



STATE OF CALIFORNIA

# **COMMISSION ON JUDICIAL PERFORMANCE**

2013 ANNUAL REPORT

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# STATE OF CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE



## 2013 ANNUAL REPORT

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## INTRODUCTION

California's leadership in innovation extends to the field of judicial ethics and discipline. California's citizens established the first judicial performance commission by constitutional amendment in 1960. Today, all 50 states and the District of Columbia have judicial performance entities with the final addition being Arkansas, which established its Judicial Discipline and Disability Commission in 1988.

Many of the 50 other judicial conduct commissions modeled themselves on California's system or have adopted some of California's procedures. Nineteen states have commissions with public members outnumbering judicial members. All states include attorney members with one exception (West Virginia) and Ohio has a majority of attorneys – 17 lawyers, 7 judges and 4 public members. One state even requires that a clerk of the court or a retired clerk serve on its Committee on Judicial Conduct (New Hampshire). Utah seats two members of each legislative branch on its Judicial Conduct Commission.

California is somewhat unique among conduct commissions in its authority to promulgate rules for commission proceedings. Soon after being vested with this authority in 1995, the commission adopted a policy declaration that, among other things, requires the commission to review its rules at least every two years. In 2013, California's commission made changes to its rules and procedures to ensure that they are as transparent as possible. In an effort to be responsive to concerns voiced by judges in the state, the commission enacted rule 111.4 to explicitly adopt the Supreme Court's standards expressed in *Oberholzer v. Commission on Judicial Performance* (1999) 20 Cal.4th 371. Our goal in adopting this rule was to reassure all involved in the process that the commission does not discipline for judicial error alone, without one of the "plus" factors identified in *Oberholzer*.

The commission also modified its biennial rules review process to create a more interactive and publicly documented process. Under the rules review process, proposals for rule enactments, amendments or repeals can be submitted by anyone in writing. Proposals that the commission seeks to adopt are circulated for public comment. That public comment will now be available to the public prior to adoption or modification of the commission's rules. The process now includes the opportunity for interested persons or groups to respond in writing to public comments. This gives those interested in the proposed rule an opportunity to address information or arguments they might not have been aware of and it provides the commission with further input and information.

As a public agency, the commission strives to be as responsive as possible. This commitment starts with the commission members and staff. Thanks to my colleagues on the commission and to commission staff, all of whom make themselves available at all times to respond to calls to action with alacrity, clarity, and insight.



Honorable Erica R. Yew  
Chairperson

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**COMMISSION ON JUDICIAL PERFORMANCE**  
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**TABLE OF CONTENTS**

	Page
COMMISSION MEMBERS.....	i
SPECIAL MASTERS.....	vi
 <b>I. OVERVIEW OF THE COMPLAINT PROCESS</b>	
The Authority of the Commission on Judicial Performance .....	1
How Matters Are Brought Before the Commission.....	1
Judicial Misconduct.....	1
What the Commission Cannot Do .....	1
Review and Investigation of Complaints .....	1
Actions the Commission Can Take.....	2
Confidential Dispositions .....	2
Public Dispositions .....	2
Review .....	2
Confidentiality .....	2
 <b>II. LEGAL AUTHORITY AND COMMISSION PROCEDURES</b>	
Legal Authority.....	3
Recent Changes in the Law .....	3
California Constitution, Government Code and Code of Civil Procedure Section 170.9.....	3
Commission Rules and Policy Declarations .....	3
Rules of Court.....	4
Code of Judicial Ethics .....	4
Commission Procedures.....	4
Commission Review of Complaints .....	4
Investigation at the Commission's Direction and Disposition of Cases	
Without Formal Proceedings .....	4
Deferral of Investigation .....	5
Monitoring.....	5
Formal Proceedings .....	5
Hearing .....	6
Commission Consideration Following Hearing .....	6
Disposition of Cases After Hearing.....	6
Release of Votes .....	6
Supreme Court Review .....	6
Statute of Limitations .....	7
Standard of Proof .....	7
Confidentiality of Commission Proceedings.....	7

**III. ACTIVE AND FORMER JUDGES – 2013 STATISTICS**

Complaints Received and Investigated .....	9
New Complaints .....	9
Staff Inquiries and Preliminary Investigations .....	9
Formal Proceedings .....	9
Deferral of Investigation.....	10
Complaint Dispositions.....	10
Closed Without Discipline .....	10
Closed With Discipline .....	11
Resignations and Retirements .....	11
10-Year Summary of Commission Activity .....	11
Chart on 2013 Complaint Dispositions .....	12
Chart on Types of Conduct Resulting in Discipline in 2013 .....	13
Chart on 10-Year Summary of Commission Activity .....	14

**IV. ACTIVE AND FORMER JUDGES – CASE SUMMARIES**

Public Discipline .....	15
Public Censure by the Commission.....	15
Public Admonishment by the Commission.....	18
Private Discipline .....	20
Private Admonishments .....	20
Advisory Letters .....	20

**V. SUBORDINATE JUDICIAL OFFICERS**

Commission Procedures.....	25
2013 Statistics .....	26
Complaints Received and Investigated.....	26
Cases Concluded .....	26

**VI. JUDICIAL DISABILITY RETIREMENT**

Voluntary Disability Retirement .....	29
Involuntary Disability Retirement .....	29
Amendments to Disability Policy Declarations .....	30
2013 Statistics .....	30

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

Commission Organization and Staff.....	31
2013-2014 Budget.....	32
2012-2013 Budget .....	32

**APPENDIX**

1. GOVERNING PROVISIONS.....	35
2. CALIFORNIA CODE OF JUDICIAL ETHICS.....	37
3. COMPLAINT FORM .....	67
4. COMMISSION PROCEEDINGS CHART .....	69

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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.



**HON. ERICA R. YEW, 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 commission's chairperson since October 2013; she served as its vice-chairperson in 2012 and 2013. 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 2000 to 2001. 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.



**ANTHONY P. CAPOZZI, ESQ., VICE-CHAIRPERSON**, was appointed to the commission as a lawyer member by the Governor April 6, 2010, and reappointed December 23, 2013; his term ends February 28, 2017. Mr. Capozzi has served as the vice-chairperson of the commission since October 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 representative and co-chair of the Ninth Circuit Judicial Conference; co-chair of the Bench Bar Coalition; president of the State Bar of California, 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 was inducted as a fellow of the American College of Trial Lawyers.



**MS. MARY LOU ARANGUREN** was appointed to the commission as a public member by the Senate Committee on Rules September 5, 2011, and reappointed March 1, 2013; her term ends February 28, 2017. 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.



**HON. THOMAS M. MADDOCK** was appointed to the commission as a superior court judicial member by the Supreme Court April 1, 2013; his term ends February 28, 2017. Judge Maddock has served on the Contra Costa County Superior Court since his appointment in 1998. His primary assignment is felony trials and he has served as an unlimited civil trial judge, felony calendar judge, and juvenile court judge. In addition, Judge Maddock has been a supervising judge, assistant presiding judge, and presiding judge of the Contra Costa County Superior Court, and has been elected judge three times by popular vote. In 2006, Judge Maddock was appointed to the Judicial Council and currently is a member of the council's Advisory Committee on Financial Accountability and Efficiency for the Judicial Branch and the Court Emergency Response and Security Task Force. He previously sat on the Trial Court Budget Working Group and served as a faculty member for the Center for Judicial Education and Research. Judge Maddock was previously a member of the California Judges Association's Board of Directors. Judge Maddock has a long career of committed public service as a deputy district attorney for Contra Costa and El Dorado Counties, public advisor to the California Energy Commission, deputy director of the California Department of Consumer Affairs, chief deputy director of the Department of Veterans Affairs, and undersecretary of the Youth and Adult Correctional Agency. He also served in the U.S. Coast Guard on active duty and in the reserves, and was honored with the Humanitarian Service Medal and the Coast Guard Achievement Medal. He retired from the Coast Guard as a Captain. Judge Maddock received his Bachelor of Arts degree in Economics from the University of California, Davis in 1968, and his law degree from the University of California, Hastings College of the Law in 1977.



**NANCI E. 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 California Women Lawyers, and serves on the Board of Trustees of the California Science Center Foundation and the Commission of the Asian Art Museum, San Francisco. 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.



