

136604

STATE OF CALIFORNIA
COMMISSION
ON JUDICIAL
PERFORMANCE
1991 ANNUAL REPORT

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U.S. Department of Justice
National Institute of Justice

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STATE OF CALIFORNIA
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ON JUDICIAL
PERFORMANCE
1991 ANNUAL REPORT

NCJRS

MAY 18 1992

ACQUISITIONS

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PLEASE NOTE:

The Commission has moved into new offices.
Our new address is:
Commission on Judicial Performance
101 Howard Street, Suite 300
San Francisco, CA 94105
Our new telephone number is:
(415) 904-3650 Fax: (415) 904-3666

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



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



DENNIS A. CORNELL
Outgoing Attorney Member
Merced
Appointed January 1989
Membership terminated upon
appointment to Superior Court
January 1992

COMMISSION MEMBERS continued



**HONORABLE
RUTH ESSEGAN**
Judge of the Municipal Court
Los Angeles
Appointed May 1990
Present term expires
January 1996



EDWARD P. GEORGE, JR.
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 1995



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

COMMISSION STAFF

VICTORIA B. HENLEY
Director-Chief Counsel

KHOI NGOC BUI
Data Processing Analyst

BERNADETTE M. KEEVAMA
Supervising Judicial Secretary

CYNTHIA DORFMAN
Associate Counsel

JENNIFER L. MACHLIN
Administrative Counsel

NANCY GILMORE
Senior Administrative Assistant

JOHN PLOTZ
Staff Counsel

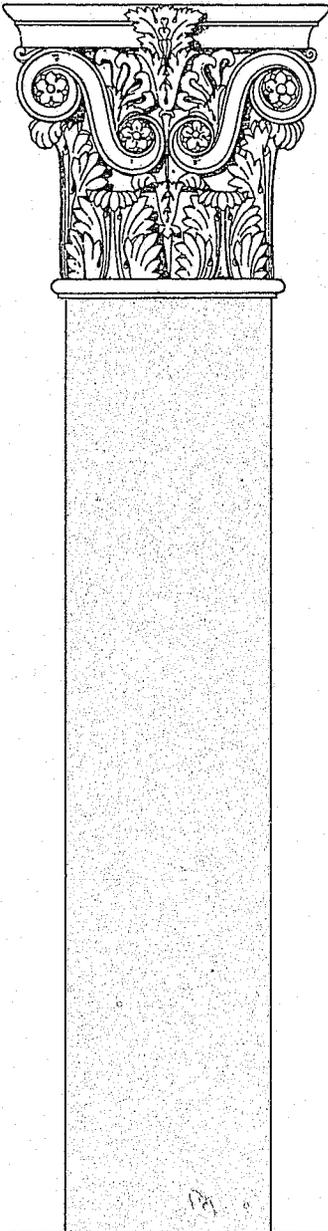
PETER GUBBINS
Investigating Attorney

ELAINE D. SWEET
Judicial Secretary/Administrative Assistant

VINCENT GUILIN
Intake Assistant

BARBARA JO WHITEOAK
Judicial Secretary

**I.
THE
COMMISSION
IN 1991:
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 employs a staff of twelve.

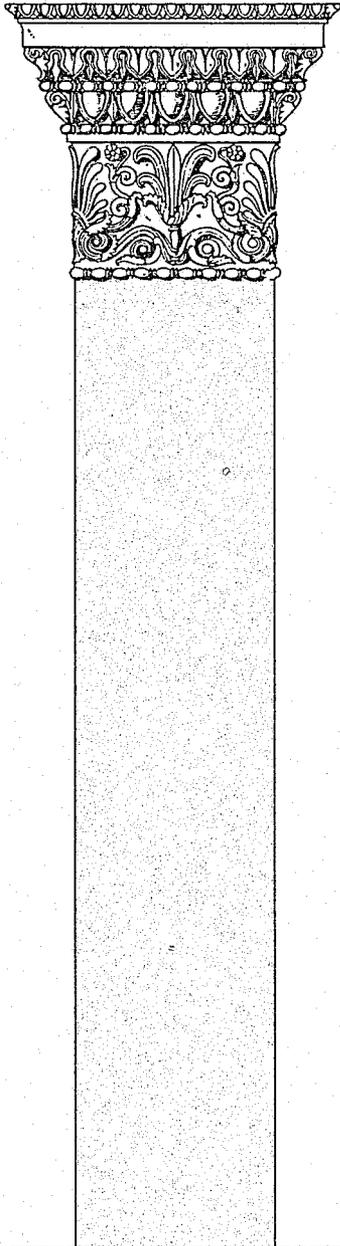
The commission's primary duty is to investigate charges of wilful misconduct in office, persistent failure or inability to perform the duties of a judge, habitual intemperance in the use of intoxicants or drugs, conduct prejudicial to the administration of justice that brings the judicial office into 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.

This year's report contains an expanded discussion of the handling of complaints and how the commission functions at Chapter VI.

In 1991, the commission received 744 complaints. The commission ordered 109 staff inquiries and 33 preliminary investigations. The commission instituted formal proceedings in 6 matters.

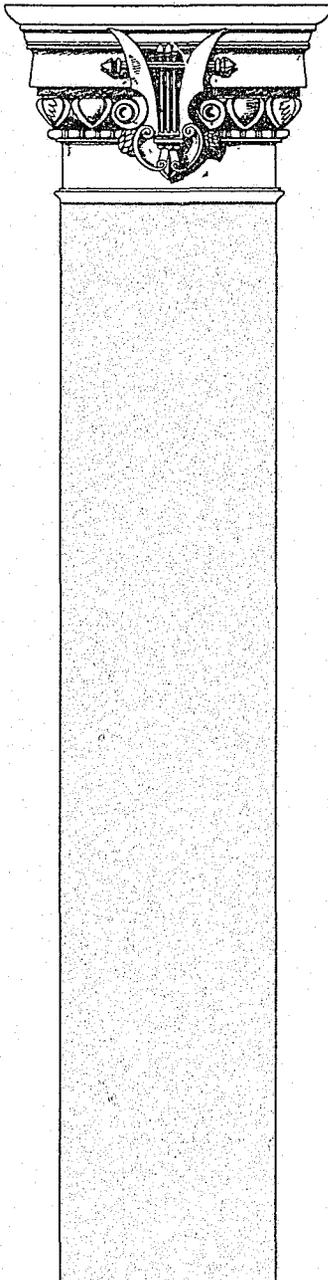
The commission issued 29 advisory letters and 9 private admonishments (see Section IV of this report for a summary of these matters).

