
STATE OF CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE



2005 ANNUAL REPORT

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COMMISSION ON JUDICIAL PERFORMANCE

2005 ANNUAL REPORT

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INTRODUCTION

The close of 2005 marks the end of ten full years of proceedings by the Commission since the passage of Proposition 190. Effective in March of 1995, the changes mandated by Prop 190 included opening previously confidential hearings to the public, granting the Commission direct authority to impose discipline subject to Supreme Court review and transferring the authority for promulgating Commission rules from the Judicial Council to the Commission. The Commission itself was also restructured, from a body with a majority of judge members to one comprised of a majority of citizens who are not judges.

When Prop 190 was passed, much concern was expressed about the changes, particularly by judges. At the close of a decade, the consensus is that the Commission changed for the better. The secrecy that surrounded the Commission has been replaced with greater scrutiny. In the Commission's most serious cases, the public and the judiciary now can examine what is charged, what is proved and what is ultimately decided, affording a greater measure of confidence in the Commission's work. With public participation a mainstay in the work of the Commission, public confidence is enhanced. The Commission's rule-making has been open and responsive and has improved the disciplinary process.

The Commission continues to play a vital, yet discreet, role in maintaining the excellence of California's judiciary. While public proceedings and public discipline make news, the reality is that judicial misconduct warranting discipline is the exception, not the rule. The Commission imposes discipline when necessary, and does it publicly when the public interest so requires.

My colleagues on the Commission are an extraordinary and diverse group of dedicated volunteers from the judiciary, the bar and the public. We are assisted in our work by a remarkably talented legal staff headed by Victoria Henley, the director-chief counsel, and Jay Linderman, legal advisor to the Commission. We welcome comments and suggestions from the bench, bar and public as we strive to fulfill our mandate to protect the public, enforce rigorous standards of judicial conduct and maintain public confidence in the integrity and independence of the judicial system.

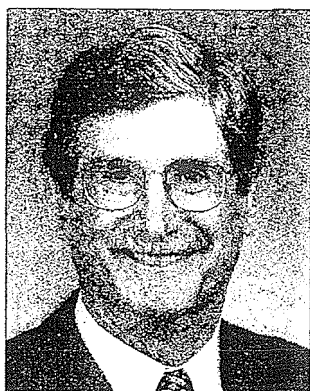


Marshall B. Grossman, Esq.
Chairperson

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 - 2005



MARSHALL B. GROSSMAN, ESQ.

Chairperson

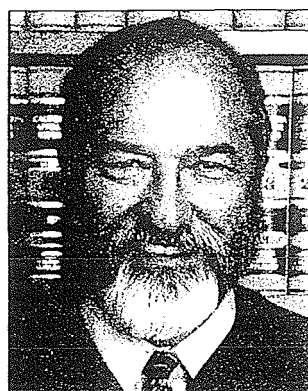
Attorney Member

Appointed by the Governor

Appointed: April 10, 2001

Reappointed: March 1, 2005

Term Ends: February 28, 2009



HONORABLE

FREDERICK P. HORN

Vice-Chairperson

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



HONORABLE

JUDITH D. MCCONNELL

Justice, Court of Appeal

Appointed by the Supreme Court

Appointed: March 30, 2005

Term Ends: February 28, 2009

COMMISSION MEMBERS - 2005



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



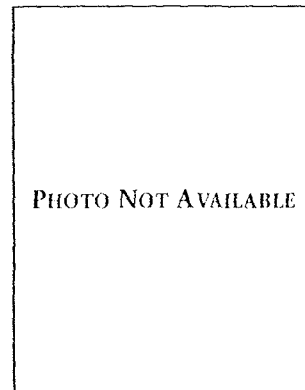
MRS. PENNY PEREZ
Public Member
Appointed by the
Senate Committee on Rules
Appointed: August 9, 2002
Reappointed: March 1, 2003
Term Ends: February 28, 2007



**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
Reappointed: March 1, 2005
Term Ends: February 28, 2009



MR. LAWRENCE SIMI
Public Member
Appointed by the Governor
Appointed: August 17, 2005
Term Ends: February 28, 2009

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 chairperson of the Commission since March 2005 and was vice-chairperson in 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. From 2002 to 2006 he served as presiding judge of the Orange County Superior Court. Prior to his appointment to the bench, he was a prosecutor with the Los Angeles District Attorney's Office. 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 was the Chair of the Trial Court Presiding Judges Advisory Committee of the California Judicial Council from 2002 to 2006. He is also a member of the faculty of the Judicial College, the New Judges Orientation Program and is a member of the Advisory Committee for the Continuing Judicial Studies Program. He has served as vice-chairperson of the Commission since 2005.

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 where he was Book Review

Editor of the *Stanford Law Review*. During 1973-1974 he clerked for Judge Ben C. Duniway of the United States Court of Appeals for the 9th Circuit. 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.

JUDITH D. McCONNELL (Justice Member) resides in San Diego County. She has served as the Administrative Presiding Justice of the Court of Appeal, Fourth Appellate District since 2003 and Associate Justice from 2001 to 2003. From 1978 to 1980 she was a judge of the San Diego Municipal Court, and from 1980 to 2001 she was a judge of the San Diego Superior Court. Prior to her appointment to the bench she was in private law practice in San Diego. She also worked for the California Department of Transportation. Justice McConnell received her law degree from the University of California, Boalt Hall School of Law in 1969. She served as a member and vice-chair of the Judicial Council Task Force on Jury System Improvement from 1998 to 2003, and as chair of the Task Force on Judicial Ethics Issues from 2003 to 2004.

PATRICIA MILLER (Public Member) resides in Los Angeles County. She is currently Senior Deputy for Los Angeles Supervisor Yvonne

BIOGRAPHIES

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.

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.

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.

LAWRENCE SIMI (Public Member) resides in San Francisco. He is the director of state government relations for Pacific Gas and Electric, where he has worked for the past 25 years. Previously, he was a program manager for Mayors Alioto, Moscone and Feinstein in San Francisco. He has been a board member of a variety of civic and non-profit organizations including San Francisco's Commission on the Aging and Mayor's Fiscal Advisory Committee, Self Help for the Elderly, Society for the Preservation of San Francisco's Architectural Heritage, Mission Education Project, United Cerebral Palsy Association, San Francisco Adult Day Health Network and the Institute on Aging. Currently he serves as President of the Board of Directors of Pine View Housing Corporation and as a member of Senator Dianne Feinstein's Service Academy Advisory Board. He holds a Bachelor of Arts in Political Science from San Francisco State University and a Master of Arts in Government from California State University, Sacramento.

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 2005 are discussed in Section V, Subordinate Judicial Officers.

HOW MATTERS ARE BROUGHT BEFORE THE COMMISSION

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

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

JUDICIAL MISCONDUCT

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

WHAT THE COMMISSION CANNOT DO

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

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

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 2005, not identifying the judge involved, is contained in Section IV, Case Summaries.

Public Dispositions

In cases involving more serious misconduct, the Commission may issue a public admonishment or a public censure.

This can occur after a hearing or without a hearing if the judge consents. The nature and impact of the misconduct generally determine the level of discipline. Both public 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 2005, there were no substantive changes to the California Constitution, the California Rules of Court, the California Government Code or the Code of Civil Procedure relating to the work of the Commission. There also were no substantive changes to the Code of Judicial Ethics.

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 1.

Commission Rules and Policy Declarations

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

Commission Rules 101 through 138 were adopted by the Commission on October 24, 1996, and took effect December 1, 1996. Following the 2004 biennial review of the Commission's Rules and Policy Declarations and public comment, on October 25, 2005, the Commission amended rules 102, 104, 107, 108, 109, 114, 116, 118, 119.5, 123, and 129. New rule 111.5 was adopted to allow a judge who receives an advisory letter to apply to the Commission for correction of an error of fact or law. Rule 120.5 was adopted regarding the suspension of a judge from office when certain criminal charges are pending and the removal of the judge from office upon finality of a criminal conviction.

