
STATE OF CALIFORNIA
COMMISSION ON JUDICIAL PERFORMANCE



1995 ANNUAL REPORT



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INTRODUCTION

This was a year of transition for the Commission as the changes mandated by Proposition 190 were implemented, beginning in March.

Soon after the members took office, the newly constituted Commission instituted a comprehensive review of the rules and procedures governing the Commission. Proposition 190 transferred the authority for promulgating the Commission's rules from the Judicial Council to the Commission. For most of the year, a committee of the Commission carefully studied the rules and considered revisions. After additional study and review by the full Commission, at its first meeting in 1996, the Commission approved the circulation of proposed revised rules for public comment.

The Commission also established a public education committee. Nine of the Commission's panel of eleven members were new to the Commission. All members, however, were well aware that the work of the Commission is not well known or understood. This committee will provide a means to improve public awareness of the Commission's work.

Most of the Commission's effort during this year has focused on fulfilling the Commission's primary mandate: handling the cases before it. The newly constituted Commission has faced a caseload of unprecedented magnitude. But, with the assistance of a highly professional and diligent staff, this work has continued without significant interruption.

As 1996 begins, the Commission continues to be sensitive to the expectations of both the citizens of California and the members of the judiciary and looks forward to further fulfilling its mandate.

Justice William A. Masterson
Chairperson



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Public Member

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Judge Vincent J. McGraw
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SECTION I.

THE PURPOSE AND WORK OF THE COMMISSION: AN OVERVIEW

The Commission's Function and Composition

The Commission on Judicial Performance is an independent state agency that handles complaints involving judicial misconduct and disability claims of state judges. Established by voter referendum in 1960, the Commission's authority is set forth in Article VI, sections 8, 18 and 18.5 of the California Constitution. In 1966, 1986, 1988, and most recently in 1994, the Constitution was amended to change various aspects of the Commission's work. Proposition 190, passed by California voters in November 1994 and effective March 1, 1995, mandated broad changes in the Commission's membership, authority and proceedings. A summary of the changes is provided in Section II, Recent Changes in the Law. The text of the Constitution, as amended by Proposition 190, effective March 1, 1995 as well as the earlier provisions are set forth in Appendix 1A and B. Charts B and C in Appendix 3 illustrate Commission proceedings before and after Proposition 190.

As of March 1, 1995, the membership of the Commission was reconstituted to include eleven members: one justice of a court of appeal, one judge of a superior court, and one judge of a municipal court, all appointed by the Supreme Court; two attorneys appointed by the Governor; and six lay citizens, two appointed by the Governor, two appointed by the Senate Committee on Rules and two appointed by the Speaker of the Assembly. Generally, members' terms are four years. The terms are staggered. The Commission meets approximately seven times a year, and the meetings usually last two days. The members receive only reimbursement for their expenses.

In addition to Article VI, sections 8, 18 and 18.5 of the California Constitution, the Commission is also subject to Government Code sections 68701 through 68755 and 75060 through 75064 (dealing with disability retirement determinations). Prior to the enactment of Proposition 190, which conferred the authority for procedural rulemaking on the Commission itself, the rules governing Commission procedures were promulgated by the Judicial Council as Rules of Court 901 through 922. During 1995, a comprehensive review of the Commission's rules and procedures was undertaken; proposed revised rules were circulated for public comment early in 1996. Pending this review, the Commission adopted Rules of Court 901 through 922 as interim rules as well as Rules 1, 2 and 3 covering certain changes mandated by Proposition 190. Rule 917 was amended to change the number of votes required for Commission action from five to six in light of the increase in the number of Commission members. The Commission's internal procedures are also governed by declarations of existing policy issued by the Commission. These policy declarations, as well as the statutes, and transitional and emergency rules governing the work of the Commission, are reprinted in the appendix.

Pursuant to Proposition 190, the California Supreme Court was charged with the responsibility for making rules for the conduct of judges when Proposition 190 took effect on March 1, 1995. At that time, the Supreme Court adopted the California Code of Judicial Conduct, previously promulgated by the California Judges Association, as an interim code of conduct for judges pending a review of the code. In December 1995, the Supreme Court adopted the Code of Judicial Ethics, to take effect January 15, 1996. In addition to the Canons, effective January 1, 1995, judges are expected to comply with Code of Civil Procedure section 170.9. That section, which the Commission is charged with enforcing, limits the gifts, honoraria and travel

expenses which judges may accept. The California Code of Judicial Conduct, adopted by the Supreme Court as an interim code, and Code of Civil Procedure section 170.9 are reprinted in the appendix.

Under the California Constitution, the Commission's duty is to investigate and, where appropriate, to impose discipline concerning allegations of willful 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 in decision-making, 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.

Over the past five years, the number of complaints received by the Commission increased by seventy percent, from 744 in 1991 to 1,251 in 1995. In 1991, the Commission conducted an inquiry or investigation in 142 matters. In contrast, in 1995, the Commission conducted 227 inquiries or investigations.

In 1995, the Commission completed a reorganization of its staff in order to more effectively handle its cases. In large part, these changes were made possible by a substantial augmentation to the Commission's budget. The Commission's staff increased from a total of thirteen at the beginning of fiscal year 1994-1995 to twenty-five in 1995-1996. The Commission's legal staff increased from seven to fifteen attorneys. In addition to the Director-Chief Counsel, the Commission's legal staff now includes ten attorneys responsible for the evaluation and investigation of complaints (increased from six in 1994) and three trial counsel hired to serve as Examiner during formal proceedings. The Commission also established the position of "Commission Counsel," an attorney who reports directly to the Commission, does not participate in the investigation or prosecution of cases, and is responsible solely for arranging hearings and assisting the Commission in its deliberations during its adjudication of contested matters.

The Complaint Process

A Commission case usually commences 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 Commission staff or a Commission member.

Due to the increasing number of complaints received by the Commission, three staff members are assigned primarily to review the incoming complaints alleging improper conduct by California state court judges. 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.

Investigation at the Commission's Direction

Commission staff devotes considerable 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 review of staff's evaluation. When a complaint states particular facts which, if true, could constitute misconduct, the Commission orders staff to make an inquiry

into the matter and report back to the Commission.

A staff inquiry may include contacting witnesses, reviewing court records and other documents, courtroom observation, or such other investigation as the issues may warrant. Usually, the judge is asked to comment on the allegations. These letters of inquiry to the judge are not accusations, but rather are requests for information. Occasionally, the inquiry reveals facts that dispose of the complaint and make it unnecessary to contact the judge.

After 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 improper or 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. (In certain cases the Commission may order a preliminary investigation without a staff inquiry.) After a preliminary investigation, the Commission has various options. The Commission may close the case without action or may issue an advisory letter. The Commission may also issue a notice of intended private admonishment or issue a notice of intended public admonishment, depending upon the seriousness of any misconduct established. These notices contain a description of the improper conduct and any findings made by the Commission. A judge may object and obtain a hearing if the judge does not agree with a private or public admonishment. If the judge does not choose to contest the private or public admonishment, it takes effect within fifteen days after mailing of the notice. After a preliminary investigation, the Commission may also institute formal proceedings, discussed below.

In the course of a preliminary investigation, the Commission may "monitor" the judge under Rule 904.2(d) and defer any action for a period up to two years in order to permit observation and review of the judge's conduct. The judge is given notice that a period of monitoring has been ordered. The alternative of monitoring is used when the preliminary investigation reveals a persistent but correctable problem, for example, demeanor that could be improved.

Formal Proceedings

In the most serious cases, the Commission issues a notice of formal proceedings under Rule 905. Under transitional Rule 3, formal proceedings are also instituted when a judge rejects a public admonishment and files a demand for formal proceedings. The notice of formal proceedings is a formal statement of charges.

