

---

STATE OF CALIFORNIA  
COMMISSION ON JUDICIAL PERFORMANCE



2003 ANNUAL REPORT

455 Golden Gate Avenue, Suite 14400  
San Francisco, California 94102  
(415) 557-1200  
<http://cjp.ca.gov>

---

---

# COMMISSION ON JUDICIAL PERFORMANCE

## 2003 ANNUAL REPORT

### TABLE OF CONTENTS

	Page
INTRODUCTION .....	i
COMPOSITION OF THE COMMISSION .....	ii
<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 .....	2
Action the Commission Can Take .....	2
Confidential Dispositions .....	2
Public Dispositions .....	2
Confidentiality .....	3
<b>II. LEGAL AUTHORITY AND COMMISSION PROCEDURES</b>	
Legal Authority .....	4
Recent Changes In The Law .....	4
California Constitution, Government Code, and Code of Civil Procedure Section 170.9 .....	4
Commission Rules and Policy Declarations .....	4
Code of Judicial Ethics .....	4
Commission Procedures .....	5
Commission Review of Complaints .....	5
Investigation at the Commission's Direction and Disposition of Cases Without Formal Proceedings .....	5
Chart on Complaint Process .....	6
Deferral of Investigation .....	7
Monitoring .....	7
Formal Proceedings .....	7
Hearing .....	7
Commission Consideration Following Hearing .....	7
Chart on Formal Proceedings .....	8
Disposition of Cases After Hearing .....	9
Release of Votes .....	9
Supreme Court Review .....	9
Statute of Limitations .....	9
Standard of Proof .....	9
Confidentiality of Commission Proceedings .....	10

---

<b>TABLE OF CONTENTS continued</b>	<b>Page</b>
<b>III. 2003 STATISTICS - ACTIVE AND FORMER JUDGES</b>	
Complaints Received and Investigated .....	11
New Complaints .....	11
Staff Inquiries and Preliminary Investigations .....	11
Formal Proceedings .....	12
Complaint Dispositions .....	12
Closed Without Action .....	12
Chart on 2003 Complaint Dispositions .....	13
Closed With Discipline .....	14
Resignations and Retirements .....	14
Chart on Types of Conduct Resulting in Discipline .....	15
<b>IV. CASE SUMMARIES</b>	
Public Discipline .....	16
Removal From Office by the Commission .....	16
Public Censure by the Commission .....	22
Public Admonishment by the Commission .....	24
Private Discipline .....	25
Private Admonishments .....	25
Advisory Letters .....	26
<b>V. SUBORDINATE JUDICIAL OFFICERS</b>	
Commission Procedures .....	28
2003 Statistics .....	29
Complaints Received and Investigated .....	29
Cases Concluded .....	29
<b>VI. JUDICIAL DISABILITY RETIREMENT</b>	
Voluntary Disability Retirement .....	30
Involuntary Disability Retirement .....	31
2003 Statistics .....	31
<b>VII. COMMISSION ORGANIZATION, STAFF AND BUDGET</b>	
Commission Organization and Staff .....	32
2003-2004 Budget .....	33
2002-2003 Budget .....	33
<b>APPENDIX</b>	
<b>1. GOVERNING PROVISIONS</b>	
A. California Constitution, Article VI, Sections 8, 18, 18.1 and 18.5 .....	36
B. Rules of the Commission on Judicial Performance .....	39
C. Policy Declarations of the Commission on Judicial Performance .....	54
D. California Rules of Court .....	64
E. California Code of Judicial Ethics .....	69
F. California Government Code .....	87
G. California Code of Civil Procedure Section 170.9 .....	96
<b>2. SELECTED JUDICIAL OPINIONS AFFECTING THE COMMISSION</b> .....	98
<b>3. 10-YEAR SUMMARY OF COMMISSION ACTIVITY</b> .....	101
<b>4. COMPLAINT FORM</b> .....	103

---

## INTRODUCTION



In the year 2003, the Commission on Judicial Performance faced a daunting challenge. As with most other state agencies, the Commission's budget was reduced. Because of its small staff and operating budget, the Commission had few alternatives, and for the first time in its 40-year history, the Commission found it necessary to lay off employees. This was a very difficult and painful decision, demoralizing to all. The actual impact of the budget cuts is discussed at Section VII, Commission Organization, Staff and Budget.

The staff of the Commission must be credited for exercising great care with the remaining resources, giving priority to those matters which would most negatively impact the protection of the public, their confidence in the judiciary, and the preservation of judicial independence. Knowing that delay is an inevitable consequence of any reduction in staff and expenses, the Commission and staff worked tirelessly to avoid it. The 2003 Annual Report demonstrates the Commission's commitment to the reduction of delay in all aspects of its work including intake, investigation, and disposition. The Annual Report shows complaints have increased almost 10 percent from last year and the rate of disposition has increased by the same percentage. In our efforts to avoid delay, the Commission and staff have also worked with vigilance to adhere to the requirements of substantive and procedural due process.

For their continued hard work in difficult times, I thank each member of the Commission's staff. I commend our Director-Chief Counsel, Victoria Henley, for her exceptional leadership, creativity, and tenacity under whose direction we were able to meet our challenges. With my expression of gratitude to Richard Schickele for his wise analytical and legal guidance in formal proceedings, I also announce his resignation as Commission Counsel. Following his departure, the Commission undertook an extensive search to find a new legal advisor, and I am very pleased to report that Jay Linderman has been selected for the position with a new title, "Legal Advisor to Commissioners." The change in title is for greater accuracy in job description only.

It has been an honor to serve as Chairperson of the Commission on Judicial Performance for the past two years. It has been a privilege to work with the ten outstanding and dedicated individuals – citizens, lawyers, and judges – who serve with enthusiasm and commitment, without compensation, to fulfill the mandates of the Constitution of the State of California.

*Risë Jones Pichon*

Honorable Risë Jones Pichon  
Chairperson

---

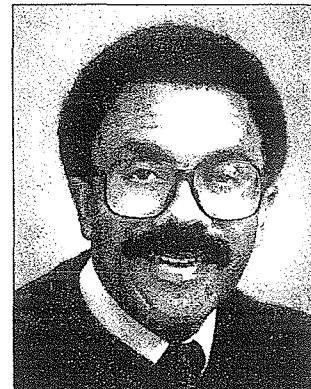
## COMPOSITION OF THE COMMISSION

Pursuant to California Constitution, article VI, section 8, the Commission is composed of eleven members: one justice of a court of appeal and two trial court judges, all appointed by the Supreme Court; two attorneys appointed by the Governor; and six lay citizens, two appointed by the Governor, two appointed by the Senate Committee on Rules, and two appointed by the Speaker of the Assembly. Members are appointed to four-year terms. The members do not receive a salary but are reimbursed for expenses relating to Commission business. The members of the Commission elect a chairperson and vice-chairperson annually.

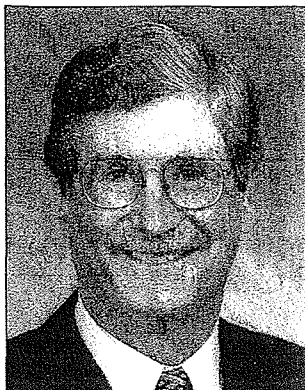
### COMMISSION MEMBERS - 2003



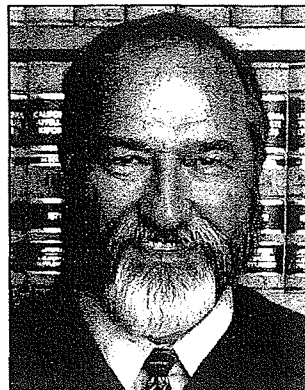
**HONORABLE  
RISE JONES PICHON**  
Chairperson  
Judge, Superior Court  
Appointed by the Supreme Court  
Appointed: March 3, 1999  
Reappointed: March 1, 2003  
Term Ends: February 28, 2007



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



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



**HONORABLE  
FREDERICK P. HORN**  
Judge, Superior Court  
Appointed by the Supreme Court  
Appointed: October 22, 2003  
Term Ends: February 28, 2005



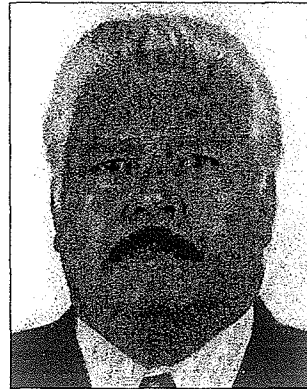
**MICHAEL A. KAHN, ESQ.**  
Attorney Member  
Appointed by the Governor  
Appointed: March 1, 1999  
Reappointed: March 1, 2003  
Term Ends: February 28, 2007

---

## COMMISSION MEMBERS



**MRS. CRYSTAL LUI**  
Public Member  
Appointed by the  
Speaker of the Assembly  
Appointed: April 9, 1999  
Reappointed: March 1, 2003  
Term Ends: February 28, 2007



**JOSE C. MIRAMONTES**  
Public Member  
Appointed by the Governor  
Appointed: June 18, 2003  
Term Ends: February 28, 2007



**MRS. PENNY PEREZ**  
Public Member  
Appointed by the  
Senate Committee on Rules  
Appointed: August 9, 2002  
Reappointed: March 1, 2003  
Term Ends: February 28, 2007



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

**VACANT POSITION**  
Public Member  
Appointed by the  
Speaker of the Assembly  
Term Ends: February 28, 2005

**VACANT POSITION**  
Public Member  
Appointed by the Governor  
Term Ends: February 28, 2005

---

## INCOMING MEMBER

### MS. PATRICIA MILLER

Public Member  
Appointed by the  
Speaker of the Assembly  
Appointed: February 6, 2004  
Term Ends: February 28, 2005

## OUTGOING MEMBERS

### MS. LARA BERGTHOLD

Public Member  
Appointed by the Governor  
Appointed: April 15, 1999  
Membership Terminated: June 18, 2003  
(upon appointment of successor)

### HONORABLE

#### MADELEINE I. FLIER

Judge, Superior Court  
Appointed by the Supreme Court  
Appointed: March 3, 1999  
Reappointed: March 1, 2001  
Membership Terminated: September 25, 2003  
(upon elevation to Court of Appeal)

### MS. RAMONA RIPSTON

Public Member  
Appointed by the  
Speaker of the Assembly  
Appointed: July 15, 1998  
Reappointed: March 1, 2001  
Resigned: November 5, 2003

### BETTY WYMAN, PH.D.

Public Member  
Appointed by the Governor  
Appointed: September 12, 2001  
Resigned: November 26, 2003

---

# 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 2003 are discussed in Section V, Subordinate Judicial Officers.

### HOW MATTERS ARE BROUGHT BEFORE THE COMMISSION

Anyone may make a complaint to the Commission. Complaints must be in writing. The Commission also considers complaints made anonymously and matters it learns of in other

ways, such as news articles or information received in the course of a Commission investigation.