The Commission adopted new policy declaration 2.6 on June 29, 2005 permitting the Commission to modify a Commission determination to correct an erroneous statement of law or fact.

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

Code of Judicial Ethics

The Constitution requires the Supreme Court to make rules "for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns," to

II.
LEGAL AUTHORITY AND COMMISSION PROCEDURES

be referred to as the "Code of Judicial Ethics" (California Constitution, article VI, section 18(m)). The Supreme Court adopted the Code of Judicial Ethics effective January 1996.

The canons 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 with-

out the judge being contacted. Otherwise, the judge is asked in a letter to comment on the allegations.

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

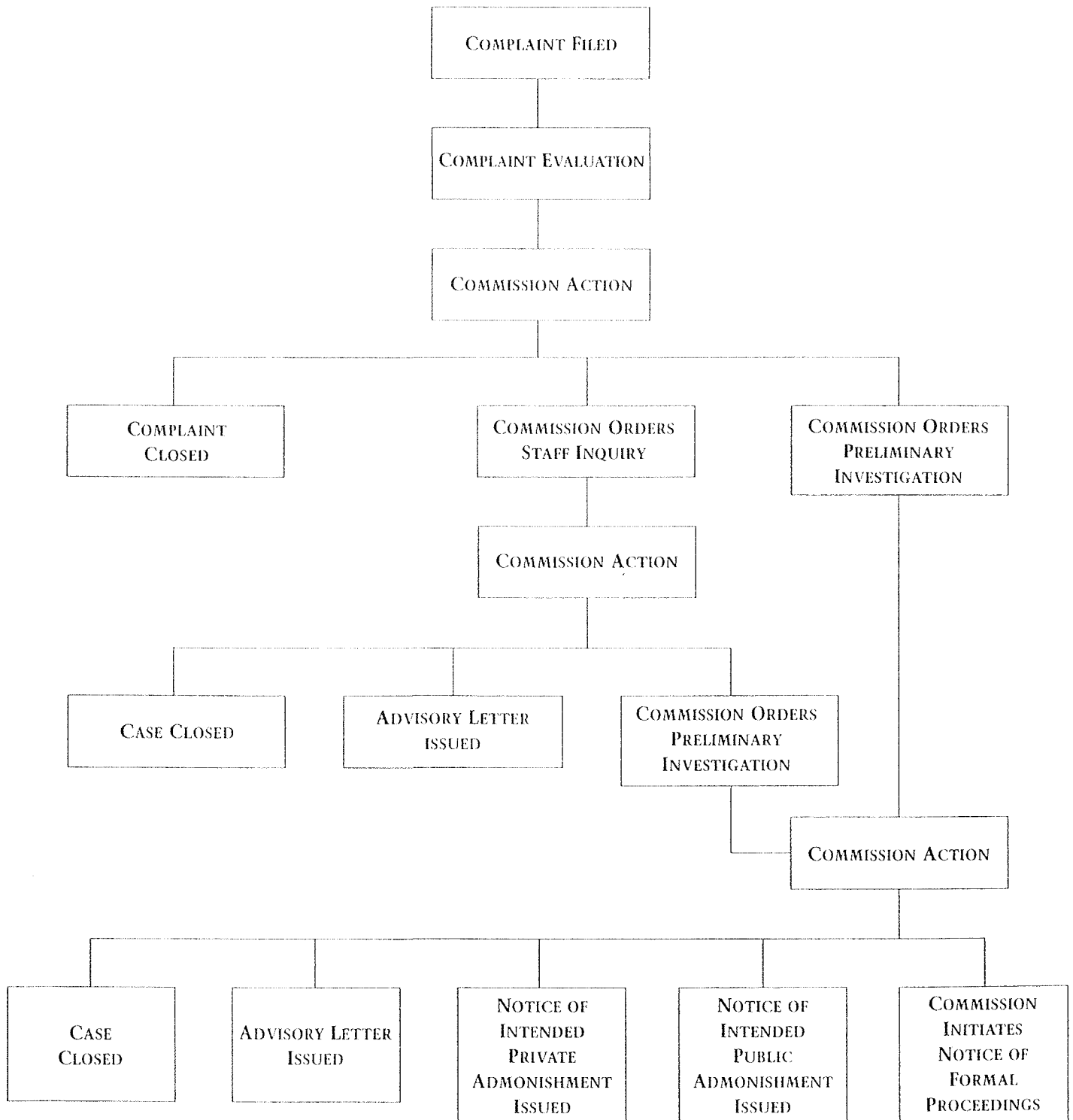
Following a staff inquiry, the Commission may take one of three actions. If the facts do not support a showing that misconduct has occurred, the Commission will close the case without any action against the judge. If improper or questionable conduct is found, but the misconduct was relatively minor or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

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

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

II.
LEGAL AUTHORITY AND COMMISSION PROCEDURES

COMPLAINT PROCESS



II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

tial" and does not use the inscription "Commission on Judicial Performance" on the envelopes. (Commission Rule 107(a).)

Deferral of Investigation

The Commission may defer an investigation of a pending matter under certain circumstances. Deferral may be warranted, under Policy Declaration 1.8, when the case from which the complaint arose is still pending before the judge, when an appeal or ancillary proceeding is pending in which factual issues or claims relevant to the complaint are to be resolved, and when criminal or other proceedings involving the judge are pending. While deferral of an investigation may result in delay in Commission proceedings, deferral is often appropriate to ensure that complaints before the Commission do not affect court proceedings. Deferral while a reviewing court or other tribunal completes its adjudication reduces the potential for duplicative proceedings and inconsistent adjudications.

Monitoring

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

Formal Proceedings

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

mand for formal proceedings. (Commission Rules 114, 116.) When formal proceedings are 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 hearing. (Commission Rule 121(a).) As an alternative to hearing the case itself, the Commission may request the Supreme Court to appoint three special masters to hear and take evidence in the matter and to report to the Commission. (Commission Rule 121(b).) Special masters are active judges or judges retired from courts of record.