**HON. IGNAZIO J. RUVOLO** was appointed to the commission as the Court of Appeal judicial member by the Supreme Court May 1, 2013; his term ends February 28, 2017. Justice Ruvolo has served as the presiding justice of Division Four of the Court of Appeal, First Appellate District since 2006; he served as an associate justice in Division Two from 1996 to 2006. Prior to his appointment to the appellate bench, Justice Ruvolo was a superior court judge in Contra Costa County and was elected to judicial office by popular vote three times. Justice Ruvolo has served on the State Bar Commission for the Revision of the Rules of Professional Conduct, and the San Francisco Bar Association's Ethics Committee. Justice Ruvolo has been a member, vice-chair, and chair of the California

Judges Association's Judicial Ethics Committee, a member of the American Bar Association's Litigation Section Committee on Professional Responsibility, chair and special advisor to the State Bar of California's Committee on Professional Responsibility and Conduct, and founder and chair of the Contra Costa County Bar Association's Ethics Committee. Justice Ruvolo also has been a member of the Judicial Council's Task Force on Jury Instructions, Advisory Committee on Civil and Small Claims Actions, and Appellate Advisory Committee; the Center for Judicial Education and Research's Planning Committee; and the California Judicial College. Before being appointed to the superior court bench, Justice Ruvolo was a trial attorney with the U.S. Department of Justice and an attorney with a Bay Area law firm. He was honored with a formal commendation from the Director of the U.S. Marshal Service, the Trial Judge of the Year Award by the Alameda Contra Costa Trial Lawyers Association, and the Appellate Justice of the Year Awards by the San Francisco Trial Lawyers Association and the Italian American Bar Association of Northern California. He has served as an adjunct professor at University of California, Hastings College of the Law, Golden Gate University School of Law, and the John F. Kennedy School of Law. Justice Ruvolo graduated magna cum laude in 1972 from the University of San Diego School of Law, where he served as editor-in-chief of the San Diego Law Review, and he received a Masters of Law degree from the University of Virginia.



**MR. LAWRENCE J. SIMI** was appointed to the commission as a public member by the Governor August 17, 2005, and reappointed September 13, 2009; his term ended February 28, 2013, but he continues to serve pending appointment of a successor. Mr. Simi served as the commission's chairperson in 2012 and 2013. 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.



**MR. RICHARD SIMPSON** was appointed to the commission as a public member by the Speaker of the Assembly June 17, 2013; his term ends February 28, 2017. He resides in Sacramento County. Mr. Simpson is Deputy Chief of Staff for the Speaker of the California State Assembly, John Perez. He served as a senior advisor for prior Assembly Speakers Willie L. Brown, Jr., Antonio Villaraigosa, Bob Hertzberg, Herb Wesson, Fabian Nunez, and Karen Bass. He served for two years as Chief of Staff for the Senate Education Committee and for more than six years as Chief Consultant for the Assembly Education Committee, and worked for a short time as a lobbyist for the California Teachers Association. In 1999, Mr. Simpson served for six months as the first Legislative Secretary

for California Governor Gray Davis. Mr. Simpson was the lead negotiator on Propositions 1A, 47, 55, and 1D, the multi-billion dollar school bond measures. He has either written or played a key role in developing most of California's major education reforms of the past decade, including the Class Size Reduction program, the laws creating California's system of academic standards and assessment, and the recent law creating a new structure for school accountability. Mr. Simpson also drafted the budget reform measures contained in Propositions 1A and 1B for the 2009 special election and the education sections of Governor Edmund G. Brown, Jr.'s Proposition 30. Mr. Simpson is the Assembly's lead negotiator on the annual budget for public education. He served for 12 years as an elected trustee of the Sacramento County Board of Education and was elected president of that board three times. He has also served on the Board of Directors of the Sacramento Chapter of the American Heart Association and the Sacramento Urban League. Mr. Simpson is a frequent speaker at statewide conferences and has received numerous awards for public service including the Golden Oak Service Award. He received his Bachelor of Arts degree in Economics from the University of California, Santa Cruz and earned a Master's degree in Public Policy from the Graduate School of Public Policy at the University of California, Berkeley.



**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 served as senior advisor to Mayor Gavin Newsom and Director of Violence Prevention for the City and County of San Francisco from 2007 to 2009. She was a council-appointed member of the City of Oakland's Violence Prevention and Public Safety Oversight Committee from 2005 to 2009, was elected founding chair, and was reelected each of her four consecutive terms. In 2009, she served on the Oakland Fund for Children and Youth Planning and Oversight Committee. She was staff to the Judicial Council of California

Task Force on Jury System Improvements from 2002 to 2004. She also served as external advisor to the California Wellness Foundation and the California Endowment, and on the Board of Directors of the Oakland Land Trust and the Center for Young Women's Development. She also held positions with the U.S. Census Monitoring Board, the National Bureau of Economic Research and U.S. Representative Barbara Lee. Ms. Dillard Smith is currently a law student at the University of California, Hastings College of the Law and she externed for the Honorable Marsha Berzon of the Ninth Circuit Court of Appeals in 2013. She is affiliated with professional and nonprofit organizations including the Alameda County Women Lawyers, American Bar Association, Bar Association of San Francisco, Black Women Lawyers of California and the Charles Houston Bar Association. Prior to law school, Ms. Dillard Smith was a strategy and fund development consultant. She received her Master's degree in Public Policy from Harvard University, John F. Kennedy School of Government and a Bachelor of Arts degree in Economics from the University of California, Berkeley.

## COMMISSION MEMBERS

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**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 she was chair of the committee in 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, and then as a freelance casting director. She has been involved in the volunteer 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 where his expert area of focus is white-collar investigations, intelligence and due diligence and security consulting. Previously, he was appointed by the President of the United States as the Marshal for the Central District of California from 2003 to 2010, where he was responsible for the protection of the federal courts, pre-sentenced federal prisoners, apprehension of fugitives, and asset forfeitures. At the Internal Revenue Service, Mr. Torres was a Supervisory Special Agent from 2000 to 2003, Special Agent from 1993 to 2000 and Revenue Agent from 1986 to 1992. As a Revenue Agent he conducted audits of large and complex financial structures; and as a Supervisory Special Agent and Special Agent he led and conducted criminal investigations for tax evasion, money laundering, public corruption and a variety of other financial crimes and fraud. While at the IRS, he also served as an Equal Employment Opportunity Investigator conducting investigations of EEO violations for the Department of the Treasury. Mr. Torres has been recognized by a variety of governmental, private and professional organizations for outstanding service. He is a Certified Fraud Specialist and licensed Private Investigator and holds a Bachelor of Science degree in Business Administration/Accounting from California State University, San Bernardino.

## OUTGOING COMMISSION MEMBERS

**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 ended February 28, 2013. Judge Horn served as the commission's chairperson in 2007 and 2008, and as its vice-chairperson in 2005, 2006, 2011 and 2012.

**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 ended 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.

**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 ended February 28, 2013.

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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 2013:

**Honorable Gail A. Andler**

Superior Court of Orange County

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

Superior Court of Ventura County

**Honorable Dennis M. Perluss**

Court of Appeal, Second Appellate District,  
Division Seven

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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 2013 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 substance abuse, using court resources for personal business, or improper solicitation of funds.

### 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.

## ACTIONS 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 2013 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.

### REVIEW

A judge may petition the Supreme Court for review of an admonishment, censure, removal or involuntary retirement determination. A judge may petition the Supreme Court for a writ of mandate to challenge an advisory letter.

### 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.

#### ACTIONS 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 2013, 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. There also were no changes to the Code of Judicial Ethics. In 2013, 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 May 8, 2013, following circulation of proposed changes for public comment, the commission adopted the following amendments and additions to its rules. Rules 110 and 111 were amended to incorporate into its rules the commission's practice of including specificity of allegations in staff inquiry and preliminary investigation letters. New rule 111.4 states the standard for the imposition of discipline based on legal error plus other conduct that constitutes judicial misconduct. The commission amended rules 114(b) and 116(b) to modify procedures for submitting new information during the process of an appearance before the commission to object to a notice of intended public or private admonishment. Rule 119.5 was amended to provide electronic and facsimile filing and service during formal proceedings, subject to certain specified conditions. The commission reenacted rule 122(g)(2) – concerning discovery depositions – without an expiration date. See the commission's website at <http://cjp.ca.gov> under "Governing Provisions" for the Report Concerning Adoption on May 8, 2013 of Additions and Amendments to Rules of the Commission on Judicial Performance.

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 2013, the commission adopted amendments and additions to its policy declarations. In December 2013, policy declaration 3.5 was amended to publicly

document the commission's rules review process and to make the process more inclusive, interactive, and transparent. In January 2013, the commission adopted amendments to policy declarations 3.6 (related to the process for staff's submission to the commission of a draft proposed amendment to a policy declaration), 5.1 through 5.5 (related to the disability application process), and 6.1 (prohibiting recused commission members from receiving written materials). In January 2013, the commission also adopted new policy declaration 2.3.5 providing for the procedures that apply to the transcription of a deposition taken pursuant to rule 122(g).

