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STATE OF CALIFORNIA
COMMISSION ON JUDICIAL PERFORMANCE

110537

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1987 ANNUAL REPORT

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ACQUISITIONS

COMMISSION ON JUDICIAL PERFORMANCE
1987 ANNUAL REPORT

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COMMISSION MEMBERS



HONORABLE JOHN T. RACANELLI,
Chairperson
Presiding Justice, Court of Appeal
First Appellate District, Division One
San Francisco
Appointed June 1977
Present term expires November 1988



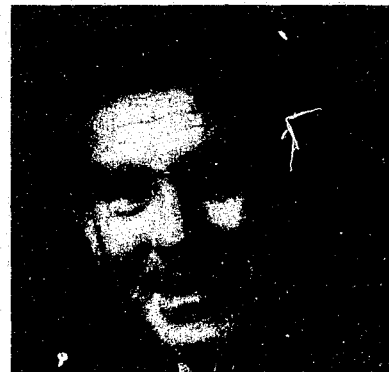
HONORABLE RICHARD A. BANCROFT
Vice Chairperson
Judge of the Superior Court
Oakland
Appointed August 1981
Present term expires November 1988



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



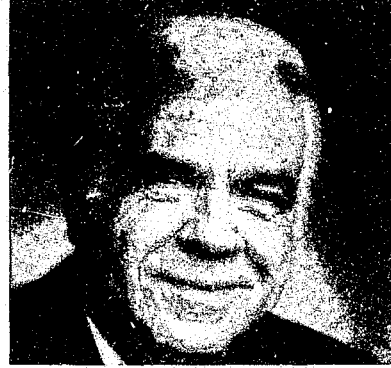
HONORABLE CHARLES E. GOFF
Judge of the Municipal Court
San Francisco
Appointed February 1981
Present term expires January 1988



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



DALE E. HANST
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



HONORABLE CHRISTIAN E. MARKEY, JR.
Judge of the Superior Court
Los Angeles
Appointed March 1987
Present term expires March 1991



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

JACK E. FRANKEL
Director-Chief Counsel

PETER GUBBINS
Investigating Attorney

CYNTHIA DORFMAN
Staff Counsel

HILARY WINSLOW
Investigating Attorney

CAROL G. BABINGTON
Staff Counsel

I

THE COMMISSION DEFINED

The Commission on Judicial Performance is a constitutionally created independent state agency that handles complaints and problems involving judicial performance. The Commission has been in existence since 1960.

There are nine members of the Commission: two judges of courts of appeal, two judges of superior courts, and one judge of a municipal court, each appointed by the Supreme Court; two members of the State Bar who have practiced law in California for ten years, appointed by the State Bar; and two citizens who are not judges, retired judges, or members of the State Bar, appointed by the Governor and approved by a majority of the Senate. All terms are four years. (California Constitution Article VI, Section 8.)

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 action occurring not more than six 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 may also recommend that the Supreme Court retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent. In addition, the Commission is authorized to privately admonish a judge found to have engaged in an improper action or a dereliction of duty.

A flow chart showing the progress of complaints through Commission proceedings is attached. While not a complete overview of the various courses of Commission proceedings, this illustrates some of the typical patterns. Note that a staff inquiry may or may not precede a preliminary investigation pursuant to Rule 904.

During its existence, the Commission has made eleven recommendations to the Supreme Court that judges be removed or involuntarily retired. Six judges were removed as the Commission recommended, and two were involuntarily retired as the Commission recommended. Two of the Commission's removal recommendations were not followed by the Court; in one case the charges against the judge were dismissed, and in the other the judge was publicly censured. Another removal recommendation is pending. An additional ninety judges have retired or resigned with Commission matters pending.

In addition to the constitutional provisions mentioned above, Commission disciplinary jurisdiction derives from California Government Code sections 68701 through 68704 (General Provisions), sections 68725 and 68726 (Cooperation of Public Officers and Agencies), and sections 68750 through 68755 (Investigations and Hearings), and California Rules of Court 901-922 (Rules for Censure, Removal, Retirement or Private Admonishment of Judges). These provisions are included in the attached appendix.

The appendix to this year's report includes for the first time the Commission's declarations of existing policy which reflect internal procedures consistent with and in implementation of the Commission's constitutional mandate, applicable statutes and Rules of Court 901 through 922.

II

SUMMARY OF COMMISSION DISCIPLINARY ACTIVITY IN 1987

At the close of 1987, there were 1446 judicial positions within the jurisdiction of the Commission:

Justices of the Supreme Court	7
Justices of the Courts of Appeal	77
Judges of Superior Courts	724
Judges of Municipal Courts	559
Judges of Justice Courts	79

These figures exclude the various judicial positions created but not operative during 1987.

Five hundred forty-seven complaints were filed with the Commission in 1987. Some of these named more than one judge. Four hundred twenty-two complaints or seventy-eight percent were close following review and consideration by the staff and the Commission because no actionable allegations were presented. Many of these came from individuals dissatisfied with a judge's rulings on the merits of a particular case, frequently a small claims or domestic relations case involving the complainant.

Although these complaints do not warrant investigation beyond review and consideration of the complaint, they nevertheless require that staff spend substantial time writing and talking to the complainants about their difficulties and the reasons these problems are not grounds for Commission proceedings. While this process often does settle an issue for a complainant, many other times a troubled or frustrated or disgruntled person is as unhappy as ever, and repeated calls and letters are not infrequent. This facet of the Commission's work does provide individuals an opportunity to express their dissatisfactions to someone other than the judge or court complained about, and to become informed about the function of the judiciary.

In addition to handling complaints, the Commission responds to inquiries about judicial conduct and performance from citizens, government officials, practicing lawyers, and judges. As a result of these contacts, many questions and problems involving judges are discussed, reviewed, and often resolved.

Of the five hundred forty-seven complaints received in 1987, there was some investigation in one hundred twenty matters. Seventy-five of these investigations included writing to the judge for comment and explanation. Twenty cases went to the stage of an official preliminary investigation under Rule 904 of the California Rules of Court. Seven complaints were consolidated with other complaints, and nineteen were carried over into 1988.

Private disciplinary action or disposition was completed in thirty-eight cases in 1987. Five judges retired or resigned following institution of Commission proceedings; these included some disability cases. The majority of judicial retirements in the course of the year were totally unrelated to proceedings by the Commission. Formal proceedings were ordered in five cases. In four cases, two of which had been initiated in 1986, formal hearings were held. In one case, a recommendation for public discipline was made to the Supreme Court. (*In re Rasmussen* (1987) 43 Cal.3d 536 [severe censure].)

The Commission's workload reached record levels again this year. Two new attorneys were added to the Commission's staff, which formerly consisted of the Director/Chief Counsel and two other attorneys, reflecting the Commission's increased activity at all stages of proceedings.

