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STATE OF CALIFORNIA

COMMISSION ON JUDICIAL PERFORMANCE



1988 ANNUAL REPORT

(with Appendix containing relevant portions of the California Constitution, Government Code and Rules of Court, and complete texts of the Code of Judicial Conduct and the Commission's Policy Declarations)

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**COMMISSION ON JUDICIAL PERFORMANCE**

**1988 ANNUAL REPORT**

**NCJRS**

**MAR 22 1989**

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## INTRODUCTION

Judges, especially those who plan educational programs, often say to the commission: Can't you tell us more about judicial problems from the commission's perspective? A few years ago the commission in its annual report started describing private disciplinary actions without revealing names and particulars. The result has been so favorable that each year we have discussed this aspect of the work of the commission in greater detail.

In this current report we have attempted to discuss the problems and issues facing the commission in more detail than ever before. We expect this treatment will engender discussion. We hope the public, the legal profession and the judiciary will find it interesting and useful. If the end result is to assist the judiciary to meet its ethical obligations to the people of California, one objective of this report will have been fulfilled.

This report also contains the governing provisions of the commission. These have been kept up to date with the constitutional amendments approved by the voters in November, substantial changes in the Rules of Court made by the Judicial Council, and changes in the disability retirement law made by the legislature.

Four distinguished judges concluded their service on the commission during 1988:

Justice John Racanelli served on the commission for more than eleven years—longer than any member in its history. He was chair from 1981 to 1988, leading the commission in this period of unusual development. As a jurist of ability, integrity and vision, he served the commission with exceptional dedication.

After more than six years as a valuable member, Judge Richard Bancroft was elected chair of the commission in 1988. He was noted for his restraint and humanity. With a calm determination to maintain high judicial standards, Judge Bancroft often guided the commission through difficult decisions.

Judge Charles Goff served with distinction for more than seven years. He brought to the commission the highest standards of integrity and competence, serving with unflagging grace and humor.

Judge Christian Markey, although a member for only a year and a half, performed with keenness and insight. In that period, his participation was impressive. His early retirement from the bench is a loss to the commission as well as the Los Angeles Superior Court.

January 1989

Arleigh Woods  
Chairperson  
Commission on Judicial Performance

## COMMISSION MEMBERS



**HONORABLE ARLEIGH WOODS**  
Chairperson  
Presiding Justice, Court of Appeal  
Second Appellate District, Division Four  
Los Angeles  
Appointed May 1986  
Present term expires March 1989



**DALE E. HANST**  
Vice Chairperson  
Attorney Member  
Santa Barbara  
Appointed January 1985  
Present term expires  
December 1988



**BEN NOBLE**  
Public Member  
La Canada Flintridge  
Appointed March 1984  
Present term expires May 1991



**ANDY GUY**  
Public Member  
Lodi  
Appointed November 1985  
Present term expires October 1989



**JOSEPH W. COTCHETT**  
Attorney Member  
Burlingame  
Appointed January 1985  
Present term expires  
December 1988



**HONORABLE JAMES F. NELSON**  
Judge of the Municipal Court  
Los Angeles  
Appointed March 1988  
Present term expires  
January 1992



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

**VACANT:**  
1 Court of Appeal  
1 Superior Court

**INCOMING:**  
**P. TERRY ANDERLINI**  
Attorney Member, San Mateo  
**DENNIS A. CORNELL**  
Attorney Member, Merced

## OUTGOING MEMBERS



**HONORABLE  
JOHN T. RACANELLI**  
Presiding Justice, Court of Appeal  
First Appellate District, Division One  
San Francisco  
Appointed June 1977  
Term expired November 1988



**HONORABLE  
RICHARD A. BANCROFT**  
Judge of the Superior Court, Retired  
Oakland  
Appointed August 1981  
Retired August 1988



**HONORABLE  
CHARLES E. GOFF**  
Judge of the Municipal Court  
San Francisco  
Appointed February 1981  
Term expired January 1988



**HONORABLE  
CHRISTIAN E. MARKEY, JR.**  
Judge of the Superior Court, Retired  
Los Angeles  
Appointed March 1987  
Retired November 1988

## COMMISSION STAFF

**JACK E. FRANKEL**  
Director—Chief Counsel

**PETER GUBBINS**  
Investigating Attorney

**CYNTHIA DORFMAN**  
Associate Counsel

**NANCY GILMORE**  
Senior Administrative  
Assistant

**CAROLYN KIELY**  
Supervising Judicial  
Secretary

**KHOI NGOC BUI**  
Data Processing Analyst

**HILARY WINSLOW**  
Investigating Attorney

**JOHN PLOTZ**  
Staff Counsel

**JENNIFER MACHLIN**  
Staff Counsel/Office  
Administrator

...

**BERNADETTE M.  
KEEVAMA**  
Judicial Secretary

**MARIA A. ZELAYA**  
Judicial Secretary

**ELAINE D. SWEET**  
Judicial Secretary/  
Administrative Assistant

## I

### THE COMMISSION DEFINED

The Commission on Judicial Performance is an independent state agency that handles complaints and problems involving judicial misconduct and disability. The commission was created in 1960 by additions to the state constitution (Article VI, sections 8 and 18). In November 1988, the voters of California amended the commission's constitutional charter in certain respects. These changes are explained in the next section of this report.

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

Under Article VI, section 18 of the California Constitution, the commission is authorized to recommend to the Supreme Court that a judge be removed from office or publicly censured for willful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The commission may also recommend involuntary retirement of a judge because of serious disability. Effective November 9, 1988, the commission may, with the judge's consent, issue a public reproof. And the commission may privately admonish a judge found to have engaged in an improper action or dereliction of duty. Short of such formal discipline, the commission issues many advisory letters, also known as "stingers."

A 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. Occasionally another judge or a court employee brings a matter to the commission's attention. All complaints are presented to the commission. Many of the complaints do not state a case of judicial misconduct even if the facts alleged are true. For instance, a complaint might allege that the judge erroneously ruled against the complainant. These complaints are ordinarily closed by the commission. When a complaint does state a case, or even might state a case, the commission orders its staff to make an inquiry into the matter and to report further at the next meeting. Usually the staff inquiry includes contact with the judge. These inquiries are not intended as accusations, but only as requests for information.

After an inquiry, the commission has a range of options. Sometimes the allegations are found to be untrue, unprovable, or exaggerated, in which case the commission closes the case without any action against the judge. If questionable conduct did occur, but it was relatively minor or the judge has recognized the problem, the commission may close the case with an advisory letter—a "stinger." If serious issues remain after inquiry, the commission will order a "preliminary investigation" under Rule of Court 904. A preliminary investigation may also be ordered without a staff inquiry. A preliminary investigation may lead to a formal hearing and to discipline.

A flow chart showing the progress of complaints through the commission is

appended. While not a complete overview of the various courses of commission proceedings, this illustrates some of the typical patterns.

In 1988 the commission received 693 complaints. There was investigation of some sort in 199 cases. There were 114 official staff inquiries and 22 investigations under Rule 904. The commission instituted formal proceedings in two matters and there was one formal hearing. The commission issued 47 advisory letters and eight private admonishments. It recommended censure in one case and removal in three others. It recommended that one judge be suspended without pay after a jury found him guilty of conspiracy to obstruct justice.

Since its beginning, the commission has recommended to the Supreme Court that fourteen judges be removed or involuntarily retired. Seven judges were removed as the commission recommended, and two were involuntarily retired. Two of the commission's removal recommendations were not followed by the Court: in one case the charges were dismissed, and in the other the judge was publicly censured. Pending before the Supreme Court at the end of 1988 were three recommendations for removal and one recommendation for censure. During the 28 years of the commission's existence, many judges have retired or resigned with commission proceedings pending.

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

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

## II

### RECENT CHANGES IN THE LAW

**The Constitution.** In November 1988, the people of California passed Proposition 92, which made various changes in the commission's constitutional charter. The full text of these changes may be found in the appendix at the end of this report.

The primary aim of the amendments was to open some commission proceedings to public scrutiny. When the Legislature proposed the amendments, it declared:

*WHEREAS, The Legislature finds and declares that maintaining public confidence in the integrity of the judicial system is essential to good government; and*

*WHEREAS, The Commission on Judicial Performance bears a great public trust which it must currently fulfill in total secrecy; and*

*WHEREAS, Because responsible public disclosure and accountability is proper, desirable, and consistent with the goal of public confidence, it is the intent of this measure that appropriate commission proceedings be open to public scrutiny, and that this measure be construed so as to accomplish this purpose which is hereby declared to be the public policy of this state . . .*

The amendments took several steps in the direction of openness:

- The new Article VI, section 18(f)(1) allows the judge to require that a formal hearing be public, unless the commission finds "good cause" for a confidential hearing.
- The new section 18(f)(3) allows the commission to hold a hearing in public if the charges involve moral turpitude, dishonesty or corruption.
- The new section 18(f)(2) allows the commission, with the judge's consent, to issue a "public reproof." This is a new level of discipline, more severe than a private admonishment (which the commission can issue by itself), but less severe than a public censure (which requires a formal hearing, argument before the commission, a recommendation by the commission to the Supreme Court, and full review in the Supreme Court).
- The new sections 18(f)(3) and 18(g) permit the commission to issue appropriate press releases in limited circumstances.

