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STATE OF CALIFORNIA  
COMMISSION  
ON JUDICIAL  
PERFORMANCE  
1991 ANNUAL REPORT

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### PLEASE NOTE:

The Commission has moved into new offices.

Our new address is:

Commission on Judicial Performance

101 Howard Street, Suite 300

San Francisco, CA 94105

Our new telephone number is:

(415) 904-3650

Fax: (415) 904-3666

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## COMMISSION MEMBERS



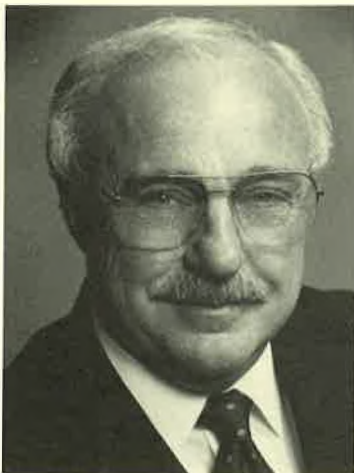
**HONORABLE ARLEIGH WOODS**

Chairperson  
Presiding Justice, Court of Appeal  
Second Appellate District, Division Four  
Los Angeles  
Appointed May 1986  
Present term expires March 1993



**ANDY GUY**

Vice Chairperson  
Public Member  
Lodi  
Appointed November 1985  
Present term expires  
October 1993



**ROGER J. BARKLEY**

Public Member  
La Canada Flintridge  
Appointed February 1990  
Present term expired  
May 1991



**DENNIS A. CORNELL**

Outgoing Attorney Member  
Merced  
Appointed January 1989  
Membership terminated upon  
appointment to Superior Court  
January 1992

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## COMMISSION MEMBERS continued



**HONORABLE  
RUTH ESSEGAN**  
Judge of the Municipal Court  
Los Angeles  
Appointed May 1990  
Present term expires  
January 1996



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



**HONORABLE  
INA LEVIN GYEMANT**  
Judge of the Superior Court  
San Francisco  
Appointed September 1988  
Present term expires  
November 1992



**HONORABLE  
WILLIAM A. MASTERSON**  
Judge of the Superior Court  
Los Angeles  
Appointed February 1989  
Present term expires  
March 1995



**HONORABLE  
EUGENE M. PREMO**  
Associate Justice  
Court of Appeal  
Sixth Appellate District  
San Jose  
Appointed February 1989  
Present term expires  
November 1994



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## COMMISSION STAFF

**VICTORIA B. HENLEY**  
Director-Chief Counsel

**KHOI NGOC BUI**  
Data Processing Analyst

**CYNTHIA DORFMAN**  
Associate Counsel

**NANCY GILMORE**  
Senior Administrative Assistant

**PETER GUBBINS**  
Investigating Attorney

**VINCENT GUILIN**  
Intake Assistant

**BERNADETTE M. KEEVAMA**  
Supervising Judicial Secretary

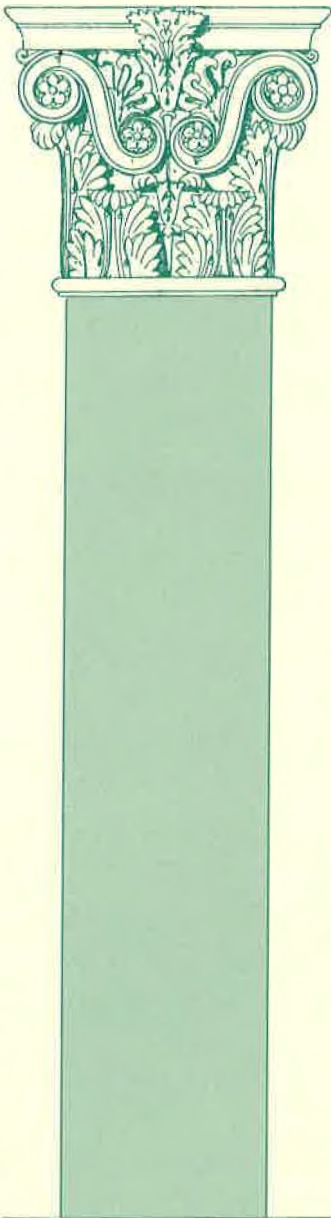
**JENNIFER L. MACHLIN**  
Administrative Counsel