Another significant event in 1987 was the Chief Justice's appointment of the Judicial Council Advisory Committee on Judicial Performance Procedures. This committee, comprised of active and retired judges and an attorney member of the Commission, was appointed in response to a request from the Commission for a more effective and expeditious mechanism for consideration of amendments and rule changes. The committee considered a wide range of subjects and has recommended a proposed constitutional amendment adding public reproof as a sanction between public censure and private admonishment, rules formalizing the Commission's use of advisory letters and periods of observation and review for matters not warranting formal disciplinary action, and rules clarifying the period within which a trial judge may decide a case. Other topics under consideration by the committee include the scope of confidentiality of Commission proceedings and procedural aspects of investigation and discipline.

Recent Commission annual reports have discussed the Commission's interest in informing the Bench and Bar about the work of the Commission. The staff and members of the Commission have been concerned about the lack of information and misinformation in the legal and governmental communities regarding the Commission's work. Since opportunities to communicate with appropriate groups are limited, the annual report has remained the chief vehicle for providing information. However, the Commission has always welcomed chances to explain and discuss its work.

A number of opportunities arose in 1987. These included participation in the 1987 Judicial College course on judicial conduct, providing a speaker for the August meeting of the Merced County Bar Association, the participation by the Chairperson in a program at the Annual Meeting of the California Judges Association in September, and attendance by the Director and Commissioner Dale Hanst at a meeting with Superior and Municipal Court judges of Ventura County. The Ventura meeting marked the first occasion in the Commission's twenty-seven-year history when judges of a county have invited Commission representatives to respond to questions about Commission procedures and discuss the Commission's work. The meeting proved valuable to both the judges and the Commission representatives. The Commission wishes to encourage exploration of such avenues for demystification of the operation of the Commission with the state's judges, and looks forward to additional opportunities for discussion of the Commission's work at other Bar and judicial gatherings.

III

PUBLIC DISCIPLINE

In 1987, the Supreme Court adopted the Commission's recommendation of removal in *Furey v. Commission on Judicial Performance* (1987) 43 Cal. 3d 1297; that recommendation had been filed in 1986. The Supreme Court also followed the Commission's recommendation of public censure filed in 1986 in *McCullough v. Commission on Judicial Performance* (1987) 43 Cal.3d 534. A recommendation for removal filed by the Commission in 1986 in *Ryan v. Commission on Judicial Performance* SF 25086, is pending in the Supreme Court.

The Commission filed one recommendation for public discipline in the Supreme Court in 1987. In that case, *In re Rasmussen* (1987) 43 Cal.3d 536, the Supreme Court imposed the sanction of severe public censure recommended by the Commission.

Furey v. Commission on Judicial Performance (1987) 43 Cal. 3d 1297

In *Furey v. Commission on Judicial Performance*, the Supreme Court adopted the Commission's recommendation that Judge Robert H. Furey, Jr., be removed from office. This marked the sixth time in the history of the Commission that the Court has followed the Commission's recommendation that a judge be removed.

The Court's determination was based on the record of an eleven-day hearing before three special masters, as well as the report of the special masters and the report and recommendation of the Commission.

In its lengthy opinion, the Court preliminarily noted that Judge Furey, who was elected to the Justice Court of the Santa Catalina Judicial District in 1983, spent one day each week presiding there and the remainder of the week sitting by assignment in various municipal courts on the mainland. The Court found that during his judicial tenure, Judge Furey engaged in various actions constituting eight counts of wilful misconduct and ten counts of conduct prejudicial to the administration of justice that brings the judiciary into disrepute, as follows:

1. In early 1983, Judge Furey interrupted and threatened with contempt a defendant appearing before him to account for completion of community service work imposed as a condition of probation by another judge. When the defendant said he felt the judge was "harassing him," the judge found him in contempt and ordered him immediately incarcerated, despite evidence that the defendant had a medical problem requiring attention.

The judge later presided at the defendant's probation violation hearing, which was held over defense counsel's objection that the defendant had never received written notice of the claimed violation. The judge chided the defendant for failing to bring in more than a "perfunctory" doctor's letter about his medical condition to explain why he had not completed the required community service work, and remanded him to serve one hundred eighty days in county jail. The appellate department of the superior court subsequently reversed the order revoking probation and the jail sentence, directing the municipal court to terminate all proceedings against the defendant.

The Supreme Court found that Judge Furey's display of impatience and hostility toward the defendant constituted prejudicial conduct. The Court also found the judge's abuse of the contempt power to be prejudicial conduct.

2. A defendant who had been ordered by another judge to pay \$300 or serve ten days in jail on a traffic matter appeared before Judge Furey to ask for more time to pay the fine. The judge refused, saying "it is \$300 or ten days today." When the defendant pointed out that others in court were obtaining continuances, the judge warned him to say nothing further and remanded him to serve the ten days. While being directed toward the lockup, the defendant muttered the word "tremendous" under his breath. Judge Furey immediately adjudged him to be in contempt and sentenced him to five days in jail. The defendant then made the sound "shhh," which the judge believed was followed by "it;" the judge again held the defendant in contempt and imposed another sentence of ten days. The defendant was released later that day, after a public defender interceded on his behalf.

The Court found that Judge Furey's abuse of the contempt power, as well as his impatience and hostility toward an unrepresented defendant, constituted prejudicial conduct.

3. A defendant appeared before Judge Furey on Catalina Island and filed a motion to disqualify him under Code of Civil Procedure section 170.6. Judge Furey ordered the case transferred to another court. He then wrote an unbidden note to the judge of that court, recommending that the defendant be given a sentence stiffer than the "standard" sentence for his offense because he had a bad attitude.

The Court adopted the conclusion of the masters and the Commission that this action, given Judge Furey's inexperience and his admission soon afterwards that his action was wrong, constituted prejudicial conduct rather than wilful misconduct.

4. A defendant appeared before Judge Furey to discuss his inability to pay a fine for jaywalking. The judge, who had presided at his jaywalking trial, knew the defendant was indigent and possibly mentally unbalanced. He also believed he was potentially violent. He therefore ordered that the defendant's bag, which was out of his reach, be searched. The bag contained a small paring knife, along with some food. Judge Furey immediately found the defendant in violation of a statute banning knives over four inches long from courtrooms, and had him remanded on \$10,000 bail.

Judge Furey arranged for a public defender to appear with the defendant that afternoon. He thereafter found the defendant in contempt for entering the courtroom with the knife and sentenced him to five days in jail. He also ordered a mental evaluation under Penal Code section 4011.6. When the deputy public defender objected to the examination, the judge imposed a \$500 fine, to be served at the rate of \$30 per day, while continuing to insist on a mental evaluation. The defendant then made several delusional remarks, which resulted in two more findings of contempt and fines of \$500 to be served at the rate of \$30 per day. The superior court subsequently granted a petition for writ of habeas corpus.

The Court adopted the conclusion of the masters and the Commission that Judge Furey engaged in prejudicial conduct by his display of impatience and hostility to the defendant and by his abuse of the contempt power. The Court stated: "We agree that the actions at the very least reflect conduct prejudicial to the administration of justice." The Court found that the result of the judge's actions was that "a mentally disturbed, indigent defendant — who had the misfortune to have a small paring knife in his bag while requesting an extension of time to pay a \$50 fine for jaywalking — was effectively sentenced...to approximately 65 days in jail." The Court continued, "There is little doubt that [the defendant] may have been unstable and in need of treatment, but these punitive measures bear virtually no relation to his almost trivial offense and his obvious need for care."

