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# STATE OF CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE



## 2007 ANNUAL REPORT

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# COMMISSION ON JUDICIAL PERFORMANCE

## 2007 ANNUAL REPORT

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## INTRODUCTION

In the commentary over Pakistan's political turmoil and the propriety of President Musharraf's placing the Chief Justice of the Supreme Court of Pakistan on forced leave as an interim measure while charges against the Chief Justice were investigated and heard, one commentator noted, "On this issue, the practices of the State of California Commission on Judicial Performance provide some guidance." After observing that California was the first state in the United States to set up a permanent body to oversee judicial misconduct, Law Professor L. Ali Khan described the Commission's procedures for investigations, hearings, interim suspension and discipline: "Before or during the investigation, the California Commission uses no interim measures to suspend a judge from office, seal his office, fire his staff, or send the judge on forced leave.... Only after the completion of the investigation may the commission exercise ... one of the many available disciplinary options."<sup>1</sup> The article reminds us that California's judicial disciplinary system continues to serve as a model in the United States and for other nations.

Although a model, California's judicial disciplinary system, now in its 48<sup>th</sup> year, continues to evolve, as does the larger ethics system of which it is a part. To enhance California's judicial ethics system, this year the Commission recommended the establishment of an official judicial ethics advisory committee under the auspices of the California Supreme Court. Ethics advisory committees now exist in more than 40 states, affording judges advice on ethical issues to assist them in maintaining high standards of personal and professional conduct. In the Commission's view, such advice from an official body is an important component of maintaining the integrity of the judiciary and the public's confidence in the judicial system. The Court adopted the proposal in concept and charged its Advisory Committee on the Code of Judicial Ethics with responsibility for submitting a proposal for the ethics advisory committee to the Court.

The Commission's own procedures in formal proceedings also changed, effective January 1, 2008. Both the judge and the Commission's examiner now have the opportunity to take depositions. The rule change was enacted at the behest of the California Judges Association and the panel of attorneys that represent judges in Commission proceedings. It remains the hope of the Commission that depositions will not add substantial additional cost or undue delay to the proceedings and will not disrupt the work of the courts. The rule providing depositions will sunset in three years, at which time the Commission will evaluate the effect of depositions on the process.

I welcome the Commission's new members and thank them, along with the Commission's continuing members, for their dedication to this important cause.



Honorable Frederick P. Horn  
Chairperson

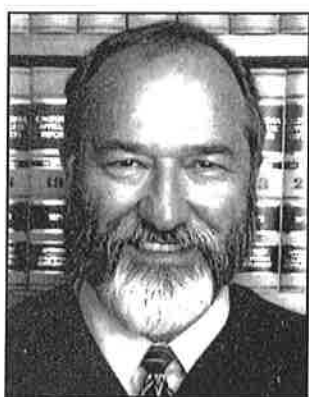
<sup>1</sup>L. Ali Khan, *Sending Pakistan's Chief Justice on forced leave: an unconstitutional interim measure*. (2007) JURIST (<http://jurist.law.pitt.edu/hotline/2007/07/sending-pakistan-chief-justice-on.php>)

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## 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. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing authority. 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 - 2007



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



**HONORABLE  
JUDITH D. McCONNELL**  
Vice-Chairperson  
Justice, Court of Appeal  
Appointed by the Supreme Court  
Appointed: March 30, 2005  
Term Ends: February 28, 2009



**HONORABLE  
KATHERINE FEINSTEIN**  
Judge Superior Court  
Appointed by the Supreme Court  
Appointed: March 1, 2007  
Term Ends: February 28, 2011

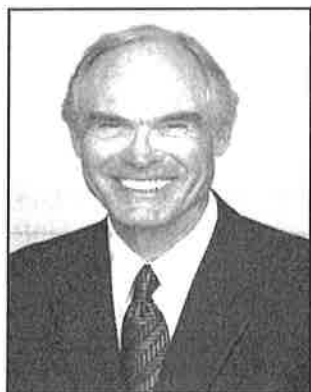


**PETER E. FLORES, JR., ESQ.**  
Attorney Member  
Appointed by the Governor  
Appointed: August 17, 2007  
Term Ends: February 28, 2011



**MARSHALL B. GROSSMAN, ESQ.**  
Attorney Member  
Appointed by the Governor  
Appointed: April 10, 2001  
Reappointed: March 1, 2005  
Term Ends: February 28, 2009

## COMMISSION MEMBERS - 2007



**MR. SAMUEL A. HARDAGE**  
Public Member  
Appointed by the Governor  
Appointed: August 17, 2007  
Term Ends: February 28, 2011



**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



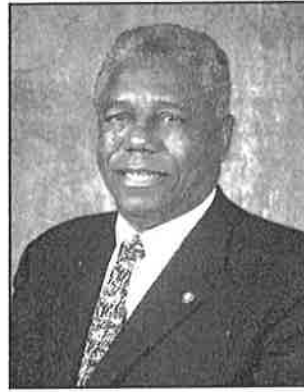
**MR. LAWRENCE SIMI**  
Public Member  
Appointed by the Governor  
Appointed: August 17, 2005  
Term Ends: February 28, 2009



**MS. MAYA DILLARD SMITH**  
Public Member  
Appointed by the  
Senate Committee on Rules  
Appointed: June 27, 2007  
Term Ends: February 28, 2011



**MS. SANDRA TALCOTT**  
Public Member  
Appointed by the  
Speaker of the Assembly  
Appointed: November 15, 2007  
Term Ends: February 28, 2011



**MR. NATHANIEL TRIVES**  
Public Member  
Appointed by the  
Speaker of the Assembly  
Appointed: October 3, 2007  
Term Ends: February 28, 2009

## OUTGOING MEMBERS

**MICHAEL A. KAHN, ESQ.**  
Attorney Member  
Appointed by the Governor  
Appointed: March 1, 1999  
Membership Ended: August 16, 2007  
(Upon appointment of successor)

**MR. JOSE C. MIRAMONTES**  
Public Member  
Appointed by the Governor  
Appointed: June 18, 2003  
Membership Ended: August 16, 2007  
(Upon appointment of successor)

**MRS. CRYSTAL LUI**  
Public Member  
Appointed by the  
Speaker of the Assembly  
Appointed: April 9, 1999  
Resigned: March 12, 2007

**MRS. PENNY PEREZ**  
Public Member  
Appointed by the  
Senate Committee on Rules  
Appointed: August 9, 2002  
Resigned: February 28, 2007

**MS. PATRICIA MILLER**  
Public Member  
Appointed by the  
Speaker of the Assembly  
Appointed: February 6, 2004  
Membership Ended: October 2, 2007  
(Upon appointment of successor)

**HONORABLE  
RISÉ JONES PICHON**  
Judge, Superior Court  
Appointed by the Supreme Court  
Appointed: March 3, 1999  
Term Ended: February 28, 2007

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## COMMISSION MEMBERS' BIOGRAPHIES

**KATHERINE FEINSTEIN** (Judge Member) resides in San Francisco. She has served on the San Francisco Superior Court since 2000. Before being assigned to civil jury trials in 2006, Judge Feinstein served as the supervising judge of Unified Family Court and presided over juvenile dependency, delinquency, family law, and domestic violence matters. Before becoming a judge, she served as a deputy district attorney and a deputy city attorney. She was also director of the Mayor's Office of Criminal Justice and a member of San Francisco's Police Commission. Judge Feinstein is a 1984 graduate of Hastings College of the Law and a Phi Beta Kappa graduate of the University of California, Berkeley.

**PETER ERNEST FLORES, JR.** (Lawyer Member) resides in San Francisco. He is a deputy attorney general prosecuting criminal cases throughout Northern California for the California Attorney General's Office. He received a Bachelor of Arts degree from Stanford University and his law degree from Boalt Hall School of Law at the University of California, Berkeley in 1993. From 1995 to 2005, he served as a deputy district attorney for the Sacramento County District Attorney's Office. Prior to that, he served as an associate for the law firm of Littler, Mendelson, Fastiff, Tichy & Mathiason in San Francisco. Mr. Flores is president of the California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (CASE). He serves as a board member of the Criminal Law Section of the California State Bar. He is also a member of the Hispanic National Bar Association, the California La Raza Lawyer's Association and the San Francisco La Raza Lawyer's Association.

**MARSHALL B. GROSSMAN** (Lawyer Member) resides in Los Angeles County. He is a partner in the law firm of Bingham McCutchen 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 Jewish Big Brothers/Big Sisters and the American Jewish Committee. He served as chairperson of the Commission in 2005 and 2006 and vice-chairperson in 2004.

**SAMUEL A. HARDAGE** (Public Member) resides in San Diego County. He is the chairman of a San Diego-based company, The Hardage Group, which owns and operates hotels in 11 states. He has been active in the real estate industry for over three decades, developing, constructing and managing projects, including hotels, high-rise office buildings, apartments and warehouses. He is an active supporter of a number of professional associations, private companies and civic organizations. He serves as the Founding Chairman of the Board of the Vision of Children Foundation, a non-profit organization benefiting children with hereditary, genetic vision disorders. He is also the Founding Chairman of The Project for California's Future and a Founding Board Member of the Village Christian Foundation. He serves on Pepperdine University's School of Public Policy Board of Visitors. He is a past board member of Sonoma Cutrer Vineyards, and is currently a partner of Emeritus Vineyards. He is a graduate of the U.S. Air Force Academy and received his MBA from Harvard Business School. He was elected Delegate to the White House Conference on Small Business in 1980 and was appointed by President Reagan to the President's Commission on Industrial Competitiveness in 1983. He was the Republican nominee for Governor of Kansas in 1982.

**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

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## BIOGRAPHIES

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 chairperson of the Commission since March 2007 and as vice-chairperson in 2005 and 2006.

**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. She has served as vice-chairperson of the Commission since March 2007.

**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 a government relations director for Pacific Gas and Electric, where he has worked for the past 27 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 degree in Political Science from San Francisco State University and a Master of Arts in Government from California State University, Sacramento.

**MAYA DILLARD SMITH** (Public Member) resides in Alameda County. She is the Director of Violence Prevention for the San Francisco Mayor's Office of Criminal Justice, and the chairperson of the Violence Prevention and Public Safety Oversight Committee for the City of Oakland. She has worked as a private management consultant and held positions with the California Judicial Council/Administrative Office of the Courts, U.S. Representative Barbara Lee, the U.S. Census Monitoring Board, and the National Bureau of Economic Research. She also served on the Board of Directors for the Center for Young Women's Development, a San Francisco based nonprofit organization. She received a Bachelor of Arts degree in Economics from the University of California at Berkeley and Master of Public Policy degree from Harvard University, John F. Kennedy School of Government.

