

CALIFORNIA
COMMISSION ON JUDICIAL PERFORMANCE

1984 REPORT TO THE GOVERNOR



LETTER OF TRANSMITTAL

To: His Excellency, George Deukmejian
Governor of the State of California

The 1984 Report of the Commission on Judicial
Performance is presented herewith.

January, 1985

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Chairperson

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First Appellate District, Division One

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I

The Commission's jurisdiction covered 1341 California judicial positions in 1984:

Justices of the Supreme Court	7
Justices of Courts of Appeal	77
Judges of Superior Court	655
Judges of Municipal Courts	520
Judges of Justice Courts	82

Three hundred, eighty-eight complaints were filed with the Commission in 1984. Eighty-four percent of these, or 327, were closed upon initial review because the complaints contained no actionable allegations of judicial misconduct or wrongdoing. Most of these were expressions of disagreement with legal rulings, orders or decisions, or dissatisfaction with a judge's exercise of judicial discretion.

The Commission conducted some inquiry or investigation in sixty-two matters. The subject judges were contacted in most of these inquiries; preliminary investigations pursuant to Rule 904 were initiated in seventeen instances. The Commission issued Notices of Formal Proceedings following six of these investigations: one Notice was withdrawn, following which a Private Admonishment issued, and the Commission conducted one hearing (the Respondent's petition for review in opposition to the Commission's recommendation for public censure is pending). A judge resigned during a formal proceeding that was outstanding from 1983.

The Commission on Judicial Performance was created in 1960 by an amendment to the California Constitution (present Article VI, Sections 8 and 18) that empowered the Commission to investigate charges of judicial malfeasance and disability. Following a hearing, it may recommend that the state Supreme Court remove, censure, or retire a judge.

The Commission conducts its investigations and formal proceedings pursuant to California Rules of Court 901 through 922 adopted by the state Judicial Council, a separate judicial agency, and the state Government Code, Sections 68701 through 68755. Internal Commission organization and management and procedural aspects of formal proceedings not detailed in the Rules or Statutes are governed by Commission Policy Declarations (see page 10).

In its published opinions disposing of cases filed by the Commission (see Appendix for citations), the California Supreme Court has defined the high standard to which California judges are held through its interpretation of the Constitutional grounds for discipline: wilful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, engaging in an improper action or a dereliction of duty, and disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent.

This is the Commission's twenty-fourth Annual Report.

Four formal proceedings were carried over into 1985. Eleven other matters were pending at the close of the Commission's last meeting on December 7, 1984 and were carried forward into 1985. The Commission met seven times in 1984 in 6 one-day and 1 two-day meetings.

II

PUBLIC DISCIPLINE

In October, 1984, the California Supreme Court acted upon the one outstanding recommendation from 1983 for public disciplinary action after consideration of a petition for review by a Burbank Municipal Court Judge. The Supreme Court endorsed the Commission's recommendation by imposing public Censure.

The Court's opinion chiefly addressed the Judge's contention that his improper enforcement of a statute was legal error reviewable only on appeal, rather than judicial misconduct subject to discipline. Amicus briefs siding with the Judge had been filed by the Los Angeles Municipal Court Judges' Association, the Burbank Bar Association and the Los Angeles County Counsel.

In its unanimous, 59-page opinion upholding disciplinary action, the Court refined the error-versus-misconduct distinction which it had defined in earlier Commission cases. Citing these, the Court identified bad faith as the "touchstone" for finding wilful misconduct, and discussed the elements of "conduct prejudicial" and the "grossly negligent" misuse of judicial power. A summary of the Court's findings and conclusions follows.

Improper Enforcement of Fee Orders Was Conduct Prejudicial

Most of the charges stemmed from the Judge's efforts to coerce from criminal defendants statutory payment to the county for their legal representation by public defenders. These efforts included mandating the payment of attorney fees before fines, ordering unauthorized appearances of defendants in court for fee-collecting purposes, recording fee orders as apparent conditions of probation, and extraction of attorney fees from bail deposits without defendants' request or consent. The Judge had also once threatened to increase another judge's fee order.