**II.
RECENT
CHANGES
IN THE LAW**



In 1991 there were no changes in the statutes and rules affecting the commission.

**III.
SUMMARY OF
COMMISSION
DISCIPLINARY
ACTIVITY
IN 1991**



COMPLAINTS RECEIVED AND INVESTIGATED

At the close of 1991, there were 1553 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	616
Judges of the Justice Courts	53

In 1991, the commission received 744 new complaints, all of which were carefully reviewed and evaluated. In approximately 580 cases a prima facie case of misconduct was not established and the cases were closed after review by staff and the commission. In approximately 170 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 109 cases. In a staff inquiry, the commission's legal staff investigates the facts underlying the complaint. Occasionally the inquiry reveals facts which dispose of the complaint 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 33 preliminary investigations in 1991.

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 6 cases in 1991.

Of the 744 complaints received in 1991, approximately 65% originated from litigants or their families. 25% of the complaints came from members of the public apparently unconnected to any litigation. Complaints from lawyers accounted for

**III.
SUMMARY OF
COMMISSION
DISCIPLINARY ACTION
IN 1991**

another 8%. All others sources, including judges, court employees, jurors, and others, amounted to approximately 2%.

The 744 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%).

▶ **COMPLAINT DISPOSITIONS**

Since some of the actions taken by the commission in 1991 involved cases begun in 1990, and since some cases begun in 1991 were still pending at the end of the year, the following statistics are based on cases completed in 1991, regardless of when the case began. Cases still pending at the end of 1991 are not included.

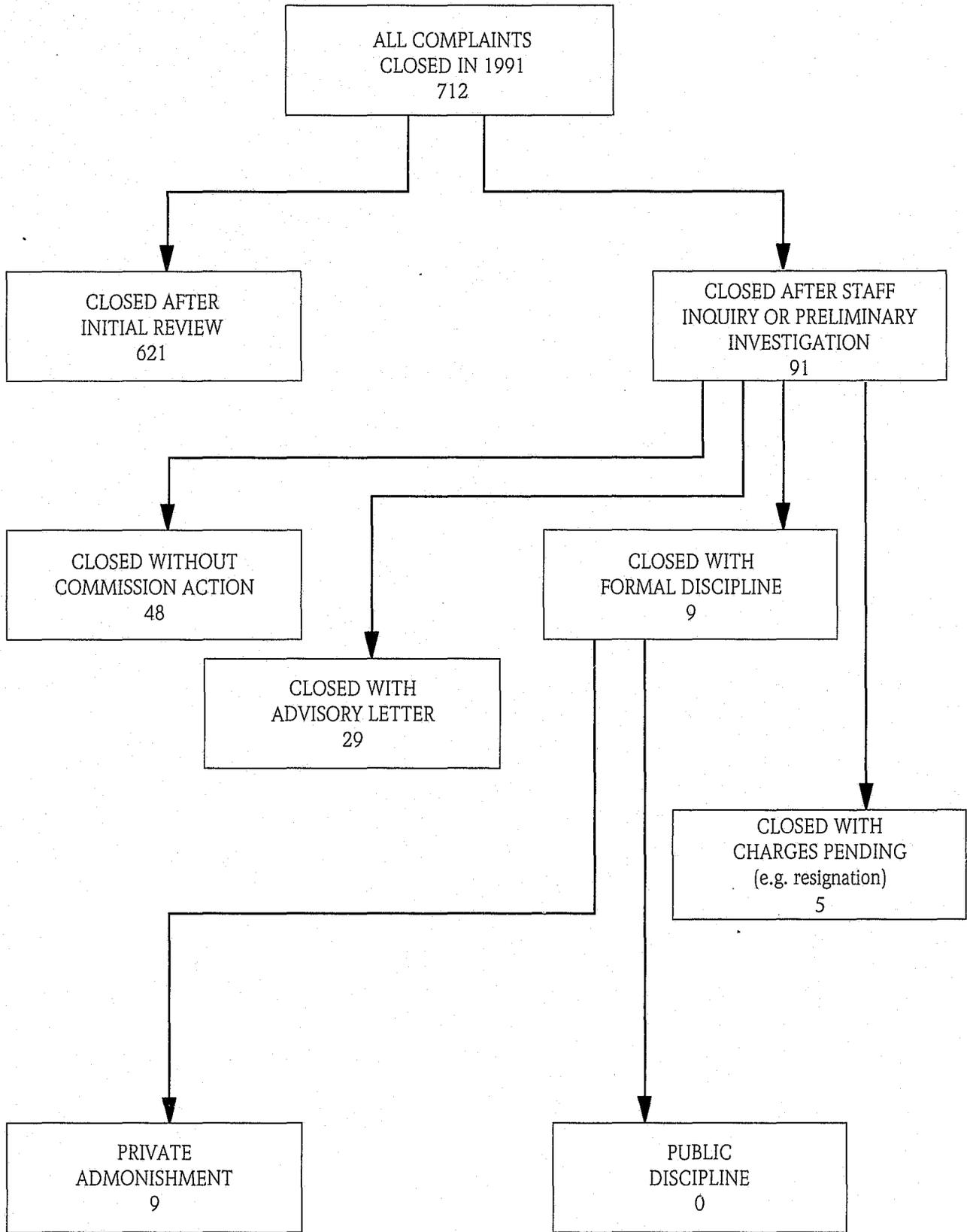
The commission completed 712 cases in 1991. Of these, 669 were closed without action; 38 were closed with discipline or action of some sort; and there were 5 matters closed when judges left the bench with charges pending.

Discipline may be imposed by the commission only after official investigation, including comment from the judge. Of the 91 officially investigated cases that were completed in 1991, 48 were closed without any action. In those cases, investigation showed that the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation.

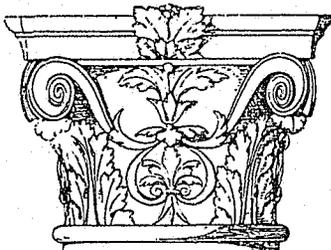
Action of some sort was taken by the commission in 38 cases, including 9 private admonishments and 29 advisory letters. See Section IV of this report for a discussion of the action taken by the commission.

Chart III provides an overview of the cases completed in 1991.

CHART III



IV. DISPOSITION OF COMMISSION CASES



In 1991 there was no public discipline of any California judge.

