
STATE OF CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE



2010 ANNUAL REPORT

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INTRODUCTION

In the November 1960 election, California voters approved Proposition 10 establishing the Commission on Judicial Performance, the first judicial disciplinary body of its kind in our nation. This year marks the 50th anniversary of the commencement of the work of the Commission and inspires some reflection on the Commission's development and impact.

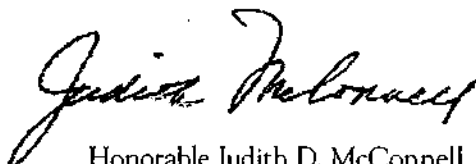
After California's Commission was established, other states followed "The California Plan" and set up judicial disciplinary systems. Today, there are comparable bodies in all fifty states and in the District of Columbia. While most were initially modeled after California, each has evolved to meet the unique needs of its state. The need for accountability has prompted the establishment of judicial disciplinary bodies in numerous other countries. Many have benefited from our Commission's history and development and from the pro bono assistance provided by Commission members and staff.

California's Commission has evolved significantly over the years. Since the Commission's inception, the Constitution has been amended five times, to change various aspects of the Commission's role and functioning, sometimes dramatically. What began as a purely investigative body is now authorized to impose a full range of sanctions, subject to review by the Supreme Court. Proceedings that once were entirely confidential, unless and until the Commission made a recommendation to the Supreme Court for discipline of a judge, are now open to the public upon the Commission's filing of public charges. The judicial majority membership gave way to today's public member majority. The Commission's jurisdiction has been expanded to include subordinate judicial officers and former judges for their conduct while a judge. The Commission is now responsible for promulgating the rules for its proceedings, and its budget is independent of the courts and other state agencies.

Throughout these changes, the Commission's mandate has remained constant: the protection of the public, the enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity and independence of the judicial system. This mandate has been fulfilled over the past 50 years in large part because of the hard work and dedication of the Commission's members who serve without pay. As of today, 45 judges, 24 attorneys and 38 public members have served on the Commission. Almost *one-fifth of the members have served eight years or more.*

The work of the Commission has been facilitated by our Supreme Court's commitment to judicial ethics and public confidence in the integrity of the judiciary. Recently, at the Commission's urging, the Court established the Judicial Ethics Advisory Committee to render official opinions on judicial ethics issues. In 2010, pursuant to the Court's authorization, Commission disciplinary opinions began being published in the Official Reports in order to expand public access to the decisions and help guide judges and justices as they seek to ensure that they comport with the high ethical standards imposed on all judicial officers.

As we face the challenges of a new year, I would like to thank the members of the Commission currently serving for the important work done in the last year. I would also like to thank our staff for their invaluable assistance.



Honorable Judith D. McConnell

Chairperson

COMMISSION ON JUDICIAL PERFORMANCE
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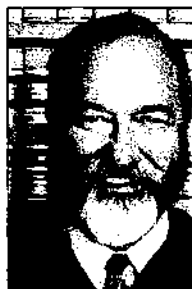
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COMMISSION MEMBERS

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; however, no member shall serve for more than a total of ten years. 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.



HON. JUDITH D. MCCONNELL, CHAIRPERSON, was appointed to the Commission as the Court of Appeal judicial member by the Supreme Court March 30, 2005, and reappointed January 8, 2009; her term ends February 28, 2013. Justice McConnell has served as the Commission's chairperson since March 2009; she served as its vice-chairperson in 2007 and 2008. 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. As a superior court judge, she served as Presiding Judge of the Juvenile Court and Supervising Judge of the Family Court and was elected by her colleagues in 1988 to serve as Assistant Presiding Judge and Presiding Judge in 1990, serving two years in each position. 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. FREDERICK P. HORN, VICE-CHAIRPERSON, was appointed to the Commission as a superior court judicial member by the Supreme Court October 22, 2003, and reappointed March 1, 2005 and January 8, 2009; his term ends February 28, 2013. Judge Horn is the current vice-chairperson of the Commission; he served as the Commission's chairperson in 2007 and 2008 and 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.



ANTHONY P. CAPOZZI, ESQ., was appointed to the Commission as a lawyer member by the Governor on April 6, 2010; his term ends February 28, 2013. He resides in Fresno and Carmel, California. Mr. Capozzi received his Bachelor of Arts degree in Philosophy from the State University of New York at Buffalo in 1967 and his law degree from the University of Toledo, College of Law in 1970. Mr. Capozzi served as a law clerk to the Honorable Omer Poos, a United States District Court Judge for the Southern District of Illinois from 1970 to 1973. From 1973 to 1979 he was a Supervising Assistant United States Attorney in the Eastern District of California, Fresno Division. He has owned and operated the Law Offices of Anthony P. Capozzi since 1979, primarily focusing his practice in the area of criminal law. Mr. Capozzi is admitted to the Ohio, Illinois and California bars. He has served as president of the Fresno County Bar Association and the Federal Bar Association, San Joaquin Valley Chapter; lawyer, co-chair of the Ninth Circuit Judicial Conference; co-chair of the Bench Bar Coalition; president of the State Bar of California from 2003-2004; member of the Access and Fairness Commission, 2004-2005; and member of the Judicial Council of the State of California, 2005-2010. Mr. Capozzi has served as the legal and political analyst for ABC Channel 30, KFSN TV in the Central Valley since 2005. He is presently the chair of the Law School Advisory Committee for the State Bar accredited law schools, and is secretary of the Board of the Central California Blood Center; since 2005, Mr. Capozzi has been a fellow of the American Board of Criminal Lawyers. In June of 2010, Mr. Capozzi received an Honorary Doctorate of Law Degree from the Southern California Institute of Law.



PETER E. 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.



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.



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 ended February 28, 2009, but she continues to serve pending the appointment of a successor. 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, and reappointed September 13, 2009; his term ends February 28, 2013. He resides in San Francisco. Mr. Simi recently retired as a government relations director for Pacific Gas and Electric, where he worked for the past 30 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 a strategy + fund development consultant. Ms. Dillard Smith was formerly senior advisor to Mayor Gavin Newsom and Director of Violence Prevention for the Mayor's Office of Criminal Justice in San Francisco. She has also worked for the California Judicial Council, the U.S. Census Monitoring Board, the National Bureau of Economic Research and U.S. Representative Barbara Lee, Chair of the Congressional Black Caucus. A public safety expert and youth development specialist, Ms. Dillard Smith was the founding chairperson of the Oakland Violence Prevention and Public Safety Oversight Committee and currently serves on the Oakland Fund for Children and Youth Planning and Oversight Committee. She maintains an affiliation with a variety of nonprofit boards and professional networks. 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 in 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 casting director.

