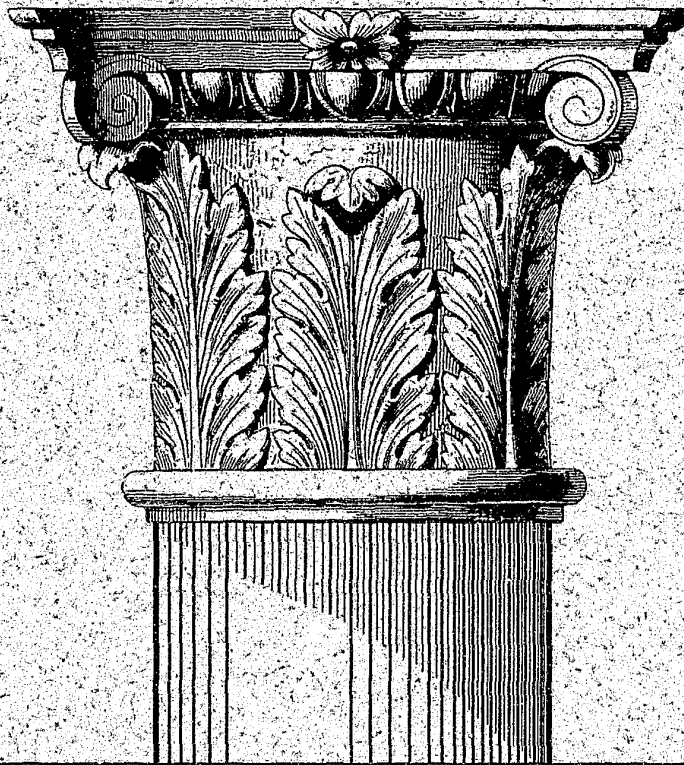




STATE OF CALIFORNIA
COMMISSION
ON JUDICIAL
PERFORMANCE
1993 ANNUAL REPORT

149392



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COMMISSION MEMBERS



**HONORABLE
EUGENE M. PREMO**
Chairperson
Judge Member
Court of Appeal
Appointed February 1989
Present term expires
November 1994



**HONORABLE
INA LEVIN GYEMANT**
Vice-Chairperson
Judge Member
Superior Court
Appointed September 1988
Present term expires
November 1996



**HONORABLE
RUTH ESSEGIAN**
Judge Member
Municipal Court
Appointed May 1990
Present term expires
January 1996



CHRISTOPHER J. FELIX
Public Member
Appointed June 1992
Present term expires
June 1996

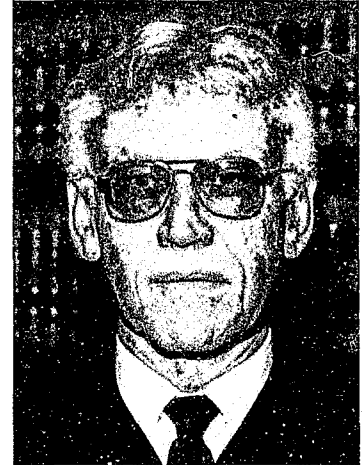
COMMISSION MEMBERS continued



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



ANDY GUY
Public Member
Appointed November 1985
Present term expired
October 1993



**HONORABLE
WILLIAM A. MASTERSON**
Judge Member
Court Of Appeal
Appointed February 1989
Present term expires
June 1997



JAMES W. O'BRIEN
Attorney Member
Appointed March 1992
Present term expires
December 1996



**HONORABLE FUMIKO
HACHIYA WASSERMAN**
Judge Member
Superior Court
Appointed July 1993
Present term expires
March 1995



**Outgoing Member
HONORABLE
ARLEIGH WOODS**
Judge Member & Chairperson
Court of Appeal
Term expired
March 1993

COMMISSION STAFF

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Director-Chief Counsel

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NANCY GILMORE
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PETER GUBBINS
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MARK JACOBSON
Staff Counsel

JENNIFER L. MACHLIN
Staff Counsel

JOHN PLOTZ
Staff Counsel

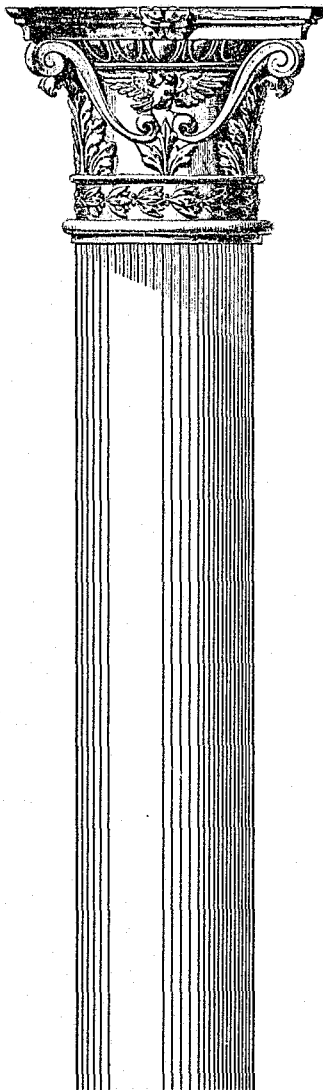
FRANCES A. STEPHENS
Judicial Secretary

ELAINE D. SWEET
Judicial Secretary/Administrative Assistant

BERNADETTE M. TORIVIO
Supervising Judicial Secretary

BARBARA JO WHITEOAK
Judicial Secretary

I.
THE
COMMISSION
IN 1993:
AN OVERVIEW



▶ A. The Commission's Function and Composition

The Commission on Judicial Performance is an independent state agency that handles complaints involving judicial misconduct and disability of state judges. The commission was founded in 1960. It has nine members: two justices of the courts of appeal, two judges of the superior courts, and one judge of a municipal court, all appointed by the Supreme Court; two attorneys appointed by the State Bar; and two lay citizens appointed by the Governor and approved by a majority of the Senate. Each member is appointed to a term of four years. The terms are staggered. The commission meets approximately seven times a year, and the meetings usually last two days. It employs a staff of thirteen.

The commission is established and governed by Article VI, sections 8 and 18, of the California Constitution. It is also subject to Government Code sections 68701 through 68755 and 75060 through 75064 (dealing with disability retirement), as well as Rules of Court 901 through 922. The commission also issues declarations of existing policy regarding its internal procedures. The California Code of Judicial Conduct, adopted by the California Judges Association, establishes minimum standards for ethical conduct of judges. Although the Code of Judicial Conduct lacks the force of law or regulation, judges are expected to comply with its canons. These statutes, court rules, policy declarations and the California Code of Judicial Conduct are reprinted in the appendix.

As mandated by the California Constitution, the commission's primary duty is to investigate charges of wilful misconduct in office, persistent failure or inability to perform the duties of a judge, habitual intemperance in the use of intoxicants or drugs, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or other improper actions or derelictions of duty. Many forms of misconduct have claimed the commission's attention — for instance, rudeness to litigants, lawyers and court staff, gender and ethnic bias, abuse of contempt

power, delay of decision, ex parte communications, ticket-fixing, drunkenness, systematic denial of litigants' rights, and improper off-bench activities. The commission is also charged with evaluating disabilities that seriously interfere with a judge's performance.

► **B. The Complaint Process**

A commission case usually begins with a written complaint from a member of the public, most often a litigant or an attorney, but sometimes a concerned citizen, another judge or a court employee. The commission occasionally becomes aware of a problem through a news article or a report to the commission staff or a commission member.

Due to the increasing number of complaints received by the commission, two staff members are assigned primarily to review the incoming complaints. Many individuals who complain to the commission, although angry and frustrated by the court system, do not have a clear idea about what constitutes judicial misconduct. Because the commission provides the only forum for redressing misconduct, the commission is committed to a careful review of each matter submitted to it. All complaints are presented to the commission.

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

Commission staff devotes a considerable amount of time to reviewing and obtaining the information necessary to evaluate a complaint. The majority of complaints do not state on their face a case of judicial misconduct. These complaints are closed by the commission after staff review. When a complaint states particular facts which, if true, could constitute misconduct, the commission orders its staff to make an inquiry into the matter and report at the next meeting.

A staff inquiry may include contacting witnesses, reviewing court records and other documents, courtroom observation, or conducting such other investigation as the issues may warrant. A staff inquiry usually includes contact with the judge. These letters of inquiry are not intended as accusations, but only as requests for information.

After the inquiry, the commission has a range of options. Sometimes the allegations are found to be untrue, exaggerated, or unprovable, in which case the commission closes the case without any action against the judge. If questionable conduct did occur, but it was relatively minor or the judge has recognized the problem, the commission may close the case with an advisory letter under Rule of Court 904.1. An advisory letter informs the judge that facts discovered during the commission's inquiry do not warrant further proceedings; however, the commission's concerns or disapproval regarding the judge's conduct are noted.

If serious issues remain after an inquiry, the commission orders a "preliminary investigation" under Rule 904.2. The commission sometimes orders a preliminary investigation without a staff inquiry. As with a staff inquiry, a preliminary investigation includes whatever investigation is warranted. After a preliminary

investigation, the commission may close the case without action, issue an advisory letter, or issue a notice of intended private admonishment. This notice contains a description of the improper conduct and any findings made by the commission. If the judge does not contest the private admonishment, it takes effect within fifteen days after mailing of the notice. The commission also has the option of issuing a public reproof at any point after the notice of formal proceedings is issued, provided the judge consents. A public reproof is not subject to review by the Supreme Court.

In some cases, the commission may "monitor" the judge under Rule 904.2(d). This process involves deferring any action by the commission for a period up to two years in order to permit observation and review of a judge's conduct. The judge is aware of the monitoring. This alternative is used when the preliminary investigation reveals an ongoing problem, such as possible alcohol abuse.

► D. Formal Proceedings

In the most serious cases, or when the judge demands a formal hearing to contest a private admonishment, the commission will issue a notice of formal proceedings under Rule 905. The notice is a formal statement of charges and leads to a hearing, usually before a panel of special masters appointed by the Supreme Court. The Constitution provides that the commission may open hearings to the public if the charges involve moral turpitude, corruption or dishonesty, or if the judge requests an open hearing. After the hearing, the special masters report their findings to the commission.

After reviewing the report of the special masters, the commission may close the case, issue an advisory letter, a private admonishment or a public reproof (with the judge's consent) or it may recommend to the Supreme Court that the judge be removed, publicly censured, or involuntarily retired because of a disability.

Two flow charts showing the progress of complaints through the commission are appended at pages 59 and 60. While not a complete overview of the various courses of commission proceedings, they illustrate the typical patterns.

► E. Statistical Summary

Since its inception, the commission has recommended the removal or involuntary retirement of 15 judges. The Supreme Court has accepted the recommendation in 13 cases. During the last 10 years, 32 judges have resigned or retired with commission proceedings pending.

The number of complaints received by the commission has increased over the past several years. In 1993, the commission received 950 complaints. The number of complaints received has doubled since 1986. The commission ordered 121 staff inquiries and 35 preliminary investigations in 1993, and instituted formal proceedings in 9 matters.

In 1993, the commission issued 26 advisory letters, 7 private admonishments and 2 public reprovals (see Section IV of this report for a summary of these matters). In addition, 7 judges resigned or retired with commission proceedings pending.

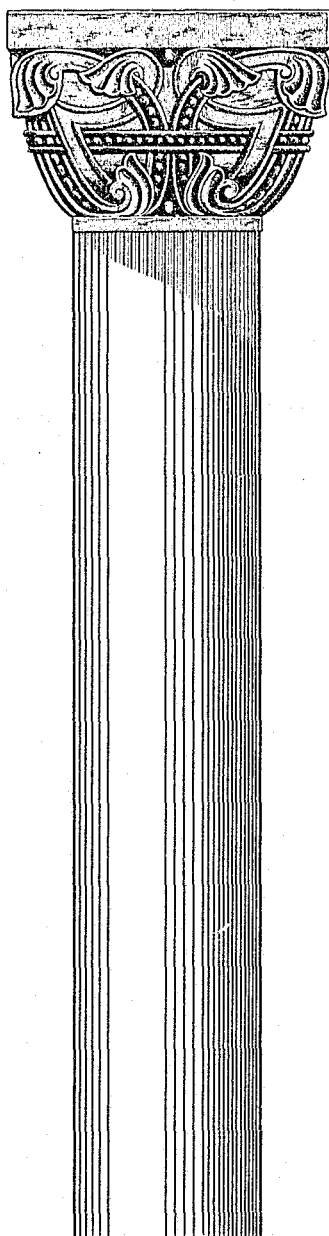
The statistics cannot accurately reflect all of the commission's work. The commission's unique function results in innumerable inquiries from members of the public, including litigants, attorneys and citizens. The commission's staff spends a considerable amount of time responding to these inquiries, explaining the commission's function and the types of judicial actions that might amount to misconduct. As a result of these discussions, many of the telephone inquiries do not develop into written complaints and thus fail to become part of the statistical analysis. The importance of providing a forum for complaints about judicial misconduct cannot be overestimated in terms of public confidence in the judiciary.

