

129446

STATE OF CALIFORNIA
COMMISSION
ON JUDICIAL
PERFORMANCE
1990 ANNUAL REPORT

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1990 ANNUAL REPORT

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U.S. Department of Justice
National Institute of Justice

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INTRODUCTION



In 1961, when the Commission on Judicial Performance was established in California, a young man, Jack Frankel, then attorney-consultant to the Continuing Education of the Law Program, was selected as its Director and Chief Counsel.

California was the first state in the nation to create such a commission. The field of judicial discipline was uncharted, except for a small handful of impeachment cases. There were no precedents, no established procedures, no agreed-upon standards. Its new director had only the enabling language of the Constitution and some experience in handling disciplinary matters, during his seven-year tenure with the State Bar of California, to guide him in structuring the manner in which the commission would function. Jack was given a one room office in a corner of the state building and a part-time secretary to assist him. On this unpromising field, he built the commission.

In responding to the query "Why is a commission necessary?", Jack replied: "The existence of such a [commission] is an effective element in the strengthening of the judicial system and in leading to a higher standard of judicial conduct. Not only is the independence of the judiciary protected, but we are convinced that the strength and capability of the judicial branch of the government is greatly enlarged."

Jack Frankel has become a national leader in the field of judicial discipline. Over the course of almost 30 years he has worked continuously to maintain the California commission as the national model. He is devoted to the ideal of a strong and honorable judiciary. In a real, not a rhetorical, sense, the commission was his creation. It has been his lifework -- a work in which he may justly take pride.

Jack was honored this year with a lifetime achievement award from the National Association of Judicial Disciplinary Counsel, which he co-founded.

As chair and a member of the commission for the past five years, I have worked closely with Jack on many issues and through many crises. I have found Jack to be unfailingly patient, courteous and reasonable. He is truly a person who can disagree without being disagreeable. It has been a privilege to work with him and to have this opportunity to thank him on behalf of the commission, the judiciary, and the citizens of the State of California.

INTRODUCTION

Finding a successor to Jack was not an easy task, but the commission was pleased last October to appoint Victoria Henley as its new Executive Director and Chief Counsel. Ms. Henley is a graduate of the University of Pennsylvania and received her law degree from the University of San Francisco in 1978. She practiced civil litigation for 10 years with the San Francisco law firm of Long & Levit where she specialized in professional liability cases, including legal malpractice. The commission selected her after an arduous nationwide search. We have every expectation that she will be an outstanding Director.

We dedicate this 1990 Annual Report with great affection to Jack Frankel.

Arleigh Woods
Chairperson
Commission on Judicial Performance

January 1991

INTRODUCTION

**Excerpts from an open letter to Jack E. Frankel
from Chief Justice Malcolm M. Lucas**

...I wish to concur with my colleagues who commend your exemplary contributions to the Commission on Judicial Performance during your nearly thirty years of service as Director-Chief Counsel.

By virtue of your selfless dedication to our state and its people, you were instrumental in developing the Commission and have been a distinguished leader in the organization since its inception. Indeed, you can be credited with starting the national judicial disciplinary movement by publishing in the February 1963 *ABA Journal* your article entitled, "Removal of Judges: California Tackles an Old Problem." Your commitment to excellence knew no boundaries, for you served as the first Chairman of the Advisory Committee for the Center for Judicial Conduct Organizations, and you were the first Chairman of the Association of Judicial Disciplinary Counsel. You have also helped maintain the high standards of the judiciary by serving as an annual lecturer at the California College of Trial Judges, and by speaking at numerous statewide citizens' conferences on the courts that were sponsored by the American Judicature Society.

Your contributions to the Bar have also been numerous. You have been instrumental in planning and developing lectures and seminars for various CEB programs, and you have served as an adjunct professor at the University of San Francisco School of Law.

Jack, you have served the state of California as a dedicated, principled member of our legal community, and your colleagues and I are proud of your many achievements. You can retire with the knowledge that you have made a difference; your numerous accomplishments will help maintain California's tradition of an independent and fair judiciary as we prepare to enter the twenty-first century. Of course, we are sorry to see you go, but we are confident that you will continue to contribute to the profession with your keen mind and enthusiasm for maintaining excellence in the judiciary. I salute you on your stellar career, and wish you and your family all the best in your well-deserved retirement.

Cordially,
MALCOLM M. LUCAS

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



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



ROGER J. BARKLEY
Public Member
La Canada Flintridge
Appointed February 1990
Present term expires
May 1991



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

COMMISSION MEMBERS continued



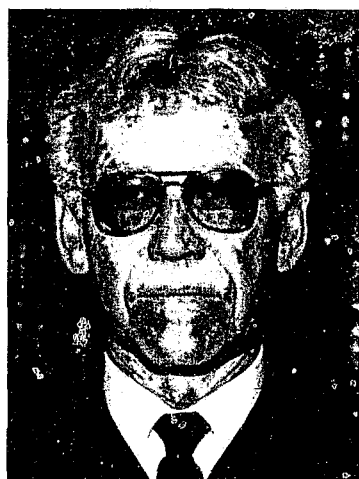
**HONORABLE
RUTH ESSEGIAN**
Judge of the Municipal Court
Los Angeles
Appointed May 1990
Present term expires
January 1992



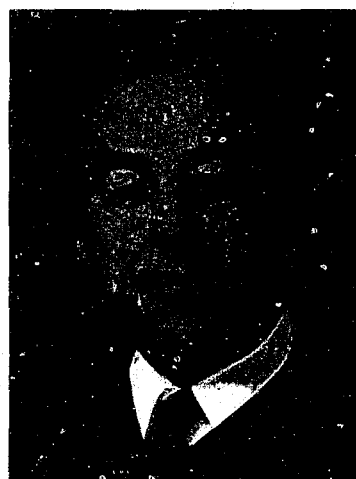
EDWARD P. GEORGE, JR.
Incoming Attorney Member
Long Beach
Appointed January 1991
Present term expires
December 1994



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



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



**HONORABLE
EUGENE M. PREMO**
Associate Justice
Court of Appeal
Sixth Appellate District
San Jose
Appointed February 1989
Present term expires
November 1994

COMMISSION STAFF



JACK E. FRANKEL
Director-Chief Counsel
(Retired)



VICTORIA B. HENLEY
Director-Chief Counsel

KHOI NGOC BUI
Data Processing Analyst

CYNTHIA DORFMAN
Associate Counsel

NANCY GILMORE
Senior Administrative Assistant

PETER GUBBINS
Investigating Attorney

VINCENT GUILIN
Intake Assistant

BERNADETTE M. KEEVAMA
Supervising Judicial Secretary

JENNIFER L. MACHLIN
Administrative Counsel

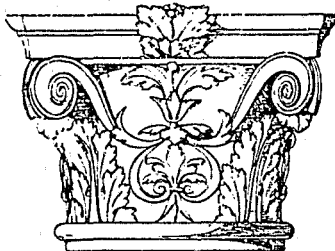
JOHN PLOTZ
Staff Counsel

ELAINE D. SWEET
Judicial Secretary/Administrative Assistant

BARBARA JO WHITEOAK
Judicial Secretary

HILARY WINSLOW
Investigating Attorney

I. THE COMMISSION IN 1990: AN OVERVIEW



The Commission on Judicial Performance is an independent state agency that handles complaints involving judicial misconduct and disability of state judges. The commission was founded in 1960. It has nine members: two justices 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 is appointed to 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 duties of a judge, 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 charged with evaluating disabilities which seriously interfere with a judge's performance.

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, another judge or a court employee. If appropriate, the staff does some initial, informal investigation into the factual background of the complaint. 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 review. When a complaint appears to 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 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 ques-

**I.
AN OVERVIEW**

tionable 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. The commission sometimes orders a preliminary investigation 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. In the most serious cases, 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. The Constitution provides that 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.

At any point after the notice of formal proceedings is issued, the commission may issue a "public reproof" with the judge's consent. A public reproof is not subject to review by the Supreme Court.

Two flow charts showing the progress of complaints through the commission are appended at pages 71 and 72. While not a complete overview of the various courses of commission proceedings, they illustrate some of the typical patterns.

Since its beginning, the commission has recommended the removal or involuntary retirement of 15 judges. The Supreme Court has accepted the recommendation in 13 cases and rejected it in 2. Some judges have elected to retire or resign with commission proceedings pending.

• • •

In 1990 the commission received 885 complaints. The commission ordered 92 staff inquiries and 29 preliminary investigations. The commission instituted formal proceedings in 9 matters.

The commission issued 41 advisory letters and 11 private admonishments (see section V of this report for a summary of these matters.) The commission also issued 2 public reprovals (see section IV.)

The Supreme Court ordered the removal of Municipal Court Judge Charles D. Boags, when his misdemeanor conviction became final in 1990. In another

**I.
AN OVERVIEW**

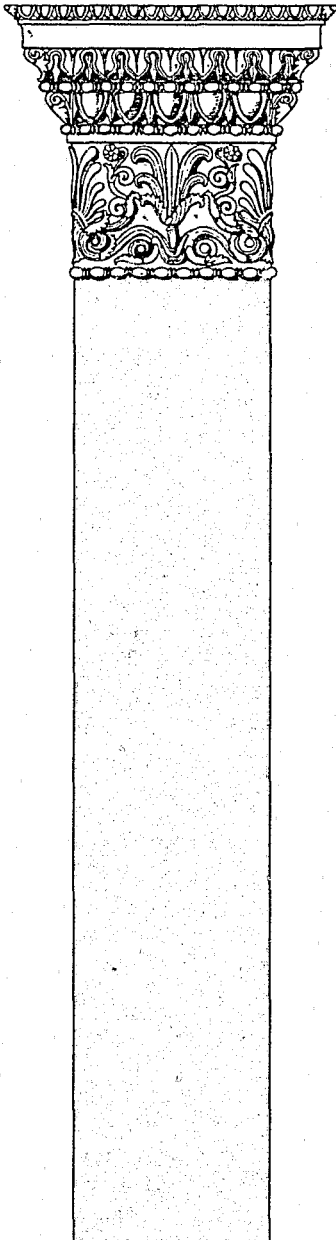
action that became final in 1990, the Supreme Court removed Municipal Court Judge Kenneth Kloefer (49 Cal.3d 826). And the Supreme Court ordered the removal of Municipal Court Judge David Kennick (50 Cal.3d 297). (See section IV.)

The commission also rules on applications for disability retirement by judges. In 1990 the commission granted two applications and tentatively denied one other. This aspect of the commission's work is discussed in section VI 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 with other relevant material.

II. RECENT CHANGES IN THE LAW



In 1990 there were few changes in the statutes and rules affecting the commission.

The California Judges Association amended Canon 5B(2) of the Code of Judicial Conduct to read as follows:

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 privately solicit funds for such an organization from other judges (excluding court commissioners, referees and temporary judges), and 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 an organization's fund-raising events, but they may attend such events.