COMMISSION MEMBERS

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, and reappointed March 4, 2009; his term ends February 28, 2013. 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.



HON. ERICA R. YEW was appointed to the Commission as a superior court judicial member by the Supreme Court December 10, 2010, to the remainder of Judge Katherine Feinstein's term, ending February 28, 2011, and to a new four-year term beginning March 1, 2011 and ending February 28, 2015. Judge Yew sits on the Santa Clara County Superior Court, to which she was appointed in October 2001. She is a member of the Judicial Council and a former member of the California State Bar Board of Governors. She served on the Judicial Council Task Force on Self-Represented Litigants. She has worked on and led a number of projects to increase diversity in the legal profession. Among her judicial assignments, Judge Yew has presided over a dependency drug treatment court and speaks on the topic of problem-solving courts. Prior to her appointment to the bench, Judge Yew was a civil litigator and graduated from Hastings College of the Law and with honors from the University of California, Berkeley.

OUTGOING COMMISSION MEMBERS

HON. KATHERINE FEINSTEIN was appointed to the Commission as a superior court judicial member by the Supreme Court March 1, 2007. Judge Feinstein served as the Commission's vice-chairperson from March 2009 until December 6, 2010, when she resigned from the Commission.

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 ended February 28, 2009, but he continued to serve until a successor was appointed on April 6, 2010. Mr. Grossman served as the Commission's chairperson in 2005 and 2006 and its vice-chairperson in 2004.

SPECIAL MASTERS

Pursuant to Commission Rule 121(b), as an alternative to hearing a case itself, the Commission may request 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 2010:

Honorable Larry W. Allen
Superior Court of San Bernardino County

Honorable Gail A. Andler
Superior Court of Orange County

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

Honorable Denise de Bellefeuille
Superior Court of Santa Barbara County

Honorable Allan D. Hardcastle
Superior Court of Sonoma County

Honorable Stephen J. Kane
Court of Appeal, Fifth Appellate District

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 2010 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 2010 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>.

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

II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

LEGAL AUTHORITY

Recent Changes in the Law

In 2010, section 170.9 of the Code of Civil Procedure and rules 10.603(c)(4)(C) and 10.703(k) of the California Rules of Court were amended, and the Commission approved various changes to its policy declarations. The amendments 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. In 2010, CCP section 170.9 was amended to include subordinate judicial officers in the statute's restrictions on acceptance of gifts, travel expenses and honoraria. On February 28, 2011, the Commission adopted \$370.00 as the 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>.

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 Commission's rules were adopted in 2010, however, at the end of the year, as part of its biennial rules review, the Commission circulated various proposed changes for public comment. The Commission will take action on these proposed changes in 2011.

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 June 2010, the Commission approved new policy declaration 2.7, concerning the form for citations to Commission decisions, new policy declaration 2.1.5, concerning applications for correction of advisory letters pursuant to rule 111.5, and new policy declaration 3.13, setting forth the procedures and standards for staff recusal.

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

Rules of Court

In 2010, rules 10.603(c)(4)(C) and 10.703(k) of the California Rules of Court were amended to clarify the duty of presiding judges to notify the Commission concerning complaints about or allegations of misconduct committed by subordinate judicial officers, the discipline of a subordinate judicial officer or the resignation or retirement of a subordinate judicial officer.

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 changes to the code in 2010.

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. At each meeting, the Commission receives a report regarding the status of each deferred matter. See Section III for statistics on deferred cases.

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 alternative to hearing the case itself, the Commission may request the Supreme Court to appoint three special masters to hear and take evidence in the matter and to report to the Commission. (Commission Rule 121(b).) 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 actions 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:

II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

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

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

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

Release of Votes

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

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. 2010 STATISTICS ACTIVE AND FORMER JUDGES

COMPLAINTS RECEIVED AND INVESTIGATED

In 2010, there were 1,774 judgeships within the Commission's jurisdiction. In addition to jurisdiction over active judges, the Commission has authority to impose certain discipline upon former judges for conduct while they were active judges.

The Commission's jurisdiction also includes California's 392 commissioners and referees. The Commission's handling of complaints involving commissioners and referees is discussed in Section V.

JUDICIAL POSITIONS As of December 31, 2010	
Supreme Court	7
Court of Appeal.....	105
Superior Courts	1,662
Total.....	1,774

New Complaints

In 2010, the Commission considered 1,176 new complaints about active and former California judges. The 1,176 complaints named a total of 1,396 judges (863 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 decision.

2010 CASELOAD – JUDGES	
Cases Pending 1/1/10	130
New Complaints Considered.....	1,176
Cases Concluded	1,133
Cases Pending 12/31/10.....	148
Discrepancies in totals are due to consolidated complaints/dispositions.	

In 2010, the Commission considered 151 complaints about subordinate judicial officers. These cases are discussed in Section V.

The Commission office also received over 500 complaints in 2010 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 2010, the Commission ordered 101 staff inquiries and 101 preliminary investigations.

INVESTIGATIONS COMMENCED IN 2010	
Staff Inquiries	101
Preliminary Investigations.....	101

Formal Proceedings

At the beginning of 2010, there were two formal proceedings pending before the Commission. Both of these matters were concluded in 2010.

The Commission instituted formal proceedings in two cases during 2010. One of the matters was concluded in 2010, and one matter remained pending before the Supreme Court at the end of the year.

FORMAL PROCEEDINGS	
Pending 1/1/10.....	2
Commenced in 2010.....	2
Concluded in 2010.....	3
Pending 12/31/10.....	1

DEFERRAL OF INVESTIGATION

As discussed on page 4, the Commission may defer an investigation under certain circumstances. At the beginning of 2010, 12 deferred matters were pending. The Commission ordered 26 matters deferred during 2010. Twelve matters were returned to the Commission's active calendar, considered and concluded by the Commission in 2010. Two matters were returned to the active calendar and remained pending before the Commission at the end of 2010. Twenty-four matters remained deferred at the end of the year.