5. After taking the bench to hear traffic cases, Judge Furey told a group of defendants that if there was a discrepancy between their version of the facts and that of a police officer, he would always believe the officer because perjury was a felony and a police officer would not jeopardize his career over such an insignificant matter.

Judge Furey then heard a traffic trial. An officer testified for the prosecution. During his defense, the unrepresented defendant began reading from a Vehicle Code section. The judge cut him short and found him guilty. The appellate department of the superior court later reversed the judgment because the defendant had been denied the opportunity to cross-examine the police officer and to make a closing argument.

The Court adopted the conclusions of the masters and the Commission that Judge Furey committed wilful misconduct when he made his announcement to the assembled defendants and when he denied the defendant his right to be heard. After clarifying that a finding of "wilful misconduct" requires clear and convincing evidence of a "malicious or corrupt" purpose, the Court accepted the Commission's view

that the judge's purpose was to coerce guilty pleas and thereby expedite the calendar. The Court therefore concluded that the judge was guilty of wilful misconduct.

6. In a number of incidents involving one individual, a woman described in the record as a "foulmouthed and intentionally disruptive spectator and litigant" who frequently appeared in the Catalina court, the Supreme Court concluded that Judge Furey engaged in wilful misconduct.

a. Judge Furey became aware of a letter the woman wrote to the Commission alleging that he had her evicted from the courtroom and directed his bailiff, in doing so, to punch her in the mouth. It appears that the woman had posted this letter at various public places in Avalon. Judge Furey wrote to the woman, directing her to appear before him. When she did, he asked her questions about her letter to the Commission. When she refused to answer, he ordered her to appear in Long Beach to show cause why she should not be held in contempt for language in her letter. He also said if she were found in contempt and remanded to custody he would order a mental evaluation. He also said he would hold her in contempt if she again appeared in his courtroom, unless she came as a party or a witness.

The Court found "fully justified" the Commission's findings that Judge Furey engaged in wilful misconduct by abusing the contempt power and by failing to conduct himself in a manner promoting public confidence in the judiciary. The Court found that the judge's conduct exhibited malice, stating, "It stretches credulity to claim that summoning someone into court and initiating a contempt proceeding for writing a letter to the Commission could be done for a proper judicial purpose."

b. About a month after the incident above, Judge Furey again wrote to the woman, directing her to appear in his courtroom. When she appeared, she attempted to disqualify him under Code of Civil Procedure section 170.6. He denied the motion as inappropriate in a contempt hearing. A peace officer then testified that he had seen the woman in line to board the ferry from the island to Long Beach about two hours after the time Judge Furey had ordered her to appear in Long Beach in connection with the incident described above. He sentenced her to five days in jail and a fine of \$500, which could be served at the rate of \$30 per day, and remanded her forthwith.

Later that afternoon, the judge had the woman brought back into court to ask her questions about whether her son might be living alone in a motel room in Avalon, in violation of a local ordinance. When the woman invoked her right to remain silent, the judge held her in contempt and sentenced her to an additional \$500 fine and five more days in jail.

Five days later, the superior court granted a writ of habeas corpus and subsequently overturned the contempt orders.

The Court adopted the Commission's conclusions that Judge Furey abused the contempt power, failed to conduct himself in a manner promoting public confidence in the integrity of the judiciary, and engaged in vindictive and punitive conduct. The Court found malice in Judge Furey's actions, noting that the facts supported a strong inference that his purpose was to punish the woman and perhaps drive her off the island.

In discussing the contempt proceedings, the Court noted that in such proceedings "the court is often the prosecutor, judge, and jury. The contempt power is virtually unique in our system of justice because it permits a single official to deprive a citizen of his fundamental liberty interest without all of the procedural safeguards normally accompanying such a deprivation." The Court suggested that Judge Furey would have done well to recall the words of an early Supreme Court opinion: "The power [of

contempt] is necessarily of an arbitrary nature and should be used with great prudence and caution. A Judge should bear in mind that he is engaged, not so much in vindicating his own character, as in promoting the respect due to the administration of the laws...." (*People v. Turner* (1850) 1 Cal. 152, 153.)

c. Later, the woman appeared as a defendant in Catalina and filed an affidavit of prejudice against Judge Furey. The case was transferred to another court.

Judge Furey then wrote a letter to a judge of that court, in which he stated: "any statements made by this defendant should be viewed with skepticism....[H]er ability to distort and/or lie can be most persuasive."

The Court adopted the conclusion of the masters and the Commission that Judge Furey was guilty of wilful misconduct. The Court noted that the judge wrote the letter after admitting, in the incident previously described in 3, *supra*, that such conduct was improper.

d. Judge Furey later held the same woman in contempt and sentenced her to five days in jail and a \$500 fine for coming into the courtroom clad in shoes, jeans, and a sweatshirt that left one shoulder bare, revealing the strap of a piece of underclothing or a bathing suit; Judge Furey felt that she was in violation of a posted dress code which disallowed wearing swim suits in court. Judge Furey ordered the woman remanded, and ordered that she not be allowed to make a telephone call. The woman was released that day after she petitioned the superior court for a writ of habeas corpus; the writ was later granted and the contempt order vacated.

The Court found that the incidents were "part of a disturbing pattern of wilful misconduct toward a litigant and courtroom spectator." The Court continued: "...[Judge Furey] was probably dealing with [the woman] in a manner applauded by those who believe her to be a controversial and difficult individual. But a judge's prime responsibility is the evenhanded dispensation of justice, even for the controversial and difficult persons in society." The Court therefore concluded that Judge Furey was guilty of wilful misconduct.

In considering the appropriate disposition, the Court reviewed those cases in which it has previously removed judges on the Commission's recommendation. The Court then considered Judge Furey's claim that the sanction of removal was too harsh, given his industriousness and inexperience. The Court pointed out that neither hard work nor inexperience can mitigate wilful misconduct. The Court also rejected Judge Furey's suggestion that a temporary suspension be ordered, noting that the California Constitution specifically empowers the Court only to remove or publicly censure a judge. The Court concluded: "The purpose of these proceedings is not to punish errant judges but to protect the judicial system and those subject to the awesome power that judges wield. [Citation]...[T]hat purpose will best be served in this case by adopting the recommendation of the masters and of the Commission."

In re Rasmussen (1987) 43 Cal.3d 536

In *Rasmussen*, the judge did not challenge the findings or recommendation of the Commission. He thereby consented to a determination on the merits based on the record filed by the Commission.

Upon reviewing the record, the Supreme Court found that during the period 1981 through 1984 Judge Rasmussen violated Canon 2 of the California Code of Judicial Conduct, which states that "A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." The Court further found that during

that period Judge Rasmussen violated Canon 3A(3), which states: "A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom he deals in his official capacity..." and Canon 3C(1), which states: "A judge should disqualify himself in a proceeding in which his disqualification is required by law, or his impartiality might reasonably be questioned."