### JUDICIAL MISCONDUCT

The Commission's authority is limited to investigating alleged judicial misconduct and, if warranted, imposing discipline. Judicial misconduct usually involves conduct in conflict with the standards set forth in the Code of Judicial Ethics (see Appendix I, section E). Examples of judicial misconduct include intemperate courtroom conduct (such as yelling, rudeness, or profanity), improper communication with only one of the parties in a case, failure to disqualify in cases in which the judge has or appears to have a financial or personal interest in the outcome, delay in performing judicial duties, and public comment about a pending case. Judicial misconduct also may involve improper off-the-bench conduct such as driving under the influence of alcohol, using court stationery for personal business, or soliciting money from persons other than judges on behalf of charitable organizations.

### WHAT THE COMMISSION CANNOT DO

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

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



## REVIEW AND INVESTIGATION OF COMPLAINTS

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

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

When a complaint states facts which, if true and not otherwise explained, would be misconduct, the Commission orders an investigation in the matter. Investigations may include interviewing witnesses, reviewing court records and other documents, and observing the judge while court is in session. Unless evidence is uncovered which establishes that the complaint lacks merit, the judge is asked to comment on the allegations.

## ACTION THE COMMISSION CAN TAKE

### Confidential Dispositions

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

When more serious misconduct is found, the Commission may issue a private admonishment. Private admonishments are designed in part to bring problems to a judge's attention at an early stage in the hope that the misconduct will not be repeated or escalate. A private admonishment

consists of a notice sent to the judge containing a description of the improper conduct and the conclusions reached by the Commission.

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

A description of each advisory letter and private admonishment issued in 2003, not identifying the judge involved, is contained in Section IV, Case Summaries.

### Public Dispositions

In cases involving more serious misconduct, the Commission may issue a public 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 are notices that describe a judge's improper conduct and state the findings made by the Commission. Each notice is sent to the judge and made available to the press and the general public.

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

### ACTION THE COMMISSION CAN TAKE

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

I.  
OVERVIEW OF THE COMPLAINT PROCESS

---

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

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

### CONFIDENTIALITY

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

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

---

## II. LEGAL AUTHORITY AND COMMISSION PROCEDURES



### LEGAL AUTHORITY

#### Recent Changes In The Law

In June and December 2003, the Supreme Court adopted amendments to the Code of Judicial Ethics. There were no substantive changes to the California Constitution, the California Rules of Court, California Government Code or the Code of Civil Procedure relating to the work of the Commission.

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

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

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

In addition, the Commission is responsible for enforcement of the restrictions on judges' receipt of gifts and honoraria, set forth in Code of Civil Procedure section 170.9. On January 29, 2003, the Commission adopted \$310.00 as the adjusted gift limit, for purposes of Code of Civil Procedure section 170.9.

The provisions governing the Commission's

work are included in Appendix 1.

#### Commission Rules and Policy Declarations

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

Commission Rules 101 through 138 were adopted by the Commission on October 24, 1996, and took effect December 1, 1996. Various rules were amended in January 2003 following the 2002 biennial review of the Commission's Rules and Policy Declarations. These included amendments to rule 102(e), (h) and (k), rule 109(d), rule 114, rule 116, rule 119(b), rule 122, rule 129, rule 130(a), rule 133, and rule 134.

The Commission's Policy Declarations further detail internal procedures and existing policy. The Policy Declarations were substantially revised in 1997.

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

#### Code of Judicial Ethics

The Constitution requires the Supreme Court to make rules "for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns," to be referred to as the "Code of Judicial Ethics" (California Constitution, article VI, section 18(m)). The Supreme Court adopted the Code of Judicial Ethics effective January 1996. On June

## II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

18, 2003, the Supreme Court amended the *Commentary* to Canon 3E regarding membership in certain organizations as it effects disclosure and disqualification. On December 22, 2003, the Supreme Court amended Canons 3B(5) and 3C(5) concerning the prohibition on sexual harassment in the performance of judicial and administrative duties. Canon 3E was amended, adding a subsection concerning bond ownership. The Court also revised Canon 5B regarding statements by candidates for judicial office.

The canons as amended are included in Appendix 1, section E.

### COMMISSION PROCEDURES

#### Commission Review of Complaints

Upon receipt, each written complaint about a California judge is carefully reviewed by the staff. Staff also requests any additional information needed to evaluate the complaint. Each complaint is voted upon by the Commission. The Commission determines whether the complaint is unfounded and should not be pursued or whether sufficient facts exist to warrant investigation. (Commission Rule 109.)

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

When the Commission determines that a complaint warrants investigation, the Commission directs staff to investigate the matter and report back to the Commission. There are two levels of investigation: a staff inquiry and a preliminary investigation. (Commission Rule 109; Policy Declarations 1.2, 1.4.) Most cases begin with a staff inquiry. In more serious matters, the Commission may commence with a preliminary investigation.

Commission investigations may include contacting witnesses, reviewing court records and other documents, observing courtroom proceedings, and conducting such other investigation as the issues may warrant. If the investigation reveals facts that warrant dismissal of the

complaint, the complaint may be closed without the judge being contacted. Otherwise, the judge is asked in a letter to comment on the allegations.

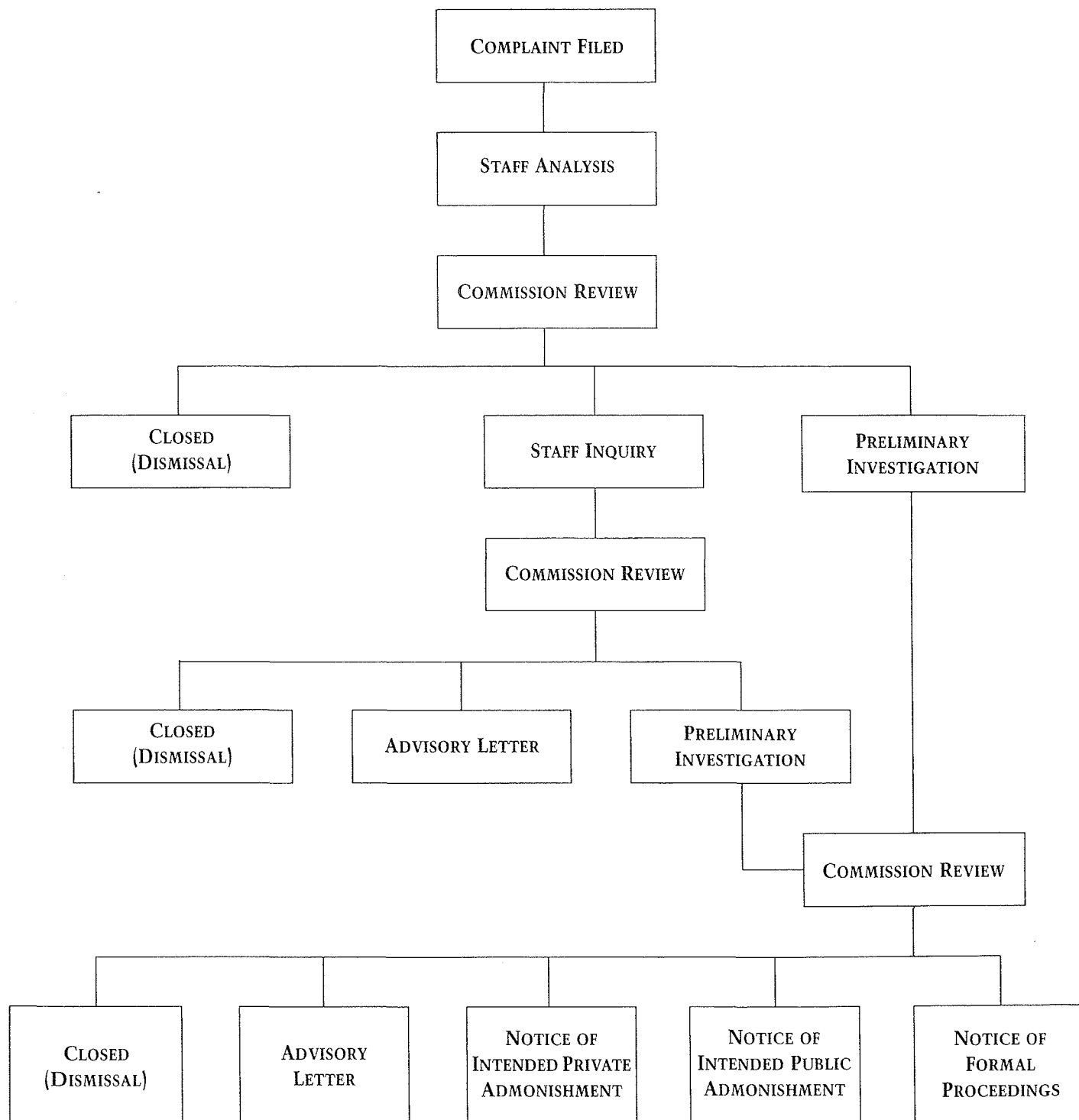
A judge has 20 days from the date of mailing to respond to an inquiry or investigation letter. (Commission Rules 110, 111.) Extensions of time to respond to inquiry and investigation letters are governed by the rules. (Commission Rule 108.)

Following a staff inquiry, the Commission may take one of three actions. If the facts do not support a showing that misconduct has occurred, the Commission will close the case without any action against the judge. If improper or questionable conduct is found, but the misconduct was relatively minor or isolated or the judge recognized the problem and took steps to improve, the Commission may issue an advisory letter. (Commission Rule 110; Policy Declaration 1.2.) If serious issues remain after a staff inquiry, the Commission will authorize a preliminary investigation. (Commission Rule 109; Policy Declarations 1.2, 1.4.)