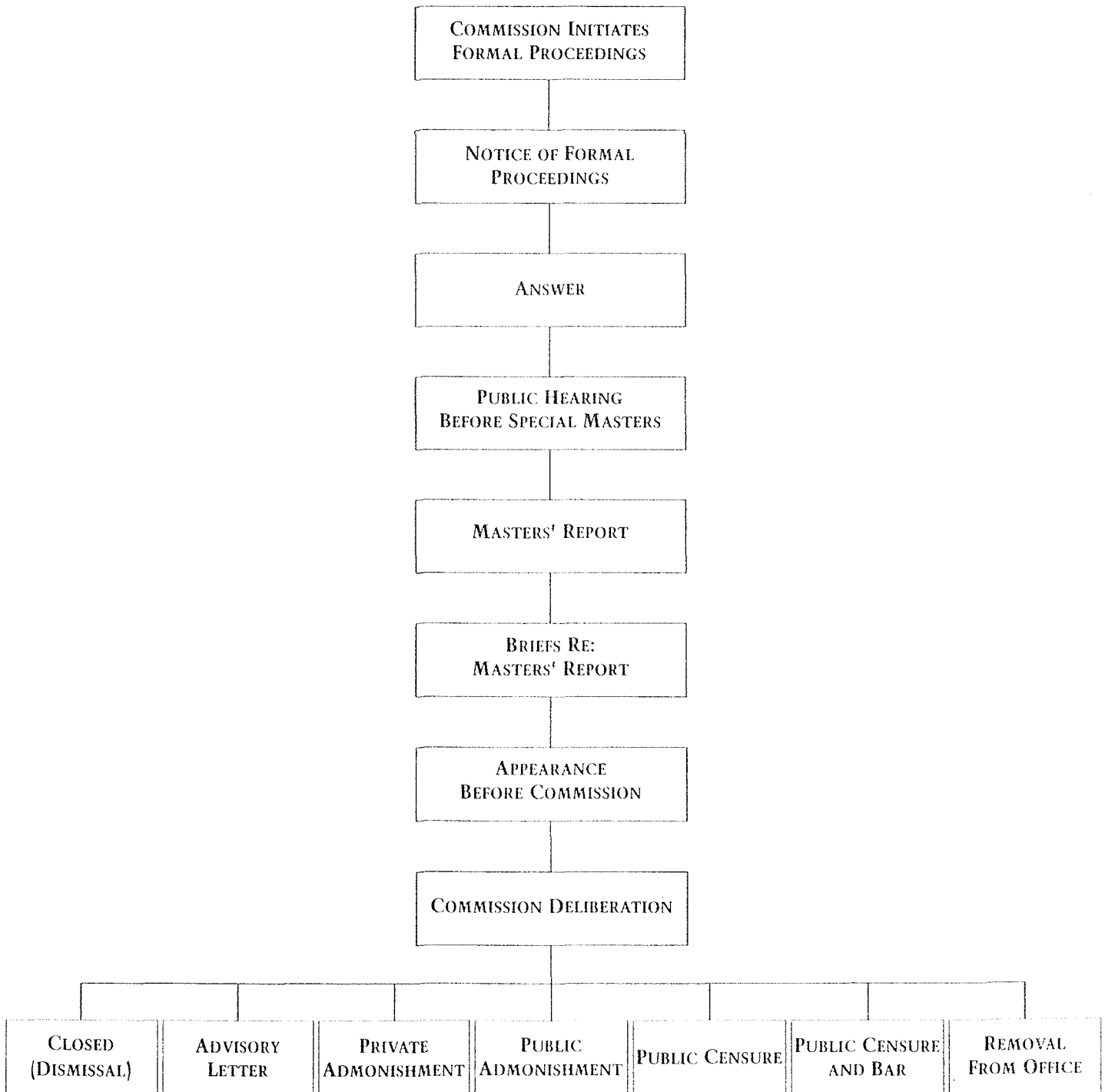
As in all phases of Commission proceedings, the judge may be represented by counsel at the hearing. The evidence in support of the charges is presented by an examiner appointed by the Commission (see Section VII, Commission Organization and Staff). The California Evidence Code applies to the hearings. (Commission Rule 125(a).)

Commission Consideration Following Hearing

Following the hearing on the formal charges, the special masters file a report with the Com-

II.
LEGAL AUTHORITY AND COMMISSION PROCEDURES

FORMAL PROCEEDINGS



II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

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

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

Disposition of Cases After Hearing

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

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

In cases involving former judges, the Commission may publicly censure or publicly or privately admonish the former judge. The Consti-

tution also permits the Commission to bar a former judge who has been censured from receiving an assignment from any California state court.

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

Release of Votes

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

SUPREME COURT REVIEW

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

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

STATUTE OF LIMITATIONS

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

STANDARD OF PROOF

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

II.
LEGAL AUTHORITY AND COMMISSION PROCEDURES

**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) - (n); Policy Declarations 4.1-4.6.) During the course of a staff inquiry or preliminary investigation, persons questioned or interviewed are advised that the inquiry or investigation is confidential. (Policy Declaration 1.9; *Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 528.)

The Constitution 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(c).)

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.

2005 STATISTICS

ACTIVE AND FORMER JUDGES



COMPLAINTS RECEIVED AND INVESTIGATED

In 2005, 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 460 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, 2005	
Supreme Court	7
Court of Appeal	105
Superior Courts	1,498
Total	1,610

New Complaints

In 2005, 965 new complaints about active and former California judges were considered by the Commission. The 965 complaints named a total of 1,196 judges (748 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.

2005 CASELOAD - JUDGES

Cases Pending 1/1/05	80
New Complaints Considered	965
Cases Concluded in 2005	954
Cases Pending 12/31/05	85

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

In 2005, the Commission received 155 complaints about subordinate judicial officers. These cases are discussed in Section V.

The Commission did not receive any complaints about State Bar Court judges in 2005. One matter carried over from 2004 was closed in 2005.

The Commission also received approximately 500 complaints in 2005 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 2005, the Commission ordered 55 staff inquiries and 41 preliminary investigations.

INVESTIGATIONS COMMENCED IN 2005

Staff Inquiries	55
Preliminary Investigations	41

III.
2005 STATISTICS - ACTIVE AND FORMER JUDGES

Formal Proceedings

At the beginning of 2005, 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 four cases during 2005. 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 2005, four formal proceedings had been concluded and four formal proceedings remained pending before the Commission. In a matter in which the Commission ordered a judge removed from office in 2005 (Inquiry Concerning Judge Kevin A. Ross, No. 174), the time for the judge to file a petition for review with the Supreme Court had not expired at the end of the year.²

FORMAL PROCEEDINGS

Pending 1/1/05	5 ¹
Commenced in 2005	4
Concluded in 2005	4
Pending 12/31/05	5 ²

COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the Commission in 2005, regardless of when the complaints were received.³ In 2005, a total of 954⁴ cases were concluded by the Commission. The average time period from the filing of a complaint to the disposition was 3 months. A chart of the disposition of all cases completed by the Commission in 2005 is included on page 13.

TYPE OF COURT CASE UNDERLYING COMPLAINTS CONCLUDED IN 2005

Criminal	44%
General Civil	22%
Family Law	16%
Small Claims/Traffic	7%
All Others	9%

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 2005

Litigant/Family/Friend	86%
Attorney	5%
Judge/Court Staff	3%
All Other Complainants	5%
(including citizens)	
Source Other Than Complaint	1%
(includes anonymous letters, news reports)	

Closed Without Action

In 876 of the cases closed in 2005, 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.

¹ The *O'Flaherty* matter was pending before the Supreme Court at the end of 2004 and was not included in the complaint disposition statistics for 2004. It is included in the 2005 statistics.

