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STATE OF CALIFORNIA  
COMMISSION ON JUDICIAL PERFORMANCE



2008 ANNUAL REPORT

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## INTRODUCTION

For the first 40 years of the commission's existence, the commission's annual report was the primary source of information about the commission's largely confidential activities. In the early years, it chronicled commission recommendations to the Supreme Court for discipline of judges and the Court's actions on those matters and provided statistics about the volume of complaints received and their disposition. Beginning in the mid-1980's, the annual report began describing the conduct that resulted in advisory letters and private admonishments for the edification of the bench, the bar and the public.

Much has changed in the ensuing years. Proposition 190 opened proceedings to the public upon the institution of formal proceedings, and the public admonishment was introduced. As more information became public, the commission established its first Web site in 2000. To respond to increasing demands for information, the commission's Web site was redesigned in 2008. Now, in addition to access to all public decisions by the commission and the Supreme Court, visitors to the Web site can search the Public Discipline and Decisions Database by judge's name, by county, by level of court, by level of discipline and by type of misconduct. The Web site also includes summaries of private admonishments and confidential advisory letters issued over the past decade. The entire Web site can be word-searched in order to obtain all pertinent public discipline decisions and descriptions of relevant private discipline. The new Web site ensures that judges and the public are able to obtain current, accurate and complete information about commission proceedings and the commission itself.

Just as the commission's Web site was eclipsing the annual report as a means of providing information to the public, demands upon the commission's financial resources mandated changes to the annual report. The 2008 Annual Report and the reports from the past five years are now available on the Web site. By posting annual reports on the Web site, we are able to decrease the distribution of hard copies and thereby reduce expenses. To further reduce costs, the governing provisions, except for the Code of Judicial Ethics, are no longer included in the appendix to the annual report; however the Web site continues to provide all of the rules and law that govern the work of the commission.

One change not being made to the annual report is the opportunity this letter affords to thank all my fellow commission members and our staff for their hard work and dedication over the past year. In February 2009, public member Barbara Schraeger and attorney member Marshall Grossman conclude eight years of service on the commission. They have performed an invaluable service to the people of the State of California and to the judiciary.



Honorable Frederick P. Horn  
Chairperson

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**COMMISSION ON JUDICIAL PERFORMANCE**  
**2008 ANNUAL REPORT**  
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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 judges of superior courts appointed by the Supreme Court; two attorneys appointed by the Governor; and six lay citizens, two appointed by the Governor, two appointed by the Senate Committee on Rules, and two appointed by the Speaker of the Assembly. Members are appointed to four-year terms. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing authority. 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 – 2008



**HON. FREDERICK P. HORN, CHAIRPERSON**, was appointed to the Commission as a superior court judicial member by the Supreme Court October 22, 2003, and reappointed March 1, 2005; his term ends February 28, 2009. Judge Horn has served as the Commission's chairperson since March 2007; he served as its vice-chairperson in 2005 and 2006. Judge Horn resides in Orange County. He has been a judge of the Orange County Superior Court since 1993; he was a judge of the Orange County Municipal Court, Harbor Judicial District, from 1991 to 1993. From 2002 to 2006, he served as presiding judge of the Orange County Superior Court. Prior to his appointment to the bench, he was a prosecutor with the Los Angeles District Attorney's Office. Judge Horn 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. He was the Chair of the Trial Court Presiding Judges Advisory Committee of the California Judicial Council from 2002 to 2006. He is a member of the faculty of the Judicial College, the New Judges Orientation Program, and the Continuing Judicial Studies Program.



**HON. JUDITH D. MCCONNELL, VICE-CHAIRPERSON**, was appointed to the Commission as the Court of Appeal judicial member by the Supreme Court March 30, 2005; her term ends February 28, 2009. Justice McConnell has served as the Commission's vice-chairperson since March 2007. She resides in San Diego County. Justice McConnell has served as the Administrative Presiding Justice of the Court of Appeal, Fourth Appellate District, since 2003; she served as 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, 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, Berkeley, 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.



**HON. KATHERINE FEINSTEIN** was appointed to the Commission as a superior court judicial member by the Supreme Court March 1, 2007; her term ends February 28, 2011. She resides in San Francisco. Judge Feinstein currently serves as Assistant Presiding Judge of the San Francisco Superior Court. Since taking the bench in 2000, she has presided over both civil and criminal calendars and jury trials. Judge Feinstein also served as Supervising Judge of San Francisco's Unified Family Court. Before becoming a judge, she

## COMMISSION MEMBERS

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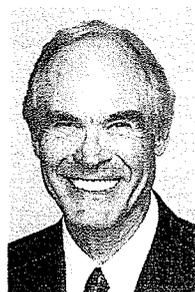
served as a deputy district attorney and a deputy city attorney. She was also director of the Mayor's Office of Criminal Justice and a member of the San Francisco Police Commission. Judge Feinstein is a 1984 graduate of Hastings College of the Law and a Phi Beta Kappa graduate of the University of California, Berkeley.



**PETER ERNEST FLORES, JR., ESQ.**, was appointed to the Commission as a lawyer member by the Governor August 17, 2007; his term ends February 28, 2011. He resides in San Francisco. Mr. Flores is a deputy attorney general prosecuting criminal cases throughout Northern California for the California Attorney General's Office. Mr. Flores received his 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 was an associate with the law firm of Littler, Mendelson, Fastiff, Tichy & Mathiason in San Francisco. Mr. Flores is president of 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, and is a member of the Hispanic National Bar Association, the California La Raza Lawyers Association and the San Francisco La Raza Lawyers Association.



**MARSHALL B. GROSSMAN, ESQ.**, was appointed to the Commission as a lawyer member by the Governor April 10, 2001, and reappointed March 1, 2005; his term ends February 28, 2009. He served as the Commission's chairperson in 2005 and 2006 and its vice-chairperson in 2004. Mr. Grossman 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. He has served on the boards of the Beverly Hills Bar Association, Association of Business Trial Lawyers, Legal Aid Foundation, Public Counsel and United Way. He served on the Coastal Commission for many years, and is currently on the boards of Jewish Big Brothers/Big Sisters and the American Jewish Committee.



**MR. SAMUEL A. HARDAGE** was appointed to the Commission as a public member by the Governor August 17, 2007; his term ends February 28, 2011. He resides in San Diego County. Mr. Hardage 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. Mr. Hardage serves as the Founding Chairman of the Board of the Vision of Children Foundation, a nonprofit 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. Mr. Hardage 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.

## COMMISSION MEMBERS

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**Ms. BARBARA SCHRAEGER** was appointed to the Commission as a public member by the Senate Committee on Rules September 14, 2001, and reappointed March 1, 2005; her term ends February 28, 2009. She resides in Marin County. Ms. Schraeger 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. Ms. Schraeger 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.



**Mr. LAWRENCE J. SIMI** was appointed to the Commission as a public member by the Governor August 17, 2005; his term ends February 28, 2009. He resides in San Francisco. Mr. Simi is a government relations director for Pacific Gas and Electric, where he has worked for the past 29 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 nonprofit organizations, including San Francisco's Commission on the Aging, the Mayor's Fiscal Advisory Committee, Self Help for the Elderly, Society for the Preservation of San Francisco's Architectural Heritage, Mission Education Project, United Cerebral Palsy Association, San Francisco Adult Day Health Network, and the Institute on Aging. Currently he serves as President of the Board of Directors of Pine View Housing Corporation, as a member of the Board of Directors of the Coro Center for Civic Leadership, and as a member of Senator Dianne Feinstein's Service Academy Advisory Board. Mr. Simi holds a Bachelor of Arts degree in Political Science from San Francisco State University and a Master of Arts in Government from California State University, Sacramento.



**Ms. MAYA DILLARD SMITH** was appointed to the Commission as a public member by the Senate Committee on Rules June 27, 2007; her term ends February 28, 2011. She resides in Alameda County. Ms. Dillard Smith is the Director of Violence Prevention for the San Francisco Mayor's Office of Criminal Justice and is the chairperson of the Violence Prevention and Public Safety Oversight Committee for the City of Oakland. She has worked previously 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 has served as a board member of and has been involved with a number of nonprofit organizations serving disconnected youth and young adults. Ms. Dillard Smith received a Bachelor of Arts degree in Economics from the University of California, Berkeley, and a Master of Arts in Public Policy from Harvard University, John F. Kennedy School of Government.



**Ms. SANDRA TALCOTT** was appointed to the Commission as a public member by the Speaker of the Assembly November 15, 2007; her term ends February 28, 2011. She resides in Los Angeles County. From 1999 to 2002, Ms. Talcott served as a public member on the Judicial Nominees Evaluation Commission; from 2003 to 2006, she served on that commission's review committee, and was chair of the committee between 2005 and 2006. She received a Bachelor of Arts degree in Political Science from the University of California, Berkeley. Ms. Talcott has a background in advertising; she worked at Young and Rubicam International, Inc., as a producer and casting director, then as a freelance

## COMMISSION MEMBERS

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casting director. She has been involved in the volunteer sector of the Los Angeles art community, where she co-curated one of the early exhibitions at the Craft and Folk Art Museum. She was involved in the start-up phase of the Museum of Contemporary Art, and has served the Los Angeles County Museum of Art as chairperson of one of its councils. She has also served as a board member of a national association of art museum volunteer committees. She presently works as an interior designer.



**MR. NATHANIEL TRIVES** was appointed to the Commission as a public member by the Speaker of the Assembly October 3, 2007; his term ends February 28, 2009. He resides in Los Angeles County. Mr. Trives is a former mayor of Santa Monica, California, and a retired Deputy Superintendent/Chief Government Relations Officer for the Santa Monica Community College 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 has served on the board of the National Urban League, and 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 Visitors Bureau in Santa Monica. He is an emeritus professor of criminal justice at California State University, Los Angeles.

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## 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 5 of this report, at the conclusion of the hearing and after briefing by the parties, the special masters prepare a report of findings of fact and conclusions of law for the Commission. The Commission also may appoint a special master to assist in a disability retirement matter.

The Commission wishes to recognize the following judges for their service as special masters in Commission matters in 2008:

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

**Honorable Gail A. Andler**  
Superior Court of Orange County

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

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

**Honorable Jacqueline A. Connor**  
Superior Court of Los Angeles County

**Honorable Dennis A. Cornell**  
Court of Appeal, Fifth Appellate District

**Honorable Denise de Bellefeuille**  
Superior Court of Santa Barbara County

**Honorable Jack Komar**  
Superior Court of Santa Clara County

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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 2008 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 from news articles or from information received in the course of a Commission investigation.

### JUDICIAL MISCONDUCT

The Commission's authority is limited to investigating alleged judicial misconduct and, if warranted, imposing discipline. Judicial misconduct usually involves conduct in conflict with the standards set forth in the Code of Judicial Ethics (see Appendix 2). Examples of judicial misconduct

include 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 or advice to individuals or intervene in litigation on behalf of a party.

### REVIEW AND INVESTIGATION OF COMPLAINTS

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

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

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

## 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 complainant. If, after an investigation and an opportunity for comment by the judge, the Commission determines that improper conduct occurred, but the misconduct was relatively minor, the Commission may issue an advisory letter to the judge. In an advisory letter, the Commission advises caution or expresses disapproval of the judge's conduct.

