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# STATE OF CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE



## 2001 ANNUAL REPORT

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# COMMISSION ON JUDICIAL PERFORMANCE

## 2001 ANNUAL REPORT

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## INTRODUCTION



The report that follows chronicles some of the most important work our state government performs. We citizens, by our Constitution and state laws, have invested awesome powers and responsibilities in our state judiciary, which is the largest in the world. Yet we also have created a mechanism to oversee the judiciary's performance, and fittingly we have placed control of that oversight in the hands of citizens who comprise six of the eleven Commission members.

This report, I believe, demonstrates that the Commission is fulfilling its responsibilities in a careful, respectful – yet vigilant – fashion. Incidents of judicial misconduct are described in detail to announce to judges, lawyers and litigants alike what should be expected of our judges.

The Commission has a rich history, which has been amply chronicled in my predecessors' introductions to previous reports. Yet perhaps its most important tradition is the consistently thorough, conscientious and impartial investigations that have been conducted by the extremely experienced staff that works for the Commission. Californians have been well served by the Commission's constant effort to protect the public and preserve judicial independence.

The Commission's eleven members serve California on a purely voluntary basis. At least seven times a year the Commission meets to consider large volumes of evidence on a wide variety of cases. This year the Commission has seen its share of controversial cases and issues. It is difficult to conceive of a group of more dedicated and honest citizens, lawyers and judges than those I have been privileged to work alongside.

The year 2001 brought a renewed effort by the Commission to work cooperatively with representatives of the Administrative Office of the Courts, the State Bar and others. As my term as the Commission's chair concludes, I want to express my hope that these and other initiatives continue to strengthen the effective role of the Commission on Judicial Performance in our democratic society. Finally, I want to express my gratitude to my fellow commissioners, to the Commission's staff, and especially to the Director, Victoria Henley, and Commission Counsel, Richard Schickele, for their excellent work and unflinching commitment to the betterment of California's legal system.

Michael A. Kahn, Esq.  
Chairperson

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## 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 and two trial court judges, 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 members of the Commission elect a chairperson and vice-chairperson annually.

### COMMISSION MEMBERS - 2001



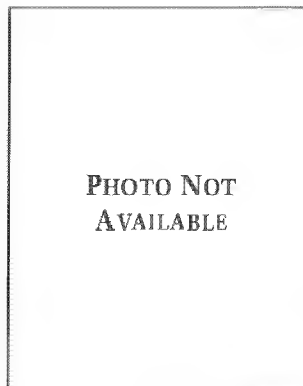
**MICHAEL A. KAHN, ESQ.**  
Chairperson  
Attorney Member  
Appointed by the Governor  
Appointed: March 1, 1999  
Term Ends: February 28, 2003



**HONORABLE  
RISE JONES PICHON**  
Vice-Chairperson  
Judge, Superior Court  
Appointed by the Supreme Court  
Appointed: March 3, 1999  
Term Ends: February 28, 2003



**MS. LARA BERGTHOLD**  
Public Member  
Appointed by the Governor  
Appointed: April 15, 1999  
Term Ends: February 28, 2003



**HONORABLE  
MADELEINE I. FLIER**  
Judge, Superior Court  
Appointed by the Supreme Court  
Appointed: March 3, 1999  
Reappointed: March 1, 2001  
Term Ends: February 28, 2005



**MARSHALL B. GROSSMAN,  
ESQ.**  
Attorney Member  
Appointed by the Governor  
Appointed: April 10, 2001  
Term Ends: February 28, 2005

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## COMMISSION MEMBERS



**MRS. GAYLE GUTIERREZ**  
Public Member  
Appointed by the  
Senate Committee on Rules  
Appointed: April 5, 2000  
Term Ends: February 28, 2003



**MRS. CRYSTAL LUI**  
Public Member  
Appointed by the  
Speaker of the Assembly  
Appointed: April 9, 1999  
Term Ends: February 28, 2003



**HONORABLE  
VANCE W. RAYE**  
Justice, Court of Appeal  
Appointed by the Supreme Court  
Appointed: January 1, 2001  
Reappointed: March 1, 2001  
Term Ends: February 28, 2005



**MS. RAMONA RIPSTON**  
Public Member  
Appointed by the  
Speaker of the Assembly  
Appointed: July 15, 1998  
Reappointed: March 1, 2001  
Term Ends: February 28, 2005



**MRS. BARBARA SCHRAEGER**  
Public Member  
Appointed by the  
Senate Committee on Rules  
Appointed: September 14, 2001  
Term Ends: February 28, 2005



**BETTY WYMAN, PH.D.**  
Public Member  
Appointed by the Governor  
Appointed: September 12, 2001  
Term Ends: February 28, 2005

## OUTGOING MEMBERS

**MR. MIKE FARRELL**  
Public Member  
Appointed by the  
Senate Committee on Rules  
Appointed: February 2, 1998  
Resigned: July 17, 2001

**HONORABLE  
DANIEL M. HANLON**  
Justice, Court of Appeal  
Appointed by the Supreme Court  
Appointed: March 1, 1997  
Membership ended:  
December 31, 2000  
{Upon retirement from  
Court of Appeal}

**PATRICK M. KELLY, ESQ.**  
Attorney Member  
Appointed by the Governor  
Appointed: March 1, 1995  
Membership ended:  
April 10, 2001  
{Upon appointment of successor}

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## 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, and the Commission has shared authority with local courts over court commissioners and referees. In addition, the Director-Chief Counsel of the Commission is designated as the Supreme Court's investigator for complaints involving State Bar Court judges. 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 rules and procedures for complaints involving commissioners and referees and statistics concerning those matters for 2001 are discussed in Section V, 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 news articles or information received in the course of a Commission investigation.

### JUDICIAL MISCONDUCT

The Commission's authority is limited to investigating alleged judicial misconduct and, if warranted, imposing discipline. 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 also may involve improper off-the-bench conduct such as driving under the influence of alcohol, using court stationery for personal business, or 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 a decision made by any judicial officer. When a court makes an incorrect decision or misapplies the law, the ruling can be changed only through appeal to the appropriate reviewing court.

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

## REVIEW AND INVESTIGATION OF COMPLAINTS

Complaints about judges are reviewed and analyzed by the Commission's legal staff. When the Commission meets, it decides upon the action to take with respect to each complaint.

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

When a complaint 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. The Commission and its staff ordinarily cannot advise anyone, even the person who lodged the complaint, of the nature of the discipline that has been imposed. However, the Commission's rules provide that upon completion of an investigation or proceeding, the person who lodged the complaint will be advised either that the Commission has closed the matter or that appropriate corrective action has been taken. The California Constitution also provides that, upon request of the governor of any state, the President of the United States, or the Commission on Judicial Appointments, the Commission will provide the requesting authority with the text of any private admonishment or advisory letter issued to a judge who is under consideration for a judicial appointment.

A description of each advisory letter and private admonishment issued in 2001, not identifying the judge involved, is contained in Section IV, Case Summaries.

### Public Dispositions

In cases involving more serious misconduct, the Commission may issue a public admonish-

ment or a public censure. This can occur after a hearing or without a hearing if the judge consents. The nature and impact of the misconduct generally determine the level of discipline. Both public ad-

monishments and public censures are notices that describe a judge's improper conduct and state the findings made by the Commission. Each notice is sent to the judge and made available to the press and the general public.

In the most serious cases, the Commission may determine—following a hearing—to remove a judge from office. Typically, these cases in-

### ACTION THE COMMISSION CAN TAKE

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



1.  
OVERVIEW OF THE COMPLAINT PROCESS

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involve persistent and pervasive misconduct. In cases in which a judge is no longer capable of performing judicial duties, the Commission may determine – again, following a hearing – to involuntarily retire the judge from office. In cases in which the conduct of a former judge warrants public censure, the Commission also may bar the judge from receiving assignments from any California state court.