The Judge had argued that his practices to enforce fee orders were within the broad authority given him by Penal Code section 987.8, subdivision (a), to order payment of legal costs "in the manner in which the court believes reasonable and compatible with the defendant's financial ability."

The Court rejected this contention and agreed with the Commission that orders otherwise within the Judge's statutory discretion became an abuse of that discretion when the defendants were given the incorrect impression that payment of the fees could be enforced by criminal sanctions:

Though some of the acts in question . . . would not necessarily constitute misconduct or even legal error when viewed in isolation, they became misconduct as part of petitioner's larger scheme for using threats . . . That scheme violated the provisions of section 987.8 that provide for collection of attorney fee orders only by execution as on a judgment in a civil action and prohibit enforcement by contempt. (P. 23.)

The Court concluded that the Judge's improper collection practices created unreasonable obstacles to satisfaction of assessed criminal fines, but they had not been carried out in bad faith; these practices constituted "conduct prejudicial."

Increasing Fees Because of Irritation at Counsel Was Wilful Misconduct

In one case, the Judge had doubled a defendant's attorney's fees because of irritation at what he believed was the Deputy Public Defender's improper participation in the fee-collecting process (the Public Defender had objected to notation of the fee on the probation order). Citing its opinion in Gonzalez v. Commission on Judicial Performance (1983) 33 Cal.3d 359, the Court concluded that the Judge's "hostile, arbitrary and unreasonable conduct jeopardized the liberty of an indigent defendant for reasons not related to the merits of the case" and constituted wilful misconduct.

Fee Orders in Unreasonable Amounts Were "Conduct Prejudicial"

In three cases, the Judge had assessed fees which were "unreasonable in light of the evidence available to petitioner as to the defendants' ability to pay." The Judge had done little or nothing to ascertain the defendant's financial expectancies: in one case, he had based fees on an ambiguous financial statement and the fact that the defendant "seemed able to afford bail;" another defendant testified he had been asked for no financial information; the third defendant's lawyer had told the Judge that his client was not only indigent but "borderline mentally retarded."

Unsolicited Advice to Another Judicial Officer After
Disqualification Was Wilful Misconduct

Another charge emanated from an incident in which, after the Judge had been disqualified from participating in a case by the filing of a declaration of prejudice under C.C.P. 170.6, he wrote a note to the Court Commissioner who was determining the amount of attorney fees due the county in the case, suggesting a fee hearing and an order of \$500.00.

Citing Spruance v. Commission on Judicial Qualifications (1975) 13 Cal.3d 788, the Court concluded that the Judge's act of writing the note was "for a corrupt purpose, i.e. for a purpose other than the faithful discharge of judicial duties" and thus constituted wilful misconduct:

Since petitioner was disqualified under section 170.6 from hearing the fee-setting issue, it was highly improper for him to give unsolicited advice to another judicial officer on how to decide it. The right to disqualify a judge, guaranteed by section 170.6 [case citation omitted], would be undermined and perhaps vitiated if the disqualified judge were permitted to circumvent the disqualification by initiating advice to another judicial officer on how to decide the matter. (P. 41.)

Grossly Negligent Misuse of Judicial Power Was Conduct
Prejudicial

The Judge had on four occasions ordered the Burbank Police Department to release firearms which had been confiscated in connection with the owners' criminal convictions. He had then approved the purchase of two of

the guns by his courtroom Bailiff and close personal friend and approved his Bailiff/friend's negotiating the sale of the other two. Again, the Judge argued that the validity of his orders was legally debatable and that his making them constituted appealable legal error rather than misconduct.

