
**ANNUAL REPORT OF THE
STATE OF CALIFORNIA
COMMISSION ON JUDICIAL PERFORMANCE**



1996

COMMISSION MEMBERS

Honorable William A. Masterson, Chairperson

Robert C. Bonner, Esq., Vice-Chairperson

Ms. Ophelia Basgal

Mr. Christopher J. Felix

Honorable Lois Haight

Ms. Eleanor Johns

Patrick M. Kelly, Esq.

Mr. David L. Malcolm

Honorable Vincent J. McGraw

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COMMISSION ON JUDICIAL PERFORMANCE

1996 ANNUAL REPORT

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INTRODUCTION



This year marked the first full year of Commission operations since Proposition 190 took effect in March of 1995.

Under Proposition 190, the authority for promulgation of rules for Commission proceedings was conferred upon the Commission. After careful study and consideration of public comment, the Commission completed its review of the existing rules governing Commission proceedings and adopted new rules which took effect December 1, 1996. To further ensure that the practices and procedures of the Commission are in compliance with the changes to the Constitution as a result of Proposition 190 and the new rules, the Commission also undertook a review of its Policy Declarations, which govern the Commission's internal policies and procedures. At year's end, revised policy declarations were under consideration by the Commission with the expectation that they will be adopted and published in early 1997.

One significant change in the rules concerns the Commission's ability to refer matters to other regulatory bodies. Under the old rules governing confidentiality, the Commission was often unable to refer matters to the State Bar of California when a judge retired or resigned, and also was unable to refer information about possible criminal activity to a prosecuting authority. New Commission Rule 102 permits the Commission to make referrals when the circumstances warrant, thus ensuring that a judge's wrongdoing does not escape review by the appropriate public agencies.

Most of the Commission's effort this year was again focused on its primary mandate of handling the cases before it. As the statistics show, the volume of complaints filed with the Commission remains high. The Commission committed considerable resources to careful screening and review of complaints early on. In so doing, the number of formal investigations was reduced and the Commission's resources were concentrated on the cases involving the most serious misconduct.

A handwritten signature in dark ink, reading 'William A. Masterson'. The signature is fluid and cursive, with a large, stylized 'W' and 'M'.

Justice William A. Masterson
Chairperson

COMPOSITION OF THE COMMISSION

Pursuant to California Constitution, article VI, section 8, the Commission is composed of 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. Members are appointed to staggered four-year terms. The members do not receive a salary but are reimbursed for expenses relating to Commission business. The Commission members elect a chairperson and vice-chairperson annually.

COMMISSION MEMBERS - 1996



**HONORABLE
WILLIAM A. MASTERSON**
Chairperson
Justice, Court of Appeal
Appointed by the Supreme Court
Term Began: March 1, 1995
Term Ends: February 28, 1997



ROBERT C. BONNER, ESQ.
Vice-Chairperson
Attorney Member
Appointed by the Governor
Term Began: March 1, 1995
Term Ends: February 28, 1999



MS. OPHELIA BASGAL
Public Member
Appointed by the Senate
Committee on Rules
Term Began: March 1, 1995
Term Ends: February 28, 1999



MR. CHRISTOPHER J. FELIX
Public Member
Appointed by the Governor
Term Began: April 28, 1995
Term Ends: February 28, 1997



PATRICK M. KELLY, ESQ.
Attorney Member
Appointed by the Governor
Term Began: March 1, 1995
Term Ends: February 28, 1997



MR. DAVID L. MALCOLM
Public Member
Appointed by the
Speaker of the Assembly
Term Began: March 1, 1995
Term Ends: February 28, 1997

COMMISSION MEMBERS



**HONORABLE
VINCENT J. MCGRAW**
Judge, Municipal Court
Appointed by the Supreme Court
Term Began: March 1, 1995
Term Ends: February 28, 1997



MS. HARRIET C. SALARNO
Public Member
Appointed by the Governor
Term Began: April 28, 1995
Term Ends: February 28, 1999



MS. PEARL WEST
Public Member
Appointed by the Senate
Committee on Rules
Term Began: March 1, 1995
Term Ends: February 28, 1997

NOT PICTURED

HONORABLE LOIS HAIGHT
Judge, Superior Court
Appointed by the Supreme Court
Term Began: March 1, 1995
Term Ends: February 28, 1999

MS. ELEANOR JOHNS
Public Member
Appointed by the
Speaker of the Assembly
Term Began: March 1, 1995
Term Ends: February 28, 1999

I.

OVERVIEW OF THE COMPLAINT PROCESS



THE AUTHORITY OF THE COMMISSION ON JUDICIAL PERFORMANCE

The Commission on Judicial Performance is the independent state agency responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges (pursuant to article VI, section 18 of the California Constitution). Its jurisdiction includes all active California judges. The Commission also has authority to impose certain discipline on former judges. The Commission does not have authority over court commissioners, referees, judges pro tem or private judges. In addition to its disciplinary functions, the Commission is responsible for handling judges' applications for disability retirement.

HOW MATTERS ARE BROUGHT BEFORE THE COMMISSION

Anyone may make a complaint to the Commission. Complaints must be in writing. The Commission also considers complaints made anonymously and matters it learns of in other ways, such as through news articles or through information received in the course of a Commission investigation.

JUDICIAL MISCONDUCT

The Commission's authority is limited to investigation and discipline of judicial misconduct. Judicial misconduct usually involves conduct in conflict with the standards set forth in the Code of Judicial Ethics (see Appendix 1H). Examples of judicial misconduct include intemperate courtroom conduct (such as yelling, rudeness, or profanity), improper communication

with only one of the parties in a case, failure to disqualify in cases in which the judge has or appears to have a financial or personal interest in the outcome, delay in performing judicial duties, and public comment about a pending case. Judicial misconduct may involve a judge's improper off-the-bench conduct such as driving under the influence of alcohol, using court stationery for personal business, and soliciting money from persons other than judges on behalf of charitable organizations.

WHAT THE COMMISSION CANNOT DO

The Commission is not an appellate court. The Commission cannot change the decision of any judge. When a court makes an incorrect decision or misapplies the law, the ruling can be changed only through appeal by the appropriate reviewing court.

The Commission cannot provide individual legal assistance or intervene in litigation on behalf of a party.

REVIEW AND INVESTIGATION OF COMPLAINTS

A complaint about a judge is reviewed and analyzed by the Commission's legal staff. When the Commission meets, it decides upon the action to take with respect to each complaint.

Many of the complaints considered by the Commission do not involve judicial misconduct. These cases are closed by the Commission after initial review.

When a complaint does state facts which, if true and not otherwise explained, would be mis-

I.
OVERVIEW OF THE COMPLAINT PROCESS

conduct, the Commission orders an investigation in the matter. Investigations may include interviewing witnesses, reviewing court records and other documents, and observing the judge while court is in session. Unless evidence is uncovered which establishes that the complaint lacks merit, the judge is asked to comment on the allegations.

ACTION THE COMMISSION CAN TAKE

Confidential Dispositions

After an investigation, the Commission has several options. If the allegations are found to be untrue or unprovable, the Commission may close the case without action against the judge. If, after an investigation and opportunity for comment by the judge, the Commission determines that improper or questionable conduct did occur, but it was relatively minor, the Commission may issue an **advisory letter** to the judge. In an advisory letter, the Commission will advise caution or express disapproval of the judge's conduct.

When more serious misconduct is found, the Commission may issue a **private admonishment**. Private admonishments are designed in part to bring problems to a judge's attention at an early stage in the hope that the misconduct will not be repeated or escalate. A private admonishment consists of a notice sent to the judge containing a description of the improper conduct and the conclusions reached by the Commission.

Advisory letters and private admonishments are confidential and the Commission and its staff cannot advise anyone, even the person who lodged the complaint, of the nature of the discipline that has been imposed. However, the Commission's rules provide that upon completion of an investigation or proceeding, the person who lodged the complaint will be advised

either that the Commission has closed the matter or that appropriate corrective action has been taken. The California Constitution also provides that, upon request of the Governor of any State, the President of the United States, or the Commission on Judicial Appointments, the Commission will provide the requesting authority with the text of any private admonishment or advisory letter with respect to judges who are under consideration for a judicial appointment.

A description of each advisory letter and private admonishment issued in 1996, not including identification of the subject judge, is contained in Section IV of this report.

Public Dispositions

In cases involving more serious misconduct, the Commission may issue a **public admonishment** or a **public censure**

for improper judicial conduct. Public admonishments and censures are typically issued in cases in which the misconduct was serious, but was not or is not likely to be repeated. The nature and impact of the misconduct generally

determines the level of discipline. Both public admonishments and public censures are notices sent to the judge describing the improper conduct and stating the findings made by the Commission. These notices are also made available to the press and the general public.

In the most serious cases, typically involving persistent misconduct, the Commission may determine to **remove** a judge from office following a hearing. In cases in which a judge is no longer capable of performing judicial duties, the Commission may determine to **involuntarily retire** the judge from office following a hearing.

Admonishment, censure, removal and involuntary retirement determinations may be appealed by the judge to the Supreme Court.

**ACTION THE COMMISSION CAN TAKE
(In Increasing Order of Severity)**

Close (Dismissal)
Advisory Letter
Private Admonishment
Public Admonishment
Public Censure
Removal or Involuntary Retirement

I.
OVERVIEW OF THE COMPLAINT PROCESS

CONFIDENTIALITY

Under the California Constitution and the Commission Rules, complaints to the Commission and the Commission's investigations are confidential. The Commission cannot ordinarily confirm or deny that a complaint has been received or that an investigation is underway. Persons contacted by the Commission during an

investigation are advised regarding the confidentiality requirements.

At such time as the Commission orders formal proceedings in a matter, the matter becomes public. The charges and all subsequently filed documents are made available for public inspection. Any hearing on the charges is also public.

II.

LEGAL AUTHORITY AND COMMISSION PROCEDURES



In the November 1994 general election, California voters approved Proposition 190, mandating major changes to the structure and authority of California's judicial disciplinary system. Proposition 190 took effect on March 1, 1995. Pursuant to Proposition 190, the Supreme Court was vested with the authority for promulgating the Code of Judicial Ethics, and the Commission on Judicial Performance was charged with the responsibility for promulgating its own rules. In 1996, the Supreme Court adopted the new Code of Judicial Ethics and the Commission adopted a new set of procedural rules. These changes are described and summarized in this section.