The Court found that Judge Rasmussen's violations of Canon 2 included the following incidents: publicly calling a coach of a youth sports event a "pervert" based on the judge's knowledge that the coach had once been convicted of child molestation; initiating probation revocation proceedings against a probationer based on personal reasons other than the faithful discharge of his duties; communicating to a criminal defendant his likely sentence in the absence of counsel; engaging in intemperate, open-court criticism of a fellow judge; improperly suggesting that the State Bar investigate an attorney who had asserted the attorney-client privilege in response to overly inquisitive questioning in chambers; and displaying a lack of impartiality to, and petty harassment of, attorneys who filed affidavits of prejudice against him.

The Court further found that Judge Rasmussen's violations of Canon 3 included the following incidents: discouraging the exercise of peremptory disqualification rights by inappropriate means (including the making of intemperate remarks to counsel) and attempting to inconvenience counsel by withholding judgments in unrelated cases, refusing to disqualify himself from sentencing proceedings after having substantively communicated to the defendant his likely sentence in the absence of counsel, initiating probation revocation proceedings based on patently insufficient evidence, and displaying an intolerant and persistently abusive and sarcastic demeanor toward litigants, attorneys, and others in his courtroom.

The Court held that this misconduct represented "a disturbing, intolerable affront to the legal profession, and to the public." 43 Cal.3d at p. 536. The Court noted that were it not for persuasive testimony from numerous attorneys that since 1984 the judge had engaged in continuous efforts to temper his courtroom behavior, a more severe sanction than severe public censure might be warranted.

McCullough v. Commission on Judicial Performance (1987) 43 Cal.3d 534

In the *McCullough* case, the judge also did not challenge the Commission's findings or recommendation of public censure. The Supreme Court agreed with the Commission's finding that between 1982 and 1985, despite three private admonishments and inquiries from the Commission and the attorneys involved, Judge McCullough failed to decide a submitted case for three years and nine months. The Court also agreed with the Commission's finding that during this period, the judge executed salary affidavits certifying that no case was pending and undecided which had been under submission for more than ninety days. The Court found that the protracted delay and failure to respond amounted to persistent failure to perform judicial duties. The Court also found that Judge McCullough's failure to decide the case along with his execution of salary affidavits and receipt of salary constituted conduct prejudicial to the administration of justice that brings the judicial office into disrepute. On this basis, the Court imposed the sanction of public censure recommended by the Commission.

IV

PRIVATE DISCIPLINE AND DISPOSITION

In 1987, thirty-eight cases warranted private disciplinary action or disposition.

In six of these, private admonishments were formally imposed pursuant to California Rule of Court 904(d). 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 six cases resulting in admonishments are summarized below:

A judge frequently expressed impatience and anger toward attorneys, witnesses, and defendants. The records of cases examined by the Commission supported complaints that the judge was interrupting and chastising witnesses and threatening attorneys with contempt without justification.

A reviewing court found that a judge had demonstrated pre-judgment in a probation hearing. The judge also routinely set bail in a manner which prevented posting of ten percent bail, and exerted pressure on the Public Defender to transfer a deputy public defender with whom the judge was upset.

A judge's claimed abusiveness to attorneys was demonstrated by the judge telling them to "shut up," calling them "lady" or "fellow" and, in one instance, abusing the contempt power to restrict an attorney's cross-examination.

A judge failed to decide two matters for some twenty-seven months, during which period the judge regularly executed salary affidavits attesting the judge had no submitted cases pending longer than ninety days.

A judge delayed decision in several cases for over ninety days while regularly executing salary affidavits. The Commission accepted in mitigation that the delays were partially attributable to the judge's participation in an arduous settlement program.

A judge engaged in displays of temper towards attorneys who disqualified the judge under Section 170.6 of the Code of Civil Procedure providing for peremptory disqualification of a judge and appeared to act in disregard of that statute. The judge also ordered incarceration of indigent defendants unable to pay fines, without adequate consideration of alternatives or ability to pay.

In some cases, the Commission will determine that formal discipline is not warranted but will advise caution or express disapproval of a judge's conduct for educational purposes. Thirty-two complaints were so closed in 1987. These cases mostly involved perceived ethical violations or apparent impropriety of a minor degree.

Fifteen of the thirty-two judges were cautioned to bear in mind the requirements of Canon 3 of the California Code of Judicial Conduct regarding patience and courtesy based on the following reported conduct:

A judge left the bench while a defendant was addressing the court.

In two cases, a judge exhibited apparent impatience toward a litigant and made remarks perceived as sarcastic.

In two separate matters a judge made critical comments in the presence of jurors about attorneys appearing before the judge.

Two judges were warned regarding conflicts with each other.

Two judges denied indigent litigants court fee waivers to which the judges knew or should have known the litigants were entitled.

A judge questioned about reports of unsuitable temperament at first exhibited unwillingness to examine courtroom demeanor.

A judge sharply criticized an attorney and then cited the attorney for contempt without justification.

A judge was perceived as coming in physical contact with a litigant while attempting to calm him in a chambers conference.

A judge made harsh and intemperate comments to a victim at a hearing.

A judge made apparently intemperate comments to an attorney such as "I really don't have time to practice law for you," and made disparaging remarks about appellate decisions with which the judge disagreed.

A judge who dismissed a civil case was advised of the need for care and patience in dealing with pro per plaintiffs.

The balance of the judges were cautioned for a variety of actions, as follows:

A judge made gratuitous comments to a litigant that appeared to be disparaging.

A judge engaged in an inappropriate display of impatience and anger when the judge refused to let a defendant consult with counsel before entering a plea. When the defendant then declined to enter a plea, the judge revoked the defendant's own recognizance release and ordered him into custody.

A judge apparently failed to provide for continuous legal representation of a client when the judge was appointed to the bench and later, after appointment to the bench, used attorney letterhead in correspondence with the former client.

A judge's form letter, sent to defendants who had been assessed attorneys' fees for the services of the public defender, appeared as inappropriate judicial involvement in the county's efforts to collect fees.

A judge granted a continuance ex parte to a litigant employed by the county without notice to the opposing party, thereby appearing to show favoritism.

A judge was a featured speaker at a campaign function for a candidate for non-judicial office.

Another judge publicly endorsed candidates for non-judicial office and attempted to influence matters within the ambit of other officials.

A judge placed on the record jocular but inappropriate remarks about the appellate court.

A judge's address to a conference of court officials included jokes that some of the audience found offensive.

A judge forcibly restrained a citizen unnecessarily.

A judge was inappropriately and gratuitously publicly critical of the credibility of certain witnesses in a number of cases.

A judge made derogatory remarks about the credibility of a police officer who had been involved in a case against the judge.

A presiding judge appeared to ignore a citizen's complaint about a court-appointed official.

Two judges used official stationery in personal correspondence.

