

STATE OF CALIFORNIA
COMMISSION
ON JUDICIAL
PERFORMANCE
1997 ANNUAL REPORT

**ANNUAL REPORT OF THE
STATE OF CALIFORNIA
COMMISSION ON JUDICIAL PERFORMANCE**



1997

COMMISSION MEMBERS

Robert C. Bonner, Esq., Chairperson
Ms. Ophelia Basgal, Vice-Chairperson
Mr. Alan W. Barcelona
Honorable Lois Haight
Honorable Daniel M. Hanlon
Ms. Eleanor Johns
Patrick M. Kelly, Esq.
Honorable Vincent J. McGraw
Ms. Harriet C. Salarno
Donald E. Vinson, Ph.D.
Ms. Pearl West

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COMMISSION ON JUDICIAL PERFORMANCE

1997 ANNUAL REPORT

TABLE OF CONTENTS

	Page
INTRODUCTION	i
COMPOSITION OF THE COMMISSION	ii
I. OVERVIEW OF THE COMPLAINT PROCESS	
The Authority of the Commission on Judicial Performance	1
How Matters Are Brought Before the Commission	1
Judicial Misconduct	1
What the Commission Cannot Do	1
Review and Investigation of Complaints	1
Action the Commission Can Take	2
Confidential Dispositions	2
Public Dispositions	2
Confidentiality	3
II. LEGAL AUTHORITY AND COMMISSION PROCEDURES	
Legal Authority	4
California Constitution, Government Code, and Code of Civil Procedure Section 170.9	4
Commission Rules and Policy Declarations	4
Code of Judicial Ethics	4
Commission Procedures	5
Commission Review of Complaints	5
Investigation at the Commission's Direction and Disposition of Cases Without Formal Proceedings	5
Chart on Complaint Process	6
Deferral of Investigation	7
Monitoring	7
Formal Proceedings	7
Hearing	7
Chart on Formal Proceedings	8
Commission Consideration Following Hearing	9
Disposition of Cases After Hearing	9
Supreme Court Review	9
Statute of Limitations	9
Standard of Proof	9
Confidentiality of Commission Proceedings	9

TABLE OF CONTENTS continued

Page

III. 1997 STATISTICS

Complaints Received and Investigated 11
 New Complaints 11
 Staff Inquiries and Preliminary Investigations 11
 Formal Proceedings 11
Complaint Dispositions 12
 Closed Without Action 12
 Chart on 1997 Commission Case Dispositions 13
 Closed With Discipline or Advisory 14
 Resignations and Retirements 14
 Chart on Types of Conduct Resulting in Advisory
 Letter or Discipline 15

IV. CASE SUMMARIES

Public Discipline 16
 Censures by the Commission 16
 Public Admonishments by the Commission 17
Private Admonishments 20
Advisory Letters 21
Decisions and Orders of Dismissal of Formal Proceedings 23

V. VOLUNTARY DISABILITY RETIREMENT 25

VI. COMMISSION ORGANIZATION, STAFF AND BUDGET

Commission Organization and Staff 26
Budget 27

APPENDIX

1. GOVERNING PROVISIONS

A. California Constitution, Article VI, Sections 8, 18 and 18.5 29
B. Rules of the Commission on Judicial Performance 32
C. Policy Declarations of the Commission on Judicial Performance 45
D. California Rules of Court 54
E. California Code of Judicial Ethics 56
F. California Government Code 71
G. California Code of Civil Procedure Section 170.9 76

2. SELECTED JUDICIAL OPINIONS AFFECTING THE COMMISSION 79

3. 10-YEAR SUMMARY OF COMMISSION ACTIVITY 81

4. COMPLAINT FORM 83

INTRODUCTION



The California Constitution mandates that the Commission on Judicial Performance investigate allegations of judicial misconduct and, if warranted by the facts, take disciplinary action. Fulfilling this mandate is crucially important to the preservation of public confidence in the State's judiciary and in the system of justice itself. It is no exaggeration to say that if public confidence in the judiciary erodes, the rule of law itself, an essential element of our democratic system, is threatened.

1997 marked the first full year of the Commission's operations under its new procedural rules, adopted under authority conferred by Proposition 190 which took effect in March 1995. The Commission concluded its work on the last "pre-Prop 190" cases, and all formal proceedings in 1997 were open to the public.

In 1997, I was honored to be selected by my fellow commissioners to succeed Justice William A. Masterson as the chairperson of the Commission. Justice Masterson chaired the Commission during a critical time in its 37-year history – the period immediately following the passage of Proposition 190 which profoundly altered the authority and composition of the Commission. The people of our State owe a debt of gratitude to Justice Masterson for ensuring a smooth, steady transition into the Commission's post-Prop 190 era.

Finally, readers will note some changes in the 1997 Annual Report. We have added a ten-year statistical history of the Commission as well as a chart reflecting the categories of misconduct most frequently resulting in discipline or advisory letters in 1997. The Commission invites comments about the format and content of the Annual Report.

As 1998 begins, the Commission continues to make every effort to faithfully adhere to its mandate.

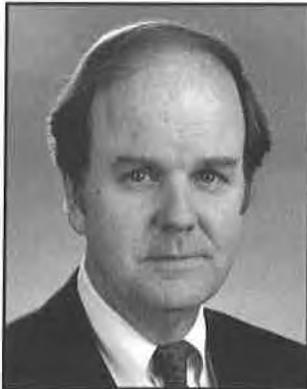
A handwritten signature in cursive script, reading "Robert C. Bonner".

Robert C. Bonner
Chairperson

COMPOSITION OF THE COMMISSION

Pursuant to California Constitution, article VI, section 8, the Commission is composed of eleven members: one justice of a court of appeal, one judge of a superior court, and one judge of a municipal court, all appointed by the Supreme Court; two attorneys appointed by the Governor; and six lay citizens, two appointed by the Governor, two appointed by the Senate Committee on Rules and two appointed by the Speaker of the Assembly. Members are appointed to staggered four-year terms. The members do not receive a salary but are reimbursed for expenses relating to Commission business. The Commission members elect a chairperson and vice-chairperson annually.

COMMISSION MEMBERS - 1997



ROBERT C. BONNER, ESQ.
Chairperson
Attorney Member
Appointed by the Governor
Term Began: March 1, 1995
Term Ends: February 28, 1999



MS. OPHELIA BASGAL
Vice-Chairperson
Public Member
Appointed by the Senate
Committee on Rules
Term Began: March 1, 1995
Term Ends: February 28, 1999



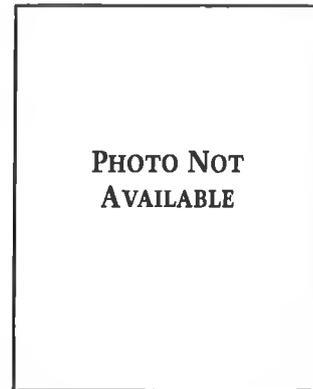
MR. ALAN W. BARCELONA
Public Member
Appointed by the
Speaker of the Assembly
Term Began: July 14, 1997
Term Ends: February 28, 2001



HONORABLE LOIS HAIGHT
Judge, Superior Court
Appointed by the Supreme Court
Term Began: March 1, 1995
Term Ends: February 28, 1999



HONORABLE DANIEL M. HANLON
Justice, Court of Appeal
Appointed by
the Supreme Court
Term Began: March 1, 1997
Term Ends: February 28, 2001



MS. ELEANOR JOHNS
Public Member
Appointed by the
Speaker of the Assembly
Term Began: March 1, 1995
Term Ends: February 28, 1999

COMMISSION MEMBERS



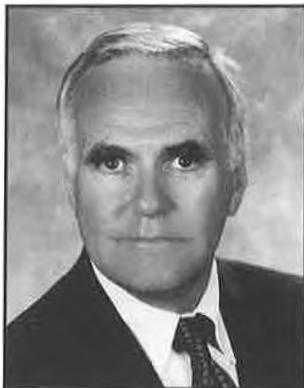
PATRICK M. KELLY, ESQ.
Attorney Member
Appointed by the Governor
Term Began: March 1, 1995
Reappointed: March 1, 1997
Term Ends: February 28, 2001



**HONORABLE
VINCENT J. MCGRAW**
Judge, Municipal Court
Appointed by the Supreme Court
Term Began: March 1, 1995
Reappointed: March 1, 1997
Term Ends: February 28, 2001



MS. HARRIET C. SALARNO
Public Member
Appointed by the Governor
Term Began: April 28, 1995
Term Ends: February 28, 1999



DONALD E. VINSON, PH.D.
Public Member
Appointed by the Governor
Term Began: March 1, 1997
Term Ends: February 28, 2001



MS. PEARL WEST
Public Member
Appointed by the Senate
Committee on Rules
Term Began: March 1, 1995
Term Ended: February 28, 1997

OUTGOING MEMBERS

**HONORABLE
WILLIAM A. MASTERTON**
Justice, Court of Appeal
Appointed by the Supreme Court
Term Ended: February 28, 1997

MR. CHRISTOPHER J. FELIX
Public Member
Appointed by the Governor
Term Ended: February 28, 1997

MR. DAVID L. MALCOLM
Public Member
Appointed by the
Speaker of the Assembly
Term Ended: February 28, 1997

I.

OVERVIEW OF THE COMPLAINT PROCESS



THE AUTHORITY OF THE COMMISSION ON JUDICIAL PERFORMANCE

The Commission on Judicial Performance is the independent state agency responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges (pursuant to article VI, section 18 of the California Constitution). Its jurisdiction includes all active California judges. The Commission also has authority to impose certain discipline on former judges. The Commission does not have authority over court commissioners, referees, judges pro tem or private judges. In addition to its disciplinary functions, the Commission is responsible for handling judges' applications for disability retirement.