LEGAL AUTHORITY

California Constitution, Government Code, and Code of Civil Procedure Section 170.9

The Commission on Judicial Performance was initially established by voter referendum in 1960. In 1966, 1976, 1988, and most recently in 1994, the Constitution was amended to change various aspects of the Commission's work. The Commission's authority is set forth in article VI, sections 8, 18 and 18.5 of the California Constitution. The Commission is also subject to Government Code sections 68701 through 68755. Commission disability retirement determinations are governed by Government Code sections 75060 through 75064. In addition, the Commission is responsible for enforcement of the restrictions on judges' receipt of gifts and honoraria contained in Code of Civil Procedure section 170.9. These provisions are included in the appendix.

Commission Rules and Policy Declarations

Proposition 190 authorized the Commission to promulgate its own rules. Prior to that time, the Judicial Council promulgated the rules governing the Commission, which were contained in the California Rules of Court, rules 901 through 922. After Proposition 190 took effect on March 1, 1995, the Commission adopted Rules of Court 901 through 922 and three Transitional Rules as interim rules and undertook a comprehensive review of its rules and procedures. Proposed revised rules were circulated for public comment early in 1996. Comments were considered by the Commission and appropriate changes were incorporated in the revised rules. The new Commission Rules, rules 101 through 138, were adopted by the Commission on October 24, 1996, and took effect December 1, 1996. Some of the key features of the rules are described in the "Commission Procedures" section that follows. The Rules of Court, Transitional Rules and Commission Rules are included in Appendix 1.

The Commission's internal procedures are also governed by declarations of existing policy issued by the Commission. These Policy Declarations are included in the appendix. At the end of 1996, the Policy Declarations were under review by the Commission in light of changes to the rules and procedures of the Commission.

Code of Judicial Ethics

The Code of Judicial Ethics establishes standards for ethical conduct of judges on and off the bench and for candidates for judicial office.

These standards are set forth in broad declarations called Canons.

Prior to Proposition 190, the California Judges Association had adopted the California Code of Judicial Conduct to provide standards of judicial conduct for its members. Proposition 190 created a new constitutional provision requiring the Supreme Court to make rules "for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns," to be referred to as the "Code of Judicial Ethics" (California Constitution, article VI, section 18(m)). The Supreme Court formally adopted the Code of Judicial Ethics, effective January 15, 1996. A set of amendments to the Code of Judicial Ethics was adopted by the Supreme Court effective April 15, 1996.

The California Code of Judicial Ethics is included in the appendix.

COMMISSION PROCEDURES

The rules cited in this section refer both to the California Rules of Court and to the new Commission Rules, which took effect December 1, 1996.

Commission Review of Complaints

Each written complaint about a California judge is voted upon by the Commission. The Commission determines whether the complaint is unfounded and should not be pursued or whether sufficient facts exist to warrant investigation. (Rule of Court 904; Commission Rule 109.)

Investigation at the Commission's Direction and Disposition of Cases Without Formal Proceedings

When the Commission determines that a complaint warrants investigation, the Commission directs staff to investigate the matter and report back to the Commission. Both the old and new rules provide two levels of investigation: a staff inquiry and a preliminary investigation. (Rule of Court 904; Commission Rule

109.) Most cases begin with a staff inquiry. In more serious matters, the Commission may proceed directly with a preliminary investigation.

Commission investigations may include contacting witnesses, reviewing court records and other documents, observing courtroom proceedings, or conducting such other investigation as the issues may warrant. The investigation may reveal facts that lead to the dismissal of the complaint and make it unnecessary to contact the judge. If not, the judge is asked in a letter to comment on the allegations.

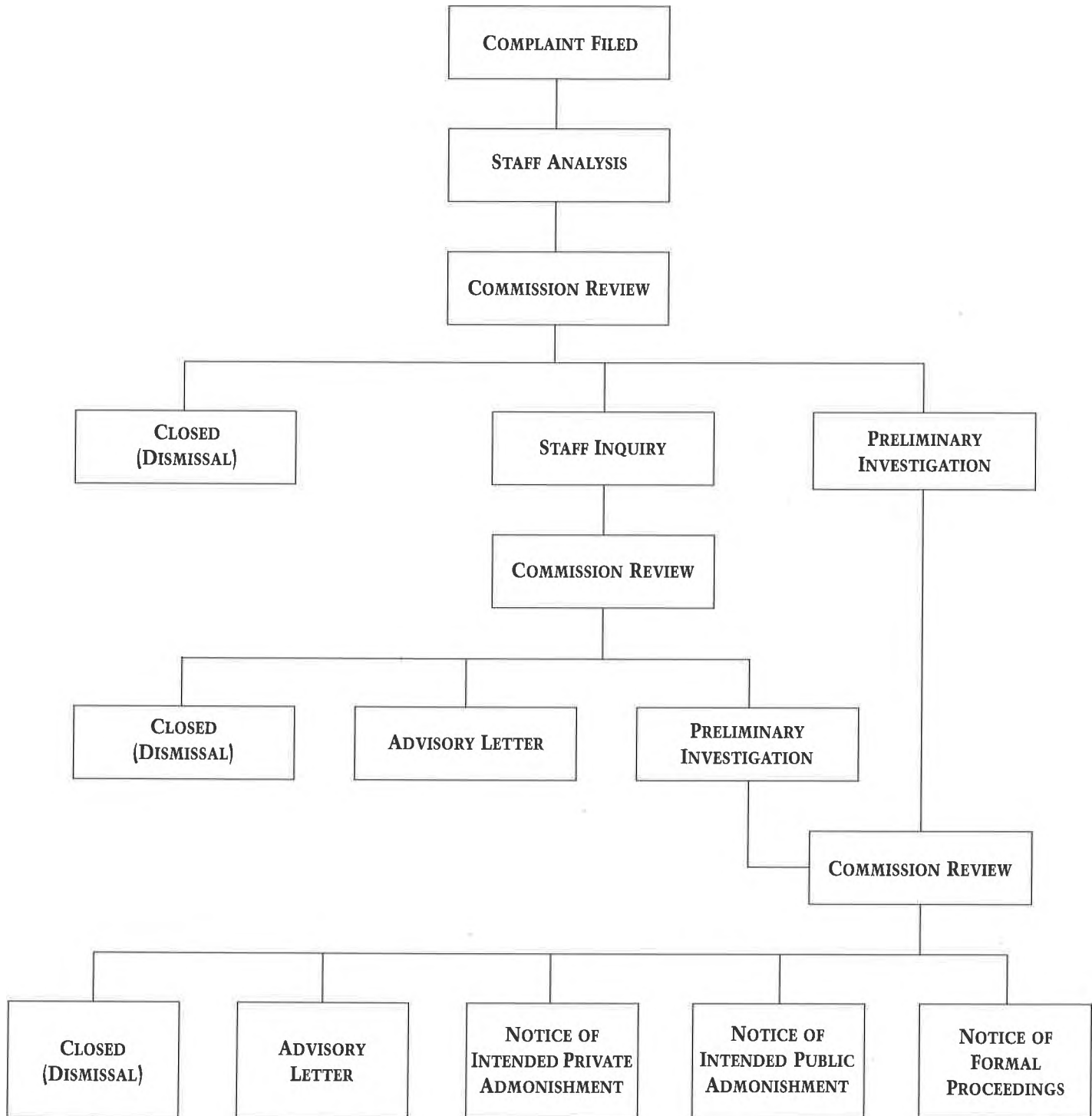
Under both the old and new rules, a judge has 20 days from the date of mailing to respond to an inquiry or investigation letter. (Rule of Court 904.1; Policy Declaration 1.7; Commission Rules 110, 111.) Under the old rules, limited extensions could be granted by staff; further extensions could be granted only by the chairperson for good cause. (Rule of Court 904.1; Policy Declaration 1.7.) Under the new rules, a judge may obtain a 30-day extension of time for filing a response to an inquiry or investigation letter simply by submitting a written request for extension to the chairperson prior to the expiration of time for filing the response. Further extensions by the chairperson require good cause. (Commission Rule 108.)

Following a staff inquiry, the Commission may take one of three actions. If the facts do not support a showing that misconduct has occurred, the Commission may close the case without any action against the judge. If improper or questionable conduct is found, but the misconduct was relatively minor or isolated or the judge recognized the problem and took steps to improve, the Commission may issue an advisory letter. (Rule of Court 904.1; Commission Rule 110.) If serious issues remain after a staff inquiry, the Commission will authorize a preliminary investigation. (Rule of Court 904; Commission Rule 109.)

After a preliminary investigation, the Commission has various options. The Commission may close the case without action or may issue

II.
LEGAL AUTHORITY AND COMMISSION PROCEDURES

COMPLAINT PROCESS



an advisory letter. (Rule of Court 904.2; Commission Rule 111.) The Commission may also issue a notice of intended private admonishment or a notice of intended public admonishment, depending upon the seriousness of any misconduct established. (Rule of Court 904.3; Transitional Rule 3; Commission Rules 113, 115.) The Commission may also institute formal proceedings, as discussed below.

Under the new rules, all notices of staff inquiry, preliminary investigation or intended private or public admonishment are sent to the judge at chambers instead of the judge's residence, unless otherwise requested. (Commission Rule 107(a).) This change reflects the stated preference of judges. Notices that relate to a staff inquiry are given by first-class mail, and notices that relate to a preliminary investigation or intended private or public admonishment are given by prepaid certified mail, return receipt requested. (Rule of Court 904.4; Transitional Rule 3; Commission Rule 107(a).) The new rules formalize the Commission's practice of marking envelopes containing such notices "personal and confidential" and not using the inscription "Commission on Judicial Performance" on the envelopes. (Commission Rule 107(a).)

Monitoring

In the course of a preliminary investigation, the Commission may "monitor" the judge and defer termination of a preliminary investigation for a period of up to two years in order to permit observation and review of the judge's conduct. Such review may include periodic courtroom observation, review of relevant documents, and interviews with persons who have appeared before the judge. The judge is given notice that a period of monitoring has been ordered and, under the new rules, is advised in writing of the type of behavior for which the judge is being monitored. Monitoring is used when the preliminary investigation reveals a persistent but correctable problem. One example is demeanor that could be improved. (Rule of Court 904.2(d); Commission Rule 112.)

