1 contains the comparable California statutory disqualification. Section 170.1 provides in subdivision (a)(6) in part that:

For any reason (A) the judge believes his or her recusal would further the interests of justice, (B) the judge believes there is a substantial doubt as to his or her capacity to be impartial, or (C) a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial...

(b) the judge served as lawyer in the matter in controversy, or the judge has been a material witness concerning it;

► **California Commentary:** Subdivision (a)(2) of Section 170.1 of the California Code of Civil Procedure contains disqualifications in addition to those enumerated in Canon 3C(1)(b). A California judge should carefully consider CCP 170.1, subdivisions (a)(2), (a)(2)(A), and (a)(2)(B) in connection with Canon 3C(1)(b).

*Each California Commentary to Canon 3C on Disqualification has been revised to reflect differences between the canon and the Code of Civil Procedure 170 et seq. (September 15, 1986)

D.
CALIFORNIA CODE OF JUDICIAL CONDUCT

CCP § 170.1, subdivision (a)(2) provides for disqualification when:

The judge served as a lawyer in the proceeding or in any other proceeding involving the same issues, he or she served as a lawyer for any party in the present proceeding or gave advice to any party in the present proceeding upon any matter involved in the action or proceeding.

A judge shall be deemed to have served as a lawyer in the proceeding if within the past two years:

(A) A party to the proceeding or an officer, director, or trustee of a party was a client of the judge when the judge was in the private practice of law or a client of a lawyer with whom the judge was associated in the private practice of law, or

(B) A lawyer in the proceeding was associated in the private practice of law with the judge.

A judge who served as a lawyer for or officer of a public agency which is a party to the proceeding shall be deemed to have served as a lawyer in the proceeding if he or she personally advised or in any way represented the public agency concerning the fact² or legal issues in the proceeding.

(c) the judge knows that, individually or as a fiduciary, the judge 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 substantially affected by the outcome of the proceeding;

► **California Commentary:** Canon 3C(1)(c) contains slightly different grounds for disqualification than does California Code of Civil Procedure Section 170.1(a)(3) which provides that a judge shall be disqualified if:

The judge has a financial interest in the subject matter in a proceeding or in a party to the proceeding.

A judge shall be deemed to have a financial interest within the meaning of this paragraph if:

(A) A spouse or minor child living in the household has a financial interest; or

(B) The judge or the spouse of the judge is a fiduciary who has a financial interest.

A judge has a duty to make reasonable efforts to inform himself or herself about his or her personal and fiduciary interests and those of his or her spouse and the personal financial interest of children living in the household.

CCP § 170.5(b) provides that:

"Financial interest" means ownership of more than a one percent legal or equitable interest in a party, or a legal or equitable interest in a party

of a fair market value in excess of one thousand five hundred dollars (\$1500) or a relationship as director, advisor or other active participant in the affairs of a party, except as follows:

(1) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in those securities unless the judge participates in the management of the fund.

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

(3) The proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest.

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

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

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

► **Commentary:** The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "their impartiality might reasonably be questioned" under Canon 3C(1), or that the lawyer-relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(1)(d)(iii) may require the judge's disqualification.

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

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

(e) the judge has personal knowledge of disputed evidentiary facts concerning the proceedings;

(2) Judges should inform themselves about their personal and fiduciary financial interests, and make a reasonable effort to inform themselves about the personal financial interests of their spouses and minor children residing in their households.

(3) For the purposes of this section:

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

► **Commentary:** According to the civil law system, the third degree of relationship test would, for example, disqualify the judge if the judge's or the judge's spouse's parent, grandparent, aunt, uncle, sibling

D.
CALIFORNIA CODE OF JUDICIAL CONDUCT

or niece's husband or nephew's wife were a party or lawyer in the proceeding, but would not disqualify the judge if a cousin were a party or lawyer in the proceeding.

► **California Commentary:** *Canon 3C(1)(d) contains the same grounds for disqualification as does the California Code of Civil Procedure Section 170.1(a)(4) and (5).*

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

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

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

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

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

► **California Commentary:** *Canons 3C(3)(b) and (c) contain substantially the same disqualifications previously quoted in Section 170.5(b)(1), (2) and (3).*

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

► **D. Remittal of Disqualification.**

A judge disqualified for any reason other than those expressed in Canon 3C(1)(a) or Canon 3C(1)(b) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification, and may ask the parties and their lawyers whether they wish to waive the disqualification. If the parties and lawyers, independently of the judge's participation, all agree in writing to waive the disqualification, the judge may participate in the proceeding. The waiver agreement, signed by all parties and lawyers, shall recite the basis for the disqualification and shall be incorporated in the record of the proceeding.