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

All notices of staff inquiry, preliminary investigation, or intended private or public admonishment are sent to the judge at court, unless otherwise requested. Notices that relate to a staff inquiry are given by first class mail, and notices that relate to a preliminary investigation or intended private or public admonishment are given by prepaid certified mail, return receipt requested. The Commission marks envelopes containing such notices "personal and confiden-

## COMPLAINT PROCESS



tial" 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.

### **Monitoring**

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

### **Formal Proceedings**

After preliminary investigation, in cases involving allegations of serious misconduct, the Commission may institute formal proceedings. (Commission Rule 118.) Formal proceedings also may be instituted when a judge rejects a private or public admonishment and files a de-

mand for formal proceedings. (Commission Rules 114, 116.) When formal proceedings are instituted, the Commission issues a notice of formal proceedings, which constitutes a formal statement of the charges. The judge's answer to the notice of charges is filed with the Commission and served within 20 days after service of the notice. (Commission Rules 118(a), (b), 119(b).) Extensions of time to respond to a notice of charges are governed by the rules. (Commission Rules 108, 119.)

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

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

### **Hearing**

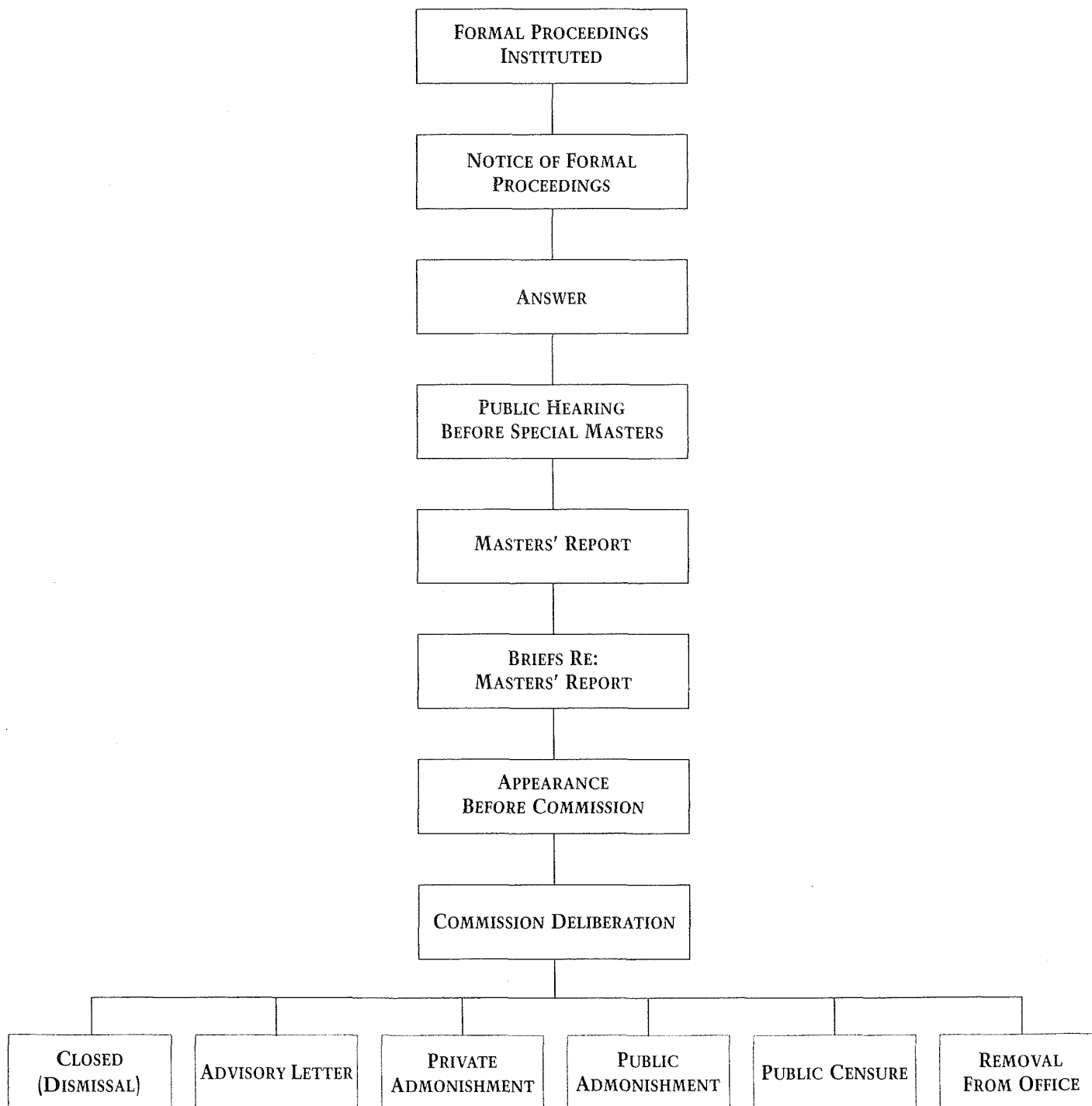
After the judge has filed an answer to the charges, the Commission sets the matter for a hearing. (Commission Rule 121(a).) As an alternative to hearing the case itself, the Commission may request the Supreme Court to appoint three special masters to hear and take evidence in the matter and to report to the Commission. (Commission Rule 121(b).) Special masters are active judges or judges retired from courts of record.

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 Com-

## FORMAL PROCEEDINGS



## II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

mission. The report includes a statement of the proceedings and the special masters' findings of fact and conclusions of law with respect to the issues presented by the notice of formal proceedings and the judge's answer. (Commission Rule 129.) Upon receipt of the masters' report, the judge and the examiner are given the opportunity to file objections to the report and to brief the issues in the case to the Commission. Prior to a decision by the Commission, the parties are given the opportunity to be heard orally before the Commission. (Commission Rules 130, 132.)

Amicus curiae briefs may be considered by the Commission when it is demonstrated that the briefs would be helpful to the Commission in its resolution of the pending matter. (Commission Rule 131.)

### Disposition of Cases After Hearing

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

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

In cases involving former judges, the Commission may publicly censure or publicly or privately admonish the former judge. The Constitution also permits the Commission to bar a

former judge who has been censured from receiving an assignment from any California state court.

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

### Release of Votes

The Commission discloses the votes of the individual Commission members on disciplinary determinations reached after formal proceedings are instituted. The Commission also releases individual votes on public admonishments issued pursuant to Commission Rules 115 and 116.

### SUPREME COURT REVIEW

A judge may petition the California Supreme Court to review a Commission determination to admonish, censure or remove the judge. Review is discretionary. If the Supreme Court so chooses, its review may include an independent "de novo" review of the record. (California Constitution, article VI, section 18(d).) California Rules of Court 935 and 936 govern petitions for review of Commission determinations.

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

### STATUTE OF LIMITATIONS

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

### STANDARD OF PROOF

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



### CONFIDENTIALITY OF COMMISSION PROCEEDINGS

The California Constitution authorizes the Commission to provide for the confidentiality of complaints to and investigations by the Commission. (California Constitution, article VI, section 18(i)(1).) The Commission's rules provide that complaints and investigations are confidential, subject to certain exceptions, for example, when public safety may be compromised, when information reveals possible criminal conduct, and when judges retire or resign during proceedings. (Commission Rule 102(f) - (k); Policy Declarations 4.1-4.6.) During the course of a staff inquiry or preliminary investigation, persons questioned or interviewed are advised that the inquiry or investigation is confidential. (Policy Declaration 1.9; *Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 528.)

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

The Constitution provides that when formal proceedings are instituted, the notice of charges, the answer, and all subsequent papers and proceedings are open to the public. (California Constitution, article VI, section 18(j); see also Commission Rule 102(b).)

After final resolution of a case, the rules require the Commission to disclose to the person who filed the complaint that the Commission has 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.)

### III.

## 2003 STATISTICS

### ACTIVE AND FORMER JUDGES



#### COMPLAINTS RECEIVED AND INVESTIGATED

In 2003, there were 1,610 judgeships within the Commission's jurisdiction. In addition to jurisdiction over active judges, the Commission has authority to impose certain discipline upon former judges.

The Commission's jurisdiction also includes California's 458 commissioners and referees. The Commission's handling of complaints involving commissioners and referees is discussed in Section V. In addition, the Director-Chief Counsel of the Commission is designated as the Supreme Court's investigator for complaints involving the eight judges of the State Bar Court.

JUDICIAL POSITIONS As of December 31, 2003	
Supreme Court .....	7
Court of Appeal .....	105
Superior Courts .....	1,498
<b>Total .....</b>	<b>1,610</b>

#### New Complaints

In 2003, 1,011 new complaints about active California judges and former judges were considered by the Commission. The 1,011 complaints named a total of 1,223 judges (759 different judges). The complaints set forth a wide array of grievances. A substantial percentage alleged legal error not involving misconduct or expressed dissatisfaction with a judge's discretionary handling of judicial duties.

#### 2003 CASELOAD - JUDGES

Cases Pending 1/1/03 .....	76
New Complaints Considered .....	1,011
Cases Concluded in 2003 .....	993
Cases Pending 12/31/03 .....	63

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

In 2003, the Commission received 86 complaints about subordinate judicial officers. These cases are discussed in Section V.

In 2003, the Commission received four complaints about State Bar Court judges. After review, it was determined that none warranted further action.

The Commission also received over 500 complaints in 2003 concerning individuals and matters which did not come under the Commission's jurisdiction: federal judges, former judges for matters outside the Commission's jurisdiction, judges pro tem, workers' compensation judges, other government officials and miscellaneous individuals. Commission staff responded to each of these complaints and, when appropriate, made referrals.

#### Staff Inquiries and Preliminary Investigations

In 2003, the Commission ordered 55 staff inquiries and 48 preliminary investigations.

#### INVESTIGATIONS COMMENCED IN 2003

Staff Inquiries .....	55
Preliminary Investigations .....	48

### Formal Proceedings

At the beginning of 2003, there were three formal proceedings pending before the Commission and one matter pending before the California Supreme Court.<sup>1</sup> The Commission instituted formal proceedings in three cases during 2003. In all of these cases the Commission has the authority to impose discipline, including censure and removal, subject to discretionary review by the Supreme Court upon petition by the judge. As of the end of 2003, three formal proceedings had been concluded and three formal proceedings remained pending before the Commission. In a matter in which the Commission had issued an order of removal in 2003 (Inquiry Concerning Judge Bruce Van Voorhis, No. 165<sup>2</sup>), the judge submitted a petition for writ of certiorari to the United States Supreme Court concerning the Commission's determination, which was pending at the end of the year.