Formal Proceedings

In cases in which the misconduct, if proven, may warrant public discipline or in cases in which material facts are in dispute, the Commission issues a notice of formal proceedings. (Rule of Court 905; Commission Rule 118.) Under the new rules, formal proceedings may also be instituted when a judge rejects a private or public admonishment and files a demand for formal proceedings. (Rule of Court 904.5; Transitional Rule 3; Commission Rules 114, 116.)

The notice of formal proceedings is a formal statement of charges. Under the old rules, an answer to the notice of charges was due within 15 days after service. (Rule of Court 906.) Under the new rules, a judge files an answer with the Commission within 20 days after service of the notice. One 30-day extension may be obtained by the filing of a written request with the chairperson before expiration of the initial period for responding to the notice. Additional extensions may be granted by the chairperson upon timely written request establishing good cause. (Commission Rule 119(b).)

Pursuant to Proposition 190, the Constitution now permits the Commission to disqualify a judge once formal proceedings are instituted. Disqualification is covered under Commission Rule 120.

Both sets of rules provide for discovery between the parties after a written notice of formal proceedings is issued. Under the old rules, discovery was exchanged after the judge's response to the notice of formal proceedings was due. (Rule of Court 907.5.) Under the new rules, a judge receives discovery from the Commission with the notice of formal proceedings. (Commission Rule 122.)

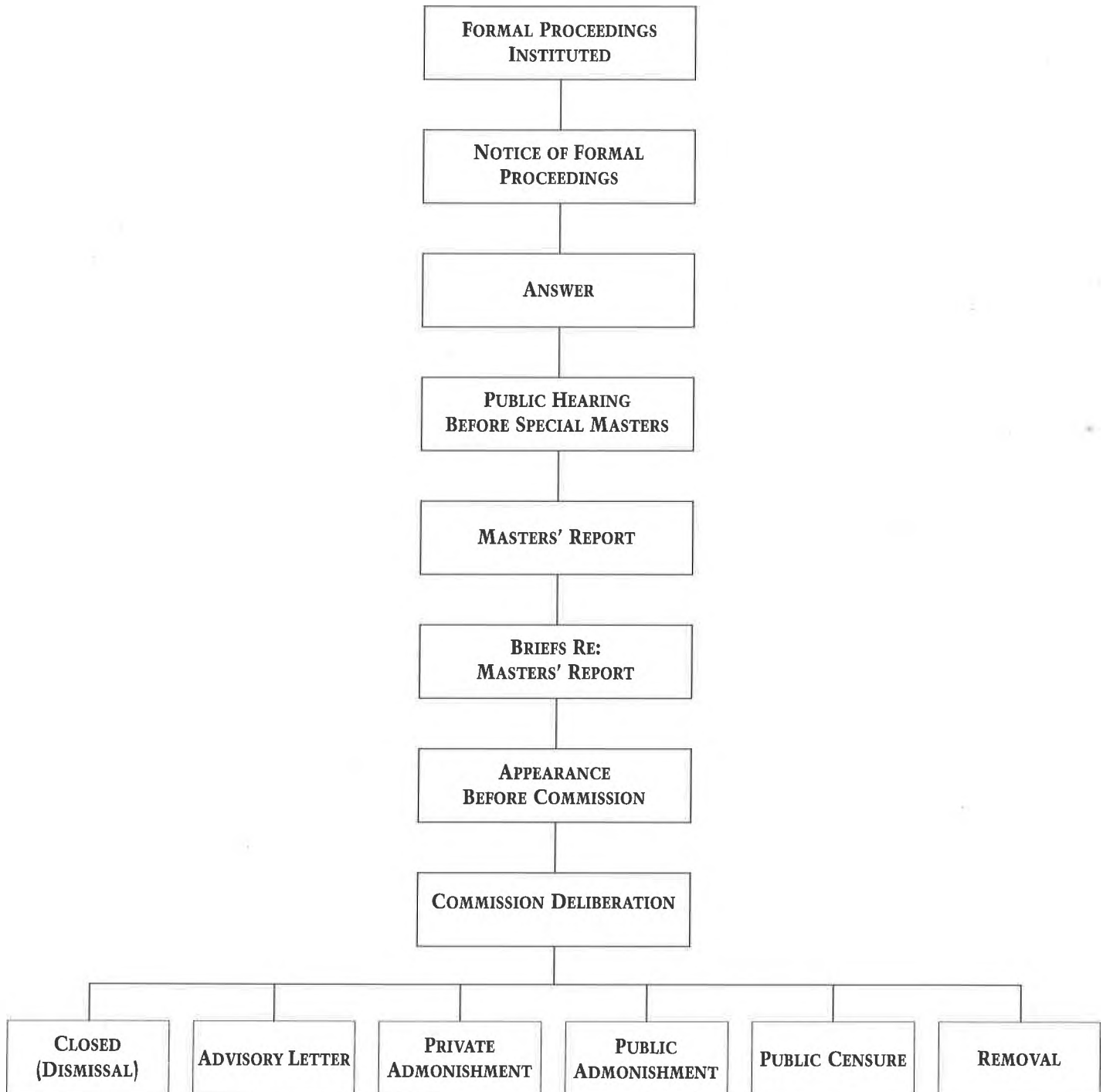
Hearing

Under both sets of rules, after the judge has filed an answer to the charges, the Commission sets the matter for a hearing. (Rule of Court 907; Commission Rule 121(a).) As an alternative to the Commission hearing the case itself, both sets

II.
LEGAL AUTHORITY AND COMMISSION PROCEDURES

FORMAL PROCEEDINGS

(For cases in which formal proceedings were instituted on or after March 1, 1995.*)



* See Appendix 3 for chart on formal proceedings instituted before March 1, 1995.

of rules allow the Commission to request the Supreme Court to appoint three special masters to hear and take evidence in the matter, and to report to the Commission. (Rule of Court 907; Commission Rule 121(b).) Special masters are active judges or judges retired from courts of record.

The judge may be represented by counsel at the hearing. The evidence in support of the charges is presented by an examiner appointed by the Commission (see Section VI). The California Evidence Code applies to the hearings. (Rule of Court 909; Commission Rule 125(a).)

Commission Consideration Following Hearing

Under both sets of rules, following the hearing on the formal charges, the special masters file a report with the Commission. (Rule of Court 912; Commission Rule 129.) The report includes a brief statement of the proceedings and the special masters' findings of fact and conclusions of law with respect to the issues presented by the notice of formal proceedings and the answer thereto. The judge and the examiner are given the opportunity to file objections to the masters' report and points and authorities concerning the issues in the matter. (Rule of Court 913; Commission Rule 130.)

Under the old rules, the Commission was required to afford a hearing only if objections to the masters' report were filed or if the masters' findings were not to be adopted. (Rule of Court 914.) Under the new rules, the judge and examiner are given the opportunity to be heard orally before the Commission upon receipt of the masters' report and any briefs. (Commission Rule 132.)

Under the Commission's new rules, briefs of *amicus curiae* may be considered by the Commission when the briefs are helpful to the Commission in its resolution of the pending matter. (Commission Rule 131.)

Disposition of Cases After Hearing

After a hearing on the formal charges, unless the case is closed without discipline, the Commission may take one of the following actions pursuant to article VI, section 18 of the California Constitution:

- Publicly censure or remove a judge for action that constitutes willful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.
- Publicly or privately admonish a judge found to have engaged in an improper action or dereliction of duty.
- Retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent.

In cases involving former judges, after hearing, the Commission may publicly censure or publicly or privately admonish the former judge. The Constitution also permits the Commission to bar a former judge who has been censured from receiving an assignment from any court.

After formal proceedings, the Commission may also close the matter with an advisory letter to the judge or former judge.

SUPREME COURT REVIEW

In cases in which formal proceedings were commenced before March 1, 1995, upon determining to recommend to the California Supreme Court the censure or removal of a judge, the Commission files a copy of the recommendation, together with the record of the proceeding before the Commission, with the Supreme Court, and mails the judge a notice of the filing and a copy of the recommendation, findings and conclusions. (Rule of Court 919.)

In cases in which formal proceedings were commenced after March 1, 1995, upon petition by the judge, the California Supreme Court is afforded discretionary review of a Commission

determination to admonish, censure or remove a judge, which can include an independent, "de novo," review of the record if the Supreme Court so chooses. (California Constitution, article VI, section 18(d).) Effective December 1, 1996, the Judicial Council adopted Rules of Court 935 and 936 concerning petitions for review of Commission determinations.

A list of citations to a selection of Supreme Court cases involving judicial disciplinary proceedings is included in the appendix.

STATUTE OF LIMITATIONS

Article VI, section 18 of the California Constitution provides that a judge can be censured or removed only for action occurring not more than six years prior to the commencement of the judge's current term (or a former judge's last term).

STANDARD OF PROOF

The standard of proof in Commission proceedings is proof by clear and convincing evidence sufficient to sustain a charge to a reasonable certainty. (*Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 275.)

CONFIDENTIALITY OF COMMISSION PROCEEDINGS

The California Constitution, article VI, section 18, authorizes the Commission to provide for the confidentiality of complaints to and investigations by the Commission.

Under the old rules, in cases in which formal proceedings were instituted on or before February 28, 1995, all papers filed with and proceedings before the Commission were confidential until a record was filed by the Commission in the Supreme Court in connection with a recommendation of censure or removal, or a public reproof was issued by the Commission with the consent of the judge. (Rule of Court 902; California Constitution, article VI, former section 18 (h).) Exceptions existed where the Commission ordered an open hearing in response to

the judge's request for an open hearing (Rule of Court 907.1; California Constitution, article VI, former section 18(f)(1)), or when any charge in the notice of formal proceedings involved moral turpitude, dishonesty, or corruption and the Commission determined that an open hearing was in the pursuit of public confidence and in the furtherance of justice. (Rule of Court 907.2; California Constitution, article VI, former section 18(f)(3).)

Prior to March 1, 1995, the Constitution also permitted the Commission to issue public statements during investigations and formal proceedings under limited circumstances, specified in Rule 902(b). (California Constitution, article VI, former sections 18(f)(3), (g).)

