



STATE OF CALIFORNIA
COMMISSION ON JUDICIAL PERFORMANCE

1998 ANNUAL REPORT

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COMMISSION ON JUDICIAL PERFORMANCE

1998 ANNUAL REPORT

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INTRODUCTION

1998 brought legislation concerning the Commission, the first since the passage of Proposition 190 in 1994. In June 1998, California voters approved Proposition 221, extending the Commission's jurisdiction to include court commissioners and referees. Interim rules were adopted by the Commission in October, and the Commission is now providing oversight as to California's subordinate judicial officers.

In addition to Proposition 221, two bills were passed by the Legislature last August that sought to alter the mandate and work of the Commission. One bill proposed establishing an "independent prosecutor" for the Commission, even though the Commission cannot constitutionally be divested of its charging authority. It also proposed requiring the release of confidential voting information: a bad idea as a policy matter (because it will detract from merits-based decision-making) and one that intrudes on the Commission's exclusive authority under the Constitution to make its own rules. It also sought to restrict the Commission's explanatory statements to the public, an unnecessary gag on the Commission that would prevent it from informing the public when inaccurate statements are made. The second bill sought to prohibit the Commission from investigating or disciplining a judge "solely on the basis of a legal or administrative act" later found to be incorrect legally or "on the basis of a dissenting opinion in an appellate case which does not adhere to precedent." Although intended to restate the mere-legal-error rule that is already in the Code of Judicial Ethics, these judicial conduct provisions impermissibly usurped the Supreme Court's constitutional authority to prescribe the rules for judicial conduct. They also immunized conduct that under some circumstances violates the constitutional bases for discipline. For these reasons, Governor Wilson vetoed both bills.

As this report goes to print, terms of office are ending for those members of the Commission initially appointed to serve after the passage of Proposition 190 in 1994. I thank them for their dedicated service over the past four years—years that marked the transition of the Commission into the post-Prop 190 era.

Notwithstanding Proposition 190's structural changes, the Commission's charge remains unchanged: to uphold public confidence in the integrity of the judiciary through the enforcement of high standards of conduct for judges. In fulfilling this charge, the members of the Commission—judicial, attorney and citizen representatives—must objectively determine the facts and apply the Code of Judicial Ethics and other relevant law, towards the end of assuring accountability to the public in those relatively rare instances where judicial misconduct has occurred. In my four years on the Commission, all of its members have — like judges — strived to fairly evaluate the facts and apply the canons of judicial ethics and the law without regard to partisan interests, public clamor or fear of criticism. The Commission's decisions have been absolutely free from partisan political influence. It is essential to the viability of the Commission that it continue to operate independently and free from any political interference.

One final note: It has been a great privilege for me to serve as the Chair of the Commission these past two years. Besides hard-working, fellow Commission members, I was blessed, as are the People of our state, to be able to work with a first-rate and thoroughly professional staff.

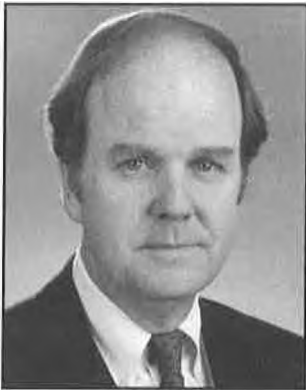


Robert C. Bonner
Chairperson

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.

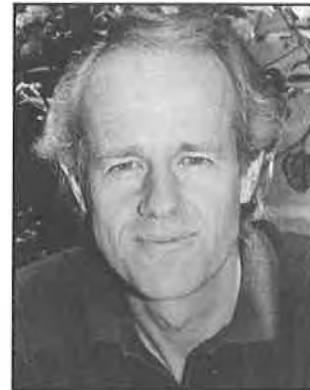
COMMISSION MEMBERS - 1998



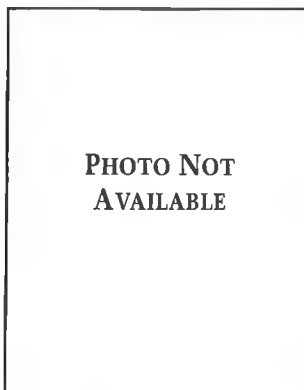
ROBERT C. BONNER, ESQ.
Chairperson
Attorney Member
Appointed by the Governor
Term Began: March 1, 1995
Term Ends: February 28, 1999



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



MR. MIKE FARRELL
Public Member
Appointed by the
Senate Committee on Rules
Term Began: February 2, 1998
Term Ends: February 28, 2001



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



HONORABLE DANIEL M. HANLON
Justice, Court of Appeal
Appointed by the Supreme Court
Term Began: March 1, 1997
Term Ends: February 28, 2001



PATRICK M. KELLY, ESQ.
Attorney Member
Appointed by the Governor
Term Began: March 1, 1995
Reappointed: March 1, 1997
Term Ends: February 28, 2001

*See Section II, "Recent Changes in the Law," page 4.

COMMISSION MEMBERS



MR. LUKE LEUNG
Public Member
Appointed by the
Speaker of the Assembly
Term Began: April 22, 1998
(to fill unexpired term)
Term Ends: February 28, 1999



MS. RAMONA RIPSTON
Public Member
Appointed by the
Speaker of the Assembly
Term Began: July 15, 1998
(to fill unexpired term)
Term Ends: February 28, 2001



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



DONALD E. VINSON, PH.D.
Public Member
Appointed by the Governor
Term Began: March 1, 1997
Term Ends: February 28, 2001

VACANT POSITION
Municipal Court Judge

OUTGOING MEMBERS

MR. ALAN W. BARCELONA
Public Member
Appointed by the
Speaker of the Assembly
Resigned: March 11, 1998

MS. ELEANOR JOHNS
Public Member
Appointed by the
Speaker of the Assembly
Resigned: March 2, 1998

**HONORABLE
VINCENT J. MCGRAW**
Judge, Municipal Court
Appointed by the Supreme Court
Term Ended: July 1, 1998
(upon elevation to the superior
court due to court unification)

MS. PEARL WEST
Public Member
Appointed by the
Senate Committee on Rules
Service Through:
February 1, 1998
(date successor appointed)

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. Pursuant to Proposition 221, enacted in June 1998, the Commission has shared authority with local courts over court commissioners and referees. The Commission does not have authority over judges pro tem or private judges. In addition to its disciplinary functions, the Commission is responsible for handling judges' applications for disability retirement.

This section describes the Commission's handling and disposition of complaints involving judges. The interim rules and procedures for complaints involving commissioners and referees is discussed in Section III, Subordinate Judicial Officers.

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 1E). 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 judicial officer. 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

I.
OVERVIEW OF THE COMPLAINT PROCESS

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 states facts which, if true and not otherwise explained, would be misconduct, 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 ordinarily 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 1998, not including identification of the subject judge, is contained in Section V, Case Summaries.

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 determine the level of discipline. Both public admonishments and public censures are no-

tices 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 – following a hearing – the Commission may determine to remove a judge from office. Typically, these cases involve persistent misconduct. In cases in which

ACTION THE COMMISSION CAN TAKE

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

I.
OVERVIEW OF THE COMPLAINT PROCESS

a judge is no longer capable of performing judicial duties – again, following a hearing – the Commission may determine to involuntarily retire the judge from office. In cases involving former judges, if their conduct warrants public censure, the Commission may also bar the judge from receiving assignments from any state court.

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

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, 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



LEGAL AUTHORITY

Recent Changes In The Law

In the June 1998 election, California voters approved two amendments to the Constitution which affected the work of the Commission. Proposition 221 gave the Commission authority – along with local courts – to discipline court commissioners and referees. The constitutional amendment and its implementation are discussed in Section III, Subordinate Judicial Officers. Proposition 220, the measure providing for unification of California's trial courts, permits the Supreme Court to appoint a superior court judge to the Commission position designated for a judge of the municipal court when there are fewer than ten counties in the state with municipal courts.

In 1998, the Commission adopted interim rules for the handling of complaints involving subordinate judicial officers – discussed in Section III. The Commission also adopted interim rule changes and some new policy declarations, discussed below.

In 1998, there were no amendments to the Code of Judicial Ethics.

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

The Commission on Judicial Performance was established by voter referendum in 1960. The Commission's authority is set forth in article VI, sections 8, 18, 18.1 and 18.5 of the California Constitution. In 1966, 1976, 1988, 1994 and most recently in 1998, the Constitution was amended to change various aspects of the

Commission's work. 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 set forth in Code of Civil Procedure section 170.9. These provisions are included in the appendix. For 1998, the gift limitation amount was \$260, as adjusted by the Commission pursuant to Code of Civil Procedure section 170.9.

Commission Rules and Policy Declarations

Article VI, section 18(i) of the Constitution authorizes the Commission to make rules for investigations and formal proceedings.

The Commission Rules, rules 101 through 138, were adopted by the Commission on October 24, 1996, and took effect December 1, 1996. In October 1998, various interim rules and rule changes were adopted by the Commission for the handling of complaints concerning court commissioners and referees following the passage of Proposition 221 on June 2, 1998. The interim rules and proposed changes to other rules were circulated for public comment in October 1998. At year's end, the proposals and public comments were under consideration by the Commission.

The Commission's internal procedures are further detailed in declarations of existing policy issued by the Commission. The Commission approved new Policy Declarations 1.13 and 2.5 on June 25, 1998. Additional policy declaration

changes were under consideration at the end of 1998.

Some of the key features of the rules and Policy Declarations are described in the "Commission Procedures" section that follows. The Commission Rules and Policy Declarations are included in Appendix 1 B and C.

Code of Judicial Ethics

The Constitution requires 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 adopted the Code of Judicial Ethics effective January 1996 with amendments in 1996 and 1997.

The California Code of Judicial Ethics is included in Appendix 1 E.

COMMISSION PROCEDURES

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. (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. There are two levels of investigation: a staff inquiry and a preliminary investigation. (Commission Rule 109; Policy Declarations 1.2, 1.4.) Most cases begin with a staff inquiry. In more serious matters, the Commission may commence with a preliminary investigation.