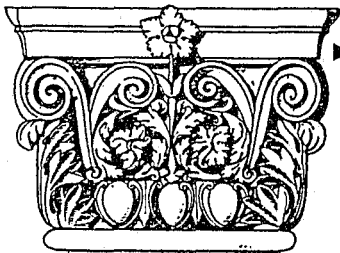
The Judicial Council clarified rules 78, 205 and 532.5 of the Rules of Court. These rules, which apply respectively to appellate, superior and municipal courts, define the duty of presiding judges to report the failure of other judges to perform their duties. The revised rules state that the presiding judge shall

notify the Commission on Judicial Performance, and give the judge a copy of the notice, of (i) a judge's substantial failure to perform judicial duties, including but not limited to any habitual neglect of duty, or (ii) any absences caused by disability totaling more than 90 court days in a 12-month period, excluding absences authorized [for vacations, conferences, etc.].

The commission adopted an important new policy declaration (4.4) setting forth the procedure for handling disability retirement applications. It is discussed in section VI of this report and reprinted in full in the appendix.

There were also a few technical changes to other policy declarations.

**III.
SUMMARY OF
COMMISSION
DISCIPLINARY
ACTIVITY
IN 1990**



COMPLAINTS RECEIVED AND INVESTIGATED

At the close of 1990, 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 the Superior Courts.....	789
Judges of the Municipal Courts.....	614
Judges of the Justice Courts.....	57

In 1990, the commission received 885 new complaints, all of which were carefully reviewed and evaluated. More than 600 cases were completed after initial review of the complaint because a prima facie case of misconduct was not established. In approximately 200 cases, some informal investigation was necessary before the matter was submitted to the commission for review. The commission determined that further formal inquiry was required in certain cases.

The commission ordered a "staff inquiry" (Rule of Court 904) in 92 cases. In a staff inquiry, the commission's legal staff investigates the facts underlying the complaint. Occasionally the inquiry reveals facts which clear the judge completely and make the judge's comment unnecessary. Usually, however, the judge is asked to comment on the allegations.

Under Rules of Court 904 and 904.2, the commission may institute a "preliminary investigation" to determine whether formal proceedings should be instituted, or discipline imposed of greater severity than an advisory letter, or the case should be closed. The commission ordered 29 preliminary investigations in 1990.

After a preliminary investigation, the commission may issue a notice of formal proceedings (Rule of Court 905), which is a statement of formal charges leading to a hearing. Such notices were issued in 9 cases in 1990.

Of the 885 complaints received in 1990, approximately 71% originated from litigants or their families. 14% of the complaints came from members of the public apparently unconnected to any litigation. Complaints from lawyers accounted for another 8%. All other sources, including judges, court employees, jurors, and others, amounted to approximately 7%.

**III.
SUMMARY OF
DISCIPLINARY
ACTIVITY**

The 885 complaints set forth a wide array of grievances. A large number of the complaints alleged legal error not involving misconduct. Approximately 45% of all complaints fell in this category. Many of these complaints were expressions of frustration and disappointment with the legal process. The next most common category was demeanor and rudeness (10%) followed by allegations of bias or the appearance of bias (5%). Many complaints mentioned more than one sort of misconduct.

▶ **DISCIPLINE IMPOSED**

Since some of the actions taken by the commission in 1990 involved cases begun in 1989, and since some cases begun in 1990 were still pending at the end of the year, the following statistics are based on cases completed in 1990, regardless of when the case began. Cases still pending at the end of 1990 are not included.

The commission completed 893 cases in 1990. Of these, 832 were closed without discipline; 57 were closed with discipline of some sort; and there were 4 retirements or resignations with charges pending.

Discipline may be imposed by the commission only after official investigation, including comment from the judge. Of the 106 officially investigated cases that were completed in 1990, 45 were closed without any discipline. In those cases, investigation showed that the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation.

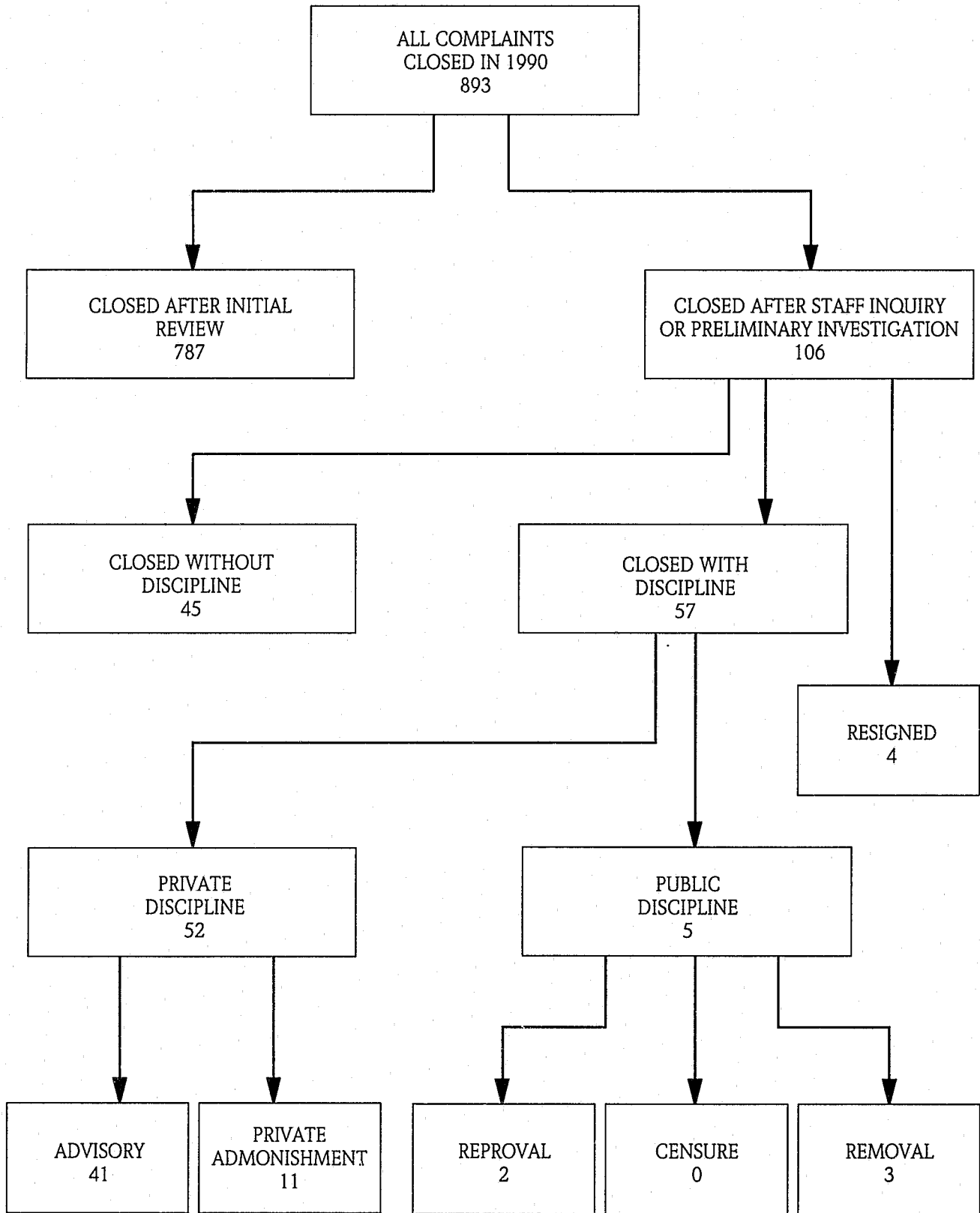
Discipline of some sort was imposed in 57 cases, ranging from mild advisory letters to removal by the Supreme Court.

Public discipline included 3 removals by the Supreme Court and 2 public reprovals by the commission. See section IV of this report for a discussion of the public discipline imposed.

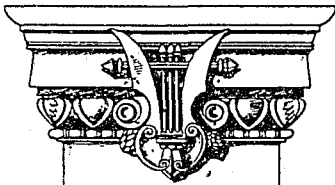
Private discipline included 11 private admonishments and 41 advisory letters. See section V of this report for a discussion of the private discipline imposed.

See Chart III.

CHART III



IV. PUBLIC DISCIPLINE



In this Annual Report on the work of the commission we necessarily analyze all of the complaints and resulting discipline which we have addressed during this period. We would be remiss, however, if we failed to take this opportunity to observe that the vast majority of the 1555 judges comprising the California judiciary served the State of California with dedication and have not been the subject of any disciplinary proceeding. It is a goal of the commission to assist the California judiciary in maintaining its reputation for excellence.

The following is a synopsis of disciplinary action taken by the Commission on Judicial Performance and the Supreme Court in 1990.

In January 1990, the Supreme Court's order removing Judge Kenneth Kloepfer (San Bernardino Municipal Court) became final (49 Cal.3d 826; 264 Cal.Rptr. 100; 782 P.2d 239).

In March, the Supreme Court removed Judge David Kennick (Los Angeles Municipal Court) (50 Cal.3d 297; 267 Cal.Rptr. 293; 787 P.2d 591).

In May, the Supreme Court removed Judge Charles D. Boags (Beverly Hills Municipal Court) after his conviction of conspiracy to obstruct justice became final.

The commission itself issued two public reprovls (Const. art. VI, sect. 18(f)(2)).

• • •

▶ THE KLOEPFER CASE

In a 1989 opinion which became final in 1990, the Supreme Court removed San Bernardino Municipal Court Judge Kenneth L. Kloepfer from office for four acts of wilful misconduct and twenty-one acts of prejudicial conduct. (*Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826.)

The court first discussed and rejected the judge's claim that the combination of investigatory and adjudicatory functions in the commission was a denial of due process. The court also rejected the judge's argument that he was denied due process by delays in commission proceedings.