A judge may petition the Supreme Court to review an admonishment, censure, removal or involuntary retirement determination.

**CONFIDENTIALITY**

Under the California Constitution and the Commission Rules, complaints to the Commission and Commission investigations are confidential. The Commission ordinarily cannot confirm or deny that a complaint has been received or that an investigation is under way. Persons contacted by the Commission during an investigation are advised regarding the confidentiality requirements.

After the Commission orders formal proceedings, the charges and all subsequently filed documents are made available for public inspection. Any hearing on the charges is also public.

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## II. LEGAL AUTHORITY AND COMMISSION PROCEDURES



### LEGAL AUTHORITY

#### Recent Changes In The Law

In 2001, the Legislature repealed two Government Code provisions – section 75060.3 in the Judge's Retirement Law and its companion measure, section 75560.3 in the Judges' Retirement System II Law – which had required the Commission to submit to the Governor and Legislature data on the incidence of ordered, requested and granted disability retirements in the preceding fiscal year. In addition, the Commission adopted an interim amendment to Commission Rule 102(h), discussed below.

#### 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 also is subject to Government Code sections 68701 through 68755. Commission determinations on disability retirement applications are governed by Government Code sections 75060 through 75064 and sections 75560 through 75564.

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. On February 8, 2001, the Commission adopted \$290.00 as the

adjusted gift limit, for purposes of Code of Civil Procedure section 170.9.

The provisions governing the Commission's work are included in Appendix 1.

#### Commission Rules and Policy Declarations

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

Commission Rules 101 through 138 were adopted by the Commission on October 24, 1996, and took effect December 1, 1996. On May 9, 2001, the Commission adopted an interim amendment to rule 102(h) regarding the disclosure of records to a public entity with the consent of a judge. The rule as amended is included in Appendix 1B.

The Commission's internal procedures are further detailed in declarations of existing policy issued by the Commission. The Commission's Policy Declarations were substantially revised in 1997.

The Commission Rules and Policy Declarations are included in Appendix 1 B and C, with the dates of adoption or approval and the dates of any amendments.

#### 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.

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

## COMMISSION PROCEDURES

### Commission Review of Complaints

Upon receipt, each written complaint about a California judge is carefully reviewed by the staff. Staff also requests any additional information needed to evaluate the complaint. Each complaint 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 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.)

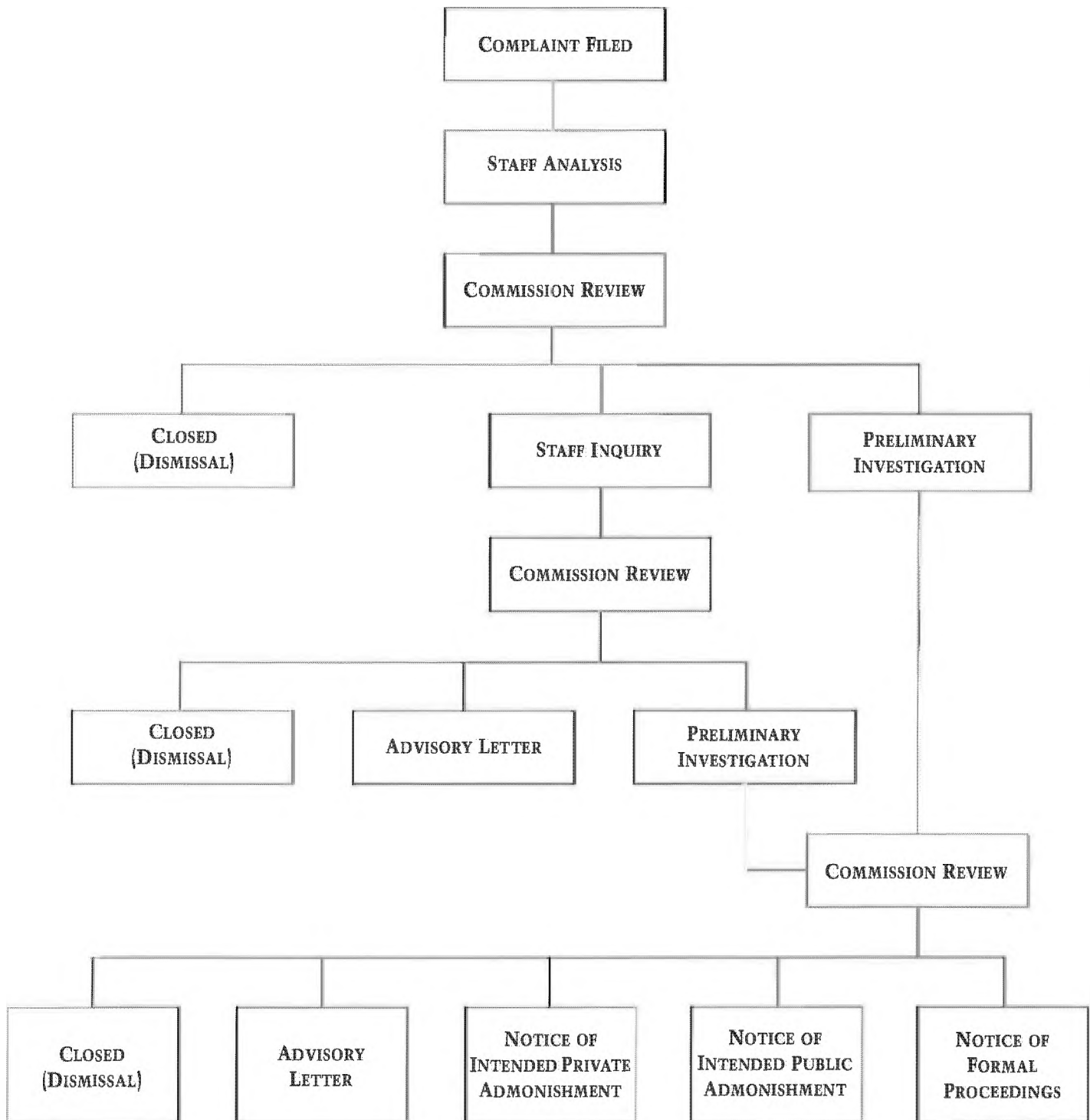
After a preliminary investigation, the Commission has various options. The Commission may close the case without action or may issue an advisory letter. (Commission Rule 111; Policy Declaration 1.4.) The Commission may also issue a notice of intended private admonishment or a notice of intended public admonishment, depending upon the seriousness of the misconduct. (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 court, unless otherwise requested. Notices that relate to a staff inquiry are given by first class mail, and notices that relate to a preliminary investigation or intended private or public admonishment are given by prepaid certified mail, return receipt requested. 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 com-

## COMPLAINT PROCESS



plaint 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 ensure that complaints before the Commission do not affect 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's conduct, deferring termination of the investigation for up to two years. Monitoring 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 also may 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, which constitutes 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 no-

tice of charges are governed by the rules. (Commission Rules 108, 119.)

