

STATE OF CALIFORNIA

COMMISSION ON JUDICIAL PERFORMANCE



1986 ANNUAL REPORT

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COMMISSION ON JUDICIAL PERFORMANCE

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TWENTY-SIXTH ANNUAL REPORT

In Recognition of

FORMER CHAIRPERSONS

Commission on Judicial Performance



HONORABLE A. F. BRAY
Presiding Justice, Court of Appeal
San Francisco
March 1961 - September 1964



HONORABLE LLOYD E. GRIFFIN
Presiding Justice, Court of Appeal
San Diego
October 1964 - February 1965



HONORABLE WILLIAM B. NEELEY
Judge of the Superior Court
Los Angeles
February 1965 - February 1967



HONORABLE MURRAY DRAPER
Presiding Justice, Court of Appeal
San Francisco
February 1967 - December 1973



HONORABLE BERTRAM D. JANES
Associate Justice, Court of Appeal
Sacramento
December 1973 - November 1979



HONORABLE THOMAS KONGSGAARD
Judge of the Superior Court
Napa
December 1979 - November 1980



HONORABLE HOWARD L. SCHWARTZ
Judge of the Municipal Court
Oakland
November 1980 - January 1981
(currently Judge of the Superior Court)

COMMISSION MEMBERS



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



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



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



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



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



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



BEN NOBLE
Public Member
La Canada Flintridge
Appointed March 1984
Present term expires May 1987



HONORABLE SARA K. RADIN
Judge of the Superior Court
Los Angeles
Appointed September 1985
Present term expires February 1987



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

JACK E. FRANKEL
Director-Chief Counsel

PETER GUBBINS
Investigating Attorney

CYNTHIA DORFMAN
Investigating Attorney

I
SUMMARY OF COMMISSION DISCIPLINARY ACTIVITY IN 1986

At the close of 1986, there were 1429 judicial positions within the jurisdiction of the Commission:

Justices of the Supreme Court	7
Justices of Courts of Appeal	77
Judges of Superior Courts	715
Judges of Municipal Courts	548
Judges of Justice Courts	82

Four hundred and seventy-six complaints were filed with the Commission in 1986. Several named more than one judge. Three hundred sixty-three complaints or seventy-six percent were closed following review and consideration by the staff and the Commission because no actionable allegations were presented. Most of these came from individuals dissatisfied with a judge's rulings on the merits of a particular case, frequently a small claims or domestic relations case involving the complainant. Although these complaints do not warrant investigation beyond review of the complaint, they nevertheless occupy large amounts of staff time spent writing and talking to the complainants about their difficulties and the reasons those problems are not grounds for Commission proceedings. While this process often does settle an issue for the complainant, many other times a troubled or frustrated or disgruntled person is as unhappy as ever, and repeated calls and letters are not infrequent.

This facet of the Commission's work does provide complainants a forum for their dissatisfactions and an opportunity to become informed about the role of the judiciary. Such problems are not limited to the average citizen. Government officials, practicing lawyers and judges sometimes make inquiries of the Commission when they are troubled with questions of judicial conduct or performance. Through these contacts, the Commission reviews, sifts, and often resolves a wide range of claims involving judges.

There was some investigation in one hundred and thirteen matters. Seventy-eight of these investigations included writing to the judge for comment and explanation. Twenty-two of these seventy-eight cases went to the stage of an official preliminary investigation under Rule 904 of the California Rules of Court. Twenty-six of the one hundred and thirteen complaints investigated resulted in private disciplinary action. Formal proceedings were ordered in four cases. In five cases, all of which had been initiated in 1985, formal hearings were concluded. In four cases, recommendations for public discipline were made to the Supreme Court (*In re Creede* 42 Cal.3d 1098 [censure]; *Furey v. CJP*, LA #32200 [removal]; *McCullough v. CJP*, SF #25030 [censure]; *Ryan v. CJP*, SF #25086 [removal].) There are presently five additional cases at the formal proceeding stage.

The numbers of complaints, investigations, formal proceedings and recommendations pending before the Supreme Court are at record levels. The best single

explanation for this is that the word has spread that the Commission on Judicial Performance has the authority and the will to do something about problems of judicial conduct. The Commission held eight two-day meetings in 1986, also a record number.

On numerous occasions during the year the Commission has communicated with bar associations and groups of judges about the work of the Commission. Practicing lawyers are traditionally reluctant to report judicial conduct problems. Occasionally, local bar associations have done so. If local bar groups know about the availability of the Commission, increased cooperation can be anticipated from this source. Also, for the first time ever a panel of Commission members and staff presented at the State Bar's annual meeting a program called "How and Why you should Utilize the Commission on Judicial Performance," moderated by a member of the Board of Governors. This educational activity has clearly resulted in increased business for the Commission.