In most cases, the notice of charges leads to a hearing, usually before a panel of special masters appointed by the Supreme Court. One of the most significant changes mandated by Proposition 190 is that these hearings will now be open to the public. Prior to Proposition 190, the Commission had discretion to open hearings to the public only if the charges involved moral turpitude, corruption or dishonesty.

Following the hearing on the formal charges, the special masters report their findings to the Commission. After reviewing the report of the special masters, the Commission may close the case without discipline or further proceedings, issue an advisory letter, a private or public* admonishment. The Commission may also impose the more severe sanctions of censure or removal. In the past, the Commission made recommen-

* Proposition 190 substituted the public admonishment for the public reproof. Unlike the public reproof, the public admonishment does not require the judge's consent.

dations for censure, removal or involuntary retirement to the Supreme Court which was responsible for imposing such discipline. Proposition 190 transferred this authority to the Commission. Thus, in cases in which formal proceedings are instituted after March 1, 1995, all disciplinary decisions are to be made by the Commission itself. Upon petition by the judge, the Supreme Court is afforded discretionary review of the Commission's determination, which can include a full "de novo" review of the record if the Court so chooses.

The charts appended at pages 75, 76 and 77 illustrate typical patterns of Commission proceedings, both before and after Proposition 190.

Statistical Summary

At the beginning of 1995, there were 2 removal recommendations and 1 public censure recommendation pending before the Supreme Court. The Supreme Court followed both removal recommendations (*Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866 [42 Cal.Rptr.2d 606, 897 P.2d 544] and *Doan v. Commission on Judicial Performance* (1995) 11 Cal.4th 294 [45 Cal.Rptr.2d 254, 902 P.2d 272]). The Supreme Court also adopted the public censure recommendation (*Fitch v. Commission on Judicial Performance* (1995) 9 Cal.4th 552 [37 Cal.Rptr.2d 581, 897 P.2d 937]). These cases are discussed in Section IV.

In 1995, the Commission made 2 additional recommendations to the Supreme Court for public censure. In a decision in December, the Supreme Court rejected 1 Commission recommendation for censure (*Dodds v. Commission on Judicial Performance* (1995) 12 Cal.4th 163 [48 Cal.Rptr.2d 106, 906 P.2d 1260]). At year's end, a petition for rehearing in that matter, filed by the Commission, was still pending before the Court. The other censure recommendation (*In re Claude E. Whitney*, No. S050615) was also pending.

In 1995, 9 judges resigned or retired with Commission proceedings pending. The Commission issued 3 public reprovals and 3 public admonishments, 7 private admonishments and 41 advisory letters. These disciplinary actions are also discussed in Section IV.

In 1995, the Commission received a total of 1,251 complaints alleging improper conduct by state court judges. A total of 1,263 complaints were considered by the Commission for the first time in 1995 (this included some complaints received in 1994). The Commission ordered 163 staff inquiries and 64 preliminary investigations in 1995, and instituted formal proceedings in 4 matters.

These statistics do not 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 considerable 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.

In addition, in 1995 the Commission handled 490 complaints concerning individuals and matters which did not come under the Commission's jurisdiction: federal judges, retired judges, court commissioners, referees, judges pro tem, workers' compensation judges, other government officials and miscellaneous individuals. Commission staff responded to each of these complaints and, when appropriate, made referrals.

Resignation and Retirement with Proceedings Pending

Another aspect of the Commission's workload that is not reflected in the statistical analysis is the amount of time spent investigating complaints that lead to a judge's resignation or retirement with Commission pro-

ceedings pending. Since the Commission's establishment in 1960, the Commission has recommended that a judge be removed or retired from office in 16 cases. In all but 2 cases, the California Supreme Court has followed that recommendation. During the same period, 83 other judges have voluntarily resigned during Commission proceedings 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* (1984) 11 San Fernando Val.L.Rev. 43, 68.)

It is rare that a judge resigns before considerable time and effort have been expended in investigation, and resignations usually occur only after formal proceedings have begun. In some instances, judges have resigned only after a hearing has been held 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.

In the absence of Commission proceedings, only judges convicted of certain crimes are removed from office by operation of law. (Cal. Const., art. VI, section 18(b).) Of the 41 judges who resigned with proceedings pending in the last 10 years, only 3 were also the subject of criminal charges and faced the possibility of removal from office because of a criminal conviction.



SECTION II. RECENT CHANGES IN THE LAW

Proposition 190

Proposition 190, approved by California voters in the November 1994 general election, took effect March 1, 1995. Several major changes to the structure and authority of California's judicial disciplinary system were thereby implemented. The most significant changes are summarized below. (Sections 8, 18 and 18.5 of the California Constitution, as amended by Proposition 190, are included as Appendix 1A to this report.)

Membership - The membership of the Commission increased from nine to eleven members. The composition of the Commission changed from five judges, two lawyers and two public members to six public members, three judges and two lawyers. The Supreme Court remains responsible for the appointment of the judge members. The Speaker of the Assembly appoints two of the public members; the Senate Rules Committee appoints two public members; and the Governor appoints the remaining two public members as well as the two lawyers. The State Bar Board of Governors no longer appoints lawyer members.

Open proceedings - In cases in which formal proceedings are instituted after March 1, 1995, the notice of charges and all subsequent papers and proceedings will be public, including hearings and appearances. Previously, formal proceedings were confidential except the Commission had discretion to open hearings in cases involving charges of moral turpitude, corruption or dishonesty when an open hearing was in the interests of justice and in the pursuit of public confidence.

Rulemaking - The Commission now has the authority to promulgate its own rules regarding procedures and confidentiality. Previously, rules regulating the Commission were made by the Judicial Council.

Disciplinary determinations - The Commission has the authority to make censure and removal determinations (subject to transitional Rule 1). Previously, the Commission made recommendations for such action to the Supreme Court, which was responsible for determinations regarding censure and removal.

Review of Commission decisions - The Supreme Court has discretionary review of Commission disciplinary determinations; the Court may make an independent review of the record. If the Court does not review the Commission's determination within 120 days after granting a petition for review, the Commission's decision will be final. Previously, censure and removal determinations were made by the Supreme Court, upon recommendation by the Commission, after an independent review of the record.

Public admonishment - The public reproof has been replaced by the "public admonishment." The judge's consent is no longer required.

Interim suspension - The Commission has the authority to suspend a judge, with pay, upon notice of formal proceedings charging the judge with misconduct or disability.

Jurisdiction over former judges - The Commission has the authority to censure and admonish former judges for action occurring not more than six years prior to the commencement of the former judge's last term in office. A judge's retirement or resignation will not prevent the Commission from completing an investigation or disciplinary proceeding.

Censured former judges barred from assignments - The Commission may “bar” a former judge who has been censured from acting as a judge by assignment, appointment or reference from any California state court.

Supreme Court jurisdiction in proceedings involving the Commission - The Supreme Court has exclusive jurisdiction over proceedings brought by a judge who is a respondent in a Commission proceeding. Requests for injunctive relief or other provisional remedies in these proceedings must be decided by the Supreme Court within 90 days.

Immunity - Commission members and staff have absolute immunity from liability for their conduct in the course of their official duties. In addition, no civil action or adverse employment action can be taken against any individual based on the individual’s statements to the Commission.

Disclosure to appointing authorities - The Commission shall provide to any Governor or to the President private admonishments, advisory letters or records of other disciplinary action with respect to any individual under consideration for a judicial appointment.

Budget independence - The Commission’s budget is separate from the budget of any other state agency or court.

Code of Civil Procedure Section 170.9 Limitation on Acceptance of Gifts

Code of Civil Procedure section 170.9, effective January 1, 1995, restricts the gifts, travel expenses and honoraria which can be accepted by a judge. The Commission on Judicial Performance is charged with responsibility for enforcing the statute’s prohibitions. Code of Civil Procedure section 170.9 is included as Appendix 1H.