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

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

### **Hearing**

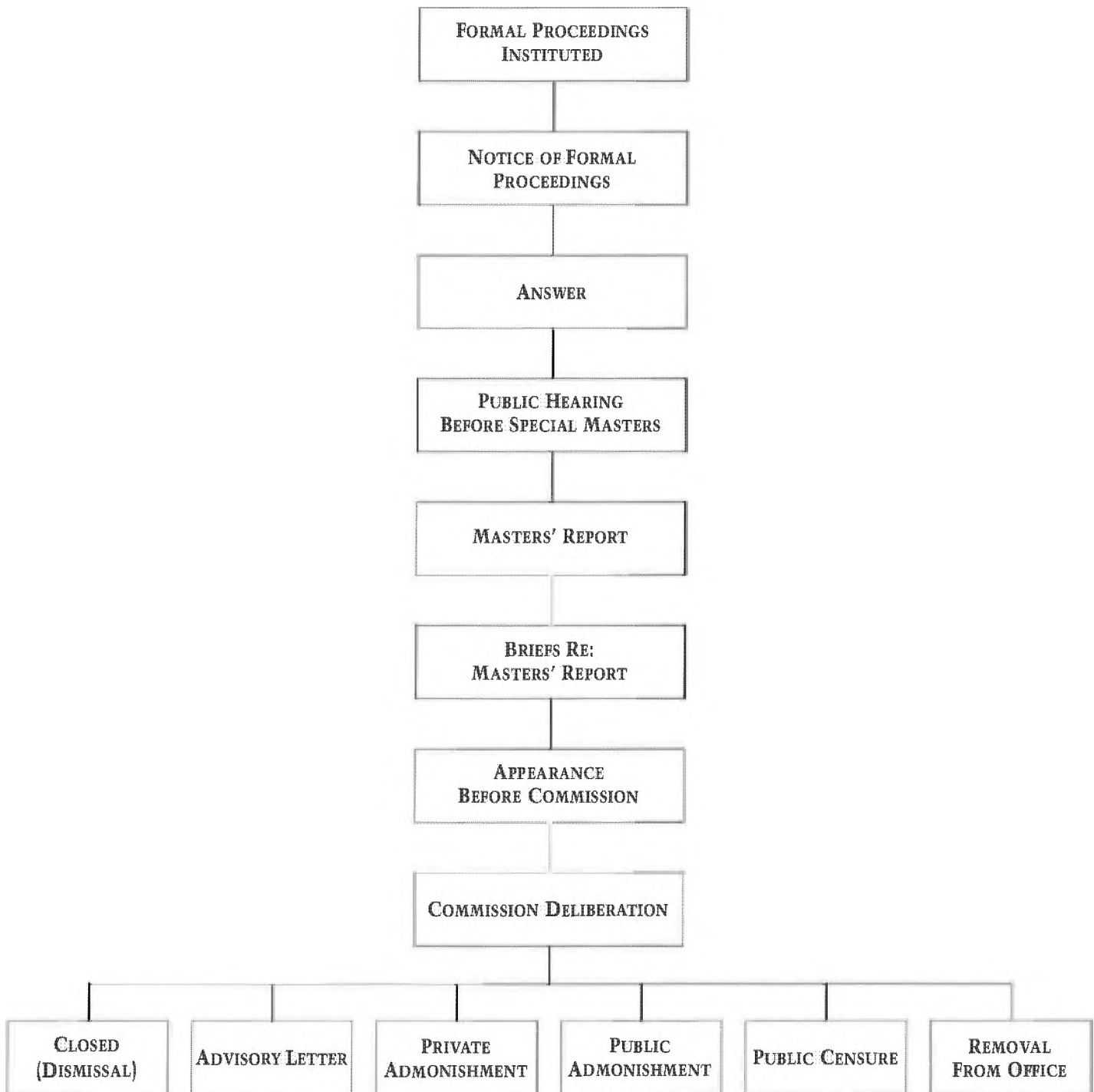
After the judge has filed an answer to the charges, the Commission sets the matter for a hearing. (Commission Rule 121(a).) As an alternative to hearing the case itself, the Commission may request the Supreme Court to appoint three special masters to hear and take evidence in the matter and to report 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 and Staff). The California 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 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.) Upon receipt of the masters' report, the judge and the examiner are given the opportunity to file objections to the report and to brief the issues in the case to the Commission. Prior to a decision by the Commission, the parties are

### FORMAL PROCEEDINGS



given the opportunity to be heard orally before the Commission. (Commission Rules 130, 132.)

Amicus curiae briefs 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**

The following are actions that may be taken by the Commission pursuant to article VI, section 18 of the California Constitution after a hearing on the formal charges, unless the case is closed without discipline:

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

In cases involving former judges, 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 California state court.

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

### **Release of Votes**

The Commission discloses the votes of the individual Commission members on disciplin-

ary determinations reached after formal proceedings are instituted. In addition, the Commission also releases individual votes on public admonishments issued pursuant to Commission Rules 115 and 116.

### **SUPREME COURT REVIEW**

A judge may petition the California Supreme Court to review a Commission determination to admonish, censure or remove the judge. Review is discretionary. 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).) California Rules of Court 935 and 936 govern petitions for review of Commission determinations.

Selected Supreme Court cases involving judicial disciplinary proceedings are listed in Appendix 2.

### **STATUTE OF LIMITATIONS**

Article VI, section 18(d) of the California Constitution provides that a judge may 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.)

### **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, for example, when public safety may be compromised, when information reveals possible criminal con-

II.  
LEGAL AUTHORITY AND COMMISSION PROCEDURES

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duct, 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 Con-

stitution, 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 found no basis for action against the judge, has taken an appropriate corrective action (the nature of which is not disclosed), or has imposed 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 also is 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.

## 2001 STATISTICS

## ACTIVE AND FORMER JUDGES



#### COMPLAINTS RECEIVED AND INVESTIGATED

In 2001, there were 1,610 judgeships within the Commission's jurisdiction. In addition to jurisdiction over active judges, the Commission has authority to impose certain discipline upon former judges.

The Commission's jurisdiction also includes California's 447 commissioners and referees. The Commission's handling of complaints involving commissioners and referees is discussed in Section V. In addition, the Director-Chief Counsel of the Commission is designated as the Supreme Court's investigator for complaints involving the eight judges of the State Bar Court.

#### JUDICIAL POSITIONS

As of December 31, 2001

Supreme Court .....	7
Court of Appeal .....	105
Superior Courts .....	1,498
<b>Total .....</b>	<b>1,610</b>

As of the end of the year 2001, the trial courts in all counties had been unified.

#### New Complaints

In 2001, 835 complaints about active California judges and former judges were considered by the Commission for the first time. The 835 complaints named a total of 1173 judges (781 different judges). The complaints set forth a wide array of grievances. A substantial percentage alleged legal error not involving misconduct or expressed dissatisfaction with a judge's discretionary handling of judicial duties.

#### 2001 CASELOAD

Cases Pending 1/1/01 .....	83
New Complaints Considered .....	835
Cases Concluded in 2001 .....	837
Cases Pending 12/31/01 .....	66

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

In 2001, the Commission received 112 complaints about subordinate judicial officers. These cases are discussed in Section V.

In 2001, the Commission received two complaints about State Bar Court judges. After review, it was determined that neither warranted further action.

The Commission also received in excess of 400 complaints in 2001 concerning individuals and matters which did not come under the Commission's jurisdiction: federal judges, former judges for matters outside the Commission's jurisdiction, 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 2001, the Commission ordered 50 staff inquiries and 47 preliminary investigations.

III.  
2001 STATISTICS - ACTIVE AND FORMER JUDGES

**INVESTIGATIONS COMMENCED IN 2001**

Staff Inquiries .....	50
Preliminary Investigations .....	47

**Formal Proceedings**

At the beginning of 2001, there were three formal proceedings pending before the Commission. The Commission instituted formal proceedings in six cases during 2001. In all of these cases the Commission has the authority to impose discipline, including censure and removal, subject to discretionary review by the Supreme Court upon petition by the judge. As of the end of 2001, three formal proceedings had been concluded and six formal proceedings remained pending before the Commission.