**IV.
PUBLIC DISCIPLINE**

In turning to the merits, the court considered five broad counts, each containing a number of incidents, set forth in the commission's report and recommendation of removal. On the first count, the court upheld the commission's conclusion that Judge Kloepfer had engaged in ten acts of prejudicial conduct which formed a persistent pattern of rude, abusive, and hostile behavior. These acts were:

1. Angrily berating a court reporter for being late.
2. Telling a deputy district attorney in open court, "You are an embarrassment to the People of the State of California and it's frightening to think that you represent their interests."
3. Telling another deputy district attorney in open court that he was appalled that the interests of the People of the State of California rested in her hands.
4. Berating a court reporter before a courtroom full of people because she asked a defendant who was entering a plea whether he meant "yes" when he nodded his head.
5. Accusing an attorney in open court of being "psychologically afraid to take a case to trial" and demanding that she name the cases she had tried and the courts in which they had been tried.
6. Interrupting a lay witness who had been asked two questions to admonish her in an intimidating manner: "First rule is you keep your mouth shut." The Supreme Court found that "in this incident, as in others, the manner in which petitioner addressed lay witnesses reflects impatience, anger, and an intimidating lack of courtesy in explaining court procedure." (49 Cal.3d at p. 844.)
7. Displaying hostility toward the defendant, defense counsel, and a defense witness during a misdemeanor court trial. The defendant's conviction was reversed by the superior court on the ground that the judge had shown such animosity toward him that she had been denied "even the semblance of a fair trial." Noting that Judge Kloepfer had engaged in argumentative dialogue with the defense witness and had cross-examined him in a manner which reflected hostility and disbelief, the Supreme Court stated "It is fundamental that the trial court...must refrain from advocacy and remain circumspect in its comments on the evidence, treating litigants and witnesses with appropriate respect and without demonstration of partiality or bias. (*People v. Carlucci* (1979) 23 Cal.3d 258.)" (49 Cal.3d at p. 845.)
8. Harshly admonishing an inexperienced lay witness to "Keep your mouth shut."
9. Taking a defendant into custody for failing to respond to a question from the judge and stating that if the defendant sat there "like a bump on a log" and failed to respond to questions being interpreted to him in Spanish, he would "cage him" and bring him back "manacled" to ensure that he followed the court's orders.
10. Intimidating a defendant for whispering to his attorney after the judge asked the defendant a question. The Supreme Court stated, "[Judge Kloepfer's] argument that no one was harmed reflects his inability to appreciate the manner

**IV.
PUBLIC DISCIPLINE**

in which impulsive, discourteous, threatening, and arbitrary statements by a judge affect public perception of the judiciary and the justice system." (49 Cal.3d at p. 849.)

Turning to the second count, the Supreme Court found that Judge Kloepfer had failed to ensure the rights of criminal defendants in five instances:

1. A defendant appeared before the judge on four matters. Without advising counsel previously appointed in two of the cases, and without eliciting proper waivers or obtaining a probation report, the judge took pleas and admissions and imposed sentence on the defendant. The Supreme Court found support in the record for the conclusion that the judge "knowingly failed to ensure the constitutional rights of a criminal defendant and did so to avoid the burden of proceedings in which the defendant would have adequate representation." (49 Cal.3d at p. 850.) The court agreed with the commission that this was wilful misconduct.

2. A defendant appeared without counsel for a pretrial conference. The defendant had retained counsel, who had not yet appeared. Without giving the defendant an opportunity to explain, the judge remanded him to custody for not being interviewed by a panel that screened defendants seeking appointed counsel and for not discussing his case with the district attorney. The court stated, "We disagree with petitioner's characterization of his conduct as atypical. To the contrary, it is all too typical of his pattern of discourteous remarks, threats and intimidation, and punitive rulings made on the basis of unfounded assumptions." (49 Cal.3d 850.)

3. The judge issued an arrest warrant for a defendant who did not appear at a motion hearing; the defendant had not been ordered to appear and her counsel, who had made all appearances on her behalf, was present.

4. The judge denied a defense motion to disqualify another judge under Code of Civil Procedure section 170.6 because the motion was not worded in the exact language of the statute. The Supreme Court found that this ground was "wholly irrelevant" and that the judge's action was "at least prejudicial conduct." (49 Cal.3d at p. 852.)

5. A defendant appeared before Judge Kloepfer with proof that the criminal case underlying a charge of probation violation had been dismissed. The judge insisted that the probation violation proceed to hearing immediately, although the defendant had never waived his right to counsel and repeatedly asked for counsel. After listening to hearsay testimony from a police officer, the judge found the defendant in violation of probation and sentenced him to six months in jail.

The defendant, represented by the public defender, filed a notice of appeal and a petition for writ of habeas corpus. Notwithstanding the pendency of the appeal, but pursuant to a stipulation by counsel, Judge Kloepfer reasserted jurisdiction in the case, set aside the sentence, and released the defendant from custody. The public defender then filed an affidavit of prejudice against Judge Kloepfer; he denied it, even though he recognized that this was the first appearance

**IV.
PUBLIC DISCIPLINE**

by counsel. Judge Kloepfer then held another probation violation hearing at which he again found the defendant in violation and sentenced him to four months in jail.

The Supreme Court found that the judge's insistence on proceeding to hearing without obtaining a waiver of counsel, his subsequent refusal to appoint counsel, and the means by which he reasserted jurisdiction over the case after recognizing his error all supported the commission's conclusion that he had engaged in wilful misconduct and prejudicial conduct.

On the third general count, the Supreme Court found that the judge had abused his contempt power and his power to issue orders to show cause and bench warrants in five instances:

1. The judge held a defendant in contempt for asking "how come" after the judge rebuffed his request to say something. When the defendant responded "but," the judge held him in contempt again. He sentenced the defendant to two days in jail on each count.

2. The judge threatened a witness with a fine or jail after counsel objected that the witness's answer to a question was not responsive.

3. A spectator in the judge's courtroom uttered an expletive when she struck her knee on a bench. Apparently believing that the expletive was a comment on the proceedings, the judge held the spectator in contempt and imposed a short jail sentence.

4. When a defendant the judge had ruled ineligible for 10% bail was released on 10% bail and failed to appear, the judge issued an arrest warrant for the person who apparently had posted the bail. In agreeing with the commission that this constituted wilful misconduct, the Supreme Court stated, "Ordering a person to appear in court when no matter requiring his attendance is pending constitutes serious misuse of the judicial office." (49 Cal.3d at p. 857.)

5. The judge threatened a defendant with contempt for whispering to his attorney during proceedings. The court noted that the contempt power should be a "last resort" for a judge, and should never be used "to intimidate litigants and witnesses, or in a manner that interferes unnecessarily with a litigant's ability to consult with counsel." (49 Cal.3d at p. 858.)

On the fourth general count, the Supreme Court found that Judge Kloepfer failed to remain objective and became personally involved in matters before him in three incidents:

1. After granting a defense motion to suppress evidence, the judge denied the prosecutor's motion to dismiss the case, stating that he had read the police report and felt there was enough evidence to go forward. He also stated that he felt the defendant was guilty, but then denied an oral disqualification motion made by the defense.

2. The judge repeatedly criticized the office of the district attorney for exercising its right to seek extraordinary relief from one of his rulings.

**IV.
PUBLIC DISCIPLINE**

3. After stating at the end of a preliminary hearing that he believed the defendant was "fraudulent, a liar, and deceitful," the judge increased bail from \$13,000 to \$150,000 and ordered \$1500 in attorney fees paid from the bail already posted, despite the fact that this bail had been posted by the defendant's grandmother.

On the fifth and last count, the Supreme Court upheld the commission's determination that the judge abused his power to make fee orders in two instances:

1. A defendant represented by the public defender was convicted after a trial. Without advising the defendant of his right to a hearing and without taking any evidence of the cost of the public defender's services or the defendant's ability to pay, as required by Penal Code section 987.8, the judge ordered the defendant to reimburse the county \$2000 for legal services. The judge later chastised the public defender for seeking modification of the order. The Supreme Court agreed with the commission that the judge's actions constituted wilful misconduct.

2. At the end of a preliminary hearing, the judge ordered \$1500 in attorney fees paid out of a bail deposit. He made this order without holding a hearing or taking any evidence of the cost of the services or the defendant's ability to pay. This was found to be prejudicial conduct.

The Supreme Court then considered the question of mitigation. Noting that attorneys and other judges had testified to Judge Kloepfer's honesty and integrity, the court stated, "This evidence, and that which confirms that petitioner had a good reputation for legal knowledge and administrative skills are not mitigating, however. Honesty and good legal knowledge are minimum qualifications which are expected of every judge." (49 Cal.3d at p. 865.)

The court also pointed out that the judge's years of experience as a deputy district attorney suggested that he was aware of the constitutional and procedural rights of criminal defendants, but failed to use his knowledge to ensure those rights. The court found that the record belied the judge's claim that he had learned from past experience and modified his courtroom behavior. The court stated, "[The record] demonstrates instead an inability to appreciate the importance of, and conform to, the standards of judicial conduct that are essential if justice is to be meted out in every case." (49 Cal.3d 866.) The court concluded that Judge Kloepfer's removal was necessary to protect the public and the reputation of the judiciary.

► **THE KENNICK CASE**

Judge David M. Kennick of the Los Angeles Municipal Court was removed from office by the Supreme Court in 1990 for persistent failure to perform judicial duties (*Kennick v. Commission on Judicial Performance* (1990) 50 Cal.3d 297). This marked the first time the Supreme Court has removed a judge on this constitutional ground.

**IV.
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The court first considered and rejected the judge's claim that the proceedings were moot because he had retired after the commission made its recommendation of removal to the Supreme Court. The court pointed out that Judge Kennick's retirement did not foreclose his future eligibility to serve as a judge, or resolve the question whether he should be suspended from the practice of law pending further order of the court.

The judge claimed that it would be a denial of due process and equal protection for the court to suspend him from the practice of law as part of the disciplinary case. In rejecting this argument, the court pointed out that a removed judge is automatically suspended from the practice of law pending further order of the court (Cal. Const., art. VI, sect. 18 (c)), and that the record of charges sustained by the commission forms the basis for any decision not to suspend.

Although the judge offered to stipulate to his ineligibility for judicial office and to the entry of an order suspending him from California law practice, the court noted that the judge, if suspended from the practice of law, could later apply for reinstatement. In view of this possibility, the court found that it was necessary to go forward with the disciplinary proceeding in order to create a record which could be used in future reinstatement proceedings. The court then stated, "In light of this conclusion, we need not consider the other reasons urged by the commission for immediately reaching the merits, e.g., protection of the integrity of the judicial system [citation], preservation of public confidence in the judiciary [citation], and provision of guidance to other judges [citation]." (50 Cal.3d at p. 313.)

On the charge of persistent failure or inability to perform judicial duties, the record established that Judge Kennick had stopped working in early 1987, about four months before the commission's formal hearing. The judge also had been absent from court about 96 days in 1985 and 1986, reporting illness on 21 of those days. At the hearing, the judge testified that he was being treated for medical and psychological problems, but offered no medical evidence. Noting that under the constitution, as amended in 1976, "persistent failure or inability to perform judicial duties" standing alone is a sufficient ground for removal, the Supreme Court ordered the judge removed on the basis of his absences. The court in *Kennick* made clear that there need not be proof that absence or other nonperformance is the result of an illness or other disabling condition in order for a judge to be removed for "persistent failure or inability."

Although the court specified that "persistent failure or inability" was the sole basis of the removal, findings were made on the other charges contained in the commission's report. The court found that Judge Kennick engaged in prejudicial conduct by behaving in a rude and uncooperative manner when arrested for driving under the influence, and by going to a California Highway Patrol office the next day to ask a sergeant if the paperwork could get lost between the office and the court. The court also found that Judge Kennick engaged in wilful misconduct when he

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shouted at a deputy district attorney in chambers and later laughed with his clerk about having upset the attorney. In addition, the Supreme Court found that the judge was discourteous, impatient, and demeaning to litigants appearing before him, denied parties a full opportunity to be heard, and was rude and intimidating to witnesses. The court also found that the judge was abusive and intimidating to an attorney appearing before him, and denied her the right to be heard.

