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# STATE OF CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE



## 2012 ANNUAL REPORT

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## INTRODUCTION

The Commission on Judicial Performance's mandate is to protect the public, enforce rigorous standards of judicial conduct and maintain public confidence in the integrity and independence of the judicial system. One of the commission's greatest challenges in meeting these responsibilities is the lack of awareness of the commission's existence, its role and how it operates. This lack of awareness is not confined to the public but extends to the legal community, court employees and even to judges. With the population of California approaching 40 million and the number of active lawyers in the state exceeding 179,000, the commission's public information challenge is formidable.


Historically, the commission's primary vehicle for informing the public, lawyers and the judiciary of its work was this annual report. It is sent annually to all 2,000 state court judicial officers and to various government officials. Legislators, members of Congress, libraries, local and minority bar associations and others are alerted to its publication and availability online. Today it still serves a critical transparency function and as a digest of the commission's work.

A much richer resource for information about the commission's work, however, is its website (<http://cjp.ca.gov>). There, one can find every public Supreme Court and commission decision since the commission's establishment in 1960, summaries of private discipline since 1998 and pleadings and documents from pending cases. Statistical information, statistical reports and past annual reports are available on the site, as are all of the statutes, rules and other provisions that govern the commission's work. The website also provides information about the commission's mandate, its authority as well as limitations to its authority and how the process works. In 2012, there were in excess of 32,000 visits to the commission's website. We invite you to visit the site and to urge anyone interested in maintaining high standards of conduct for the judiciary to do so as well.

In addition to providing these informational resources, for several years members of the commission and its staff have worked diligently on outreach to the commission's various constituencies. Members have spoken to Rotary and other civic organizations. Last October, attorney members of the commission made a presentation to attorneys at the 2012 California State Bar Annual Meeting. Commission staff made a number of presentations to law school ethics classes and to prospective judicial applicants and candidates at a program through California Women Lawyers. Judge members of the commission made presentations at New Judge Orientation sessions throughout the year, and annually, to the Presiding Judge and Court Executive Orientation program and to the Supervising Judges Institute. Members and staff also participated in programs at the 2012 California Judges Association Annual Meeting. We hope that these efforts have increased the accuracy of people's understanding of the commission's work as well as awareness of the commission itself.

The commission welcomes and would be most grateful for any suggestions about improving future annual reports, its website or outreach efforts.

I would like to thank members of the judiciary, the legal community, court staff and the general public who continually assist us in our work. Additionally, I would like to thank my colleagues on the commission for their untiring work on behalf of the people of California. Finally, the staff of the commission support us with a level of excellence and dedication that is remarkable. We are grateful to them for their service.



Lawrence J. Simi  
Chairperson

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**2012 ANNUAL REPORT**  
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## COMMISSION MEMBERS

Pursuant to California Constitution, article VI, section 8, the commission is composed of 11 members: one justice of a court of appeal and two judges of superior courts 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 four-year terms. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing authority; however, no member shall serve for more than a total of 10 years. The commission meets approximately seven times a year. 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.



**MR. LAWRENCE J. SIMI, CHAIRPERSON**, was appointed to the commission as a public member by the Governor August 17, 2005, and reappointed September 13, 2009; his term ends February 28, 2013. Mr. Simi has served as the commission's chairperson since March 2012. He resides in San Francisco. Mr. Simi is a retired public affairs professional and spent 30 years with a Fortune 500 company. Previously, he was a program manager for Mayors Alioto, Moscone and Feinstein in San Francisco. He has been a board member of a variety of civic and nonprofit organizations, including San Francisco's Commission on the Aging, the Mayor's Fiscal Advisory Committee, Self Help for the Elderly, Society for the Preservation of San Francisco's Architectural Heritage, Mission Education

Project, United Cerebral Palsy Association, San Francisco Adult Day Health Network, and the Institute on Aging. Currently he serves as president of the Board of Directors of Pine View Housing Corporation, as a member of the Board of Directors of the Coro Center for Civic Leadership, as a member of the Board of Directors of the George Moscone Institute for Public Service, and as a member of Senator Dianne Feinstein's Service Academy Advisory Board. Mr. Simi holds a Bachelor of Arts degree in Political Science from San Francisco State University and a Master of Arts in Government from California State University, Sacramento.



**HON. ERICA R. YEW, VICE-CHAIRPERSON**, was appointed to the commission as a superior court judicial member by the Supreme Court December 10, 2010, to the remainder of an unexpired term ending February 28, 2011, and to a new four-year term beginning March 1, 2011, and ending February 28, 2015. Judge Yew has served as the vice-chairperson of the commission since March 2012. Judge Yew sits on the Santa Clara County Superior Court, to which she was appointed in October 2001. She was a member of the Judicial Council from 2009 to 2012, and a member of the California State Bar Board of Governors from 2010 to 2011. She serves on the Judicial Council Task Force on Self-Represented Litigants. She has worked on and led a number of projects to increase diversity in the

legal profession. Among her judicial assignments, Judge Yew has presided over a dependency drug treatment court and speaks nationally on the topic of problem-solving courts. Prior to her appointment to the bench, Judge Yew was a civil litigator and graduated from the University of California, Hastings College of the Law and with honors from the University of California, Berkeley.



**MS. MARY LOU ARANGUREN** was appointed to the commission as a public member by the Senate Committee on Rules September 5, 2011; her term ends February 28, 2013. She resides in Alameda County. Ms. Aranguren is a certified court interpreter in Spanish/English and currently works for the Alameda County Superior Court. Ms. Aranguren previously worked as a labor representative for the California Federation of Interpreters, and served as legislative director during the development and implementation of the Trial Court Interpreter Employment and Labor Relations Act, which created 800 jobs for interpreters in the court system. Ms. Aranguren is involved in professional development and education activities for interpreters and in language access advocacy.

She is a member of the California Labor Federation, and its appointee to the State Bar of California's Access to Justice Commission. Ms. Aranguren holds a Bachelor of Arts degree in Communications from San Francisco State University.



**ANTHONY P. CAPOZZI, ESQ.**, was appointed to the commission as a lawyer member by the Governor on April 6, 2010; his term ends February 28, 2013. He resides in Fresno and Carmel, California. Mr. Capozzi received his Bachelor of Arts degree in Philosophy from the State University of New York at Buffalo in 1967 and his law degree from the University of Toledo, College of Law in 1970. Mr. Capozzi served as a law clerk to the Honorable Omer Poos, a United States District Court Judge for the Southern District of Illinois from 1970 to 1973. From 1973 to 1979 he was a Supervising Assistant United States Attorney in the Eastern District of California, Fresno Division. He has owned and operated the Law Offices of Anthony P. Capozzi since 1979, primarily focusing his

practice in the area of criminal law. Mr. Capozzi is admitted to the Ohio, Illinois and California bars. He has served as president of the Fresno County Bar Association and the Federal Bar Association, San Joaquin Valley Chapter; lawyer, co-chair of the Ninth Circuit Judicial Conference; co-chair of the Bench Bar Coalition; president of the State Bar of California from 2003-2004; member of the Access and Fairness Commission, 2004-2005; and member of the Judicial Council of the State of California, 2005-2010. Mr. Capozzi has served as the legal and political analyst for ABC Channel 30, KFSN TV in the Central Valley since 2005. He has served as president and is currently a member of the Law School Advisory Committee for the State Bar accredited law schools and is secretary of the Board of the Central California Blood Center; since 2005, Mr. Capozzi has been a fellow of the American Board of Criminal Lawyers. In June of 2010, Mr. Capozzi received an Honorary Doctorate of Law Degree from the Southern California Institute of Law. In March of 2013, Mr. Capozzi will be inducted as a fellow of the American College of Trial Lawyers.



**HON. FREDERICK P. HORN** was appointed to the commission as a superior court judicial member by the Supreme Court October 22, 2003, and reappointed March 1, 2005, and January 8, 2009; his term ends February 28, 2013. Judge Horn served as the commission's chairperson in 2007 and 2008 and as its vice-chairperson in 2011 and 2012, and in 2005 and 2006. Judge Horn resides in Orange County. He has been a judge of the Orange County Superior Court since 1993; he was a judge of the Orange County Municipal Court, Harbor Judicial District, from 1991 to 1993. From 2002 to 2006, he served as presiding judge of the Orange County Superior Court. Prior to his appointment to the bench, he was a prosecutor with the Los Angeles District Attorney's Office. Judge Horn

received his law degree from the University of West Los Angeles in 1974, where he wrote for and served as staff on the Law Review. He was the chair of the Trial Court Presiding Judges Advisory Committee of the California Judicial Council from 2002 to 2006. He is a member of the faculty of the Judicial College, the New Judges Orientation Program, and the Continuing Judicial Studies Program.



**HON. JUDITH D. McCONNELL** was appointed to the commission as the Court of Appeal judicial member by the Supreme Court March 30, 2005, and reappointed January 8, 2009; her term ends February 28, 2013. Justice McConnell served as the commission's chairperson from 2009 to 2012; she served as its vice-chairperson in 2007 and 2008. She resides in San Diego County. Justice McConnell has served as the administrative presiding justice of the Court of Appeal, Fourth Appellate District, since 2003; she served as associate justice from 2001 to 2003. From 1978 to 1980, she was a judge of the San Diego County Municipal Court and, from 1980 to 2001, a judge of the San Diego County Superior Court. As a superior court judge, she served as presiding judge of the Juvenile Court

and supervising judge of the Family Court and was elected by her colleagues in 1988 to serve as assistant presiding judge and as presiding judge in 1990, serving two years in each position. Justice McConnell received her law degree from the University of California, Berkeley, Boalt Hall School of Law in 1969. She served as a member and vice-chair of the Judicial Council Task Force on Jury System Improvement from 1998 to 2003, and as chair of the Task Force on Judicial Ethics Issues from 2003 to 2004.



**NANCI NISHIMURA, ESQ.**, was appointed to the commission as a lawyer member by the Governor May 12, 2011; her term ends February 28, 2015. She resides in San Mateo County. Ms. Nishimura is a partner at Cotchett, Pitre & McCarthy, LLP. She was a legislative assistant to Senator Daniel Inouye, and a clerk to the Overseas Private Investment Corporation and the U.S. International Trade Commission. Prior to law, Ms. Nishimura was a business development consultant to major corporations in Japan. She served on the Judicial Nominees Evaluation Commission from 2004 to 2008. She is involved in professional and nonprofit organizations, including the Board of Governors of California Women Lawyers, the Board of Trustees of the Asian Art Museum, and the

Board of Trustees of the California Science Center Foundation. Ms. Nishimura received her law degree from The Catholic University of America, Washington, D. C., and a Bachelor of Arts in Psychology and Master of Arts in International Relations from the University of Southern California.



**MS. MAYA DILLARD SMITH** was appointed to the commission as a public member by the Senate Committee on Rules June 27, 2007, and reappointed March 17, 2011; her term ends February 28, 2015. She resides in Alameda County. Ms. Dillard Smith is a strategy and fund development consultant. She is currently a law student at the University of California, Hastings College of the Law and extern in the Ninth Circuit Court of Appeals. Formerly, Ms. Dillard Smith was senior advisor to Mayor Gavin Newsom and Director of Violence Prevention for the Mayor's Office of Criminal Justice in San Francisco. She also has worked for the California Judicial Council, the U.S. Census Monitoring Board, the National Bureau of Economic Research and U.S. Representative

Barbara Lee. Ms. Dillard Smith was also the founding chairperson of the Oakland Violence Prevention and Public Safety Oversight Committee and a member of the Oakland Fund for Children and Youth Planning and Oversight Committee. She is affiliated with a variety of nonprofits and professional networks. Ms. Dillard Smith received a Bachelor of Arts degree in Economics from the University of California, Berkeley, and a Master of Arts in Public Policy from Harvard University, John F. Kennedy School of Government.





**MS. SANDRA TALCOTT** was appointed to the commission as a public member by the Speaker of the Assembly November 15, 2007, and reappointed July 11, 2011; her term ends February 28, 2015. She resides in Los Angeles County. From 1999 to 2002, Ms. Talcott served as a public member on the Judicial Nominees Evaluation Commission; from 2003 to 2006, she served on that commission's review committee, and was chair of the committee between 2005 and 2006. She received a Bachelor of Arts degree in Political Science from the University of California, Berkeley. Ms. Talcott has a background in advertising; she worked at Young and Rubicam International, Inc., as a producer and casting director, then as a freelance casting director. She has been involved in the volun-

teer sector of the Los Angeles art community, where she co-curated one of the early exhibitions at the Craft and Folk Art Museum. She was involved in the start-up phase of the Museum of Contemporary Art, and has served the Los Angeles County Museum of Art as chairperson of one of its councils. She has also served as a board member of a national association of art museum volunteer committees. She presently works as an interior designer.



**MR. ADAM N. TORRES** was appointed to the commission as a public member by the Governor May 12, 2011; his term ends February 28, 2015. He resides in Riverside County. Mr. Torres is a managing director of business intelligence and investigations at Stroz Friedberg. Previously, he was the United States Marshal for the Central District of California from 2003 to 2010. At the Internal Revenue Service, Mr. Torres was a supervisory special agent from 2000 to 2003, a special agent from 1993 to 2000 and a revenue agent from 1986 to 1992. Mr. Torres received a Bachelor of Science degree in Accounting from California State University, San Bernardino.



**MR. NATHANIEL TRIVES** was appointed to the commission as a public member by the Speaker of the Assembly October 3, 2007, and reappointed March 4, 2009; his term ends February 28, 2013. He resides in Los Angeles County. Mr. Trives is a former mayor of Santa Monica, California, and a retired Deputy Superintendent/Chief Government Relations Officer for the Santa Monica Community College District. He attended Santa Monica College, California State University, Los Angeles, and the University of California, Los Angeles. He is a former chair of the California Commission on Peace Officer Standards and Training. Mr. Trives served as a U.S. District Court special master, overseeing a consent decree governing the resolution of race and gender bias in

the San Francisco Police Department. He has served on the board of the National Urban League, and is serving on the board of advisors of the Santa Monica UCLA Medical Center and the Pat Brown Institute, as well as numerous community based boards, including the Chamber of Commerce and the Convention and Visitors Bureau in Santa Monica. He is an emeritus professor of criminal justice at California State University, Los Angeles.

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## SPECIAL MASTERS

Pursuant to commission rule 121(b), as an alternative to hearing a case itself, the commission may request the appointment of special masters – usually three – by the Supreme Court to preside over a hearing and take evidence in a formal proceeding. As further discussed on page 6 of this report, at the conclusion of the hearing and after briefing by the parties, the special masters prepare a report of findings of fact and conclusions of law for the commission. The commission also may appoint a special master to assist in a disability retirement matter.

The commission wishes to recognize the following judges for their service as special masters in commission matters in 2012:

**Honorable Gail A. Andler**

Superior Court of Orange County

**Honorable Donald Cole Byrd**

Superior Court of Glenn County

**Honorable Jacqueline A. Connor**

Superior Court of Los Angeles County

**Honorable Suzanne N. Kingsbury**

Superior Court of El Dorado County

**Honorable Ronni B. MacLaren**

Superior Court of Alameda County

**Honorable Vincent J. O'Neill, Jr.**

Superior Court of Ventura County

**Honorable Dennis M. Perluss**

Court of Appeal, Second Appellate District,  
Division Seven

**Honorable Vance W. Raye**

Court of Appeal, Third Appellate District

**Honorable Maria P. Rivera**

Court of Appeal, First Appellate District,  
Division Four

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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 temporary judges (also called 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 2012 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 (see complaint form in Appendix 3). The commission also considers complaints made anonymously and matters it learns of in other ways, such as from news articles or from 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 2). Examples of judicial misconduct include intem-

perate 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 or advice to individuals or intervene in litigation on behalf of a party.

### REVIEW AND INVESTIGATION OF COMPLAINTS

At commission meetings, which occur approximately every seven weeks, the commission decides upon the action to take with respect to each new 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 will close the case without action against the judge and so notify the complainant. If, after an investigation and an opportunity for comment by the judge, the commission determines that improper conduct occurred, but the misconduct was relatively minor, the commission may issue an advisory letter to the judge. In an advisory letter, the commission advises caution or expresses disapproval of the judge's conduct.

When more serious misconduct is found, the commission may issue a private admonishment. 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.

Each advisory letter and private admonishment that became final in 2012 is summarized, without identifying the judge involved, in Section IV. Summaries from prior years are available on the commission's website at <http://cjp.ca.gov>.

### Public Dispositions

In cases involving more serious misconduct, the commission may issue a public admonishment 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 admonishments and public censures consist of 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 complainant, the press and the general public. 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.

In the most serious cases, the commission may determine – following a hearing – to remove a judge from office. Typically, these cases 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.

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's 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.

#### ACTION THE COMMISSION CAN TAKE

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

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## II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

### LEGAL AUTHORITY

#### Recent Changes in the Law

In 2012, there were no substantive changes to the California Constitution, the California Rules of Court, the California Government Code or the Code of Civil Procedure relating to the work of the commission. The Supreme Court adopted amendments to the Code of Judicial Ethics in 2012 taking effect January 1, 2013. In 2012, the commission approved various changes to its rules and policy declarations. The amendments are summarized below.

A list of all of the provisions governing the commission's work is contained in Appendix 1 and the governing provisions are available on the commission's website at <http://cjp.ca.gov>.

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

The Commission on Judicial Performance was established by legislative constitutional amendment approved by the voters 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, 1998 and most recently in 2002 the Constitution was amended to change various aspects of the commission's work.

The commission is subject to Government Code sections 68701 through 68756. Additionally, the Government Code controls the commission's handling of disability retirement applications, pursuant to sections 75060 through 75064 and sections 75560 through 75564.

The commission is responsible for enforcement of the restrictions on judges' and subordinate judicial officers' receipt of gifts and honoraria, set forth in Code of Civil Procedure section 170.9. On January 30, 2013, the commission adopted \$390.00 as the adjusted gift limit, for purposes of 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 conducting investigations and formal proceedings.

The Rules of the Commission on Judicial Performance, rules 101 through 138, were adopted by the commission on October 24, 1996, and took effect December 1, 1996. The rules have been amended periodically thereafter. On October 17, 2012, the commission adopted interim changes to rule 119.5, which provides for electronic and facsimile filing during formal proceedings. On December 5, 2012, the commission reenacted rule 122(g)(2), concerning discovery depositions, without an expiration date. The commission circulated these rules and several additional proposed amendments and new rules for public comment in early 2013.

The Policy Declarations of the Commission on Judicial Performance detail internal procedures and existing policy. The policy declarations were substantially revised in 1997 and have been amended periodically thereafter. In January 2013, the commission approved amendments to policy declaration 3.6 (concerning the process for changes to the policy declarations) and policy declaration 6.1 (concerning receipt of written materials by recused commission members), and approved new policy declaration 2.3.5 (concerning deposition transcripts taken pursuant to rule 122(g)). The commission also approved adoption of amendments to policy declarations 5.1, 5.2, 5.3, 5.4 and 5.5 (regarding disability retirement applications).

### Rules of Court

The Rules of Court that pertain to commission proceedings concern the review by the Supreme Court of a commission discipline determination, proceedings involving a justice of the Supreme Court, and the responsibilities of the presiding judge concerning the oversight of judges and subordinate judicial officers. No amendments were made to the Rules of Court pertaining to the commission in 2012.

## 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)). All members of the judiciary must comply with the code. As stated in the preamble to the code, “Compliance is required to preserve the integrity of the bench and to ensure the confidence of the public.” The Supreme Court adopted the Code of Judicial Ethics effective January 1996.

In 2012, the Supreme Court adopted several amendments to the Code of Judicial Ethics taking effect January 1, 2013. The following summary is adapted from the court’s description of changes:

A number of revisions address campaign ethics, such as the manner of disclosure of campaign contributions by trial judges, required by Code of Civil Procedure section 170.1(a)(9)(C), and the disqualification of appellate justices who receive campaign contributions of \$5,000 or more from a litigant or lawyer appearing before the justice. The disclosure provisions, contained in canons 3E(2)(b) and (c), address the nature, manner, and timing of those disclosures. Disqualification of appellate justices is addressed in new canon 3E(5)(j).

In other amendments concerning the election process, the court adopted new canon 5B(3), which requires judicial candidates, including incumbents, under specified conditions, to complete a judicial campaign ethics course before the election. Another canon – canon 5B(2) – now requires judicial candidates to review and approve the content of all campaign statements and materials produced by the candidate’s campaign committee.

Other amendments to the code contain important clarifications. New canon 3B(12) addresses settlement conferences and cautions judges against engaging in conduct that may be perceived as coercive. Reorganized canon 4D(6) addresses the acceptance by judges of gifts, honoraria, and reimbursements, and lists first the general exceptions to the prohibition against accepting gifts – such as gifts

from relatives and friends – followed by the more specific exceptions, such as reimbursements for the cost of travel and gifts incidental to a public testimonial. The revisions also clarify the types of gifts judges may accept. Canon 3B(7), which addresses ex parte communications, defines that term and clarifies the circumstances under which a judge may engage in such communications. New canon 3E(3)(a) provides that a judge is disqualified if the judge has made a statement that a person aware of the facts might reasonably believe commits the judge to reach a particular result or rule in a particular way in a proceeding. The commentary to canon 3B(9), which addresses the issue of judges commenting on pending cases, has been amended to clarify the circumstances under which judges may comment on pending cases and to caution judges about complying with other canons when making such comments.

Finally, the code now includes definitions of terms central to the judicial role, including impartiality, integrity, impropriety, and independence. These definitions are consistent with the adoption of similar definitions in the revised ABA model code.

The Code of Judicial Ethics is included in Appendix 2 (underlining and strikeouts are shown to indicate changes to the new Code of Judicial Ethics).

## COMMISSION PROCEDURES

### Commission Review of Complaints

The commission considers each written complaint about a California judge and determines whether sufficient facts exist to warrant investigation or whether the complaint is unfounded and should not be pursued. Until the commission has authorized an investigation, the commission’s staff does not contact the judge or any court personnel. However, to assist the commission in its initial review of the complaint, the commission’s legal staff will research any legal issues and may obtain additional relevant information from the complainant or the complainant’s attorney. (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 legal 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 will close the case without any action against the judge. If improper 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 also may 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 also may 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 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 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. At each meeting, the commission receives a report regarding the status of each deferred matter. See Section III for statistics on deferred cases.

### **Monitoring**

In the course of a preliminary investigation, the commission may monitor the judge's conduct, pursuant to rule 112, 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, such as demeanor that could be improved.

### Formal Proceedings

After a preliminary investigation, in cases involving allegations of serious misconduct, the commission may initiate 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 commenced, 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 served and filed with the commission within 20 days after service of the notice. (Commission Rules 118(a), (b), 119(b), 119.5.) 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 formal proceedings are initiated. 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).) The Supreme Court has selected a pool of approximately 45 experienced jurists who have received training to serve as special masters in commission proceedings.

As in all phases of commission proceedings, 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 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 disciplinary determinations reached after formal proceedings are instituted. The commission also releases individual votes on public admonishments.

### 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, rules 9.60 and 9.61 govern petitions for review of commission determinations.

### 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

California Constitution, article VI, section 18(i)(1) authorizes the commission to provide for the confidentiality of complaints to and investigations by the commission. 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 conduct, and when judges retire or resign during proceedings. (Commission Rule 102(f)-(n); 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 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 found no basis for action against the judge or determined not to proceed further in the matter, 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.)

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### III.

## ACTIVE AND FORMER JUDGES

### 2012 STATISTICS

#### COMPLAINTS RECEIVED AND INVESTIGATED

In 2012, there were 1,803 judgeships within the commission's jurisdiction. In addition to jurisdiction over active judges, the commission has authority to impose certain discipline upon former judges for conduct while they were active judges.