The judge shall not seek to induce a waiver and shall avoid any effort to discover which lawyers or parties favored or opposed a waiver of disqualification.

► **Commentary:** *This procedure is designed to minimize the chance that a party or lawyer will feel coerced into an agreement. When a party is not immediately available, the judge, without violating this section, may proceed on the written assurance*

of the lawyer that the party's consent will be subsequently filed.

The Canon precludes waivers of disqualification in situations involving personal bias or personal participation in the matter. Code of Civil Procedure Section 170.3 does not contain those limitations on the waiver procedure.

► **CANON 4**

Judges may engage in activities to improve the law, the legal system, and the administration of justice

Judges, subject to the proper performance of their judicial duties, may engage in the following quasi-judicial activities, if in doing so they do not cast doubt on their capacity to decide impartially any issue that may come before them:

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

B. They may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and they may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

► **California Commentary:** *This Canon is not intended to prevent judges from making an appearance in the management of their personal affairs, provided they do not exploit their judicial position; for example, judges may properly appear before zoning boards acting with respect to property in which they own an interest.*

C. Judges may serve as members, officers, or directors of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. They may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. They may make recommendations to public and private fund granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

► **Commentary:** *As judicial officers and persons specially learned in the law, judges are in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that their time permits, they are encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law. Extra-judicial activities are governed by Canon 5.*

D.
CALIFORNIA CODE OF JUDICIAL CONDUCT

► CANON 5

Judges should regulate their extra-judicial activities to minimize the risk of conflict with their judicial duties

► A. Avocational Activities.

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

► Commentary: *Complete separation of judges from extra-judicial activities is neither possible nor wise. They should not become isolated from the society in which they live.*

► B. Civic and Charitable Activities.

Judges may participate in civic and charitable activities that do not reflect adversely upon their impartiality or interfere with the performance of their judicial duties. Judges may serve as officers, directors, trustees, or non-legal advisors of educational, religious, charitable, fraternal, or civic organizations not conducted for the economic or political advantage of their members, subject to the following limitations:

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

► Commentary: *The changing nature of some organizations and of their relationship to the law makes it necessary for judges regularly to reexamine the activities of each organization with which they are affiliated to determine if it is proper for them to continue their relationship with the organization. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.*

(2) Judges should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of their office for that purpose, but they may be listed as officers, directors, or trustees of such organization. They should not be the principal speaker or the guest of honor at any organization's fund-raising events, but they may attend such events.

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

► Commentary: *Judges' participation in organizations devoted to quasi-judicial activities is governed by Canon 4.*

► C. Financial Activities.

(1) Judges should refrain from financial and business dealings that tend to reflect adversely on their impartiality, interfere with the proper performance of their judicial duties, exploit their judicial position, or involve them in frequent transactions with lawyers or persons likely to come before the courts on which they serve.

(2) Subject to the requirements of subsection (1), judges may hold and manage investments, including real estate, and engage in other remunerative activities, but should not participate in, nor permit their names to be used in connection with, any business venture or commercial advertising program, with or without compensation, in such a way as would justify a reasonable inference that the power or prestige of their office is being utilized to promote a business or commercial product. Judges should not serve as officers, directors, managers or employees of a business affected with a public interest including, without limitation, a financial institution, insurance company, or public utility.

(3) Judges should manage their investments and other financial interests to minimize the number of cases in which they are disqualified. As soon as they can do so without serious financial detriment, they should divest themselves of investments and other financial interests that might require frequent disqualification.

(4) Neither judges nor members of their families residing in their households should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) judges may accept a gift incident to a public testimonial to them; books supplied by publishers on a complimentary basis for official use; or an invitation to judges and their spouses to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) judges or members of their families residing in their households may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) judges or members of their families residing in their households may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge.

► Commentary: *This subsection does not apply to contributions to any judge's campaign for judicial office, a matter governed by Canon 7.*

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

D.
CALIFORNIA CODE OF JUDICIAL CONDUCT

(6) Judges are not required by this Code to disclose their income, debts, or investments.