**FORMAL PROCEEDINGS**

Pending 1/1/01 .....	3
Commenced in 2001 .....	6
Concluded in 2001 .....	3
Pending 12/31/01 .....	6

**COMPLAINT DISPOSITIONS**

The following case disposition statistics are based on cases completed by the Commission in 2001, regardless of when the complaints were received.<sup>1</sup> In 2001, a total of 836 cases were concluded by the Commission.<sup>2</sup> A chart of the disposition of all cases completed by the Commission in 2001 is included on page 13.

**TYPE OF COURT CASE UNDERLYING  
COMPLAINTS CONCLUDED IN 2001**

Criminal .....	39%
General Civil .....	22%
Family Law .....	13%
Small Claims/Traffic .....	9%
All Others .....	12%

5% of the complaints did not arise out of court cases. These complaints concerned off-bench conduct, such as the handling of court administration and political activity.

**SOURCE OF COMPLAINTS CONCLUDED IN 2001**

Litigant/Family/Friend .....	84%
Attorney .....	5%
Judge/Court Staff .....	2%
All Other Complainants .....	6%
(including citizens)	
Source Other Than Complaint .....	3%
(includes anonymous letters, news reports)	

**Closed Without Action**

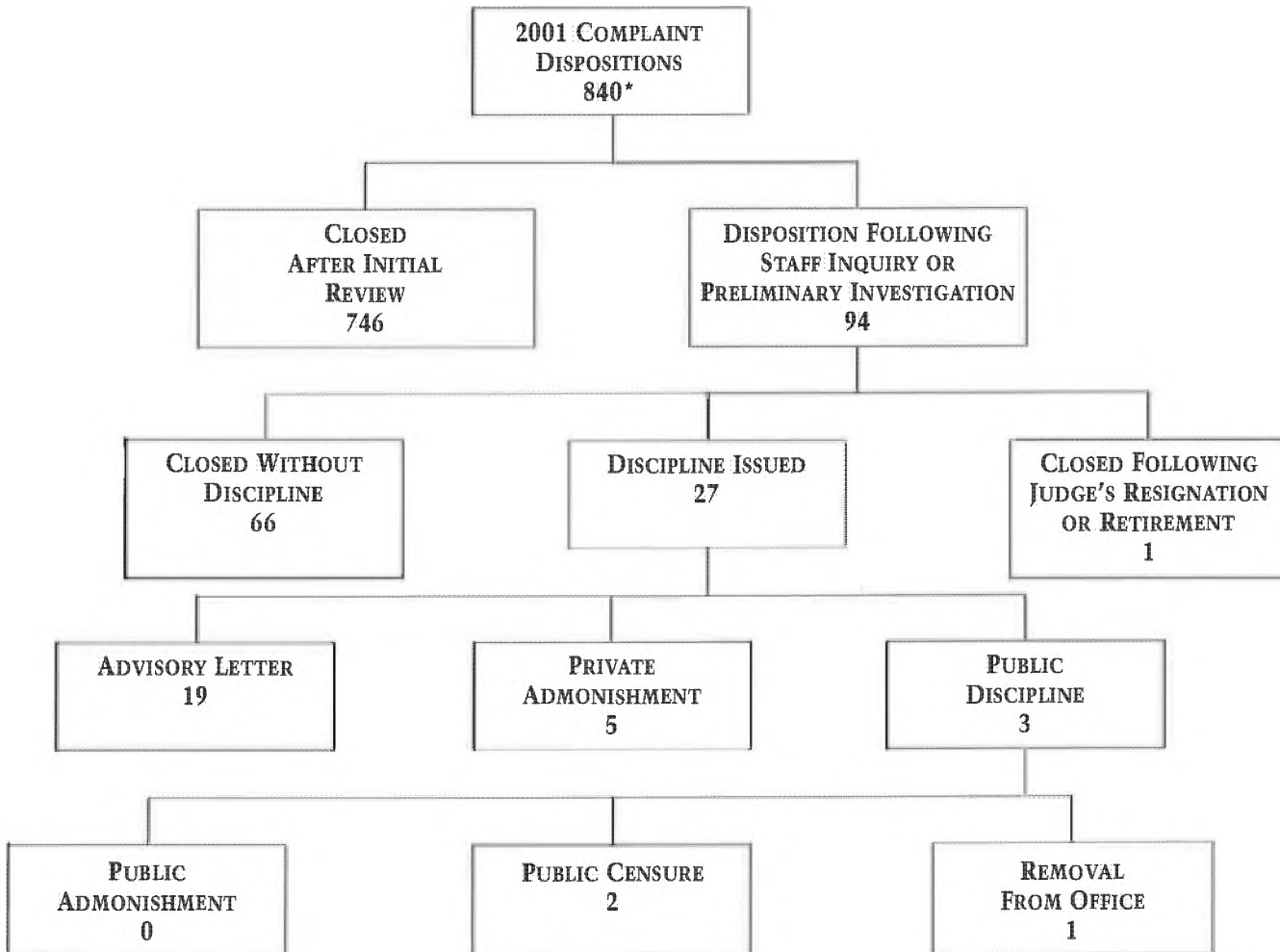
In 746 of the cases closed in 2001, a sufficient showing of misconduct did not appear after the information necessary to evaluate the complaint was obtained and reviewed. (In other words, there was an absence of facts which, if true and not otherwise explained, might constitute misconduct.) These cases were closed by the Commission without staff inquiry or preliminary investigation.

Following staff inquiry or preliminary investigation, another 66 matters were closed without any action. In these cases, investigation showed that the allegations were unfounded or

<sup>1</sup> Staff inquiries and preliminary investigations in the cases closed in 2001 may have commenced in prior years. Cases or portions of cases pending at the end of 2001 are not included in complaint disposition statistics.

<sup>2</sup> The total number of dispositions exceeds the total number of cases concluded because complaints involving multiple allegations of varying severity may be resolved with multiple dispositions. For example, some allegations in a case may warrant closure with an advisory letter while others in the same case 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.

**2001  
COMPLAINT DISPOSITIONS**



\* See footnote 2 at page 12.

unprovable, or the judge gave an adequate explanation of the situation.

#### **Closed With Discipline**

In 2001, the Commission removed one judge from office and issued two public censures, five private admonishments and 19 advisory letters. Each of these dispositions is summarized in Section IV.

A chart of the types of judicial conduct which resulted in discipline in 2001 appears on page 15. 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 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 in a single case, 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, if warranted, to impose 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. In 2001, the Commission closed one matter without discipline when the judge resigned or retired with an investigation pending.

III.  
2001 STATISTICS - ACTIVE AND FORMER JUDGES

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**TYPES OF CONDUCT RESULTING IN DISCIPLINE\***

**DEMEANOR, DECORUM**  
(includes inappropriate humor,  
[7]

**ON-BENCH ABUSE OF  
AUTHORITY IN PERFORMANCE  
OF JUDICIAL DUTIES**  
[5]

**BIAS OR APPEARANCE OF BIAS  
(NOT DIRECTED TOWARD A  
PARTICULAR CLASS)**  
(includes embroilment, prejudgment,  
favoritism,  
[5]

**MISCELLANEOUS OFF-BENCH  
CONDUCT**  
[5]

**DECISIONAL DELAY,  
TARDINESS, ATTENDANCE**  
[4]

**DISQUALIFICATION,  
DISCLOSURE AND  
RELATED RETALIATION**  
[3]

**ABUSE OF  
CONTEMPT/SANCTIONS**  
[2]

**ADMINISTRATIVE  
MALFEASANCE**  
(includes conflicts between judges, failure  
to supervise staff, delay in responding to  
complaints about commissioners,  
[2]

**COMMENT ON  
PENDING CASE**  
[2]

**OFF-BENCH ABUSE OF OFFICE**  
(includes charitable fund raising,  
improper use of official stationery)  
[2]

**FAILURE TO ENSURE RIGHTS**  
[2]

**EX PARTE COMMUNICATIONS**  
[1]

**PRE-BENCH MISCONDUCT**  
[1]

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

**GIFTS/LOANS/FAVORS  
TICKET-FIXING**  
[1]

**LACK OF CANDOR/COOPERATION  
WITH REGULATORY AUTHORITIES**  
[1]

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

\* See "Closed With Discipline" at page 14 of text.