The commission's jurisdiction also includes California's 304 commissioners and referees. The commission's handling of complaints involving commissioners and referees is discussed in Section V.

JUDICIAL POSITIONS As of December 31, 2012	
Supreme Court .....	7
Court of Appeal.....	103
Superior Courts .....	1,693
Total.....	1,803

#### New Complaints

In 2012, the commission considered 1,143 new complaints about active and former California judges. The 1,143 complaints named a total of 1,387 judges (857 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 decision.

2012 CASELOAD – JUDGES	
Cases Pending 1/1/12 .....	151
New Complaints Considered.....	1,143
Cases Concluded .....	1,152
Cases Pending 12/31/12.....	124
Discrepancies in totals are due to consolidated complaints/dispositions.	

In 2012, the commission considered 160 complaints about subordinate judicial officers. These cases are discussed in Section V.

The commission office also received 469 complaints in 2012 concerning individuals and matters that did not come under the commission's jurisdiction: federal judges, former judges for matters outside the commission's jurisdiction, judges pro tem (temporary judges), 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 2012, the commission ordered 72 staff inquiries and 80 preliminary investigations.

INVESTIGATIONS COMMENCED IN 2012	
Staff Inquiries .....	72
Preliminary Investigations.....	80

#### Formal Proceedings

At the beginning of 2012, there was one formal proceeding pending before the commission. This matter was concluded in 2012.

The commission instituted formal proceedings in two cases during 2012. One matter was concluded in 2012. The other matter remained pending before the commission at the end of the year.

FORMAL PROCEEDINGS	
Pending 1/1/12 .....	1
Commenced in 2012.....	2
Concluded in 2012.....	2
Pending 12/31/12.....	1

### DEFERRAL OF INVESTIGATION

As discussed on page 5, the commission may defer an investigation under certain circumstances. At the beginning of 2012, 31 deferred matters were pending. The commission ordered 20 matters deferred during 2012. Nineteen matters were returned to the commission's active calendar, considered and concluded by the commission in 2012. Six matters were returned to the active calendar and remained pending before the commission at the end of 2012. Twenty-six matters remained deferred at the end of the year.

#### DEFERRED INVESTIGATIONS

Pending 1/1/12 .....	31
Investigations deferred in 2012 .....	20
Deferred investigations returned to active calendar and concluded in 2012 .....	19
Investigations returned to the active calendar and pending 12/31/12 .....	6
Deferred investigations pending 12/31/12...	26

#### REASONS INVESTIGATIONS WERE DEFERRED IN 2012

Deferred pending resolution of underlying case.....	7
Deferred pending appeal or other review ...	12
Deferred pending civil, criminal or administrative investigation or proceeding ....	0
Deferred pending rule 112 monitoring .....	1

### COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the commission in 2012, regardless of when the complaints were received.<sup>1</sup> In 2012, the commission concluded a total of 1,152 cases. The average time period from the filing of a complaint to the disposition was 4.3 months. A chart of Complaint Dispositions of all cases completed by the commission in 2012 is included on page 12.

#### TYPE OF COURT CASE UNDERLYING COMPLAINTS CONCLUDED IN 2012

Criminal .....	40%
General Civil .....	22%
Family Law .....	15%
Small Claims/Traffic .....	8%
All Others.....	12%

3% 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.

### Closed Without Discipline

In 2012, after obtaining the information necessary to evaluate the complaints, the commission determined that there was not a sufficient showing of misconduct in 1,000 of the complaints. In other words, there was an absence of facts which, if true and not otherwise explained, might constitute misconduct. The commission closed these complaints without staff inquiry or preliminary investigation.

Following staff inquiry or preliminary investigation, the commission closed another 106 matters without discipline. In these cases, investigation showed that the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation.

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<sup>1</sup> Staff inquiries and preliminary investigations in the cases closed in 2012 may have commenced in prior years. Cases or portions of cases pending at the end of 2012 are not included in complaint disposition statistics.

**SOURCE OF COMPLAINTS CONCLUDED  
IN 2012**

Litigant/Family/Friend.....	91%
Attorney .....	4%
Judge/Court Staff.....	1%
All Other Complainants .....	2%
(including citizens)	
Source Other than Complaint .....	2%
(includes anonymous letters, news reports)	

### Closed With Discipline

In 2012, the commission ordered one judge removed from office, publicly censured one judge and imposed five public admonishments. The commission also issued six private admonishments and 30 advisory letters. Each of these cases is summarized in Section IV.

A chart of the Types of Conduct Resulting in Discipline in 2012 appears on page 13. 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 was counted once and assigned to the category most descriptive of the wrongdoing. If multiple types of misconduct were involved in a single case, each different type of conduct was counted and assigned to the appropriate category. However, if the same type of conduct occurred on multiple occasions in a single case, the conduct was counted only once.

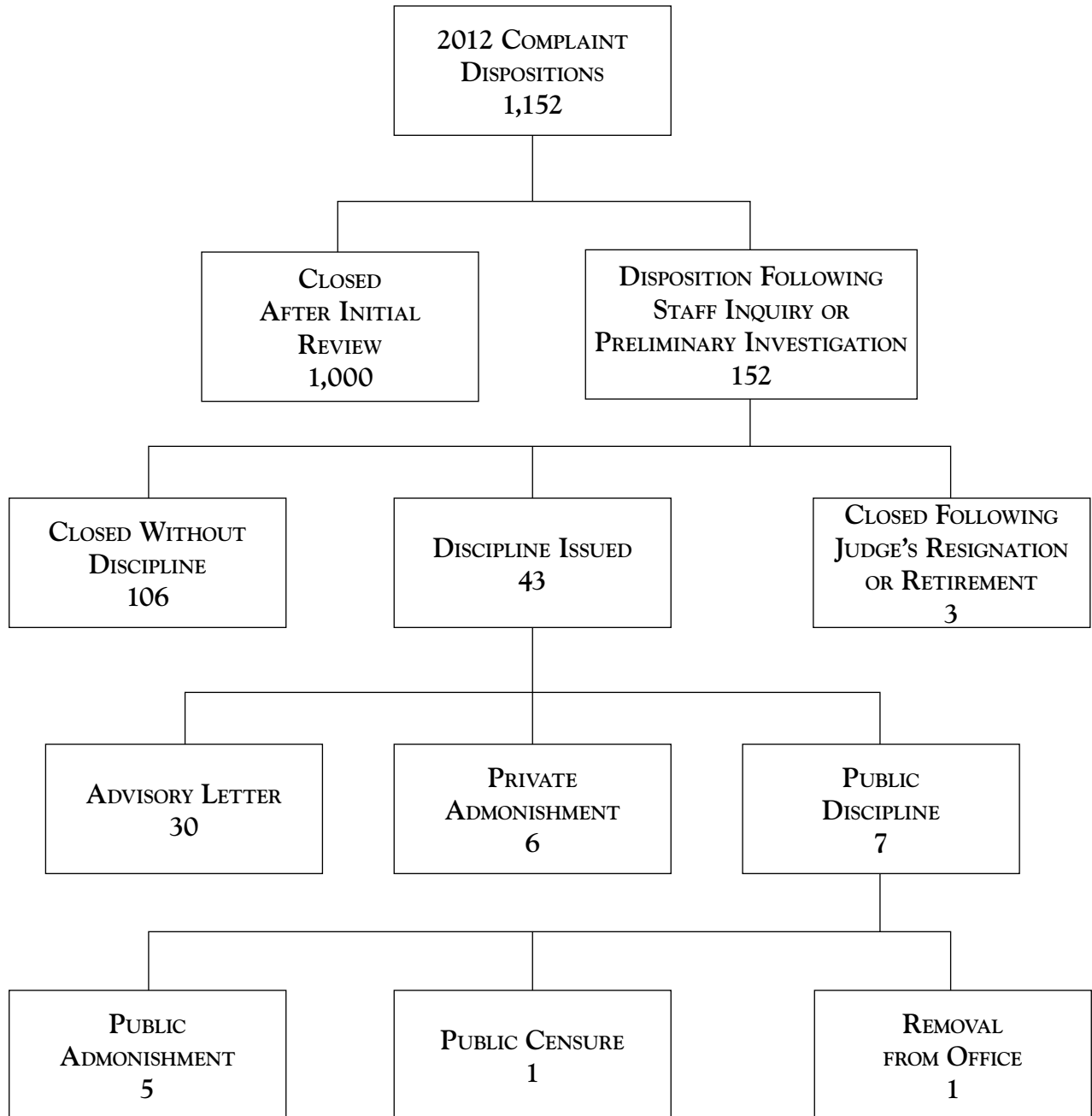
### Resignations and Retirements

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 2012, the commission closed three matters without discipline when the judge resigned or retired with an investigation pending.

### 10-YEAR SUMMARY OF COMMISSION ACTIVITY

A chart summarizing statistics on commission activities over the past 10 years appears on page 14.

2012  
COMPLAINT DISPOSITIONS\*



\*See "Closed with Discipline" at page 11 of text.

III.  
ACTIVE AND FORMER JUDGES – 2012 STATISTICS

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**TYPES OF CONDUCT RESULTING IN DISCIPLINE IN 2012\***

The types of conduct are listed in order of prevalence. The numbers indicate the number of times each type of conduct resulted in discipline. A single act of misconduct was counted once and assigned to the category most descriptive of the misconduct. If multiple types of misconduct were involved in a single case, each different type of conduct was counted and assigned to the appropriate category. However, if the same type of conduct occurred on multiple occasions in a single case, it was counted only once.

DEMEANOR/DECORUM  
(includes inappropriate humor)  
[14]

FAILURE TO ENSURE RIGHTS  
[10]

ON-BENCH ABUSE OF AUTHORITY  
IN PERFORMANCE OF  
JUDICIAL DUTIES  
[10]

ABUSE OF CONTEMPT/SANCTIONS  
[6]

DISQUALIFICATION/DISCLOSURE/  
POST-DISQUALIFICATION  
CONDUCT  
[5]

BIAS OR APPEARANCE OF  
BIAS NOT DIRECTED TOWARD  
A PARTICULAR CLASS  
(includes embroilment,  
prejudgment, favoritism)  
[3]

DECISIONAL DELAY,  
FALSE SALARY  
AFFIDAVITS  
[3]

EX PARTE COMMUNICATIONS  
[3]

ADMINISTRATIVE MALFEASANCE  
(includes conflicts between  
judges, failure to supervise staff,  
delay in responding to complaints  
about commissioners)  
[1]

COMMENT ON A  
PENDING CASE  
[1]

GIFTS/LOANS/FAVORS/  
TICKET FIXING  
[1]

IMPROPER BUSINESS FINANCIAL  
OR FIDUCIARY ACTIVITIES  
[1]

IMPROPER POLITICAL  
ACTIVITIES  
[1]

MISCELLANEOUS  
OFF-BENCH CONDUCT  
[1]

OFF-BENCH ABUSE OF OFFICE/  
MISUSE OF COURT INFORMATION  
(includes improper use  
of office stationery)  
[1]

PRE-BENCH MISCONDUCT  
[1]

\* See "Closed With Discipline" at page 11 of text.

**III.**  
**ACTIVE AND FORMER JUDGES – 2012 STATISTICS**

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**10-YEAR SUMMARY OF COMMISSION ACTIVITY**

**NEW COMPLAINTS CONSIDERED BY COMMISSION**

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
	1,011	1,114	965	1,019	1,077	909	1,161	1,176	1,158	1,143

**COMMISSION INVESTIGATIONS COMMENCED**

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Staff Inquiries	55 (5%)	91 (8%)	55 (6%)	67 (7%)	55 (5%)	70 (8%)	102 (9%)	101 (9%)	95 (8%)	72 (6%)
Preliminary Investigations	48 (5%)	47 (4%)	41 (4%)	51 (5%)	54 (5%)	42 (5%)	63 (5%)	101 (9%)	77 (7%)	80 (7%)
Formal Proceedings Instituted	3 (<1%)	2 (<1%)	4 (<1%)	5 (<1%)	1 (<1%)	2 (<1%)	1 (<1%)	2 (<1%)	1 (<1%)	2 (<1%)

**DISPOSITION OF COMMISSION CASES**

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Total Dispositions	993	1,080	954	1,023	1,058	892	1,115	1,133	1,138	1,152
Closed After Initial Review	906 (91%)	993 (92%)	876 (92%)	919 (90%)	975 (92%)	805 (90%)	1,007 (90%)	988 (87%)	995 (87%)	1,000 (87%)
Closed Without Discipline After Investigation	62 (6%)	60 (6%)	51 (5%)	64 (6%)	45 (4%)	48 (5%)	74 (7%)	96 (8%)	99 (9%)	106 (9%)
Advisory Letter	16 (2%)	13 (1%)	12 (1%)	16 (2%)	20 (2%)	18 (2%)	25 (2%)	31 (3%)	26 (2%)	30 (3%)
Private Admonishment	2 (<1%)	8 (<1%)	6 (<1%)	7 (<1%)	9 (<1%)	7 (<1%)	3 (<1%)	8 (<1%)	10 (<1%)	6 (<1%)
Public Admonishment	1 (<1%)	3 (<1%)	4 (<1%)	9 (<1%)	5 (<1%)	7 (<1%)	2 (<1%)	4 (<1%)	5 (<1%)	5 (<1%)
Public Censure	1 (<1%)	0 (0%)	2 (<1%)	4 (<1%)	1 (<1%)	0 (0%)	1 (<1%)	3 (<1%)	1 (<1%)	1 (<1%)
Removal	2 (<1%)	1 (<1%)	0 (0%)	1 (<1%)	2 (<1%)	2 (<1%)	0 (0%)	0 (0%)	0 (0%)	1 (<1%)
Judge Retired or Resigned with Proceedings Pending	3 (<1%)	2 (<1%)	4 (<1%)	3 (<1%)	1 (<1%)	5 (<1%)	3 (<1%)	3 (<1%)	2 (<1%)	3 (<1%)



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## IV. ACTIVE AND FORMER JUDGES CASE SUMMARIES

The following case summaries pertain to active and former judges. See Section V for information regarding discipline of subordinate judicial officers.

All references are to the Code of Judicial Ethics in effect until January 1, 2013.

### PUBLIC DISCIPLINE

Public discipline decisions issued by the commission in 2012 are summarized in this section. All public decisions in commission cases are available on the commission's website at <http://cjp.ca.gov>.

#### REMOVAL FROM OFFICE BY THE COMMISSION

In 2012, the commission ordered one judge removed from office.

#### **Order of Removal of Judge Richard W. Stanford, Jr. January 11, 2012**

Judge Richard W. Stanford, Jr., of the Orange County Superior Court, was ordered removed from office for willful misconduct. The commission's action concluded formal proceedings, during which there was a hearing before special masters and a hearing before the commission. The judge's petition for review in the California Supreme Court was denied on May 16, 2012.

The commission and the special masters found that Judge Stanford diverted to his own court and acted on traffic tickets issued to his son-in-law, friends, and a juror over a seven-year period, between 2003 and 2010. He improperly waived or suspended all or practically all fines and fees in eight cases and granted a continuance, outside of the ordinary course of business, in one case. The commission, like the masters, concluded that Judge Stanford engaged in nine instances of willful misconduct over a seven-year period, but based its decision to remove the judge only on the seven instances of willful misconduct occurring within

six years of the start of the judge's current term. (California Constitution, article VI, section 18(d).) The commission found that the pattern of misconduct between 2005 and 2010 created both the appearance and the reality of a two-track system of justice – one for his friends and family and another for all others.

Before the special masters and the commission, Judge Stanford claimed that he had a “blind spot” and did not know that his conduct was wrong when he adjudicated the tickets of friends and family. Addressing this claim, the commission first pointed out that consciousness of wrongdoing was not charged, and was not an element of willful misconduct in the context of the case. The commission noted that the masters, citing the testimony of many witnesses who had known the judge for years that he could have – and did – miss the issue, stated that they were “not persuaded that he [Judge Stanford] could not have failed to recognize the conflict of interest and the appearance of impropriety it created.” The commission disagreed and found, instead, that Judge Stanford did recognize the impropriety of his conduct when he provided preferential treatment to friends and his son-in-law.

The commission noted that many of Judge Stanford's fellow jurists had attested to his integrity and opined that he would not have handled the tickets of friends and family if he knew it was wrong, and that the presiding judge believed Judge Stanford had missed the issue until confronted with the impropriety of his conduct. The commission found, however, that even if Judge Stanford's misconduct was an aberration or was motivated by his proclivity to help others, it was implausible that he was entirely unconscious of the impropriety of his actions. The commission stressed that the judge's 26 years on the bench, long career as a prosecutor, and reputation as a “by-the-book” judge who does not “cut corners” and is knowledgeable, diligent and follows the law negated any possibility that he missed the issue. The commission pointed out

that Judge Stanford's fellow judges acknowledged that they would not have missed the issue. The judge's clerk, who declined to handle the judge's son-in-law's ticket because she knew him, did not miss the issue, and made this known to the judge. In addition, the commission noted, it is common knowledge among members of the public that a judge should not handle traffic tickets of family and friends. The commission pointed out that the impropriety of adjudicating traffic tickets of friends and family is no less transparent when fines and fees are waived than when the ticket is dismissed, since the vice is the existence of a two-track system of justice.

In explaining its decision to override the findings of the special masters as to Judge Stanford's credibility, the commission noted that when he appeared before the commission, Judge Stanford acknowledged that he had attended judicial ethics programs and had looked at summaries of cases involving ticket fixing, but was unable to explain how he could have missed the obvious. The commission noted Judge Stanford's statement that it would have been obvious that disqualification was required if his son-in-law was standing before him in court; the commission opined that the issue was just as obvious to the judge in the cases at issue, but his failure to disqualify was easier to conceal when people were not standing before him. In addition, the commission noted Judge Stanford's agreement with the testimony of witnesses who stated that the issue was so obvious they did not see how anyone would miss it. The commission concluded, "Judge Stanford did not miss the issue, he ignored the issue."

Next, the commission turned to the question of whether it was reasonable for Judge Stanford to believe that suspension of all fees and fines was a common practice in traffic court. The commission noted the judge's testimony that he believed – based on his own experience occasionally covering traffic court and night court 15 to 20 years earlier, and occasional unspecified conversations with traffic commissioners – that this was a regular practice, although he had not inquired about current traffic court practices when adjudicating the tickets at issue. The commission disagreed with the masters' conclusion that the judge's belief that he was acting

within the mainstream of traffic citation outcomes, while falling below professional standards, was not unreasonable.

The commission cited evidence presented at the hearing before the masters that during the period in question, waiver or suspension of all fines and fees was an unusually lenient disposition in traffic court. The commission found that Judge Stanford had no reasonable basis for believing his family and friends would have received this outcome if they had appeared in court. The commission noted that it has never been proper to waive fees and fines for no reason or to benefit friends and family, and agreed with the masters that under canon 3B(2) of the Code of Judicial Ethics (requiring judges to be faithful to the law and maintain professional competence in the law), judges should not issue orders in any cases where they are unfamiliar with the legal standards. The commission concluded, "Wearing blinders may have provided Judge Stanford with a rationalization for his conduct, but it did not render his unfounded belief that he was acting within the mainstream of traffic citation dispositions reasonable."

The commission next discussed evidence concerning Judge Stanford's contributions to the judiciary and his community, adopting the masters' findings that the judge was a widely respected jurist, and that the nature and quantity of his community service was extraordinary. The commission noted that such mitigating evidence is not relevant in determining whether a judge has acted in bad faith and thus engaged in willful misconduct, but may be taken into account in determining the appropriate discipline.

The judge engaged in unjudicial conduct by failing to comply with the Code of Judicial Ethics, including canons 1 (a judge shall uphold the integrity of the judiciary), 2A (a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), 2B(1) (a judge shall not allow family, social or other relationships to influence the judge's judicial conduct or judgment), 3B(7) (prohibiting improper ex parte communication), 3E(1) (mandating disqualification where disqualification is required by law) and 3E(2) (requiring disclosure of information reasonably relevant to disqualification). The

commission agreed with the masters' conclusion that Judge Stanford's actions undermined public confidence in the judiciary and called into question the fundamental fairness of the judicial process, and that Judge Stanford abused his power, allowed his relationships to influence his judicial conduct, and conveyed the impression that certain people were in a position to influence him. The commission and the masters also concluded that Judge Stanford improperly failed to disqualify in matters involving friends and family members.

Both the commission and the masters found that Judge Stanford violated canon 3B(7) by engaging in ex parte communications with individuals who had received traffic tickets, but the commission also found that the judge violated this canon by failing to accord the district attorney the right to be heard. While acknowledging that the district attorney's office had not appeared on traffic infractions for many years due to limited resources, the commission noted a stipulation between Judge Stanford and the hearing examiner that this non-appearance policy is limited to matters that are legitimately before the judge. The commission found that Judge Stanford should have realized that the district attorney's non-appearance policy was limited to cases being handled by a judge without a conflict in the normal course of business. The commission added that it is not necessary for district attorneys to specifically advise judicial officers that they are not consenting to communications with litigants that by definition are improper, e.g., at the judge's house, or through an intermediary.

The commission found that Judge Stanford acted in bad faith because he performed judicial acts for a purpose other than the faithful discharge of judicial duties, i.e., to benefit friends and family. He was acting in a judicial capacity because he was performing a function associated with his position as a judge – entering pleas, imposing sentence and granting a continuance.

Turning to the question of discipline, the commission pointed out that Judge Stanford had engaged in a pattern of willful misconduct involving the abuse of judicial authority to benefit family and friends, and that this conduct manifestly demonstrated an inability to perform judicial functions in an even-handed manner. The commission

noted that in six of the seven instances of misconduct upon which its decision was based, the judge provided substantial financial breaks to the favored few. In addition to favoring those he knew with procedural shortcuts and extraordinarily lenient dispositions, the commission found, the judge repeatedly engaged in ex parte communications, entered dispositions based on hearsay information, failed to recuse despite obvious conflicts of interest, handled matters not assigned to his court, and waived fees and fines without considering the facts of the offense, the driver's record, or public safety.

The commission found that Judge Stanford's actions tarnished the integrity of the judicial system. In addition, his actions had an adverse impact on court staff. The judge involved staff members in transferring matters to his department and effectuating and processing his dispositions; in addition, his misconduct led to the creation of false court records. His failure to realize that his actions could have serious consequences for others was an aggravating factor.

On the question of whether the judge's conduct and his response to the commission's inquiry reflected a lack of integrity or dishonesty, the commission stated that although Judge Stanford had a reputation as a person of honesty and integrity among those who provided character evidence on his behalf, his conduct in the case before it unquestionably demonstrated a lack of integrity. In addition, the judge was not honest with the special masters or the commission about his state of mind.

As to whether the judge appreciated the impropriety of his actions and was therefore capable of reform, the commission noted that although the judge had been contrite and humble since being confronted with his misconduct, his insistence that he did not recognize that his actions were wrong reflected an effort to minimize his culpability. The commission stated that even if the judge could be expected to refrain from this type of misconduct in the future, it was not convinced that he would not engage in other types of misconduct, given his failure to consider the impact of his misconduct on his court staff and the reputation of the judiciary at the time of his actions. The commission also noted that the judge personally changed the adjudication on his son-in-law's ticket after having been

counseled by his presiding judge about the obvious conflict, raising concerns about his ability to refrain from future misconduct.