► **Commentary:** *Canon 3 requires judges to disqualify themselves in any proceeding in which they have a financial interest, however small. Canon 5 requires judges to refrain from engaging in business and from financial activities that might interfere with the impartial performance of their judicial duties. Judges have the rights of ordinary citizens, including the right to privacy of their financial affairs. Owning and receiving income from investments do not as such affect the performance of a judge's duties.*

(7) Neither confidential information acquired by judges in their official capacity nor intentions with respect to rulings to be made by them should be used or disclosed by judges in financial dealings or for any other purpose until such information is a matter of public record.

► **D. Fiduciary Activities.**

Except as provided in Canon 5B, judges should not serve as executors, administrators, trustees, guardians, or other fiduciaries, except for the estate, trust, or person of members of their families, and then only if such service will not interfere with the proper performance of their judicial duties. "Members of their families" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close family-like relationship. As family fiduciaries, judges are subject to the following restrictions:

(1) Judges should not serve if it is likely that as a fiduciary they will be engaged in proceedings that would ordinarily come before them.

► **Commentary:** *The Effective Date of Compliance provision of this Code qualifies this subsection with regard to a judge who is an executor, administrator, trustee, or other fiduciary at the time this Code becomes effective.*

(2) While acting as a fiduciary, judges are subject to the same restrictions on financial activities that apply to them in their personal capacities.

► **Commentary:** *Judges' obligations under this Canon and their obligations as a fiduciary may come into conflict. For example, judges should resign as trustees if such service would result in detriment to the trust because the judge had to divest it of holdings whose retention would place the judge in violation of Canon 5C(3).*

► **E. Arbitration.**

Judges should not act as arbitrators or mediators, other than in their official capacity as judges.

► **F. Practice of Law.**

Judges should not practice law.

► **G. Extra-judicial Appointments.**

Judges should not accept appointment to a govern-

mental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. Judges, however, may represent their country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

► **Commentary:** *Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of demands on the judiciary created by today's crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.*

► **CANON 6**

Compensation and expense reimbursements for quasi-judicial and extra-judicial activities

Judges may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judges in their judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

► **A. Compensation.**

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

► **B. Expense Reimbursement.**

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

► **Commentary:** *Subject to Canon 5C(1), the foregoing restrictions shall not apply to the sale or distribution of publications authored by a judge which are available to the general public.*

► **CANON 7**

Judges should refrain from political activity inappropriate to their judicial office

Judges are entitled to entertain their personal views on political questions. They are not required to surrender their rights or opinions as citizens. They should avoid political activity which may give rise to a suspicion of political bias or impropriety.

D.
CALIFORNIA CODE OF JUDICIAL CONDUCT

► **A. Political Conduct in General.**

(1) Judges and candidates for election to judicial office should not:

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

(b) make speeches for a political organization or candidate for non-judicial office or publicly endorse a candidate for non-judicial office;

(c) personally solicit funds for or pay an assessment to a political organization or non-judicial candidate; make contributions to a political party or organization or to a non-judicial candidate in excess of five hundred dollars per year per political party or organization or candidate, or in excess of an aggregate of one thousand dollars per year for all political parties or organizations or candidates.

► **California Commentary:** *Although attendance at political gatherings is not prohibited, any such attendance should be restricted in such a manner as not to constitute a public endorsement of a cause or candidate otherwise prohibited by these Canons.*

Subject to the monetary limitation herein to political contributions, a judge may purchase tickets for political dinners or other similar dinner functions. Any admission price to such a political dinner or function, in excess of the actual cost of the meal shall be considered a political contribution. The prohibition in 7A(1)(c) does not preclude judges from contributing to a campaign fund for distribution among judges who are candidates for reelection or retention.

(2) Judges who are candidates for election or reelection or non-judges who are candidates for judicial office, may speak to political gatherings only on their own behalf.

(3) Except as otherwise permitted in this Code, judges should not engage in any political activity, other than on behalf of measures to improve the law, the legal system or the administration of justice.

► **California Commentary:** *The term "political activity" should not be construed so narrowly as to prevent private comment.*

This provision does not prohibit a judge from signing a petition to qualify a measure for the ballot without the use of the judge's official title.