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## IV. CASE SUMMARIES



### PUBLIC DISCIPLINE

Following is a summary of public discipline imposed in 2001. The full text of these decisions is available from the Commission office and on the Commission's Web site at <http://cjp.ca.gov>.

### REMOVAL FROM OFFICE BY THE COMMISSION

In 2001, the Commission issued one Order of Removal, in Inquiry Concerning Judge Patrick Couwenberg, No. 158. In November 2001, Judge Couwenberg filed a petition for review in the California Supreme Court. That petition was denied on January 16, 2002, and the matter has been included in the 2001 case disposition statistics.



#### Order of Removal of Judge Patrick Couwenberg, August 15, 2001

Judge Patrick Couwenberg of the Los Angeles Superior Court was ordered removed from office by the Commission in August 2001, for willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission's action concluded formal proceedings, during which there was a hearing before special masters and an appearance before the Commission.

The Commission determined that Judge Couwenberg provided false information on two Personal Data Questionnaires he submitted to the Governor when seeking appointment to ju-

dicial office. The judge made false representations about the colleges and law schools he attended, falsely stated that he had received a master's degree, and misstated the dates he had attended law school, thus hiding the fact that he had failed to pass the California bar examination on several attempts after completing law school. To further his efforts to obtain a judicial appointment, Judge Couwenberg misled two judges into believing that he had served in Vietnam, which they represented to others in connection with his application for appointment to the bench.

Upon being appointed, Judge Couwenberg made false statements about his education, military service, and past employment on a Judicial Data Questionnaire submitted to the presiding judge. Judge Couwenberg also misled the judge chosen to conduct his enrobing ceremony into stating that Judge Couwenberg had received a Purple Heart while serving in Vietnam. Judge Couwenberg never served in Vietnam.

In the courthouse, the judge made false statements to attorneys concerning his background and education. He also made false statements to a newspaper reporter about his military service.

The Commission further determined that during the Commission's investigation, the judge falsely testified under oath that he had participated in covert CIA operations in Southeast Asia and that he had a master's degree.

The Commission rejected Judge Couwenberg's claim of a mental condition that excused or mitigated his misconduct, and found that he

engaged in willful misconduct when he made false statements on the Judicial Data Questionnaire, when he made false statements to the judge chosen to conduct his enrobing ceremony, and when he made false statements under oath during the Commission's investigation. The Commission also found that the judge engaged in prejudicial conduct when he made false statements on two Personal Data Questionnaires, when he misled two judges about his military background when seeking appointment, when he made false statements to attorneys in the courthouse, and when he made false statements to a newspaper reporter.

The Commission determined that removal from office was necessary for the protection of the public and the reputation of the judiciary. The Commission noted that the judge's lack of honesty was an ongoing problem, and that honesty was a minimum qualification expected of every judge. The Commission also pointed out that evidence of exemplary judicial performance would not excuse his misconduct.

Commission members Mr. Michael A. Kahn, Judge Rise Jones Pichon, Ms. Lara Bergthold, Judge Madeleine I. Flier, Mr. Marshall B. Grossman, Mrs. Crystal Lui, Justice Vance W. Raye, and Ms. Ramona Ripston voted in favor of all the findings and conclusions and the removal of Judge Couwenberg. Ms. Gayle Gutierrez did not participate in the proceeding. There were two public member vacancies at the time of the decision.

In November 2001, Judge Couwenberg filed a petition for review in the California Supreme Court. The petition purported not to challenge the judge's removal from the bench, but to seek the reinstatement of his license to practice law. (A judge removed by the Commission is suspended from practicing law pending further order of the Supreme Court.) On January 16, 2002, the Supreme Court denied Judge Couwenberg's petition without prejudice to the submission of an original motion for reinstatement before the State Bar.

#### PUBLIC CENSURE BY THE COMMISSION

In 2001, the Commission imposed two public censures. Both judges also were barred from receiving assignments, appointments or references of work from any California state court.



#### Public Censure of Judge Alfonso D. Hermo (Retired), February 20, 2001

Former Judge Alfonso D. Hermo, retired from the Los Angeles County Municipal Court, was publicly censured and barred from receiving an assignment, appointment or reference of work from any California state court. The discipline was imposed pursuant to Rule 127 (Discipline By Consent).

The judge was presiding over a criminal matter involving a misdemeanor vehicle code violation and alleged probation violations in four other misdemeanor cases. When the defendant failed to appear, the judge issued a bench warrant and set bail at \$20,000. The defendant subsequently appeared. After being remanded to custody, the defendant fled the courtroom and the judge increased the defendant's bail to \$175,000. At the request of his bailiff the following day, the judge ordered the recall of the bench warrant and altered the court record by crossing out the order for bail and writing in "own recognizance" instead. The judge's actions were undertaken to assist his bailiff in avoiding suspension without pay for allowing the defendant to escape.

Pursuant to a plea agreement with the Los Angeles County District Attorney's Office, the judge pled no contest to aiding and abetting a person's escape after remand to the custody of a sheriff, a violation of Penal Code section 836.6(a), a misdemeanor. The Commission found that the judge's conduct constituted willful misconduct in office.

Commission members Mr. Michael A. Kahn, Ms. Lara Bergthold, Judge Madeleine I. Flier, Ms.

IV.  
CASE SUMMARIES

Gayle Gutierrez, Mr. Patrick M. Kelly, Mrs. Crystal Lui, Judge Rise Jones Pichon, Justice Vance W. Raye, and Ms. Ramona Ripston voted to issue the notice of formal proceedings, and to impose this public censure and bar from receiving assignments. Commission member Mr. Mike Farrell did not participate in this matter. There was one public member vacancy at the time of the decision.



**Public Censure of Judge Patrick B. Murphy,  
May 10, 2001**

Judge Patrick B. Murphy of the Los Angeles Superior Court was publicly censured and barred from receiving any assignment, appointment or reference of work from any California state court. The Commission initially determined to remove Judge Murphy from office, but stated that if it was determined that the judge had resigned before its order of removal, the order would be considered one censuring former Judge Murphy and barring him from receiving assignments. It was later established that Judge Murphy had resigned, and the Commission determined by resolution that its action was to be considered a censure and bar. The Commission's action concluded formal proceedings during which there was a hearing before special masters. Judge Murphy did not exercise his right to appear before the Commission.

Claiming various illnesses, the judge was absent for multiple, extensive periods over four years. On days he claimed to be ill, the judge engaged in activities such as teaching evening law classes, sitting for depositions in civil litigation, completing prerequisites for admission to medical school, and secretly enrolling in and briefly attending medical school in the Caribbean. The Commission found that the judge had persistently failed or had been unable to perform judicial duties, had failed to give judicial duties precedence over all other activities, had engaged in activities that interfered with the proper performance of judicial duties, had exhibited a lack

of candor to his presiding judge, had failed to cooperate in the administration of court business and had malingered.

In its Decision and Order of Removal dated May 10, 2001, the Commission noted that it had received a copy of a letter from Judge Murphy in which he purported to resign from office, but that the Governor's office had not confirmed receipt of the letter. The Commission's decision stated: "If it is determined that Judge Murphy has resigned prior to this order of removal, this decision shall be considered a public censure of former Judge Patrick B. Murphy and a bar from receiving any assignment, appointment, or reference of work from any California state court."