DEFERRED INVESTIGATIONS

Pending 1/1/10.....	12
Investigations deferred in 2010.....	26
Deferred investigations returned to active calendar and concluded in 2010.....	12
Investigations returned to the active calendar and pending 12/31/10.....	2
Deferred investigations pending 12/31/10...	24

REASONS INVESTIGATIONS WERE DEFERRED IN 2010

Deferred pending resolution of underlying case.....	6
Deferred pending appeal or other review...	10
Deferred pending civil, criminal or administrative investigation or proceeding.....	7
Deferred pending rule 112 monitoring	3

COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the Commission in 2010, regardless of when the complaints were received.¹ In 2010, the Commission concluded a total of 1,133 cases. The average time period from the filing of a complaint to the disposition was 4.2 months. A chart of Complaint Dispositions of all cases completed by the Commission in 2010 is included on page 10.

TYPE OF COURT CASE UNDERLYING COMPLAINTS CONCLUDED IN 2010

Criminal.....	42%
General Civil.....	21%
Family Law.....	18%
Small Claims/Traffic.....	7%
All Others.....	8%

4% 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 2010, after obtaining the information necessary to evaluate the complaints, the Commission determined that there was not a sufficient showing of misconduct in 988 of the complaints. In other words, there was an absence of facts which, if true and not otherwise explained, might constitute misconduct. The Commission closed these complaints without staff inquiry or preliminary investigation.

Following staff inquiry or preliminary investigation, the Commission closed another 96 matters without discipline. In these cases, investigation showed that the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation.

¹ Staff inquiries and preliminary investigations in the cases closed in 2010 may have commenced in prior years. Cases or portions of cases pending at the end of 2010 are not included in complaint disposition statistics.

SOURCE OF COMPLAINTS CONCLUDED IN 2010	
Litigant/Family/Friend	88%
Attorney	5%
Judge/Court Staff	2%
All Other Complainants	4%
(including citizens)	
Source Other than Complaint	1%
(includes anonymous letters, news reports)	

Closed With Discipline

In 2010, the Commission publicly censured three judges and imposed four public admonishments. The Commission also issued eight private admonishments and 31 advisory letters. Each of these cases is summarized in Section IV.

A chart of the Types of Conduct Resulting in Discipline in 2010 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 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.

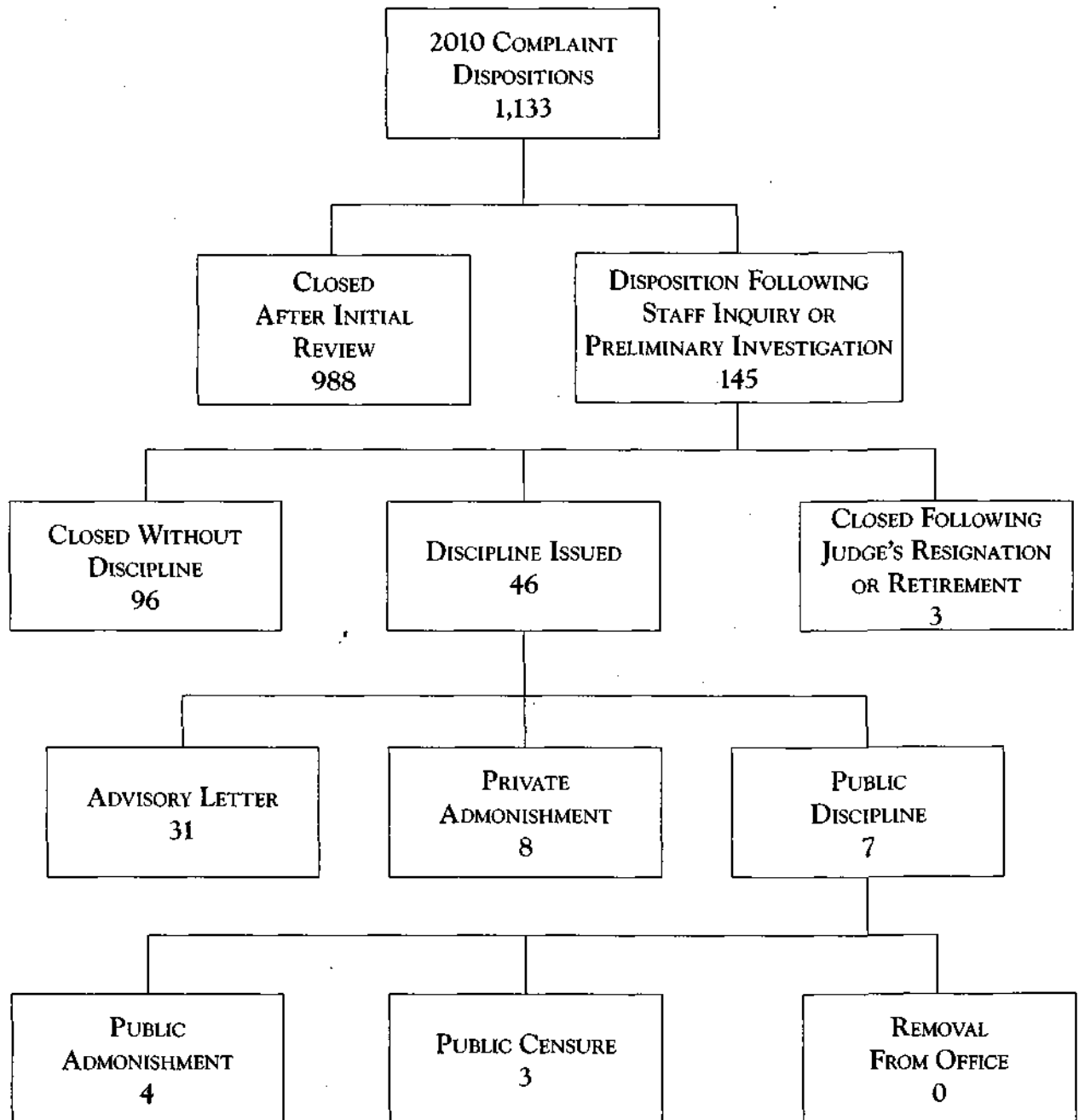
Resignations and Retirements

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 2010, the Commission closed three 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.

