
STATE OF CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE



2004 ANNUAL REPORT

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

COMMISSION ON JUDICIAL PERFORMANCE

2004 ANNUAL REPORT

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INTRODUCTION

In 1960 California became the first state to establish an agency to receive and investigate complaints of judicial misconduct. The California Commission on Judicial Performance, later joined by similar bodies in all 50 states and strengthened by additional grants of constitutional authority, remains a national model. On behalf of the Commission, I am pleased to present this report which documents our continued efforts over the past year to preserve California's leadership in addressing abuses of judicial power while preserving the integrity and independence of the judiciary.

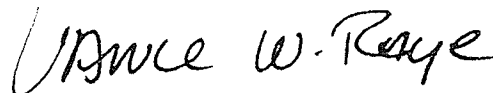
Though we live in an age of unparalleled information technology, one of the great challenges faced by government remains how best to provide the public with an understanding of its inner workings. Transparency – the ability of ordinary citizens to hold officials accountable for their actions – is impossible unless the public is adequately informed. Information dispersion is particularly difficult for bodies, like the Commission, whose deliberations are, to a degree, shielded from public view. Though necessary to protect the accuser and the accused, confidentiality hinders transparency.

Within the constraints imposed by rules of confidentiality, this report endeavors to disclose as much information as possible about the Commission's inner workings so the public and the judiciary can assess how we have exercised the trust and authority reposed in us. For the first time, the report provides information on the diverse backgrounds of Commission members. In response to a suggestion from the Judicial Council Task Force on Judicial Ethics Issues, we provide more details in the summaries of discipline. The additional details should assist public understanding and increase the value of the report as an educational tool for judges by highlighting problematic conduct.

Along with changes in the report, we have also embarked on other efforts to enhance understanding of the Commission's operations. The Commission's Outreach Committee aims to demystify the Commission's decision making by clarifying the terms used to describe the disciplinary process and by involving Commission members in conversations with judges on how decisions on discipline are made. In March a panel of Commission members met to share their perspectives on discipline with judges of the Orange County Superior Court during the judges' annual workshop. Additional meetings are planned with judges in other counties and at judicial gatherings. Our outreach efforts reflect the view that, while confidentiality must be preserved in individual cases, there should be no mystery about how complaints are investigated and how decisions are made.

As I complete my term on the Commission, I depart with enormous respect for the dedication and hard work of my fellow members. Together we waded through huge volumes of material and sat through lengthy meetings to make difficult decisions affecting the public interest and the lives of individual judges. Their charity and devotion to public service are truly remarkable. I also leave with an appreciation for the diligence and talent of the Commission's staff, their director Victoria Henley, who enjoys a national reputation as an expert on judicial ethics, and the Commission's Legal Advisor, Jay Linderman. California is well served by these thoughtful and dedicated public servants.

It has been a privilege to serve as a member of the Commission and the Commission's chair.



Honorable Vance W. Raye
Chairperson

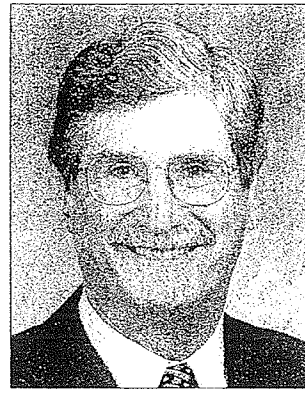
COMMISSION MEMBERS

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 Commission meets approximately seven times a year. The members do not receive a salary but are reimbursed for expenses relating to Commission business. The members of the Commission elect a chairperson and vice-chairperson annually.

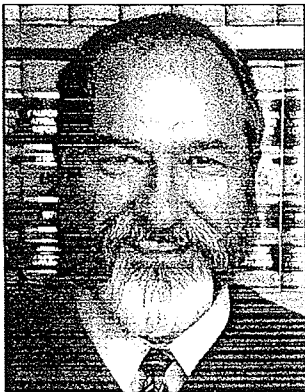
COMMISSION MEMBERS - 2004



**HONORABLE
VANCE W. RAYE**
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.
Vice-Chairperson
Attorney Member
Appointed by the Governor
Appointed: April 10, 2001
Reappointed: March 1, 2005
Term Ends: February 28, 2009



**HONORABLE
FREDERICK P. HORN**
Judge, Superior Court
Appointed by the Supreme Court
Appointed: October 22, 2003
Reappointed: March 1, 2005
Term Ends: February 28, 2009



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



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

COMMISSION MEMBERS - 2004



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



MR. 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



**HONORABLE
RISÉ JONES PICHON**
Judge, Superior Court
Appointed by the Supreme Court
Appointed: March 3, 1999
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 Governor
Term Ends: February 28, 2005

COMMISSION MEMBERS' BIOGRAPHIES

MARSHALL B. GROSSMAN (Lawyer Member) resides in Los Angeles County. He is a partner in the law firm of Alschuler Grossman Stein & Kahan LLP. He attended the University of California, Los Angeles and received his law degree from the University of Southern California in 1964, where he was Production Editor of the Law Review and Order of the Coif. Mr. Grossman has served on the boards of the Beverly Hills Bar Association, the Association of Business Trial Lawyers, Legal Aid Foundation, Public Counsel and United Way. He served on the Coastal Commission for many years. He is currently on the boards of Bet Tzedek Legal Services, Jewish Big Brothers/Big Sisters and the American Jewish Committee. He has served as vice-chairperson of the Commission since 2004.

FREDERICK P. HORN (Judge Member) resides in Orange County. He has been a judge of the Orange County Superior Court since 1993 and was a judge of the Orange County Municipal Court, Harbor Judicial District, from 1991 to 1993. Since 2002 he has served as presiding judge of the Orange County Superior Court. Prior to his appointment to the bench, he was a prosecutor with the Los Angeles District Attorney's Office. He received his law degree from the University of West Los Angeles in 1974, where he wrote for and served as staff on the Law Review. Judge Horn is currently the Chair of the Trial Court Presiding Judges Advisory Committee of the California Judicial Council. He is also a member of the faculty of the Judicial College and the New Judges Orientation Program and is a member of the Advisory Committee for the Continuing Judicial Studies Program.

MICHAEL A. KAHN (Lawyer Member) resides in San Francisco. He is a senior partner in the law firm of Folger Levin & Kahn LLP. He attended the University of California, Los Angeles and received his law degree from Stanford University in 1973. Mr. Kahn is a member of the American Law Institute and was a member of the Northern District California Civil Justice Reform Act Advisory Group. Mr. Kahn was President of Coro Northern California, Chairman of the Stanford Law Fund and has held numerous government appointments including Chairman of the California Electrical Oversight Board and Independent System Operator. Mr. Kahn served as chairperson of the Commission in 2001 and as vice-chairperson in 1999 and 2000.

CRYSTAL LUI (Public Member) resides in Los Angeles County. Before retirement, she was an accounting and financial analyst with a major reinsurance brokerage firm from 1975 to 1995. She attended California State University, Los Angeles. Mrs. Lui has served as a member of the Asian Pacific Legal Center, the Japanese American Cultural and Community Center and the Los Angeles Public Library Foundation.

PATRICIA MILLER (Public Member) resides in Los Angeles County. She is currently Senior Deputy for Los Angeles Supervisor Yvonne Brathwaite Burke. Previously, she served as Chief of Staff to Congressman Julian C. Dixon in his Los Angeles office for twenty-two years, and worked for the California Legislature for twelve years. She attended Los Angeles City College. Ms. Miller has served as a member of the Los Angeles City Attorney's Advisory Council, the Certification Board of Infection Control and the Black-Jewish Youth Experience.