Commission investigations may include

contacting witnesses, reviewing court records and other documents, observing courtroom proceedings, and conducting such other investigation as the issues may warrant. If the investigation reveals facts that warrant the dismissal of the complaint, the complaint may be closed without the judge being contacted. Otherwise, the judge is asked in a letter to comment on the allegations.

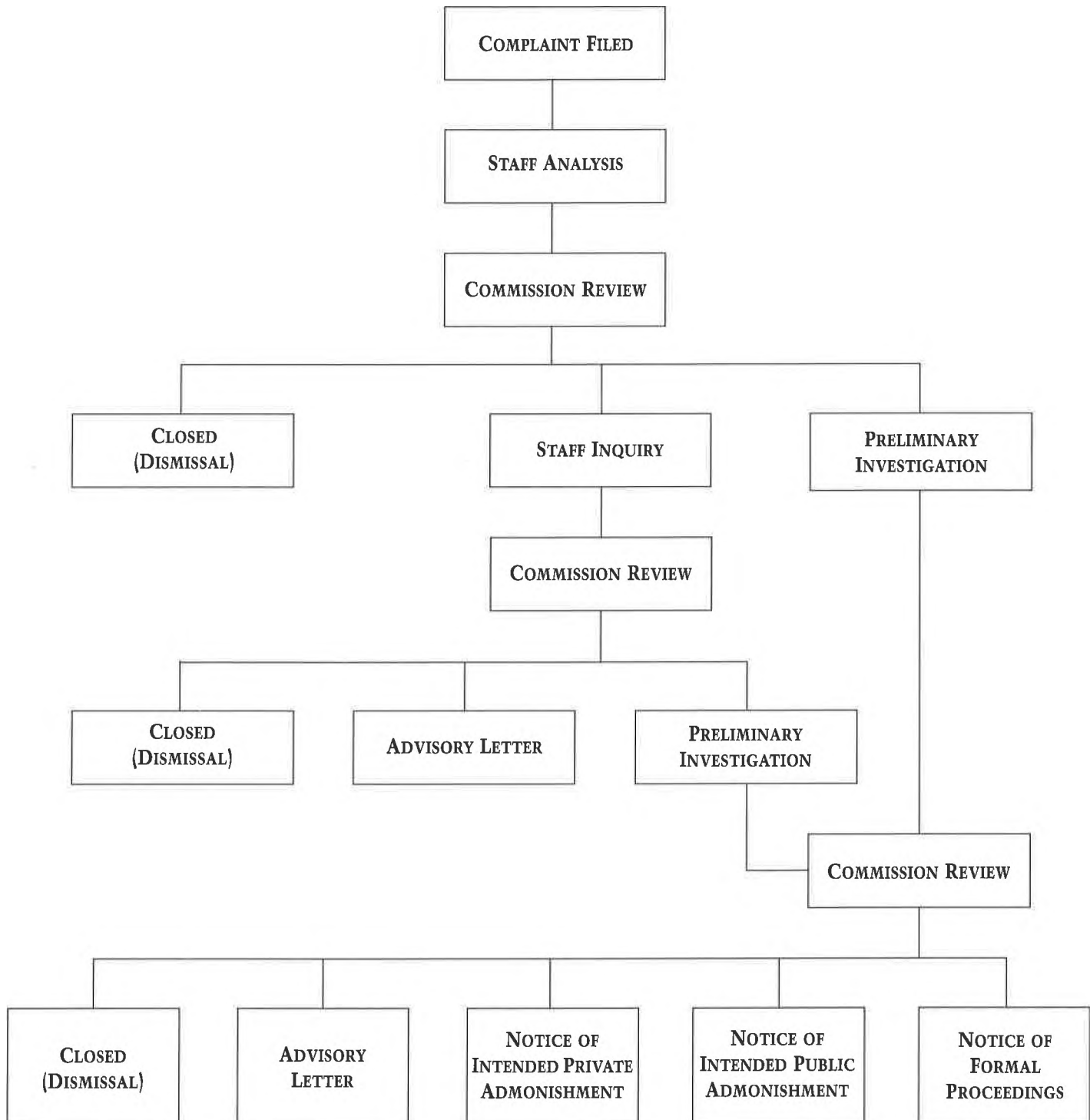
A judge has 20 days from the date of mailing to respond to an inquiry or investigation letter. (Commission Rules 110, 111.) Extensions of time to respond to inquiry and investigation letters are governed by the rules. (Commission Rule 108.)

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. (Commission Rule 110; Policy Declaration 1.2.) If serious issues remain after a staff inquiry, the Commission will authorize a preliminary investigation. (Commission Rule 109; Policy Declarations 1.2, 1.4.)

After a preliminary investigation, the Commission has various options. The Commission may close the case without action or may issue an advisory letter. (Commission Rule 111; Policy Declaration 1.4.) 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. (Commission Rules 113, 115; Policy Declaration 1.4.) The Commission may also institute formal proceedings, as discussed below.

All notices of staff inquiry, preliminary investigation or intended private or public admonishment are sent to the judge at chambers, unless otherwise requested. Notices that relate to

COMPLAINT PROCESS



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. The Commission marks envelopes containing such notices "personal and confidential" and does not use the inscription "Commission on Judicial Performance" on the envelopes. (Commission Rule 107(a).)

Deferral of Investigation

The Commission may defer an investigation of a pending matter under certain circumstances. Deferral may be warranted, under Policy Declaration 1.8, when the case from which the complaint arose is still pending before the judge, when an appeal or ancillary proceeding is pending in which factual issues or claims relevant to the complaint are to be resolved, and when criminal or other proceedings involving the judge are pending. While deferral of an investigation may result in delay in Commission proceedings, deferral is often appropriate to prevent complaints before the Commission from affecting court proceedings. Deferral while a reviewing court or other tribunal completes its adjudication reduces the potential for duplicative proceedings and inconsistent adjudications.

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 notified that a period of monitoring has been ordered and is advised in writing of the type of behavior for which the judge is being monitored. Monitoring may be used when the preliminary investigation reveals a persistent but correctable problem. One example is demeanor that could be improved. (Commission Rule 112.)

Formal Proceedings

After preliminary investigation, in cases involving allegations of serious misconduct, the Commission may institute formal proceedings. (Commission Rule 118.) Formal proceedings may also be instituted when a judge rejects a private or public admonishment and files a demand for formal proceedings. (Commission Rules 114, 116.) When formal proceedings are instituted, the Commission issues a notice of formal proceedings, a formal statement of the charges. The judge's answer to the notice of charges is filed with the Commission and served within 20 days after service of the notice. (Commission Rules 118(a), (b), 119(b).) Extensions of time to respond to a notice of charges are governed by the rules. (Commission Rules 108, 119.)

The rules provide for discovery between the parties after a written notice of formal proceedings is issued. A judge receives discovery from the Commission when the notice of formal proceedings is served. (Commission Rule 122.)

The Commission may disqualify a judge once formal proceedings are instituted if the judge's continued service is causing immediate, irreparable, and continuing public harm. (Commission Rule 120.)

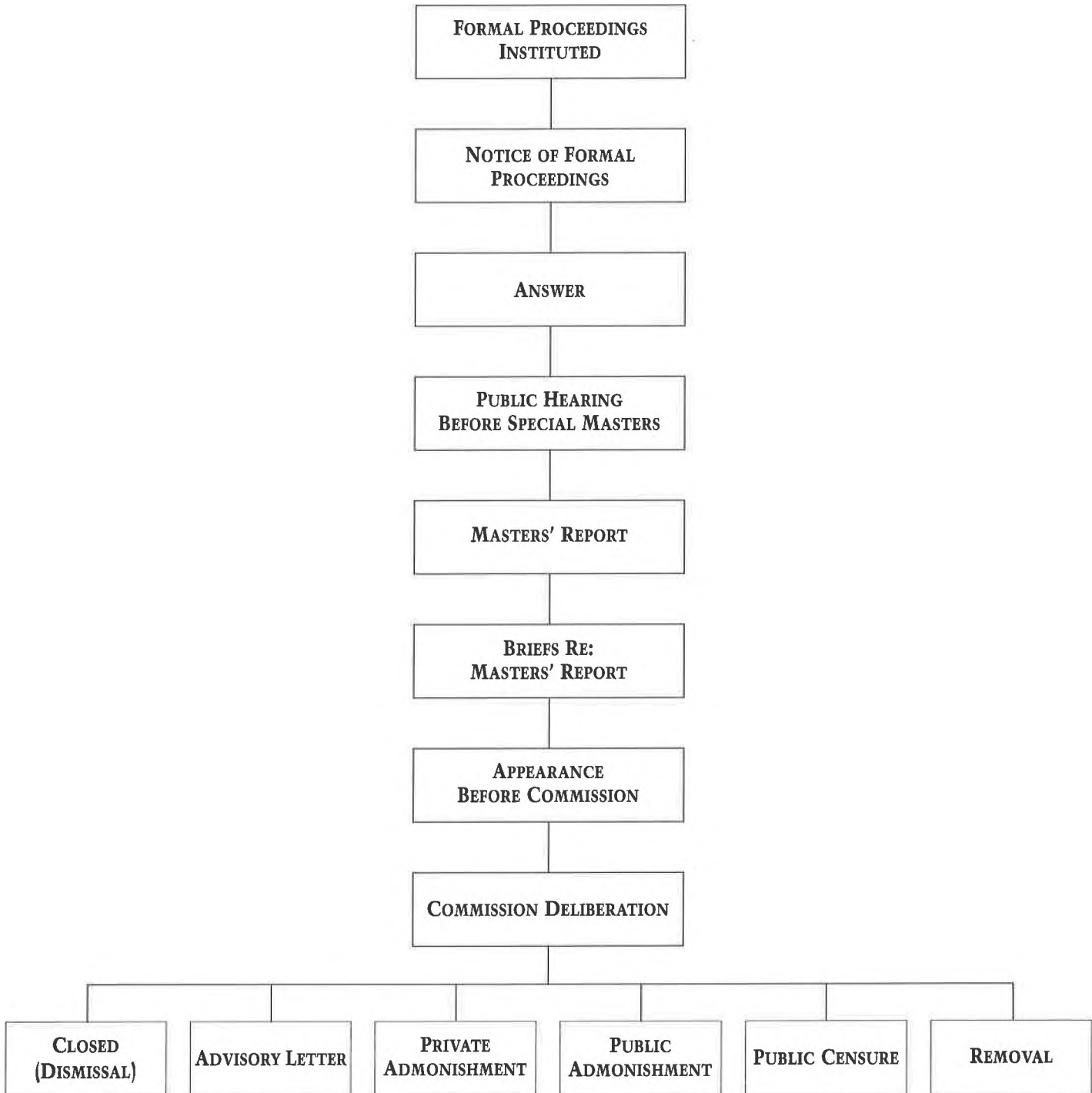
Hearing

After the judge has filed an answer to the charges, the Commission sets the matter for a hearing. (Commission Rule 121(a).) As an alternative to the Commission hearing the case itself, the 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. (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 VII, Commission Organization, Staff and Budget). The Cali-

II.
LEGAL AUTHORITY AND COMMISSION PROCEDURES

FORMAL PROCEEDINGS



fornia Evidence Code applies to the hearings. (Commission Rule 125(a).)