► **F. Resignation and Retirement With Proceedings Pending**

Another aspect of the commission's workload that is not accurately reflected in the statistical analysis is the amount of time spent investigating complaints that lead to a judge's resignation or retirement with commission proceedings pending. It is rare that a judge resigns before considerable time and effort have been expended in investigation, and resignations often do not occur until formal proceedings have begun. In some instances, judges have resigned only after a hearing has transpired and the commission has reviewed the masters' findings. Consequently, the statistics do not accurately reflect the time, effort and funds expended prior to a resignation. The numbers will merely show that a judge retired or resigned with commission proceedings pending.

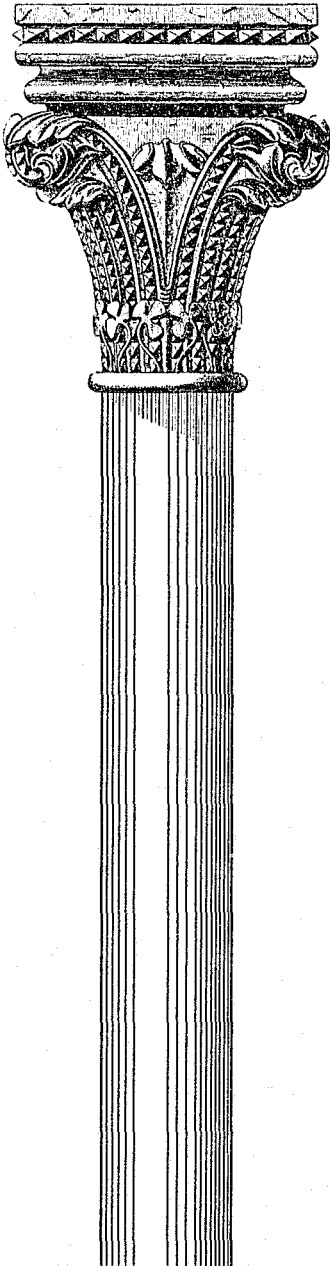
Most judges who have resigned or retired with commission proceedings pending have not been the subjects of criminal proceedings. Of the 32 judges who resigned with charges pending in the last 10 years, only 2 were also the subject of criminal charges and faced the possibility of removal from office because of a criminal conviction (Article VI, section 18(b)). No criminal charges were pending against the other resigning judges. The vast majority of judges who resign are charged with serious derelictions of judicial duty or failure to adhere to standards of judicial conduct.

II. RECENT CHANGES IN THE LAW



In 1993 there were no changes in the statutes and rules affecting the commission, except for an amendment to the commission's Policy Declaration 4.4, which concerns the handling of disability retirement applications. It is discussed in Section V of this report and reprinted in full in the appendix.

III. SUMMARY OF COMMISSION DISCIPLINARY ACTIVITY IN 1993



► A. Complaints Received and Investigated

At the close of 1993, there were 1,554 judicial positions within the commission's jurisdiction. This includes judges of the justice, municipal and superior courts as well as courts of appeal and the Supreme Court. In addition, the Director-Chief Counsel of the commission is designated as the Supreme Court's investigator for complaints involving State Bar Court judges.

In 1993, the commission received 950 new complaints, all of which were carefully reviewed and evaluated. In approximately 353 cases, some informal investigation was necessary before the matter was submitted to the commission for review. In approximately 809 cases, either with or without an informal investigation, the complaint on its face failed to state particular facts which, if true and not otherwise explained, might constitute some level of misconduct. These cases were closed after review by staff and the commission.

The commission ordered a staff inquiry under Rule of Court 904 in 121 cases. In a staff inquiry, the commission's legal staff investigates the facts underlying the complaint. Occasionally, the inquiry reveals facts that dispose of the complaint and make the judge's comment unnecessary. Usually, however, the judge is asked to comment on the allegations.

Under Rules of Court 904 and 904.2, the commission may institute a preliminary investigation to determine whether formal proceedings should be instituted, or discipline imposed of greater severity than an advisory letter. The commission ordered 35 preliminary investigations in 1993.

After a preliminary investigation, the commission may issue a notice of formal proceedings under Rule of Court 905. This is a statement of formal charges leading to a hearing. Such notices were issued in 9 cases in 1993. At the end of the year, 6 judges were the subject of pending formal proceedings.

Of the 950 complaints received in 1993, approximately 77% were filed by litigants or their families and friends. Complaints from lawyers accounted for another 7%. All other sources, including citizens, judges, court employees, jurors and others, amounted to approximately 16%.

The complaints received by the commission in 1993 set forth a wide array of

**III.
SUMMARY OF
COMMISSION
DISCIPLINARY ACTION
IN 1993**

grievances. A large number of the complaints alleged legal error not involving misconduct. More than half of the complaints fell into this category. Many of these complaints were expressions of frustration and disappointment with the legal process. Another common category was poor demeanor and rudeness.

► **B. Complaint Dispositions**

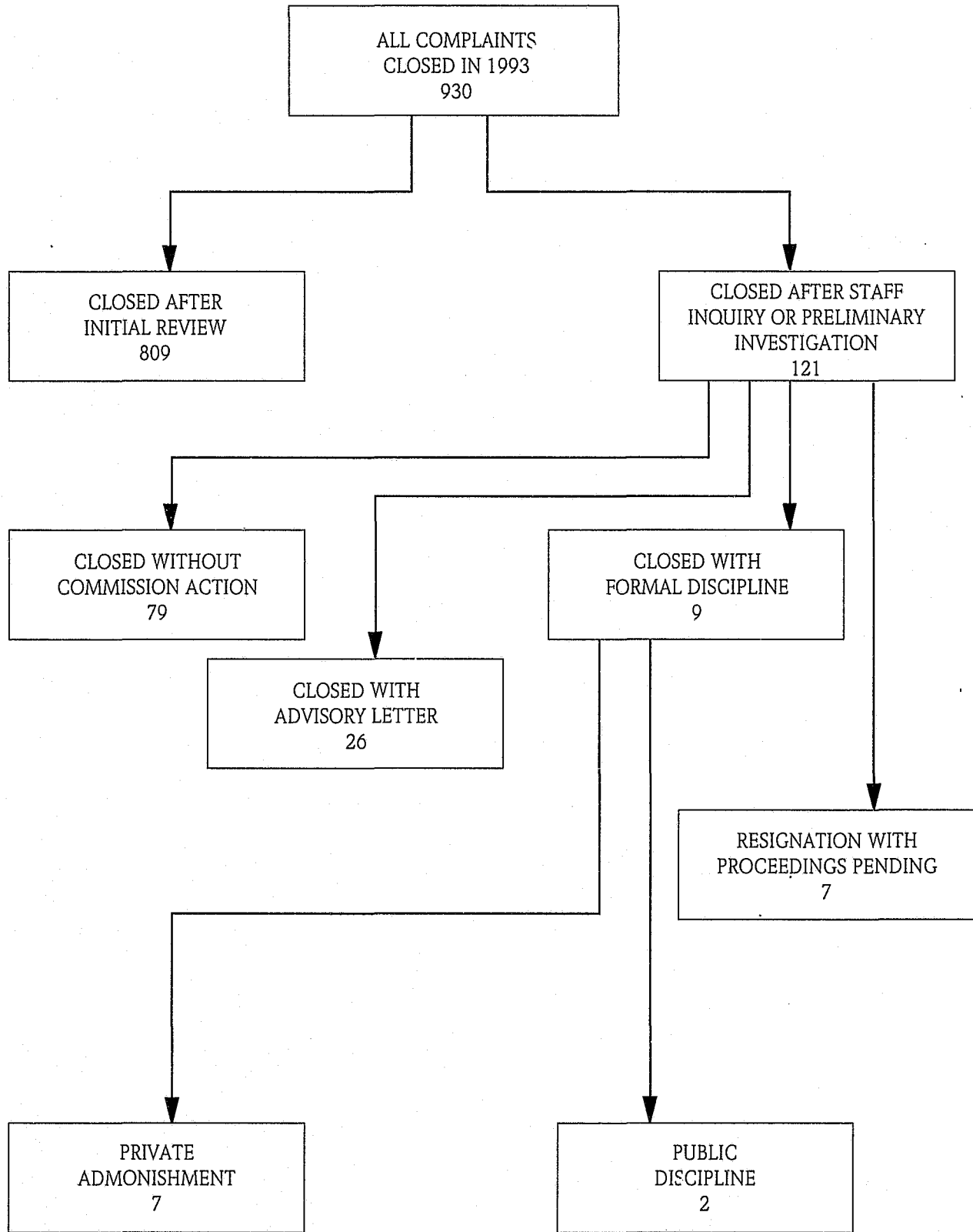
Since some of the actions taken by the commission in 1993 involved cases begun in 1992, and since some cases begun in 1993 were still pending at the end of the year, the following statistics are based on cases completed in 1993, regardless of when the case began. Cases still pending at the end of 1993 are not included in this Annual Report.

The commission reviewed and evaluated 930 cases in 1993. Action was taken by the commission in 35 cases. The commission closed 7 matters when the judge left the bench with proceedings pending. Following review, the commission closed 888 complaints after determining that further proceedings were not warranted.

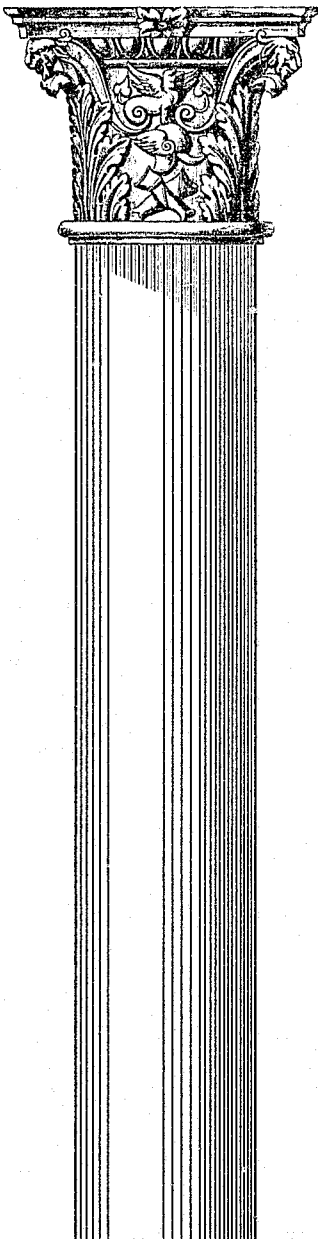
Discipline may be imposed by the commission only after official investigation, including comment from the judge. Of the 121 officially investigated cases that were completed in 1993, 79 were closed without any action. In those cases, investigation showed that the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation.

The action taken by the commission in 35 cases included 2 public reprovls, 7 private admonishments and 26 advisory letters. See Section IV of this report for a discussion of commission case dispositions.

The chart at page 9 provides an overview of the cases completed in 1993.



IV.
DISPOSITION OF
COMMISSION
CASES



▸ Retirements and Resignations

Statistics

In 1993 three judges retired or resigned after the commission instituted formal proceedings. Four other judges resigned while under investigation by the commission for alleged acts of serious misconduct. There was no criminal prosecution pending at the time of any of these resignations.

Since the commission's establishment in 1960, the commission has recommended that a judge be removed or retired from office in 15 cases. In 13 cases, the California Supreme Court has followed that recommendation. During the same period, 74 other judges under investigation by the commission have voluntarily resigned rather than risk removal from office. As one commentator noted, "The cases the [Supreme] Court hears are merely the pinnacle of a pyramid of cleansing activity by the Commission." Lewis, "Judicial Misconduct in California," 11 *San Fernando Val.L.Rev.* 43, 68 (1984).

Suggested Rule Change

Under the present Rules of Court, commission proceedings are confidential until the last stage: the filing of a recommendation for censure or removal in the Supreme Court. One exception to the strict rule of confidentiality is Rule 902(b)(4) (emphasis added):

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

Acting under this rule, the commission referred one of the judges who resigned in 1993 to the State Bar to investigate his fitness to practice law.

In the light of recent experience, the commission believes the rule permitting referral to public entities is inadequate. If a judge resigns during the commission's

IV. DISPOSITION OF COMMISSION CASES

investigation — *before* the commission institutes formal proceedings — the existing rules do not permit the commission to refer the matter to the State Bar or other public agencies. In at least one 1993 case, the commission felt the public interest warranted consideration of the allegations by the State Bar — but the judge involved resigned almost immediately after the commission began its preliminary investigation. The commission was unable to forward its information to the State Bar. The judge was able to resume the practice of law and to engage in private judging.

The commission has asked the Judicial Council to amend the rules to allow the release of information to a public entity at *any* stage of the proceedings or investigation. The commission has also asked that other aspects of the rules of confidentiality be considered by the Judicial Council.

► Public Reprovals

When the commission was established in 1960, the commission's authority was limited to making recommendations to the Supreme Court that a judge be removed or publicly censured. The system worked well when the charges were very serious. Since 1960 the constitution has been amended twice to give the commission greater flexibility in imposing discipline in less serious matters. In 1976 the commission was given the power to impose "private admonishments" (Article VI, section 18(c)). In 1988 the commission was given the power to impose "public reprovals":

The Commission on Judicial Performance may, without further review in the Supreme Court, impose a public reproof with the consent of the judge for conduct warranting discipline. . . (Article VI, section 18(f)(2).)