When more serious misconduct is found, the Commission may issue a private admonishment. A private admonishment consists of a notice sent to the judge containing a description of the improper conduct and the conclusions reached by the Commission.

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

Each advisory letter and private admonishment issued in 2008 is summarized, without identifying the judge involved, in Section IV. Summaries from prior years are available on the Commission's Web site at <http://cjp.ca.gov> or by contacting the Commission office.

## 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 cases in which the conduct of a former judge warrants public censure, the Commission also may bar the judge from receiving assignments from any California state court.

In the most serious cases, the Commission may determine — following a hearing — to remove a judge from office. Typically, these cases involve persistent and pervasive misconduct. In cases in which a judge is no longer capable of performing judicial duties, the Commission may determine — again, following a hearing — to involuntarily retire the judge from office.

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.

ACTION THE COMMISSION CAN TAKE
Close (Dismissal)
Advisory Letter
Private Admonishment
Public Admonishment
Public Censure
Removal or Involuntary Retirement

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## II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

### LEGAL AUTHORITY

#### Recent Changes in the Law

In 2008, the Commission adopted two new Policy Declarations, which 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. Additionally, the Government Code controls the Commission's handling of disability retirement applications, pursuant to sections 75060 through 75064 and sections 75560 through 75564.

The Commission is responsible for enforcement of the restrictions on judges' receipt of gifts and honoraria, set forth in Code of Civil Procedure section 170.9. On February 9, 2009, the Commission adopted \$370.00 as the adjusted gift limit for purposes of Code of Civil Procedure section 170.9.

The provisions governing the Commission's work are available on the Commission's Web site at <http://cjp.ca.gov> or by contacting the Commission office.

#### Commission Rules and Policy Declarations

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

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

periodically thereafter. No amendments to the rules were made in 2008.

The Policy Declarations of the Commission on Judicial Performance detail internal procedures and existing policy. The Policy Declarations were substantially revised in 1997 and have been amended periodically thereafter. In May 2008, the Commission approved new Policy Declaration 1.14, concerning the submission of character letters in Commission proceedings. In October 2008, new Policy Declaration 7.1, Non-exclusive Factors Relevant to Sanctions, was approved by the Commission.

The Commission Rules and Policy Declarations are available on the Commission's Web site at <http://cjp.ca.gov> or by contacting the Commission office.

#### Rules of Court

No amendments were made to the Rules of Court pertaining to the Commission in 2008.

#### Code of Judicial Ethics

The Constitution requires the Supreme Court to make rules "for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns," to be referred to as the "Code of Judicial Ethics" (California Constitution, article VI, section 18(m)). All members of the judiciary must comply with the code. As stated in the preamble to the Code, "Compliance is required to preserve the integrity of the bench and to ensure the confidence of the public." The Supreme Court adopted the Code of Judicial Ethics effective January 1996. There were no amendments to the Code in 2008.

The Code of Judicial Ethics is included in Appendix 2.

### 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 research any legal issues and may obtain 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 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, or 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, pursuant to rule 112, deferring termination of the investigation for up to two years. Monitoring may include periodic courtroom observation, review of relevant documents, and interviews with persons who have appeared before the judge. The judge is notified that a period of monitoring has been ordered and is advised in writing of the type of behavior for which the judge is being monitored. Monitoring may be used when the preliminary investigation reveals a persistent but correctable problem, such as demeanor that could be improved.

## Formal Proceedings

After 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 service is causing immediate, irreparable and continuing public harm. (Commission Rule 120.)

## Hearing

After the judge has filed an answer to the charges, the Commission sets the matter for a hearing. (Commission Rule 121(a).) As an alter-

native to hearing the case itself, the Commission may request the Supreme Court to appoint three special masters to hear and take evidence in the matter and to report to the Commission. (Commission Rule 121(b).) The Supreme Court has selected a pool of approximately 45 experienced jurists who have received training to serve as special masters in Commission proceedings.

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

## Commission Consideration Following Hearing

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

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

## Disposition of Cases After Hearing

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

- Publicly censure or remove a judge for action that constitutes willful misconduct in office, persistent failure or inability to perform the judge's duties,

II.  
LEGAL AUTHORITY AND COMMISSION PROCEDURES

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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.

#### SUPREME COURT REVIEW

A judge may petition the California Supreme Court to review a Commission determination to admonish, censure or remove the judge. Review is discretionary. If the Supreme Court so chooses, its review may include an independent "de novo" review of the record. (California Constitution, article VI, section 18(d).) California Rules of Court 9.60 and 9.61 govern petitions for review of Commission determinations.

#### STATUTE OF LIMITATIONS

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

#### STANDARD OF PROOF

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

#### CONFIDENTIALITY OF COMMISSION PROCEEDINGS

California Constitution, article VI, section 18(i) (1) authorizes the Commission to provide for the confidentiality of complaints to and investigations by the Commission. The Commission's rules provide that complaints and investigations are confidential, subject to certain exceptions, for example, when public safety may be compromised, when information reveals possible criminal conduct, and when judges retire or resign during proceedings. (Commission Rule 102(f) - (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 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. 2008 STATISTICS ACTIVE AND FORMER JUDGES

#### COMPLAINTS RECEIVED AND INVESTIGATED

In 2008, there were 1,740 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 426 commissioners and referees. The Commission's handling of complaints involving commissioners and referees is discussed in Section V.

<b>JUDICIAL POSITIONS</b>	
As of December 31, 2008	
Supreme Court .....	7
Court of Appeal.....	105
Superior Courts .....	1,628
<b>Total.....</b>	<b>1,740</b>

#### New Complaints

In 2008, 909 new complaints about active and former California judges were considered by the Commission. The 909 complaints named a total of 1,113 judges (762 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.

<b>2008 CASELOAD — JUDGES</b>	
Cases Pending 1/1/08 .....	87
New Complaints Considered.....	909
Cases Concluded in 2008 .....	892
Cases Pending 12/31/08.....	97
Discrepancies in totals are due to consolidated complaints and/or dispositions.	

In 2008, the Commission considered 144 complaints about subordinate judicial officers. These cases are discussed in Section V.

The Commission office also received over 500 complaints in 2008 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 2008, the Commission ordered 70 staff inquiries and 42 preliminary investigations.

<b>INVESTIGATIONS COMMENCED IN 2008</b>	
Staff Inquiries .....	70
Preliminary Investigations.....	42

#### Formal Proceedings

At the beginning of 2008, there were two formal proceedings pending before the Commission. Both of these matters were concluded in 2008. In one of the matters (Inquiry Concerning Judge Robert G. Spitzer, No. 182), the Commission had issued an order of removal from office in 2007, and the judge had filed a petition for review of the Commission's determination, which was pending before the California Supreme Court at the end of 2007.<sup>1</sup>

<sup>1</sup> Because the Spitzer matter was not final at the end of 2007, it was not included in the complaint disposition statistics for 2007. It is included in the 2008 statistics.

The Supreme Court denied the petition in 2008. The other matter (Inquiry Concerning Judge Kelly MacEachern, No. 184) concluded in 2008 with the judge's removal from office, following the Supreme Court's denial of the judge's petition for review of the Commission's decision.

The Commission instituted formal proceedings in two cases during 2008. These matters remained pending before the Commission at the end of the year.

FORMAL PROCEEDINGS	
Pending 1/1/08 .....	2
Commenced in 2008 .....	2
Concluded in 2008 .....	2
Pending 12/31/08 .....	2

#### COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the Commission in 2008, regardless of when the complaints were received.<sup>2</sup> In 2008, a total of 892 cases were concluded by the Commission. The average time period from the filing of a complaint to the disposition was 3.5 months. A chart of Complaint Dispositions of all cases completed by the Commission in 2008 is included on page 10.

TYPE OF COURT CASE UNDERLYING COMPLAINTS CONCLUDED IN 2008	
Criminal .....	43%
General Civil .....	22%
Family Law .....	15%
Small Claims/Traffic .....	7%
All Others .....	10%
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.	

#### Closed Without Discipline

In 2008, after obtaining the information necessary to evaluate the complaints, the Commission determined that there was not a sufficient showing of misconduct in 805 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 48 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.

SOURCE OF COMPLAINTS CONCLUDED IN 2008	
Litigant/Family/Friend .....	88%
Attorney .....	7%
Judge/Court Staff .....	2%
All Other Complainants .....	2%
(including citizens)	
Source Other than Complaint .....	1%
(includes anonymous letters, news reports)	

#### Closed With Discipline

In 2008, the Commission removed two judges from office and imposed seven public admonishments. The Commission also issued seven private admonishments and 18 advisory letters. Each of these cases is summarized in Section IV.

A chart of the Types of Conduct Resulting in Discipline in 2008 appears on page 11. 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

<sup>2</sup> Staff inquiries and preliminary investigations in the cases closed in 2008 may have commenced in prior years. Cases or portions of cases pending at the end of 2008 are not included in complaint disposition statistics.

**III.**  
**2008 STATISTICS – ACTIVE AND FORMER JUDGES**

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act of misconduct was counted once and assigned to the category most descriptive of the wrongdoing. If multiple types of misconduct were involved in a single case, each different type of conduct was counted and assigned to the appropriate category. However, if the same type of conduct occurred on multiple occasions in a single case, the conduct was counted only once.

**Resignations and Retirements**

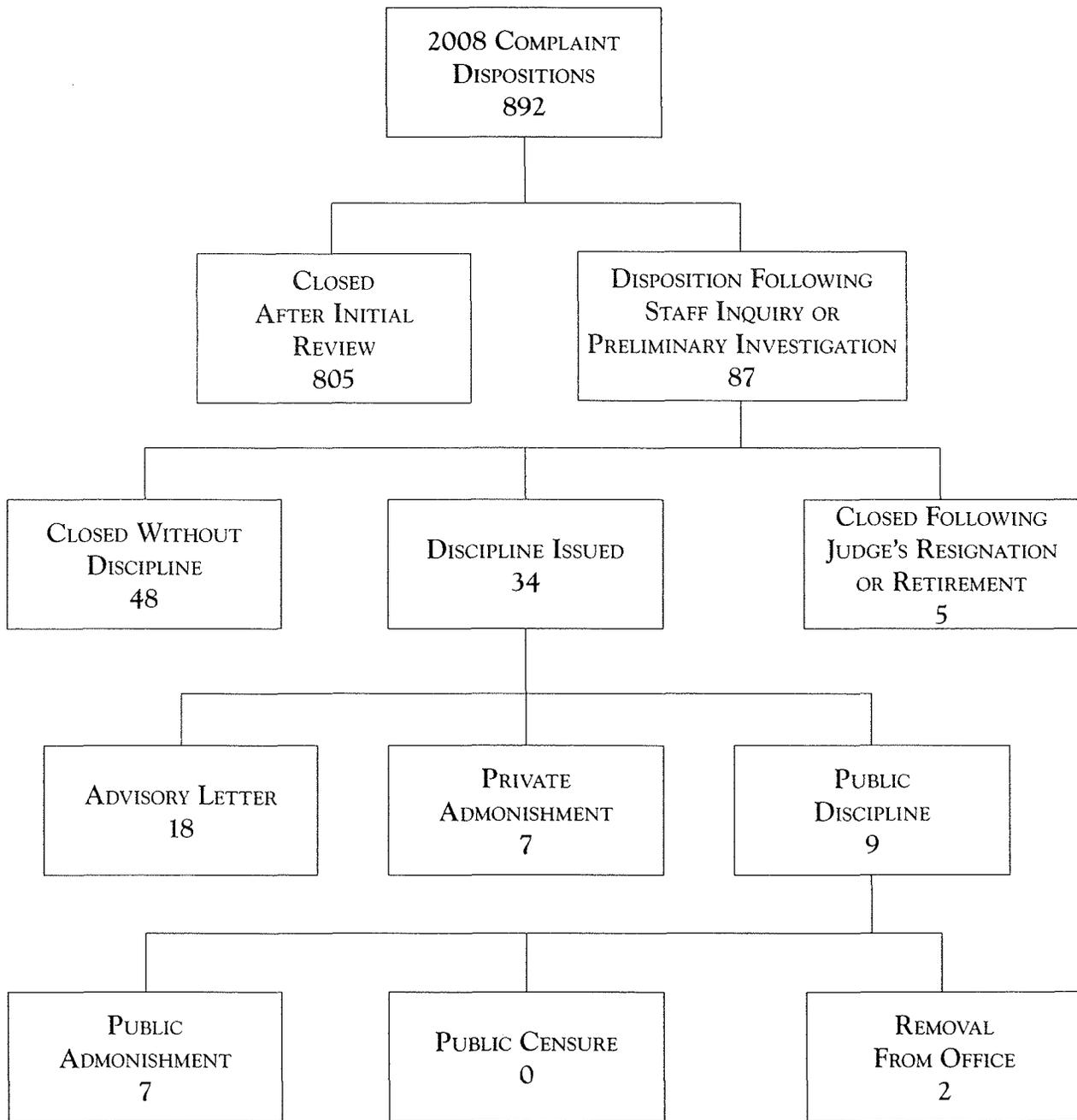
The Constitution authorizes the Commission to continue proceedings after a judge retires or resigns and, if warranted, to impose discipline

