
STATE OF CALIFORNIA
COMMISSION
ON JUDICIAL
PERFORMANCE
1993 ANNUAL REPORT

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Commission on Judicial Performance
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COMMISSION MEMBERS



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



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



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

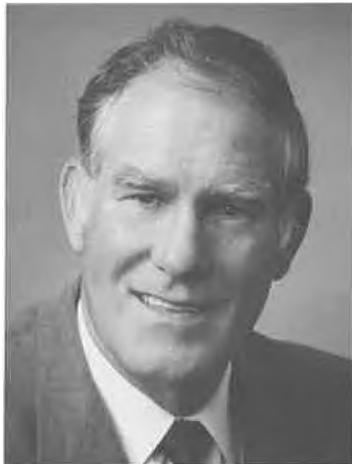


CHRISTOPHER J. FELIX
Public Member
Appointed June 1992
Present term expires
June 1996

COMMISSION MEMBERS continued



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



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



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



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



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



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

COMMISSION STAFF

VICTORIA B. HENLEY
Director-Chief Counsel

COLETTE BROOKS
Staff Counsel

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Data Processing Analyst

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NANCY GILMORE
Senior Administrative Assistant

PETER GUBBINS
Staff Counsel

MARK JACOBSON
Staff Counsel

JENNIFER L. MACHLIN
Staff Counsel

JOHN PLOTZ
Staff Counsel

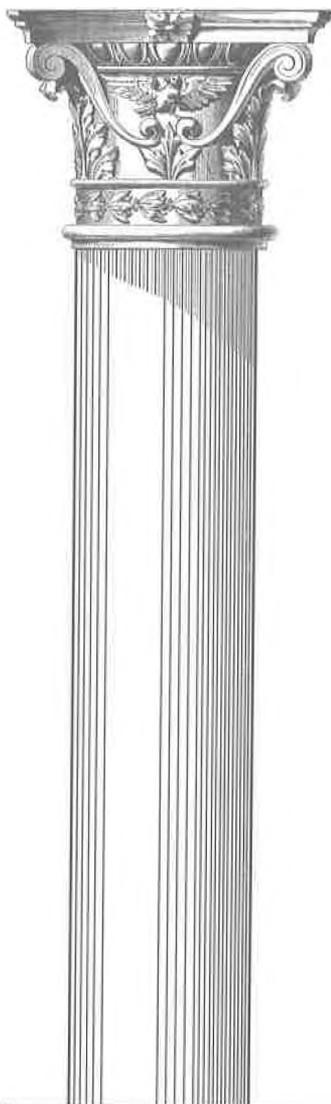
FRANCES A. STEPHENS
Judicial Secretary

ELAINE D. SWEET
Judicial Secretary/Administrative Assistant

BERNADETTE M. TORIVIO
Supervising Judicial Secretary

BARBARA JO WHITEOAK
Judicial Secretary

I.
THE
COMMISSION
IN 1993:
AN OVERVIEW



▶ **A. The Commission's Function and Composition**

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

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

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

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

► **B. The Complaint Process**

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

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

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

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

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

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

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

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

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

► **D. Formal Proceedings**

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

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

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

► **E. Statistical Summary**

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

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

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

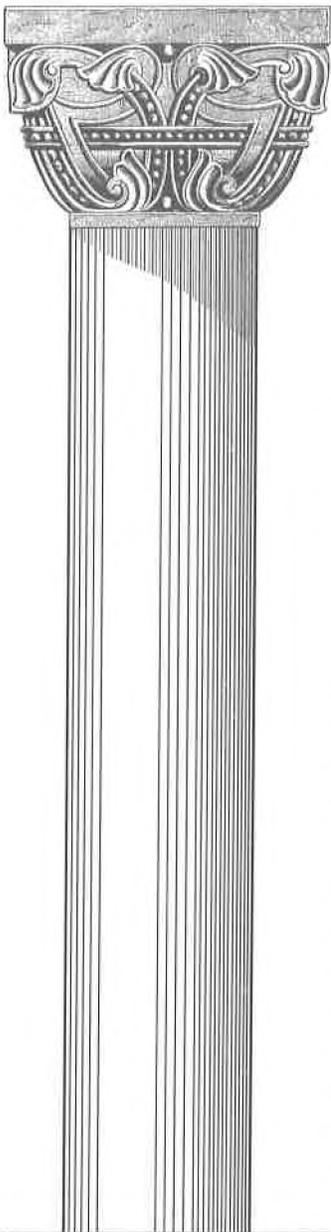
The statistics cannot accurately reflect all of the commission's work. The commission's unique function results in innumerable inquiries from members of the public, including litigants, attorneys and citizens. The commission's staff spends a considerable amount of time responding to these inquiries,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