The purpose of the public reproof is to permit resolution of discipline cases without the enormous expense of full formal proceedings. After the commission issues a notice of formal proceedings, the process of mutual discovery begins. Then there is a full hearing of the charges by special masters appointed by the Supreme Court. Full argument before the masters is permitted, followed by argument to the commission itself. Then, if the charges have been sustained and warrant serious discipline, the case moves to the Supreme Court, where there is further argument.

The entire process from complaint to disposition by the Supreme Court is necessarily time-consuming. It is also expensive. The time and expense are justified where removal of the judge might be the appropriate outcome. But there are other cases where the misconduct is serious enough to deserve public rebuke, but removal is not required. In those cases, "public reproof" provides a prompt and fair disposition.

Public reprovals are particularly useful when the acts of misconduct were serious, but were not repeated. A review of Supreme Court cases shows that judges are removed, typically, for *persistent* misconduct. An isolated act of misconduct, unless it is criminal, can often be dealt with by discipline short of removal.

**IV.
DISPOSITION OF
COMMISSION CASES**

In the last five years the commission has issued 11 public reprovls. In 1993 there were two:

1. Judge Gary T. Friedman of the Kern County Superior Court was publicly reprovd for the following conduct:

A. In September 1987, a defendant who was representing himself in a felony criminal proceeding appeared before Judge Friedman for sentencing. The defendant told the judge he had been unable to read the probation report in part because he had observed and smelled a snake outside his cell. He told the judge that fear of snakes outside his prison cell had kept him awake at night. For the purpose of playing a joke on the defendant, the judge caused the head of a rattlesnake, enclosed in a plastic ball, to be displayed to the defendant when he was locked in a holding cell, causing an emotional outburst.

B. In October 1987, a defendant who was in custody appeared before Judge Friedman for trial. The judge was well aware of the defendant's obsession with a famous TV personality. The judge obtained a publicity photograph of the personality. He then pressured a court employee into writing on the photograph a personal inscription, purportedly from the personality to the defendant. The inscription was designed to play on the defendant's bizarre obsession. The judge caused the photograph to be passed to the defendant. His purpose in these actions was to play a joke on a vulnerable prisoner.

The commission determined that these actions constituted wilful misconduct in office (California Constitution, Article VI, section 18(c)).

The commission noted and approved this commentary by the special masters:

The Special Masters recognize that humor and levity can oftentimes reduce tension in the courtroom. When appropriate, humor can assist in humanizing the otherwise intimidating atmosphere of our courts, and may even assist in improving communications between the judges, attorneys and litigants. However, humor at the expense of another, or humor intended or likely to demean or belittle another is unacceptable. This is particularly true when the object of the joke is someone who has been deprived of his liberty and who is submitting to the jurisdiction of the Court.

In determining that a public reprov was appropriate, the commission noted that these two incidents occurred more than five years ago. There is no indication that the judge has engaged in any further conduct of this kind.

The special masters and the commission also considered charges relating to the judge's conduct in *People v. Pitts*, a trial occurring in 1985. The commission declined to take action and dismissed these charges.

2. Santa Barbara County Superior Court Judge James M. Slater was publicly reprovd for the following conduct:

**IV.
DISPOSITION OF
COMMISSION CASES**

On April 21, 1993, Judge Slater returned to the Santa Barbara courthouse parking lot after the lunch hour to find a van parked in his reserved parking space. Judge Slater parked in a space reserved for someone else and went into the courthouse, where he contacted the court administrator and said that he wanted the van towed. Judge Slater then returned to the parking lot, where he deflated the right front tire of the van. The van in question belonged to a handicapped person.

Findings of misconduct in formal proceedings must be established by clear and convincing evidence. In this case, there was sufficient evidence to support a finding that Judge Slater deflated the right front tire of the van. However, there was not sufficient evidence to establish that Judge Slater was aware that the van belonged to a handicapped person, or to establish that he made any comment which might have indicated such awareness. There also was not sufficient evidence to establish that Judge Slater later denied deflating the tire.

Judge Slater has offered that he was upset about previous incidents in which his parking space had been usurped, and about a previous vandalism of his automobile. Judge Slater has presented as justification that his intent was to keep the van in the parking lot until it could be cited and towed. The commission found that these concerns did not justify Judge Slater's conduct.

After conducting an investigation of the incident, the Santa Barbara County District Attorney issued a report concluding that Judge Slater had engaged in unjustified tampering with a vehicle within the meaning of Vehicle Code Section 10852, but stating that the matter would not be prosecuted.

The commission found, and Judge Slater agreed, that Judge Slater's conduct was contrary to the California Code of Judicial Conduct. Canon 2 of the California Code of Judicial Conduct provides that a judge "should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Canon 1 of the Code of Judicial Conduct provides that a judge "should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary will be preserved."

The commission noted that the judge's conduct had led to extensive negative publicity tending to diminish public confidence in the judiciary and bring the judiciary into disrepute.

In mitigation, the commission took into account Judge Slater's lengthy service without discipline and noted that the incident appeared to be an isolated one and that Judge Slater had admitted his misconduct and had expressed remorse. The commission considered that Judge Slater had apologized to the owner of the van, and had met with an organization of disabled persons to discuss improving access to public buildings and the sensitivity of government employees to problems of the handicapped.

**IV.
DISPOSITION OF
COMMISSION CASES**

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▪ **► Private Admonishments**

▪ Since they were authorized in 1976, the commission has issued 121 private
▪ admonishments. A private admonishment is formal discipline, but it is confidential.
▪ The judge may appeal the discipline and obtain a hearing before special masters.
▪ The judge may then petition the Supreme Court for review of the admonishment.

▪ Private admonishments are designed in part to correct problems at an early
▪ stage. Absent this "early warning" system, some misconduct would continue and
▪ escalate. Over the years the commission has found that most judges improve their
▪ behavior dramatically after a private admonishment. Private admonishments
▪ thereby serve the commission's larger purpose of maintaining the integrity of the
▪ California judiciary.

▪ In those cases where a judge persists in misconduct, the admonishment may
▪ be used to aggravate the discipline in future proceedings against the judge. This is
▪ particularly true where the judge repeats the conduct which was the subject of the
▪ earlier discipline.

▪ In 1993 the commission imposed 7 private admonishments. They are
▪ summarized below. In order to maintain privacy it has been necessary to omit
▪ certain details. This has made some summaries less informative than they
▪ otherwise would be; but since these examples are intended in part to educate
▪ judges and assist them in avoiding inappropriate conduct, we think it is better to
▪ describe them in abbreviated form than to omit them altogether.

▪ **A.** A judge took extended lunch hours. On the judge's return to court, the
▪ judge exhibited signs of alcohol consumption. The judge's performance in the
▪ afternoon appeared to be affected by alcohol. In response to the commission
▪ investigation, the judge undertook to abstain from any alcohol consumption during
▪ lunch hours. The commission independently verified that the judge's behavior
▪ changed as a result of the investigation.

▪ **B.** (1) A judge received a traffic ticket from a police agency. The judge
▪ contacted the police agency and met with an official of the agency. The agency then
▪ withdrew the ticket before the case was heard in court. Although there was
▪ insufficient evidence that the ticket was dismissed because of improper influence
▪ by the judge, there was an appearance of impropriety. (2) The judge used official
▪ stationery to "exempt" a certain vehicle from a parking ordinance. (3) (a) The judge
▪ disregarded various statutory requirements concerning sentencing and dismissal of
▪ cases; (b) the judge impeded appellate review of one of the judge's rulings by
▪ refusing to sign an order for a transcript; (c) the judge made rude and inappropriate
▪ remarks to the party requesting the transcript. (4) The judge sometimes conducted
▪ proceedings in a language other than English.

▪ **C.** (1) A judge improperly "relieved" (fired) an attorney from a case and
▪ threatened to banish the attorney from the judge's courtroom. (2) A friend of the
▪ judge was arrested on the charge of driving under the influence of alcohol (DUI).

**IV.
DISPOSITION OF
COMMISSION CASES**

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• The friend telephoned the judge to discuss the case. The judge then ordered the court clerk to transfer the case to the judge's court. (Learning of this, the prosecutor disqualified the judge under section 170.6 of the Code of Civil Procedure, which allows for the peremptory challenge of a judge by any party.) (3) The judge presided over the DUI case of the judge's own clerk. Although the prosecutor was aware of this and impliedly waived the disqualification, there should have been an on-the-record disclosure and written waiver of disqualification. (4) The judge regularly met with probation officers to discuss their reports. These meetings were improper because they were held without the defendants and their lawyers being present. In mitigation, the commission noted that the judge was exceptionally frank and willing to make changes.

•
• **D.** (1) When an attorney requested clarification of an order after the judge had ruled, the judge ordered the attorney taken into custody without a hearing, findings, or written order — all of which are required by law before punishment for a contempt may be imposed. (Four hours later the attorney was brought from the jail to the judge's chambers and given the opportunity to apologize. When the attorney apologized, the attorney was released.) The judge was patronizing throughout. (2) In a separate matter the judge repeatedly and rudely interrupted an attorney's questions and the witness's answers, reducing the witness to tears.

•
• **E.** A judge, believing that a litigant had made a contemptuous remark, ordered the litigant jailed without a hearing, findings, or written order — all of which are required by law before punishment for a contempt may be imposed. (Two days later the judge held a contempt hearing.)

•
• **F.** (1) A judge neglected and avoided judicial duties by routinely transferring cases out of the judge's own department to other departments, and routinely granting multiple, lengthy continuances. (2) The judge improperly interfered with the orderly operation of the court by intervening repeatedly in personnel matters that were the responsibility of the court administrator, not the judge. (3) The judge took punitive action against persons who the judge believed were political adversaries. For instance, the judge removed an election opponent from the panel of pro tem judges, in violation of Canon 3C(4), which requires that judges make appointments impartially. (4) The judge used court staff to perform personal errands. The admonishment was issued at the conclusion of a lengthy period of monitoring by the commission under Rule of Court 904.2(d).

•
• **G.** One of the duties of presiding judges is to handle complaints about court commissioners and referees (see Rules of Court, rule 205(16) and rule 532.5(a)(18)). The commission sent a presiding judge an advisory letter for failure to properly handle a citizen's complaint about a commissioner. The commission then learned of and asked the judge about another such failure. In response to the commission's inquiry about the second failure, the judge displayed indifference to the judge's duties.

IV.
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► **Advisory Letters**

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

- The commission sometimes issues advisory letters when the impropriety is isolated or relatively minor. For instance, a judge who made an improper comment to a jury on a single occasion might receive an advisory letter.
- Advisory letters are also used when the impropriety is more serious but the judge has demonstrated an understanding of the problem and has taken steps to improve.
- Advisory letters are especially useful when there is an appearance of impropriety, but bad faith has not been established.
- An advisory letter might be appropriate where there is significant misconduct but substantial mitigation.

1. A judge harshly threatened to hold a bailiff in contempt because the judge disagreed with how the bailiff handled a routine matter.

2. A judge held stock worth \$6500 in a bank of which the judge had formerly served as a director. The judge ruled on two motions in litigation in which the bank was a party without disclosure of the judge's association with the bank. The judge should have disqualified himself because of his stock holdings (Code of Civil Procedure, sections 170.1(a)(3), 170.5(b)), or made an on-the-record disclosure of his holdings to allow the parties to make a written waiver of the judge's disqualification (section 170.3(b)). Canon 3E of the Code of Judicial Conduct imposes an ethical duty on judges to comply with the disqualification requirements of the Code of Civil Procedure.

3. Local attorneys were seeking sanctions against an out-of-town attorney. Just before the sanctions hearing, the judge met privately with the local attorneys. Although the meeting did not concern the sanctions, there was an appearance of impropriety. The Supreme Court has said, "[M]eeting alone in chambers with an attorney representing one side of a case pending before [the judge] in the absence of circumstances that would make ex parte communication proper [gives] rise to an appearance of impropriety." *Kennick v. Commission on Judicial Performance* (1990) 50 Cal.3d 297, 332.

4. A judge was listed as "Judge Advocate" of a veteran's organization. The position was honorary, but was not listed as honorary in the publications of the organization. Hence there was a public appearance that the judge was acting as a legal advisor. Canon 4G prohibits judges from practicing law.

5. Disbelieving a witness's testimony, a judge cited the witness for contempt in the presence of the jury. In the subsequent contempt hearing, the judge gave the appearance of having prejudged the witness's guilt.