In addition to the changes in Article VI, section 18, Proposition 92 also amended Article VI, section 8, which defines the membership of the commission. The commission members still serve a four-year term, but each member may serve no more than two terms. The amendments also created staggered terms by dictating that, for once only, two members shall serve two-year terms. In order to reduce vacancies, a member is permitted to serve until a replacement is named.

**Government Code.** Various changes were made in Government Code sections relating to disability retirement. These are discussed in section VII of this report.

**Rules of Court.** In late 1988, the Judicial Council on recommendation of the Judicial Council Advisory Committee on Judicial Performance Procedures amended and adopted a number of rules affecting commission proceedings. These rules, effective January 1, 1989, do the following:

1. Codify the existing commission practice of issuing confidential advisory letters.
2. Clarify and modify procedures for the commencement and termination of commission proceedings and the issuance of private admonishments.
3. Provide for notification to the judge of complaints closed without investigation or action under certain circumstances.
4. Delete the requirement that the commission recommend no more serious penalty than private admonishment if the judge does not accept an intended admonishment and the matter proceeds to hearing.
5. Define "submission" of a cause in the trial courts and impose a duty upon presiding and sole judges of trial courts to monitor and supervise causes under submission.
6. Set forth standards for discovery in commission proceedings, including disclosure of information favorable to the judge and taking of depositions.
7. Provide for use of commission records, subject to certain limitations, and require the commission to adopt a records disposition program to dispose of records no longer needed.
8. Codify the use of the California Evidence Code in commission proceedings.
9. Amend the procedures for petitions for review of private admonishment to correct certain technical defects.

The full text of the new and amended rules is included in the appendix.

**Policy Declarations.** The commission approved various technical changes to the policy declarations. Many of these were necessary to bring the Policy Declarations in line with the newly amended Rules of Court.

Policy declarations affecting disability retirement are mentioned in Section VII of this Report.

### III

#### SUMMARY OF COMMISSION DISCIPLINARY ACTIVITY IN 1988

At the close of 1988, there were 1462 judicial positions within the commission's jurisdiction:

|                                       |     |
|---------------------------------------|-----|
| Justices of the Supreme Court .....   | 7   |
| Justices of the Court of Appeal ..... | 88  |
| Judges of Superior Courts .....       | 725 |
| Judges of Municipal Courts .....      | 566 |
| Judges of Justice Courts .....        | 76  |

*New complaints.* Six hundred ninety-three complaints concerning judges within the commission's jurisdiction (*i.e.*, active California judges) were filed in 1988, representing an increase of 26 percent over 1987. These complaints named a total of 815 judges, since some named more than one judge.

*Investigated cases.* Of the new complaints before the commission, a total of 199 warranted at least some investigation (an increase of 65 percent over 1987). The commission ordered an official staff inquiry in 114 cases. One hundred of these inquiries included contacting the judge and requesting comment and explanation concerning the allegations (an increase of 33 percent over 1987). The commission's 1988 investigation caseload also included 28 matters carried over from 1987. In 22 cases, including two held over from 1987, the commission ordered and conducted an official preliminary investigation under Rule 904 of the California Rules of Court, to determine whether formal proceedings should be instituted and a hearing held. Three of the complaints warranting investigation were closed because the judges retired or resigned after the investigation had commenced.

*Formal proceedings; public discipline.* Formal proceedings pursuant to Rule 905 of the California Rules of Court were ordered in two cases, including one held over from 1987. One formal hearing was held in a case held over from 1987. In this proceeding, the commission recommended removal to the Supreme Court (*Bernard McCullough*, No. S007641). The commission recommended public discipline in three cases which were formally heard in 1987 (*David M. Kennick*, No. S003813; *Kenneth Lynn Kloepfer*, No. S004893; *David Press*, No. S005227).

*Private discipline.* Private disciplinary action was taken in 57 of the cases investigated in 1988 (an increase of 52 percent over 1987). In eight of these cases, the commission issued a notice of private admonishment. Forty-seven of the investigated matters were closed with an advisory letter expressing disapproval of some aspect of the judge's performance or conduct or providing information intended to educate the judge concerning the ethical obligations of the judiciary. Two cases were closed with "educational" letters, a practice that has been discontinued. (More detail on these matters is provided in Section V of this Report.) Eighty-six of the investigated matters were closed without discipline.

*Disability retirement; restoration to capacity.* Seven judges filed applications for disability retirement in 1988. The commission granted five of these applications and two were still pending at the end of the year. In addition, the commission granted one and denied two disability retirement requests that were filed in 1987. Two judges on disability retirement applied for restoration to capacity for service in 1988, pursuant to Government Code section 75060.6. The commission granted these applications. As to one judge, the commission specified certain limitations on the scope and nature of the assignments that could be accepted.

*Complaints closed without discipline.* Five hundred thirty complaints before the commission in 1988, 76 percent of the total, were closed following initial review and consideration because no actionable allegations were presented (an increase of 25 percent over the number so closed in 1987). Many of these complaints were filed by individuals dissatisfied with a judge's rulings on the merits of a particular case, frequently a small claims or domestic relations matter involving the complainant.

In order to determine whether a complaint is actionable, however, staff often must review and analyze lengthy complaint letters and accompanying documents. Supplemental research may be necessary before making the threshold determination on whether an investigation is warranted. If a complaint is closed without additional investigation, staff sends a closing letter to the complainant, explaining why the stated problem does not warrant commission action. In many instances, staff also will discuss with complainants the commission's role and procedures and the disposition of their complaints. While this process sometimes settles an issue for a complainant, often a troubled or frustrated person is as unhappy as ever, and repeated calls and letters are not uncommon.

*Miscellaneous complaints and inquiries.* In addition to complaints about judges, actionable and otherwise, the commission also receives numerous complaints about matters and individuals not now within its jurisdiction, *e.g.*, pro tem judges and commissioners. Such matters—a total of approximately 200 letters in 1988—usually result in referring the complainant to the appropriate agency. Another area that demands attention involves responding to general inquiries about the judicial system and process from citizens, government officials, practicing lawyers, and judges. As a result of these contacts, many questions and problems involving judges are discussed, evaluated, and resolved.

The commission's workload reached record levels again this year. A sixth attorney was added to the commission's staff, reflecting the commission's increased activity at all stages of proceedings. The commission met nine times in 1988, in two one-day sessions and seven two-day sessions. Thirty matters were pending before the commission at the close of its final 1988 meeting (December 1-2); these matters were carried over into 1989.

## IV

### PUBLIC DISCIPLINE

On May 31, 1988, the Supreme Court followed the commission's recommendation that Municipal Court Judge Richard Ryan be removed. (*Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 247 Cal.Rptr. 378, 754 P.2d 724.)

In 1988, the commission also recommended the removal of Judges David Kenick (Los Angeles Municipal Court), Kenneth Kloepfer (San Bernardino Municipal Court), and Bernard McCullough (San Benito Justice Court) and the censure of Judge David Press (Crest Forest Justice Court—San Bernardino County). The commission recommended that Judge Charles D. Boags (Beverly Hills Municipal Court) be suspended without pay after a jury found him guilty of conspiracy to obstruct justice. (Cal. Const., Art. VI, Sect. 18(b)). These matters were still pending at the year's end.

#### The Ryan Case

The Supreme Court first noted that commission procedures did not violate the judge's due process rights. It was proper for the commission, when investigating before formal charges were filed, to admonish witnesses that the proceedings were confidential and that they should not speak with anyone about the investigation. This served to protect the witnesses from intimidation.

The Court went on to review the definitions of willful misconduct and conduct prejudicial to the administration of justice. *Willful misconduct* is "unjudicial conduct which a judge acting in his judicial capacity commits in bad faith." In turn, "bad faith" means that the judge "(1) committed acts he knew or should have known to be beyond his power (2) for a purpose other than faithful discharge of his judicial duties." Both prongs of this test require an objective standard.

*Conduct prejudicial* is "conduct which the judge undertakes in good faith but which would nonetheless appear to an objective observer to be unjudicial and harmful to the public esteem of the judiciary. It also refers to unjudicial conduct committed in bad faith by a judge not acting in an official capacity."

The Supreme Court found four instances of willful misconduct by Judge Ryan:

1. Dissatisfied with a ruling of the judge, an attorney jokingly asked another attorney when the next judicial election was. This led to an argument between the clerk and the attorney about the judge's ruling. Court was not in session at the time. The clerk went into chambers and repeated the remark to the judge, who called in the attorney. After listening to unsworn accounts of the incident, the judge found the attorney in contempt and imposed a fine of \$200 or three days in jail. The finding was invalidated by the superior court because it was not direct contempt to criticize the judge when court was not in session (Code of Civ. Proc., section 1209(b)), and because there was no affidavit as required by law (*id.*, section 1211). Even before the superior court had ruled, the judge realized his error and dropped the matter. He did not, however, inform the attorney of this for two weeks.