FORMAL PROCEEDINGS	
Pending 1/1/03 .....	4 <sup>1</sup>
Commenced in 2003 .....	3
Concluded in 2003 .....	3
Pending 12/31/03 .....	4 <sup>2</sup>

### COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the Commission in 2003, regardless of when the complaints were received.<sup>3</sup> In 2003, a total of 993 cases were concluded by the Commission. The average time period from the filing of a complaint to the disposition was 3.9 months. A chart of the disposition of all cases completed by the Commission in 2003 is included on page 13.

#### TYPE OF COURT CASE UNDERLYING COMPLAINTS CONCLUDED IN 2003

Criminal .....	45%
General Civil .....	21%
Family Law .....	17%
Small Claims/Traffic .....	8%
All Others .....	6%

3% of the complaints did not arise out of court cases. These complaints concerned off-bench conduct, such as the handling of court administration and political activity.

#### SOURCE OF COMPLAINTS CONCLUDED IN 2003

Litigant/Family/Friend .....	87%
Attorney .....	4%
Judge/Court Staff .....	3%
All Other Complainants .....	5%
(including citizens)	
Source Other Than Complaint .....	1%
(includes anonymous letters, news reports)	

### Closed Without Action

In 906 of the cases closed in 2003, a sufficient showing of misconduct did not appear after the information necessary to evaluate the complaint was obtained and reviewed. (In other words, there was an absence of facts which, if true and not otherwise explained, might constitute misconduct.) These cases were closed by the Commission without staff inquiry or preliminary investigation.

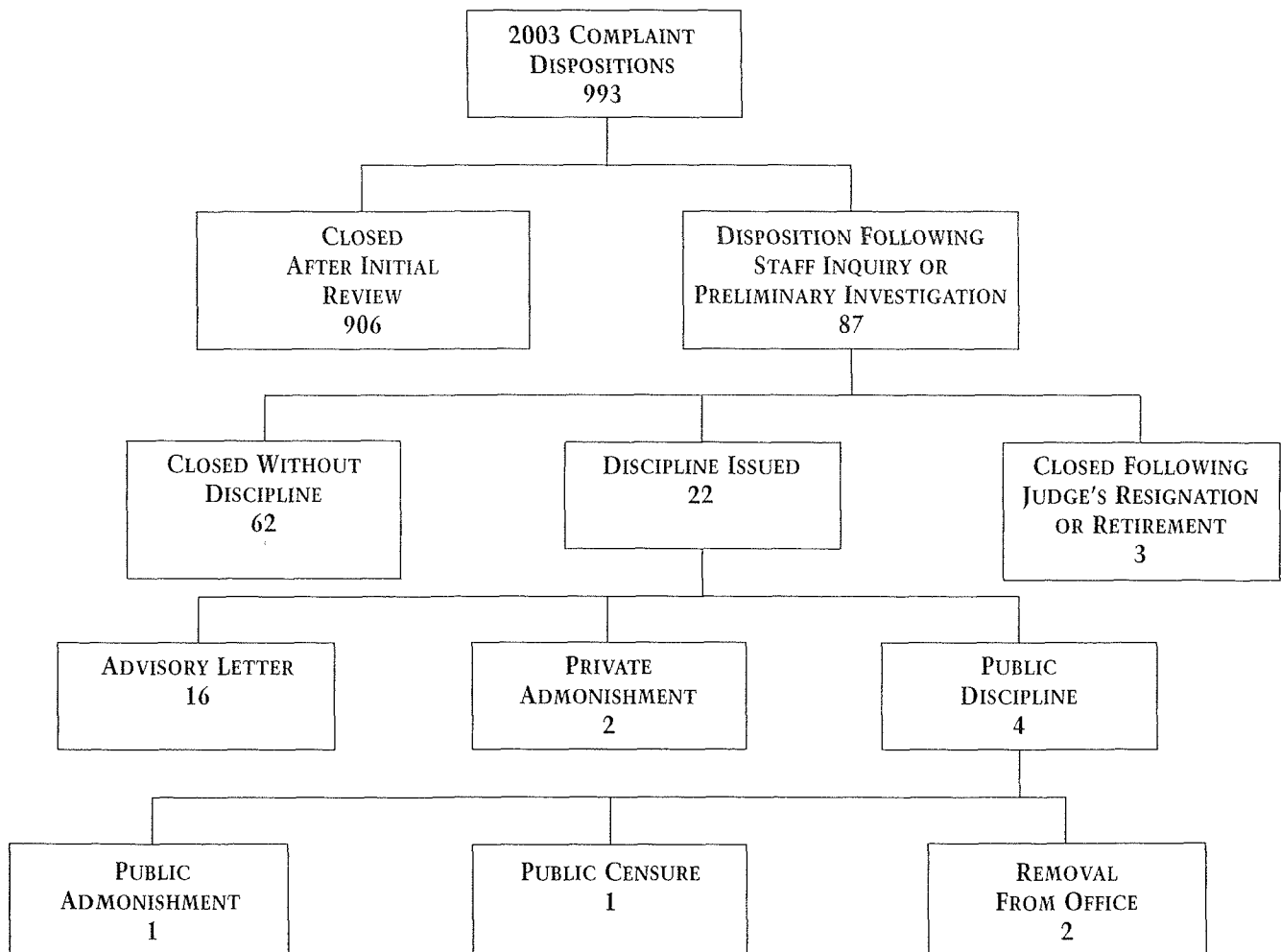
Following staff inquiry or preliminary investigation, another 62 matters were closed without any action. In these cases, investigation showed that the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation.

<sup>1</sup> The *Platt* matter was pending before the Supreme Court at the end of 2002 and was not included in the complaint disposition statistics for 2002. It is included in the 2003 statistics.

<sup>2</sup> The *Van Voorhis* matter is not included in the complaint disposition statistics for 2003.

<sup>3</sup> Staff inquiries and preliminary investigations in the cases closed in 2003 may have commenced in prior years. Cases or portions of cases pending at the end of 2003 are not included in complaint disposition statistics.

2003  
COMPLAINT DISPOSITIONS



### **Closed With Discipline**

In 2003, the Commission removed two judges from office, issued one public censure, one public admonishment, two private admonishments and 16 advisory letters. Each of these dispositions is summarized in Section IV.

A chart of the types of judicial conduct which resulted in discipline in 2003 appears on page 15. The types of conduct are listed in order of prevalence. The numbers on the chart indicate the number of times each type of conduct resulted in discipline. A single act of misconduct is counted once and is assigned to the category most descriptive of the wrongdoing. If separate acts of different types of wrongdoing were involved in a single case, each different type of conduct was counted and assigned to an ap-

propriate category. If the same type of conduct occurred on multiple occasions in a particular case, however, it was counted only once.

### **Resignations and Retirements**

The Constitution authorizes the Commission to continue proceedings after a judge retires or resigns and, if warranted, to impose discipline upon the former judge. When a judge resigns or retires during proceedings, the Commission determines whether to continue or close the case and, if the case is closed, whether to refer the matter to another entity such as the State Bar. In 2003, the Commission closed three matters without discipline when the judge resigned or retired with an investigation pending.

III.  
2003 STATISTICS - ACTIVE AND FORMER JUDGES

---

TYPES OF CONDUCT RESULTING IN DISCIPLINE\*

DEMEANOR, DECORUM  
(includes inappropriate humor)  
[9]

DISQUALIFICATION,  
DISCLOSURE AND  
RELATED RETALIATION  
[6]

BIAS OR APPEARANCE OF BIAS  
(NOT DIRECTED TOWARD A  
PARTICULAR CLASS)  
(includes embroilment, prejudice,  
favoritism)  
[6]

EX PARTE COMMUNICATIONS  
[5]

OFF-BENCH ABUSE OF OFFICE  
IN PERFORMANCE OF  
JUDICIAL DUTIES  
[4]

ABUSE OF  
CONTEMPT/SANCTIONS  
[3]

IMPROPER POLITICAL  
ACTIVITIES  
[2]

FAILURE TO ENSURE RIGHTS  
[2]

MISCELLANEOUS OFF-BENCH  
CONDUCT  
[1]

GIFTS/LOANS/FAVORS  
TICKET-FIXING  
[1]

MISUSE OF COURT RESOURCES  
[1]

BIAS OR APPEARANCE OF BIAS  
(TOWARD A PARTICULAR CLASS)  
[1]

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

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

SEXUAL HARASSMENT/  
INAPPROPRIATE WORKPLACE  
GENDER COMMENTS  
[1]

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

---

## IV. CASE SUMMARIES



### PUBLIC DISCIPLINE

Public discipline decisions issued by the Commission in 2003 are summarized in this section. The full text of these decisions is available from the Commission office and on the Commission's Web site at <http://cjp.ca.gov>.

#### REMOVAL FROM OFFICE BY THE COMMISSION

In February of 2003, the Supreme Court denied review of the Commission's August 2002 order of removal in Inquiry Concerning Judge Michael E. Platt, No. 162. Because the petition was pending at the end of 2002, this matter was not included in the 2002 case disposition statistics. It has been included in the 2003 statistics in Section III.

Two judges were ordered removed from office by the Commission in 2003: Judge Bruce Van Voorhis, Inquiry No. 165, and Judge D. Ronald Hyde, Inquiry No. 166.

Judge Van Voorhis subsequently filed a petition for review in the California Supreme Court which was denied in September 2003. At the end of 2003, the judge submitted a petition for writ of certiorari in the United States Supreme Court. For this reason, this matter has not been included in the 2003 case disposition statistics.

Judge Hyde did not seek review by the California Supreme Court.



### Order of Removal of Judge Michael E. Platt, August 5, 2002

Judge Michael E. Platt of the San Joaquin County Superior Court was ordered removed from office by the Commission on August 5, 2002, for willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission's action concluded formal proceedings, during which there was a hearing before special masters and an appearance before the Commission. On February 19, 2003, the California Supreme Court denied the judge's petition for review.