► **COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT**

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

► **A. Part-time Judge.**

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

(1) are not required to comply with Canon 5C(2), 5D, 5E, 5F, and 5G.

(2) should not practice law in the court on which they serve or in any court subject to the appellate jurisdiction of the court on which they serve, or act as a lawyer in a proceeding in which they have served as a judge or in any other proceeding related thereto.

► **B. Judge Pro Tempore.**

A judge pro tempore is a person appointed to act temporarily as a judge, except that officers of the judicial system performing judicial functions, as defined above, shall not be deemed judges pro tempore qualifying for the exceptions contained herein.

(1) While acting as such, judges pro tempore are not required to comply with Canon 5C(2), (3), 5D, 5E, 5F, 5G and 7, except that they may not engage in political activity while performing judicial functions.

(2) Persons who have been judges pro tempore should not act as lawyers in a proceeding in which they have served as judges or in any other proceeding related thereto.

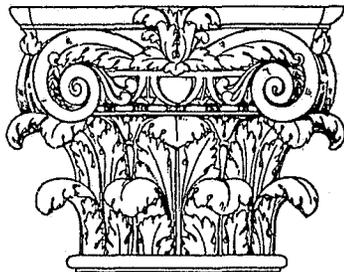
► **C. Retired Judge.**

Retired judges, upon recall to judicial service, during such service or prior to such service if they consider themselves available for such service, shall comply with all provisions of this Code. However, they shall not be required to comply with Canon 5C(2), 5D, 5E, and 5G.

► **EFFECTIVE DATE OF COMPLIANCE**

Persons to whom this Code becomes applicable should arrange their affairs as soon as reasonably possible to comply with it. If, however, the demands on their time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date this Code becomes effective may continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of their family.

**E.
CALIFORNIA
GOVERNMENT
CODE**



▶ **TABLE OF CONTENTS**

▶ **TITLE 8: THE ORGANIZATION AND GOVERNMENT OF COURTS**

▶ **Chapter 2.5: COMMISSION ON JUDICIAL PERFORMANCE**

Page

▶ **Article 1: GENERAL PROVISIONS**

§ 68701. Definitions 64
 § 68701.5. Retired judges; senior judge status; investigation and termination; maximum salary 64
 § 68702. Officers and employees; experts and reporters; witnesses; legal counsel 64
 § 68703. Expenses 64
 § 68704. Concurrence of majority in acts of council 64

▶ **Article 2: CO-OPERATION OF PUBLIC OFFICERS AND AGENCIES**

§ 68725. Assistance and information 64
 § 68726. Service of process; execution of orders 64

▶ **Article 3: INVESTIGATIONS AND HEARINGS**

§ 68750. Oaths; inspection of books and records; subpoenas 64
 § 68751. Scope of process; attendance of witnesses 64
 § 68752. Order compelling witness to attend and testify 64
 § 68753. Depositions 65
 § 68754. Witness fees; mileage 65
 § 68755. Costs 65

▶ **Chapter 11: JUDGES' RETIREMENT LAW**

▶ **Article 2: RETIREMENT FOR SERVICE**

§ 75033.2. Conviction of felony involving moral turpitude or committed in course of performing duties; loss of benefits 65

▶ **Article 3: DISABILITY RETIREMENT**

§ 75060. Mental or physical disability; consent to and approval of retirement; certificate; filling vacancy 65
 § 75060.1. Application of section; claim against state 65
 § 75060.3. Commission on Judicial Performance; annual report; contents 66
 § 75060.5. Judges receiving allowances under §75061; effect of repeal 66
 § 75060.6. Judges receiving allowance; fitness examination; effect ... 66
 § 75061. Disability retirement; prerequisites 66
 § 75062. Judge applying for disability retirement who is subject of felony charge or conviction; presumed not disabled; standard of proof; physicians' or psychiatrists' statements required 66
 § 75063. Judge applying for disability retirement who has been removed for judicial misconduct; presumed not disabled; standard of proof; physicians' or psychiatrists' statements required 66
 § 75064. Member applying for disability who is defeated at election; presumed not disabled; burden of proof; physicians' or psychiatrists' statements required 67

E.**CALIFORNIA GOVERNMENT CODE****▶ Chapter 2.5: COMMISSION ON JUDICIAL PERFORMANCE****▶ Article 1****GENERAL PROVISIONS****▶ § 68701. Definitions**