The Supreme Court held that the substantive and procedural defects of the contempt finding were not excused by the judge's ignorance of the law.

*Judge Ryan should have known, or should have researched, the proper contempt procedures . . . His failure to do so constituted bad faith . . .*

(45 Cal.3d at 533.) It was also bad faith for the judge not to inform the attorney that he had dropped the contempt charge.

2. The judge ordered a civil litigant to pay a judgment. After the hearing, as the litigant was walking from the courtroom, she said, "You can't get blood out of a turnip." The judge heard the remark and ordered his bailiff to jail the woman immediately. There was no hearing. The woman was held for 24 hours. The Supreme Court called this "another inexcusable example of Judge Ryan's abuse of the contempt power." It was also misconduct for the judge to rely on his bailiff for advice on the appropriate code section to cite in the contempt order.

3. A defendant refused a no-jail-time disposition, insisting on a jury trial. The judge told the district attorney that he would give the man a harsh sentence to teach the defense attorney a lesson. He went on to say that he could justify the sentence by citing the defendant's perjury at trial. The man then had his trial and was convicted. The judge did impose a harsh sentence, refusing to give his reasons on the record. The next day he told the press that the purpose of the sentence was to discourage jury trials. But when the superior court remanded the case for the judge to supply a statement of reasons, the judge brought out his pre-fabricated perjury charge. The Supreme Court found this incident to be "misconduct of the worst kind, evidencing moral turpitude and dishonesty."

4. After a preliminary hearing, the district attorney decided to charge the defendant with a misdemeanor only. The judge felt that a felony charge was justified. He telephoned the prosecutor to urge the higher charge. The Supreme Court held that the judge had exceeded his authority and function and "deprived the defendant of an impartial magistrate." This was willful misconduct.

The Supreme Court also found numerous instances of conduct prejudicial to the administration of justice:

- The judge conducted an independent investigation in the midst of a criminal trial. He also interrupted the defense case to call his own witness.

- Although the judge knew he lacked authority to place a defendant in a work-release program, he did so anyway. When the county challenged his ruling through writ proceedings, the judge hired an attorney to defend the court, later billing the county for the same. The Supreme Court found bad faith here, but concluded in light of the judge's apparent concern for the welfare of the defendant that the misconduct was only prejudicial and not willful.

- A defendant failed to appear for sentencing and a bench warrant issued. When the defendant was arrested he was brought to Judge Ryan. Although the judge knew that the defendant was represented, he asked the defendant whether he wanted to proceed. When the defendant said yes, the judge sentenced him to jail. This would have been willful misconduct, but for the defendant's acquiescence.

- In a similar incident, a defendant was brought before the judge on a petition to revoke probation. The defendant requested an attorney and the request was granted. Before the attorney arrived, however, the judge asked the defendant if he had committed the charged acts. The defendant admitted them.

- In three instances the judge failed to provide a court reporter in a criminal proceeding. The judge knew that a court reporter had to be provided on request; but he failed to inform pro per defendants of their right to make the request, thereby "effectively den[ying] those defendants their constitutional right to have a reporter present." The judge asserted that he was trying to save money for the

county. The Supreme Court called his attitude “stubborn and obstructionist.”

- In one case, the judge told the parties he would mail them his decision. Before mailing it, however, he showed a draft opinion to a newspaper reporter and discussed the case with the reporter. In two other cases, the judge talked with reporters about pending matters. The judge also wrote a letter to the editor explaining a sentence. These acts violated Canon 3A(6), which forbids public comment by a judge about a pending matter.

- The judge told two offensive sexual jokes to attorneys in chambers.
- The judge regularly left the court at 2 o'clock, and earlier on Fridays. He was unavailable in the afternoon for warrant applications and other non-adjudicative purposes.

In summary, the Supreme Court held:

*The judge's conduct exhibits a pattern of personal embroilment in the cases assigned to him. He has lost his temperance and objectivity on several occasions, resulting in prejudice to the parties appearing before him or in abuse of his contempt power. He has attempted to defend his position in the courts and in the media with little regard for procedure or judicial decorum.*

## V

### PRIVATE DISCIPLINE AND DISPOSITION

In 1988, the commission issued eight private admonishments and 47 advisory letters.

#### *Private Admonishments*

Private admonishments are formally imposed pursuant to California Rule of Court 904.3. Evidence of an admonishment can be introduced at a later hearing to prove that conduct is persistent or to determine what action or recommendation should follow (Rule 909(b)). The private admonishments are summarized below. In order to maintain the privacy of these admonishments, it has been necessary to omit or alter certain details in these summaries. (In some cases, unfortunately, this omission of detail has made the summary quite uninformative.)

A. In one case, a judge delayed decision for nearly nine months, thereby violating Canon 3A(5) ["Judges should dispose promptly of the business of the court."]. During this time the judge signed salary affidavits stating that no cases had been pending longer than 90 days. Three times before, the commission had sent letters of disapproval to the judge because of decisional delay.

B. A judge made rulings and statements that were so contrary to the law that they passed beyond legal error. They constituted an abandonment of the law and showed bias.

C. A judge repeatedly appeared late at the courthouse, took inordinately long breaks, and often worked well beyond normal court hours, requiring the presence of court personnel, attorneys and litigants. The same judge was sometimes altogether absent without notice.

D. While still practicing law, a judge accepted a grant deed to two clients' property as security for fees. In arranging for this transfer, the judge did not fully explain to the clients in writing the terms and significance of the transaction, thereby violating the Rules of Professional Conduct, rule 5-101. Later the judge sold the property without informing the clients.

E. A judge presided over proceedings in a criminal case in which the defendant was a social acquaintance. The judge made several rulings favorable to the defendant, such as modifying probation to delete a fine. The judge also wrote a personal recommendation for the defendant on court stationery and met in chambers with law enforcement officers to help the defendant.

F. A judge, who was standing for re-election, made speeches to jurors which could reasonably have been understood as electioneering. The judge also ran campaign advertisements which appeared to promise certain rulings.

G. Before appointment to the bench, a judge committed prosecutorial misconduct that tended to mislead the fact-finder. [Severe private admonishment.]

H. At a hearing in open court with a newspaper reporter present, a judge irresponsibly accused an attorney of unethical conduct.

#### *Advisory Letters*

In some cases, the commission will determine for various reasons that formal discipline is not warranted but will advise caution or express disapproval of a judge's conduct. These letters of advice are called advisory letters, or "stingers." The commission sometimes issues advisory letters when the misconduct is clear but the judge has demonstrated an understanding of the problem and a willingness to improve. They are also used when the impropriety is isolated or relatively minor.

Forty-seven complaints were closed with advisory letters in 1988.

#### **Demeanor**

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

1. A contentious citizen harangued a judge in the vicinity of the courtroom. The judge responded in vulgar language. When the citizen replied in a similar vein, the judge had the citizen arrested and brought to court, where the judge threatened to hold the citizen in contempt. The commission criticized the judge's choice of words, mentioned the limits on the contempt power (Code of Civil Procedure sections 1209(a)(1) and (b)), and reminded the judge that the duty to be patient, dignified and courteous extends to controversial and difficult individuals.

2. During trial, a judge sometimes leaned back with closed eyes, giving the appearance of slumber. The judge also made remarks intended "to lighten the atmosphere" which were often perceived as sarcastic. At least once the judge dressed down an attorney in front of the client, intending to cause a rift between the two. The commission was persuaded that the judge showed awareness of the problems and was actively taking steps to overcome them.

3. In dealing with a non-English-speaking defendant and with the defendant's proposed interpreter, a judge gave the impression of impatience and discourtesy. The commission reminded the judge that a patient tone is particularly important with non-English-speaking parties and witnesses.

4. During trial a judge made numerous remarks to an attorney that were rude or that interfered with the performance of the attorney's duties. The judge was sarcastic and unnecessarily impatient with the attorney.

5. A judge treated a victim-witness roughly. The witness was 17 years old and became emotional when testifying about serious injuries the victim suffered

when shot during a robbery. The judge admitted to the commission that the matter could have been handled better.

6. A judge yelled at an attorney in open court because of the attorney's repetitive questions.

7. In addressing a group of defendants, a judge used an expression which, though intended to be humorous, was at least condescending and could have been considered denigrating. During a hearing, the judge made an off-the-record indication to a police witness that the judge would rule against the defendant. Both of these incidents involved ill-advised attempts at humor.

8. Before the jury returned its verdict, a judge told two attorneys in chambers that the defendant was a cold-blooded killer. The remarks found their way into the newspapers.

9. At a routine pre-trial hearing, a judge referred to the defendant as "the killer." It was an isolated remark.

10. A judge was rude to pro per traffic defendants, rushing them, cutting them off, and intimidating them. The judge was also sarcastic and demeaning to attorneys.

11. In order to encourage settlement or arbitration of a case, a judge was deliberately rude and harsh to litigants in open court. The judge had twice before been sent advisory letters for discourteous behavior.