Commission Consideration Following Hearing

Following the hearing on the formal charges, the special masters file a report with the Commission. 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 judge's answer. (Commission Rule 129.) 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 and to be heard orally before the Commission upon receipt of the masters' report and any briefs. (Commission Rules 130, 132.)

Briefs of amicus curiae may be considered by the Commission when it is demonstrated that the briefs would be 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 perfor-

mance 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

Upon petition by the judge, the California Supreme Court is afforded discretionary review of a Commission determination to admonish, censure or remove a judge. If the Supreme Court so chooses, its review may include an independent, "de novo," review of the record. (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 Appendix 2.

STATUTE OF LIMITATIONS

Article VI, section 18(d) of the California Constitution provides that a judge can be censured or removed, or a former judge censured, 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.)

II.
LEGAL AUTHORITY AND COMMISSION PROCEDURES

**CONFIDENTIALITY OF
COMMISSION PROCEEDINGS**

The California Constitution authorizes the Commission to provide for the confidentiality of complaints to and investigations by the Commission. (California Constitution, article VI, section 18(i)(1).) The Commission's 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) - (k); Policy Declarations 4.1- 4.6.) During 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.)

The Constitution permits the Commission to make explanatory statements during proceedings. (California Constitution, article VI, section 18(k); Commission Rule 102(c).)

The Constitution provides that when formal proceedings are instituted, 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).)

After final resolution of a case, the 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 which is not disclosed), or has imposed or recommended public discipline. The name of the judge is not used in any written communications to the complainant unless the proceedings are public. (Commission Rule 102(e).)

The Commission is also required to provide the text of any private admonishment, advisory letter or other disciplinary action to appointing authorities upon request. (California Constitution, article VI, section 18.5.)

III.

SUBORDINATE JUDICIAL OFFICERS



In June 1998, California voters approved Proposition 221 which gave the Commission, along with local courts, the authority to discipline subordinate judicial officers – that is, court commissioners and referees. As of October 1998, there were approximately 400 commissioners and referees employed by California state courts who were thereby added to the Commission's jurisdiction.

The amendment to the Constitution, article VI, section 18.1, contains a number of key provisions governing the Commission's role in the oversight and discipline of commissioners and referees:

- The Commission's jurisdiction with respect to the discipline of subordinate judicial officers is discretionary.
- The responsibility of local courts to exercise initial jurisdiction to discipline or dismiss a subordinate judicial officer was not diminished or eliminated.
- Subordinate judicial officers are subject to discipline by the Commission according to the same standards, and subject to review upon petition to the Supreme Court, as specified for judges in section 18 of article VI of the Constitution.
- No person found unfit to serve as a subordinate judicial officer after a hearing before the Commission shall have the requisite status to serve as a subordinate judicial officer.

Upon passage of Proposition 221, a "work-

ing group" was set up by the Judicial Council and the Commission to coordinate the Commission and the local courts' implementation of the initiative. In October, the Commission adopted interim rules for the handling and disposition of complaints involving subordinate judicial officers and circulated those rules for public comment. In November, the Judicial Council adopted Rule of Court 6.655 for local courts' handling of complaints involving commissioners and referees.

The Commission's interim rules require complaints about subordinate judicial officers to be made first to the local court, in keeping with Proposition 221. After disposition by the local court, the complainant may submit the complaint to the Commission for its review. In the event that the local court has abused its discretion in failing to impose discipline or in imposing insufficient discipline, the Commission may commence an investigation.

To assist in coordinating the Commission's review of complaints involving commissioners and referees, the Rules of Court adopted by the Judicial Council require consistent handling and record-keeping of complaints by local courts. When a local court completes its disposition of a complaint, the local court is required to notify the complainant of the right to seek review by the Commission within thirty days. Upon request by the Commission, the local court is required to make the records available to the Commission. In cases where the local court imposes written or formal discipline or terminates the commissioner or referee, the local court is required to notify the Commission. The local

III.
SUBORDINATE JUDICIAL OFFICERS

court must also notify the Commission if a referee or commissioner resigns while an investigation is pending.

As of the end of 1998, the Commission had received 11 complaints about referees or commissioners which had been filed with and concluded by the local court after June 3, 1998, the effective date of Proposition 221. The Commission closed eight of those complaints on the grounds that the allegations and evidence were insufficient to establish an abuse of discretion on the part of the local courts in their handling of the matters. Three complaints remained pending at the end of the year.

After the passage of Proposition 221, the Commission received 138 complaints involving commissioners or referees which either had been handled by the local court before the passage of Proposition 221 – in some cases many years before the enactment – or which had not yet been submitted to the local court. After careful consideration of the legal issues involved, the Commission determined not to review disciplinary decisions made by local courts prior to the passage of Proposition 221. Accordingly, the individuals filing these complaints were advised that the matters would not be pursued by the Commission. Individuals seeking to file complaints which had not yet been reviewed by the local courts were referred to the local courts.

IV. 1998 STATISTICS



COMPLAINTS RECEIVED AND INVESTIGATED

In 1998, there were 1,580 judgeships within the Commission's jurisdiction. In addition to jurisdiction over 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.

As noted in Section III, approximately 400 commissioners and referees were added to the Commission's jurisdiction in June of 1998. Complaints involving commissioners and referees are discussed in Section III. The statistics presented in this section pertain only to judges.

1998 JUDICIAL POSITIONS As of December 31, 1998

Supreme Court	7
Court of Appeal	93
Unified Courts*	982
Superior Courts	271
Municipal Courts	227
Total	1,580

*Unified courts are those newly created courts established through voter passage of Proposition 220 on June 2, 1998. The creation of these courts is reflected in the reduction of the number of superior and municipal court positions.

New Complaints

In 1998, 1,125 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 and bias.

1998 CASELOAD

Cases Pending 1/1/98	108
New Complaints Considered	1,125
Cases Concluded in 1998	1,088
Cases Pending 12/31/98	120

Discrepancies in totals are due to consolidated complaints and/or dispositions.

The Commission also received in excess of 500 complaints in 1998 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 and referees prior to the enactment of Proposition 221, 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 1998, the Commission ordered 122 staff inquiries and 65 preliminary investigations.

INVESTIGATIONS COMMENCED IN 1998

Staff Inquiries	122
Preliminary Investigations	65

IV.
1998 STATISTICS

Formal Proceedings

During 1998, two matters remained pending before the Supreme Court involving matters instituted prior to March 1, 1995, when Proposition 190 took effect: *Broadman v. Commission on Judicial Performance*, filed with the Supreme Court in August 1996, and *Fletcher v. Commission on Judicial Performance*, filed with the Supreme Court in January 1997. Both of these cases were governed by pre-Proposition 190 law pursuant to which the Supreme Court makes disciplinary determinations upon recommendation by the Commission.

- In August 1998, the Supreme Court adopted the recommendation of the Commission and issued a public censure of Judge Broadman. (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079.) On November 9, 1998, Judge Broadman filed a Petition for Writ of Certiorari in the United States Supreme Court which was still pending at the close of the year. The Supreme Court unanimously denied certiorari on January 11, 1999.
- On December 31, 1998, the Supreme Court adopted the recommendation of the Commission and ordered Judge Fletcher removed from office. The Supreme Court's decision was not final as of the end of 1998.

At the beginning of 1998, there were six formal proceedings pending before the Commission. The Commission instituted formal proceedings in six cases during 1998. In all of these cases, the Commission has the authority to im-

pose discipline, including censure and removal, subject to discretionary review by the Supreme Court upon petition by the judge. As of the end of 1998, six formal proceedings had been concluded. Six formal proceedings remained pending before the Commission at the end of the year.

FORMAL PROCEEDINGS

Pending 1/1/98	6
Commenced in 1998	6
Concluded in 1998	6
Pending 12/31/98	6

COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the Commission in 1998, regardless of when the complaints were received.¹ In 1998, a total of 1,088 cases were concluded by the Commission.² Those cases named 824 active judges and 21 former judges. A chart of the disposition of all cases completed by the Commission in 1998 is included on page 15.