Addressing the judge's claim that removal was not warranted without proof that he knew his conduct was wrong when he engaged in it, the commission restated its finding that he did know that providing preferential treatment for friends and family was wrong when he handled their tickets. The commission noted, however, that it agreed with the masters that the judge's state of mind was not the determining factor on the issue of discipline, since failure to recognize the impropriety of such obviously unethical conduct would necessarily raise the correlated concern that the judge might continue to miss other such issues in the future. In addition, the commission pointed out, a corrupt state of mind is not a prerequisite to removal. The commission stressed that the purpose of judicial proceedings is not to punish the judge, but to protect the public, enforce rigorous standards of judicial conduct, and maintain public confidence in the integrity and independence of the judicial system. The commission concluded that removal was required.

#### **PUBLIC CENSURE BY THE COMMISSION**

In 2012, the commission imposed one public censure.

##### **Public Censure of Judge Salvador Sarmiento July 5, 2012**

Judge Salvador Sarmiento of the Orange County Superior Court was publicly censured for prejudicial misconduct. The commission's actions followed the filing of a Notice of Formal Proceedings and entry of a Stipulation for Discipline by Consent.

The commission found, based upon the stipulation, that Judge Sarmiento spoke to an Orange County Superior Court commissioner about a traffic ticket issued to the judge's wife; he asked the commissioner to address a \$300 civil assessment on the ticket, thereby seeking to have her vacate this assessment. The judge approached the commissioner a second time later the same day to get a trial date for the ticket; in doing so, he

bypassed normal procedures for obtaining a trial date, and sought and obtained favorable treatment on behalf of his wife.

In accordance with the stipulation, the commission determined that Judge Sarmiento's conduct violated canons 1 (a judge shall uphold the integrity of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety), 2A (a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), 2B(1) (a judge shall not allow family, social or other relationships to influence the judge's judicial conduct or judgment), 2B(2) (a judge shall not lend the prestige of judicial office to advance the pecuniary or personal interests of the judge or others) and 3B(7) (prohibiting improper ex parte communication). The commission found that the judge's conduct constituted prejudicial misconduct.

Turning to the question of discipline, the commission noted that the public has a right to expect that justice will be dispensed with an even hand and without favoritism, and that Judge Sarmiento's conduct made it more difficult for judges throughout the state to maintain the trust and respect of the public. The commission found that Judge Sarmiento's misconduct was aggravated by the fact that he requested preferential treatment from his subordinate, a commissioner who was employed by the court, thus placing the commissioner in the uncomfortable position of having to find a way to say "no" to the judge without offending her superior.

The commission concluded that although Judge Sarmiento's misconduct was seriously at odds with a judge's duty to uphold the integrity and impartiality of the judiciary, removal was not required, since this single incident did not establish that the judge lacked the temperament and ability to perform judicial functions in an even-handed manner. The commission noted the judge's lack of prior discipline for similar misconduct during his long tenure as a judicial officer, and his acknowledgment of engaging in serious misconduct warranting a severe sanction through entry of the stipulation. The commission concluded that censure was the appropriate sanction.

#### **PUBLIC ADMONISHMENT BY THE COMMISSION**

The commission may publicly admonish a judge for improper action or dereliction of duty. In 2012, the commission issued five public admonishments.

##### **Public Admonishment of Judge Anthony C. Edwards February 7, 2012**

Judge Anthony C. Edwards of the Trinity County Superior Court was publicly admonished for conduct that constituted, at a minimum, improper action, pursuant to commission rules 115-116 (governing public admonishments).

The commission found that in 2010, Judge Edwards, who was then presiding judge, cancelled a court reporter for a day the reporter had been scheduled to report proceedings, including two criminal preliminary hearings, in the courtroom of the county's other judge. Judge Edwards took this action despite the fact that the other judge informed him that he had a number of matters requiring a court reporter, including the two preliminary hearings, set for the day in question.

Judge Edwards told the commission that he cancelled the court reporter in an effort to prompt the other judge to engage in a dialogue about court expenses, and asserted that his action was necessitated by his responsibility as presiding judge to actively manage the court's financial situation. The commission found that Judge Edwards's court management duties did not extend to intruding on another judge's case-related authority by countermanding that judge's case-related orders. The commission determined that Judge Edwards's purported desire to prompt the other judge to engage in a dialogue about court expenses was not a valid justification for his actions, which were contrary to canons 2A (requiring judges to respect and comply with the law) and 3B(2) (requiring judges to be faithful to the law) and were, at a minimum, improper action.

In determining to issue a public admonishment, the commission noted that Judge Edwards was previously publicly admonished, shortly before he engaged in the conduct in the current matter. That discipline included a determination that Judge Edwards abused his authority by dismissing

certain infractions and misdemeanors because the defendants had been cited to appear in court in a town where they did not live, although there was no court order or legal requirement that they be cited to appear in the town where they lived.

##### **Public Admonishment of Judge Judge John D. Kiriara May 16, 2012**

Judge John D. Kiriara of the Merced County Superior Court was publicly admonished for conduct that constituted, at a minimum, improper action and dereliction of duty, pursuant to commission rules 115-116 (governing public admonishment).

The commission found that over the course of less than a year, Judge Kiriara failed to rule on three submitted matters in a timely manner. He failed to rule on a civil matter until 320 days after it was taken under submission. He failed to rule on a probate matter until 237 days after it was taken under submission, and 59 days after a court clerk informed him that an attorney had inquired about the status of the case, and advised him of the date of submission. The judge failed to rule in another probate case until 110 days after it was taken under submission. The commission found that the judge's failure to decide these matters within 90 days after they were taken under submission violated canon 3B(8) (requiring judges to dispose of all judicial matters promptly and efficiently).

The commission also found that Judge Kiriara signed and caused to be submitted on his behalf 11 salary affidavits that falsely stated that no cause remained pending and undetermined that had been submitted to him for decision for a period of 90 days prior to specified dates. The judge received his salary in violation of California Constitution, article VI, section 19, which provides that a judge may not receive a salary when any submitted matter has been pending for 90 days, and Government Code section 68210, which requires that judges submit affidavits certifying that they have no matters that have been under submission longer than 90 days in order to be paid. The commission found that Judge Kiriara allowed the 11 salary affidavits to be processed and received

his salary in violation of law while a matter in at least one of the three cases was pending and undetermined for over 90 days.

The commission also found that Judge Kiri-hara failed to keep a list of cases he had under submission during the relevant time period, even when he was the presiding judge and had a duty under California Rules of Court, rule 10.603(c)(3), to compile and circulate a list of all matters that had been under submission for more than 30 days. The commission noted that the fact that a judge may be unaware that he or she has matters that have been under submission for more than 90 days, or signs salary affidavits in advance at a time when the judge has no matters under submission for more than 90 days, is not a defense to a charge of filing false salary affidavits. The commission found that Judge Kiri-hara's conduct violated canons 1 (requiring judges to uphold the integrity of the judiciary) and 2 (requiring judges to respect and comply with the law and conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary).

In addition, the commission found that when he was presiding judge of the Merced County Superior Court, Judge Kiri-hara failed to circulate each month to each judge of the court a complete list of all causes that had been under submission for more than 30 days, as required by the California Rules of Court. By failing to circulate such a list, the judge violated canon 3C(1), requiring that administrative duties be discharged diligently and in a manner that promotes public confidence in the integrity of the judiciary.

Lastly, the commission found that Judge Kiri-hara failed to respond to emails from a judicial assistant inquiring about cases under submission and the dates they were taken under submission. The judge's failure to respond violated canon 3C(1).

The commission determined that Judge Kiri-hara's conduct demonstrated a lack of regard for his obligation to decide matters in a timely manner and ensure the accuracy of his salary affidavits. The judge's indifference was reflected in his failure to keep a list of submitted matters, failure to respond

to emails from a judicial assistant inquiring about cases under submission, and failure to circulate a list of submitted matters to other judges while he was presiding judge. The commission pointed out that these were not simply technical requirements, but were procedures designed to alert judges to decisional delays and prevent the filing of false salary affidavits. The commission noted that delay in issuing decisions can cause significant financial and emotional harm to litigants, and that the filing of false salary affidavits lowers public esteem for the judiciary. The fact that the judge delayed matters and allowed false salary affidavits to be filed on his behalf while he was presiding judge, with responsibility to monitor cases under submission in his county and ensure that cases were decided within 90 days, was an aggravating factor. The commission determined that the appropriate sanction was public admonishment.

**Public Admonishment of  
Judge Morris D. Jacobson  
July 11, 2012**

Judge Morris D. Jacobson of the Alameda County Superior Court was publicly admonished for conduct that constituted, at a minimum, improper action, pursuant to commission rules 115-116 (governing public admonishment).

The commission found that the judge presided over a criminal case in which a defendant's attorney sought a continuance of the preliminary hearing, which was set for the next day. After calling the matter at about 9:00 a.m., Judge Jacobson pointed out that one of the co-defendants had not waived time, and said that he could not rule until the other defendants were present. He then ordered the attorney to "spend every waking moment between now and when we are next in court working on this case." The attorney replied that she could not be ready the next day. Judge Jacobson told her again to "spend every waking moment working on it," and expressed the view that the 13 days the attorney had had to read and absorb 1,100 pages of discovery was "plenty of time." The attorney disagreed. The judge said that the matter would be taken up the next day, when all parties were present, and said, "Work all day today, work all night. Get up early tomorrow

morning – ” The attorney said, “Your Honor, I don’t need your advice on how to be competent.” Judge Jacobson responded, “That is contemptuous. That is contemptuous. That was disrespectful. Take a seat.”

The attorney took a seat in the courtroom, and the judge called a brief recess during which he went into chambers to gather his thoughts and review a checklist to be followed in adjudicating a contempt. He subsequently returned to the bench and began calling other cases. At about 10:20 a.m., while the judge was hearing another matter, the attorney walked across the courtroom to obtain a portion of the case file to review. The judge told the attorney to take a seat and remain in the courtroom as she had been told. She complied. About 45 minutes later, the judge called the case. He ordered the attorney to return at 2:00 p.m. that afternoon for a hearing. The attorney apologized for her earlier remark, which she said was “improper and too informal.”

At about 2:35 p.m., the judge called the matter for a contempt hearing. After some discussion, including another apology from the attorney, the judge decided not to find the attorney in contempt.

The commission determined that Judge Jacobson’s actions constituted abuse of the contempt power and abuse of authority. Whether or not the attorney’s remark constituted contempt, it was improper for the judge to order her to remain in the courtroom from the time he ordered her to take a seat until he recalled the case – a period of over an hour and a half – without adjudicating the alleged contempt. The commission pointed out that in a direct contempt situation, a judge may detain an alleged contemnor in the courtroom for the time necessary to review the contempt checklist and compose himself or herself; however, Judge Jacobson’s detention of the attorney continued long after he took a recess for those purposes, and was tantamount to punishing her for contempt without a hearing. The commission also noted the apparent paradox in detaining the attorney in the courtroom for over an hour and a half after having ordered her to spend every waking moment working on the case.

In addition, the commission found that Judge Jacobson abused his authority by ordering the attorney to spend “every waking moment” working on the case until the time set for the preliminary hearing. The commission concluded that this order constituted an abuse of authority and violated canons 1 (requiring judges to uphold the integrity of the judiciary) and 2A (requiring judges to conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary). The judge’s remarks were also found to be contrary to canon 3B(4) (requiring judges to be patient, dignified, and courteous toward those with whom they deal in an official capacity); they were demeaning and discourteous, and because they were made in the presence of the attorney’s client, were of a nature that could be expected to damage the attorney-client relationship.

The judge’s prior discipline for similar misconduct was a significant factor in the commission’s decision to impose a public admonishment. In 2010, the judge received a strong advisory letter for abuse of authority and poor demeanor after he ordered an attorney to appear in his court when there was no matter requiring the attorney’s presence, and chastised him when he appeared for engaging in what the judge perceived as an improper ex parte communication arising out of the attorney’s discussion of a matter with a court administrator. The judge ordered the attorney to remain in the courtroom while the judge summoned opposing counsel in one of the attorney’s cases, and then conducted an un-calendared hearing. In the commission’s view, Judge Jacobson’s repeat of similar misconduct in the case before it reflected a lack of appreciation for the bounds of his authority and his duty to treat those appearing before him with courtesy, dignity and respect.

**Public Admonishment of  
Judge Charles R. Brehmer  
October 25, 2012**

Judge Charles R. Brehmer of the Kern County Superior Court was publicly admonished for conduct prejudicial to the administration of

justice that brings the judicial office into disrepute, pursuant to commission rules 115-116 (governing public admonishment).

The commission's public admonishment was based on violations of the Political Reform Act (contained in Government Code sections 81000 through 91004) that occurred during and after the 2008 election in which the judge, then an attorney, was elected to the bench.

After an investigation by the Fair Political Practices Commission (FPPC), the judge stipulated to three violations and agreed to pay a \$5,500 fine. The judge admitted that he and his campaign committee received three cash contributions over the \$100 limit set, failed to disclose the true source of a \$15,000 loan that the campaign treasurer made to the campaign, and failed to timely file two semi-annual campaign statements.

The commission found that Judge Brehmer committed additional violations not addressed in the FPPC stipulation. The judge failed to disclose \$9,000 in contributions on a pre-election campaign statement. He failed to file a semi-annual campaign statement for a certain reporting period. He also failed to deposit the \$15,000 campaign loan that he received from his campaign treasurer into the campaign committee's bank account, and instead deposited it into his personal account.

The commission agreed with the FPPC's findings that there was no evidence that Judge Brehmer intended to conceal information from the public. The commission stated its view that the violations were the result of a failure to oversee sufficiently the work of an inexperienced campaign treasurer handling the campaign's reporting requirements. The commission noted that the judge amended his campaign statements after the problems with his filings were brought to his attention (post-election), and that the cash contributions were timely reported in various campaign statements. In addition, the commission noted Judge Brehmer's acknowledgment that ensuring that his campaign activities were in compliance with the law was his obligation, and his acceptance of responsibility for his conduct.

In determining that public admonishment was the appropriate sanction, the commission

stated that Judge Brehmer's multiple failures to comply with his campaign reporting obligations undermined a basic purpose of the Political Reform Act, which is to ensure that campaign receipts and expenditures are fully and truthfully disclosed so that the voters may be fully informed and improper practices may be inhibited. The commission pointed out that public confidence in the integrity of the judicial campaign process and the judiciary is harmed when the public is deprived of important information, such as sources of contributions and amounts of expenditures made by a campaign. The commission concluded that the judge's failure to obey the requirements of the Political Reform Act in his campaign constituted conduct prejudicial to the administration of justice that brings the judicial office into disrepute; in addition, the violations that occurred after the judge took the oath of judicial office also constituted violations of canons 3B(2) (requiring judges to be faithful to the law) and 2A (requiring judges to respect and comply with the law and to conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary).

**Public Admonishment of  
Judge Derek G. Johnson  
December 13, 2012**

Judge Derek G. Johnson of the Orange County Superior Court was publicly admonished for conduct that constituted, at a minimum, improper action, pursuant to commission rules 115-116 (governing public admonishment).

Judge Johnson was publicly admonished for remarks he made while sentencing a defendant convicted of rape and other sexual assault offenses. The judge's comments created the impression that he was not impartial in cases involving rape without serious bodily injury showing resistance by the victim.

In explaining why he had decided to impose a sentence of six years on a defendant who had been convicted by a jury of rape and other sexual assault offenses against a woman with whom he had previously been in a relationship, despite the prosecution's request for a sixteen-year sentence, the judge referred to his past experience as a pro-



ecutor in the sexual assault unit, and said that he had seen women who had been “ravaged and savaged” and whose vaginas had been “shredded by the rape.” He continued:

I’m not a gynecologist, but I can tell you something: If someone doesn’t want to have sexual intercourse, the body shuts down. The body will not permit that to happen unless a lot of damage is inflicted, and we heard nothing about that in this case. That tells me that the victim in this case, although she wasn’t necessarily willing, she didn’t put up a fight. And to treat this case like the rape cases that we all hear about is an insult to victims of rape. I think it’s an insult. I think it trivializes a rape.

After further discussion, the prosecutor asked why the court was not viewing the fact that threats and a weapon were involved as aggravating factors. Judge Johnson responded, “I just found the threats to be technical threats. I found this whole case to be a technical case. The rape is technical. The forced oral copulation is technical. It’s more of a crim law test than a real live criminal case.”

The commission found that Judge Johnson’s remarks were contrary to canons 2A (requiring judges to conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary) and 3B(5) (requiring judges to perform judicial duties without bias or prejudice, and to refrain from speech or other conduct that would reasonably be perceived as bias or prejudice). The comments suggested that the judge was not impartial towards sexual assault victims who do not “put up a fight,” by indicating the view that they are not victims of a “real” crime. In addition, the judge improperly relied on his own “expert opinion” concerning serious bodily injury showing resistance on the basis of his experiences in the district attorney’s office, rather than the evidence before him. The commission found that the judge’s comments reflected his own view that a victim must resist in order for there to be a “real” sexual assault – a view that is inconsistent with California law, which since 1980 has contained no requirement of proof that the

victim of rape either resisted or was prevented from resisting because of threats.

The commission noted that in his response to the commission and at his appearance, Judge Johnson conceded that his comments were inappropriate and apologized. The judge also said that his comments were the result of his frustration with the prosecutor’s arguments and the prosecution’s citation of certain cases he believed were distinguishable from the case before him; however, the commission found that his statements did not pertain to the prosecutor’s argument or to the cases cited.

The commission concluded that Judge Johnson’s remarks reflected outdated, biased and insensitive views about sexual assault victims who do not “put up a fight,” and that such comments cannot help but diminish public confidence and trust in the impartiality of the judiciary. The commission determined that the appropriate sanction was public admonishment.

#### PRIVATE DISCIPLINE

Private admonishments and advisory letters that became final in 2012 are summarized below. In order to maintain confidentiality, certain details of the cases have been omitted or obscured, making the summaries less informative than they otherwise might be. Because these summaries 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 the conduct in abbreviated form than to omit the summaries altogether.

Summaries of private discipline since 1998 are available on the commission’s website at <http://cjp.ca.gov>.

#### PRIVATE ADMONISHMENTS

Private admonishments are designed in part to correct problems at an early stage in the hope that the misconduct will not be repeated or escalate, thus serving the commission’s larger purpose of maintaining the integrity of the California judiciary.

The commission may consider private discipline in subsequent proceedings, particularly when the judge has repeated the conduct for which the judge was previously disciplined.

In 2012, six private admonishments became final.

1. A judge independently conducted online investigations and considered information not part of the record and not properly subject to judicial notice. The judge also relied on and drew inferences from this information before giving the parties notice or an opportunity to be heard, thereby prejudging the matter.

2. While presiding over a family law matter, a judge made remarks that failed to promote public confidence in the integrity and impartiality of the judiciary. For example, the judge suggested that newer judges made rulings on the basis of whom they do not like, rather than on the merits. The judge also made other remarks that were undignified or discourteous.

3. On the date that a dissolution trial was scheduled to resume, a judge who was soon to be transferred, declared a mistrial without taking the bench. The judge did not give the parties, who were present and ready to proceed, the opportunity to be heard on this issue. Prior to this date, the parties had not been informed of the possibility of a mistrial, and the case had been pending before the judge for over three years.

4. A judge disregarded a litigant's right to notice and a hearing and engaged in an abuse of authority when the judge improperly vacated the litigant's fee waiver application on the stated ground that the litigant had counsel. The judge improperly disclosed in open court confidential information submitted in the fee waiver application. The judge also made rude and disparaging remarks in open court about the plaintiff's attorney. The judge also issued a sanctions order that included an order to show cause as to why the sanctions had not been paid, although there had been no failure to pay at that point.

5. A judge imposed an enhanced sentence based on the judge's belief that a defendant, who had not testified at trial, had lied to defense counsel.

There were no facts concerning the defendant's alleged dishonesty in the record at trial. The judge's conduct and remarks at sentencing gave an appearance of retaliation for the defendant's exercise of the right to trial. The judge also routinely locked the courtroom door during arraignments and told a defense attorney that the judge "preferred" that the defense attorney not be present in the courtroom during pro per arraignments.

6. A judge failed to disclose or to disqualify from post-trial proceedings in a case in which the judge commenced a social relationship with an alternate juror between the verdict and sentencing. In another matter, the judge improperly accused an attorney of misconduct in front of the jury.

#### ADVISORY LETTERS

As noted by the California Supreme Court in *Oberholzer v. Commission on Judicial Performance* (1999) 20 Cal.4th 371, 393: "Advisory letters may range from a mild suggestion to a severe rebuke." 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 2012, 30 advisory letters became final.

#### 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.)

1. At a settlement conference in a family law case, after learning of misconduct by an attorney in the handling of discovery in the case, a judge sanctioned the attorney without providing the attorney notice or an opportunity to be heard.

2. After courtroom spectators had been detained for allegedly speaking with an in-custody defendant, a judge stated to them that they could resolve their case that day for a \$150 fine or hire an attorney and have a hearing, which did not constitute an opportunity to be heard prior to imposition of sanctions and appeared coercive.

3. A judge sanctioned an attorney without giving notice and an opportunity to be heard and failed to issue an order setting forth the conduct that gave rise to the sanctions, as required by law.

4. A judge sanctioned an attorney for an alleged direct contempt without complying with statutory or due process requirements for contempt or sanctions.

### Decisional Delay

Judges are required to perform the duties of judicial office diligently as well as impartially. (Canon 3.) Under California Constitution, article VI, section 19, a judge may not receive the judge's salary while any submitted matters remain pending and undecided for more than 90 days.

5. A judge did not rule on a habeas petition for more than 18 months after the judge received it. Although the underlying case file was missing for most of that time, the commission believed that the judge should have made a greater effort to locate the documents needed to make a ruling given the length of the delay and the fact that the judge was aware of the delay.

6. A judge failed to rule on two motions until 137 days after they were taken under submission. During the period that the matters were under submission for more than 90 days, the judge signed one false salary affidavit and received one month's salary in violation of law. There was no showing that the affidavit was knowingly false.

### 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...." (Canons 3B(3), (4).)

7. In the presence of an attorney's client, a judge criticized the attorney and threatened to refer the attorney to the State Bar, in a manner that appeared to interfere with the attorney-client relationship.

8. A judge tossed small rewards from the bench to drug court participants. The commission did not take issue with giving these items to defendants, but emphasized concern that they be delivered in a manner that does not either demean the defendants or diminish the dignity of the court.

9. A family law judge made denigrating remarks to an attorney, including questioning where the attorney went to law school and in what country the attorney thought the attorney was practicing law.

### Disclosure and Disqualification

Judges must disqualify themselves under certain circumstances and trial judges must make appropriate disclosures to those appearing before them. (Canon 3E.)

10. By transferring a new trial motion alleging judicial misconduct during trial to another judge, a judge was disqualified from the case. When the judge later presided over the same case after the second judge ruled on the motion, the judge presided while disqualified.

11. A judge ruled on two habeas petitions relating to a criminal case in which the judge had appeared nine times as a deputy district attorney seven to eight years earlier, including at the change of plea.

12. A judge had a romantic relationship with a deputy district attorney whose colleagues appeared before the judge in criminal cases. The judge did not disclose the relationship on the record at all relevant times.

### Ex Parte Communications

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

13. A judge met with two attorneys and discussed a disqualification challenge filed against

the judge by another attorney in the case, outside the presence of that attorney. The judge also solicited declarations from the attorneys to be filed in opposition to the disqualification motion.

### **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.)

14. A judge's handling of a defendant's motion to discharge privately retained counsel reflected intentional disregard of the applicable law and disregard of the defendant's right to counsel of choice.

15. A judge improperly refused to hold a hearing on a defendant's motion to discharge appointed counsel, under circumstances that reflected prejudgment and disregard of the litigant's full right to be heard according to law.

### **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.)

16. A judge failed to make reasonable efforts to keep informed about the judge's spouse's law firm and failed to disclose required information about the judge's financial interests in the law firm on Statements of Economic Interests filed with the Fair Political Practices Commission over a three-year period.