12. A judge shouted at an attorney in chambers for asking questions that were too long. Before the judge would sign an order, the attorney had to promise to join a local organization.

13. Addressing an obstreperous traffic court defendant, a judge made a remark which appeared to denigrate the defendant's national origin.

### **Abuse of Contempt Power**

Abuse of the contempt power was again a common problem. The commission also noted several complaints about misuse of the new sanction power contained in Code of Civil Procedure section 128.5, one of which resulted in a stinger:

14. A judge gave an obstreperous person a "choice" of five days in jail for contempt or the risk of prosecution under Penal Code section 148 (obstruction of a public officer). When the person chose the latter, the judge ordered the person taken into custody, claiming that it was a citizen's arrest. The judge expressed regret to the commission.

15. A judge found an attorney in contempt for appearing late. In the contempt order (which was overturned by a higher court) the judge failed to mention that the attorney had previously asked the court for a continuance because of a scheduling conflict and that the court had denied the request.

16. A judge threatened to find and did find attorneys in contempt on inadequate grounds. The threats were sometimes made in the jury's presence. The judge expressed regret to the commission and promised efforts to improve.

17. In imposing sanctions on a litigant, a judge failed to follow strictly the terms of Code of Civil Procedure section 128.5.

[See also Advisory Letters Nos. 1 and 43.]

### **Improper Use of Judicial Position to Denigrate Attorneys**

18. In denying an attorney's ordinary and legitimate request, a judge said in open court that the attorney was perpetrating a fraud. The judge was also rude and sarcastic.

19. When an attorney criticized a judge in the press, the judge required the attorney's presence at a public "hearing," the purpose of which was, in effect, to reprimand the attorney.

20. Without a sufficient basis, a judge told the other members of the local bench that an attorney had done something very improper.

21. An attorney whose firm advertises came before a judge on a motion to withdraw. The judge, in denying the motion, made statements the attorney perceived as hostile and derogatory to attorneys who advertise. The judge responded to the commission's inquiry letter only after a lengthy delay and after questioning the seriousness of the commission's inquiry.

[See also Admonishment H and Advisory Letters Nos. 2, 4, 6, 10, 12, 15 and 16.]

### **Improper Remarks to Juries**

A small number of judges failed to adhere to the Judicial Council's Standards of Judicial Administration, section 14, which forbids a judge to praise or criticize a jury's verdict.

22. After a jury acquitted the defendant, a judge told the defendant, in the jury's presence, that the defendant was lucky to get off and that next time the defendant would serve a long sentence because of a previous conviction. The jury had not known about the prior conviction. The judge promised the commission to refrain from such comments in the future.

23. Upset with a jury's verdict, a judge informed the jury of the judge's contrary opinion and revealed suppressed evidence. Later the judge telephoned one of the jurors to learn more of the deliberations. The judge expressed deep regret to the commission.

[See also Admonishment F.]

### **Ex Parte Communications**

A perennial problem.

24. A prosecutor showed some material, which had not been admitted into evidence, to a courtroom clerk who took the material into the judge's chambers. The judge looked at and considered the material, and reached a decision based on it. Only later did the prosecutor make the material available to the defendant.

25. One party made an *ex parte* motion for modification of an order. The judge telephoned the other party's attorney, discussed the matter *ex parte*, and incorporated into the order several changes suggested by the other attorney.

26. Before a court session began, a deputy prosecutor told a judge that the opposing attorney, who was unknown to the judge, was "weird." The judge chastised the opposing attorney in open court for stating the intention of challenging the judge under Code of Civil Procedure section 170.6.

### **Tardy Decision-Making**

The commission again issued advisory letters for failure to decide cases timely:

27. A judge did not rule on a submitted matter for more than a year. The commission did not accept the judge's use of "resubmission" orders as a legitimate method of handling the case.

28. A judge did not rule on habeas corpus petitions in a timely fashion. The judge had relegated all such petitions to a lower priority than set by the Rules of Court. The commission did not accept the press of business as an adequate excuse.

29. A judge did not decide a submitted matter for more than six months.

[See also Admonishment A.]

### **Miscellaneous**

And there was a variety of other cases:

30. A judge participated slightly in a case where one party was represented by a close family member of the judge.

31. At an order of examination, a judge ordered the judgment debtor to deliver his wallet to the court. The judge personally looked through the wallet, extracted

some cash, and divided it between the creditor and the debtor. The judge ignored the debtor's explanation that the money was not his personally. Though the debtor may have been "evasive" and the outcome fair, these procedural shortcuts were not well advised.

32. During a settlement conference, a judge made statements which appeared to threaten sanctions if the parties later settled the case. [See also Advisory Letter No. 11 above.]

33. In one case, a judge hinted to a pro per defendant that there would be a light sentence after a guilty plea. In fact, the judge imposed a harsh one. In two other cases, the judge sentenced misdemeanor defendants to jail, ordered them remanded forthwith, then hurried from the bench, refusing to hear their bail requests. The commission noted that the judge was making serious efforts to improve performance.

34. A judge made an absurd legal ruling as a means of drawing attention to a policy the judge disapproved of and as a means of venting personal frustration over the issue.

35. A judge responded to an inquiry from the commission in a manner that suggested unwillingness to cooperate reasonably. [See also Advisory Letter No. 21.]

36. A judge was perceived as giving favorable treatment to a defendant because the defendant was a law enforcement officer. The judge not only overturned a jury verdict of guilty, but ordered the record sealed, which was beyond the judge's statutory authority.

37. A judge engaged in acts leading to misdemeanor charges.

38-39. Two judges from the same court engaged in a semi-public feud. After speaking with both judges, the commission closed the case.

40. It was reported that a judge drank several martinis every lunch hour at a local restaurant, exhibited marked temperament changes after lunch, and joked about the judge's own blood alcohol level. There was a perception among local attorneys that the judge's own attitude toward alcohol made the judge lenient in DUI cases. The judge assured the commission that there would be no recurrence of the reported conduct and that the judge would take lunch at home or in chambers, without alcohol.

41. A judge, unaware that a litigant had properly given notice of his intention to tape record proceedings under a rule of court allowing such recording, ordered the litigant's tapes confiscated and erased. The judge admitted the error to the commission.

42. On a declaration of candidacy, a judge deliberately gave an incorrect and misleading home address.

43. An attorney missed an appearance in a traffic matter. At the next appearance, after dealing with the underlying infraction, the judge offered the attorney a choice between the client having a failure-to-appear on the client's driving record and the attorney paying a sum of money into the court's automation fund.

44. A presiding judge failed to supervise a court commissioner. The presiding judge failed to respond to a litigant's complaint that the commissioner had not decided a case for more than a year.

45. A judge removed a person from the courtroom for trying to intimidate a witness by glaring and shaking of the head, but provided no warning to the person before acting.

46. A judge failed to order restitution as a condition of probation in a case where it was required and where the judge was advised of this requirement.

47. A judge made a ruling based on the judge's fear of the defendant. Later the judge falsely insinuated that another judge was emotionally unable to hear the case.

## VI

### "SMALL POTATOES"

In May 1988, a retired Municipal Court judge pled guilty to the misdemeanor of falsifying court records. The plea concerned 15 instances in which the judge had fixed traffic tickets by arranging for the transfer of the cases to his own court and then dismissing them. A local newspaper article referred to the charge of ticket-fixing as "small potatoes."

Some observers believe that ticket-fixing, if not acceptable, is no more than venial—a minor fault meriting no particular notice.

The commission, however, views ticket-fixing as willful misconduct in office (see *Spruance v. Commission on Judicial Qualifications* (1975) 13 Cal.3d 778, 798). There are, to be sure, more serious forms of judicial misconduct—such as bias or pre-judgment of cases—but ticket-fixing is serious enough. For most citizens, traffic and parking tickets are the only contact they have with the judicial system. Ticket-fixing subverts public confidence in the impartiality of the judiciary and leads to the suspicion that a judge willing to fix a small case would be willing to fix a large one. Where is the line on corruption to be drawn?

Given this apparent difference in perception, the commission would like to emphasize its view: Allegations of ticket-fixing will be vigorously investigated. If proven, the allegations will lead to appropriate action.

• • •

A number of other judicial activities are of current concern. The commission hopes in this discussion to encourage greater awareness of a few problem areas. By limiting ourselves to a small number of topics, we do not suggest that other topics are less important. In this annual report, however, it would be impossible to give an encyclopedic survey of judicial misconduct. It must also be remembered that the commission examines cases one by one, each situation being unique. We can therefore offer only general discussions in this report, not authoritative pronouncements.

#### **Favoritism**

Ticket-fixing is an example of a more general form of misconduct: use of judicial power for private purposes—in particular, use of judicial power for the benefit of friends, relatives, former associates, former clients, fellow judges and other individuals with some sort of private line to the judge. Such conduct violates Canon 2B:

*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.*

As a general rule, it would be contrary to the Canons for a judge to intervene on behalf of a friend. A judge should not order a particular case transferred to his or her own department in order to handle the case personally (*Spruance v. Com-*

*mission on Judicial Qualifications, supra*). "Putting in a good word" for a litigant with another judge or a prosecutor is also interference (*Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359, 366-369). Normally a judge should not dismiss a traffic citation unless the citation has been calendared to the judge's department. A judge should not lower bail for a friend if another judge is scheduled for such duties. In short, a judge should not *interfere* in the normal process of the court.