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

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

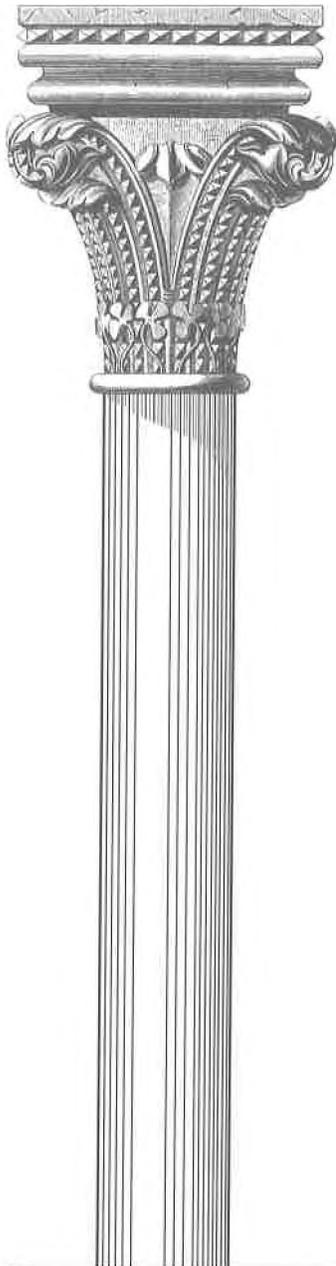
Most judges who have resigned or retired with commission proceedings pending have not been the subjects of criminal proceedings. Of the 32 judges who resigned with charges pending in the last 10 years, only 2 were also the subject of criminal charges and faced the possibility of removal from office because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