TYPE OF COURT CASE UNDERLYING COMPLAINTS CONCLUDED IN 1998

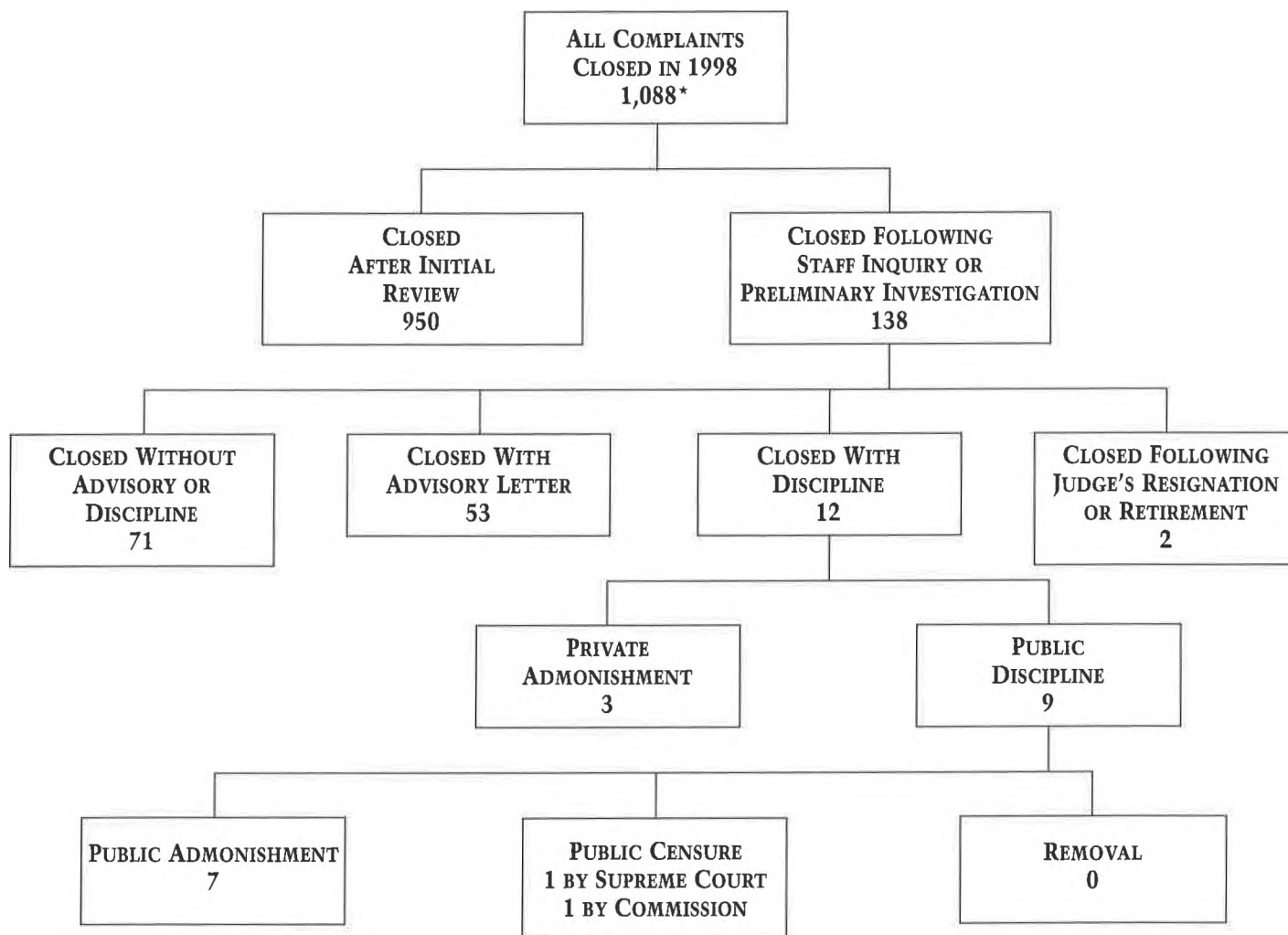
Criminal	38%
General Civil	24%
Family Law	18%
Small Claims/Traffic	8%
All Others	9%

3% 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.

¹ Staff inquiries and preliminary investigations in the cases closed in 1998 may have commenced in prior years. Cases or portions of cases pending at the end of 1998 are not included in complaint disposition statistics.

² The total number of dispositions exceeds the total number of complaints closed because complaints involving multiple allegations of varying severity may be closed with multiple dispositions. For example, some allegations may warrant closure with an advisory while others warrant public discipline. These dispositions do not always occur within the same year: some allegations may be closed at the time formal charges are issued and the remaining allegations not concluded until after hearing and determination by the Commission.

**1998
CASE DISPOSITIONS**



* See footnote 2 at page 14.

SOURCE OF COMPLAINTS CONCLUDED IN 1998

Litigant/Family/Friend	87%
Attorney	6%
Judge/Court Staff	1%
All Other Complainants	3%
(including citizens)	
Source Other Than Complaint	3%
(includes anonymous letters, news reports)	

Closed Without Action

In 950 of the cases closed in 1998, a sufficient showing of misconduct did not appear after the information necessary to evaluate the complaint was obtained and reviewed. (That is to say that there was an absence of facts which, if true and not otherwise explained, might constitute misconduct.) These cases were closed by the Commission without staff inquiry or preliminary investigation.

Following staff inquiry or preliminary investigation, another 71 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 Discipline or Advisory

In 1998, the Commission issued one public censure, seven public admonishments, three pri-

vate admonishments and 53 advisory letters. In one pre-Proposition 190 case, the Supreme Court ordered a censure. Each of these dispositions is summarized in Section V.

A chart of the types of judicial conduct which resulted in an advisory or discipline in 1998 appears on page 17. The types of conduct are listed in order of prevalence. The numbers on the chart indicate the number of times each type of conduct resulted in an advisory or discipline. A single act of misconduct is counted once and is assigned to the category most descriptive of the wrongdoing. If separate acts of different types of wrongdoing were involved, each different type of conduct was counted and assigned to an appropriate category. If the same type of conduct occurred on multiple occasions in a particular case, however, it was counted only once.

Resignations and Retirements

The Constitution authorizes the Commission 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 two matters in 1998 when the judge resigned or retired with an investigation pending.

IV.
1998 STATISTICS

TYPES OF CONDUCT RESULTING IN ADVISORY LETTER OR DISCIPLINE*

DEMEANOR, DECORUM
(includes inappropriate humor)
[11]

**DECISIONAL DELAY,
TARDINESS, ATTENDANCE
OTHER DERELICTION OF DUTY**
[11]

**BIAS, APPEARANCE OF BIAS
(NOT DIRECTED TOWARD A
PARTICULAR CLASS)**
(includes embroilment, prejudgment,
favoritism)
[10]

**ON-BENCH/CASE RELATED
ABUSE OF AUTHORITY**
(includes disregard of law, failure to
exercise judicial discretion, interference
with attorney-client relationship,
criticizing jurors)
[9]

ABUSE OF CONTEMPT/SANCTIONS
[8]

**DISCLOSURE,
DISQUALIFICATION AND
RELATED RETALIATION**
[6]

EX PARTE COMMUNICATIONS
[6]

MISCELLANEOUS OFF-BENCH
(includes smoking in chambers)
[5]

**ADMINISTRATIVE
MALFEASANCE**
(includes conflicts between judges, failure
to supervise staff, delay in responding to
complaints about commissioners)
[4]

OFF-BENCH ABUSE OF OFFICE
(includes charitable fund raising,
improper use of official stationery)
[4]

**COMMENT ON
PENDING CASE**
[3]

**IMPROPER BUSINESS
ACTIVITIES**
(includes practicing law, improper
financial activities)
[3]

**FAILURE TO
ENSURE RIGHTS**
[2]

**SEXUAL HARASSMENT
INAPPROPRIATE WORKPLACE
GENDER CONDUCT**
[2]

**IMPROPER POLITICAL
ACTIVITIES**
(includes improper campaign conduct,
violation of Political Reform Act)
[1]

**MISUSE OF
COURT RESOURCES**
[1]

**NON-SUBSTANCE
ABUSE CRIMINAL
CONDUCT**
[1]

**BIAS, APPEARANCE OF BIAS
TOWARD PARTICULAR CLASS**
[1]

SLEEPING
[1]

GIFTS/LOANS/FAVORS
[1]

* See "Closed With Discipline or Advisory" at page 16 of text.

V. CASE SUMMARIES



PUBLIC DISCIPLINE

Following is a summary of public discipline imposed by the Commission in 1998. The full text of these decisions is available from the Commission office.

Censure by the Supreme Court

Prior to the passage of Proposition 190, the Supreme Court had the authority to censure judges based upon recommendations made by the Commission. In 1998, the Supreme Court ordered the censure of Judge Howard R. Broadman in *Broadman v. Commission on Judicial Performance*, a case covered by pre-Proposition 190 rules since formal proceedings were instituted prior to the effective date of Proposition 190.



***Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079**

Judge Howard R. Broadman of the Tulare County Superior Court was censured by the California Supreme Court, on recommendation of the Commission on Judicial Performance, for willful misconduct and conduct prejudicial to the administration of justice which brings the judiciary into disrepute.

In its decision, the Supreme Court first considered certain threshold issues Judge Broadman had raised. The Court rejected the judge's contention that it could not find willful misconduct where the Commission had found only conduct prejudicial, along with his contention that the

Court could not impose discipline more severe than that recommended by the Commission. The Court also rejected the judge's attempt to equate the "clear and convincing" standard of proof in Commission proceedings to the standard of proof beyond a reasonable doubt. The Court found meritless the judge's contention that less-than-unanimous decisions by the Commission are "inherently suspect."

The Court then addressed the definition of "bad faith" required for a finding of willful misconduct. The Court noted that to commit willful misconduct in office, a judge must (1) engage in conduct that is unjudicial and (2) committed in bad faith, (3) while acting in a judicial capacity. The Court concluded that in this context, "a judge acts in bad faith only by (1) performing a judicial act for a corrupt purpose (which is any purpose other than the faithful discharge of judicial duties), or (2) performing a judicial act with knowledge that the act is beyond the judge's lawful judicial power, or (3) performing a judicial act that exceeds the judge's lawful power with a conscious disregard for the limits of the judge's authority." (18 Cal.4th at p. 1092.)