The Commission determined that Judge Platt improperly ordered dismissal of three traffic tickets based on his personal relationship with a man from whom he had borrowed \$3,500, a debt that had been discharged in bankruptcy. The judge dismissed a traffic ticket issued to the man and a ticket issued to the man's niece. The judge also attempted to dismiss a ticket issued to the man's wife. All of the judge's actions were taken after ex parte communications from the man's wife. The Commission adopted the special masters' finding that "ticket fixing is a quintessential bad act of a judge," and is "an abuse of power that citizens unquestionably understand and are suspicious about." The Commission adopted the masters' finding that when Judge Platt ordered dismissal of the tickets, he knew that his actions were wrong, although he acted out of a desire to help others.

IV.  
CASE SUMMARIES

---

The Commission concluded that the judge's actions were willful misconduct.

The Commission determined that Judge Platt also improperly ordered dismissal of a traffic ticket issued to the minor son of a reserve deputy sheriff. After ex parte communications with his courtroom bailiff about the matter, Judge Platt initiated an ex parte communication with the California Highway Patrol officer who had issued the ticket. Thereafter, Judge Platt caused the ticket to be dismissed. The Commission adopted the masters' findings that the judge had the ticket dismissed to help the son of an acquaintance, and knew when he took the action that it was wrong. His actions were willful misconduct.

The Commission next found that Judge Platt telephoned a court commissioner and said that an individual, whom he identified by name and as the judge's godfather, had received a traffic ticket. He also said that the man was active in the community. The Commission found that conveying this information was an attempt to influence the commissioner and was prejudicial misconduct.

In another instance, the Commission found that Judge Platt visited the arraignment judge and asked him to grant an "own recognizance" release to the defendant in a case. Judge Platt told the other judge that the defendant was an acquaintance or family member of an acquaintance of Judge Platt's. The Commission found that Judge Platt was attempting to use the prestige of his office to advance the personal interests of an acquaintance; his actions constituted willful misconduct.

In another matter, the Commission found that Judge Platt telephoned another judge about a juvenile dependency matter that was before that judge. The case involved a parent who had been a client of Judge Platt's when he practiced law. Judge Platt told the judge about a communication he had received from one of the parents in the case. The Commission found that Judge Platt's conveyance of substantive information about the parties and the case constituted

improper action.

In determining that removal was the appropriate sanction, the Commission pointed out that Judge Platt had received a private admonishment from the Commission in 1997 for soliciting attorneys who appeared before him to purchase raffle tickets for a church fundraiser and tickets to a fundraiser for a childcare center, and for selling candy bars at court to benefit his children's parochial school. The judge had been cautioned by colleagues against such activities before being admonished. The Commission noted that Judge Platt, in accepting the private admonishment, had stated in a letter that he would conduct himself and his affairs in compliance with the Code of Judicial Ethics in all areas. The Commission also stressed that Judge Platt's responses to the allegations raised concerns about his truthfulness, noting in particular that his testimony that he did not recognize an ethical problem with dismissing the tickets at the time he dismissed them was not credible. The Commission concluded that despite some factors in mitigation, removal was necessary for protection of the public, enforcement of rigorous standards of judicial conduct, and maintenance of public confidence in the integrity and independence of the judicial system.

In a separate statement of dissent setting forth her position that Judge Platt should be publicly censured, Commission member Ms. Ramona Ripston expressed the view that, in light of Judge Platt's motivations, personal history, and record as a judge, as well as his public and private apologies, unequivocal acceptance of responsibility, and effort to improve future performance, public censure would be adequate discipline.

Commission members Judge Risë Jones Pichon, Justice Vance W. Raye, Ms. Lara Bergthold, Judge Madeleine I. Flier, Mr. Marshall B. Grossman, Mr. Michael A. Kahn, Mrs. Crystal Lui, Ms. Barbara Schraeger, and Dr. Betty L. Wyman voted in favor of all the findings and conclusions and in the removal of Judge Platt from office. Commission member Ms. Ramona



Ripston voted in favor of all the findings and conclusions, but voted to publicly censure Judge Platt. One public member position was vacant at the time of the decision.



**Order of Removal of  
Judge Bruce Van Voorhis,  
February 27, 2003**

Judge Bruce Van Voorhis of the Contra Costa County Superior Court was ordered removed from office by the Commission on February 27, 2003, for willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission's actions concluded formal proceedings, during which there was a hearing before special masters and an appearance before the Commission. The judge filed a petition for review in the California Supreme Court, which was denied on September 10, 2003. On December 9, 2003, the judge submitted a petition for writ of certiorari in the United States Supreme Court.

The Commission determined that the judge engaged in prejudicial misconduct when he made statements giving the appearance that he had made a legally questionable ruling during a criminal trial to see how an inexperienced prosecutor would react.

The Commission found that Judge Van Voorhis mistreated attorneys on numerous occasions. In one criminal trial, the judge interjected a lengthy series of questions and comments about defense counsel's cross-examination that disparaged the attorney's professional competence; these included comments about what the attorney should have learned in law school. This constituted prejudicial misconduct. In another criminal trial, the judge questioned a prosecutor in a sarcastic and condescending manner in the presence of the jury, suggesting through his questions that she was acting inappropriately and perhaps unethically in seeking to introduce certain evidence that she reason-

ably and in good faith viewed as admissible. This was willful misconduct because the purpose of the judge's comments was to ridicule the prosecutor and to vent the judge's anger or frustration. In addition, the judge's attack on the prosecutor's personal motives and his ridicule of her appeared to show conscious disregard for the limits of the judge's authority, since the judge previously had been publicly reprimanded by the Commission for poor demeanor, and had been cautioned verbally and in writing about his demeanor by the presiding judge two weeks before the incident. In another matter, the judge engaged in prejudicial misconduct when he told a deputy public defender born in Ecuador that he should "lose" his accent. In a criminal trial, the judge in the presence of the jury engaged in a lengthy, antagonistic critique of a prosecutor's performance and ethics. The judge attacked the prosecutor's legal training, professional competence, and motives, and accused her of breaking the law, when it should have been obvious to him that the prosecutor, who was inexperienced, had innocently misunderstood what she could do. This was willful misconduct because the judge's personal attacks were made for the purpose of venting his anger or frustration. In another criminal trial, the judge angrily ordered a prosecutor to tell the jury that relevant evidence, which she in good faith was attempting to introduce, did not "mean anything." This was willful misconduct, because the judge admittedly knew of no authority that permitted him to order a lawyer to confess her mistakes to the jury, and because the judge's comments were made for the purpose of venting his anger or frustration. In the same trial, the judge in the presence of the jury angrily badgered the prosecutor into acquiescing in the judge's view that certain evidence was relevant. This was willful misconduct, as the judge's comments were made for the purpose of venting his anger or frustration.

The Commission also found that the judge engaged in mistreatment of court staff. In one instance he yelled at a temporary court clerk and threw a stack of files; the clerk was reduced to tears. In a second incident, the judge angrily

IV.  
CASE SUMMARIES

---

berated an experienced court clerk in open court for swearing in a bailiff in the customary manner. In a third matter, the judge publicly humiliated a new security deputy because the judge was frustrated with the sheriff's department when an inmate was not brought to court. Each of these actions constituted prejudicial misconduct.

In addition, the Commission found that Judge Van Voorhis engaged in prejudicial misconduct when he made comments critical of the grammar used in a question submitted by the jury; his comments were condescending, disparaging, and embarrassing to the jury foreperson and the other jurors.

The Commission identified five considerations relevant to its determination of appropriate discipline of Judge Van Voorhis: (1) the number of acts of misconduct; (2) the effect of prior discipline on the judge's conduct; (3) whether the judge appreciates the inappropriateness of his actions; (4) whether the judge is likely to continue to engage in unethical conduct; and (5) the impact of the judge's misconduct on the judicial system. The Commission also noted that any factors in mitigation advanced by the judge would be considered.

In turning to the first factor, the Commission noted that there does not appear to be any minimum number of acts required for removal, and cited past cases in which removal has been based on a pattern of misconduct. The Commission pointed out that Judge Van Voorhis had engaged in four acts of willful misconduct and seven instances of prejudicial misconduct, and that these instances were part of a persistent pattern of abuse and arbitrary conduct. Turning to prior discipline, the Commission noted that Judge Van Voorhis had been publicly reprimanded in 1992 for conduct that included mistreatment of jurors, a judicial colleague, court staff and attorneys. In addition, he had been privately admonished in 1994 for issuing subpoenas in his own dissolution case and signing them using his official title. Finally, he had been advised both orally and in writing by his presid-

ing judge in 1999 that he still had a demeanor problem that needed to be addressed. On the question of whether the judge appreciated his misconduct, the Commission noted that Judge Van Voorhis' actions and testimony showed a lack of such appreciation. The Commission found that it was "close to a certainty" that Judge Van Voorhis, if allowed to remain on the bench, would continue to violate the Code of Judicial Ethics. Finally, the Commission stated that Judge Van Voorhis' misconduct seriously undermined the public's confidence in and respect for the judicial system.

The Commission considered in mitigation the judge's offer of evidence provided by attorneys of his good judicial character; the Commission also noted that the judge's industriousness and efficiency, as well as his intensity and his years on the bench, were additional possible mitigating factors. The Commission found little weight in these factors, however, pointing out that the judge's intensity may have contributed to his impatience and inability to appreciate the perspectives of others, and his years on the bench were not mitigating since he had engaged in a pattern of misconduct during his time in judicial office.

The Commission concluded that removal was the appropriate sanction.

Commission members Judge Risë Jones Pichon, Ms. Lara Bergthold, Judge Madeleine I. Flier, Mr. Michael A. Kahn, Mrs. Crystal Lui, Mrs. Penny Perez, Ms. Barbara Schraeger, and Dr. Betty L. Wyman voted in favor of all the findings and conclusions and in the removal of Judge Van Voorhis from office. Commission member Mr. Marshall B. Grossman did not participate.

Commission members Justice Vance Raye and Ms. Ramona Ripston dissented in part from the Commission's decision. Justice Raye's dissent expressed the view that the judge's mistreatment of counsel did not constitute willful misconduct, and that the judge's comments to the jury did not constitute misconduct. The dissent also expressed the view that Judge Van Voorhis' conduct did not warrant removal from office,

when viewed in comparison with the conduct of other judges who had been removed or censured. Ms. Ripston's dissent agreed with Justice Raye's that removal was too harsh a sanction for the judge's conduct; Ms. Ripston noted, however, that some of the past judicial conduct cases discussed in Justice Raye's dissent might be decided differently today, particularly those raising issues of race and gender bias.