It is usually no defense that the actual ruling in the case (e.g., the dismissal of the speeding ticket or the reduction of bail) was legally proper. The intervention itself was improper. The Code of Judicial Conduct, Canon 3(C)1(a) requires judges to disqualify themselves when "their impartiality *might reasonably be questioned* [because] the judge has a personal bias or prejudice concerning a party." (Emphasis added.) (See also, Code of Civil Procedure, section 170.1(a)(6).) The impartiality of a judge who interferes with the routine functioning of the court on behalf of a friend might reasonably be questioned. Discipline would be considered even if there was nothing inappropriate in the actual disposition. If the ruling was favorable to the friend, that fact might be considered an aggravating circumstance.

Even when a case comes regularly before a judge — that is, when it happens that a friend's case is calendared before the judge — the judge should adhere strictly to the disqualification provisions of the Code of Civil Procedure, section 170.1 and of Canon 3C. *Ex parte* rulings are not an exception to this rule. On the contrary, here the need for strict compliance is especially acute.

### ***Ex parte* communications**

Unless permitted by law, *ex parte* communications are improper (Canon 3A(4)). Few judges would listen to an attorney argue a client's cause over the telephone or at a social function. Yet it seems that some judges may go over the day's calendar alone with the local prosecutor (sometimes with the local defender) or have casual, friendly chats about pending cases with lawyers in chambers. The commission once received a complaint from an attorney about biased treatment from a judge. The judge gave the commission an explanation for the judge's courtroom actions, but went on to remark that the prosecutor, during a pending proceeding, had warned the judge that this attorney was a troublemaker. Evidently the judge thought it was appropriate for a prosecutor to give such an off-the-record assessment of the opposition and for the judge to repeat it to the commission. The commission sent an advisory letter to the judge.

In some courts it appears to be the practice for an attorney to approach a judge *ex parte* to obtain an indicated sentence, or otherwise to discuss a plea bargain. Obviously there are some benefits to this practice—such as efficiency—but the potential for abuse and for the appearance of impropriety is great.

*Ex parte* communications are generally improper unless expressly allowed by law or expressly agreed to by the opposing party before the communication occurs.

### **Humor**

A sense of humor is a vital judicial asset. It enables judges to maintain a patient demeanor and adopt a balanced perspective with regard to the matters and individuals before them. See *generally* Canon 3(A), California Code of Judi-

cial Conduct. A judge may use humor, for example, to alleviate tension or tedium in a lengthy proceeding. See, e.g., *People v. Melton* (1988) 4 Cal.3d 713, 753 (“Well-conceived judicial humor can be a welcome relief during a long, tense trial.”). The appropriate use of judicial humor, however, entails a measure of self-control of the part of the judge. In court or in chambers, a seemingly innocuous joke by the judge may assume disproportionate significance in the eyes of parties, counsel, jurors, or others. Moreover, a captive attorney audience may feel compelled to laugh rather than risk an objection.

In general, the more serious the tenor of the matter, the more caution the judge should exercise with regard to humor. A murder trial, for example, is not to be taken lightly. See, e.g., *People v. Fatone* (1985) 165 Cal.App.3d 1164, 1173, 1176-81 (attempted murder conviction reversed in part for judge’s sarcasm toward defense counsel). As *Fatone* indicates, a remark that seems merely humorous to a trial judge may strike an appellate court as judicial hostility. Cf. *People v. Melton*, *supra*, 44 Cal.3d at p. 753 (although trial court “obviously” should “refrain from joking remarks which the jury might interpret as denigrating a particular party or his attorney,” a court’s “brief and mild” jokes at defense counsel’s expense did not warrant death penalty reversal).

Judicial humor is a dreadful thing. In the first place, the jokes are usually bad; I have seldom heard a judge utter a good one . . . In the second place, the bench is not an appropriate place for unseemly levity. The litigant has vital interests at stake. His entire future, or even his life, may be trembling in the balance, and the robed buffoon who makes merry at his expense should be choked with his own wig.

— Prosser, *The Judicial Humorist* (1952) p. vii

Ill-conceived humor may adversely impact a judge’s ability to command respect and the public’s perception of the judiciary at large. The risk that humor will trigger unfortunate repercussions escalates if it is pegged to any handicap or personal trait (race, gender, age, religion, national origin, ethnic background, and so on). It is axiomatic that judges should refrain from humor or observations that could be construed as impugning persons with that trait or handicap. Off-color jokes and those involving profanity also fall in this high-risk category. See e.g., *Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 537, 544-45; *Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359, 376-77; *Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 278-81 (Findings, Counts One-Three).

As *Ryan* and *Geiler* demonstrate, gender bias is a pervasive source of misplaced judicial humor. *Ryan*’s prejudicial conduct included “offensive jokes” directed to women attorneys; *Geiler*’s included “crude effort[s] at humor” directed to his woman clerk. The judiciary has begun to address the broad problem of gender bias, but demeaning jokes and vulgarities concerning women attorneys, litigants, witnesses, court employees, and jurors are scarcely a thing of the past.

See, e.g., Schafran, "Documenting Gender Bias in the Courts," 87-5 *L.A. Daily Journal Report* 25 (March 10, 1987) (discussing the National Judicial Education Program to Promote Equality for Women and Men in the Courts (NJEP)). NJEP uncovered thoughtless banter that reflects, for example, insensitivity toward rape victims (labeling a five-year-old "an unusually promiscuous young lady") and condescension toward women attorneys ("You get better looking every time I see you. How come I didn't hire you when you applied for that clerkship?"). *Id.* at 31 n. 17 and 35. See also Blodgett, "I Don't Think That Ladies Should Be Lawyers," 72 *ABA Journal* 48, 51, 52 (judicial mention of a woman lawyer's appearance subtly undermines her credibility). As New Jersey's Chief Judge acknowledged in response to the NJEP reports, "There's no room for gender bias in our system. . . . There's no room for the funny joke and the not-so-funny joke." Schafran, *supra*, at 38.

A judge who regularly indulges in gender-biased humor or other tasteless jokes may become a subject of media scrutiny. Objectionable humor harms the judiciary's public image even absent media attention, but such attention serves to aggravate the harm. The risk of press coverage extends, of course, to jokes at a public nonadjudicative gathering (e.g., a convention or seminar).

No bright line divides humor in good taste from that in poor taste. What makes one person laugh often makes another wince. The commission recommends, therefore, that judges take pains to second-guess themselves on whether a joke may be offensive before yielding to the impulse to tell it.

### **Short Hours**

Unless excused by illness or some unusual circumstance, a judge must appear regularly for work. The Code of Judicial Conduct, Canon 3, requires that judges perform their duties diligently and the commission has authority to discipline judges for "persistent failure or inability to perform the judge's duties" and for "dereliction of duty" (Art. VI, sec. 18). Other states also discipline judges for excessive tardiness and absence (e.g., *In re Haggarty* (La. 1970) 241 So.2d 469, 482; *In re Daley* (1983) 2 Ill.Cts.Com. 38).

The commission sometimes hears complaints about judges who complete their calendar early (or rush through it) and then leave the courthouse in mid-afternoon to pursue their private activities. It is not immediately clear that the judge's duties are (or are not) being discharged. (In *Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 545-546, the Supreme Court found it was prejudicial conduct for a judge regularly to leave the courthouse at 2 o'clock, ignoring his uncalendared obligations, such as ruling on warrant applications.) Other judges maintain unusual hours—starting and ending their calendars habitually late. Other judges take unduly extended breaks. And others refuse assignments from the calendar judge or deliberately fail to participate in administrative meetings. In all these cases, too, there might well be impropriety.

Attendance concerns, like most other problems involving judges, must be addressed case-by-case. Judges, particularly presiding judges, are welcome to approach the commission about a colleague's short hours or poor attendance. But they are most likely to get effective help from the commission if they have first established clear local rules concerning attendance and have attempted to deal

directly with the errant judge. Government Code section 68070 gives local courts ample authority to set rules for the conduct of business and Rules of Court 205 and 532.5 give presiding judges ample authority to supervise their colleagues. Presiding judges are also obliged to inform the commission of a colleague's substantial failure to perform duties (Rules of Court 205(17), 532.5(a)(19)). Plainly it is more difficult for the commission to identify or discipline a judge for failure to work diligently if the judge's colleagues tolerate that failure. Local toleration, however, will not bar commission action.

### **Duties of Presiding Judges**

In addition to their obligation to oversee the attendance of their colleagues, presiding judges have other duties laid out in the Rules of Court. These include the duty to resolve complaints against court commissioners and referees (Rules of Court, rules 205(16) and 532.5(a)(18); see Standards of Judicial Administration 16). The commission frequently receives complaints from members of the public about commissioners and referees. Since the commission does not now assert jurisdiction over them, these complaints are routinely forwarded to the local presiding judge. If the presiding judge fails to handle complaints against commissioners, the commission might consider that failure as the presiding judge's own neglect of duty.