During the year, five judges left the bench while commission proceedings were pending.

At the end of 1991, five judges were the subject of pending formal proceedings (Rules of Court, rule 905, et seq.).

• • •

In 1991 the commission issued 9 private admonishments and 29 advisory letters.

► Private Admonishments

Private admonishments are imposed under California Rules of Court, rule 904.3. The private admonishments imposed in 1991 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 disagreement between a judge and an attorney escalated into a personal controversy. The judge wrote a letter to the local paper personally attacking the attorney. The letter was intemperate and showed improper embroilment.

B. Before joining the bench, a judge was in private practice. After becoming a judge, but not in the course of judicial duties, the judge received information regarding the subject matter of his prior representation which should have been communicated to the former client or successor counsel. The judge failed to do so, in apparent violation of Business and Professions Code, section 6068(m), and the State Bar Rules of Professional Conduct, rule 3-700(A)(2).

C. A judge publicly revealed confidential information in order to embarrass a litigant. The judge twice made remarks which could reasonably be construed as racist. The judge found a defendant in contempt on inadequate grounds and without giving the defendant an adequate opportunity to defend himself. In communications with the commission the judge recognized the problems, promised

**IV.
DISPOSITION OF
COMMISSION CASES**

reform, and agreed to attend a program on fairness sponsored by the California Center for Judicial Education and Research. The judge was relatively inexperienced.

D. On voir dire, a judge interrogated certain jurors in a rude, intimidating manner in order to "educate" the rest of the panel. The judge also made inappropriate references to religion. The judge was sometimes sarcastic toward defendants during arraignments. For instance, the judge asked at least one defendant who was slow in responding, "Do you have wax in your ears?" The judge belittled an inexperienced prosecutor during and after trial. For instance, in front of the jury the judge asked, "Haven't you heard of leading questions?" "Didn't they teach you about hearsay in law school?"

E. A judge engaged in an improper, undisclosed ex parte conference with a prosecutor before an arraignment calendar. In permitting the prosecutor to upgrade a traffic infraction to a misdemeanor and in setting extraordinarily high bail, the judge apparently was relying on information given by the prosecutor in the improper communication.

F. A judge failed to rule on two motions for 7 months after submission. The judge nonetheless continued to sign monthly salary affidavits stating that no matter was pending longer than 90 days, and to receive a salary contrary to Article VI, section 19, of the Constitution. The judge did not respond to inquiries from either the parties or the Court of Appeal. Court staff gave incorrect information regarding the matter to both the parties and the Court of Appeal (see Canon 3B(2)). The judge also disregarded the Court of Appeal's request for a response in connection with a petition for writ of mandate and later failed to comply with the Court of Appeal's order in the case.

G. A judge sentenced a traffic defendant for speeding based on the judge's unfounded "diagnosis" that defendant was "addicted to something." The "diagnosis" was entered onto the court docket, which is a public document. On another occasion, the judge issued Orders to Show Cause against three attorneys for possible sanctions under the Code of Civil Procedure, sections 128.5 and 177.5. There was no basis for sanctions. The true purpose of the Orders was for the judge to inquire into the operation of the attorneys' law office and to display the judge's pique.

H. On behalf of a juvenile relative, a judge made requests of various officials in the court process. The judge was or should have been aware that the request, even if made in the role of relative, would receive special treatment. On another occasion the judge actively participated in the selection of a court employee. The judge did not reveal a financial relationship between the judge and the employee.

I. A judge drove under the influence of alcohol, thereby committing a misdemeanor (Vehicle Code, section 23152(a)). The judge's failure to comply with the law was an improper action. The judge failed to observe the high standards of conduct expected of California judges and diminished public confidence in the judiciary.

**IV.
DISPOSITION OF
COMMISSION CASES**

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• **► 1991 Advisory Letters**

• The commission will sometimes advise caution or express disapproval of a judge's conduct without imposing formal discipline. This milder form of action is contained in letters of advice or disapproval called "advisory letters." They are 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 made an improper comment to a jury on a single occasion might receive an advisory letter.

• • Advisory letters are also used when the misconduct is more serious — sometimes much more serious — but the judge has demonstrated an understanding of the problem and has taken steps to improve.

• • Advisory letters are especially useful when there is an appearance of impropriety, but the commission is not convinced of the judge's bad faith.

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

• As in the past, the largest category of complaints received and of action taken by the commission relates to demeanor and what might be deemed abusive behavior. In some cases, the commission observed commendable improvement by judges who, when the impropriety was brought to their attention, undertook serious programs of improvement.

• 1. A judge made vulgar comments calculated to frighten two defendants at misdemeanor sentencings.

• 2. During a long trial, a judge occasionally expressed impatience through gesture and tone of voice. Jurors interpreted these gestures as signs of bias.

• 3. A criminal defendant was born in a certain country. The judge told the defendant that persons of his nationality "have a horrible reputation in this country," and made other racist remarks. The judge enjoyed an otherwise high reputation from all segments of the bar. The incident was apparently isolated. In dealings with the commission the judge recognized the impropriety of the remarks, expressed remorse, and promised to apologize to the defendant.

• 4. On the bench, a judge impugned the credibility of an attorney/defendant who had earlier disqualified the judge. The judge also threatened to sue the attorney for libel for statements in the attorney's affidavit of prejudice in an earlier case.

• 5. A judge needlessly disparaged an attorney in front of a jury by sarcastically blaming him for rather insignificant delays in trial.

• 6. As part of a sanctions order relating to an attorney's failure to obtain relief from a local court rule, a judge ordered the attorney to display the order to other judges if relief from the rule was sought in the future. This humiliated the attorney.

• 7. In open court, a judge explained the judge's recusal from a case by attacking the credibility of one of the attorneys of record, who was not present. The clients

**IV.
DISPOSITION OF
COMMISSION CASES**

were present. The judge further published this negative opinion by needlessly sending the presiding judge a copy of the judge's response to the commission in violation of the commission's rules of confidentiality.

8. At a seminar, an attorney criticized a judge. Acting on a second-hand (and erroneous) report about the seminar, the judge denounced the attorney in open court and in the presence of the attorney's clients. The judge ordered the bailiff to remove the attorney from court without permitting the attorney to respond.

9. During an in-chambers conference the judge heard substantial, uncontroverted evidence of funds being misappropriated in a matter before the court, implicating court-appointed attorneys. The judge took no action.