**Order of Removal of  
Judge D. Ronald Hyde,  
September 23, 2003**

Judge D. Ronald Hyde of the Alameda County Superior Court was ordered removed from office by the Commission on September 23, 2003, for willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission's action concluded formal proceedings, during which there was a hearing before special masters and an appearance before the Commission.

The Commission found that Judge Hyde had a court clerk obtain for him confidential Department of Motor Vehicles information about a driver who had "cut him off" as he was driving to court. After the judge reviewed the DMV records, he called the police department to report the driver, and said that he wanted the police to issue a cautionary warning. The Commission determined that the judge's use of his judicial position to obtain confidential information that did not pertain to court business constituted willful misconduct in office. The Commission found that the judge was acting in his judicial capacity and that he was acting for a purpose other than the faithful discharge of judicial duties. In addition, the Commission found that the judge knew that he was acting beyond his lawful judicial power when he obtained the restricted DMV records, as he had been publicly censured in 1996 for conduct that included asking court employees to access DMV records to obtain information about motorists that was not

related to court business. The Commission also found that the judge wrongly used nonpublic information acquired in a judicial capacity for a purpose unrelated to judicial duties.

The Commission determined that Judge Hyde engaged in prejudicial misconduct when he told the county's new court executive officer a story about individuals having oral sex in the courthouse parking lot, using the term "blow job," during a gathering in a courthouse break room in the presence of other court employees.

The Commission found that after a court clerk called Judge Hyde's daughter to tell her that a night court trial date on a small claims case she had filed would have to be rescheduled because Judge Hyde had been assigned to preside that night, Judge Hyde told the court clerk to keep the date. Judge Hyde then personally called a pro tem judge he knew well and asked him to preside that night. The Commission determined that Judge Hyde's interference with the rescheduling of his daughter's case constituted prejudicial misconduct, since the judge had acted in the case despite his disqualification and had used his judicial authority to confer a benefit on his daughter. The Commission also found that Judge Hyde engaged in prejudicial misconduct when he called a pro tem with whom he had a social relationship to preside on the night his daughter's case was scheduled, noting that this action at a minimum created the appearance that the judge was using his position to gain an advantage for his daughter.

The Commission next found that Judge Hyde engaged in improper action when he failed to provide the prosecutor or the defense attorney with a copy of a letter he wrote to an individual who was on probation, and failed to give the prosecutor notice of his letter or an opportunity to respond. The probationer had written to Judge Hyde, asking to have his probation terminated early. Another judge acted on the probationer's request while Judge Hyde was on vacation, terminating his probation early and dismissing the case. When Judge Hyde returned from vacation, he wrote to the probationer, tell-

IV.  
CASE SUMMARIES

---

ing him that he was terminating his probation early, and enclosed a form for the probationer to sign and submit to the court allowing the plea of guilty to be withdrawn and the matter dismissed. This was an improper *ex parte* communication.

The Commission determined that Judge Hyde engaged in prejudicial misconduct when he failed to disclose, at a hearing where he granted another defendant's request for early termination of probation, that he had a social relationship with the defendant's family and that before the hearing he had an *ex parte* telephone conversation with the defendant about her request for early termination of probation.

The Commission determined that Judge Hyde engaged in prejudicial misconduct when he acted as an advocate by assisting the wife of a criminal defendant, who had angered him, in obtaining a fee waiver order so that she could quickly file and serve dissolution of marriage papers.

The Commission determined that Judge Hyde committed willful misconduct when, after being disqualified in a criminal case, he telephoned the judge to whom the case had been reassigned and asked that judge to "back him up" on a bail increase for the defendant.

The Commission pointed out that Judge Hyde had previously received a severe public censure, a private admonishment, and three advisory letters. In 1992, the judge received an advisory letter for referring to himself as the "vacuum cleaner for the court" and inquiring at the beginning of a proceeding which party had refused to stipulate to a *pro tem* judge. In 1996, Judge Hyde received an advisory letter for four types of conduct: (1) personally participating in the solicitation of funds or in-kind donations for charitable organizations from persons other than judges and permitting the use of the prestige of judicial office for fundraising, (2) telling a female visitor to the court that he could get her a job, taking her to lunch, and giving her a rose from the garden he cultivated on court property, (3) using nicknames for female court employees

that were or appeared to be demeaning or to have sexual connotations, and (4) making comments to a defendant involved with drugs that gave rise to an appearance of embroilment. Also in 1996, the judge received a severe public censure for conduct that included asking court employees to access DMV records for purposes not related to court business, using court employees to perform typing, photocopying, babysitting and other personal services for him and for a club and a charity, making comments to a clerk/administrator who spoke with him about his use of the secretary's time that appeared to be intimidating, and making improper sexually-related comments to female court employees. The Commission noted that the stipulated censure was entered only after Judge Hyde represented that he was aware of the inappropriateness of his actions and assured the Commission that the challenged conduct had ceased and would not resume. Thereafter, in 1997, Judge Hyde received a private admonishment for presiding in a probation violation matter without either disqualifying himself or disclosing that he had engaged in an *ex parte* telephone conversation about the case with the defendant's employer, a close friend of the judge's. Finally, in 1998, Judge Hyde received an advisory letter for providing legal and judicial assistance to a *pro per* county jail inmate in her unlawful detainer case.

The Commission found that in the current matter Judge Hyde had displayed a lack of candor in his filings with the Commission as illustrated by seven examples of statements in the judge's verified answer that differed from admissions made during his testimony during the hearing before the special masters. In addition, the Commission noted that the special masters had expressed skepticism about the judge's candor in some of his testimony at the hearing before them.

In turning to the question of appropriate discipline, the Commission considered five factors: (1) the number of acts of misconduct; (2) the effect of prior discipline on the judge's conduct, (3) concerns regarding the judge's integrity; (4)

whether the judge was likely to continue to engage in unethical conduct; and (5) the impact of the matter on the judicial system. In addition, the Commission considered mitigating evidence offered by the judge.

As to the number of acts of misconduct, the Commission found that Judge Hyde engaged in two acts of willful misconduct, four acts of prejudicial misconduct, and one instance of improper action in a fifteen-month period, and that these acts of misconduct followed five prior disciplines for over twenty other acts of misconduct. The Commission noted Judge Hyde's extensive record of prior discipline, and that the judge had repeated wrongful acts identical to, or similar to, the previously disciplined misconduct. The Commission also pointed out that concerns about the judge's integrity were raised by the discrepancies between his filings and his testimony, and by the masters' comments concerning his credibility. The Commission stated that Judge Hyde's repetition of misconduct for which he had been previously disciplined suggested that he could not or would not conform his behavior to the standards of judicial conduct. The Commission found that Judge Hyde's repeated acts of misconduct had a negative effect on the judicial system and on court staff. In mitigation, the Commission considered Judge Hyde's evidence that he had concern for his community and was innovative, as well as testimony from a number of attorneys about the judge's contributions to his community, good character, and good judicial performance. The Commission noted, however, that the weight accorded to the judge's concern for the community was lessened by the fact that his 1996 advisory letter and 1996 public censure chastised him for not keeping his community and judicial activities separate.

The Commission concluded that the appropriate sanction was removal. Commission members Judge Risë Jones Pichon, Justice Vance W. Raye, Judge Madeleine I. Flier, Mr. Marshall B. Grossman, Mr. Michael A. Kahn, Mrs. Crystal Lui, Mr. Jose C. Miramontes, Mrs. Penny

Perez, Ms. Ramona Ripston, and Ms. Barbara Schraeger voted in favor of all the findings and conclusions and in the removal of Judge D. Ronald Hyde from judicial office. Commission member Dr. Betty L. Wyman did not participate.

#### PUBLIC CENSURE BY THE COMMISSION

In 2003, the Commission imposed one public censure. The judge was also barred from receiving assignments, appointments or a reference of work from any California state court.



#### Public Censure of Judge Vincent J. McGraw, April 3, 2003

Former Judge Vincent J. McGraw, who resigned from the Fresno County Superior Court, was publicly censured and barred from receiving any assignment, appointment or reference of work from any California state court for prejudicial misconduct. The discipline was imposed pursuant to Commission Rule 127 (Discipline by Consent).

The Commission found that after being privately admonished by the Commission for frequent use of his court computer to access Internet sites containing sexually explicit materials, Judge McGraw made false and misleading statements about the matter during two interviews with a television reporter, conducted during his unsuccessful reelection campaign. In those statements, Judge McGraw repeatedly denied that he had ever used his court computer to access Internet sites containing sexually explicit materials, denied that he had spoken with his then-presiding judge about the matter, and denied that he had been disciplined by the Commission. Judge McGraw subsequently gave a public statement in which he retracted his denials, and said that he should have responded with "no comment."

The Commission pointed out that honesty is a "minimum qualification" expected of every judge. The Commission determined that Judge

IV.  
CASE SUMMARIES

---

McGraw's misrepresentations constituted prejudicial misconduct, that is, "conduct which would appear to an objective observer to be not only unjudicial conduct, but conduct prejudicial to the public esteem for the judicial office." The Commission also found that Judge McGraw had engaged in prejudicial misconduct because he committed unjudicial conduct in bad faith while not acting in a judicial capacity. The Commission pointed out that bad faith, in this context, means "a culpable mental state beyond mere negligence and consisting of either knowing or not caring that the conduct being undertaken is unjudicial and prejudicial to public esteem."

The Commission next found that Judge McGraw engaged in prejudicial misconduct when he threatened to bring legal action against the television station if it published the allegations that he had denied. The judge was attempting to dissuade the station from publishing facts about him that were true and that he knew were true.

In a separate matter, the Commission found that during his unsuccessful reelection campaign, Judge McGraw committed prejudicial misconduct when he engaged in, or involved court employees in, improper campaign activities in and around the courthouse.

The judge distributed to several hundred court and county employees copies of a Petition in Lieu of Filing Fees and a request that recipients collect signatures on a petition in support of his candidacy. The judge provided a stamped envelope addressed to himself at his home address for return of the petitions. Although the requests for support were created using Judge McGraw's own private resources, he utilized the court's interoffice mail system to distribute some or all of his requests. Some of the persons from whom the judge requested support were court employees subordinate to him. The judge did not include a caution against solicitation of signatures during working hours in court facilities; when this omission was brought to his attention, he agreed to send a cautionary e-mail message to all affected court and county employ-

ees, and not to use any petitions circulated in this manner to county or court employees.