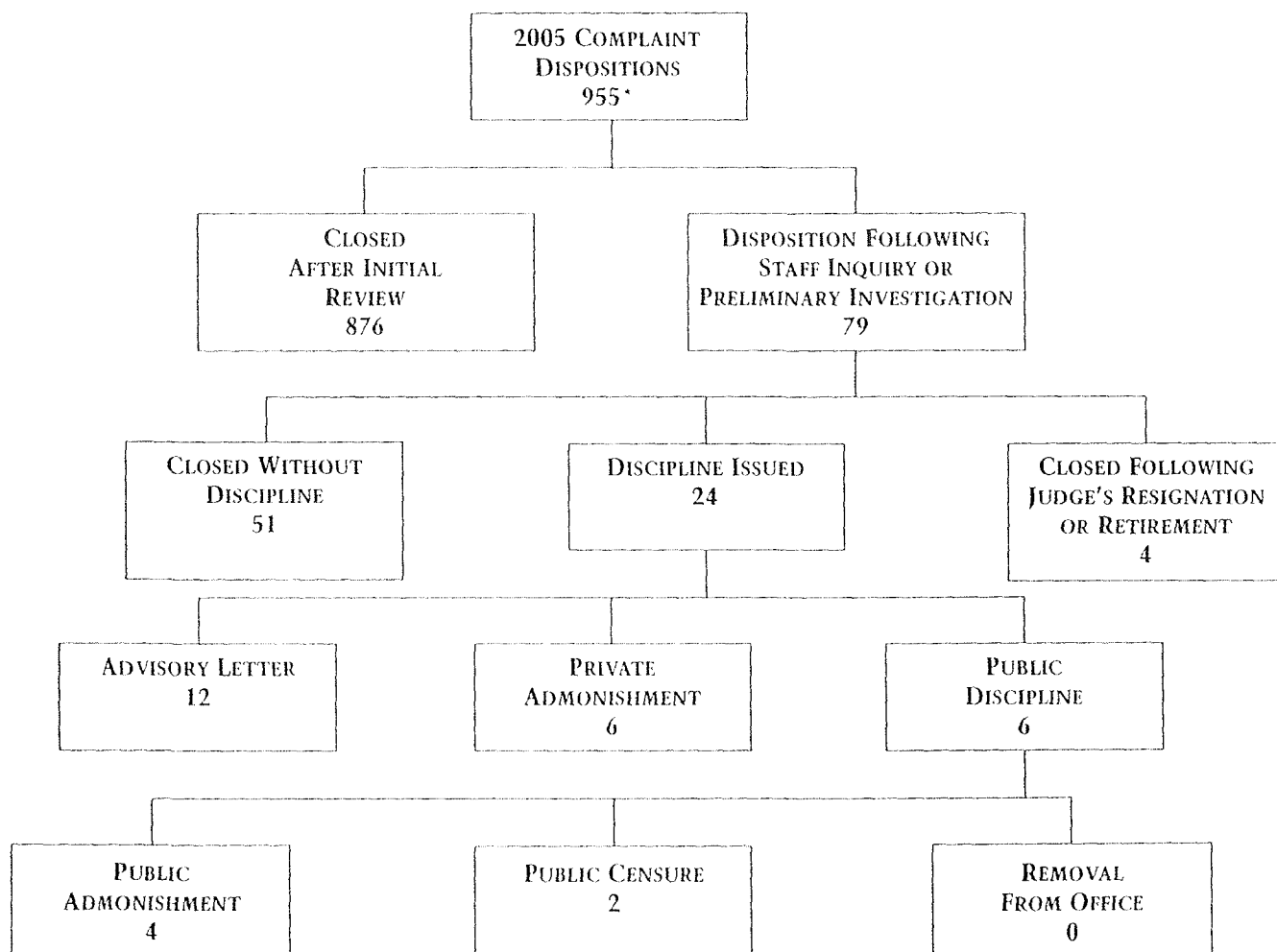
² The *Ross* matter is not included in the complaint disposition statistics for 2005.

³ Staff inquiries and preliminary investigations in the cases closed in 2005 may have commenced in prior years. Cases or portions of cases pending at the end of 2005 are not included in complaint disposition statistics.

⁴ The total number of dispositions exceeds the total number of cases concluded because complaints involving multiple allegations of varying severity may be resolved with multiple dispositions. For example, some allegations in a case may warrant closure with an advisory letter while others in the same case warrant public discipline. These dispositions do not always occur within the same year - some allegations may be closed at the time formal charges are issued and the remaining allegations not concluded until after hearing and determination by the Commission.

III.
2005 STATISTICS - ACTIVE AND FORMER JUDGES

2005
COMPLAINT DISPOSITIONS



* See footnote 4 at page 12.

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2005 STATISTICS - ACTIVE AND FORMER JUDGES

Following staff inquiry or preliminary investigation, another 51 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.

Closed With Discipline

In 2005, the Commission publicly censured two judges. The Commission imposed three public admonishments, and one public admonishment, issued in 2004, became final when the Supreme Court denied the judge's petition for review. The Commission also issued six private admonishments and 12 advisory letters. Each of these dispositions is summarized in Section IV.

A chart of the types of judicial conduct which resulted in discipline in 2005 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 2005, the Commission closed four matters without discipline when the judge resigned or retired with an investigation pending.

III.
2005 STATISTICS - ACTIVE AND FORMER JUDGES

TYPES OF CONDUCT RESULTING IN DISCIPLINE*

EX PARTE COMMUNICATIONS
[7]

FAILURE TO ENSURE RIGHTS
[7]

DISQUALIFICATION,
DISCLOSURE AND
RELATED RETALIATION
[6]

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

DEMEANOR, DECORUM
(includes inappropriate humor)
[4]

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

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

DECISIONAL DELAY,
TARDINESS, ATTENDANCE
[2]

GIFTS/LOANS/FAVORS/
TICKET-FIXING
[2]

OFF-BENCH ABUSE
OF OFFICE
(includes improper use of
office stationery)
[2]

SEXUAL HARASSMENT/
INAPPROPRIATE WORKPLACE
GENDER COMMENTS
[2]

ALCOHOL OR DRUG RELATED
CRIMINAL CONDUCT
[1]

FAILURE TO COOPERATE,
LACK OF CANDOR
[1]

IMPROPER BUSINESS
ACTIVITIES
[1]

MISCELLANEOUS OFF-BENCH
CONDUCT
[1]

MISUSE OF COURT RESOURCES
[1]

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

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PUBLIC DISCIPLINE

Public discipline decisions issued by the Commission in 2005 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 November of 2005, the Commission issued an order of removal of Judge Kevin A. Ross of the Los Angeles County Superior Court. In February 2006, Judge Ross filed a petition for review in the California Supreme Court. Because the matter was not concluded at the end of 2005, it is not included in the 2005 case disposition statistics.



Order of Removal of Judge Kevin A. Ross, November 16, 2005

Judge Kevin A. Ross of the Los Angeles County Superior Court was ordered removed from office by the Commission on November 16, 2005, for willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission's action concluded formal proceedings, during which there was a hearing before special masters and an appearance before the Commission.

The Commission first determined that the judge engaged in misconduct in connection with four criminal cases.

In one matter, a defendant who had two traffic citations submitted a declaration asserting that she was not the person cited. Judge Ross told her that he thought she was lying, added a misdemeanor charge of knowingly providing false insurance information in each traffic case, set bail at \$2,500 in each case, summarily remanded the defendant to custody, and set her next court date 30 days in the future; the defendant testified that the judge said she was going to custody for 30 days. The judge also entered a "not guilty" plea for the defendant, but did not arraign her and did not notify the prosecutor or the public defender that he had added the misdemeanor charge. The defendant remained in custody for two and a half days; she was then released after posting bail. In Commission proceedings, Judge Ross made a number of unconvincing excuses and false statements in an effort to mislead the special masters and the Commission.

The Commission concluded that Judge Ross engaged in willful misconduct. The judge's actions toward the defendant were in bad faith because he acted out of pique, irritation or impatience; alternatively or additionally, the judge acted beyond his lawful authority, either with knowledge that his actions were beyond his authority or with conscious disregard for the limits of his authority. In addition, the Commission found that the judge's knowing disregard of fundamental rights and abuse of authority were part of a pattern that rendered the judge unfit for the bench.

In another matter, Judge Ross telephoned a defendant charged with misdemeanor drug of-

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fenses and had an ex parte conversation with her. The Commission found that this was improper action. The Commission rejected the judge's claim that his call was justified by an emergency, and found that his claim that he promptly notified counsel of the call was false. The Commission found that Judge Ross made notes on a computer-generated printout of court minutes in an attempt to buttress his defense, and then used that altered document, first, to attempt to mislead his supervising judges and then to assert a false defense in Commission proceedings.

In a third matter, Judge Ross presided over the case of a defendant who had been placed on diversion on misdemeanor charges of violating zoning and other municipal ordinances in connection with holding religious services in his home. The prosecutor said that the defendant had not complied with the diversion agreement and that he wished to proceed with criminal charges. He also asked the judge to immediately enter an order prohibiting the defendant from holding religious services. Judge Ross informed the defendant of his right to legal representation, and the defendant said that he would need to seek legal representation. Despite this unambiguous request for counsel, Judge Ross asked the defendant a series of questions bearing on the requested order and the criminal charges, and accused the defendant of lying to him. The judge eventually obtained incriminating admissions from the defendant, after which he entered a not-guilty plea for the defendant and told him that he needed to get a lawyer.

The Commission concluded that Judge Ross engaged in willful misconduct. The Commission determined that the judge intentionally violated the defendant's constitutional rights, and displayed manifest embroilment and lack of impartiality.