**NATHANIEL TRIVES** (Public Member) resides in Los Angeles County. He is a former mayor of Santa Monica, California, and is a retired Deputy Superintendent/Chief Government Relations Officer for the Santa Monica Community Col-



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## BIOGRAPHIES

lege District. He attended Santa Monica College, California State University, Los Angeles and the University of California, Los Angeles. He is a former chair of the California Commission on Peace Officer Standards and Training. Mr. Trives served as a U.S. District Court special master overseeing a consent decree governing the resolution of race and gender bias in the San Francisco Police Department. He served on the board of the National Urban League. He is serving on the board of advisors of the Santa Monica UCLA Medical Center and the Pat Brown Institute as well as numerous community based boards including the Chamber of Commerce and the Convention and Visitor's Bureau in Santa Monica. He is an emeritus professor of criminal justice at California State University, Los Angeles.

**SANDRA TALCOTT** (Public Member) resides in Los Angeles County. From 1999 to 2002, she

served on the Judicial Nominees Evaluation Commission as a public member, and from 2003 to 2006 she served on that commission's review committee and was chair of the committee between 2005 and 2006. She presently works as an interior designer. She received a Bachelor of Arts degree in Political Science from the University of California, Berkeley. Ms. Talcott has a background in advertising, and worked at Young and Rubicam International, Inc. as a producer and casting director, then as a freelance casting director. She was involved in the volunteer sector of the Los Angeles art community where she co-curated one of the early exhibitions at the Craft and Folk Art Museum, was involved in the start-up phase of the Museum of Contemporary Art, served the Los Angeles County Museum of Art as chairperson of one of its councils, and served as a board member of a national association of art museum volunteer committees.

## SPECIAL MASTERS

Pursuant to Commission Rule 121(b), as an alternative to hearing a case itself, the Commission requests the appointment of special masters – usually three – by the Supreme Court to preside over a hearing and take evidence in a formal proceeding. As further discussed on page 8 of this report, at the conclusion of the hearing and after briefing by the parties, the special masters prepare a report of findings of fact and conclusions of law for the Commission.

The Commission wishes to recognize the following judges for their service as special masters in Commission matters in 2007:

**Honorable Judith Ashmann-Gerst**  
Court of Appeal, Second Appellate District

**Honorable George J. Abdallah, Jr.**  
San Joaquin County Superior Court

**Honorable Tani G. Cantil-Sakauye**  
Court of Appeal, Third Appellate District

**Honorable Mary Jo Levinger**  
Santa Clara County Superior Court

**Honorable William A. Mayhew**  
Stanislaus County Superior Court

**Honorable Kevin M. McCarthy**  
San Francisco County Superior Court

**Honorable Fred K. Morrison**  
Court of Appeal, Third Appellate District

**Honorable Eugene M. Premo**  
Court of Appeal, Sixth Appellate District

**Honorable Eleanor Provost**  
Tuolumne County Superior Court

**Honorable Laurence D. Rubin**  
Court of Appeal, Second Appellate District

**Honorable Mark H. Tansil**  
Sonoma County Superior Court

**Honorable Kathryn Doi Todd**  
Court of Appeal, Second Appellate District

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# I.

## OVERVIEW OF THE COMPLAINT PROCESS



### THE AUTHORITY OF THE COMMISSION ON JUDICIAL PERFORMANCE

The Commission on Judicial Performance is the independent state agency responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges (pursuant to article VI, section 18 of the California Constitution). Its jurisdiction includes all active California judges. The Commission also has authority to impose certain discipline on former judges, and the Commission has shared authority with local courts over court commissioners and referees. In addition, the Director-Chief Counsel of the Commission is designated as the Supreme Court's investigator for complaints involving State Bar Court judges. The Commission does not have authority over temporary judges (also called judges pro tem) or private judges. In addition to its disciplinary functions, the Commission is responsible for handling judges' applications for disability retirement.

This section describes the Commission's handling and disposition of complaints involving judges. The rules and procedures for complaints involving commissioners and referees and statistics concerning those matters for 2007 are discussed in Section V, Subordinate Judicial Officers.

### HOW MATTERS ARE BROUGHT BEFORE THE COMMISSION

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

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

### JUDICIAL MISCONDUCT

The Commission's authority is limited to investigating alleged judicial misconduct and, if warranted, imposing discipline. Judicial misconduct usually involves conduct in conflict with the standards set forth in the Code of Judicial Ethics (see Appendix 1, section E). Examples of judicial misconduct include intemperate courtroom conduct (such as yelling, rudeness, or profanity), improper communication with only one of the parties in a case, failure to disqualify in cases in which the judge has or appears to have a financial or personal interest in the outcome, delay in performing judicial duties, and public comment about a pending case. Judicial misconduct also may involve improper off-the-bench conduct such as driving under the influence of alcohol, using court stationery for personal business, or soliciting money from persons other than judges on behalf of charitable organizations.

### WHAT THE COMMISSION CANNOT DO

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

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

I.  
OVERVIEW OF THE COMPLAINT PROCESS

**REVIEW AND INVESTIGATION  
OF COMPLAINTS**

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

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

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

**ACTION THE COMMISSION CAN TAKE**

**Confidential Dispositions**

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

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

be repeated or escalate. A private admonishment consists of a notice sent to the judge containing a description of the improper conduct and the conclusions reached by the Commission.

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

A description of each advisory letter and private admonishment issued in 2007, not identifying the judge involved, is contained in Section IV, Case Summaries.

**Public Dispositions**

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

This can occur after a hearing or without a hearing if the judge consents. The nature and impact of the misconduct generally determine the level of discipline. Both public admonishments and public censures are notices that describe a judge's improper conduct and state the findings made by the Commission. Each notice is sent to the judge and made available to the 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

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

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



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## II. LEGAL AUTHORITY AND COMMISSION PROCEDURES



### LEGAL AUTHORITY

#### Recent Changes in the Law

In 2007, the Supreme Court amended the Code of Judicial Ethics, and the Commission adopted various changes to its rules. The amendments to the Code and to the Commission rules are summarized below.

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

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

The Commission is subject to Government Code sections 68701 through 68756. The Government Code also controls the Commission's handling of disability retirement applications. The pertinent provisions are Government Code sections 75060 through 75064 and sections 75560 through 75564.

In addition, the Commission is responsible for enforcement of the restrictions on judges' receipt of gifts and honoraria, set forth in Code of Civil Procedure section 170.9. On January 31, 2007, the Commission adopted \$350.00 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.

The Rules of the Commission on Judicial Performance, rules 101 through 138, were adopted by the Commission on October 24, 1996, and took effect December 1, 1996.

In May 2007, after circulation for public comment, the Commission adopted three new rules and amendments to six other rules. New rule 116.5 permits the negotiation of stipulated dispositions during preliminary investigations and admonishment proceedings, as well as after formal charges have been filed. New rule 134.5 provides for the application of the rule of necessity when a quorum of Commission members cannot otherwise be convened. New rule 125.5 provides for the handling of original exhibits at the conclusion of a hearing; rule 119.5 was amended to clarify which documents are to be filed with the commission during formal proceedings. Rule 108(c) was amended to set forth the requirements for requesting a continuance of a hearing before special masters and to emphasize that such continuances are disfavored. Amendments to rules 113 and 115 were adopted to expressly provide for the citation to any prior discipline in notices of intended private and public admonishments. Rule 126(d) was amended to permit the Commission to petition a court for appointment of a conservator for a judge who is adjudged or appears to be incompetent. Rule 102(k) was amended to permit the Commission to refer information to the State

Bar or other regulatory agencies about proceedings involving a subordinate judicial officer who is terminated by the local court, as well as when the subordinate judicial officer retires or resigns from employment with the court.

In October 2007, after circulating proposed rule changes for public comment, the Commission adopted an amendment to rule 118(c) to provide that service of a notice of formal proceedings by certified mail is complete at the time of mailing. Rule 122(g) was amended to allow each side in formal proceedings to take four discovery depositions.

The Policy Declarations of the Commission on Judicial Performance detail internal procedures and existing policy. The Policy Declarations were substantially revised in 1997. In January 2007, the Commission adopted a Code of Ethics for Commission Members (Policy Declarations 6.1-6.5). In December 2007, the Commission adopted a clarification of the Preface to its Code of Ethics concerning the effect of the code. Additions and revisions to Policy Declaration 6.3 also were adopted to prohibit the receipt as well as the initiation of ex parte communications by Commission members and to prohibit ex parte communications between the Commission members and the Director-Chief Counsel, trial counsel or the investigative staff concerning a matter after formal proceedings have been initiated.

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.

### Rules of Court

As part of the reorganization of the California Rules of Court, the rules were renumbered and amended effective January 1, 2007. None of the amendments made any substantive changes to the rules pertaining to the Commission.

### Code of Judicial Ethics

The Constitution requires the Supreme

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

In 2007, the Supreme Court adopted various amendments to the Code of Judicial Ethics, which took effect January 1, 2008. Amended canon 3B(8) requires judges presiding over cases with self-represented litigants to manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated. Canon 3E(2) was amended to adopt an objective standard requiring that judges disclose information that is reasonably relevant to the question of disqualification. Canon 2B(2) was amended to permit judges to provide factual or character information to the Commission, without a subpoena, on behalf of judges who are under investigation, provided the information is based on personal knowledge.

Canon 3D(3) was amended to clarify when judges must report being charged or convicted of a crime to the Commission and to require subordinate judicial officers to report such information to their presiding judges and retired assigned judges to report such information to the Chief Justice. Amended canon 6D prohibits temporary judges, referees, and court-appointed arbitrators from using their title or lending the prestige of judicial office to advance the interests of themselves or others at any time.

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

## COMMISSION PROCEDURES

### Commission Review of Complaints

The Commission considers each written complaint about a California judge and determines whether sufficient facts exist to warrant investigation or whether the complaint is unfounded and should not be pursued. Until the Commission has authorized an investigation,

the Commission's staff does not contact the judge or any court personnel. However, to assist the Commission in its initial review of the complaint, the Commission's legal staff will have researched any legal issues and may have obtained additional relevant information from the complainant or the complainant's attorney. (Commission Rule 109.)

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

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

Commission investigations may include contacting witnesses, reviewing court records and other documents, observing courtroom proceedings, and conducting such other investigation as the issues may warrant. If the investigation reveals facts that warrant dismissal of the complaint, the complaint may be closed without the judge being contacted. Otherwise, the judge is asked in a letter to comment on the allegations.

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

Following a staff inquiry, the Commission may take one of three actions. If the facts do not support a showing that misconduct has occurred, the Commission will close the case without any action against the judge. If improper or questionable conduct is found, but the misconduct was relatively minor or isolated or the judge recognized the problem and took steps to improve, the Commission may issue an advisory

letter. (Commission Rule 110; Policy Declaration 1.2.) If serious issues remain after a staff inquiry, the Commission will authorize a preliminary investigation. (Commission Rule 109; Policy Declarations 1.2, 1.4.)