Prejudicial conduct, the Court pointed out, is *either* conduct which a judge undertakes in good faith but which nevertheless would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to public esteem for the judicial office *or* willful misconduct out of office, i.e., unjudicial conduct committed in bad faith by a judge not then acting in a judicial capacity. In this context, the Court stated, "bad faith means a culpable mental state

beyond mere negligence and consisting of either knowing or not caring that the conduct being undertaken is unjudicial and prejudicial to public esteem." (Id., at p. 1093.)

The Court then turned to the charges against Judge Broadman. The Court concluded that the judge committed willful misconduct when he asked a defendant and his attorney to waive time for sentencing so that the parties could conduct legal research, without revealing that the subject of the research was to be whether the judge could order that the HIV-positive defendant be denied medical treatment in prison. Upon obtaining the time waiver, the judge revealed the subject of the research; the attorney immediately attempted to withdraw the time waiver, but the judge would not permit him to do so. The Court found that the judge's attempt to take an attorney unawares by concealing material information was an abuse of the judicial process constituting willful misconduct.

The Court found that the judge engaged in prejudicial conduct when he made public comments about two criminal cases pending on appeal. One of the comments was made after the judge had received a written warning by the Commission that public comment on pending cases would violate canon 3A(6) of the former Code of Judicial Conduct. The Court rejected Judge Broadman's contention that former canon 3A(6), prohibiting judicial public comment on pending cases, violated judges' First Amendment rights. The Court also rejected the judge's claim that the canon was void for vagueness.

The Court also found that Judge Broadman engaged in prejudicial conduct when he attempted to affect the outcome of a legal malpractice case against an attorney toward whom he bore personal animosity. The judge had summoned the plaintiff's attorney to his chambers, offered assistance in strengthening the plaintiff's case, and expressed his hope that the plaintiff's counsel would "kick [the defendant's] ass." He offered to testify against the defendant, telephoned for delivery of a court file in a different malpractice action, and checked with the State

Bar to find out the status of a complaint against the defendant. Later, during the defendant's testimony, Judge Broadman briefly attended the trial. The Court concluded that Judge Broadman's actions were motivated by a desire to bring about a result harmful to the defendant because of personal animosity between them, and constituted prejudicial conduct.

Before addressing the appropriate level of discipline, the Court considered and rejected Judge Broadman's claims that he could not be disciplined because the Commission's proceedings violated his due process rights. In determining that censure was the appropriate discipline, the Court found that the nature of the judge's misconduct warranted censure, noting that "a level of discipline may be warranted either by the existence of a pattern of misconduct or by the seriousness of a single incident." (Id., at pp. 1112-1113.) The Court concluded that Judge Broadman's "lack of candor and integrity" in obtaining the waiver from the criminal defendant, his public comments on pending cases (one made after receiving a written warning from the Commission about making public comments on pending cases), and his attempt to influence the outcome of a civil proceeding justified censure.

Public Censure by the Commission

Proposition 190 granted the Commission the authority to impose the sanction of public censure. Pursuant to this authorization, in 1998, the Commission imposed one public censure in the matter of *In re Ross*.



Public Censure and Bar from Assignment of James Randal Ross, April 30, 1998

Judge James Randal Ross (retired), a former judge of the Orange County Superior Court, was publicly censured by the Commission for willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. He also was barred

from receiving assignments, appointments, or references of work from any California state court. The Commission's action followed a hearing before special masters and an appearance before the Commission during formal proceedings. Judge Ross thereafter petitioned the Supreme Court to exercise its discretion to grant review of the Commission's determination, pursuant to article VI, section 18(d) of the California Constitution. After full briefing, the court denied review.

During pretrial proceedings in a civil case in 1993 and 1994, Judge Ross became angry with an attorney and his client, an insurance company. The judge lost his ability to be objective, and improperly ordered the president of the insurance company, who was based in Illinois, to appear in court. Thereafter, Judge Ross abused his contempt authority, using that power to embarrass the attorney because he was angry with him. In subsequent proceedings, the judge called witnesses for the improper purpose of proving that he was right and the attorney was wrong about some of the attorney's conduct, and violated the due process rights of the witnesses and the insurance company. Judge Ross again inappropriately threatened the attorney with contempt. He also improperly threatened to require the president of the insurance company to appear on a second occasion. The judge was embroiled, and his threat was punitive. The judge's conduct in the case constituted willful misconduct and conduct prejudicial to the administration of justice.

In another civil case, Judge Ross yelled at an attorney and forcefully slammed a tablet down on the bench. The judge's conduct was contrary to canon 3B(4) of the Code of Judicial Ethics, which requires judges to be patient, dignified and courteous to those with whom they deal in an official capacity, and constituted prejudicial conduct.

From 1989 until his retirement in 1995, Judge Ross kept copies of a book he had written available for sale in the courthouse. He sold copies of the book from his chambers and

through his bailiff to jurors and attorneys. The judge's conduct was contrary to canon 1, which requires judges to personally observe high standards of conduct; canon 2, which requires judges to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary; and canon 2B, which prohibits judges from using the judicial office to advance personal interests. In addition, Judge Ross misused public judicial resources in the sale of his books. The judge's conduct constituted prejudicial conduct.

During a 1994 civil trial which involved allegations of sexual molestation of a twelve-year-old girl, the judge told an inappropriate, undignified and offensive joke. His conduct was contrary to canons 1, 2A, and 3B(4), and constituted prejudicial conduct.

In a civil case in 1995, Judge Ross became embroiled and abused his judicial authority to advance his personal interests. On two occasions, the judge requested and received waivers of any complaints to the Commission on Judicial Performance as well as waivers of the filing of any civil suits against himself. This constituted willful misconduct. The judge also violated canons 1, 2A, and 3B(2), and committed willful misconduct when he threatened on two occasions to go forward with contempt proceedings if he did not receive the requested waivers. After receiving waivers as requested, Judge Ross requested indemnification for any civil or disciplinary action another individual might bring against him. This request violated canons 1 and 2A, and constituted willful misconduct. Finally, the judge made a threat of retaliation to discourage the filing of complaints about his conduct with the Commission on Judicial Performance. This violated canons 1, 2A, and 3B(2) and constituted willful misconduct.

Since Judge Ross had resigned from office, he was not subject to removal. The Commission determined that the appropriate sanction was an order of public censure and an order barring Judge Ross from sitting on assignment, given the egregious nature of the misconduct and

the fact that Judge Ross had failed to recognize that his conduct was in any way improper.

Public Admonishments by the Commission

The Commission may publicly or privately admonish a judge for improper action or dereliction of duty. Public admonishments, as compared to private admonishments, are issued in cases when the improper action or dereliction of duty is more serious. In 1998, the Commission publicly admonished seven judges.



Public Admonishment of Judge James L. Stevens, Jr., February 19, 1998

Judge James L. Stevens, Jr., of the Yolo County Superior Court was publicly admonished for conduct prejudicial to the administration of justice within the meaning of article VI, section 18 of the California Constitution, pursuant to Commission Rule 127 (Discipline by Consent). The Commission's action followed the commencement of formal proceedings in the matter.

On June 14, 1996, Judge Stevens referred to two female juveniles charged with battery on two teachers as "bitches" during an in-chambers conference. The juveniles were not present.

During a hearing in court on May 16, 1996, after the bailiff forcibly restrained a defendant who became physically disruptive, Judge Stevens commented that the defendant did not have a "Chinaman's chance" of reaching him.

Judge Stevens' comments in these matters were in violation of canon 3B(4) of the Code of Judicial Ethics, which requires a judge to be patient, dignified and courteous to litigants and others with whom a judge deals in an official capacity, and canon 2A, which requires a judge to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

In making its determination in these matters, the Commission noted that Judge Stevens

was publicly reprovved by the Commission in 1994 for improper and offensive remarks in court. In mitigation, Judge Stevens acknowledged to the Commission that the comments he made may be considered offensive and agreed to refrain from use of such terms. The Commission also noted that Judge Stevens had indicated his intention to retire from the bench in May 1998.



Public Admonishment of Judge Robert H. Oliver, June 16, 1998

Judge Robert H. Oliver of the Fresno County Municipal Court was publicly admonished for conduct contrary to canon 3B(8) of the Code of Judicial Ethics, which requires that judges dispose of all judicial matters fairly, promptly and efficiently.

On October 4, 1997, Judge Oliver took under submission certain motions pertaining to discovery in a misdemeanor criminal case. These motions were not decided until seven months later. Judge Oliver failed to decide the motions despite receiving several written and verbal reminders. The case was dismissed for violation of the right to a speedy trial, because of delay.

On April 19, 1996, Judge Oliver took under submission demurrers in two misdemeanor criminal cases. Judge Oliver failed to rule on these motions for thirteen months.

While the above cases remained pending and undecided for longer than 90 days, Judge Oliver executed salary declarations under penalty of perjury stating that there were no cases before him which had remained pending and undecided for longer than 90 days, and continued to receive his judicial salary. This was in direct violation of article VI, section 19 of the California Constitution and Government Code section 68210.

In mitigation, it was noted that Judge Oliver reported his delay in one of the matters to the Commission.

*Public Admonishment of
Judge Gregory M. Caskey, July 6, 1998*

Judge Gregory M. Caskey of the Shasta County Superior Court was publicly admonished for conduct contrary to canon 3B(7) of the Code of Judicial Ethics, which generally prohibits ex parte communications, and contrary to canon 2A, which provides that a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

In November 1997, Judge Caskey sent an e-mail concerning a juvenile dependency matter to an attorney who regularly appeared before him, soliciting advice on how to handle a case then pending before the judge. The attorney responded: "Your honor, I don't feel comfortable responding ex-parte on how you should rule on a pending case." Judge Caskey responded to the attorney: "chicken," displaying a joking attitude toward the attorney's ethical concerns.

On November 12, 1997, Judge Caskey sent the attorney another e-mail message. In this message, he solicited the attorney's views on the advisability of having children in court. He offered the attorney the opportunity to give an "unofficial" view. Later that day, the attorney provided a lengthy response, giving the attorney's views on the positive and negative aspects of having children in court. Judge Caskey's ex parte communications with the attorney included comments about the perceived shortcomings of other attorneys appearing before the judge on dependency cases and about procedural aspects of other cases. These communications were problematic and contributed to an impression that the judge was aligned with one side in matters before him.