upon the former judge. When a judge resigns or retires during proceedings, the Commission determines whether to continue or close the case and, if the case is closed, whether to refer the matter to another entity such as the State Bar. In 2008, the Commission closed five matters without discipline when the judge resigned or retired with an investigation pending.

**10-YEAR SUMMARY OF COMMISSION ACTIVITY**

A chart summarizing statistics on Commission activities over the past 10 years appears on page 12.

2008  
COMPLAINT DISPOSITIONS



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2008 STATISTICS – ACTIVE AND FORMER JUDGES

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TYPES OF CONDUCT RESULTING IN DISCIPLINE\*

DEMEANOR/DECORUM  
(Includes inappropriate humor)  
[16]

ON-BENCH ABUSE OF AUTHORITY  
IN PERFORMANCE OF JUDICIAL DUTIES  
[9]

BIAS OR APPEARANCE OF BIAS  
(Not directed toward a particular class)  
(Includes embroilment, prejudice, favoritism)  
[8]

DISQUALIFICATION/DISCLOSURE/  
POST-DISQUALIFICATION CONDUCT  
[4]

FAILURE TO ENSURE RIGHTS  
[3]

MISCELLANEOUS  
OFF-BENCH CONDUCT  
[3]

ABUSE OF  
CONTEMPT/SANCTIONS  
[2]

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

EX PARTE COMMUNICATIONS  
[2]

ALCOHOL OR DRUG RELATED  
CRIMINAL CONDUCT  
[1]

DECISIONAL DELAY,  
FALSE SALARY AFFIDAVITS  
[1]

FAILURE TO COOPERATE,  
LACK OF CANDOR  
[1]

BIAS OR APPEARANCE OF BIAS  
(Toward a particular class)  
[1]

MISUSE OF COURT RESOURCES  
[1]

NON-PERFORMANCE OF  
JUDICIAL FUNCTIONS/  
ATTENDANCE/SLEEPING  
[1]

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

SEXUAL HARASSMENT/  
INAPPROPRIATE WORKPLACE  
GENDER COMMENTS  
[1]

IMPROPER POLITICAL ACTIVITIES  
[1]

SUBSTANCE ABUSE  
[1]

\*See "Closed With Discipline" at page 8 of text.

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2008 STATISTICS – ACTIVE AND FORMER JUDGES

10-YEAR SUMMARY OF COMMISSION ACTIVITY

NEW COMPLAINTS CONSIDERED BY COMMISSION

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
	1,022	951	835	918	1,011	1,114	965	1,019	1,077	909

COMMISSION INVESTIGATIONS COMMENCED

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Staff Inquiries	74 (7%)	92 (10%)	50 (6%)	58 (6%)	55 (5%)	91 (8%)	55 (6%)	67 (7%)	55 (5%)	70 (8%)
Preliminary Investigations	30 (3%)	36 (4%)	47 (6%)	37 (4%)	48 (5%)	47 (4%)	41 (4%)	51 (5%)	54 (5%)	42 (5%)
Formal Proceedings Instituted	4 (<1%)	3 (<1%)	6 (<1%)	4 (<1%)	3 (<1%)	2 (<1%)	4 (<1%)	5 (<1%)	1 (<1%)	2 (<1%)

DISPOSITION OF COMMISSION CASES

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Total Dispositions	1,059	934	840	901	993	1,080	954	1,023	1,058	892
Closed after Initial Review	929 (88%)	835 (89%)	746 (89%)	830 (92%)	906 (91%)	993 (92%)	876 (92%)	919 (90%)	975 (92%)	805 (90%)
Closed without Discipline after Investigation	86 (8%)	64 (7%)	66 (8%)	40 (4%)	62 (6%)	60 (6%)	51 (5%)	64 (6%)	45 (4%)	48 (5%)
Advisory Letter	30 (3%)	19 (2%)	19 (2%)	17 (2%)	16 (2%)	13 (1%)	12 (1%)	16 (2%)	20 (2%)	18 (2%)
Private Admonishment	3 (<1%)	6 (<1%)	5 (<1%)	6 (<1%)	2 (<1%)	8 (<1%)	6 (<1%)	7 (<1%)	9 (<1%)	7 (<1%)
Public Admonishment	4 (<1%)	6 (<1%)	0 (0%)	1 (<1%)	1 (<1%)	3 (<1%)	4 (<1%)	9 (<1%)	5 (<1%)	7 (<1%)
Public Censure	3 (<1%)	1 (<1%)	2 (<1%)	4 (<1%)	1 (<1%)	0 (0%)	2 (<1%)	4 (<1%)	1 (<1%)	0 (0%)
Removal	1 (<1%)	0 (0%)	1 (<1%)	0 (0%)	2 (<1%)	1 (<1%)	0 (0%)	1 (<1%)	2 (<1%)	2 (<1%)
Judge Retired or Resigned with Proceedings Pending	3 (<1%)	3 (<1%)	1 (<1%)	3 (<1%)	3 (<1%)	2 (<1%)	4 (<1%)	3 (<1%)	1 (<1%)	5 (<1%)

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## IV. CASE SUMMARIES

### PUBLIC DISCIPLINE

Public discipline decisions issued by the Commission in 2008 are summarized in this section. Commission decisions and decisions by the Supreme Court in Commission cases are available on the Commission's Web site at <http://cjp.ca.gov> and from the Commission office.

### REMOVAL FROM OFFICE BY THE COMMISSION

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 was not included in the 2007 case disposition statistics. The Supreme Court denied his petition in March 2008. The matter is included in the 2008 statistics.

In June of 2008, the Commission issued an order of removal of Judge Kelly A. MacEachern of the Orange County Superior Court. Judge MacEachern subsequently filed a petition for review in the California Supreme Court, which was denied in December 2008. The matter is included in the 2008 case disposition statistics.

### 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. Judge Spitzer filed a petition for review in the California Supreme Court, which was denied in March 2008.

A complete summary of the Commission's removal decision is contained in the Commission's

2007 annual report. In essence, the Commission found that Judge Spitzer engaged in significant delays in handling cases assigned to him, failed to cooperate with his presiding judge's attempts to rectify the situation, and signed salary affidavits falsely declaring that he had no causes pending and undecided that had been under submission for more than 90 days. The Commission concluded that the delays, exacerbated by the failure to cooperate, constituted prejudicial misconduct and persistent failure to perform judicial duties. The Commission determined that the signing of false salary affidavits constituted willful misconduct when the judge signed affidavits after being informed that he had matters pending in excess of 90 days, and prejudicial misconduct when he signed the remaining affidavits.

The Commission also found that Judge Spitzer engaged in willful misconduct and prejudicial misconduct in three criminal cases. In one case, the judge made a telephone call to the watch commander of an arresting officer who was a witness in the case, without notice to the parties, because he suspected that the deputy was not available to testify. When the deputy was not present the next day, Judge Spitzer granted a defense motion to dismiss the case; the judge, who seemed upset and annoyed, commented that the deputy had lost credibility with the entire court. The judge admitted to the prosecutor that he had called the watch commander and had been told that the deputy was on medical leave, but later changed his account, and said that the watch commander had called him. The judge also testified at the Commission 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 Commission concluded that Judge Spitzer displayed embroilment and bias, and engaged in both prejudicial misconduct and willful 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 found that

the judge's embroilment, manifested through his improper ex parte communication with the witness, constituted prejudicial misconduct, and that he acted as an advocate rather than a neutral arbiter.

In a third criminal case, in which a defendant was charged with murder after he killed a child in an accident while driving under the influence, Judge Spitzer displayed embroilment and engaged in improper ex parte communication in pressing for a manslaughter disposition. At trial, while discussing jury instructions with counsel, the judge urged the prosecutor to charge gross vehicular manslaughter as an alternative to murder; when he declined, the judge questioned his qualifications and asked the prosecutor to speak with his supervisor. The judge 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 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, the judge called her into chambers and, in a manner she perceived as intimidating, attempted to enlist her in his efforts to convince the prosecution to agree to a manslaughter disposition. At a subsequent court appearance, the judge continued to pressure the prosecutor, giving his impression that the decedent's mother was "not hostile" to such a disposition. The judge later called a supervising prosecutor and made similar statements. The Commission concluded that the judge engaged in willful misconduct.

In addition, the Commission determined that Judge Spitzer engaged in prejudicial misconduct by failing to provide any response to the Commission's preliminary investigation letter, after requesting and receiving three extensions of time.

In deciding discipline, the Commission pointed out that Judge Spitzer had engaged in numerous instances of willful and prejudicial misconduct over a ten-year period, had not shown an appreciation of his misconduct, and had repeatedly avoided taking full responsibility for his actions. Identifying the likelihood of future misconduct as a "key factor," 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, noting that he had made similar assurances in 2003, when he appeared before the Commission to oppose an intended public admonishment for decisional delay and persuaded the Commission not to impose discipline. The Commission stated that there was a strong likelihood of future misconduct in a criminal assignment, as well. On the issue of integrity and honesty, the Commission noted that Judge Spitzer's integrity was called into question by his execution of false salary affidavits and by his lack of candor in the Commission proceedings. While noting that Judge Spitzer had not previously been disciplined, the Commission concluded that removal was required.