BIOGRAPHIES

JOSE C. MIRAMONTES (Public Member) resides in San Bernardino County. He is currently the Divisional Security Chief for the Coca Cola Bottling Company of Southern California. He earned a Bachelor of Science degree in police science and administration from California State University, Los Angeles. He served ten years with the Los Angeles County Sheriff's Department. Mr. Miramontes was the Charter President of the East Los Angeles Chapter of the National Latino Peace Officers Association and served three two-year terms as the California State President and two two-year terms as the National President of the National Latino Peace Officers Association.

PENNY PEREZ (Public Member) resides in Los Angeles County. She presently teaches silver jewelry fabrication. Before leaving to raise a family, she taught elementary school in the Los Angeles Unified School District. She earned a Bachelor of Arts degree in English from the University of California, Santa Barbara. Mrs. Perez has served as a member of Las Doradas, a group supporting the Neighborhood Youth Association's Las Doradas Children's Center in Venice, California.

RISÉ JONES PICHON (Judge Member) resides in Santa Clara County. She has been a judge of the Santa Clara County Superior Court since 1998 and was a judge of the Santa Clara County Municipal Court from 1984 to 1998. She served as presiding judge of the Santa Clara County Municipal Court from 1990 to 1991. Prior to her appointment to the bench, she was an attorney in the Santa Clara Office of County Counsel from 1979 to 1983 and in the Office of the Public Defender from 1976 to 1979, and was a court commissioner with the Santa Clara County Municipal Court from 1983 to 1984. She received her law degree from Santa Clara University in 1976. Judge Pichon has served on the California Judicial Council in a number of capacities and participated in numerous judicial education programs. She served as chairperson of the Commission in 2002 and 2003 and as vice-chairperson in 2001.

VANCE WALLACE RAYE (Judge Member) resides in Sacramento County. He has been an associate justice of the Court of Appeal, Third Appellate District since 1991, and was a judge of the Sacramento County Superior Court from 1989 to 1991. Prior to his appointment to the bench, he served as Legal Affairs Secretary to Governor Deukmejian from 1983 to 1989 and was an attorney with the Attorney General's Office from 1974 to 1982. Between 1970 and 1974, he served as a captain in the U.S. Air Force in the Judge Advocates Corps. He earned his law degree from the University of Oklahoma in 1970. Justice Raye has served on the Judicial Council in various capacities and participated in a number of community service organizations. He has served as chairperson of the Commission since 2004 and was vice-chairperson in 2002 and 2003.

BARBARA SCHRAEGER (Public Member) resides in Marin County. She is currently the vice-chair of the Board of Directors of the Institute on Aging. She practiced in the field of organizational consulting for twenty years, serving as the Director of the San Francisco Labor-Management Work Improvement Project and as an instructor at the University of San Francisco in Human Relations and Organizational Behavior. She received a Bachelor of Arts degree in English from the University of Wisconsin and a Master of Arts in American Literature from New York University.

SPECIAL MASTERS

Pursuant to Commission Rule 121(b), as an alternative to hearing a case itself, the Commission requests the appointment of special masters – usually three – by the Supreme Court to preside over a hearing and take evidence in a formal proceeding. As further discussed on page 9 of this report, at the conclusion of the hearing and after briefing by the parties, the special masters prepare a report of findings of fact and conclusions of law for the Commission.

The Commission wishes to recognize the following judges for their service as special masters in Commission matters in 2004:

Judge Donald Cole Byrd

Glenn County Superior Court

Justice Rodney Davis

Court of Appeal, Third Appellate District

Judge Terrance R. Duncan

Monterey County Superior Court

Judge Michael T. Garcia

Sacramento County Superior Court

Judge Ramona J. Garrett

Solano County Superior Court

Justice Judith L. Haller

Court of Appeal, Fourth Appellate District

Justice Harry E. Hull, Jr.

Court of Appeal, Third Appellate District

Judge Thomas E. Kelly

Santa Cruz County Superior Court

Sandra Lynn Margulies

Court of Appeal, First Appellate District

Justice Eileen C. Moore

Court of Appeal, Fourth Appellate District

Judge Patrick J. Morris

San Bernardino County Superior Court

Judge Vincent J. O'Neill, Jr.

Ventura County Superior Court

Judge John W. Runde

San Mateo County Superior Court

Judge Michael A. Smith

San Bernardino County Superior Court

Judge Henry J. Walsh

Ventura County Superior Court

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 2004 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 1, 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.

I.
OVERVIEW OF THE COMPLAINT PROCESS

REVIEW AND INVESTIGATION
OF COMPLAINTS

At Commission meetings, which occur approximately every seven weeks, the Commission decides upon the action to take with respect to each new complaint.

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

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

ACTION THE COMMISSION CAN TAKE

Confidential Dispositions

After an investigation, the Commission has several options. If the allegations are found to be untrue or unprovable, the Commission will close the case without action against the judge and so notify the source. 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 2004, not identifying the judge involved, is contained in Section IV, Case Summaries.

Public Dispositions

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

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

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

In the most serious cases, the Commission

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

may determine – following a hearing – to remove a judge from office. Typically, these cases involve persistent and pervasive misconduct. In cases in which a judge is no longer capable of performing judicial duties, the Commission may determine – again, following a hearing – to involuntarily retire the judge from office. 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 2004, 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, the 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 February 14, 2005, the Commission adopted \$320.00 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 I.

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.

Following the 2004 biennial review of the Commission's Rules and Policy Declarations and public comment, on August 26, 2004, the Commission adopted new rule 102(m) and amendments to rule 102(k). Interim amendments to rule 102(i) and (j) were also adopted, pending circulation for public comment. At year's end, final action had not been taken on the interim amendments.

The Commission's Policy Declarations further detail internal procedures and existing policy. The Policy Declarations were substantially revised in 1997. On August 26, 2004, Policy Declarations 2.2, 2.3, 3.9 and 5.1 were amended, and new Policy Declaration 3.12 was approved.

The Commission Rules and Policy Declarations are included in Appendix I, 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. Effective January 1, 2005, the Supreme Court adopted Canon 6H setting forth the applicability of the Code to judges on leave while running for non-judicial office and modified Canon 6B regarding retired assigned judges. Canon 3E(5)(h) was added to preclude a justice from hearing matters under specified circumstances if he or she has an arrangement with or has had discussions concerning employment with a dispute resolution service. Language was also added to the commentary to Canon 4G making clear that the bar against practicing law applicable to other judicial officers also applies to subordinate judicial officers. Canon 3E(3) was renumbered to be consistent with the rest of the Code. In addition, the phrase "subordinate judicial officer" was defined in the terminology section. Effective June 1, 2005, Canon 6G, permitting the part-time practice of law by subordinate judicial officers, will be repealed as explained in the Advisory Committee Commentary to Canon 6G.

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

COMMISSION PROCEDURES

Commission Review of Complaints

The Commission considers each written complaint about a California judge and determines whether sufficient facts exist to warrant investigation or whether the complaint is unfounded and should not be pursued. Until the Commission has authorized an investigation, the Commission's staff does not contact the judge or any court personnel. However, to assist the Commission in its initial review of the complaint, the Commission's legal staff will have researched any legal issues and may have obtained additional relevant information from the complainant or the complainant's attorney. (Commission Rule 109.)

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

When the Commission determines that a complaint warrants investigation, the Commission directs 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.