California Rules of Court and Rules 1, 2 and 3

The Commission adopted California Rules of Court 901 through 922 as interim rules pending a comprehensive review of the rules. The Commission also adopted Rules 1, 2 and 3 as interim rules to cover certain aspects of Proposition 190, specifically the application of Proposition 190 to pending cases, opening cases to the public when formal proceedings are instituted and the issuance of public admonishments. Rule of Court 917 was amended to change the number of votes required for Commission action from five to six in light of the increase in the number of Commission members. Rules of Court 901 through 922 and Rules 1, 2 and 3 are included as Appendix 1C and D.



SECTION III.

SUMMARY OF COMMISSION DISCIPLINARY ACTIVITY IN 1995

Complaints Received and Investigated

At the close of 1995, there were 1,554 judicial positions within the Commission's jurisdiction. This includes judges of 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 1995, the Commission received a total of 1,251 complaints about active California judges. During 1995, 1,263 complaints were considered by the Commission for the first time. (Some of the complaints considered by the Commission in 1995 had been received in 1994.)

The Commission ordered a staff inquiry under Rule of Court 904 in 163 cases. The Commission ordered 64 preliminary investigations in 1995 under Rules of Court 904 and 904.2 to determine whether formal proceedings should be instituted or formal discipline imposed.

At the beginning of 1995, 15 formal proceedings were pending before the Commission. During 1995, the Commission instituted formal proceedings in another 4 cases. At the end of the year, 6 formal proceedings remained pending before the Commission. Additionally, 2 recommendations to the Supreme Court were still pending at the end of 1995.

Complaint Dispositions

The following case disposition statistics are based on cases completed by the Commission in 1995, regardless of when the case began. Cases still pending at the end of 1995 are not included in these statistics.*

In 1995, 1,213 cases were concluded by the Commission. In approximately 1,053 cases, a sufficient showing of misconduct was not made (that is, facts which, if true and not otherwise explained, might constitute some level of misconduct). These cases were closed by the Commission without formal investigation. One hundred sixty cases were closed following formal investigation. Of these cases, 94 were closed without any action. In these cases, investigation showed that the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation.

After formal investigation, including comment from the judge, action was taken by the Commission in 54 cases. The action taken by the Commission in these cases included 3 public reprovais, 3 public admonishments, 7 private admonishments and 41 advisory letters. In addition to the action taken by the Commission, the Supreme Court removed 2 judges and censured 1 judge based upon recommendations by the Commission. Each of these case dispositions is discussed in Section IV. Additionally, the Commission closed 9 matters

* In 1995, the Supreme Court's decision concerning the Commission's recommendation for public censure in *Dodds v. Commission on Judicial Performance* was not final. Another censure recommendation, *In re Claude E. Whitney*, was also pending. Neither of these cases is included in 1995 statistics.

III.
SUMMARY OF COMMISSION DISCIPLINARY ACTIVITY IN 1995

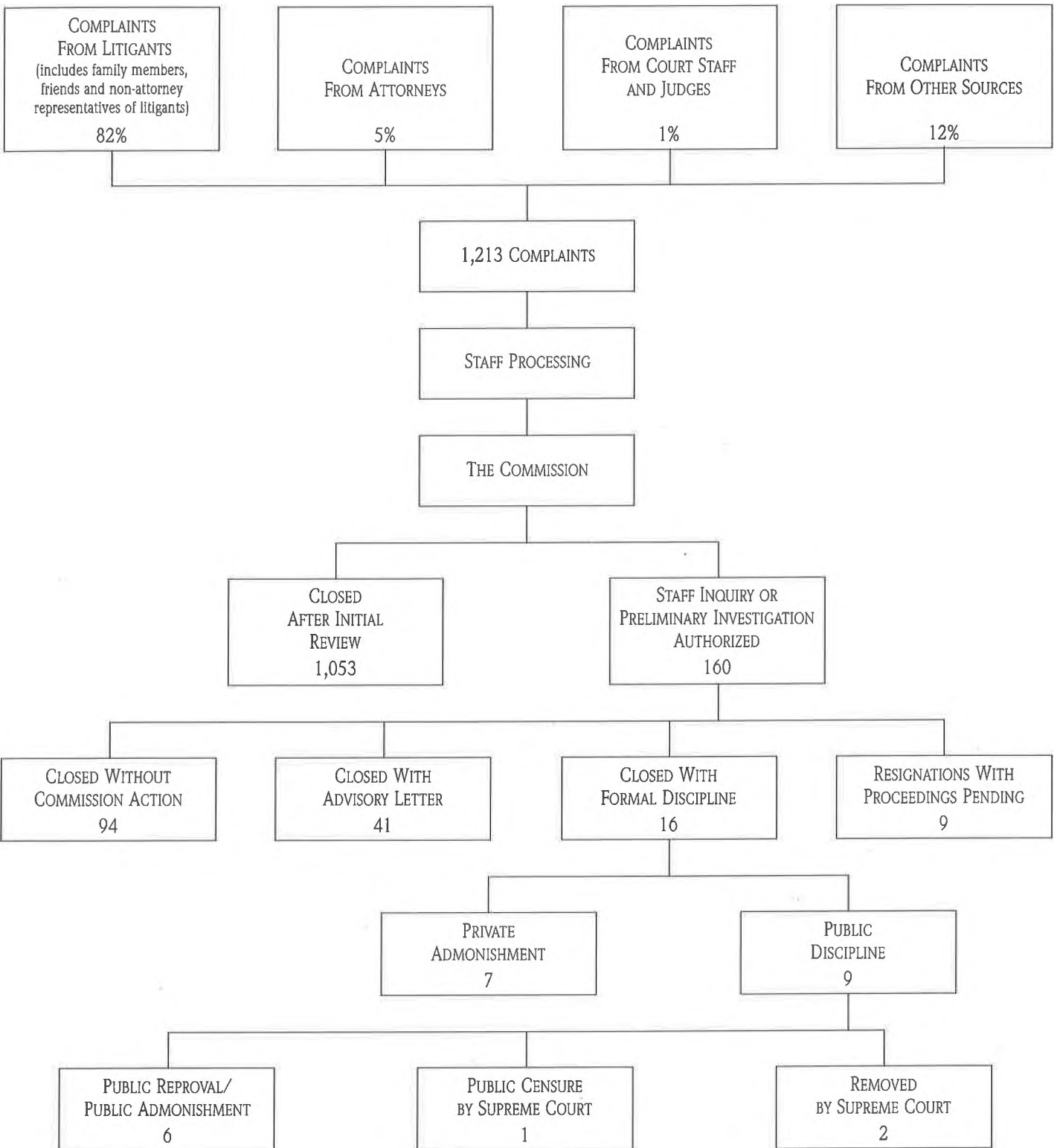
when the judge resigned or retired with proceedings pending.

Of the 1,213 cases completed by the Commission in 1995, approximately 82% were filed by litigants, their family members, friends or other non-attorney representatives. Complaints from attorneys accounted for 5% and complaints from court staff and judges totaled 1%. Complaints from all other sources, including witnesses, jurors and citizens, amounted to approximately 12%. The complaints set forth a wide array of grievances. A substantial percentage alleged legal error not involving misconduct. Other common categories were poor demeanor, rudeness and bias.

The chart at page 11 provides an overview of the cases completed in 1995.



1995 STATISTICS COMMISSION CASE DISPOSITIONS





SECTION IV.
DISPOSITION OF COMMISSION CASES

Supreme Court Cases

In 1995, the Supreme Court removed two judges and censured one judge based upon recommendations made by the Commission.