**JOHN PLOTZ**  
Staff Counsel

**ELAINE D. SWEET**  
Judicial Secretary/Administrative Assistant

**BARBARA JO WHITEOAK**  
Judicial Secretary

# I. THE COMMISSION IN 1991: AN OVERVIEW



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

The commission's primary duty is to investigate charges of wilful misconduct in office, persistent failure or inability to perform the duties of a judge, habitual intemperance in the use of intoxicants or drugs, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or other improper actions or derelictions of duty. The commission considers a wide variety of judicial misconduct. Rudeness to litigants, lawyers and court staff, gender and ethnic bias, abuse of contempt power, delay of decision, ex parte communications, ticket-fixing, drunkenness, systematic denial of litigants' rights, improper off-bench activities and many other forms of misconduct have claimed the commission's attention. The commission is also charged with evaluating disabilities which seriously interfere with a judge's performance.

This year's report contains an expanded discussion of the handling of complaints and how the commission functions at Chapter VI.

In 1991, the commission received 744 complaints. The commission ordered 109 staff inquiries and 33 preliminary investigations. The commission instituted formal proceedings in 6 matters.

The commission issued 29 advisory letters and 9 private admonishments (see Section IV of this report for a summary of these matters).

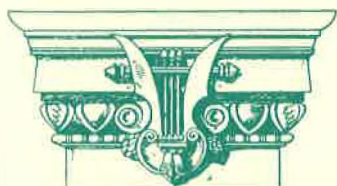
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## **II. RECENT CHANGES IN THE LAW**

In 1991 there were no changes in the statutes and rules affecting the commission.

### III. SUMMARY OF COMMISSION DISCIPLINARY ACTIVITY IN 1991



#### COMPLAINTS RECEIVED AND INVESTIGATED

At the close of 1991, there were 1553 judicial positions within the commission's jurisdiction:

Justices of the Supreme Court .....	7
Justices of the Court of Appeal .....	88
Judges of the Superior Courts .....	789
Judges of the Municipal Courts .....	616
Judges of the Justice Courts .....	53

In 1991, the commission received 744 new complaints, all of which were carefully reviewed and evaluated. In approximately 580 cases a prima facie case of misconduct was not established and the cases were closed after review by staff and the commission. In approximately 170 cases, some informal investigation was necessary before the matter was submitted to the commission for review. The commission determined that further formal inquiry was required in certain cases.

The commission ordered a "staff inquiry" (Rule of Court 904) in 109 cases. In a staff inquiry, the commission's legal staff investigates the facts underlying the complaint. Occasionally the inquiry reveals facts which dispose of the complaint and make the judge's comment unnecessary. Usually, however, the judge is asked to comment on the allegations.

Under Rules of Court 904 and 904.2, the commission may institute a "preliminary investigation" to determine whether formal proceedings should be instituted, or discipline imposed of greater severity than an advisory letter, or the case should be closed. The commission ordered 33 preliminary investigations in 1991.

After a preliminary investigation, the commission may issue a notice of formal proceedings (Rule of Court 905), which is a statement of formal charges leading to a hearing. Such notices were issued in 6 cases in 1991.

Of the 744 complaints received in 1991, approximately 65% originated from litigants or their families. 25% of the complaints came from members of the public apparently unconnected to any litigation. Complaints from lawyers accounted for



### III. SUMMARY OF COMMISSION DISCIPLINARY ACTION IN 1991

another 8%. All others sources, including judges, court employees, jurors, and others, amounted to approximately 2%.

The 744 complaints set forth a wide array of grievances. A large number of the complaints alleged legal error not involving misconduct. Approximately 45% of all complaints fell in this category. Many of these complaints were expressions of frustration and disappointment with the legal process. The next most common category was demeanor and rudeness (10%).

#### ► COMPLAINT DISPOSITIONS

Since some of the actions taken by the commission in 1991 involved cases begun in 1990, and since some cases begun in 1991 were still pending at the end of the year, the following statistics are based on cases completed in 1991, regardless of when the case began. Cases still pending at the end of 1991 are not included.