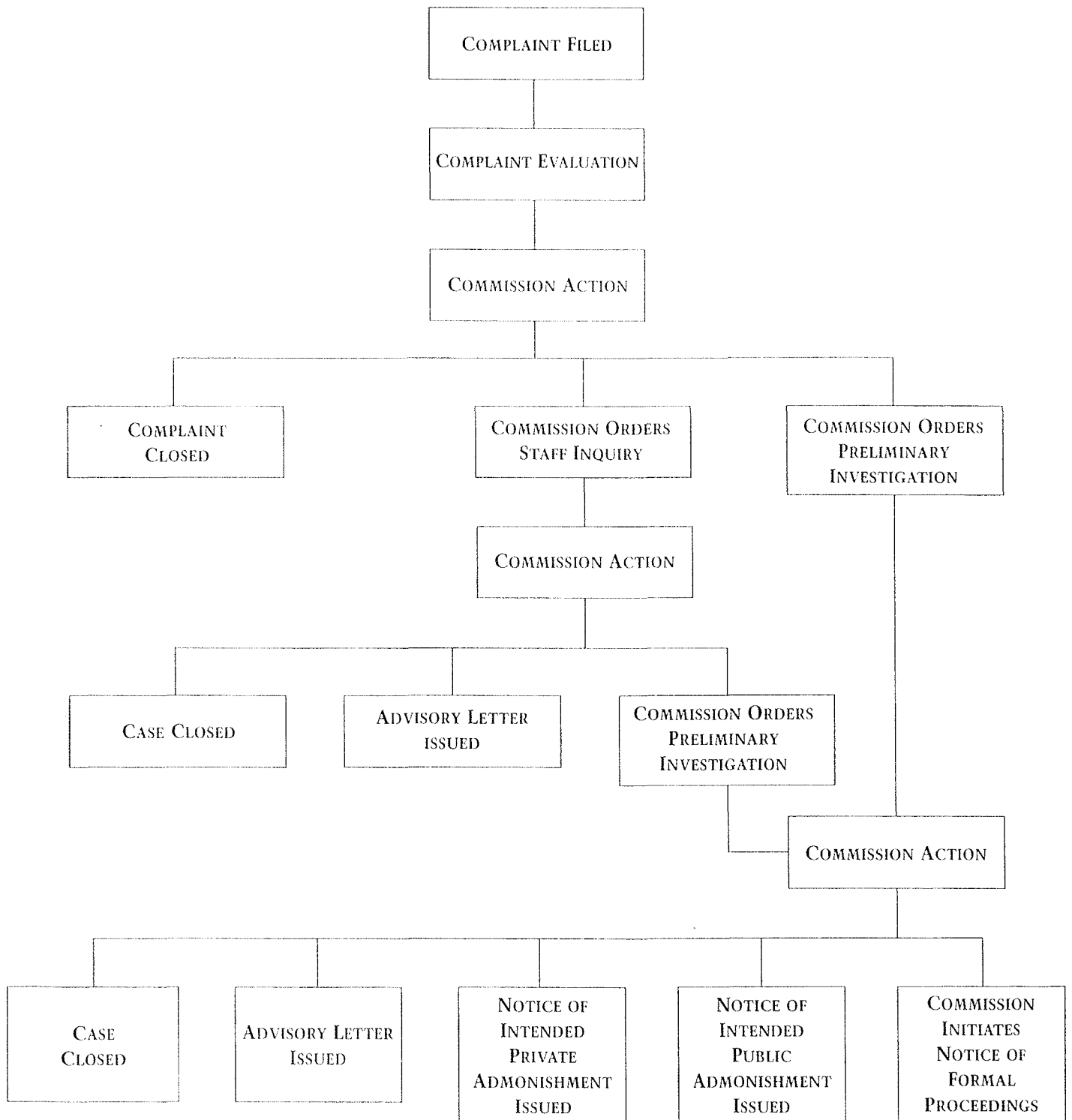
A judge has 20 days from the date of mailing to respond to an inquiry or investigation letter. (Commission Rules 110, 111.) Extensions of time to respond to inquiry and investigation letters are governed by the rules. (Commission Rule 108.)

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

II.
LEGAL AUTHORITY AND COMMISSION PROCEDURES

COMPLAINT PROCESS



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

All notices of staff inquiry, preliminary investigation, or intended private or public admonishment are sent to the judge at court, unless otherwise requested. Notices that relate to a staff inquiry are given by first class mail, and notices that relate to a preliminary investigation or intended private or public admonishment are given by prepaid certified mail, return receipt requested. The Commission marks envelopes containing such notices "personal and confidential" and does not use the inscription "Commission on Judicial Performance" on the envelopes. (Commission Rule 107[a].)

Deferral of Investigation

The Commission may defer an investigation of a pending matter under certain circumstances. Deferral may be warranted, under Policy Declaration 1.8, when the case from which the 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 con-

duct, 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 initiate formal proceedings. (Commission Rule 118.) Formal proceedings also may be instituted when a judge rejects a private or public admonishment and files a demand for formal proceedings. (Commission Rules 114, 116.) When formal proceedings are commenced, the Commission issues a notice of formal proceedings, which constitutes a formal statement of the charges. The judge's answer to the notice of charges is 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 initiated. A judge receives discovery from the Commission when the notice of formal proceedings is served. (Commission Rule 122.)

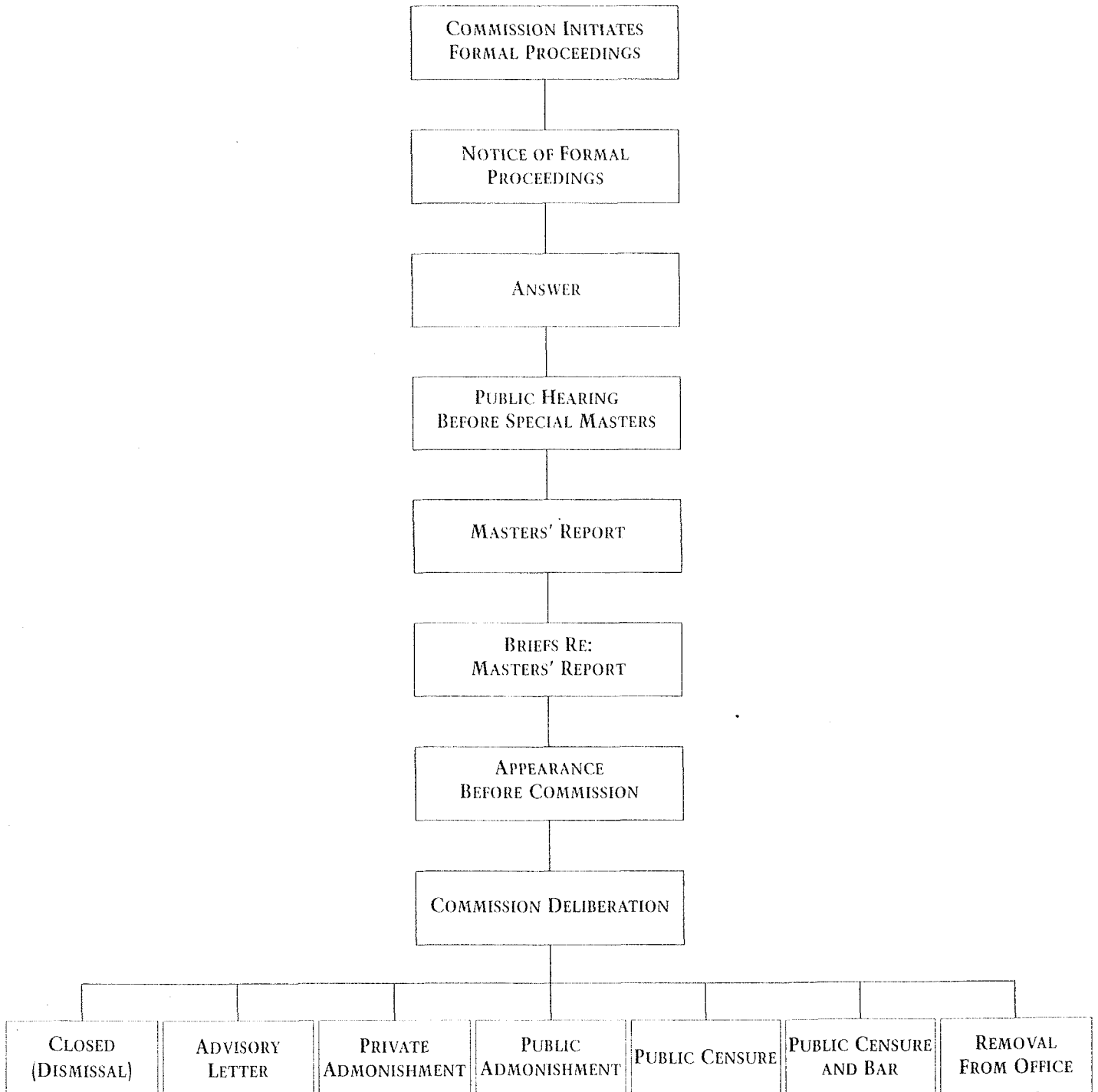
The Commission may disqualify a judge from performing judicial duties once formal proceedings are instituted if the judge's continued service is causing immediate, irreparable, and continuing public harm. (Commission Rule 120.)