### **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.)

17. A defendant in a criminal case sought to substitute in new counsel. A judge allowed the substitution but tripled the defendant's bail and remanded the defendant into custody, creating the impression that the judge was punishing the defendant for seeking new counsel or causing a delay in the case, neither of which is a valid basis for raising bail.

18. A judge threatened a defendant appearing for arraignment on a traffic infraction with revocation of the defendant's own recognizance release and remand to custody if the defendant did not enter a plea. Since the defendant was charged only with an infraction, not punishable by jail, the defendant was not subject to being taken into custody.

19. A defendant was brought back into court by law enforcement after a proceeding had been concluded, and was interrogated by the judge without the judge advising the defendant of the nature of the proceeding or advising the defendant of the right to counsel.

20. A judge took action on a matter, contrary to a local court rule adopted in response to statutory and case law.

21. A judge took action on a matter, contrary to a local court rule adopted in response to statutory and case law.

### **Public Comment**

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

22. A judge made a comment to a news reporter in support of a federal judge's ruling while the case was on appeal.

### **More Than One Type of Misconduct**

Some cases involved more than one type of misconduct.

23. Prior to arraigning a defendant and granting the defendant own recognizance release, a judge failed to disclose on the record that the judge had interacted with the defendant professionally and knew a number of the prosecution witnesses well. In another matter, the judge modified a temporary restraining order without providing notice to

the petitioner. In a family law matter, the judge communicated to counsel for one litigant a disparaging courthouse joke about a party in another case who was represented by the counsel's law firm, and conveyed the judge's displeasure with the contentiousness of both cases. Opposing counsel was not present for the judge's remarks.

24. During a contested family law proceeding, a judge made inappropriate personal comments and hugged one of the litigants at the conclusion of the hearing. In another matter involving a restraining order, the judge denied the respondent the opportunity to cross-examine the petitioner. The judge also repeatedly urged the respondent to consult with a particular doctor, thus lending the prestige of judicial office to advance the doctor's interests.

25. A judge made harsh comments to an attorney, in the presence of the attorney's client, including inviting the attorney to admit that the attorney was inept and making references to sanctions and a possible referral to the State Bar. The nature of the judge's comments created the appearance of embroilment. In another matter, the judge spoke to a represented defendant regarding disposition while the defendant's attorney was out of the courtroom.

26. A judge displayed poor demeanor toward counsel or litigants in three family law cases. In one of the cases, after reprimanding counsel for the manner in which a motion was presented and continuing the hearing, the judge refused to allow counsel to be heard or to ask a clarifying question.

27. During a criminal trial, a judge expressed impatience and annoyance and reprimanded

defense counsel in front of the jury. During the same trial when the judge began questioning the defendant about being late to court, defense counsel requested that the judge's questions be directed to counsel, not the defendant. The judge responded that the defendant's own recognizance release was revoked. The judge's revocation of the defendant's OR release appeared to be in retaliation for defense counsel's assertion of the defendant's right to have counsel, rather than the defendant, respond to questions.

28. A judge sent a highly accusatory and inaccurate email to the attorneys in a case that had been before the judge, without investigating the facts and ascertaining from the attorneys what had occurred. In another matter, the judge made remarks at a sentencing hearing that created a strong appearance that the judge had established a mandatory minimum sentence for a certain type of offense, when none was prescribed by law and without consideration of the individual facts and circumstances of each case.

29. After being appointed to the bench, a judge failed to ensure that a case in which the judge was the attorney of record was transferred to another attorney before taking the oath of office. The judge remained counsel of record for three weeks after taking the oath.

30. A judge used vulgar language and was unduly harsh with an attorney who volunteered court-scheduling information in a case that was not the attorney's. The judge also engaged in abuse of authority by ordering the attorney to leave the courtroom.

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## V. SUBORDINATE JUDICIAL OFFICERS

Since June of 1998, the commission has shared authority with the superior courts for the discipline of subordinate judicial officers (SJO's), attorneys employed by California's state courts to serve as court commissioners and referees. In 2012, there were 304 authorized subordinate judicial officer positions in California.

### SUBORDINATE JUDICIAL OFFICERS AUTHORIZED POSITIONS

As of December 31, 2012

Court Commissioners.....	276
Court Referees .....	28
Total.....	304

### 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 superior 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 court is required to advise the complainant to seek such review within 30 days. (California Rules of Court, rule 10.703(l)(2)(B); Commission Rule 109(c)(1).) Second, a local court must notify the commission when it disciplines a subordinate judicial officer for conduct that, if alleged against a judge, would be within the jurisdiction of the commission. (California Rules

of Court, rule 10.703(k)(1); Commission Rule 109(c)(3).) Third, a local court must notify the commission if a subordinate judicial officer resigns while a preliminary or formal investigation is pending concerning conduct that, if alleged against a judge, would be within the jurisdiction of the commission, or under circumstances that would lead a reasonable person to conclude that the resignation was due, at least in part, to a complaint or allegation of misconduct. (California Rules of Court, rule 10.703(k)(2); Commission Rule 109(c)(3), (4).) Lastly, the commission may investigate or adjudicate a complaint against a subordinate judicial officer at the request of a local court. (California Rules of Court, rule 10.703(g)(2); Commission Rule 109(c)(2).)

When a matter comes to the commission after disposition by a local court, the commission may commence an investigation of the subordinate judicial officer if it appears that the court has abused its discretion by failing to investigate sufficiently, by failing to impose discipline, or by imposing insufficient discipline. When a court commissioner or referee has resigned while an investigation is pending or has been terminated by the local court, the commission may commence an investigation to determine whether to conduct a hearing concerning the individual's fitness to serve as a subordinate judicial officer.

To facilitate the commission's review of complaints and discipline involving subordinate judicial officers, the California Rules of Court require superior courts to adopt procedures to ensure that complaints are handled consistently and that adequate records are maintained. (See California Rules of Court, rules 10.603(c)(4)(C) and 10.703.) Upon request by the commission, the superior court must make its records concerning a 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 investigations and formal

proceedings concerning judges 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 by the subordinate judicial officer to the California Supreme Court.

## 2012 STATISTICS

### Complaints Received and Investigated

In 2012, the commission reviewed 160 new complaints about subordinate judicial officers. Because the superior courts were required to conduct the initial investigations, the commission's function primarily entailed reviewing the local courts' actions to determine whether there was any basis for further investigation or action by the commission.

In 2012, the commission commenced four staff inquiries and six preliminary investigations.

#### RULE UNDER WHICH NEW COMPLAINTS WERE SUBMITTED

Rule 109(c)(1) – appeal from local court's disposition .....	155
Rule 109 (c)(2) – at the request of a local court .....	0
Rule 109(c)(3) – notification by local court of discipline.....	4
Rule 109(c)(4) – notification by local court of resignation with investigation pending .....	1

#### 2012 CASELOAD –

##### SUBORDINATE JUDICIAL OFFICERS

Cases Pending 1/1/12 .....	5
New Complaints Considered.....	160
Cases Concluded .....	161
Cases Pending 12/31/12.....	4

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

### Cases Concluded

In 2012, the commission concluded its review of 161 complaints involving subordinate judicial officers. The commission closed 152 of these matters after initial review because it determined that the superior court's handling and disposition of the complaints were adequate and that no further proceedings were warranted. Following investigation, the commission imposed one public admonishment, issued four advisory letters, closed three of the cases without discipline, and closed one case when the commissioner resigned with the agreement not to serve or seek to serve in a judicial capacity, which case was also referred to the State Bar.

At the end of the year, four matters remained pending before the commission.

#### 2012 SJO COMPLAINT DISPOSITIONS

Total complaint dispositions.....	161
Closed after initial review.....	152
After independent investigation by the commission:	
Public Admonishment.....	1
Advisory Letter .....	4
Closed Without Discipline .....	3
Resignation Pursuant to Stipulation .....	1



**TYPE OF COURT CASE UNDERLYING  
SUBORDINATE JUDICIAL OFFICER  
COMPLAINTS CONCLUDED IN 2012**

Small Claims.....	32%
Family Law .....	25%
Traffic .....	15%
General Civil .....	14%
Criminal.....	3%
All Others.....	10%
(including off-bench)	
None .....	1%
(not arising out of a case)	

**SOURCE OF COMPLAINTS  
INVOLVING SUBORDINATE  
JUDICIAL OFFICERS  
CONCLUDED IN 2012**

Litigant/Family/Friend.....	91%
Judge/Court Staff.....	<1%
Attorney .....	<4%
All Other Complainants .....	<2%
Source Other Than Complaint.....	2%

**SUMMARIES OF DISCIPLINARY ACTION**

All references are to the Code of Judicial Ethics in effect until January 1, 2013.

**Public Discipline**

In 2012, the commission publicly admonished one subordinate judicial officer.

**Public Admonishment of  
Commissioner Alan Friedenthal  
April 3, 2012**

Commissioner Alan Friedenthal of the Los Angeles County Superior Court was publicly admonished for conduct that constituted, at a minimum, improper action, pursuant to commission rules 115-116 (governing public admonishment). The admonishment was severe.

The commission found that Commissioner

Friedenthal committed misconduct in five family law cases over which he presided between June 2007 and January 2009. His conduct included making discourteous, undignified, gratuitous and denigrating remarks to litigants, attorneys and related parties, and attempting to engage in humor at the expense of litigants; engaging in conduct that reflected embroilment and conveyed the appearance of bias; engaging in improper ex parte communications; and failing to disclose on the record information that was reasonably relevant to the question of disqualification. The commissioner's misconduct included repeated remarks during court proceedings about complaint letters from litigants or a family member of a litigant sent to the supervising family law judge; these comments not only reflected embroilment, but could inappropriately discourage a litigant from exercising the right to file a complaint, and give the appearance that the commissioner would be biased against the litigant who filed the complaint in future proceedings. The commission acknowledged that the family law matters involved were highly contentious and that some of the litigants were challenging; nonetheless, Commissioner Friedenthal was required to comport himself at all times in accordance with the Code of Judicial Ethics.

The first case involved teenage parents and their child. When an attorney appeared for the father, Commissioner Friedenthal failed to disclose that he had provided character testimony for the attorney at a State Bar proceeding a year earlier or that he had attended her husband's funeral the same year. The commission found that the failure to disclose this information was contrary to canon 3E(2) of the Code of Ethics, which requires judges to disclose on the record information that is reasonably relevant to disqualification, even if the judge believes there is no actual basis for disqualification.

At a hearing in the case, the commissioner made derogatory comments about the child's maternal grandmother, such as referring to her as "Hurricane [name]," "toxic" and a "marionette manipulator" as to her daughter. The commissioner referred to complaints the grandmother had made about him, stating that these complaints were made in an attempt to get him off the case and that this was "never going to happen." The commissioner also

made negative remarks about the grandmother's boyfriend. The commissioner said that if he was not a semi-public figure he would consider suing the grandmother for defamation, told the mother that he could make an order that the child not live with her if the grandmother was in the house, and said he knew that the grandmother was planning a lawsuit against him and that he was waiting for it. The commission found that the commissioner's remarks at this hearing reflected embroilment, created the appearance of bias, and constituted a failure to be patient, dignified and courteous, contrary to canons 1 (requiring judges to uphold the integrity of the judiciary), 2A (requiring judges to conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary) and 3B(4) (requiring judges to be patient, dignified, and courteous toward those with whom they deal in an official capacity).

At two subsequent hearings in the case, Commissioner Friedenthal referred again to complaints made against him; he said that the complaints were "going nowhere" and told the grandmother that it was her right to pursue the matter "if you got nothing (sic) better to do than do that." The commission found that the commissioner's remark about the complaints "going nowhere" appeared to suggest that the complaints about him would serve no purpose, thereby undermining public confidence in the integrity of the judicial system, contrary to canons 1 and 2A. The remainder of his remark constituted embroilment and violated canon 3B(4).

Later in the proceedings, the commissioner admonished the teenage parents that if they could not control their parents in the use of certain county agencies as an "offensive weapon to gain advantage," he would take the child away and have the Department of Children and Family Services pick the child up and he would "go into a placement." The commission found that this threat constituted a threatened abuse of authority and contravened canons 1 and 2A.

After the father's attorney filed a civil harassment restraining order application as to the mother and grandmother following an alleged incident at the father's workplace, a Mexican fast food restaurant, counsel for the mother and grandmother

sought to introduce evidence about the father's stepfather as a defense. The commissioner stated sarcastically, "Let me write this down. – The next time I get mad at somebody who pushes the taco-burrito combo through the window to me, I'll say it was because of [the stepfather]." The commission found that this remark was contrary to canon 3B(4).

Finally, the commissioner reviewed comments the grandmother had posted about him on an online forum concerning court matters and on a Myspace page, while he was presiding over the case. This was contrary to canon 3B(7) (prohibiting consideration of improper ex parte communications). The commission noted that if a judicial officer is concerned about personal safety, the appropriate steps are to alert judicial security and ask them to monitor the posts, rather than to review ex parte communication.

In a second case involving some of the same participants, the maternal grandmother filed a request for a temporary restraining order against the father's stepfather, in a different courthouse. Commissioner Friedenthal had the case transferred to the courthouse and department where he presided. Before a hearing, the commissioner conducted independent investigation of the stepfather, which included checking online records and having his clerk bring him the stepfather's divorce file and other files involving the parties. The commission found that this independent investigation was contrary to canon 3B(7).

During the hearing and at a later hearing, Commissioner Friedenthal made gratuitous remarks, including a reference to a "bottomless pit of money to order transcripts," references to the grandmother's online postings about him, and remarks about complaints made against him that he suggested would serve no purpose, which reflected embroilment and violated canon 3B(4). The judge also took over questioning of the stepfather and questioned him extensively about his background, which created an appearance of embroilment.

In a third case, involving a dispute between a father and mother over custody of a child, the mother accused the minor's counsel of making untrue statements about her, including that she

was a lesbian. Minor's counsel denied making the statement, and the mother apologized. Commissioner Friedenthal responded by stating, "She called you a Martian, and that was substantiated?" At a later hearing, the commissioner referred twice to the possibility that the mother would complain about him to the court, creating an appearance of embroilment. When the mother said that she did not want to "bag on" Commissioner Friedenthal (meaning insult or offend him, according to her), he responded, "Bag on me? Is that a legal term?" After voicemail messages the mother had left for the father were played in court, Commissioner Friedenthal asked her if the way she dealt with the father was something she "had taken away from" a court-ordered parenting class. When she said no, the commissioner responded, "Good. So you flunked. I hope you do better in nursing school." The commission found that the remarks, which appeared to be sarcastic, were contrary to canon 3B(4).

Shortly after Commissioner Friedenthal awarded custody of the child to the father and ordered that the mother not have contact with him before the trial date, the mother left a voicemail message for the father that included a highly offensive remark about Jewish people, which may have referred to people affiliated with the case. The father then sought a restraining order against the mother. At a hearing on the restraining order matter, Commissioner Friedenthal asked the mother numerous times to whom she was referring in her voicemail message, and otherwise referred to her anti-Semitic comment. At one point, he told her, "You're going to raise a little Nazi." The commissioner also asked if she wanted the administration of the nursing school she was attending to see what she had said, and stated, "They're pleased that one of their star nursing students is an anti-Semite." The commission found that the commissioner's remarks exhibited improper demeanor and reflected embroilment.

During a subsequent hearing on a petition for a restraining order against the mother that was brought by minor's counsel, the mother, who had not seen her son for several months, complained that she had not been told where her son was. Commissioner Friedenthal interrupted and said,

"Hold on. [Minor's counsel], didn't I order you to implant the GPS in his blood?" The commission found that the commissioner's attempt at humor was contrary to canon 3B(4).

In a fourth case, involving a minor child, the child's mother posted a number of comments about Commissioner Friedenthal on an online forum concerning court matters. While he was presiding over the case, the commissioner reviewed those posts; this was contrary to canon 3B(7). At a hearing in the case, the commissioner referred to the posts, denying the allegations contained in them, calling them "defamation" and the mother's actions a "witch hunt," and saying, "It's not going anywhere." The commissioner also referred to a reference in the posts to what Commissioner Friedenthal's "German-Jewish ancestors might think," saying that his "German-Jewish ancestors would be very proud of [him]." The commission found that these comments were contrary to canon 3B(4) and created an appearance of bias and embroilment.

In a fifth case, involving custody of a child, it was alleged that the child's stepfather had hit the child when the child tried to stop the stepfather from kissing the child's mother. Commissioner Friedenthal told the mother that if this bore out, the child might be living with his father, and then told her that he might put her in the position of choosing between the stepfather and the child, adding, "smoochie, smoochie, or [the child] – got it?" The commission found that this undignified and discourteous remark violated canon 3B(4). At a later hearing, after the commissioner ordered the father to pay over \$4,000 in fees for minor's counsel and a supplemental custody evaluation, the father said that he was not refusing to pay but owed a lot of people money. The commissioner interrupted to say, "Okay. This needs to be grandparent placement because he can't afford to pay the rates for the child." The commission found that the threat to award custody to other family members in response to the father's statements constituted a threatened abuse of authority and violated canons 1, 2A and 3B(4).

In deciding to issue a public admonishment, the commission took into consideration the number of acts of misconduct and the nature and seriousness of the misconduct. The commission found that the

commissioner displayed a pattern of poor demeanor and embroilment by his many denigrating and undignified comments, and that his misconduct also included inappropriately commenting on complaints made against him, viewing online posts of litigants concerning matters pending before him, independently investigating facts, and failing to disclose on the record information that was reasonably relevant to the question of disqualification.

### **Private Discipline**

The commission issued four advisory letters to subordinate judicial officers in 2012.

1. After hearing a contested child support matter, the subordinate judicial officer sanctioned a litigant \$2,500 without notice or the opportunity to be heard. In addition, while handling traffic arraignments, the SJO maintained a practice, inconsistent with proper arraignment procedures, of not advising defendants of the charges against them and instead telling them only the amount of the fines they were facing.

2. At a hearing on a pro per litigant's motion to reduce child support, the subordinate judicial officer made numerous demeaning and disparaging remarks to the litigant who was behind on support payments. The SJO ordered the litigant to turn over money on the litigant's person during the hearing without any advance notice.

3. When a traffic litigant appeared for trial, more than a month after filing a peremptory challenge of an assigned subordinate judicial officer, the case was still set in the SJO's department. The police officer who had issued the traffic citation was not present. The SJO made several impatient and discourteous remarks reflecting the view that litigant was improperly trying to force a dismissal by disqualifying the SJO and refusing to waive time. After the officer failed to appear, the SJO did not transfer the case to another department where the litigant would likely have obtained a dismissal; instead, the SJO continued the trial for several weeks, under circumstances that created an appearance of retaliation.

4. During a hearing on a restraining order, a subordinate judicial officer made extended harsh, personally critical and unjudicial statements. The SJO also spoke to the parties' families, friends and witnesses in a similar manner and instructed them as to their out of court conduct, over which the SJO had no jurisdiction.

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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. Disability retirement proceedings are confidential, with limited exceptions. The application procedure is set forth in Division V of the commission's policy declarations, which are available on the commission's website at <http://cjp.ca.gov>.

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 judicial 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 satisfy a higher burden of proof if the application is filed while disciplinary proceedings 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 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 examiner, 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 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

VI.  
JUDICIAL DISABILITY RETIREMENT

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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.

**AMENDMENTS TO DISABILITY POLICY  
DECLARATIONS**

In January 2013, the commission adopted amendments to policy declarations 5.1, 5.2, 5.3, 5.4 and 5.5, which control the handling of voluntary judicial disability applications for Judges' Retirement System II judges (those who took office after 1994).

**ATTORNEY GENERAL OPINION**

In December 2012, the Attorney General issued an opinion at the request of the commission on the question of whether judges who are voluntarily retired for disability may be certified to administer oaths. The Attorney General

concluded that a "judge who has voluntarily retired for disability with the approval of the Commission on Judicial Performance and the Chief Justice of the California Supreme Court may not be certified to administer oaths under Code of Civil Procedure section 2093(c) and Government Code section 1225. However, pursuant to a separate statutory scheme, a judge who has voluntarily retired for disability, but who is later found by the Commission on Judicial Performance to be capable of judicial service and is assigned to a court by the Chair of the Judicial Council, may administer oaths while sitting on assignment." (\_\_ Ops.Cal.Atty.Gen. \_\_, \_\_ (Dec. 20, 2012) [filed opn. p.16].)

**2012 STATISTICS**

No disability retirement applications were pending before the commission at the beginning of 2012.

The commission received four disability retirement applications during 2012, all of which were granted. No disability retirement applications were pending at the end of the year.

## VII.

### COMMISSION ORGANIZATION, STAFF AND BUDGET

#### COMMISSION ORGANIZATION AND STAFF

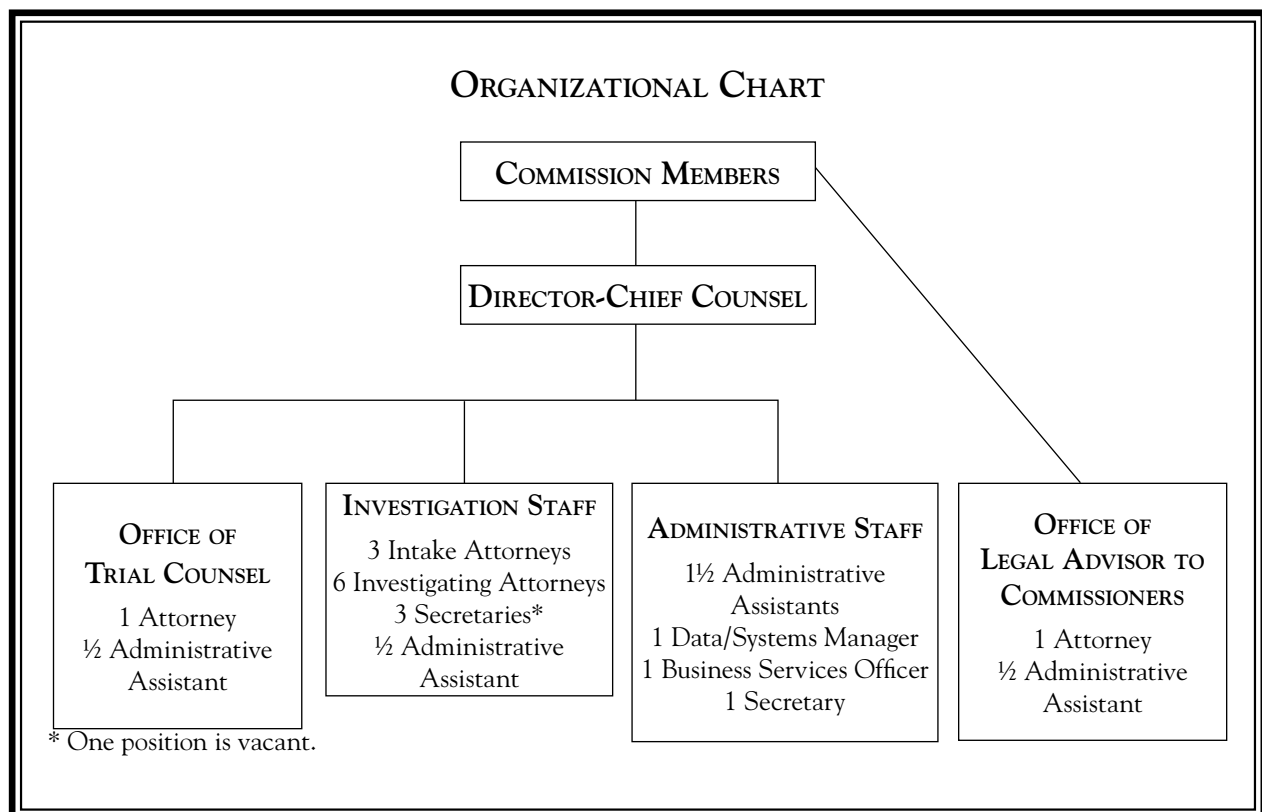
Prior to the 2012-2013 fiscal year, the commission had 27 authorized staff positions. In 2003 and 2008, the commission's budget was reduced by a total of 20%. As a consequence, several positions were kept vacant and others filled part-time as a cost-saving measure. This resulted in an overall staffing reduction of approximately 26% over the past 10 years. During the current fiscal year, the commission's authorized positions were reduced to 22 – 12 attorneys, 9 support staff, and 1 temporary staff position – to reflect the actual number of filled positions.