Under the Constitution as amended by Proposition 190, in cases in which formal proceedings were instituted on or after March 1, 1995, the notice of charges, the answer, and all subsequent papers and proceedings are open to the public. (California Constitution, article VI, section 18(j); see also Commission Rule 102(b).) The Commission is also required to provide the text of any confidential disciplinary action to appointing authorities upon request. (California Constitution, article VI, section 18.5.) The Constitution still permits the Commission to make explanatory statements during proceedings and allows the Commission to provide for the confidentiality of complaints and investigations. (California Constitution, article VI, section 18(i)(1), (k).) The Commission's new rules provide that complaints and investigations are confidential, subject to certain exceptions, such as when public safety may be compromised, when information reveals possible criminal conduct, and when judges retire or resign during proceedings. (Commission Rule 102(f), (g), (h), (i), (j), (k).)

In addition, after final resolution of a case, both the old and new rules require the Commission to disclose to the person who filed the complaint that the Commission has either found no basis for action against the judge, has taken an appropriate corrective action (the nature of

II.
LEGAL AUTHORITY AND COMMISSION PROCEDURES

which is not disclosed), or has imposed or recommended public discipline. (Rule of Court 902(b)(5); Commission Rule 102(e).) The name of the judge is not used in any written communications to the complainant unless the proceedings are public. (Rule of Court 902(b)(5); Commission Rule 102(e).)

In the course of a staff inquiry or preliminary investigation, persons questioned or interviewed are advised that the inquiry or investigation is confidential. (Policy Declaration 1.9; *Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 528.)

III. 1996 STATISTICS



COMPLAINTS RECEIVED AND INVESTIGATED

In 1996, there were 1,554 active judicial positions within the Commission's jurisdiction. In addition to disciplining active judges, the Commission has authority to impose certain discipline upon former judges, and the Director-Chief Counsel of the Commission is designated as the Supreme Court's investigator for complaints involving State Bar Court judges.

1996 JUDICIAL POSITIONS

Supreme Court	7
Court of Appeal	88
Superior Courts	789
Municipal Courts	670
Total	1,554

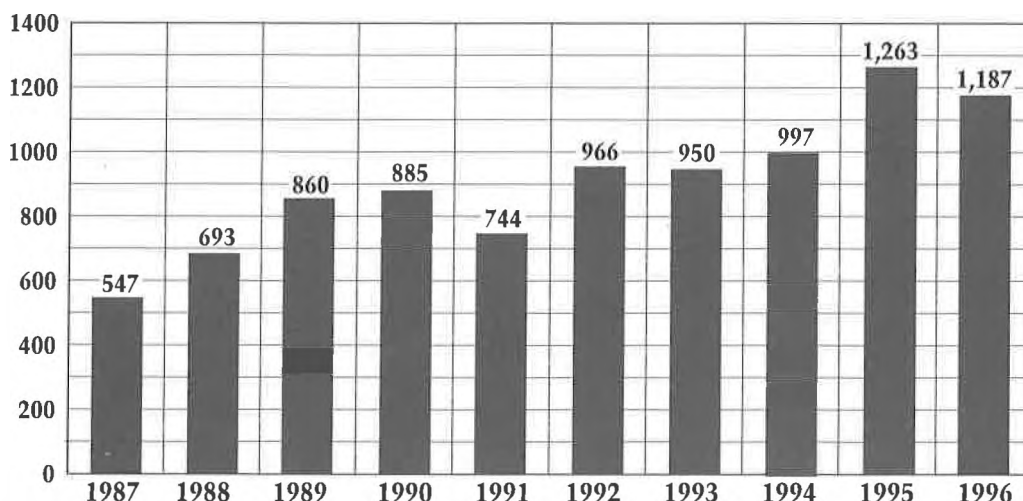
New Complaints

1996 CASELOAD

Cases Pending 1/1/96	128
New Complaints Considered	1,187
Cases Concluded in 1996	1,176
Cases Pending 12/31/96	107
Discrepancies in totals are due to consolidated complaints and/or dispositions.	

In 1996, 1,187 complaints about active California judges and former judges were considered by the Commission for the first time. The complaints set forth a wide array of grievances. A substantial percentage alleged legal error not involving misconduct. Other common allegations were poor demeanor, rudeness and bias.

COMPLAINTS CONSIDERED BY THE COMMISSION 1987 - 1996



III.
1996 STATISTICS

1996 COMPLAINTS

New complaints considered	1,187
Number of authorized judicial positions.....	1,554
Number of active judges named in complaints.....	820
Number of former judges named in complaints.....	10

The Commission also received 490 complaints in 1996 concerning individuals and matters which did not come under the Commission's jurisdiction: federal judges, former judges for matters outside the Commission's jurisdiction, 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.

Staff Inquiries and Preliminary Investigations

In 1996, the Commission ordered 114 staff inquiries under Commission Rules 109 and 110 (former California Rule of Court 904) and 60 preliminary investigations under Commission Rules 109 and 111.

INVESTIGATIONS COMMENCED IN 1996

Staff Inquiries	114
Preliminary Investigations	60

Formal Proceedings

At the beginning of 1996, six formal proceedings were pending before the Commission. All of these formal proceedings had been instituted prior to March 1, 1995, and were governed by the constitutional provisions and rules in effect before the changes implemented by the passage of Proposition 190 took effect. In pre-Proposition 190 cases, the Commission made recommendations for the censure or removal of judges to the Supreme Court, which was responsible for determinations regarding censure or removal.

At the end of 1996, two of the formal proceedings which were instituted prior to March 1, 1995, remained pending before the Commission.

Two Commission recommendations were pending before the Supreme Court at the beginning of 1996. Two additional recommendations were filed with the Supreme Court in 1996 (*In re Gordon* (1996) 13 Cal.4th 472; *Broadman v. Commission on Judicial Performance*, Supreme Court No. S055684). The Supreme Court decided three Commission cases in 1996, and one recommendation remained pending before the Supreme Court at the end of the year. All of these cases were governed by pre-Proposition 190 law.

FORMAL PROCEEDINGS

PRE-PROP 190 CASES

Pending 1/1/96	6
Concluded in 1996.....	4
Pending 12/31/96	2

POST-PROP 190 CASES

Pending 1/1/96	0
Commenced in 1996.....	8
Concluded in 1996.....	2
Pending 12/31/96	6

The Commission instituted formal proceedings in eight cases during 1996 which were subject to the provisions of Proposition 190. In these cases, the Commission has the authority to make censure and removal determinations subject to discretionary review by the Supreme Court upon petition by the judge. As of the end of 1996, six of these formal proceedings remained pending before the Commission. Two cases had been concluded. None of the Commission's post-Proposition 190 cases had been the subject of a review petition to the Supreme Court.

COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the Commission in 1996, regardless of when the complaints were received. Cases pending at the end of 1996 are not included in complaint disposition statistics.

III.
1996 STATISTICS

In 1996, a total of 1,176 cases were concluded by the Commission. The chart on page 15 depicts the disposition in those cases.

SOURCE OF COMPLAINTS CONCLUDED IN 1996

Litigants/Family/Friends	83%
Attorneys	7%
Judges and Court Staff	1%
All Others	9%

Closed Without Action

In approximately 1,024 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). After obtaining and reviewing the information necessary to evaluate the complaint, these cases were closed by the Commission without staff inquiry or preliminary investigation.

Following staff inquiry or preliminary investigation, 102 matters 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.

Closed With Action

After staff inquiry or preliminary investigation, including comment from the judge, action was taken by the Commission in 43 cases. The action taken included two public censures, three public admonishments, four private admonishments and 34 advisory letters. In addition to

the action taken by the Commission, the Supreme Court censured two judges based upon recommendations made by the Commission in matters in which formal proceedings had been instituted prior to the passage of Proposition 190. Each of these case dispositions is summarized in Section IV.

TYPE OF COURT CASE UNDERLYING COMPLAINTS CONCLUDED IN 1996

Criminal	38%
General Civil	21%
Family Law	15%
Small Claims/Traffic	9%
All Others	9%

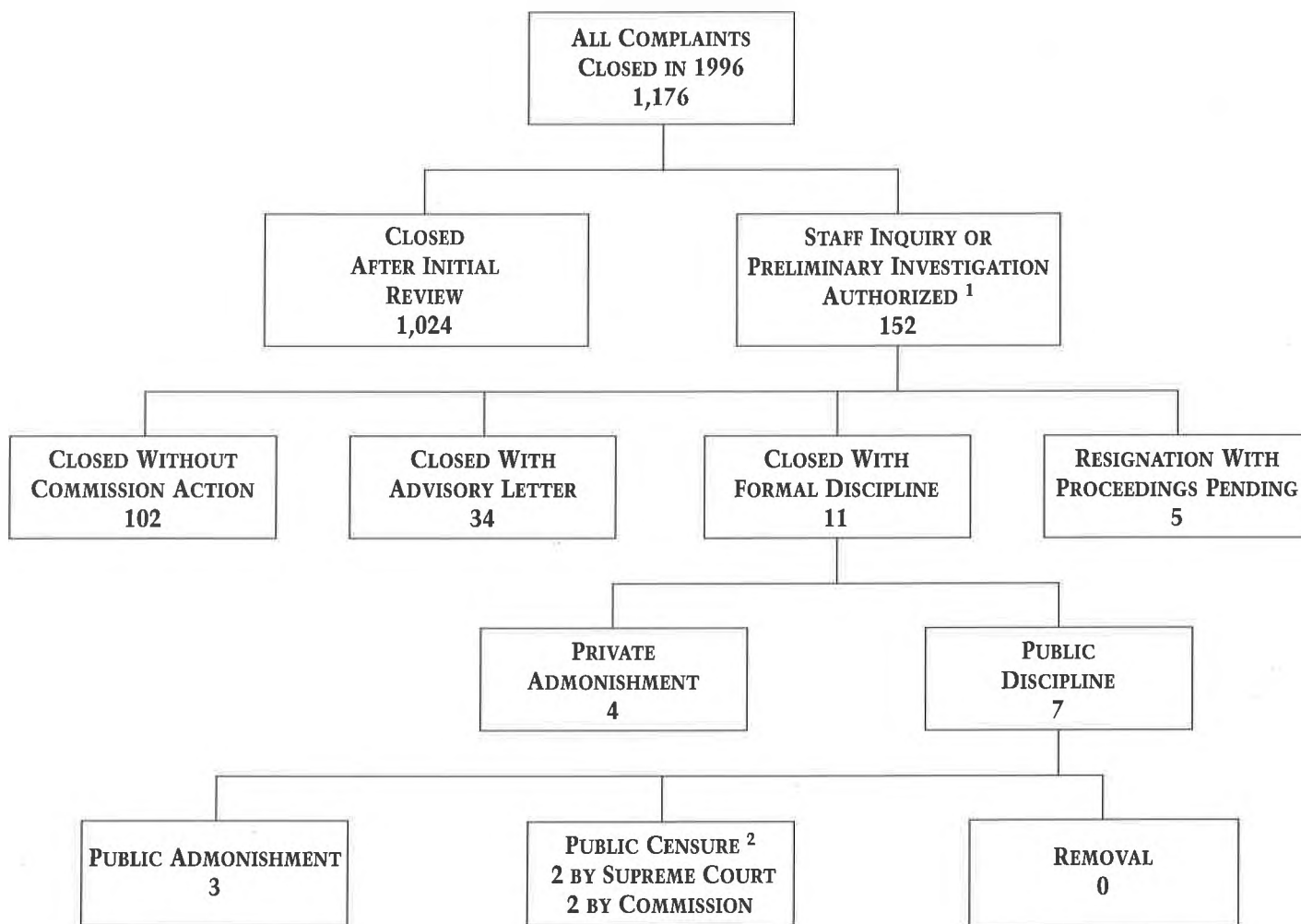
8% of the complaints did not arise out of a court case. These complaints concerned off-bench conduct, such as the handling of court administration and political activity.