Hearing

After the judge has filed an answer to the charges, the Commission sets the matter for a

II.
LEGAL AUTHORITY AND COMMISSION PROCEDURES

FORMAL PROCEEDINGS



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

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

Disposition of Cases After Hearing

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

- Publicly censure or remove a judge for action that constitutes willful

misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

- Publicly or privately admonish a judge found to have engaged in an improper action or dereliction of duty.
- Retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent.

In cases involving former judges, the Commission may publicly censure or publicly or privately admonish the former judge. The Constitution also permits the Commission to bar a former judge who has been censured from receiving an assignment from any California state court.

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

Release of Votes

The Commission discloses the votes of the individual Commission members on disciplinary determinations reached after formal proceedings are instituted. The Commission also releases individual votes on public admonishments 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.

II.
LEGAL AUTHORITY AND COMMISSION PROCEDURES

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) - (m);

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.

2004 STATISTICS

ACTIVE AND FORMER JUDGES



COMPLAINTS RECEIVED AND INVESTIGATED

In 2004, 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, 2004	
Supreme Court	7
Court of Appeal	105
Superior Courts	1,498
Total	1,610

New Complaints

In 2004, 1,114 new complaints about active and former California judges were considered by the Commission. The 1,114 complaints named a total of 1,402 judges (848 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.

2004 CASELOAD - JUDGES

Cases Pending 1/1/04	63
New Complaints Considered	1,114
Cases Concluded in 2004	1,080
Cases Pending 12/31/04	80

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

In 2004, the Commission received 158 complaints about subordinate judicial officers. These cases are discussed in Section V.

In 2004, the Commission received one complaint about a State Bar Court judge. The matter is still pending.

The Commission also received over 500 complaints in 2004 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 (temporary judges), workers' compensation judges, other government officials and miscellaneous individuals. Commission staff responded to each of these complaints and, when appropriate, made referrals.

Staff Inquiries and Preliminary Investigations

In 2004, the Commission ordered 91 staff inquiries and 47 preliminary investigations.

INVESTIGATIONS COMMENCED IN 2004

Staff Inquiries	91
Preliminary Investigations	47

III.
2004 STATISTICS - ACTIVE AND FORMER JUDGES

Formal Proceedings

At the beginning of 2004, there were four formal proceedings pending before the Commission and one matter pending before the California Supreme Court.¹ The Commission instituted formal proceedings in two cases during 2004. 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 2004, one formal proceeding had been concluded and four formal proceedings remained pending before the Commission. In a matter in which the Commission had issued a public admonishment in 2004 (Inquiry Concerning Judge Joseph W. O'Flaherty, No. 171), the judge submitted a petition for review of the Commission's determination, which was pending before the California Supreme Court at the end of the year.

FORMAL PROCEEDINGS

Pending 1/1/04	4 ¹
Commenced in 2004	2
Concluded in 2004	1
Pending 12/31/04	5 ²

COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the Commission in 2004, regardless of when the complaints were received.³ In 2004, a total of 1,080 cases were concluded by the Commission. The average time period from the filing of a complaint to the disposition was 3.6 months. A chart of the disposition of all cases completed by the Commission in 2004 is included on page 13.

TYPE OF COURT CASE UNDERLYING COMPLAINTS CONCLUDED IN 2004

Criminal	44%
General Civil	19%
Family Law	16%
Small Claims/Traffic	8%
All Others	11%

2% 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 2004

Litigant/Family/Friend	84%
Attorney	7%
Judge/Court Staff	2%
All Other Complainants	6%
(including citizens)	
Source Other Than Complaint	1%
(includes anonymous letters, news reports)	

Closed Without Action

In 993 of the cases closed in 2004, there was not a sufficient showing of misconduct 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 60 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.

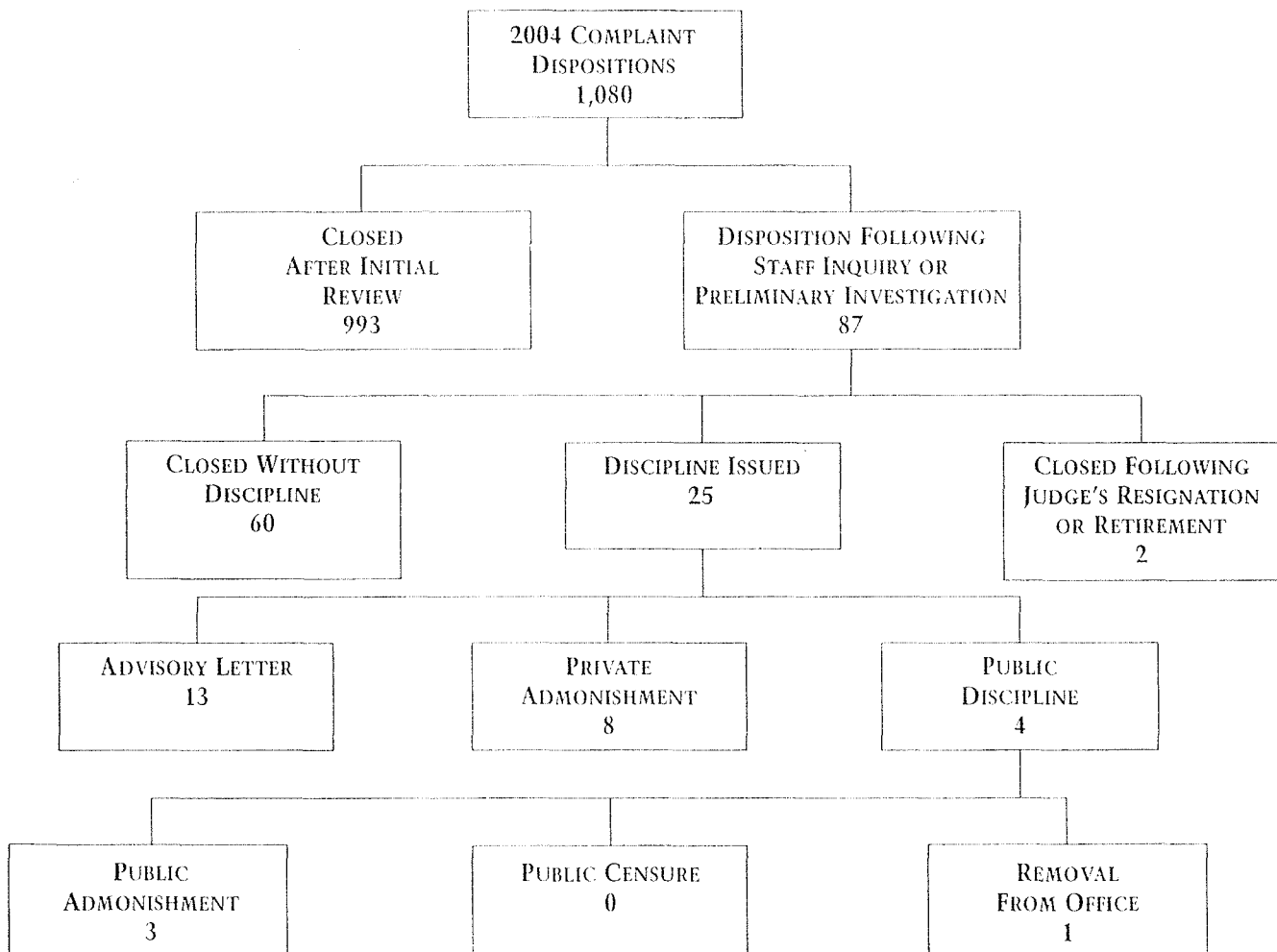
¹ The *Van Voorhis* matter was pending before the Supreme Court at the end of 2003 and was not included in the complaint disposition statistics for 2003. It is included in the 2004 statistics.