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 examiner's 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 Staff Counsel include intake attorneys who are responsible for reviewing and evaluating new complaints and investigating attorneys who are responsible for conducting staff inquiries and preliminary investigations.

Trial Counsel serves as examiner during formal proceedings, aided by Assistant Trial Counsel. The examiner is responsible for preparing cases for hearing before special masters, including presenting the evidence that supports the charges and briefing. The examiner also presents cases orally and in writing in hearings before the commission and the California Supreme Court.

One member of the commission's legal staff, the Legal Advisor to Commissioners, is solely responsible for assisting the commission in its deliberations during its adjudication of contested matters and for the coordination of formal hearings. That attorney does not participate in the investigation or prosecution of cases and reports directly to the



**VII.**  
**COMMISSION ORGANIZATION, STAFF AND BUDGET**

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commission. Janice M. Brickley was appointed to the position of Legal Advisor in August 2007.

**2012–2013 BUDGET**

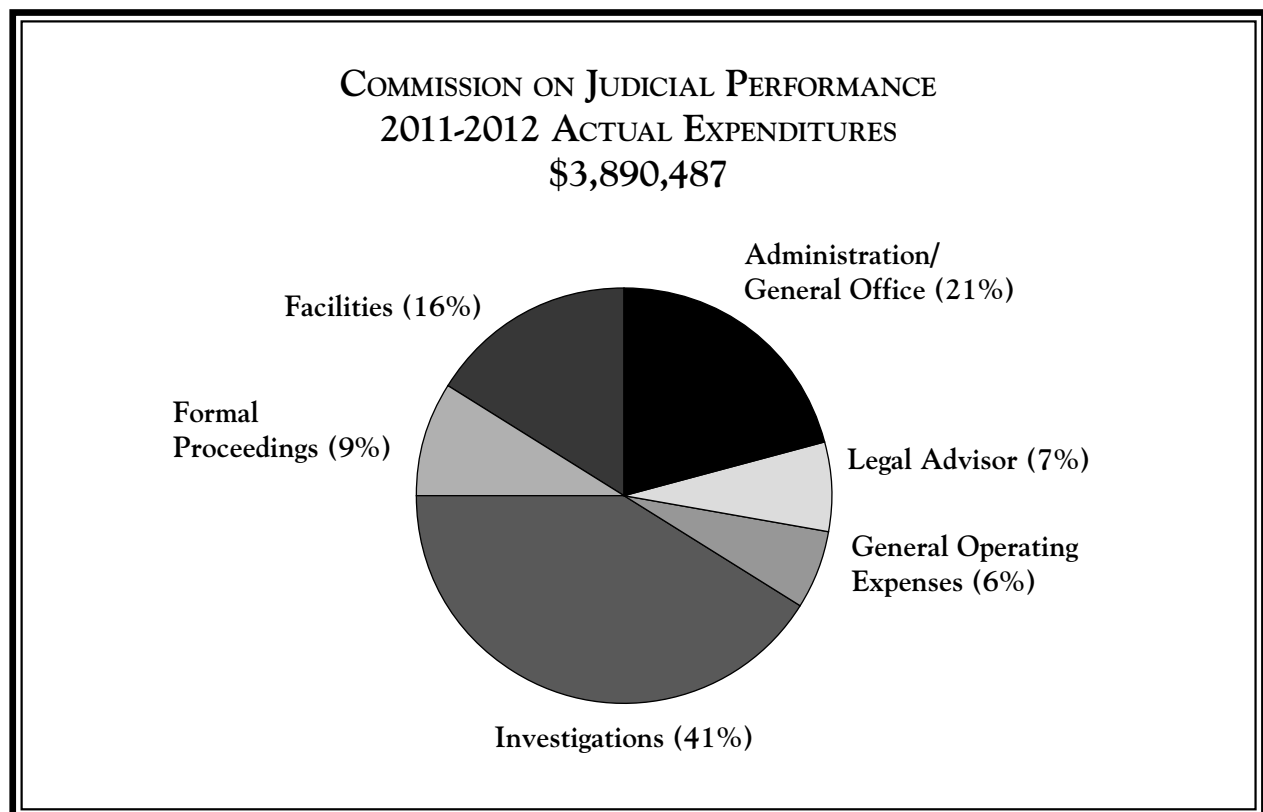
The commission's budget is separate from the budget of any other state agency or court. For the current 2012-2013 fiscal year, the commission's budget is \$4,198,000. In the 2003-2004 fiscal year, and again in the 2008-2009 fiscal year, the commission's budget was reduced by 10%. None of the 20% reduction in funding has been restored.

The commission's constitutional mandate is the investigation of allegations of misconduct and the imposition of discipline. The members of the commission receive no salaries, only reimbursement of expenses relating to commission business. Because the performance of the commission's core functions is dependent upon the services of its legal and support staff, the commission's budget is largely allocated to

personnel expenses. This leaves the commission with few options for reducing expenditures. In spite of reducing spending in nearly every aspect of its operations, since the 2003-2004 fiscal year, the commission has had to maintain reduced staffing levels in order to achieve the required savings.

**2011–2012 BUDGET**

The commission's final budget appropriation for the 2011-2012 fiscal year was \$4,181,000. Final expenditures totaled \$3,890,487. Approximately 41% of the commission's budget supported the intake and investigation functions and approximately 16% was used in connection with formal proceedings. The remaining 43% went toward sustaining the general operations of the commission, including facilities, administrative staff, supplies, and security.





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## APPENDIX

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## **APPENDIX 1.**

### **GOVERNING PROVISIONS**

The following provisions governing the Commission on Judicial Performance are available on the commission's website at <http://cjp.ca.gov>.

**California Constitution, Article VI, Sections 8, 18, 18.1 and 18.5**

**Rules of the Commission on Judicial Performance**

**Policy Declarations of the Commission on Judicial Performance**

**California Rules of Court**  
(provisions pertaining to the Commission on Judicial Performance)

**California Government Code**  
(provisions pertaining to the Commission on Judicial Performance)

**California Code of Civil Procedure Section 170.9**

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## APPENDIX 2.

### CALIFORNIA CODE OF JUDICIAL ETHICS

Adopted by the Supreme Court of California

Amended by the Supreme Court of California effective January 1, 2013<sup>†</sup>; previously amended March 4, 1999, December 13, 2000, December 30, 2002, June 18, 2003, December 22, 2003, January 1, 2005, June 1, 2005, July 1, 2006, January 1, 2007, ~~and January 1, 2008, and April 29, 2009.~~

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<sup>†</sup> Underlining indicates new language; strikeouts indicate deleted language. See page 4 for summary of changes to the Code of Judicial Ethics.

## PREFACE

Formal standards of judicial conduct have existed for more than 50 years. The original Canons of Judicial Ethics promulgated by the American Bar Association were modified and adopted in 1949 for application in California by the Conference of California Judges (now the California Judges Association).

In 1969, the American Bar Association determined that current needs and problems warranted revision of the Canons. In the revision process, a special American Bar Association committee, headed by former California Chief Justice Roger Traynor, sought and considered the views of the bench and bar and other interested persons. The American Bar Association Code of Judicial Conduct was adopted by the House of Delegates of the American Bar Association August 16, 1972.

Effective January 5, 1975, the California Judges Association adopted a new California Code of Judicial Conduct adapted from the American Bar Association 1972 Model Code. The California code was recast in gender-neutral form in 1986.

In 1990, the American Bar Association Model Code was further revised after a lengthy study. The California Judges Association again reviewed the model code and adopted a revised California Code of Judicial Conduct on October 5, 1992.

Proposition 190 (amending Cal. Const., art. VI, § 18(m), effective March 1, 1995) created a new constitutional provision that states, "The Supreme Court shall make rules for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns. These rules shall be referred to as the Code of Judicial Ethics."

The Supreme Court formally adopted the 1992 Code of Judicial Conduct in March 1995, as a transitional measure pending further review.

The Supreme Court formally adopted the Code of Judicial Ethics effective January 15, 1996.

The Supreme Court has formally adopted amendments to the Code of Judicial Ethics; effective April 15, 1996 on several occasions. The Advisory Committee Commentary is published by the Supreme Court Advisory Committee on the Code of Judicial Ethics.

## PREAMBLE

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to this code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible member of government under the rule of law.

The Code of Judicial Ethics ("Code") establishes standards for ethical conduct of judges on and off the bench and for candidates for judicial office.\* The Code consists of broad declarations called Canons, with subparts, and a Terminology section. Following each Canon is a Commentary section prepared by the Supreme Court Advisory Committee on the Code of Judicial Ethics. The Commentary, by explanation and example, provides guidance as to the purpose and meaning of the Canons. The Commentary does not constitute additional rules and should not be so construed. All members of the judiciary must comply with the Code. Compliance is required to preserve the integrity\* of the bench and to ensure the confidence of the public.

The Canons should be read together as a whole, and each provision should be construed in context and consistent with every other provision. They are to be applied in conformance with constitutional requirements, statutes, other court rules, and decisional law. Nothing in the Code shall either impair the essential independence\* of judges in making judicial decisions or provide a separate basis for civil liability or criminal prosecution.

The Code governs the conduct of judges and judicial candidates for judicial office\* and is binding upon them. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, requires a reasoned application of the text and consideration of such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

## TERMINOLOGY

Terms explained below are noted with an asterisk (\*) in the Canons where they appear. In addition, the Canons in which terms appear are cited after the explanation of each term below.

~~“Appropriate authority” denotes the authority with responsibility for initiation of the disciplinary process with respect to a violation to be reported. See Commentary to Canon 3D (Commentary).~~

~~“Candidate for judicial office.” A candidate is a person seeking election for to or retention of judicial office by election. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support. The term “candidate” has the same meaning when applied to a judge seeking election to nonjudicial office, unless on leave of absence. See Preamble and Canons 2B(3), the preliminary paragraph of 3E(2)(b)(i), 3E(3)(a), 5, 5A, 5A (Commentary), 5B(1), 5B(2), 5B(3), 5B (Commentary), 5C, 5D, and 6E.~~

~~“Court personnel” does not include the lawyers in a proceeding before a judge. See Canons 3B(4), 3B(7)(b), 3B(9), and 3C(2).~~

~~“Fiduciary” includes such relationships as executor, administrator, trustee, and guardian. See Canons 3E(5)(d), 4E(1), 4E(2), 4E(3), 4E (Commentary), 6B, and 6F (Commentary).~~

~~“Gift” denotes anything of value to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. See Canons 4D(5), 4D(5) (Commentary), 4D(6), 4D(6)(a), 4D(6)(b), 4D(6)(b) (Commentary), 4D(6)(d), 4D(6)(f), 4H (Commentary), 5A (Commentary), 6D(2)(c), and 6D(7).~~

~~“Impartial,” “impartiality,” and “impartially” mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 1 (Commentary), 2A, 2A (Commen-~~

~~tary), 2B (Commentary), 2C (Commentary), 3, 3B(9) (Commentary), 3B(10) (Commentary), 3B(12), 3B(12) (Commentary), 3C(1), 3C(5), 3E(4)(b), 3E(4)(c), 4A(1), 4A (Commentary), 4C(3)(b) (Commentary), 4C(3)(c) (Commentary), 4D(1) (Commentary), 4D(6)(a) (Commentary), 4D(6)(b) (Commentary), 4D(6)(g) (Commentary), 4H (Commentary), 5, 5A, 5A (Commentary), 5B (Commentary), 6D(2)(a), and 6D(3)(vii).~~

~~“Impending proceeding” is a proceeding or matter that is imminent or expected to occur in the near future. The words “proceeding” and “matter” are used interchangeably, and are intended to have the same meaning. See Canons 3B(7), 3B(7)(a), 3B(9), 3B(9) (Commentary), 4H (Commentary), and 6D(6). “Pending proceeding” is defined below.~~

~~“Impropriety” includes conduct that violates the law, court rules, or provisions of this code, and conduct that undermines a judge’s independence, integrity, or impartiality. See Canons 2, 2A (Commentary), 2B (Commentary), 2C (Commentary), 3B(9) (Commentary), 4D(1)(b) (Commentary), 4D(6)(g) (Commentary), 4H, 5, and 5A (Commentary).~~

~~“Independence” means a judge’s freedom from influence or controls other than those established by law. See Preamble, Canons 1, 1 (Commentary), 4C(2) (Commentary), 4D(6)(a) (Commentary), 4D(6)(g) (Commentary), 4H(3) (Commentary), 5, 5A (Commentary), 5B (Commentary), and 6D(1).~~

~~“Integrity” means probity, fairness, honesty, uprightness, and soundness of character. See Preamble, Canons 1, 1 (Commentary), 2A, 2A (Commentary), 2B (Commentary), 2C (Commentary), 3B(9) (Commentary), 3C(1), 3C(5), 4D(6)(a) (Commentary), 4D(6)(b) (Commentary), 4D(6)(g) (Commentary), 4H (Commentary), 5, 5A (Commentary), 5B (Commentary), and 6D(1).~~

~~“Knowingly,” “knowledge,” “known,” and “knows” mean actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances. See Canons 2B(2)(b), 2B(2)(e), 2C (Commentary), 3B(2) (Commentary), 3B(7)(a), 3B(7)(a) (Commentary), 3D(2), 3D(5), 3E(5)(f), 5B(1)(b), 6D(3)(a)(i), 6D(3)(a) (Commentary), 6D(4) (Commentary), and 6D(5)(a).~~

“Law” denotes court rules as well as statutes, constitutional provisions, and decisional law. See Canons 1 (Commentary), 2A, 2C (Commentary), 3A, 3B(2), 3B(7), 3B(7)(c), 3B(8), 3B(8) (Commentary), 3B(12) (Commentary), 3E(1), ~~4B (Commentary)~~, 4C(3)(c) (Commentary), ~~4C(3)(d)(ii)~~, 4C(3) (Commentary), ~~4D(6)(a)-(b)~~, 4F, and 4H, and ~~5D~~.

“Law, the legal system, or the administration of justice.” When a judge engages in an activity that relates to the law, the legal system, or the administration of justice, the judge should also consider factors such as whether the activity upholds the integrity, impartiality, and independence of the judiciary (Canons 1 and 2A), whether it impairs public confidence in the judiciary (Canon 2), whether the judge is allowing the activity to take precedence over judicial duties (Canon 3A), and whether engaging in the activity would cause the judge to be disqualified (Canon 4A(4)). See Canons ~~4B (Commentary)~~, 4C(1), 4C(1) (Commentary), 4C(2), 4C(2) (Commentary), 4C(3)(a), 4C(3)(b) (Commentary), 4C(3)(d)(ii), 4C(3)(d) (Commentary), 4D(6)(d), 4D(6)(e), 5A (Commentary), 5D, and 5D (Commentary).

“Member of the judge’s family” denotes a spouse, registered domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Canons 2B(3)(c), 2B (Commentary), 4C(3)(d)(i), 4D(1) (Commentary), 4D(2), 4D(5) (Commentary), 4E(1), and 4G (Commentary).

“Member of the judge’s family residing in the judge’s household” denotes a spouse or registered domestic partner and those persons who reside in the judge’s household and who are relatives of the judge including relatives by marriage, or persons with whom the judge maintains a close familial relationship. See Canons 4D(5), 4D(5) (Commentary), 4D(6), 4D(6)(b) (Commentary), 4D(6)(f) and 6D(2)(c).

“Nonprofit youth organization” is any nonprofit corporation or association, not organized for the private gain of any person, whose purposes are irrevocably dedicated to benefiting and serving the interests of minors and ~~which that~~ maintains its nonprofit status in accordance with applicable state and federal tax laws. See Canons 2C, 2C (Commentary), and 6D(5)(b).

“Nonpublic information” denotes information that, by law, is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order, impounded, or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Canons 3B(11) and 6D(8)(a).

“Pending proceeding” is a proceeding or matter that has commenced. A proceeding continues to be pending through any period during which an appeal may be filed and any appellate process until final disposition. The words “proceeding” and “matter” are used interchangeably, and are intended to have the same meaning. See Canons 2A (Commentary), 2B(3)(a), 3B(7), 3B(9), 3B(9) (Commentary), 3E(5)(a), 4H (Commentary), and 6D(6). “Impending proceeding” is defined above.

“Political organization” denotes a political party, political action committee, or other group, the principal purpose of which is to further the election or appointment of candidates to nonjudicial office. See Canon 5A.

“Registered domestic partner” denotes a person who has registered for domestic partnership pursuant to state law or who is recognized as a domestic partner pursuant to Family Code section 299.2. See Canons 3E(5)(d), 3E(5)(e), 3E(5)(i), 4D(6)(d), 4D(6)(f), 4D(6)(j), 4H(2), 5A (Commentary), 6D(3)(a)(v), and 6D(3)(a)(vi).

“Require.” Any Canon prescribing that a judge “require” certain conduct of others means that a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge’s direction and control. See Canons 3B(3), 3B(4), 3B(6), 3B(8) (Commentary), 3B(9), ~~3C(2)~~ 3C(3), 6D(1), 6D(2)(a), and 6D(6).

“Service organization” includes any organization commonly referred to as a “fraternal organization.” See Canons 3E(5)(d), 4C(2) (Commentary), 4C(3)(b), 4C(3)(b) (Commentary), 4C(3)(d) (Commentary), 4D(6)(j), and 6D(2)(b).

“Subordinate judicial officer.” A subordinate judicial officer is, for the purposes of this Code, a person appointed pursuant to article VI, section 22 of the California Constitution, including, but



not limited to, a commissioner, referee, and hearing officer. See Canons 3D(3), 4G (Commentary), and 6A.

“Temporary Judge.” A temporary judge is an active or inactive member of the bar who, pursuant to article VI, section 21 of the California Constitution, serves or expects to serve as a judge once, sporadically, or regularly on a part-time basis under a separate court appointment for each period of service or for each case heard. See Canons 3E(5)(h), 4C(3)(d)(i), 4C(3)(d) (Commentary), 6A, and 6D.

“Third degree of relationship” includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Canons 3E(5)(e), 3E(5)(i), and 6D(3)(a)(v).

## CANON 1

### A Judge Shall Uphold the Integrity\* and Independence\* of the Judiciary

An independent, impartial\*, and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity\* and independence\* of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective. A judicial decision or administrative act later determined to be incorrect legally is not itself a violation of this Code.

#### ADVISORY COMMITTEE COMMENTARY

*Deference to the judgments and rulings of courts depends upon public confidence in the integrity\* and independence\* of judges. The integrity\* and independence\* of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law\* and the provisions of this Code. Public confidence in the impartiality\* of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violations of this Code diminish public confidence in the judiciary and thereby do injury to the system of government under law.*

*The basic function of an independent, impartial\* and honorable judiciary is to maintain the utmost integrity\* in decision making, and this Code should be read and interpreted with that function in mind.*

[Adopted 1/15/96; amended 1/1/13.]

## CANON 2

### A Judge Shall Avoid Impropriety\* and the Appearance of Impropriety\* in All of the Judge’s Activities

#### A. Promoting Public Confidence

A judge shall respect and comply with the law\* and shall act at all times in a manner that promotes public confidence in the integrity\* and impartiality\* of the judiciary. A judge shall not make statements, whether public or nonpublic, that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

#### ADVISORY COMMITTEE COMMENTARY

*Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges.*

*A judge must avoid all impropriety\* and appearance of impropriety\*. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge’s conduct that might be viewed as burdensome by other members of the community and should do so freely and willingly.*

*The prohibition against behaving with impropriety\* or the appearance of impropriety\* applies to both the professional and personal conduct of a judge.*

*The test for the appearance of impropriety\* is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity\*, impartiality\*, and competence.*

*As to membership in organizations that practice invidious discrimination, See also Commentary under Canon 2C.*

*As to judges making statements that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts, see also Canon 3B(9) and its commentary concerning comments about pending proceedings,\* Canon 3E(3)(a) concerning disqualification of judges who make state-*

ments that commit the judge to a particular result, and Canon 5B(1)(a) concerning statements made during an election campaign that commit the candidate to a particular result. In addition, Code of Civil Procedure section 170.2, subdivision (b), provides that, with certain exceptions, a judge is not disqualified on the ground that the judge has, in any capacity, expressed a view on a legal or factual issue presented in the proceeding before the judge.

### **B. Use of the Prestige of Judicial Office**

(1) A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.

(2) A judge shall not lend the prestige of judicial office or use the judicial title in any manner, including any oral or written communication, to advance the pecuniary or personal interests of the judge or others. This Canon does not prohibit the following:

(a) A judge may testify as a character witness, provided the judge does so only when subpoenaed.

(b) A judge may, without a subpoena, provide the Commission on Judicial Performance with a written communication containing (i) factual information regarding a matter pending before the commission, or (ii) information related to the character of a judge who has a matter pending before the commission, provided that any such factual or character information is based on personal knowledge.\* In commission proceedings, a judge shall provide information responsive to a subpoena or when officially requested to do so by the commission.

(c) A judge may provide factual information in State Bar disciplinary proceedings and shall provide information responsive to a subpoena or when officially requested to do so by the State Bar.

(d) A judge may respond to judicial selection inquiries, provide recommendations (including a general character reference, relating to the evaluation of persons being considered for a judgeship), and otherwise participate in the process of judicial selection.

(e) A judge may serve as a reference or provide a letter of recommendation only if based on the judge's personal knowledge\* of the individual. These written communications may include the judge's title and may be written on stationery that uses the judicial title.

(3) Except as permitted in subdivision (c) or otherwise authorized by law\* or these canons:

(a) A judge shall not advance the pecuniary or personal interests of the judge or others by initiate initiating communications with a sentencing judge or a probation or corrections officer, a representative of a probation department about a proceeding pending\* before the sentencing judge, but may provide information in response to an official request. "Sentencing judge" includes a judge who makes a disposition pursuant to Welfare and Institutions Code section 725.

(b) A judge, other than the judge who presided over the trial of or sentenced the person seeking parole, pardon, or commutation of sentence, shall not initiate communications with the Board of Parole Hearings regarding parole, or the Office of the Governor regarding parole, pardon, or commutation of sentence, but may provide them these entities with information for the record in response to an official request.

(c) A judge may initiate communications concerning a member of the judge's family\* with a probation or corrections officer a representative of a probation department regarding sentencing, the Board of Parole Hearings regarding parole, or the Office of the Governor regarding parole, pardon, or commutation of sentence concerning a member of the judge's family, provided the judge is not identified as a judge in the communication.

### **ADVISORY COMMITTEE COMMENTARY**

A strong judicial branch, based on the prestige which that comes from effective and ethical performance, is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Judges should distinguish between proper and improper use of the prestige of office in all of their activities.

As to those communications that are permitted under this canon, a judge must keep in mind the general obligations to maintain high standards of conduct, as

set forth in Canon 1, and to avoid any impropriety\* or the appearance of impropriety\* as set forth in Canon 2. A judge must also be mindful of 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 courts.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of the judge or others. For example, a judge must not use the judicial position to gain advantage in a civil suit involving a member of the judge's family;\* or use his or her position to gain deferential treatment when stopped by a police officer for a traffic offense.