Adams v. Commission on Judicial Performance (1995) 10 Cal.4th 866 [42 Cal.Rptr.2d 606, 897 P.2d 544]

On September 13, 1994, the Commission filed a recommendation in the California Supreme Court that Judge G. Dennis Adams of the San Diego County Superior Court be removed from office for wilful misconduct in office and conduct prejudicial to the administration of justice that brings the judiciary into disrepute. In July of 1995, the Supreme Court followed the Commission's recommendation and ordered Judge Adams removed from office. The judge's Petition for Rehearing was denied by the Supreme Court and the removal became final on September 14, 1995.

In its opinion, the Supreme Court first considered and rejected the judge's claim that the Commission proceedings were tainted by lack of neutrality and the probability of bias against him, resulting in a denial of his right to due process of law. The judge's claim was based on the Commission's combined investigatory and adjudicatory functions, and on the Commission's role as his opponent in collateral proceedings in which the judge contested the Commission's determination that his formal hearing should be open to the public.

In reviewing the charges, the Court, like the Commission, found that Judge Adams had engaged in five business transactions with a litigant, the owner of a car dealership, who had received a multi-million dollar judgment from the judge. Some of these transactions took place while the litigant's case was on appeal and the judge had reserved jurisdiction on certain matters. Four of the transactions also involved the attorney who had represented the litigant.

In discussing the first transaction, in which the judge bought a used Mercedes automobile from the litigant, the Court noted that by initiating a business transaction with the litigant and actively soliciting his assistance the judge had "violated the general proscription against conduct giving rise to the appearance of impropriety ... including extrajudicial activities that may cast reasonable doubt upon the individual's capacity to act impartially as a judge, and business dealings that reasonably may be perceived as exploiting the judge's position...." (10 Cal.4th at p. 888.) The Court stated, "To an objective observer of the transaction, petitioner would appear to have been seeking to use his office to collect for past deeds, and to procure a benefit for himself.... Petitioner's actions would have placed in doubt his ability to act with integrity, independence, and impartiality." (Id., p. 888.) The Court, like the Commission, concluded that the judge had engaged in conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Regarding a second automobile transaction in which the judge purchased a Jeep from the litigant with the assistance of the litigant's attorney, the Court noted that the attorney had received an interest in the judgment awarded to the litigant and that matters involving his firm frequently came before the judge. The Court pointed out that, by placing himself in the attorney's hands in the transaction, the judge engaged in

conduct which “readily could be construed as an attempt to collect for judicial services rendered in the ... litigation, and otherwise to use his judicial office to advance his personal interests.” The Court concluded, “To an objective observer, petitioner’s integrity and impartiality would appear to have been placed in doubt.” (Id., pp., 891-892.) The Court, like the Commission, concluded that the judge had engaged in conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

For the same reasons, the Court, like the Commission, concluded that the judge had engaged in conduct prejudicial to the administration of justice that brings the judicial office into disrepute in three other automobile transactions involving both the litigant and the litigant’s attorney.

The Court adopted the Commission’s finding that Judge Adams engaged in prejudicial conduct when he attended a dinner party celebrating the litigant’s victory in court, and when he accepted a sweater as a Christmas gift from the litigant shortly after the judgment was paid.

The Court next found that Judge Adams engaged in prejudicial conduct (in two instances) and in improper action (in three instances) by accepting gifts or financial benefits from attorneys or law firms whose interests had come and were likely to come before him. In addition, the Court found that once the judge was disqualified in any matter involving those attorneys or law firms, to the extent that he performed any judicial function other than conducting settlement conferences, his failure to disclose on the record the grounds for disqualification and obtain a written waiver constituted improper action.

The Court, like the Commission, also found that in four instances, Judge Adams engaged in prejudicial conduct by assisting or otherwise communicating with members of a law firm regarding cases which were pending before other judges on the superior court.

Finally, the Court, like the Commission, found that the judge had engaged in wilful misconduct in four instances by making material omissions and misrepresentations in responding to inquiries from the Commission concerning his receipt of gifts or favors from litigants or attorneys who had appeared before him. The Court stated, “These sustained charges, in particular, warrant [the judge’s] removal from office. There are few judicial actions in our view that provide greater justification for removal from office than the action of a judge in deliberately providing false information to the commission in the course of its investigation into charges of wilful misconduct on the part of the judge.” (Id., p. 914.)

The Court concluded that the Commission’s recommendation of removal should be upheld. The Court pointed out that the judge had “engaged in successive extrajudicial transactions that extended over a significant period of time, creating an appearance of serious impropriety and thereby tending to diminish the public esteem of the judiciary—a consequence [the judge] either deliberately ignored or was unable to appreciate.” (Id., p. 914.)

Doan v. Commission on Judicial Performance (1995) 11 Cal.4th 294 [45 Cal.Rptr.2d 254, 902 P.2d 272]

On December 12, 1994, the Commission filed a recommendation in the California Supreme Court that Judge Glenda Kraft Doan of the Corcoran Municipal Court in Kings County be removed from office for wilful misconduct in office and conduct prejudicial to the administration of justice that brings the judiciary into disrepute. In October of 1995, the Supreme Court followed the Commission’s recommendation and ordered Judge Doan removed from office. The removal became final in November.

The Court, like the Commission, found that Judge Doan had committed misconduct in her handling of certain criminal cases.

The Court adopted the Commission’s finding that Judge Doan released her former gardener on his own recognizance after engaging in four successive ex parte contacts and becoming personally embroiled in the matter. She neither recused herself nor disclosed her involvement before ruling in the case, and intentionally distorted or omitted certain information at the bail review hearing in order to achieve a certain result. The

IV.
DISPOSITION OF COMMISSION CASES

Court concluded that the judge engaged in wilful misconduct because she acted “for a purpose other than the faithful discharge of judicial duties.” (11 Cal.4th at pp. 319-320.)

The Court also adopted the Commission’s finding that Judge Doan heard the case of a nephew of a close friend to whom the judge owed a substantial sum of money. The judge had told her friend that she would take care of the case. The judge exerted pressure on the district attorney to reduce criminal charges against the nephew. She did not recuse herself or disclose the friendship. The Court, like the Commission, concluded that the judge committed wilful misconduct.

In a case involving the nephew of another friend, the Court adopted the Commission’s finding that Judge Doan failed to recuse herself or disclose her relationship before handling the case, but disposed of it in a standard manner. The Court, like the Commission, concluded that the judge engaged in conduct prejudicial to the administration of justice in this matter.

In another case in which a friend of Judge Doan was the defendant, the Court adopted the Commission’s finding that the judge repeatedly told her friend that she would take care of the matter. The Court also adopted the Commission’s finding that Judge Doan tried to give the friend the impression that she was helping her so that she could continue to receive food and money from the friend. The Court, like the Commission, concluded that the judge had engaged in prejudicial conduct.

The Court adopted the Commission’s findings that Judge Doan had in three instances failed to report loans on her State of California Statement of Economic Interests, despite having been publicly reprovved for the same conduct in 1989. The Court, like the Commission, concluded that these acts constituted prejudicial conduct.

Next, the Court adopted the Commission’s findings that Judge Doan had engaged in financial dealings with court staff and individuals appearing before the court, and that the judge had accepted a loan from a court clerk after being privately admonished for accepting a loan from the same clerk in 1990. The Court, like the Commission, concluded that the judge engaged in prejudicial conduct.

The Court adopted the Commission’s finding that the judge had failed to list all creditors in a petition for bankruptcy, and adopted the Commission’s conclusion that this constituted prejudicial conduct.

The Court also adopted the Commission’s finding that the judge had been habitually tardy in starting court sessions, and the Commission’s conclusion that this constituted prejudicial conduct.

The Court next adopted the Commission’s finding that Judge Doan had improperly offered to provide legal services for a federal prisoner, and adopted the Commission’s conclusion that this constituted conduct prejudicial to the administration of justice.