Resignations and Retirements

Under Proposition 190, the Commission has authority to continue proceedings after a judge retires or resigns and to impose certain discipline upon the former judge. When a judge resigns or retires during proceedings, the Commission determines whether to continue or close the case and, if the case is closed, whether to refer the matter to another entity such as the State Bar. The Commission closed five matters in 1996 when the judge resigned or retired with an investigation or formal proceedings pending. In one case, the matter was referred to the State Bar.

III.
1996 STATISTICS

1996
COMMISSION CASE DISPOSITIONS



¹ Staff inquiries and preliminary investigations in these matters may have commenced in prior years.

² In formal proceedings instituted before March 1, 1995, the date Proposition 190 took effect, the determination of public censure was made by the Supreme Court. In formal proceedings instituted on or after March 1, 1995, the public censure determination was made by the Commission.

IV. SUMMARY OF ACTION TAKEN IN 1996



PUBLIC DISCIPLINE

Censures by the Supreme Court

In 1996, the Supreme Court censured two judges based upon recommendations made by the Commission.



In re Whitney (1996) 14 Cal.4th 1

The California Supreme Court publicly censured Orange County Municipal Court Judge Claude Whitney on the basis of a censure recommendation by the Commission which Judge Whitney did not contest.

The Court adopted the Commission's findings that Judge Whitney, while conducting his court's in-custody misdemeanor arraignment calendar in 1992, abdicated his responsibility to protect the statutory and constitutional rights of defendants in certain respects. As a matter of routine practice, Judge Whitney failed to exercise his judicial discretion to consider release of defendants on their own recognizance, or to consider grants of probation or concurrent sentencing for defendants pleading guilty or no contest at arraignment. He also refused to appoint counsel to assist defendants at arraignment, and failed to inform defendants entering pleas of guilty or no contest of the negative immigration consequences a conviction could have for a non-citizen.

The Court, like the Commission, concluded that Judge Whitney's refusal to appoint counsel to assist indigent defendants at arraignment constituted willful misconduct in office, and con-

cluded that the remaining acts constituted, at most, conduct prejudicial to the administration of justice.

The Court noted evidence in the record that Judge Whitney was considered diligent and hard-working, that he had a reputation of thoughtfulness on legal issues, that he was generally well-regarded among the bench and bar, and that he had good relationships with court staff. The Court also stated that the judge had improved his conduct and had acknowledged that he erred in several respects. In addition, the Court pointed out that the misconduct charged ended in 1992, well before the disciplinary proceedings were commenced, and that Judge Whitney responded honestly and appropriately to the Commission's inquiry and disciplinary proceedings.



In re Gordon (1996) 13 Cal.4th 472

The California Supreme Court publicly censured Los Angeles County Superior Court Judge Norman Gordon on the basis of a censure recommendation by the Commission which Judge Gordon did not contest.

The Court adopted the Commission's findings that between April 1990 and October 27, 1992, Judge Gordon on several occasions made sexually suggestive remarks to and asked sexually explicit questions of female staff members, referred to staff members using crude and demeaning names and descriptions and an ethnic slur, referred to a fellow jurist's physical attributes in a demeaning manner, and mailed a

IV.
SUMMARY OF ACTION TAKEN IN 1996

sexually suggestive postcard to a staff member addressed to her at the courthouse. It was noted that none of the conduct occurred while court was in session or while the judge was on the bench conducting the business of the court.

The Court, like the Commission, concluded that the judge's actions constituted conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Court stated, "While the actions were taken in an ostensibly joking manner and there was no evidence of intent to cause embarrassment or injury, or to coerce, to vent anger, or to inflict shame, the result was an overall courtroom environment where discussion of sex and improper ethnic and racial comments were customary." (13 Cal.4th at p. 474.)

Censures by the Commission

Under Proposition 190, the Commission has authority in cases in which formal proceedings were instituted on or after March 1, 1995, to impose the sanction of public censure. In formal proceedings instituted before Proposition 190 took effect, public censure was imposed by the Supreme Court upon recommendation by the Commission, as referenced above. The Commission imposed two public censures in 1996. The full text of these decisions is available from the Commission office.



***In re Hyde* - Commission Decision and Order of Public Censure, May 10, 1996**

The Commission severely censured Alameda County Municipal Court Judge D. Ronald Hyde pursuant to a stipulation between the judge and the Commission.

The Commission accepted certain stipulated facts concerning Judge Hyde's conduct.

It was stipulated that Judge Hyde asked certain court employees on a number of occasions to access Department of Motor Vehicles records for purposes which were personal and not related to court business. When the court's clerk/ad-

ministrators sent a memorandum to all court employees asking them to acknowledge the restrictions on use of DMV records, Judge Hyde, believing himself not to be a "court employee," declined to sign the acknowledgment, and continued accessing DMV records for personal purposes.

Over a period of several years, Judge Hyde used the services of a court secretary for work unrelated to court business; this included typing, photocopying, and other services in connection with a paralegal class the judge taught at a local college, and similar services for a club to which the judge belonged and for a charity. This work consumed the equivalent of approximately 74 days. Judge Hyde also used the services of a court secretary to send approximately 48 personal letters, most of which were sent on official court stationery. He also used the secretary's services in typing an affidavit he wished to submit in a personal capacity, and in typing an application for a federal judgeship, which later was driven to San Francisco by a court attendant using a county vehicle. The clerk/administrator spoke to the judge about his use of the court secretary's time. In one conversation, the clerk/administrator formed the impression that the judge was trying to intimidate him regarding his job security. After another conversation regarding the judge's use of the secretary's services for the college class, the judge generally stopped using the secretary's services for this purpose.

Judge Hyde sometimes brought his elementary school-aged daughter to court, where the court secretary and other employees assisted in watching her activities. A court employee once picked the judge's daughter up from a dental appointment during a break, when the judge could not leave court. A court attendant picked up forms relating to the judge's candidacy for reelection while delivering some evidence; the employee believed that the judge had asked that the employee spend personal time picking up the forms.

Judge Hyde used the county facsimile machine to send approximately 57 personal fac-

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simile transmissions to Idaho. Court envelopes and postage were used to send materials in connection with the paralegal course taught by the judge.

Over a five-year period, Judge Hyde used official court stationery to send letters to business entities or public officials under circumstances in which the use of court stationery could have been interpreted to lend the prestige of judicial office to personal or private interests. This included sending a letter to an insurance company about a claim and a letter to a publishing company about a billing dispute.

Over a four-year period, Judge Hyde failed to report certain items on his annual verified Statement of Economic Interests. The judge represented, and the Commission accepted as true, that the failure was inadvertent and amended statements would be filed.

Judge Hyde made sexually related comments to female court employees which were deemed to be offensive by some court employees who overheard the statements. For example, during a conversation with another judge and two division chiefs about court policies and procedures, Judge Hyde commented to a female division chief, "Are we having a PMS day?"

Over a two-year period, Judge Hyde was absent from the courthouse for six and three-quarters days without reporting them as vacation time. Additionally, there were other days when Judge Hyde absented himself from the courthouse without reporting the time as vacation time and regularly left the courthouse when the Friday calendar was completed, sometimes as early as noon. On some days when Judge Hyde was absent, as well as on some days when he was present, the county incurred the expense of utilizing a commissioner to hear civil trials, small claims matters, or traffic matters.

It was stipulated that none of the acts described above concerned the manner in which Judge Hyde conducted his courtroom proceedings or deported himself while on the bench. It also was stipulated that Judge Hyde had the

impression that utilizing the work time of court personnel did not result in the impairment or non-production of necessary court business. The Commission stated that Judge Hyde represented (and the Commission accepted as true) that he had taken measures to ensure that neither court personnel nor county equipment would be utilized in any manner or in any activity that was not strictly court-related.

The Commission noted that Judge Hyde had represented in a signed statement that he was aware of the inappropriateness of his actions, and assured the Commission that those actions would not be repeated in the future. The Commission determined that, in view of the judge's response to the charges and his assurance that the conduct had ceased and would not resume, discipline less than removal from office would be appropriate. The Commission therefore agreed to the judge's proposal that he receive a severe public censure. The Commission concluded that the appropriate discipline for the repeated instances of conduct prejudicial to the administration of justice established by the stipulated facts was severe public censure.

WYX
GVS

***In re Ormsby - Commission Decision and
Order of Public Censure, March 20, 1996
(modified May 17, 1996)***

The Commission severely censured Judge William M. Ormsby, a judge of the Los Angeles Municipal Court, Inglewood Judicial District, pursuant to a stipulation between the judge and the Commission.