### 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 2013.

### 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. There were no changes to the code in 2013.

The Code of Judicial Ethics is included in Appendix 2 with dates of adoption and amendments noted.

### COMMISSION PROCEDURES

To view a flowchart of commission proceedings from complaint to commission consideration and decision, see Appendix 4.

### 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. (Commission Rule 109.) 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.

### 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.) Some 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 proceed-

ings 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, or close the case without discipline.

### 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 for review of 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).) A judge may petition the Supreme Court for a writ of mandate to challenge an advisory letter. 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)-(p); 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

### 2013 STATISTICS

#### COMPLAINTS RECEIVED AND INVESTIGATED

In 2013, there were 1,817 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 341 commissioners and referees. The commission's handling of complaints involving commissioners and referees is discussed in Section V.

#### JUDICIAL POSITIONS As of December 31, 2013

Supreme Court .....	7
Courts of Appeal .....	105
Superior Courts .....	1,705
<b>Total .....</b>	<b>1,817</b>

#### New Complaints

In 2013, the commission considered 1,209 new complaints about active and former California judges. The 1,209 complaints named a total of 1,504 judges (908 different judges).

#### 2013 CASELOAD – JUDGES

Cases Pending 1/1/13 .....	124
New Complaints Considered.....	1,209
Cases Concluded .....	1,181
Cases Pending 12/31/13.....	124

Discrepancies in totals are due to consolidated complaints/dispositions.

In 2013, the commission considered 126 complaints about subordinate judicial officers. These cases are discussed in Section V.

The commission office also received 427 complaints in 2013 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 2013, the commission ordered 53 staff inquiries and 102 preliminary investigations.

#### INVESTIGATIONS COMMENCED IN 2013

Staff Inquiries .....	53
Preliminary Investigations .....	102

#### Formal Proceedings

At the beginning of 2013, there was one formal proceeding pending before the commission. This matter was concluded in 2013.

#### FORMAL PROCEEDINGS

Pending 1/1/13 .....	1
Commenced in 2013.....	0
Concluded in 2013.....	1
Pending 12/31/13.....	0

### DEFERRAL OF INVESTIGATION

As discussed on page 5, the commission may defer an investigation under certain circumstances. At the beginning of 2013, 26 deferred matters were pending. The commission ordered 17 matters deferred during 2013. Eighteen matters were returned to the commission's active calendar and were considered and concluded by the commission in 2013. Eight matters were returned to the active calendar and remained pending before the commission at the end of 2013. Twenty matters remained deferred at the end of the year.

#### DEFERRED INVESTIGATIONS

Pending 1/1/13 .....	26
Investigations deferred in 2013.....	17
Deferred investigations returned to active calendar and concluded in 2013 .....	18
Investigations returned to the active calendar and pending 12/31/13 .....	8
Deferred investigations pending 12/31/13...	20
Discrepancies in totals are due to consolidated complaints/dispositions	

#### REASONS INVESTIGATIONS WERE DEFERRED IN 2013

Deferred pending resolution of underlying case.....	9
Deferred pending appeal or other review ....	6
Deferred pending civil, criminal or administrative investigation or proceeding ...	2
Deferred pending rule 112 monitoring .....	0

### COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the commission in 2013, regardless of when the complaints were received.<sup>1</sup> In 2013, the commission concluded a total of 1,181 cases. The average time period from the filing of a complaint to the disposition was 3.75 months. A chart of Complaint Dispositions of all cases completed by the commission in 2013 is included on page 12.

#### TYPE OF COURT CASE UNDERLYING COMPLAINTS CONCLUDED IN 2013

Criminal .....	40%
General Civil .....	22%
Family Law .....	16%
Small Claims/Traffic.....	8%
All Others.....	10%

4% 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 2013, after obtaining the information necessary to evaluate the complaints, the commission determined that there was not a sufficient showing of misconduct in 1,061 of the complaints. In other words, there was an absence of facts which, if true and not otherwise explained, might constitute misconduct. A substantial percentage alleged legal error not involving misconduct or expressed dissatisfaction with a judge's decision. The commission closed these complaints without staff inquiry or preliminary investigation.

Following staff inquiry or preliminary investigation, the commission closed another 88 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 2013 may have commenced in prior years. Cases or portions of cases pending at the end of 2013 are not included in complaint disposition statistics.

**SOURCE OF COMPLAINTS CONCLUDED  
IN 2013**

Litigant/Family/Friend.....	87%
Attorney .....	5%
Judge/Court Staff.....	2%
All Other Complainants .....	4%
(including citizens)	
Source Other Than Complaint.....	2%
(includes anonymous letters, news reports)	

### Closed With Discipline

In 2013, the commission publicly censured one judge and imposed one public admonishment. The commission also issued seven private admonishments and 21 advisory letters. Each of these cases is summarized in Section IV.

A chart of the Types of Conduct Resulting in Discipline in 2013 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.

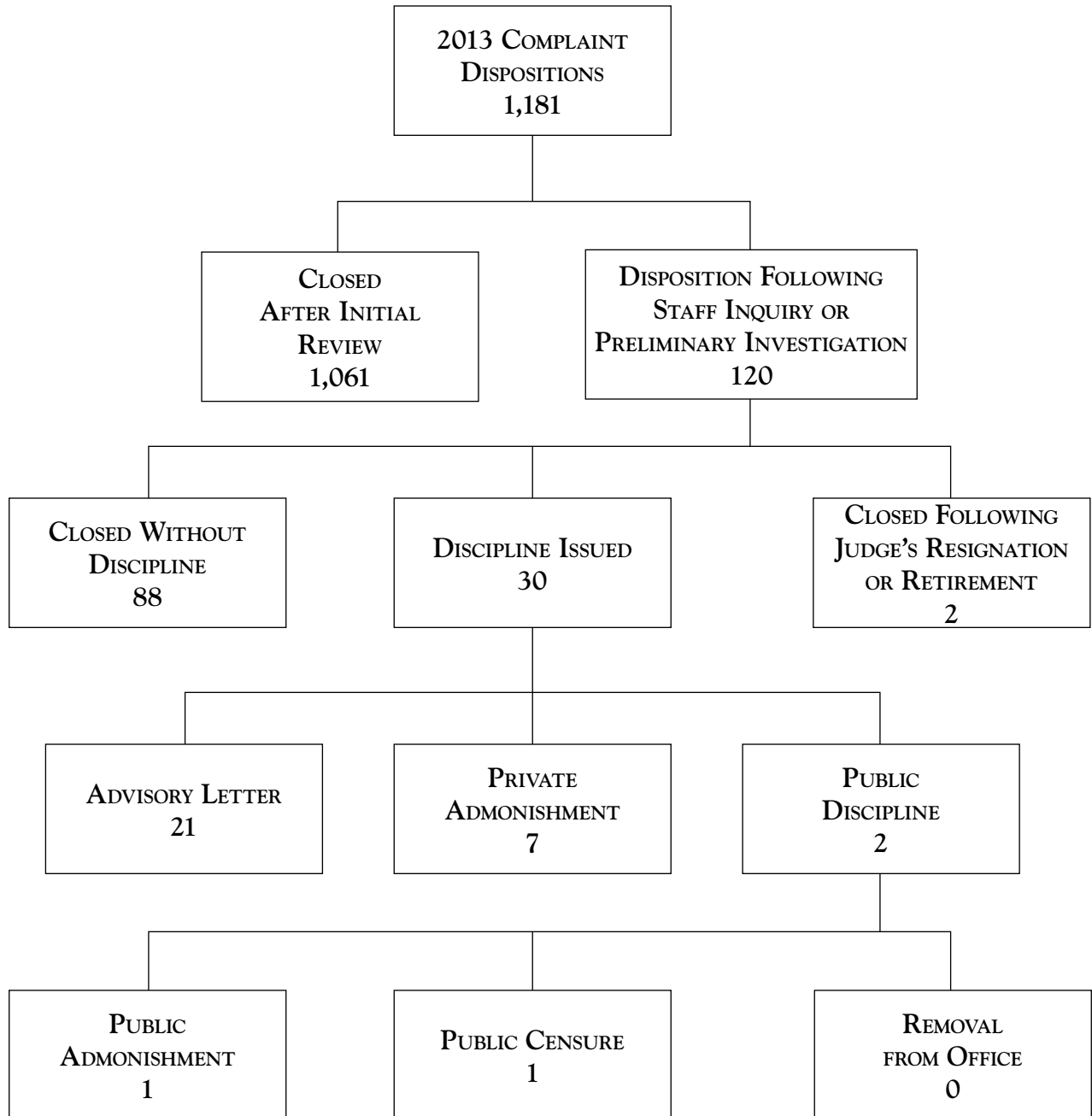
### Resignations and Retirements

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 2013, the commission closed two 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.