HOW MATTERS ARE BROUGHT BEFORE THE COMMISSION

Anyone may make a complaint to the Commission. Complaints must be in writing. The Commission also considers complaints made anonymously and matters it learns of in other ways, such as through news articles or through information received in the course of a Commission investigation.

JUDICIAL MISCONDUCT

The Commission's authority is limited to investigation and discipline of judicial misconduct. Judicial misconduct usually involves conduct in conflict with the standards set forth in the Code of Judicial Ethics (see Appendix 1E). Examples of judicial misconduct include intemperate courtroom conduct (such as yelling, rudeness, or profanity), improper communication

with only one of the parties in a case, failure to disqualify in cases in which the judge has or appears to have a financial or personal interest in the outcome, delay in performing judicial duties, and public comment about a pending case. Judicial misconduct may involve a judge's improper off-the-bench conduct such as driving under the influence of alcohol, using court stationery for personal business, and soliciting money from persons other than judges on behalf of charitable organizations.

WHAT THE COMMISSION CANNOT DO

The Commission is not an appellate court. The Commission cannot change the decision of any judge. When a court makes an incorrect decision or misapplies the law, the ruling can be changed only through appeal by the appropriate reviewing court.

The Commission cannot provide individual legal assistance or intervene in litigation on behalf of a party.

REVIEW AND INVESTIGATION OF COMPLAINTS

A complaint about a judge is reviewed and analyzed by the Commission's legal staff. When the Commission meets, it decides upon the action to take with respect to each complaint.

Many of the complaints considered by the Commission do not involve judicial misconduct. These cases are closed by the Commission after initial review.

When a complaint does state facts which, if true and not otherwise explained, would be mis-

I.
OVERVIEW OF THE COMPLAINT PROCESS

conduct, the Commission orders an investigation in the matter. Investigations may include interviewing witnesses, reviewing court records and other documents, and observing the judge while court is in session. Unless evidence is uncovered which establishes that the complaint lacks merit, the judge is asked to comment on the allegations.

ACTION THE COMMISSION CAN TAKE

Confidential Dispositions

After an investigation, the Commission has several options. If the allegations are found to be untrue or unprovable, the Commission may close the case without action against the judge. If, after an investigation and opportunity for comment by the judge, the Commission determines that improper or questionable conduct did occur, but it was relatively minor, the Commission may issue an **advisory letter** to the judge. In an advisory letter, the Commission will advise caution or express disapproval of the judge's conduct.

When more serious misconduct is found, the Commission may issue a **private admonishment**. Private admonishments are designed in part to bring problems to a judge's attention at an early stage in the hope that the misconduct will not be repeated or escalate. A private admonishment consists of a notice sent to the judge containing a description of the improper conduct and the conclusions reached by the Commission.

Advisory letters and private admonishments are confidential and the Commission and its staff cannot advise anyone, even the person who lodged the complaint, of the nature of the discipline that has been imposed. However, the Commission's rules provide that upon completion of an investigation or proceeding, the person who lodged the complaint will be advised

either that the Commission has closed the matter or that appropriate corrective action has been taken. The California Constitution also provides that, upon request of the Governor of any State, the President of the United States, or the Commission on Judicial Appointments, the Commission will provide the requesting authority with the text of any private admonishment or advisory letter with respect to judges who are under consideration for a judicial appointment.

A description of each advisory letter and private admonishment issued in 1997, not including identification of the subject judge, is contained in Section IV of this report.

Public Dispositions

In cases involving more serious misconduct, the Commission may issue a **public admonishment** or a **public censure**

for improper judicial conduct. Public admonishments and censures are typically issued in cases in which the misconduct was serious, but was not or is not likely to be repeated. The nature and impact of the misconduct generally

determines the level of discipline. Both public admonishments and public censures are notices sent to the judge describing the improper conduct and stating the findings made by the Commission. These notices are also made available to the press and the general public.

In the most serious cases, typically involving persistent misconduct, the Commission may determine to **remove** a judge from office following a hearing. In cases in which a judge is no longer capable of performing judicial duties, the Commission may determine to **involuntarily retire** the judge from office following a hearing.

Admonishment, censure, removal and involuntary retirement determinations may be appealed by the judge to the Supreme Court.

**ACTION THE COMMISSION CAN TAKE
(In Increasing Order of Severity)**

Close (Dismissal)
Advisory Letter
Private Admonishment
Public Admonishment
Public Censure
Removal or Involuntary Retirement

I.
OVERVIEW OF THE COMPLAINT PROCESS

CONFIDENTIALITY

Under the California Constitution and the Commission Rules, complaints to the Commission and the Commission's investigations are confidential. The Commission cannot ordinarily confirm or deny that a complaint has been received or that an investigation is underway. Persons contacted by the Commission during an

investigation are advised regarding the confidentiality requirements.

At such time as the Commission orders formal proceedings in a matter, the matter becomes public. The charges and all subsequently filed documents are made available for public inspection. Any hearing on the charges is also public.

II. LEGAL AUTHORITY AND COMMISSION PROCEDURES



LEGAL AUTHORITY

Major changes to the structure and authority of California's judicial disciplinary system were mandated by Proposition 190, a constitutional amendment approved by the voters, which took effect in 1995. The following year, the Commission on Judicial Performance adopted a new set of procedural rules to conform to those changes. In May 1997, the Commission adopted revised Policy Declarations.

In 1997, the Supreme Court approved an amendment to the Code of Judicial Ethics. The code was initially adopted by the Court in 1996, pursuant to Proposition 190.

California Constitution, Government Code, and Code of Civil Procedure Section 170.9

The Commission on Judicial Performance was established by voter referendum in 1960. The Commission's authority is set forth in article VI, sections 8, 18 and 18.5 of the California Constitution. In 1966, 1976, 1988, and most recently in 1994, the Constitution was amended to change various aspects of the Commission's work. The Commission is also subject to Government Code sections 68701 through 68755. Commission disability retirement determinations are governed by Government Code sections 75060 through 75064. In addition, the Commission is responsible for enforcement of the restrictions on judges' receipt of gifts and honoraria set forth in Code of Civil Procedure section 170.9. These provisions are included in the appendix. In 1997, the Commission adjusted the gift limitation amount of Code of Civil Procedure section 170.9 to \$260.

Commission Rules and Policy Declarations

The Commission Rules, rules 101 through 138, were adopted by the Commission on October 24, 1996, and took effect December 1, 1996.

The Commission's internal procedures are further detailed in declarations of existing policy issued by the Commission. After a comprehensive review of the Policy Declarations in light of changes to the rules and procedures of the Commission, the Commission approved revised Policy Declarations on May 28, 1997.

Some of the key features of the rules and Policy Declarations are described in the "Commission Procedures" section that follows. The Commission Rules and Policy Declarations are included in Appendix 1.

Code of Judicial Ethics

The Constitution, as amended by Proposition 190, requires the Supreme Court to make rules "for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns," to be referred to as the "Code of Judicial Ethics" (California Constitution, article VI, section 18(m)). The Supreme Court adopted the Code of Judicial Ethics effective January 1996 and a set of amendments effective April 1996. The standards for judges' conduct are set forth in the code as "Canons." Effective June 19, 1997, the Supreme Court amended Canon 3D by adding the following:

(3) A judge who is charged by prosecutorial complaint, information, or indictment, or convicted of a crime in the United States, other than one that would

be considered a misdemeanor not involving moral turpitude or an infraction under California law, shall promptly and in writing report that fact to the Commission on Judicial Performance.

The Commission had requested an amendment to the code requiring judges to inform the Commission when they are charged with a crime.

The California Code of Judicial Ethics is included in the appendix.

COMMISSION PROCEDURES

Commission Review of Complaints

Each written complaint about a California judge is voted upon by the Commission. The Commission determines whether the complaint is unfounded and should not be pursued or whether sufficient facts exist to warrant investigation. (Commission Rule 109.)

Investigation at the Commission's Direction and Disposition of Cases Without Formal Proceedings

When the Commission determines that a complaint warrants investigation, the Commission directs staff to investigate the matter and report back to the Commission. There are two levels of investigation: a staff inquiry and a preliminary investigation. (Commission Rule 109; Policy Declarations 1.2, 1.4.) Most cases begin with a staff inquiry. In more serious matters, the Commission may commence with a preliminary investigation.

Commission investigations may include contacting witnesses, reviewing court records and other documents, observing courtroom proceedings, and conducting such other investigation as the issues may warrant. If the investigation reveals facts that warrant the dismissal of the complaint, the complaint may be closed without the judge being contacted. Otherwise, the judge is asked in a letter to comment on the allegations.