On a charge raising the issue of gender bias, the court agreed with the commission that the judge's practice of addressing female attorneys, court personnel, and others as "sweetheart," "sweetie," "honey," and "dear" in the course of conducting court business was "unprofessional, demeaning, and sexist." (50 Cal.3d at p. 325.) The court concluded that the use of these appellations was prejudicial conduct.

The court also found that Judge Kennick displayed favoritism in appointing counsel for indigent defendants and in having ex parte conversations with attorneys appearing on appointed cases. Finally, the court found that the judge engaged in prejudicial conduct when he improperly suggested to a waitress that she should not worry about her arrest for driving under the influence.

► **THE BOAGS CASE**

Judge Charles D. Boags of the Beverly Hills Municipal Court was removed from office by the Supreme Court in 1990 after he was convicted of conspiracy to obstruct justice, a crime involving moral turpitude. (California Supreme Court Case # S008424.)

In late December of 1988, Judge Boags was found guilty of conspiracy to obstruct justice by a municipal court jury. The evidence presented at trial showed that the judge had improperly suspended fines on over 200 parking tickets issued to his son and his son's high school friends. The commission filed with the Supreme Court a recommendation that he be suspended without pay pursuant to Article VI, section 18(b) of the California Constitution. That provision states:

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 law. [...] If the judge is suspended and the conviction becomes final the Supreme Court shall remove the judge from office.

In February 1989, the Supreme Court followed the commission's recommendation and ordered the judge suspended without pay. When the conviction became final fifteen months later, the Supreme Court removed the judge from office pursuant to Article VI, section 18(b).

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▶ **PUBLIC REPROVALS**

1. Judge Raymond D. Mireles (Los Angeles Superior Court)

Judge Mireles, annoyed at the absence of a particular attorney from his courtroom, directed two police officers to bring him to the court, adding they should bring "a piece of" or "a body part" of the attorney. The officers went to another courtroom and used physical force to remove the attorney. Judge Mireles witnessed the forcible delivery of the attorney to his courtroom, but did not rebuke the officers or make any inquiry into their conduct despite the attorney's protests.

The commission found that the judge did not actually intend force to be used, but carelessly allowed that impression to be conveyed.

Judge Mireles acknowledged and expressed regret for the remarks which led to the mistreatment of the attorney.

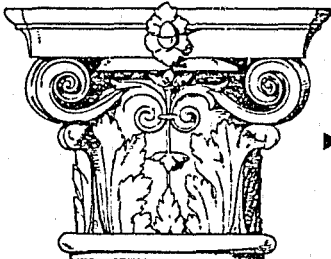
2. Judge Glenda K. Doan (Corcoran Justice Court)

Judge Doan telephoned a superior court judge to ask that a defendant who was accused of serious crimes of violence be released under supervision but without bail. She told the judge she knew the defendant's family and they were "good people." The superior court judge declined, telling Judge Doan that the request was improper. Judge Doan also asked a deputy probation officer on at least two occasions to recommend the defendant's release pending trial.

In the course of its investigation, the commission asked the judge about these matters. Her response read, "Judge Doan simply agreed to check on the status of the case. . . Judge Doan made no other efforts on behalf of the defendant. . ." This response was false.

Judge Doan ultimately recognized the impropriety of her actions and assured the commission that they would not be repeated.

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In 1990 the commission issued 11 private admonishments and 41 advisory letters.

PRIVATE DISCIPLINE AND DISPOSITIONS

Private admonishments are imposed under California Rules of Court, rule 904.3. The private admonishments imposed in 1990 are summarized below. In order to maintain privacy, it has been necessary to omit certain details. This has made some summaries less informative than they otherwise would be; but since these examples are intended in part to educate judges and assist them in avoiding inappropriate conduct, we think it is better to be vague in these descriptions than to omit them altogether.

A. A witness, who had never appeared in court before, told the judge that the judge was wrong in an earlier ruling. The judge responded by immediately ordering the witness into custody. The judge did not hear the witness's explanation or apology until several hours later.

B. During a settlement conference, a judge made rude, impatient, and sexist remarks to parties and counsel; the judge made unwarranted threats to counsel and to a party; the judge met with parties without counsel's presence or consent; the judge denounced counsel in open court and to the parties. The admonishment was severe.

C. A judge took extended lunch hours during which the judge consumed alcohol. In the afternoons, the judge was sometimes unavailable and sometimes appeared to be intoxicated. The judge agreed to undertake remedial measures.

D. A judge appeared to be personally embroiled in a number of cases. This raised questions about the judge's detachment and neutrality. For instance, the judge urged a defendant to accept an offered plea bargain, suggesting an additional charge that the prosecutor might have brought, but did not. When the defendant declined the offer, the judge displayed anger and frustration and invited the prosecutor to amend the complaint to add the suggested charge. In the course of the investigation, the judge recognized the problem and promised improvement.

E. A judge failed to rule in two cases for approximately one year.

F. In a previous disciplinary action, the judge had assured the commission that certain acts of misconduct were isolated and that the commission knew of all such acts. After discipline was imposed, the commission learned of other acts of similar misconduct which the judge had not revealed. All of the acts involved using the prestige of office to advance the private interests of others.

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G. On several occasions a judge seemed to act in disregard of the rights of criminal defendants. For instance, the judge sometimes questioned defendants during arraignments in what appeared to be an effort to elicit admissions; the judge appeared to force a defendant to choose between the right to counsel and the right to a speedy trial; the judge set bail in apparent retaliation for a refusal to enter a plea bargain. The commission determined that private admonishment was appropriate because of the judge's exceptionally constructive attitude toward the problem and the concrete steps the judge took to prevent further problems.

H. A judge requested and received two personal loans from a clerk of the court.

I. A judge violated Canon 2C, which forbids membership in any organization, excluding religious organizations, that practices invidious discrimination on the basis of race, sex, religion, or national origin. However, the judge resigned the membership.

J. A judge violated Canon 2C, which forbids membership in any organization, excluding religious organizations, that practices invidious discrimination on the basis of race, sex, religion, or national origin. However, the judge resigned the membership.

K. A judge violated Canon 2C, which forbids membership in any organization, excluding religious organizations, that practices invidious discrimination on the basis of race, sex, religion, or national origin. However, the judge resigned the membership.

▶ **ADVISORY LETTERS**

The commission will sometimes advise caution or express disapproval of the judge's conduct. This milder form of action is contained in letters of advice or disapproval called "advisory letters" provided for in rule 904.1. Over the years the commission has issued them in a variety of situations:

- The commission sometimes issues advisory letters when the impropriety is isolated or relatively minor. For instance, a judge who is rude to a litigant on a single occasion might receive an advisory letter.

- Advisory letters are also used when the misconduct is more serious but the judge has demonstrated an understanding of the problem and has taken steps to improve. For instance, a judge who persistently belittled inexperienced lawyers might receive an advisory letter after acknowledging the problem and promising improvement.

- Advisory letters are especially useful where the problem is the *appearance* of impropriety. For instance, suppose a judge often leans back with closed eyes for minutes at a time. A complainant writes that the judge fell asleep during a trial. The judge claims that the judge was not asleep, but only concentrating. Other evidence on the dispute is ambiguous. It is difficult and perhaps unnecessary to find the

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"truth" in this situation. The commission's view is that attorneys, litigants, and the general public have trouble distinguishing between profound cogitation and unconsciousness. The commission is in a unique position to help the judge see him- or herself as others do. An advisory letter may serve the judge as a kind of candid snapshot.

- An advisory letter might be appropriate where there is significant misconduct but substantial mitigation.

41 complaints were closed with advisory letters in 1990.

► **Demeanor**

The most commonly implicated Canon is Canon 3A(3): "Judges should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom judges deal in their official capacity. . ."

1. A judge was persistently rude to litigants, counsel and court personnel. The commission closed the case with an advisory after the judge accepted the commission's advice to attend a course in courtroom behavior sponsored by the California Center for Judicial Education and Research [CJER].

2. A judge was persistently rude, especially to inexperienced attorneys. The judge made a sincere effort to improve, including attendance at the CJER program.

3. A judge's demeanor was perceived by nearly everyone as combative, harsh and rude. However, the judge's conduct was otherwise exemplary.

4. A judge sometimes appeared to slumber on the bench.

5. A judge was habitually tardy, usually taking the bench after 10 o'clock for an 8:30 calendar. However, the judge took active steps to change this pattern.

6. A judge who had previously gone through an alcohol program appeared to some to have a recurrence of the problem. The judge denied there was a problem, but agreed to avoid any such perception by not having a drink at lunch and by other means.

7. A judge was rude and impatient toward counsel. The judge also displayed the judge's gun during the hearing.

8. A judge spoke to and treated some defendants in a manner that appeared harsh, rude and demeaning. It appeared, however, that the judge's performance had recently improved.

9. A judge was insulting and undignified in remarks to counsel at a settlement conference.

See also *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 839-849, *Kennick v. Commission on Judicial Performance* (1990) 50 Cal.3d 297, 321-327, and Admonishment B.

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▶ **Mistreatment of Attorneys**

The relationship between judges and attorneys is supposed to be, and usually is, one of mutual respect. As one court said, "Members of the bar have the right to expect and demand courteous treatment by judges and court attaches; similarly, the court has the right to expect and demand that, in the course of judicial proceedings, advocates will conduct themselves in a courteous, professional manner." (*In re Grossman* (1972) 24 Cal.App.3d 624, 629.)

To control their courtrooms and enforce proper conduct judges have many tools, including the example of their own proper behavior, persuasion, warning, sanctions, contempt power, and the ability to refer misconduct to the State Bar or other authorities (see Canon 3B(3)). It does not follow that judges may insult attorneys needlessly, make entirely unfounded complaints, or otherwise abuse their authority.

10. In open court, a judge made insulting remarks about an attorney who was not present. The same judge continued to handle a case after being disqualified.

11. A judge made uncalled-for criticisms of an attorney in front of the client, causing a rift between attorney and client.

12. After a pre-trial conference in which the judge failed to persuade an attorney to endorse a plea bargain, the judge "heard" from some source that the attorney had a conflict of interest. The judge irresponsibly referred the matter to the State Bar, which investigated and cleared the attorney.

13. A judge sent memoranda to court personnel which rebuked a number of attorneys, giving the appearance of retaliation against the attorneys.

14. A judge impugned an attorney in a letter to another judge and sent copies to a third judge and opposing counsel. The reference to the attorney was gratuitous.

See also *Kloepfer*, supra, 49 Cal.3d at 860, *Kennick*, supra, 50 Cal.3d at 326 - 327, Admonishment B and Advisory Letters 1, 2, 7, 9, 20, 21, 22, 33 and 38.