Commission members Mr. Michael A. Kahn, Judge Rise Jones Pichon, Ms. Lara Bergthold, Judge Madeleine I. Flier, Mr. Marshall B. Grossman, Ms. Gayle Gutierrez, Mrs. Crystal Lui and Justice Vance W. Raye, voted in favor of all the findings and conclusions and in the discipline of Judge Patrick B. Murphy. Commission members Mr. Mike Farrell and Ms. Ramona Ripston did not participate in this proceeding. There was one public member vacancy at the time of the decision.

By resolution at its July 19-20, 2001 meeting, the Commission indicated its receipt of information that Judge Murphy's letter of resignation was received and his pay terminated before the Commission's May 10, 2001 decision and further resolved that its decision was to be considered a public censure and bar from receiving any assignment, appointment or reference of work from any California state court.

**PRIVATE DISCIPLINE**

**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 also may be used



to elevate discipline in subsequent proceedings. This is particularly true in cases where the judge repeats the conduct that was the subject of the earlier discipline.

In 2001, the Commission imposed five private admonishments. The admonishments are summarized below. In order to maintain confidentiality, it has been necessary to omit certain details, making some summaries less informative than they otherwise would be. Because these examples are intended in part to educate judges and the public, and to assist judges in avoiding inappropriate conduct, the Commission believes it is better to describe them in abbreviated form than to omit them altogether.

1. A judge's off-bench conduct undermined public confidence in the integrity and impartiality of the judiciary. In addition, in a matter over which the judge had presided, the judge made comments that appeared to criticize the jury after its verdict.
2. During a trial, the judge made comments to the jury reflecting bias about the case. In another matter, the judge abused the judge's authority in an order involving payment of fees. In a third matter, the judge improperly threatened an attorney with contempt.
3. In two separate civil matters, the judge made remarks during court proceedings that disparaged the litigants and counsel. Some remarks appeared to advocate one side of the case, and some remarks appeared to reflect bias against a particular class; some of the remarks had been made in the presence of the jury. In a third matter, the judge demeaned a potential juror.
4. A judge delayed in ruling on four matters and executed an inaccurate salary affidavit.
5. At arraignment on a failure to appear, the judge proceeded without appointed counsel despite the defendant's statements that he wanted counsel. The judge made comments that disparaged the defendant's version of the case and fostered the appearance that the judge was attempting to pressure the defendant into pleading guilty.

#### 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. As noted by the California Supreme Court in *Oberholzer v. Commission on Judicial Performance* (1999), "Advisory letters may range from a mild suggestion to a severe rebuke." (20 Cal.4th 371, 393.) 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 2001, the Commission issued 19 advisory letters. These advisory letters are summarized below.

#### Delay, Dereliction of Duty

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

1. A judge engaged in activities away from the courthouse during working hours that undermined public confidence in the integrity of the judiciary.
2. In a family law matter, a judge delayed over five months between the filing of objections to a proposed statement of decision and the issuance of a signed statement.

#### 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).)

3. In two juvenile dependency matters, a judge

made comments to parents that were demeaning and created the appearance of a lack of impartiality.

4. A judge made demeaning remarks and expressed hostility in open court toward an attorney who sought correction of an inaccurate order. On another occasion, the judge made gratuitous and disparaging remarks in open court about an attorney, in the attorney's absence.

5. A judge displayed anger and rudeness toward an attorney in open court.

6. A judge displayed sarcasm and derision in remarks toward a pro per litigant in a civil harassment matter.

#### **Administrative Malfeasance**

Judges are required to diligently discharge their administrative responsibilities.

7. A judge performed administrative functions in a manner that appeared to reflect abuse of authority and a lack of impartiality.

#### **Failure to Ensure Rights**

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

8. A judge conducted all or portions of some criminal proceedings without the prosecutor being present.

#### **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.)

9. A judge used judicial stationery to obtain an advantage in a personal business matter.

10. A judge smoked in chambers in violation of law and despite being reminded of the prohibition by the presiding judge.

11. A judge used chambers stationery in connection with a personal business dispute.

#### **Public Comment**

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

12. A judge made an improper public comment on a pending case.

#### **Case-Related 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.)

13. A judge improperly required defendants to address the courtroom audience.

#### **Disclosure and Disqualification**

Judges must disqualify themselves under certain circumstances and trial judges must make appropriate disclosures to those appearing before them.

14. A judge failed to fully disclose on the record the judge's relationship with one of the counsel, and failed to place the parties' waiver of disqualification on the record.

15. A judge responded to a litigant's exercise of a peremptory challenge by criticizing the litigant's attorney and delaying the transfer of the case to the presiding judge for reassignment.

#### **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 adher-

IV.  
CASE SUMMARIES

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ence 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.)

16. A judge failed to follow procedures required to sanction indirect contempt.

**Ex Parte Communications**

Unless expressly allowed by law or expressly agreed to by the opposing party, ex parte communications are improper. (Canon 3B(7).)

17. A judge initiated an ex parte discussion with a juror in a case tried before the judge while post-trial proceedings were pending.

**Miscellaneous**

Some cases involved more than one type of misconduct.

18. A judge made rude and disparaging remarks to a witness and improperly raised the prospect of incarceration of the witness in a manner that implied prejudgment.

19. A judge failed to disqualify or to disclose to the parties aspects of the judge's relationship with one of the counsel. An appointment by the judge gave rise to an appearance of favoritism. The judge also commented improperly on a pending case.

## V. SUBORDINATE JUDICIAL OFFICERS



Since June of 1998, the Commission has shared authority with local courts over the discipline of "subordinate judicial officers" — attorneys employed by California's state courts to serve as court commissioners and referees. In 2001, there were 447 authorized subordinate judicial officer positions in California.

<b>SUBORDINATE JUDICIAL OFFICERS AUTHORIZED POSITIONS As of December 31, 2001</b>	
Court Commissioners .....	400
Court Referees .....	47
Total .....	447

### COMMISSION PROCEDURES

The constitutional provisions governing the Commission's role in the oversight and discipline of court commissioners and referees expressly provide that the Commission's jurisdiction is discretionary. Each local court retains initial jurisdiction to discipline subordinate judicial officers or to dismiss them from its employment and also has exclusive authority to respond to complaints about conduct problems outside the Commission's constitutional jurisdiction. Since the local court's role is primary, the Commission's rules require that complaints about subordinate judicial officers be made first to the local court. (Commission Rule 109(c)(1).)

Complaints about subordinate judicial officers come before the Commission in a number of ways. First, when a local court completes its disposition of a complaint, the complainant has

the right to seek review by the Commission. (When closing the complaint, the local court is required to advise the complainant to seek such review within 30 days.) Second, a local court must notify the Commission when it imposes written or formal discipline or terminates a subordinate judicial officer. Third, a local court must notify the Commission if a referee or commissioner resigns while an investigation is pending. (Commission Rule 109(c)(3), (4).) Lastly, the Commission also may investigate or adjudicate a complaint against a subordinate judicial officer at the request of a local court. (Commission Rule 109(c)(2).)

When a matter comes to the Commission after disposition by a local court, the Commission may commence an investigation if it appears that the local court has abused its discretion by failing to investigate sufficiently, by failing to impose discipline, or by imposing insufficient discipline. To assist in coordinating the Commission's review of complaints and discipline involving commissioners and referees, the California Rules of Court require local courts to adopt procedures to ensure that complaints are handled consistently and that adequate records are maintained. (See California Rules of Court, rule 6.655.) Upon request by the Commission, the local court must make its records concerning the complaint available to the Commission.