A judge has 20 days from the date of mailing

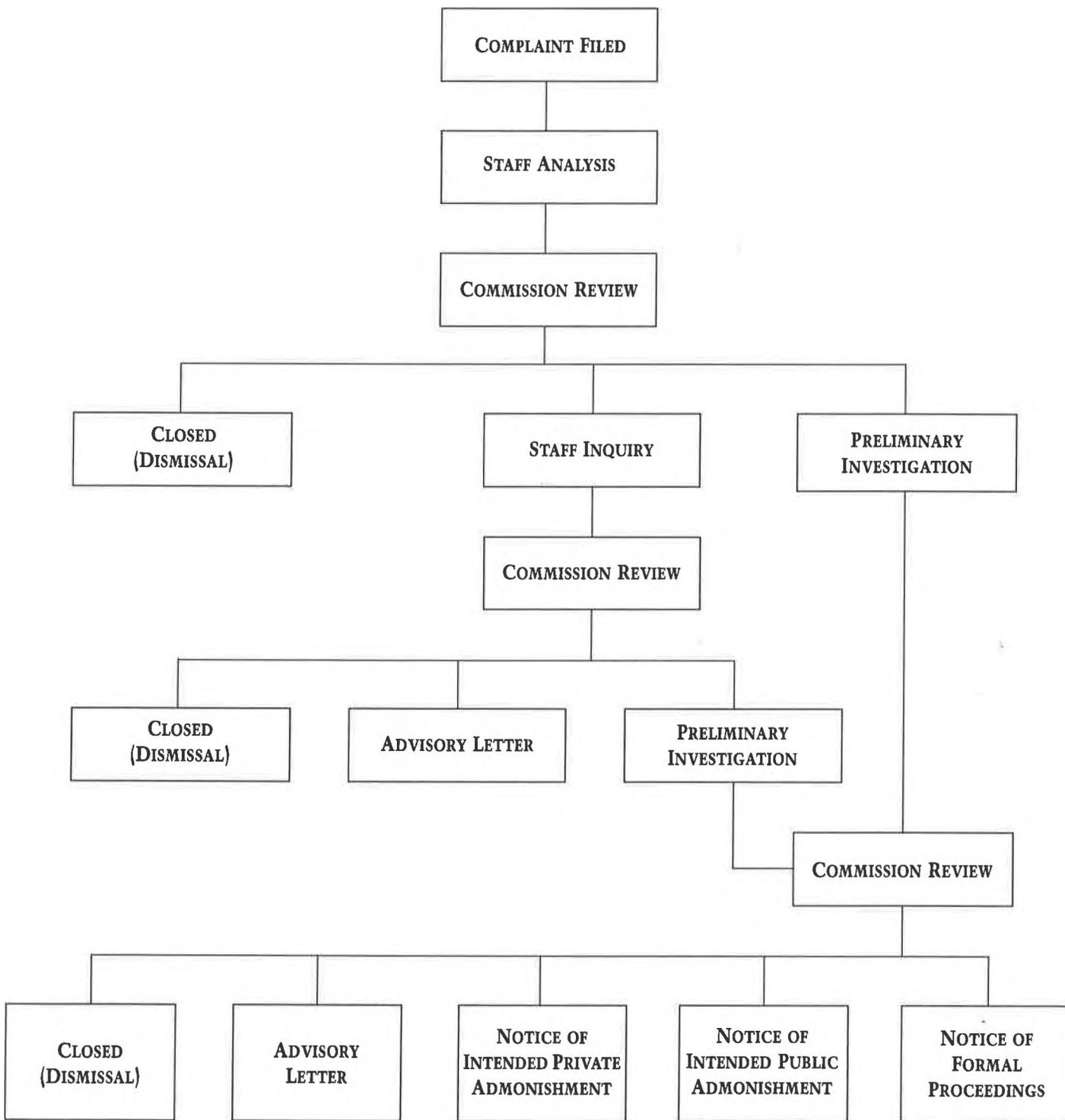
to respond to an inquiry or investigation letter. (Commission Rules 110, 111.) A judge may obtain a 30-day extension of time for filing a response to an inquiry or investigation letter simply by submitting a written request for extension to the chairperson prior to the expiration of time for filing the response. Further extensions by the chairperson require good cause. (Commission Rule 108.)

Following a staff inquiry, the Commission may take one of three actions. If the facts do not support a showing that misconduct has occurred, the Commission may close the case without any action against the judge. If improper or questionable conduct is found, but the misconduct was relatively minor or isolated or the judge recognized the problem and took steps to improve, the Commission may issue an advisory letter. (Commission Rule 110; Policy Declaration 1.2.) If serious issues remain after a staff inquiry, the Commission will authorize a preliminary investigation. (Commission Rule 109; Policy Declarations 1.2, 1.4.)

After a preliminary investigation, the Commission has various options. The Commission may close the case without action or may issue an advisory letter. (Commission Rule 111; Policy Declaration 1.4.) The Commission may also issue a notice of intended private admonishment or a notice of intended public admonishment, depending upon the seriousness of any misconduct established. (Commission Rules 113, 115; Policy Declaration 1.4.) The Commission may also institute formal proceedings, as discussed below.

All notices of staff inquiry, preliminary investigation or intended private or public admonishment are sent to the judge at chambers, unless otherwise requested. Notices that relate to a staff inquiry are given by first-class mail, and notices that relate to a preliminary investigation or intended private or public admonishment are given by prepaid certified mail, return receipt requested. The Commission marks envelopes containing such notices "personal and confidential" and does not use the inscription "Commis-

COMPLAINT PROCESS



sion on Judicial Performance" on the envelopes. (Commission Rule 107(a).)

Deferral of Investigation

The Commission may defer an investigation of a pending matter under certain circumstances. Deferral may be warranted, under Policy Declaration 1.8, when the case from which the complaint arose is still pending before the judge, when an appeal or ancillary proceeding is pending in which factual issues or claims relevant to the complaint are to be resolved, and when criminal or other proceedings involving the judge are pending. While deferral of an investigation may result in delay in Commission proceedings, deferral is often appropriate to prevent complaints before the Commission from affecting court proceedings. Deferral while a reviewing court or other tribunal completes its adjudication reduces the potential for duplicative proceedings and inconsistent adjudications.

Monitoring

In the course of a preliminary investigation, the Commission may "monitor" the judge and defer termination of a preliminary investigation for a period of up to two years in order to permit observation and review of the judge's conduct. Such review may include periodic courtroom observation, review of relevant documents, and interviews with persons who have appeared before the judge. The judge is notified that a period of monitoring has been ordered and is advised in writing of the type of behavior for which the judge is being monitored. Monitoring may be used when the preliminary investigation reveals a persistent but correctable problem. One example is demeanor that could be improved. (Commission Rule 112.)

Formal Proceedings

After preliminary investigation, in cases involving allegations of serious misconduct, the Commission may institute formal proceedings. (Commission Rule 118.) Formal proceedings may also be instituted when a judge rejects a

private or public admonishment and files a demand for formal proceedings. (Commission Rules 114, 116.) When formal proceedings are instituted, the Commission issues a notice of formal proceedings, a formal statement of the charges. The judge's answer to the notice of charges is filed with the Commission within 20 days after service of the notice. One 30-day extension may be obtained by the filing of a written request with the chairperson before expiration of the initial period for responding to the notice. Additional extensions may be granted by the chairperson upon timely written request establishing good cause. (Commission Rules 118(a), (b); 119(b).)

The rules provide for discovery between the parties after a written notice of formal proceedings is issued. A judge receives discovery from the Commission when the notice of formal proceedings is served. (Commission Rule 122.)

The Commission may disqualify a judge once formal proceedings are instituted if the judge's continued service is causing immediate, irreparable, and continuing public harm. (Commission Rule 120.)

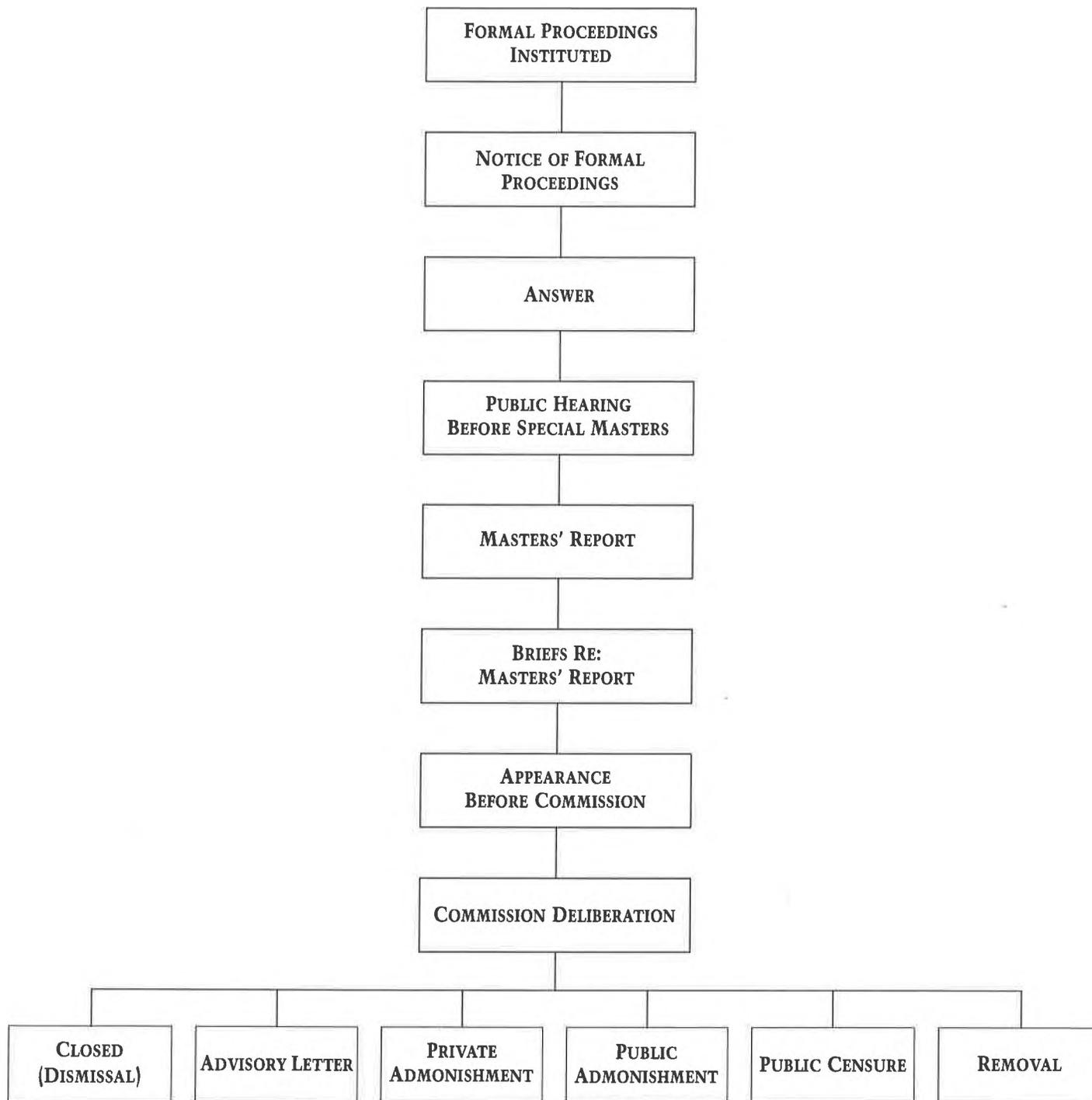
Hearing

After the judge has filed an answer to the charges, the Commission sets the matter for a hearing. (Commission Rule 121(a).) As an alternative to the Commission hearing the case itself, the rules allow the Commission to request the Supreme Court to appoint three special masters to hear and take evidence in the matter and to report to the Commission. (Commission Rule 121(b).) Special masters are active judges or judges retired from courts of record.