² The *O'Flaherty* matter is not included in the complaint disposition statistics for 2004.

³ Staff inquiries and preliminary investigations in the cases closed in 2004 may have commenced in prior years. Cases or portions of cases pending at the end of 2004 are not included in complaint disposition statistics.

III.
2004 STATISTICS - ACTIVE AND FORMER JUDGES

2004
COMPLAINT DISPOSITIONS



III.
2004 STATISTICS - ACTIVE AND FORMER JUDGES

Closed With Discipline

In 2004, the Commission's removal from office of one judge became final. The Commission also issued three public admonishments, eight private admonishments and 13 advisory letters. Each of these dispositions is summarized in Section IV.

A chart of the types of judicial conduct which resulted in discipline in 2004 appears on page 15. The types of conduct are listed in order of prevalence. The numbers on the chart indicate the number of times each type of conduct resulted in discipline. A single act of misconduct is counted once and is assigned to the category most descriptive of the wrongdoing. If separate acts of different types of wrongdoing were involved in a single case, each different type

of conduct was counted and assigned to an appropriate category. If the same type of conduct occurred on multiple occasions in a particular case, however, it was counted only once.

Resignations and Retirements

The Constitution authorizes the Commission to continue proceedings after a judge retires or resigns and, if warranted, to impose discipline upon the former judge. When a judge resigns or retires during proceedings, the Commission determines whether to continue or close the case and, if the case is closed, whether to refer the matter to another entity such as the State Bar. In 2004, the Commission closed two matters without discipline when the judge resigned or retired with an investigation pending.

III.
2004 STATISTICS - ACTIVE AND FORMER JUDGES

TYPES OF CONDUCT RESULTING IN DISCIPLINE*

DEMEANOR, DECORUM
(includes inappropriate humor)
[8]

ON-BENCH ABUSE OF
AUTHORITY IN PERFORMANCE
OF JUDICIAL DUTIES
[6]

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

EX PARTE COMMUNICATIONS
[5]

FAILURE TO ENSURE RIGHTS
[4]

DISQUALIFICATION,
DISCLOSURE AND
RELATED RETALIATION
[3]

DECISIONAL DELAY,
TARDINESS, ATTENDANCE
[3]

ABUSE OF
CONTEMPT/SANCTIONS
[2]

FAILURE TO COOPERATE
LACK OF CANDOR
[1]

COMMENT ON A
PENDING CASE
[1]

MISUSE OF COURT RESOURCES
[1]

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

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

MISCELLANEOUS OFF-BENCH
CONDUCT
[1]

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

IMPROPER POLITICAL
ACTIVITIES
[1]

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

IV. CASE SUMMARIES



PUBLIC DISCIPLINE

Public discipline decisions issued by the Commission in 2004 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 Commission issued an order of removal of Judge Bruce Van Voorhis of the Contra Costa County Superior Court. 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. That petition was denied in March 2004. Because the petition was pending at the end of 2003, this matter was not included in the 2003 case disposition statistics. It has been included in the 2004 statistics in Section III.



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 Com-

mission. 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. That petition was denied on March 22, 2004.

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 reasonably 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

IV.
CASE SUMMARIES

Commission for poor demeanor, and had been cautioned orally 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." The judge admittedly had no authority that permitted him to order a lawyer to confess her mistakes to the jury. The judge's comments were made for the corrupt purpose of venting his anger or frustration. This was willful misconduct. 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 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 presiding 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's 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

IV.
CASE SUMMARIES

Ethics. Finally, the Commission stated that Judge Van Voorhis's 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 Berghold, 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 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's 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.

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 2004, three public admonishments were issued and became final. A fourth admonishment issued by the Commission was the subject of a petition for review which was still pending before the Supreme Court at the end of the year.

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Public Admonishment of Judge Francisca P. Tisher, April 8, 2004

Judge Francisca P. Tisher, a judge of the Napa 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 at a hearing in a family law case, Judge Tisher repeatedly made misleading statements indicating to the parties that an order she knew had been filed that morning, just before the hearing, had actually been filed four days earlier. That order gave jurisdiction to New Jersey, the father's state of residence. The timing of the order was significant because the day before the hearing, the father in the case had taken one of the couple's children to New Jersey in violation of the order that was in effect until the new order was entered. Judge Tisher knew that the new order had been filed just before the hearing because the court commissioner who issued it consulted her about its wording, telling her that she had forgotten to enter the order, that someone had come and "picked up the kid," and that she would prefer to have the matter "heat up" in the other state. Despite this knowledge, Judge Tisher told the parties three times during the brief hearing that the order had been issued four days earlier. The judge stated

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CASE SUMMARIES

that the file before her “indicate[d] that there was an order filed by [the commissioner] on September 30th” and said she did not know if the attorneys both had copies; she mentioned that no proof of service was attached. The judge also said she was “not going to make an order when one was made September 30th....”, and stated, “...I have an order here in the court file from September 30th....” The Commission determined that the making of these misleading statements was contrary to canon 2A of the Code of Judicial Conduct, which provides that judges should conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.



**Public Admonishment of
Former Judge Robert M. Letteau,
May 20, 2004**

Former Judge Robert Letteau, previously a judge of the Los Angeles 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 Judge Letteau displayed bias and embroilment in handling the fee request of an attorney in a conservatorship case. The Commission concluded that the judge repeatedly made oral and written statements displaying hostility and animosity toward the attorney; that hostility apparently arose, at least in part, from the judge’s reaction to material in the attorney’s fee request that criticized the probate court’s overall handling of attorney fee requests in cases involving possible elder abuse. The Commission found that the judge’s substantial reduction of the fees requested by the attorney was the result of his bias and embroilment. In addition, the Commission found that the judge inordinately delayed deciding the fee request, and improperly denied the attorney an opportunity to be heard on the request. The Commission further found that the judge improperly attempted to engage the attorney in an ex parte

discussion of the handling of the fee request. The Commission noted that the Court of Appeal also found that Judge Letteau displayed bias and embroilment in his handling of the case.