As to the use of a judge's title to identify a judge's role in the presentation and creation of legal education programs and materials, see Commentary to Canon 4B. In contracts for publication of a judge's writings, a judge should retain control over the advertising, to the extent feasible, to avoid exploitation of the judge's office. As to the acceptance of awards, see Canon 4D(6)(c) and Commentary.

This Canon does not afford judges a privilege against testifying in response to any official summons.

See also Canons 3D(1) and 3D(2) concerning a judge's obligation to take appropriate corrective action regarding other judges who violate any provision of the Code of Judicial Ethics and attorneys who violate any provision of the Rules of Professional Conduct.

Except as set forth in Canon 2B(3)(a), this Canon does not preclude internal discussions consultations among judges regarding the application of substantive or procedural provisions of law\* to any pending criminal or civil case. Additional limitations on such consultations among judges are set forth in Canon 3B(7)(a).

### C. Membership in Organizations

A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

This Canon does not apply to membership in a religious organization or an official military organization of the United States. So long as membership does not violate Canon 4A, this Canon does not bar membership in a nonprofit youth organization.\*

### ADVISORY COMMITTEE COMMENTARY

Membership of a judge in an organization that practices invidious discrimination gives rise to a perception that the judge's impartiality\* is impaired. This Canon exempts membership in religious and military organizations and, subject to Canon 4A, does not bar membership in nonprofit youth organizations.\* These exemptions are necessary because membership in United States military organizations is subject to current valid military regulations, and religious beliefs are constitutionally protected. Membership in nonprofit youth organizations\* is not barred to accommodate individual rights of intimate association and free expression. See also Canon 3E and its Commentary concerning disqualification and disclosure.

Canon 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, gender, national origin, ethnicity, or sexual orientation persons who would otherwise be admitted to membership.

Although Canon 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by law\* also violates Canon 2 and Canon 2A and gives the appearance of impropriety.\* In addition, it would be a violation of Canon 2 and Canon 2A for a judge to arrange a meeting at a club that the judge knows\* practices such invidious discrimination or for the judge to use such a club regularly. Moreover, public manifestation by a judge of the judge's knowing\* approval of invidious discrimination on any basis gives the appearance of impropriety\* under Canon 2 and diminishes public confidence in the

*integrity\* and impartiality\* of the judiciary in violation of Canon 2A.*

[Adopted 1/15/96; amended 6/19/03, 1/1/08 and 1/1/13.]

### CANON 3

#### **A Judge Shall Perform the Duties of Judicial Office Impartially,\* Competently, and Diligently**

##### **A. Judicial Duties in General**

All of the judicial duties prescribed by law\* shall take precedence over all other activities of every judge. In the performance of these duties, the following standards apply.

##### **B. Adjudicative Responsibilities**

(1) A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified.

##### *ADVISORY COMMITTEE COMMENTARY*

*Canon 3B(1) is based upon the affirmative obligation contained in the Code of Civil Procedure section 170.*

(2) A judge shall be faithful to the law\* regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.\*

##### *ADVISORY COMMITTEE COMMENTARY*

*Competence in the performance of judicial duties requires the legal knowledge,\* skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office. Canon 1 provides that an incorrect legal ruling is not itself a violation of this code.*

(3) A judge shall require\* order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require\* similar conduct of lawyers and of all court staff and court personnel under the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (1) bias or prejudice, including but not limited to bias or prejudice based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or socioeconomic status, or political affiliation, or (2) sexual harassment.

(6) A judge shall require\* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or socioeconomic status, or political affiliation against parties, witnesses, counsel, or others. This ~~Canon~~ does not preclude legitimate advocacy when race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, political affiliation, or other similar factors are issues in the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, full right to be heard according to law.\* Unless otherwise authorized by law,\* a judge shall not independently investigate facts in a proceeding and shall consider only the evidence presented or facts that may be properly judicially noticed. This prohibition extends to information available in all media, including electronic. A judge shall not initiate, permit, or consider ex parte communications, ~~or consider other that is, any~~ communications made to or from the judge outside the presence of the parties concerning a pending\* or impending\* proceeding, and shall make reasonable efforts to avoid such communications, except as follows:

~~(a) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding\* before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.~~

~~(b) (a) Except as stated below, a A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges. A judge~~

shall not engage in discussions about a case with a judge who has previously been disqualified from hearing that matter; likewise, a judge who knows\* he or she is or would be disqualified from hearing a case shall not discuss that matter with the judge assigned to the case. A judge also shall not engage in discussions with a judge who may participate in appellate review of the matter, nor shall a judge who may participate in appellate review of a matter engage in discussions with the judge presiding over the case.

A judge may consult with court personnel or others authorized by law,\* so long as the communication relates to that person's duty to aid the judge in carrying out the judge's adjudicative responsibilities.

In any discussion with judges or court personnel, the judge shall make reasonable efforts to avoid receiving factual information that is not part of the record or an evaluation of that factual information. In such consultations, the judge shall not abrogate the responsibility personally to decide the matter.

For purposes of Canon 3B(7)(a), "court personnel" includes bailiffs, court reporters, court externs, research attorneys, courtroom clerks, and other employees of the court, but does not include the lawyers in a proceeding before a judge, persons who are appointed by the court to serve in some capacity in a proceeding, or employees of other governmental entities, such as lawyers, social workers, or representatives of the probation department.

#### ADVISORY COMMITTEE COMMENTARY

Regarding communications between a judge presiding over a matter and a judge of a court with appellate jurisdiction over that matter, see also Government Code section 68070.5.

Though a judge may have ex parte discussions with appropriate court personnel, a judge may do so only on matters that are within the proper performance of that person's duties. For example, a bailiff may inform the judge of a threat to the judge or to the safety and security of the courtroom, but may not tell the judge ex parte that a defendant was overheard making an incriminating statement during a court recess. A clerk may point out to the judge a technical defect in a proposed sentence, but may not suggest to the judge that a defendant deserves a certain sentence.

A sentencing judge may not consult ex parte with a representative of the probation department about a matter pending before the sentencing judge.

This canon prohibits a judge from discussing a case with another judge who has already been disqualified. A judge also must be careful not to talk to a judge whom the judge knows\* would be disqualified from hearing the matter.

~~(c)~~ A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

~~(d)~~ (b) A judge may initiate, permit, or consider ex parte communications, where circumstances require, for scheduling, administrative purposes, or emergencies that do not deal with substantive matters provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

~~(e)~~ (c) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law\* to do so or when authorized to do so by stipulation of the parties.

(d) If a judge receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

#### ADVISORY COMMITTEE COMMENTARY

An exception allowing a judge, under certain circumstances, to obtain the advice of a disinterested expert on the law\* has been eliminated from Canon 3B(7) because consulting with legal experts outside the presence of the parties is inconsistent with core tenets of the adversarial system. Therefore, a judge shall not consult with legal experts outside the presence of the parties. Evidence Code section 730 provides for the appointment of an expert if a judge determines that

expert testimony is necessary. A court may also invite the filing of amicus curiae briefs.

An exception allowing a judge to confer with the parties separately in an effort to settle the matter before the judge has been moved from this canon to Canon 3B(12).

~~The proscription against communications concerning a proceeding includes communications from lawyers, law\* professors, and other persons who are not participants in the proceeding except to the limited extent permitted by the exceptions noted in Canon 3B(7).~~

~~This Canon does not prohibit a judge from initiating or considering an ex parte communication when authorized to do so by stipulation of the parties.~~

~~This Canon does not prohibit court staff personnel from communicating scheduling information or carrying out similar administrative functions.~~

~~An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file an amicus curiae brief.~~

~~A judge must not independently investigate facts in a case and must consider only the evidence presented, unless otherwise authorized by law. For example, a judge is statutorily authorized to investigate and consult witnesses informally in small claims cases. Code of Civil Procedure section 116.520, subdivision (c).~~

(8) A judge shall dispose of all judicial matters fairly, promptly, and efficiently. A judge shall manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law.\*

#### ADVISORY COMMITTEE COMMENTARY

The obligation of a judge to dispose of matters promptly and efficiently must not take precedence over the judge's obligation to dispose of the matters fairly and with patience. For example, when a litigant is self-represented, a judge has the discretion to take reasonable steps, appropriate under the circumstances and consistent with the law\* and the canons, to enable the litigant to be heard. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs. ~~A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.~~

Prompt disposition of the court's business requires

a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to require\* that court officials, litigants, and their lawyers cooperate with the judge to that end.

(9) A judge shall not make any public comment about a pending\* or impending\* proceeding in any court, and shall not make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require\* similar abstention on the part of staff and court personnel subject to the judge's direction and control. This Canon does not prohibit judges from making statements in the course of their official duties or from explaining for public information the procedures of the court, and does not apply to proceedings in which the judge is a litigant in a personal capacity. Other than cases in which the judge has personally participated, this Canon does not prohibit judges from discussing in legal education programs and materials, cases and issues pending in appellate courts. This educational exemption does not apply to cases over which the judge has presided or to comments or discussions that might interfere with a fair hearing of the case.

#### ADVISORY COMMITTEE COMMENTARY

The requirement that judges abstain from public comment regarding a pending\* or impending\* proceeding continues during any appellate process and until final disposition. A judge shall make reasonable efforts to ascertain whether a case is pending\* or impending\* before commenting on it. This Canon does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly.

"Making statements in the course of their official duties" and "explaining the procedures of the court" include providing an official transcript or partial official transcript of a court proceeding open to the public and explaining the rules of court and procedures related to a decision rendered by a judge.

Although this canon does not prohibit a judge from commenting on cases that are not pending\* or impending\* in any court, a judge must be cognizant of the general prohibition in Canon 2 against conduct involving impropriety\* or the appearance of impropriety.\* A judge should also be aware of the mandate

in Canon 2A that a judge must act at all times in a manner that promotes public confidence in the integrity\* and impartiality\* of the judiciary. In addition, when commenting on a case pursuant to this canon, a judge must maintain high standards of conduct, as set forth in Canon 1.

Although a judge is permitted to make nonpublic comments about pending\* or impending\* cases that will not substantially interfere with a fair trial or hearing, the judge should be cautious when making any such comments. There is always a risk that a comment can be misheard, misinterpreted, or repeated. A judge making such a comment must be mindful of the judge's obligation under Canon 2A to act at all times in a manner that promotes public confidence in the integrity\* and impartiality\* of the judiciary. When a judge makes a nonpublic comment about a case pending\* before that judge, the judge must keep an open mind and not form an opinion prematurely or create the appearance of having formed an opinion prematurely.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

#### ADVISORY COMMITTEE COMMENTARY

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial\* in a subsequent case.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information\* acquired in a judicial capacity.

#### ADVISORY COMMITTEE COMMENTARY

This Canon makes it clear that judges cannot make use of information from affidavits, jury results, or court rulings, before they become public information, in order to gain a personal advantage.

(12) A judge may participate in settlement conferences or in other efforts to resolve matters in dispute, including matters pending before the judge. A judge may, with the express consent of the parties or their lawyers, confer separately with the parties and/or their lawyers during such resolution efforts. At all times during such resolution efforts, a judge shall remain impartial\* and shall not engage

in conduct that may reasonably be perceived as coercive.

#### ADVISORY COMMITTEE COMMENTARY

While the judge plays an important role in overseeing efforts to resolve disputes, including conducting settlement discussions, a judge should be careful that efforts to resolve disputes do not undermine any party's right to be heard according to law.\*

The judge should keep in mind the effect that the judge's participation in dispute resolution efforts may have on the judge's impartiality\* or the appearance of impartiality\* if the case remains with the judge for trial after resolution efforts are unsuccessful. Accordingly, a judge may wish to consider: (1) whether the parties or their counsel have requested or objected to the participation by the trial judge in such discussions; (2) whether the parties and their counsel are relatively sophisticated in legal matters or the particular legal issues involved in the case; (3) whether a party is unrepresented; (4) whether the case will be tried by the judge or a jury; (5) whether the parties will participate with their counsel in settlement discussions and, if so, the effect of personal contact between the judge and parties; and (6) whether it is appropriate during the settlement conference for the judge to express an opinion on the merits or worth of the case or express an opinion on the legal issues that the judge may later have to rule upon.

If a judge assigned to preside over a trial believes participation in resolution efforts could influence the judge's decision making during trial, the judge may decline to engage in such efforts.

Where dispute resolution efforts of any type are unsuccessful, the judge should consider whether, due to events that occurred during the resolution efforts, the judge may be disqualified under the law\* from presiding over the trial. See, e.g., Code of Civil Procedure section 170.1, subdivision (a)(6)(A).

### C. Administrative Responsibilities

(1) A judge shall diligently discharge the judge's administrative responsibilities impartially,\* on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity\* of the judiciary. A judge shall not, in the performance of administrative duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (i) bias or prejudice, including but not limited to bias

or prejudice based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or socioeconomic status, or political affiliation, or (ii) sexual harassment. A judge shall maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.

#### ADVISORY COMMITTEE COMMENTARY

*In considering what constitutes a conflict of interest under this Canon, a judge should be informed by Code of Civil Procedure section 170.1, subdivision (a)(6).*

(2) A judge shall require\* staff and court personnel under the judge's direction and control to observe appropriate standards of conduct and to refrain from manifesting bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status in the performance of their official duties. A judge shall maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to ensure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities. A judge shall require\* staff and court personnel under the judge's direction and control to observe appropriate standards of conduct and to refrain from manifesting bias or prejudice based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, or socioeconomic status, or political affiliation in the performance of their official duties.

(4) A judge shall not make unnecessary court appointments. A judge shall exercise the power of appointment impartially\* and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees above the reasonable value of services rendered. A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to ensure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

#### ADVISORY COMMITTEE COMMENTARY

*Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks,\* secretaries, court reporters,\* court interpreters,\* and bailiffs.\* Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Canon 3C(4).*

(5) A judge shall perform administrative duties without bias or prejudice. A judge shall not, in the performance of administrative duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (1) bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, or (2) sexual harassment. A judge shall not make unnecessary court appointments. A judge shall exercise the power of appointment impartially,\* on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity\* of the judiciary. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees above the reasonable value of services rendered.

#### ADVISORY COMMITTEE COMMENTARY

*Appointees of a judge include assigned counsel and officials such as referees, commissioners, special masters, receivers, and guardians. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Canon 3C(5).*

### D. Disciplinary Responsibilities

(1) Whenever a judge has reliable information that another judge has violated any provision of the Code of Judicial Ethics, the judge shall take or initiate appropriate corrective action, which may include reporting the violation to the appropriate authority. (See Commentary following Canon 3D(2).)

(2) Whenever a judge has personal knowledge,\* or concludes in a judicial decision, that a lawyer has committed misconduct or that a lawyer has violated any provision of the Rules of Professional Conduct, the judge shall take appropriate corrective action, which may include reporting the violation to the appropriate authority.



ADVISORY COMMITTEE COMMENTARY

Appropriate corrective action could include direct communication with the judge or lawyer who has committed the violation, other direct action, such as a confidential referral to a judicial or lawyer assistance program, or a report of the violation to the presiding judge, appropriate authority, or other agency or body. Judges should note that in addition to the action required by Canon 3D(2), California law imposes mandatory additional reporting requirements on judges regarding lawyer misconduct. See Business and Professions Code section 6086.7.

“Appropriate authority” denotes the authority with responsibility for initiation of the disciplinary process with respect to a violation to be reported.

(3) A judge shall promptly report in writing to the Commission on Judicial Performance when he or she is charged in court by misdemeanor citation, prosecutorial complaint, information, or indictment, with any crime in the United States as specified below. Crimes that must be reported are: (1) all crimes, other than those that would be considered misdemeanors not involving moral turpitude or infractions under California law; and (2) all misdemeanors involving violence (including assaults), the use or possession of controlled substances, the misuse of prescriptions, or the personal use or furnishing of alcohol. A judge also shall promptly report in writing upon conviction of such crimes.

If the judge is a retired judge serving in the Assigned Judges Program, he or she shall promptly report such information in writing to the Chief Justice rather than to the Commission on Judicial Performance. If the judge is a subordinate judicial officer,\* he or she shall promptly report such information in writing to both the presiding judge of the court in which the subordinate judicial officer\* sits and the Commission on Judicial Performance.

ADVISORY COMMITTEE COMMENTARY—

~~Appropriate corrective action could include direct communication with the judge or lawyer who has committed the violation, other direct action if available, or a report of the violation to the presiding judge, appropriate authority, or other agency or body. Judges should note that in addition to the action required by Canon 3D(2), California law imposes additional reporting requirements regarding lawyers.~~

(4) A judge shall cooperate with judicial and lawyer disciplinary agencies.

ADVISORY COMMITTEE COMMENTARY

See Government Code section 68725, which requires judges to cooperate with and give reasonable assistance and information to the Commission on Judicial Performance, and rule 104 of the Rules of the Commission on Judicial Performance, which requires a respondent judge to cooperate with the commission in all proceedings in accordance with section 68725.

(5) A judge shall not retaliate, directly or indirectly, against a person known\* or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

E. Disqualification and Disclosure

(1) A judge shall disqualify himself or herself in any proceeding in which disqualification is required by law.\*

(2) In all trial court proceedings, a judge shall disclose on the record as follows:

(a) Information relevant to disqualification

A judge shall disclose information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification.

(b) Campaign contributions in trial court elections(i) Information required to be disclosed

In any matter before a judge who is or was a candidate for judicial office\* in a trial court election, the judge shall disclose any contribution or loan of \$100 or more from a party, individual lawyer, or law office or firm in that matter as required by this canon, even if the amount of the contribution or loan would not require disqualification. Such disclosure shall consist of the name of the contributor or lender, the amount of each contribution or loan, the cumulative amount of the contributor's contributions or lender's loans, and the date(s) of each contribution or loan. The judge shall make reasonable efforts to obtain current information regarding contributions or loans received by his or

her campaign and shall disclose the required information on the record.

**(ii) Manner of disclosure**

The judge shall ensure that the required information is conveyed on the record to the parties and lawyers appearing in the matter before the judge. The judge has discretion to select the manner of disclosure, but the manner used shall avoid the appearance that the judge is soliciting campaign contributions.

**(iii) Timing of disclosure**

Disclosure shall be made at the earliest reasonable opportunity after receiving each contribution or loan. The duty commences no later than one week after receipt of the first contribution or loan, and continues for a period of two years after the candidate takes the oath of office, or two years from the date of the contribution or loan, whichever event is later.

**ADVISORY COMMITTEE COMMENTARY**

Code of Civil Procedure section 170.1(a)(9)(C) requires a judge to “disclose any contribution from a party or lawyer in a matter that is before the court that is required to be reported under subdivision (f) of Section 84211 of the Government Code, even if the amount would not require disqualification under this paragraph.” This statute further provides that the “manner of disclosure shall be the same as that provided in Canon 3E of the Code of Judicial Ethics.” Canon 3E(2)(b) sets forth the information the judge must disclose, the manner for making such disclosure, and the timing thereof.

“Contribution” includes monetary and in-kind contributions. See Cal. Code Regs., tit. 2, § 18215, subd. (b)(3). See generally Government Code section 84211(f).

Disclosure of campaign contributions is intended to provide parties and lawyers appearing before a judge during and after a judicial campaign with easy access to information about campaign contributions that may not require disqualification but could be relevant to the question of disqualification of the judge. Depending upon the circumstances, the judge may conclude that the most effective and efficient manner of providing disclosure is to state the required information on the record in open court. In the alternative, a judge may

determine that it is more appropriate to disclose on the record that parties and lawyers may obtain the required information at an easily accessible location in the courthouse, and provide an opportunity for the parties and lawyers to review the available information.

In addition to the disclosure obligations set forth in Canon 3E(2)(b), a judge must, pursuant to Canon 3E(2)(a), disclose on the record any other information that may be relevant to the question of disqualification. As examples, such an obligation may arise as a result of contributions or loans of which the judge is aware made by a party, lawyer, or law office or firm appearing before the judge to a third party in support of the judge or in opposition to the judge’s opponent; a party, lawyer, or law office or firm’s relationship to the judge or role in the campaign; or the aggregate contributions or loans from lawyers in one law office or firm.

Canon 3E(2)(b) does not eliminate the obligation of the judge to recuse where the nature of the contribution or loan, the extent of the contributor’s or lender’s involvement in the judicial campaign, the relationship of the contributor or lender, or other circumstance requires recusal under Code of Civil Procedure section 170.1, and particularly section 170.1, subdivision (a)(6)(A).

**(3) Judges shall disqualify themselves in accordance with the following:**

**(a) Statements that commit the judge to a particular result**

A judge is disqualified if the judge, while a judge or candidate for judicial office,\* has made a statement, other than in a court proceeding, judicial decision, or opinion, that a person aware of the facts might reasonably believe commits the judge to reach a particular result or rule in a particular way in a proceeding.

**(b) Bond ownership**

Ownership of a corporate bond issued by a party to a proceeding and having a fair market value exceeding ~~one thousand five hundred dollars~~ \$1,500 is disqualifying. Ownership of government bonds issued by a party to a proceeding is disqualifying only if the outcome of the proceeding could substantially affect the value of the judge’s bond. Ownership in a mutual or common investment fund that holds bonds is not a disqualifying financial interest.

## ADVISORY COMMITTEE COMMENTARY

*The distinction between corporate and government bonds is consistent with the Political Reform Act (see Gov. Code, § 82034), which requires disclosure of corporate bonds, but not government bonds. Canon 3E(3) is intended to assist judges in complying with Code of Civil Procedure section 170.1, subdivision (a)(3) and Canon 3E(5)(d).*

(4) An appellate justice shall disqualify himself or herself in any proceeding if for any reason:

(a) the justice believes his or her recusal would further the interests of justice; or

(b) the justice substantially doubts his or her capacity to be impartial;\* or

(c) the circumstances are such that a reasonable person aware of the facts would doubt the justice's ability to be impartial.\*

(5) Disqualification of an appellate justice is also required in the following instances:

(a) The appellate justice has appeared or otherwise served as a lawyer in the pending\* matter proceeding, or has appeared or served as a lawyer in any other matter proceeding involving any of the same parties if that other matter proceeding related to the same contested issues of fact and law as the present matter proceeding, or has given advice to any party in the present proceeding upon any issue involved in the proceeding.

## ADVISORY COMMITTEE COMMENTARY

*Canon 3E(5)(a) is consistent with Code of Civil Procedure section 170.1, subdivision (a)(2), which addresses disqualification of trial court judges based on prior representation of a party in the proceeding.*

(b) Within the last two years, (i) a party to the proceeding, or an officer, director or trustee thereof, either was a client of the justice when the justice was engaged in the private practice of law or was a client of a lawyer with whom the justice was associated in the private practice of law; or (ii) a lawyer in the proceeding was associated with the justice in the private practice of law.

(c) The appellate justice represented a public officer or entity and personally advised or in any way represented such officer or entity concerning

the factual or legal issues in the present proceeding in which the public officer or entity now appears.

(d) The appellate justice, or his or her spouse or registered domestic partner,\* or a minor child residing in the household, has a financial interest or is a fiduciary\* who has a financial interest in the proceeding, or is a director, advisor, or other active participant in the affairs of a party. A financial interest is defined as ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value exceeding ~~one thousand five hundred dollars~~ \$1,500. Ownership in a mutual or common investment fund that holds securities does not itself constitute a financial interest; holding office in an educational, religious, charitable, ~~fraternal~~ service\*, or civic organization does not confer a financial interest in the organization's securities; and a proprietary interest of a policyholder in a mutual insurance company or mutual savings association or similar interest is not a financial interest unless the outcome of the proceeding could substantially affect the value of the interest. A justice shall make reasonable efforts to keep informed about his or her personal and fiduciary\* interests and those of his or her spouse or registered domestic partner\* and of minor children living in the household.