The judge may be represented by counsel at the hearing. The evidence in support of the charges is presented by an examiner appointed by the Commission (see Section VI). The California Evidence Code applies to the hearings. (Commission Rule 125(a).)

II.
LEGAL AUTHORITY AND COMMISSION PROCEDURES

FORMAL PROCEEDINGS



Commission Consideration Following Hearing

Following the hearing on the formal charges, the special masters file a report with the Commission. The report includes a brief statement of the proceedings and the special masters' findings of fact and conclusions of law with respect to the issues presented by the notice of formal proceedings and the judge's answer. (Commission Rule 129.) The judge and the examiner are given the opportunity to file objections to the masters' report and points and authorities concerning the issues in the matter and to be heard orally before the Commission upon receipt of the masters' report and any briefs. (Commission Rules 130, 132.)

Briefs of amicus curiae may be considered by the Commission when it is demonstrated that the briefs would be helpful to the Commission in its resolution of the pending matter. (Commission Rule 131.)

Disposition of Cases After Hearing

After a hearing on the formal charges, unless the case is closed without discipline, the Commission may take one of the following actions pursuant to article VI, section 18 of the California Constitution:

- Publicly censure or remove a judge for action that constitutes willful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.
- Publicly or privately admonish a judge found to have engaged in an improper action or dereliction of duty.
- Retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent.

In cases involving former judges, after hear-

ing, the Commission may publicly censure or publicly or privately admonish the former judge. The Constitution also permits the Commission to bar a former judge who has been censured from receiving an assignment from any court.

After formal proceedings, the Commission may also close the matter with an advisory letter to the judge or former judge.

SUPREME COURT REVIEW

Upon petition by the judge, the California Supreme Court is afforded discretionary review of a Commission determination to admonish, censure or remove a judge. If the Supreme Court so chooses, its review may include an independent, "de novo," review of the record. (California Constitution, article VI, section 18(d).) Effective December 1, 1996, the Judicial Council adopted Rules of Court 935 and 936 concerning petitions for review of Commission determinations.

A list of citations to a selection of Supreme Court cases involving judicial disciplinary proceedings is included in the appendix.

STATUTE OF LIMITATIONS

Article VI, section 18(d) of the California Constitution provides that a judge can be censured or removed, or a former judge censured, only for action occurring not more than six years prior to the commencement of the judge's current term (or a former judge's last term).

STANDARD OF PROOF

The standard of proof in Commission proceedings is proof by clear and convincing evidence sufficient to sustain a charge to a reasonable certainty. (*Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 275.)

CONFIDENTIALITY OF COMMISSION PROCEEDINGS

The California Constitution authorizes the Commission to provide for the confidentiality of complaints to and investigations by the Com-

II.
LEGAL AUTHORITY AND COMMISSION PROCEDURES

mission. (California Constitution, article VI, section 18(i)(1).) The Commission's rules provide that complaints and investigations are confidential, subject to certain exceptions, such as when public safety may be compromised, when information reveals possible criminal conduct, and when judges retire or resign during proceedings. (Commission Rule 102(f)-(k); Policy Declarations 4.1-4.6.) During the course of a staff inquiry or preliminary investigation, persons questioned or interviewed are advised that the inquiry or investigation is confidential. (Policy Declaration 1.9; *Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 528.)

The Constitution permits the Commission to make explanatory statements during proceedings. (California Constitution, article VI, section 18(k); Commission Rule 102(c).)

The Constitution provides that when formal proceedings are instituted, the notice of charges,

the answer, and all subsequent papers and proceedings are open to the public. (California Constitution, article VI, section 18(j); see also Commission Rule 102(b).)

After final resolution of a case, the rules require the Commission to disclose to the person who filed the complaint that the Commission has either found no basis for action against the judge, has taken an appropriate corrective action (the nature of which is not disclosed), or has imposed or recommended public discipline. The name of the judge is not used in any written communications to the complainant unless the proceedings are public. (Commission Rule 102(e).)

The Commission is also required to provide the text of any private admonishment, advisory letter or other disciplinary action to appointing authorities upon request. (California Constitution, article VI, section 18.5.)

III. 1997 STATISTICS



COMPLAINTS RECEIVED AND INVESTIGATED

In 1997, there were 1,580 active judicial positions within the Commission's jurisdiction. In addition to disciplining active judges, the Commission has authority to impose certain discipline upon former judges, and the Director-Chief Counsel of the Commission is designated as the Supreme Court's investigator for complaints involving State Bar Court judges.

The Commission also received 573 complaints in 1997 concerning individuals and matters which did not come under the Commission's jurisdiction: federal judges, former judges for matters outside the Commission's jurisdiction, court commissioners, referees, judges pro tem, workers' compensation judges, other government officials and miscellaneous individuals. Commission staff responded to each of these complaints and, when appropriate, made referrals.

1997 JUDICIAL POSITIONS	
Supreme Court	7
Court of Appeal	93
Superior Courts	806
Municipal Courts	674
Total	1,580

Staff Inquiries and Preliminary Investigations

In 1997, the Commission ordered 132 staff inquiries and 65 preliminary investigations.

INVESTIGATIONS COMMENCED IN 1997	
Staff Inquiries	132
Preliminary Investigations	65

New Complaints

1997 CASELOAD	
Cases Pending 1/1/97	107
New Complaints Considered	1,183
Cases Concluded in 1997	1,169
Cases Pending 12/31/97	108
Discrepancies in totals are due to consolidated complaints and/or dispositions.	

In 1997, 1,183 complaints about active California judges and former judges were considered by the Commission for the first time. The complaints set forth a wide array of grievances. A substantial percentage alleged legal error not involving misconduct. Other common allegations were poor demeanor and bias.

Formal Proceedings

During 1997, the Commission concluded its work on all formal proceedings instituted prior to March 1, 1995, when Proposition 190 took effect. As of the end of 1997, there were two recommendations in pre-Proposition 190 cases pending before the Supreme Court: *Broadman v. Commission on Judicial Performance*, Supreme Court No. S055684, filed with the Supreme Court in August 1996, and *Fletcher v. Commission on Judicial Performance*, Supreme Court No. S058378, filed with the Supreme Court in January 1997. Both of these cases are governed by pre-Proposition 190 law pursuant to which the Supreme Court makes disciplin-

III.
1997 STATISTICS

any determinations upon recommendation by the Commission.

FORMAL PROCEEDINGS	
Pending 1/1/97	8
Commenced in 1997	5
Concluded in 1997	7
Pending 12/31/97	6

At the beginning of 1997, there were six formal proceedings pending before the Commission which were subject to the provisions of Proposition 190. The Commission instituted formal proceedings in five cases during 1997. In all of these cases, the Commission has the authority to impose discipline, including censure and removal, subject to discretionary review by the Supreme Court upon petition by the judge. As of the end of 1997, five of the post-Prop 190 formal proceedings had been concluded, in addition to all of the pre-Prop 190 cases. Six formal proceedings, all subject to the provisions of Proposition 190, remained pending before the Commission at the end of the year.

COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the Commission in 1997, regardless of when the complaints were received. In 1997, a total of 1,169 cases were concluded by the Commission. Those cases named 835 active judges and 18 former judges.

TYPE OF COURT CASE UNDERLYING COMPLAINTS CONCLUDED IN 1997	
Criminal	37%
General Civil	25%
Family Law	14%
Small Claims/Traffic	11%
All Others	10%
3% of the complaints did not arise out of a court case. These complaints concerned off-bench conduct, such as the handling of court administration and political activity.	

SOURCE OF COMPLAINTS CONCLUDED IN 1997	
Litigant/Family/Friend	81%
Attorney	7%
Judge/Court Staff	2%
All Other Complainants	8%
(including citizens)	
Source Other Than Complaint	2%
(includes anonymous letters, news reports)	

A chart of the disposition of all cases completed by the Commission in 1997 is included on page 13. Staff inquiries and preliminary investigations in the cases closed in 1997 may have commenced in prior years. Cases or portions of cases pending at the end of 1997 are not included in complaint disposition statistics.

The total number of dispositions exceeds the total number of complaints closed because complaints involving multiple allegations of varying severity may be closed with multiple dispositions. For example, some allegations may warrant closure with an advisory while others warrant public discipline. These dispositions do not always occur within the same year: some allegations may be closed at the time formal charges are issued and the remaining allegations not concluded until after hearing and determination by the Commission.