A judge's attendance to personal matters when the judge was scheduled in more than one court in the judge's judicial district on the same day fostered an impression of unavailability.

A presiding judge who appeared to ignore two letters of complaint about a court commissioner was reminded of his responsibility under Court Rule 532-5(18) to supervise court-appointed personnel.

A judge who had initiated contempt proceedings was reminded of the need for strict observance of the statutory requirements in those actions.

V

GENDER BIAS

During the past several years the issue of gender bias within our society has received increased public attention. The court system has not remained immune or unresponsive. A thirty-two-member Judicial Council Advisory Committee on Gender Bias in the Court System is now engaged in studying the topic.

In January of 1987, the Judicial Council added new provisions to the Standards of Judicial Administration specifically directed at preventing gender or other bias in the administration of the court system (see sections 1-1.3, *Standards of Judicial Administration Recommended by the Judicial Council*, Appendix, Cal. Rules of Ct.). Gender bias was a subject of significant judicial education efforts during the year. Several courses taught at the 1987 California Judicial College included the topic of gender bias. It has been a part of the curriculum in the Fairness course at the Continuing Judicial Studies Program for several years.

A related issue of invidious discrimination prompted the California Judges Association in September 1986 to add a new provision to Canon 2 of the Code of Judicial Conduct proscribing judicial membership in organizations that practice invidious discrimination on the basis of race, sex, religion, or national origin. The problem was deemed of such importance that the California Judges Association Committee on Judicial Ethics issued an opinion delineating the proscriptions intended by the new enactment.

Exhibitions of gender bias have been regarded as conduct prejudicial to the administration of justice that brings the judicial office into disrepute and therefore a basis for judicial discipline. The Commission on Judicial Performance has conducted investigations in cases which included allegations of gender bias. However, despite the fact that gender bias is perceived as a problem within the court system affecting the fair and impartial administration of justice, to date there has been comparatively limited reporting of such incidents to the Commission.

What is Gender Bias?

In its 1984 report the New Jersey Supreme Court Task Force on Women in the Courts defined gender bias as:

... the predisposition or tendency to think about and behave toward people mainly on the basis of their sex. It is reflected in attitudes and behavior based on stereotypical beliefs about the sexes' "true natures" and "proper roles" rather than independent evaluations of each individual's abilities, life experiences and aspirations.

Some of the more subtle expressions of gender bias identified with the judiciary included:

- The judge who in a courtroom setting compliments a female attorney on her appearance is presenting a non-professional image and detracts from her credibility.
- A judge who at conferences in chambers falls into camaraderie with male attorneys while excluding female counsel.
- The judge who expresses gender bias through his or her demeanor, such as leaning forward and giving full attention to a male expert witness while slumping and eyeing the clock when a female expert testifies.
- The judge who acts impatient with victims of domestic violence due to lack of understanding of the psychological and economic constraints on battered spouses.

In March of 1986 the New York Task Force on Women in the Courts stated that there still existed a widespread perception within the legal field that some judges, male attorneys, and court personnel do not treat female attorneys with the same dignity, respect, and professional acceptance as male attorneys, although there had been improvement in the way female attorneys were treated by the courts. Among the most commonly cited types of conduct considered inappropriate within the courtroom context were the following:

- 1) being addressed in familiar terms;
- 2) being subjected to comments about personal appearance;
- 3) being subjected to degrading remarks and conduct including verbal or physical sexual advances; and
- 4) being subjected to dismissive and less tolerant treatment.

Judicial Discipline for Gender Bias — California

Among the cases in California where judicial discipline has been imposed for conduct constituting gender bias are *In Re Robert S. Stevens* (1981) 28 Cal.3d 873, and *Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270. In *Stevens, supra*, a superior court judge was publicly censured for conduct including a pattern of unsolicited and protested telephone calls to a former secretary in which he used vulgar and offensive language of an explicitly sexual nature. In *Geiler, supra*, a municipal court judge was removed from judicial office for a number of acts of crude behavior and vulgar conduct which included habitually using vulgar and profane language in conversations with his female clerk and, on two occasions, making lustful references to her, once while in chambers in the presence of a group of professional associates. The judge was also found to have invited two female attorneys into his chambers where he discoursed on the salacious nature of the evidence adduced in criminal cases concerning homosexual acts and rape, punctuating his commentary with profane terms for bodily functions.

Two cases presently pending involve gender bias charges.

Judicial Discipline for Gender Bias — Other Jurisdictions

Out-of-state cases illustrate the increased concern over gender bias in the court system. Judicial discipline ranging from reprimand to removal from judicial office has been imposed for judicial misconduct constituting gender bias. New York reports more gender bias cases than any of the other states. Gender bias cases from other jurisdictions can be grouped into several categories (which are not intended to be exclusive or exhaustive): (1) demeaning and undignified remarks concerning the physical appearance and/or temperament of women; (2) conduct constituting sexual harassment, e.g., suggestive and/or off-color remarks including verbal and physical sexual advances; and (3) preferential and/or discriminatory treatment based on sexual identity.

Following is a sample of out-of-state cases in which judicial discipline has been imposed for acts of gender bias.

New York: A judge was publicly reprimanded for swatting at a female attorney's hand with some legal papers, and explaining that "I like to hit girls because they are soft." In another case a judge was disciplined for addressing a female attorney as "little girl" twice. In a third case, a judge was censured for making a public comment to a newspaper reporter regarding a possible sentence reduction in a pending rape case, and remarking that "maybe they ended up enjoying themselves." In still another case, a judge was admonished for conduct, over a four-year period, which included numerous improper comments to female attorneys referring to their appearance and physical size, suggesting that they could get whatever they were asking of the court because of their physical appearance.

Minnesota: A judge was reprimanded and placed on probation for impatient, undignified, discourteous, and publicly critical conduct toward female attorneys appearing before him. Admitted conduct included sexually harassing and embarrassing female court employees and female attorneys by making suggestive and off-color remarks to them in the presence of others, attempting to make dates with them, and touching them in offensive ways.

Illinois: A judge was publicly reprimanded for courtroom remarks to one female attorney to the effect that "ladies should not be lawyers," "do not belong in court," and "should be at home raising a family." In another instance he told a pregnant attorney that he "would never allow a pregnant woman to try a case with him," and in yet a third

instance he told a pregnant attorney that "if your husband had kept his hands in his pockets you would not be in the condition you are in."

Washington: A judge was censured for conduct which included the following: commenting about the size of one staff member's breasts; speculating about the type of lingerie she wore; requesting an employee to wear clothing that "looks sexy on her;" referring to a clerk as "young, tender flesh;" discussing with another clerk her "womanly odor;" and hugging and kissing another in an offensive and embarrassing manner.

California Outlook

In 1985 the State Bar Committee on Women in the Law surveyed women lawyers in small firms in California. Approximately forty percent of those responding reported experiencing gender bias in the courtroom. Indications are that gender bias exists, and that there may be unreported incidents of unacceptable conduct in this area as well as in other areas of judicial conduct. The Commission on Judicial Performance is committed to fulfilling its responsibilities, but can act only on the basis of reported incidents.