In a fourth case, Judge Ross refused to conduct a probation violation hearing, stating that he already had found the defendant in violation of probation and would proceed to sentencing. After the defendant's public defender had a heated exchange with the judge and was removed

from the courtroom, the judge continued with the sentencing proceedings. Another public defender who was in the courtroom stated his appearance, but the Commission determined that neither he nor the judge understood him to have replaced the public defender who had been representing the defendant or to have been in a position to provide effective representation of the defendant. The judge addressed the defendant directly, and accused him of being a pathological liar. The matter was continued to the afternoon. The next day, after being told that the public defender's office intended to boycott his courtroom, Judge Ross set a formal probation violation hearing in the case.

The Commission concluded that Judge Ross committed willful misconduct. The judge presumptively knew, through his experience as a prosecutor, that a defendant in a probation violation case has a right to a hearing, and the defendant's lawyer insisted on that right. Therefore, the Commission concluded, Judge Ross intentionally disregarded the defendant's fundamental rights or knowingly acted beyond his judicial power or with a conscious disregard for the limits of his authority. Alternatively or additionally, the Commission determined that the judge displayed embroilment evidencing anger, pique, revenge or other improper purpose.

The Commission concluded that Judge Ross violated canon 3B(9) and engaged in prejudicial misconduct when he revealed confidential information about a juvenile case while appearing on a local public television program, and when he discussed a pending appellate case during another appearance on the same show.

The Commission concluded that Judge Ross engaged in willful misconduct and violated canons 1, 2A, 2B(2), 4A(2), 4D(1)(a), and 4D(2) when he acted as a private arbitrator during filming of a pilot television program for a possible new series to be called *Mobile Court*. The Commission concluded that the judge committed willful misconduct when he served as an arbitrator because he was acting in a judicial capacity. The Commission rejected the judge's claim that he

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did not know he was acting as an arbitrator, noting that he had signed two documents entitled "Arbitrator's Award" after filming was complete. The Commission noted that the judge's patent attempts at avoidance of responsibility and his act of providing a false story that he had signed the arbitration awards before the filming demonstrated a serious lack of candor and accountability.

In deciding discipline, the Commission noted that Judge Ross had engaged in repeated wrongdoing, that he had displayed a pervasive lack of candor and accountability and that he previously had been disciplined for similar misconduct. The Commission pointed out that honesty is a "minimum qualification" expected of every judge, and that Judge Ross had fabricated stories and attempted to mislead the Commission. The Commission also noted that the judge's behavior suggested a strong likelihood of future violations, and that his conduct besmirched the reputation of the judiciary. The Commission concluded that the appropriate discipline was removal from office.

Commission members Mr. Marshall B. Grossman, Judge Frederick P. Horn, Mr. Michael A. Kahn, Mrs. Crystal Lui, Justice Judith D. McConnell, Mr. Jose C. Miramontes, Mrs. Penny Perez, Judge Risë Jones Pichon, and Ms. Barbara Schraeger voted in favor of all the findings and conclusions and the order of removal of Judge Ross. Commission member Ms. Patricia Miller was recused, and Commission member Mr. Lawrence Simi did not participate.

PUBLIC CENSURE BY THE COMMISSION

In 2005, the Commission imposed two public censures. Both judges also were barred from receiving assignments, appointments, or a reference of work from any California state court.



**Censure and Bar of
Judge David E. Wasilenko,
March 2, 2005**

Judge David E. Wasilenko (Retired), formerly a judge of the Yuba County Superior Court, was ordered censured and barred from any assignment, appointment or reference of work from any California state court on March 2, 2005, for willful misconduct in office. The Commission's action concluded formal proceedings, during which there was a hearing before special masters; the judge waived argument before the Commission.

The Commission found that in nine infraction and misdemeanor matters, the judge gave procedural and substantive benefits to certain defendants, establishing "a two-track system of justice, with special handling available for relatives, friends and others with special connections." The Commission determined that the judge's actions were contrary to canon 2A (requiring judges to promote public confidence in the integrity and impartiality of the judiciary), 2B(1) (prohibiting a judge from conveying or permitting others to convey the impression that any individual is in a special position to influence the judge), and, in some instances, canons 3E(1) (requiring disqualification in certain circumstances), 3E(2) (requiring disclosure in certain circumstances) and 3B(7) (prohibiting ex parte communications in a pending proceeding). The Commission concluded that the judge engaged in nine instances of willful misconduct.

The Commission noted that while situations in which a judge "knows" a party, and must therefore be particularly vigilant to ensure the appearance and reality of independence and impartiality, may arise more frequently in a small town like Marysville than in a major metropolitan area, "the judge's ethical duties are the same irrespective of population statistics." The Commission further noted that the demographics of Marysville and Yuba County were irrelevant to Judge Wasilenko's misconduct, and stated, "Repeatedly diverting non-assigned cases so as to

be in a position to afford preferential judicial treatment to family, friends, and others specially situated is improper under the canons and intolerable in every county in this state."

In deciding discipline, the Commission pointed out that Judge Wasilenko was privately admonished by the Commission in 1993 for similar conduct, which included transferring to his own court two cases in which the judge's friends were the defendants; presiding in a matter in which his courtroom clerk was the defendant, without disclosure of the relationship on the record; and engaging in ex parte communications. The Commission concluded that the judge had displayed failure or inability to change his conduct, and was thus unsuitable for judicial office. Since the judge already had retired, the Commission determined that the appropriate discipline was censure and a bar from any assignment, appointment or reference of work from any California state court.

Commission members Justice Vance W. Raye, Mr. Marshall B. Grossman, Judge Frederick P. Horn, Mr. Michael A. Kahn, Mrs. Crystal Lui, Ms. Patricia Miller, Mr. Jose C. Miramontes, Mrs. Penny Perez, Judge Risë Jones Pichon, and Ms. Barbara Schraeger voted to impose a censure and bar. There was one public member vacancy on the Commission at the time of the decision.



**Censure and Bar of
Judge William R. Danser,
June 2, 2005**

Judge William R. Danser (Retired), formerly a judge of the Santa Clara County Superior Court, was ordered censured and barred from receiving any assignment, appointment or reference of work from any California state court on June 2, 2005, for willful misconduct in office. The Commission's action concluded formal proceedings, during which there was a report by three special masters based on a settlement agreement between the parties. Judge

Danser retired on the day the hearing before the special masters was to begin, and stipulated that the charges against him were to be determined based on the transcript and exhibits from the judge's criminal trial, in which he was convicted of a felony and seven misdemeanors. The judge also stipulated that certain other charges were true, and that at a minimum, his actions constituted prejudicial misconduct; the judge further stipulated that the Commission could issue a censure and bar against him.

The Commission concluded that Judge Danser improperly transferred to his court and then dismissed 24 traffic infraction cases involving 20 different defendants. Many of these defendants (some of whom were members or associates of a local professional hockey team) had a relationship with a police officer who was a friend of the judge's; others included friends and acquaintances of the judge and the father of the judge's court reporter. The Commission concluded that the judge's actions violated canons 2, 2A, 2B(1), and 2B(2); some of the judge's actions also violated canons 3B(7), 3B(8), 3E(1), and 3E(2). The Commission concluded that the judge engaged in willful misconduct, as his actions in the traffic matters constituted a "corrupt scheme of affording preferential treatment to his inner circle."

The Commission further concluded that Judge Danser improperly transferred to his courtroom four misdemeanor driving under the influence cases, and that after the transfers, he afforded procedural preferences and imposed more lenient sentences than the defendants otherwise likely would have received. The Commission concluded that the judge's actions, which were taken to benefit defendants with contacts in the judge's inner circle, were willful misconduct.