In addition, Judge McGraw distributed a campaign brochure containing a photograph of himself and members of his judicial staff. He did not obtain the permission or consent of the staff before including the photograph in his brochure. When a complaint was brought to his attention, he discontinued distribution of the brochure and reprinted it, omitting the photograph.

Judge McGraw engaged court employees and staff in conversations about his election campaign during working hours, including asking employees to obtain signatures on a petition in lieu of filing fees and asking for other assistance.

On one occasion, Judge McGraw left the courthouse for campaign-related activities after his 8:30 a.m. calendar and did not return in time for the 10:00 calendar.

The Commission, noting that Judge McGraw had lost his bid for reelection, nonetheless determined that issuance of a censure and bar to assignment was required for "the protection of the public, the enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity and independence of the judicial system." The Commission stated that its decision "reassures the public that such misconduct will be investigated and disciplined even after a judge leaves office." The Commission also stated that censure and bar to assignments was the maximum sanction it could levy against a former judge, and that this was the appropriate sanction for a judge who had knowingly uttered falsehoods to a television reporter, during his campaign for reelection, in an effort to keep information from the public.

Commission members Judge Risë Jones Pichon, Justice Vance W. Raye, Ms. Lara Bergthold, Judge Madeleine I. Flier, Mr. Marshall B. Grossman, Mrs. Crystal Lui, Mrs. Penny Perez, Ms. Ramona Ripston and Ms. Barbara Schraeger voted to impose the public censure and bar from receiving assignments. Commis-

sion members Mr. Michael A. Kahn and Dr. Betty L. Wyman did not participate.

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

The Commission may publicly or privately admonish a judge for improper action or dereliction of duty. Public admonishments are issued in cases when the improper action or dereliction of duty is more serious than conduct warranting a private admonishment. In 2003, the Commission publicly admonished one judge.



#### **Public Admonishment of Judge James L. Roeder, December 16, 2003**

Judge James L. Roeder of the Placer County Superior Court was publicly admonished for conduct that constituted, at a minimum, improper action, pursuant to Commission Rule 115 (Notice of Intended Public Admonishment).

The Commission found that while presiding over his court's felony arraignment calendar, for a period of at least a year, Judge Roeder maintained a practice of stating, for the record, that defendants had waived their rights to have a speedy preliminary examination without obtaining the defendants' personal waivers of those rights, as required by law. In one illustrative example, the judge asked a defendant at arraignment whether he wished to hire an attorney or have one appointed; when the defendant said that he was requesting a court-appointed attorney, the judge said that he would appoint the public defender, provided a copy of the felony complaint, and continued:

Waiving formal arraignment, stipulating to advisement of constitutional rights, not guilty pleas will be entered. Set this for a conference Tuesday, January 15, at 8:30 in this courtroom. Waiving time for the preliminary examination both 10 days and 60 days, that will not be scheduled. There is a parole hold. I'll set bail at \$25,000 on this case.

Judge Roeder entered these waivers despite the fact that Penal Code section 859b specifies that (1) when a defendant is in custody, a preliminary hearing may not be set or continued beyond ten court days from the time of arraignment, unless the defendant personally waives the right to a hearing within ten days, and (2) when a defendant is out of custody, a preliminary hearing may not be set or continued beyond sixty court days from the time of arraignment, unless the defendant personally waives the right to a hearing within sixty days. If the defendant's rights under this statute are violated, the felony complaint must be dismissed. In the case above, the defendant filed a motion to dismiss averring that he had no opportunity to speak to the attorney appointed for him at the time of arraignment, either before or during the arraignment, and did not personally waive his right to a speedy preliminary hearing. The felony case against him was dismissed, as required by law, for the violation of his rights at arraignment.

The Commission also found that during the same one-year period, Judge Roeder maintained a practice of stating, for the record, that defendants appearing in custody before him for arraignment on misdemeanor charges had waived their rights to have a speedy trial, without obtaining the defendants' personal waivers of those rights, as required by law. In one illustrative matter, the judge asked a defendant appearing in custody without counsel if he wished to hire his own attorney or have one appointed; when the defendant said that he was requesting a court-appointed attorney, the judge said that he would appoint the public defender, provided a copy of the misdemeanor complaint, and then stated:

Waiving formal arraignment, stipulating to advisement of constitutional rights, not guilty pleas will be entered....Waiving time for the misdemeanor jury trial, that will not be scheduled....

Judge Roeder entered these waivers despite the fact that Penal Code section 1382(a)(3), which implements the constitutional right to a

IV.  
CASE SUMMARIES

---

speedy trial, specifies that a defendant who is in custody at the time of arraignment or plea on a misdemeanor must be brought to trial within thirty days after the arraignment or plea. While a defendant can waive the right to be tried within thirty days, a defendant not represented by counsel may not be deemed to have done so unless the court has explained to the defendant the rights provided by the statute and the effect of agreeing to a trial date beyond the thirty-day limit. (Penal Code section 1382(c).)

The Commission found that the judge's practices were legal error that also represented a disregard for the statutory and constitutional rights of the defendants. Although Judge Roeder's apparent motivation was to accommodate defense counsel by giving them more time, this accommodation was accomplished at the expense of the defendants' rights.

The Commission concluded that issuance of a public admonishment was required for at least three reasons. First, Judge Roeder abdicated his judicial responsibility to ensure the rights of criminal defendants by his practice of stating at arraignment proceedings that defendants had waived their rights to a preliminary examination or misdemeanor trial within applicable time limits without properly obtaining the defendants' consent to a waiver of those rights, as prescribed by law. Second, for at least one year, the public observed Judge Roeder state for the record at arraignment that defendants had waived their rights without actually obtaining any input from the defendants. Third, Judge Roeder's practices created inaccurate and misleading court records, reflecting that defendants had waived their rights to have their preliminary hearings or misdemeanor trials within applicable time limits when, in fact, the defendants had not consented to the purported waivers.

In mitigation, the Commission noted Judge Roeder's statements acknowledging his error, and his statement that he had altered his arraignment practice by asking each defendant if he or she personally agreed with the time waiver.

Commission members Judge Risë Jones

Pichon, Justice Vance W. Raye, Mr. Marshall B. Grossman, Judge Frederick P. Horn, Mr. Michael A. Kahn, Mrs. Crystal Lui, Mrs. Penny Perez, and Ms. Barbara Schraeger voted to impose a public admonishment. Mr. Jose C. Miramontes did not participate. Two public member positions were vacant at the time of the decision.

### PRIVATE DISCIPLINE

#### PRIVATE ADMONISHMENTS

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

A private admonishment also may be used to elevate discipline in subsequent proceedings. This is particularly true in cases where the judge repeats the conduct that was the subject of the earlier discipline.

In 2003, the Commission imposed two private admonishments. The admonishments are summarized in this section. In order to maintain confidentiality, it has been necessary to omit certain details, making these summaries less informative than they otherwise would be. Because these examples are intended in part to educate judges and the public, and to assist judges in avoiding inappropriate conduct, the Commission believes it is better to describe them in abbreviated form than to omit them altogether.

1. A judge made sexually suggestive gestures and comments to a court reporter, an employee of the prosecutor's office and a courthouse visitor. The judge behaved offensively in front of court staff. The judge also failed to disclose when a friend and former law partner appeared before the judge, under circumstances that required disclosure but not recusal. The judge also engaged in an ex parte contact with an attorney immediately prior to a hearing at which the attorney appeared before the judge.
2. A judge's remarks concerning litigants in two separate matters displayed bias and offensive demeanor.



## ADVISORY LETTERS

The Commission advises caution or expresses disapproval of a judge's conduct in an advisory letter. The Commission has issued advisory letters in a variety of situations. As noted by the California Supreme Court in *Oberholzer v. Commission on Judicial Performance* (1999) 20 Cal.4th 371, "Advisory letters may range from a mild suggestion to a severe rebuke." (Id. at p. 393.) An advisory letter may be issued when the impropriety is isolated or relatively minor, or when the impropriety is more serious but the judge has demonstrated an understanding of the problem and has taken steps to improve. An advisory letter is especially useful when there is an appearance of impropriety. An advisory letter might be appropriate when there is actionable misconduct offset by substantial mitigation.

In 2003, the Commission issued 16 advisory letters. These advisory letters are summarized in this section.

### Bias

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

1. In a civil matter, a judge fraternized with one of the litigants during trial recesses by conversing and examining one of the trial exhibits with the litigant.

### Demeanor and Decorum

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

2. A judge failed to be "patient, dignified and courteous" toward a medical witness, and improperly threatened the witness with contempt.

3. While ruling on an attorney's request, the judge's treatment of the attorney was discourteous and callous.

4. A judge made a gratuitous comment about sending a pro per litigant to jail that was likely to be perceived as a threat.

### Ex Parte Communications

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

5. A judge met ex parte with jurors during deliberations.

### Case-Related Abuse of Authority

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

6. A judge improperly invoked judicial authority in addressing an administrative problem.

7. A judge's revocation of a criminal defendant's own-recognition release gave the appearance of punishing the defendant for delays in the proceedings.

### Failure to Ensure Rights

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

8. A judge granted an ex parte application for modification of child visitation without notice of the ex parte application having been given to the affected parent.

### 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

IV.  
CASE SUMMARIES

---

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

9. A judge engaged in an abuse of authority by imposing additional conditions to a sanctions order after the sanctions were paid.

**More Than One Type of Misconduct**

Some cases involved more than one type of misconduct.

10. In a family law matter, the judge made remarks concerning the litigants that were undignified and disparaging. In another family law matter, the judge's remarks reflected a pattern of embroilment. The judge responded to criticism of the case in a manner that appeared to constitute an abuse of authority. A more severe sanction was not imposed because the judge agreed to and did attend appropriate educational programs.

11. A judge's treatment of jurors undermined public confidence in the integrity and impartiality of the judiciary. The judge also appeared to engage in campaign activities in the courthouse during court hours.