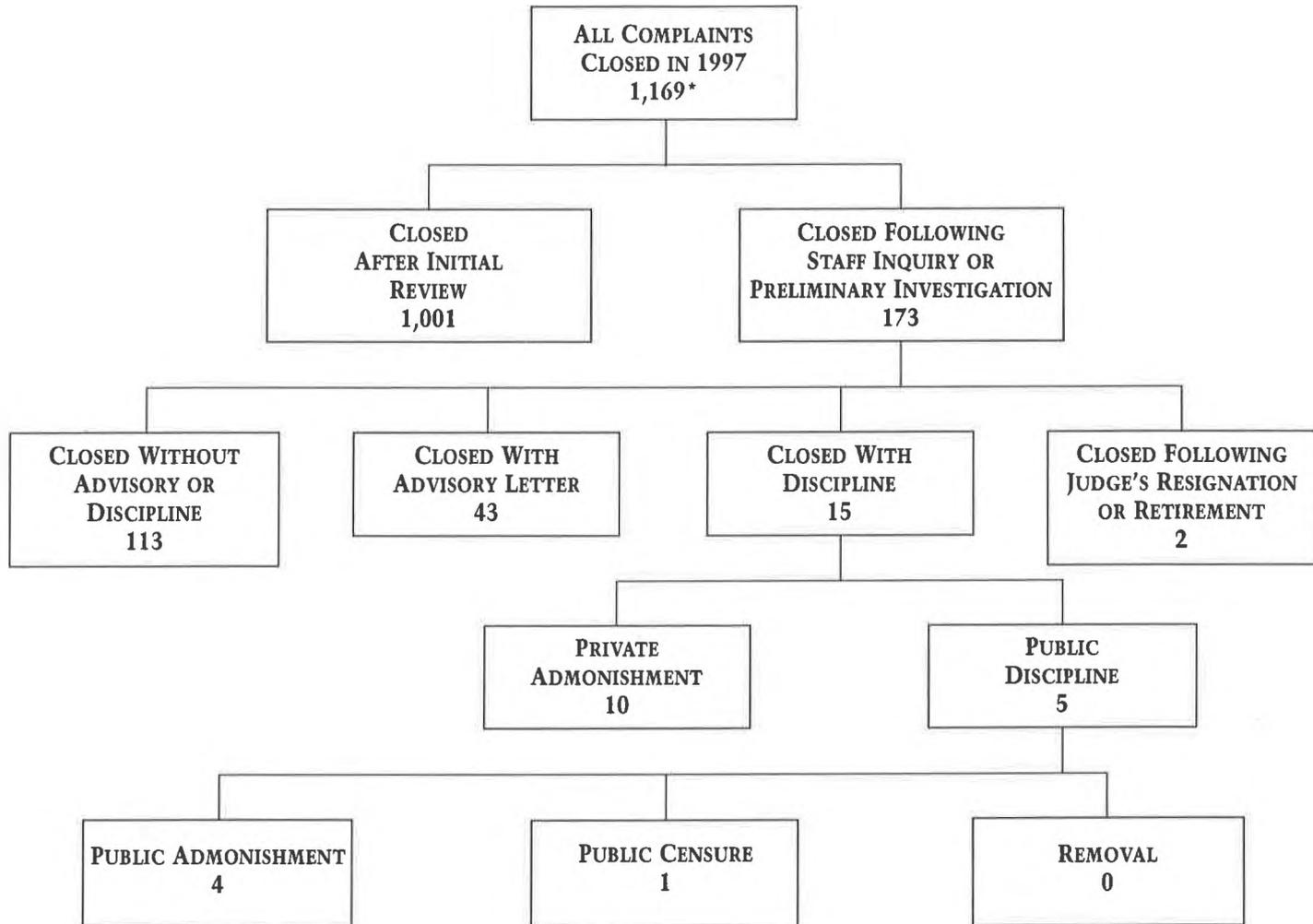
Closed Without Action

In 1,001 of the cases closed in 1997, after the information necessary to evaluate the complaint was obtained and reviewed, a sufficient showing of misconduct could not be made (that is, a demonstration of facts which, if true and not otherwise explained, might constitute misconduct). These cases were closed by the Commission without staff inquiry or preliminary investigation.

Following staff inquiry or preliminary investigation, 113 matters were closed without any action. In these cases, investigation showed that the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the

III.
1997 STATISTICS

1997
COMMISSION CASE DISPOSITIONS



* See discussion of Complaint Dispositions at page 12 of the text.

III.
1997 STATISTICS

situation. Three of these cases were dismissed without discipline after formal hearing.

Closed With Discipline or Advisory

In 1997, the Commission issued one public censure, four public admonishments, ten private admonishments and 43 advisory letters. Each of these dispositions is summarized in Section IV.

A chart of the types of judicial conduct which resulted in an advisory or discipline in 1997 appears on page 15. The types of conduct are listed in order of prevalence. The numbers on the chart indicate the number of times each type of conduct resulted in an advisory or discipline. A single act of misconduct is counted once and is assigned to the category most descriptive of the wrongdoing. If separate acts of different types of wrongdoing were involved, each differ-

ent type of conduct was counted and assigned to appropriate categories. If the same type of conduct occurred on multiple occasions in a particular case, however, it was counted only once.

Resignations and Retirements

The Constitution authorizes the Commission to continue proceedings after a judge retires or resigns and to impose certain discipline upon the former judge. When a judge resigns or retires during proceedings, the Commission determines whether to continue or close the case and, if the case is closed, whether to refer the matter to another entity such as the State Bar. The Commission closed two matters in 1997 when the judge resigned or retired with an investigation or formal proceedings pending.

III.
1997 STATISTICS

TYPES OF CONDUCT RESULTING IN ADVISORY LETTER OR DISCIPLINE*

**ON-BENCH CASE RELATED
ABUSE OF AUTHORITY**
(includes disregard of law, failure to
exercise judicial discretion, interference
with attorney-client relationship,
criticizing jurors)
14

EX PARTE COMMUNICATIONS
11

**DISCLOSURE,
DISQUALIFICATION AND
RELATED RETALIATION**
7

OFF-BENCH ABUSE OF OFFICE
(includes charitable fund raising,
improper use of official stationery)
6

DEMEANOR, DECORUM
(includes inappropriate humor)
6

**DECISIONAL DELAY,
TARDINESS, ATTENDANCE**
6

**BIAS, APPEARANCE OF BIAS
(NOT DIRECTED TOWARD A
PARTICULAR CLASS)**
(includes embroilment, prejudgment,
favoritism)
6

FAILURE TO ENSURE RIGHTS
5

**ABUSE OF CONTEMPT/
SANCTIONS**
3

**ADMINISTRATIVE
MALFEASANCE**
(includes conflicts between judges, failure
to supervise staff, delay in responding to
complaints about commissioners)
3

**COMMENT ON
PENDING CASE**
3

**IMPROPER POLITICAL
ACTIVITIES**
(includes improper campaign conduct,
violation of Political Reform Act)
3

**BIAS, APPEARANCE OF BIAS
(TOWARD PARTICULAR CLASS)**
2

MISCELLANEOUS OFF-BENCH
(includes smoking in chambers)
2

**LACK OF CANDOR/
COOPERATION WITH
REGULATORY AUTHORITIES**
(Commission on Judicial Performance,
Fair Political Practices Commission)
1

**IMPROPER BUSINESS
ACTIVITIES**
(includes practicing law, improper
financial activities)
1

SLEEPING
1

* See Closed With Discipline or Advisory at page 14 of text.

IV. CASE SUMMARIES



PUBLIC DISCIPLINE

Following is a summary of public discipline imposed by the Commission in 1997. The full text of these decisions is available from the Commission office.

Censures by the Commission

Proposition 190 granted the Commission the authority to impose the sanction of public censure, which previously was imposed by the Supreme Court upon recommendation by the Commission. In 1997, the Commission imposed one public censure in *In re Velásquez*.



In re Velásquez - Commission Decision and Order of Public Censure, April 16, 1997 (modified May 28, 1997)

The Commission censured Monterey County Municipal Court Judge Jose Angel Velásquez pursuant to Commission Rule 127 (Discipline by Consent).

The Commission accepted certain stipulated facts concerning Judge Velásquez' conduct.

It was stipulated that Judge Velásquez displayed a crucifix, visible to the public, on the wall behind the bench during an arraignment calendar in December 1995. After concerns were expressed by attorneys appearing in court, the crucifix was removed later that day. Judge Velásquez displayed the crucifix as an expression of his personal religious belief, without intending to offend anyone. The parties stipulated and the Commission found that these actions

constituted conduct prejudicial to the administration of justice.

In December 1995, Judge Velásquez authorized the use of his name and judicial title in a newspaper advertisement sponsored by a group called the Reproductive Rights Coalition celebrating the 23rd anniversary of *Roe v. Wade*. The advertisement appeared in the *Monterey Herald* on January 22, 1996, with the judge's name and title. The parties stipulated and the Commission found that these actions constituted conduct prejudicial to the administration of justice.

In January 1996, upon his initial assignment to a misdemeanor trial calendar, Judge Velásquez announced publicly that he intended to impose a specified range of jail time and AA meetings for first, second and third time DUI offenders. The sentences announced would have been lawful under the California Vehicle Code; however, the policy as announced appeared not to allow exceptions, and therefore created the appearance of prejudgment in DUI cases. The parties stipulated and the Commission found that these actions constituted conduct prejudicial to the administration of justice.

The Commission found that Judge Velásquez' actions with respect to the crucifix, his endorsement of one side in the ongoing debate about abortion, and his DUI policy manifested prejudgment with respect to certain religious or moral principles, and, by inference, a bias against those having different religious or moral principles. In this regard, the Commission stated: "The bench is not a pulpit nor soapbox for self-expression."