In mitigation, the Commission noted that Judge Caskey has a long record of judicial service and service in judicial education, that the judge had no record of prior discipline, and that the judge expressed remorse.

*Public Admonishment of
Judge Harvey H. Hiber, October 23, 1998*

Judge Harvey H. Hiber of the San Diego County Municipal Court was publicly admonished for conduct contrary to canons 2 and 3B(5) of the former Code of Judicial Conduct, which constituted, at a minimum, improper action within the meaning of article VI, section 18(d) of the California Constitution. The Commission's imposition of discipline followed the issuance of a notice of Intended Public Admonishment pursuant to rule 115 of the Rules of the Commission on Judicial Performance and an appearance through counsel before the Commission pursuant to rule 116(b).

In 1994 and 1995, Judge Hiber engaged in a pattern of inappropriate conduct toward his courtroom clerk. Shortly before the clerk began working for him, Judge Hiber wrote to her frequently, and sought to have her sign a large, two-page scroll which purported to be a waiver of harassment, including verbal or physical advances by him. Thereafter, the judge repeatedly asked the clerk to spend time with him outside of court hours, once called her at home on a weekend, once kissed her on the mouth after taking her to her car near the courthouse (for which he apologized), twice passed her notes from the bench which contained jokes of a sexual nature, and at least once brought flowers to her home when she was ill. The judge often interrupted the clerk while she was working to discuss non-work-related matters. Judge Hiber also gave the clerk gifts, including clothing, an expensive pen, a lamp, a computer keyboard, and an exercise machine.

The judge's conduct toward his clerk was unjudicial and contrary to canon 1 of the former Code of Judicial Conduct, which provides that a judge shall uphold the integrity of the judiciary; canon 2, which provides that a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities; and canon 3B(5), which provides that a judge shall not manifest

bias in the performance of his judicial duties by words or conduct, the commentary to which provides that a judge must refrain from speech, gestures, or other conduct that could reasonably be perceived as sexual harassment.

In 1994, Judge Hiber gave his clerk \$250 in cash and asked her to donate the money in her name to the campaign of a candidate for non-judicial office. The clerk did as the judge requested. The judge's conduct created the appearance that the judge was attempting to conceal that he was the source of a political contribution, in violation of canon 2 of the former Code of Judicial Conduct.

In mitigation, the Commission noted that Judge Hiber cooperated with the Commission and had acknowledged that his actions towards his clerk were inappropriate.



***Public Admonishment of Judge
Christopher J. Sheldon, October 23, 1998***

Judge Christopher J. Sheldon of the Riverside County Superior Court was publicly admonished for conduct prejudicial to the administration of justice within the meaning of article VI, section 18 of the California Constitution. The Commission's action followed a hearing before special masters and an appearance before the Commission during formal proceedings.

From approximately July 1995 through February 1996, Judge Sheldon frequently failed to take the bench or left the bench during portions of his misdemeanor calendar. Judge Sheldon, in his absence from the courtroom, allowed clerks to enter pleas and execute court documents imposing sentences. For some of the pleas entered in his absence, Judge Sheldon allowed clerks to stamp his signature on constitutional rights waiver forms. For some pleas entered in his absence, Judge Sheldon signed rights waiver forms after the pretrial calendar was concluded. In other cases, rights waiver forms were neither signed by Judge Sheldon nor stamped with his signature.

Judge Sheldon committed prejudicial misconduct by abandoning his duty to preside over cases adjudicated in his court, as well as his duty to determine that a defendant entering a plea has done so freely and voluntarily and that the defendant has made a knowing, intelligent, and voluntary waiver of his constitutional rights. Judge Sheldon also abandoned his duty to approve a sentence agreed upon by the attorneys and his duty to impose sentence. Judge Sheldon's conduct in managing his pretrial calendar was unjudicial and violated canon 1 of the Code of Judicial Ethics (a judge shall uphold the integrity of the judiciary), canon 2A (a judge shall act at all times in a manner which promotes public confidence in the judiciary), and canon 3B(1) (a judge shall hear and decide all matters assigned to the judge except when disqualified).

On some occasions while his pretrial calendar was ongoing, Judge Sheldon left the courthouse. Sometimes Judge Sheldon would schedule personal matters outside of the courthouse during court hours, but would ask – or would have his bailiff ask – another judicial officer to cover for him. Judge Sheldon admitted that on one occasion when he left the courthouse before his pretrial calendar was completed, he had been told that there was no coverage by another judicial officer. Judge Sheldon also admitted that he occasionally exercised by running the stairs next to his chambers during his pretrial calendar.

Judge Sheldon engaged in prejudicial conduct when on one occasion he left the courthouse with his pretrial calendar ongoing without arranging for another judicial officer to cover, violating canons 4A(3), 3A and 2A. Judge Sheldon's admitted occasional jogging on the stairs during his afternoon pretrial calendar is misconduct in and of itself, violating canons 4A(3) (a judge shall conduct his extra-judicial activities so that they do not interfere with the proper performance of his judicial duties), canon 3A (judicial duties take precedence over all other activities), and canon 2A (a judge must avoid the appearance of impropriety and must act to promote public confidence in the judiciary).



Public Admonishment of Judge Pamela Rogers, October 29, 1998

Judge Pamela R. Rogers of the Los Angeles Municipal Court was publicly admonished for conduct contrary to canon 3B(8) of the Code of Judicial Ethics, which requires that judges dispose of all judicial matters fairly, promptly, and efficiently. In addition, the judge agreed to a 21-month period of monitoring, to include submission of medical reports concerning all treatments provided, and medications prescribed, by the judge's doctors; submission of affidavits by the judge attesting to the accuracy and completeness of the medical information; submission of the judge's attendance records; and courtroom observation by Commission staff. It was stipulated that upon compliance with these conditions, charges concerning the judge's use of medications would be dismissed with prejudice on July 1, 2000. This disposition followed the institution of formal proceedings, and was entered prior to commencement of a formal hearing, by consent, pursuant to rule 127 of the Rules of the Commission on Judicial Performance.

Judge Rogers took prescribed drugs, including narcotic drugs, for serious medical conditions, primarily migraine headaches. Some of these medications carried a risk of drug dependence which could be inconsistent with the responsibility of a judge. The judge sought and received expert medical assistance to manage her condition without narcotics. Since April 1997, the judge had used only non-narcotic medications, and had not appeared to be under the influence of medications at work. It was stipulated that the judge appeared to have remedied the underlying medical problem that gave rise to allegations regarding her use of medication.

In seven civil cases, matters were submitted to Judge Rogers which remained undecided in excess of 90 days. These included four superior court law and motion matters and three municipal court trials. The judge's conduct violated canon 3B(8) of the Code of Judicial Ethics.

The judge received her judicial salary while these matters were pending for longer than 90 days, without execution of salary affidavits required by Government Code section 68210. However, during this time, court administration was not having any of the municipal court judges execute salary affidavits. In addition, the judge was voluntarily handling a superior court law and motion calendar, in addition to a full time municipal court calendar.



Public Admonishment of Judge John Shook, October 29, 1998

Judge John P. Shook of the Los Angeles County Superior Court was publicly admonished for conduct contrary to canons 1, 2A, 2B, 3B(4), 3C, and 5C(1) of the former Code of Judicial Conduct (effective until October 5, 1992), and canons 1, 2A, 2B, 3C(4), 3E and 4D(1) of the former Code of Judicial Conduct (effective beginning October 5, 1992). The Commission's imposition of discipline followed the institution of formal proceedings, and was entered prior to commencement of a formal hearing by consent, pursuant to rule 127 of the Rules of the Commission on Judicial Performance.

From approximately January 1989 through February 1996, Judge Shook appointed an attorney to represent criminal defendants in approximately 50 cases. During that time, the judge had a financial relationship with the attorney; the attorney was renting office space in a building owned by Judge Shook and Judge Shook's wife. From 1989 through May 1993, Judge Shook appointed the attorney to approximately 28 cases for which the attorney's fees were paid through a countywide appointment system. When the attorney appeared before the judge, the judge did not disclose the landlord-tenant relationship or disqualify himself because of that relationship. Judge Shook approved the attorney's fees in the appointed cases. In mid-1993, Judge Shook recommended the attorney's membership in a regional attorney appointment panel. From about

November 1993 through September 1995, Judge Shook appointed the attorney to approximately 22 cases in which attorney fees were paid through this panel. Approximately 15 of these appointments were not made according to the panel's rotation list. These appointments were known as "collars." The attorney received more "collars" from all judges combined than did any other panel attorney, and all but one of the attorney's "collars" were made by Judge Shook. The judge made more "collars" to the attorney than he did to any other attorney.

Judge Shook's conduct violated canons 1, 2A, 2B, 3B(4), and 5C(1) of the former Code of Judicial Conduct (effective until October 5, 1992), and canons 1, 2A, 2B, 3C(4), and 4D(1) of the former Code of Judicial Conduct (effective beginning October 5, 1992). Canon 1 provides that a judge should uphold the independence and integrity of the judiciary. Canon 2 provides that a judge should avoid impropriety and the appearance of impropriety in all of the judge's activities. Canon 2A provides that a judge should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Canon 2B provides that a judge should not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment, and should not lend the prestige of the judicial office to advance the private or personal interests of the judge or others, and should not convey or permit others to convey the impression that they are in a special position to influence the judge. Canon 3B(4) (before October 5, 1992) and canon 3C(4) (after October 5, 1992) require a judge to use the power of appointment impartially and on the basis of merit, avoiding favoritism. Canon 5C(1) (before October 5, 1992) and canon 4D(1) (after October 5, 1992) provide that a judge should not engage in financial and business dealings that might be reasonably perceived to exploit the judge's judicial position, or involve the judge in frequent transactions or continuing business relationships with lawyers likely to appear before the court on which the judge serves.