The Constitution requires the Commission to exercise its disciplinary authority over subordinate judicial officers using the same standards specified in the Constitution for judges. Thus, the rules and procedures that govern in-

V.  
SUBORDINATE JUDICIAL OFFICERS

vestigation of judges and formal proceedings (discussed above in Section II, Commission Procedures) also apply to matters involving subordinate judicial officers. In addition to other disciplinary sanctions, the Constitution provides that a person found unfit to serve as a subordinate judicial officer after a hearing before the Commission shall not be eligible to serve as a subordinate judicial officer. The Constitution also provides for discretionary review of Commission determinations upon petition to the California Supreme Court.

### 2001 STATISTICS

#### Complaints Received and Investigated

In 2001, 112 new complaints about subordinate judicial officers were reviewed by the Commission. Because the local courts were required to conduct the initial investigations, the Commission's function primarily entailed reviewing the local courts' actions to determine whether there was an abuse of discretion in the disposition of the complaints.

#### RULE UNDER WHICH NEW COMPLAINTS WERE SUBMITTED

Rule 109(c)1 – appeal from local court's disposition .....	111
Rule 109(c)3 – notification by local court of discipline .....	1

In 2001, the Commission concluded its review of 114 complaints involving subordinate judicial officers. This included two matters in which the local courts had imposed written reprimands, two matters in which written warnings were given and one matter in which an oral warning was given. The 114 cases were closed by the Commission because the Commission determined that the local courts had not abused their discretion in the handling or the disposition of the complaints.

At the end of the year, three matters remained under investigation. All involved subordinate judicial officers who retired or resigned while complaints were under investigation by the local courts.

#### 2001 CASELOAD SUBORDINATE JUDICIAL OFFICERS

Cases Pending 1/1/01 .....	5
New Complaints Considered .....	112
Cases Concluded in 2001 .....	114
Cases Pending 12/31/01 .....	3
Discrepancies in totals are due to consolidated complaints.	

#### TYPE OF COURT CASE UNDERLYING SUBORDINATE JUDICIAL OFFICER COMPLAINTS CONCLUDED IN 2001

Small Claims .....	41%
Family Law .....	28%
General Civil .....	10%
Traffic .....	9%
Criminal .....	6%
All Others (including off-Bench) .....	6%

#### SOURCE OF COMPLAINTS INVOLVING SUBORDINATE JUDICIAL OFFICERS CONCLUDED IN 2001

Litigant/Family/Friend .....	96%
Attorney .....	3%
Judge/Court Staff .....	1%

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## VI. JUDICIAL DISABILITY RETIREMENT



### VOLUNTARY DISABILITY RETIREMENT

In addition to its disciplinary function, the Commission is responsible for evaluating and acting upon judges' applications for disability retirement. This responsibility is shared with the Chief Justice of the California Supreme Court. The application procedure is set forth in Division V of the Commission's Policy Declarations (Appendix 1 C). Pertinent statutes are included in Appendix 1 F. Disability retirement proceedings are confidential, with limited exceptions.

Judges are eligible to apply for disability retirement after either four or five years on the bench, depending on when they took office. This prerequisite does not apply if the disability results from injury or disease arising out of and in the course of service.

The statutory test for disability retirement is a mental or physical condition that precludes the efficient discharge of judicial duties and is permanent or likely to become so. The applicant judge is required to prove that this standard is satisfied. The judge must provide greater support for the application and meet a heavier burden of proof if the application is filed while formal disciplinary charges are pending, if the judge has been defeated in an election, or if the judge has been convicted of a felony.

Judicial disability retirement may afford substantial lifetime benefits. Applications, accordingly, are carefully scrutinized by both the Commission and the Chief Justice. In most cases, the Commission will appoint an independent physician or physicians to review medical records, examine the judge, and report on

whether the judge meets the test for disability retirement.

Because the law requires that the disability be permanent or likely to become so, the applicant judge must exhaust all reasonable treatment options before a decision on the application can be made. If the Commission finds that the judge is disabled, but may recover with treatment, the Commission will keep the application open and closely monitor the judge's progress, requiring regular medical reports and frequent medical examinations. Disability retirement will be approved only if the record, including the opinion of the Commission's independent medical examiners, establishes that further treatment would be futile. If the Commission determines that an application should be granted, it is referred to the Chief Justice for consideration. A judge whose application is denied is given an opportunity to seek review of the denial of benefits.

Once a judge retires on disability, the Commission may review the judge's medical status every two years prior to age 65, to ascertain whether he or she remains disabled. A judge who is no longer disabled becomes eligible to sit on assignment, at the discretion of the Chief Justice. Should an eligible judge refuse an assignment, the disability retirement allowance ceases.

The Judges' Retirement System has authority to terminate disability retirement benefits if the judge earns income from activities "substantially similar" to those which he or she was unable to perform due to disability. Accordingly, the Commission's Policy Declarations require

VI.  
JUDICIAL DISABILITY RETIREMENT

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physicians who support a judge's disability retirement application to specify the judicial duties that cannot be performed due to the condition in question. When the Commission approves an application, it may prepare findings specifying those duties. Upon request of the Judges' Retirement System, the Commission may provide information about a disability retirement application to assist in determining whether to terminate benefits.

#### INVOLUNTARY DISABILITY RETIREMENT

On occasion, a judge is absent from the bench for medical reasons for a substantial period of time, but does not apply for disability retirement. If the absence exceeds 90 court days in a 12-month period, the presiding judge is required to notify the Commission. Because the absent judge is not available for judicial service,

the Commission will invoke its disciplinary authority and conduct an investigation, which may include an independent medical examination. Should the investigation establish that the judge is disabled or displays a persistent failure or inability to perform judicial duties, the Commission will institute formal proceedings, which may lead to discipline or involuntary disability retirement.

#### 2001 STATISTICS

At the beginning of 2001, three disability retirement applications were pending before the Commission. The Commission received three additional applications during the year. The Commission granted two disability retirement applications during 2001 and denied two applications. Two applications remained pending at the close of 2001.