**Order of Removal of  
Judge Kelly A. MacEachern  
June 26, 2008**

Judge Kelly A. MacEachern of the Orange County Superior Court was ordered removed from office by the Commission on June 26, 2008, for willful misconduct in office. The Commission's action concluded formal proceedings, during which there was a hearing before special masters and a hearing before the Commission. Judge MacEachern's petition for review was denied by the California Supreme Court in December 2008.

The Commission found that Judge MacEachern had her clerk submit an online application for a judicial education seminar to be conducted by the Center for Judicial Education and Research (CJER) of the Administrative Office of the Courts (AOC) in San Diego, California. The clerk applied on the judge's behalf for two classes, one (Excellence in Judging) scheduled for Monday morning through Wednesday morning, and the other (Statements of Decision) scheduled for Wednesday afternoon. AOC sent the judge an e-mail confirming receipt of her application but cautioning that she would be notified at a later date as to whether she had been accepted into her chosen courses, and that she should not make hotel or airline reservations until receiving such notification. A few days later, however, the judge submitted a planned absence form indicating that she expected to be away from court for the seminar for the entire week. The next day, Judge MacEachern received an e-mail from

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AOC informing her that she had been accepted into only the Wednesday afternoon class, and did not meet the prerequisite (eight years' experience on the bench) for the other class. AOC also advised that it would pay for lodging only for the nights stated in the confirmation e-mail, and only for judicial officers who attended the entire course in which they were enrolled.

The next day, Judge MacEachern signed a travel request form prepared by the travel coordinator for meals and incidentals for five days; the form did not include hotel costs because those were to be paid directly by CJER. Sometime before the seminar began, Judge MacEachern telephoned AOC and discussed other classes; Judge MacEachern was not interested in any of the classes that had openings, but was placed on the wait list for an Evidence course that was full.

On the Sunday before the conference, Judge MacEachern went to San Diego with her husband and his twin seven-year-old daughters. They checked into one of the hotels approved by AOC for lodging during the program.

Judge MacEachern arrived for seminar registration early Monday morning, and told a senior coordinator that she wanted to sit in on a class she was not enrolled in. When told that this was not possible, she responded that she would sit in the class anyway.

At the hearing before the special masters, Judge MacEachern testified that she went to the Excellence in Judging class to which she had been denied admission shortly before its 8:30 start time to see whether she could get in, stayed in the classroom for 10 to 15 minutes, and left shortly after the class started. However, an AOC attorney testified that she arrived in the classroom about 8:00 a.m., that the door was closed when the class started about 8:30 a.m., and that no one entered or left the classroom during the first five to ten minutes. The special masters found that Judge MacEachern lied about going into the classroom, and the Commission accepted this credibility finding.

Judge MacEachern returned to the registration area about 8:45 a.m. and asked the seminar coordinator whether there had been any cancellations

in the Evidence class. She was told that she would have to wait 30 to 60 minutes to see if there were openings, and to check back. Instead, she went to the Evidence classroom, although she had also been told that she could not "sit in" on a class unless admitted. At the hearing before the masters, Judge MacEachern testified that she sat in the classroom for 15 or 20 minutes, and left when the seminar coordinator briefly entered the classroom because she was afraid of making the coordinator angry. The masters and the Commission concluded that the judge was not intimidated by the coordinator, and that her actions and statements evinced disrespect for, not fear of, AOC staff.

At some point on Monday or Tuesday morning, Judge MacEachern enrolled in a half-day computer course scheduled for Tuesday. She attended that class in the morning, and joined her husband and his daughters for kayaking and paddle boating in the afternoon. On Wednesday afternoon, she attended the Statements of Decision class.

Judge MacEachern testified before the masters that she "sat in" on a Domestic Violence (DV) Workshop on Thursday morning, arriving between 8:00 a.m. and 8:30 a.m. and staying for about 15 to 20 minutes. Based on testimony from other witnesses, the masters found that Judge MacEachern lied about even entering the DV Workshop classroom.

Judge MacEachern testified that after leaving the DV Workshop, she sat in the back of a Selected Civil Topics class for about 20 to 30 minutes on Thursday morning, but left and returned to her hotel because she could not follow the discussion without the materials.

The judge did not attend the seminar at all on Friday. She testified that she and her family drove home after checking out of their hotel in the morning; her husband testified that they spent the day at Sea World. Judge MacEachern made no effort to see if she was needed in court that day, or to change her day off on Friday from educational leave to vacation time. The judge's husband testified that in addition to going to Sea World on Friday, the judge participated in many other activities with him and his children during the week; they visited a mission, went to the zoo, went kayaking and paddle boating, and visited a nature preserve.

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Shortly after the seminar, Judge MacEachern submitted a travel reimbursement claim asking the court to reimburse her for three nights of hotel expenses and meals from dinner on Sunday through lunch on Friday. The travel coordinator contacted the judge by e-mail, saying that he had contacted CJER because it was his understanding that CJER directly paid hotel expenses. Before receiving a response, he sent the judge a follow-up, stating he had been informed that CJER had paid for only one night, Tuesday, because the judge had attended class only on Wednesday. He asked for any further information. Judge MacEachern replied by e-mail that when she got to the seminar it “turned out there was a mix up with [her] registration,” that she “sat in” on the Excellence in Judging class on Monday, attended a Tuesday morning computer class and the Wednesday afternoon Statements of Decision class, and “sat in” on a Thursday morning Domestic Violence class. She stated that she knew that CJER wouldn’t cover any other nights, but was hoping the county would. The travel coordinator contacted CJER again, and CJER agreed to pay for Monday night—since the judge had attended the computer class on Tuesday—as well as Tuesday night. Based on Judge MacEachern’s representation that she had sat in on classes on Monday and Thursday, the travel coordinator submitted a request to the presiding judge for hotel expenses for Sunday and Wednesday nights.

The presiding judge had her executive assistant conduct an investigation into the reimbursement claim, and then scheduled a meeting with Judge MacEachern. At the meeting, Judge MacEachern said that she had briefly “sat in” on the Excellence in Judging and DV Workshop classes, but quickly realized that they were not appropriate for her and left. The presiding judge told Judge MacEachern that the statements in her e-mail to the travel coordinator were misleading, and Judge MacEachern acknowledged that the statements could be misleading and convey a false impression. She agreed to withdraw her claim for hotel reimbursement and convert her educational leave to vacation leave for the days she did not attend any classes.

The Commission adopted the masters’ finding that Judge MacEachern made intentionally false and misleading statements in her e-mail to the travel coordinator. In particular, the Commission stressed

that Judge MacEachern deliberately created a false impression that a “mix up” in her registration had occurred when she got to the conference, and knew that her statement that she “sat in” on the Excellence in Judging and Domestic Violence classes would be understood to mean that she audited the classes in their entirety. The Commission adopted the masters’ finding that the judge’s choice of the words used in her e-mail was “calculated, not careless.” The Commission found that the judge made these statements in an attempt to obtain reimbursement from the government for costs to which she was not entitled.

The Commission adopted the masters’ finding that the judge engaged in willful misconduct, defined as unjudicial conduct committed in bad faith by a judge acting in his or her judicial capacity.

The Commission determined that the judge’s conduct was unjudicial in that it violated canon 1 (duty to uphold the integrity of the judiciary), canon 2 (duty to avoid impropriety and the appearance of impropriety in all their activities), canon 2A (duty to comply with the law and act in a manner that promotes public confidence in the integrity of the judiciary) and canon 2B (duty not to lend the prestige of judicial office to advance the pecuniary or personal interests of the judge or others).

The Commission also determined that Judge MacEachern acted in bad faith because she acted for an improper purpose, adopting the masters’ conclusion that, “It goes without saying that making false representations to the court in order to obtain money reflects a corrupt purpose.” Addressing the judge’s claim that she acted out of a “sense of entitlement” rather than greed, the Commission adopted the masters’ conclusion that this “haughty sense of entitlement to reimbursement” further evinced bad faith, noting that whether her motivation was monetary or an unwarranted sense of entitlement, she acted for a purpose other than the faithful discharge of her judicial duties. The Commission pointed out that neither the conference materials nor common sense could have led the judge to believe that appearing at the conference site and making unsuccessful inquiries about enrolling in additional classes would entitle her to reimbursement for hotel expenses and meals, or provide her license to mislead the travel coordi-

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nator. The Commission concluded that the judge acted in bad faith by sending a deceitful e-mail to the travel coordinator, regardless of whether her motivation was monetary or an unjustified sense of entitlement.

Finally, the Commission determined that Judge MacEachern was acting in her judicial capacity, since she sent the e-mail in her administrative capacity as a judge and used her authority as a judge to ask the travel coordinator to submit a claim for reimbursement to which she knew she was not entitled. The Commission rejected the judge's claim that the e-mail pertained to a personal matter, noting that it concerned court reimbursement for attendance at a judicial conference, and was sent to a court employee during court hours from the courthouse on the court's e-mail system.

Turning to the issue of appropriate discipline, the Commission determined that removal was required to protect the public because Judge MacEachern "engaged in wrongdoing that seriously undermines the integrity of the judiciary and falls far short of the rigorous standards to which the judiciary is held."

In discussing certain factors bearing on discipline, the Commission first noted that although the number of acts of misconduct is relevant, consideration of this factor would not militate against removal here because of the "corrupt nature of the misconduct and pervasive lack of candor during these commission proceedings, which combined demonstrate a temperament lacking the core qualities required of a judge."

Turning to the next factor, integrity and honesty, the Commission pointed out that Judge MacEachern sent an intentionally false and misleading e-mail to the travel coordinator, contrived self-serving definitions and specious excuses when confronted with the patently misleading e-mail, and lied in her testimony before the special masters.

Addressing the next factor, appreciation of the misconduct, the Commission stated that in her response to the Commission's investigation and in her testimony before the special masters, Judge McEachern had repeatedly deflected responsibility for her actions, expressed remorse only as to the trouble her false e-mail had caused her,

and blamed others. The Commission said that a belated expression of contrition had come after well over a year of misrepresentations and excuses, and that the judge had continued to fail to fully acknowledge the gravamen of her misconduct: intentional dishonesty.

In considering the likelihood of future misconduct, the Commission stated that although it seemed unlikely that the judge would again submit a false travel voucher, there was concern that the traits and lack of judgment that led to the misconduct could lead to future improper actions. The Commission noted that the judge had no prior discipline in her five years on the bench, but stated that the seriousness of her misconduct and subsequent lack of candor overshadowed her lack of prior discipline. Finally, in addressing the impact of the misconduct on the judicial system, the Commission rejected the judge's attempts to portray her misconduct as personal, stating that public faith in the integrity of the judicial system is seriously compromised by a judge who attempts to obtain money from the government through false pretenses and lies under oath.

In mitigation, the Commission considered testimony and letters in which Judge MacEachern was described as conscientious, knowledgeable and fair, and noted the masters' finding that the judge was well-known for being a hardworking and ethical judge. The Commission pointed out that mitigating evidence is not relevant in determining whether a judge has acted in bad faith and thus engaged in willful misconduct, but may be taken into account in determining the appropriate discipline. The Commission concluded that the judge's reputation in the community could not redeem the seriousness of her wrongdoing and its negative impact on the reputation of the judiciary.