**IV.
DISPOSITION OF
COMMISSION CASES**

- 6. A judge made a taunting remark to a court employee, in the presence of co-workers, about the judge's remand into custody of the employee's relative.
- 7. A party disqualified a judge under section 170.6 of the Code of Civil Procedure, which allows for the peremptory challenge of a judge by any party. The judge improperly interrogated the party about the challenge. The judge then improperly rejected the disqualification on the grounds that the litigant "didn't understand" what he was doing, although it was clear that the litigant did intend to disqualify the judge.
- 8. A party challenged a judge for cause. Section 170.3 of the Code of Civil Procedure prohibits judges from hearing the question of their own disqualification. Nonetheless, this judge convened an in-chambers hearing which amounted to an unauthorized and improper disqualification proceeding. During the hearing the judge interrogated a witness whose testimony supported the motion.
- 9. A judge declared a mistrial because of an attorney's alleged misconduct. The judge then made statements to the press about the attorney's conduct in the trial. That was an improper public comment on a pending or impending case, prohibited by Canon 3B(9).
- 10. During a jury's deliberations, a judge met with the jurors, evidently to discuss scheduling matters. The parties were not informed of the meeting and there was no court reporter present, as required by law. The Supreme Court has said, "[I]nformal communications between judge and jury. . . interfere with the parties' right to the assistance of counsel and . . . undermine public esteem for the integrity and impartiality of the judicial office." *Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359, 374-375.
- 11. A judge drafted a decision immediately after trial, but failed to ensure that it was promptly filed and served. As a result, the parties did not learn of the decision for a year. This violated Canon 3B(8), which requires judges to dispose of all judicial business "promptly and efficiently."
- 12. A judge failed to rule on a small claims matter for 10 months, violating Canon 3B(8).
- 13. A judge made a joke about a defendant that could reasonably have been construed as racist.
- 14. A presiding judge failed to handle a citizen's complaint about a court commissioner, as required by the Rules of Court, rule 532.5(a)(18).
- 15. A judge found an unrepresented defendant in violation of probation without affording the defendant a hearing or advising of the right to a hearing and counsel. In mitigation, the judge did appoint counsel and set a hearing when the public defender called the judge's attention to the matter.
- 16. Within a calendar year a judge contributed slightly more than \$500 to a candidate for non-judicial office in violation of campaign contribution limits contained in Canon 5A(3). There were mitigating circumstances.
- 17. At a settlement conference a judge made an off-color remark and said to

**IV.
DISPOSITION OF
COMMISSION CASES**

the litigants, "You want to try this case? Fine. I don't give a f---k."

18. A judge found an attorney in contempt for failure to pay sanctions and failure to appear and issued a bench warrant for his arrest. No contempt hearing had been held or other contempt procedures followed.

19. A presiding judge failed to respond to the complaint of a litigant about a commissioner.

20. Before a decision of the Court of Appeal was final, a judge wrote an article about the appellate decision. Judges are permitted to publicly comment on a higher court's decision, including criticism, but only after the litigation has concluded. (Canon 3B(9); *Wenger v. Commission on Judicial Performance* (1981) 29 Cal.3d 615, 635-636.) In addition, the judge initiated an ex parte contact with one of the litigants to ask if further review would be sought.

21. In order to deal with a personnel matter, a judge issued a temporary restraining order against a court employee although there was no case pending. A temporary restraining order may be issued only if there is a lawsuit pending.

22. Many observers, including jurors, perceived the judge as biased and harsh, based on the judge's body language and tone of voice.

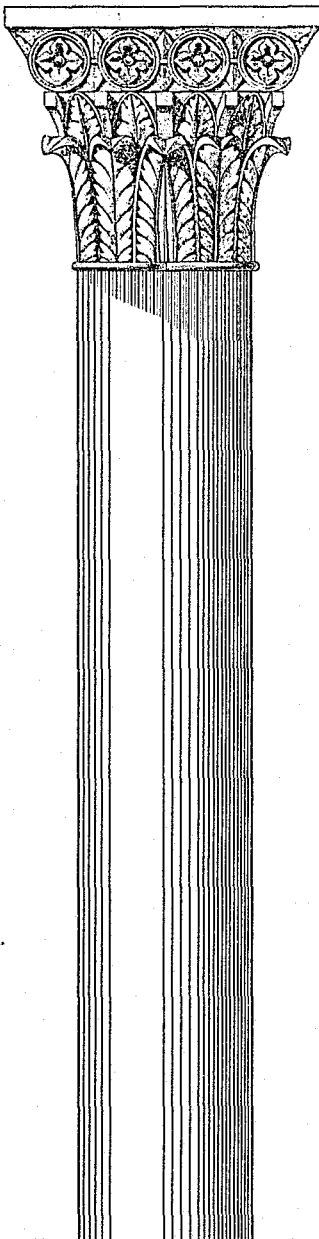
23. A judge presided over a civil case in which one party was represented by the judge's former law partner. Since the judge had left the partnership somewhat more than two years earlier, the judge was not automatically disqualified under section 170.1(a)(2)(B) of the Code of Civil Procedure. Nonetheless, the commission determined that the relationship should have been disclosed on the record.

24. When an attorney made a request of the court on behalf of a witness, the judge responded with loud and inappropriate expressions of anger and became personally embroiled in the matter.

25. A judge entertained and granted an unnoticed, uncalendared motion to dismiss a civil case. The judge's ruling was obviously wrong, and so clearly undermined the fairness of the proceeding that it went beyond legal error.

26. When a pro per litigant said that she had been given certain information about court procedures, the judge said, "Your beautician tell you that?" The commission found the remark rude and demeaning.

V.
**VOLUNTARY
DISABILITY
RETIREMENT**



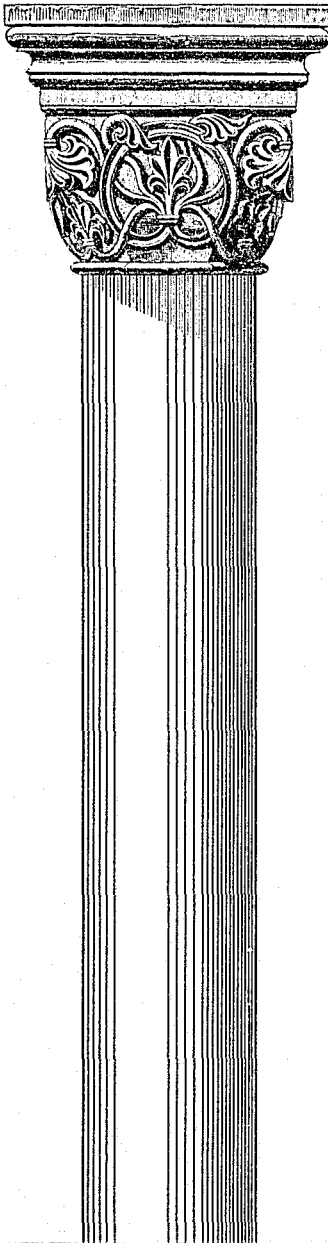
In addition to its duties as an investigator of judicial misconduct, the commission reviews judges' applications for disability retirement. A disability retirement takes effect only after approval by the commission and the Chief Justice. See Government Code sections 75060 - 75064 and Policy Declaration 4.4, which are printed in Appendix 1 to this report.

Policy Declaration 4.4 reflects minor modifications adopted by the commission in 1993. Those of substance may be summarized as follows: the policy lists the required contents of an application for disability retirement (paragraph 1); it clarifies the time for requesting an independent medical examination and provides for a good cause extension (paragraph 3); it clarifies that the commission will provide an applicant with a copy of the medical examiner's report and, if the application is tentatively denied, a copy of such decision (paragraphs 3 and 5).

In 1993, four disability retirements took effect. One application was denied, and one was pending at the end of the year.

**Appendix I.
GOVERNING
PROVISIONS**

**A.
CONSTITUTION
OF CALIFORNIA**



• **CONSTITUTION OF CALIFORNIA**

• **Article VI, Sections 8 and 18**

• ▶ **SEC. 8.**

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

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

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

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

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

• ▶ **SEC. 18.**

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

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

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OF CALIFORNIA

- 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 intemper-
- ance in the use of intoxicants or drugs, or conduct prejudicial to the administration
- of justice that brings the judicial office into disrepute. The Commission on Judicial
- Performance may privately admonish a judge found to have engaged in an improper
- action or dereliction of duty, subject to review in the Supreme Court in the manner
- provided for review of causes decided by a court of appeal.
- (d) A judge retired by the Supreme Court shall be considered to have retired
- voluntarily. A judge removed by the Supreme Court is ineligible for judicial office
- and pending further order of the court is suspended from practicing law in this State.
- (e) A recommendation of the Commission on Judicial Performance for the
- censure, removal or retirement of a judge of the Supreme Court shall be determined
- by a tribunal of 7 court of appeal judges selected by lot.
- (f) If, after conducting a preliminary investigation, the Commission on Judicial
- Performance by vote determines that formal proceedings should be instituted:
- (1) The judge or judges charged may require that formal hearings be public,
- unless the Commission on Judicial Performance by vote finds good cause for
- confidential hearings.
- (2) The Commission on Judicial Performance may, without further review in
- the Supreme Court, issue a public reproof with the consent of the judge for conduct
- warranting discipline. The public reproof shall include an enumeration of any and
- all formal charges brought against the judge which have not been dismissed by the
- commission.
- (3) The Commission on Judicial Performance may in the pursuit of public
- confidence and the interests of justice, issue press statements or releases or, in the
- event charges involve moral turpitude, dishonesty, or corruption, open hearings to
- the public.
- (g) The Commission on Judicial Performance may issue explanatory statements
- at any investigatory stage when the subject matter is generally known to the public.
- (h) The Judicial Council shall make rules implementing this section and
- providing for confidentiality of proceedings.

**B.
CALIFORNIA
RULES OF
COURT**

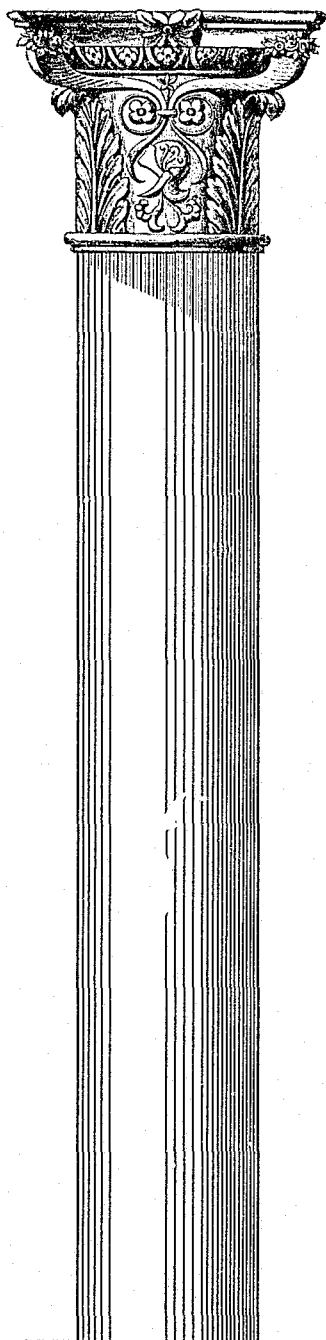


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**B.
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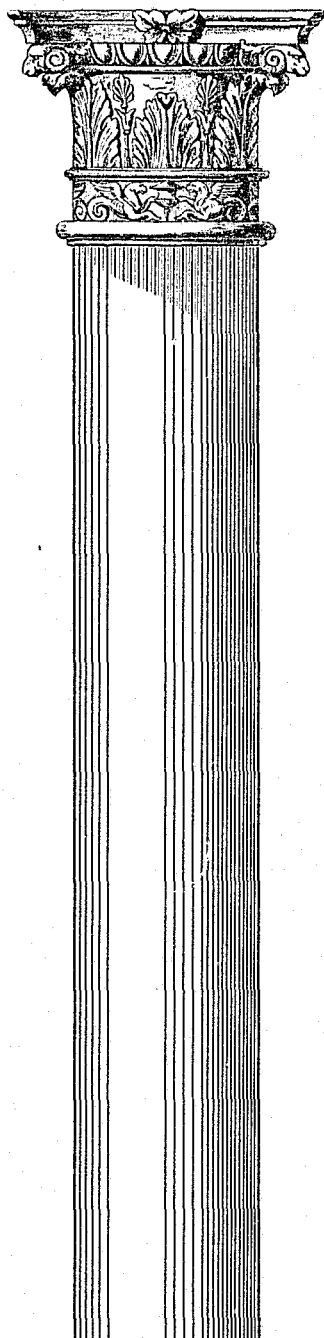


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B.
CALIFORNIA RULES OF COURT

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

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

The Chief Justice or presiding justice or administrative presiding justice shall give the judge a copy of any notification to the commission.

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

The presiding judge shall

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

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

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

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

► **Rule 901. Interested Party**

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

► **Rule 902. Confidentiality of Proceedings**

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

Information released by the commission under this subdivision in proceedings resulting in a recommendation of cen-

sure shall make appropriate reference to a petition for review in the Supreme Court filed by the judge, if any is filed, to the end that the public will perceive that the commission's recommendation and findings are wholly or partly contested by the judge.