▶ **Delay**

The commission issued only one advisory letter in 1990 for failure to decide cases timely. The delay in that case 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)).

15. A judge delayed 6 1/2 months in deciding a small claims case.

See also Admonishment E and Advisory Letter 24.

▶ **Ex Parte Communications**

Unless expressly allowed by law or expressly agreed to by the opposing party, ex parte communications are improper.

16. A judge heard and acted upon an ex parte request to alter a docket. The

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conduct was mitigated by the fact that the alteration was intended to permit implementation of a court action to which all the parties had agreed.

See also Admonishment B and *Kennick*, supra, 50 Cal.3d at 331-332, holding it improper to meet "alone in chambers with an attorney representing one side of a case pending before him in the absence of circumstances that would make ex parte communication proper." Such a meeting is improper even if the meeting is purely social and the pending case is not discussed.

► **Conscious Disregard of the Law**

"[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." (*Gubler v. Commission on Judicial Performance* (1984) 37 Cal.3d 27, 47-48.) But discipline is necessary when a judge consciously chooses to disregard the law. The Supreme Court said in *Kloepfer*, supra, 49 Cal.3d at 850: "While petitioner argues that his omissions in this case amounted to no more than procedural error, the Commission could conclude on this record that petitioner knowingly failed to ensure the constitutional rights of a criminal defendant and did so to avoid the burden of proceedings in which the defendant would have adequate representation. [This] constituted wilful misconduct."

17. In order to leave the courtroom quickly, a judge routinely rushed through the criminal calendar, taking procedural short-cuts which deprived defendants of their constitutional rights. When concerns over these practices were brought to the judge's attention, the judge made significant changes. After a period of observation and review (Rules of Court, rule 904.2(d)), the commission closed the case with an advisory letter.

18. A judge publicly announced a "policy" that all offenders in a certain category of cases would receive a sentence of 90 days. This was contrary to the sentencing judge's obligation to consider the particular defendant and exercise discretion as to whether that defendant's request for probation should be granted or denied.

19. A judge refused to let attorneys represent parties in small claims appeals. See also Admonishment G and Advisory Letters 20 and 23.

► **Abuse of Contempt Power**

Before sending a person to jail for contempt, or imposing a fine, judges are required to provide due process of law, including strict adherence 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.)

20. A judge ordered an attorney to pay sanctions without giving notice or opportunity to be heard. In two separate matters, the judge helped plaintiff serve

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process on the defendant by detaining the defendant in the courtroom, and gave a defendant less than the statutory time to answer the complaint.

21. A judge ordered an attorney to pay \$250 sanctions by noon the day they were ordered. Under the circumstances this was an unreasonably short time.

22. A judge was frequently abusive toward counsel and imposed sanctions without following proper procedures. The judge acknowledged the problems and showed considerable improvement.

See also *Kloepfer*, supra, 49 Cal.3d at 854 -858, and Admonishment A.

► **Miscellaneous**

And there was a variety of other cases.

23. When two defendants were not present at the first calendar call, a judge revoked their bail. They arrived a few minutes later. The judge refused to hear their attorney's (quite reasonable) explanation for their lateness. The defendants were held in jail overnight before the judge reinstated their bail. The advisory letter concerned the judge's refusal to listen to the attorney's explanation.

24. A judge failed to ensure that rulings were issued promptly and that attorneys and litigants were notified of scheduling changes. The judge blamed the court clerk for these failures. The advisory letter concerned the judge's responsibility to supervise the clerk (Canon 3B(2)).

25. A judge engaged in activities which suggested that the judge had political influence and access to high officials. The commission considered this to be "political activity inappropriate to the judicial office," in violation of Canon 7.

26. A judge who favored a particular legislative action made a ruling in a case and used that ruling as part of the legislative effort. The commission found no impropriety in the legislative activity, but thought the judge was not sufficiently sensitive to the appearance of impropriety caused by the timing of these events.

27. A judge, irate at a traffic stop of the judge's spouse, used intemperate language in a telephone conversation with police officials. This fostered the impression that the judge was abusing the judicial position.

28. A judge who was advisor to a grand jury rudely and improperly demanded that a portion of a grand jury report be deleted. In remarks to the jury, the judge said that the portion impugned the integrity of the judge and a colleague.

29. A presiding judge failed either to acknowledge an attorney's complaint about a court commissioner or to advise the attorney of its disposition.

30. A judge told a reporter that an upcoming hearing might be newsworthy. In the circumstances of that particular case, the judge's statement to the reporter gave the appearance of pre-judgment.

31. A judge made a public speech in which the judge commented on a case that was pending in another court.

32. After an attorney, sitting as a judge pro tem, had heard a judge's civil calendar, the judge took the bench and heard the final item on the calendar, in

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. which the attorney represented a party. The judge conceded that this situation
. might have created an appearance of impropriety.

. **33.** A judge attempted to pressure the parties into a settlement. In open
. court, the judge questioned the parties about the fees they were paying their attor-
. neys and expressed the opinion that the parties should seek a discount or reimburse-
. ment.

. **34.** A traffic defendant refused to enter a plea. Instead of entering a not
. guilty plea and moving on, the judge made the defendant wait in the courtroom all
. day before entering the plea. This appeared to be a vindictive use of judicial power.

. **35.** A judge's minor child was a criminal defendant. The judge acted on the
. child's behalf in a way that could have been perceived as using the judicial position
. to benefit a family member.

. **36.** The commission investigated a judicial act which gave the strong ap-
. pearance of bias. The judge's response to the commission displayed indifference to
. the perceptions of others and to the appearance of bias.

. **37.** A judge was cautioned to avoid the appearance of undue harshness and
. insufficient concern for due process in certain courtroom control practices.

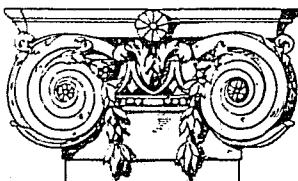
. **38.** A judge often made rude and insulting comments to attorneys from a
. particular office. The judge also failed to disclose that the witness had a business
. relationship with the judge; but the judge was under the impression that all parties
. knew of the relationship.

. **39.** A judge engaged in acts constituting a misdemeanor.

. **40.** A judge solicited a court employee and friends to invest in a financial
. venture, giving the appearance that the judge was lending the prestige of judicial
. office to the enterprise.

. **41.** A judge issued an order before the time had expired for a party's briefing.
. When the party filed the brief, the judge considered it, but decided that it did not
. affect the decision. The judge acknowledged to the commission that there was the
. risk of an appearance of unfairness.

VI. VOLUNTARY DISABILITY RETIREMENT



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

In 1990, two disability applications were approved and one was tentatively denied.

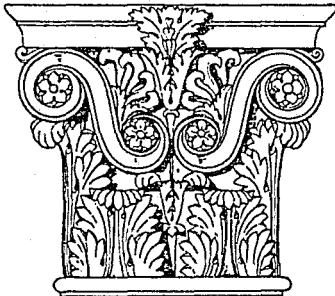
In 1990 the commission adopted Policy Declaration 4.4, which sets out a new procedure for the consideration of disability retirement applications. When a judge files an application, he or she must provide medical documentation of the disability. If the commission finds the documentation inadequate, the judge is given an opportunity to supplement the application. The commission may then order an independent medical examination of the judge. The commission may ask a consultant to review the medical reports and advise the commission.

The commission must then either approve or tentatively deny the application. The commission must state reasons for its tentative denial. The judge may either accept the denial or request the opportunity to present more evidence. If there is such a request, the commission appoints a special master who will "take evidence, obtain additional medical information, and take any other steps he or she deems necessary for determination of the matter." The special master then makes a report to the commission with proposed findings.

After receiving the special master's report, the commission again considers the matter and decides either to approve the application or to deny it finally.

The complete text of Policy Declaration 4.4 may be found in the appendix.

**VII.
LOOKING BACK
AND LOOKING
FORWARD**



The commission invited retiring Director-Chief Counsel, Jack Frankel, to write an essay for the Annual Report on the occasion of his retirement. The subject of the essay and the views expressed are his own.

LOOKING BACK AND LOOKING FORWARD

by Jack E. Frankel

In November 1960, on the same day John F. Kennedy was elected President, the people of California enacted a constitutional amendment creating an institution which for the first time in jurisprudence anywhere would receive and investigate the public's complaints against judges and take action towards removal. Nine months later the Commission on Judicial Performance, then called the Commission on Judicial Qualifications, opened its doors. The doors, until some time later when a regular office became available, were to the chambers in the First District Court of Appeal used by visiting pro tem judges.

The function of the fledgling program was to provide an orderly, fair and effective method for terminating the tenure of unfit judges. The judges causing problems were alcoholic judges, judges who conducted themselves outrageously in court, incapacitated judges, judges who could not or would not work regularly for whatever reason, and other judges whose mental faculties were such that they shouldn't be deciding issues affecting people's lives. The solution contemplated by the trail blazing amendment was removal or involuntary retirement by the state Supreme Court after investigation, hearing and recommendation by the nine-member commission.

Many questions were raised and debated during this period. For example: Why should judges be subject to such oversight, when legislators and other elected officials were not? Should proceedings be strictly confidential? What should be done to afford due process to the respondent judge during the investigation and hearing? How should judicial misconduct be defined? Should public and bar members be allowed to sit in judgment on judges? If so, should the majority of commission members be judges? And, fundamentally: Was the commission a viable means for inaugurating accountability of judges beyond appellate, electoral and impeachment remedies?

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The commission proved itself viable. Known in the 1960's as the California Plan, state judicial conduct commissions have been established throughout the United States. They have been generally acclaimed. The media regularly objects to the secrecy of commission proceedings, and some judges (with scant evidence) have criticized perceived unfairness and aggressiveness, but on balance the commission has served its primary objective of "protect[ing] the judicial system and the public which it serves from judges who are unfit to hold office." (*McComb v. Commission on Judicial Performance*, (1977) 19 Cal.3d Spec. Trib. Supp. 1.)

There are a number of elements to point to in reflecting on the development and success of the CJP. I am thinking about the many excellent commission members, the able and unsung legal and support staff, and the good coverage from the media and interested journalists. I should also note the backing given by each Chief Justice of California in this 30-year period from Phil S. Gibson to Malcolm Lucas. The commission would not have achieved its standing without their endorsement and support.

Over the years, the commission's original goal of removing or retiring judges for demonstrated lack of fitness was enlarged by the people of California, the Judicial Council, and the California Supreme Court. Constitutional amendments, rule changes, and rulings of the Supreme Court instituted and validated additional grounds for imposing discipline, and added disciplinary measures short of removal and involuntary retirement. At the same time, there was a development of commission functions beyond investigating, holding hearings, and then recommending the removal of unfit judges. These ancillary functions included building a system of discipline short of removal so that various types and degrees of unethical or questionable conduct could be addressed, clearing judges who were the targets of malicious and unfounded allegations and participating in educational programs to try to prevent judicial improprieties.