In a dissenting opinion, three members of the Commission concurred in the majority's findings of fact and conclusions of law, but disagreed as to the level of discipline. Based on the judge's mitigation evidence and the lack of prior discipline, the dissenters concluded that her misconduct was an isolated instance of wrongdoing and that removal was not required. The dissenters stated that, at the hearing before the Commission, the judge had acknowledged and taken responsibility for her

mistakes and expressed remorse. In addition, it was noted that the offense did not directly relate to court proceedings, and did not affect or harm litigants. The dissenters concluded that a severe public censure would be adequate discipline.

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

The Commission may publicly admonish a judge for improper action or dereliction of duty. In 2008, seven public admonishments were issued.

#### **Public Admonishment of Judge James M. Brooks April 4, 2008**

Judge James M. Brooks of the Orange County Superior Court was publicly admonished pursuant to stipulation for prejudicial misconduct.

The Commission found that while presiding over a jury trial in a civil case, Judge Brooks engaged in conduct that ultimately led to reversal of the judgment, based on the appellate court's conclusion that the judge's conduct was sufficiently egregious and pervasive that a reasonable person could doubt whether the trial was fair and impartial.

During the trial, Judge Brooks held up a sign reading "overruled" when ruling on one of the plaintiff's objections; the next day, he accepted an "overruled" sign prepared by defense counsel. A week later, after the judge used the sign prepared by defense counsel, plaintiff's counsel objected and the judge responded, "It's lightening things up." The appellate court found that the use of the sign "was a sideshow in the overall circus atmosphere mocking a serious proceeding important to the parties," and that it cast the judicial system in a bad light in the eyes of the litigants and the public. The Commission found that the use of the sign, and the act of adopting defense counsel's sign for its acknowledged entertainment value, belittled plaintiff's objections and violated canon 1 (duty to observe high standards of conduct), canon 2A (duty to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), canon 3B(3) (duty to require order and decorum in proceedings), and canon 3B(4) (duty to be patient, dignified and courteous).

During cross-examination of the plaintiff by defense counsel, Judge Brooks permitted defense counsel to ask the plaintiff whether he got the idea for some of his testimony from "The Twilight Zone," and to quote from the show's introduction and sing its theme song, over the objection of plaintiff's counsel that this was improper argument and that the singing was mocking her client and the trial. Judge Brooks commented on the quality of defense counsel's singing, and said that he did not see it as mocking. The Commission noted that while some of the comments were counsel's, the judge encouraged many of them, giving defense counsel free rein to deride and make snide remarks at will at the expense of the plaintiff. The Commission concluded that this conduct violated canon 3B(3).

Judge Brooks made a number of improper comments during a part of the trial in which defense counsel, while cross-examining the plaintiff, was permitted to read a long portion of a deposition, over numerous objections from plaintiff's counsel. The judge said that he would deem counsel's objection to be made "to every question and every answer throughout time," and added, "With the same ruling. Well, until I die. Same ruling. Okay." In overruling an objection by plaintiff's counsel the next day, the judge referred to "187," and when asked by defense counsel what "187 in the Penal Code" was, answered, "Murder." The judge also said, "Aren't they clever?" in reference to plaintiff and his counsel in a manner that disparaged the plaintiff's testimony and implied that his lawyer was trying to sneak in otherwise inadmissible evidence. After the judge overruled an objection by defense counsel and defense counsel began to suggest another ground for objection, the judge told him to "Go back to sleep." When the attorney asked the judge to wake him when it was break time, the judge said that it was very close. Later that day, when the attorney made an objection, the judge said, "Don't wake him up," to which the attorney responded, "Hey, I don't get a lot of sleep."

The Commission found that the comments "until I die," "murder" and "187" made it clear that the court had no use for the objections. The Commission stated that while the comments may have been humorous to the judge and defense

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counsel, humor should not be used to belittle litigants or their counsel. The Commission also found improper the "Aren't they clever?" comment, and noted that a trial court must avoid comments that convey to the jury the message that the judge does not believe the testimony of the witness. In addition, the Commission found that the "Go back to sleep" and "Don't wake him up" comments belittled the seriousness of the proceedings. The Commission concluded that the comments violated canons 1, 2A, and 3B(4).

During the trial, the judge said that he would use a "soccer style method" in which he would call out "red cards" as to the plaintiff or defendant that would require payment of 50 dollars, and that at the end of the trial, the court would collect the money and possibly take the jurors to lunch at a very nice place. The Court of Appeal found that the procedure was "glaringly inappropriate" and violated the requirement of judicial decorum, noting that a "trial is not a sporting event." The Commission concluded that Judge Brooks's use of the "soccer cards" violated canons 1, 2A, and 3B(4).

In determining that public admonishment was appropriate, the Commission noted that Judge Brooks had previously been disciplined for similar conduct. In 1996, the judge received an advisory letter addressing, in part, comments reflecting ethnic bias. In 1999, the judge received an advisory letter for comments to a defendant at the end of a preliminary hearing about how the judge would have handled an assault on a member of his own family. The judge also received a private admonishment in 2003 for conduct including improper comments; in one matter, the appellate court reversed a ruling based on the appearance of bias. In 2006, the judge received a public admonishment for harsh comments to a litigant and comments suggesting bias based on ethnicity.

The Commission's decision to resolve the matter with a public admonishment and to forego formal proceedings and the possible imposition of higher discipline was conditioned on Judge Brooks's agreement to retire from the bench and not to seek or hold judicial office and not to seek or accept judicial assignment.

**Public Admonishment of  
Former Judge Robert D. Quall  
June 2, 2008**

Judge Robert D. Quall, retired from the Merced County Superior Court, was publicly admonished pursuant to stipulation for prejudicial misconduct.

The Commission found that on numerous occasions between 1996 and 2006, Judge Quall personally solicited donations for annual fund-raising auctions; the auctions raised money for volunteer medical relief missions, which included a Christian evangelical component, to Kenya and Tanzania. Judge Quall solicited a court commissioner employed by the judge's court, the sheriff and undersheriff, a deputy sheriff, a retired marshal, a public defender, two local businessmen, two attorneys who regularly appeared before him, and a local farmer. The judge also asked a court administrator to contact local golf courses and obtain donations of playing time. After an attorney complained to the presiding judge about the solicitations and the presiding judge spoke to Judge Quall in 2005, the judge asked the attorney whether she had "snatched him off," and then continued to solicit donations from the attorney and others.

The Commission also found that Judge Quall personally solicited attendance for the auction, asking several people if they wanted to buy tickets or if they knew anyone else who might. In addition, the judge directed others, including a court interpreter, the undersheriff, and a marshal, to sell tickets. The judge also sometimes acted as auctioneer.

The Commission concluded that Judge Quall's actions violated canon 4C(3)(d)(i), which provides that although a judge may assist a nonprofit organization of which he is a director in planning fund-raising, a judge may not personally participate in the solicitation of funds or other fund-raising activities (except solicitation of other judges). In addition, the Commission found that Judge Quall's actions violated canon 4C(3)(d)(iv), which provides that a judge shall not permit the use of the prestige of his or her judicial office for fund-raising.

The Commission found that Judge Quall used his judicial secretary to create documents connected with the Africa trips and, in a few instances,

pertaining to other personal interests of the judge. After the presiding judge told Judge Quall, in late 2003 or mid-2004, that he was not to use the judicial secretary or court resources for the Africa trips, the judge curtailed but did not totally discontinue his use of the secretary. The Commission concluded that Judge Quall's use of the court secretary was improper and contrary to canon 2A, which requires judges to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Finally, the Commission found that eleven of the letters prepared by the judicial secretary were on judicial letterhead; eight concerned the Africa trips, and three concerned other personal interests of the judge. The Commission determined that the use of court stationery was contrary to canon 2B(2), which prohibits judges from lending the prestige of office to advance the personal interests of the judge or others, and that the letters directly related to fund-raising were in violation of canon 4C(3)(d)(iv).

**Public Admonishment of  
Judge Lisa Guy-Schall  
September 5, 2008**

Judge Lisa Guy-Schall of the San Diego County Superior Court was publicly admonished, pursuant to the California Constitution and Commission rule 115, for conduct that constituted, at a minimum, improper action.

The judge was arrested for driving under the influence after driving her vehicle in a reckless manner while under the influence of alcohol. A blood test performed within approximately an hour yielded a result of approximately .09 percent blood alcohol. The judge was charged with driving under the influence, and later entered a plea of guilty to the lesser charge of alcohol related reckless driving. The Commission found that the judge's action evidenced a serious disregard of the principles of personal and official conduct embodied in the California Code of Judicial Ethics, including the duty to observe high standards of conduct so that the integrity and independence of the judiciary will be preserved (canon 1), and the duty to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (canon 2).

In determining that a public admonishment was appropriate, the commission noted that the judge had been the subject of prior discipline: a 1999 public admonishment for abuse of the contempt power and a 1995 private admonishment for embroilment in a juvenile dependency case.

**Public Admonishment of  
Former Judge Paul M. Bryant, Jr.  
October 27, 2008**

Judge Paul M. Bryant, Jr., retired from the San Bernardino County Superior Court, was publicly admonished by stipulation for conduct that constituted, at a minimum, improper action.

The Commission found that in five matters Judge Bryant failed to be patient, dignified and courteous toward individuals with whom he dealt in an official capacity, contrary to canon 3B(4).

In a civil case, an attorney appeared before the judge for a motion and a case management conference. Judge Bryant granted the attorney's motion and an attendant request for sanctions, and then began to call the next case on the calendar. When the attorney attempted to alert the judge that the case was also on calendar for a case management conference, the judge ordered her to sit down "or we'll address it in another fashion." When the attorney again attempted to give this information, the judge yelled at her, "Will you have a seat." After hearing the next brief matter, the judge recalled the attorney's case, vacated his prior order granting the attorney's motion and request for sanctions, and recused himself from the case. In open court, the judge told the attorney that he had found her to be "rude and obnoxious" on this and previous occasions. The Commission found that in addition to failing to be patient, dignified and courteous, the judge vacated orders he had issued in favor of the attorney's client after becoming annoyed with the attorney and immediately before recusing himself, thus creating the impression that he was not impartial and was vacating his orders out of pique. The Commission noted that Judge Bryant had acknowledged the impression created by this conduct, and expressed regret for the conduct.

In a criminal case, an attorney appearing with her client for an arraignment that had been added

to the calendar requested that the judge call the case after he left the bench to take a recess, but before he had left the courtroom. Upon returning to the bench, Judge Bryant asked the attorney if she had a matter that she wished to call, and then, in the presence of her client, called her “obnoxious.”

In another criminal case, Judge Bryant, in refusing to accept a plea agreement reached by a prosecutor and defense attorney, made a comment to the effect that the prosecutor must have “rocks for brains” to agree to the proposed disposition. The Commission noted that Judge Bryant had said that he did not recall using those precise words and did not recall this exchange, but had apologized if he did use words to that effect, and had stated his understanding that a judge should not use words even similar to those with counsel at any time.

In another matter, the judge heard a prosecutor tell the bailiff that he had spoken with the judge’s clerk that morning about having the judge review a box of discovery documents that had been dropped off by the public defender’s office earlier that day in preparation for a proceeding later that day. During the proceeding, Judge Bryant stated in open court, in reference to the prosecutor, “I heard him ... say one of the dumbest things I ever heard a lawyer say, which is he thought ... I was actually going to go through that box.” The prosecutor responded that the clerk had told him Judge Bryant would review the documents prior to the proceeding. The judge had overheard the earlier communication, but had not heard the clerk tell the prosecutor that the documents would be reviewed by the judge. Judge Bryant replied, “With all due respect—no she didn’t. I don’t know about your command of the English language or the lack thereof, what you hear and what you don’t want to hear, but I heard what the woman said. She didn’t tell you I was going to go through that.” The Commission noted that Judge Bryant had acknowledged that his comments on the record were harsh and sarcastic, and had stated that in retrospect, he would have handled the situation differently.