From approximately 1989 through February 1996, Judge Shook appointed another attorney to represent criminal defendants in over 30 cases. During that time, the judge had a social relationship with the attorney; he had gone on cruises with the attorney and had attended several small group dinners with him. Judge Shook also allowed the attorney to pay for two lunches for the judge and his staff. When the attorney appeared before the judge, the judge did not disclose the social relationship or disqualify himself. In some appointed cases, the judge allowed the attorney to bring his bills for attorney fees directly to the judge in chambers for approval, in disregard of the appointment panel's policy.

Judge Shook's conduct violated canons 1, 2A, 2B, and 3B(4) of the former Code of Judicial Conduct (effective until October 5, 1992), and canons 1, 2A, 2B, and 3C(4) of the former Code of Judicial Conduct (effective beginning October 5, 1992). The judge's conduct also violated canon 3C (before October 5, 1992) and canon 3E (after October 5, 1992), which provide that a judge should disqualify himself or herself in a proceeding in which disqualification is required by law, or in which the judge's impartiality might reasonably be questioned.

In 1994, a third attorney was a prospective tenant in the office building owned by Judge Shook and his wife. The attorney had a telephone conversation with Judge Shook in which the attorney expressed doubt that he could afford the rent. Judge Shook ascertained that the attorney's application to become a member of the appointment panel had been denied. The judge told the attorney that if he rented office space in the Shook building, the judge would recommend him to the appointment panel. The attorney would then receive criminal appointments from the judge which would cover the rent.

Judge Shook's conduct violated canons 1, 2A, 2B, 3C(4), and 4D(1) of the former Code of Judicial Conduct.

From approximately mid-1985 through 1988, the judge appointed a fourth attorney to repre-

sent criminal defendants in cases before him. On two occasions, the judge allowed the attorney to pay for lunch for the judge and his staff. On one of those occasions, the attorney used a limousine, in which champagne was available, to take the judge and the judge's staff to lunch.

Judge Shook's conduct violated canons 1, 2A, 2B, and 3B(4) of the former Code of Judicial Conduct.

In mitigation, the Commission noted that Judge Shook recognized the impropriety of his actions. The judge also requested that the Commission note his cooperation in the investigation. The Commission concluded that despite the reprehensible nature of the judge's conduct, in the circumstances of the case, the public interest was served by the issuance of a public admonishment.

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 1998, the Commission imposed three private admonishments. The admonishments 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 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. On the judge's own initiative and after being informed that the action was contrary to law, a judge reduced a misdemeanor charge under circumstances which created the appearance

that the judge had acted for the purpose of depriving the defendant of a jury trial and representation by court appointed counsel.

2. After receiving an advisory letter from the Commission for similar conduct, a judge displayed a weapon in open court, causing some observers to be concerned or fearful.

3. A judge failed to observe high standards of conduct in the judge's personal, off-bench activities which undermined confidence in the integrity of the judiciary.

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 1998, the Commission issued 53 advisory letters. The advisory letters are summarized below.

Disclosure and Disqualification

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

1. A judge appeared to retaliate against attorneys who had disqualified the judge.

2. A judge used profanity in open court concerning a litigant's actions. After recusing for bias, the judge continued to preside over a second proceeding involving the same litigant.

3. A judge recused and then discussed the case with a judge who subsequently handled the case.

4. While recusing from a case, a judge made comments which were disparaging and unnecessary, creating an appearance of bias and the perception that hearing was being conducted for a purpose other than the discharge of judicial duties.

5. A judge ruled upon the merits of a motion for the judge's own disqualification in contravention of Code of Civil Procedure section 170.3(c) (5).

On-Bench Abuse of Authority

Acts in excess of judicial authority may constitute misconduct, particularly where a judge deliberately disregards the requirements of fairness and due process. (See *Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359, 371, 374; *Cannon v. Commission on Judicial Qualifications* (1975) 14 Cal.3d 678, 694.)

6. A judge modified a defendant's conditions of probation without notice to the parties. The judge also made a remark which suggested a lack of neutrality.

7. After a criminal defendant requested representation by the public defender, the judge directed the bailiff to search the defendant's wallet.

Demeanor and Decorum

A judge "shall require order and decorum in proceedings before the judge" and "shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity...." (Canon 3 B(3), (4).)

8. A judge's comment to a jury appeared unduly harsh and punitive toward the jurors.

9. A judge made an insensitive joking comment in a family law matter.

10. A judge made inappropriate comments and exhibited demeaning and abusive behavior toward those appearing before the judge. In one proceeding, the judge created an appearance of retaliation by remanding a defendant after the defendant requested a hearing.

11. During a court session, a judge made harsh and intimidating comments to one pro per defendant and used inappropriate humor in the judge's remarks to three other pro per defendants.

12. A judge presided over a court trial without wearing a judicial robe, in violation of Government Code section 68110.

13. A judge was unduly harsh in his treatment of court staff.

Abuse of Contempt/Sanctions

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 these procedures is not a mitigating but an aggravating factor. (*Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 533.)

14. In a civil case, a judge had a litigant handcuffed for contempt without conducting contempt proceedings.

15. A judge had a prospective juror taken into custody by the bailiff for a short period of time for contempt without following proper contempt procedures. The judge's order of contempt failed to recite the facts constituting contempt.

16. A judge ordered a litigant briefly taken into custody for contempt without conducting contempt proceedings.

17. A judge imposed sanctions against attorneys without notice or hearing in two cases, giving the appearance of embroilment and bias. In a separate matter, the judge considered ex parte communications during the case.

18. Without notice or a hearing, a judge ordered sanctions against an attorney who failed to attend a mandatory settlement conference.

19. A judge failed to afford notice and to comply with other requirements for issuance of an order to show cause re: sanctions.

Ex Parte Communications

Unless expressly allowed by law or expressly

agreed to by the opposing party, ex parte communications are improper. (Canon 3B(7).)

20. A judge assigned to a case discussed the case with a judge who had been disqualified from the case.

21. A judge denied a motion based on an ex parte communication from a litigant.

22. A judge initiated an ex parte contact with an attorney in a family law matter pending before the judge.

Public Comment

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

23. A judge made comments to the media concerning a pending case.

24. A judge made comments to the media concerning a pending case.

Failure to Ensure Rights

Society's commitment to institutional justice requires that judges are solicitous of the rights of persons who come before the court. (*Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 286.)

25. A judge failed to provide a habeas petitioner with notice and an opportunity to be heard, as required by law, regarding information which the judge was authorized to receive ex parte.

Administrative Malfeasance

Judges are required to diligently discharge their administrative responsibilities.

26. A judge failed to respond to a complaint against a court commissioner.

27. A judge appeared to retaliate against a court employee for remarks made outside of work by the employee.

28. A supervising judge failed to respond to a complaint against two court commissioners. In another matter, the judge failed to respond timely to a complaint against a court commissioner. There were mitigating circumstances.

29. A supervising judge failed to respond to a complaint about a court commissioner.

Bias

Judges are prohibited from manifesting bias in the performance of judicial duties. (Canon 3B(5).)

30. A judge counseled a witness not to testify in a case pending before the judge. The judge also answered a note from the jury during deliberations without notice to the parties and counsel, and failed to make a record.

31. A judge appeared to provide legal assistance outside of court to a pro per litigant in a case pending in another department of the judge's court.

32. A judge made remarks during a court proceeding that gave the appearance of bias against a litigant based on the litigant's country of origin.

33. During a break in proceedings, a judge left the bench to shake hands in the courtroom with a litigant in the case being tried before the judge.

34. A judge made comments which gave an appearance of prejudgment during an arraignment. The judge also made comments to the media about the case. There were mitigating circumstances.

35. A judge made extraneous remarks to a jury which were determined in a subsequent proceeding to have prejudiced a litigant's rights.

36. A judge's repeated remarks to a jury fostered the appearance of encouraging them to identify with one of the parties.

37. In a criminal case, a judge made disparaging remarks about the defendants and appeared to remand one of the defendants into custody out of pique.

Sexual Harassment, Inappropriate Workplace Conduct

The prohibition against manifestation of bias in the performance of judicial duties includes requiring judges to refrain from conduct that

could reasonably be perceived as sexual harassment. (Commentary to Canon 3B(5).)

38. A judge engaged in displays of affection toward court employees which were unwelcome to some. In mitigation, the judge attended training in appropriate workplace conduct. The judge also made a comment to an attorney appearing before the judge which reflected gender bias.

Off-Bench Improprieties

A judge is required to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. (Canon 2A and Commentary.)

39. A judge smoked in chambers in violation of law.

40. A judge smoked in chambers in violation of law.

41. A judge smoked in chambers in violation of law.

42. A judge smoked in chambers in violation of law.

Improper Business Activity

Active judges are prohibited from practicing law. (California Constitution, article VI, section 17; canon 4G.)

43. A new judge failed to ensure that the judge was no longer counsel of record in a number of cases after taking the bench.

44. A new judge failed to ensure that the judge was no longer counsel of record in a pending case. The judge remained counsel of record for a lengthy period after taking the bench.

Delay, Dereliction of Duty

The Commission issued three advisory letters in 1998 for failure to decide submitted cases timely. The delay in these cases was over 90 days. In some circumstances, a shorter delay would be a failure to "dispose of all judicial mat-

ters fairly, promptly, and efficiently." (Canon 3B(8).)

45. A judge failed to rule for 12 months on a submitted matter, despite inquiries from one of the parties.

46. A judge failed to rule on a submitted matter for over 22 months.

47. A judge failed to rule on submitted matters in a family law case – including child and spousal support – for four months. The judge executed one false salary affidavit.

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

48. A judge failed to review and act on a habeas petition for over six months.

Judges are required to perform the duties of judicial office diligently as well as impartially. (Canon 3.)

49. A judge failed to perform certain assigned judicial duties.

50. A judge failed to perform certain assigned judicial duties.

51. A judge failed to perform certain assigned judicial duties.

Miscellaneous

Some cases involved more than one type of misconduct.