2013  
COMPLAINT DISPOSITIONS



III.  
ACTIVE AND FORMER JUDGES – 2013 STATISTICS

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**TYPES OF CONDUCT RESULTING IN DISCIPLINE IN 2013\***

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.

OFF-BENCH ABUSE OF OFFICE/MISUSE OF COURT INFORMATION  
[6]

DISQUALIFICATION/DISCLOSURE/  
POST-DISQUALIFICATION CONDUCT  
[5]

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

DECISIONAL DELAY,  
FALSE SALARY AFFIDAVITS  
[4]

DEMEANOR/DECORUM  
[4]

MISCELLANEOUS OFF-BENCH CONDUCT  
[3]

ABUSE OF CONTEMPT/  
SANCTIONS  
[2]

BIAS OR APPEARANCE  
OF BIAS NOT DIRECTED  
TOWARD A PARTICULAR  
CLASS  
(includes embroilment,  
prejudgment, favoritism)  
[2]

FAILURE TO ENSURE  
RIGHTS  
[2]

EX PARTE  
COMMUNICATIONS  
[2]

COMMENT ON A  
PENDING CASE  
[1]

FAILURE TO COOPERATE/LACK OF CANDOR WITH  
REGULATORY AUTHORITIES  
[1]

IMPROPER BUSINESS, FINANCIAL  
OR FIDUCIARY ACTIVITIES  
[1]

IMPROPER POLITICAL  
ACTIVITIES  
[1]

MISUSE OF COURT  
RESOURCES  
[1]

NONPERFORMANCE OF JUDICIAL FUNCTIONS/  
ATTENDANCE/SLEEPING  
[1]

NON-SUBSTANCE ABUSE  
CRIMINAL CONDUCT  
[1]

SEXUAL HARASSMENT/INAPPROPRIATE WORKPLACE  
GENDER COMMENTS  
[1]

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

**III.**  
**ACTIVE AND FORMER JUDGES – 2013 STATISTICS**

**10-YEAR SUMMARY OF COMMISSION ACTIVITY**

**NEW COMPLAINTS CONSIDERED BY COMMISSION**

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
	1,114	965	1,019	1,077	909	1,161	1,176	1,158	1,143	1,209

**COMMISSION INVESTIGATIONS COMMENCED**

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Staff Inquiries	91 (8%)	55 (6%)	67 (7%)	55 (5%)	70 (8%)	102 (9%)	101 (9%)	95 (8%)	72 (6%)	53 (4%)
Preliminary Investigations	47 (4%)	41 (4%)	51 (5%)	54 (5%)	42 (5%)	63 (5%)	101 (9%)	77 (7%)	80 (7%)	102 (8%)
Formal Proceedings Instituted	2 (<1%)	4 (<1%)	5 (<1%)	1 (<1%)	2 (<1%)	1 (<1%)	2 (<1%)	1 (<1%)	2 (<1%)	0 (0%)

**DISPOSITION OF COMMISSION CASES**

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Total Dispositions	1,080	955	1,023	1,058	892	1,115	1,133	1,138	1,152	1,181
Closed After Initial Review	993 (92%)	876 (92%)	919 (90%)	975 (92%)	805 (90%)	1,007 (90%)	988 (87%)	995 (87%)	1,000 (87%)	1,061 (90%)
Closed Without Discipline After Investigation	60 (6%)	51 (5%)	64 (6%)	45 (4%)	48 (5%)	74 (7%)	96 (8%)	99 (9%)	106 (9%)	88 (8%)
Advisory Letter	13 (1%)	12 (1%)	16 (2%)	20 (2%)	18 (2%)	25 (2%)	31 (3%)	26 (2%)	30 (3%)	21 (2%)
Private Admonishment	8 (<1%)	6 (<1%)	7 (<1%)	9 (<1%)	7 (<1%)	3 (<1%)	8 (<1%)	10 (<1%)	6 (<1%)	7 (<1%)
Public Admonishment	3 (<1%)	4 (<1%)	9 (<1%)	5 (<1%)	7 (<1%)	2 (<1%)	4 (<1%)	5 (<1%)	5 (<1%)	1 (<1%)
Public Censure	0 (0%)	2 (<1%)	4 (<1%)	1 (<1%)	0 (0%)	1 (<1%)	3 (<1%)	1 (<1%)	1 (<1%)	1 (<1%)
Removal	1 (<1%)	0 (0%)	1 (<1%)	2 (<1%)	2 (<1%)	0 (0%)	0 (0%)	0 (0%)	1 (<1%)	0 (0%)
Judge Retired or Resigned with Proceedings Pending	2 (<1%)	4 (<1%)	3 (<1%)	1 (<1%)	5 (<1%)	3 (<1%)	3 (<1%)	2 (<1%)	3 (<1%)	2 (<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 to canons are to the Code of Judicial Ethics in effect until January 1, 2013.

### PUBLIC DISCIPLINE

Public discipline decisions issued by the commission in 2013 are summarized in this section. All public decisions in commission cases are available on the commission's website at <http://cjp.ca.gov>.

#### PUBLIC CENSURE BY THE COMMISSION

In 2013, the commission imposed one public censure.

#### **Public Censure and Bar of Former Judge Paul D. Seeman December 16, 2013**

Pursuant to stipulation, former Judge Paul D. Seeman, who had resigned from the Alameda County Superior Court, was ordered publicly censured and barred from serving in a judicial capacity in any California state court for conduct that constituted willful misconduct and conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

In 1998, Paul Seeman was an attorney living across the street from Lee and Anne Nutting, both of whom were in their 80's. The Nuttings had no children and no family or friends living nearby. Mr. Seeman did not know the Nuttings well.

In December 1998, the Nuttings moved to a hotel, after their home was deemed unsuitable for habitation due to an accumulation of possessions and lack of upkeep. Mr. Seeman offered to help them obtain permission to return to their home. They agreed.

In January 1999, Mr. Seeman entered into a written retainer agreement for legal services with the Nuttings regarding their home, estate planning, and other miscellaneous matters. At that time, Mr. Seeman had almost no experience with estate planning. Mr. Seeman began billing the Nuttings for professional services and continued to do so monthly until at least the end of July 2004.

Also in January 1999, Mr. Seeman had the Nuttings each execute a Durable Power of Attorney, which he had prepared, naming him as the agent for each of them. Mr. Seeman did not advise the Nuttings in writing that they should seek independent counsel before signing the documents. Mr. Seeman also found numerous stock certificates in the Nuttings' home, which he collected and took to a broker who set up a brokerage account for the Nuttings that had a beginning value in excess of \$1,000,000.

Mr. Seeman also retained a tax accountant for the Nuttings and began paying their taxes. At times, he had Mrs. Nutting make out checks for "taxes" that were payable to him personally, rather than to the Internal Revenue Service or the Franchise Tax Board.

In January 2000, after Mr. Nutting had passed away, Mr. Seeman opened a client trust account with funds belonging to Mrs. Nutting (the "Trust Account"). Mrs. Nutting periodically gave Mr. Seeman checks to deposit into the Trust Account. From 2000 until 2010, Mr. Seeman maintained a Quicken ledger to record the debits and credits for the Trust Account.

In early 2004, Mr. Seeman applied for the position of commissioner with the Alameda County Superior Court. Later that year, when Mrs. Nutting was 91 years old, her stock brokerage account was changed from an account for which Mr. Seeman had a power of attorney

to an account naming him as the pay-upon-death beneficiary. As long as Mr. Seeman was the pay-upon-death beneficiary of the account, if Mrs. Nutting predeceased him, he would have obtained sole ownership of the account, which was worth approximately \$2,000,000. Around the same time, Mr. Seeman's name was added to two of Mrs. Nutting's bank accounts. One account contained approximately \$200,000 and the other account contained approximately \$250,000. If Mrs. Nutting had predeceased Mr. Seeman, he would have obtained sole ownership of each account.

In July 2004, Mr. Seeman prepared a will for Mrs. Nutting that named 13 different charitable organizations as the beneficiaries of her estate and named his wife as the executor of her estate. He also prepared a declaration of trust in which he was designated as the successor trustee and sole beneficiary, and a second declaration of trust in which his wife was the successor trustee and he was the sole beneficiary. The sole asset of each trust was Mrs. Nutting's residence. Mrs. Nutting decided not to sign these draft trust documents.