(e) The justice or his or her spouse or registered domestic partner,\* or a person within the third degree of relationship\* to either of them, or the spouse or registered domestic partner\* thereof, is a party or an officer, director, or trustee of a party to the proceeding, or a lawyer or spouse or registered domestic partner\* of a lawyer in the proceeding is the spouse, registered domestic partner,\* former spouse, former registered domestic partner,\* child, sibling, or parent of the justice or of the justice's spouse or registered domestic partner,\* or such a person is associated in the private practice of law with a lawyer in the proceeding.

(f) The justice (i) served as the judge before whom the proceeding was tried or heard in the lower court, (ii) has ~~a~~ personal knowledge\* of disputed evidentiary facts concerning the proceeding, or (iii) has a personal bias or prejudice concerning a party or a party's lawyer.

(g) A temporary or permanent physical impairment renders the justice unable properly to perceive the evidence or conduct the proceedings.

(h) The justice has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding prospective employment or service as a dispute resolution neutral, or has been engaged in such employment or service, and any of the following applies:

(i) The arrangement is, or the prior employment or discussion was, with a party to the proceeding;

(ii) The matter before the justice includes issues relating to the enforcement of either an agreement to submit a dispute to an alternative dispute resolution process or an award or other final decision by a dispute resolution neutral;

(iii) The justice directs the parties to participate in an alternative dispute resolution process in which the dispute resolution neutral will be an individual or entity with whom the justice has the arrangement, has previously been employed or served, or is discussing or has discussed the employment or service; or

(iv) The justice will select a dispute resolution neutral or entity to conduct an alternative dispute resolution process in the matter before the justice, and among those available for selection is an individual or entity with whom the justice has the arrangement, with whom the justice has previously been employed or served, or with whom the justice is discussing or has discussed the employment or service.

For purposes of ~~this~~ eCanon 3E(5)(h), “participating in discussions” or “has participated in discussions” means that the justice solicited or otherwise indicated an interest in accepting or negotiating possible employment or service as an alternative dispute resolution neutral or responded to an unsolicited statement regarding, or an offer of, such employment or service by expressing an interest in

that employment or service, making any inquiry regarding the employment or service, or encouraging the person making the statement or offer to provide additional information about that possible employment or service. If a justice’s response to an unsolicited statement regarding, a question about, or offer of, prospective employment or other compensated service as a dispute resolution neutral is limited to responding negatively, declining the offer, or declining to discuss such employment or service, that response does not constitute participating in discussions.

For purposes of ~~this~~ eCanon 3E(5)(h), “party” includes the parent, subsidiary, or other legal affiliate of any entity that is a party and is involved in the transaction, contract, or facts that gave rise to the issues subject to the proceeding.

For purposes of ~~this~~ eCanon 3E(5)(h), “dispute resolution neutral” means an arbitrator, a mediator, a temporary judge\* appointed under section 21 of article VI of the California Constitution, a referee appointed under Code of Civil Procedure section 638 or 639, a special master, a neutral evaluator, a settlement officer, or a settlement facilitator.

(i) The justice’s spouse or registered domestic partner\* or a person within the third degree of relationship\* to the justice or his or her spouse or registered domestic partner,\* or the person’s spouse or registered domestic partner,\* was a witness in the proceeding.

(j) The justice has received a campaign contribution of \$5,000 or more from a party or lawyer in a matter that is before the court, and either of the following applies:

(i) The contribution was received in support of the justice’s last election, if the last election was within the last six years; or

(ii) The contribution was received in anticipation of an upcoming election.

Notwithstanding Canon 3E(5)(j), a justice shall be disqualified based on a contribution of a lesser amount if required by Canon 3E(4).

The disqualification required under Canon 3E(5)(j) may be waived if all parties that did not make the contribution agree to waive the disqualification.

## ADVISORY COMMITTEE COMMENTARY

Canon 3E(1) sets forth the general duty to disqualify applicable to a judge of any court. Sources for determining when recusal or disqualification is appropriate may include the applicable provisions of the Code of Civil Procedure, other provisions of the Code of Judicial Ethics, the Code of Conduct for United States Judges, the American Bar Association's Model Code of Judicial Conduct, and related case law.

The decision whether to disclose information under Canon 3E(2) is a decision based on the facts of the case before the judge. A judge is required to disclose only information that is related to the grounds for disqualification set forth in Code of Civil Procedure section 170.1.

Canon 3E(4) sets forth the general standards for recusal of an appellate justice. The term "appellate justice" includes justices of both the Courts of Appeal and the Supreme Court. Generally, the provisions concerning disqualification of an appellate justice are intended to assist justices in determining whether recusal is appropriate and to inform the public why recusal may occur.

However, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must promptly disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

In some instances, membership in certain organizations may have the potential to give an appearance of partiality, although membership in the organization generally may not be barred by Canon 2C, Canon 4, or any other specific canon. A judge holding membership in an organization should disqualify himself or herself whenever doing so would be appropriate in accordance with Canon 3E(1), 3E(4), or 3E(5) or statutory requirements. In addition, in some circumstances, the parties or their lawyers may consider a judge's membership in an organization relevant to the question of disqualification, even if the judge believes there is no actual basis for disqualification. In accordance with this Canon, a judge should disclose to the parties his or her membership in an organization, in

any proceeding in which that information is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge concludes there is no actual basis for disqualification.

[Adopted 1/15/96; amended 4/15/96, 6/19/97, 3/4/99, 12/13/00, 12/22/03, 1/1/05, 1/1/07, 1/1/08, 4/29/09 and 1/1/13.]

## CANON 4

### A Judge Shall So Conduct the Judge's Quasi-judicial and Extrajudicial Activities as to Minimize the Risk of Conflict with Judicial Obligations

#### A. Extrajudicial Activities in General

A judge shall conduct all of the judge's extrajudicial activities so that they do not

(1) cast reasonable doubt on the judge's capacity to act impartially;\*

(2) demean the judicial office; or

(3) interfere with the proper performance of judicial duties; or

(4) lead to frequent disqualification of the judge.

## ADVISORY COMMITTEE COMMENTARY

Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which ~~the judge he or she~~ lives. Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially\* as a judge. Expressions ~~which that~~ may do so include ~~jokes inappropriate use of humor or other the use of demeaning remarks demeaning individuals on the basis of a classification such as their race, sex, religion, sexual orientation, or national origin.~~ See Canon 2C and accompanying Commentary.

Because a judge's judicial duties take precedence over all other activities (see Canon 3A), a judge must avoid extrajudicial activities that might reasonably result in the judge being disqualified.

#### B. Quasi-judicial and Avocational Activities

A judge may speak, write, lecture, teach, and participate in activities concerning legal and

nonlegal subject matters, subject to the requirements of this *Code*.

#### ADVISORY COMMITTEE COMMENTARY

*As a judicial officer and person specially learned in the law,\* a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice,\* including revision of substantive and procedural law\* and improvement of criminal and juvenile justice. To the extent that time permits, a judge may do so, either independently or through a bar or judicial association or other group dedicated to the improvement of the law.\* It may be necessary to promote legal education programs and materials by identifying authors and speakers by judicial title. This is permissible, provided such use of the judicial title does not contravene Canons 2A and 2B.*

Judges are not precluded by their office from engaging in other social, community, and intellectual endeavors so long as they do not interfere with the obligations under Canons 2C and 4A.

#### C. Governmental, Civic, or Charitable Activities

(1) A judge shall not appear at a public hearing or officially consult with an executive or legislative body or public official except on matters concerning the law, the legal system, or the administration of justice\* or in matters involving the judge's private economic or personal interests.

#### ADVISORY COMMITTEE COMMENTARY

*When deciding whether to appear at a public hearing or whether to consult with an executive or legislative body or public official on matters concerning the law, the legal system, or the administration of justice,\* a judge should consider whether that conduct would violate any other provisions of this code. For a list of factors to consider, see the explanation of "law, the legal system, or the administration of justice" in the terminology section. See also Canon 2B regarding the obligation to avoid improper influence.*

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice.\* A judge may, however, serve in the military reserve or represent a national, state, or local government on ceremonial occasions

or in connection with historical, educational, or cultural activities.

#### ADVISORY COMMITTEE COMMENTARY

Canon 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system, or administration of justice\* as authorized by Canon 4C(3). The appropriateness of accepting extrajudicial assignments must be assessed in light of the demands on judicial resources and the need to protect the courts from involvement in extrajudicial matters that may prove to be controversial. Judges shall not accept governmental appointments that are likely to interfere with the effectiveness and independence\* of the judiciary, or ~~which~~ that constitute a public office within the meaning of the California Constitution, article VI, section 17.

Canon 4C(2) does not govern a judge's service in a nongovernmental position. See Canon 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system, or the administration of justice\* and with educational, religious, charitable, ~~fraternal~~ service\*, or civic organizations not conducted for profit. For example, service on the board of a public educational institution, other than a law school, would be prohibited under Canon 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Canon 4C(3).

(3) Subject to the following limitations and the other requirements of this *Code*,

(a) a judge may serve as an officer, director, trustee, or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice\* provided that such position does not constitute a public office within the meaning of the California Constitution, article VI, section 17;

(b) a judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, ~~fraternal~~ service\*, or civic organization not conducted for profit;

#### ADVISORY COMMITTEE COMMENTARY

Canon 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system, or the administration of justice.\* See Canon 4C(2).

Canon 4C(3) uses the phrase, “Subject to the following limitations and the other requirements of this Ecode.” As an example of the meaning of the phrase, a judge permitted by Canon 4C(3) to serve on the board of a ~~fraternal institution~~ service organization\* may be prohibited from such service by Canon 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge’s capacity to act impartially\* as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Canon 4C. For example, a judge is prohibited by Canon 4G from serving as a legal advisor to a civic or charitable organization.

Service on the board of a homeowners’ association or a neighborhood protective group is proper if it is related to the protection of the judge’s own economic interests. See Canons 4D(2) and 4D(4). See Canon 2B regarding the obligation to avoid improper use of the prestige of a judge’s office.

(c) a judge shall not serve as an officer, director, trustee, or nonlegal advisor if it is likely that the organization

(i) will be engaged in judicial proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

#### ADVISORY COMMITTEE COMMENTARY

The changing nature of some organizations and of their relationship to the law\* makes it necessary for the judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. Some organizations regularly engage in litigation to achieve their goals or fulfill their purposes. Judges should avoid a leadership role in such organizations as it could compromise the appearance of impartiality.\*

(d) a judge as an officer, director, trustee, or nonlegal advisor, or as a member or otherwise

(i) may assist such an organization in planning fundraising and may participate in the management and investment of the

organization’s funds;<sup>2</sup> ~~but~~ However, a judge shall not personally participate in the solicitation of funds or other fundraising activities, except that a judge may privately solicit funds for such an organization from members of the judge’s family\* or from other judges (excluding court commissioners, referees, retired judges, court-appointed arbitrators, hearing officers, and temporary judges\*);

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice;\*

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fundraising mechanism, except as permitted in Canon 4C(3)(d)(i);

(iv) shall not permit the use of the prestige of his or her judicial office for fundraising or membership solicitation but may be a speaker, guest of honor, or recipient of an award for public or charitable service provided the judge does not personally solicit funds and complies with Canons 4A(1), (2), ~~and~~ (3), and (4).

#### ADVISORY COMMITTEE COMMENTARY

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system, or the administration of justice,\* or a nonprofit educational, religious, charitable, ~~fraternal-service~~\*, or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fundraising mechanism. Solicitation of funds or memberships for an organization ~~and solicitation of memberships~~ similarly involves the danger that the person solicited will feel obligated to respond favorably ~~to the solicitor~~ if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing, or by telephone except in the following cases: (1) a judge may solicit other judges (excluding court commissioners, referees, retired judges, court-

appointed arbitrators, hearing officers, and temporary judges\*) for funds or memberships; (2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves; and (3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

When deciding whether to make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice,\* a judge should consider whether that conduct would violate any other provision of this code. For a list of factors to consider, see the explanation of "law, the legal system, or the administration of justice" in the terminology section.

Use of an organization letterhead for fundraising or membership solicitation does not violate Canon 4C(3)(d), provided the letterhead lists only the judge's name and office or other position in the organization, and designates the judge's judicial title only if other persons whose names appear on the letterhead have comparable designations. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials, and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

(e) A judge may encourage lawyers to provide pro bono publico legal services.

#### ADVISORY COMMITTEE COMMENTARY

In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, as long as the judge does not employ coercion or abuse the prestige of judicial office.

#### **D. Financial Activities**

(1) A judge shall not engage in financial and business dealings that

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to appear before the court on which the judge serves.

#### **ADVISORY COMMITTEE COMMENTARY**

The Time for Compliance provision of this Ecode (Canon 6F) postpones the time for compliance with certain provisions of this Ecanon in some cases.

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to appear either before the judge personally or before other judges on the judge's court. A judge shall discourage members of the judge's family\* from engaging in dealings that would reasonably appear to exploit the judge's judicial position or that involve family members in frequent transactions or continuing business relationships with persons likely to appear before the judge. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in Canon 4A against activities that tend to reflect adversely on impartiality,\* demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety\* or the appearance of impropriety\* and the prohibition in Canon 2B against the misuse of the prestige of judicial office.

In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1.

(2) A judge may, subject to the requirements of this Ecode, hold and manage investments of the judge and members of the judge's family,\* including real estate, and engage in other remunerative activities. A judge shall not participate in, nor permit the judge's name to be used in connection with, any business venture or commercial advertising that indicates the judge's title or affiliation with the judiciary or otherwise lend the power or prestige of his or her office to promote a business or any commercial venture.

(3) A judge shall not serve as an officer, director, manager, or employee of a business affected with a public interest, including, without limitation, a financial institution, insurance company, or public utility.



## ADVISORY COMMITTEE COMMENTARY

Although participation by a judge in business activities might otherwise be permitted by Canon 4D, a judge may be prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in any business activity if the judge's participation would involve misuse of the prestige of judicial office. See Canon 2B.

(4) A judge shall manage personal investments and financial activities so as to minimize the necessity for disqualification. As soon as reasonably possible, a judge shall divest himself or herself of investments and other financial interests that would require frequent disqualification.

(5) Under no circumstance shall a judge accept a gift,\* bequest, or favor if the donor is a party whose interests have come or are reasonably likely to come before the judge. A judge shall discourage members of the judge's family residing in the judge's household\* from accepting similar benefits from parties who have come or are reasonably likely to come before the judge.

## ADVISORY COMMITTEE COMMENTARY

In addition to the prohibitions set forth in Canon 4D(5) regarding gifts,\* other laws\* may be applicable to judges, including, for example, Code of Civil Procedure section 170.9 and the Political Reform Act of 1974 (Gov. Code, § 81000 et seq.).

Canon 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5.

Because a gift,\* bequest, or favor to a member of the judge's family residing in the judge's household\* might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them urge them to take these constraints into account when making decisions about accepting such gifts,\* bequests, or favors. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.\*

The application of Canon 4D(5) requires recognition that a judge cannot reasonably be expected to

anticipate all persons or interests that may come before the court.

(6) A judge shall not accept and shall discourage members of the judge's family residing in the judge's household\* from accepting a gift,\* bequest, favor, or loan from anyone except as hereinafter set forth, provided that acceptance would not reasonably be perceived as intended to influence the judge in the performance of judicial duties:

~~(a) any gift\* incidental to a public testimonial, books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or registered domestic partner\* or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system, or the administration of justice;\*~~

(a) a gift,\* bequest, favor, or loan from a person whose preexisting relationship with a judge would prevent the judge under Canon 3E from hearing a case involving that person;

## ADVISORY COMMITTEE COMMENTARY

Upon appointment or election as a judge or within a reasonable period of time thereafter, a judge may attend an event honoring the judge's appointment or election as a judge provided that (1) the judge would otherwise be disqualified from hearing any matter involving the person or entity holding or funding the event, and (2) a reasonable person would not conclude that attendance at the event undermines the judge's integrity,\* impartiality,\* or independence.\*

~~(b) advances or reimbursement for the reasonable cost of travel, transportation, lodging, and subsistence which is directly related to participation in any judicial, educational, civic, or governmental program or bar-related function or activity, devoted to the improvement of the law, the legal system, or the administration of justice;\*~~

## ADVISORY COMMITTEE COMMENTARY

Acceptance of an invitation to a law-related function is governed by Canon 4D(6)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Canon 4D(6)(d).

(b) a gift\* for a special occasion from a relative or friend, if the gift\* is fairly commensurate with the occasion and the relationship;

ADVISORY COMMITTEE COMMENTARY

A gift\* to a judge, or to a member of the judge's family residing in the judge's household,\* that is excessive in value raises questions about the judge's impartiality\* and the integrity\* of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Canon 4D(6)(a).

(c) a gift,\* award, or benefit incident to the business, profession, or other separate activity of a spouse or registered domestic partner\* or other member of the judge's family\* residing in the judge's household,\* including gifts,\* awards, and benefits for the use of both the spouse or registered domestic partner\* or other family member and the judge, provided the gift,\* award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(d) ordinary social hospitality;

ADVISORY COMMITTEE COMMENTARY

Although Canon 4D(6)(d) does not preclude ordinary social hospitality between members of the bench and bar, a judge should carefully weigh acceptance of such hospitality to avoid any appearance of bias. See Canon 2B.

(d) any gift\* incidental to a public testimonial, or educational or resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or registered domestic partner\* or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system, or the administration of justice\*;

(e) a gift\* for a special occasion from a relative or friend, if the gift\* is fairly commensurate with the occasion and the relationship;

ADVISORY COMMITTEE COMMENTARY

A gift\* to a judge, or to a member of the judge's family residing in the judge's household,\* that is

excessive in value raises questions about the judge's impartiality\* and the integrity\* of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Canon 4D(6)(f).

(e) advances or reimbursement for the reasonable cost of travel, transportation, lodging, and subsistence that is directly related to participation in any judicial, educational, civic, or governmental program or bar-related function or activity; devoted to the improvement of the law, the legal system, or the administration of justice\*;

ADVISORY COMMITTEE COMMENTARY

Acceptance of an invitation to a law-related function is governed by Canon 4D(6)(d); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Canon 4D(6)(g). See also Canon 4H(2) and accompanying Commentary.

(f) a gift,\* bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Canon 3E;

(f) a gift,\* award, or benefit incident to the business, profession, or other separate activity of a spouse or registered domestic partner\* or other member of the judge's family residing in the judge's household,\* including gifts,\* awards, and benefits for the use of both the spouse or registered domestic partner\* or other family member and the judge;

(g) a loan in the regular course of business on the same terms generally available to persons who are not judges;

(g) ordinary social hospitality;

ADVISORY COMMITTEE COMMENTARY

Although Canon 4D(6)(g) does not preclude ordinary social hospitality, a judge should carefully weigh acceptance of such hospitality to avoid any appearance of impropriety\* or bias or any appearance that the judge is misusing the prestige of judicial office. See Canons 2 and 2B. A judge should also consider whether acceptance would affect the integrity,\* impartiality,\* or independence\* of the judiciary. See Canon 2A.

(h) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants ;

(i) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(j) an invitation to the judge and the judge's spouse, registered domestic partner,\* or guest to attend an event sponsored by an educational, religious, charitable, service,\* or civic organization with which the judge is associated or involved, if the same invitation is offered to persons who are not judges and who are similarly engaged with the organization.

### **E. Fiduciary\* Activities**

(1) A judge shall not serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary,\* except for the estate, trust, or person of a member of the judge's family,\* and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary\* if it is likely that the judge as a fiduciary\* will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or minor or conservatee becomes engaged in contested proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary\* capacity.

#### **ADVISORY COMMITTEE COMMENTARY**

*The Time for Compliance provision of this Ecode (Canon 6F) postpones the time for compliance with certain provisions of this Ecanon in some cases.*

*The restrictions imposed by this Ecanon may conflict with the judge's obligation as a fiduciary.\* For example, a judge shall resign as trustee if detriment to the trust would result from divestiture of trust holdings the retention of which would place the judge in violation of Canon 4D(4).*

### **F. Service as Arbitrator or Mediator**

A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.\*

#### **ADVISORY COMMITTEE COMMENTARY**

*Canon 4F does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of his or her judicial duties.*

### **G. Practice of Law**

A judge shall not practice law.

#### **ADVISORY COMMITTEE COMMENTARY**

*This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or member of the judge's family.\* See Canon 2B.*

*This prohibition applies to subordinate judicial officers,\* magistrates, special masters, and judges of the State Bar Court.*

### **H. Compensation, and Reimbursement, and Honoraria**

A judge may receive compensation and reimbursement of expenses as provided by law\* for the extrajudicial activities permitted by this Ecode, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.\*

(1) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(2) Expense reimbursement shall be limited to the actual cost of travel, food, lodging, and other costs reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or registered domestic partner\* or guest. Any payment in excess of such an amount is compensation.

(3) No judge shall accept any honorarium. "Honorarium" means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. "Honorarium" does not include earned income for personal services that are customarily provided in connection with the practice of a bona

bona fide business, trade, or profession, such as teaching or writing for a publisher, and does not include fees or other things of value received pursuant to Penal Code section 94.5 for performance of a marriage. For purposes of this canon, “teaching” shall include presentations to impart educational information to lawyers in events qualifying for credit under Mandatory Continuing Legal Education, to students in bona fide educational institutions, and to associations or groups of judges.

ADVISORY COMMITTEE COMMENTARY

Judges should not accept compensation or reimbursement of expenses if acceptance would appear to a reasonable person to undermine the judge’s integrity,\* impartiality,\* or independence.\*

A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge’s independence,\* integrity,\* or impartiality.\* The factors a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

- (a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;
- (b) whether the funding comes largely from numerous contributors rather than from a single entity, and whether the funding is earmarked for programs with specific content;
- (c) whether the content is related or unrelated to the subject matter of a pending\* or impending\* proceeding before the judge, or to matters that are likely to come before the judge;
- (d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;
- (e) whether information concerning the activity and its funding sources is available upon inquiry;
- (f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge’s court, thus possibly requiring disqualification of the judge;
- (g) whether differing viewpoints are presented;
- (h) whether a broad range of judicial and non-

judicial participants are invited; and  
(i) whether the program is designed specifically for judges.

Judges should be aware of the statutory limitations on accepting gifts, including honoraria.\*

[Adopted 1/15/96; amended 1/1/05, 1/1/07 and 1/1/13.]

CANON 5

**A Judge or Judicial Candidate for Judicial Office\* Shall Refrain From Inappropriate Not Engage in Political or Campaign Activity that is Inconsistent with the Independence\*, Integrity\*, or Impartiality\* of the Judiciary**

Judges and candidates for judicial office\* are entitled to entertain their personal views on political questions. They are not required to surrender their rights or opinions as citizens. They shall, however, ~~avoid~~ not engage in political activity that may create the appearance of political bias or impropriety.\* Judicial independence,\* and impartiality,\* ~~and integrity\*~~ shall dictate the conduct of judges and candidates for judicial office.\*

Judges and candidates for judicial office\* shall comply with all applicable election, election campaign, and election campaign fundraising laws\* and regulations.

**A. Political Organizations\***

Judges and candidates for judicial office\* shall not

- (1) act as leaders or hold any office in a political organization;\*
- (2) make speeches for a political organization\* or candidate for nonjudicial office or publicly endorse or publicly oppose a candidate for nonjudicial office; or
- (3) personally solicit funds for a political organization\* or nonjudicial candidate; or make contributions to a political party or political organization\* or to a nonjudicial candidate in excess of ~~five hundred dollars~~ \$500 in any calendar year per political party or political organization\* or candidate, or in excess of an aggregate of ~~one thousand dollars~~ \$1,000 in any calendar year for all political parties or political

organizations\* or nonjudicial candidates.