2010
COMPLAINT DISPOSITIONS



TYPES OF CONDUCT RESULTING IN DISCIPLINE*

DEMEANOR/DECORUM
(includes inappropriate humor)
[14]

**ON-BENCH ABUSE OF AUTHORITY
IN PERFORMANCE OF
JUDICIAL DUTIES**
[13]

**BIAS OR APPEARANCE OF BIAS
NOT DIRECTED TOWARD A
PARTICULAR CLASS**
(includes embroilment, prejudice, favoritism)
[10]

**ABUSE OF
CONTEMPT/SANCTIONS**
[7]

**DISQUALIFICATION/DISCLOSURE/
POST-DISQUALIFICATION
CONDUCT**
[6]

FAILURE TO ENSURE RIGHTS
[6]

**MISCELLANEOUS OFF-BENCH
CONDUCT**
[6]

EX PARTE COMMUNICATIONS
[5]

ADMINISTRATIVE MALFEASANCE
(includes conflicts between judges, failure
to supervise staff, delay in responding to
complaints about commissioners)
[4]

**DECISIONAL DELAY/
FALSE SALARY AFFIDAVITS**
[3]

IMPROPER POLITICAL ACTIVITIES
[3]

**OFF-BENCH ABUSE OF OFFICE/
MISUSE OF COURT INFORMATION**
(includes improper use
of office stationery)
[3]

**ALCOHOL OR DRUG
RELATED CRIMINAL CONDUCT**
[2]

**NON-PERFORMANCE OF JUDICIAL
FUNCTIONS/ATTENDANCE/SLEEPING**
[2]

COMMENT ON A PENDING CASE
[1]

**GIFTS/LOANS/FAVORS
TICKET-FIXING**
[1]

**IMPROPER BUSINESS, FINANCIAL OR
FIDUCIARY ACTIVITIES**
[1]

MISUSE OF COURT RESOURCES
[1]

* See "Closed With Discipline" at page 9 of text.

III.
2010 STATISTICS – ACTIVE AND FORMER JUDGES

10-YEAR SUMMARY OF COMMISSION ACTIVITY

NEW COMPLAINTS CONSIDERED BY COMMISSION

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
	835	918	1,011	1,114	965	1,019	1,077	909	1,161	1,176

COMMISSION INVESTIGATIONS COMMENCED

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Staff Inquiries	50 (6%)	58 (6%)	55 (5%)	91 (8%)	55 (6%)	67 (7%)	55 (5%)	70 (8%)	102 (9%)	101 (9%)
Preliminary Investigations	47 (6%)	37 (4%)	48 (5%)	47 (4%)	41 (4%)	51 (5%)	54 (5%)	42 (5%)	63 (5%)	101 (9%)
Formal Proceedings Instituted	6 (<1%)	4 (<1%)	3 (<1%)	2 (<1%)	4 (<1%)	5 (<1%)	1 (<1%)	2 (<1%)	1 (<1%)	2 (<1%)

DISPOSITION OF COMMISSION CASES

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total Dispositions	840	901	993	1,080	954	1,023	1,058	892	1,115	1,133
Closed after Initial Review	746 (89%)	830 (92%)	906 (91%)	993 (92%)	876 (92%)	919 (90%)	975 (92%)	805 (90%)	1,007 (90%)	988 (87%)
Closed without Discipline after Investigation	66 (8%)	40 (4%)	62 (6%)	60 (6%)	51 (5%)	64 (6%)	45 (4%)	48 (5%)	74 (7%)	96 (8%)
Advisory Letter	19 (2%)	17 (2%)	16 (2%)	13 (1%)	12 (1%)	16 (2%)	20 (2%)	18 (2%)	25 (2%)	31 (3%)
Private Admonishment	5 (<1%)	6 (<1%)	2 (<1%)	8 (<1%)	6 (<1%)	7 (<1%)	9 (<1%)	7 (<1%)	3 (<1%)	8 (<1%)
Public Admonishment	0 (0%)	1 (<1%)	1 (<1%)	3 (<1%)	4 (<1%)	9 (<1%)	5 (<1%)	7 (<1%)	2 (<1%)	4 (<1%)
Public Censure	2 (<1%)	4 (<1%)	1 (<1%)	0 (0%)	2 (<1%)	4 (<1%)	1 (<1%)	0 (0%)	1 (<1%)	3 (<1%)
Removal	1 (<1%)	0 (0%)	2 (<1%)	1 (<1%)	0 (0%)	1 (<1%)	2 (<1%)	2 (<1%)	0 (0%)	0 (0%)
Judge Retired or Resigned with Proceedings Pending	1 (<1%)	3 (<1%)	3 (<1%)	2 (<1%)	4 (<1%)	3 (<1%)	1 (<1%)	5 (<1%)	3 (<1%)	3 (<1%)

IV. CASE SUMMARIES

The following case summaries pertain to active and former judges. See Section V for summaries concerning discipline of subordinate judicial officers.

PUBLIC DISCIPLINE

Public discipline decisions issued by the Commission in 2010 are summarized in this section. All public decisions in Commission cases are available on the Commission's Web site at <http://cjp.ca.gov>.

PUBLIC CENSURE BY THE COMMISSION

In 2010, the Commission imposed four public censures. One of these censures (Public Censure of Judge Joseph W. O'Flaherty) is not included in the 2010 case disposition statistics because the judge filed a petition for review in the California Supreme Court, which was pending at the end of the year. The decision, however, is summarized in this section.

Public Censure of Judge Peter J. McBrien January 5, 2010

Judge Peter J. McBrien, a judge of the Sacramento County Superior Court, was ordered severely publicly censured for one instance of willful misconduct, two instances of prejudicial misconduct, and one instance of improper action. The Commission's action concluded formal proceedings, during which there was a hearing before special masters and an appearance before the Commission.