12. In one matter, the judge failed to disclose on the record a relationship with the defendant's family. In another matter, the judge created the appearance of favoritism by issuing a ruling on the judge's own motion based in part on personal knowledge of the defendant and on information received ex parte. The judge failed to disqualify from the matter, notwithstanding the judge's personal knowledge of evidentiary facts, and

failed to disclose on the record that the judge was familiar with the defendant's family. In a third matter, the judge discussed a pending case with an attorney who was not involved in the case. The Commission strongly urged the judge to obtain further ethics education.

13. In one case, the judge made remarks indicating prejudgment. In another matter, the judge improperly failed to recuse. In a third matter, the judge struck another judge's order disqualifying the judge from the case. In another matter, the judge made a disparaging remark about a government attorneys' office. In addition, the judge's treatment of court staff failed to comply with Canon 3B(4), requiring judges to be "patient, dignified and courteous" toward those with whom they deal in an official capacity.

14. A judge commenced a contempt proceeding without affording the alleged contemnor notice of the charges or the hearing, and gave him an opportunity to be heard only after finding him in contempt. Because the judge had become embroiled, the judge should have recused.

15. A judge frequently used a member of court staff to assist the judge with personal matters. The judge presided over a criminal matter without disclosing the judge's past friendship with—and current antipathy toward—the victim.

16. A judge made misleading public statements that diminished public confidence in the integrity of the judiciary. During a court proceeding, the judge made a disparaging remark about other judicial officers.

---

## V. SUBORDINATE JUDICIAL OFFICERS



Since June of 1998, the Commission has shared authority with local courts over the discipline of "subordinate judicial officers" — attorneys employed by California's state courts to serve as court commissioners and referees. In 2003, there were 458 authorized subordinate judicial officer positions in California.

SUBORDINATE JUDICIAL OFFICERS AUTHORIZED POSITIONS As of December 31, 2003	
Court Commissioners .....	404
Court Referees .....	54
Total .....	458

### COMMISSION PROCEDURES

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

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

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

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

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

V.  
SUBORDINATE JUDICIAL OFFICERS

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

### 2003 STATISTICS

#### Complaints Received and Investigated

In 2003, 86 new complaints about subordinate judicial officers were reviewed by the Commission. Because the local courts were required to conduct the initial investigations, the Commission's function primarily entailed reviewing the local courts' actions to determine whether there was an abuse of discretion in the disposition of the complaints.

#### RULE UNDER WHICH NEW COMPLAINTS WERE SUBMITTED

Rule 109(c)(1) – appeal from local court's disposition .....	83
Rule 109(c)(2) – at the request of a local court .....	1
Rule 109(c)(3) – notification by local court of discipline .....	1
Rule 109(c)(4) – notification by local court of resignation with investigation pending .....	1

#### Cases Concluded

In 2003, the Commission concluded its review of 86 complaints involving subordinate judicial officers. All of these complaints were closed by the Commission because the Commission determined that the local courts had not

abused their discretion in the handling or disposition of the complaints. These matters included one case in which the local court had terminated the subordinate judicial officer and one case in which a written reprimand had been imposed by the local court. In both of these matters, the Commission determined that no further proceedings by the Commission were warranted.

At the end of the year, three matters remained under investigation.

#### 2003 CASELOAD SUBORDINATE JUDICIAL OFFICERS

Cases Pending 1/1/03 .....	3
New Complaints Considered .....	86
Cases Concluded in 2003 .....	86
Cases Pending 12/31/03 .....	3

#### TYPE OF COURT CASE UNDERLYING SUBORDINATE JUDICIAL OFFICER COMPLAINTS CONCLUDED IN 2003

Small Claims .....	39%
Family Law .....	32%
General Civil .....	11%
Traffic .....	9%
Criminal .....	6%
All Others (including off-bench) .....	3%

#### SOURCE OF COMPLAINTS INVOLVING SUBORDINATE JUDICIAL OFFICERS CONCLUDED IN 2003

Litigant/Family/Friend .....	95%
Attorney .....	1%
Judge/Court Staff .....	1%
All Other Complainants .....	3%

---

## VI. JUDICIAL DISABILITY RETIREMENT



### VOLUNTARY DISABILITY RETIREMENT

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

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

The statutory test for disability retirement is a mental or physical condition that precludes the efficient discharge of judicial duties and is permanent or likely to become so. The applicant judge is required to prove that this standard is satisfied. The judge must provide greater support for the application and satisfy a heavier 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 or physicians to review medical

records, examine the judge, and report on whether the judge meets the test for disability retirement.

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

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

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

VI.  
JUDICIAL DISABILITY RETIREMENT

---

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 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.

#### 2003 STATISTICS

At the beginning of 2003, one disability retirement application was pending before the Commission. The Commission received two additional applications during the year. The Commission granted two disability retirement applications during 2003. One application was pending at the close of 2003.

## VII. COMMISSION ORGANIZATION, STAFF AND BUDGET



### COMMISSION ORGANIZATION AND STAFF

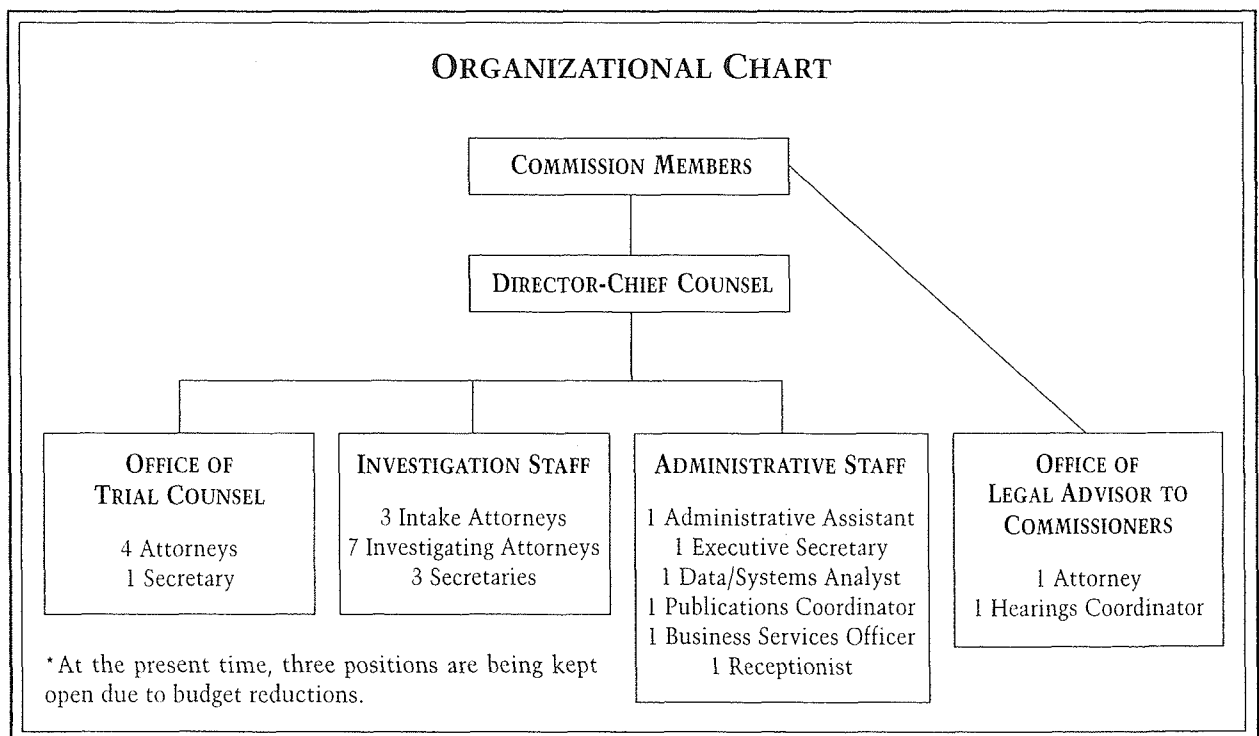
The Commission has 27 authorized staff positions, including 16 attorneys and 11 support staff. Due to budget reductions in fiscal year 2003-2004, it was necessary for the Commission to lay off some employees and to reduce the work hours of others. Presently, three positions are vacant. Positions filled part-time result in the equivalent of almost two vacant positions. This represents an overall staffing reduction of 18%.

The Director-Chief Counsel heads the agency and reports directly to the Commission. The Director-Chief Counsel oversees the intake and investigation of complaints and the Commission examiners' handling of formal proceedings. The Director-Chief Counsel is also the pri-

mary liaison between the Commission and the judiciary, the public, and the media. Victoria B. Henley has served as Director-Chief Counsel since 1991.

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

Two Trial Counsel serve as examiners during formal proceedings, aided by two Assistant Trial Counsel. The examiner is responsible for preparing cases for hearing and presenting the evidence that supports the charges before the



VII.  
COMMISSION ORGANIZATION, STAFF AND BUDGET

special masters. The examiner handles briefing regarding special masters' reports, and presents cases orally and in writing in hearings before the Commission and the California Supreme Court.

One member of the Commission's legal staff is solely responsible for assisting the Commission in its deliberations during its adjudication of contested matters and for the coordination of formal hearings. That attorney does not participate in the investigation or prosecution of cases and reports directly to the Commission. Richard G.R. Schickele served in that position under the title of Commission Counsel from 1998 until September 2003. Jay Linderman has served in that capacity under the title of Acting Legal Advisor to Commissioners since September 2003.

#### 2003 - 2004 BUDGET

The Commission's budget is separate from the budget of any other state agency or court. For the 2003-2004 fiscal year, the Commission's budget allocation is \$3,734,000. This represents a 10% reduction in the budget from the preceding fiscal year. 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 meeting related expenses. The Commission's performance of its core functions is dependent upon legal and support staff. Thus, the Commission's budget is largely allocated to personnel expenses. Prior to the funding reduction, the Commission's budget for operating expenses – excluding rent – was \$500,000 per year. (The rent for the Commission's offices, located in a State building, is fixed by the State.) To reduce the Commission's expenses by \$408,000 – the amount of the budget reduction – the Commission restricted investigative travel and reduced spending in almost every other aspect of its operations. Nonetheless, reductions in staffing were required.

#### 2002 - 2003 BUDGET

During the 2002 - 2003 fiscal year, approximately 32% of the Commission's budget supported the intake and investigation functions of the Commission and approximately 19% of the Commission's budget was used in connection with formal proceedings. The remaining 49% went toward sustaining the general operations of the Commission, including facilities, administrative staff, supplies, and security.