10. A judge treated a victim/witness rudely, engaged in ex parte conversations with a prosecution witness during cross-examination, held an ex parte meeting with a supervisor from the DA's office during a hearing, and refused to allow a defendant's attorney to be present while the judge answered the jury's questions.

11. A judge issued an ex parte order suspending visitation without requiring any written documentation of either notice to the opposing party or the basis for the suspension.

12. A judge commented to the jury that it had, in effect, reached the wrong verdict.

13. A jury asked the judge questions during deliberations. The judge answered them without a court reporter, without the presence or knowledge of the attorneys or parties, and without retaining copies of the questions.

14. In warning a disruptive litigant of possible use of a gag, the judge appeared to demean and denigrate the litigant.

15. An attorney came to chambers before appearing on a motion. The attorney engaged in a personal cash transaction with a member of the court staff. The judge was not present during the transaction but was aware of it. Thereafter, the judge ruled in the attorney's favor. The commission was convinced there was no actual impropriety, but the circumstances created an appearance of impropriety.

16. A judge failed to exercise any control over the judge's campaign committee. With apparent reckless disregard of the truth, the committee published what seemed to be defamatory falsehoods about a law firm with which the judge's opponent had been associated and which still practiced in the county.

17. A judge engaged in acts constituting a misdemeanor.

18. A judge commented to the media about a matter pending before the judge.

19. Judge A wrote to Judge B, who was in another jurisdiction. The letter concerned a defendant about to be sentenced by Judge B. The letter revealed A's status as a judge and discussed A's sentencing philosophy.

20. A judge failed to follow proper procedures in imposing sanctions. Also, the sanctions were ordered to be paid to charity.

**IV.
DISPOSITION OF
COMMISSION CASES**

21. A judge met with reluctant or nervous witnesses ex parte to encourage them to testify. The judge also threatened to revoke (and did revoke) a defendant's O.R. release because the defendant refused to accept a certain plea bargain. There was extraordinary mitigation.

22. In a pending matter, a judge changed an order after entry, changed another order prior to entry but without adequate notice to a party, and held an ex parte meeting with a party's attorney.

23. A judge exhibited generally poor demeanor, often giving the appearance of vindictiveness. The judge took steps to improve performance, such as videotaping and reviewing court proceedings for the purpose of checking on the judge's own demeanor and seeking professional help for stress.

24. A judge came into unauthorized possession of a police report. Around the courthouse, the judge made derogatory reference to the subject based on information in the report.

25. A judge took 110 days to rule on a small claims case and signed a salary affidavit incorrectly stating there were no cases pending more than 90 days. The judge also received ex parte communications in the case.

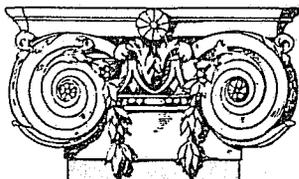
26. A judge repeatedly engaged in displays of temper, including loud critical remarks toward attorneys, court staff and witnesses. The judge sought and received continuing professional counseling. The judge's behavior improved.

27. A judge permitted a political fund-raiser to be held in the judge's home. The invitation to the fund-raiser identified the home-owner as a judge.

28. A judge was the "roastee" — that is, the guest of honor — at a fund-raiser for a local non-profit organization.

29. A judge put undue pressure on the litigants to settle. The judge made several remarks that were reasonably perceived as harsh and intimidating, and which undermined the perception of fairness and dignity of the proceedings.

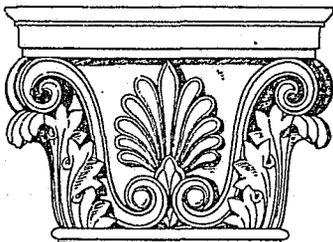
**V.
VOLUNTARY
DISABILITY
RETIREMENT**



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, and Policy Declaration 4.4, which are printed in the appendix to this report.

In 1991 the commission approved four disability applications and denied one. The denial was based on a full hearing before a special master under Policy Declaration 4.4 after the judge sought review of the commission's initial denial of the application.

VI.
A CLOSER
LOOK AT
HOW THE
COMMISSION
FUNCTIONS



The rules and provisions which govern the commission and its proceedings are set forth in full in the appendix to this Annual Report. This discussion provides an informal view of the commission's work.

► **Commission Decisionmaking**

Because the commission is comprised of nine appointed representatives of the judiciary, State Bar and the public, the face-to-face deliberations of the commission are key to its function. The commission usually meets eight times a year, once every six to eight weeks. Meetings usually last two days. The various rules which govern the commission restrict actions which can be taken by less than the full membership of the commission. Accordingly, all significant decisions regarding investigations and discipline are made by the full commission after deliberation at a commission meeting.

The role of the commission's staff of six attorneys and six support staff is to assist the commission in the performance of its constitutional investigatory and adjudicative functions. The activities of the staff are based upon commission directives. The commission, not staff, makes decisions regarding the institution and scope of investigations as well as all decisions regarding disciplinary actions.

► **Starting the Process**

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. The commission on occasion first becomes aware of a problem through a news article or a report to the commission staff or a commission member.

In some instances, before the complaint is reviewed by the commission, the staff does some initial, informal investigation into the factual background of the complaint. This investigation is usually limited to obtaining further information from the complainant or the complainant's counsel. Staff does not contact the judge as part of this informal checking. Contact with a judge is undertaken by staff only after the commission has reviewed a complaint and authorized either a staff inquiry or a preliminary investigation under Rule 904. Delay cases are an exception. Because of the continuing harm where a court has failed to rule on a submitted

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A CLOSER LOOK AT
HOW THE COMMISSION
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matter, in ninety-day delay cases which are clear on their face and adequately supported, staff is permitted to institute inquiry letters without the commission's approval. Such delay cases are the only instances in which the commission staff is permitted to institute an inquiry on its own.

► **Investigation at the Commission's Direction**

All complaints are presented to the commission. The full text of the complaint is made available for the commission's review.

The majority of complaints received by the commission do not on their face state a case of judicial misconduct. For example, a litigant might express disappointment over a judge's ruling in a child custody case. Complaints which do not set forth actionable facts are closed by the commission after staff review. When a complaint appears to state a case, the matter is placed on the commission's agenda for discussion and a vote. The standard employed by the commission in determining whether to make an inquiry is whether the complaint sets forth a prima facie case of misconduct — in other words, whether the complaint on its face states particular facts which, if true and not otherwise explained, might constitute some level of misconduct. Where a prima facie case of misconduct is set forth, the commission orders its staff to make an inquiry and report back at the next meeting.