The Commission found that in a family law case in which the estimated trial time was two days, Judge McBrien left the bench shortly before 4:30 p.m. on the second day of trial, while a witness was testifying, stating that he had to take a call regarding an emergency protective order. The judge briefly reentered the courtroom to announce that the trial had ended, and walked out as the husband's attorney was trying to explain that she had additional evidence to present.

After handling the emergency protective order matter in less than three minutes, Judge McBrien made a brief telephone call to his residence and then left the courthouse. Thereafter, the parties were allowed to submit closing briefs, but no additional evidence.

The Commission adopted the masters' conclusions that Judge McBrien violated canons 2A and 3B(7), as well as a litigant's constitutional right to due process and a fair trial, and that his actions constituted prejudicial misconduct. Noting that the public has a right to expect that trials will be conducted in an even-handed and procedurally regular manner that does not exalt efficiency over fairness, the Commission pointed out that abruptly terminating a trial in the middle of a witness's testimony is contrary to due process and is a denial of fundamental fairness.

The Commission and the masters also found that in the same case, Judge McBrien threatened the husband's counsel with contempt in order to compel her to comply with his request that she produce Statements of Economic Interests her client had filed. The judge wanted the documents in order to determine whether her client might have violated the Fair Political Practices Act, an issue that was not relevant to the proceedings before him. The masters and the Commission concluded that Judge McBrien's threat of contempt violated canons 2 and 3B(4). The Commission determined that the judge's wrongdoing constituted prejudicial misconduct, noting that raising the possibility of contempt for failing to comply with a request to produce documents that are not relevant to the proceeding reflects adversely on the judiciary and is prejudicial to public esteem for the judiciary.

In addition, the Commission and the masters found that in the same case, Judge McBrien repeatedly requested a transcript of certain proceedings, which he believed showed that the husband might have violated the Fair Political Practices Act, and transmitted the transcript to the husband's employer. The judge continued to preside over post-trial contested matters in the case without

disclosing his actions. He disqualified himself only after learning that the husband's employer had dismissed him from employment upon reviewing the transcript.

The Commission and the masters concluded that Judge McBrien violated canons 2 and 3E(2), and the Commission concluded that the judge committed willful misconduct. The Commission expressed the view that the judge acted in bad faith because he repeatedly requested the transcript and reported the husband to his employer for a purpose wholly unrelated to the dissolution action before him. The Commission agreed with the masters that the judge "joined the fray" through his investigation and pursuit of the issue. The Commission concurred with the masters' finding that Judge McBrien became so personally embroiled as to make him unfit to conduct further proceedings, and required his disqualification.

Finally, the Commission and the masters found that throughout proceedings in the same case, Judge McBrien displayed impatience toward the husband's counsel; he repeatedly threatened to declare a mistrial, and made derogatory and discourteous remarks to her in open court and in the presence of her client. The Commission and the masters concluded that the judge's conduct was contrary to canons 2 and 3B(4), and constituted improper action.

Addressing prior discipline, the Commission noted that Judge McBrien had received a public admonishment in 2002 based on his misdemeanor conviction arising out of the 1999 cutting of trees, and removal of limbs from trees, on public land adjacent to his residence. The masters and the Commission found in aggravation that Judge McBrien gave testimony inconsistent with his prior sworn testimony regarding the matter underlying his prior public admonishment, and improperly tried to use the special masters' hearing as a public forum to address a grievance with the media on a prior disciplinary matter.

Turning to the issue of appropriate discipline, the Commission took into consideration that the judge's misconduct demonstrated a pattern of serious wrongdoing throughout the course of presiding over the family law case; that Judge

McBrien was publicly admonished in 2002; that prior to his final appearance before the Commission, Judge McBrien repeatedly denied any wrongdoing or impropriety in his conduct; that he provided self-serving statements and testimony during the Commission proceedings which were subsequently shown to be inaccurate, and gave testimony inconsistent with his prior sworn testimony concerning his prior admonishment; and that his misconduct resulted in the family law case being reversed on appeal, costing the parties substantial expense and delays.

Regarding the likelihood of future misconduct, the Commission stated that the judge's failure to appreciate the full extent and gravamen of his misconduct indicated an inability to reform suggesting a likelihood of future misconduct, but also expressed its recognition that the judge's lengthy tenure on the bench with no previous discipline for on-bench misconduct, along with the fact that the misconduct occurred within the context of one case, could suggest that the misconduct was isolated to that case rather than representing a pattern likely to reoccur. The Commission concluded that removal was not necessary to protect the public from future misconduct. The Commission recognized that during his long tenure on the family law bench, Judge McBrien had worked to improve the family law system in his county, was extremely hard-working, and served as a mentor to new judges.

Having considered and balanced the various factors, the Commission determined that a severe censure was the appropriate discipline.

Public Censure and Bar of Former Judge Brett Carroll Klein February 2, 2010

Pursuant to stipulation, former Judge Brett C. Klein, who had retired from the Los Angeles County Superior Court, was ordered publicly censured and barred from serving in a judicial capacity in any California state court, for conduct that constituted, at a minimum, conduct prejudicial to the administration of justice that brings the judicial office into disrepute. In an affidavit of consent for discipline filed with the stipulation, Judge Klein admitted the truth of the charges in

the Notice of Formal Proceedings, and agreed that in the decision and order imposing a censure and bar, the Commission could articulate the reasons for its decision.

Judge Klein presided over a hearing for final approval of a settlement in a class action lawsuit against a women's clothing store chain; he was assigned because the judge who had presided over prior proceedings and granted preliminary approval of a settlement reached after mediation, was ill. The terms of the settlement included issuance of a permanent injunction preventing the chain from requesting and recording personal identification information from credit card purchasers, issuance to class members of a \$10 voucher that could be used at any store in the chain, an award of \$2,500 to the class representative, and payment of \$125,000 in attorney's fees and costs to plaintiffs' counsel.

During the hearing, Judge Klein engaged in a pattern of sarcasm and improper remarks toward the attorneys. This included asking, when inquiring into how the class representative had learned that the store's practice of asking customers for information was illegal, "Someone mentioned it to her at a cocktail party?"; stating that the class representative's name was "probably more common than the most common legal fictitious name for a woman," commenting that an attorney's statement that he was not qualified to discuss a certain subject was "the lawyer's way of saying I don't know," and asking counsel if he would have used a higher hourly rate if he had decided to sign a declaration before filing it, rather than filing it unsigned.