VI

VOLUNTARY DISABILITY RETIREMENT

Pursuant to Government Code section 75060, et seq., a judge in office for two or more years who is unable to discharge efficiently the duties of office by reason of a mental or physical disability that is or is likely to become permanent is eligible for disability retirement upon the approval of the Commission and the Chief Justice. These statutes, enacted by the Legislature in 1953 but involving the Commission since 1967, give the Commission an additional, non-disciplinary duty not included in the constitutional provisions setting forth the Commission's disciplinary function.

Since 1967, one hundred fifty-eight applications for disability retirement have been considered by the Commission. The Commission approved one hundred thirty-three of these requests and denied fourteen. Four applications were withdrawn prior to Commission action. Two applications are currently pending. In five cases in which the Commission initially denied requests, judges took legal action resulting in the requests being granted.

The disability retirement process involves several steps. First, a judge seeking a disability retirement executes a disability retirement request and files a medical certificate under penalty of perjury with supporting medical reports. The Commission may examine other medical and hospital reports and records and request additional medical data from the judge's physicians, ask for an independent evaluation of the existing data under an arrangement entered into with the deans of the four medical schools of the University of California, and/or arrange for the judge to submit to independent medical examination for report to the Commission. After thorough review and consideration of a disability application, the Commission votes its approval or denial. If the application is approved, it is sent to the Chief Justice for independent consideration. An application which is approved by both the Commission and the Chief Justice is implemented by the Public Employees Retirement System, which administers the Judges' Retirement Act.

The Commission wishes to call attention to Policy Declarations 4.1 and 4.2 regarding disability retirement. Under declaration 4.2, the filing of a disability application may be revealed upon receipt of an appropriate inquiry.

In discharging its responsibilities under Government Code section 75060, et seq., the Commission has frequently noted a number of problems inherent in the wording and content of the statutes. The Commission's attempts to bring these matters to the attention of the Legislature have thus far met with little success.

In March of 1987, Chairperson Racanelli sent to the appropriate legislative committee chairs a letter identifying some of the main problem areas. Listed first is the overbreadth of the key statutory language, which makes any mental or physical disability that renders the judge "unable to discharge efficiently the duties of his office" a potential basis for disability retirement. Chairperson Racanelli's letter then highlights inadequacies of the statutory scheme in relation to pre-existing, partial, and temporary disabilities; it also points out difficulties in provisions concerning recovery from disability and the grant of disability retirement at the close of a terminal illness. The letter suggests the formation of a committee or task force to revise the disability legislation for submission to the Legislature. However, there is apparently no active legislative consideration of these basic statutory problems.

The formation of the Judicial Council Advisory Committee on Judicial Performance Procedures, discussed in Section I, *supra*, provided another opportunity for review of these problem areas. That committee has not yet had an opportunity to grapple with these questions, but it is expected that it may do so in 1988. Although the Commission has not felt the Commission on Judicial Performance is the proper agency to draft and sponsor legislative changes affecting judges' retirement benefits, it will persist in its efforts to facilitate the long overdue revamping of the disability retirement statutes.

APPENDICES

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

CASES COMING BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

Five-Year Summary - 1983-1987

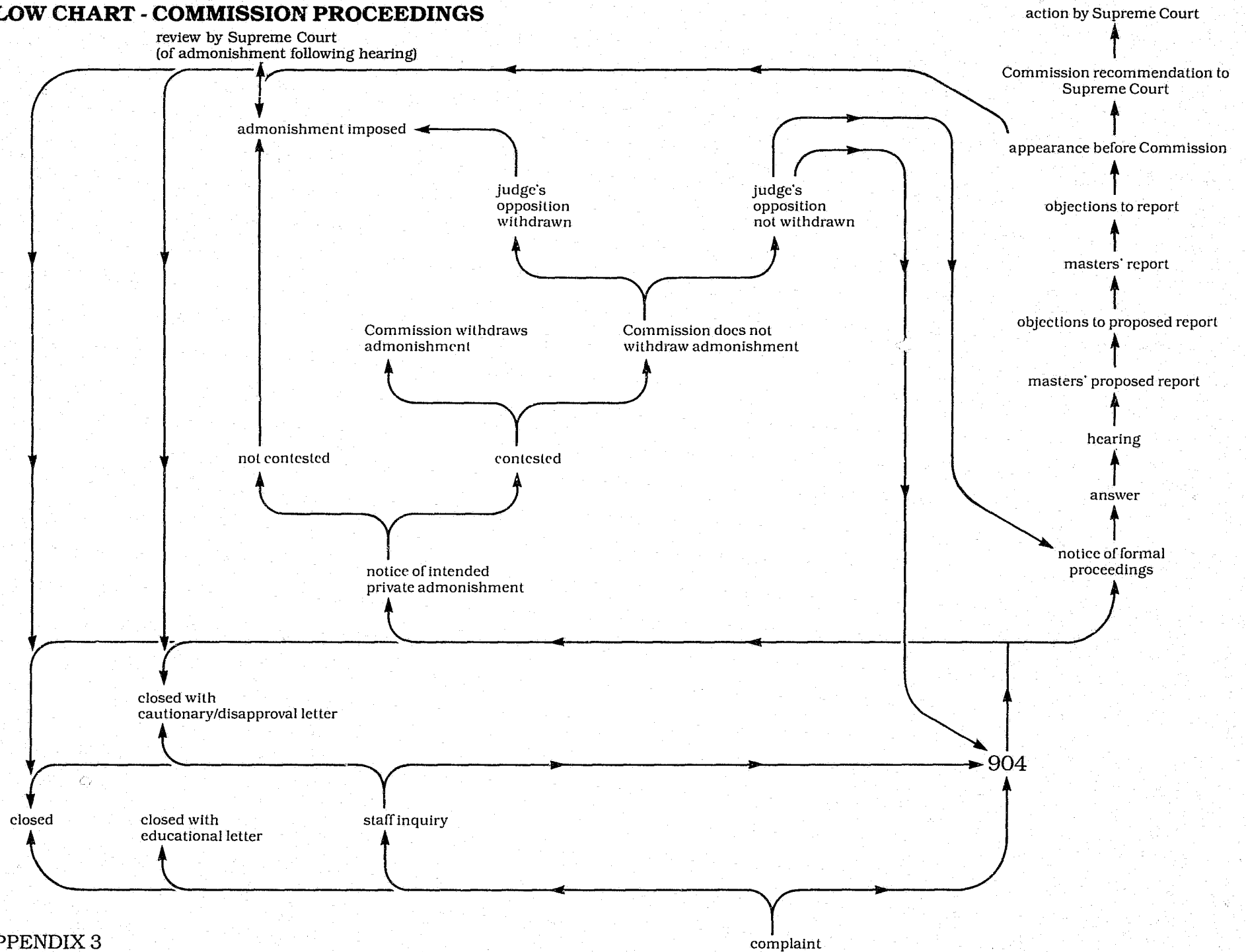
Year	Complaints Filed	Inquiries (Some kind of Investigation)	Judges Contacted	Preliminary Investigations	Cautionary/Educational Letters	Admonishments	Resignations or Retirements While Under Investigation	Public Discipline
1983	351	63	56	21	*	6	3	1 censure 1 severe censure 1 removal
1984	388	62	64	17	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 1 severe censure 1 removal

January 1988

These figures do not include the number of cases carried over from one year to the next. Nineteen of the 547 complaints received by the Commission in 1987 were carried over into 1988. Also, some of the cases in which investigations were conducted and/or action taken in 1987 resulted from complaints received in 1986.