## VII. COMMISSION ORGANIZATION, STAFF AND BUDGET



### COMMISSION ORGANIZATION AND STAFF

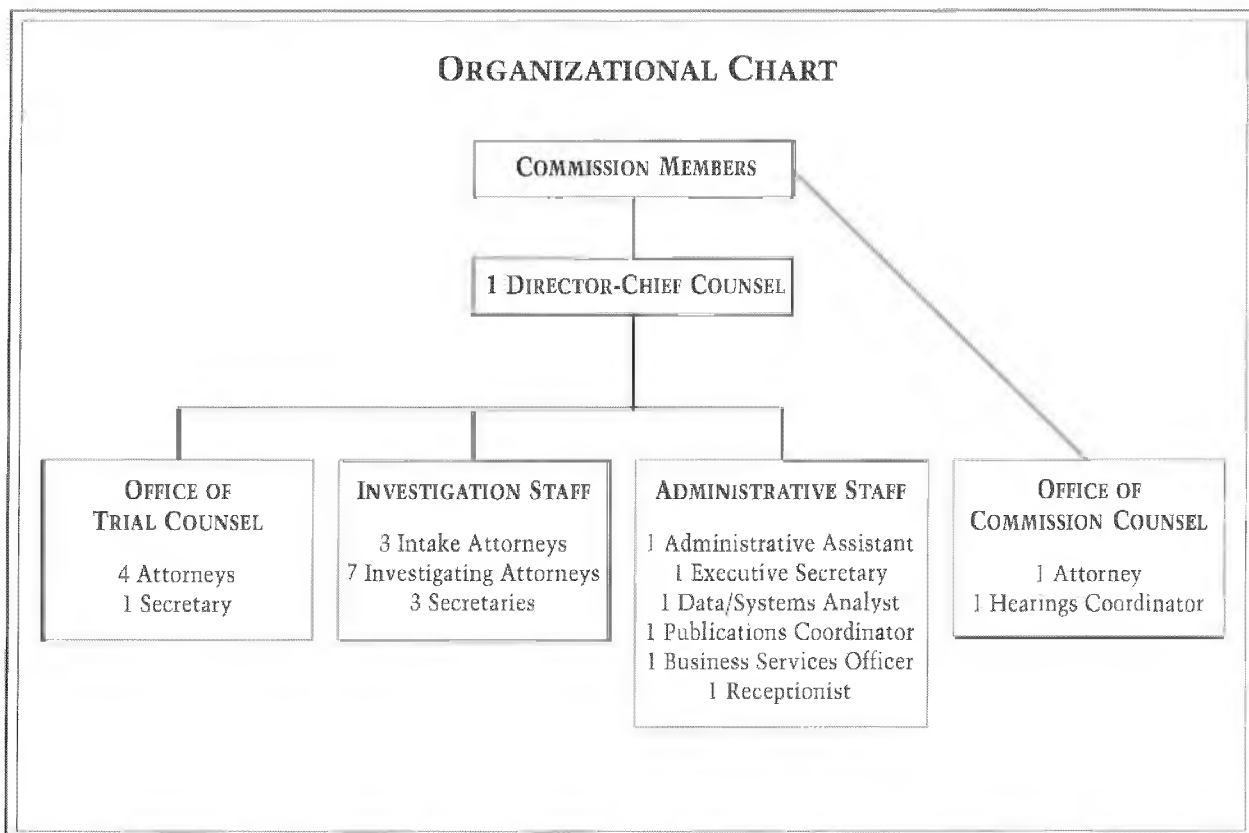
The Commission has 27 authorized staff positions, including 16 attorneys and 11 support staff. All Commission staff are state employees.

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 pri-

mary 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 are primarily responsible for reviewing and evaluating new complaints, and seven are primarily responsible for conducting staff inquiries and preliminary investigations.

### ORGANIZATIONAL CHART





VII.  
COMMISSION ORGANIZATION, STAFF AND BUDGET

Four Trial Counsel serve as examiners 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 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 the 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. Richard G.R. Schickele has served as Commission Counsel since July of 1998.

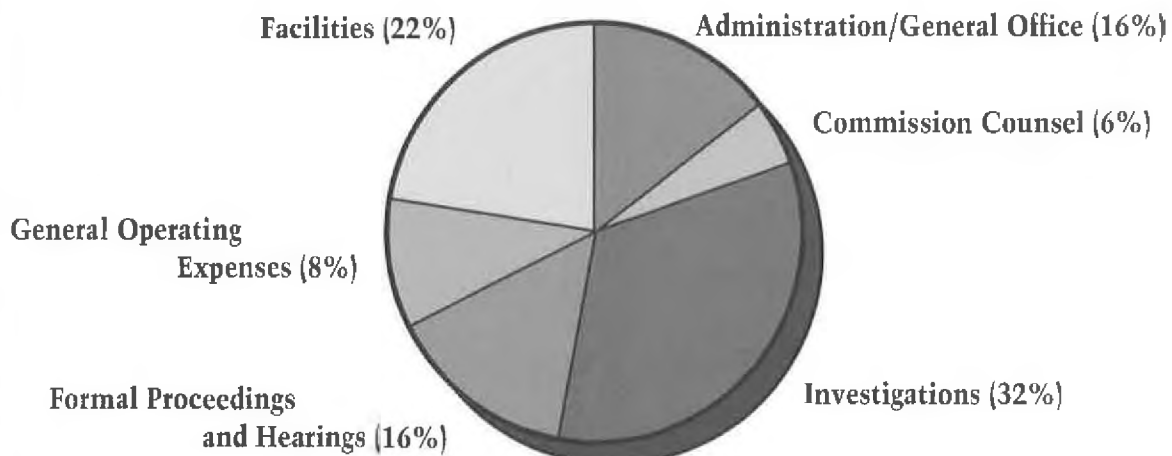
### BUDGET

The Commission's budget is separate from the budget of any other state agency or court. For the 2001-2002 fiscal year, the Commission's budget allocation is \$3,976,000.

During the 2000-2001 fiscal year, approximately 32% of the Commission's budget supported the intake and investigation functions of the Commission and approximately 22% of the Commission's budget was used in connection with formal proceedings. The remaining 46% went toward sustaining the general operations of the Commission, including facilities, administrative staff, supplies, and security.

**COMMISSION ON JUDICIAL PERFORMANCE  
2000-2001 BUDGET EXPENSES**

\$3,491,645 (Actual Expenditure)



### APPENDIX 3.

## 10-YEAR SUMMARY OF COMMISSION ACTIVITY

#### NEW COMPLAINTS CONSIDERED BY COMMISSION

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
	966	950	997	1,263	1,187	1,183	1,125	1,022	951	835

#### COMMISSION INVESTIGATIONS COMMENCED

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Staff Inquiries	136 (14%)	121 (13%)	120 (12%)	163 (13%)	114 (10%)	132 (11%)	122 (11%)	74 (7%)	92 (10%)	50 (6%)
Preliminary Investigations	15 (2%)	35 (4%)	51 (5%)	64 (5%)	60 (5%)	65 (5%)	65 (6%)	30 (3%)	36 (4%)	47 (6%)
Formal Proceedings Instituted	2 (<1%)	9 (1%)	14 (1%)	4 (<1%)	8 (1%)	5 (<1%)	6 (<1%)	4 (<1%)	3 (<1%)	6 (<1%)

#### DISPOSITION OF COMMISSION CASES\*

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Total Dispositions	975	930	940	1,213	1,176	1,174	1,088	1,059	934	840
Closed after Initial Review	827 (85%)	809 (87%)	834 (89%)	1,053 (87%)	1,024 (87%)	1,001 (85%)	950 (87%)	929 (88%)	835 (89%)	746 (89%)
Closed without Discipline after Investigation	93 (10%)	79 (8%)	53 (6%)	94 (8%)	102 (9%)	114 (10%)	71 (7%)	86 (8%)	64 (7%)	66 (8%)
Advisory Letter	40 (4%)	26 (3%)	41 (4%)	41 (3%)	34 (3%)	42 (4%)	53 (5%)	30 (3%)	19 (2%)	19 (2%)
Private Admonishment	11 (1%)	7 (1%)	6 (1%)	7 (1%)	4 (<1%)	10 (1%)	3 (<1%)	3 (<1%)	6 (<1%)	5 (<1%)
Public Admonishment (or Reprimand)	3 (<1%)	2 (<1%)	3 (<1%)	6 (<1%)	3 (<1%)	4 (<1%)	7 (<1%)	4 (<1%)	6 (<1%)	0 (0%)
Public Censure (by Supreme Court or Commission)	0 (0%)	0 (0%)	0 (0%)	1 (<1%)	4 (<1%)	1 (<1%)	2 (<1%)	3 (<1%)	1 (<1%)	2 (<1%)
Removal	0 (0%)	0 (0%)	0 (0%)	2 (<1%)	0 (0%)	0 (0%)	0 (0%)	1 (<1%)	0 (0%)	1 (<1%)
Judge Resigned or Retired with Proceedings Pending	1 (<1%)	7 (1%)	3 (<1%)	9 (1%)	5 (<1%)	2 (<1%)	2 (<1%)	3 (<1%)	3 (<1%)	1 (<1%)

\* See footnote 2 at page 12.