(In 1988 the commission decided in principle that it was desirable to bring court commissioners within its jurisdiction. In the coming year, the commission will consider ways that this decision can be implemented, including coordination with the Judicial Council.)

### **Delay of Decision**

The Code of Judicial Conduct, Canon 3(A)(5) requires judges to dispose promptly of the business of the court. Here, too, the commission is faced with the problem of choosing appropriate standards. Over the years the commission has disciplined or warned many judges for holding decisions more than 90 days (Const., Art. VI, section 19). Except in extraordinary situations, a judge may not avoid the duty to rule promptly by "resubmitting" decisions every 90 days. (See *Mardikian v. Commission on Judicial Performance* (1985) 40 Cal.3d 473.) This year a judge was warned for failing to act on habeas corpus petitions within 30 days (Rules of Court, rule 260). When a statute sets an exact time it operates like a posted speed limit, giving both drivers and police a ready standard.

But the requirement of "promptness" is not entirely defined by statutory limits. The commission will not apply those limits mechanically. Just as there might be situations where a judge has a legitimate excuse for exceeding 90 days on a decision, so there might be cases where holding a decision for 30 or 60 days is an intolerable delay.

The commission was pleased that the Judicial Council this year adopted new Rules of Court 205.1 and 532.6, which help address the delay problem. These new rules were suggested by the commission. They require presiding judges to supervise and monitor the number of causes under submission to each of the judges in the court, and the length of those submissions, and to take various steps to deal with delay problems. Another new Rule of Court, rule 825, more clearly defines "submission," "pendency" and other important terms.

### **Failure to Cooperate with the Commission**

When the commission receives a complaint which states a *prima facie* case of misconduct, it will typically order a staff inquiry, including a letter to the judge asking for comment on the complaint. Most judges who receive such letters understand that the commission is legitimately concerned about what might be a problem, that the commission has not pre-judged the case, and that the commission is sincerely interested in what the judge has to say. These judges answer the inquiry with candor and completeness.

Occasionally, however, the commission encounters a judge who refuses to respond, or whose response does not deal with the facts. It may be appropriate for a judge to deny the facts alleged in a complaint. It may also be appropriate to state that the facts are true but, in the judge's view, do not constitute misconduct. The commission does not expect judges to respond to staff inquiries with cringing submission. But it does expect a response that addresses the issues raised and does so with a modicum of civility.

## VII

### VOLUNTARY DISABILITY RETIREMENT

In addition to its duties as an investigator of judicial misconduct, the commission reviews applications for disability retirement by judges. Government Code section 75060 reads:

*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 . . . and the Commission on Judicial Performance, be retired from office.*

A judge on disability retirement receives 65 percent of full pay for the rest of his or her life. This is paid from the Judges' Retirement System.

To obtain a disability retirement pension, the judge first executes a disability retirement request and files one or more medical certificates with supporting medical reports. The commission frequently obtains additional reports and records and may require an independent medical examination. The commission is concerned, not only with the judge's present condition, but also with treatment and prognosis. The commission needs to be satisfied that the disability is or is likely to become *permanent*. The commission makes available to the applicant all reports and records which it receives, and will accept any further evidence which the applicant may wish to submit. After thorough review and consideration, the commission votes its approval or denial. If the application is approved, it is sent to the Chief Justice for independent evaluation. An application which is approved by both the commission and the Chief Justice is implemented by the Public Employees Retirement System. Even after the judge's retirement, the commission can require periodic re-examination and re-evaluation of the judge's disability. Recovery can lead to a restoration to capacity and eligibility for judicial assignment.

In 1988, the commission approved six disability applications and denied two others. Two were still pending at the end of the year. In March 1988, an unsuccessful applicant sought review in superior court. The court found, on the evidence before it, that the commission's denial was not an abuse of discretion (*Kennick v. Commission on Judicial Performance*, San Francisco Superior Court No. 887147).

Since 1967, the commission has considered 162 applications, approving 139 and denying 21. Five times the courts have reversed a commission denial. The most notable of these judicial reversals was *Willens v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 451, 110 Cal.Rptr. 713, 516 P.2d 1. The commission had rejected Willens' disability application because (a) he had been convicted of bribery and (b) he had lost his last election. The Supreme Court held that, even though the applicant was ineligible to hold judicial office, he was still eligible for a lifetime pension. The commission has been obliged to follow *Willens*.

In 1988, the legislature amended the Government Code, making it more difficult for a judge who is the subject of disciplinary proceedings to obtain disability benefits. (The appendix to this report reprints all the relevant Government Code sections.) In sum, the amendments:

- require judges to have served four years before they are eligible for disability retirement, unless the disability was caused by judicial service.
- forbid payment of retirement benefits to a judge found guilty of certain felonies (but allowing return of the judge's accumulated contributions).
- permit periodic re-examination of judges retired because of disability, but no oftener than once every two years.
- impose additional requirements on judges who apply for disability when felony or disciplinary charges are pending, or an election has been lost. These burdens are:
  1. The judge is presumed not to be disabled.
  2. The judge can overcome this presumption only by presenting clear and convincing evidence sufficient to support the disability claim to a reasonable certainty.
  3. The judge must support the application with the written statements of two doctors or psychiatrists.

In the commission's view, these reforms are useful but do not go far enough to prevent abuse of the system. It would be more thorough (and easier to administer) if applications were simply deferred while criminal or disciplinary charges are pending and simply denied if the charges lead to removal or conviction of a felony. A judge who loses an election should be ineligible for a disability retirement, except in the extraordinary situation where the judge is physically injured in the line of duty.

It is also the commission's view that there is inadequate provision in the law for temporary and/or partial disabilities. There ought to be some sort of middle ground between a lifetime pension and complete rejection of the claim. An applicant might, for instance, have an orthopedic problem so severe that, for the time being, adequate performance on the bench is impossible—but it is difficult for the commission to determine whether the problem is permanent and how it might affect the applicant's ability to perform *some* work.

The recent amendments provide for periodic re-examination of disabled judges. (See also the new Policy Declaration 4.3, which spells out the commission's policy of requiring periodic re-examination when it grants certain disability applications.) Such re-examination is desirable but does not solve the overall problem of the recovered or partially recovered judge. Under present law, a judge who recovers continues to receive disability payments except when paid for temporary assignments under Government Code sections 75060.6 and 68543.5. If a judge refuses an assignment, the disability pension is automatically forfeited. Compulsory assignment is unsatisfactory. In some cases non-medical reasons prevent service, as in *Willens*. Also, a judge sitting by assignment under protest, simply to retain disability benefits, might perform judicial duties in a substandard manner. The commission therefore sees a need for other ways of dealing with recovered judges. For instance, it might be desirable to reduce or end a disability

pension if the judge is able to resume the practice of law or some other gainful employment.

The current law has arguably inadequate provisions for offsetting other income. There is no offset for unearned income or for workers' compensation or other financial recovery. Pension payments are offset by earned income, but only in a certain range (see Government Code section 75080(b)). The entire problem needs rethinking.