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

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

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

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

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

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

► **Rule 903. Defamatory Material**

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

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

A judge shall, within such reasonable time as the commission may prescribe, respond to the merits of a letter from the

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

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

(a) (Receipt of verified statement) Upon receiving a verified statement alleging facts indicating that a judge is guilty of wilful misconduct in office, persistent failure or inability to perform the duties of office, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or that the judge has a disability that seriously interferes with the performance of the duties of office and is or is likely to become permanent, or that the judge has engaged in an improper action or a dereliction of duty, the commission shall

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

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

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

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

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

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

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

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

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

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

choose. A reasonable time for a judge to respond to an inquiry letter shall be 20 days from the date the letter was mailed to the judge unless the time is extended for good cause shown.

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

► **Rule 904.2. Preliminary Investigation**

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

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

(c) (Advisory letter) At any time after notice of a preliminary investigation and a reasonable opportunity to respond has been given to the judge, the commission may determine that the judge's conduct does not constitute a basis for further proceedings and may terminate the investigation by issuing a confidential advisory letter to the judge.

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

► **Rule 904.3. Private Admonishment**

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

► **Rule 904.4. Notice Requirements**

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

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

(a) (Judge's demand for appearance) Within 15 days after mailing of a notice of an intended private admonishment, the

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judge may file with the commission a written demand for an appearance before the commission to object to the intended private admonishment.

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

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

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

(3) make further preliminary investigation; or

(4) institute formal proceedings.

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

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

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

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

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

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

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

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

► **Rule 906. Answer**

Within 15 days after service of the notice of formal proceedings the judge may file with the commission an original and 11 legible copies of an answer, which shall be verified and shall conform in style to subdivision (c) of rule 15 of the Rules on

Appeal. The notice of formal proceedings and answer shall constitute the pleadings. No further pleadings shall be filed and no motion or demurrer shall be filed against any of the pleadings.

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

On filing or on expiration of the time for filing an answer, the commission shall order a hearing to be held before it concerning the censure, removal, retirement or private admonishment of the judge. In place of or in addition to a hearing before the commission, the commission may request the Supreme Court to appoint three special masters to hear and take evidence in the matter, and to report to the commission. On a vote of two-thirds of the members of the commission and with the consent of the judge involved, the commission may request the Supreme Court to appoint one special master in place of three special masters. Consent of the judge shall be defined as (i) written agreement by the judge or counsel of record, or (ii) failure to object in writing within 30 days of notice of intention to request the appointment of one special master.

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

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

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

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

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

B.
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commission and served on the opposing party within 30 days after mailing the notice.

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

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

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

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

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

► **Rule 907.5. Discovery Procedures**

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

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

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

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

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

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

(3) all statements about the subject matter of the proceedings, including any impeaching evidence, made by any wit-

ness then intended to be called by either side;

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

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

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

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

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

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

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

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

(h) (Applicable privileges) Nothing in these procedures

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shall authorize the discovery of any writing or thing which is privileged from disclosure by law or is otherwise protected or made confidential as the work product of the attorney. Statements of any witness interviewed by the examiners, by any investigators for either side, by the judge, or by the judge's attorney shall not be protected as work product.

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

► **Rule 908. Hearing**

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

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

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

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

► **Rule 909. Evidence**

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

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

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

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

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

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

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

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

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

► **Rule 912. Report of Masters**

(a) (Proposed report) Within 20 days after the conclusion of the hearings before masters, they shall prepare and transmit to the parties a proposed report which shall contain a brief statement of the proceedings had and their findings of fact and conclusions of law with respect to the issues presented by the notice of formal proceedings and the answer thereto, or if there be no answer, their findings of fact and conclusions of law with respect to the allegations in the notice of formal

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

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

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

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

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

► **Rule 913. Objections to Report of Masters**

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

► **Rule 914. Appearance Before Commission**

If no statement of objections to the report of the masters is filed within the time provided, the commission may adopt the findings of the masters without a hearing. If such statement is filed, or if the commission in the absence of such statement proposes to modify or reject the findings of the masters, the commission shall give the judge and the examiner an opportunity to be heard orally before the commission, and written notice of the time and place of such hearing shall be mailed to the judge at least 10 days prior thereto.

► **Rule 915. Extension of Time**

(a) (In general) The chairperson of the commission may extend for a period not to exceed 30 days, except for good cause, the time for each of the following: filing of an answer, commencing a hearing before the commission, transmitting

the masters' proposed report to the parties, filing with the masters a statement of objections to the proposed report of the masters, transmitting the masters' report to the commission, and filing with the commission a statement of objections to the report of the masters. The presiding master may similarly extend the time for commencing a hearing before masters.

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

► **Rule 916. Hearing Additional Evidence**

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

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

► **Rule 917. Commission Vote**

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

► **Rule 918. Record of Commission Proceedings**

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

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

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

(b) A petition to the Supreme Court to modify or reject the recommendation of the commission for censure, removal or

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

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

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

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

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

(b) (Petition for review) A judge seeking review of the commission's action shall serve and file a petition for review in the Supreme Court within 30 days after mailing of the notice of entry of the private admonishment in the records of the commission. The petition shall be verified and include proof of the delivery or mailing of three copies of the petition to the commission. Within 20 days after the filing of the petition the commission shall transmit to the Clerk of the Supreme Court the original record, including a transcript of the testimony, briefs, and all original papers and exhibits on file in the proceeding. If the petition is denied, the Clerk of the Supreme Court shall return the transmitted materials to the commission.

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

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

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

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

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

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

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

► **Rule 922. Definitions**

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

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

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

(c) "Chairman" includes the acting chairman.

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

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

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

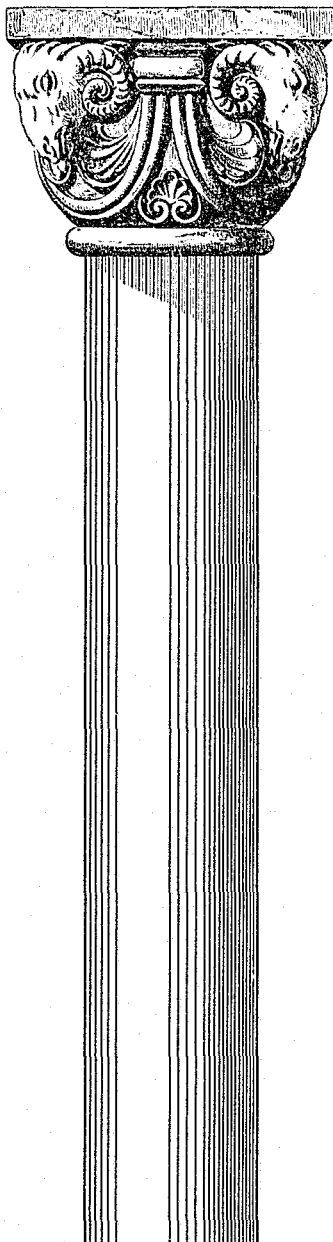
(g) "Shall" is mandatory and "may" is permissive.

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

(i) The masculine gender includes the feminine gender.

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

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**CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE
POLICY DECLARATIONS AS OF DECEMBER 1993**

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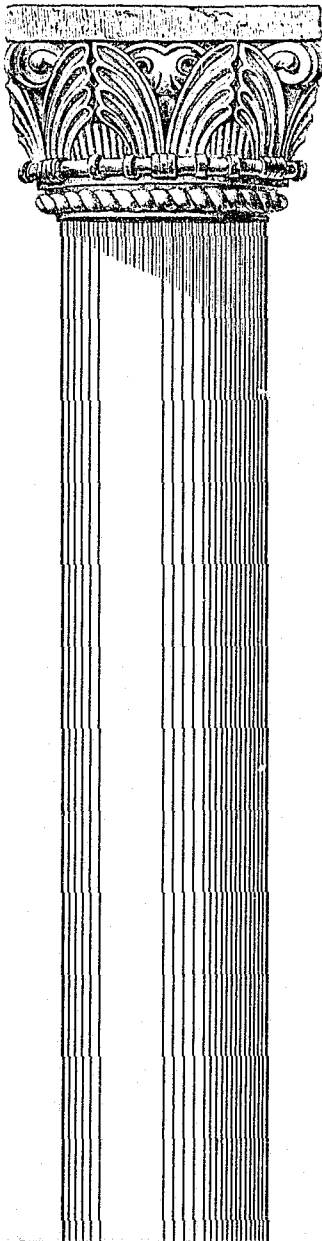
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C. POLICY DECLARATIONS

► PREAMBLE

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

► TITLE

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

► DEFINITIONS

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

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

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

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

► DIVISION I.

INVESTIGATION PROCEDURE

► 1.1 Staff Inquiry

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

► 1.2 Authorization for Staff Inquiry Between Meetings

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

► 1.3 Inquiry Letter

As part of a staff inquiry, allegations of claimed misconduct may be furnished the subject judge so that the judge has an opportunity to present such matters as the judge may choose,

including 1) information about factual aspects of claimed misconduct and 2) other relevant comment. The purpose is to assist the commission in making a decision regarding further action. An inquiry letter may, but need not, precede a preliminary investigation letter. An inquiry letter and opportunity for response must precede issuance of a confidential advisory letter under rule 904.1.

► 1.4 Authorization for Inquiry Letters and Preliminary Investigation Letters, Between Meetings, in Certain Types of Situations

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

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

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

► 1.6 Preliminary Investigation Letter

After commencement of a preliminary investigation under rule 904(a)(3) or 904(b), but before issuance of a notice of formal proceedings, the commission shall provide to the subject judge written notice of the investigation with a statement of the nature of the charges, and shall afford the judge a reasonable opportunity to present such matters as the judge may choose, pursuant to rule 904.2(a).

► 1.7 Time Limits for Judge's Response to Inquiry and Preliminary Investigation Letters

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

► 1.8 Receipt of Information Showing Authorized Inquiry or Preliminary Investigation Letter Unwarranted

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

► 1.9 Interviews and Statements

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

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the subject judge). When it appears that there may be use of the elicited information in connection with possible testimony, or discovery, the person providing the information shall be so advised.

► **1.10 Consent, Preservation**

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

► **1.11 Investigation Subpenas**

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

► **1.12 Expediting Subpena Enforcement**

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

► **DIVISION II.**
FORMAL PROCEEDINGS

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

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

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

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

► **2.2 [Deleted]**

► **2.3 Pre-Hearing Conference**

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

► **2.4 Agreed Statement**

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

► **2.5 Investigator or Agent at Hearing**

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

► **2.6 Proposed Findings and Conclusions**

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

► **DIVISION III.**
MISCELLANEOUS

► **3.1 Anonymous Complaints**

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

► **3.2 Setting Regular and Special Meetings**

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

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

► **3.3 Preparation of Annual Report**

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

► **3.4 Availability**

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

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

► 3.5 Election of Chairperson and Vice-Chairperson

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

► 3.6 Policy Declarations

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

► 3.7 [Deleted]

► 3.8 Removed from Active Calendar

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

► 3.9 Criminal Prosecution Arising Out of a Commission Investigation

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

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

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

► 3.10 Staff Authorization for Announcements

When the director believes an announcement pursuant to Article VI, section 18(f)(3) or (g), or pursuant to rule 902(b) (1), (2), (3) or (4) is desirable in a particular proceeding, the director shall so advise the chairperson who, following consultation with two other members, may authorize the announcement.

► 3.11 [Deleted]

► DIVISION IV.

DISABILITY RETIREMENT APPLICATIONS

► 4.1 Disability Applications: Confidentiality

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

► 4.2 Disability Applications: Medical Consultants

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

75060 and for re-evaluation under Government Code section 75060.6.

► 4.3 Re-examination of Judges Retired for Disability

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

► 4.4 Procedure in Disability Retirement Matters

(1) An application for disability retirement must include: a consent to disability retirement, executed by the judge, and a medical certificate of disability, executed under penalty of perjury by a licensed physician. To complete the application, the commission ordinarily will require a medical report prepared by that physician in support of certification and all pertinent medical documentation.

(2) When a judge submits an application for disability retirement, the commission will advise the judge if the certifying physician's report or other medical documentation supporting the application is inadequate, and will give the judge 30 days to supply more complete data.

(3) Following receipt of a complete application, the commission may request review of medical reports and documents by independent consultants and/or medical examiners. One or more independent medical examinations may be requested within 120 days of the first commission meeting after receipt of complete medical records. This time may be extended for good cause. If an independent medical examination is conducted, the commission will provide a copy of the examiner's report to the judge.

(4) Within 60 days of the first commission meeting after receipt of all reports by consultants and medical examiners, the commission will either approve the application or tentatively deny it.

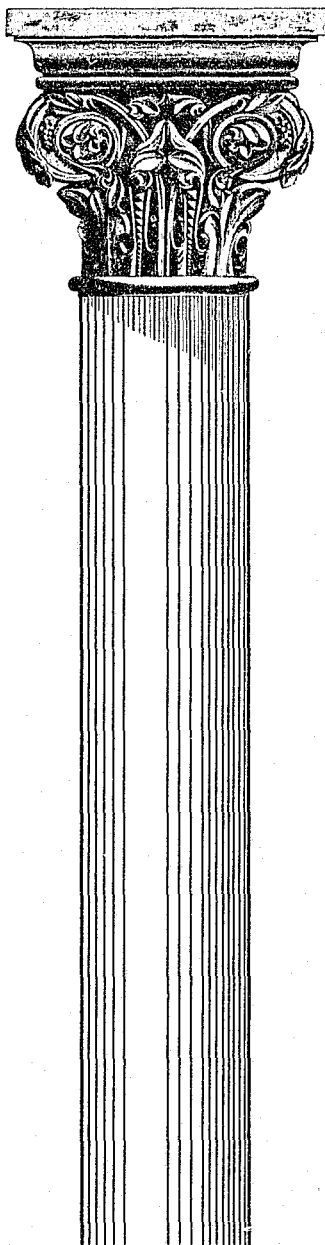
(5) If the commission tentatively denies the application, the commission will within 30 days issue a tentative decision setting forth the reasons for the denial. The tentative decision will be provided to the judge upon issuance.