The Court disagreed; approving the gun sales was a grossly negligent misuse of judicial power and constituted conduct prejudicial:

Section 12028 and 12030 would have made petitioner's approval of private sales of confiscated guns highly improper regardless of the identity or relationship of the parties to the transactions. The involvement of courtroom personnel, particularly petitioner's courtroom bailiff and close personal friend . . . additionally violated petitioner's obligations under canon 2(B) of the California Code of Judicial Conduct, which specifies particular ways in which 'a judge should avoid impropriety and the appearance of impropriety in all his activities . . .'. By approving a series of confiscated-gun sales to, or negotiated by, his bailiff and friend, petitioner was bound to convey the impression that the bailiff had an 'inside track' for obtaining the guns' release. Moreover, the bailiff's status as an arm of the court necessarily gave him an enormous bargaining advantage over the gun sellers . . . (P. 50-51.)

Conclusion

Arguing that his collection enforcement methods were "legal errors subject to correction on appeal or in writ proceedings," the Judge and the amici had suggested to the

Court that Censure based on his wrongful application of the attorney fee collection statute would deter enforcement of the statute. The Court firmly rejected this contention:

Finally . . . Petitioner's misconduct arose primarily out of his failure to observe clear guidelines laid down by the Legislature . . . His culpability transcends mere legal error. . . . The commission's recommendation of public censure is clearly correct. (P. 59.)^{1/}

^{1/} (Gubler v. Commission on Judicial Performance (1984) 37 Cal.3d 27.) The Judge had also challenged the Commission's practice of releasing a report to the media upon filing its record with the Court. The Court discussed the public and private interests involved and concluded that in cases in which Censure is recommended:

We think that the public interest in minimizing doubts about the judicial process arising from charges that may not be upheld warrants a postponement of the release to the public of the commission's report and of the record of its proceedings until either a petition for review by this court has been filed or the time for filing such a petition has expired. (P. 58.)

The Court recommended that the Judicial Council so provide by Rule and that the Commission comply voluntarily pending that action; the Court directed its Clerk to keep any filed Censure recommendation under seal for the additional (up to 30 days) period.

As far as the Commission is advised, the Judicial Council has not acted to change the Rule 902(a) provision that ". . . all papers filed with and proceedings before the Commission . . . shall be confidential until a record is filed by the Commission in the Supreme Court" [emphasis supplied]. The Commission hopes this will be speedily resolved by the Judicial Council.

III

PRIVATE DISCIPLINE

As in past years, the great majority of the complaints requiring inquiry or investigation and justifying criticism of a judge by the Commission were resolved through private and confidential corrective action, rather than public discipline. (See 1983 Annual Report, Part II for a fuller discussion of private discipline.)

The Commission imposed three Private Admonishments in 1984, two of which were denominated Severe: one was occasioned by incidents of alcohol abuse, another involved misuse of the contempt power in a single case, and the third was based on a judge's remarks disparaging the defendants before him and some of his judicial colleagues.

The Commission closed twenty matters without official discipline by sending letters of caution or disapproval regarding a particular aspect of judicial behavior:

- * Three judges appeared to have "over-reached," or acted in excess of their authority. One was criticized for using brief incarceration to frighten a defendant, another for issuing a bench warrant for a defendant as a result of pique at an attorney, and the third for appearing to penalize two defendants for exercising their right to trial rather than pleading guilty.

- * Nine judges had made remarks that the Commission determined to be improper under the Code of Judicial Conduct standard requiring

patience and courtesy. These included discourteous comments and offensive language of various kinds.

* Two judges were advised of the Code's proscription of unauthorized ex parte communications.

* Three judges had each delayed deciding a single case for an unacceptably long period, and three judges were referred to the political activity canon when they apparently endorsed a candidate for non-judicial office.

* One judge was advised that he had appeared to ignore the law in citing an attorney for contempt. Another had attempted to bar an attorney from practicing before him. A judge was notified of the Commission's disapproval after he had appeared to invoke the authority of his office in a personal traffic dispute.

Three communications to judges were limited to educational explanation about an ethical precept which apparently had been overlooked or ignored.