In some staff inquiries, the judge is not contacted until various allegations have been investigated. If the allegations are not borne out, the judge need not be contacted. No further explanation is needed. Commission staff reports back that the complaint was not substantiated and the matter is closed.

► **Inquiry Letters to the Judge**

Most staff inquiries, however, require contact with the judge. Letters of inquiry to the judge are not intended as accusations, but only as requests for information. Staff sometimes interviews the judge.

When a judge receives a staff inquiry letter and responds, the judge's response is furnished to the commission for its review. The response is not edited by commission staff. The commission's review of both the actual allegations and the judge's response is essential to the commission's function. In those rare instances in which judges have failed to provide any response to the commission or have provided false information, the judges were disciplined for this conduct in and of itself. In order to afford commission members a full opportunity to prepare for commission deliberations, all materials relating to pending cases or complaints which are to be considered at a commission meeting are forwarded to commission members at least one week in advance of the commission meeting.

► **Disposition After a Staff Inquiry**

The commission has a range of options after a staff inquiry. Sometimes the allegations are found to be untrue, exaggerated, or unprovable, in which case the commission closes the case without any further action. But if it appears that ethically

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A CLOSER LOOK AT
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questionable conduct did occur, but it was an isolated incident or 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. An advisory letter informs the judge that facts discovered during the commission's inquiry do not warrant further proceedings; however, the commission's concerns or disapproval regarding the judge's conduct are noted.

► **Advanced Investigations**

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, usually in more serious cases or where the use of more formal investigative procedures, such as subpoenas or statements under oath, are anticipated. As in a staff inquiry, during a preliminary investigation the commission also sends a letter to the judge advising of the commission's investigation and of the matters under investigation as possible charges. As in the case of a staff inquiry, the judge is afforded an opportunity to respond to the allegations and "to present such matters as the judge may choose." The judge's response is again furnished to the commission for its review without editing.

► **Commission Action After a Preliminary Investigation**

After a preliminary investigation, the commission may close the case without further 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. A notice of intended private admonishment contains a description of the improper conduct and any findings made by the commission. Unless a judge files a demand for an appearance within fifteen days after mailing of the notice, the private admonishment takes effect.

If a judge demands an appearance to contest a private admonishment, the judge is given the opportunity to come before the commission with or without an attorney. After this appearance, the commission can close the case with or without an advisory letter, restate its intention to issue a private admonishment, conduct further preliminary investigation or institute formal proceedings. If the commission still believes that a private admonishment is the appropriate sanction, the judge must decide whether to withdraw his or her opposition and accept the admonishment or demand a formal hearing.

► **Formal Proceedings**

In the most serious cases or where a judge demands a formal hearing regarding a private admonishment, the commission issues 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 three special masters appointed by the Supreme Court. (At least one must be an active judge.) The hearing examiner may be an attorney on the commission's staff, an attorney with the Attorney General's office or other

**VI.
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appointed counsel. After the notice of formal proceedings, reciprocal discovery takes place. The matter then proceeds to a hearing. At any point after the notice of formal proceedings, the commission may issue a "public reproof" with the judge's consent, thereby eliminating the need for a hearing. A public reproof is not subject to review 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. At the hearing, the Evidence Code applies; witnesses are examined and cross-examined. The burden of proof to sustain a charge of misconduct is clear and convincing evidence. After the hearing and an opportunity for both sides to object to proposed findings, the special masters report their findings to the commission.

► Commission Review Post-Hearing

Upon receipt of the special masters' reported findings, the commission conducts a de novo review of the evidence and the masters' findings. If either side objects to the findings, or if the commission determines to modify or reject any of the masters' findings, the judge and the examiner are given an opportunity to appear before the commission and be heard. At this point, the commission may close the case, take relatively minor action such as sending an advisory letter or issuing a private admonishment. If a private admonishment is issued after a hearing, the judge may petition for review in the Supreme Court. The commission may also issue a public reproof, if the judge consents.

If the facts supporting serious charges have been established, the commission may recommend to the Supreme Court that the judge be publicly censured, removed from office, or involuntarily retired because of a disability. If the commission recommends that a judge be removed, the recommendation becomes public immediately. If censure is sought, the recommendation remains confidential during the 30 days the judge has to file with the court a petition to modify or reject the recommendation. Until this point, unless a public hearing was held, all records and proceedings before the commission are confidential, subject to limited provisions for the issuance of press releases and statements by the commission.

Before the Supreme Court, full briefing by both sides is permitted as well as oral argument. The Supreme Court conducts a second de novo review of the evidence and findings and may follow the commission's recommendation or it may impose a lesser sanction (such as censure if the commission's recommendation was for removal). The court can also dismiss the proceedings altogether.

Since the inception of the commission in 1961, the commission has recommended the removal or involuntary retirement of 15 judges. The Supreme Court has adopted the recommendation in 13 cases and rejected it in 2. Over the years, many judges have resigned or retired with commission proceedings pending. In the last five years, 20 judges have resigned or retired with commission proceedings pending.

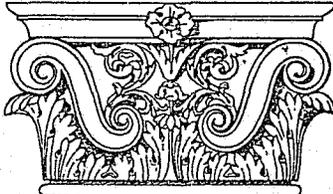
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HOW THE COMMISSION
FUNCTIONS**

Two flow charts showing the progress of complaints through the commission are appended at pages 57 and 58. While not a complete overview of the various courses of commission proceedings, they illustrate some of the typical patterns. Generally, all complaints are reviewed by the commission at the first meeting after the complaint is received. In perhaps half of the cases in which the commission authorizes a staff inquiry, the matter is resolved at the next meeting, either by closing without action or closing with an advisory letter. Thus, approximately half of the matters which require investigation and a judge's explanation are completed within four months. Obviously, matters which proceed to preliminary investigations and formal proceedings take longer.

All complaints to the commission receive a written response from commission staff. If a complaint provides no basis for proceedings by the commission, the complainant is so informed. At the end of a proceeding which was the subject of a complaint, consistent with Rule 902(b)(5), the complainant is advised that the commission's proceedings have concluded.