II. RECENT CHANGES IN THE LAW



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

III. SUMMARY OF COMMISSION DISCIPLINARY ACTIVITY IN 1993



► A. Complaints Received and Investigated

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

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

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

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

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

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

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

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

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

► B. Complaint Dispositions

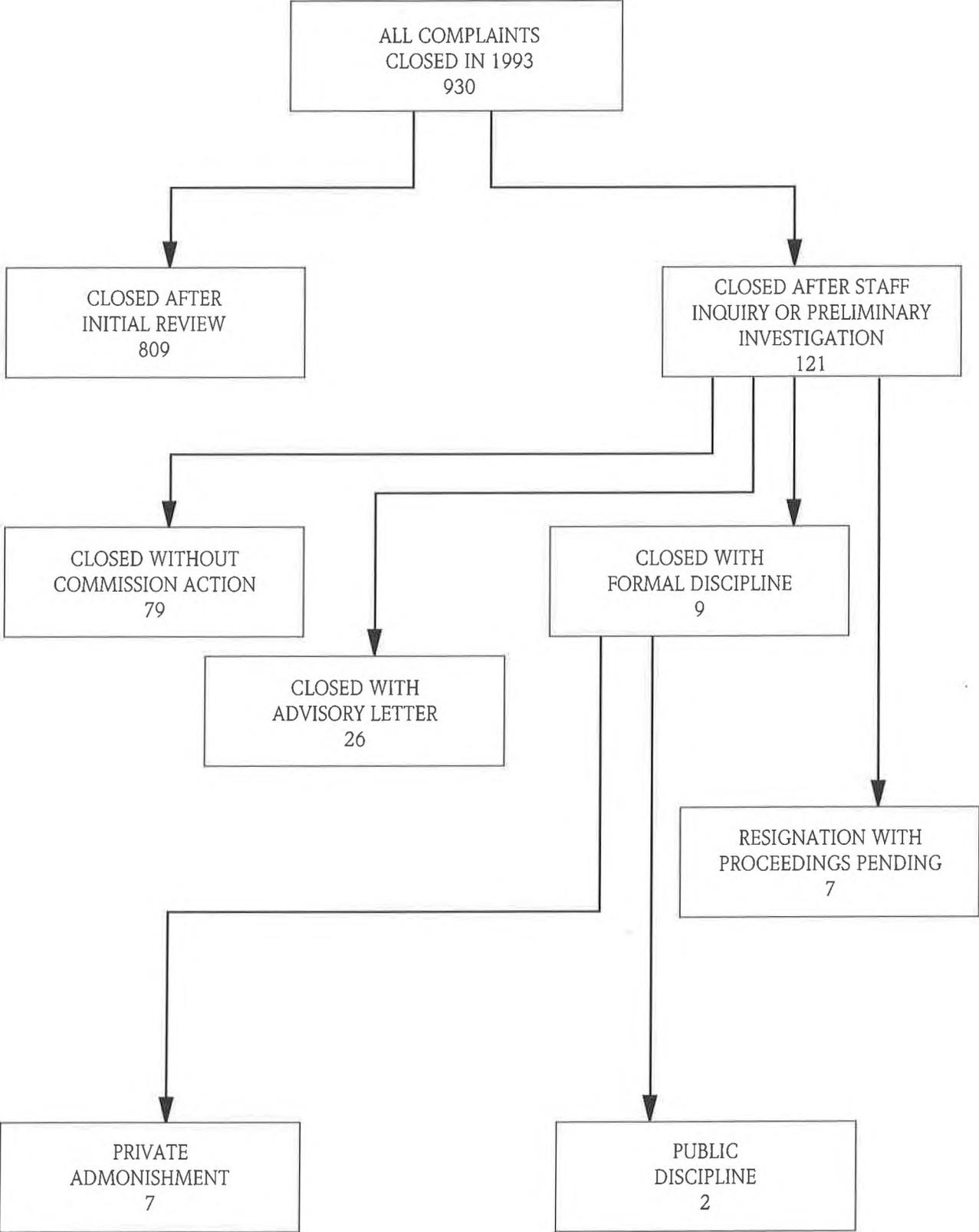
Since some of the actions taken by the commission in 1993 involved cases begun in 1992, and since some cases begun in 1993 were still pending at the end of the year, the following statistics are based on cases completed in 1993, regardless of when the case began. Cases still pending at the end of 1993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

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

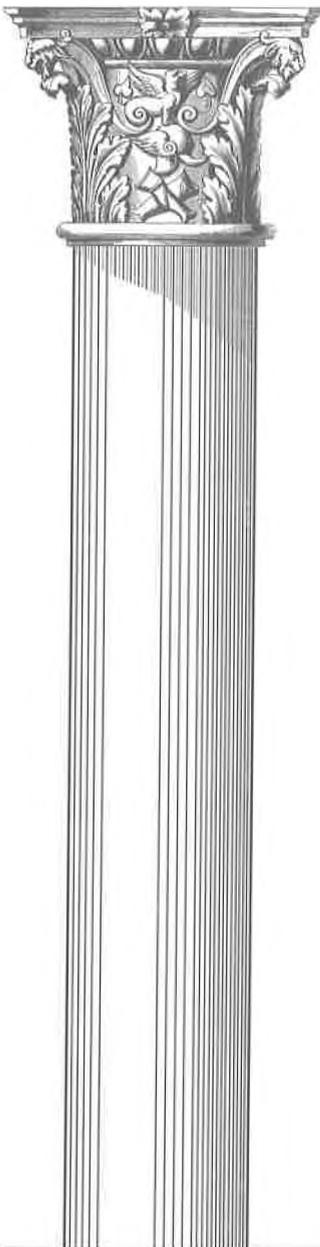
Discipline may be imposed by the commission only after official investigation, including comment from the judge. Of the 121 officially investigated cases that were completed in 1993, 79 were closed without any action. In those cases, investigation showed that the allegations were unfounded or unprovable,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

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

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



IV. DISPOSITION OF COMMISSION CASES



► Retirements and Resignations

Statistics

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

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

Suggested Rule Change

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

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

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

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

IV. DISPOSITION OF COMMISSION CASES

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

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

► Public Reprovals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**IV.
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COMMISSION CASES**

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• **► Private Admonishments**