Finally, the Court adopted the Commission’s findings that the judge had asked witnesses not to cooperate in the Commission’s investigation. The Court concluded that this constituted wilful misconduct.

In determining to follow the Commission’s recommendation of removal, the Court pointed out that the judge had “displayed moral turpitude, dishonesty, and corruption.” (Id., p. 339.) The Court noted that the judge had received two prior public reprovalls and one private admonishment, but had not reformed. In addition to removing Judge Doan from office, the Court denied her request to resume the practice of law, noting that she had engaged in significant acts and omissions involving moral turpitude, dishonesty, and corruption.

Fitch v. Commission on Judicial Performance (1995) 9 Cal.4th 552 [37 Cal.Rptr.2d 581, 897 P.2d 937]

On July 26, 1994, the Commission filed a recommendation in the California Supreme Court that Judge John E. Fitch of the Fresno County Superior Court be publicly censured. In February of 1995, the Supreme Court followed the Commission’s recommendation and publicly censured Judge Fitch. The censure became final in March.

The Court, like the Commission, found that Judge Fitch had engaged in a pattern of inappropriate and offensive comments in the workplace concerning the physical attributes and clothing of female members of the court staff. These included remarks about the female employees' buttocks and breasts. The Court, like the Commission, also found that the judge had engaged in a pattern of inappropriate and offensive remarks in the workplace concerning the intimate relationships of court attaches or attorneys with their spouses, and had made other inappropriate, personal, offensive and embarrassing remarks in the presence of court staff. In addition, the Court, like the Commission, found that Judge Fitch had engaged in a pattern of inappropriate and nonconsensual touching and attempted touching of female members of court staff.

The Court agreed with the Commission that Judge Fitch's conduct was conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and upheld the Commission's recommendation of public censure.

Recommendations to the Supreme Court

In 1995, the Commission recommended to the Supreme Court that Judges Bruce W. Dodds (Santa Barbara County Superior Court) and Claude E. Whitney (Central Orange County Municipal Court) be publicly censured by the Supreme Court.

Retirements and Resignations

In 1995, nine judges resigned while under investigation by the Commission for alleged acts of serious misconduct. In none of these cases was there a criminal prosecution pending at the time of the judge's resignation which upon conviction would have resulted in the judge's removal by operation of law.

Public Reprovals and Public Admonishments

When the Commission was established in 1960, the Commission's authority was limited to recommending to the Supreme Court that a judge be removed or retired from office. Since 1960, various constitutional amendments have addressed the types of discipline available in less serious matters. In 1966, the sanction of censure by the Supreme Court was authorized for cases in which removal was not warranted. 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 was to permit resolution of discipline cases without the enormous expense of full formal proceedings. Proposition 190 replaced the public reproof with the "public admonishment" which does not require the judge's consent. Public admonishments 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 criminal, can often be addressed by discipline short of removal.

In the last seven years the Commission has issued 17 public reprovals. In 1995, there were 3 public

reprovals and, after Proposition 190 took effect, 3 public admonishments:

1. Judge Thomas P. Breen of the San Benito County Superior Court was publicly reproved for the following conduct:

Judge Breen has engaged in a continuing pattern of failure to dispose of judicial matters promptly and efficiently.

On July 16, 1986, the Commission sent Judge Breen an advisory letter concerning an unacceptable delay of 17 months in issuing a decision in *American Forest Products Corporation v. Russell*. The matter was submitted for decision on January 7, 1985, and a tentative decision was issued on June 2, 1986.

On July 13, 1987, Judge Breen was privately admonished by the Commission for: (1) failing to rule for 31 months on a demurrer submitted on November 30, 1984, in *Hospital and Institutional Workers' Union Local 250 v. San Benito Hospital District* (decision issued June 24, 1987); and (2) failing to file a statement of decision for seven to nine months after submission of proposed statements of decision on September 26, 1985, and November 18, 1985, in *Hospital and Institutional Workers' Union Local 250, SEIU AFL-CIO v. San Benito Hospital Workers* (decision issued June 13, 1986).

On May 15, 1989, the Commission sent Judge Breen another advisory letter for failure to recognize or take steps to correct serious problems in the clerk's office involving the misfiling and loss of legal documents. Judge Breen was referred in that letter to the Training and Consulting Unit of the Administrative Office of the Courts.

Judge Breen has nonetheless continued to delay disposition of judicial matters. There have been submitted matters in his court, involving issues of child and spousal support, marital property disposition, marital dissolution and corporate dissolution, that were ready for disposition but which remained undecided for excessive periods of time, constituting inordinate delay. These cases include the following:

1. *Castillo v. Castillo Bros. Feed, Inc.* (Tulare County No. 145933). Judge Breen's decision after a request for statement of decision, submitted on July 1, 1992, was not issued until September 27, 1993, almost 15 months later. His ruling on a motion to tax costs, which was submitted on July 9, 1992, was issued on February 19, 1994, more than 18 months later.

2. *Marriage of Arena* (San Benito County No. 19816). The matter was submitted on September 21, 1993, and was not decided until November 1994, approximately 14 months later.

3. *Marriage of Morrison* (San Benito County No. 19116). The matter was submitted on January 6, 1993, and was not decided until January 21, 1994, more than 12 months later.

4. *Marriage of Quinn* (San Benito County No. 16181). The matter was originally submitted on December 13, 1991, and a memorandum decision addressing some, but not all, of the issues was not filed until April 29, 1992, four and one-half months later. The remaining issues were briefed and submitted on October 5, 1992, and findings were issued on some, but not all, of the remaining issues on July 1, 1993, almost nine months later. Objections to the proposed statement of decision were submitted on November 16, 1993, but findings were not issued until March 3, 1994, three and one-half months later.

5. *Marriage of McDavid* (San Benito County No. 16837). The case was submitted on June 24, 1991, and was not decided until May 11, 1994, almost three years later.

Although inordinate delay in decision making is unacceptable in all cases, Judge Breen's failure to promptly decide family law matters before him was particularly egregious in light of the harm to

the parties caused thereby.

During those periods when the above-referenced cases were under submission in Judge Breen's court and remained undecided in excess of 90 days, he executed salary affidavits pursuant to Government Code section 68210, representing under penalty of perjury that he had no cases under submission for periods in excess of 90 days. During those periods while there were cases pending and undecided over 90 days after they were submitted for decision, Judge Breen received the salary for his judicial office in violation of California Constitution, Article VI, section 19.

In mitigation, the Commission noted Judge Breen's agreement to submit monthly reports to the Commission of all cases remaining undecided as of the date of the submission of his salary affidavits. These monthly reports to the Commission shall contain the date of submission for each such case and shall be submitted for the next three years from the date of this public reproof [February 28, 1995].

2. Alpine County Justice Court Judge Thomas M. Kelly was publicly reproofed for the following conduct:

In 1987, before justice court judges were prohibited from practicing law by California Constitution, Article VI, section 17 and Government Code section 71607, Judge Kelly became attorney of record for the plaintiff in *Okoye v. Citicorp*, Los Angeles Superior Court Case No. C 683268. Judge Kelly signed a complaint prepared by a Nevada attorney whose law library and office Judge Kelly sometimes used. Judge Kelly accommodated the Nevada attorney without receiving a fee or promise of fee, and without expecting a fee. The attorney had told Judge Kelly that he intended to handle the case and would file a motion to appear pro hac vice, seeking the court's permission to appear as an out-of-state attorney with Kelly, a California attorney, associated as counsel. However, within a month after the complaint was filed, the Nevada attorney abandoned his plan to file the application and so advised Judge Kelly.

Because Kelly was counsel of record in *Okoye v. Citicorp*, the defendant's counsel communicated with Judge Kelly at the Nevada counsel's address. A demurrer to the complaint was filed. Judge Kelly and the Nevada attorney discussed the matter and agreed to stipulate to the demurrer. A first amended complaint was filed; a demurrer to that complaint was sustained as well. No second amended complaint was filed.