* Figures not available

FLOW CHART - COMMISSION PROCEEDINGS



GOVERNING PROVISIONS

A.

CONSTITUTION OF CALIFORNIA
Article VI, Sections 8 and 18

SEC. 8. 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 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, appointed by the Governor and approved by the Senate, a majority of the membership concurring. All terms are 4 years.

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.

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 may privately admonish a judge found to have engaged in an improper action or a 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) The Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings.

B.

CALIFORNIA RULES OF COURT Title III Miscellaneous Rules

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

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 formal hearing it is determined there is no basis for further proceedings or recommendation of discipline, the Commission may issue a short explanatory statement.

(3) When a formal hearing has been ordered in a proceeding in which the subject matter is generally known to the public and in which there is broad public interest, and in which confidence in the administration of justice is threatened due to lack of information concerning the status of the proceeding and 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 proceed-

ings, 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 prescribe, submit to a medical examination ordered by the Commission. The examination must be limited to the conditions stated in the showing for good cause. No examination by a specialist in psychiatry may be required without the consent of the judge.

Rule 904. Preliminary Investigation; Private Admonishment

(a) The Commission, upon receiving a verified statement, not obviously unfounded or frivolous, alleging facts indicating that a judge is guilty of wilful misconduct in office, persistent failure or inability to perform his duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or that he has a disability that seriously interferes with the performance of his duties and is or is likely to become permanent, or that he has engaged in an improper action or a dereliction of duty, shall make a preliminary investigation to determine whether formal proceedings should be instituted and a hearing held. The Commission without receiving a verified statement may make a preliminary investigation on its own motion.

(b) The judge shall be notified of the investigation, the nature of the charge, and the name of

the person making the verified statement, if any, or that the investigation is on the Commission's own motion, and shall be afforded reasonable opportunity in the course of the preliminary investigation to present such matters as he may choose. Such notice shall be given by prepaid certified or registered mail addressed to the judge at his chambers and at his last known residence.

(c) If the preliminary investigation does not disclose sufficient cause to warrant further proceedings, the judge shall be so notified.

(d) 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 or a hearing, and the requirement of a hearing prior to seeking review of the action in the Supreme Court.

Rule 904.5 Demand for Appearance or Hearing

Within 15 days after mailing of a notice of an intended private admonishment the judge may request either an appearance before the Commission or a hearing by filing a written demand therefor with the Commission. Thereupon the Commission may make further preliminary investigation or may institute formal proceedings as provided in rule 905, but shall not recommend the censure, retirement or removal of the judge unless substantial and serious new facts to justify such a recommendation are proved in the formal proceedings.

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) 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 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) At a hearing before the Commission or masters, legal evidence only shall be received, and oral evidence shall be taken only on oath or affirmation. The examiner or the judge may propose to the other party an agreed statement in place of all or a part of the testimony. An agreed statement shall not foreclose argument to the Commission or masters.

(b) 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 origi-

nal 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

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 an answer, for the commencement of a hearing before the Commission, for the transmittal of the masters' proposed report to the parties, for filing with the masters a statement of objections to the proposed report of the masters, for the transmittal of the masters' report to the Commission, and for filing with the Commission a statement of objections to the report of the masters. The presiding master may similarly extend the time for the commencement of a hearing before masters.

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 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. Entry and Review of Commission Proceeding Resulting in Private Admonishment

(a) Upon making a determination to privately admonish a judge following a hearing, the Commission shall enter the determination in the record and shall immediately send a private admonishment to the judge by mail with notice of the entry thereof and a copy of the findings and conclusions.

(b) Within 60 days after a private admonishment is entered in the records of the Commission, the Supreme Court, on its own motion, or on petition as provided in subdivision (c), may order the cause transferred to itself for hearing and decision, and within the original 60-day period, or any extension thereof the Supreme Court may for good cause extend the time for one or more additional periods not to exceed a total of an additional 60 days.

(c) A judge seeking review of the Commission's action in the Supreme Court shall serve and file a petition for review within 30 days after the private admonishment is entered in the records of the Commission. Proof shall be made of the delivery or mailing of three copies of the petition to the Commission. Forthwith upon receipt of the copies 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.

(d) An answer to the petition for review may be served and filed by the Commission within 45 days after the private admonishment is entered in the records of the Commission.

(e) Except as provided in these rules, the petition and answer shall, insofar as practicable, conform to the provisions of rules 15 and 28. Each copy of the petition shall contain or be accompanied by a copy of the admonishment and the written findings of fact and conclusions of law.

(f) Review in the Supreme Court of the private admonishment 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 the time specified in subdivision (b) of this rule, the petition shall be deemed denied and the clerk shall enter a notation in the register to that effect.

(g) No review shall be held in the Supreme Court of a private admonishment issued without a hearing.

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

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

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

Rule 922. Definitions

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

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

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

(c) "Chairman" includes the acting chairman.

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

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

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

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

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

(i) The masculine gender includes the feminine gender.

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

C.
CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE
POLICY DECLARATIONS AS OF DECEMBER, 1987

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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(b), a reasonable time for a judge to respond to the merits of an inquiry letter or letter under Rule 904 shall be fifteen (15) days. 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

When, during an investigation, the Commission determines that a judge's conduct does not constitute a basis for further proceedings but does warrant concern, the Commission may, upon termination of its consideration of the case, instruct staff to so inform the judge by Advisory Letter or a Letter of Caution.

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

1. DEMAND means a notice in writing of the judge's opposition to an intended private admonishment which shall be filed with the Commission within fifteen (15) days after mailing of a notice of an intended private admonishment.

A Demand for an Appearance may include a written STATEMENT of the judge's objections, both legal and factual, to the Commission's findings. The Statement may include points and authorities in support of any legal arguments, and verified statements in opposition to the Commission's factual findings. A Statement shall be filed with the Commission within twenty (20) days after filing of a Demand for an Appearance.

Following timely receipt of a Demand, the Commission may (A) schedule an Appearance, (B) schedule a Hearing, or (C) set aside the intended admonishment and terminate the proceeding.

2. APPEARANCE is a judge's opposition in person with or without counsel to informally contest imposition of the private admonishment

in argument before the Commission. Argument shall be limited to oral presentation by the judge not to exceed twenty (20) minutes.

After an Appearance, the Commission shall set aside the intended private admonishment and (A) order that formal charges issue pursuant to Rule 905 et seq., or (B) make further investigation under Rule 904, or (C) terminate the proceeding. The Commission may impose the admonishment only upon the judge's withdrawal of opposition.