(6) Following a tentative denial, the judge may either withdraw the application or, within 30 days of the denial, file a request to present additional evidence. Within 30 days of the first commission meeting after such filing, the commission will appoint a special master authorized to take evidence, obtain additional medical information, and take any other steps he or she deems necessary to resolve the matter.

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

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

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Adapted from the 1990 ABA Model Code of Judicial Conduct by the California Judges Association.

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"While the canons do not have the force of law or regulation, they reflect a judicial consensus regarding appropriate behavior, and are helpful in giving content to the constitutional standards under which disciplinary proceedings are charged. (*Canon v. Commission on Judicial Qualifications* (1975) 14 Cal.3d 678, 707, fn. 22 [122 Cal.Rptr. 778, 537 P.2d 898]; *Spruance v. Commission on Judicial Qualifications* (1975) 13 Cal.3d 778, 796 [119 Cal.Rptr. 841, 532 P.2d 1209].)

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

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► PREFACE

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

In 1969, the American Bar Association determined that 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 Judges Association then drafted a new California Code of Judicial Conduct adapted from the ABA 1972 Model Code. The new version was adopted by the membership at the Annual Meeting in September 1974, and became effective January 5, 1975. The California Code was recast in gender-neutral form in 1986.

In 1990, a third generation of the American Bar Association Model Code was approved by the House of Delegates after a lengthy study. The California Judges Association began review of the 1990 Model Code later that year, culminating in the adoption of a revised California Code of Judicial Conduct on October 5, 1992.

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 1993 Annual Meeting.

► PREAMBLE

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol

of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in sections under each Canon, a Terminology section, a Compliance section and Commentary. The text of the Canons and the sections, including the Terminology and Compliance sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and sections. The Commentary is not intended as a statement of additional rules.

The use of the word "should" throughout the text does not relieve judges of the obligation to comply with this Code.

The Canons and sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution.

The text of the Canons and sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

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► **TERMINOLOGY**

Terms explained below are noted with an asterisk (*) in the Canons where they appear. In addition, the Canons where terms appear are cited after the explanation of each term below.

► **“Appropriate authority”** denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported. See Commentary to Canon 3D.

► **“Candidate.”** A candidate is a person seeking election for or retention in judicial office by election. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support. The term “candidate” has the same meaning when applied to a judge seeking election to non-judicial office, unless on leave of absence. See Preamble and Canons 2B, 5A, 5B, 5C, and 6D.

► **“Court personnel”** does not include the lawyers in a proceeding before a judge. See Canons 3B(7)(b) and 3B(9).

► **“Fiduciary”** includes such relationships as executor, administrator, trustee, and guardian. See Canons 4E and 6E.

► **“Law”** denotes court rules as well as statutes, constitutional provisions and decisional law. See Canons 1, 2A, 2C, 3A, 3B(2), 3B(7), 3E, 4B, 4C, 4D(4), 4F, and 5D.

► **“Member of the judge’s family”** denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the judge maintains a close familial relationship. See Canons 2B, 4D(1), 4D(2), 4E, 4G and 5A.

► **“Member of the judge’s family residing in the judge’s household”** denotes those persons who reside in the judge’s household who are relatives of the judge within the third degree of relationship (i.e., a great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece) or by marriage, or persons treated by the judge as a member of the judge’s family. See Canons 4D(4) and 4D(5).

► **“Nonpublic information”** denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports. See Canon 3B(11).

► **“Political organization”** denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to nonjudicial office. See Canon 5A(3).

► **“Pro tempore judge.”** (“Temporary Judge”) A pro tempore judge is an active or inactive member of the bar who serves or expects to serve as a judge once, sporadically, or regularly on a part-time basis under a separate appointment for each period of service or for each case heard. See Canon 6C.

► **“Require.”** The rules prescribing that a judge “require” certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term “require” in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control. See Canons 3B(3), 3B(4), 3B(6), 3B(8), 3B(9) and 3C(2).

► **CANON 1**

A judge should uphold the integrity and independence of the judiciary.

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

► **Commentary:** *Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law* and the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violations of this Code diminish public confidence in the judiciary and thereby do injury to the system of government under law.*

A judicial decision or administrative act later determined to be incorrect legally is not in itself a violation of this Code. The basic function of an independent and honorable judiciary is to maintain the utmost integrity in decision-making, and this Code should be read and interpreted with that function in mind.

► **CANON 2**

A judge should avoid impropriety and the appearance of impropriety in all of the judge’s activities.

► **A.** A judge should respect and comply with the law* and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

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

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the pro-

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Canon 2A continued

professional and personal conduct of a judge.

The test for the appearance of impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality, and competence.

See also Commentary under Canon 2C.

► **B.** A judge should not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge should not lend the prestige of judicial office to advance the private or personal interests of the judge or others; nor should a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

► **Commentary:** *Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to use his or her position to gain a personal advantage, such as deferential treatment when stopped by a police officer for a traffic offense, or to use judicial letterhead to gain favor or special treatment.*

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judicial position to gain advantage in a civil suit involving a member of the judge's family. As to the use of a judge's title to identify a judge's role in the presentation and/or creation of legal education programs and materials, see Commentary to Canon 4B. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see Canon 4D(4)(a) and Commentary.*

Judges may participate in the process of judicial selection by serving on and cooperating with screening and appointing committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship, and by providing letters of recommendation relating to the character of the candidate.*

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation of a factual nature. Writing general character recommendations in areas involving the administration of justice is consistent with the purposes of Canon 4B. A judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer, but may provide to such persons information for the record in response to

a formal request from such persons.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in an awkward position of cross-examining the judge.

This Canon, however, does not afford judges a privilege against testifying in response to an official summons.

► **C.** A judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin. This Canon does not apply to membership in a religious organization.

► **Commentary:** *Membership of a judge in an organization that practices invidious discrimination gives rise to a perception that the judge's impartiality is impaired.*

Canon 2C refers to the current practices of the organization. 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 how the organization selects members and other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or whether it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, or national origin persons who would otherwise be admitted to membership.

Although Canon 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion, or national origin, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by law also violates Canon 2 and Canon 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Canon 2A for a judge to arrange a meeting at a club that the judge knows practices such invidious discrimination or for the judge to regularly use such a club. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Canon 2A.*

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► **CANON 3**

A judge should perform the duties of judicial office impartially and diligently.

► **A. Judicial Duties in General.**

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

► **B. Adjudicative Responsibilities.**

(1) A judge should hear and decide all matters assigned to the judge except those in which he or she is disqualified.

► **Commentary:** *This Canon 3B(1) is based upon the affirmative obligation contained in the Code of Civil Procedure.*

(2) A judge should be faithful to the law* and maintain professional competence in it. A judge should not be swayed by partisan interests, public clamor or fear of criticism.

(3) A judge should require* order and decorum in proceedings before the judge.

(4) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require* similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

(5) A judge should perform judicial duties without bias or prejudice. A judge should not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.

► **Commentary:** *A judge must refrain from speech, gestures, or other conduct that could reasonably be perceived as sexual harassment.*

(6) A judge should require* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel or others. This Canon does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, or other similar factors, are issues in the proceeding.

(7) A judge should accord to every person who has a legal interest in a proceeding, or that person's lawyer, full right to be heard according to law.* A judge should not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding, except as follows:

(a) A judge may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable

opportunity to respond.

(b) A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(c) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(d) A judge may initiate or consider any ex parte communication when expressly authorized by law* to do so.

► **Commentary:** *The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by the exceptions noted in this Canon 3B(7).*

This Canon does not prohibit a judge from initiating or considering an ex parte communication when authorized to do so by stipulation of the parties.

This Canon does not prohibit court staff from communicating scheduling information or carrying out similar administrative functions.

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 an amicus curiae brief.

A judge must not independently investigate facts in a case and must consider only the evidence presented, unless otherwise authorized by law.*

(8) A judge should dispose of all judicial matters fairly, promptly, and efficiently.

► **Commentary:** *The obligation of a judge to dispose of matters promptly and efficiently must not take precedence over the judge's obligation to dispose of the matters fairly and with patience. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.*

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to require that court officials, litigants and their lawyers cooperate with the judge to that end.

(9) A judge should not make any public comment about a pending or impending proceeding in any court, and should not make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge should require* similar abstention on the part of court personnel* subject to the judge's direction and control. This Canon does not prohibit judges from making statements in the course of their

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Canon 3B(9) continued

official duties or from explaining for public information the procedures of the court, and does not apply to proceedings in which the judge is a litigant in a personal capacity.

- ▶ **Commentary:** *The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Canon does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. Other than cases in which the judge has personally participated, this Canon does not prohibit judges from discussing in legal education programs and materials cases and issues pending in appellate courts.*

(10) A judge should not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

- ▶ **Commentary:** *Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.*

(11) A judge should not disclose or use, for any purpose unrelated to judicial duties, nonpublic information* acquired in a judicial capacity.

- ▶ **Commentary:** *This Canon makes it clear that judges cannot make use of information from affidavits, jury results, or court rulings, before they become public information, in order to gain personal advantage.*

▶ **C. Administrative Responsibilities.**

(1) A judge should diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge should require* staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status in the performance of their official duties.

- ▶ **Commentary:** *A judge should require* staff, court officials, and others subject to the judge's direction and control to refrain from speech, gestures, or other conduct that could reasonably be perceived as sexual harassment.*

(3) A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

- (4) A judge should not make unnecessary appointments. A

judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid nepotism and favoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.

- ▶ **Commentary:** *Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers and guardians and personnel such as clerks, secretaries and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Canon 3C(4).*

▶ **D. Disciplinary Responsibilities.**

A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

- ▶ **Commentary:** *Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, or reporting the violation to the appropriate authority or other agency or body. Judges should note that in addition to the action required by Canon 3D, California law imposes additional reporting requirements regarding lawyers, such as those contained in the Business & Professions Code.*

▶ **E. Disqualification.**

A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, or in a proceeding in which disqualification is required by law*.

- ▶ **Commentary:** *Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, or whenever required by the disqualification provisions of the Code of Civil Procedure.*

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no actual basis for disqualification.

The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must timely disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

A judge should observe the provisions of the Code of Civil Procedure concerning remittal of disqualification.

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CALIFORNIA CODE OF JUDICIAL CONDUCT

► **CANON 4**

A judge should so conduct the judge's quasi-judicial and other extra-judicial activities as to minimize the risk of conflict with judicial obligations.

► **A. Extra-judicial Activities in General.**

A judge should conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

► **Commentary:** Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of a classification such as their race, sex, religion, sexual orientation or national origin. See Canon 2C and accompanying Commentary.

► **B. Quasi-Judicial and Avocational Activities.**

A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law*, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.

► **Commentary:** As a judicial officer and person specially learned in the law, a judge is 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 time permits, a judge is encouraged to do so, either independently or through a bar or judicial association or other group dedicated to the improvement of the law.

In order to improve the law, the legal system and the administration of justice through a judge's participation in and creation of legal education programs and materials, it may be necessary to promote such programs and materials, in part, by identifying the creator and/or participant by judicial title. This is permissible, provided such use of the judicial title does not contravene Canon 2A.

In this and other sections of Canon 4, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various Canons of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

► **C. Governmental, Civic or Charitable Activities.**

(1) A judge should not appear at a public hearing or otherwise consult with an executive or legislative body or public official except on matters concerning the law*, the legal system or the administration of justice, except when acting pro se in a matter involving the judge's personal interests.

► **Commentary:** See Canon 2B regarding the obligation to avoid improper influence.

(2) A judge should not accept appointment to a governmental committee or commission or other governmental 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. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

► **Commentary:** Canon 4C(2) prohibits a judge from accepting any governmental position except one relating to the law*, legal system or administration of justice as authorized by Canon 4C(3). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary, or which constitute a public office within the meaning of California Constitution, Article VI, Section 17. But this Canon does not apply to positions in federal or state military units.

Canon 4C(2) does not govern a judge's service in a nongovernmental position. See Canon 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit. For example, service on the board of a public educational institution, unless it were a law school, would be prohibited under Canon 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Canon 4C(3).*

(3) Subject to the following limitations and the other requirements of this Code,

(a) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law*, the legal system or the administration of justice provided that such position does not constitute a public office within the meaning of the California Constitution, Article VI, Section 17.

(b) A judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal or civic organization not conducted for profit.