In another matter, the Commission found that Judge Letteau displayed prejudgment and engaged in advocacy in his handling of a court trial in a malicious prosecution case. The Commission found that in questioning the defendant, the judge abandoned the impartial role of eliciting relevant and material testimony, and used the examination to criticize the defense; he also indicated in his questioning that he had made up his mind on a disputed issue. The Commission further found that Judge Letteau made statements indicating that he had made up his mind on two disputed issues of liability and damages before he had heard all the evidence and before closing arguments. In addition, the judge displayed prejudgment by making a statement at the beginning of the closing argument by the defense that he intended to award a specific amount of emotional distress damages. Finally, the Commission found that Judge Letteau made sarcastic, disparaging, belittling, and discourteous remarks to the defendant and his counsel on numerous occasions during the trial. In addition to reflecting a lack of impartiality, these comments violated canon 3B(4), which requires judges to be patient, dignified and courteous toward those with whom they deal in an official capacity. The Commission noted that the Court of Appeal had reversed and remanded with directions to enter judgment in favor of the defendant.

The Commission noted that the misconduct on which the public admonishment was based bore a striking similarity to conduct for which Judge Letteau was privately admonished in 2002. In one of the three cases included in that private admonishment, Judge Letteau made remarks giving an appearance of prejudgment and ordered a person who was not a party to provide information to the court. In another case, the judge denied due process to a conservatee, engaged in improper ex parte communication with

the conservatee's retained attorney and displayed bias against the attorney; the conservatorship order was reversed on appeal. In the third case, Judge Letteau displayed prejudgment and abuse of the power to impose sanctions; his sanctions order was reversed on appeal.

The Commission pointed out that Judge Letteau's handling of the matters included in the private and public admonishments occurred over a span of six years and resulted in four appellate decisions reversing his orders, three of which reversed on grounds that the judge had displayed bias, prejudgment, abuse of the sanctions power, and/or disregard of the rights of parties or their attorneys. Taken together, the incidents presented a pervasive pattern of bias, prejudgment, ex parte communication and abuse of judicial authority.

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**Public Admonishment of
Judge Brett Carroll Klein,
October 20, 2004**

Judge Brett Carroll Klein of the Los Angeles 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 Judge Klein abused his authority and displayed bias and embroilment through actions he took after a judgment he had entered was reversed by the Court of Appeal.

In a case in which two tenants sued their landlord for personal injuries caused by a falling ceiling, Judge Klein struck the landlord's answer for failure to obey certain discovery orders, proceeded to a default prove-up hearing to determine damages, and then determined damages in a small amount, which he further reduced to nominal damages of \$1 for each plaintiff. The Court of Appeal reversed, finding that Judge Klein's determination of damages was arbitrary and capricious, and remanded the case with instructions to enter a new default judgment in

accordance with the evidence the plaintiffs had presented at the default prove-up hearing. Rather than following these instructions, Judge Klein on his own initiative issued an order setting a hearing on the defendant's motion for reconsideration of the order striking her answer—a motion that the judge had declined to hear at the beginning of the default prove-up hearing, and that had been withdrawn at the conclusion of that hearing.

The plaintiffs then filed a peremptory challenge to disqualify Judge Klein, which he struck as untimely, and a challenge for cause, which he struck as disclosing no legal grounds for disqualification. The plaintiffs petitioned the Court of Appeal for a writ to require the court to honor the peremptory challenge; the appellate court denied the petition as untimely, but expressed its view that the petition had merit and reminded the court of its inherent authority to reconsider the two challenges. Instead of doing so, Judge Klein heard and granted the defendant's previously withdrawn motion for reconsideration, which had been refiled before the hearing, and made a further ruling about what evidence the defendant could present at trial. The judge then accepted the plaintiffs' refiled peremptory challenge. The Court of Appeal reversed, ruling that Judge Klein's order materially departed from its directions on remand and was unauthorized and void.

The Commission found that Judge Klein's actions after the first appellate reversal displayed abuse of authority, bias and embroilment and were contrary to canon 2A, which requires judges to respect and comply with the law and conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. The Commission pointed out that Judge Klein's actions were not simply legal error, but reflected a flagrant disregard of the order of the Court of Appeal remanding the case for a redetermination of damages, as well as abandonment of his role as neutral arbiter.

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**Public Admonishment of
Judge Joseph W. O'Flaherty,
September 29, 2004**

Judge Joseph W. O'Flaherty of the Placer County Superior Court was publicly admonished following formal proceedings [Rule 118, et seq.] for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Judge O'Flaherty filed a petition for review in the California Supreme Court, pursuant to article VI, section 18(d) of the California Constitution in November 2004. That petition was denied by the Supreme Court in February 2005. Because the matter was still pending at the end of 2004, it is not included in the 2004 statistics but is summarized here. It will be counted in the 2005 statistics.

The Commission adopted the findings of fact and conclusions of law of the panel of special masters who presided in the formal proceedings. The Commission found that in a criminal case, Judge O'Flaherty told prospective jurors that if they harbored racial bias but did not wish to admit it, they had permission to lie, and to make up some other reason to be excused from jury service. In another criminal case, Judge O'Flaherty similarly told prospective jurors that if they harbored racial bias but did not want to admit it, they should answer questions in a way that would allow them to be excused for some other reason. Both defendants' convictions were reversed by the Court of Appeal. The Commission concluded that although Judge O'Flaherty believed in good faith that he was acting within his lawful judicial authority, he both condoned and directed a violation of the law by directing jurors to violate their oath under Code of Civil Procedure section 232, subdivision (a). The Commission found that the judge's conduct would appear to an objective observer to be prejudicial to public esteem for the judicial office. In addition, the conduct cast doubt on whether the juries selected were fair and impartial; consequently, the judge's failure to follow the law was

a violation of the fundamental constitutional right to trial by jury.

The Commission considered Judge O'Flaherty's argument that discipline was precluded by the California Supreme Court's decision in *Oberholzer v. Commission on Judicial Performance* (1999) 20 Cal.4th 371, which held that a judge may not be disciplined for legal error unless there is, in addition, bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law, or any purpose other than the faithful discharge of judicial duties. The Commission noted first that Judge O'Flaherty did not make a discrete ruling or decision that was legally incorrect; rather, he engaged in a course of improper conduct by giving a series of improper directives to the various jury panel members in two separate cases. Although finding *Oberholzer* factually inapposite, the Commission concluded that the judge's instructions, which violated the defendants' federal and state constitutional rights to a fair and impartial jury and to due process of law, constituted misconduct under the *Oberholzer* standard because they manifested, at least, intentional disregard of the law, disregard of fundamental rights and abuse of judicial authority.

The Commission rejected Judge O'Flaherty's argument that he should not be publicly disciplined because the two reversals by the Court of Appeal and the extensive news coverage of those decisions in the local press provided adequate notice to the public. Pointing out that the Court of Appeal had referred the matter to the Commission, the Commission stated that its mandate is the enforcement of rigorous standards of judicial conduct and the maintenance of public confidence in the integrity of the judicial system. The Commission concluded that it was necessary to state publicly that judicial instructions to lie, however well intended, are incompatible with fundamental principles of the administration of justice and cannot be tolerated.