On August 2, 2004, Mr. Seeman became a court commissioner. Thereafter, he continued to handle some of Mrs. Nutting's financial affairs, including her taxes and payment of utilities and other expenses via the Trust Account, in the same manner as he had before he became a commissioner, and he continued to act as her fiduciary. In August 2004, Mr. Seeman changed the Trust Account from a client trust account to a joint account between himself and Mrs. Nutting. If Mrs. Nutting predeceased him, Mr. Seeman would have obtained sole ownership of the funds in the Trust Account.

Between 2004 and 2010, Mr. Seeman on a number of occasions commingled his personal funds with Mrs. Nutting's funds in the Trust Account and failed to keep a proper accounting of the Trust Account. During some of this time, he also used money in the Trust Account to pay some of his personal American Express bills. These transactions totaled over \$5,000.

On September 10, 2004, Mr. Seeman borrowed approximately \$250,000 from Mrs. Nutting. He

signed an unsecured "Simple Promissory Note" for \$250,000 at 3 percent interest, with monthly interest payments to be made on the first of every month, starting in November 2004. Mr. Seeman made interest-only payments for eight months and then stopped making any payments after July 2005.

In May 2007, Mrs. Nutting contacted an attorney who directed Mr. Seeman to remove his name from all of her accounts and to take no further action with respect to her affairs. Mr. Seeman did not comply with this directive, and he continued to use and control the Trust Account, and could have accessed the other accounts from which he did not remove his name.

On March 27, 2009, Mr. Seeman became a judge. He continued to handle Mrs. Nutting's financial affairs, including her taxes and payment of utilities and other expenses via the Trust Account, and he continued to act as her fiduciary. From 2000 until 2010, Mr. Seeman had exclusive access to and use of the Trust Account. The bank statements for the Trust Account were sent to Mr. Seeman and not to Mrs. Nutting.

In February 2010, Mr. Seeman was asked by an individual acting on Mrs. Nutting's behalf to repay the \$250,000 loan he took from Mrs. Nutting. He told Mrs. Nutting that he was still paying the monthly interest payments into the Trust Account. Mr. Seeman's representation was false, and he knew it was false.

Mrs. Nutting died on April 17, 2010.

Mr. Seeman repaid the loan plus interest in November 2010.

While a court commissioner and then as a judge, Mr. Seeman signed Statements of Economic Interests (Form 700's) under penalty of perjury on the following dates: February 22, 2005; January 12, 2006; February 14, 2007; January 16, 2008; January 12, 2009; March 27, 2009; April 2, 2009; January 12, 2010; and January 5, 2011. The Form 700's were filed with the Alameda County Superior Court and the Fair Political Practices Commission. On each of these dates, Mr. Seeman failed to disclose the \$250,000 personal loan he received from Mrs. Nutting. He also failed to

disclose investments he made in different properties through Trust Deed Investments, Inc. and the income he received from those investments. Mr. Seeman did disclose income from Trust Deed Investments, Inc. on the January 2011 Form 700. Mr. Seeman also filed an Amended Form 700 in October of 2011, declaring the loan retroactively for 2004.

On August 1, 2013, Mr. Seeman pled no contest to two felony counts. One charge was for felony perjury (Pen. Code, § 118(a)) in connection with his failure to disclose on his Form 700's. Mr. Seeman's conduct violated Penal Code section 118(a) and Government Code section 87200 et seq. His conduct also violated canons 1, 2, and 2A.

The second criminal charge to which Mr. Seeman pled no contest was felony elder abuse (Pen. Code, § 368(d)) in connection with his handling of Mrs. Nutting's financial affairs. Mr. Seeman's conduct while he was an attorney also constituted a breach of fiduciary duty and violated Probate Code sections 4232 (duty of holder of power of attorney to act solely in the interest of the principal and to avoid conflicts of interest), 4233 (duty of holder of power of attorney to keep property separate and distinct from other property in a manner adequate to identify the property clearly as belonging to the principal), 4236 (duty of holder of power of attorney to keep records of all transactions entered into on behalf of the principal), 21350 (no provision of any instrument shall be valid to make a donative transfer to the person who drafted the instrument), and 21351(b) (draft instrument making donative transfer to person who drafted it must be reviewed by independent attorney); Rules of Professional Conduct, rule 3-300 (attorney shall not enter into a business transaction with a client, or acquire a pecuniary interest adverse to a client, unless the transaction is fair and reasonable to the client and is fully disclosed in writing to the client, the client is advised in writing that the client may seek the advice of independent counsel and is given the opportunity to do so, and the client consents in writing to the terms of the transaction), rule 4-100 (attorney may not commingle client funds with personal funds), and rule 4-400 (attorney

cannot induce a client to make a substantial gift to the attorney); and Penal Code section 368(d) (theft from an elder).

Mr. Seeman's conduct when he was a bench officer violated Penal Code section 368(d) (theft from an elder) and Government Code section 89503 (annual gift limit), and violated the following canons of the Code of Judicial Ethics: canon 1 (a judge shall personally maintain high standards of conduct so the integrity of the judiciary will be preserved), canon 2 (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities), canon 2A (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 of the judiciary), canon 4D(6) (a judge shall not accept a loan from anyone, with certain exceptions that do not apply here), and canon 4E(1) (a judge shall not serve as executor, 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).

In addition to the foregoing, in August 2004, Mr. Seeman filled out a California Department of Motor Vehicles Application for Title or Registration for a car, handwrote that the purchase price of the car was \$10,000, and signed the application under penalty of perjury under the laws of the State of California. In fact, the purchase price of the car was \$28,045. Mr. Seeman's statement on the application regarding the purchase price of the car was false. Mr. Seeman's conduct violated Penal Code sections 115 and 118(a), and Vehicle Code section 20. His conduct also violated canons 1, 2, and 2A.

On four occasions, while he was a judge, Mr. Seeman caused court personnel to access Department of Motor Vehicles registration records to obtain information regarding the license plates of vehicles belonging to certain individuals for a purpose unrelated to the faithful discharge of his judicial duties. Mr. Seeman's conduct violated Vehicle Code section 1808.45. His conduct also violated canons 1, 2, 2A, and 3B(11) (a judge shall not use for any purpose unrelated to judicial

duties nonpublic information acquired in a judicial capacity).

Mr. Seeman stipulated that his conduct constituted prejudicial misconduct and willful misconduct and seriously undermined the integrity of the judiciary. Article VI, section 18(d) of the California Constitution provides that the commission may “censure a judge or former judge . . . for action . . . that constitutes . . . conduct prejudicial to the administration of justice that brings the judicial office into disrepute.” In this case, the commission determined that the severe sanction of a public censure and bar from serving in a judicial capacity in any California state court was necessary for the protection of the public and the reputation of the judiciary. This constitutes the maximum discipline that may be imposed by the commission on a former judge.

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

The commission may publicly admonish a judge for improper action or dereliction of duty. In 2013, the commission issued one public admonishment.

#### **Public Admonishment of Judge Bruce Clayton Mills July 30, 2013**

Judge Bruce Clayton Mills of the Contra Costa County Superior Court was publicly admonished for prejudicial conduct. The commission’s action concluded formal proceedings, during which there was a hearing before special masters and an appearance before the commission.

The commission found that Judge Mills engaged in misconduct by speaking to a clerk and a pro tem judge, through channels not available to the public, about his desired disposition of his son’s infraction case.

The judge’s son had entered a guilty plea to a tobacco infraction before a commissioner in the courthouse where Judge Mills sat, and had been sentenced to perform volunteer work. He did not complete the volunteer hours, however, because he entered an out-of-state residential rehabilitation program shortly after sentencing. An order to show cause for failure to complete the volunteer work was issued and set for hearing.

An attorney was engaged to appear at the hearing to present proof that the judge’s son was in the residential program and to request that he receive credit for the program in lieu of the volunteer work. However, on the morning of the hearing – set for 1:30 in the afternoon – the attorney contacted Judge Mills to say that she could not appear because of an emergency. The judge responded that he would figure out what to do.

Before noon, in a nonpublic area of the courthouse, Judge Mills spoke with the clerk working in the department in which the case was to be heard. He told her that the attorney could not appear, discussed his desired resolution of the matter, and showed her documents pertaining to his son’s participation in the rehabilitation program. Before Judge Mills returned from lunch, the pro tem judge who was presiding over the calendar that day knew that an attorney would not be appearing on the judge’s son’s case. Just before the 1:30 calendar was to begin, Judge Mills spoke with the pro tem judge in her chambers; he explained that his son was in the out-of-state program and advised that the attorney had intended to ask for “credit for time served” in the program. He said something to the pro tem judge like, “Do what you want.” The pro tem judge decided that participation in the program would fulfill the volunteer work requirement.