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

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

### **Deferral of Investigation**

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



court or other tribunal completes its adjudication reduces the potential for duplicative proceedings and inconsistent adjudications.

### **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 demand for formal proceedings. (Commission Rules 114, 116.) When formal proceedings are commenced, the Commission issues a notice of formal proceedings, which constitutes a formal statement of the charges. The judge's answer to the notice of charges is served and filed with the Commission within 20 days after service of the notice. (Commission Rules 118(a), (b), 119(b), 119.5.) Extensions of time to respond to a notice of charges are governed by the rules. (Commission Rules 108, 119.)

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

The Commission may disqualify a judge from performing judicial duties once formal proceedings are instituted if the judge's continued ser-

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

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

### **Disposition of Cases After Hearing**

The following are actions that may be taken

by the Commission pursuant to article VI, section 18 of the California Constitution after a hearing on the formal charges, unless the case is closed without discipline:

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

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

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

#### **Release of Votes**

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

#### **SUPREME COURT REVIEW**

A judge may petition the California Supreme Court to review a Commission determination to admonish, censure or remove the judge. Re-

view 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 9.60 and 9.61 govern petitions for review of Commission determinations.

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

#### **STATUTE OF LIMITATIONS**

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

#### **STANDARD OF PROOF**

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

#### **CONFIDENTIALITY OF COMMISSION PROCEEDINGS**

The California Constitution authorizes the Commission to provide for the confidentiality of complaints to and investigations by the Commission. (California Constitution, article VI, section 18(i)(1).) The Commission's rules provide that complaints and investigations are confidential, subject to certain exceptions, for example, when public safety may be compromised, when information reveals possible criminal conduct, and when judges retire or resign during proceedings. (Commission Rule 102(f) - (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 proceed-

II.  
LEGAL AUTHORITY AND COMMISSION PROCEDURES

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ings. (California Constitution, article VI, section 18(k); Commission Rule 102(c).)

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

After final resolution of a case, the rules require the Commission to disclose to the person who filed the complaint that the Commission has found no basis for action against the judge

or determined not to proceed further in the matter, has taken an appropriate corrective action (the nature of which is not disclosed), or has imposed public discipline. The name of the judge is not used in any written communications to the complainant unless the proceedings are public. (Commission Rule 102(e).)

The Commission also is required to provide the text of any private admonishment, advisory letter or other disciplinary action to appointing authorities upon request. (California Constitution, article VI, section 18.5.)

### III.

## 2007 STATISTICS

### ACTIVE AND FORMER JUDGES



#### COMPLAINTS RECEIVED AND INVESTIGATED

In 2007, there were 1,660 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 457 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, 2007

Supreme Court .....	7
Court of Appeal .....	105
Superior Courts .....	1,548
<b>Total .....</b>	<b>1,660</b>

#### New Complaints

In 2007, 1,077 new complaints about active and former California judges were considered by the Commission. The 1,077 complaints named a total of 1,328 judges (812 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.

#### 2007 CASELOAD - JUDGES

Cases Pending 1/1/07 .....	69
New Complaints Considered .....	1,077
Cases Concluded in 2007 .....	1,058
Cases Pending 12/31/07 .....	87

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

In 2007, the Commission received 148 complaints about subordinate judicial officers. These cases are discussed in Section V.

The Commission considered two complaints about State Bar Court judges in 2007. After review, it was determined that neither warranted further action.

The Commission office also received over 500 complaints in 2007 concerning individuals and matters that did not come under the Commission's jurisdiction: federal judges, former judges for matters outside the Commission's jurisdiction, judges pro tem (temporary judges), workers' compensation judges, other government officials and miscellaneous individuals. Commission staff responded to each of these complaints and, when appropriate, made referrals.

#### Staff Inquiries and Preliminary Investigations

In 2007, the Commission ordered 55 staff inquiries and 54 preliminary investigations.

#### INVESTIGATIONS COMMENCED IN 2007

Staff Inquiries .....	55
Preliminary Investigations .....	54

III.  
2007 STATISTICS - ACTIVE AND FORMER JUDGES

### Formal Proceedings

At the beginning of 2007, there were four formal proceedings pending before the Commission. In one of these matters (Inquiry Concerning Judge Diana R. Hall, No. 175), the Commission issued a decision in 2006, but the time for the judge to file a petition for review with the Supreme Court had not expired by the end of 2006.<sup>1</sup> The Commission instituted formal proceedings in one case during 2007. 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 2007, three formal proceedings had been concluded and two formal proceedings remained pending before the Commission. In one of these matters (Inquiry Concerning Judge Robert G. Spitzer, No. 182), the Commission issued an order of removal from office in 2007, and the judge filed a petition for review of the Commission's determination, which was pending before the California Supreme Court at the end of the year.<sup>2</sup>

#### FORMAL PROCEEDINGS

Pending 1/1/07 .....	4 <sup>1</sup>
Commenced in 2007 .....	1
Concluded in 2007 .....	3
Pending 12/31/07 .....	2 <sup>2</sup>

### COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the Commission in 2007, regardless of when the complaints were received.<sup>3</sup> In 2007, a total of 1,058 cases were concluded by the Commission. The average time period from the filing of a complaint to the disposition was 2.8 months. A chart of the disposition of all cases completed by the Commission in 2007 is included on page 13.

#### TYPE OF COURT CASE UNDERLYING COMPLAINTS CONCLUDED IN 2007

Criminal .....	47%
General Civil .....	22%
Family Law .....	13%
Small Claims/Traffic .....	6%
All Others .....	9%

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

#### SOURCE OF COMPLAINTS CONCLUDED IN 2007

Litigant/Family/Friend .....	87%
Attorney .....	6%
Judge/Court Staff .....	2%
All Other Complainants .....	3%
(including citizens)	
Source Other Than Complaint .....	2%
(includes anonymous letters, news reports)	

### Closed Without Discipline

In 2007, after obtaining the information necessary to evaluate the complaints, the Commission determined that there was not a sufficient showing of misconduct in 975 of the complaints. In other words, there was an absence of facts which, if true and not otherwise explained, might constitute misconduct. These complaints were closed by the Commission without staff inquiry or preliminary investigation.

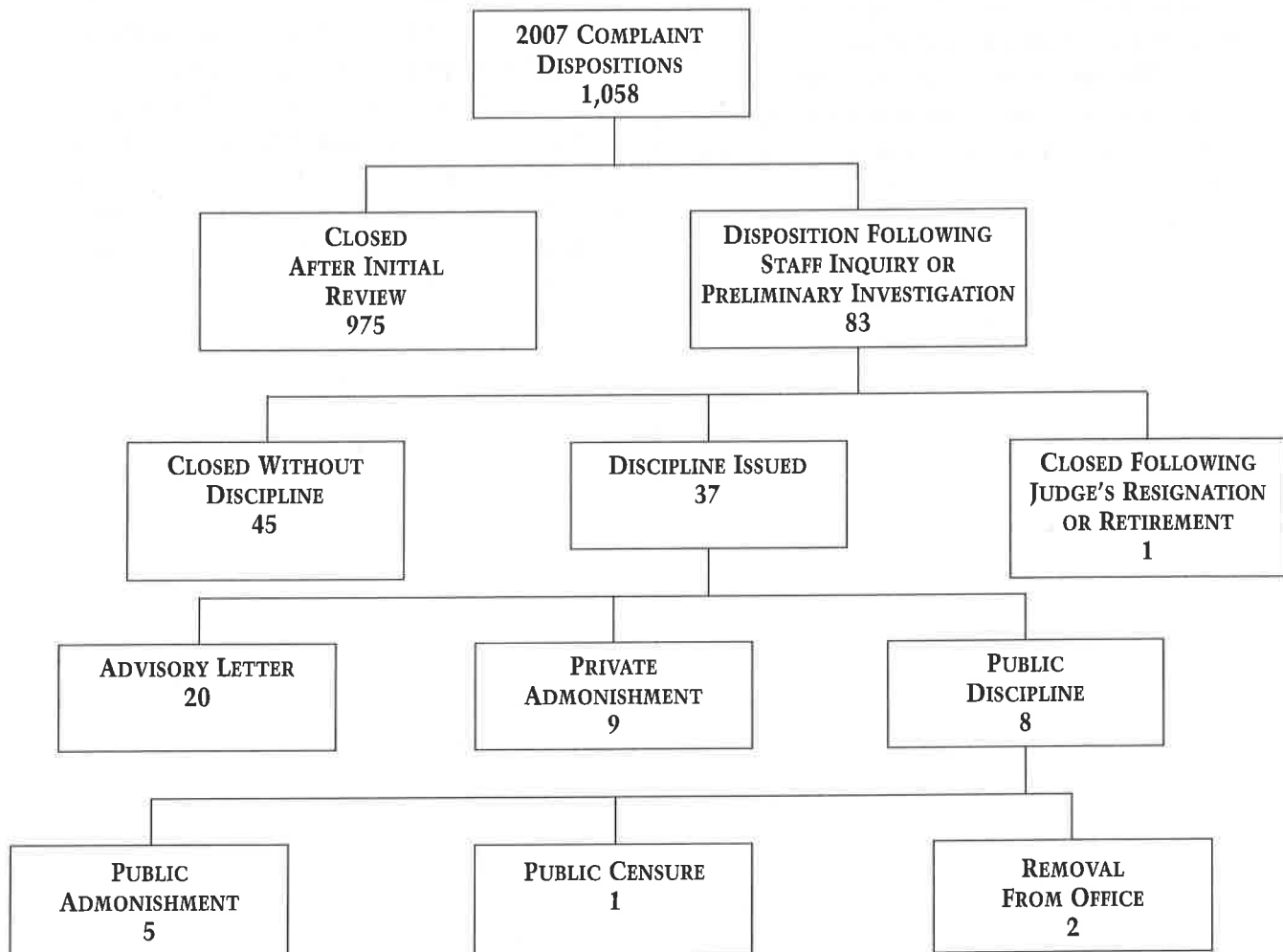
Following staff inquiry or preliminary investigation, another 45 matters were closed without discipline. In these cases, investigation showed that the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation.

<sup>1</sup> Because the *Hall* matter was not final at the end of 2006, it was not included in the complaint disposition statistics for 2006. It is included in the 2007 statistics.

<sup>2</sup> The *Spitzer* matter is not included in the complaint disposition statistics for 2007.

<sup>3</sup> Staff inquiries and preliminary investigations in the cases closed in 2007 may have commenced in prior years. Cases or portions of cases pending at the end of 2007 are not included in complaint disposition statistics.

**2007  
COMPLAINT DISPOSITIONS**



III.  
2007 STATISTICS - ACTIVE AND FORMER JUDGES

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**Closed with Discipline**

In 2007, the Commission removed two judges from office, publicly censured one judge and imposed five public admonishments. The Commission also issued nine private admonishments and 20 advisory letters. Each of these dispositions is summarized in Section IV.