The Commission concluded that Judge Danser also committed willful misconduct when he made efforts to have a local police department dismiss a traffic citation and two parking citations issued to the judge's son. In telephone conversations and in written correspondence, on official stationery, the judge threat-

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ened to retaliate against the police department by no longer "making himself available" to the department; the judge also made misleading and sarcastic comments, and expressed anger. The Commission concluded that the judge's actions violated canons 1, 2, 2A, 2B(1), 2B(2), and 3B(4), and were taken for the corrupt purpose of obtaining favorable treatment for his son. In addition, the judge attempted to order his son's parking citations dismissed; the Commission found that this was a flagrant abuse of judicial power and was contrary to canon 3E(1), requiring disqualification in certain circumstances.

Finally, the Commission concluded that Judge Danser engaged in willful misconduct when he denied a deputy district attorney's request for a transcript in one of the driving under the influence cases he handled improperly, and tried to intimidate her and her office from pursuing the matter by making angry, crude and discourteous comments. The Commission found that the judge's actions were taken for the corrupt purpose of inhibiting the gathering of evidence concerning his handling of the case.

In deciding discipline, the Commission noted that Judge Danser had agreed that his conduct warranted a censure and bar. Stressing the egregiousness of the judge's behavior, the Commission stated that its opinion was issued "as an unqualified denunciation of all of Judge Danser's misconduct in an effort to enforce rigorous standards of conduct," and for the purpose of rehabilitating public confidence in the integrity and independence of the judicial system "by censuring Judge Danser in the strongest terms possible."

Commission members Mr. Marshall B. Grossman, Judge Frederick P. Horn, Mr. Michael A. Kahn, Mrs. Crystal Lui, Ms. Patricia Miller, Mr. Jose C. Miramontes, Mrs. Penny Perez and Ms. Barbara Schraeger voted to impose a censure and bar. Former Commission member Justice Vance W. Raye abstained from the vote because he would complete his term as a member prior to the completion of the written decision. Commission member Judge Risë Jones Pichon

was recused. Commission member Justice Judith D. McConnell had not been appointed to the Commission at the time of the vote and did not participate in the decision. There was one public member vacancy on the Commission at the time of the decision.

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 2005, three public admonishments were issued and became final. A fourth public admonishment issued by the Commission in 2004 became final when a petition for review was denied by the Supreme Court.

❧

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 (Commission 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. The petition was denied in February 2005; the admonishment is therefore included 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

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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.

Commission members Mr. Marshall B. Grossman, Judge Frederick P. Horn, Mr. Michael A. Kahn, Mrs. Crystal Lui, Mr. Jose C. Miramontes, Mrs. Penny Perez, Judge Risë Jones Pichon, and Ms. Barbara Schraeger voted to impose a public admonishment. Commission member Justice Vance W. Raye was recused and Commission member Ms. Patricia Miller did not participate in this matter. There was one public member vacancy on the Commission at the time of the decision.



**Public Admonishment of
Judge Stephen P. Gildner,
January 5, 2005**

Judge Stephen P. Gildner, a judge of the Kern County Superior Court, was publicly admonished for conduct that constituted, at a minimum, improper action, pursuant to Commission Rules 115-116 (governing public admonishments).

The Commission found that Judge Gildner issued bench warrants without lawful authority in two criminal cases.

In the first matter, a defendant had been ordered to appear at 9:00 a.m. for a pre-preliminary hearing conference, but the public defender advanced the matter to 8:30 a.m. for the purpose of declaring a conflict of interest so that

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new counsel could be appointed. When Judge Gildner called the case at 8:45 a.m., the defendant was not present. Judge Gildner issued a bench warrant for the defendant, although he had not been ordered to appear at 8:30 a.m., and the public defender did not know whether he had been notified to appear at the earlier time. When the defendant arrived during the 9:00 a.m. calendar call, he was taken into custody on the warrant. When defense counsel asked Judge Gildner to recall the matter that day, Judge Gildner refused to do so.

In the second matter, a defendant had been ordered to appear for a pre-preliminary hearing conference, but the public defender placed the matter on calendar six days before the date set for the conference in order to declare a conflict and facilitate appointment of new counsel. The defendant had not been notified that he needed to be present on this earlier date. Nonetheless, over objection of the public defender, Judge Gildner issued a no-bail bench warrant for the defendant. When the defendant appeared on the date previously set for the pre-preliminary hearing conference, the public defender attempted to address the court. Judge Gildner refused to allow him to do so. After appointing private counsel to represent the defendant, Judge Gildner ordered the defendant taken into custody on the previously-issued bench warrant.

The Commission concluded that Judge Gildner issued bench warrants in these matters without legal authority, and that his refusal to give the defendants an opportunity to explain their earlier non-appearance when they appeared as originally ordered constituted an abuse of judicial power. The Commission found that the issuance of the warrants was both legally erroneous and in violation of the defendants' fundamental right to notice.

The Commission also found that the judge engaged in misconduct when he refused to hear a defendant's explanation for his late arrival on the date set for trial. The defendant had been ordered to appear at 9:00 a.m. When the defendant had not appeared by 9:13 a.m., Judge

Gildner issued a bench warrant. A few minutes later, the public defender met the defendant in the courthouse hallway; the defendant explained that he had gone to the wrong courtroom. Judge Gildner refused to recall the case that day, thus barring the defendant from presenting evidence that his late appearance was unintentional or that mitigating circumstances existed. The Commission found that Judge Gildner's refusal to give the defendant a prompt hearing appeared arbitrary and created the appearance of substantial unfairness.

In addition, the Commission found that Judge Gildner engaged in misconduct when he told defendants at pre-preliminary hearings that they would never receive a plea disposition offer as lenient as or more lenient than the pre-preliminary hearing offer. This admonition overstated both the court policy and actual practice, and was not correct. Judge Gildner conceded that the admonition carried the potential for coercion.

The Commission concluded that Judge Gildner's conduct in these matters was, at a minimum, improper action, and suggested a pattern of failing to ensure the rights of criminal defendants.

Commission members Justice Vance W. Raye, Mr. Marshall B. Grossman, Judge Frederick P. Horn, Mr. Michael A. Kahn, Mrs. Crystal Lui, Ms. Patricia Miller, Mr. Jose C. Miramontes, Mrs. Penny Perez, Judge Risë Jones Pichon, and Ms. Barbara Schraeger voted to impose a public admonishment. There was one public member vacancy on the Commission at the time of the decision.



**Public Admonishment of
Judge John D. Harris,
March 29, 2005**

Judge John D. Harris (Retired), formerly a judge of the Los Angeles Superior Court, was publicly admonished following formal proceedings (Commission Rule 118, et seq.) for conduct

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that constituted prejudicial misconduct and improper action.

The Commission found that immediately prior to the sentencing hearing in a sexual molestation case, Judge Harris met privately in chambers with the victim, who was the defendant's niece; during this meeting, he commended her and offered support. Based on this meeting, the Court of Appeal vacated the sentence Judge Harris imposed, and remanded the case for sentencing before a different judge. The Commission found that although the judge may have been motivated by humanitarian concerns, his meeting with the victim and offer of support could raise questions in the mind of an objective observer regarding the judge's impartiality in the pending case. The Commission concluded that the judge engaged in prejudicial misconduct.

The Commission also found that immediately after sentencing in a sexual assault case, Judge Harris met privately in chambers with the victim; the judge commended her and offered support. The judge also invited the victim to dinner with his family. When the victim later called the judge to accept his invitation, the judge suggested that instead of dining at his home, the two of them dine at a mutually convenient place. The victim later called to cancel the dinner. The Commission found that although the judge may have been motivated by compassion, his improper ex parte communication and offer of support could raise questions in the mind of an objective observer regarding the judge's impartiality in the pending case. The Commission concluded that the judge engaged in prejudicial misconduct.

The Commission found that Judge Harris engaged in improper action in an interaction with a court employee. The employee had just returned from a lunchtime workout and was wearing exercise clothes. When she apologized for her attire, the judge told her she looked okay. He then placed his hands on her face and said, "You're so cute." The Commission concluded that the judge's conduct in putting his hands on

the employee's face and saying "You're so cute" violated canon 3B[4] and constituted improper action.