The rapid growth of the Commission's workload is expected to continue. As the public, the bench and the bar become increasingly aware of what the Commission can and will do, the numbers of complaints and resulting investigations will rise even higher. Moreover, the Commission has taken on greater responsibility in conducting advanced investigations through its staff. Formerly, its own resources were too limited to do the kind of investigation that the Commission has decided is needed. During 1986 there were more advanced staff investigations than ever before, and this trend is likely to continue. In addition, proposals now being considered by the Commission for submission to the legislature could broaden the scope of the Commission's work by providing for constructive involvement in a range of judicial conduct problems not deserving of public censure which now receive inadequate attention.

II

PUBLIC DISCIPLINE

The Commission filed four recommendations in the Supreme Court. Two of the recommendations were for removal from office; these are pending. One recommendation for public censure is pending. In the fourth case, *In re Creede* 42 Cal.3d 1098, the Court has imposed the sanction of public censure recommended by the Commission.

The *Creede* case was referred to the Commission by the Commission on Judicial Appointments. Fresno Superior Court Judge Frank Creede, Jr., had appeared before that body in hearings on confirmation of his appointment by the Governor to the Court of Appeal for the Fifth District. When the Appointments Commission was provided with information indicating that Judge Creede had not decided a number of cases within ninety days of their submission but had continued to present affidavits to the contrary and to receive his salary while the cases remained undecided, the matter was referred to this Commission for "determination."

Article VI, section 19 of the California Constitution provides, "...A Judge of a court of record may not receive the salary for the judicial office held by the judge while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision." Government Code section 68210 requires a judge of a court of record to state monthly by affidavit that no case is pending and undeter-

mined for 90 days after submission in order to receive his or her salary. In *Mardikian v. Commission on Judicial Performance* (1985) 40 Cal.3d 473, 220 Cal.Rptr. 883, 709 P.2d 852, the Court pointed out that neither this constitutional provision nor Government Code section 68210 mandates that judges decide cases within 90 days of their submission. "Nonetheless," the Court stated, "the 90-day provision which has been a part of the Constitution since its adoption in 1879, and section 68210 (which in 1966 replaced the affidavit requirement formerly in the Constitution) reflect the judgment of the Legislature and the electorate that this period affords a reasonable time within which to expect a trial judge to carry out the basic responsibility of a judge to decide cases under Code of Civil Procedure, section 170." (*Id.*, at p. 447, fn. 4.)

Following investigation and nine days of evidentiary hearings, the three judges appointed as Special Masters to hear the case determined that Judge Creede had submitted salary affidavits and received his salary while fifty-one cases were submitted and pending for over ninety days, but that when he executed the salary affidavits he was unaware that any submitted cases remained or would remain undecided in excess of ninety days, and that he did not execute any affidavits knowing them to be false. The Masters concluded, "The totality of the circumstances of failing timely to decide fifty-one cases coupled with the execution of erroneous salary affidavits and receipt of judicial salary brings the judicial office into disrepute." Following argument before the Commission by the judge and his counsel and the examiners appointed to present the case, the Commission adopted the Special Masters' Findings of Fact and Conclusions of Law and filed with the court a recommendation for public censure. Judge Creede did not oppose the censure recommendation, and on October 3, 1986, the Court adopted the Commission's recommendation. The Court said:

The record reveals that Judge Creede is a diligent, hardworking and highly respected judge. Nonetheless, clear and convincing evidence supports the conclusion that he violated Canon 3 A (5) of the California Code of Judicial Conduct, which states that "A judge should dispose promptly of the business of the court." During a five-year period, between March 1979 and April 1985, Judge Creede repeatedly and unjustifiably delayed filing decisions in cases submitted to his court. During this time, he continued to execute erroneous salary affidavits and to collect his salary even though submitted cases remained pending and undecided in his court for periods in excess of 90 days. [Citations omitted.] He did not, however, knowingly falsify the salary affidavits, and did not intentionally or maliciously disregard his adjudicative responsibilities. There was no credible evidence of actual prejudice from the delays, which were partially attributable to an excessive workload and inadequate support staff. Yet he could have taken steps to monitor his cases and to dispose more promptly of submitted matters. Since the protracted delays served to damage the esteem of the public for the judiciary, his conduct was "...prejudicial to the administration of justice..."

III

PRIVATE DISCIPLINE AND DISPOSITIONS

Twenty-six complaints resulted in disciplinary action or disposition that did not become public. These cases accounted for about twenty-five percent of the complaints that warranted investigation, or five percent of the total complaints received.

The Commission imposed three private admonishments pursuant to Court Rule 904(d). One of these followed a hearing. Here are descriptions of the conduct which resulted in the admonishments:

A judge failed to decide several cases within 90 days of their submission and over an eight-month period filed salary affidavits incorrectly stating that no such submitted cases remained pending and undecided, and received salary. The Commission found substantial mitigation in the fact that the delays were mostly attributable to specific events over which the judge had no control.