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

▶ § 68701.5. Retired judges; senior judge status; investigation and termination; maximum salary

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

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

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

▶ § 68703. Expenses

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

▶ § 68704. Concurrence of majority in acts of council

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

▶ Article 2**CO-OPERATION OF PUBLIC OFFICERS AND AGENCIES****▶ § 68725. Assistance and information**

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

▶ § 68726. Service of process; execution of orders

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

▶ Article 3**INVESTIGATIONS AND HEARINGS****▶ § 68750. Oaths; inspection of books and records; subpoenas**

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

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

▶ § 68751. Scope of process; attendance of witnesses

In any investigation or formal proceeding in any part of the State, the process extends to all parts of the State. A person is not obliged to attend as a witness in any investigation or proceeding under this chapter unless the person is a resident within the state at the time of service.

▶ § 68752. Order compelling witness to attend and testify

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

E.
CALIFORNIA GOVERNMENT CODE

regularly issued, the court shall order such person to appear before the commission or the masters at the time and place fixed in the order and testify or produce the required writings or things. Upon failure to obey the order, such person shall be dealt with as for contempt of court.

► **§ 68753. Depositions**

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

► **§ 68754. Witness fees; mileage**

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

► **§ 68755. Costs**

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

► **Chapter 11: JUDGES' RETIREMENT LAW**

► **Article 2**

RETIREMENT FOR SERVICE

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

A judge who pleads guilty or no contest or is found guilty of a crime committed while holding judicial office which is punishable as a felony under California or

federal law and which either involves moral turpitude under that law or was committed in the course and scope of performing the judge's duties, and the conviction becomes final shall not receive any benefits from the Judges' Retirement System, except that the amount of his or her accumulated contributions shall be paid to him or her by the Judges' Retirement System.

► **Article 3**

DISABILITY RETIREMENT

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

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

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

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

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

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

E.
CALIFORNIA GOVERNMENT CODE

section.

► § 75060.3. Commission on Judicial Performance; annual report; contents

(a) The Commission on Judicial Performance shall annually submit to the Governor and the Legislature a report on the incidence of ordered, requested, and granted disability retirements in the preceding fiscal year.

(b) The report shall include the following:

(1) The number of years the affected judges have served as a judge on the date of receipt of the application for disability retirement and on the effective date of the disability retirement.

(2) The age of the judge on the date of receipt of the application for disability retirement and on the effective date of his or her disability retirement.

(3) The physical or mental impairment which was the basis for the application by the judge for disability retirement, for the granted disability retirement, or for the ordered disability retirement, using the following categories to describe these impairments:

- (A) Orthopedic.
- (B) Psychological.
- (C) Cardio-vascular.
- (D) Internal.
- (E) Neurological.
- (F) Other.

(4) Any other information deemed relevant by the Commission on Judicial Performance.

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

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

► § 75060.6. Judges receiving allowance; fitness examination; effect

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

is not so incapacitated, he or she shall be a judicial officer of the state, but shall not exercise any of the powers of a justice or judge except while under assignment to a court by the Chairman of the Judicial Council. The allowance of the judge shall cease if he or she refuses an assignment while he or she is not so incapacitated. The provisions of Section 68543.5 are applicable to such a judge. The provisions of this section and of Section 75060 are applicable to all judges of courts of record in this state.

► § 75061. Disability retirement; prerequisites

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

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

► § 75062. Judge applying for disability retirement who is subject of felony charge or conviction; presumed not disabled; standard of proof; physicians' or psychiatrists' statements required

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

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

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

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

► § 75063. Judge applying for disability retirement who has been removed for judicial misconduct; presumed not disabled; standard of proof; physicians' or psychiatrists' statements required

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

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

E.
CALIFORNIA GOVERNMENT CODE

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

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

► § 75064. Member applying for disability who is defeated at election; presumed not disabled; burden of proof; physicians' or psychiatrists' statements required

A member who is defeated at an election and who either had submitted, prior to the date of the election, an

application for disability retirement or submits, on or after the date of the election, an application for disability retirement:

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

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

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

Appendix 2. COMMISSION CASES TO THE SUPREME COURT

Stevens v. Commission on Judicial Qualifications

61 Cal.2d 886 (1964)
39 Cal.Rptr. 397
393 P.2d 709

In re Gerald S. Chargin

2 Cal.3d 617 (1970)
87 Cal.Rptr. 709
471 P.2d 29

In re Bernard B. Glickfeld

3 Cal.3d 891 (1971)
92 Cal.Rptr. 278
479 P.2d 638

In re Leopoldo Sanchez

9 Cal.3d 844 (1973)
109 Cal.Rptr. 78
512 P.2d 302

In re Antonio E. Chavez

9 Cal.3d 846 (1973)
109 Cal.Rptr. 79
512 P.2d 303

Geiler v. Commission on Judicial Qualifications

10 Cal.3d 270 (1973)
110 Cal.Rptr. 201
515 P.2d 1
cert.den. (1974) 417 U.S. 932
41 L.Ed.2d 235, 94 S.Ct. 2643

McCartney v. Commission on Judicial Qualifications

12 Cal.3d 512 (1974)
116 Cal.Rptr. 260
526 P.2d 268

Spruance v. Commission on Judicial Qualifications

13 Cal.3d 778 (1975)
119 Cal.Rptr. 841
532 P.2d 1209

Cannon v. Commission on Judicial Qualifications

14 Cal.3d 678 (1975)
122 Cal.Rptr. 778
537 P.2d 898

McComb v. Commission on Judicial Performance

19 Cal.3d Spec.Trib.Supp. 1 (1977)
138 Cal.Rptr. 459
564 P.2d 1

McComb v. Superior Court of San Francisco, et al.