IV

POLICY DECLARATIONS

Since its first meeting on March 24, 1961, the Commission has deliberated on and recorded in its minutes its resolutions regarding significant policy issues. These Resolutions have provided for uniformity and continuity of

Commission practice and procedure in areas not detailed in its governing provisions (the state Constitution, Court Rules and Government Code). These areas include internal organization and management, staff functions, and implementation of the rules and statutes regarding formal proceedings.

These statements of existing policy have been collected in a single, amendable document and titled Commission Policy Declarations. Pertinent Declarations are routinely furnished respondent judges in formal proceedings in order to give notice of Commission policy to the parties who are directly affected by it.

For example, the Commission has for many years followed an open file practice in formal proceedings by permitting mutual Discovery. Accordingly, a Declaration of Commission Discovery policy was developed to provide guidance in the consistent application of this principle.

Another Declaration in this category augments Rule 904.5, Demand for Appearance or Hearing. The Rule establishes a judge's right to contest imposition of a Private Admonishment, but provides little procedural detail; the Declaration spells out the distinction between a hearing and an appearance, the means of making an election between them, the path of consequent Commission action, and other procedural matters.

Other subjects of Declarations are aspects of house-keeping such as Declarations providing for the election of the Chairperson, the setting of regular and special meetings, and the preparation of this report.

EDUCATIONAL ACTIVITIES

The Commission took advantage of a series of opportunities in 1984 to expand awareness and understanding of its purpose and operation among the state's judicial officers. At the invitation of the Administrative Office of the Courts, the Commission's Director-Chief Counsel discussed the "Role and Function of the Commission on Judicial Performance" at the 1984 Management Workshop for Superior Court Presiding Judges and Executive Officers and the 1984 Management Workshop for Municipal Court Presiding Judges and Clerk/Administrative Officers. Both workshops were held in Burlingame, California.

For the first time, the California Judges' Association included a panel discussion on "Perspectives on the Commission on Judicial Performance" in a well-attended general session at its 1984 Annual Meeting at Monterey, California.

The California Judicial College has continued its efforts to educate new judges on standards of conduct. For the second successive year, it included Commission members as panelists in a class on Judicial Conduct at the 1984 College in Berkeley, California.

Finally, the Los Angeles County Bar Association included a discussion about the Commission on the program of its November Conference of Local Bar Leaders.

In 1982 the Commission developed an Informational Pamphlet to explain the function and jurisdiction of the Commission. Since the pamphlet was first issued, approximately 2000 copies have been distributed.

APPENDIX - COMMISSION CASES TO THE SUPREME COURT

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

In re Gerald S. Chargin
2 Cal.3d 617 (1970)
87 Cal.Rptr. 709
471 P.2d 29

In re Bernard B. Glickfeld
3 Cal.3d 891 (1971)
92 Cal.Rptr. 278
479 P.2d 638

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

In re Antonio E. Chavez
9 Cal.3d 846 (1973)
109 Cal.Rptr. 79
512 P.2d 303

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

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

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

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

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

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

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

In re Charles Robert Roick
24 Cal.3d 74 (1978)
154 Cal.Rptr. 413
592 P.2d 1165

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

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

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

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

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

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

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

Gubler v. Commission on
Judicial Performance
37 Cal.3d 27 (1984)

CASES COMING BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

Seven Year Summary - 1978-1984

<u>Year</u>	<u>Complaints Filed</u>	<u>Inquiries (some kind of investigation)</u>	<u>Judge Contacted</u>	<u>Preliminary Investigation</u>	<u>Admonishments</u>	<u>Resignations or Retirements</u>	<u>Public Discipline</u>
1978	274	72	59	20	7	3	1 censure 1 retirement (involuntary)
1979	291	76	62	18	3	2	
1980	260	65	54	12	8	1	
1981	267	52	48	18	7	3	1 censure 1 removal
1982	360	68	61	14	5	1	2 censures
1983	351	63	56	21	6	3	2 censures 1 removal
1984	388	62	64	17	3	1	1 censure

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