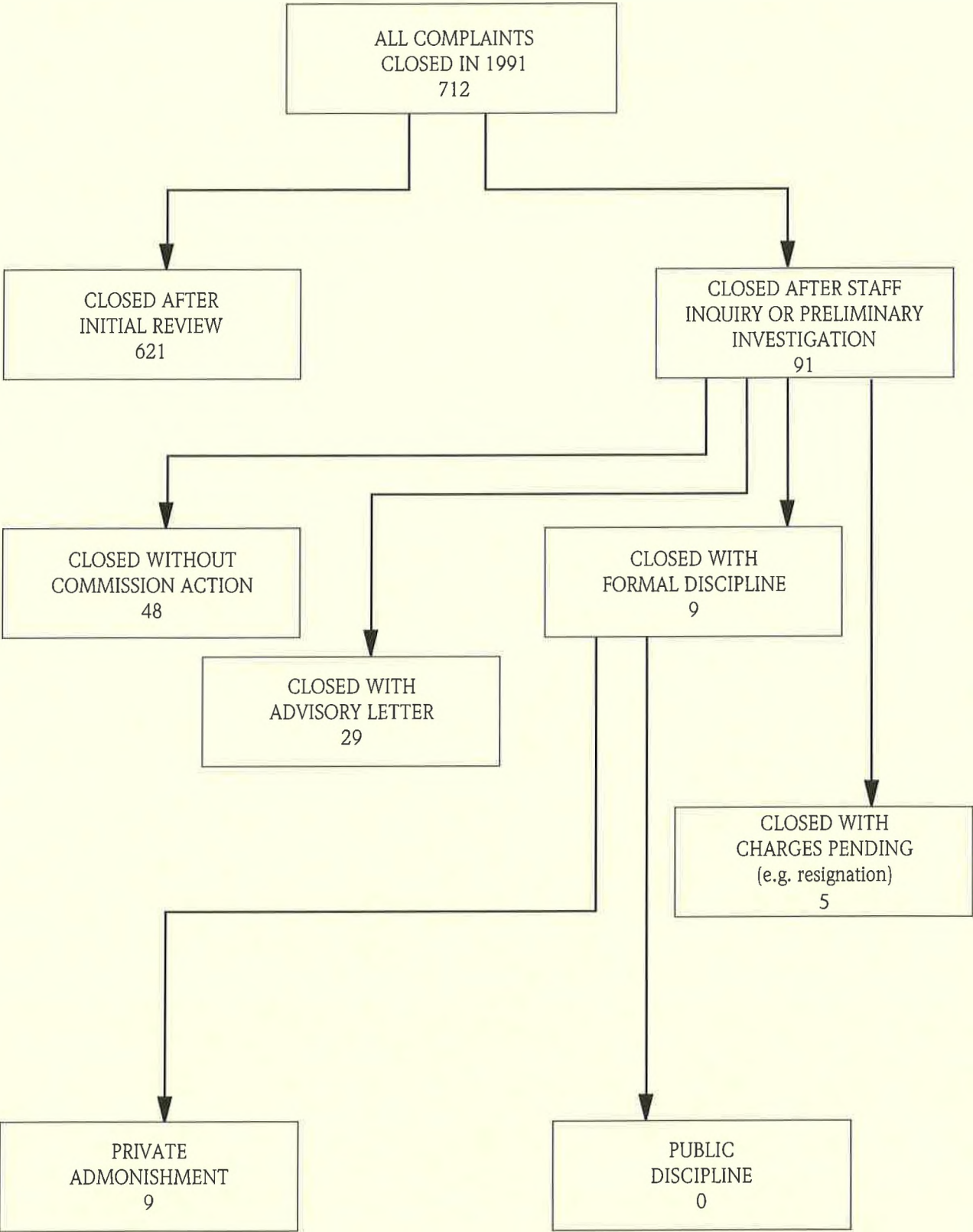
The commission completed 712 cases in 1991. Of these, 669 were closed without action; 38 were closed with discipline or action of some sort; and there were 5 matters closed when judges left the bench with charges pending.