## COMMISSION CASES TO THE SUPREME COURT

**Stevens v. Commission on  
Judicial Qualifications**

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

**In re Gerald S. Chargin**

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

**In re Bernard B. Glickfeld**

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

**In re Leopoldo Sanchez**

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

**In re Antonio E. Chavez**

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

**Geiler v. Commission on  
Judicial Qualifications**

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

**McCartney v. Commission on  
Judicial Qualifications**

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

**Spruance v. Commission on  
Judicial Qualifications**

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

**Cannon v. Commission on  
Judicial Qualifications**

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

**McComb v. Commission on  
Judicial Performance**

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

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

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

**In re Arden T. Jensen**

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

**In re Charles Robert Roick**

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

**In re Robert S. Stevens**

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

**Wenger v. Commission on  
Judicial Performance**

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

**In re Hugo M. Fisher**

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

**In re Charles S. Stevens**

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

**Gonzalez v. Commission on  
Judicial Performance**

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

**Roberts v. Commission on  
Judicial Performance**

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

**In re Bobby D. Youngblood**

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

**Gubler v. Commission on  
Judicial Performance**

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

**Mardikian v. Commission on  
Judicial Performance**

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

**In re Frank J. Creede**

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

**McCullough v. Commission on  
Judicial Performance**

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

**In re L. Eugene Rasmussen**

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

**Furey v. Commission on  
Judicial Performance**

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

**Ryan v. Commission on  
Judicial Performance**

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

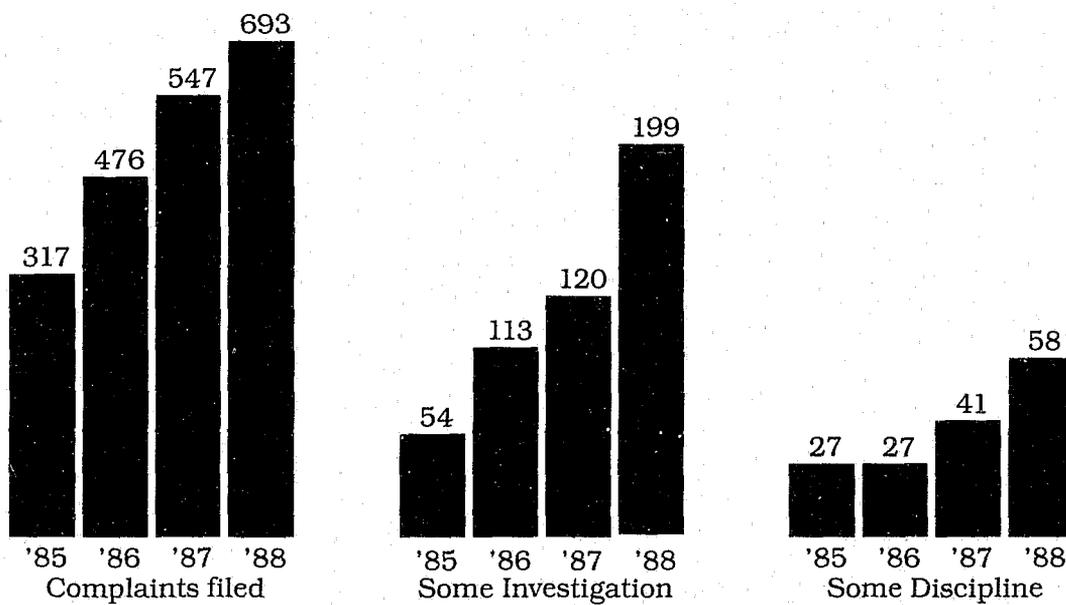
## CASES COMING BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

### Ten-Year Summary - 1979-1988

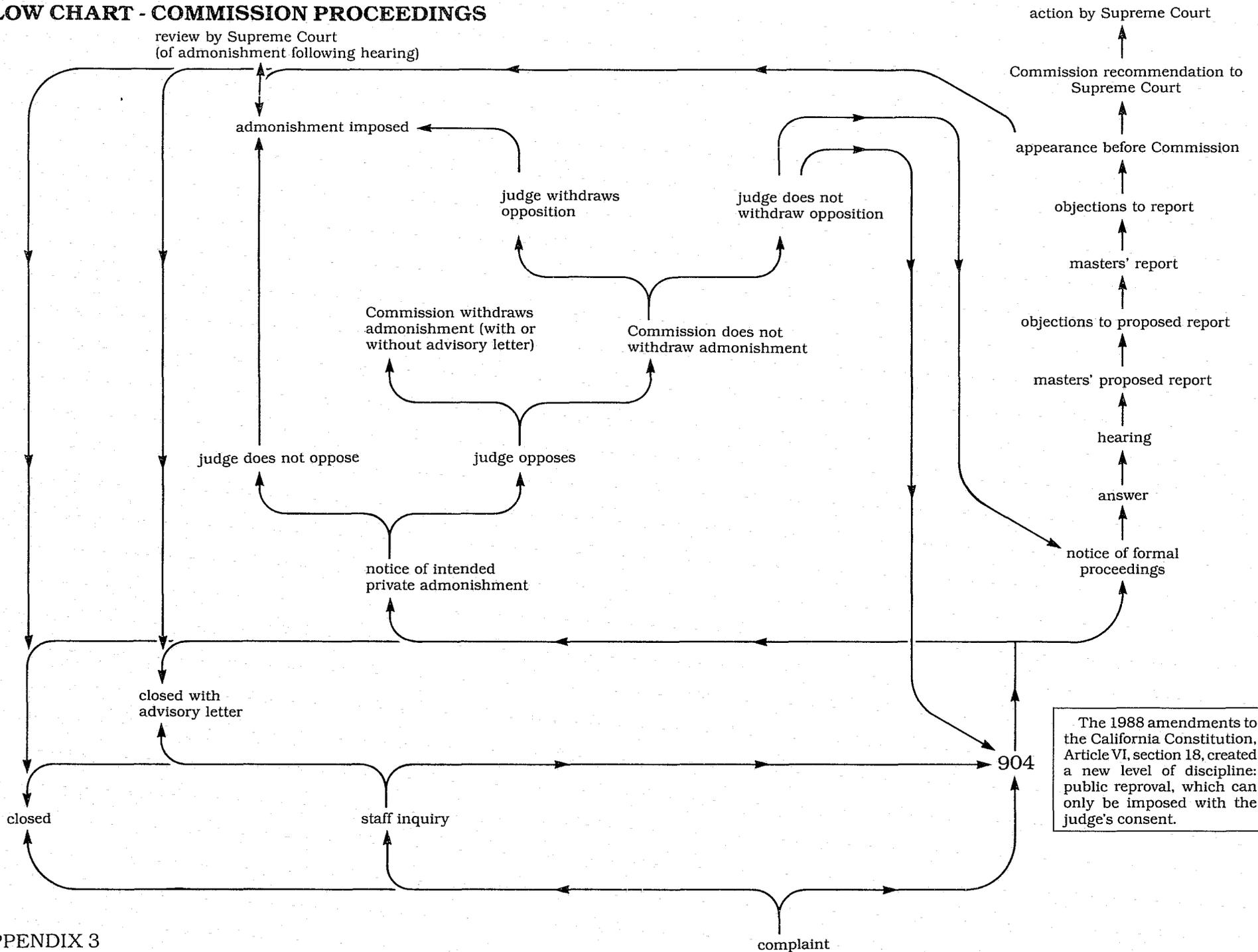
| Year | Complaints Filed | Inquiries (Some kind of Investigation) | Judges Contacted | Preliminary Investigations | Advisory Letters | Admonishments | Resignations or Retirements While Under Investigation | Public Discipline                          |
|------|------------------|--|------------------|----------------------------|------------------|---------------|---|--|
| 1979 | 291              | 76                                     | 62               | 18                         | *                | 3             | 2   |  |
| 1980 | 260              | 65                                     | 54               | 12                         | *                | 8             | 1   |  |
| 1981 | 267              | 52                                     | 48               | 18                         | *                | 7             | 3   | 1 censure<br>1 removal                     |
| 1982 | 360              | 68                                     | 61               | 14                         | *                | 5             | 1   | 2 censures                                 |
| 1983 | 351              | 63                                     | 56               | 21                         | *                | 6             | 3   | 1 censure<br>1 severe censure<br>1 removal |
| 1984 | 388              | 62                                     | 64               | 17                         | 23               | 3             | 1   | 1 censure                                  |
| 1985 | 317              | 54                                     | 47               | 11                         | 20               | 6             | 2   | 1 censure                                  |
| 1986 | 476              | 113                                    | 78               | 22                         | 23               | 3             | 1   | 1 censure                                  |
| 1987 | 547              | 120                                    | 75               | 20                         | 32               | 6             | 5   | 1 censure<br>1 severe censure<br>1 removal |
| 1988 | 693              | 199                                    | 100              | 22                         | 49               | 8             | 3   | 1 removal                                  |

\* Figures not available

January 1989



# FLOW CHART - COMMISSION PROCEEDINGS



The 1988 amendments to the California Constitution, Article VI, section 18, created a new level of discipline: public reproof, which can only be imposed with the judge's consent.

# GOVERNING PROVISIONS

## A.

### 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.

(c) On recommendation of the Commission On Judicial Performance the Supreme Court

may (1) retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of the judge's current term that constitutes wilful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission on Judicial Performance may privately admonish a judge found to have engaged in an improper action or dereliction of duty, subject to review in the Supreme Court in the manner provided for review of causes decided by a court of appeal.

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

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

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

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

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

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

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

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

## B.

# CALIFORNIA RULES OF COURT Title III Miscellaneous Rules

### DIVISION 1 RULES FOR CENSURE, REMOVAL, RETIREMENT OR PRIVATE ADMONISHMENT OF JUDGES

#### **Rule 901. Interested Party**

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

#### **Rule 902. Confidentiality of Proceedings**

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

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

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

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

(2) If a judge is publicly associated with having engaged in serious reprehensible conduct or having committed a major offense, and after a preliminary investigation or a formal hearing it is determined there is no basis for further proceedings or recommendation or 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 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 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 proscribe, submit to a medical examination ordered by the Commission. The examination must be limited to the conditions stated in the showing for good cause. No examination by a specialist in psychiatry may be required without the consent of the judge.

#### **Rule 904. Commencement of commission action**

(a) (Receipt of verified statement) Upon receiving a verified statement alleging facts indicating that a judge is guilty of willful 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. [Effective Jan. 1, 1989.]

(b) (Investigation without verified statement) The commission without receiving a verified statement may make a staff inquiry or preliminary investigation on its own motion. [Effective Jan. 1, 1989.]

(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. [Effective Jan. 1, 1989.]

#### **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. [Effective Jan. 1, 1989.]

#### **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. [Effective Jan. 1, 1989.]

(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. [Effective Jan. 1, 1989.]

(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. [Effective Jan. 1, 1989.]

(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. [Effective Jan. 1, 1989.]