During the spring and summer of 1987, defense counsel contacted Judge Kelly four times to schedule the plaintiff's deposition. Although Judge Kelly informed the Nevada attorney, Judge Kelly did not notify the plaintiff. On one occasion, Judge Kelly told defense counsel that he could not attend a deposition because he was scheduled on a judicial assignment.

No discovery pertinent to the merits of the case was provided to the defense. On July 8, 1987, a motion to compel production of documents was heard. There was no appearance for plaintiff. The court ordered production of the requested documents and ordered sanctions against Judge Kelly and the plaintiff, which were later paid by the Nevada attorney. Judge Kelly never notified the plaintiff.

On August 25, 1987, Judge Kelly appeared at a hearing on defendant's motion to dismiss. This was the first occasion on which the plaintiff and Judge Kelly met with each other. The court ordered the case dismissed for failure to file a second amended complaint, and imposed sanctions of \$2,500 on both Judge Kelly and the plaintiff.

A federal complaint signed by Judge Kelly also was filed on behalf of the plaintiff, in April of 1987. It was dismissed for lack of prosecution, and the motion to set the dismissal aside was dismissed without hearing in December 1987.

IV.
DISPOSITION OF COMMISSION CASES

The plaintiff sued Judge Kelly and the Nevada attorney for breach of contract, fraud, and legal malpractice in their representation of him in the *Okoye v. Citicorp* case. After a court trial, the court found Judge Kelly and the Nevada attorney liable on the cause of action for legal malpractice. The Nevada attorney was also held liable for breach of contract. Both were ordered to pay a judgment of \$351,000. The judgment was affirmed on appeal.

The trial court determined that Judge Kelly, by agreeing that the Nevada attorney would handle the management of the lawsuits in the absence of a court order permitting the Nevada attorney to appear as counsel, after signing the complaints prepared by the Nevada attorney, unlawfully aided and abetted the unauthorized practice of law, contrary to Business and Professions Code section 6126(a) and Code of Professional Responsibility rule 3-101. The Commission finds that by his conduct in the case, including abandoning, for all intents and purposes, a client for whom he was attorney of record, Judge Kelly committed a breach of fiduciary duty and committed legal malpractice. Judge Kelly's conduct constitutes conduct prejudicial to the administration of justice that brings the judiciary into disrepute.

3. Judge Kenneth E. Vassie of the Inglewood Municipal Court District in Los Angeles County was publicly reproved for the following conduct:

1. On March 28, 1994, Judge Vassie called the case of a defendant charged with driving under the influence. Her attorney, Deputy Public Defender Jason Rubel, stated that he wished to set the matter for a motion to suppress pursuant to Penal Code section 1538.5 and jury trial. The deputy district attorney advised the court that the case was a "DUI refusal" and that an offer had been made. Judge Vassie then said to the defendant, "You understand ... that the offer that the prosecution has made will not be repeated." Her attorney said that he had related the offer to the defendant. Judge Vassie replied, "I am talking to her." Mr. Rubel said that he objected to the judge talking to his client. This colloquy followed:

THE COURT: What is your authority for that? She has a right to speak to me if I ask her something, and if you interfere with that you are in contempt.

MR. RUBEL: Judge, this is my client. You have no right to speak to her.

THE COURT: Please stand. I'm finding you in contempt for interfering with the lawful process of this court.

You are interrupting me. This is a second count. Is there anything you'd like to say about that; either the interruption of my conferring with this defendant or your interruption?

MR. RUBEL: Judge, I represent her.

THE COURT: Is there anything you wish to say?

MR. RUBEL: Yes. I represent her as her attorney. If you wish to address her you address her through me.

THE COURT: What is your authority for that position?

MR. RUBEL: I am her attorney, Judge.

THE COURT: You are in contempt. You are remanded to the County Jail for 5 days.

Mr. Rubel was released a few hours later. On April 5, Judge Vassie held further proceedings in which he stated that he was vacating any previous action taken against Mr. Rubel.

Judge Vassie's actions constituted an abuse of the contempt power and an interference with

the attorney-client relationship between Mr. Rubel and his client. Judge Vassie completely failed to follow proper contempt procedures. He jailed Mr. Rubel immediately, with no hearing or written order of contempt. Judge Vassie, who has been a judge for 26 years, was obligated to know or research proper contempt procedures. The contempt power, which permits a single official to deprive a citizen of his fundamental liberty interest without all of the procedural safeguards normally accompanying such a deprivation, must be used with great prudence and caution. It is essential that judges know and follow proper procedures in exercising this power, which has been called a court's "ultimate weapon." (See, *Furey v. Commission on Judicial Performance* (1987) 43 Cal.3d 1297, 1314; *Cannon v. Commission on Judicial Performance* (1975) 14 Cal.3d 678, 694, 696.)

In mitigation, Judge Vassie has acknowledged that he handled the matter improperly, and that he failed to follow proper contempt procedures.

2. Judge Vassie has refused to exercise his discretion to consider traffic school as a possible disposition in traffic matters. Judge Vassie has told traffic litigants requesting traffic school that he did not give traffic school because it was "a joke," and that he would not give traffic school until the traffic school system, which the judge characterizes as "corrupt," was cleaned up.

In mitigation, Judge Vassie changed his policy. He now considers traffic school as a possible disposition in traffic matters, and exercises his discretion to grant or deny traffic school on a case-by-case basis.

Judge Vassie's conduct in these two matters was contrary to Canon 2A of the California Code of Judicial Conduct, which 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, and Canon 3B(2), which provides that a judge should be faithful to the law.

4. Contra Costa County Superior Court Judge Richard S. Flier was publicly admonished by the Commission on May 30, 1995, for improper conduct within the meaning of Article VI, section 18(d) of the California Constitution, for the following conduct:

On October 21, 1993, Lindell Abercrombie, an African-American adult, appeared before Judge Flier at a hearing in *People v. Abercrombie*. The following occurred:

PROSECUTOR [addressing Abercrombie]: Sir, you have a right to trial by court or jury on the charges and enhancements and probation ineligibility causes charged against you. You understand that right.

ABERCROMBIE: Yes.

PROSECUTOR: Do you waive that right?

ABERCROMBIE: Yes, I waive all of that. I waive all —

THE COURT: Mr. Abercrombie, we will have to do this in an organized fashion. When he asks you a question, I want you to answer only that question. Got it? Okay. Good boy. Go ahead, please.

Following this incident, another African-American defendant sought to disqualify Judge Flier based on his remark to Mr. Abercrombie (*People v. Perkins*). The motion was granted. The First District Court of Appeal reversed on the ground that Mr. Abercrombie himself did not challenge Judge Flier. The court did not rule on the propriety of the judge's remark to Mr. Abercrombie:

Whether Judge Flier's use of the words "good boy" in addressing an adult male of African-American descent was unseemly, rude, racially insensitive, or simply thoughtless, no objection or other comment was raised by Mr. Abercrombie or his counsel [at the time of the incident or later during the proceeding].... In the context of the entire proceeding, the words "good boy" would not lead a person to reasonably entertain a doubt about Judge Flier's ability to be impartial toward Mr. Abercrombie because of race or for any other reason.

23 Cal.App.4th 165, 171-172. The court noted that if anyone "believes that Judge Flier's comment warrants discipline, they may file a complaint with the Commission on Judicial Performance." (23 Cal.App.4th 165, 170 n. 4.)

The Commission found that, based on the content of the remark and the reported tone used by Judge Flier, his reference to the in-custody adult defendant as a "good boy" manifested racial insensitivity.