In the final case, the judge said, in explaining his unwillingness to sentence a criminal defendant to prison and then continue the matter for two months, “I’m not going to sentence him to two years

in state prison and then have him come in ... when there’s no penalty if he doesn’t show up other than the failure to appear, which the Government never seems to prosecute”; the judge later added that “the Government will undoubtedly wimp out and not go after the failure to appear because that’s been my observation over the last 21 years....” Judge Bryant conceded that his words, such as “wimp out,” were poorly chosen.

In determining that public admonishment was appropriate, the Commission took into consideration the fact that Judge Bryant received an advisory letter in 1991 for making disparaging statements about an attorney in front of a jury.

### Public Admonishment of Judge John M. Watson November 6, 2008

Judge John M. Watson of the Orange County Superior Court was publicly admonished by stipulation for conduct that constituted, at a minimum, improper action.

At an evidentiary hearing concerning a request for a permanent injunction in a case involving neighbors, Judge Watson failed to be patient, dignified and courteous with the parties and lawyers and became embroiled in the matter, in violation of canons 2 and 3B(4). Throughout the proceedings, the judge made sarcastic and testy comments expressing his view that the dispute was one that should not be pursued in court. The judge’s comments included, “I would love to spend the rest of the day listening to these people calling each other names,” “I don’t feel like spending the afternoon listening to it,” “I am irritated at this. I do not think this is good sense or good use of these resources that I govern. We have people that have real problems,” “I think it is a waste of time,” and “I wish I had a sandbox.” The judge also referred to the case as “mud throwing.” The judge made mocking and sarcastic comments about the evidence presented; he stated, for example, that a priest who was a potential witness was “maybe praying for your soul,” that testimony about how the height of a house was “as important as anything else I have heard,” and that he could “see where they would provide” an extra large grille on the front of a car “for running children down.”

Judge Watson also presided in three consolidated unlawful detainer cases, in which the defendants were not represented by counsel, without disclosing that he recently had been the defendant in a lawsuit filed by tenants of his apartment units; warranty of habitability was an issue in both cases. The appellate panel of the Orange County Superior Court concluded that the failure to disclose this information was an irregularity in the proceeding that prevented the defendants from having a fair trial.

The Commission noted Judge Watson's prior discipline. In 2006, the judge was privately admonished for sending an e-mail to other judges that was perceived as biased or prejudiced. Earlier in 2006, he was publicly admonished for using his courtroom clerk to help with secretarial tasks for management of rental properties he owned, and using court resources and court facilities for his real estate business. In 2004, the judge received an advisory letter expressing the Commission's "strong disapproval" of conduct that included making sarcastic, demeaning, and disparaging remarks and displaying impatience toward attorneys in two cases. In 1995, he received an advisory letter for admitting a defendant to bail after a hearing and then revoking the defendant's bail status later that day, without notice or a hearing, based on an ex parte contact between the judge's clerk and the police.

In determining that a public admonishment would adequately protect the public from any future misconduct, the Commission took into account that Judge Watson had previously tendered his resignation from judicial office for health reasons and had agreed not to seek or hold judicial office and not to seek or accept judicial assignment.

**Public Admonishment of  
Judge James J. McBride  
November 18, 2008**

Judge James J. McBride of the San Francisco County Superior Court was publicly admonished, after waiving his right to formal proceedings and to review by the Supreme Court and after appearing before the Commission pursuant to Commission rule 116 to contest the imposition of an intended public admonishment, for conduct that constituted, at a minimum, improper action.

The Commission found that while presiding over the master criminal calendar, Judge McBride improperly advanced a trial date without notice to, or consent of, the defendant's attorney, thereby abusing his judicial authority in violation of canon 1 (duty to uphold the integrity of the judiciary), canon 2A (duty to respect and comply with the law), and canon 3B(2) (duty to be faithful to the law). The misdemeanor defendant had not waived his statutory right to a speedy trial and had a trial date set five days before the last day his case could be tried. Two days before the scheduled trial date, Judge McBride ordered the case out to trial; the defense attorney handling the case was not present, and the attorney appearing for her said that she could not accept a trial assignment for her. Judge McBride nonetheless sent the case to a trial department, where the defense filed a peremptory challenge of the judge. The next day, Judge McBride again assigned the case out for trial, a day before the scheduled trial date, over the objection of the attorney appearing for the defendant's attorney.

Before the Commission, Judge McBride contended that he advanced the trial date based on his presumption that the defendant wanted a disposition of his case before Christmas, and because he wanted to avoid the dismissal of the case for violation of the defendant's right to a speedy trial if the case was not tried within the statutory period. Judge McBride acknowledged to the Commission that while presiding over the master criminal calendar, he had advanced trial dates in a few other criminal cases in which the defendants had not waived the right to a speedy trial and courtrooms became available before the originally set trial dates. Judge McBride contended that he advanced the trial dates in those cases to avoid the possibility that they would have to be dismissed if not tried by the speedy trial deadline. The judge also contended that he had the authority to advance a case for trial as part of his authority to manage the criminal trial docket, but cited no authority for that position.

The Commission found that Judge McBride's advancement of trial dates in disregard of the due process rights of the parties constituted an abuse of authority. The Commission stated that assigning a case out for trial before the scheduled trial date, especially with no notice before that day, was

contrary to fundamental principles of fairness and due process. The Commission pointed out that Judge McBride expected the attorney to be available and the defendant present to commence trial even though they had not been notified of the new date; it was also noted that witnesses had not been subpoenaed for that date.

The Commission also found that Judge McBride improperly relieved the public defender's office from five cases. The deputy public defender assigned to the cases had not personally appeared before the judge on her cases, including a matter in which a motion to suppress was scheduled, a few days earlier because she was then engaged in a trial (in recess that day) in another courtroom. In addition, the Commission found that Judge McBride improperly relieved the public defender's office from a case in which a different deputy public defender had failed to appear a few days earlier due to a calendaring error. The Commission pointed out that under the case law, the involuntary removal of any attorney may be justified, if at all, only in the most flagrant circumstances of attorney misconduct or incompetence when all other judicial controls have failed. The Commission found that in these matters, there was no indication of any conflict or that the attorneys' representation was inadequate, or that the impairment of court proceedings caused by the attorneys' absence a few days earlier was substantial enough to warrant removal of the public defender's office. The Commission further found that Judge McBride's relieving the public defender in the cases created the appearance that he was acting out of pique and for the purpose of punishing the attorneys for not appearing. The Commission concluded that the judge's conduct was contrary to canons 1, 2A, and 3B(2).

Finally, the Commission found that Judge McBride displayed improper demeanor in three cases, making sarcastic and denigrating comments to and about attorneys, contrary to canon 3B(4). In one matter, the judge said that he was "going to suggest that the district attorney get their act together by two o'clock this afternoon," adding, "How about that? Is that too much to ask?" He then said, "Now that the district attorney's had the benefit of everybody explaining everything to them, maybe they'll figure out what they want to do." In another

matter, Judge McBride said sarcastically, "I'm so glad the public has a district attorney who's not punitive and really sees the light here." In a third matter, the judge was rude and condescending to a deputy public defender, telling her that the defendant with whom she was appearing was not waiving time "if you understand the doctrine," and saying, "I don't know if you have any business in it, but thank you for your—" when she said that she did not want to have the defendant waive his last day yet.

### Public Admonishment of Judge Christine K. Moruza December 16, 2008

Judge Christine K. Moruza of the Alameda County Superior Court was publicly admonished, after withdrawing her demand for an appearance before the Commission to contest the intended public admonishment under Commission rule 116, for conduct that constituted, at a minimum, improper action.

The Commission found that in two cases, Judge Moruza made comments about publicly-funded defense counsel—telling defendants, "You get what you pay for"—suggesting that she believed that indigent defendants were entitled to receive, and consequently did receive, legal services and court access inferior to that provided to defendants who could afford to pay attorneys. The Commission pointed out that the remarks could be expected to have a negative impact on the attorney-client relationship, and to undermine confidence in the criminal justice system. In addition, the comments reflected a lack of patience and courtesy, and conveyed bias. The Commission concluded that the comments were contrary to canons 2A, 3B(4), and 3B(5). The Commission noted that Judge Moruza had admitted that making the comments was wrong but had denied bias; it was also noted that she had self-reported her conduct in one of the cases.

The Commission also found that the judge's comments that a domestic violence case before her was "a crazy waste of time" and that pursuing it amounted to "stupidity" suggested abandonment of the judicial role and embroilment, and appeared impatient and discourteous, contrary to canons 1, 2A, 3B(4), and 3B(5). In addition, the judge's

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comments in the same case that she had lived about 30 years longer than the prosecutor and knew “a lot more about relationships and life and the court system” appeared inappropriately personal, undignified, and demeaning, and contrary to canon 3B(4). In another domestic violence case, the judge asked, as soon as the case was called, if this was “another case where we’re going to ruin the relationship between the victim [and the defendant].” The judge’s comments in the two matters suggested bias in domestic violence cases. Judge Moruza admitted that her comments should not have been made, although she denied that she was generally biased in domestic violence cases. The Commission further found that on two other occasions, the judge made remarks to counsel in chambers about her own experience of domestic violence; these comments appeared inappropriate and undignified, and suggested a lack of impartiality in domestic violence cases. The Commission noted that Judge Moruza had stated her recognition that statements about her own life experience were not appropriate, and assured the Commission that she would not in the future share personal information in her role as a judge.

In an assault case, Judge Moruza remarked to the prosecutor that her son might have acted in the same way the defendant had, in a similar situation. The judge’s comment was inappropriately personal and suggested bias and prejudice. Judge Moruza denied bias, but said that she would not mention matters related to personal relationships when handling cases in the future.

In an assault case in which Judge Moruza took the position that the defendant had “almost every excuse” for his actions, the judge stated that in the past, if someone did what the defendant did, the matter “wouldn’t have gone any further” and there wouldn’t have been felony convictions or “all kinds of expenditures of taxpayers money.” Her remarks suggested that prosecution of such cases was an unwise expenditure of public funds. The judge added, “Unfortunately we have the system of criminal justice that you’re not allowed to do that anymore. Some people would say our system of criminal justice is immoral because of that. However, it is what it is and I must apply it.” The Commission found that regardless of the judge’s intent, this state-

ment suggested that the judge held the view that the criminal justice system was “immoral” insofar as it required punishment for conduct such as the defendant’s. The Commission concluded that the judge’s statements appeared to reflect disdain for the legal system, as well as bias and prejudice, and were contrary to canons 2A and 3B(5). It was noted that the judge had admitted that her statements could be construed as disdainful of the fact that the law had to be applied in that situation.