A chart of the types of conduct which resulted in discipline in 2007 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 2007, the Commission closed one matter without discipline when the judge resigned or retired with an investigation pending.

III.  
2007 STATISTICS - ACTIVE AND FORMER JUDGES

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TYPES OF CONDUCT RESULTING IN DISCIPLINE\*

DEMEANOR, DECORUM  
(includes inappropriate humor)  
[18]

DISQUALIFICATION,  
DISCLOSURE AND  
RELATED RETALIATION  
[9]

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

MISCELLANEOUS OFF-BENCH  
CONDUCT  
[5]

FAILURE TO ENSURE RIGHTS  
[4]

ON-BENCH ABUSE OF  
AUTHORITY IN PERFORMANCE  
OF JUDICIAL DUTIES  
[4]

OFF-BENCH ABUSE  
OF OFFICE  
(includes improper use of  
official stationery)  
[3]

DECISIONAL DELAY,  
TARDINESS, ATTENDANCE  
[3]

ADMINISTRATIVE  
MALFEASANCE  
(includes conflicts between judges, failure  
to supervise staff, delay in responding to  
complaints about commissioners)  
[3]

EX PARTE COMMUNICATIONS  
[2]

ABUSE OF  
CONTEMPT/SANCTIONS  
[2]

IMPROPER POLITICAL  
ACTIVITIES  
[2]

COMMENT ON A  
PENDING CASE  
[2]

SEXUAL HARASSMENT/  
INAPPROPRIATE WORKPLACE  
GENDER COMMENTS  
[1]

SUBSTANCE ABUSE  
[1]

ALCOHOL OR DRUG RELATED  
CRIMINAL CONDUCT  
[1]

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



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## IV. CASE SUMMARIES



### PUBLIC DISCIPLINE

Public discipline decisions issued by the Commission in 2007 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 December of 2006, the Commission issued an order of removal of Judge Diana R. Hall of the Santa Barbara County Superior Court. The time for Judge Hall to file a petition for review in the California Supreme Court had not expired at the end of 2006, and therefore, this matter was not included in the case disposition statistics for 2006. It is included in the 2007 statistics.

In April of 2007, the Commission issued an order of removal of Judge José A. Velasquez of the Monterey County Superior Court. Judge Velasquez subsequently filed a petition for review in the California Supreme Court, which was denied in October 2007. This matter is included in the 2007 case disposition statistics.

In October of 2007, the Commission issued an order of removal of Judge Robert G. Spitzer of the Riverside County Superior Court. In December 2007, Judge Spitzer filed a petition for review in the California Supreme Court. Because the matter was not concluded as of the end of 2007, it is not included in the 2007 case disposition statistics.



### Order of Removal of Judge Diana R. Hall, December 12, 2006

Judge Diana R. Hall of the Santa Barbara County Superior Court was ordered removed from office by the Commission on December 12, 2006, for willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission's action concluded formal proceedings, during which there was a hearing before special masters and an appearance before the Commission.

The Commission found that Judge Hall drove a car when impaired by alcohol and with a blood alcohol level of .18, more than twice the legal limit, resulting in convictions by a jury of driving under the influence and driving with a blood alcohol level over .08. The Commission adopted the special masters' conclusions that the judge's conduct was contrary to canons 1 and 2A, and that it reflected "a complete lack of concern for the safety of others" as well as "an inability to control her impulses and poor judgment, thereby seriously injuring the integrity of the judiciary in the eyes of the public." The Commission also adopted the special masters' conclusion that the judge engaged in prejudicial misconduct, since her conduct would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to the public esteem for the judicial office.

The Commission also found that during her campaign for reelection, Judge Hall illegally

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CASE SUMMARIES

commingled campaign and personal funds, and filed four sworn false campaign statements. The Commission found that the judge accepted \$20,000 for her campaign from a woman with whom she lived in a romantic relationship; the judge deposited these funds to her personal checking account and then wrote a check for \$25,000 to her campaign. Subsequently, the judge signed under penalty of perjury four campaign statements that did not include the \$20,000 she had received, either as a loan or as a contribution; the statements falsely listed the judge as the sole source of the \$25,000 deposited to her campaign account.

The Commission found that the judge intentionally omitted the source of the \$20,000 from her campaign statements because she believed disclosure of her same-sex relationship would have made her job difficult in the area in which she was running for reelection. The Commission noted that although the judge had admitted in prior testimony at her DUI trial that this was the reason she omitted the \$20,000 from her sworn statements, she testified at the hearing before the masters that she "never really thought about" the possibility that listing the \$20,000 would result in disclosure of the relationship, and also testified that she considered the \$20,000 to be jointly earned and therefore not subject to disclosure. The Commission and the masters rejected these latter claims, finding that the judge intentionally omitted the source of the \$20,000 from her statements to avoid disclosure of her relationship.

The Commission concluded that Judge Hall violated various provisions of the Political Reform Act, rejecting her claim that she did not willfully violate the law because she was ignorant of its requirements at the time of the violations. The Commission concluded that by commingling funds, intentionally concealing the source of nearly half of her campaign contributions, and signing four declarations under penalty of perjury knowing they were false, the judge violated canons 1, 2A and 5, and engaged in prejudicial misconduct. The Commission con-

cluded that Judge Hall's campaign misconduct was unjudicial conduct committed in bad faith by a judge not then acting in a judicial capacity, noting that "in this context, bad faith means a culpable mental state beyond mere negligence and consisting of either knowing or not caring that the conduct being undertaken is unjudicial and prejudicial to public esteem." (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1093.)

Finally the Commission found that Judge Hall questioned a prosecutor about why he was filing a peremptory challenge against her, and rejected her claim that she did not do so. The Commission noted that the judge admitted that she knew she could not question the prosecutor about the challenge. The Commission concluded that the judge violated canons 1 and 2A by her questioning and engaged in willful misconduct, noting that the judge's conduct was unjudicial, that she was acting in a judicial capacity, and that she committed an act she knew was beyond her judicial power, thus acting in bad faith. (See, *Broadman, supra*, 18 Cal.4th at p. 1091.)

The Commission determined that the special masters properly admitted into evidence a private admonishment that was in effect before the conclusion of the Commission proceeding, as allowed by Commission rule 125(b), and noted that the rule provides that prior discipline is admissible "to determine what action should be taken regarding discipline." The Commission rejected the judge's arguments that admitting the admonishment improperly made private discipline public, and that the Commission should only consider discipline for conduct predating the conduct considered in the formal proceedings. The Commission pointed out that Judge Hall had committed the misconduct underlying the admonishment when she knew she was under investigation by the Commission, and had thereby "shown her inability to control her behavior at a time one would expect her to be on her very best behavior."

The Commission then discussed the facts

underlying the private admonishment. In that matter, Judge Hall insisted on being seated in the main courtroom, rather than an overflow courtroom, during arraignment and argument in a high-profile case, so that the prosecutor could see her "no worse off" than before he had prosecuted her for the DUI and other charges. She disobeyed the order of the judge presiding over the case not to enter the main courtroom, and refused to speak to the presiding judge by telephone.

In considering the appropriate sanction, the Commission stated that the case required it to "decide whether a judge who engages in materially deceitful and lawless conduct that undermines the electoral process, and thereafter attempts to explain it away with specious arguments and misleading testimony should continue in judicial office." The Commission pointed out that honesty is a minimum qualification for every judge, and cited past cases from California and other states in which judges were removed primarily or specifically for dishonesty, including deceptive campaign conduct and subsequent dissembling before the Commission.

The Commission considered in mitigation the testimony of several witnesses who described Judge Hall as a hardworking, conscientious and well prepared jurist. Nonetheless, the Commission concluded that "the judge's election fraud overwhelms other considerations and compels [its] removal decision." The Commission stated that the judge engaged in deceit and misrepresentations to keep her position as a judge; dissembled before the masters and the Commission; demonstrated an extreme lack of judgment when she drove while drunk; questioned an attorney's disqualification of her when she knew this was improper; and showed "alarming disrespect" for the authority of the judge presiding over a high-profile case, the presiding judge, and other court personnel when she insisted on taking a seat in the courtroom for proceedings in the case. The Commission noted that the judge's actions showed "the serious degree to which she is unable to control her behavior."



**Order of Removal of  
Judge José A. Velasquez,  
April 25, 2007**

Judge José A. Velasquez of the Monterey County Superior Court was ordered removed from office by the Commission on April 25, 2007, 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 considered 46 instances of misconduct in criminal cases before the judge. These instances of misconduct were grouped into seven categories.

The Commission found that Judge Velasquez denied due process to defendants seeking probation modification. In each of eight cases, a defendant who appeared before the judge to request a modification of the terms of probation was, by the end of the proceeding, found to be in violation of probation and remanded to serve a jail sentence in addition to the sentence imposed on the original charge. In each case, the judge failed to give the defendant notice that a probation violation hearing would be taking place or the basis of the alleged violation, and failed to advise the defendant of his constitutional rights, including the right to counsel and a formal evidentiary hearing. In addition, in various cases the judge independently investigated facts, refused to consider documents the defendant had brought to court, engaged in a contest with the defendant to determine who was lying, and increased sentences out of impatience and pique when a defendant attempted to explain his failure to comply with a court order or questioned a sentence.

The Commission concluded that the judge's actions went well beyond mere legal error, reflecting a disregard of the defendants' fundamental right to due process; the Commission adopted the special masters' conclusion that Judge

IV.  
CASE SUMMARIES

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Velasquez "engaged in intentional conduct that diminished or virtually eliminated those rights." The Commission also found that the judge acted for a purpose other than the faithful discharge of judicial duties by becoming embroiled, thereby surrendering his role as an impartial jurist.

The Commission and the masters found that the evidence was insufficient to establish that other judges in Monterey County either did or did not engage in the same practices in probation modification matters, and rejected Judge Velasquez's claim that he was acting on the good faith belief that he was following the practices of other judges in the county. The Commission noted that Judge Velasquez had an obligation to ensure the rights of defendants irrespective of the practices of other judges.

The Commission concluded that Judge Velasquez engaged in willful misconduct, which is defined as unjudicial conduct a judge acting in a judicial capacity commits in bad faith. The Commission determined that the judge, acting in a judicial capacity, engaged in conduct that was unjudicial in that it violated canons 1, 2A, 3B(2), 3B(4) and 3B(8). The Commission determined that the judge acted in bad faith by acting beyond his lawful authority, either knowingly or with conscious disregard for the limits of his authority. In addition, the Commission determined that the judge displayed bad faith by acting out of pique, irritation or impatience.