The Commission also found that Judge Flier's remark damaged the respect for the judiciary held by members of the public who were present and, as such, was "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." (Cal. Const., Art. VI, section 18(d).) While notoriety is not required for "conduct prejudicial," Judge Flier's remark led to substantial adverse publicity that further diminished public confidence in the judiciary and brought the judiciary into disrepute. (See, *Wenger v. Commission on Judicial Performance* (1981) 29 Cal.3d 615, 622 n. 4, quoting *McCartney v. Commission on Judicial Qualifications* (1974) 12 Cal.3d 512, 534.)

Judge Flier's conduct was contrary to these provisions of the California Code of Judicial Conduct: Canon 3 (avoiding the appearance of bias or prejudice), Canon 2 (preserving public confidence in the judiciary), and Canon 1 (maintaining high standards of conduct).

Judge Flier consented to public admonishment.

5. On May 15, 1995, the Commission publicly admonished Judge B.J. Bjork of the Riverside County Municipal Court, Desert Judicial District, for improper conduct within the meaning of Article VI, section 18(d), of the California Constitution, for the following conduct:

On March 25, 1994, Judge Bjork was contacted by the clerk of another judge. On behalf of the other judge, the clerk asked that a family member of the other judge, who had received a traffic citation, be permitted to attend traffic school. Judge Bjork rejected the clerk's request, believing she was asking him to dismiss the citation. The other judge then approached Judge Bjork personally and explained that the family member had previously failed to complete traffic school on the citation. He asked Judge Bjork to allow his relative to attend traffic school again and Judge Bjork did so. This appeared to be lenient and favorable toward the other judge's relative.

Judge Bjork's act of granting the other judge's family member traffic school a second time was done in the absence of any appearance or personal request by the family member, and was based on a request by a judicial colleague.

On March 30, 1994, Judge Bjork was approached by the same judge regarding another citation received by the same relative charging him with an inadequate muffler, driving while not in possession of a valid driver's license and a failure to appear. The other judge indicated that he owned the car driven by his relative at the time the citation was received, and that he was responsible for the inadequate muffler and the relative's failure to appear. Based upon the other judge's statements and his representation that he would take care of the other counts charged in the

citation, and without any proof of correction, Judge Bjork then dismissed the failure to appear charge, a misdemeanor. This action appeared to be lenient and favorable toward the other judge's relative.

Judge Bjork's conduct in these two cases was contrary to Canon 2A of the California Code of Judicial Conduct, which 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, and Canon 2B, which provides that a judge should not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment, and that a judge should not convey or permit others to convey the impression that they are in a special position to influence them.

Judge Bjork consented to public admonishment.

6. Judge Judith C. Chirlin of the Los Angeles County Superior Court was publicly admonished on August 28, 1995, for improper conduct as follows:

In 1993, a jury trial in the case of *Main Line Pictures, Inc. v. Kim Basinger, et al.* was conducted before Judge Chirlin. The case involved an action for breach of contract based on defendant Basinger's alleged withdrawal from the making of Main Line's movie "Boxing Helena," which was completed and released with a different female lead. The case attracted significant media attention due to the subject matter and the celebrity of the defendant.

There was a verdict for plaintiff Main Line Pictures, Inc. on March 23, 1993. A notice of appeal was filed by defendants Kim Basinger, et al. on July 16, 1993.

In August 1993, Judge Chirlin attended the premiere of the movie "Boxing Helena" at the invitation of the movie's producer, the plaintiff in *Main Line Pictures, Inc. v. Kim Basinger, et al.* The premiere consisted of the showing of the movie followed by a reception at a Los Angeles restaurant. Judge Chirlin's attendance at the event was noted in the media.

The Commission found that Judge Chirlin's attendance at the premiere was improper in that it contributed to an appearance of bias: due to Judge Chirlin's role in the trial of the lawsuit, the judge was seen as joining in the plaintiff's celebration of the movie's release and the plaintiff's celebration of its legal victory.

An appearance of bias or partiality erodes public confidence in and respect for the judiciary. Canon 2 of the Code of Judicial Conduct requires judges to avoid impropriety and the appearance of impropriety in all of the judge's activities; Canon 3 of the Code of Judicial Conduct requires that judges perform judicial duties without bias; Canon 4 requires that judges conduct even extra-judicial activities so the activities do not cast reasonable doubt on the judge's capacity to act impartially as a judge.

On January 2, 1994, while the appeal of judgment in *Main Line Pictures, Inc. v. Kim Basinger, et al.* was still pending, an article appeared in the *Los Angeles Times* Sunday magazine about the case. Judge Chirlin was interviewed for the article and asked about allegations that her rulings during the trial exhibited bias against defendant Basinger. Judge Chirlin was quoted as saying, "The fact of the matter is that throughout the trial, a significant portion of my rulings were in favor of Kim."

The Commission found that Judge Chirlin's comments to the reporter about the *Main Line Pictures, Inc. v. Kim Basinger, et al.* case were in conflict with the provisions of Canon 3 of the Code of Judicial Conduct, which states in part:

...A judge should not make any public comment about a pending or impending proceeding in any court....

At the time of the remarks, an appeal of the judgment was pending. The requirement that judges refrain from commenting about cases continues during any appellate process until final disposition.

In arriving at this disposition, the Commission noted that the judge recognized and acknowledged the impropriety of her attendance at the premiere and of her public comments regarding the case.

Private Admonishments

Since they were authorized in 1976, the Commission has issued 134 private admonishments. Private admonishments are designed in part to correct problems at an early stage. Absent this "early warning" system, it is believed that some misconduct would continue and escalate. Private admonishments serve the Commission's larger purpose of maintaining the integrity of the California judiciary. The Commission has found that most judges improve their behavior after a private admonishment.

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

In 1995, 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, the Commission believes it better to describe them in abbreviated form rather than omit them altogether.

1. A judge became embroiled in a case, engaging in retaliatory conduct against two attorneys, attacking their integrity and interfering in their relationship with their clients.

2. A judge imposed sanctions to punish counsel for failure to settle and without following due process requirements. In another matter, the judge criticized jurors for their verdict.

3. A judge delayed six months in deciding a civil case. The judge had previously received an advisory letter for delay.

4. During a jury trial, a judge was abusive in his treatment of an expert witness and also made a sarcastic joke during trial regarding the nature of the plaintiff's injury. In an unrelated matter, the judge convened a contempt hearing concerning the conduct of a prospective juror without following due process requirements. At the hearing, the judge chastised the prospective juror for alleged but unsubstantiated rudeness to the judge's clerk and for alleged but unsubstantiated interference with the court's process.

5. At a sentencing hearing, a judge refused to allow victim impact statements in contravention of Penal Code sections 679.02 and 1191.1.

6. In response to a motion to disqualify, a judge issued an order in which he recused himself, but which included a gratuitous statement impugning the credibility of the party who had moved to disqualify the judge.

7. A judge failed to disclose that an attorney appearing before him regularly was a close personal friend. In disqualifying himself, the judge made a gratuitous disparaging remark about the attorney who had asked the judge to disqualify himself. The judge also was not candid in responding to the Commission's inquiry.

Advisory Letters

The Commission will advise caution or express disapproval of a judge's conduct in letters of advice or disapproval called "advisory letters." (See Rule 904.1.) The Commission has issued these letters in a variety of situations:

The Commission may issue an advisory letter 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.

An advisory letter is also used when the impropriety is more serious but the judge has demonstrated an understanding of the problem and has taken steps to improve. An advisory letter is especially useful when there is an appearance of impropriety. An advisory letter might be appropriate where there is actionable misconduct offset by substantial mitigation.

In 1995, the Commission issued 41 advisory letters. They are summarized below.

Demeanor

The most commonly violated canon of the Code of Judicial Conduct is Canon 3B(4): "A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity...."