In a case in which an elderly rancher was charged with killing a mountain lion, the judge made a reference to killing unborn babies, which was intended to put the crime into perspective. The Commission found that the comment, in addition to being inappropriately personal, suggested the view that the offense with which the defendant was charged was minor by comparison with killing unborn babies, and thus conveyed bias. Judge Moruza also made a statement to the effect that she knew someone who sounded a bit like the defendant, as her father was also an ornery old guy. The Commission found that the judge’s comparison of the defendant to her own father also carried the suggestion of bias. In addition, the judge made comments about her own views of how animals might experience pain and references to her personal experience that were inappropriate and contrary to canons 2A, 3B(4), and 3B(5). Finally, the judge referred to the prosecution as raking an old man “over the coals.” This comment appeared to reflect bias and was contrary to canons 2A, 3B(4), and 3B(5).

In a case in which a question was raised as to whether a police officer had been able to smell a small amount of marijuana found in a closed container inside a vehicle, the judge responded to the prosecutor’s claim that he could smell the marijuana from approximately 15 feet away by asking, “How old are you? Eighteen?” In further discussions at sidebar, after the prosecutor expressed the view that the judge had taken an “amateurish” approach to making a factual determination in the case, the judge responded, “You’re the amateur.” The judge’s remarks were demeaning, undignified, and contrary to canon 3B(4).

In a homicide case, the judge made harsh and demeaning comments to a spectator who, when

leaving the courtroom after the matter had been continued at the request of the defense, said, "Another wasted day." The judge asked the spectator whether she had graduated from high school and whether she had taken any civics classes; when she said that she had not, the judge responded, "That's why you're ignorant." The judge told the spectator that if she wanted to go back to the days "when we strung people up before trial," then she could go back there on her own. The judge also ordered her to apologize to the court, which she did. The judge's comments were unnecessarily harsh and demeaning, and were contrary to canon 3B(4). The Commission noted that Judge Moruza had admitted making the statements, which were not recorded by the court reporter, and had expressed regret.

Finally, in two of the cases described above (a domestic violence case and the case involving the killing of a mountain lion), Judge Moruza set distant trial dates despite the prosecution's request for earlier dates. The judge's conduct gave the appearance that she was setting distant trial dates because of her view that the cases should not be tried. The Commission found that this conduct constituted an abuse of authority, was in disregard of the People's right to a speedy trial, and was contrary to canons 2A and 3B(5).

In determining that a public admonishment was appropriate discipline, the Commission noted that the judge had reported one incident to the Commission; the Commission also pointed out that the judge took immediate steps to address problems brought to her attention in its preliminary investigation letter, and enrolled in anger management counseling. In addition, it was noted that Judge Moruza had not been the subject of prior discipline in her 11 years on the bench, and had supplied positive reports of her judicial abilities and demeanor. The Commission concluded that formal proceedings were not necessary for protection of the public.

#### PRIVATE DISCIPLINE

Private admonishments and advisory letters issued in 2008 are summarized below. In order to maintain confidentiality, certain details of the cases have been omitted or obscured, making the summaries less informative than they otherwise might be.

Because these summaries are intended in part to educate judges and the public and to assist judges in avoiding inappropriate conduct, the Commission believes it is better to describe the conduct in abbreviated form than to omit the summaries altogether.

Summaries of private discipline since 1998 are available on the Commission's Web site at <http://cjp.ca.gov>.

#### PRIVATE ADMONISHMENTS

Private admonishments are designed in part to correct problems at an early stage in the hope that the misconduct will not be repeated or escalate, thus serving the Commission's larger purpose of maintaining the integrity of the California judiciary.

Private discipline may be considered by the Commission in subsequent proceedings, particularly when the judge has repeated the conduct for which the judge was previously disciplined.

In 2008 the Commission imposed seven private admonishments.

1. A judge used demeaning and unduly harsh language toward a pro per litigant seeking a protective order, and told her that she should blame herself if she could not present her case and should hire a lawyer. On another occasion, in open court, the judge used demeaning and unduly harsh language toward a member of court staff and threatened the individual's employment with the court.

2. A judge appeared at court under the influence of intoxicants. The judge engaged in a course of inappropriate and unwelcome conduct toward a member of court staff. The judge retired from office and agreed not to seek judicial office or sit on assignment.

3. A judge engaged in multiple displays of improper demeanor including threatening to slap a deputy sheriff and a lawyer. The judge also told an attorney whose client previously had been released on bail that the judge hoped, if the client reoffended while released, the attorney or someone close to the attorney would be the client's next victim. While presiding over a trial, the judge became embroiled, questioning a witness and sustaining objections in a manner that suggested the judge lacked impar-

tiality. The judge agreed to retire and not to seek judicial office or to sit on assignment.

4. A judge became impatient with a defendant who had not made restitution payments and claimed to lack the ability to pay. The judge ordered the defendant into custody before allowing him to speak and without ascertaining whether the defendant could make the payments.

5. A judge had a witness taken into custody in a manner that suggested retaliation for the witness's assertion of Fifth Amendment rights. The judge did not follow contempt procedures or procedures to have the witness secured for examination. In another matter, the judge failed to be patient, dignified and courteous to an attorney, and the judge improperly threatened to report the attorney to the State Bar in a manner that gave the appearance of retaliation.

6. A judge gave oral instructions to jurors, without a court reporter present, and responded to jurors inquiries in the jury room in the absence of attorneys or the defendant.

7. A judge failed to recuse or disclose on the record various relationships with attorneys appearing before the judge, including an intimate and prior professional relationship with an attorney whose partners were appearing before the judge, a financial connection with the attorneys' law firm, and ownership of real estate with another member of the firm.

#### ADVISORY LETTERS

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

In 2008, the Commission issued 18 advisory letters.

#### Demeanor and Decorum

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

1. In the presence of the jury, a judge displayed anger and used profanity toward counsel at a side bar conference for not following the judge's rule requiring attorneys to stand to make objections.

2. In front of other jurors, a judge accused two potential jurors of lying to get out of jury duty.

3. A judge was rude to counsel and litigants in three cases.

#### Bias

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

4. Before conducting a hearing directed by the Court of Appeal, a judge made angry remarks to counsel that suggested prejudgment and a lack of impartiality, for example, "Let the Court of Appeal reverse."

5. In a civil matter, a judge appeared to display deference to the defendant, who was a celebrity. When counsel for the plaintiff brought the plaintiff's concerns to the judge's attention, the judge overreacted and displayed a lack of patience and dignity in responding to counsel.

6. A judge used the court computer to forward to judicial officers a satirical e-mail that promoted negative stereotypes about people from a certain country, apparently realizing that it would be offensive to at least one judge whose ancestors were from that country.

7. A judge, who had just ordered an arrest warrant and increased bail, suggested to the police officer that the judge should be contacted if the defendant later appeared to be about to make bail. While the judge appeared to be motivated by concern for public safety, the judge's conduct created the appearance of embroilment and lack of impartiality.

8. A judge, while presiding over post-trial proceedings, made comments about the parties and the prospects of settlement that reflected embroilment and created an appearance of lack of impartiality.

### On-Bench Abuse of Authority

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

9. A judge threatened to terminate the reporting of a juvenile proceeding, contrary to Welfare and Institutions Code section 677 which requires that "all of the testimony and statements and remarks" of the judge and all persons appearing at all juvenile court proceedings be reported.

10. During a probation revocation proceeding, a judge used a bail order for the improper purpose of collecting restitution by setting bail in cash and requiring the bail depositor to sign over the funds deposited as bail to pay restitution.

11. A judge's use of a research attorney to confer with counsel regarding a motion appeared inconsistent with according the parties a full right to be heard and created an appearance of impropriety.

### Disclosure and Disqualification

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

12. A judge failed to disclose a relationship with an attorney appearing before the judge until the end of a hearing, after the judge had granted the relief sought by the attorney's client.

### Off-Bench Improprieties

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

ance of impropriety applies to both the professional and personal conduct of a judge. (Canon 2A and Commentary.)

13. A judge failed to cooperate with the presiding judge in administrative matters concerning time off from court.

### Failure to Ensure Rights

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

14. When a criminal defendant's counsel of record failed to appear for trial, the judge said that the defendant was nevertheless going to trial or pleading that day. The defendant pled that day, assisted by another attorney.

### Administrative Malfeasance

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

15. A judge failed to obtain prior approval from the presiding judge for absences of more than one-half day, as required by California Rules of Court, rule 10.603.

### Abuse of Contempt/Sanctions

Before sending a person to jail for contempt or imposing a fine, judges are required to provide due process of law, including strict adherence to the procedural requirements contained in the Code of Civil Procedure. Ignorance of these procedures is not a mitigating but an aggravating factor. (*Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 533.)

16. A judge held a juror in contempt without following required procedures and displayed sarcasm toward the juror. The judge later improperly remanded the juror to a lockup area before adjudicating further contempt by the juror.

### More Than One Type of Misconduct

Some cases involved more than one type of misconduct.

IV.  
CASE SUMMARIES

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17. During a hearing, when an attorney commented that the court reporter had apparently missed an answer, the judge interrogated counsel in an accusatory manner. In another matter, the judge inappropriately accused a prosecutor of unethical conduct for speaking to a defendant who was represented by counsel. The judge engaged in an abuse of judicial authority by ordering the prosecutor to call the prosecutor's supervisor and remain in the courtroom until the supervisor arrived. The judge's

campaign disclosure form also failed to provide the street address of a donor, as required by law.

18. In open court, while presiding over a criminal matter, a judge accused the defendant's attorney, who was asserting the client's rights, of being unethical, and stated that the attorney's unethical practices disgraced the legal profession. When the attorney later filed a statement of disqualification, the judge gave the appearance of soliciting the prosecution's assistance in opposing it.

V.  
SUBORDINATE JUDICIAL OFFICERS

Since June of 1998, the Commission has shared authority with the superior courts for the discipline of subordinate judicial officers (SJO's), attorneys employed by California's state courts to serve as court commissioners and referees. In 2008, there were 426 authorized subordinate judicial officer positions in California.

SUBORDINATE JUDICIAL OFFICERS AUTHORIZED POSITIONS	
As of December 31, 2008	
Court Commissioners .....	381
Court Referees .....	45
Total .....	426

**COMMISSION PROCEDURES**

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

Complaints about subordinate judicial officers come before the Commission in a number of ways. First, when a local court completes its disposition of a complaint, the complainant has the right to seek review by the Commission. When closing the complaint, the court is required to advise the complainant to seek such review within 30 days. (California Rules of Court, rule 10.703(l)(2)(B); Commission Rule 109(c)(1).) Second, a local court must notify the Commission when it 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 court has abused its discretion by failing to investigate sufficiently, by failing to impose discipline, or by imposing insufficient discipline. When a court commissioner or referee has resigned while an investigation is pending or has been terminated by the local court, the Commission may commence an investigation to determine whether to conduct a hearing concerning the individual's fitness to serve as a subordinate judicial officer.

To facilitate the Commission's review of complaints and discipline involving subordinate judicial officers, the California Rules of Court require superior courts to adopt procedures to ensure that complaints are handled consistently and that adequate records are maintained. (See California Rules of Court, rules 10.603(c)(4)(C) and 10.703.) Upon request by the Commission, the superior court must make its records concerning a complaint available to the Commission.