68 Cal.App.3d 89 (1977)
137 Cal.Rptr. 233

In re Arden T. Jensen

24 Cal.3d 72 (1978)
154 Cal.Rptr. 503
593 P.2d 200

In re Charles Robert Roick

24 Cal.3d 74 (1978)
154 Cal.Rptr. 413
592 P.2d 1165

In re Robert S. Stevens

28 Cal.3d 873 (1981)
172 Cal.Rptr. 676
625 P.2d 219

Wenger v. Commission on Judicial Performance

29 Cal.3d 615 (1981)
175 Cal.Rptr. 420
630 P.2d 954

In re Hugo M. Fisher

31 Cal.3d 919 (1982)
184 Cal.Rptr. 296
647 P.2d 1075

In re Charles S. Stevens

31 Cal.3d 403 (1982)
183 Cal.Rptr. 48
645 P.2d 99

Gonzalez v. Commission on Judicial Performance

33 Cal.3d 359 (1983)
188 Cal.Rptr. 880
657 P.2d 372
appeal dismissed, 104 S.Ct. 690
(1984)

Roberts v. Commission on Judicial Performance

33 Cal.3d 739 (1983)
190 Cal.Rptr. 910
661 P.2d 1064

In re Bobby D. Youngblood

33 Cal.3d 788 (1983)
191 Cal.Rptr. 171
662 P.2d 108

Gubler v. Commission on Judicial Performance

37 Cal.3d 27 (1984)
207 Cal.Rptr. 171
688 P.2d 551

Mardikian v. Commission on Judicial Performance

40 Cal.3d 473 (1985)
220 Cal.Rptr. 833
709 P.2d 852

In re Frank J. Creede

42 Cal.3d 1098 (1986)
233 Cal.Rptr. 1
729 P.2d 79

McCullough v. Commission on Judicial Performance

43 Cal.3d 534 (1987)
236 Cal.Rptr. 151
734 P.2d 987

In re L. Eugene Rasmussen

43 Cal.3d 536 (1987)
236 Cal.Rptr. 152
734 P.2d 988

Furey v. Commission on Judicial Performance

43 Cal.3d 1297 (1987)
240 Cal.Rptr. 859
743 P.2d 919

Ryan v. Commission on Judicial Performance

45 Cal.3d 518 (1988)
247 Cal.Rptr. 378
754 P.2d 724

McCullough v. Commission on Judicial Performance

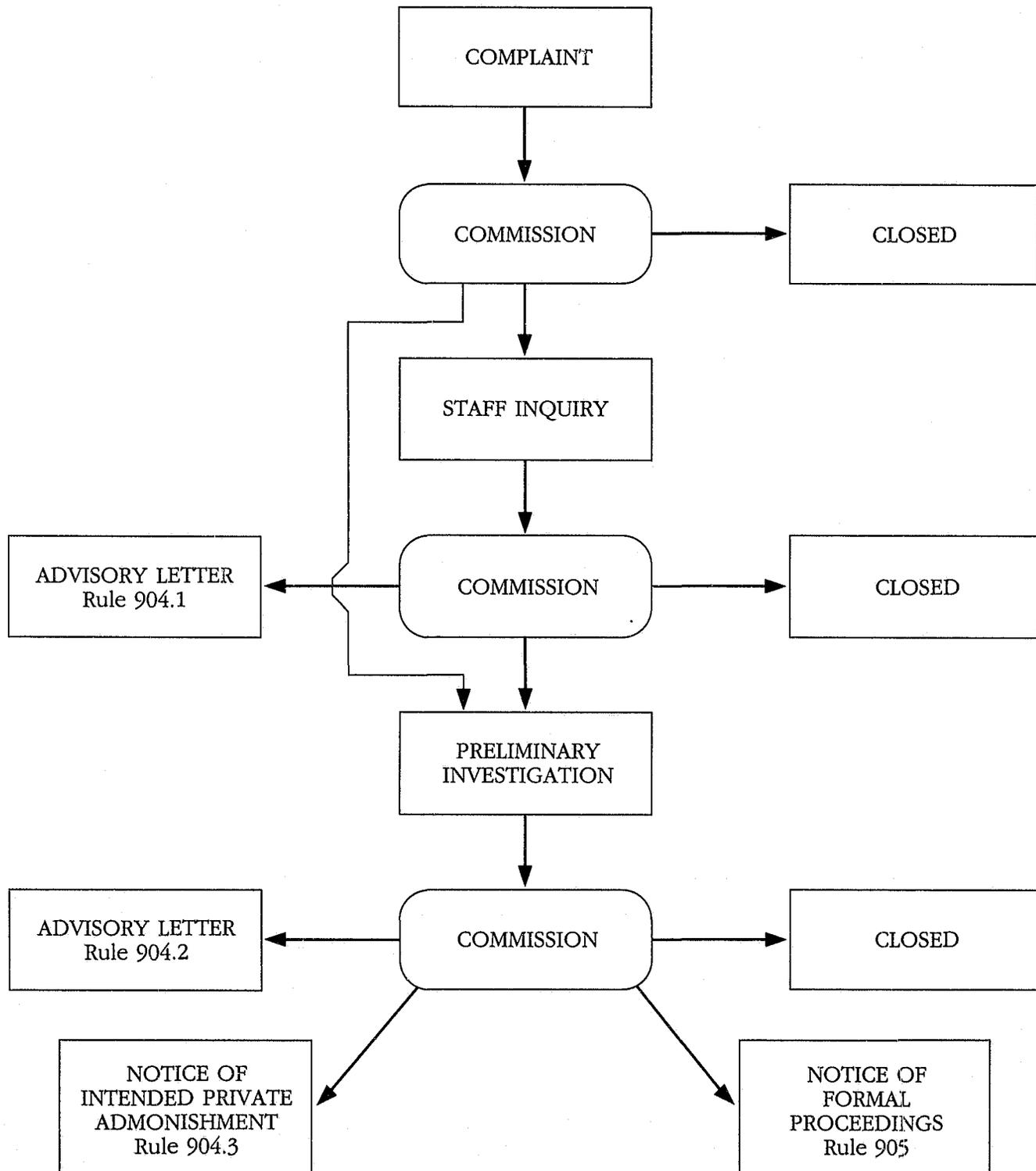
49 Cal.3d 186 (1989)
260 Cal.Rptr. 557
776 P.2d 259