Discipline may be imposed by the commission only after official investigation, including comment from the judge. Of the 91 officially investigated cases that were completed in 1991, 48 were closed without any action. In those cases, investigation showed that the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation.

Action of some sort was taken by the commission in 38 cases, including 9 private admonishments and 29 advisory letters. See Section IV of this report for a discussion of the action taken by the commission.

Chart III provides an overview of the cases completed in 1991.

CHART III



#### IV. DISPOSITION OF COMMISSION CASES



In 1991 there was no public discipline of any California judge.

During the year, five judges left the bench while commission proceedings were pending.

At the end of 1991, five judges were the subject of pending formal proceedings (Rules of Court, rule 905, et seq.).

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In 1991 the commission issued 9 private admonishments and 29 advisory letters.

##### ► Private Admonishments

Private admonishments are imposed under California Rules of Court, rule 904.3. The private admonishments imposed in 1991 are summarized below. In order to maintain privacy, it has been necessary to omit certain details. This has made some summaries less informative than they otherwise would be; but since these examples are intended in part to educate judges and assist them in avoiding inappropriate conduct, we think it is better to be vague in these descriptions than to omit them altogether.

**A.** A disagreement between a judge and an attorney escalated into a personal controversy. The judge wrote a letter to the local paper personally attacking the attorney. The letter was intemperate and showed improper embroilment.

**B.** Before joining the bench, a judge was in private practice. After becoming a judge, but not in the course of judicial duties, the judge received information regarding the subject matter of his prior representation which should have been communicated to the former client or successor counsel. The judge failed to do so, in apparent violation of Business and Professions Code, section 6068(m), and the State Bar Rules of Professional Conduct, rule 3-700(A)(2).

**C.** A judge publicly revealed confidential information in order to embarrass a litigant. The judge twice made remarks which could reasonably be construed as racist. The judge found a defendant in contempt on inadequate grounds and without giving the defendant an adequate opportunity to defend himself. In communications with the commission the judge recognized the problems, promised



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#### IV. DISPOSITION OF COMMISSION CASES

reform, and agreed to attend a program on fairness sponsored by the California Center for Judicial Education and Research. The judge was relatively inexperienced.

**D.** On voir dire, a judge interrogated certain jurors in a rude, intimidating manner in order to “educate” the rest of the panel. The judge also made inappropriate references to religion. The judge was sometimes sarcastic toward defendants during arraignments. For instance, the judge asked at least one defendant who was slow in responding, “Do you have wax in your ears?” The judge belittled an inexperienced prosecutor during and after trial. For instance, in front of the jury the judge asked, “Haven’t you heard of leading questions?” “Didn’t they teach you about hearsay in law school?”

**E.** A judge engaged in an improper, undisclosed ex parte conference with a prosecutor before an arraignment calendar. In permitting the prosecutor to upgrade a traffic infraction to a misdemeanor and in setting extraordinarily high bail, the judge apparently was relying on information given by the prosecutor in the improper communication.

**F.** A judge failed to rule on two motions for 7 months after submission. The judge nonetheless continued to sign monthly salary affidavits stating that no matter was pending longer than 90 days, and to receive a salary contrary to Article VI, section 19, of the Constitution. The judge did not respond to inquiries from either the parties or the Court of Appeal. Court staff gave incorrect information regarding the matter to both the parties and the Court of Appeal (see Canon 3B(2)). The judge also disregarded the Court of Appeal’s request for a response in connection with a petition for writ of mandate and later failed to comply with the Court of Appeal’s order in the case.

**G.** A judge sentenced a traffic defendant for speeding based on the judge’s unfounded “diagnosis” that defendant was “addicted to something.” The “diagnosis” was entered onto the court docket, which is a public document. On another occasion, the judge issued Orders to Show Cause against three attorneys for possible sanctions under the Code of Civil Procedure, sections 128.5 and 177.5. There was no basis for sanctions. The true purpose of the Orders was for the judge to inquire into the operation of the attorneys’ law office and to display the judge’s pique.