In six matters, the Commission determined that Judge Velasquez threatened to increase or did increase sentences when defendants questioned the sentences or otherwise commented at sentencing. The Commission concluded that this was willful misconduct. By infringing upon the defendants' right to be heard and becoming embroiled, Judge Velasquez violated canons 1, 2A, 3B(4), 3B(7) and 3B(8), thus engaging in unjudicial conduct while acting in a judicial capacity. In addition, the judge acted in bad faith by either knowingly violating or consciously disregarding his obligation to assure those in his courtroom their right to be heard, and by acting for the "corrupt purpose" of venting his anger.

The Commission found that in five additional matters, Judge Velasquez asked defendants who were being sentenced on a misdemeanor charge of exhibition of speed if it "felt good" to "peel out." Based on his own experience as a young man, Judge Velasquez concluded that defendants who answered "yes" were telling the truth and those who answered "no" were lying and therefore deserving of harsher punishment; he accused two defendants who answered "no" of lying. The Commission concluded that Judge Velasquez made prejudgments regarding the defendants' credibility based on his own experiences as a young man, and that he violated canons 1, 2A, 3B(4), and 3B(8) by becoming embroiled, unreasonably accusing some defendants of lying, and acting in a way that manifested prejudgment. The Commission concluded that the judge engaged in prejudicial misconduct in these matters.

In seven other cases, Judge Velasquez gave defendants the choice of a diversion program or jail time, without advising them of their right to plead not guilty; in some cases, he suggested that the consequence of failure to successfully complete diversion would be immediate incarceration. The Commission concluded that the judge violated canons 1, 2A and 3B(7) and engaged in prejudicial misconduct.

The Commission found that in seven other cases, Judge Velasquez issued bench warrants for defendants in misdemeanor cases in which the defendants had authorized counsel to appear for them pursuant to Penal Code section 977, but neither the attorney nor the defendant had appeared. In some of these cases, the judge refused to recall the bench warrants after the attorneys asked that they be recalled. In one instance, after Judge Velasquez issued bench warrants for two defendants and refused to recall them, the defendants' attorney disqualified the judge and sent letters of complaint to the presiding judge; when the attorney later appeared before Judge Velasquez on an unrelated matter, the judge demanded that the attorney provide him copies of the letters.

IV.  
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The Commission concluded that Judge Velasquez engaged in willful misconduct by issuing bench warrants in matters in which he knew that defendants were not required to appear. The Commission found that the judge "manifested a callous indifference to the bounds of his authority" by issuing these warrants, and that he did so "for the improper purpose of teaching the defendants' attorneys a lesson." The Commission concluded that the judge's conduct in issuing the warrants violated canons 1, 2, 3B(2), 3B(4), 3B(7) and 3B(8), and that he acted in bad faith; therefore, his issuance of the warrants was willful misconduct.

The Commission also concluded that Judge Velasquez engaged in willful misconduct when he ordered the attorney to produce correspondence concerning a case in which he had been disqualified. The Commission found that the judge knew that he had been disqualified, and he conceded that he was not aware of any authority permitting him to order the attorney to produce the letters. The Commission found that in addition to exceeding his authority, the judge acted for an improper purpose, i.e., to pursue his personal interest in proving that the attorney had lied to the presiding judge. The Commission concluded that the judge acted in bad faith.

The Commission next determined that Judge Velasquez made eleven "joking" remarks to defendants and to the friend of a defendant about incarceration; the Commission found these remarks offensive and inappropriate, stating, "We fail to see how suggesting that a person is going to be incarcerated can ever be considered appropriate humor in the courtroom." The Commission found that the remarks violated canons 1, 2A, and 3B(4), and constituted prejudicial misconduct.

The Commission also found that Judge Velasquez engaged in prejudicial misconduct when he made two disparaging remarks concerning attorneys in open court. The Commission noted that Judge Velasquez had been publicly censured in 1997 for conduct that included making disparaging remarks about counsel.

In determining the appropriate discipline, the Commission noted that Judge Velasquez had engaged in 21 instances of willful misconduct and 25 instances of prejudicial misconduct, "a plethora of misconduct by any standard," that was wide-ranging in nature and impact. The Commission pointed out that Judge Velasquez had been publicly censured in 1997 for varied misconduct, and that its decision not to remove him at that time was based in part on the fact that the judge had refrained from further misconduct for about a year. The Commission stated that given the judge's disciplinary history and the misconduct before it, a second censure was "clearly insufficient," and would be contrary to the Commission's "established policy and practice of escalating discipline for successive misconduct."

In addition, the Commission found that during the proceedings, Judge Velasquez displayed little appreciation of his misconduct, and that his "failure to grasp the substance or seriousness of his misconduct" left it with no confidence in his capacity to reform. The Commission further noted that Judge Velasquez was less than candid in his testimony before the special masters regarding one of the charges.

Concerning the likelihood of future misconduct, the Commission found that the judge's repetition of misconduct after being publicly censured, as well as his unwillingness or inability to appreciate the principles underlying his current misconduct, led it to the conclusion that there was "a very strong likelihood, if not a certainty, of future misconduct." In addition, the Commission found that a pattern of misconduct like Judge Velasquez's, reflecting abuse of authority and serious infringement of defendants' constitutional rights, necessarily has a negative impact on the judicial system.

The Commission took note of the judge's mitigating evidence from character witnesses, most of which concerned the judge's positive contributions to the community outside of his judicial capacity and his reputation as a role model in the Latino community. The Commis-

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sion found that these considerations were “overwhelmed by the breadth and severity of the judge’s past and present misconduct,” and stated, “Members of the community who appear before Judge Velasquez inside the courtroom are entitled to the same respect and dignity he accords those who consider him to be a role model outside the courtroom.”

Judge Velasquez’s petition for review was denied by the California Supreme Court on October 10, 2007.



**Order of Removal of  
Judge Robert G. Spitzer,  
October 2, 2007**

Judge Robert G. Spitzer of the Riverside County Superior Court was ordered removed from office by the Commission on October 2, 2007, for willful misconduct in office, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and persistent failure to perform judicial duties. The Commission’s action concluded formal proceedings, during which there was a hearing before special masters and an appearance before the Commission. At the end of 2007, Judge Spitzer’s petition for review was pending before the California Supreme Court.

The Commission found that in four cases, Judge Spitzer significantly delayed giving signed orders to his clerk for processing, and that during the period of delay in three of these cases, Judge Spitzer failed to cooperate with his presiding judge’s repeated inquiries about the status of the cases and directives to resolve all outstanding matters. The Commission determined that these delays violated canons 3B(8), 1 and 2A, and that the judge engaged in prejudicial misconduct and persistent failure to perform judicial duties. The Commission stated, “By allowing judicial orders to sit unprocessed in his cluttered chambers for months, Judge Spitzer showed a complete indifference to the rights of litigants and his judicial responsibilities,” and noted that in one matter, an appeal was dis-

missed as untimely due to the delay. In addition, the Commission found that these and other delays were aggravated by Judge Spitzer’s failure to cooperate with his presiding judge. The Commission found that these delays, when combined with similar conduct discussed below, constituted a persistent failure to perform judicial duties.

The Commission determined that Judge Spitzer delayed rendering decisions in four other cases. In one matter, the judge failed to rule for six years, and in the other three matters, he never issued rulings. The Commission concluded that this was prejudicial misconduct and persistent failure to perform judicial duties. In addition, the judge signed salary affidavits—a prerequisite to receiving his salary—falsely declaring he had no causes pending and undecided that had been under submission for more than 90 days. The Commission concluded that Judge Spitzer engaged in willful misconduct when he signed false salary affidavits after being informed of delays in two of the cases, and engaged in prejudicial misconduct in executing the remaining affidavits. The determination of willful misconduct was based on a finding that Judge Spitzer acted with an utter and reckless disregard for the truth when he continued to sign salary affidavits after being informed that he had delayed matters pending that remained undecided.

The Commission also found that Judge Spitzer failed to take necessary action (issuance of certain orders) in two civil cases, failed to act on a criminal defendant’s request for a certificate of probable cause for almost ten months, and failed to issue an order to show cause in a fourth matter for over four months. The Commission determined that the judge’s inaction and delays violated canons 3B(8), and 2A, and constituted prejudicial misconduct and failure to perform judicial duties. The Commission noted that “inexcusable judicial delay and inaction undermine public confidence in the judiciary, and, as such, constitute prejudicial misconduct.”

The Commission next found that Judge Spitzer engaged in willful misconduct and preju-

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dicial misconduct in a criminal case. During trial, after Judge Spitzer became suspicious that the arresting officer was not available to testify, he called the watch commander where the deputy worked, without notifying the parties, and was told that the deputy was on medical leave. When the deputy was not present the next day, Judge Spitzer granted a defense motion to dismiss the case; the judge commented that the deputy had lost credibility with the entire court, and seemed upset and annoyed. Later that day, when the prosecutor and his supervisor went to talk to the judge in chambers, he told them that he had called the watch commander the night before and had been told that the deputy was on medical leave. The next day, however, the judge told the prosecutor that he had not called the watch commander, and had only asked about the deputy's availability after the watch commander called him. Judge Spitzer also testified at the hearing before the special masters that the watch commander had called him. The masters and the Commission found that this testimony was not credible. The special masters and the Commission also rejected the judge's testimony that he had not considered his communication with the watch commander in deciding to dismiss the case.

The Commission adopted the special masters' conclusion that Judge Spitzer displayed embroilment and bias in the case, beginning with his initiation of the ex parte communication. The Commission concluded that the judge engaged in willful misconduct by failing to disclose the ex parte communication and by considering the communication in reaching his decision. The Commission also concluded that the judge's gratuitous public remarks about the deputy were contrary to canons 3B(4), 3B(5), 1 and 2A, and constituted prejudicial misconduct.

In another criminal case, Judge Spitzer located and contacted a defense witness and made arrangements for her testimony, without the knowledge or consent of the parties. The Commission determined that the judge's embroilment, manifested through his improper ex parte communication with the witness, constituted

prejudicial misconduct. The Commission found that the judge "crossed the line between a neutral arbitrator and an advocate."

In a third criminal case, Judge Spitzer engaged in what the Commission found to be his "most egregious course of conduct involving embroilment and ex parte communications." The defendant, while driving under the influence, was involved in an accident in which a child was killed; he was charged with murder. Near the end of the trial, while discussing jury instructions with counsel, Judge Spitzer urged the prosecutor to charge gross vehicular manslaughter as an alternative to murder; when he declined, the judge questioned his qualifications and asked that he speak with his supervisor. Judge Spitzer also asked to meet with the supervisor, who appeared before the judge that day to explain his office's filing decision.

After the jury deadlocked 11-1 in favor of guilt on the murder charge and convicted the defendant of lesser offenses, Judge Spitzer addressed several members of the decedent's family in the courtroom, telling them that the case should be settled with a plea to vehicular manslaughter. When the decedent's mother arrived after court had recessed, the judge directed that she come into chambers to talk to him. In a manner she perceived as intimidating, the judge attempted to enlist her in his efforts to convince the district attorney's office to agree to a manslaughter disposition.