**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.

A.
CONSTITUTION
OF CALIFORNIA

(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**

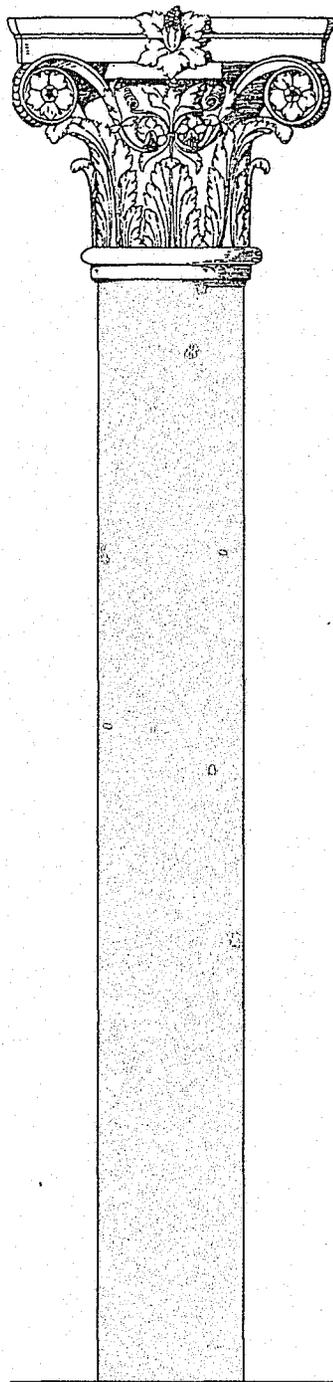


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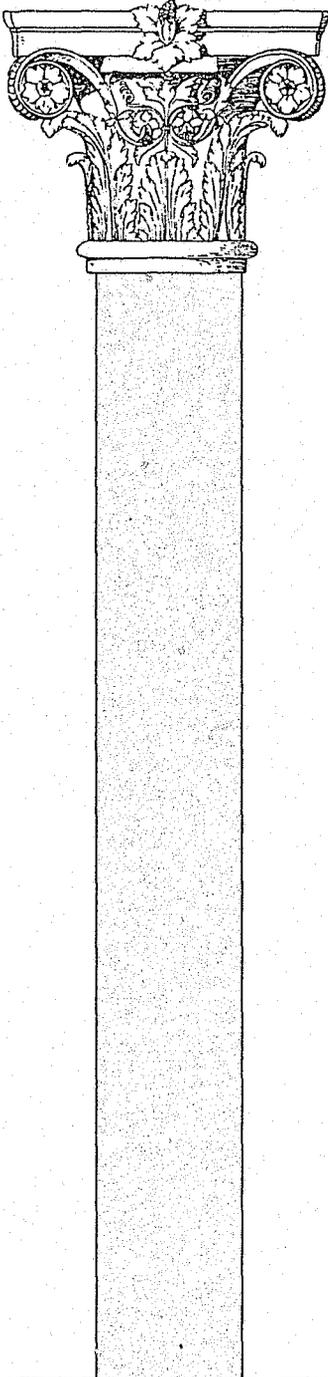


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B.
CALIFORNIA RULES OF COURT

► **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 of 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

B.

CALIFORNIA RULES OF COURT

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.

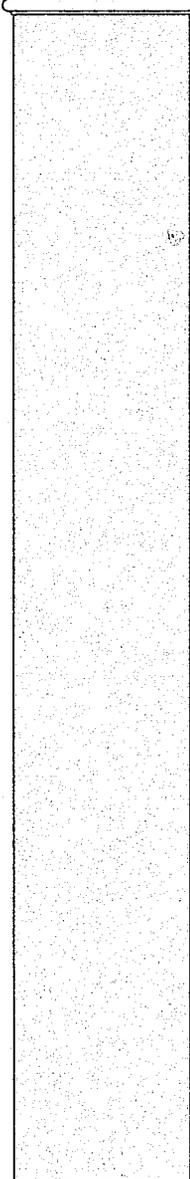
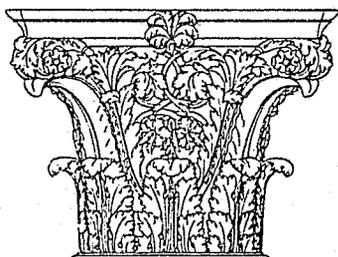
(g) "Shall" is mandatory and "may" is permissive.

(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.

**C.
POLICY
DECLARATIONS**



**CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE
POLICY DECLARATIONS AS OF DECEMBER 1991**

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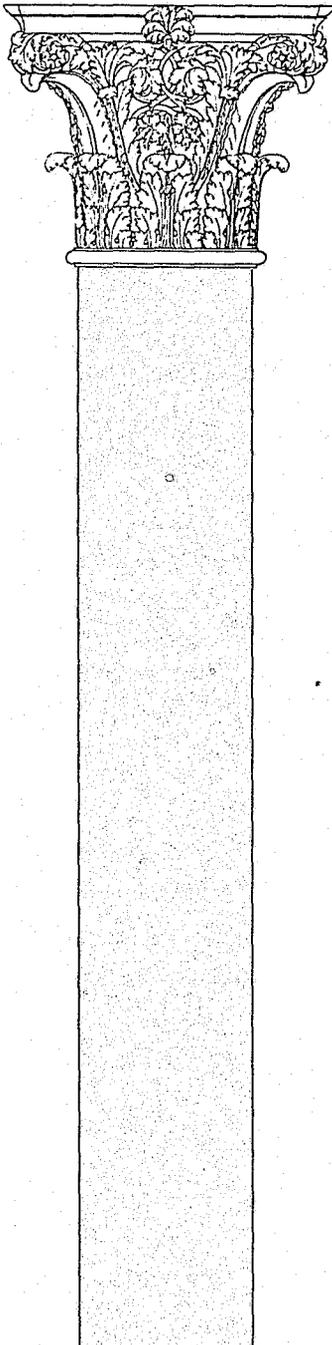


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C. POLICY DECLARATIONS

► 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

C.
POLICY DECLARATIONS

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-

C.
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.

**D.
CALIFORNIA
CODE OF
JUDICIAL
CONDUCT**

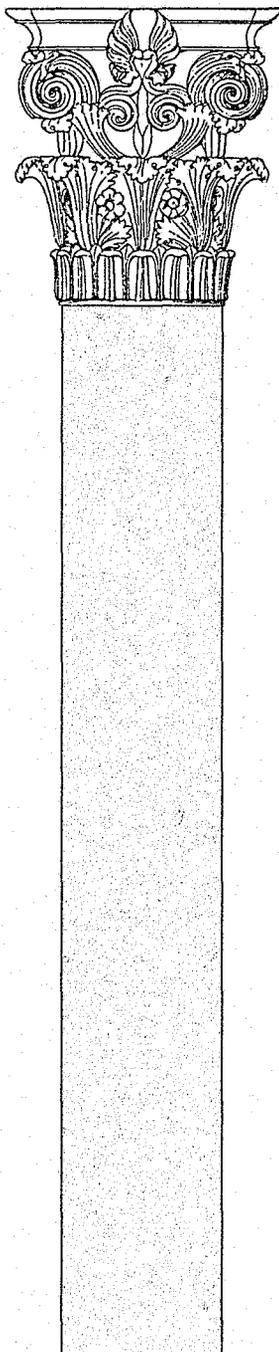


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"The California Code of Judicial Conduct, adapted from the American Bar Association Code of Judicial Conduct of 1972, was adopted by the California Conference of Judges on September 10, 1974, to become effective January 1, 1975. While the canons do 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. (*Canon 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.)