1. A judge made harsh and demeaning comments to an elderly pro per litigant.
2. A judge received a severe advisory letter for poor demeanor and for conduct during the Commission's investigation which may have appeared to be an attempt to influence court staff's participation in the investigation.
3. A judge spoke in an excessively harsh tone to a pro per misdemeanor defendant.
4. A judge's demeanor when questioning a witness appeared discourteous, angry and hostile.
5. A judge made disparaging, demeaning, and sarcastic remarks to counsel and used profanity during a court proceeding.
6. A judge made harsh and insensitive comments in open court to a teenaged witness about her attire. The witness, who was testifying about a drive-by shooting despite threats against her and her family, felt humiliated and denigrated.
7. At sentencing, a judge interrupted the victim impact statement of a child abuse victim's mother with criticisms of the mother's handling of her daughter's adjustment. Observers described the judge's tone and demeanor as "harsh."
8. A judge displayed bad temper and gave the appearance of prejudgment at a hearing in a civil case. The judge admitted the loss of temper and attended seminars to remedy the problem. The Commission monitored the judge for two years.

Delay

The Commission issued two advisory letters in 1995 for failure to decide cases timely. The delay in these cases was over 90 days. But in some circumstances, a shorter delay would be a failure to "dispose of all judicial matters fairly, promptly, and efficiently." (Canon 3B(8).)

9. After taking two matters under submission, a judge delayed in ruling on the matters for over seven months. The judge also executed salary affidavits during this time.
10. A judge delayed seven months in ruling on a submitted matter.

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

11. A judge failed to rule for over five months on two habeas corpus petitions by a prisoner. The judge later adopted a procedure to ensure that habeas petitions were promptly brought to the judge's attention.

Another advisory was issued where a judge's inaction caused delay in an appellate panel's disposition of a case.

12. A judge delayed for more than four months sending a certified transcript to a superior court appellate division.

Disqualification/Disclosure

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

13. A judge took action based upon an ex parte communication in a case in which he later recused himself due to his relationship with relatives of a party.

14. In a declaration opposing a disqualification motion, a new judge failed to disclose all relevant facts relating to his prior professional association with a lawyer appearing before him.

15. A judge failed to disclose that his teenage child was employed as a "go-fer" by a law firm for approximately two years while the law firm frequently appeared before the judge.

16. A judge failed to disclose both that his law clerk was married to an attorney appearing before the judge and that the court had taken steps to avoid resulting conflict problems.

Off-Bench

The Commission's jurisdiction includes judges' conduct off the bench as well as in the courtroom. In three matters, judges' off-bench conduct reflected poorly on the judiciary.

17. A judge appeared in an advertisement, in which he identified himself as a judge, and endorsed a commercial venture.

18. A judge received an advisory letter after pleading guilty to reckless driving.

19. A judge was arrested for disturbing the peace in a public establishment in another state. It was alleged that the judge had become intoxicated, loud and abusive. The prosecutor dismissed the case because the judge had no record, had apologized and had entered counseling; also, the proprietor did not wish to pursue the case.

Abuse of Authority

Before sending a person to jail for contempt or imposing a fine, judges are required to provide due process of law, including strict adherence to the procedural requirements contained in the Code of Civil Procedure. Ignorance of those procedures is not a mitigating but rather an aggravating factor. (*Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 533.)

20. A judge ordered a victim/witness to pay court costs in a criminal case after the victim/witness's inconsistent testimony failed to result in an order that the defendant be held to answer for trial. The judge failed to follow any due process requirements. The judge rescinded the order after inquiry by the Commission.

21. A judge issued a bench warrant for a misdemeanor defendant who appeared at a pretrial conference through his attorney as provided by law. No order had been made requiring the defendant to appear personally.

22. A presiding judge improperly ordered another judge to obtain the presiding judge's approval before recusing himself from cases.

23. A judge denied a legally valid application for a waiver of court fees and costs in a small claims case on the ground that the applicant had been able to pay for the goods which were the subject of the lawsuit. The judge indicated he did not know the law concerning eligibility of indigent litigants for fee waivers.

24. In a family law matter, two orders with conflicting hearing dates were issued by the court. When only one party appeared at the next hearing the judge ordered a bench warrant for the arrest of the custodial parent, despite being advised of the confusion over hearing dates. Based on this warrant, the sheriff and the district attorney's office became involved and the judge issued an order finding that the custodial parent was detaining the children in violation of court order and also ordering that custody be changed. Only when the conflict regarding the hearing dates was again brought to the judge's attention, were the orders reconsidered.

25. A judge ordered a criminal defendant appearing before him to immediately reimburse the court clerk for photocopying and fees; the defendant's earlier check for the costs had been dishonored by the bank. The debt was unrelated to the cases on calendar and had not been reduced to a judgment.

Ex Parte Communications

Unless expressly allowed by law or expressly agreed to by the opposing party, ex parte communications are improper.

26. A judge set a defendant's bail after a bail hearing. Later that day, the judge revoked the defendant's bail without notice or a hearing, based on an ex parte contact between the judge's clerk and the police; neither the defendant nor his counsel was notified of the change in bail status.

27. In a contested matter, a judge initiated an ex parte telephone contact with one attorney regarding pending discovery.

28. A judge granted a defendant's motion to vacate the judgment in a small claims case based upon an ex parte contact.

29. In a civil matter, a motion was heard and taken under submission. The judge then called the attorney for the non-moving party and discussed matters relevant to the motion. After being confronted about the ex parte contact, the judge recused himself and did not rule on the motion.

Public Comment

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

30. A judge commented on a pending criminal case in responses to questions from participants in a legal forum on the Internet. The judge recognized the impropriety and ceased the practice.

31. A judge commented about a case pending before the judge to attorneys during a courthouse meeting of a committee of the local bar association.

Humor

"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." (From a special masters' report in a 1993 public reproof case.)

32. A judge joked with court spectators about having persuaded a pro per litigant to pay a mediation fee in a family law proceeding involving child custody issues; the joke appeared to be at the pro per litigant's expense.

33. In an attempt to diffuse courtroom tension, a judge made humorous remarks and solicited the opinion of court spectators after remanding into custody a defendant whose parent had made an emotional plea on his behalf.

34. A prospective juror informed a judge of economic hardship if he were to serve on a lengthy jury trial. The judge eventually excused the juror with a joking remark which appeared to denigrate the juror's concerns.

Administrative Duties

The duties of a presiding judge include the handling of complaints against court commissioners and referees. Two presiding judges received warnings for failing to discharge that duty.

35. A judge delayed in responding to a complaint about a court commissioner for seven months.

36. A supervising judge delayed eight months in responding to a litigant's complaints about a court commissioner.

Miscellaneous

And there were a variety of other cases.

37. A judge regularly told criminal defendants that they could be represented by a public defender if they pled guilty but would have to pay for an attorney if they exercised their right to a jury trial. When law prohibiting this practice was brought to the judge's attention, the judge discontinued the practice.

38. During settlement discussions, a judge made comments to a party disparaging the quality of the legal advice from the party's counsel and criticizing the amount of attorney's fees being charged. On an unrelated matter, the judge made a series of disparaging remarks in open court about the Court of Appeal.

39. A judge was cautioned to take appropriate measures to ensure that the public was not improperly allowed to observe confidential juvenile proceedings.

40. A judge suggested in open court that a Court of Appeal order was improperly motivated.

41. After being properly disqualified, a judge stated on the record how he would have ruled on a pending motion and then discussed the merits of the motion with the judge to whom the motion was transferred. In mitigation, the judge acknowledged the impropriety of his conduct when counsel brought it to his attention.



SECTION V.
VOLUNTARY DISABILITY RETIREMENT

In addition to its judicial disciplinary duties, 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 I of this report.

In 1995, four disability retirements took effect and four were pending at the end of the year.