It was further stipulated that between February and April 1996, Judge Velásquez made a series of public statements disparaging fellow Monterey County judges and certain Monterey County attorneys. The statements were made both on and off the bench, in open court, in documents Judge Velásquez filed with the court, and in newspapers and television broadcasts. The parties stipulated and the Commission found that these actions constituted willful misconduct. The Commission found that Judge Velásquez affirmatively used the judicial office, and his position as a judge, to accuse others who were not before his court, or even present in his court, of bias and misconduct. The Commission found especially troubling those instances where Judge Velásquez, speaking from the bench and to the news media, publicly accused fellow judges of racial bias, thereby calling into question the integrity and impartiality of Monterey County judges and the judicial system itself.

The Commission noted that the actions in question took place within ten months of Judge Velásquez assuming the bench and within four months of his initial assignment to a misdemeanor trial division, that Judge Velásquez acted with integrity and good faith in admitting forthrightly the facts that constituted the misconduct alleged, and that the public disparagement ceased in April 1996 and had not been repeated. While acknowledging a risk to the public interest that Judge Velásquez would resume misconduct at some later date, the majority of the Commission concluded that removal was not required, but that no lesser discipline than public censure would be adequate. The Commission therefore agreed with the parties that Judge Velásquez should receive a public censure.

Public Admonishments by the Commission

The Commission may publicly or privately admonish a judge for improper action or dereliction of duty. Public admonishments, as compared to private admonishments, are issued in cases when the improper action or dereliction of duty is more serious. In 1997, the Commission publicly admonished four judges.



Public Admonishment of Judge Alexander H. Williams, III, January 22, 1997

The Commission on Judicial Performance ordered Judge Alexander H. Williams, III, a judge of the Los Angeles County Superior Court, publicly admonished for improper actions within the meaning of article VI, section 18 of the California Constitution for the following conduct:

In November 1995, during a break in a pre-trial settlement conference, Judge Williams left the courtroom and approached the attorney for one of the parties in the hallway outside the courtroom. In a loud and angry voice, Judge Williams stated words to the effect of: "Your demand for money is bullshit....If you keep making this demand, you can stick it right here," while gesturing toward his buttocks with rolled up paper. Some of the parties were present, as well as other individuals, when the judge made his remarks and gestures. When another attorney in the case arrived, Judge Williams repeated to him that the demand for money was "bullshit" and, returning to the courtroom, said to the attorney in an angry voice: "If you think you are going to get money out of this case, you've got shit for brains. If you want war, you'll get war. And if you still think you're going to get money, I've got a Brooklyn Bridge I can sell you." Judge Williams went into chambers, then emerged, apologized to the attorneys for his language, and stated words to the effect of: "No jury I know of is going to give you money for this case. I'll set it for 1999 and make sure it goes nowhere. You did not want to settle, so now you are my enemy." Judge Williams then indicated an intent to sanction counsel if the plaintiffs lost at trial and told their attorney that he had no respect for him. Others were present in the courtroom during these remarks.

On the next business day, the attorneys appeared in Judge Williams' court and filed motions to disqualify him. Judge Williams suggested that the motions be withdrawn. After

the attorneys declined to do so, Judge Williams recused himself and stated words to the effect of: "Well, now I don't have anything to do with your case and you can leave. I just told the truth. This case is worth nothing and now you'll get a judge who's been disqualified three times from other cases and I hope you enjoy that environment. You will not find another judge who will show the patience and give you the time that I did." When one attorney attempted to speak, Judge Williams responded to the effect: "This is my courtroom and you have nothing to say here. Get out." The attorney then stated: "You said, 'This case is not about money and you've got shit for brains.' We weren't asking for money." Judge Williams responded, "Well, I was half right."

The Commission found that Judge Williams' conduct involved vulgar, abusive and demeaning language toward attorneys and constituted an improper display of personal hostility and embroilment, citing *Spruance v. Commission on Judicial Qualifications* (1975) 13 Cal.3d 778, 789, 797 (giving the "finger" to a defendant as constituting conduct prejudicial to the administration of justice that brings the judicial office into disrepute, making a "raspberry" sound during witness testimony as willful misconduct). The Commission further found that Judge Williams' abusive and hostile actions toward counsel reflected adversely on his judicial office. The Commission noted that, in accordance with the California Code of Judicial Conduct in effect at the time of Judge Williams' conduct, judges are expected to be impartial, patient, dignified and courteous when dealing with litigants and lawyers on matters pending before them (Canon 3B), and that even quasi-judicial activities must be conducted in a manner that does not demean the judicial office or interfere with the proper performance of judicial duty (Canon 4A).

In arriving at its disposition, the Commission took into consideration representations from individuals whose recent experiences with Judge Williams had led them to the view that there had been substantial improvement in his

judicial demeanor and temperament, as well as Judge Williams' own assurances that he had taken corrective measures to ensure that he would refrain from improper conduct in the future.



Public Admonishment of Judge Sidney P. Chapin, January 22, 1997

The Commission on Judicial Performance ordered Judge Sidney P. Chapin, a judge of the Kern County Superior Court, publicly admonished for the following conduct:

On September 17, 1993, Judge Sidney P. Chapin presided over a one-day bench trial in *Aggen v. City of San Buenaventura*, involving three consolidated petitions for mandamus by over 100 Ventura residents. The case, involving the residents' challenge to the validity of a tax assessment district, was a matter of considerable local interest. After the trial, the matter was taken under submission and Judge Chapin issued a tentative decision on December 13, 1993. By January 13, 1994, the judge had received from the parties a proposed statement of decision and judgment, and objections.

For more than one year, Judge Chapin took no action in the case. On April 24, 1995, Judge Chapin issued an order setting a hearing for June 9, 1995 on the objections to the proposed decision. The hearing took place on June 9 as scheduled. On June 9, Judge Chapin told counsel for the parties that his decision would issue in 30 days.

After the hearing on June 9, 1995, one of the parties periodically inquired of court staff about the decision. A letter of April 18, 1996 from the Commission on Judicial Performance to Judge Chapin advised him of a report that no decision had issued in *Aggen* and requested his comment. On April 30, 1996, over ten months after Judge Chapin announced that his decision would issue in 30 days, he issued his final decision and judgment.

In addition to *Aggen v. City of San Buenaventura*, Judge Chapin also was assigned to *Adams v. City of San Buenaventura*, an action for damages by some Ventura residents which involved some of the issues raised in *Aggen*. Since the outcome in *Aggen* would affect the *Adams* case, that case was stayed, pursuant to counsel's stipulation, pending a final decision in *Aggen*. Judge Chapin's delay in issuing his decision in *Aggen* thereby delayed the *Adams* litigation.

The Commission found that the more than two-year delay by Judge Chapin was inordinate and inconsistent with Canon 3B(8) of the Code of Judicial Conduct, which requires judges to "dispose of all judicial matters fairly, promptly and efficiently." In arriving at its disposition, the Commission took into account the length of the delays and the fact that the decision in question would affect the rights of numerous individuals in two cases.



Public Admonishment of Judge Elvira S. Austin, October 1, 1997

The Commission on Judicial Performance ordered Judge Elvira S. Austin, a judge of the Los Angeles Municipal Court, Long Beach Division, publicly admonished for improper actions within the meaning of article VI, section 18 of the California Constitution, pursuant to Commission Rule 127 (Discipline by Consent). The Commission's action followed the commencement of formal proceedings in the matter.

The parties stipulated that, during the evening hours of May 16, 1995 and the early morning hours of May 17, 1995, Judge Austin attempted to obtain the release from custody of a personal friend in a series of telephone calls to law enforcement agencies. In the calls, Judge Austin initially denied she was attempting to use her office, but then repeatedly invoked her judicial position and appeared to order her friend's release on her friend's own recognizance so that her friend would not have to post funds

for bail.

It was stipulated that Judge Austin's conduct was contrary to Canon 2A of the California Code of Judicial Conduct, which provides that a judge should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and Canon 2B, which provides that a judge should not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment, and should not lend the prestige of judicial office to advance the private or personal interests of the judge or others. "Using the power of the bench to benefit a friend is a casebook example of willful misconduct." *McCullough v. Commission on Judicial Performance* (1989) 49 Cal.3d 186.

It was stipulated that this was an isolated incident and that the judge recognized the impropriety of her actions.



Public Admonishment of Judge Ronald Maciel, December 1, 1997

The Commission on Judicial Performance ordered Judge Ronald Maciel, a judge of the Kings County Municipal Court, Lemoore Division, publicly admonished for improper actions within the meaning of article VI, section 18 of the California Constitution for the following conduct:

In March 1996, Judge Maciel presided over the arraignment of defendant Kevin Galik in the capital murder case *People v. Galik* and appointed attorney Marianne Brock to represent Galik. Judge Maciel, who was then the presiding judge, subsequently assigned the *Galik* case to another judge. In April 1996, Judge Maciel initiated three ex parte telephone conversations with Ms. Brock, during which he offered advice regarding the defense of the *Galik* case. Later in April 1996, after Ms. Brock filed a peremptory challenge against the assigned judge, the *Galik* case was reassigned to Judge Maciel. Thereafter, the district attorney's office learned

of the undisclosed ex parte communications between Judge Maciel and Ms. Brock and filed a motion to disqualify Judge Maciel for cause. Judge Maciel consented to the case being assigned to another judge and the case was reassigned. Judge Maciel's conduct and the challenge for cause filed against him received substantial publicity.

The Commission found that Judge Maciel's communications to Ms. Brock were improper, noting that Canon 3B(7) prohibits a judge from initiating, permitting or considering ex parte communications concerning a pending or impending proceeding. The Commission noted that the California Supreme Court has found ex parte communications between a judge and an attorney to constitute conduct prejudicial to the administration of justice, citing *Kennick v. Commission on Judicial Performance* (1990) 50 Cal.3d 297, 331-332; *Roberts v. Commission on Judicial Performance* (1983) 33 Cal.3d 739, 743-748. The Commission also noted that the Supreme Court has found prejudicial conduct where a judge communicated with and provided legal assistance to attorneys concerning matters pending before other judges, citing *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 906-908. The Commission, citing Canon 2A, also found that Judge Maciel's conduct created, at a minimum, the appearance of a lack of impartiality and damaged public confidence in the judiciary.