#### ADVISORY COMMITTEE COMMENTARY

The term “political activity” should not be construed so narrowly as to prevent private comment.

This provision does not prohibit a judge or a candidate for judicial office\* from signing a petition to qualify a measure for the ballot, ~~without the provided the judge does not use of the judge’s his or her official title.~~

In judicial elections, judges are neither required to shield themselves from campaign contributions nor are they prohibited from soliciting contributions from anyone, including attorneys. Nevertheless, there are necessary limits on judges facing election if the appearance of impropriety\* is to be avoided. In soliciting campaign contributions or endorsements, a judge shall not use the prestige of judicial office in a manner that would reasonably be perceived as coercive. See Canons 1, 2, 2A, and 2B. Although it is improper for a judge to receive a gift\* from an attorney subject to exceptions noted in Canon 4D(6), a judge’s campaign may receive attorney contributions.

Although attendance at political gatherings is not prohibited, any such attendance should be restricted so that it would not constitute an express public endorsement of a nonjudicial candidate or a measure not ~~directly~~ affecting the law, the legal system, or the administration of justice\* otherwise prohibited by this Canon.

Subject to the monetary limitation herein to political contributions, a judge or a candidate for judicial office\* may purchase tickets for political dinners or other similar dinner functions. Any admission price to such a political dinner or function in excess of the actual cost of the meal shall be considered a political contribution. The prohibition in Canon 5A(3) does not preclude judges from contributing to a campaign fund for distribution among judges who are candidates for reelection or retention, nor does it apply to contributions to any judge or candidate for judicial office.\*

Under this Canon, a judge may publicly endorse ~~another a~~ judicial candidate for judicial office\*. Such endorsements are permitted because judicial officers have a special obligation to uphold the integrity,\* ~~and impartiality,\* and independence\*~~ of the judiciary and are in a unique position to know the qualifications necessary to serve as a competent judicial officer.

Although family members of the judge’s or candi-

date for judicial office\* family are not subject to the provisions of this Code, a judge or candidate for judicial office\* shall not avoid compliance with this Code by making contributions through a spouse or registered domestic partner\* or other family member.

#### B. Conduct During Judicial Campaigns and Appointment Process

(1) A candidate for ~~election~~ judicial office\* or an applicant seeking appointment to judicial office shall not:

(1) ~~(a)~~ (a) make statements to the electorate or the appointing authority that commit the candidate or the applicant with respect to cases, controversies, or issues that ~~could~~ are likely to come before the courts, or

(2) ~~(b)~~ (b) knowingly,\* or with reckless disregard for the truth, misrepresent the identity, qualifications, present position, or any other fact concerning ~~the candidate himself or herself~~ or his or her opponent or other applicants.

(2) A candidate for judicial office\* shall review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee before their dissemination. A candidate shall take appropriate corrective action if the candidate learns of any misrepresentations made in his or her campaign statements or materials. A candidate shall take reasonable measures to prevent any misrepresentations being made in his or her support by third parties. A candidate shall take reasonable measures to ensure that appropriate corrective action is taken if the candidate learns of any misrepresentations being made in his or her support by third parties.

(3) Every candidate for judicial office\* shall complete a judicial campaign ethics course approved by the Supreme Court no earlier than one year before or no later than 60 days after either the filing of a declaration of intention by the candidate, the formation of a campaign committee, or the receipt of any campaign contribution, whichever is earliest. This requirement does not apply to judges who are unopposed for election and will not appear on the ballot. This requirement also does not apply to appellate justices who have not formed a campaign committee.

## ADVISORY COMMITTEE COMMENTARY

The purpose of Canon 5B is to preserve the integrity\* of the appointive and elective process for judicial office and to ensure that the public has accurate information about candidates for judicial office.\* Compliance with these provisions will enhance the integrity,\* impartiality,\* and independence\* of the judiciary and better inform the public about qualifications of candidates for judicial office.\*

This code does not contain the “announce clause” that was the subject of the United States Supreme Court’s decision in *Republican Party of Minnesota v. White* (2002) 536 U.S. 765. That opinion did not address the “commit clause,” which is contained in Canon 5B(1)(a). The phrase “appear to commit” has been deleted because, although judicial candidates for judicial office\* cannot promise to take a particular position on cases, controversies, or issues prior to taking the bench and presiding over individual cases, the phrase may have been overinclusive.

Canon 5B(2)(1)(b) prohibits making knowing misrepresentations, including false or misleading statements, during an election campaign because doing so would violate Canons 1 and 2A, and may violate other canons.

Candidates for judicial office\* must disclose campaign contributions in accordance with Canon 3E(2)(b).

The time limit for completing a judicial campaign ethics course in Canon 5B(3) is triggered by the earliest of either the filing of a declaration of intention, formation of a campaign committee, or receipt of any campaign contribution. A financial contribution by a candidate for judicial office\* to his or her own campaign constitutes receipt of a campaign contribution.

### C. Speaking at Political Gatherings

Candidates for judicial office\* may speak to political gatherings only on their own behalf or on behalf of another candidate for judicial office.\*

### D. Measures to Improve the Law

~~Except as otherwise permitted in this Code, judges shall not engage in any political activity, other than in relation to measures concerning the improvement of the law, the legal system, or the administration of justice. A judge or candidate for judicial office\* may engage in activity in relation to~~

measures concerning improvement of the law, the legal system, or the administration of justice,\* only if the conduct is consistent with this code.

## ADVISORY COMMITTEE COMMENTARY

When deciding whether to engage in activity relating to measures concerning the law, the legal system, or the administration of justice,\* such as commenting publicly on ballot measures, a judge must consider whether the conduct would violate any other provisions of this code. See explanation of “law, the legal system, or the administration of justice” in the terminology section.

[Adopted 1/15/96; amended 4/15/96, 12/22/03, 1/1/07 and 1/1/13.]

## CANON 6

### Compliance with the Code of Judicial Ethics

#### A. Judges

Anyone who is an officer of the state judicial system and who performs judicial functions, including, but not limited to, a subordinate judicial officer,\* magistrate, court-appointed arbitrator, judge of the State Bar Court, temporary judge,\* and special master, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

## ADVISORY COMMITTEE COMMENTARY

For the purposes of this Canon, if a retired judge is serving in the Assigned Judges Program, the judge is considered to “perform judicial functions.” Because retired judges who are privately retained may perform judicial functions, their conduct while performing those functions should be guided by this Code.

#### B. Retired Judge Serving in the Assigned Judges Program

A retired judge who has filed an application to serve on assignment, meets the eligibility requirements set by the Chief Justice for service, and has received an acknowledgment of participation in the Assigned Judges Program shall comply with all provisions of this Code, except for the following:

4C(2) – Appointment to governmental positions

4E – Fiduciary\* activities

### C. Retired Judge as Arbitrator or Mediator

A retired judge serving in the ~~a~~Assigned Judges Program is not required to comply with Canon 4F of this Code relating to serving as an arbitrator or mediator, or performing judicial functions in a private capacity, except as otherwise provided in the *Standards and Guidelines for Judges Serving on Judicial Assignments* promulgated by the Chief Justice.

#### ADVISORY COMMITTEE COMMENTARY

In California, article VI, section 6 of the California Constitution provides that a “retired judge who consents may be assigned to any court” by the Chief Justice. Retired judges who are serving in the ~~a~~Assigned Judges Program pursuant to the above provision are bound by Canon 6B, including the requirement of Canon 4G barring the practice of law. Other provisions of California law,\* and standards and guidelines for eligibility and service set by the Chief Justice, further define the limitations on who may serve on assignment.

### D. Temporary Judge,\* Referee, or Court-Appointed Arbitrator<sup>1</sup>

A temporary judge,\* a person serving as a referee pursuant to Code of Civil Procedure section 638 or 639, or a court-appointed arbitrator shall comply only with the following Code provisions:

(1) A temporary judge,\* referee, or court-appointed arbitrator shall comply with Canons 1 [integrity\* and independence\* of the judiciary], 2A [promoting public confidence], 3B(3) [order and decorum], ~~and~~ 3B(4) [patient, dignified, and courteous treatment], 3B(6) [require\* lawyers to refrain from manifestations of any form of bias or prejudice], 3D(1) [action regarding misconduct by another judge], ~~and~~ 3D(2) [action regarding misconduct by a lawyer], when the temporary judge,\* referee, or court-appointed arbitrator is actually presiding in a proceeding or communicating with the parties, counsel, or ~~staff or~~ court personnel while serving in the capacity of a temporary judge,\* referee, or court-appointed arbitrator in the case.

(2) A temporary judge,\* referee, or court-appointed arbitrator shall, from the time of notice

and acceptance of appointment until termination of the appointment:

(a) Comply with Canons 2B(1) [not allow family or other relationships to influence judicial conduct], 3B(1) [hear and decide all matters unless disqualified], ~~and~~ 3B(2) [be faithful to and maintain competence in the law\*], 3B(5) [perform judicial duties without bias or prejudice], 3B(7) [accord full right to be heard to those entitled; avoid ex parte communications, except as specified], ~~and~~ 3B(8) [dispose of matters fairly and promptly], 3B(12) [remain impartial\* and not engage in coercive conduct during efforts to resolve disputes], 3C(1) [discharge administrative responsibilities without bias and with competence and cooperatively], (2) 3C(3) [require\* staff and court personnel to observe standards of conduct and refrain from bias and prejudice], ~~and~~ (4) 3C(5) [make only fair, necessary, and appropriate appointments];

(b) Not personally solicit memberships or donations for religious, fraternal service,\* educational, civic, or charitable organizations from the parties and lawyers appearing before the temporary judge,\* referee, or court-appointed arbitrator;

(c) Under no circumstance accept a gift,\* bequest, or favor if the donor is a party, person, or entity whose interests are reasonably likely to come before the temporary judge,\* referee, or court-appointed arbitrator. A temporary judge,\* referee, or court-appointed arbitrator shall discourage members of the judge’s family residing in the judge’s household\* from accepting benefits from parties who are reasonably likely to come before the temporary judge,\* referee, or court-appointed arbitrator.

(3) A temporary judge\* shall, from the time of notice and acceptance of appointment until termination of the appointment, disqualify himself or herself in any proceeding as follows:

(a) A temporary judge\* – other than a temporary judge solely conducting settlement conferences – is disqualified to serve in a proceeding if any one or more of the following is true:

(i) the temporary judge\* has personal

<sup>1</sup> Reference should be made to relevant commentary to analogous or individual Canons cited or described in this Canon and appearing elsewhere in this Code.

knowledge\* (as defined in Code of Civil Procedure section 170.1, subdivision (a)(1)) of disputed evidentiary facts concerning the proceeding;

(ii) the temporary judge\* has served as a lawyer (as defined in Code of Civil Procedure section 170.1, subdivision (a)(2)) in the proceeding;

(iii) the temporary judge,\* within the past five years, has given legal advice to, or served as a lawyer (as defined in Code of Civil Procedure section 170.1, subdivision (a)(2), except that this provision requires disqualification if the temporary judge\* represented a party in the past five years rather than the two-year period specified in section 170.1, subdivision (a)(2)) for a party in the present proceeding;

(iv) the temporary judge\* has a financial interest (as defined in Code of Civil Procedure sections 170.1, subdivision (a)(3) and 170.5) in the subject matter in the proceeding or in a party to the proceeding;

(v) the temporary judge,\* or the spouse or registered domestic partner\* of the temporary judge,\* or a person within the third degree of relationship\* to either of them, or the spouse or registered domestic partner\* of such a person is a party to the proceeding or is an officer, director, or trustee of a party;

(vi) a lawyer or a spouse or registered domestic partner\* of a lawyer in the proceeding is the spouse, former spouse, registered domestic partner,\* former registered domestic partner,\* child, sibling, or parent of the temporary judge\* or the temporary judge's spouse or registered domestic partner,\* or if such a person is associated in the private practice of law with a lawyer in the proceeding; or

(vii) for any reason:

(A) the temporary judge\* believes his or her recusal would further the interests of justice;

(B) the temporary judge\* believes there is a substantial doubt as to his or her capacity to be impartial;\* or

(C) a person aware of the facts might reasonably entertain a doubt that the temporary judge\* would be able to be impartial.\* Bias or prejudice toward an attorney in the proceeding may be grounds for disqualification.

(viii) the temporary judge\* has received a campaign contribution of \$1,500 or more from a party or lawyer in a matter that is before the court and the contribution was received in anticipation of an upcoming election.

#### ADVISORY COMMITTEE COMMENTARY

*The application of Canon 6D(3)(a)(iii), providing that a temporary judge\* is disqualified if he or she has given legal advice or served as a lawyer for a party to the proceeding in the past five years, may depend on the type of assignment and the amount of time available to investigate whether the temporary judge\* has previously represented a party. If time permits, the temporary judge\* must conduct such an investigation. Thus, if a temporary judge\* is privately compensated by the parties or is presiding over a particular matter known\* in advance of the hearing, the temporary judge\* is presumed to have adequate time to investigate. If, however, a temporary judge\* is assigned to a high volume calendar, such as traffic or small claims, and has not been provided with the names of the parties prior to the assignment, the temporary judge\* may rely on his or her memory to determine whether he or she has previously represented a party.*

(b) A temporary judge\* before whom a proceeding was tried or heard is disqualified from participating in any appellate review of that proceeding.

(c) If the temporary judge\* has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding prospective employment or service as a dispute resolution neutral, or has been engaged in such employment or service, and any of the following applies:



(i) The arrangement or current employment is, or the prior employment or discussion was, with a party to the proceeding.

(ii) The temporary judge\* directs the parties to participate in an alternative dispute resolution process in which the dispute resolution neutral will be an individual or entity with whom the temporary judge\* has the arrangement, is currently employed or serves, has previously been employed or served, or is discussing or has discussed the employment or service.

(iii) The temporary judge\* will select a dispute resolution neutral or entity to conduct an alternative dispute resolution process in the matter before the temporary judge,\* and among those available for selection is an individual or entity with whom the temporary judge\* has the arrangement, is currently employed or serves, has previously been employed or served, or is discussing or has discussed the employment or service.

For the purposes of canon 6D(3)(c), the definitions of “participating in discussions,” “has participated in discussions,” “party,” and “dispute resolution neutral” are set forth in Code of Civil Procedure section 170.1, subdivision (a)(8), except that the words “temporary judge” shall be substituted for the word “judge” in such definitions.

(d) A lawyer is disqualified from serving as a temporary judge\* in a family law or unlawful detainer proceeding if in the same type of proceeding:

(i) the lawyer holds himself or herself out to the public as representing exclusively one side; or

(ii) the lawyer represents one side in 90 percent or more of the cases in which he or she appears.

#### ADVISORY COMMITTEE COMMENTARY

Under Canon 6D(3)(d), “one side” means a category of persons such as landlords, tenants, or litigants exclusively of one gender.

(4) After a temporary judge\* who has determined himself or herself to be disqualified from

serving under Canon 6D(3)(a)–(d) has disclosed the basis for his or her disqualification on the record, the parties and their lawyers may agree to waive the disqualification and the temporary judge\* may accept the waiver. The temporary judge\* shall not seek to induce a waiver and shall avoid any effort to discover which lawyers or parties favored or opposed a waiver.

#### ADVISORY COMMITTEE COMMENTARY

Provisions addressing waiver of mandatory disqualifications or limitations, late discovery of grounds for disqualification or limitation, notification of the court when a disqualification or limitation applies, and requests for disqualification by the parties are located in rule 2.818 of the California Rules of Court. Rule 2.818 states that the waiver must be in writing, must recite the basis for the disqualification or limitation, and must state that it was knowingly\* made. It also states that the waiver is effective only when signed by all parties and their attorneys and filed in the record.

(5) A temporary judge,\* referee, or court-appointed arbitrator shall, from the time of notice and acceptance of appointment until termination of the appointment:

(a) In all proceedings, disclose in writing or on the record information as required by law,\* or information that is reasonably relevant to the question of disqualification under Canon 6D(3), including personal or professional relationships known\* to the temporary judge,\* referee, or court-appointed arbitrator, that he or she or his or her law firm has had with a party, lawyer, or law firm in the current proceeding, even though the temporary judge,\* referee, or court-appointed arbitrator concludes that there is no actual basis for disqualification; and

(b) In all proceedings, disclose in writing or on the record membership of the temporary judge,\* referee, or court-appointed arbitrator, in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation, except for membership in a religious or an official military organization of the United States and membership in a nonprofit youth organization\* so long as membership does not violate Canon 4A [conduct of extrajudicial activities].

(6) A temporary judge,\* referee, or court-appointed arbitrator, from the time of notice and acceptance of appointment until the case is no longer pending in any court, shall not make any public comment about a pending\* or impending\* proceeding in which the temporary judge,\* referee, or court-appointed arbitrator has been engaged, and shall not make any nonpublic comment that might substantially interfere with such proceeding. The temporary judge,\* referee, or court-appointed arbitrator shall require\* similar abstention on the part of staff and court personnel subject to his or her control. This Canon does not prohibit the following:

(a) Statements made in the course of the official duties of the temporary judge,\* referee, or court-appointed arbitrator; and

(b) Explanations ~~for public information~~ about the procedures of the court.

(7) From the time of appointment and continuing for two years after the case is no longer pending\* in any court, a temporary judge,\* referee, or court-appointed arbitrator shall under no circumstances accept a gift,\* bequest, or favor from a party, person, or entity whose interests have come before the temporary judge,\* referee, or court-appointed arbitrator in the matter. The temporary judge,\* referee, or court-appointed arbitrator shall discourage family members residing in the household of the temporary judge,\* referee, or court-appointed arbitrator from accepting any benefits from such parties, persons or entities during the time period stated in this subdivision. The demand for or receipt by a temporary judge,\* referee, or court-appointed arbitrator of a fee for his or her services rendered or to be rendered shall not be a violation of this Canon.

(8) A temporary judge,\* referee, or court-appointed arbitrator shall, from time of notice and acceptance of appointment and continuing indefinitely after the termination of the appointment:

(a) Comply with Canon 3(B)(11) [no disclosure of nonpublic information\* acquired in a judicial capacity] (except as required by law\*);

(b) Not commend or criticize jurors sitting in a proceeding before the temporary judge,\* referee, or

court-appointed arbitrator for their verdict other than in a court order or opinion in such proceeding, but may express appreciation to jurors for their service to the judicial system and the community; and

(c) Not lend the prestige of judicial office to advance his, her, or another person's pecuniary or personal interests and not use his or her judicial title in any written communication intended to advance his, her, or another person's pecuniary or personal interests, except to show his, her, or another person's qualifications.

(9)(a) A temporary judge\* appointed under rule 2.810 of the California Rules of Court, from the time of appointment and continuing indefinitely after the termination of the appointment, shall not use his or her title or service as a temporary judge\* (1) as a description of the lawyer's current or former principal profession, vocation, or occupation on a ballot designation for judicial or other elected office, (2) in an advertisement about the lawyer's law firm or business, or (3) on a letterhead, business card, or other document that is distributed to the public identifying the lawyer or the lawyer's law firm.

(b) This Canon does not prohibit a temporary judge\* appointed under rule 2.810 of the California Rules of Court from using his or her title or service as a temporary judge\* on an application to serve as a temporary judge,\* including an application in other courts, on an application for employment or for an appointment to a judicial position, on an individual resume or a descriptive statement submitted in connection with an application for employment or for appointment or election to a judicial position, or in response to a request for information about the public service in which the lawyer has engaged.

(10) A temporary judge,\* referee, or court-appointed arbitrator shall comply with Canon 6D(2) until the appointment has been terminated formally or until there is no reasonable probability that the temporary judge,\* referee, or court-appointed arbitrator will further participate in the matter. A rebuttable presumption that the appointment has been formally terminated shall arise if, within one year from the appointment or from the date of the last hearing scheduled in the matter, whichever is later, neither the appointing court nor counsel for any party in the matter has informed

the temporary judge,\* referee, or court-appointed arbitrator that the appointment remains in effect.

(11) A lawyer who has been a temporary judge,\* referee, or court-appointed arbitrator in a matter shall not accept any representation relating to the matter without the informed written consent of all parties.

(12) When by reason of serving as a temporary judge,\* referee, or court-appointed arbitrator in a matter, he or she has received confidential information from a party, the person shall not, without the informed written consent of the party, accept employment in another matter in which the confidential information is material.

#### ADVISORY COMMITTEE COMMENTARY

*Any exceptions to the Ecanons do not excuse a judicial officer's separate statutory duty to disclose information that may result in the judicial officer's recusal or disqualification.*

#### E. Judicial Candidate

A candidate for judicial office\* shall comply with the provisions of Canon 5.

#### F. Time for Compliance

A person to whom this Ecode becomes applicable shall comply immediately with all provisions of this Ecode except Canons ~~4D(2)~~ 4D(4) and ~~4F~~ 4E and shall comply with these Ecanons as soon as reasonably possible and shall do so in any event within a period of one year.

#### ADVISORY COMMITTEE COMMENTARY

*If serving as a fiduciary\* when selected as a judge, a new judge may, notwithstanding the prohibitions in Canon ~~4F~~ 4E, continue to serve as fiduciary\* but only for that period of time necessary to avoid adverse consequences to the beneficiary of the fiduciary\* relation-*

*ship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Canon ~~4D(2)~~, continue in that activity for a reasonable period but in no event longer than one year.*

**G. [Canon 6G adopted 12/30/02; repealed 6/1/05.]**

#### H. Judges on Leave Running for Other Public Office

A judge who is on leave while running for other public office pursuant to article VI, section 17 of the California Constitution shall comply with all provisions of this Ecode, except for the following, insofar as the conduct relates to the campaign for public office for which the judge is on leave:

2B(2) – Lending the prestige of judicial office to advance the judge's personal interest

~~2B(4) – Using the judicial title in written communications intended to advance the judge's personal interest~~

4C(1) – Appearing at public hearings

5 – Engaging in political activity (including soliciting and accepting campaign contributions for the other public office).

#### ADVISORY COMMITTEE COMMENTARY

*These exceptions are applicable only during the time the judge is on leave while running for other public office. All of the provisions of this Ecode will become applicable at the time a judge resumes his or her position as a judge. Conduct during elections for judicial office is governed by Canon 5.*

[Adopted 1/15/96; amended 4/15/96, 3/4/99, 1/1/05, 7/1/06, 1/1/07, 1/1/08 and 1/1/13.]

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**APPENDIX 3.**  
**COMPLAINT ABOUT A CALIFORNIA JUDGE,  
COURT COMMISSIONER OR REFEREE**

*Confidential under California Constitution  
Article VI, Section 18, and Commission Rule 102*

For information about the Commission on Judicial Performance and instructions on filling out  
and submitting this form, please visit our website at <http://cjp.ca.gov>

**Today's date:**

**Your name:**

**Your telephone number:**

**Your address:**

**Your attorney's name:**

**Your attorney's telephone number:**

**Name of judge:**

**OR**

**Name of court commissioner or referee:**

(If your complaint involves a court commissioner or referee, you must first submit your complaint to the local court.  
If you have done so, please attach copies of your correspondence to and from that court.)

**Court:**

**County:**

**Name of case and case number:**

**Please specify what action or behavior of the judge, court commissioner or referee is  
the basis of your complaint. Provide relevant dates and the names of others present.**  
(Use additional pages if necessary.)

**Return to: Commission on Judicial Performance  
455 Golden Gate Avenue, Suite 14400  
San Francisco, California 94102**

**Telephone: (415) 557-1200**

**Fax: (415) 557-1266**

**6/09**

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