52. A judge slept – or appeared to be sleeping – while on the bench, and was tardy in commencing court sessions. The judge proposed personal friends as arbitrators. In one case, the judge considered and signed two orders based on ex parte communications from an attorney in a case pending before the judge.

53. A judge was convicted in another state of a Class C misdemeanor and engaged in conduct which may have given the appearance of attempting to intimidate or influence law enforcement officers. On one occasion in court and another in chambers, the judge exhibited poor demeanor.

VI. 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 Declarations 5.1 through 5.5 delineate Commission procedures in disability retirement matters.

At the beginning of 1998, two disability retirement applications were pending before the Commission. The Commission received four additional applications during the year.

The Commission granted four disability retirement applications during 1998. Two applications remained pending at the close of 1998.

VII. COMMISSION ORGANIZATION, STAFF AND BUDGET



COMMISSION ORGANIZATION AND STAFF

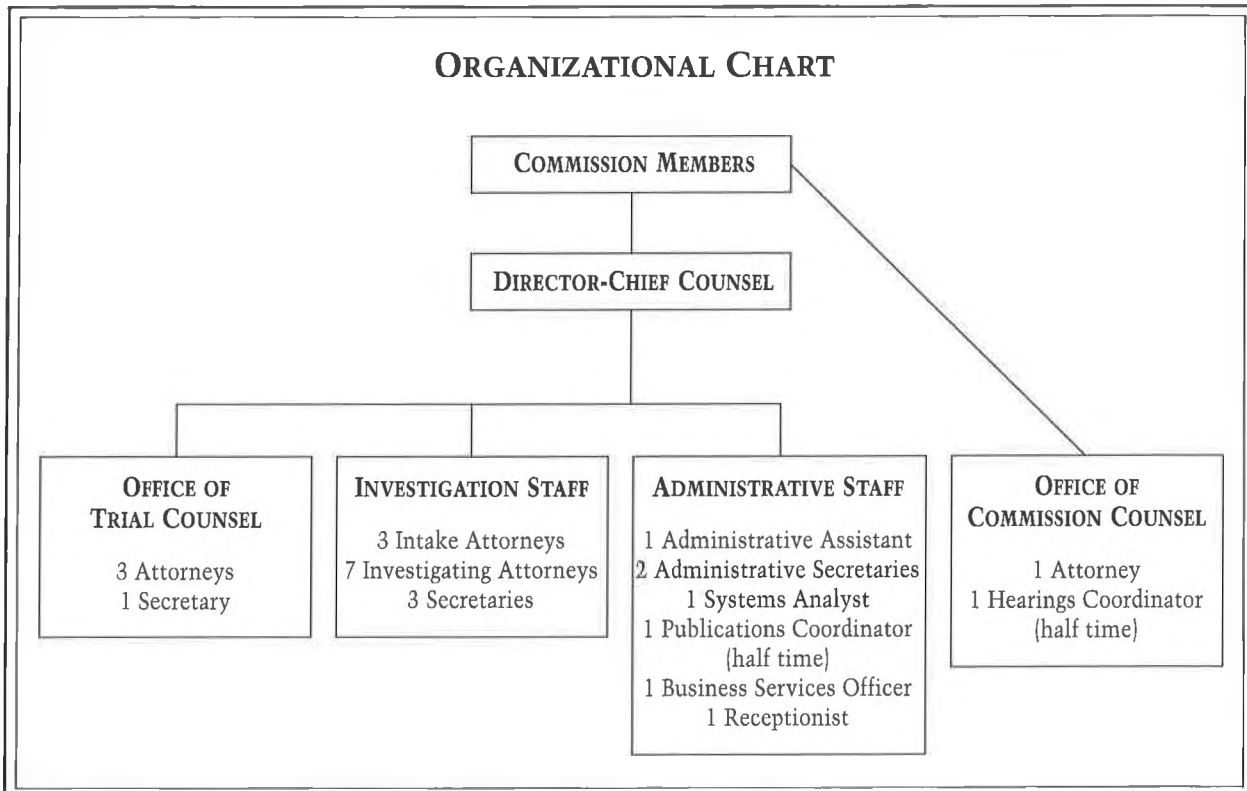
The Commission employs a staff of 26, including 15 attorneys and 11 support staff. All Commission staff are state employees.

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 cases for hearing and presenting the evidence that supports the charges before the special masters. The examiner handles briefing regarding special masters' reports, and

ORGANIZATIONAL CHART



VII.
COMMISSION ORGANIZATION, STAFF AND BUDGET

presents cases orally and in writing in hearings 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 is solely responsible for 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 served as Commission Counsel from 1995 to 1998. Richard G.R. Schickele succeeded Mr. Selman and began serving as Commission Counsel in July of 1998.

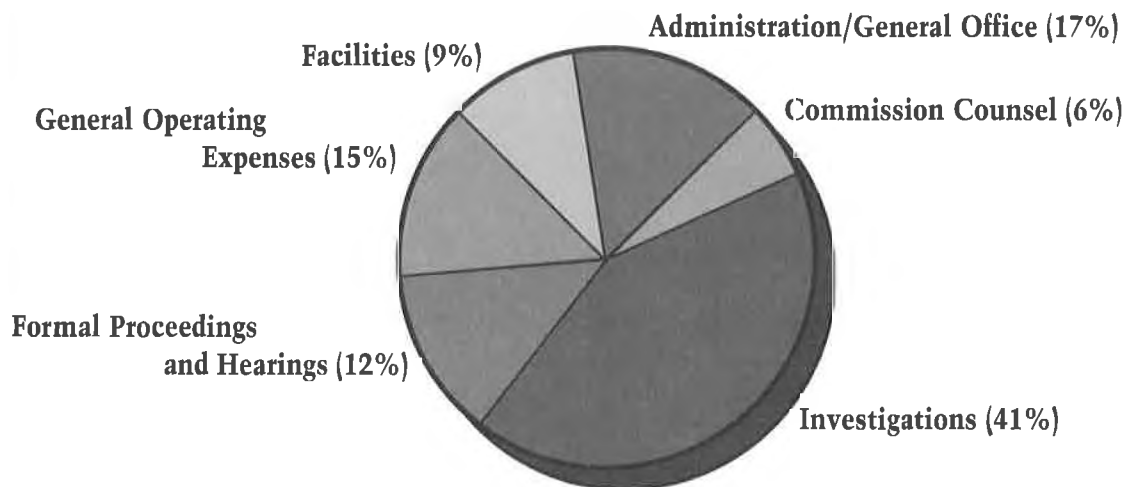
BUDGET

As mandated by Proposition 190, the Commission's budget is separate from the budget of any other state agency or court. For fiscal year 1998-99, the Commission's budget allocation is \$3,101,000.

During the 1997-98 fiscal year, approximately 41% of the Commission's budget supported the intake and investigation functions of the Commission and approximately 18% of the Commission's budget was used in connection with formal proceedings. The remaining 41% went toward sustaining the general operations of the Commission, including facilities, administrative staff, supplies, and security.

**COMMISSION ON JUDICIAL PERFORMANCE
1997-98 BUDGET**

Percent of \$2,533,311 (Actual Expenditure)



APPENDIX 3.

10-YEAR SUMMARY OF COMMISSION ACTIVITY

NEW COMPLAINTS CONSIDERED BY COMMISSION

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
	860	885	744	966	950	997	1,263	1,187	1,183	1,125

COMMISSION INVESTIGATIONS COMMENCED

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Staff Inquiries	81 (9%)	92 (10%)	109 (15%)	136 (14%)	121 (13%)	120 (12%)	163 (13%)	114 (10%)	132 (11%)	122 (11%)
Preliminary Investigations	38 (4%)	29 (3%)	33 (4%)	15 (2%)	35 (4%)	51 (5%)	64 (5%)	60 (5%)	65 (5%)	65 (6%)
Formal Proceedings Instituted	5 (1%)	9 (1%)	6 (1%)	2 ($<1\%$)	9 (1%)	14 (1%)	4 ($<1\%$)	8 (1%)	5 ($<1\%$)	6 ($<1\%$)

DISPOSITION OF COMMISSION CASES*

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Total Dispositions	839	893	712	975	930	940	1,213	1,176	1,174	1,088
Closed after Initial Review	746 (89%)	787 (88%)	621 (87%)	827 (85%)	809 (87%)	834 (89%)	1,053 (87%)	1,024 (87%)	1,001 (85%)	950 (87%)
Closed without Discipline or Advisory after Investigation	36 (4%)	45 (5%)	48 (7%)	93 (10%)	79 (8%)	53 (6%)	94 (8%)	102 (9%)	113 (10%)	71 (7%)
Closed with Advisory	36 (4%)	41 (5%)	29 (4%)	40 (4%)	26 (3%)	41 (4%)	41 (3%)	34 (3%)	43 (4%)	53 (5%)
Private Admonishment	13 (2%)	11 (1%)	9 (1%)	11 (1%)	7 (1%)	6 (1%)	7 (1%)	4 ($<1\%$)	10 (1%)	3 ($<1\%$)
Public Admonishment (or Reprimand)	4 ($<1\%$)	2 ($<1\%$)	0 (0%)	3 ($<1\%$)	2 ($<1\%$)	3 ($<1\%$)	6 ($<1\%$)	3 ($<1\%$)	4 ($<1\%$)	7 ($<1\%$)
Public Censure (by Supreme Court or Commission)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	1 ($<1\%$)	4 ($<1\%$)	1 ($<1\%$)	2 ($<1\%$)
Removal	1 ($<1\%$)	3 ($<1\%$)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2 ($<1\%$)	0 (0%)	0 (0%)	0 (0%)
Judge Resigned or Retired with Proceedings Pending	3 ($<1\%$)	4 ($<1\%$)	5 (1%)	1 ($<1\%$)	7 (1%)	3 ($<1\%$)	9 (1%)	5 ($<1\%$)	2 ($<1\%$)	2 ($<1\%$)

*See footnote 2 at page 14.