**H.** On behalf of a juvenile relative, a judge made requests of various officials in the court process. The judge was or should have been aware that the request, even if made in the role of relative, would receive special treatment. On another occasion the judge actively participated in the selection of a court employee. The judge did not reveal a financial relationship between the judge and the employee.

**I.** A judge drove under the influence of alcohol, thereby committing a misdemeanor (Vehicle Code, section 23152(a)). The judge’s failure to comply with the law was an improper action. The judge failed to observe the high standards of conduct expected of California judges and diminished public confidence in the judiciary.



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#### IV. DISPOSITION OF COMMISSION CASES

##### ► 1991 Advisory Letters

The commission will sometimes advise caution or express disapproval of a judge's conduct without imposing formal discipline. This milder form of action is contained in letters of advice or disapproval called "advisory letters." They are provided for in Rule 904.1. Over the years the commission has issued them in a variety of situations:

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

As in the past, the largest category of complaints received and of action taken by the commission relates to demeanor and what might be deemed abusive behavior. In some cases, the commission observed commendable improvement by judges who, when the impropriety was brought to their attention, undertook serious programs of improvement.

1. A judge made vulgar comments calculated to frighten two defendants at misdemeanor sentencings.

2. During a long trial, a judge occasionally expressed impatience through gesture and tone of voice. Jurors interpreted these gestures as signs of bias.

3. A criminal defendant was born in a certain country. The judge told the defendant that persons of his nationality "have a horrible reputation in this country," and made other racist remarks. The judge enjoyed an otherwise high reputation from all segments of the bar. The incident was apparently isolated. In dealings with the commission the judge recognized the impropriety of the remarks, expressed remorse, and promised to apologize to the defendant.

4. On the bench, a judge impugned the credibility of an attorney/defendant who had earlier disqualified the judge. The judge also threatened to sue the attorney for libel for statements in the attorney's affidavit of prejudice in an earlier case.

5. A judge needlessly disparaged an attorney in front of a jury by sarcastically blaming him for rather insignificant delays in trial.

6. As part of a sanctions order relating to an attorney's failure to obtain relief from a local court rule, a judge ordered the attorney to display the order to other judges if relief from the rule was sought in the future. This humiliated the attorney.

7. In open court, a judge explained the judge's recusal from a case by attacking the credibility of one of the attorneys of record, who was not present. The clients

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**IV.  
DISPOSITION OF  
COMMISSION CASES**

were present. The judge further published this negative opinion by needlessly sending the presiding judge a copy of the judge's response to the commission in violation of the commission's rules of confidentiality.

**8.** At a seminar, an attorney criticized a judge. Acting on a second-hand (and erroneous) report about the seminar, the judge denounced the attorney in open court and in the presence of the attorney's clients. The judge ordered the bailiff to remove the attorney from court without permitting the attorney to respond.

**9.** During an in-chambers conference the judge heard substantial, uncontroverted evidence of funds being misappropriated in a matter before the court, implicating court-appointed attorneys. The judge took no action.

**10.** A judge treated a victim/witness rudely, engaged in ex parte conversations with a prosecution witness during cross-examination, held an ex parte meeting with a supervisor from the DA's office during a hearing, and refused to allow a defendant's attorney to be present while the judge answered the jury's questions.

**11.** A judge issued an ex parte order suspending visitation without requiring any written documentation of either notice to the opposing party or the basis for the suspension.

**12.** A judge commented to the jury that it had, in effect, reached the wrong verdict.

**13.** A jury asked the judge questions during deliberations. The judge answered them without a court reporter, without the presence or knowledge of the attorneys or parties, and without retaining copies of the questions.

**14.** In warning a disruptive litigant of possible use of a gag, the judge appeared to demean and denigrate the litigant.

**15.** An attorney came to chambers before appearing on a motion. The attorney engaged in a personal cash transaction with a member of the court staff. The judge was not present during the transaction but was aware of it. Thereafter, the judge ruled in the attorney's favor. The commission was convinced there was no actual impropriety, but the circumstances created an appearance of impropriety.

**16.** A judge failed to exercise any control over the judge's campaign committee. With apparent reckless disregard of the truth, the committee published what seemed to be defamatory falsehoods about a law firm with which the judge's opponent had been associated and which still practiced in the county.