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Canon 4C(3) continued

► **Commentary:** Canon 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law*, the legal system or the administration of justice; see Canon 4C(2).

See Commentary to Canon 4B regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Canon 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Canon 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Canon 4C. For example, a judge is prohibited by Canon 4G from serving as a legal advisor to a civic or charitable organization.

Service on the board of a homeowners' association or a neighborhood protective group is proper if it is related to the protection of the judge's own economic interests. See Canons 4D(2) and 4D(3). See Canon 2B regarding the obligation to avoid improper use of the prestige of a judge's office.

(c) A judge should not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(i) will be engaged in proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

► **Commentary:** The changing nature of some organizations and of their relationship to the law* makes it necessary for the judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in some 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.

(d) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organizations' funds, but should not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may privately solicit funds for such an organization from other judges (excluding court commissioners, referees, and temporary judges);

(ii) may make recommendations to public and private

fund-granting organizations on projects and programs concerning the law*, the legal system or the administration of justice;

(iii) should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in Canon 4C(3)(d)(i), if the membership solicitation is essentially a fund-raising mechanism;

(iv) should not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

► **Commentary:** A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law*, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: 1) a judge may solicit other judges (excluding court commissioners, referees and temporary judges), for funds or memberships; 2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves; and 3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for fund-raising or membership solicitation does not violate Canon 4C(3)(d), provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

A judge must not be a principal speaker, or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.

► **D. Financial Activities.**

(1) A judge should not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position, or

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Canon 4D(1) continued

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

► **Commentary:** *The Time for Compliance provision of this Code (Canon 6E) postpones the time for compliance with certain provisions of this Canon in some cases.*

When a judge acquires in a judicial capacity information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See Canon 2B; see also Canon 3B(11).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position or involve those family members in frequent transactions or continuing business relationships with persons likely to come before the judge. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification.*

Participation by a judge in financial and business dealings is subject to the general prohibitions in Canon 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Canon 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See Commentary to Canon 4B regarding use of the phrase "subject to the requirements of this Code."

As to the use of a judge's title to identify a judge's role in the presentation and/or creation of legal education programs and materials, see Commentary to Canon 4B.

(2) A judge may, subject to the requirements of this Code, hold and/or manage investments of the judge and members of the judge's family*, including real estate, and engage in other remunerative activities, but should not participate in, nor permit the judge's name 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 the office is being utilized to promote a business or commercial product. A judge should not serve as an officer, director, manager or employee of a business affected with a public interest, including, without limitation, a financial institution, insurance

company, or public utility.

► **Commentary:** *Although participation by a judge in business activities might otherwise be permitted by Canon 4D(2), a judge may be prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in any business activity if the judge's participation would involve misuse of the prestige of judicial office. See Canon 2B.*

(3) A judge should manage personal investments and other financial interests to minimize the number of cases in which there can be disqualification. As soon as possible to do so without serious financial detriment, the judge should divest himself or herself of investments and other financial interests that might require frequent disqualification.

(4) A judge should not accept, and should urge members of the judge's family residing in the judge's household* not to accept, a gift, bequest, favor or loan from anyone except for:

► **Commentary:** *Canon 4D(4) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5.*

Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.*

(a) a gift incidental to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law*, the legal system or the administration of justice;

► **Commentary:** *Acceptance of an invitation to a law-related function is governed by Canon 4D(4)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Canons 4D(4)(c) and 4D(5).*

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household,* including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift for a special occasion from a relative or friend, if

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Canon 4D(4)(d) continued

the gift is fairly commensurate with the occasion and the relationship;

► **Commentary:** *A gift to a judge, or to a member of the judge's family living in the judge's household,* that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Canon 4D(4)(e).*

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Canon 3E;

(f) a loan in the regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants.

(5) Except as otherwise permitted in Canon 4D(4), a judge should not accept, and should urge members of the judge's family residing in the judge's household* not to accept, a gift, bequest, favor or loan if the donor or lender is a party or other person who has come or is likely to come, or a person whose interests have come or are likely to come before the judge.

► **Commentary:** *Canon 4D(5) prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms, if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.*

Although Canon 4D(4)(c) does not preclude ordinary social hospitality between members of the bench and bar, a judge should carefully weigh acceptance of such hospitality to avoid any appearance of bias. See Canon 2B.

► **E. Fiduciary Activities.**

(1) A judge should not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary*, except for the estate, trust or person of a member of the judge's family*, and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge should not serve as a fiduciary* if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary* capacity.

► **Commentary:** *The Time for Compliance provision of this Code(Canon 6E)postpones the time for compliance with certain provisions of this Canon in some cases.*

The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Canon 4D(3).*

► **F. Service as Arbitrator or Mediator.**

A judge should not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.*

► **Commentary:** *Canon 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties.*

► **G. Practice of Law.**

A judge should not practice law.

► **Commentary:** *This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family*. See Canon 2B.*

► **H. Compensation and Reimbursement.**

A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(1) 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.

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

► **Commentary:** *The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to exploit the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.*

As to the use of a judge's title to identify a judge's role in the presentation and/or creation of legal education programs and materials, see Commentary to Canon 4B.

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► **CANON 5**

A judge or judicial candidate should refrain from inappropriate political activity.

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.** Judges and candidates* for judicial office should not:

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

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

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

► **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.

In judicial elections, judges are neither required to shield themselves from campaign contributions nor are they prohibited from soliciting contributions from anyone including attorneys. Nevertheless, there are necessary limits on judges facing election if the appearance of impropriety is to be avoided. It is not possible for judges to do the same sort of fund raising as an ordinary politician and at the same time maintain the dignity and respect necessary for an independent judiciary. Although it is improper for a judge to receive a gift from an attorney subject to exceptions noted in Canon 4D(4), a judge's campaign may receive attorney contributions.

Although attendance at political gatherings is not prohibited, any such attendance should be restricted so that it would not constitute a public endorsement of a cause or candidate otherwise prohibited by this Canon.*

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 should be considered a political contribution. The prohibition in Canon 5A(3) does not preclude judges from contributing to a campaign fund for distribution among judges who are candidates for reelection or retention, nor does it apply to

contributions to any judge or candidate for judicial office.*

Under this Canon, a judge may publicly endorse another judicial candidate.*

Although family members of the judge are not subject to the provisions of this Code, a judge should not avoid compliance with this Code by making contributions through a spouse or other family member.*

► **B.** Judicial independence and impartiality should dictate the conduct of judicial candidates.* A candidate for election or appointment to judicial office should not make statements to the electorate or the appointing authority that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the courts. This provision does not apply to statements made in the course of judicial proceedings.

► **C.** Candidates* for judicial office may speak to political gatherings only on their own behalf or on behalf of another candidate for judicial office.

► **D.** 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.

► **CANON 6**

Compliance with the code of judicial conduct.

► **A. Judges.**

Anyone who is an officer of the state judicial system and who performs judicial functions, including, but not limited to, an officer such as a magistrate, court commissioner, judge of the State Bar Court, part-time judge, special master or referee, is a judge within the meaning of this Code. All judges should comply with this Code except as provided below.

► **Commentary:** For the purposes of this Canon, as long as a retired judge is available for assignment the judge is considered to "perform judicial functions." Because retired judges who are privately retained may perform judicial functions, their conduct while performing those functions should be guided by this Code.

► **B. Retired Judge Available for Assignment.**

A retired judge available for assignment to judicial service, and during such service, should comply with all provisions of this Code, except for the following:

- 4C(2) (appointment to governmental positions)
- 4D(2) (participation in business entities and managing investments)
- 4E (fiduciary* activities)
- 4F (service as arbitrator)

► **Commentary:** In California, Article VI section 6 of the California Constitution provides that a "retired judge who consents may be assigned to any court" by the Chief Justice. Retired judges who are available for assignment pursuant to the above provision are bound by the above

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Canon 6B continued

section B of Canon 6, including the requirement of section 4G barring the practice of law. Other provisions of California law further define the limitations on who is eligible for assignment.

► C. A Pro Tempore Judge (Temporary Judge).

A pro tempore judge* while sitting as such, should comply with all provisions of this Code, except for the following:

- 4C(2) (appointment to governmental positions)
- 4C(3)(a) (leadership in organizations devoted to law*)
- 4C(3)(b) (leadership in civic/charitable organizations)
- 4D(1)(b) (transactions with persons likely to come before the court)
- 4D(2) (participation in business entities and managing investments)
- 4D(3) (managing financial interests to minimize disqualifications)
- 4D(4) (acceptance of gifts, bequests, favors and loans)
- 4E (fiduciary* activities)
- 4F (service as arbitrator)
- 4G (practice of law)
- 4H (compensation for extrajudicial activities)
- 5A (political activity)

A person who has been a pro tempore judge* should not act as a lawyer in a proceeding in which the judge has served as

a judge or in any other proceeding related thereto except as otherwise permitted by Rule 3-310 of the Rules of Professional Conduct.

► D. Judicial Candidate.

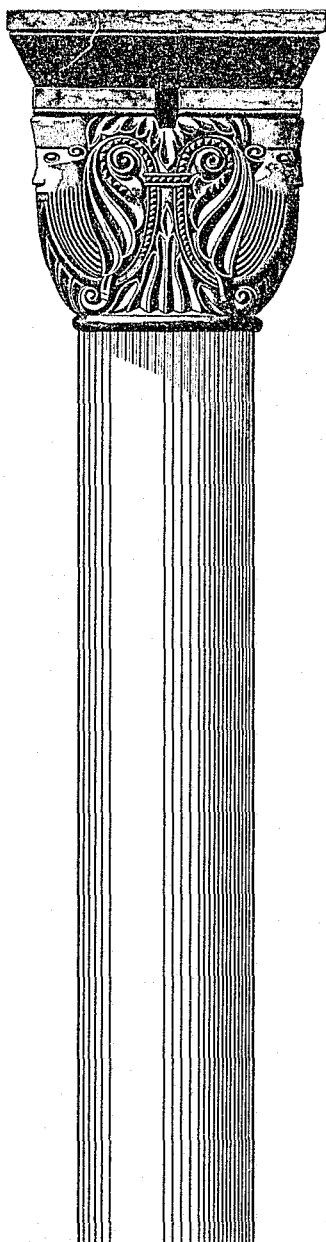
A candidate* for judicial office should comply with the provisions of Canon 5.

► E. Time for Compliance.

A person to whom this Code becomes applicable should comply immediately with all provisions of this Code except Canons 4D(2) and 4E and should comply with these Canons as soon as reasonably possible and should do so in any event within the period of one year.

► Commentary: *If serving as a fiduciary* when selected as a judge, a new judge may, notwithstanding the prohibitions in Canon 4E, continue to serve as fiduciary but only for that period of time necessary to avoid adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Canon 4D(2), continue in that activity for a reasonable period but in no event longer than one year.*

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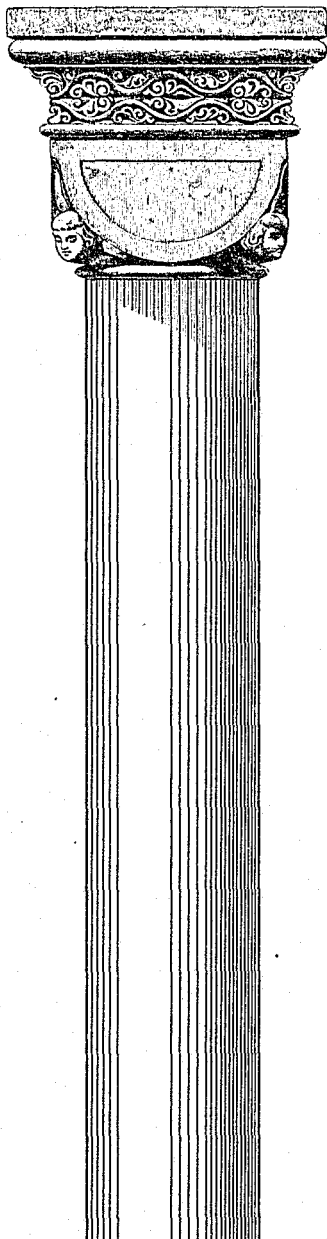


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► Chapter 2.5: COMMISSION ON JUDICIAL PERFORMANCE

► Article 1
GENERAL PROVISIONS

► § 68701. Definitions

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

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

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

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

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

► § 68703. Expenses

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

► § 68704. Concurrence of majority in acts of council

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

► Article 2
CO-OPERATION OF PUBLIC OFFICERS AND AGENCIES

► § 68725. Assistance and information

State and local public bodies and departments, officers and

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

► § 68726. Service of process; execution of orders

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

► Article 3
INVESTIGATIONS AND HEARINGS

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

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

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

► § 68751. Scope of process; attendance of witnesses

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

► § 68752. Order compelling witness to attend and testify

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

► § 68753. Depositions

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

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

► **§ 68754. Witness fees; mileage**

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

► **§ 68755. Costs**

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

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

► **Article 2**

RETIREMENT FOR SERVICE

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

A judge who pleads guilty or no contest or is found guilty of a crime committed while holding judicial office which is punishable as a felony under California or federal law and which either involves moral turpitude under that law or was committed in the course and scope of performing the judge's duties, and the conviction becomes final shall not receive any benefits from the Judges' Retirement System, except that the amount of his or her accumulated contributions shall be paid to him or her by the Judges' Retirement System.