PRIVATE ADMONISHMENTS

Private admonishments are designed in part to correct problems at an early stage, thus serving the Commission's larger purpose of maintaining the integrity of the California judiciary.

A private admonishment may also be used to elevate discipline in subsequent proceedings. This is particularly true where the judge repeats the conduct which was the subject of the earlier discipline.

In 1997, the Commission imposed 10 private admonishments. The admonishments 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 because these examples are intended in part to educate judges and assist them in avoiding inappropriate conduct, the Commission believes it is better to describe them in abbreviated form rather than omit them altogether.

1. In two separate family law cases, a judge delayed over a year in issuing decisions on submitted matters. In two unrelated cases, the judge failed to recuse or disclose information relevant to the question of disqualification.
2. A judge failed to advise unrepresented defendants of their right to counsel at arraignment. In two matters, the judge engaged unrepresented defendants in discussions of the facts of their cases during arraignment; in one of these cases, the judge also read police reports without consent.
3. A judge contacted a local deputy district attorney regarding a pending criminal matter on behalf of a defendant with whom the judge had a financial relationship.
4. To ensure a witness's availability to testify, a judge incarcerated the witness without any of the following protections: appointment of counsel, an adequate opportunity to be heard, an order stating the factual basis for the remand.
5. At a sentencing hearing, a judge refused to allow victim impact statements in contravention of Penal Code sections 679.02 and 1191.1.
6. After an ex parte communication, a judge reduced a jail sentence imposed by a fellow judge. There were aggravating circumstances.
7. A judge used profanity in a message for a judge on a reviewing court. In rescheduling a sentencing hearing, the judge acted precipitously in refusing to hear arguments regarding the availability of the out-of-town parents of a murder victim.

8. A judge appeared to condone improper conduct by a prosecutor.
9. A judge issued a defective ruling which was misleading and detrimental to the parties.
10. In the courthouse, a judge improperly solicited donations to charitable organizations. The judge also failed to make necessary disclosures.

ADVISORY LETTERS

The Commission advises caution or expresses disapproval of a judge's conduct in an advisory letter. The Commission has issued advisory letters in a variety of situations. An advisory letter may be issued when the impropriety is isolated or relatively minor, or when the impropriety is more serious but the judge has demonstrated an understanding of the problem and has taken steps to improve. An advisory letter is especially useful when there is an appearance of impropriety. An advisory letter might be appropriate when there is actionable misconduct offset by substantial mitigation.

In 1997, the Commission issued 43 advisory letters. The advisory letters are summarized below.

Disclosure and Disqualification

A number of advisory letters were issued concerning judges failing to disqualify themselves when disqualification was required (Canon 3E) or failing to make appropriate disclosures to those appearing before them.

1. A judge failed to disclose the judge's friendship with an attorney who was appearing before the judge. In another case, the judge responded to a motion to disqualify the judge by contacting the moving party *ex parte*.
2. A judge failed to adequately disclose the judge's social relationship with an attorney who was appearing before the judge.
3. A judge's handling of a criminal matter reflected apparent embroilment. After being disqualified, the judge took actions in the case which were not among the actions permitted by

Code of Civil Procedure section 170.4.

4. A judge failed to disclose a business relationship with an attorney appearing before the judge. After recusing, the judge made comments which appeared to disparage the attorney who brought the disqualification motion.
5. When an attorney who was performing legal services for the judge appeared before the judge, the judge failed to recuse or to properly disclose the relationship.
6. A judge reacted improperly to peremptory challenges, displaying embroilment and hostility. In a separate matter, the judge communicated *ex parte* with one side during a case.

On-Bench Abuse of Authority

Acts in excess of judicial authority may constitute misconduct, particularly where a judge deliberately disregards the requirements of fairness and due process. (See *Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359, 371, 374; *Cannon v. Commission on Judicial Qualifications* (1975) 14 Cal.3d 678, 694.)

7. A judge increased a defendant's bail when the defendant behaved disruptively in court.
8. A judge revoked a defendant's own recognition status under circumstances which gave rise to an appearance of retaliation for the defendant's refusal to accept a plea bargain.
9. A judge allowed an attorney to participate in a small claims matter under circumstances in which attorney participation was prohibited by law.
10. A judge dismissed a criminal case after having been reversed by a higher court for a dismissal under equivalent circumstances in a different case. The appellate decision in the earlier case was cited to the judge before the judge dismissed the case.
11. A judge failed to personally approve orders which required judicial approval.
12. A judge read a police report aloud in open court under circumstances not permitted by law.

The judge also engaged in ex parte communications during the case.

Delay

The Commission issued two advisory letters in 1997 for failure to decide cases timely. The delay in these cases was over 90 days. In some circumstances, a shorter delay would be a failure to "dispose of all judicial matters fairly, promptly, and efficiently." (Canon 3B(8).)

13. A judge failed to rule on a submitted matter for over five months.

14. A judge failed to ensure that a final judgment would issue in a timely manner. The delay of more than two years was significant.

Another problem of delay occurred in the failure to decide habeas petitions within 30 days as required by California Rules of Court, rule 260.

15. A judge failed to rule on a habeas petition for almost three months.

16. A judge failed to rule on a habeas petition for ten months.

Demeanor

"A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity...." (Canon 3B(4).)

17. A judge disparaged attorneys and litigants appearing before the judge and made statements about the judicial process which diminished public respect for the judiciary. In addition, the judge made public comments about a pending case.

18. A judge made crude, intemperate and threatening remarks to litigants in several proceedings.

19. A judge made inappropriate comments and exhibited harsh demeanor toward litigants and attorneys.

20. A judge's treatment of a party and counsel after a settlement fell through was inconsistent with the judge's obligation to be patient and courteous.

Improper Political Activity

"A judge or judicial candidate shall refrain from inappropriate political activity." (Canon 5.) Judges are also required to comply with the Political Reform Act.

21. A judge admitted violations of the Political Reform Act in connection with the judge's re-election campaign. There was no evidence of intent to conceal information from the public.

22. A judge failed to comply with campaign reporting requirements.

23. A judge was listed in an endorsement of a candidate for a nonjudicial office. Although the endorsement was unauthorized, the judge failed to seek a retraction or otherwise ameliorate the problem.

Abuse of Sanctions

Before imposing sanctions, judges are required to provide due process of law, including strict adherence to the procedural requirements contained in the Code of Civil Procedure.

24. A judge sanctioned an attorney without notice or hearing.

25. A judge sanctioned a litigant without notice or hearing and ordered the fine paid from funds posted with the court for another purpose.

26. A judge failed to comply with the statutory requirement of a written order specifying the factual basis for sanctions imposed upon an attorney.

Ex Parte Communications

Unless expressly allowed by law or expressly agreed to by the opposing party, ex parte communications are improper. (Canon 3B(7).)

27. Based on an ex parte communication, a judge countermanded another judge's order releasing a defendant on his own recognizance.

28. A judge engaged in an ex parte conversation about a case with the prosecutor while the defendant was out of the courtroom.

29. A judge engaged in an ex parte communica-

tion with a litigant about an order issued by the judge.

Public Comment

Canon 3B(9) prohibits judges from making public comment about a pending or impending proceeding in any court, with limited exceptions.

30. A judge made comments to the media concerning a sentence imposed by the judge.

31. A judge commented publicly on a pending case and appeared to solicit views on sentencing. The judge also publicly supported a public official accused of misconduct, although the official and the official's staff regularly appeared before the judge.

32. A judge commented to the media about a case that was pending in the appellate court.

Failure to Ensure Rights

Society's commitment to institutional justice requires that judges are solicitous of the rights of persons who come before the court. (*Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 286.)

33. A judge modified a condition of probation without affording any notice or hearing. The judge also initiated ex parte communications while the matter was pending before the judge.

34. A judge awarded attorney's fees to a party without affording the opposing party notice or an opportunity to respond.

Administrative Malfeasance

Judges are required to diligently discharge their administrative responsibilities.

35. A judge failed to take appropriate action after presiding over alcohol-related criminal charges involving another judge.

36. A judge failed to cooperate in the administration of court business and disparaged another judge before court staff.

Off-Bench Improprieties

37. A judge's conduct fostered an appearance that the judge was attempting to affect or interfere with a law enforcement investigation.

38. A judge allowed smoking in chambers in violation of state and local statutes.

Bias

39. A judge's attempt at humor appeared to reflect ethnic bias against two defendants.

40. A judge's actions regarding a witness in a jury trial pending before the judge created the appearance of partiality.

Lack of Candor, Cooperation With Regulatory Authorities

41. A judge failed to disclose required information in the judge's annual Statement of Economic Interests.

Improper Business Activity

42. A new judge failed to ensure that the judge was no longer counsel of record in pending litigation.

Sleeping

43. A judge slept briefly during testimony in a trial.

DECISIONS AND ORDERS OF DISMISSAL OF FORMAL PROCEEDINGS

In three matters, the Commission dismissed formal proceedings after hearings and reports by the special masters.

In consolidated matters involving Judge Bert L. Swift, a judge of the San Bernardino County Municipal Court, and Judge James C. McGuire, a judge of the San Bernardino County Superior Court, the special masters found no misconduct on the part of either Judge Swift or Judge McGuire. After briefing and oral argument before the Commission, the Commission ordered that the proceedings be dismissed.