The Commission accepted certain stipulated facts concerning Judge Ormsby's conduct.

It was stipulated that in three instances, Judge Ormsby ordered individuals remanded to custody for whispering in court, without following proper contempt procedures. Judge Ormsby ordered a fourth individual remanded for appearing to fall asleep in court, without following proper contempt procedures.

On occasion, when represented defendants

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who had failed to appear and had had bench warrants issued for their arrest later appeared in court, Judge Ormsby refused to let counsel speak for them, stating that because bench warrants had been issued, they no longer had counsel.

Judge Ormsby imposed sentence on a defendant in the absence of the defendant's retained counsel, although Judge Ormsby knew that the defendant was represented by counsel.

Judge Ormsby told a defendant that the services of the public defender's office were for trials and that if he wanted drug diversion he could not have a deputy public defender.

In four separate matters, Judge Ormsby was rude and insulting to a deputy public defender in open court, and on some occasions in the presence of the attorney's other clients.

Judge Ormsby suggested that a deputy district attorney might have committed misconduct by asking to interview the wife of a defendant before she testified at trial. When the deputy stated that if Judge Ormsby believed he had committed misconduct it would be appropriate to refer the matter to the State Bar, Judge Ormsby replied, "I don't think because of your inexperience or because of your ignorance that I will do that."

Judge Ormsby forced a defendant appearing without counsel for arraignment on theft charges into an unnecessary colloquy regarding what he was learning in school. The judge questioned him in a manner which was demeaning, visibly embarrassing the defendant in open court.

On occasion, Judge Ormsby put inordinate pressure on prosecutors to offer dispositions and on defendants to enter guilty pleas. On other occasions, Judge Ormsby engaged in conduct which appeared aimed at avoiding conducting preliminary hearings in cases which involved multiple counts or multiple defendants. In such cases, Judge Ormsby pressured defendants to waive preliminary hearings and prosecutors to offer dispositions.

On occasion, when defendants scheduled to appear in court for pretrial conferences were late,

Judge Ormsby ordered them remanded to custody upon their arrival in court; Judge Ormsby then advised that if the defendant was willing to plead guilty he would be released that day, but if the defendant wished a trial, the trial would be set within 30 days and the defendant kept in custody until trial.

An in-custody defendant was offered an opportunity to plead guilty for credit for time served; when the defendant refused the offer and opted for a jury trial, Judge Ormsby stated that he would proceed with jury selection that day (a Tuesday) and then recess the trial until the following Monday, with the defendant to remain in custody.

Judge Ormsby criticized a deputy public defender for filing motions to suppress under Penal Code section 1538.5. Judge Ormsby stated that the question of standing was going to come up, whether or not it was raised by the prosecution. In 1993, Judge Ormsby, on his own motion, refused to allow the deputy public defender to call witnesses on the issue of standing in a motion to suppress. The appellate department of the superior court found this to be reversible error.

At a jury trial, Judge Ormsby refused to allow a defendant charged with battery to call a police officer to testify about an inconsistent statement he heard the alleged victim make at the time of the incident.

Judge Ormsby refused to accept written or oral waivers pursuant to *In re Tahl* (1969) 1 Cal.3d 122, in a driving under the influence case in which the defendant entered a guilty plea. When the prosecutor pointed out that it was necessary that waivers be in the record in order for the conviction to be used as a prior conviction in any subsequent proceedings, Judge Ormsby indicated that he did not care.

Judge Ormsby frequently and arbitrarily dismissed misdemeanor cases on the day set for trial if the prosecution was unable to proceed that day, without giving consideration to the prosecution's requests to trail the cases within

the 10-day grace period set forth in Penal Code section 1382. Judge Ormsby stopped dismissing cases under these circumstances in 1994.

Judge Ormsby remanded a defendant into custody for being late to court without giving him or the deputy public defender representing him an opportunity to explain his tardiness. The attorney filed a motion for disqualification pursuant to Code of Civil Procedure section 170.6. Judge Ormsby continued the case to the following day before another judge, rather than transferring it immediately to another judge.

Judge Ormsby accused a deputy public defender of unethical conduct and of trying to commit a fraud upon the court in connection with the deputy's attempt to disqualify Judge Ormsby. Judge Ormsby denied the disqualification motion, but recused himself from further proceedings in the case. Thereafter, without giving the attorney an opportunity to respond, Judge Ormsby stated his intention to refer the attorney to the State Bar and ordered the attorney never to appear in his courtroom again. The next day, when the attorney's supervisor went to Judge Ormsby to discuss the situation, the judge threatened to have the deputy arrested if he appeared, and ordered the supervisor physically removed from the courtroom.

Judge Ormsby unnecessarily threatened a deputy public defender with contempt for conferring with in-custody defendants instead of out-of-custody defendants whose cases the judge wished to resolve.

Judge Ormsby appeared to treat a defendant harshly because he was irritated that the defendant had not been interviewed by the public defender in a timely manner as he had directed.

It was stipulated that none of the acts by Judge Ormsby, described above, involved personal corruption or gain. The Commission also noted that Judge Ormsby had acknowledged his mistakes and appeared to have significantly improved his judicial conduct, and that a medical condition may have contributed to some of the described conduct.

The Commission, after independent review of the facts set forth above, concluded that Judge Ormsby's conduct constituted willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission stated that the stipulated facts warranted discipline, and could warrant removal from office. The Commission was persuaded, however, that Judge Ormsby, having admitted his misconduct, was genuinely repentant and unlikely to resume the conduct. The Commission therefore agreed to a disposition of severe public censure; the judge agreed not to seek further review. The Commission determined to impose a severe public censure.

Public Admonishments by the Commission

Under Proposition 190, the Commission may publicly or privately admonish a judge for improper action. Public admonishments are issued in cases involving more serious improper action. In 1996, the Commission publicly admonished three judges. The full text of these decisions is available from the Commission office.



Public Admonishment of Judge Charles W. Stoll, June 3, 1996

The Commission ordered Judge Charles W. Stoll, a judge of the Los Angeles County Superior Court, North Central District, publicly admonished for improper conduct within the meaning of article VI, section 18(d) of the California Constitution.

The Commission found that Judge Stoll had failed to disqualify himself in cases in which the Walt Disney Company was a litigant although his disqualification was required, based upon his ownership of 1,000 shares of Disney stock valued at approximately \$45,000. The Commission noted that Code of Civil Procedure section 170.1(a)(3) provides that a judge shall be disqualified if the judge has a financial interest in the subject matter in a proceeding or in a party to

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the proceeding, and section 170.5(b) provides that " 'financial interest' means ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value in excess of one thousand five hundred dollars (\$1,500)." The Commission also pointed out that at the time of the judge's conduct, Canon 3E of the California Code of Judicial Conduct provided that a judge "should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned or in a proceeding in which disqualification is required by law." The Commission found that Judge Stoll ruled in four cases in which Disney was a litigant.

The Commission found that Judge Stoll's explanation that he had failed to familiarize himself with the provisions of Code of Civil Procedure section 170.5(b) served to aggravate, rather than mitigate, his misconduct in failing to disqualify himself.

In a separate matter, the Commission found that on January 17, 1995, and February 3, 1995, Judge Stoll wrote two letters on court letterhead to a collection service regarding a claim against a member of the judge's family which became the subject of litigation, in an effort to influence the recipient. The Commission determined that Judge Stoll's conduct was contrary to Canon 2B of the Code of Judicial Conduct, which at the time of the judge's conduct provided that a judge "should not lend the prestige of judicial office to advance the private or personal interests of the judge or others."



***Public Admonishment of
Judge Stephen Drew, July 29, 1996***

The Commission publicly admonished Judge Stephen Drew, a judge of the Tulare County Municipal Court, Dinuba Division, for improper action pursuant to article VI, section 18(d) of the California Constitution. In determining that public admonishment and not a more severe sanction was the appropriate disposition in this

matter, the Commission took into account reports from individuals whose recent experiences with Judge Drew had led them to the view that there had been substantial improvement in his judicial performance, as well as Judge Drew's assurance that he would refrain from improper conduct in the future.

The Commission found that Judge Drew denied a defendant his right to appointed counsel after using improper criteria for determining whether he was indigent. The judge had refused to appoint counsel for an unemployed construction worker who indicated that he was not working and was living with another person who was supporting him, on the ground that the defendant was potentially employable. Rather than appoint counsel, Judge Drew ordered the defendant to apply for work so that he might be able to retain private counsel. When the defendant later failed to appear in court for a scheduled pretrial conference, Judge Drew issued a bench warrant, and the defendant was remanded to custody. After the defendant was taken into custody, Judge Drew again improperly refused to appoint counsel for him.

The Commission noted that although judges have considerable discretion in the determination of a defendant's ability to hire private counsel, Judge Drew should have known that denying defendants appointed counsel based upon the ability of others to pay for their counsel, or upon the possibility of future employment, was improper. The Commission pointed out that the constitutional right to counsel at all stages of criminal proceedings is fundamental and not subject to reasonable differences of opinion. Moreover, once a defendant is in custody, the ability to find employment ceases. (See *In re Smiley* (1967) 66 Cal.App.2d 606.)

The Commission concluded that Judge Drew's conduct was inconsistent with Canon 2A of the Code of Judicial Conduct, which at the time of the judge's conduct provided 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

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impartiality of the judiciary."

The Commission also found that Judge Drew acted unjudicially in handling peremptory challenges under Code of Civil Procedure section 170.6. In one instance, in the case referred to above, the public defender appeared for the defendant after he was taken into custody; the public defender filed a peremptory challenge of Judge Drew under Code of Civil Procedure section 170.6. Judge Drew refused to honor this disqualification and ordered it "unfiled" because he had not allowed appointment of the public defender's office, despite the public defender's authority to represent the in-custody defendant.