PRIVATE DISCIPLINE

Private admonishments and advisory letters are summarized in this section. In order to maintain confidentiality, it has been necessary to omit certain details and obscure others, 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.

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 2004, the Commission imposed eight private admonishments.

1. After initiating a perjury complaint, a judge gave the appearance of attempting to influence the district attorney's investigation by contacting witnesses and repeatedly contacting the district attorney.
2. In a criminal matter, a judge had ordered the defendant to appear for trial but then set a hearing on a motion to dismiss the case for violation of the defendant's right to a speedy trial. The hearing was set for a date after the scheduled trial date. The defense attorney assumed that the trial date had been vacated and told the defendant not to appear. The judge issued a bench warrant when the defendant did not appear on the trial date. After the defendant was arrested on the warrant, the judge refused to reinstate the defendant's own recognizance release although the defendant's explanation that he relied on counsel's advice was undisputed. In another matter, the judge remanded a spectator

into custody, for allegedly contemptuous conduct, without following any contempt procedures; the spectator was held over the lunch hour.

3. While presiding over a trial, a judge investigated one party's expert witness on the Internet, questioned that party's witnesses in an adversarial manner, and made disparaging and intimidating remarks to and about that party's witnesses and counsel, thereby appearing biased against that party.

4. A judge served as a private arbitrator in violation of canon 4F. In addition, the judge failed to disclose to the parties the extent of the judge's relationship with one party to the arbitration. The judge also failed to report receipt of a campaign contribution as required by law. The judge lacked candor concerning aspects of the judge's conduct in responding to the Commission's investigation.

5. A judge engaged in extensive use of a court computer during court hours over a period of at least two years for a purpose specifically prohibited by court policy.

6. A judge made sarcastic, demeaning and intimidating statements to counsel during court proceedings. The judge had been previously disciplined for similar conduct.

7. A judge failed to disqualify in numerous collection matters involving financial institutions that had pending lawsuits against the judge for unpaid debt which were not contested. In mitigation, the judge's rulings did not evidence bias.

8. While ruling on a motion, a judge made a number of statements attempting to deflect responsibility for the ruling to another judge. The judge made these statements to avoid displeasing the party against whom the ruling was made.

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

IV. CASE SUMMARIES

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 2004, the Commission issued 13 advisory letters.

Demeanor and Decorum

1. In two separate matters a judge was rude and harsh toward lawyers. In another incident, the judge reprimanded a court clerk in a manner that was inappropriate under the circumstances. In another matter, during proceedings in open court, the judge suggested – without sufficient basis – that a lawyer had committed malpractice in advice given to a client; the client was present during the judge's remarks.

2. In a public area adjacent to the courthouse, a judge berated and insulted a law enforcement witness in a case pending before the judge for talking with jurors during a break. Later, in open court, the judge also made insulting remarks to the prosecutor.

3. After determining not to pursue contempt proceedings against an attorney, a judge made humiliating and insulting remarks to the attorney. The judge did not allow the attorney to address the judge's accusations.

Bias

4. A judge assigned to a criminal case predicted that the defendant would be convicted and made disparaging comments about the defendant's case that reflected a lack of impartiality and suggested prejudgment.

5. A judge's comments gave the appearance that the judge was biased and embroiled and had prejudged a contempt matter that was to be heard at a later date and the likely sanction.

Decisional Delay

6. At a time when the law required a judge to act on petitions for writs of habeas corpus within 30 days, a judge failed to take action on a petition for almost six months.

7. Although the law now requires a judge to act on petitions for writs of habeas corpus in 60 days, a judge did not act on a habeas petition for 128 days. The judge issued two extensions of time for the court to act that were not met.

Abuse of Contempt Sanctions

8. In dealing with an alleged indirect contempt—for conduct not occurring in the court's presence—a judge failed to provide due process by not giving the contemnor proper notice of the contempt charge and appointing counsel as required under the circumstances. The judge immediately remanded the contemnor to serve a jail sentence. The Commission took note that the contemnor was a difficult litigant.

Comment on a Pending Case

9. A judge participated in a public meeting where a case pending before the judge and related claims were discussed with both parties to the litigation and non-parties.

More Than One Type of Misconduct

Some cases involved more than one type of misconduct.

10. During a trial, a judge improperly spoke to the jury about another case. The judge told the jury that an attorney who would be appearing on the other case had filed inadequate papers; the judge made comments suggesting prejudgment. When the attorney appeared, the judge was sarcastic and impatient. In another case, the judge made sarcastic, demeaning and dispar-

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CASE SUMMARIES

aging remarks to two attorneys.

11. Several hours after a judge presided over a hearing in a family law case at which the judge set the respondent's monthly support payments, the respondent's counsel returned to court and told the judge, in the absence of opposing counsel, that the judge had made mistakes in calculating support. Without notifying the petitioner's counsel, the judge issued an order that significantly reduced the respondent's monthly support obligation.

12. Responding to an improper ex parte communication from a party's attorney, a supervising judge, without notice or a hearing, modified a judgment entered against that party by a pro tem judge.

13. After a judge declined assignment in one case because of an association with a party, the judge presided over a second case involving the same parties. The judge set aside a default judgment entered against the party with whom the judge was associated, without notice or a hearing. When the other party objected in an ex parte letter, the judge vacated the prior order and set a hearing before another judge. In the order reassigning the case, the judge made statements about the pending motion that appeared intended to influence the decision of the other judge.

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 2004, there were 458 authorized subordinate judicial officer positions in California.

SUBORDINATE JUDICIAL OFFICERS AUTHORIZED POSITIONS As of December 31, 2004	
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. (California Rules of Court, rule 6.655(1)(2)(B); Commission Rule 109(c)(1).) Second, a local court must notify the Commission when it imposes written or formal discipline or terminates a subordinate judicial officer. (California Rules of Court, rule 6.655(k)(1); Commission Rule 109(c)(3).) Third, a local court must notify the Commission if a referee or commissioner resigns while an investigation is pending. (California Rules of Court, rule 6.655(k)(2); Commission Rule 109(c)(3), (4).) Lastly, the Commission may investigate or adjudicate a complaint against a subordinate judicial officer at the request of a local court. (California Rules of Court, rule 6.655(g)(2); Commission Rule 109(c)(2).)

When a matter comes to the Commission after disposition by a local court, the Commission may commence an investigation of the subordinate judicial officer if it appears that the 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, rules 6.603(c)(4)(C) and 6.655.) Upon request by the Commission, the local court must make its records concerning the complaint available to the Commission.

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

2004 STATISTICS

Complaints Received and Investigated

In 2004, 158 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 any basis for further investigation or action by the Commission.

RULE UNDER WHICH NEW COMPLAINTS WERE SUBMITTED

Rule 109(c)(1) – appeal from local court's disposition	151
Rule 109(c)(2) – at the request of a local court	0
Rule 109(c)(3) – notification by local court of discipline	6
Rule 109(c)(4) – notification by local court of resignation with investigation pending	1

2004 CASELOAD SUBORDINATE JUDICIAL OFFICERS

Cases Pending 1/1/04	3
New Complaints Considered	158
Cases Concluded in 2004	159
Cases Pending 12/31/04	2

Cases Concluded

In 2004, the Commission concluded its review of 159 complaints involving subordinate judicial officers. Of these, 156 complaints were closed by the Commission because the Commission determined that the local courts' handling and disposition of the complaints were adequate. These matters included one case in which the local court had suspended the subordinate judicial officer, four cases in which a written reprimand had been imposed by local courts, one case in which a written warning was issued by the local court, and two cases that local courts had concluded with oral warnings to the subordinate judicial officers. In each of these matters, the Commission determined that no further proceedings by the Commission were warranted.