The commission underwent another kind of transformation even before it was established. Its first title, "Commission on Judicial Qualifications," reflected the fact that under the constitutional amendment as originally drafted, the commission's main job was to screen nominees for the courts by exercising veto authority over nominations by the Governor. The opposition was such that this duty was dropped, leaving the removal function and the nondescriptive title; the title was changed when more substantial changes were made by further constitutional amendments in 1976. In the literature, judicial appointment and removal are often linked as judicial selection and tenure. This attempt to combine selection and removal at the operating level was therefore understandable.

Some history may be helpful here.

Beginning in 1949 and continuing through the 1950's, Chief Justice Phil S. Gibson, as the Chairman of the Judicial Council, and the State Bar leadership worked together on a number of judicial reforms. In 1949, they spearheaded the inferior court reorganization, which eliminated a maze of lower courts. (Texas and

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New York still have many hundreds of such judicial anachronisms.) In the mid and late 1950's, Gibson and new State Bar leaders joined forces again to advocate several judicial reforms. Gibson tested the waters in a 1956 report to Governor Goodwin Knight "on the condition of judicial administration in California."

Gibson stressed that reforms were urgently needed to keep pace with "the onward rush of population, the mushroom growth of cities, the exciting developments in every phase of economic and social life"--a description equally applicable to the California of 1990. One reform Gibson considered crucial was an improvement of the judicial selection process. He wrote: "Even more important than the problem of removal of unfit judges is that of selection and tenure."

The reform movement headed by Gibson and the State Bar led to the creation of the Joint Judiciary Committee on the Administration of Justice in 1958. The State Bar loaned its Legislative Representative, Goscoe Farley (later a superior court judge and president of the California Judges Association), as Executive Director. In the introduction to its 1959 report, this Joint Legislative Committee discussed some complaints about problems in the judiciary.

These complaints were directed at certain judges who failed in one way or another to render the service required by their position. Some delayed decisions for months or even years. Some took long vacations and worked short hours, despite backlogs of cases awaiting trial. Some refused to accept assignment to cases they found unpleasant or dull. Some interrupted court sessions to perform numerous marriages, making this a profitable sideline by illegally extracting fees for the ceremonies. Some tolerated petty rackets in and around their courts, often involving "kickbacks" to court attaches. Some failed to appear for scheduled trials because they were intoxicated, or took the bench while obviously under the influence of liquor. Some clung doggedly to their positions and their salaries for months and years after they had been disabled by sickness or age.

All of these problems from the 50's would be dealt with after 1960 by the Commission on Judicial Performance.

The Joint Judiciary Committee proposed three reforms in its 1959 report on the California Judiciary: "[1] improved methods of screening the appointment of judges, [2] more effective procedures for the removal of judges guilty of serious misconduct, and [3] a closer administrative supervision over judges." The second recommendation led to the formation of the Commission on Judicial Performance, the third recommendation led to the creation of the Administrative Office of the Courts and the constitutional position of Administrative Director of the Courts. The first recommendation led nowhere.

Judicial selection reform was a hot topic in bar circles in the 1950's--more so than removal. There was much discussion about improving the administration of justice by upgrading the method of selection. In the ensuing years, the discipline side has flourished while selection as an issue has languished. Both the State Bar and the Judicial Council have been deeply involved in many other issues which

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doubtless have higher priorities than improving judicial selection. Perhaps the time has come to give renewed attention to the issue of how judges are chosen.

The prevailing school of thought on judicial selection is neo-Jacksonian: Almost anyone with the minimum qualifications and the absence of some major impediment is qualified. The prevailing assumption seems to be that "ability," "aptitude," and "performance" are terms so vague and subjective that they cannot be evaluated in a neutral manner. They are mere window-dressing on the Governor's naked power to appoint anyone he or she wishes. And since these terms have no real meaning, you might as well let the elected chief executive do the choosing on whatever personal or political bases he or she wishes. For some grossly inappropriate choice, there are commissions to encounter [Judicial Appointments and Judicial Nominees Evaluations-both discussed below]; there are judicial orientation and educational programs for new judges; and for the misfits and the unfits, the Commission on Judicial Performance is there to rap knuckles, set limits and recommend removal.

The Commission on Judicial Performance has now gone about as far in terms of disciplinary grounds and measures as the concept will allow. The constitutional grounds for removal or censure now include persistent failure and inability to perform, as well as the traditional wilful misconduct and conduct prejudicial; the grounds for admonishment include engaging in improper action or dereliction of duty. Besides removal and involuntary retirement, there is the confidential advisory letter, monitoring for up to two years, private admonishment, severe private admonishment, public reproof, censure and severe censure. Since 1989, there has been constitutional authority for public announcements. (In my view, if this power had existed in 1979, the imbroglio over the investigation of the Supreme Court would have been avoided.) With the work of the Judicial Council Advisory Committee on Judicial Performance Procedures, named by Chief Justice Lucas in 1987 to break the logjam of proposals from both the Commission on Judicial Performance and the California Judges Association, the applicable Rules of Court are now pretty much modernized. As with any important mechanism with a delicate mission, there will always be a need for maintenance, fine tuning and some change. But with a series of excellent Supreme Court decisions eloquently spelling out the disciplinary mandate of the Commission on Judicial Performance, and the explosion in California and across the country of a common law of judicial conduct, the operation of the disciplinary mechanism for judicial accountability has about reached its potential.

The same cannot be said of the commissions which pass upon judicial nominations: Judicial Appointments, a constitutional agency, for the appellate courts, and Judicial Nominees Evaluation (the Jenny Commission), a statutory body of the State Bar, for the trial courts. Both panels start with the germ of a plan: block unsatisfactory nominees. Neither panel has an office or investigative staff. Unless there are skeletons in the closet, the present system does not contemplate

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FORWARD**

influencing or rejecting any Governor's choice. That choice is commonly and correctly understood to be determined by personal and political factors. For both panels, the test is whether there is substantial cause to reject the nomination. Fortunately, the nominee is often well suited to the judicial post, but the panels do not look beyond the lowest common denominator of acceptability.

Why isn't the public entitled to excellence as a goal instead of the tiresome personal/political credentials? Stopping an unqualified aspirant is too meager an objective. The fault is not with the members of these two screening panels. They play the cards they're dealt; they do not see their role as reformers.

The tribunal for appellate judges goes through an unproductive ceremony. Its hearings resemble coronations. With rare exceptions, any dissent emanates from the lunatic fringe. There is no serious investigation of appellate aptitude or evaluation of judicial skill, nor is the Governor's choice compared with other potential choices on those bases. No standards of excellence have ever been articulated. The emperor has no clothes.

The Jenny Commission now does what was done in the 50's and 60's in a similar manner, with the same defects and limitations, by the Board of Governors of the State Bar on the basis of understandings with the governors beginning with Earl Warren. While there is regularly heard the legitimate concern that candidates receive "due process" and not be unfairly blackballed, there is surprisingly little interest in recruiting the ablest prospects or developing a talent pool. The statute establishing the Jenny Commission programs it for low effectiveness. Its only power is that the State Bar may make an announcement should a Governor appoint someone the commission has found unqualified. (Government Code Section 12011.5.)

In referring to the trial court screening system in its 1959 Report on The California Judiciary, the Joint Judiciary Committee on the Administration of Justice discussed "a serious defect in the present referral system" in words which are as true in 1991 as in 1959. "It usually works," according to their witnesses, "if the Governor's choice is notoriously bad. But it does not work if the choice is merely mediocre." The judicial appointments in the past 30 years, as in the 50's when that report was written, have been good, excellent, poor and indifferent, regardless of who is Governor. Fortunately, there have been more of the first two than the last two.

In 1970, when the Carswell nomination to the Supreme Court was before the U.S. Senate, the opposition protested on the ground of inadequacy. Finally, an exasperated Sen. Hruska countered: "Even if he is mediocre, there are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren't they?" I think it has been unfortunate that "Qualified" and "Qualifications" are the terms of reference. Judicial ability and aptitude should be what is looked for. "Qualified" and "qualifications" suggest that the emphasis should be on approving an individual in the absence of reasons not to do so, instead of searching for the choices with positive characteristics.

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We sit by apathetically while each Governor imprints his personal predilections on judges to be. Professional factors are often an afterthought. Instead of tunnel vision, why not a vision of quality? I write not about certain Governors but as an observer of five administrations. The present system does allow for good appointments; it has produced many first rate judges. But professional attributes should be the foremost factor in every choice, instead of receiving erratic and sporadic consideration.

Many years ago a good friend who was a bar activist wishing to be on the bench frequently grumbled to me, "All you have to know to be a judge is one thing: the Governor." Then one day I read that my friend was appointed to the superior court. He proved to be an excellent judge, unfortunately dying early in his new career. However, after he went on the bench I never heard him criticize the process.

Similarly, an ambitious lawyer who is effectively locked out of the appointive process because he or she doesn't satisfy the particular profile ordained by some Governor but then successfully appeals to the voters is not inclined to look critically at the elective option; it worked for him or her. It is understandable that by and large the California judiciary is not dissatisfied with the system by which it has reached office. Neither are those who are politically astute or who have a sufficient foothold in the political structure that exists when it is time to seek a place on the bench or elevation.

Some things have changed. One important and welcome change is the diversity provided by the selection of women and minorities. There also seem to be more opportunities for younger lawyers and those coming from the public sector, although this may be a reflection of the drop in real compensation, which is more of a deterrent than in the past to mid-career private sector lawyers accepting judicial office. Another important change derives from the excellent educational programs sponsored by the Center for Judicial Education and Research, which did not exist in the 50's. Probably the most significant change for the reviewing courts has been the growth of a permanent corps of staff attorneys usually chosen on ability. The excellence of the justices' research attorneys and each court's central staff attorneys is often given as a reason by insiders why the judicial position itself is secondary.

On balance, it should be noted that by comparison with the executive and legislative branches, the judicial branch has done remarkably well. It is a tribute that the judiciary functions so well, considering how society has dumped on the judicial system many of the ills and problems which society is unwilling to deal with directly.

Some suggest that the judicial selection process cannot be other than "political." Judicial selection, they point out, is part of the political or governmental process. Since an appointment is by definition political in that sense, it is reasoned that the usual political factors apply. But we have allowed "politics" to be too

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pervasive in both the appointive and elective processes. Neutral criteria such as capacity for sustained work, good judicial outlook and temperament, and a track record of training, experience and accomplishments in the profession and the community are far more significant than positions on controversial questions or self-serving pronouncements about judicial philosophy. As Bernard Witkin has said, "What is a social viewpoint in a suit on a promissory note, a personal injury case or a corporate dissolution? Not once in a hundred times is a judge called upon to make great philosophic determinations." (*California Lawyer*, September 1982, p. 82.)