**17.** A judge engaged in acts constituting a misdemeanor.

**18.** A judge commented to the media about a matter pending before the judge.

**19.** Judge A wrote to Judge B, who was in another jurisdiction. The letter concerned a defendant about to be sentenced by Judge B. The letter revealed A's status as a judge and discussed A's sentencing philosophy.

**20.** A judge failed to follow proper procedures in imposing sanctions. Also, the sanctions were ordered to be paid to charity.

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**IV.  
DISPOSITION OF  
COMMISSION CASES**

21. A judge met with reluctant or nervous witnesses ex parte to encourage them to testify. The judge also threatened to revoke (and did revoke) a defendant's O.R. release because the defendant refused to accept a certain plea bargain. There was extraordinary mitigation.

22. In a pending matter, a judge changed an order after entry, changed another order prior to entry but without adequate notice to a party, and held an ex parte meeting with a party's attorney.

23. A judge exhibited generally poor demeanor, often giving the appearance of vindictiveness. The judge took steps to improve performance, such as videotaping and reviewing court proceedings for the purpose of checking on the judge's own demeanor and seeking professional help for stress.

24. A judge came into unauthorized possession of a police report. Around the courthouse, the judge made derogatory reference to the subject based on information in the report.

25. A judge took 110 days to rule on a small claims case and signed a salary affidavit incorrectly stating there were no cases pending more than 90 days. The judge also received ex parte communications in the case.

26. A judge repeatedly engaged in displays of temper, including loud critical remarks toward attorneys, court staff and witnesses. The judge sought and received continuing professional counseling. The judge's behavior improved.

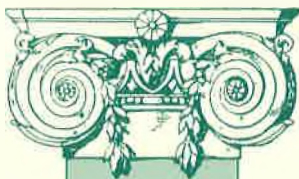
27. A judge permitted a political fund-raiser to be held in the judge's home. The invitation to the fund-raiser identified the home-owner as a judge.

28. A judge was the "roastee" — that is, the guest of honor — at a fund-raiser for a local non-profit organization.

29. A judge put undue pressure on the litigants to settle. The judge made several remarks that were reasonably perceived as harsh and intimidating, and which undermined the perception of fairness and dignity of the proceedings.

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## **V. VOLUNTARY DISABILITY RETIREMENT**



In addition to its duties as an investigator of judicial misconduct, the commission reviews applications for disability retirement by judges. Before taking effect, a disability retirement must be approved by the commission and the Chief Justice. See Government Code, sections 75060 - 75064, and Policy Declaration 4.4, which are printed in the appendix to this report.

In 1991 the commission approved four disability applications and denied one. The denial was based on a full hearing before a special master under Policy Declaration 4.4 after the judge sought review of the commission's initial denial of the application.



## VI. A CLOSER LOOK AT HOW THE COMMISSION FUNCTIONS



The rules and provisions which govern the commission and its proceedings are set forth in full in the appendix to this Annual Report. This discussion provides an informal view of the commission's work.

### ► **Commission Decisionmaking**

Because the commission is comprised of nine appointed representatives of the judiciary, State Bar and the public, the face-to-face deliberations of the commission are key to its function. The commission usually meets eight times a year, once every six to eight weeks. Meetings usually last two days. The various rules which govern the commission restrict actions which can be taken by less than the full membership of the commission. Accordingly, all significant decisions regarding investigations and discipline are made by the full commission after deliberation at a commission meeting.

The role of the commission's staff of six attorneys and six support staff is to assist the commission in the performance of its constitutional investigatory and adjudicative functions. The activities of the staff are based upon commission directives. The commission, not staff, makes decisions regarding the institution and scope of investigations as well as all decisions regarding disciplinary actions.