The special masters concluded that by discussing the case with the pro tem judge outside the courtroom and participating in a favorable resolution of the matter in chambers, Judge Mills created an appearance of impropriety in violation of canon 2 of the Code of Judicial Ethics and engaged in improper action, but not prejudicial misconduct. The special masters concluded that the judge’s communications with the clerk did not constitute misconduct. The commission, however, concluded that Judge Mills engaged in prejudicial misconduct by conveying his desired disposition of his son’s case to the clerk and the pro tem judge through channels not available to the public because, even if the conduct was not done in bad faith, it would appear to an objective observer to be conduct prejudicial to public esteem for the judicial office. The commission determined that

through his communications with the clerk and the pro tem judge, Judge Mills used the prestige of his judicial office to influence the disposition of his son's case, in violation of canon 2B(2), and created an appearance of impropriety and compromised the integrity and impartiality of the judiciary in violation of canons 1, 2, and 2A.

The commission noted that when Judge Mills learned that the attorney could not appear, he could properly have asked the attorney to seek a continuance, called the clerk to ask for another date, or appeared at the hearing himself. Instead, he approached the clerk in an area not accessible to the public, told her not only that the attorney could not appear but also of his desired resolution, and showed her documents in support of his request. By doing so, the commission found, he created the appearance that he was using the clerk as a conduit to the assigned judicial officer on behalf of his son. In addition, he discussed the matter with the pro tem judge in chambers and off the record before the start of the afternoon calendar, obtaining the desired disposition.

In concluding that Judge Mills engaged in misconduct, the commission pointed out that a member of the public would not have had special access to the pro tem judge or the pro tem judge's clerk, and would not have been able to have a case handled in chambers before the start of the calendar. Although Judge Mills, like anyone else, could have appeared in court in connection with a juvenile matter, asked to discuss the matter in chambers, and likely received the same disposition, the conduct in which he engaged created the appearance of a "two-track system of justice." The commission noted that such conduct "leads to suspicions of favoritism and backdoor deals for the select few with connections to the judicial officer hearing the matter."

The commission found that the fact that the clerk and the pro tem judge were subordinate to Judge Mills magnified the appearance of impropriety and further undermined public confidence in the integrity of the judiciary. In rejecting the judge's suggestion that he was simply following the directives of the clerk and the pro tem judge, the commission pointed out that as a judge, he was responsible for ensuring that his

son's case received no special handling and that he was not granted procedural shortcuts because of his judicial position, particularly when dealing with those who were subordinate to him.

In determining the appropriate level of discipline, the commission stated that Judge Mills's history of prior discipline weighed heavily in aggravation. The commission noted that this was not the first time the judge had been disciplined for using his judicial position to bypass proper channels on behalf of his son; in 2011, he received an advisory letter for allowing his son to accompany a police officer in executing a search warrant he had just signed, without going through the ordinary application process for going on a ride-along. In 2008, the judge received an advisory letter for improperly conditioning a defendant's release in a misdemeanor probation revocation matter on posting bail for the improper purpose of collecting restitution. In 2006, he was publicly admonished for engaging in improper ex parte discussions and for a pattern of making discourteous, sarcastic, and demeaning comments to litigants and attorneys appearing before him. In 2001, he was privately admonished for making remarks suggesting a lack of impartiality and for attempting to obtain a guilty plea from a defendant despite the defendant's statements indicating that he wanted counsel.

The commission found that an additional aggravating factor was Judge Mills's failure to acknowledge or appreciate the impropriety of his actions. The fact that the clerk and the pro tem judge were Judge Mills's subordinates was another factor in aggravation.

The commission noted the adverse impact of Judge Mills's conduct on public confidence in the impartiality of the judicial system. By imposing public discipline, the commission assured the public that using the influence of judicial office to obtain an advantage, no matter how slight, in a legal matter involving a family member or friend is impermissible.

In determining to issue a public admonishment rather than a higher level of discipline, the commission took into consideration that Judge Mills did not overtly pressure the clerk or the pro

tem judge, told the pro tem judge to do what she wanted, and requested and received a disposition that was not more favorable than an attorney who appeared in open court would likely have obtained. The commission also considered in mitigation the masters' finding that Judge Mills was acting as a concerned parent, and the testimony of a number of character witnesses that the judge was hardworking, conscientious, and fair.

### PRIVATE DISCIPLINE

Private admonishments and advisory letters that became final in 2013 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 2013, seven private admonishments became final.

1. A judge displayed poor demeanor toward counsel and embroilment, and assumed a prosecutorial role in various criminal proceedings. The judge made demeaning and discourteous remarks to a defendant and made undignified remarks about court personnel. The judge also criticized a jury's verdict, in violation of canon 3B(10).

2. A judge made demeaning and sarcastic remarks to counsel during trial. There were aggravating factors.

3. A judge failed to timely decide multiple family law matters that had been taken under submission. The judge also received salary in violation of law and submitted false salary affidavits while matters were under submission for more than 90 days; however, there was no evidence that any affidavit was knowingly false. There were mitigating factors, including that the judge self-reported the affidavits and most of the delays to the commission.

4. A judge used the prestige of office and court resources to advance the pecuniary and personal interests of a relative.

5. A judge responded to the filing of peremptory challenges against another judge in a manner that appeared retaliatory. The judge engaged in political activity on behalf of a candidate for a nonjudicial office that was contrary to canon 5; the activity also involved abuse of the prestige of office.

6. When the defendant's attorney announced ready for trial, the judge made a remark about sentencing that created the appearance that the judge was attempting to coerce a plea. There were aggravating factors.

7. A judge directed court staff to place the court's official certification on a document that was not a court record, to help a relative.

### 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 2013, 21 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. After a court proceeding, the bailiff asked if a court spectator had recorded the proceeding. The spectator denied having done so. The judge ordered the spectator taken into custody; the individual was handcuffed and detained briefly. The judge then questioned the individual about recording the proceedings, without advising that contempt was being contemplated. The judge apologized to the spectator at a later date, and reported the incident to the commission.

### 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.

2. A judge failed to timely rule on two requests for needs-based attorney's fees.

3. A judge delayed making decisions in numerous cases by issuing orders designated as "tentative rulings" that contained no substantive rulings and only delayed hearing dates or postponed issuance of tentative rulings indefinitely.

### 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).)

4. A judge made sarcastic remarks ridiculing an unemployed parent who was seeking to reduce child support payments.

5. During a criminal trial, in the presence of the jury, the judge made a remark expressing a negative personal opinion of the defense attorney.

### Disclosure and Disqualification

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

6. A judge failed to disclose on the record in open court that the judge's child works for the local district attorney's office.

7. A judge entered into a financial transaction with an attorney and failed to disqualify when the attorney appeared before the judge or to disclose the pending transaction on the record when members of the attorney's office appeared before the judge. The judge canceled the transaction when questions were raised and reported the conduct to the commission.

8. A judge failed to timely recuse when the judge had a disqualifying financial conflict of interest.

9. A judge failed to timely recuse when the judge had a disqualifying financial conflict of interest.

### Ex Parte Communications

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

10. During a hearing in drug court, the judge engaged in a sidebar conference with a deputy district attorney and a representative of a residential drug treatment program. The defendant, who was present in court in custody but whose counsel was not present, was not included. The judge then considered and acted upon the ex parte information.

### 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.)

11. During a hearing, a judge disclosed confidential information submitted by one party in connection with an application for a fee waiver in another proceeding, thereby violating the party's right of privacy. The judge relied on the confidential information in making a ruling, without affording the party notice or an opportunity to be heard.

### Nonperformance of Judicial Functions

A judge's failure to perform judicial duties or to perform assigned duties diligently conflicts with canon 3.

12. A judge was repeatedly late arriving at court in the morning, over an extended period of time.

### 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.)

13. A judge served as an auctioneer at a fund-raising event, contrary to canon 4C(3)(d).

14. A judge invoked the judicial office while reporting another driver to law enforcement.

### 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.)

15. After an attorney appeared for a defendant pursuant to Penal Code section 977, which permits a defendant charged with a misdemeanor to appear through counsel, the attorney failed to appear on the next court date. A judge issued a bench warrant for the defendant, notwithstanding the authorization for the attorney to appear on the defendant's behalf and the fact that the defendant had not been

ordered to appear. The commission concluded that the judge's conduct involved disregard of fundamental rights and abuse of authority, and was of a nature that could seriously undermine the attorney-client relationship.

16. In dealing with a probationer, the judge engaged in conduct that created the impression that the judge had abandoned the role of impartial judge and had undertaken a law enforcement function.