At the end of the hearing, Judge Klein said that he was taking the matter under submission. That afternoon, the judge revised two paragraphs of the proposed final order, which concerned the payments to counsel and to the class representative, by typing in new paragraphs and pasting them over the corresponding paragraphs of the order. The new paragraphs provided that counsel and the class representative would be paid in the form of \$10 gift cards (12,500 gift cards to counsel and 250 gift cards to the class representative). Judge Klein signed and dated the order, crossing off the

word "Proposed" on the caption. The judge—who had not mentioned during the hearing that he was considering making such changes to the proposed settlement—instructed his clerk to email the order to the attorneys. The email message he dictated to his clerk stated only that the order had been signed and filed, and that a scan of the five-page document was attached.

On the same day, Judge Klein transmitted the order to a local legal newspaper. Five days later, the newspaper published an article that disparaged the case settlement and described Judge Klein's order with approval. The article resulted in further publicity and online postings critical of the case and plaintiffs' counsel.

About two weeks after his issuance of the order, Judge Klein sent the judge who had presided over the prior proceedings an email message; he stated that his ruling troubled him. Judge Klein subsequently ordered reconsideration and set the matter before the first judge. That judge thereafter vacated Judge Klein's ruling and entered a new final order that included the payment of money to plaintiffs' counsel and to the class representative as originally approved.

The Commission found that Judge Klein's conduct displayed bias and embroilment, and constituted an abuse of authority. In addition, his conduct reflected a failure to be patient, dignified and courteous to those appearing before him. The Commission concluded that Judge Klein's conduct violated canons 1, 2A, 3B(4), and 3B(5) of the Code of Judicial Ethics, and constituted, at a minimum, conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

In considering other facts relevant to discipline, the Commission noted that in 2002, Judge Klein received an advisory letter for making remarks at a hearing about an attorney who was not present; the remarks were improper and unprofessional, and suggested bias and embroilment. In 2004, Judge Klein was publicly admonished for abusing his authority and displaying bias and embroilment through actions he took after a judgment he had entered was reversed by the Court of Appeal.

Turning to the question of appropriate discipline, the Commission determined that a censure and bar, the maximum sanction that may be imposed upon a former judge, was the appropriate discipline based on the serious nature of the misconduct and Judge Klein's history of discipline for similar misconduct. The Commission found that Judge Klein's embroilment and bias were manifested through the highly unorthodox manner in which he modified the proposed final order to provide for payment in gift cards rather than cash, and by his action in transmitting the order to the press. The Commission determined that Judge Klein abandoned his role as a neutral arbitrator and gave the appearance of being punitive toward the plaintiffs' attorney and grandstanding to the press.

**Public Censure of
Judge Joseph W. O'Flaherty
September 23, 2010**

Judge Joseph W. O'Flaherty of the Placer County Superior Court was publicly censured for willful misconduct. The Commission's action concluded formal proceedings, during which there was a hearing before special masters and an appearance before the Commission. Judge O'Flaherty filed a petition for review in the California Supreme Court; that petition was pending at the end of 2010.

The Commission and the masters found that Judge O'Flaherty had presided over a small claims case in which an independent car dealer alleged that an employee of a credit union made derogatory remarks about independent car dealers that caused a woman to break a contract with him for the sale of a car. When the plaintiff presented his case, the judge interrupted him numerous times with questions and comments generally critical of his defamation claim. The prospective buyer, by contrast, was allowed to give a lengthy narrative without interruption. The judge also heard from the employee and her supervisor. After the judge said that the plaintiff's defamation case wasn't "even close to libel," the plaintiff said that he knew he was right, but had not been allowed to prove his case, and that the judge could dismiss the case. Judge O'Flaherty dismissed the case, and the plaintiff left the courtroom.

Immediately after the plaintiff left, the three women conversed among themselves. The prospective buyer said that the plaintiff had her address. The credit union employee started crying, and expressed concern that the plaintiff would come after her; she desecrated him as a "lunatic" and said that she was afraid of him. She also said that he had come back in and tried to confront her before. The prospective buyer said that she had received a "demand letter" from the plaintiff. Although none of the comments was made directly to Judge O'Flaherty, he overheard them, and ordered the bailiff to return the plaintiff to the courtroom.

When the plaintiff returned, the judge told him that he thought he had been abusing the women and that all three of the women were afraid of him. The judge then said that he was not going to issue a formal restraining order, which he had "the right to do," but that if there was any contact between the plaintiff and the three women in the next few months, he would "issue a formal restraining order on the spot," and the plaintiff would have to pay the fees and then face criminal charges if he violated the restraining order. The judge then repeatedly told the plaintiff that he was to have "no contact" with the women and instructed the plaintiff to stay away from the credit union. When the plaintiff mentioned that he was a customer of the credit union, the judge said that he could go to other branches, and stated that he was not to have any contact with the branch in question for at least the next 90 days.

Based on a videotape of the proceedings and other evidence presented at the hearing before the special masters, the Commission, like the masters, found that the plaintiff did not directly or indirectly abuse, threaten or intimidate the three women on the day of the small claims hearing or at any other time. The Commission noted that he displayed restraint and composure in the face of the judge's frequent interruptions of his presentation and repeated comments disparaging his case.

The Commission and the masters also found that Judge O'Flaherty ordered the plaintiff not to have contact with the three women for 90 days, telling him at least six times that he was to stay away from the women, specifying the amount of

IV.
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time the order was in effect, and repeatedly asking the plaintiff if he understood what he was being told. Rejecting the judge's claim that he did not issue and did not intend to issue a no contact order and was merely warning the plaintiff and seeking his agreement not to contact the women, the Commission found Judge O'Flaherty's unequivocal choice of words and tone established that he was ordering the plaintiff to have no contact with the women, rather than seeking an agreement. The Commission concluded that there was no reasonable way to interpret the judge's words other than as an order, and that the plaintiff reasonably believed that he was under a court order not to have contact with the women.