### ► **Starting the Process**

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

In some instances, before the complaint is reviewed by the commission, the staff does some initial, informal investigation into the factual background of the complaint. This investigation is usually limited to obtaining further information from the complainant or the complainant's counsel. Staff does not contact the judge as part of this informal checking. Contact with a judge is undertaken by staff only after the commission has reviewed a complaint and authorized either a staff inquiry or a preliminary investigation under Rule 904. Delay cases are an exception. Because of the continuing harm where a court has failed to rule on a submitted

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## VI. A CLOSER LOOK AT HOW THE COMMISSION FUNCTIONS

matter, in ninety-day delay cases which are clear on their face and adequately supported, staff is permitted to institute inquiry letters without the commission's approval. Such delay cases are the only instances in which the commission staff is permitted to institute an inquiry on its own.

### ► Investigation at the Commission's Direction

All complaints are presented to the commission. The full text of the complaint is made available for the commission's review.

The majority of complaints received by the commission do not on their face state a case of judicial misconduct. For example, a litigant might express disappointment over a judge's ruling in a child custody case. Complaints which do not set forth actionable facts are closed by the commission after staff review. When a complaint appears to state a case, the matter is placed on the commission's agenda for discussion and a vote. The standard employed by the commission in determining whether to make an inquiry is whether the complaint sets forth a *prima facie* case of misconduct — in other words, whether the complaint on its face states particular facts which, if true and not otherwise explained, might constitute some level of misconduct. Where a *prima facie* case of misconduct is set forth, the commission orders its staff to make an inquiry and report back at the next meeting.

In some staff inquiries, the judge is not contacted until various allegations have been investigated. If the allegations are not borne out, the judge need not be contacted. No further explanation is needed. Commission staff reports back that the complaint was not substantiated and the matter is closed.

### ► Inquiry Letters to the Judge

Most staff inquiries, however, require contact with the judge. Letters of inquiry to the judge are not intended as accusations, but only as requests for information. Staff sometimes interviews the judge.

When a judge receives a staff inquiry letter and responds, the judge's response is furnished to the commission for its review. The response is not edited by commission staff. The commission's review of both the actual allegations and the judge's response is essential to the commission's function. In those rare instances in which judges have failed to provide any response to the commission or have provided false information, the judges were disciplined for this conduct in and of itself. In order to afford commission members a full opportunity to prepare for commission deliberations, all materials relating to pending cases or complaints which are to be considered at a commission meeting are forwarded to commission members at least one week in advance of the commission meeting.

### ► Disposition After a Staff Inquiry

The commission has a range of options after a staff inquiry. Sometimes the allegations are found to be untrue, exaggerated, or unprovable, in which case the commission closes the case without any further action. But if it appears that ethically

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## VI. A CLOSER LOOK AT HOW THE COMMISSION FUNCTIONS

questionable conduct did occur, but it was an isolated incident or relatively minor or the judge has recognized the problem, the commission may close the case with an advisory letter under the Rules of Court, rule 904.1. An advisory letter informs the judge that facts discovered during the commission's inquiry do not warrant further proceedings; however, the commission's concerns or disapproval regarding the judge's conduct are noted.

### ► **Advanced Investigations**

If serious issues remain after inquiry, the commission will order a "preliminary investigation" under Rule 904.2. The commission sometimes orders a preliminary investigation without a staff inquiry, usually in more serious cases or where the use of more formal investigative procedures, such as subpoenas or statements under oath, are anticipated. As in a staff inquiry, during a preliminary investigation the commission also sends a letter to the judge advising of the commission's investigation and of the matters under investigation as possible charges. As in the case of a staff inquiry, the judge is afforded an opportunity to respond to the allegations and "to present such matters as the judge may choose." The judge's response is again furnished to the commission for its review without editing.

### ► **Commission Action After a Preliminary Investigation**

After a preliminary investigation, the commission may close the case without further action, defer closing the case in order to observe and review the judge's conduct, issue an advisory letter, or issue a notice of intended private admonishment. A notice of intended private admonishment contains a description of the improper conduct and any findings made by the commission. Unless a judge files a demand for an appearance within fifteen days after mailing of the notice, the private admonishment takes effect.

If a judge demands an appearance to contest a private admonishment, the judge is given the opportunity to come before the commission with or without an attorney. After this appearance, the commission can close the case with or without an advisory letter, restate its intention to issue a private admonishment, conduct further preliminary investigation or institute formal proceedings. If the commission still believes that a private admonishment is the appropriate sanction, the judge must decide whether to withdraw his or her opposition and accept the admonishment or demand a formal hearing.