A judge failed to decide three cases, one of which remained submitted and undecided for four years, for no apparent reason in spite of notice of the pendency of the cases. After a hearing the Commission concluded that these failures, coupled with the judge's acceptance of his salary and submission of false salary affidavits, were derelictions of duty. The Commission adopted the Masters' finding that there were significant factors in mitigation, including an undertaking to devise and implement a system for tracking submitted cases.

A judge abused the power of contempt on two occasions. In addition, on several occasions the judge displayed discourtesy and intemperance toward witnesses, litigants and attorneys which lent an appearance of prejudice to his rulings.

The balance of actionable complaints which did not warrant public discipline were disposed of informally by letters advising caution or expressing disapproval of performance which the Commission viewed as either minor transgression or in apparent disregard of ethical precepts. Here are summaries of these cases:

A judge created a perception of unfairness by ordering a new trial in a small claims case after receiving a letter from the losing party.

A judge offered negative opinions of a party and the party's counsel in an ex parte conversation with an individual he was appointing as an expert witness; the witness' subsequent testimony was stricken by another judge on the basis of a "rather strong appearance of impropriety."

A judge's name appeared as a "sponsor" on a political mailing for a candidate for non-judicial office.

A judge used official judicial stationery in correspondence with the opposing party in personal litigation.

A judge accepted pleas from uncharged defendants who had appeared for arraignment as their bail slips had directed but before the district attorney had filed a complaint charging an offense.

A judge appeared to treat the parties to an action unevenly by excusing an instance of tardiness by defense counsel while sanctioning the in pro per plaintiff for the same act.

After a jury returned a verdict, a judge commented to the jury about the defendant's prior violations, which had not been received in evidence.

A judge altered court records to resolve an apparent inconsistency in the record, with results adverse to a pro per litigant.

A judge displayed anger and hostility toward a person attending a judicial proceeding.

Commission inquiry into a judge's public "feud" with another judge was terminated upon the assurance that there would not be any repetition.

A judge arranged for a political mailer which appeared to pair the judge with, and to constitute an endorsement of, a candidate for non-judicial office.

A judge authorized the written use of the judge's name as an endorsement of a candidate for non-judicial office.

A justice court judge who was permitted to practice law called attention to his judicial position while appearing as an attorney in another court.

A judge's inadvertence caused an eighteen-month delay between submission and decision of a single case.

A judge's statements that an indicated sentence based on a plea might be increased should defendant go to trial appeared to be, and were understood as, an effort to discourage a defendant's exercise of his right to trial.

A judge was reminded to keep in mind the requirement of courtesy expressed in Canon 3 after the litigants perceived the judge's remarks as insulting.

A judge made political contributions inconsistent with Canon 7.

A judge made public comments about a case pending in another judge's court.

After the jury in a criminal case announced that it was unable to reach a verdict, a judge directed the prosecutor to retry the case and referred to the defendant's prior convictions, previously unknown to the jury.

There was a five-month delay between submission and decision of a case.

A juvenile court judge was advised that parents of juvenile witnesses in a case perceived some of the judge's remarks as demonstrating impatience.

A judge failed to decide three submitted cases within ninety days and did not complete them until notified by an attorney or party.

The purpose of private discipline and disposition is educational and corrective. While these cases are not public, summaries are provided here for the information and benefit of the bench, bar, and public.

APPENDICES

COMMISSION CASES TO THE SUPREME COURT

**Stevens v. Commission on
Judicial Qualifications**

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

In re Gerald S. Chargin

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

In re Bernard B. Glickfeld

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

In re Leopoldo Sanchez

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

In re Antonio E. Chavez

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

**Geiler v. Commission on
Judicial Qualifications**

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

**McCartney v. Commissions on
Judicial Qualifications**

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

**Spruance v. Commission on
Judicial Qualifications**

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

**Cannon v. Commission on
Judicial Qualifications**

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

**McComb v. Commission on
Judicial Performance**

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

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

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

In re Arden T. Jensen

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

In re Charles Robert Roick

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

In re Robert S. Stevens

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

**Wenger v. Commission on
Judicial Performance**

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

In re Hugo M. Fisher

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

In re Charles S. Stevens

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

**Gonzalez v. Commission on
Judicial Performance**

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

**Roberts v. Commission on
Judicial Performance**

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

In re Bobby D. Youngblood

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

**Gubler v. Commission on
Judicial Performance**

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

**Mardikian v. Commission on
Judicial Performance**

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

In re Frank J. Creede

42 Cal.3d 1098 (1986)

CASES COMING BEFORE THE COMMISSION OF JUDICIAL PERFORMANCE

Five-Year Summer - 1982-1986

Year	Complaints Filed	Inquiries* (Some kind of Investigation)	Judges* Contacted	Preliminary Investigations	Admonishments	Resignations or Retirements While Under Investigation	Public Discipline
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
1985	317	54	47	11	6	2	1 censure
1986	476	113	78	22	3	1	1 censure

* Some Inquiries can involve more than one Judge; more than one Judge may be contacted in a single Inquiry.

January 1987