IV.
CASE SUMMARIES

In a matter involving Judge John T. Ball, a judge of the Santa Clara County Superior Court, the special masters found after hearing that Judge Ball had engaged in improper action within the meaning of article VI, section 18 of the Califor-

nia Constitution. After briefing and oral argument before the Commission, the Commission concluded that Judge Ball's actions were at most legal error and not misconduct, and ordered that the proceedings be dismissed.

V.
VOLUNTARY DISABILITY RETIREMENT



In addition to its judicial disciplinary duties, the Commission reviews judges' applications for disability retirement. The statutory provisions covering judicial disability retirement are set forth in Government Code sections 75060 through 75064. Commission Policy Declarations 5.1 through 5.5 delineate Commission procedures in disability retirement matters.

At the beginning of 1997, three disability re-

tirement applications were pending before the Commission. The Commission received seven additional applications during the year.

The Commission granted seven disability retirement applications during 1997. Two applications were denied, appealed and then withdrawn. One application remained pending before the Commission at the close of 1997.

VI. COMMISSION ORGANIZATION, STAFF AND BUDGET



COMMISSION ORGANIZATION AND STAFF

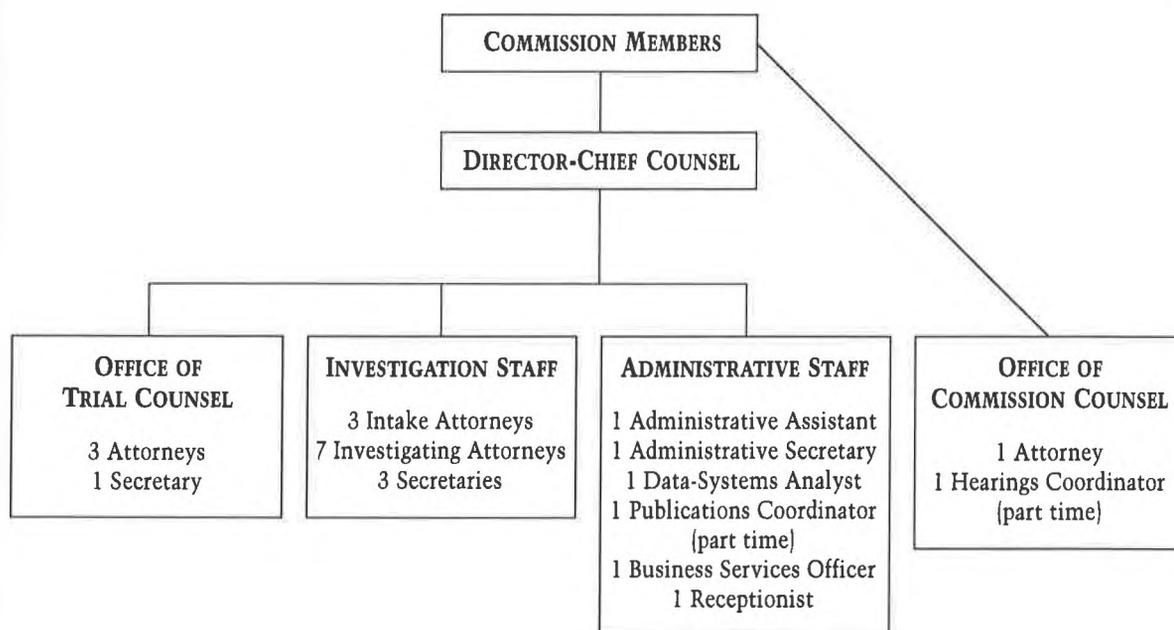
The Commission employs a staff of 25, including 15 attorneys and 10 support staff. All Commission staff are state employees.

The Director-Chief Counsel heads the agency and reports directly to the Commission. The Director-Chief Counsel oversees the intake and investigation of complaints and the Commission examiners' handling of formal proceedings. The Director-Chief Counsel is also the primary liaison between the Commission and the judiciary, the public and the media. Victoria B. Henley has served as Director-Chief Counsel since 1991.

The Commission's legal staff includes 10 attorneys responsible for the evaluation and investigation of complaints. Of these, three attorneys are primarily responsible for reviewing and evaluating new complaints, and seven attorneys are primarily responsible for conducting staff inquiries and preliminary investigations.

Three Trial Counsel serve as examiner during formal proceedings. The examiner is responsible for preparing the case for hearing and presenting the evidence that supports the charges before the special masters. The examiner handles briefing regarding the special masters'

ORGANIZATIONAL CHART



VI.
COMMISSION ORGANIZATION, STAFF AND BUDGET

report, and presents the case orally and in writing in any hearing before the Commission and the California Supreme Court.

Commission Counsel reports directly to the Commission. Commission Counsel is responsible for coordination of formal hearings and assisting the Commission in its deliberations during its adjudication of contested matters. Commission Counsel does not participate in the investigation or prosecution of cases. Roland W. Selman has served as Commission Counsel since 1995.

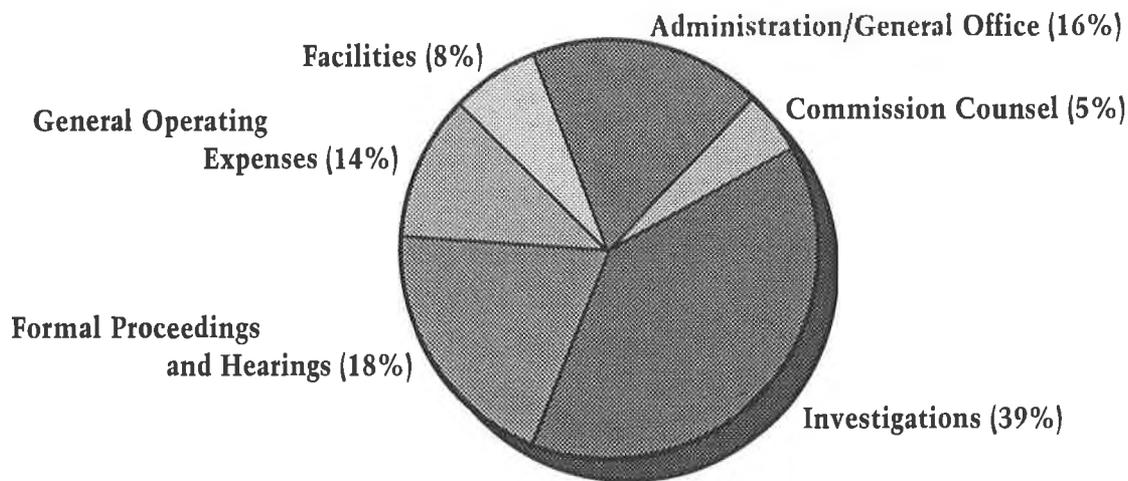
BUDGET

As mandated by Proposition 190, the Commission's budget is separate from the budget of any other state agency or court. For fiscal year 1997-98, the Commission's budget allocation is \$3,010,000.

During the 1996-97 fiscal year, approximately 39% of the Commission's budget supported the intake and investigation functions of the Commission and approximately 18% of the Commission's budget was used in connection with formal proceedings. The remaining 43% went toward sustaining the general operations of the Commission, including facilities, administrative staff, supplies, and security.

**COMMISSION ON JUDICIAL PERFORMANCE
1996-97 BUDGET**

Percent of \$2,671,450 (Actual Expenditure)



APPENDIX 3.

10-YEAR SUMMARY OF COMMISSION ACTIVITY

NEW COMPLAINTS CONSIDERED BY COMMISSION

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
	693	860	885	744	966	950	997	1,263	1,187	1,183

COMMISSION INVESTIGATIONS COMMENCED

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Staff Inquiries	114 (16%)	81 (9%)	92 (10%)	109 (15%)	136 (14%)	121 (13%)	120 (12%)	163 (13%)	114 (10%)	132 (11%)
Preliminary Investigations	22 (3%)	38 (4%)	29 (3%)	33 (4%)	15 (2%)	35 (4%)	51 (5%)	64 (5%)	60 (5%)	65 (5%)
Formal Proceedings Instituted	2 (<1%)	5 (1%)	9 (1%)	6 (1%)	2 (<1%)	9 (1%)	14 (1%)	4 (<1%)	8 (1%)	5 (<1%)

DISPOSITION OF COMMISSION CASES

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Total Dispositions	677	839	893	712	975	930	940	1,213	1,176	1,174
Closed after Initial Review	532 (79%)	746 (89%)	787 (88%)	621 (87%)	827 (85%)	809 (87%)	834 (89%)	1,053 (87%)	1,024 (87%)	1,001 (85%)
Closed without Discipline or Advisory after Investigation	86 (13%)	36 (4%)	45 (5%)	48 (7%)	93 (10%)	79 (8%)	53 (6%)	94 (8%)	102 (9%)	113 (10%)
Closed with Advisory	47 (7%)	36 (4%)	41 (5%)	29 (4%)	40 (4%)	26 (3%)	41 (4%)	41 (3%)	34 (3%)	43 (4%)
Private Admonishment	8 (1%)	13 (2%)	11 (1%)	9 (1%)	11 (1%)	7 (1%)	6 (1%)	7 (1%)	4 (<1%)	10 (1%)
Public Admonishment (or Repeval)	0 (0%)	4 (<1%)	2 (<1%)	0 (0%)	3 (<1%)	2 (<1%)	3 (<1%)	6 (<1%)	3 (<1%)	4 (<1%)
Public Censure (by Supreme Court or Commission)	0 (0%)	1 (<1%)	4 (<1%)	1 (<1%)						
Removal	1 (<1%)	1 (<1%)	3 (<1%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2 (<1%)	0 (0%)	0 (0%)
Judge Resigned or Retired with Proceedings Pending	3 (<1%)	3 (<1%)	4 (<1%)	5 (1%)	1 (<1%)	7 (1%)	3 (<1%)	9 (1%)	5 (<1%)	2 (<1%)