During a discussion in chambers, Judge Harris told a female deputy public defender that she should talk to her client about a plea bargain, and that a guilty plea would only be a technicality and did not really matter. When the deputy public defender said that her client was not guilty, the judge responded that the real reason her client wanted a trial was that he wanted to sit next to her for three days. The Commission found that even though the judge may have been acting in good faith, his comments would nevertheless appear to an objective observer to be unjudicial and prejudicial to public esteem for the judicial office. The Commission concluded that the judge engaged in prejudicial misconduct.

The Commission found that Judge Harris made improper comments about two defendants who appeared before him in prostitution cases. After a defendant who had a pelvic disorder left the courtroom, the judge discussed her medical condition in open court, and said, "caveat emptor." The judge remarked in open court about another defendant who had just left the courtroom that she "would look okay if she had her teeth straightened." The Commission concluded that these remarks were undignified and constituted improper action.

Upon completion of jury selection in a criminal case, the judge thanked counsel at sidebar for not exercising a challenge against a female juror because she was nice to look at. The Commission found that this comment could raise questions in the mind of an objective observer as to whether the judge might be motivated by personal interests during the case. In addition, the Commission found that even though the judge may have made the comment as a joke, and was acting in good faith, his comment would nevertheless appear to an objective observer to be unjudicial and prejudicial to public esteem for the judicial office. The Commission concluded that the judge engaged in prejudicial misconduct.

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Judge Harris pressed a female attorney who regularly appeared before him for a lunch appointment. The Commission found that by doing so, the judge failed to maintain and personally observe high standards of conduct so that the integrity of the judiciary would be preserved, in violation of canon I, and that his conduct constituted improper action.

At the weapons screening area of the courthouse, where 30 to 35 people were waiting in line, Judge Harris approached two female security officers, placed his hands against the wall, and asked if they were going to search him. Judge Harris asked if he could choose who would search him, and said that he wanted to be searched in chambers. This incident occurred after Judge Harris had been counseled by a supervising judge about inappropriate conduct toward women. The Commission concluded that Judge Harris's conduct was not suitable for a judicial officer in a public setting, and constituted improper action.

When a deputy city attorney appearing before Judge Harris offered to help the judge find a complaint in the court file, the judge tossed the file toward her. When the same deputy city attorney appeared before him on a later date in a case involving seized cigarettes, the judge asked her if she was going to smoke them herself. When the deputy city attorney appeared before Judge Harris in a third case and filed a peremptory challenge to the judge pursuant the Code of Civil Procedure section 170.6, Judge Harris asked her to make a record of her reasons for filing the challenge. After she did so, he agreed to transfer the case. However, while she was still in the courtroom, Judge Harris said to another deputy city attorney, "Would you like to join your colleague in filing some paper?" and added, "I didn't toss any files at you or near you, did I?" When the attorney said "no," Judge Harris responded, "No, I try to be selective when I throw things." The Commission found that Judge Harris displayed improper demeanor, and that when he pressed the deputy city attorney to prove her peremptory challenge and ques-

tioned the other attorney about making a challenge, an objective observer might have questioned whether he had become personally embroiled in his interactions with the first attorney. The Commission concluded that the judge engaged in improper action.

The judge helped a deputy district attorney appearing before him find dates with women, and did not disclose this when the attorney appeared before him. The Commission found that the judge's conduct in helping the attorney find dates could raise questions in the mind of an objective observer regarding the judge's impartiality in cases handled by the attorney, and was prejudicial misconduct.

In determining discipline, the Commission noted that Judge Harris had retired and had stated his intention not to sit on assignment. The Commission stated that although the impact of the judge's conduct on the judicial system was not insignificant, there was a great deal of evidence in mitigation, including the testimony of numerous witnesses concerning the judge's good nature and character, as well as his long and distinguished judicial career. The Commission concluded that public admonishment should be imposed.

Commission members Justice Vance W. Raye, Judge Frederick P. Horn, Mr. Michael A. Kahn, Mrs. Crystal Lui, Ms. Patricia Miller, Mr. Jose C. Miramontes, Mrs. Penny Perez, Judge Risé Jones Pichon and Ms. Barbara Schraeger voted in favor of public admonishment. Mr. Marshall B. Grossman was recused. There was one public member vacancy on the Commission at the time of the decision.



**Public Admonishment of
Judge Donald R. Alvarez,
December 27, 2005**

Judge Donald R. Alvarez, a judge of the San Bernardino County Superior Court, was publicly admonished pursuant to Commission Rules 115-

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116 (governing public admonishments).

Judge Alvarez drove under the influence of alcohol and with a blood alcohol level of .14 percent. He was convicted of driving under the influence on his plea of no contest. The Commission concluded that the judge engaged in conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Judge Alvarez also failed to report to the Commission the filing of charges against him and his conviction, despite the fact that canon 3D(3) provides that a "judge who is charged...or convicted of a crime in the United States...including all misdemeanors involving...the personal use...of alcohol, shall promptly and in writing report that fact to the Commission on Judicial Performance." The matter came to the attention of the Commission through a source other than the judge. When the Commission wrote to the judge, four months after his conviction and over seven months after charges were filed, the judge had not reported to the Commission.

The Commission, rejecting the judge's purported belief that he did not need to self report until he had completed all conditions of probation, noted that canon 3D(3) clearly and unambiguously mandates a prompt report to the Commission upon being charged or being convicted. The Commission pointed out that the judge was told by two presiding judges that he must self report. The Commission concluded that the failure to self report was, at a minimum, improper action.

The Commission stressed that the self-reporting requirement assists the Commission in fulfilling its constitutional mandate and in protecting the public. Under the Constitution, a judge who is charged with certain offenses is disqualified from acting as a judge; a judge who is convicted of certain charges must be suspended, and removed from office if the conviction becomes final. In addition, a judge may be removed from office for "habitual intemperance in the use of alcohol or drugs." When a judge is charged with an alcohol-related offense, it is the

Commission's policy to investigate not only the charged incident, but also whether there is a substance abuse problem that is affecting the judge's performance of judicial duties. The Commission pointed out that a judge's failure to report as required by canon 3D(3) impedes the Commission's performance of these constitutionally mandated duties.

Commission members Mr. Marshall B. Grossman, Judge Frederick P. Horn, Mr. Michael A. Kahn, Mrs. Crystal Lui, Justice Judith D. McConnell, Ms. Patricia Miller, Mrs. Penny Perez, Judge Risë Jones Pichon, and Ms. Barbara Schraeger voted to impose a public admonishment. Commission member Mr. Lawrence Simi was recused and Commission member Mr. Jose C. Miramontes did not participate in this matter.

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 2005, the Commission imposed six private admonishments.

1. In two matters, a judge failed to disclose on

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the record the judge's relationship with a party. In orders in which the judge consented to be disqualified from two cases, the judge made gratuitous, harsh comments about the attorneys in the cases.

2. A judge's handling of guardianship proceedings gave the appearance of bias in favor of the petitioners, with whom the judge had interacted socially and in volunteer activities for a number of years.

3. After forming the impression during jury voir dire that a potential juror was attempting to avoid jury service, a judge ordered the potential juror, who was not selected for the jury panel, to sit through two days of the trial under threat of a contempt finding and without following contempt procedures.

4. After refusing to cooperate with a judicial colleague and a court administrator, a judge defied a directive of the presiding judge of the court concerning a proceeding not pending before the judge.

5. A judge made inappropriate comments and jokes involving sexual conduct and made improper overtures toward court staff and attorneys in the courthouse. The judge failed to disclose a social relationship with an attorney appearing before the judge. The judge also misused court resources. The discipline included additional conditions.

6. A judge's practices at arraignments failed to ensure defendants' rights in a number of respects. The judge interfered with the attorney-client relationship in one matter. The judge also engaged in ex parte communications and delayed in ruling on a submitted matter.