Political experience can be valuable for a judge. But why should that weigh so heavily? Why should measuring up to the individual ideology of the person happening to occupy the chief executive's chair in Sacramento outweigh professional criteria? Talent in and out of the judiciary is squandered. A common rejoinder to this by defenders of the status quo is: Do you realize how much worse it is in state X or Y or Z -- all where politics is more pervasive than California.

Some unwelcome changes that have taken place regarding selection are those which are derived from the contested judicial election. There are a number of currents in that direction. To name only one, a recent decision of the Ninth Circuit Court of Appeals allowing political parties to endorse judicial candidates is an ominous portent. (*Geary v. Renne*, 911 F.2d 280 (9th Cir.) cert. granted (January 14, 1991) 111 S.Ct. 750.) Party endorsements of judicial candidates are a ghastly prospect. Anomalies and excesses of judicial electoral campaigning and fundraising, as if a county supervisor's seat were at stake, increasingly pollute the system. However, it is argued that since prospects with judicial aptitude and capacity are often not considered by the appointing power on the basis of their abilities, legitimate ambitions justify an outlet.

For many decades we have tolerated a four-pronged "Rube Goldberg" judicial selection scheme: the gubernatorial appointment process, the two screening commissions, and the occasional contest at the polls. Each component is seriously flawed but the scheme works, provided our standards are low enough. These weaknesses are factors in the future business of the Commission on Judicial Performance.

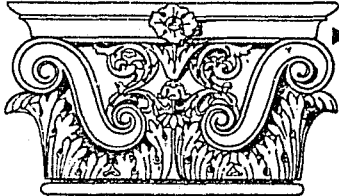
When this essay is discussed, it may seem that I do not value the outstanding work of California judges. This is far from the case. As I have said, a large number of men and women in the California courts are truly excellent judges. They labor tirelessly with good humor, great skill and scant praise.

I foresee the time when the personalization and politicization inherent in the method by which judges are chosen will once again engender discussion of reform. We should grapple with this challenge without denigrating the achievements of the California judiciary.

December 31, 1990

**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 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.

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(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**

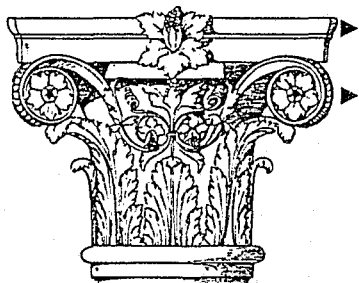


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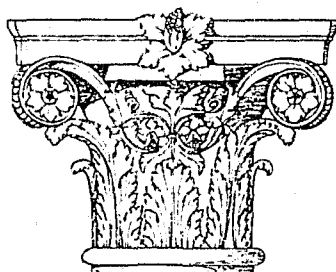


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B.
CALIFORNIA RULES OF COURT

► **Rule 78. Notification of Failure to Perform Judicial Duties [Appellate Courts]**

The Chief justice or presiding justice of a reviewing court, or the administrative presiding justice with regard to a presiding justice, shall notify the Commission on Judicial Performance of (1) a reviewing court judge's substantial failure to perform judicial duties, including but not limited to any habitual neglect of duty, or (2) any absences caused by disability totaling more than 90 court days in a 12-month period, excluding absences for authorized vacations and attendance at schools, conferences, and workshops for judges.

The Chief Justice or presiding justice or administrative presiding justice shall give the judge a copy of any notification to the commission. [As amended effective Jan. 1, 1991.]

► **Rule 205. Duties of Presiding Judge [Superior Courts]**

The presiding judge shall

(1)-(16)***

(17) notify the Commission on Judicial Performance, and give the judge a copy of the notice, of (i) a judge's substantial failure to perform judicial duties, including but not limited to any habitual neglect of duty, or (ii) any absences caused by disability totaling more than 90 court days in a 12-month period, excluding absences authorized under paragraph (7);

(18)-(20)*** [As amended effective Jan. 1, 1991.]

► **Rule. 532.5. Duties of Presiding Judge and Administrative Judge [Municipal Courts]**

(a) [Duties of presiding judge] Except as otherwise provided by subdivision (b), the presiding judge shall

(1)-(18)***

(19) notify the Commission on Judicial Performance, and give the judge a copy of the notice, of (i) a judge's substantial failure to perform judicial duties, including but not limited to any habitual neglect of duty, or (ii) any absences caused by disability totaling more than 90 court days in a 12-month period, excluding absences authorized under paragraph (9). [As amended effective Jan. 1, 1991.]

(b)***

► **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 cen-

sure 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 proceeding, 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

B.
CALIFORNIA RULES OF COURT

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 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 constitute 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

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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 & Retention of Commission Records**

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

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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 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 wit-

ness 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

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shall authorize the discovery of any writing or thing which is privileged from disclosure by law or is 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 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

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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 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

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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:

(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.

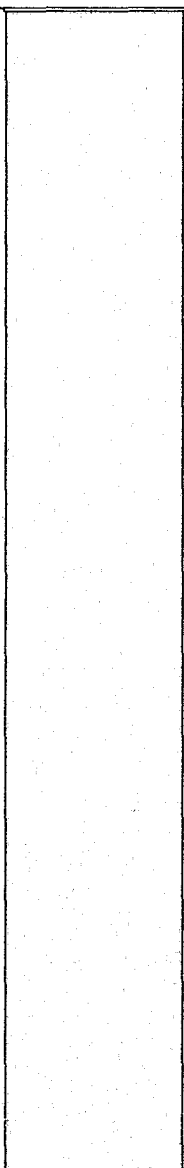
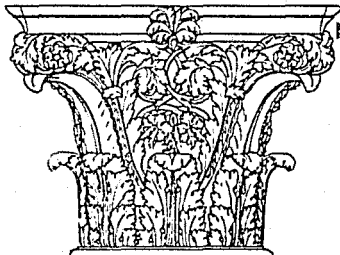
(g) "Shall" is mandatory and "may" is permissive.

(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.

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POLICY
DECLARATIONS**



**CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE
POLICY DECLARATIONS AS OF DECEMBER 1990**

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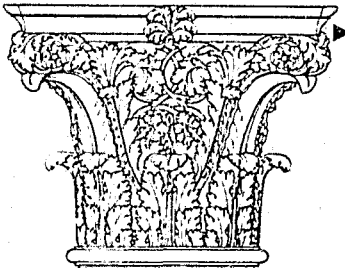


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C. POLICY DECLARATIONS

► 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 under rule 904(a)(2) or 904(b) to determine 1) whether or not there are sufficient facts to warrant a preliminary investigation under rule 904(a)(3) or 904(b) and, 2) what other disposition is appropriate. This may but need not include writing the judge an inquiry letter under rule 904.1 and policy declaration 1.3.

► 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 misconduct may be furnished the subject judge so that the judge has an opportunity to present such matters as the judge may choose,

including 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 preliminary investigation letter. An inquiry letter and opportunity for response must precede issuance of a confidential advisory letter under rule 904.1.

► 1.4 Authorization for Inquiry Letters and Preliminary Investigation 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 acting 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 Preliminary Investigation Letter

After commencement of a preliminary investigation under rule 904(a)(3) or 904(b), 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 the judge may choose, pursuant to rule 904.2(a).

► 1.7 Time Limits for Judge's Response to Inquiry and Preliminary Investigation 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 preliminary investigation letter 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 Receipt of Information Showing Authorized Inquiry or Preliminary Investigation Letter Unwarranted

An inquiry letter or preliminary investigation letter authorized by the commission need not be sent before the following meeting if information later obtained by staff shows that the letter may not be warranted.

► 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

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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 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.

► **3.4 Availability**

The policy declarations of the commission will be published in the commission's annual report. In addition, rele-

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POLICY DECLARATIONS

vant policy declarations will be sent to judges who are the subject of intended private admonishments and formal proceedings.

► **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 Announcements**

When the director believes an announcement pursuant to Article VI, section 18(f)(3) or (g), or pursuant to rule 902(b) (1), (2), (3) or (4) is desirable in a particular proceeding, the director 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.

► **4.4 Procedure in Disability Retirement Matters**

(a) When a judge submits an application for disability retirement to the commission, the commission will advise the judge if the medical documentation supporting the application is inadequate, and will give the judge an opportunity (30 days) to supply more complete medical documentation.

(b) Thereafter, the commission may obtain reports from one or more independent medical examiners, and may have any and all medical reports concerning the judge reviewed by a medical consultant. A reasonable time for obtaining medical reports and review by a medical consultant is 120 days from the date of the first commission meeting after the date the judge has filed complete medical documentation.

(c) The commission may then either approve the application or tentatively deny it. Such decision is to be made within 60 days after the date of the first commission meeting after the date all medical reports and reports by medical consultants are received by the commission.

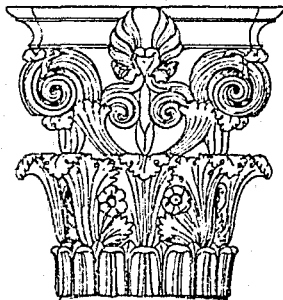
(d) If the commission tentatively denies the application, the commission will within 30 days issue a tentative decision setting forth the medical information upon which the commission relied and the reasons for its decision.

(e) The judge may either accept the denial or, within 30 days of the date of the filing of the commission's tentative decision, file a request to present additional evidence. If the judge requests an opportunity to present additional evidence, the commission will within 30 days of the date of the first commission meeting after the filing of the request refer the matter to a special master appointed by the commission, who will be authorized to take evidence, obtain additional medical information, and take any other steps he or she deems necessary for determination of the matter.

(f) Within 180 days, the special master will refer the matter back to the commission with a report containing proposed findings.

(g) Within 90 days of the date of the first commission meeting following such referral, the commission will make a decision either approving the application and referring it to the Chief Justice, or denying the application and advising the Chief Justice.

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"The California Code of Judicial Conduct, adapted from the American Bar Association Code of Judicial Conduct of 1972, was adopted by the California Conference of Judges on September 10, 1974, to become effective January 1, 1975. While the canons do not have the force of law or regulation, they reflect a judicial consensus regarding appropriate behavior, and are helpful in giving content to the constitutional standards under which disciplinary proceedings are charged. (*Cannon v. Commission on Judicial Qualifications* (1975) 14 Cal.3d 678, 707, fn. 22 [122 Cal.Rptr. 778, 537 P.2d 898]; *Spruance v. Commission on Judicial Qualifications* (1975) 13 Cal.3d 778, 796 [119 Cal.Rptr. 841, 532 P.2d 1209].)

"We therefore expect that all judges will comply with the canons. Failure to do so suggests performance below the minimum level necessary to maintain public confidence in the administration of justice." (*Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 838, n. 6.)

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▶ **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 1990 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.

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

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Canon 3A continued

(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 refusal 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). 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

*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)

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Canon 3C(1) continued

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 factual 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 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;

D.
CALIFORNIA CODE OF JUDICIAL CONDUCT

Canon 3C(3) continued

► **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.