D.
CALIFORNIA CODE OF
JUDICIAL CONDUCT

PREFACE

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

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

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

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

This edition includes all revisions made through the Association's 1991 Annual Meeting. The Code was re-cast in gender-neutral form in 1986.

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

PREAMBLE

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

D.
CALIFORNIA CODE OF JUDICIAL CONDUCT

▶ CANON 1

Judges should uphold the integrity and independence of the judiciary

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

▶ CANON 2

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

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

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

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

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

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

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

▶ CANON 3

Judges should perform the duties of their office impartially and diligently

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

▶ A. **Adjudicative Responsibilities.**

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

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

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

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

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

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

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

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

▶ **Commentary:** *Prompt disposition of the court's business requires judges to devote adequate time to their duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judges to that end.*

D.
CALIFORNIA CODE OF JUDICIAL CONDUCT

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

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

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

► **B. Civic and Charitable Activities.**

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

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

► **Commentary:** *The changing nature of some organizations and of their relationship to the law makes it necessary for judges regularly to reexamine the activities of each organization with which they are affiliated to determine if it is proper for them to continue their relationship with the organization. For example, in many jurisdictions charitable hospitals are now more*

D.
CALIFORNIA CODE OF JUDICIAL CONDUCT

Canon 5B continued

frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(2) Judges should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of their office for that purpose, but they may 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.*

D.
CALIFORNIA CODE OF JUDICIAL CONDUCT

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.

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► 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.

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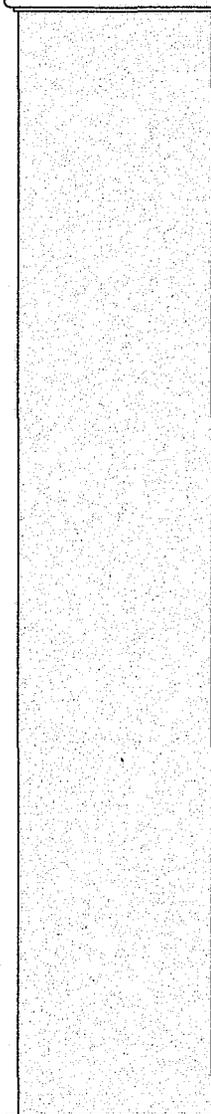
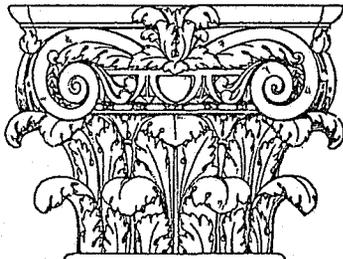