At a subsequent court appearance, Judge Spitzer continued to pressure the prosecutor for a manslaughter disposition, and gave his impression that the decedent's mother was "not hostile" to such a disposition. After the defendant declined to plead guilty to manslaughter for a 44-year sentence at a later trial readiness conference, Judge Spitzer called a supervising prosecutor to see whether there was a possibility of further negotiations, and said that the decedent's mother was not opposed to a manslaughter plea.

The Commission concluded that Judge Spitzer engaged in willful misconduct when he met privately with the decedent's mother and

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attempted to enlist her in his efforts to persuade the district attorney's office to charge the defendant with vehicular manslaughter, and when he pressured the district attorney's office to amend the charges and made statements in court attempting to persuade the decedent's family to agree to a manslaughter disposition. The Commission found that the judge was acting in a judicial capacity, that his conduct was contrary to canons 1, 2A, 3B(7) and 3B(8), and that he acted for the improper purpose of attempting to intrude on the functions of the executive branch of government. The Commission concluded that the judge abandoned his role as a neutral arbiter and became embroiled in the case. The Commission rejected the judge's testimony that in speaking with the decedent's mother he merely tried to comfort her and clarify the legal issues, finding that his comments to her reflected "an alarming lack of sensitivity in addition to being extraordinarily inappropriate and unjudicial."

The Commission further determined that Judge Spitzer engaged in prejudicial misconduct by failing to provide any response to a preliminary investigation letter sent to him by the Commission, after requesting and receiving three extensions of time to respond. The Commission found that this conduct was contrary to Government Code section 68725, as well as canons 1 and 2A. The Commission noted that the judge's claim that he had not responded because he placed priority on his case load was belied by his persistent failure to attend to his judicial obligations.

In deciding discipline, the Commission pointed out that Judge Spitzer had engaged in numerous instances of willful and prejudicial misconduct over a period of ten years, leaving the Commission with no doubt that he is unable to "perform judicial functions with the competence, temperament, and impartiality expected of the judiciary." The Commission noted that the judge had not shown an appreciation of his misconduct, and had repeatedly avoided taking full responsibility for his actions.

Identifying the likelihood of future miscon-

duct as a "key factor" in its decision to remove Judge Spitzer, the Commission said that it was not persuaded by the judge's assurances that he had taken steps to ensure timely performance of his judicial duties. The Commission pointed out that the judge had made similar representations—when he appeared before the Commission in 2003 to oppose an intended public admonishment for decisional delay, leading the Commission to decide against imposing discipline—that proved to be hollow. The Commission concluded that the judge's "long history of disorganization, pervasive pattern of dysfunctional practices resulting in delays and inaction, and failure to appreciate the seriousness of his misconduct" left it no doubt that similar misconduct would reoccur if he received a civil assignment. In addition, the Commission pointed out that even the initiation of its preliminary investigation had not spurred the judge to change his practices, and that he instead had ignored his duty to cooperate with the Commission. The Commission also found a strong likelihood of future misconduct in a criminal assignment, noting that the judge had engaged in similar misconduct involving embroilment and ex parte communications in three criminal cases.

On the issue of integrity and honesty, the Commission noted that Judge Spitzer's integrity was called into question by his conduct in executing salary affidavits with reckless disregard for the truth and by his deceptive testimony in the Commission proceedings. The Commission pointed out that honesty is a minimum qualification for every judge.

While noting that Judge Spitzer had not previously been disciplined, the Commission stated that the pattern of willful and prejudicial misconduct and persistent failure to perform judicial duties over a ten-year period overshadowed the lack of prior discipline. In addition, the Commission found that the impact on the judicial system of Judge Spitzer's misconduct and persistent failure to perform his duties had been significant. The Commission concluded that removal was required.



## PUBLIC CENSURE BY THE COMMISSION

In 2007, the Commission imposed one public censure.



### Public Censure of Judge Robert B. Freedman, June 26, 2007

Judge Robert B. Freedman of the Alameda County Superior Court was ordered publicly censured by the Commission on June 26, 2007 for willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The Commission's action concluded formal proceedings, during which there was a hearing before special masters and an appearance before the Commission.

The Commission found that Judge Freedman failed to timely decide 21 civil matters pending before him between 2001 and 2004. The Commission also found, despite warnings and offers of assistance from his presiding judge in 2001 and further warnings from a successor presiding judge in 2003, Judge Freedman failed to take appropriate action to monitor and track his caseload to avoid additional delay, and failed to adjust his workload in ways that could have helped him timely resolve the matters he had under submission. The Commission concluded that Judge Freedman's persistent and unjustified failure to rule in numerous cases was contrary to canons 3A and 3B(8) and constituted prejudicial misconduct.

The Commission also found that Judge Freedman regularly signed and submitted false salary affidavits during periods of delay, and that he executed some salary affidavits when he was aware, from reminders and requests, that he had delayed matters pending. The Commission deferred to the finding of the special masters that Judge Freedman was not *consciously* aware of the delayed matters when he signed the affidavits, based on his testimony that he executed the affidavits "by rote," "without thinking," and "without connect[ing] the dots." The Commis-

sion concluded, however, that in those instances in which the judge executed salary affidavits after being informed of delayed matters, he acted with utter indifference to whether the affidavits were true or false. The Commission concluded that Judge Freedman's "utter disregard for the truth or falsity of salary affidavits he signed when he knew he had delayed matters pending" constituted bad faith and rendered his conduct willful misconduct. The Commission also rejected certain technical arguments made by the judge regarding the affidavits.

The Commission found that Judge Freedman failed to act in a timely fashion on about 200 applications for fee waivers in civil and family law cases. The Commission concluded that this conduct violated canons 1, 2A, 3A and 3B(8), and constituted prejudicial misconduct.

In deciding discipline, the Commission first pointed out that there was "a pattern of disturbing and pervasive misconduct." The Commission noted that though the judge had minor prior discipline—an advisory letter in 1998 for conduct that was not of the same kind or gravity as the misconduct before it—he had been counseled by presiding judges twice about delayed matters and nonetheless twice allowed the problem to recur. The Commission also found, however, that Judge Freedman appreciated the impropriety of his conduct. In addition, the Commission found that the judge was respected by attorneys and judges as a thoughtful, intelligent, compassionate and hard-working jurist. The Commission stated, "The esteem of his peers and his overall competence, work ethic, and superior ability, suggest that he is capable of reform, and that his removal from office is not necessary to protect the public." The Commission found that Judge Freedman was not likely to commit misconduct in the future, stressing that since 2004, the judge had been entrusted with significant new judicial responsibility, and no further misconduct had occurred. The Commission also found, however, that the judge's misconduct had had an "obvious and palpable" negative impact on the judicial system.

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The Commission concluded that although Judge Freedman had committed serious misconduct that, taken alone, might warrant removal from office, he was a "respected and talented jurist" who had acknowledged his wrongdoing and was unlikely to offend again. The Commission therefore determined to issue a severe public censure.

**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 2007, five public admonishments were issued.



**Public Admonishment of  
Former Judge Vincent P. DiFiglia,  
January 9, 2007**

Judge Vincent P. DiFiglia, retired from the San Diego 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 while presiding over a civil case, Judge DiFiglia failed to disclose on the record any information about his long-term personal relationship with an attorney representing a party, contrary to canon 3E(2). The judge failed to make such disclosure despite the fact that he had been privately admonished by the Commission eight years earlier for failing to disclose on the record his relationship with the same attorney and his partner, and his acceptance of golf tournament fees from them.

In addition, while the case was in trial before him, Judge DiFiglia escorted a secretary then employed in the office of the attorney to a Christmas party hosted by the American Board of Trial Advocates. This conduct was contrary to canon 2A.

The Commission also found that Judge DiFiglia failed to disclose on the record that he had been previously employed by the city attorney's office, a party in the case; this was contrary to canon 3E(2).

The Commission concluded that the judge's conduct was, at a minimum, improper action.



**Public Admonishment of  
Judge Ronald M. Sohigian,  
April 26, 2007**

Judge Ronald M. Sohigian, of the Los Angeles County Superior Court, was publicly admonished for conduct that constituted, at a minimum, improper action, pursuant to Commission Rules 115-116 (governing public admonishments).

The Commission found that Judge Sohigian engaged in a practice of abusing his judicial authority in connection with the issuance of orders to show cause (OSC's) re sanctions, in violation of canons 1, 2A, and 3B(2). Judge Sohigian routinely issued OSC's to plaintiffs for failing to appear at the initial status conference in civil cases, even where the plaintiffs had appeared through counsel and there was no requirement that they appear personally. The judge also issued OSC's to defendants for failing to give notice of the initial status conference, despite the fact that only the plaintiffs were required to give notice. In addition, Judge Sohigian engaged in a practice of repeatedly continuing hearings on certain OSC's, thereby postponing decision, even though he had received a response from the party or parties threatened with sanctions that would have allowed him to decide whether to impose sanctions; this practice subjected the parties to the threat of sanctions for indeterminate periods. Further, Judge Sohigian routinely issued OSC's at initial status conferences threatening to terminate a case or a party's defense at the outset of the case, despite the fact that the law permits dismissal of a case or striking of a pleading as a sanction only if it appears that less severe sanctions would not be effective, after tak-

ing into account the effect of previous sanctions or previous lack of compliance in the case.

The Commission acknowledged Judge Sohigian's expressions of regret, his admission that his practices were wrong, and his statement that he had taken remedial action, but rejected the suggestion that his abuses of power occurred wholly or in part because the OSC forms used by him and by other judges were defective. The Commission concluded that it was at least improper action for the judge to issue OSC's threatening sanctions against innocent counsel and parties for the purpose of compelling them to provide information about some other person's wrongdoing; it was similarly improper to repeatedly continue hearings on OSC's for the purpose of holding potentially severe sanctions in abeyance throughout the action in order to consider acts and omissions occurring after issuance of the OSC in setting any sanction.

In a separate matter, the Commission found that Judge Sohigian treated an attorney appearing before him in a belittling, rude and sarcastic manner. The judge's demeaning comments concerning the attorney's credibility and competence were found to be contrary to canon 3B(4).

In determining that a public admonishment was appropriate, the Commission considered that Judge Sohigian had received an advisory letter in 1991 for abusing his authority in sanctioning attorneys.



**Public Admonishment of  
Judge James M. Petrucelli,  
May 22, 2007**

Judge James M. Petrucelli, of the Fresno 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 Petrucelli engaged in a pattern of conduct contrary to canon 3B(4) while presiding in family law and traffic

matters, which included making discourteous, sarcastic or demeaning comments to attorneys and litigants appearing before him.