The Constitution requires the Commission to exercise its disciplinary authority over subordinate judicial officers using the same standards specified in the Constitution for judges. Thus, the rules and procedures that govern investigations and formal proceedings concerning judges also apply to matters involving subordinate judicial officers. In addition to other disciplinary sanctions, the Constitution provides that a person found unfit to serve as a subordinate judicial officer after a hearing before the Commission shall not be eligible to serve as a subordinate judicial officer. The Constitution also

provides for discretionary review of Commission determinations upon petition by the subordinate judicial officer to the California Supreme Court.

**2008 STATISTICS**

**Complaints Received and Investigated**

In 2008, 144 new complaints about subordinate judicial officers were reviewed by the Commission. Because the superior courts were required to conduct the initial investigations, the Commission's function primarily entailed reviewing the local courts' actions to determine whether there was any basis for further investigation or action by the Commission.

In 2008, the Commission conducted investigations in nine matters: eight preliminary investigations and one staff inquiry. Some of the cases were consolidated.

RULE UNDER WHICH NEW COMPLAINTS WERE SUBMITTED	
Rule 109(c)(1) – appeal from local court's disposition .....	141
Rule 109 (c)(2) – at the request of a local court .....	1
Rule 109(c)(3) – notification by local court of discipline.....	0
Rule 109(c)(4) – notification by local court of resignation with investigation pending .....	2

2008 CASELOAD – SUBORDINATE JUDICIAL OFFICERS	
Cases Pending 1/1/08 .....	2
New Complaints Considered.....	144
Cases Concluded in 2008 .....	139
Cases Pending 12/31/08.....	4
Discrepancies in totals are due to consolidated complaints and/or dispositions.	

**Cases Concluded**

In 2008, the Commission concluded its review of 139 complaints involving subordinate judicial officers. The Commission closed 136 of these matters after initial review because it was determined that the superior court's handling and disposition of the complaints were adequate and that no further proceedings by the Commission were warranted. The Commission conducted investigations in three matters. One of the matters was closed without discipline following investigation by the Commission. The Commission conditionally closed two of the matters, following investigation, pursuant to stipulation by the SJO's. One of the SJO's had resigned from employment and the employment of the other had been terminated by the court. Both 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, four matters remained pending.

TYPE OF COURT CASE UNDERLYING SUBORDINATE JUDICIAL OFFICER COMPLAINTS CONCLUDED IN 2008	
Small Claims .....	37%
Family Law.....	31%
Traffic.....	11%
General Civil.....	10%
Criminal .....	6%
All Others.....	5%
(including off-bench)	

SOURCE OF COMPLAINTS INVOLVING SUBORDINATE JUDICIAL OFFICERS CONCLUDED IN 2008	
Litigant/Family/Friend .....	94%
Attorney .....	3%
Judge/Court Staff .....	1%
All other complainants .....	2%

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## VI. JUDICIAL DISABILITY RETIREMENT

### VOLUNTARY DISABILITY RETIREMENT

In addition to its disciplinary function, the Commission is responsible for evaluating and acting upon judges' applications for disability retirement. This responsibility is shared with the Chief Justice of the California Supreme Court. Disability retirement proceedings are confidential, with limited exceptions. The application procedure is set forth in Division V of the Commission's Policy Declarations, which are available on the Commission's Web site at <http://cjp.ca.gov>.

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

The statutory test for disability retirement is a mental or physical condition that precludes the efficient discharge of judicial duties and is permanent or likely to become so. The applicant judge is required to prove that this standard is satisfied. The judge must provide greater support for the application and satisfy a higher burden of proof if the application is filed while disciplinary proceedings are pending, if the judge has been defeated in an election, or if the judge has been convicted of a felony.

Judicial disability retirement may afford substantial lifetime benefits. Applications, accordingly, are carefully scrutinized by both the Commission and the Chief Justice. In most cases, the Commission will appoint an independent physician to review medical records, examine the judge, and report on whether the judge meets the test for disability retirement.

Because the law requires that the disability be permanent or likely to become so, the applicant judge must exhaust all reasonable treatment options before a decision on the application can be made. If the Commission finds that the judge is disabled, but may recover with treatment, the Commission will keep the application open and

closely monitor the judge's progress, requiring regular medical reports and frequent medical examinations. Disability retirement will be approved only if the record, including the opinion of the Commission's independent medical examiner, establishes that further treatment would be futile. If the Commission determines that an application should be granted, it is referred to the Chief Justice for consideration. A judge whose application is denied is given an opportunity to seek review of the denial of benefits.

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

The Judges' Retirement System has authority to terminate disability retirement benefits if the judge earns income from activities "substantially similar" to those which he or she was unable to perform due to disability. Accordingly, the Commission's Policy Declarations require physicians who support a judge's disability retirement application to specify the judicial duties that cannot be performed due to the condition in question. When the Commission approves an application, it may prepare findings specifying those duties. Upon request of the Judges' Retirement System, the Commission may provide information about a disability retirement application to assist in determining whether to terminate benefits.

### INVOLUNTARY DISABILITY RETIREMENT

On occasion, a judge is absent from the bench for medical reasons for a substantial period of time, but does not apply for disability retirement. If the absence exceeds 90 court days in a 12-month period, the presiding judge is required to notify the Commission. Because the absent judge is not available for judicial service, the Commission will invoke its disciplinary authority and conduct an

VI.  
JUDICIAL DISABILITY RETIREMENT

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investigation, which may include an independent medical examination. Should the investigation establish that the judge is disabled or displays a persistent failure or inability to perform judicial duties, the Commission will institute formal proceedings, which may lead to discipline or involuntary disability retirement.

2008 STATISTICS

At the beginning of 2008, six disability retirement applications were pending before the Commission. The Commission received three additional applications during the year. The Commission granted eight disability retirement applications. In one of these matters, the judge requested the opportunity to present additional evidence concerning work-relatedness of the disability. That matter and one other matter remained pending at the close of 2008.

## VII. COMMISSION ORGANIZATION, STAFF AND BUDGET

### COMMISSION ORGANIZATION AND STAFF

The Commission has 27 authorized staff positions: 16 attorneys and 11 support staff. Due to reductions in the Commission's budget over the last five years, as further discussed below, several positions have been kept vacant and others filled part time as a cost-saving measure. This resulted in an overall staffing reduction of approximately 28% in 2008.

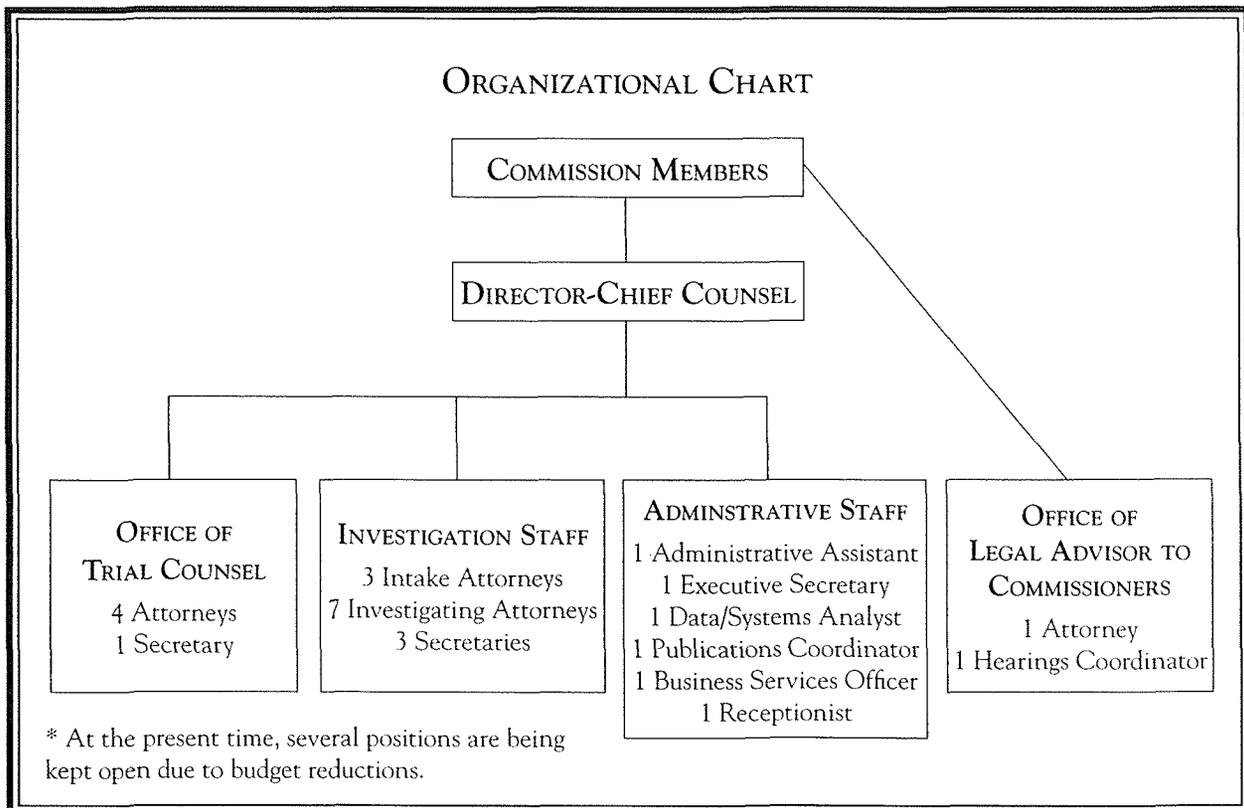
The Director-Chief Counsel heads the agency and reports directly to the Commission. The Director-Chief Counsel oversees the intake and investigation of complaints and the Commission examiner's handling of formal proceedings. The Director-Chief Counsel is also the primary liaison between the Commission and the judiciary, the public and the media. Victoria B. Henley has served as Director-Chief Counsel since 1991.

The Commission's Staff Counsel include intake attorneys who are responsible for reviewing and evaluating new complaints and investigating

attorneys who are responsible for conducting staff inquiries and preliminary investigations.

Trial Counsel serves as examiner during formal proceedings, aided by 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 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.



### 2008-2009 BUDGET

The Commission's budget is separate from the budget of any other state agency or court. For the 2008-2009 fiscal year, the Commission's budget appropriation is \$4,073,000 – a 10% reduction from the 2007-2008 appropriation. In the 2003-2004 fiscal year, the Commission's budget was reduced by 10% – funding which has never been restored; therefore, with the current reduction, the Commission's funding over the last five years has been reduced by a total of 20%. The Commission's constitutional mandate is the investigation of allegations of misconduct and the imposition of discipline. The members of the Commission receive no salaries, only reimbursement of expenses relating to Commission business. Because the performance of the Commission's core functions is dependent upon the services of its legal and support staff, the Commission's budget is largely allocated to personnel expenses. This leaves the Commission with few

options for reducing expenditures. Although the Commission reduced its spending in almost every aspect of its operations, in order to achieve the \$408,000 reduction in 2003-2004, it was necessary to reduce the Commission's staff. The current year reduction of \$453,000 can be achieved only through maintaining reduced staffing levels.

### 2007-2008 BUDGET

The Commission's final budget appropriation for 2007-2008 was \$4,490,799. Final expenditures totaled \$4,334,553. Approximately 36% of the Commission's budget supported the intake and investigation functions of the Commission and approximately 19% was used in connection with formal proceedings. The remaining 45% went toward sustaining the general operations of the Commission, including facilities, administrative staff, supplies, and security.