Kloepfer v. Commission on Judicial Performance

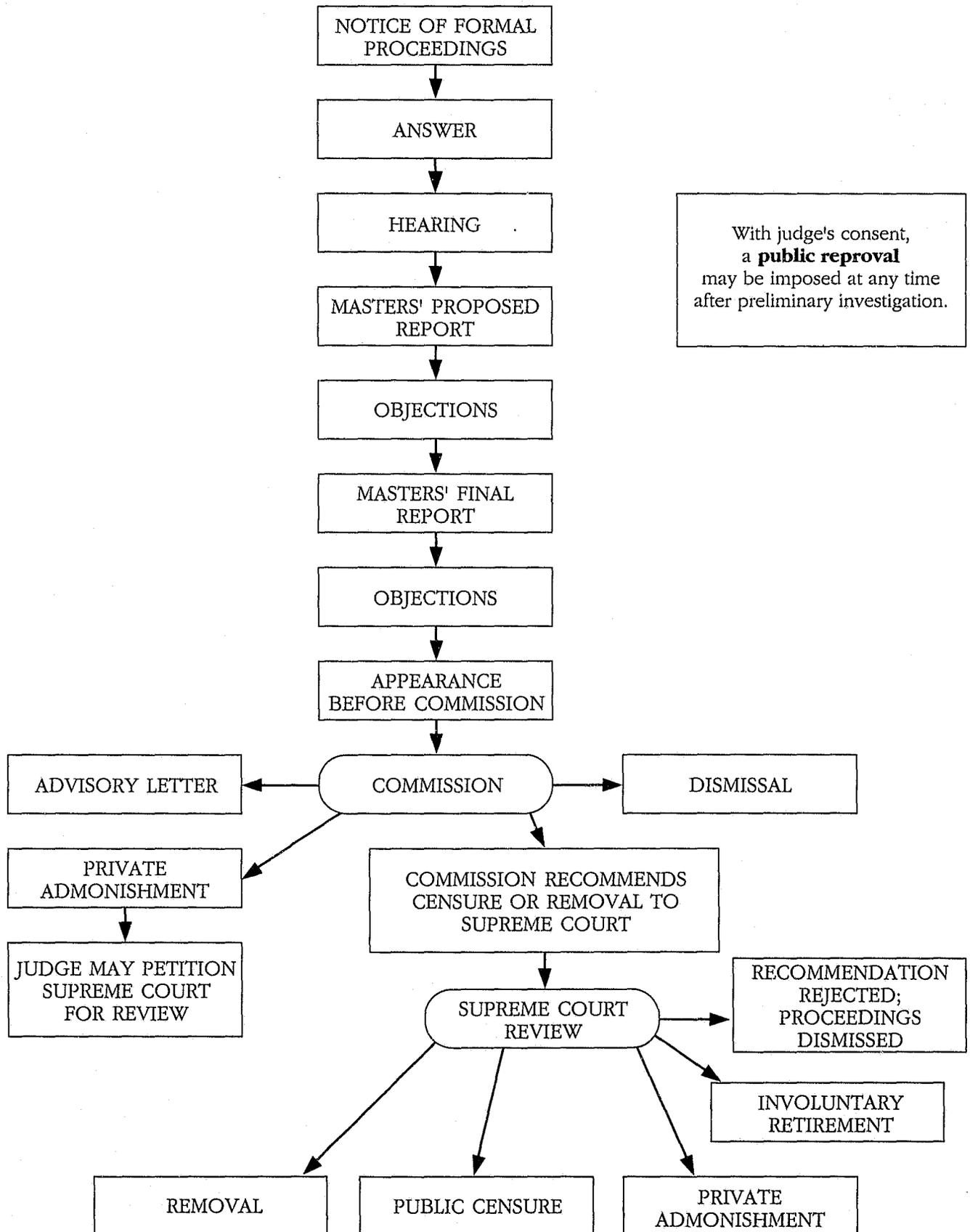
49 Cal.3d 826 (1989)
264 Cal.Rptr. 100
782 P.2d 239
[became final in 1990]

Appendix 3. COMMISSION PROCEDURES

First Steps



Formal Proceedings



Appendix 4

In response to your request, we are providing this form for your use in making a complaint about a California judge.

COMPLAINT ABOUT A CALIFORNIA JUDGE

Confidential under California Constitution

Article VI, Section 18

Today's date:

Your name:

Your telephone number:

Your address:

Your attorney's name:

Your attorney's telephone number:

Judge's name:

Court:

County:

Name of case:

Please specify exactly what action or behavior of the judge is the basis of your complaint.

Please provide relevant dates and the names of others present.

Use additional sheets if necessary.

Return to: Commission on Judicial Performance
1390 Market Street, Suite 304
San Francisco, California 94102

Telephone: (415) 557-2503

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**STATE OF CALIFORNIA
COMMISSION ON JUDICIAL PERFORMANCE
1390 MARKET STREET, SUITE 304
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