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CODE**

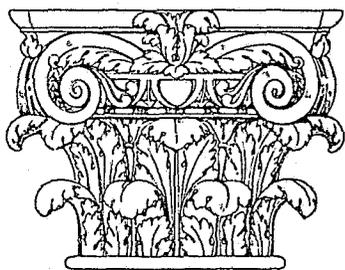


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CALIFORNIA GOVERNMENT CODE

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

▶ **Article 1**

GENERAL PROVISIONS

▶ **§ 68701. Definitions**

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

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

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

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

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

▶ **§ 68703. Expenses**

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

▶ **§ 68704. Concurrence of majority in acts of council**

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

▶ **Article 2**

CO-OPERATION OF PUBLIC OFFICERS AND AGENCIES

▶ **§ 68725. Assistance and information**

State and local public bodies and departments, officers and

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

▶ **§ 68726. Service of process; execution of orders**

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

▶ **Article 3**

INVESTIGATIONS AND HEARINGS

▶ **§ 68750. Oaths; inspection of books and records; subpoenas**

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

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

▶ **§ 68751. Scope of process; attendance of witnesses**

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

▶ **§ 68752. Order compelling witness to attend and testify**

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

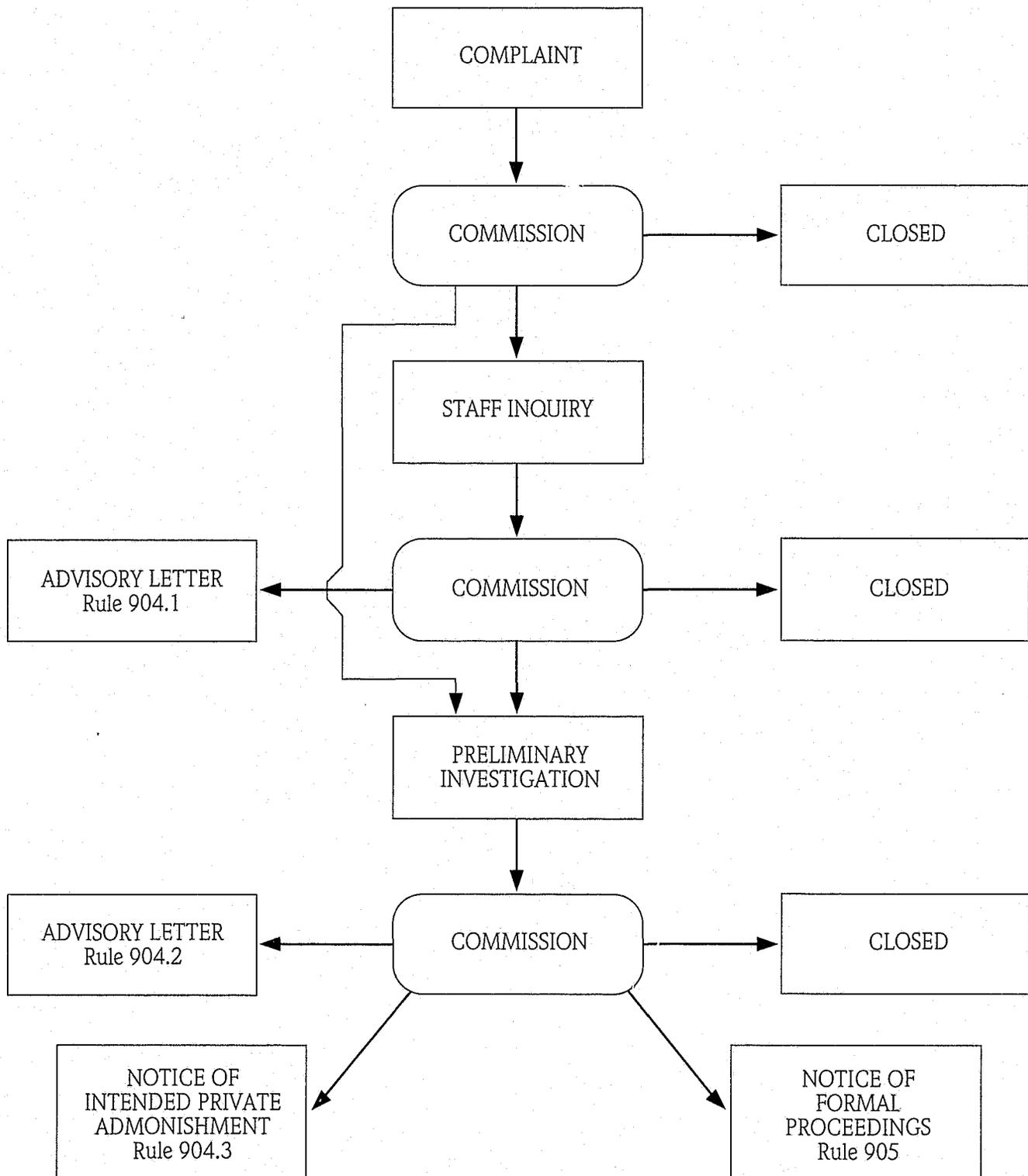
49 Cal.3d 826 (1989)
264 Cal.Rptr. 100
782 P.2d 239

Kennick v. Commission on Judicial Performance

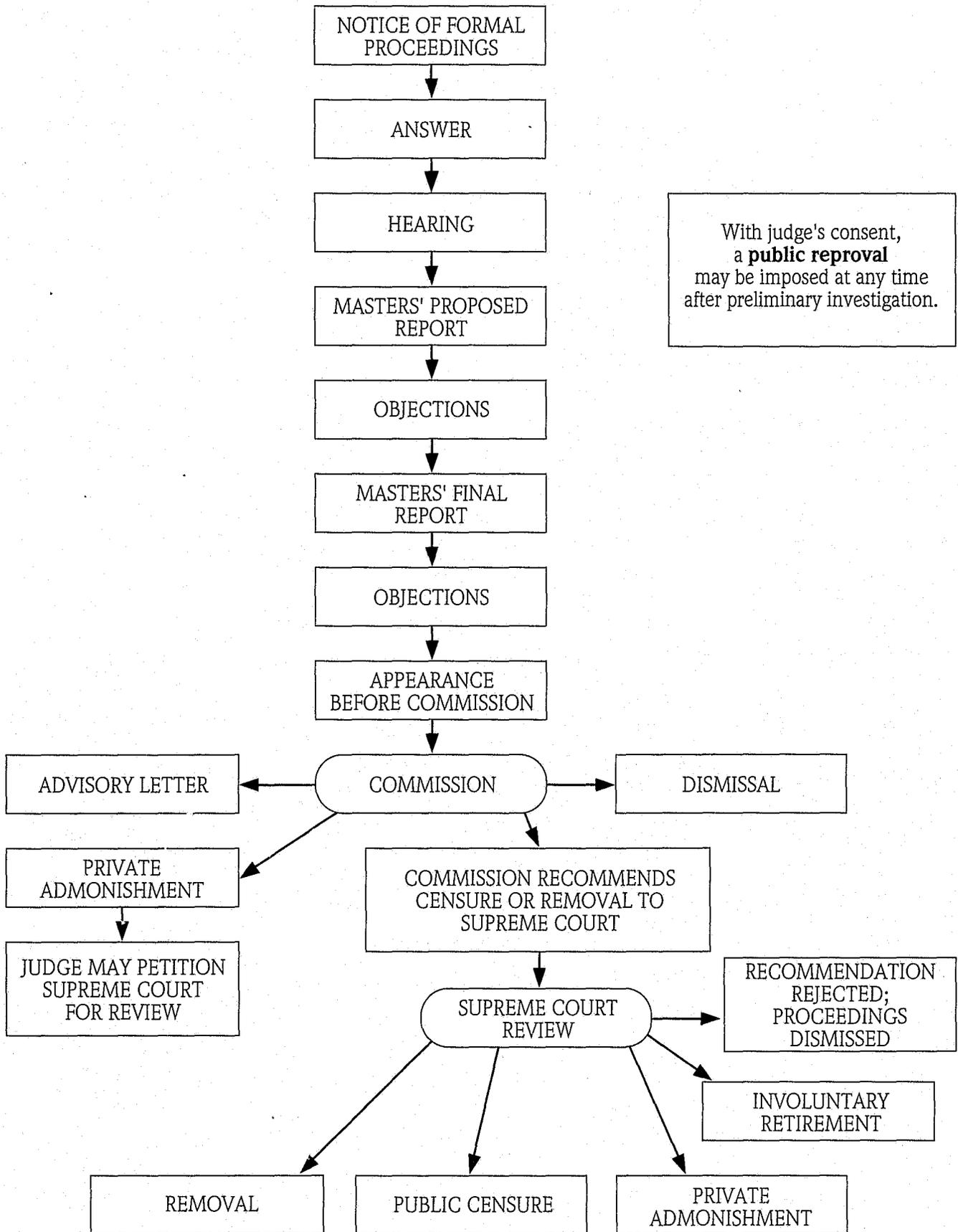
50 Cal.3d 297 (1990)
267 Cal.Rptr. 293
787 P.2d 591

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
101 Howard Street, Suite 300
San Francisco, California 94105

Telephone: (415) 904-3650

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COMMISSION ON JUDICIAL PERFORMANCE
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