### ► **Formal Proceedings**

In the most serious cases or where a judge demands a formal hearing regarding a private admonishment, the commission issues a notice of formal proceedings under Rule 905. The notice is a formal statement of charges and leads to a hearing, usually before a panel of three special masters appointed by the Supreme Court. (At least one must be an active judge.) The hearing examiner may be an attorney on the commission's staff, an attorney with the Attorney General's office or other



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## VI. A CLOSER LOOK AT HOW THE COMMISSION FUNCTIONS

· appointed counsel. After the notice of formal proceedings, reciprocal discovery  
· takes place. The matter then proceeds to a hearing. At any point after the notice of  
· formal proceedings, the commission may issue a “public reproof” with the judge’s  
· consent, thereby eliminating the need for a hearing. A public reproof is not subject  
· to review by the Supreme Court.

· The Constitution provides that the commission may open hearings to the  
· public if the charges involve moral turpitude, or if the judge requests an open  
· hearing. At the hearing, the Evidence Code applies; witnesses are examined and  
· cross-examined. The burden of proof to sustain a charge of misconduct is clear and  
· convincing evidence. After the hearing and an opportunity for both sides to object  
· to proposed findings, the special masters report their findings to the commission.

### · **► Commission Review Post-Hearing**

· Upon receipt of the special masters’ reported findings, the commission  
· conducts a de novo review of the evidence and the masters’ findings. If either side  
· objects to the findings, or if the commission determines to modify or reject any of  
· the masters’ findings, the judge and the examiner are given an opportunity to appear  
· before the commission and be heard. At this point, the commission may close the  
· case, take relatively minor action such as sending an advisory letter or issuing a  
· private admonishment. If a private admonishment is issued after a hearing, the judge  
· may petition for review in the Supreme Court. The commission may also issue a  
· public reproof, if the judge consents.

· If the facts supporting serious charges have been established, the commission  
· may recommend to the Supreme Court that the judge be publicly censured,  
· removed from office, or involuntarily retired because of a disability. If the commission  
· recommends that a judge be removed, the recommendation becomes public  
· immediately. If censure is sought, the recommendation remains confidential during  
· the 30 days the judge has to file with the court a petition to modify or reject the  
· recommendation. Until this point, unless a public hearing was held, all records and  
· proceedings before the commission are confidential, subject to limited provisions for  
· the issuance of press releases and statements by the commission.

· Before the Supreme Court, full briefing by both sides is permitted as well as  
· oral argument. The Supreme Court conducts a second de novo review of the  
· evidence and findings and may follow the commission’s recommendation or it may  
· impose a lesser sanction (such as censure if the commission’s recommendation was  
· for removal). The court can also dismiss the proceedings altogether.

· Since the inception of the commission in 1961, the commission has  
· recommended the removal or involuntary retirement of 15 judges. The Supreme  
· Court has adopted the recommendation in 13 cases and rejected it in 2. Over the  
· years, many judges have resigned or retired with commission proceedings pending.  
· In the last five years, 20 judges have resigned or retired with commission  
· proceedings pending.



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**VI.**  
**A CLOSER LOOK AT**  
**HOW THE COMMISSION**  
**FUNCTIONS**

Two flow charts showing the progress of complaints through the commission are appended at pages 57 and 58. While not a complete overview of the various courses of commission proceedings, they illustrate some of the typical patterns. Generally, all complaints are reviewed by the commission at the first meeting after the complaint is received. In perhaps half of the cases in which the commission authorizes a staff inquiry, the matter is resolved at the next meeting, either by closing without action or closing with an advisory letter. Thus, approximately half of the matters which require investigation and a judge's explanation are completed within four months. Obviously, matters which proceed to preliminary investigations and formal proceedings take longer.

All complaints to the commission receive a written response from commission staff. If a complaint provides no basis for proceedings by the commission, the complainant is so informed. At the end of a proceeding which was the subject of a complaint, consistent with Rule 902(b)(5), the complainant is advised that the commission's proceedings have concluded.