► **Article 3**

DISABILITY RETIREMENT

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

(a) Any judge who is unable to discharge efficiently the duties of his or her office by reason of mental or physical

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

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

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

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

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

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

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

(b) The report shall include the following:

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

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

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

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

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

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

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

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

The Commission on Judicial Performance, in its discretion, but not more often than once every two years, may require any judge who is receiving an allowance under this section and who is under the age of 65 years to undergo medical examination. The examination shall be made by one or more physicians or surgeons, appointed by the Commission on Judicial Performance, at the place of residence of the judge or other place mutually agreed upon. Upon the basis of the examination the commission shall determine whether he or she is still incapacitated, physically or mentally, for service as a judge. If the commission determines, on the basis of the results of the medical examination, that he or she is not so incapacitated, he or she shall be a judicial officer of the state, but shall not exercise any of the powers of a justice or judge except while under assignment to a court by the Chairman of the Judicial Council. The allowance of the judge shall cease if he or she refuses an assignment while he or she is not so incapacitated. The provisions of Section 68543.5 are applicable to such a judge. The provisions of this section and of Section 75060 are applicable to all judges of courts of record in this state.

► § 75061. Disability retirement; prerequisites

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

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

► § 75062. Felony charges or convictions; effect on disability retirement application

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

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

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

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

► § 75063. Judicial misconduct; effect on disability retirement application

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

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

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

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

► § 75064. Defeat at election; effect on disability retirement application

A member who is defeated at an election and who either had submitted, prior to the date of the election, an application for disability retirement or submits, on or after the date of the election, an application for disability retirement:

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

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

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

Appendix 2.
SELECTED JUDICIAL
OPINIONS AFFECTING
THE COMMISSION

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

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

**McCartney v. Commission on
 Judicial Qualifications**
 12 Cal.3d 512 (1974)
 116 Cal.Rptr. 260
 526 P.2d 268

**Spruance v. Commission on
 Judicial Qualifications**
 13 Cal.3d 778 (1975)
 119 Cal.Rptr. 841
 532 P.2d 1209

**Cannon v. Commission on
 Judicial Qualifications**
 14 Cal.3d 678 (1975)
 122 Cal.Rptr. 778
 537 P.2d 898

**McComb v. Commission on
 Judicial Performance**
 19 Cal.3d Spec.Trib.Supp. 1 (1977)
 138 Cal.Rptr. 459
 564 P.2d 1

**McComb v. Superior Court of
 San Francisco, et al.**
 68 Cal.App.3d 89 (1977)
 137 Cal.Rptr. 233

In re Arden T. Jensen
 24 Cal.3d 72 (1978)
 154 Cal.Rptr. 503
 593 P.2d 200

In re Robert S. Stevens
 28 Cal.3d 873 (1981)
 172 Cal.Rptr. 676
 625 P.2d 219

**Wenger v. Commission on
 Judicial Performance**
 29 Cal.3d 615 (1981)
 175 Cal.Rptr. 420
 630 P.2d 954

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

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

**Gonzalez v. Commission on
 Judicial Performance**
 33 Cal.3d 359 (1983)
 188 Cal.Rptr. 880
 657 P.2d 372
 appeal dismissed, 104 S.Ct. 690 (1984)

**Roberts v. Commission on
 Judicial Performance**
 33 Cal.3d 739 (1983)
 190 Cal.Rptr. 910
 661 P.2d 1064

In re Bobby D. Youngblood
 33 Cal.3d 788 (1983)
 191 Cal.Rptr. 171
 662 P.2d 108

**Gubler v. Commission on
 Judicial Performance**
 37 Cal.3d 27 (1984)
 207 Cal.Rptr. 171
 688 P.2d 551

**Mardikian v. Commission on
 Judicial Performance**
 40 Cal.3d 473 (1985)
 220 Cal.Rptr. 833
 709 P.2d 852

In re Frank J. Creede
 42 Cal.3d 1098 (1986)
 233 Cal.Rptr. 1
 729 P.2d 79

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

In re L. Eugene Rasmussen
 43 Cal.3d 536 (1987)
 236 Cal.Rptr. 152
 734 P.2d 988

**Furey v. Commission on
 Judicial Performance**
 43 Cal.3d 1297 (1987)
 240 Cal.Rptr. 859
 743 P.2d 919

**Ryan v. Commission on
 Judicial Performance**
 45 Cal.3d 518 (1988)
 247 Cal.Rptr. 378
 754 P.2d 724

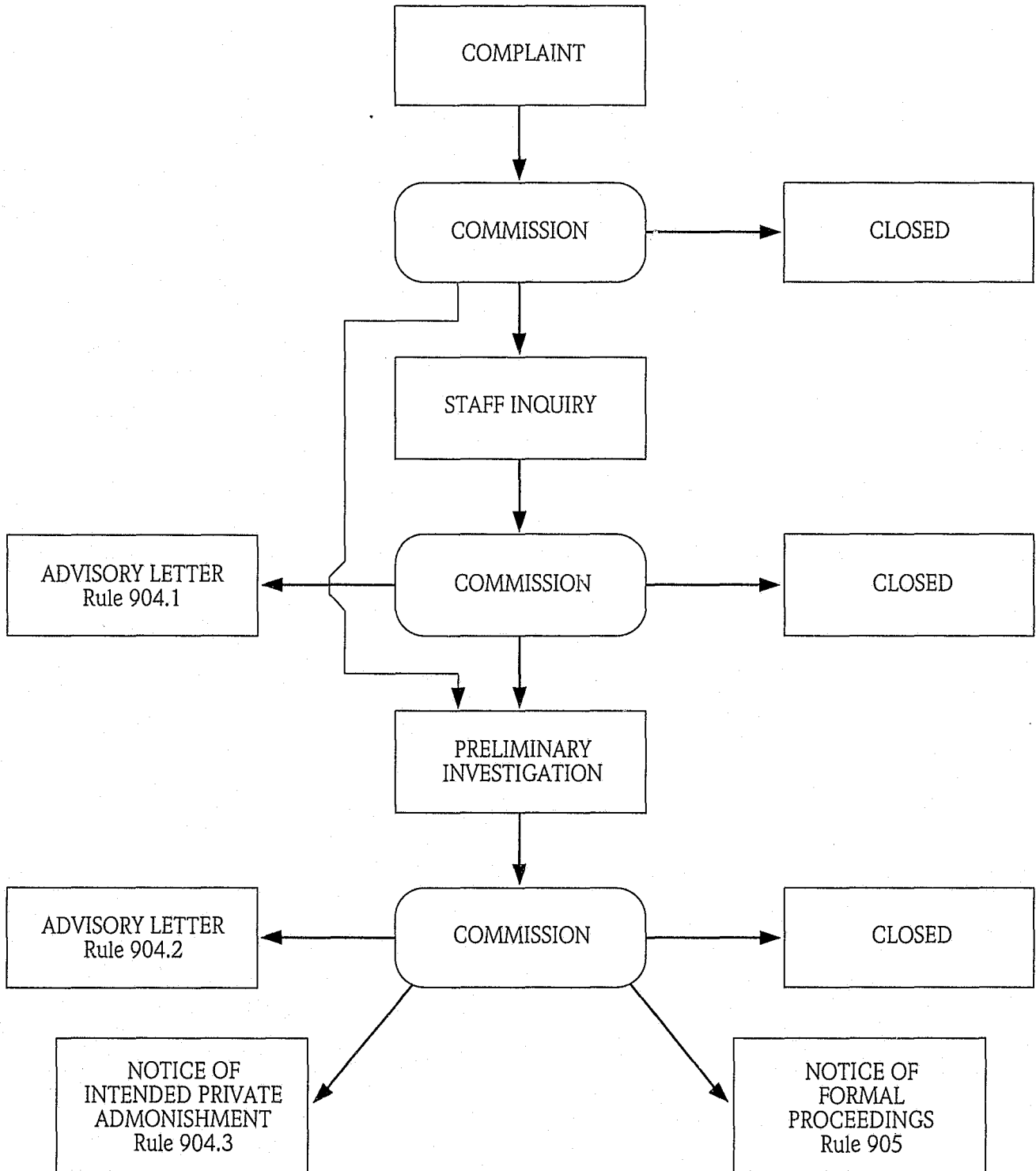
**McCullough v. Commission on
 Judicial Performance**
 49 Cal.3d 186 (1989)
 260 Cal.Rptr. 557
 776 P.2d 259

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

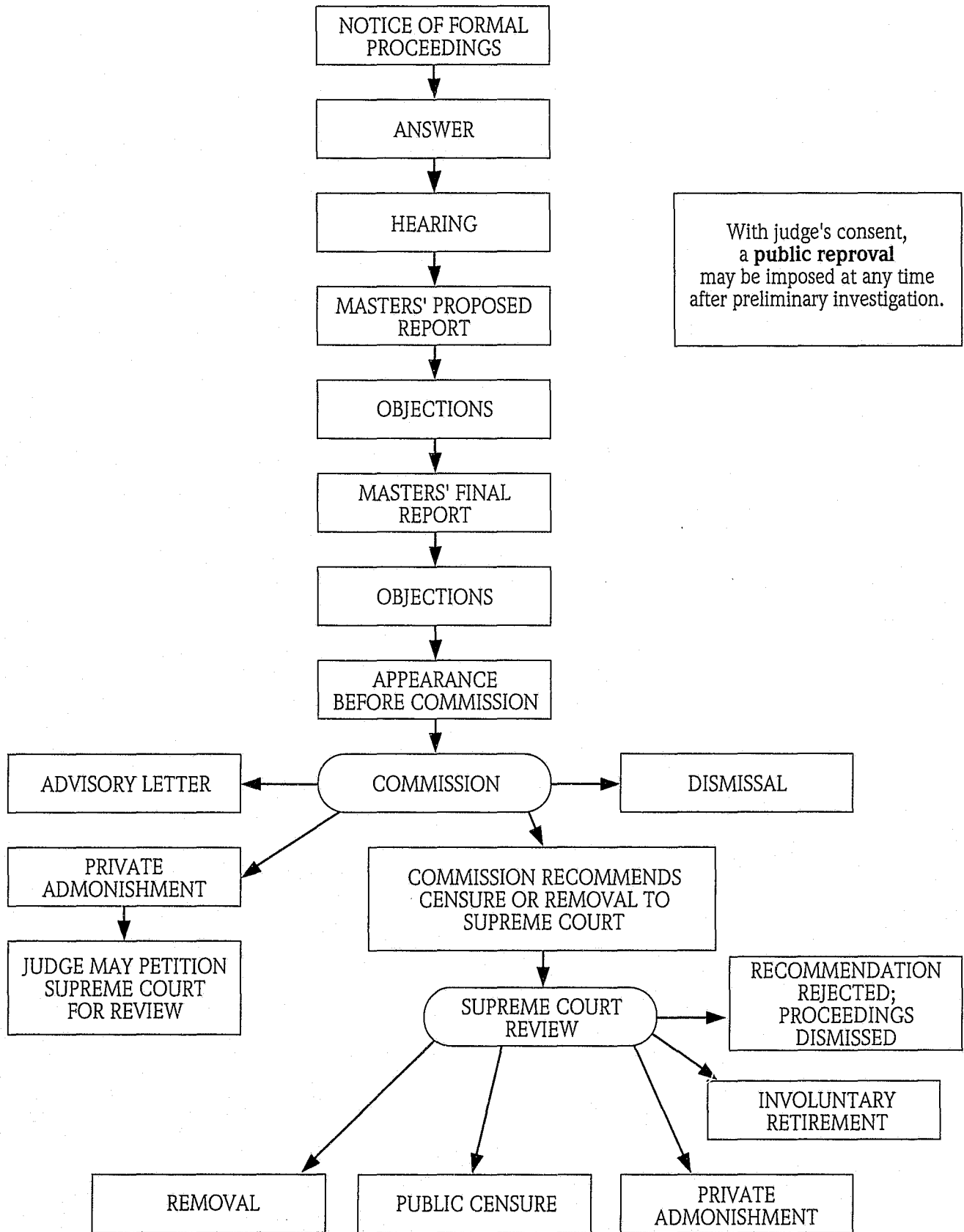
**Kennick v. Commission on
 Judicial Performance**
 50 Cal.3d 297 (1990)
 267 Cal.Rptr. 293
 787 P.2d 591

Appendix 3. COMMISSION PROCEDURES

First Steps



Formal Proceedings



Appendix 4

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

COMPLAINT ABOUT A CALIFORNIA JUDGE

Confidential under California Constitution
Article VI, Section 18

Today's date:

Your name:

Your telephone number:

Your address:

Your attorney's name:

Your attorney's telephone number:

Judge's name:

Court:

County:

Name of case and case number:

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

Return to: Commission on Judicial Performance
101 Howard Street, Suite 300
San Francisco, California 94105

Telephone: (415) 904-3650

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