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

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

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

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

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

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

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

**IV.
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COMMISSION CASES**

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

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- **D.** (1) When an attorney requested clarification of an order after the judge had ruled, the judge ordered the attorney taken into custody without a hearing, findings, or written order — all of which are required by law before punishment for a contempt may be imposed. (Four hours later the attorney was brought from the jail to the judge's chambers and given the opportunity to apologize. When the attorney apologized, the attorney was released.) The judge was patronizing throughout. (2) In a separate matter the judge repeatedly and rudely interrupted an attorney's questions and the witness's answers, reducing the witness to tears.
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- **E.** A judge, believing that a litigant had made a contemptuous remark, ordered the litigant jailed without a hearing, findings, or written order — all of which are required by law before punishment for a contempt may be imposed. (Two days later the judge held a contempt hearing.)
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- **F.** (1) A judge neglected and avoided judicial duties by routinely transferring cases out of the judge's own department to other departments, and routinely granting multiple, lengthy continuances. (2) The judge improperly interfered with the orderly operation of the court by intervening repeatedly in personnel matters that were the responsibility of the court administrator, not the judge. (3) The judge took punitive action against persons who the judge believed were political adversaries. For instance, the judge removed an election opponent from the panel of pro tem judges, in violation of Canon 3C(4), which requires that judges make appointments impartially. (4) The judge used court staff to perform personal errands. The admonishment was issued at the conclusion of a lengthy period of monitoring by the commission under Rule of Court 904.2(d).
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- **G.** One of the duties of presiding judges is to handle complaints about court commissioners and referees (see Rules of Court, rule 205(16) and rule 532.5(a)(18)). The commission sent a presiding judge an advisory letter for failure to properly handle a citizen's complaint about a commissioner. The commission then learned of and asked the judge about another such failure. In response to the commission's inquiry about the second failure, the judge displayed indifference to the judge's duties.

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COMMISSION CASES**

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• **► Advisory Letters**

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

• • The commission sometimes issues advisory letters when the impropriety
• is isolated or relatively minor. For instance, a judge who made an improper
• comment to a jury on a single occasion might receive an advisory letter.

• • Advisory letters are also used when the impropriety is more serious but the
• judge has demonstrated an understanding of the problem and has taken steps to
• improve.

• • Advisory letters are especially useful when there is an appearance of
• impropriety, but bad faith has not been established.

• • An advisory letter might be appropriate where there is significant misconduct
• but substantial mitigation.

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

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

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

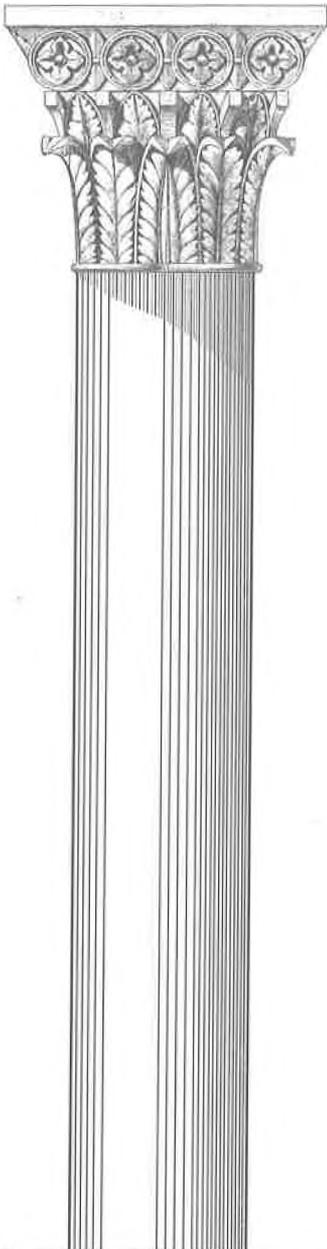
• **4.** A judge was listed as "Judge Advocate" of a veteran's organization. The
• position was honorary, but was not listed as honorary in the publications of the
• organization. Hence there was a public appearance that the judge was acting as a
• legal advisor. Canon 4G prohibits judges from practicing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

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

**IV.
DISPOSITION OF
COMMISSION CASES**

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

**V.
VOLUNTARY
DISABILITY
RETIREMENT**



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

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

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