17. A judge issued a bench warrant for the legal representative of a third party to the case who had received a subpoena duces tecum for the production of documents; the attorney was neither a party nor a personally-served witness, nor had the attorney previously been ordered by the court to appear. When the attorney appeared on the date to which the judge had ordered the warrant held, the judge appeared to impose conditions on the withdrawal of the warrant. Because there was no legal basis to issue the warrant and no reason for the judge to believe that the attorney was properly the subject of a bench warrant, the commission determined that the judge had abused the judge's authority.

18. A judge engaged in abuse of authority in the appointment of counsel.

### More Than One Type of Misconduct

Some cases involved more than one type of misconduct.

19. At the outset of a hearing on a temporary restraining order and without providing the petitioner an adequate opportunity to be heard, the judge ordered on the judge's own motion that the restrained parent would be allowed visitation as a condition of granting the restraining order. No notice had been given to the pro per petitioner that the visitation issue, which was previously set for hearing at a later date, would be addressed at the TRO hearing. The commission concluded that the judge abused the judge's authority and disregarded the litigant's fundamental right to due process. In another matter, the judge imposed sanctions on a pro per litigant without providing an adequate opportunity to be heard.

20. In a criminal matter, the judge failed to rule over a period of nine months on a pro per

IV.  
ACTIVE AND FORMER JUDGES – CASE SUMMARIES

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defendant's motion for appointment of an expert and engaged in an improper ex parte communication with the defendant's investigator.

21. A judge's remarks in emails to judicial colleagues failed to promote public confidence in the integrity and impartiality of the judiciary. The judge also made public comments about a pending case.

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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 2013, there were 341 authorized subordinate judicial officer positions in California.

SUBORDINATE JUDICIAL OFFICERS AUTHORIZED POSITIONS	
As of December 31, 2013	
Court Commissioners.....	296
Court Referees .....	45
Total.....	341

### 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.

### 2013 STATISTICS

#### Complaints Received and Investigated

In 2013, the commission reviewed 126 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 2013, the commission commenced two staff inquiries and one preliminary investigation.

#### RULE UNDER WHICH NEW COMPLAINTS WERE SUBMITTED

Rule 109(c)(1) – appeal from local court's disposition .....	125
Rule 109(c)(2) – at the request of a local court .....	0
Rule 109(c)(3) – notification by local court of discipline.....	1
Rule 109(c)(4) – notification by local court of resignation with investigation pending.....	0

#### 2013 CASELOAD – SUBORDINATE JUDICIAL OFFICERS

Cases Pending 1/1/13 .....	4
New Complaints Considered.....	126
Cases Concluded .....	127
Cases Pending 12/31/13.....	3

#### Cases Concluded

In 2013, the commission concluded its review of 127 complaints involving subordinate judicial officers. The commission closed 121 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 closed six of the cases without discipline.

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

#### 2013 SJO COMPLAINT DISPOSITIONS

Total complaint dispositions.....	127
Closed after initial review.....	121
After independent investigation by the commission:	
Closed Without Discipline .....	6

V.  
SUBORDINATE JUDICIAL OFFICERS

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**TYPE OF COURT CASE UNDERLYING  
SUBORDINATE JUDICIAL OFFICER  
COMPLAINTS CONCLUDED IN 2013**

Small Claims.....	44%
Family Law .....	26%
Traffic .....	16%
General Civil .....	7%
Criminal.....	2%
All Others.....	4%
(including off-bench)	
None .....	1%
(not arising out of a case)	

**SOURCE OF COMPLAINTS  
INVOLVING SUBORDINATE  
JUDICIAL OFFICERS  
CONCLUDED IN 2013**

Litigant/Family/Friend.....	97%
Judge/Court Staff.....	1%
Attorney .....	2%
All Other Complainants .....	0%
Source Other Than Complaint.....	0%

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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).

**2013 STATISTICS**

No disability retirement applications were pending before the commission at the beginning of 2013.

The commission received two disability retirement applications during 2013, both 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

During 2013, the commission had 22 authorized staff positions. This represents an overall staffing reduction of approximately 26% over the past 10 years. The commission's authorized positions include 12 attorneys, 9 support staff, and 1 temporary staff position.

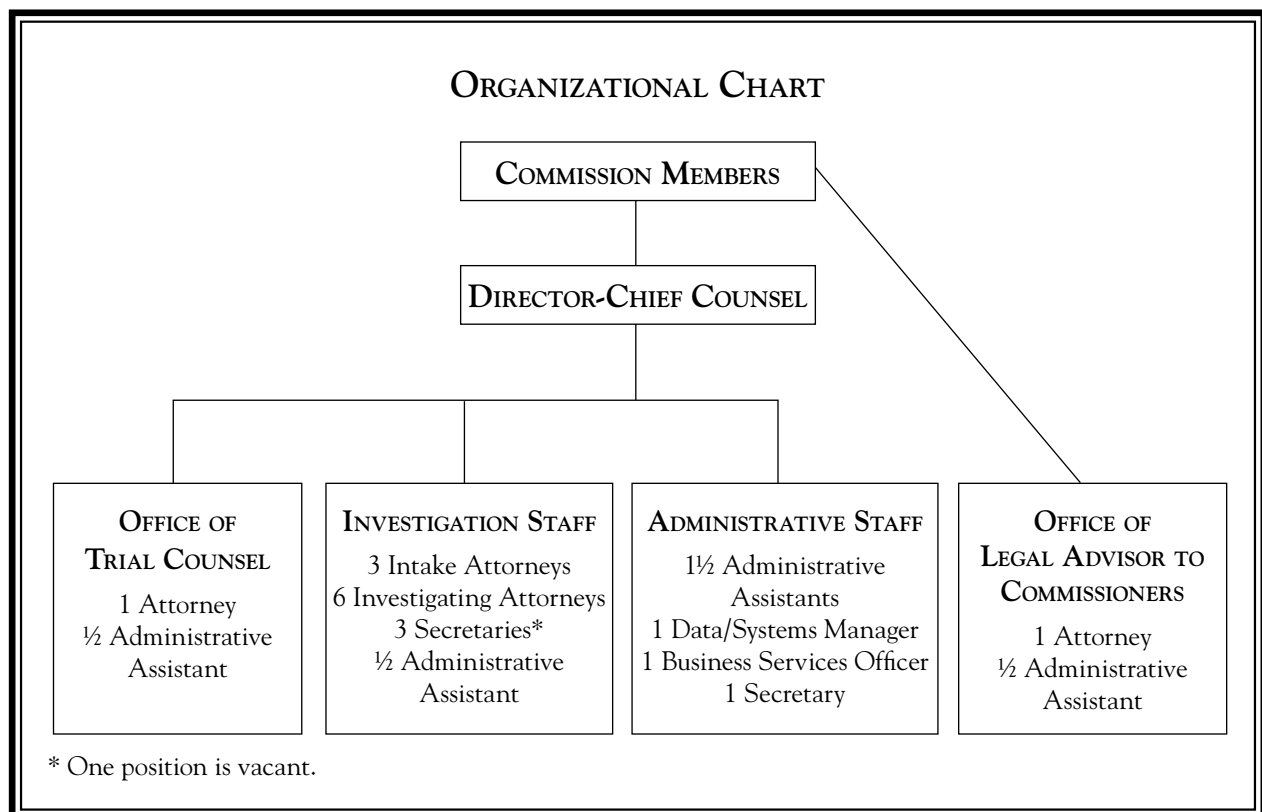
The Director-Chief Counsel heads the agency and reports directly to the commission. The Director-Chief Counsel oversees the intake and investigation of complaints and the commission examiner's handling of formal proceedings. The Director-Chief Counsel is also the primary liaison between the commission 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.

The commission appoints an attorney to serve as examiner during formal proceedings. 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 coordinating formal hearings. That attorney does not participate in the investigation or prosecution of cases and reports directly to the commission. Janice M. Brickley was appointed to the position of Legal Advisor in August 2007.



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

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**2013–2014 BUDGET**

The commission's budget is separate from the budget of any other state agency or court. For the current 2013-2014 fiscal year, the commission's budget is \$4,257,000. 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.