► **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.*

► **E. 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 fre-*

D.
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Canon 5B continued

quently 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 privately solicit funds for such an organization from other judges (excluding court commissioners, referees, and temporary judges), and 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.

(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.*

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Canon 5D continued

(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 governmental 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.

► **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.

D.
CALIFORNIA CODE OF JUDICIAL CONDUCT

► **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.

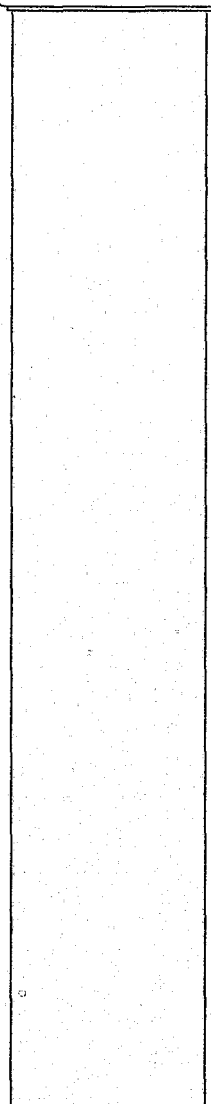
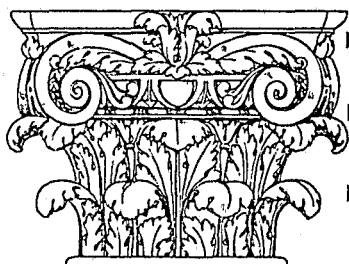
► **C. Retired Judge.**

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.
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GOVERNMENT
CODE**



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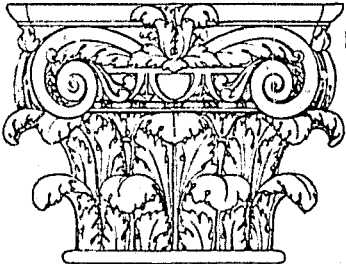


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► **Chapter 2.5: COMMISSION ON JUDICIAL PERFORMANCE**

► **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 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

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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 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:

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- (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.

(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.
SELECTED JUDICIAL
OPINIONS
AFFECTING THE
COMMISSION

**Stevens v. Commission on
Judicial Qualifications**
61 Cal.2d 886 (1964)
39 Cal.Rptr. 397
393 P.2d 709

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

In re Hugo M. Fisher
31 Cal.3d 919 (1982)
184 Cal.Rptr. 296
647 P.2d 1075

**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

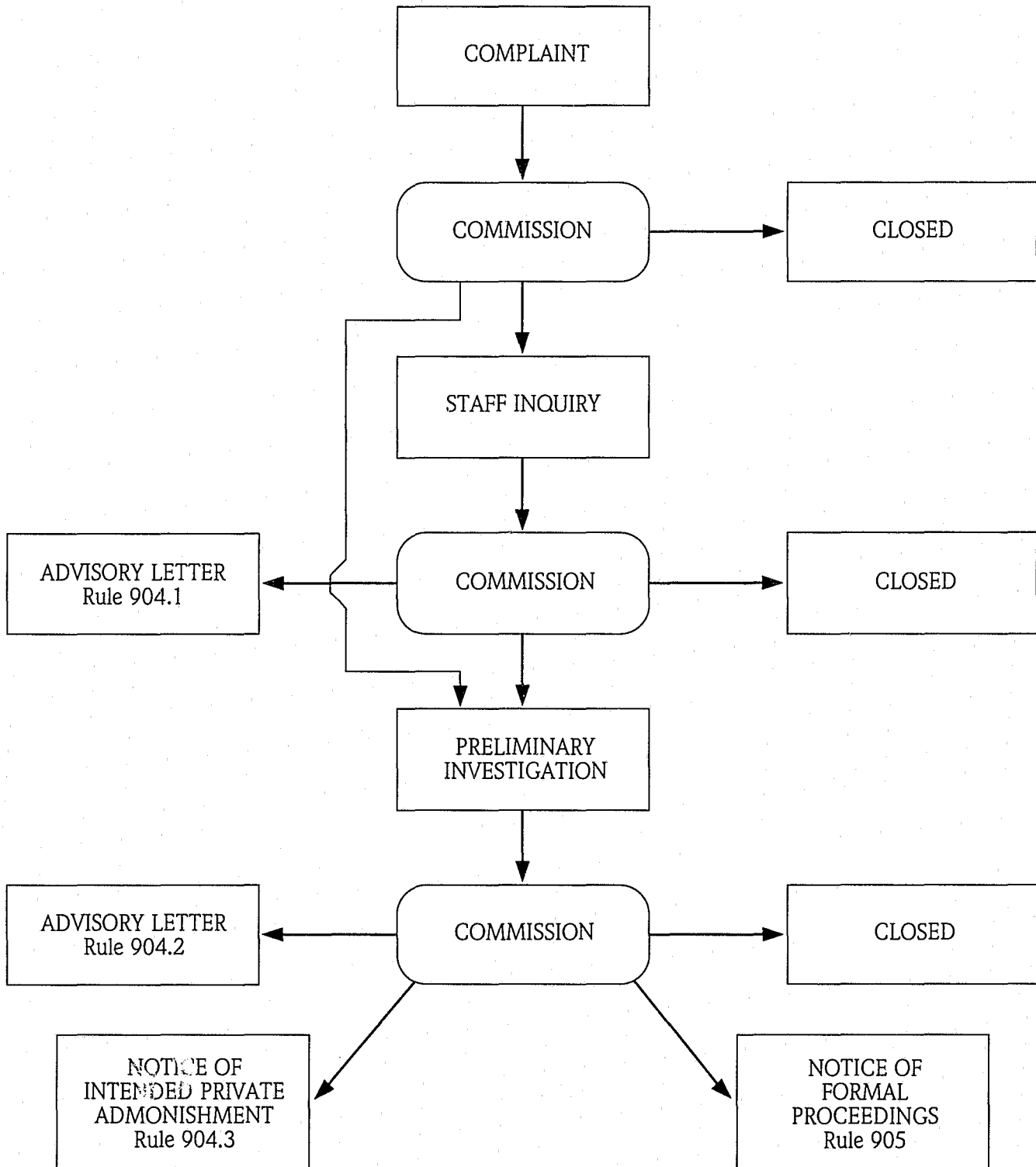
**McCullough v. Commission on
Judicial Performance**
49 Cal.3d 186 (1989)
260 Cal.Rptr. 557
776 P.2d 259

**Kloepfer v. Commission on
Judicial Performance**
49 Cal.3d 826 (1989)
264 Cal.Rptr. 100
782 P.2d 239

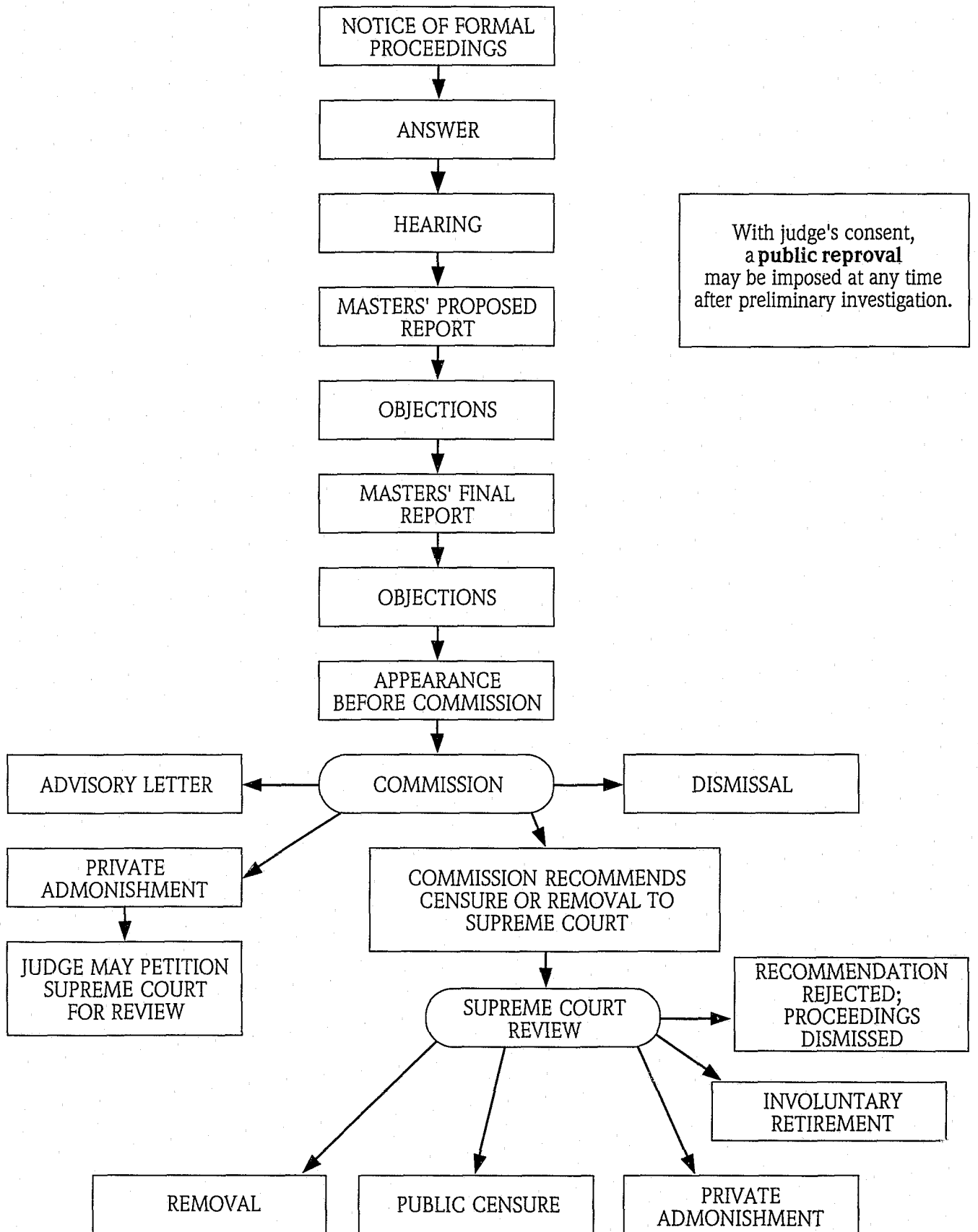
**Kennick v. Commission on
Judicial Performance**
50 Cal.3d 297 (1990)
267 Cal.Rptr. 293
787 P.2d 591

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

Rev. 10/31/88



**STATE OF CALIFORNIA
COMMISSION ON JUDICIAL PERFORMANCE
1390 MARKET STREET, SUITE 304
SAN FRANCISCO, CALIFORNIA 94102
(415) 557-2503**