Referring to Judge O'Flaherty's testimony at the hearing before the special masters that he was essentially bluffing the plaintiff into believing that a restraining order with resulting fees and possible criminal proceedings would issue "on the spot" if he had any contact with the women, the Commission stated, "We have no doubt that Judge O'Flaherty wanted [plaintiff] to believe he was subject to a restraining order, an order the judge knew he did not have authority to issue." The Commission pointed out that Judge O'Flaherty was aware of the statutory requirements for issuance of a restraining order based on his extensive experience handling harassment petitions, and thus knew that he did not have the authority to issue a no contact order based only on the women's statements after the plaintiff left the courtroom, or "on the spot" if he had contact with them in the next 90 days.

The masters and the Commission found that the judge's conduct and statements demonstrated that, rather than acting as an impartial jurist, he became a forceful advocate for the women and became embroiled in the matter to the extent that he issued orders that were neither requested nor legally proper. The Commission and the masters also found that the plaintiff was denied basic due process rights during the hearing after his return to the courtroom. The Commission pointed out that the plaintiff was not present when the women made comments that caused Judge O'Flaherty to order his return, and that the judge did not inform him of the factual basis of the no contact order except to say that the women were afraid of him,

or afford him an opportunity to ask questions or respond to the allegation that he had harassed the women.

The Commission, like the masters, concluded that Judge O'Flaherty engaged in willful misconduct. The judge engaged in unjudicial conduct by failing to comply with the canons of judicial ethics, specifically, canons 1, 2A, 3B(2), and 3B(7). He acted in bad faith by issuing a no contact order with knowledge that it was beyond his judicial authority to do so, and because he acted with a conscious disregard of the limits of his authority.

Rejecting Judge O'Flaherty's contention that he acted in good faith because he believed his actions were a necessary response to an emergency situation, the Commission noted that there is an expedited process for issuance of temporary restraining orders, which the judge failed to follow, and that had there been an emergency situation, his unenforceable no contact order would have provided the women no protection. The Commission stated that it was not suggesting that Judge O'Flaherty was required to ignore the women's comments; he could have told them where to obtain forms for filing a petition for a restraining order, without commenting on the merits of such a petition. What he could not do, the Commission said, was issue a no contact order without complying with applicable statutory requirements and constitutional due process guarantees. The Commission continued: "The power to restrict a person's freedom of movement and contact with other individuals is a weighty responsibility which should be exercised with caution and in strict compliance with the law."

Turning to the question of discipline, the Commission determined that censure was appropriate. Crucial to this determination was the fact that Judge O'Flaherty had been previously publicly admonished for abusing his authority and disregarding the law, and yet continued to show no acceptance or understanding of the limits of his authority. Judge O'Flaherty was publicly admonished in 2004 for telling prospective jurors in two criminal trials that they could lie to get out of jury duty if they thought they might be racially biased. The Commission noted a "disturbing similarity" between the misconduct resulting in the

2004 public admonishment and the misconduct in the case before it, pointing out that in both cases, Judge O'Flaherty had demonstrated a willingness to circumvent the law in favor of procedures he considered more effective. The Commission noted that Judge O'Flaherty testified before the masters that he had given essentially the same "warning" that he gave the plaintiff in the matter in question in many other cases where there was no petition for restraining order pending before him, and "it usually works." The Commission concluded that Judge O'Flaherty appeared to believe that he is "entitled to disregard the law without consequence as long as, in his mind, the ends justify the means."

The Commission also considered the adverse impact of the judge's misconduct on both the rights of the plaintiff and the reputation of the judiciary, since abuse of judicial authority and conscious disregard of the law are the antithesis of what the public expects of a judge. Finally, the Commission pointed out that intentionally bluffing a litigant "manifestly diminishes public esteem for the judiciary." Noting Judge O'Flaherty's insistence that his actions in the case were not misconduct, despite his prior discipline and the unanimous conclusion of the special masters that he committed willful misconduct, the Commission stated that it was convinced by the judge's continued failure to accept the inherent obligation of a judge to adhere to the law and the limits of judicial authority that he should be publicly censured.

**Public Censure of
Judge DeAnn M. Salcido
November 10, 2010**

Pursuant to stipulation, Judge DeAnn Salcido of the San Diego County Superior Court was publicly censured for thirty-nine instances of prejudicial misconduct. As part of the stipulation, Judge Salcido agreed to irrevocably resign from judicial office, and to not hold judicial office or accept judicial assignment thereafter. In the stipulation, Judge Salcido expressly admitted that the stated facts were true and that she agreed with the stated legal conclusions.

Judge Salcido had the husband of her courtroom bailiff videotape her on the bench presiding over various matters for about an hour, in order to

promote herself for a role in a potential television entertainment program featuring a judge. The judge gave the tape to an entertainment lawyer, who showed it to a producer. Thereafter, Judge Salcido allowed the producer to film proceedings in her courtroom for an entire day.

No request to record any of the proceedings was made under the Rules of Court, nor would an order granting such a request have been properly issued, as the filming was for the judge's personal purposes. The judge did not provide advance notice to the litigants or counsel whose cases were heard during the videotaping by her bailiff's husband; advance notice of the subsequent day-long filming was provided to some of the litigants and counsel.

In an email message to the entertainment lawyer, Judge Salcido suggested that the filming occur on a certain day, and said that she had been "setting [her] more interesting defendants and those with substance abuse issues" for that date. After the lawyer suggested the filming occur on a different date, Judge Salcido sent an email message stating that she would "line up [her] most interesting cases" for that date.

The Commission found that the judge's conduct violated canons 1, 2, 2A, 2B(2), and 3A, and constituted prejudicial misconduct.

The Commission also found that while presiding over cases on the full day of filming in her courtroom, Judge Salcido made numerous improper remarks; seventeen were specified. For example, she told one defendant that if he came before the court on another case he would "be screwed and we don't offer Vaseline for that." She said to another defendant that "they might like [his] smile in jail." The judge joked that the case of a defendant who had served more than two months in jail after urinating in public and then turning around, exposing himself, gave "new meaning to the term zip it," and that if the defendant returned to a certain location, "they'll recognize you in more ways than one." In addition, Judge Salcido involved the courtroom audience by suggesting that a defendant "call the lifeline" by polling the audience as to whether to accept a proposed disposition; in two other matters, she

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said to the audience, "Can I get a woo, woo?" or "Can I get a woo, woo, woo?"