ADVISORY LETTERS

The Commission advises caution or expresses disapproval of a judge's conduct in an advisory letter. The Commission has issued advisory letters in a variety of situations. As noted by the California Supreme Court in *Oberholzer v. Commission on Judicial Performance* (1999) 20 Cal.4th 371: "Advisory letters

may range from a mild suggestion to a severe rebuke." (Id. at p. 393.) An advisory letter may be issued when the impropriety is isolated or relatively minor, or when the impropriety is more serious but the judge has demonstrated an understanding of the problem and has taken steps to improve. An advisory letter is especially useful when there is an appearance of impropriety. An advisory letter might be appropriate when there is actionable misconduct offset by substantial mitigation.

In 2005, the Commission issued 12 advisory letters.

Failure to Ensure Rights

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

1. A judge went forward with a brief hearing in the absence of the pro per defendant.
2. A judge failed to ensure fundamental rights of a witness appearing before the court.
3. A judge failed to ensure fundamental rights of a witness appearing before the court.
4. A judge raised the bail of a defendant because a friend or family member of the defendant had caused a disturbance in court, which was not a proper reason to increase bail. In another matter, the judge failed to be patient, dignified and courteous to a defendant.

Ex Parte Communications

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

5. A judge received ex parte information about a pending case. The judge then transmitted the information ex parte in a manner that gave the appearance that the judge had been investigating the case and was not impartial.
6. A judge twice engaged in ex parte communi-

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cations about a case pending before the judge and failed to promptly disclose the communications.

7. A judge engaged in an ex parte communication. The judge also improperly received confidential information about a person who was the subject of the ex parte communication but who was not present.

Administrative Malfeasance

Judges are required to diligently discharge their administrative responsibilities. (Canon 3C.)

8. A judge participated in the decision to enter into a financial transaction on behalf of the court with an individual who was a close personal friend of the judge and with whom the judge had financial ties.

Delay, Dereliction of Duty

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

9. A judge failed to rule on a petition for habeas corpus for nearly seven months.

Demeanor and Decorum

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

10. A judge's treatment of a juror was not patient, dignified and courteous.

Disclosure and Disqualification

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

11. A judge failed to disclose a longtime friendship with an attorney appearing before the judge in a family law matter, even after the issue of a possible undisclosed conflict was raised.

On-Bench Abuse of Authority

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

12. In a case not pending before the judge and without notice to the parties, a judge rescinded another judge's order that a defendant be released on the defendant's own recognizance.

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 2005, there were 460 authorized subordinate judicial officer positions in California.

SUBORDINATE JUDICIAL OFFICERS AUTHORIZED POSITIONS As of December 31, 2005	
Court Commissioners.....	406
Court Referees	54
Total	460

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(l)(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.

2005 STATISTICS

Complaints Received and Investigated

In 2005, 155 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	148
Rule 109(c)(2) – at the request of a local court	0
Rule 109(c)(3) – notification by local court of discipline	5
Rule 109(c)(4) – notification by local court of resignation with investigation pending	2

2005 CASELOAD SUBORDINATE JUDICIAL OFFICERS

Cases Pending 1/1/05	2
New Complaints Considered	155
Cases Concluded in 2005	154
Cases Pending 12/31/05	3

Cases Concluded

In 2005, the Commission concluded its review of 154 complaints involving subordinate judicial officers. Of these, 153 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 two cases in which the local courts had suspended the subordinate judicial officers and two cases in which written reprimands had been imposed by local courts. In each of these matters, the Commission determined that no further proceedings by the Commission were warranted.

One of the 154 cases concluded in 2005 involved a subordinate judicial officer who was terminated by the local court. In this 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 individual's fitness to serve as a subordinate judicial officer. The case was closed conditioned upon the individual's agreement not to serve as a judicial or subordinate judicial officer. If the individual 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.

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

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TYPE OF COURT CASE UNDERLYING
SUBORDINATE JUDICIAL OFFICER
COMPLAINTS CONCLUDED IN 2005

Small Claims	35%
Family Law	35%
General Civil	10%
Traffic	6%
Criminal	5%
All Others (including off-bench)	9%

SOURCE OF COMPLAINTS
INVOLVING SUBORDINATE JUDICIAL OFFICERS
CONCLUDED IN 2005

Litigant/Family/Friend	93%
Judge/Court Staff	3%
Attorney	1%
All other complainants	3%

VI.

JUDICIAL DISABILITY RETIREMENT



VOLUNTARY DISABILITY RETIREMENT

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

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

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

2005 STATISTICS

At the beginning of 2005, two disability retirement applications were pending before the Commission. The Commission received six additional applications during the year. The Commission granted three disability retirement applications and denied one application during 2005. Four applications were pending at the close of 2005.

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 2005-2006, three positions are being kept vacant and other positions are filled part-time, resulting in an overall staffing reduction of 18%.

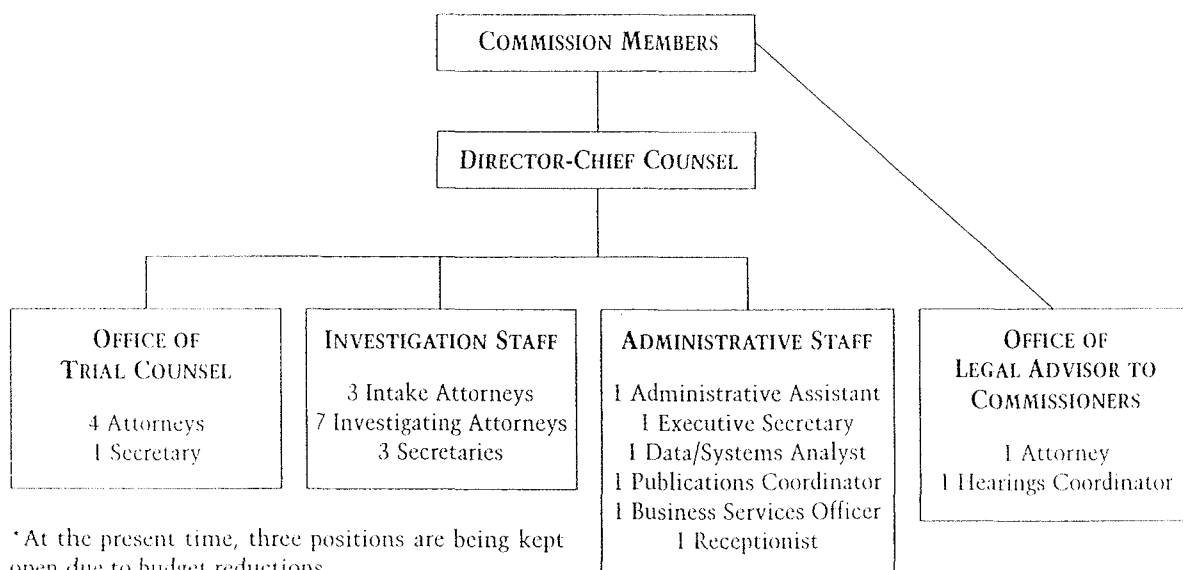
The Director-Chief Counsel heads the agency and reports directly to the Commission. The Director-Chief Counsel oversees the intake and investigation of complaints and the Commission examiners' handling of formal proceed-

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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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.

2005 - 2006 BUDGET

The Commission's budget is separate from the budget of any other state agency or court. For the 2005-2006 fiscal year, the Commission's budget allocation is \$4,110,000.

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 has not been restored, thus the measures taken to reduce expenditures remained in effect through 2005.

2004 - 2005 BUDGET

During the 2004-2005 fiscal year, approximately 32% of the Commission's budget supported the intake and investigation functions of the Commission and approximately 24% of the Commission's budget was used in connection with formal proceedings. The remaining 44% went toward sustaining the general operations of the Commission, including facilities, administrative staff, supplies, and security.