#### **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. [Effective Jan. 1, 1989.]

#### **Rule 904.4. Notice requirements**

All notices of a staff inquiry, preliminary investigation, or intended private admonishment shall be given by prepaid certified or registered mail 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. [Effective Jan. 1, 1989.]

#### **Rule 904.5. Demand for appearance after notice of private admonishment**

(a) (Judge's demand for appearance) Within 15 days after mailing of a notice of an intended private admonishment, the judge may file with the commission a written demand for an appearance before the commission to object to the intended private admonishment. [Effective Jan. 1, 1989.]

(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. [Effective Jan. 1, 1989.]

**Rule 904.6. Use and retention of commission records**

(a) (Use of records outside the limitation period) Commission records of complaints against a judge shall not be used for any purpose if the complaints (1) relate to actions occurring more than 6 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. [Effective Jan. 1, 1989.]

(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. [Effective Jan. 1, 1989.]

**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 907.5. Discovery procedures**

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

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

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

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

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

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

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

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

person described is a basis for the formal proceeding;

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

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

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

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

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

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

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

(h) (Applicable privileges) Nothing in these procedures shall authorize the discovery of any writing or thing which is privileged from disclosure by law or is 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. [Effective Jan. 1, 1989.]

#### **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. [Effective Jan. 1, 1989.]

(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) 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 proceedings. The proposed report may also contain an analysis of the evidence and reasons for the findings or conclusions.

(b) Within 15 days after the mailing of the copy of the proposed masters' report, the examiner or the judge may file with the masters 11 legible copies of a statement of objections to the proposed report. The objections and grounds shall be specific and be supported by reference to the book and page number of any transcript of the proceeding and by citation of authorities.

(c) 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) 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) 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 11 legible copies of a statement of objections to the report of the masters, setting forth all objections to the report supported by specific reference to the book and page number of any 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 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. [Effective Jan. 1, 1989.]

(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. [Effective Jan. 1, 1989.]

**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 proceedings resulting in a recommendation to the Supreme Court for censure, removal or retirement, the Commission shall prepare a transcript of the testimony and of all proceedings and shall make written findings of fact and conclusions of law on the issues of fact and law in the proceedings. In proceedings following a hearing resulting in a private admonishment, the Commission shall prepare a record of

the proceedings including findings and conclusions, but need not prepare a transcript of the testimony absent a petition for review or a request by the judge involved.

**Rule 919. Certification and Review of Commission Recommendation**

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

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

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

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

**Rule 920. Review of commission proceeding resulting in private admonishment**

(a) (Mailing of notice of entry) Upon making a determination to privately admonish a judge following a hearing, the commission shall enter the private admonishment in its records and shall immediately mail to the judge (1) a copy of the admonishment, (2) a copy of a notice stating that an admonishment has been entered in the records of the commission, and reciting the date of its entry and the date of mailing of the notice, and (3) a copy of the findings and conclusions. [Effective Jan. 1, 1989.]

(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. [Effective Jan. 1, 1989.]

(c) (Answer to petition) The commission may serve and file an answer within 30 days after the filing of the petition. [Effective Jan. 1, 1989.]

(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. [Effective Jan. 1, 1989.]

(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. [Effective Jan. 1, 1989.]

(f) (Review applicable only after hearing) No review shall be had in the Supreme Court of a private admonishment issued without a hearing. [Effective Jan. 1, 1989.]

**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.**  
**CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE**  
**POLICY DECLARATIONS AS OF DECEMBER, 1988**

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# **POLICY DECLARATIONS**

## **Commission on Judicial Performance**

### **PREAMBLE**

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

### **TITLE**

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

### **DEFINITIONS**

**HEARING** means a formal proceeding before the Commission or three Special Masters pursuant to Rule 905 et seq., to inquire into and based upon charges against the judge issued after full investigation, the judge's answer and legal evidence received, pursuant to Rule 905 et seq.

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

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

**DESIGNATED OFFICER OR OFFICERS** means an individual or individuals designated by the Commission to carry out a specific Commission function, and may be a Commission member or members, a Special Master or Masters or the Commission Director.

## **DIVISION I. INVESTIGATION PROCEDURE**

### **1.1 Staff Inquiry**

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

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

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

### **1.3 Inquiry Letter**

As part of a Staff Inquiry, allegations of claimed misconduct may be furnished the subject judge

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

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

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

### **1.5 Authorization For Inquiry Letter When There Has Been Direct Communication With the Judge**

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

### **1.6 904 Letter**

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

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

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

### **1.8 Advisory Letter**

[Deleted. See Rules of Court 904.1 and 904.2(c)]

### **1.9 Interviews and Statements**

In the course of a staff inquiry or investigation, persons questioned or interviewed to ascertain the validity of allegations shall be admonished that the inquiry or investigation is confidential under the California Constitution and Rules of Court (this does not restrict the informant's communication with the subject judge.) When it

appears that there may be use of the elicited information in connection with possible testimony, or discovery, the person providing the information shall be 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 Demand Following Notice of Intended Private Admonishment Under Rule 904.5**

[Deleted. See Rule of Court 904.5]

#### **2.2 Discovery Procedure**

[Deleted. See Rule of Court 907.5]

#### **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 a 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**

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

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

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

At the first meeting of each calendar year the Commission shall organize itself for the conduct of business for the ensuing year and shall select a Chairperson and Vice-Chairperson.

#### **3.6 Policy Declarations**

When there is Commission approval for staff to draft a Policy Declaration, any proposed enactment, amendment or repeal shall be submitted

to each Commissioner at least thirty (30) days immediately preceding the meeting at which a vote thereon is taken.

### **3.7 Records Disposition**

[Deleted. See Rule of Court 904.6(b).]

### **3.8 Removed From Active Calendar**

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

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

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

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

Should a conflict arise with respect to the examiners' representation, the Commission will consider the appointment of other counsel in place of the Attorney General.

### **3.10 Staff Authorization for Media Announcements**

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

### **3.11 Use of Closed Cases**

[Deleted. See Rule of Court 904.6(a).]

## **DIVISION IV. DISABILITY RETIREMENT APPLICATIONS**

### **4.1 Disability Applications: Confidentiality**

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

### **4.2 Disability Applications: Medical Consultants**

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

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

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

**D.**  
**CALIFORNIA CODE OF JUDICIAL CONDUCT**

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Compliance with the Code of Judicial Conduct

Effective Date of Compliance

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

## 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 1988 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.

## 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.*

(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, or personal knowledge of disputed evidentiary facts concerning the proceedings;

*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 a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

*Commentary: Lawyers in a governmental agency do not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; judges formerly employed by a governmental agency, however, should disqualify themselves in a proceeding if impartiality might reasonably be questioned because of such association.*

*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*

\*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)

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 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;

(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 a 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;

*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 by the terms of Canon 3C(1)(c) or Canon 3C(1)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that the judge's financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

*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.*

*California Commentary: Code of Civil Procedure Section 170.3 has different restrictions from those in Canon 3D.*

1. The Canon permits waivers of disqualifications only in situations involving financial interest or relationship. CCP §170.3 does not contain those limitations.

2. CCP §170.3(b)(1) requires the waiver of disqualification to recite the basis for the disqualification and is effective only when signed by all parties and their attorneys and filed in the record.

3. The Canon provides that the waiver agreement shall be entered into "independent of participation by the judge," whereas CCP §170.3(b)(1) permits the judge to disclose the basis for disqualification on the record and per-

mits the judge to ask the parties and their attorneys whether they wish to waive the disqualification. Section 170.3(b)(2), however, states 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.

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

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

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

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

### **C. Financial Activities.**

(1) Judges should refrain from financial and business dealings that tend to reflect adversely on

their impartiality, interfere with the proper performance of their judicial duties, exploit their judicial position, or involve them in frequent transactions with lawyers or persons likely to come before the courts on which they serve.

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

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

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

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

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

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

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

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

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

*Commentary: Canon 3 requires judges to dis-*

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

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

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

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

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

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

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

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

**F. Practice of Law.** Judges should not practice law.

**G. Extra-judicial Appointments.** Judges should not accept appointment to a 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.*

#### **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 a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

##### **A. Part-time judge.**

A part-time judge is a judge who serves on a

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

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

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

##### **B. Judge Pro Tempore.**

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

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

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

##### **C. Retired Judge.**

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

#### **EFFECTIVE DATE OF COMPLIANCE**

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

## E.

# CALIFORNIA GOVERNMENT CODE

## TITLE 8: THE ORGANIZATION AND GOVERNMENT OF COURTS

### 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 of conduct or performance

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

concurring 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 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.**

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 Judge's 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.**

(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.**

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.

**§ 75060.5.**

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.**

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.**

A judge 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.**

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.**

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.**

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.

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

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Today's date:

Your name:

Your telephone number:

Your address:

Your attorney's name:

Your attorney's telephone number:

Judge's name:

Court:

County:

Name of case:

Please specify exactly what action or behavior of the judge is the basis of your complaint. Please provide relevant dates and the names of others present. Use additional sheets if necessary.

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

Telephone: (415) 557-2503

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