In one family law case, after an attorney wrote the calendar line item number rather than a case number on a form used by the court clerk to locate files, the judge angrily scolded the attorney in an elevated tone of voice for "lack of cooperation," and accused him of chastising and attempting to talk over the court.

In another family law case, the judge made a statement to an attorney who had stated her client's position regarding her ex-husband's request for unsupervised visitation with their children, to the effect of, "If your client persists in this behavior, I will do everything in my power to see that custody is taken away from her." The comment was contrary to canon 3B(4) and reflected embroilment.

In a third family law case, the judge improperly disparaged an attorney who was seeking to disqualify him; the judge intermittently used a loud, angry and abrasive tone of voice when making his demeaning and belittling comments in front of the attorney's clients. The judge called the attorney's conduct "deplorable," said that her clients "could do much better without [her] today," stated that she had caused her clients "a lot of grief," and said that he would disqualify himself in all her cases because he thought she was "not an appropriate counsel for people in this situation." The Commission found that Judge Petrucelli's remarks were gratuitous and an improper response to an attempt to disqualify him.

In a fourth family law case, the judge said, "I wonder how well these parents would do without their lawyers." The Commission found that the comment improperly disparaged the attorneys in front of their clients, and was demeaning and belittling.

In a fifth family law case, Judge Petrucelli asked a litigant he was questioning, "Is there a language problem here?" in a loud and angry tone of voice, made a gratuitous and sarcastic com-

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ment about the litigant's having become involved in an affair with a woman in Mongolia because "it was cold and so you needed someone to stay warm with," made belittling comments to the effect that the litigant must be a poor car salesman because his earnings were so low, and made sarcastic remarks about the litigant's "new, young wife," the "Mongolian lady."

In a sixth family law case, the judge became involved in a heated argument with an attorney in chambers that lasted about five minutes. The judge was yelling.

In traffic court, Judge Petrucelli made remarks about an officer who had failed to appear to testify—because he was testifying at a driving under the influence trial in another court—that were disparaging to the officer and discourteous to other officers who were in court. The Commission found that the judge's remarks were contrary to canon 3B(4), and also were contrary to canon 2A, in that they created the appearance of a lack of impartiality by publicly indicating that the judge was attempting to ensure the presence of officers to testify for the prosecution.

In another instance, when a traffic litigant who had said she wished to "plead guilty with an explanation" was speaking about her case, Judge Petrucelli interrupted to say, "What could you possibly explain, that you think the radar was wrong or what? The fine is going up by the minute, so you understand. I mean, just tell me what you think you could possibly say to make me lower the fine?" The Commission found that by threatening that the fine was "going up by the minute," the judge created the appearance that he was improperly trying to discourage the litigant from speaking before she was sentenced; in addition, the comment was inconsistent with canon 3B(4).

In another traffic matter, the judge told a litigant whose speed had been measured by radar that he did not see how the litigant was going to talk him out of going by the radar, and then said that if the litigant wanted to "try and embar-

rass" himself by telling the judge that he wasn't going the measured speed, he could do so. The Commission found that the comment created the appearance that Judge Petrucelli was improperly trying to discourage the litigant from arguing his case and was contrary to canon 3B(4).

Finally, the judge made demeaning comments to a traffic litigant about his failure to notice a CHP officer behind him, remarking that CHP officers "drive those really funny looking cars" that are "different colors" and "usually ... have lights on top," and telling the litigant that the "rear view mirror is for something besides fixing your hair and stuff, you know."

In determining that public admonishment was appropriate, the Commission noted that Judge Petrucelli received an advisory letter in 2001 for his inappropriate response to the filing of a peremptory challenge, and another advisory letter in 2001 for an incident in which he raised his voice at county employees and accused them of calling him a "liar," and for his practice regarding disqualification and disclosure as to an attorney employed by his former law firm.



**Public Admonishment of  
Judge Clarence Westra, Jr.,  
September 5, 2007**

Judge Clarence Westra, Jr., 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 on two occasions, Judge Westra failed to be patient, dignified and courteous toward deputies from the sheriff's department, as required by canon 3B(4). In one incident, the judge summoned and chastised the new commander of court services for allowing a bailiff who had been sworn to take charge of a deliberating jury to leave the courthouse to attend mandatory firearms training, leaving a replacement bailiff available for the

jury. The judge told the commander that the bailiff's departure was "unacceptable" and that he "would not tolerate it." When the commander asked Judge Westra if he had a written protocol in place concerning his courtroom, the judge told her that she was not going to tell him how to run his courtroom, and directed her to leave his chambers. When she did not immediately leave, he pointed at the door of his chambers and yelled "Get out!" at her more than once. In the second incident, the judge said to a deputy concerning a failure to follow the judge's courtroom procedures, "The Keystone cops could have handled it better."

In determining that public admonishment was appropriate, the Commission noted that Judge Westra had been the subject of extensive prior discipline, much of which concerned improper treatment of those with whom he deals in an official capacity. In 2003, the judge received an advisory letter for abuse of authority after he ordered that construction workers who were renovating the courthouse be brought to his courtroom, where he ordered them to stop using power equipment at certain times and ordered them to state their names on the record. In 1992, the judge received an advisory letter for making denigrating remarks about an absent attorney in open court. In 1990, the judge received an advisory letter for making denigrating remarks about an absent deputy district attorney in open court. In addition, in 2001, Judge Westra received an advisory letter for abusing his authority as presiding judge by excluding two municipal court judges from certification for pay parity because he disagreed with their handling of certain cases. In 1988, the judge received an advisory letter for failing, in his role as presiding judge, to appropriately supervise a court commissioner who had delayed a ruling in a family law case, and for failing to respond to letters from the complainant inquiring about the delay.



**Public Admonishment of  
Judge Pamela Lee Iles,  
November 15, 2007**

Judge Pamela Lee Iles, of the Orange County Superior Court, was publicly admonished for conduct that constituted, at a minimum, improper action, pursuant to Commission Rules 115-116 (governing public admonishments).

The Commission found that in a criminal domestic violence case, Judge Iles accepted a plea agreement proposed by the defense under which sentencing would be postponed and the defendant released on his own recognizance on the condition that he leave and remain outside of California. Judge Iles made it clear that the defendant could avoid imposition of sentence if he did not appear for sentencing, and agreed that the bench warrant issued when he failed to appear would specify that it could be served only in California. The prosecutor did not object to the plea bargain. The defendant failed to appear for sentencing, and the bench warrant issued. When the defendant returned to California in 2006, he was arrested on the warrant. In subsequent writ proceedings, the Court of Appeal held that the plea bargain was unconstitutional and void as overbroad, uncertain as to duration, and contrary to public policy.

In explaining to the Commission why she had approved the plea bargain, Judge Iles said that the defendant could have been deported if sentenced. She said she had been advised that he would be subject to torture and likely execution in his home country if deported.

The Commission found that Judge Iles had an obligation to evaluate and determine the legality of the plea agreement, and that her approval of the plea bargain was contrary to canons 2A and 3B(2). The Commission pointed out that the law makes clear that sending felons to other states is prohibited by public policy. The Commission found that the judge's approval of the plea agreement reflected a purpose other than the faithful discharge of judicial duties and was, at a minimum, improper action.

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In issuing the public admonishment, the Commission considered the judge's history of Commission discipline. The judge received an advisory letter in 1988 for failing to strictly abide by statutory requirements in imposing sanctions on a litigant. She received an advisory letter in 1997 for telling a defendant that his probation would be violated if the victim contacted him, denying him bail pending appeal although he was statutorily entitled to it, and participating in settling the record on appeal after having been disqualified, which gave rise to an appearance of embroilment and abandonment of judicial neutrality. The judge received a private admonishment in 2004 for personally contacting a prosecutor and suggesting that he investigate an attorney for perjury, asking witnesses to prepare declarations for the district attorney's office, and repeatedly contacting prosecutors about their investigation while it was ongoing. She received a public admonishment in 2006 for summarily incarcerating an unrepresented defendant in disregard of his fundamental rights.

**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 2007, the Commission imposed nine private admonishments.

1. A judge engaged in a practice of reading police reports prior to arraignments in violation of applicable law. The judge engaged in *ex parte* communications in two cases and displayed inappropriate demeanor, including using profanity in expressing frustration during a bench conference when a case did not settle. In a separate case, the judge exhibited a lack of impartiality towards a pro per criminal defendant and also displayed inappropriate demeanor, including telling the defendant at the end of the proceeding to "Shut up and get out of here, please."
2. A judge was inconsistent in making disclosures and in disqualification in cases involving the judge's former law partner who was also a close friend. The judge also made inappropriate remarks with sexual overtones to court staff.
3. A judge delayed in issuing decisions in seven cases over a period of several months. The judge executed three false salary affidavits during this period but stopped executing them when the judge became aware of delays in submitted matters. The judge also failed to disclose information about an out-of-court dispute with a party who appeared regularly before the judge.
4. A judge made remarks to jurors after trial that constituted improper comment on a pending case. The judge failed to take appropriate corrective action when the judge believed an attorney had engaged in misconduct and also failed to be patient, dignified and courteous in remarks about counsel in the proceeding.
5. A judge incarcerated courtroom spectators without following the procedures necessary for the proper imposition of contempt.
6. In admonishing the defendant in a misdemeanor case about the consequences of not accepting a plea bargain, the judge told the defendant that the judge would immediately remand the defendant into custody to serve the maximum sentence if convicted at trial. After acknowledging the impropriety of the remarks, the judge made similar remarks in two other cases.

7. A judge's comments regarding a pending proceeding violated the prohibition on judges making public comments regarding a pending proceeding or non-public comments that might interfere with a fair trial or hearing. In other matters, the judge failed to disclose the judge's relationship with an attorney and law firm appearing before the judge. The judge also failed to comply with campaign reporting requirements.

8. A judge made offensive remarks to counsel and court personnel relating to litigants appearing before the judge.

9. A judge's conduct in public, some of which was alcohol related, demeaned the judicial office. The judge also abused the prestige of judicial office on multiple occasions. The private admonishment was conditioned upon the judge's retirement and agreement not to seek judicial office or assignments.

#### 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 2007, the Commission issued 20 advisory letters.

#### Demeanor and Decorum

A judge "shall require order and decorum in proceedings before the judge" and "shall be pa-

tient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity...." (Canon 3B(3), (4).)

1. On three occasions, a judge was loud and demeaning in dealing with court personnel.

2. A judge displayed improper demeanor in two cases, making unduly harsh remarks. Some of the remarks concerned a litigant, others involved a witness, and others were directed to an attorney in a settlement conference. The advisory letter was issued after a six-month period of monitoring revealed no additional incidents of poor demeanor by the judge.

3. A judge made sarcastic and demeaning remarks to a pro per litigant in family court, including mocking the litigant's use of a legal term.