3. HEARING means a formal proceeding before the Commission or Special Master or Masters pursuant to Rule 905 et seq., and may follow a demand under paragraph 1 above, or an Appearance under paragraph 2 above.

2.2 Discovery Procedure

1. The procedures provided herein shall constitute the exclusive procedures for discovery. Discovery may be obtained only after a written notice of formal proceedings is issued pursuant to Rule 905, California Rules of Court.

2. The examiners and respondent are each entitled to discovery from the other in accordance with these procedures.

3. All requests for discovery must be made in writing to the opposing side within thirty (30) days after service of the answer to the written notice of formal proceedings or within thirty (30) days after service of the written notice of formal proceedings if no answer is filed, or within fifteen (15) days after service of any amendment to the notice.

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

5. The following items may be inspected or copied by the side requesting discovery:

a) The names, and if known, the business addresses, and business telephone numbers of witnesses then intended to be called by the opposing side;

b) All statements pertaining to the subject matter of the proceedings, including any impeaching evidence, made by any witness then intended to be called by either side;

c) All statements pertaining to the subject matter of the proceedings made by a person named or described in the notice, or amendment to the notice, other than respondent, when it is claimed that an act or omission of respondent as to such person is a basis for the formal proceeding;

d) Any investigative reports made by or on behalf of the Commission, the examiners, or respondent, which pertain to the subject matter of the proceeding;

e) All writings, including but not limited to reports of mental, physical and blood examina-

tions, which are then intended to be offered in evidence by the opposing side;

f) Any physical item of evidence then intended to be offered in evidence;

g) Any writing or physical item of evidence which would be admissible in evidence at hearing.

6. When either side receives a written request for discovery in accordance with these procedures, there shall arise a continuing duty to provide discovery of items listed in the written 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 the request is made and within a reasonable time after any discoverable items become known to the side obligated to provide discovery.

7. The Commission or the masters may, at any time and at their discretion, order the taking of the deposition of respondent. As to any other person having personal knowledge of the subject matter of the proceeding, the taking of any deposition shall be ordered only upon a showing by the side requesting the deposition that material and relevant evidence not discoverable through other procedures as provided herein is likely to be obtained from the deposition. If a deposition is ordered to be taken, the procedures set forth in Government Code section 68753 shall be followed. The side requesting any deposition shall bear all expenses and costs of such deposition.

8. Failure to comply with a discovery request as authorized by these procedures shall require that the withheld items be suppressed or, if such items have been admitted into evidence, be stricken from the record. If testimony is elicited during direct examination and the side eliciting such 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 withheld items or direct examination testimony of a witness whose statement was withheld upon condition that the side against whom such evidence is sought to be admitted is granted a reasonable continuance to prepare against such 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 such evidence could have been ordered stricken by the masters for violation of a valid discovery request.

9. 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 respondent, or by respondent's attorneys shall not be protected as work product.

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.

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 implement and clarify procedures for judges who become subject to Rule 904, et seq. These are primarily Declarations on (1) Time Limits for Judges' Responses to 904 Letters, (2) Demand Following Notice of Intended Private Admonishment, (3) Commission Discovery Procedure, and (4) Pre-Hearing Conference. These, as well as any other comparable Policy Declarations, 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

The Commission shall adopt a Records Disposition program designed to dispose of those records which are no longer necessary.

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 exist-

ence 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) or (3) 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

Prior complaints against a judge in which the Commission approved and adopted the Director's action closing the matter shall not be routinely reported to the Commission when a new complaint against the judge comes before the Commission.

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 may be revealed upon receipt of an appropriate inquiry.

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.

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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 1986 Annual Meeting, at which time the Code was re-cast in gender-neutral form.

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 the 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 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 issue 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 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 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 one hundred dollars per year per political party or organization or candidate, or in excess of an aggregate of five hundred dol-

lars 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 at 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, and 5G.

(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
QUALIFICATIONS [now PERFORMANCE]**

Article I

GENERAL PROVISIONS

§ 68701. Definitions

As used in this chapter, "commission" means the Commission on Judicial Qualifications [now 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 judges' senior judge status terminated for incapacity or any failure to carry out the duties of the office.

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

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

§ 68703. Expenses

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

§ 68704. Concurrence of majority in acts of council

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

Article 2

**CO-OPERATION OF PUBLIC
OFFICERS AND AGENCIES**

§ 68725. Assistance and information

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

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

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

Article 3

INVESTIGATIONS AND HEARINGS

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

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

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

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

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

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

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

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

§ 68753. Depositions

In any pending investigation or formal proceeding, the commission or the masters may order the deposition of a person residing within or without the state to be taken in such form and subject to such limitations as may be prescribed in 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 3

DISABILITY RETIREMENT

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

(a) Any judge who is unable to discharge efficiently the duties of his office by reason of mental or physical disability that is or is likely to become permanent may, with his consent and with the approval of the Chief Justice or Acting Chief Justice and the Commission on Judicial Qualifications [now Performance], be retired from office. The consent of the judge shall be made on a written application to the Commission on Judicial

Qualifications [now Performance]. The retirement shall be effective upon approval by the designated officers, except as provided in subdivision (b) of this section. A certificate evidencing such 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 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 death if the designated officers, prior to the filling of the vacancy created by such 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 has personally examined the judge applying for retirement under this section and that he is of the opinion that the judge is unable to discharge efficiently the duties of his office by reason of a mental or physical disability that is or is likely to become permanent is presented to the persons having the responsibility to approve or disapprove the retirement.

§ 75060.1. Application of section; claim against state

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

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

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

§ 75060.6. Allowance; computation of amount; fitness examination; effect

Except as provided in Section 75060.5, every judge who retires pursuant to Section 75060 shall during the remainder of his or her life, receive an allowance equal to one-half of the salary payable, at the time the allowance falls due, to the judge holding the judicial office to which he or she was last elected by the people. The allowance shall be paid by the state at the times and in the manner provided for the payment of salaries of justices of the Supreme Court.

The Commission on Judicial Performance, in its discretion, and from time to time, may require any judge who is receiving an allowance under

this section and who is under the age of 65 years to undergo medical examination. The examination shall be made by one or more physicians or surgeons, appointed by the Commission on Judicial Performance, at the place of residence of the judge or other place mutually agreed upon. Upon the basis of the examination the commission shall determine whether he or she is still incapacitated, physically or mentally, for service as a judge. If the commission determines, on the basis of the results of the medical examination, that he or she is not so incapacitated, he or she shall be a judicial officer of the state, but shall not exercise any of the powers of a justice or judge except while under assignment to a court by the

Chairman of the Judicial Council. The allowance of the judge shall cease if he or she refuses an assignment while he or she is not so incapacitated. The provisions of Section 68543.5 are applicable to such a judge. The provisions of this section and of Section 75060 are applicable to all judges of courts of record in this state.

§ 75061. Disability retirement; prerequisites

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