In another case, Judge Drew cited a private defense attorney for contempt based on failure to appear for confirmation of a misdemeanor jury trial, even though the attorney had another attorney appear on his behalf. The cited attorney filed a peremptory challenge under Code of Civil Procedure section 170.6 against Judge Drew to disqualify him from hearing the underlying criminal case. Judge Drew subsequently denied the challenge as untimely and dismissed the contempt charge, but ordered a hearing on sanctions against the attorney. The following day, the attorney obtained a stay order against Judge Drew proceeding with the underlying jury trial. While the stay was under review, Judge Drew had court staff attempt to contact the superior court judge who issued the stay regarding legal support for his actions. The same attorney subsequently filed a challenge for cause against Judge Drew pursuant to Code of Civil Procedure section 170.1. After a denial by Judge Drew, another judge granted the challenge and disqualified Judge Drew from hearing the case. Judge Drew, although he had no standing to do so, then improperly sought to disqualify the judge who had been assigned to hear the sanctions matter, thereby heightening the impression that he had become personally embroiled in the proceeding.

In a third case, after a peremptory challenge under Code of Civil Procedure section 170.6 was filed against Judge Drew, the judge continued to handle the arraignment of the four defendants

in the case over their objection. Judge Drew entered not guilty pleas before assigning the matter to another judge. Judge Drew's actions in the case interfered with the defendants' rights to seek a continuance and to file a demurrer to the complaint. The pleas were subsequently vacated by a reviewing judge.

The Commission determined that Judge Drew's actions as described above were contrary to Canon 3E of the California Code of Judicial Conduct, which at the time of the judge's conduct provided: "A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, or in a proceeding in which disqualification is required by law." (See also *Spruance v. Commission on Judicial Qualifications* (1975) 13 Cal.3d 778, 797: "[I]t goes without saying that as a judge, petitioner should have known the proper method for handling a motion for disqualification.") In addition, Judge Drew's actions were contrary to Canon 2A of the California Code of Judicial Conduct, which at the time of the judge's conduct provided that a judge "should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

In certain matters involving the filing of peremptory challenges, Judge Drew departed from his usual practice of calling cases handled by private counsel at the beginning of the calendar, thus deliberately causing delays for attorneys who had filed challenges. The Commission determined that this conduct was contrary to Canon 2A, quoted above, and Canon 3, which at the time of the judge's conduct provided that a judge "should perform the duties of judicial office impartially."

Judge Drew also displayed bias against attorneys who had filed peremptory challenges against him, and appeared to retaliate against those attorneys by barring them from areas of the courthouse near his chambers open to other attorneys.

The Commission determined that Judge Drew's conduct in this regard was contrary to

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Canon 2A, quoted above. In mitigation, the Commission noted that Judge Drew appeared to have ceased any retaliatory practices and had assured the Commission of his commitment to refrain from impropriety in handling and reacting to challenges.

Judge Drew also appeared to exhibit animosity toward the public defender's office and certain attorneys in that office. While not acting in a judicial capacity, the judge made improper, derogatory comments about the public defender's office and attorneys in that office. He also appeared to display personal embroilment and animosity toward the public defender's office by writing to the public defender and accusing his office of taking a case for improper reasons. The Commission determined that Judge Drew's conduct as described above constituted an improper display of personal animosity toward the public defender's office and embroilment in matters handled by that office. The Commission concluded that this conduct was contrary to Canon 2A of the California Code of Judicial Conduct.

Finally, in one matter involving the imposition of sanctions, Judge Drew acted in excess of his judicial authority, contrary to Canon 2A of the Code of Judicial Conduct.



***Public Admonishment of Judge
Thomas A. Smith, November 25, 1996***

The Commission on Judicial Performance ordered Judge Thomas A. Smith, a judge of the El Dorado County Municipal Court, Cameron Park Division, publicly admonished for improper actions within the meaning of article VI, section 18 of the California Constitution.

The Commission found that Judge Smith abused his judicial office in 1995 when he utilized the court's computer to obtain for and disclose to a friend confidential information from computerized records of the Department of Motor Vehicles. The Commission noted that the California Vehicle Code provides penalties

(a fine not exceeding \$5,000 or imprisonment in the county jail not exceeding one year, or both, and civil penalties up to \$100,000) for improper disclosure of this information. The Commission determined that the judge's actions on behalf of his friend were improper and unlawful, and constituted disregard of the Code of Judicial Conduct in effect in 1995. At the time of the judge's conduct, Canon 2 provided: "A judge should avoid impropriety and the appearance of impropriety in all of the judge's activities." Canon 2A provided: "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 2B provided: "A judge should not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment." The Commission noted that the Supreme Court in *McCullough v. Commission on Judicial Performance* (1989) 49 Cal.3d 186, 194, stated: "Using the power of the bench to benefit a friend is a casebook example of wilful misconduct."

In arriving at its disposition, the Commission took into consideration that the judge's conduct was limited to a single instance, the judge candidly admitted wrongdoing and expressed recognition that his action demonstrated "a lapse of good judgment," and the judge said he had vowed to never again access Department of Motor Vehicles information for an unofficial purpose.

PRIVATE ADMONISHMENTS

Private admonishments are designed in part to correct problems at an early stage, thus serving the Commission's larger purpose of maintaining the integrity of the California judiciary.

A private 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 1996, the Commission imposed four private admonishments. The admonishments are

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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 because these examples are intended in part to educate judges and assist them in avoiding inappropriate conduct, the Commission believes it is better to describe them in abbreviated form rather than omit them altogether.

1. A judge appeared to resort to stereotypes in repeated disparaging comments about the credibility of a witness.
2. A judge displayed rudeness and prejudgment in cases and interfered in the official business of a governmental agency.
3. A judge was arrested for driving under the influence and convicted on a plea of no contest. In mitigation, the judge voluntarily reported the details of the arrest and conviction to the Commission.
4. A judge improperly used the prestige of office in interceding on behalf of a friend with county officials.

ADVISORY LETTERS

The Commission advises caution or expresses disapproval of a judge's conduct in an advisory letter. The Commission has issued advisory letters in a variety of situations. An advisory letter may be issued when the impropriety is isolated or relatively minor, or 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 when there is actionable misconduct offset by substantial mitigation.

In 1996, the Commission issued 34 advisory letters. The advisory letters are summarized below.

1. A judge evidenced personal embroilment in court matters pending before the judge and made inappropriate and offensive comments to liti-

gants, counsel, witnesses, court personnel, and members of the public. The judge's conduct improved significantly during a two-year period of monitoring under former rule 904.2.

2. In scheduling a sentencing hearing, a judge did not make an effort to accommodate the parents of a murder victim who had expressed a desire to be present and heard at a sentencing hearing pursuant to Penal Code sections 679.02 and 1191.1. The Commission acknowledged that the judge had encountered difficulties in scheduling the hearing.
3. A judge was habitually late starting court while handling a civil law and motion calendar.
4. A judge engaged in activities on behalf of a county vendor despite a possible conflict of interest.
5. A judge ruled on a motion in a criminal case after discussing the merits of the motion with a judge who had just been disqualified from the case.
6. A judge did not rule on a small claims appeal for four months.
7. A judge supervising the county grand jury allowed a member of the judge's immediate family to be appointed to the grand jury.
8. While a motion to disqualify a judge was pending, a fellow judge ordered the pro per criminal defendant who had filed the motion to be transported to court daily despite the absence of any scheduled proceedings. The judge's conduct appeared to be retaliatory.
9. A judge abused the contempt power and improperly responded to requests to use personal recording devices in a misdemeanor case.
10. A judge addressed female court employees in an offensive manner and appeared to show favoritism in considering a court appointment. The judge was discourteous to a criminal defendant and appeared to threaten to intercede in another judge's sentencing in the case. On several occasions, the judge violated Canon 4C(3)(d) in the judge's involvement in the fund-raising activities of charitable organizations.

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11. A judge allowed the judge's name to appear in promotional material for a business venture undertaken by a for-profit business and accepted brochures from the business for distribution from the courtroom.

12. A judge heard an ex parte request for temporary guardianship although informed that neither of the natural parents nor their attorneys had received notice of the request.

13. A judge made disparaging remarks about an individual associated with a case when the individual was not present. The judge's comments gave an appearance of personal bias. In mitigation, the judge acknowledged the problems with the conduct.

14. A judge condoned courtroom practices which resulted in denial of rights to defendants in criminal cases. The judge also made remarks and jokes which appeared to display a lack of patience, dignity and courtesy.

15. A judge took retaliatory actions against two attorneys who filed disqualification motions and berated another attorney for agreeing to have a case heard by another judge. In a separate matter, in open court, the judge criticized the performance of attorneys who had earlier appeared before the judge. In other matters, the judge made intimidating comments to a prospective juror and criticized a jury after its verdict.

16. A judge commented to a journalist about a pending case.

17. A judge met with the attorney for one party in a locked courtroom before the case was heard. In another case, without legal cause, the judge refused to hold a hearing regarding charges of violating restraining orders. The judge also made threatening, disparaging and undignified comments to litigants.

18. A judge made comments during trial which may have fostered an impression of gender bias. In another matter, the judge appeared to recuse for improper reasons. The judge also made public comments about a pending case.

19. A judge questioned an attorney in open court

about conduct outside of court not involving the case before the judge; the questioning appeared to accuse the attorney of unethical and possibly criminal conduct. The judge was aware that the matter had already been referred to the State Bar. On a separate occasion, the judge threatened a courtroom audience with monetary sanctions if they left while court was in session, and appeared to bar those who left from returning.

20. After recusal from the case, a judge made humiliating statements in open court to a teenage litigant and the litigant's father.

21. A judge improperly handled appointment of counsel in some criminal matters. The judge also solicited an incriminating statement from a defendant at arraignment. In another matter, the judge dismissed a misdemeanor case based on an ex parte contact by the defendant. In a small claims matter, the judge, without sufficient cause, threatened one of the litigants with perjury charges.

22. A judge delayed ruling on submitted matters in five separate cases. In two of the cases, the judge did not rule for six months; the judge had improperly "resubmitted" the matters, obtaining additional time under the 90-day rule. In the other three cases, the judge did not rule for four months. There were mitigating circumstances.

23. A judge was rude and discourteous to attorneys and litigants and, in one case, improperly refused to honor a peremptory challenge. The judge's demeanor improved significantly during a two-year period of monitoring under former rule 904.2(d).

24. A judge engaged in improper contact with a witness and participated in joking at the expense of a defendant. The judge also made non-public comments which potentially could have affected the proceeding.