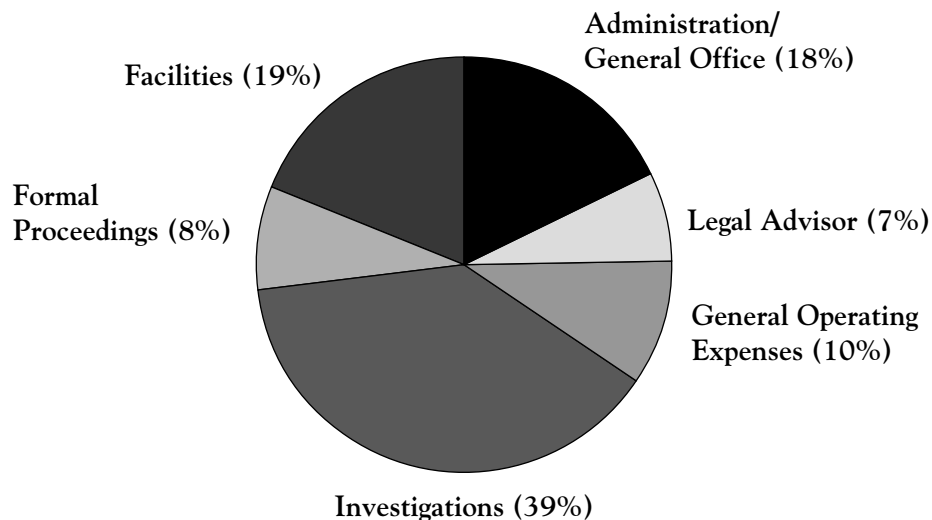
The commission's constitutional mandate is the investigation of allegations of misconduct and the imposition of discipline. The members of the commission receive no salaries, only reimbursement of expenses relating to commission business. Because the performance of the commission's core functions is 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.

**2012–2013 BUDGET**

The commission's final budget appropriation for the 2012-2013 fiscal year was \$4,198,000. Final expenditures totaled \$4,013,602. Approximately 39% of the commission's budget supported the intake and investigation functions and approximately 15% was used in connection with formal proceedings. The remaining 47% went toward sustaining the general operations of the commission, including facilities, administrative staff, supplies, and security.

**COMMISSION ON JUDICIAL PERFORMANCE  
2012-2013 ACTUAL EXPENDITURES  
\$4,013,602**



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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; 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, January 1, 2008, and April 29, 2009.

TABLE OF CONTENTS		Page
PREFACE	.....	38
PREAMBLE	.....	38
TERMINOLOGY	.....	39
CANON 1	A Judge Shall Uphold the Integrity and Independence of the Judiciary .....	41
CANON 2	A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.....	41
CANON 3	A Judge Shall Perform the Duties of Judicial Office Impartially, Competently, and Diligently.....	44
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.....	52
CANON 5	A Judge or Candidate for Judicial Office Shall Not Engage in Political or Campaign Activity that is Inconsistent with the Independence, Integrity, or Impartiality of the Judiciary .....	59
CANON 6	Compliance with the Code of Judicial Ethics.....	61

**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 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 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.

“Candidate for judicial office” is a person seeking election to or retention of judicial office. 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. See Preamble and Canons 3E(2)(b)(i), 3E(3)(a), 5, 5A, 5A (Commentary), 5B(1), 5B(2), 5B(3), 5B (Commentary), 5C, 5D, and 6E.

“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 (Commentary), 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), 4C(3)(c) (Commentary), 4F, and 4H.

“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 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(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 statements 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 initiating communications with a sentencing judge or 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 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 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, provided the judge is not identified as a judge in the communication.

### **ADVISORY COMMITTEE COMMENTARY**

*A strong judicial branch, based on the prestige 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).

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 consultations among judges. 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 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 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, 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, 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, that is, any communications 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) Except as stated below, a judge may consult 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.

(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.

(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).

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

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.

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 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, socioeconomic status, or political affiliation, or (ii) sexual harassment.

## 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 maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.

(3) 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, socioeconomic status, or political affiliation in the performance of their official duties.

(4) 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.

(5) 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 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 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.

(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 \$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\* proceeding, or has appeared or served as a lawyer in any other proceeding involving any of the same parties if that other proceeding related to the same contested issues of fact and law as the present 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 \$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, 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 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 Canon 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 Canon 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 Canon 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;
- (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 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 that may do so include inappropriate use of humor or the use of demeaning remarks. 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 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, 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, 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 improve-*

ment 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 code.” As an example of the meaning of the phrase, a judge permitted by Canon 4C(3) to serve on the board of a 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. 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), (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, 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 similarly involves the danger that the person solicited will feel obligated to respond favorably 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 code (Canon 6F) postpones the time for compliance with certain provisions of this canon 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 code, 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 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) 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) 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) 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) 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) 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,\* 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) 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 code (Canon 6F) postpones the time for compliance with certain provisions of this canon in some cases.*

*The restrictions imposed by this canon 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, Reimbursement, and Honoraria**

A judge may receive compensation and reimbursement of expenses as provided by law\* for the extrajudicial activities permitted by this code, 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 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.\**

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

## CANON 5

**A Judge or Candidate for Judicial Office\* Shall 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, not engage in political activity that may create the appearance of political bias or impropriety.\* Judicial independence,\* 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 \$500 in any calendar year per political party or political organization\* or candidate, or in excess of an aggregate of \$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, provided the judge does not use 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 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 a candidate for judicial office.\* Such endorsements are permitted because judicial officers have a special obligation to uphold the integrity,\* 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 or candidate for judicial office\* 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 judicial office\* or an applicant seeking appointment to judicial office shall not:

(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 are likely to come before the courts, or

(b) knowingly,\* or with reckless disregard for the truth, misrepresent the identity, qualifications, present position, or any other fact concerning 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 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(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

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 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 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 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], 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], 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], 3B(8) [dispose of matters fairly and promptly], 3B(12) [remain impartial\* and not engage in coercive

<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.

conduct during efforts to resolve disputes], 3C(1) [discharge administrative responsibilities without bias and with competence and cooperatively], 3C(3) [require\* staff and court personnel to observe standards of conduct and refrain from bias and prejudice], and 3C(5) [make only fair, necessary, and appropriate appointments];

(b) Not personally solicit memberships or donations for religious, 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 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 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 3B(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 canons 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 code becomes applicable shall comply immediately with all provisions of this code except Canons 4D(4) and 4E and shall comply with these canons 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 4E, continue to serve as fiduciary\* but only for that period of time necessary to avoid adverse consequences to the beneficiary of the fiduciary\* relationship and in no event longer than one year.*

**G. (Canon 6G repealed effective June 1, 2005; adopted December 30, 2002.)**

#### 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 code, 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

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 code 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**

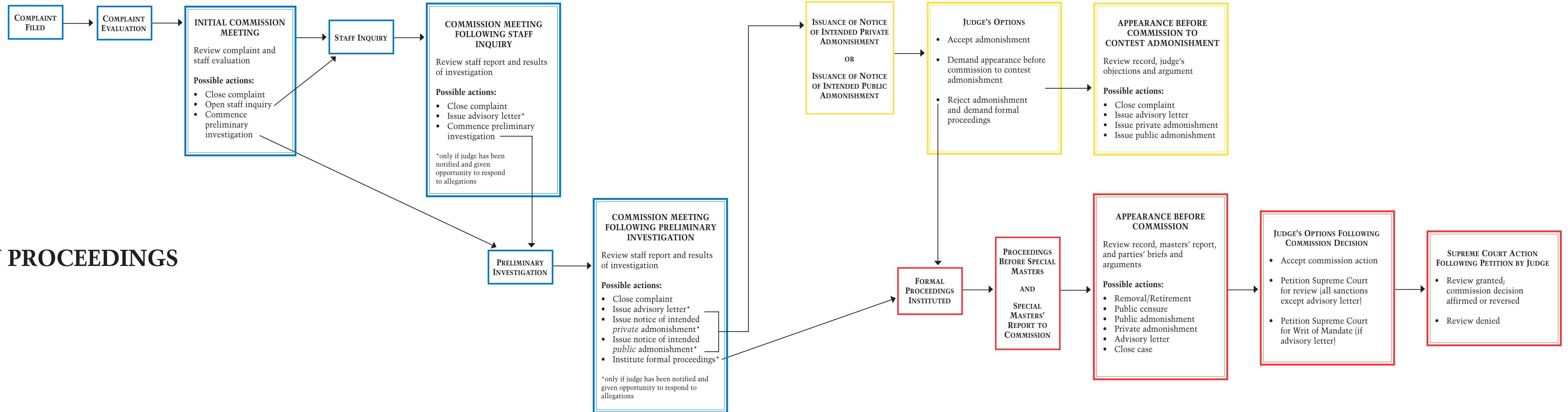
**6/09**

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## **APPENDIX 4. COMMISSION PROCEEDINGS**

# COMMISSION PROCEEDINGS



STATE OF CALIFORNIA  
COMMISSION ON JUDICIAL PERFORMANCE  
455 GOLDEN GATE AVENUE, SUITE 14400  
SAN FRANCISCO, CALIFORNIA 94102  
(415) 557-1200  
<http://cjp.ca.gov>



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