4. A judge used profanity in a sidebar conference with counsel while the jury and others were present in the courtroom.

5. A judge made numerous sarcastic and demeaning remarks to both counsel in the presence of the jury in a criminal case.

6. A judge made a vulgar remark to a pro per respondent in a domestic violence matter.

#### Delay, Dereliction of Duty

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

7. A judge delayed ruling in a family law matter for almost a year and a half. There were mitigating circumstances.

#### Disclosure and Disqualification

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

8. A judge observed a defendant committing a

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CASE SUMMARIES

misdemeanor. The following day, the judge initiated proceedings — over which the judge improperly presided — to revoke the defendant's own-recognizance release based on the conduct the judge had observed.

9. A judge presided over a litigant's motion to disqualify another judge without the litigant's agreement, in violation of Code of Civil Procedure section 170.3(c)(5).

### **Bias**

Judges are required to discharge both judicial duties and administrative responsibilities without bias or prejudice. (Canons 3B(5), 3C(1).)

10. A judge made remarks suggesting bias against counsel that appeared to be based on off-bench comments made by another judicial officer about the attorney. The judge made additional remarks that were sarcastic and demeaning.

11. In a dependency matter, a judge made remarks demonstrating bias and remarks that failed to demonstrate patience, dignity and courtesy.

12. A judge's remarks in a public setting appeared to reflect negative racial and ethnic stereotypes.

### **Ex Parte Communications**

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

13. A judge participated in an ex parte communication by email with a district attorney about a pending case.

### **Off-Bench Improprieties**

A judge is required to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. The pro-

hibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. (Canon 2A and Commentary.)

14. A judge used official court stationery to advance a personal business purpose.

15. A judge circulated an email over the court's computer system that contained offensive material. Recipients of the email included court personnel.

16. A judge sent inappropriate emails, apparently intended as humor, over the court's computer system. Recipients of the emails included court personnel.

17. A judge used stationery bearing the judge's official title for correspondence related to a personal business dispute.

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

Some cases involved more than one type of misconduct.

18. A judge was discourteous to counsel in three proceedings; in one of the cases, the judge also demonstrated a lack of impartiality. In a fourth proceeding, the judge disregarded a misdemeanorant's right to bail.

19. During pretrial discussions with counsel, a judge angrily slapped the judge's hand down on the bench; one attorney then left the courtroom. When the attorney returned, the judge had the bailiff remove the attorney without sufficient cause.

20. A judge required an attorney to come into chambers after a preliminary hearing to listen to an explanation of the judge's decision and made comments, in an emotional and argumentative manner, that were intimidating. In a separate matter, the judge made discourteous remarks to one counsel that tended to improperly personalize the matter before the court.



## 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 2007, there were 457 authorized subordinate judicial officer positions in California.

### SUBORDINATE JUDICIAL OFFICERS AUTHORIZED POSITIONS As of December 31, 2007

Court Commissioners .....	408
Court Referees .....	49
Total .....	457

### 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 10.703(1)(2)(B); Commission Rule 109(c)(1).) Second, a local court must notify the Commission when it imposes written or formal discipline or terminates a subordinate judicial officer. (California Rules of Court, rule 10.703(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 10.703(k)(2); Commission Rule 109(c)(3), (4).) Lastly, the Commission may investigate or adjudicate a complaint against a subordinate judicial officer at the request of a local court. (California Rules of Court, rule 10.703(g)(2); Commission Rule 109(c)(2).)

When a matter comes to the Commission after disposition by a local court, the Commission may commence an investigation of the subordinate judicial officer if it appears that the 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 10.603(c)(4)(C) and 10.703.) Upon request by the Commission, the local court must make its records concerning the complaint available to the Commission.

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SUBORDINATE JUDICIAL OFFICERS

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.

### 2007 STATISTICS

#### Complaints Received and Investigated

In 2007, 148 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 .....	146
Rule 109(c)(2) – at the request of a local court .....	0
Rule 109(c)(3) – notification by local court of discipline .....	1
Rule 109(c)(4) – notification by local court of resignation with investigation pending .....	1

#### 2007 CASELOAD SUBORDINATE JUDICIAL OFFICERS

Cases Pending 1/1/07 .....	2
New Complaints Considered .....	148
Cases Concluded in 2007 .....	148
Cases Pending 12/31/07 .....	2

In 2007, the Commission conducted investigations in two matters, one preliminary investigation and one staff inquiry. These matters were still pending at the end of the year.

#### Cases Concluded

In 2007, the Commission concluded its review of 148 complaints involving subordinate judicial officers. Of these, 146 complaints were closed by the Commission after initial review because the Commission determined that the local courts' handling and disposition of the complaints were adequate and that no further proceedings by the Commission were warranted. In two matters, the Commission determined to conduct further investigation. In one matter, the SJO had resigned from employment; in the other, the SJO had received a written reprimand from the local court. Following investigation, both matters were conditionally closed pursuant to stipulation by the SJO's. The SJO who had received a written reprimand agreed to resign from employment. Both SJO's agreed not to serve or seek to serve in a judicial capacity and agreed to have information concerning the complaints disclosed to the State Bar.

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

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**TYPE OF COURT CASE UNDERLYING  
SUBORDINATE JUDICIAL OFFICER  
COMPLAINTS CONCLUDED IN 2007**

Family Law .....	35%
Small Claims .....	34%
General Civil .....	12%
Traffic .....	10%
Criminal .....	3%
All Others (including off-bench) .....	6%

**SOURCE OF COMPLAINTS  
INVOLVING SUBORDINATE JUDICIAL OFFICERS  
CONCLUDED IN 2007**

Litigant/Family/Friend .....	95%
Attorney .....	3%
Judge/Court Staff .....	1%
All other complainants .....	1%

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## VI. JUDICIAL DISABILITY RETIREMENT



### VOLUNTARY DISABILITY RETIREMENT

In addition to its disciplinary function, the Commission is responsible for evaluating and acting upon judges' applications for disability retirement. This responsibility is shared with the Chief Justice of the California Supreme Court. 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 examiner, establishes that further treatment would be futile. If the Commission determines that an application should be granted, it is referred to the Chief Justice for consideration. A judge whose application is denied is given an opportunity to seek review of the denial of benefits.

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

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

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JUDICIAL DISABILITY RETIREMENT

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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.

**2007 STATISTICS**

At the beginning of 2007, two disability retirement applications were pending before the Commission. The Commission received six additional applications during the year. The Commission granted one disability retirement application and denied one application during 2007. Six applications were pending at the close of 2007.

## VII. COMMISSION ORGANIZATION, STAFF AND BUDGET



### COMMISSION ORGANIZATION AND STAFF

The Commission has 27 authorized staff positions, including 16 attorneys and 11 support staff. Since budget reductions in fiscal year 2003-2004, at least three positions have been kept vacant and other positions have been filled part-time, resulting in an overall staffing reduction of 22%.

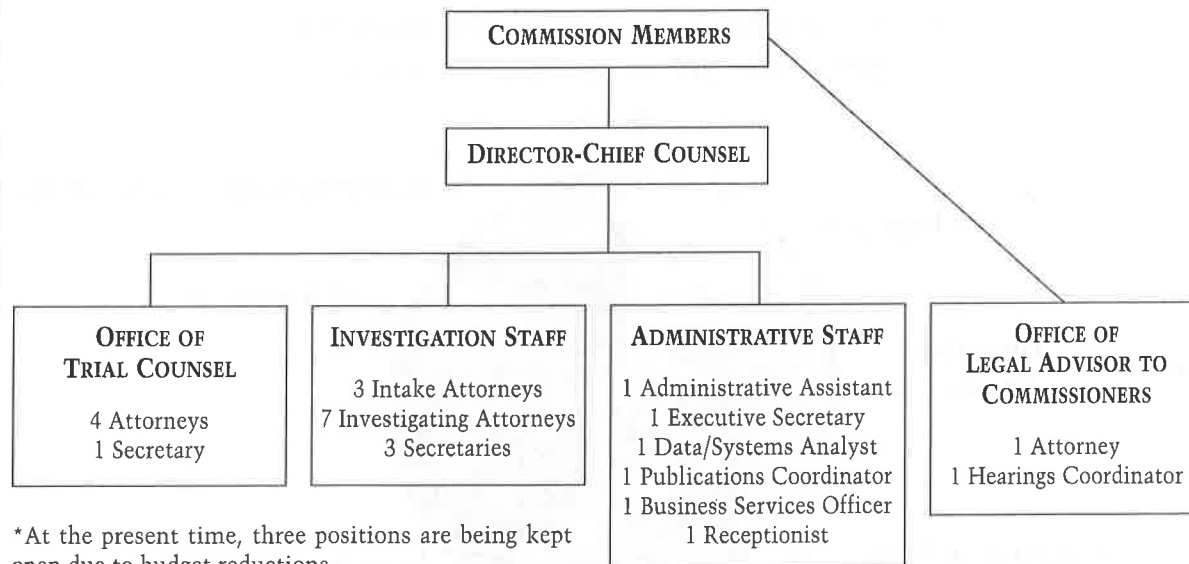
The Director-Chief Counsel heads the agency and reports directly to the Commission. The Director-Chief Counsel oversees the intake and investigation of complaints and the Commission examiners' handling of formal proceedings. The Director-Chief Counsel is also the primary liaison between the Commission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

### ORGANIZATIONAL CHART



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

#### 2007 - 2008 BUDGET

The Commission's budget is separate from the budget of any other state agency or court. For the 2007-2008 fiscal year, the Commission's budget appropriation is \$4,495,000.\*

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. Because the Commission's performance of its core functions is dependent upon legal and support staff, the Commission's budget is largely allocated to personnel expenses.

As noted, in the 2003-2004 fiscal year, the Commission's budget was reduced by 10%. Prior to that funding reduction, the Commission's operating budget for expenses – exclud-

\* Includes mid-year adjustments.

ing rent – was \$500,000. Although spending in almost every aspect of the Commission's operations was reduced, in order to achieve the \$408,000 reduction, it was necessary to reduce the Commission's staff. The 10% funding reduction from 2003-2004 has not been restored.

As this report goes to press, 10% budget reductions have been proposed for fiscal year 2008-2009 for almost all agencies and departments in the state of California, including the Commission. If implemented, this would mean a 20% reduction of the Commission's funding over the last five years. Further reductions in spending can be made only by maintaining reduced staffing levels.

#### 2006 - 2007 BUDGET

The Commission's final budget appropriation for 2006-2007 was \$4,373,965.\* During the 2006-2007 fiscal year, approximately 31% of the Commission's budget supported the intake and investigation functions of the Commission and approximately 26% of the Commission's budget was used in connection with formal proceedings. The remaining 43% went toward sustaining the general operations of the Commission, including facilities, administrative staff, supplies, and security.