25. A judge admitted violations of the Political Reform Act. Although the judge was negligent in failing to take any steps to ensure that the judge's inexperienced campaign committee complied with the law, there was no evidence of in-

IV.
SUMMARY OF ACTION TAKEN IN 1996

tent to conceal campaign finance information.

26. A judge initiated an ex parte communication with a lawyer suggesting a course of action to pursue in a case.

27. A judge did not rule for one year on a petition for writ of habeas corpus. While some of the delay was attributable to a clerical error, the judge failed to issue a timely ruling once the error was discovered and ruled only after inquiries by the Court of Appeal.

28. A judge was rude and discourteous on several occasions to attorneys and litigants.

29. A judge used court resources for personal purposes.

30. A judge failed to disclose that the judge was related to and socialized with an attorney appearing before the judge.

31. In annual Statements of Economic Interests filed with the Fair Political Practices Commission, a judge failed to disclose a real property interest and certain income.

32. A judge engaged in ex parte contacts with an individual concerning a disputed issue in a case pending before the judge.

33. A judge's comments to prospective jurors in one case appeared to discourage them from seeking to be questioned in private about sensitive matters. In other proceedings, the judge's comments to litigants could have fostered an impression of gender bias. The judge also engaged in an ex parte discussion concerning a case.

34. A judge inordinately delayed decisions in two related small claims matters. In mitigation, the judge implemented a tracking system for submitted cases.

V. VOLUNTARY DISABILITY RETIREMENT



In addition to its judicial disciplinary duties, the Commission reviews judges' applications for disability retirement. The statutory provisions covering judicial disability retirement are set forth in Government Code sections 75060 through 75064. Commission Policy Declaration 4.4 delineates Commission procedures in disability retirement matters.

At the beginning of 1996, four disability re-

tirement applications were pending before the Commission. The Commission received three additional applications during the year.

The Commission granted three disability retirement applications during 1996. One application was denied in 1995 and appealed. The judge withdrew the appeal in 1996. Three applications remained pending before the Commission at the close of 1996.

VI. COMMISSION ORGANIZATION, STAFF AND BUDGET



COMMISSION ORGANIZATION AND STAFF

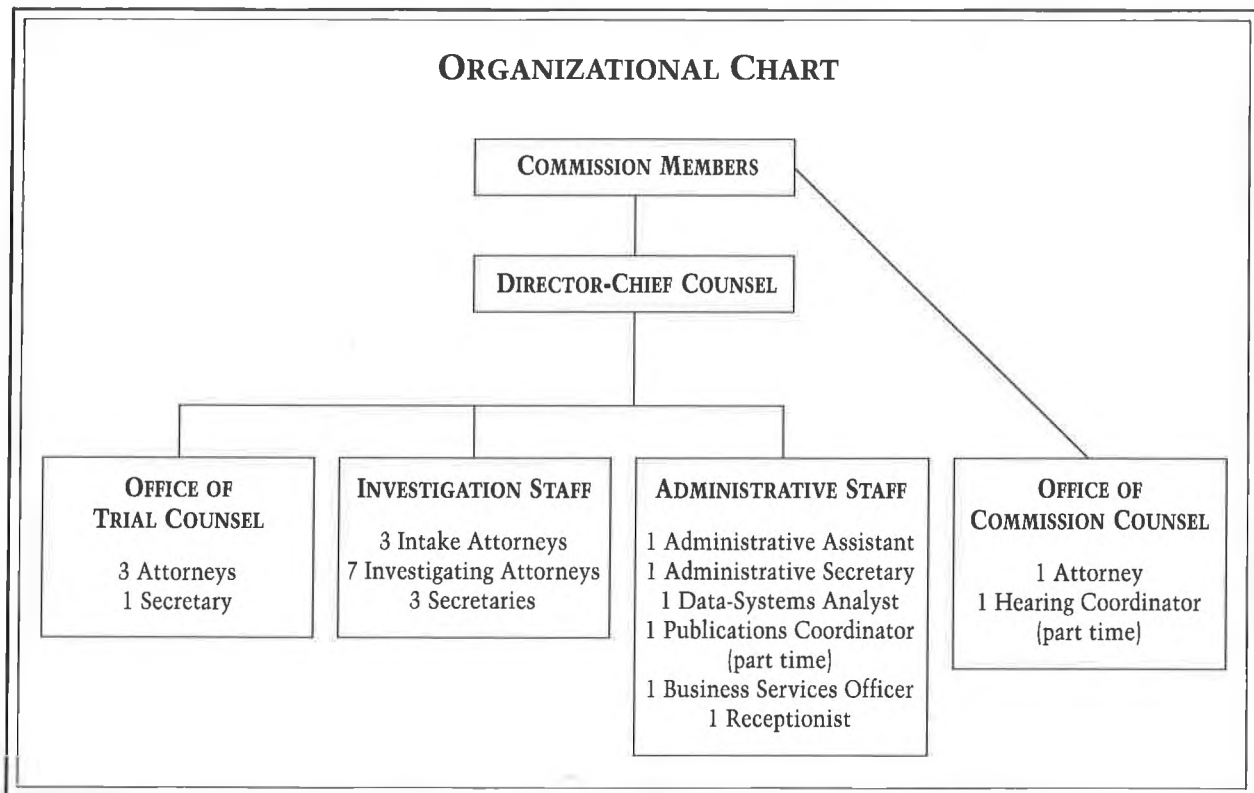
The Commission employs a staff of 25, including 15 attorneys and 10 support staff. All Commission staff are state employees.

The Director-Chief Counsel heads the agency and reports directly to the Commission. The Director-Chief Counsel oversees the intake and investigation of complaints and the Commission examiners' handling of formal proceedings. The Director-Chief Counsel is also the primary liaison between the Commission and the judiciary, the public and the media. Victoria B. Henley has served as Director-Chief Counsel since 1991.

The Commission's legal staff includes 10 attorneys responsible for the evaluation and investigation of complaints. Of these, three attorneys are primarily responsible for reviewing and evaluating new complaints, and seven attorneys are primarily responsible for conducting staff inquiries and preliminary investigations.

Three Trial Counsel serve as examiner during formal proceedings. The examiner is responsible for preparing the case for hearing and presenting the evidence that supports the charges before the special masters. The examiner handles briefing regarding the special masters'

ORGANIZATIONAL CHART



VI.
COMMISSION ORGANIZATION, STAFF AND BUDGET

report, and presents the case orally and in writing in any hearing before the Commission and the California Supreme Court.

Commission Counsel reports directly to the Commission. Commission Counsel is responsible for coordination of formal hearings and assisting the Commission in its deliberations during its adjudication of contested matters. Commission Counsel does not participate in the investigation or prosecution of cases. Roland W. Selman has served as Commission Counsel since 1995.

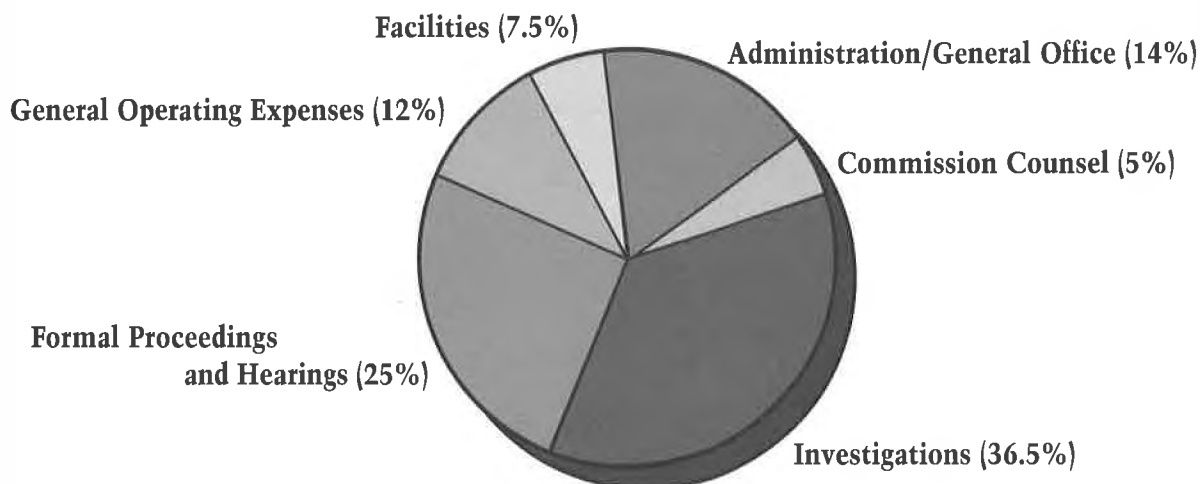
BUDGET

As mandated by Proposition 190, the Commission's budget is separate from the budget of any other state agency or court. For fiscal year 1996-97, the Commission's budget allocation is \$2,997,000.

During the 1995-96 fiscal year, approximately 36% of the Commission's budget supported the intake and investigation functions of the Commission and approximately 25% of the Commission's budget was used in connection with formal proceedings. The remaining 39% went toward sustaining the general operations of the Commission, including facilities, administrative staff, supplies, and security.

COMMISSION ON JUDICIAL PERFORMANCE 1995-96 BUDGET

Percent of \$2,736,712 (Actual Expenditure)



APPENDIX 4.

5-YEAR SUMMARY OF COMMISSION ACTIVITY

NEW COMPLAINTS CONSIDERED BY COMMISSION	1992	1993	1994	1995	1996
	966	950	997	1,263	1,187

COMMISSION INVESTIGATIONS COMMENCED	1992	1993	1994	1995	1996
Staff Inquiries	136	121	120	163	114
Preliminary Investigations	15	35	51	64	60
Formal Proceedings Instituted	2	9	14	4	8

DISPOSITION OF COMMISSION CASES	1992	1993	1994	1995	1996
Closed after Initial Review	827	809	834	1,053	1,024
Closed without Action after Investigation	93	79	53	94	102
Closed with Advisory Letter	40	26	41	41	34
Private Admonishment	11	7	6	7	4
Public Admonishment (or Reproval)	3	2	3	6	3
Public Censure (by Supreme Court or Commission)	0	0	3	1	4
Removal (by Supreme Court)	0	0	0	2	0
Judge Resigned or Retired with Proceedings Pending	1	7	3	9	5