Two of the 159 cases concluded in 2004 involved subordinate judicial officers who retired or resigned while complaints were under investigation by the local courts. In each case, the Commission conducted an investigation and reviewed the matter to determine whether any further action by the Commission was appropriate, in particular, whether proceedings should be instituted concerning the individuals' fitness to serve as subordinate judicial officers. Both cases were closed conditioned upon the individuals' agreement not to serve as a judicial or subordinate judicial officer. If either of the individuals serves or seeks to serve in a judicial capacity, the Commission may release information gathered in its investigation to appointing and evaluating authorities and may reopen its investigation.

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SUBORDINATE JUDICIAL OFFICERS

In one matter, referred to the Commission for both investigation and disposition pursuant to rule 109(c)(2), the Commission issued a private admonishment.

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

**TYPE OF COURT CASE UNDERLYING
SUBORDINATE JUDICIAL OFFICER
COMPLAINTS CONCLUDED IN 2004**

Small Claims	35%
Family Law	33%
General Civil	9%
Traffic	13%
Criminal	5%
All Others (including off-bench)	5%

**SOURCE OF COMPLAINTS
INVOLVING SUBORDINATE JUDICIAL OFFICERS
CONCLUDED IN 2004**

Litigant/Family/Friend	92%
Judge/Court Staff	5%
Attorney	3%

**SUMMARY OF DISCIPLINE IMPOSED
BY THE COMMISSION**

Private Admonishment

A subordinate judicial officer issued an order without providing the notice and hearing required by law. The subordinate judicial officer's decision was based in part on information received by the subordinate judicial officer that was not properly disclosed to the parties.

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 higher burden of proof if the application is filed while disciplinary proceedings are pending, if the judge has been defeated in an election, or if the judge has been convicted of a felony.

Judicial disability retirement may afford substantial lifetime benefits. Applications, accordingly, are carefully scrutinized by both the Commission and the Chief Justice. In most cases, the Commission will appoint an independent physician 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,

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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.

2004 STATISTICS

At the beginning of 2004, one disability retirement application was pending before the Commission. The Commission received six additional applications during the year. The Commission granted five disability retirement applications during 2004. Two applications were pending at the close of 2004.

VII. COMMISSION ORGANIZATION, STAFF AND BUDGET



COMMISSION ORGANIZATION AND STAFF

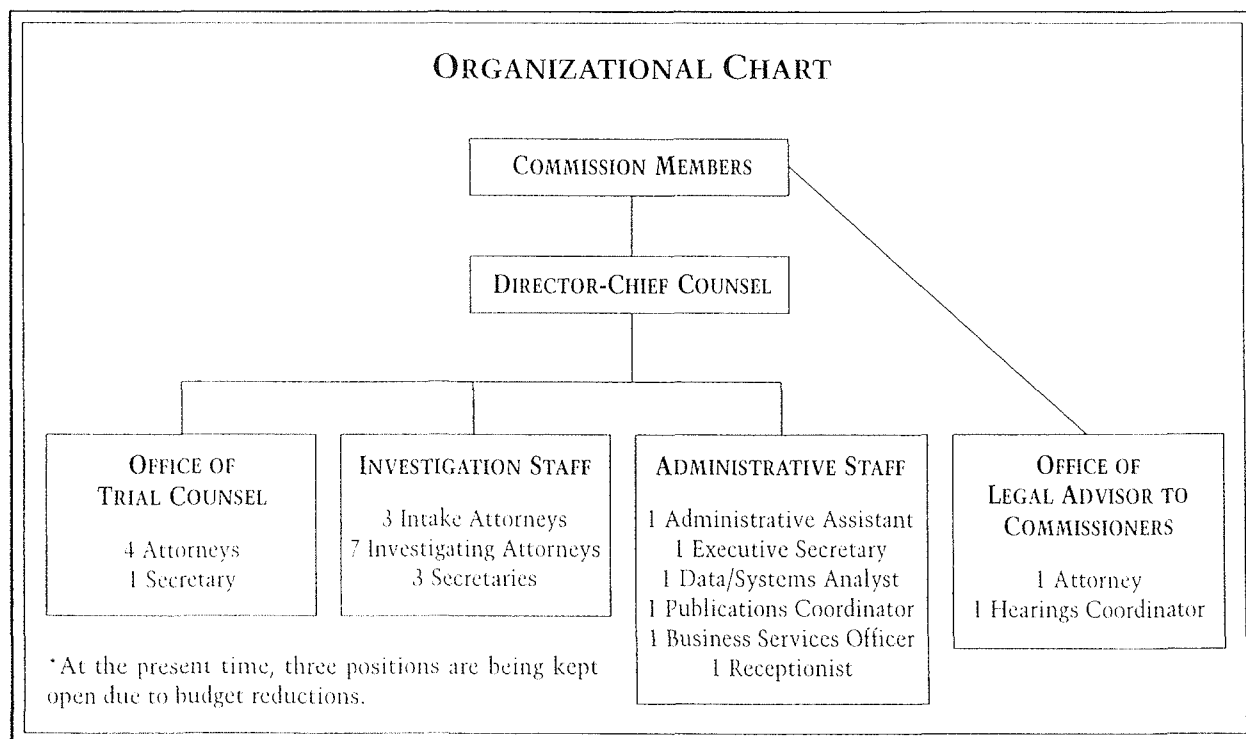
The Commission has 27 authorized staff positions, including 16 attorneys and 11 support staff. Due to budget reductions in fiscal year 2003-2004, it was necessary for the Commission to lay off some employees and to reduce the work hours of others. Because the budget reductions continued into 2004-2005, three positions are being kept vacant and other positions are filled part-time, resulting in 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 proceed-

ings. The Director-Chief Counsel is also the primary liaison between the Commission and the judiciary, the public, and the media. Victoria B. Henley has served as Director-Chief Counsel since 1991.

The Commission's legal staff includes 10 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



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COMMISSION ORGANIZATION, STAFF AND BUDGET

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

One member of the Commission's legal staff, the Legal Advisor to Commissioners, is solely responsible for assisting the Commission in its deliberations during its adjudication of contested matters and for the coordination of formal hearings. That attorney does not participate in the investigation or prosecution of cases and reports directly to the Commission. Jay Linderman has served in that capacity since September 2003.

2004 - 2005 BUDGET

The Commission's budget is separate from the budget of any other state agency or court. For the 2004-2005 fiscal year, the Commission's budget allocation is \$3,910,000.

The Commission's constitutional mandate is the investigation of allegations of misconduct and the imposition of discipline. The members of the Commission receive no salaries, only reimbursement of expenses related to Commission business. 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 10% funding reduction in fiscal year 2003-2004, 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 2003-2004 budget reduction – the Commission restricted investigative travel and reduced spending in almost every other aspect of its operations. Nonetheless, reductions in staffing were required. Funding was not restored in fiscal year 2004-2005, thus the measures taken to reduce expenditures remained in effect through 2004.

2003 - 2004 BUDGET

During the 2003-2004 fiscal year, approximately 33% of the Commission's budget supported the intake and investigation functions of the Commission and approximately 21% of the Commission's budget was used in connection with formal proceedings. The remaining 46% went toward sustaining the general operations of the Commission, including facilities, administrative staff, supplies, and security.