The Commission found, in addition, that over a year-long period, the judge engaged in improper conduct and made improper remarks regarding litigants, court staff, attorneys and others; twenty incidents were specified. For example, Judge Salcido referred to another judge of her court as "aka assistant public defender," repeatedly referred to a deputy public defender as "Mr. Federal Case," and referred to court staff as "cucumbers," adding that they weren't even potatoes, "because potatoes have eyes," and weren't corn, "because corn has ears." The judge also said that she "wouldn't trust a guinea pig to" most of the clerks. In presiding over a domestic violence case, the judge repeatedly used the phrase "booty call," and said, "If he's stalking her, he got a taste of it. They don't stalk unless they've got something." After a defense attorney said that his client felt unable to travel from Maine to attend court because of her pregnancy, and provided a letter from his client's physician stating her due date, Judge Salcido expressed her view that pregnancy would not preclude travel, and then tore up the physician's letter while on the bench. In another matter, the judge, stating that she was a Chargers fan, asked a defendant who had appeared in court wearing an Oakland Raiders jersey whether he wanted to leave by the Charger door [the public exit] or the Raider door [the door for defendants going into custody], and then asked a woman in the courtroom who was connected with the case, "Would you say he's smart, coming here in a Raiders shirt? No? What does that say about you ... and the kind of men you pick?"

The Commission found that the judge's conduct demonstrated a pattern of misconduct, violated canons 1, 2, 2A, 3B(3), and 3B(4), and constituted prejudicial misconduct.

Lastly, the Commission found that Judge Salcido took a defendant into custody for direct contempt without affording her due process or complying with the legal requirements for direct contempt, and without sentencing her; in addition, the judge directed comments to the courtroom audience that failed to uphold a high standard of conduct. The defendant, who was

represented by counsel, was entering a guilty plea when the judge said that she didn't "deal well with eye-rolling attitudes" and was "about to sentence her." The judge directed counsel to take the defendant outside and "let her know whose courtroom this is," reiterating that she was "about to sentence her." The defendant responded, saying either "For what?" or "So what?" Judge Salcido then directed the bailiff to "go grab her for direct contempt of court," and ordered the defendant into custody, stating that she was in direct contempt "for saying 'so what' when I said I was about to sentence her." After the defendant denied saying this, and stated that she had said, "do what," the judge responded, "Be quiet. Anybody else feel like they're lucky today? [Laughter] I guarantee you we're not in Las Vegas [...] people." The judge kept the defendant in custody for over twenty minutes before recusing herself and sending the case to another department, where the defendant was released and entered her guilty plea. The contempt proceeding was not pursued.

The Commission found that the judge's conduct constituted an abuse of authority and demonstrated embroilment. Her conduct violated canons 1, 2, 2A, 3B(2), 3B(4), and 3B(7), and constituted, at a minimum, prejudicial misconduct.

Turning to the issue of discipline, the Commission concluded that the stipulated disposition was warranted, noting that Judge Salcido had admitted engaging in thirty-nine separate instances of prejudicial misconduct. The Commission stated that these instances established a pattern of misconduct demonstrating a temperament ill-suited for judicial office.

In many instances, the Commission stated, Judge Salcido's misconduct made a mockery of the judicial system. She used court proceedings as an audition for her own television entertainment program and gave the unseemly appearance of playing to the cameras and the audience. The proceedings took on the atmosphere of a game show. The judge's showmanship behavior and her statement that she would line up her more interesting cases for the day of the filming created the appearance that she was more interested in

promoting herself for a role in a television show than in providing justice to those who appeared before her.

In addition, the Commission stated, the judge's crude comments and sexually suggestive jokes were manifestly inappropriate. The Commission expressed its appreciation of the fact that each judge has his or her own style, and that a modest injection of humor at the appropriate time can have a place in the courtroom; nonetheless, judicial humor should never be used to ridicule, embarrass or disparage others, or in a manner that diminishes the dignity of the judicial process. The Commission stated that judges are expected to administer justice and resolve serious issues, not to provide entertainment, and that Judge Salcido's misconduct served to cheapen the dignity of the court and undermine public confidence in and respect for the judicial system.

Finally, the Commission pointed out that Judge Salcido's misconduct also included abuse of authority and embroilment through her incarceration of a defendant for direct contempt without affording the defendant due process or complying with the requisite legal procedures. Noting that the importance of strict adherence to statutory and constitutional procedural requirements before exercising the "ultimate weapon" of contempt had been repeatedly emphasized by the Supreme Court and the Commission, the Commission stated that it should have been apparent to Judge Salcido that she could not summarily remand a defendant to custody for what she perceived to be contemptuous conduct without affording the defendant any due process.

The Commission concluded that the stipulated disposition was in the best interest of the public and the reputation of the judiciary.

PUBLIC ADMONISHMENT BY THE COMMISSION

The Commission may publicly admonish a judge for improper action or dereliction of duty. In 2010, the Commission issued four public admonishments.

Public Admonishment of Judge Anthony C. Edwards April 12, 2010

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

The Commission found that the judge conducted an in-custody arraignment in a felony case in which he was disqualified. The judge and his wife, an attorney, had a personal relationship with the defendant and her family, and the defendant had come to the judge's house shortly after the incident resulting in the criminal charges. Judge Edwards signed a minute order recusing himself, as did the other judge in his county. Nonetheless, Judge Edwards presided when the defendant, after her arrest in another county, appeared in custody for arraignment. Judge Edwards's wife stood up when the case was called; the judge asked her what should be done next, and she said that the public defender should be appointed. The judge arraigned the defendant, appointed the public defender, and set the case for bail review and preliminary hearing. As he left the courtroom, he walked by the jury box where the defendant was sitting and hugged her.

The Commission determined that it was improper for Judge Edwards to preside over proceedings involving the defendant, which included an inquiry to his spouse, when he was already disqualified and his disqualification was required by law. The Commission stated that this exceeded the scope of actions that may be taken by a disqualified judge pursuant to Code of Civil Procedure section 170.4. Noting the judge's claim that he believed he needed to preside due to the difficulty of finding an out-of-county judge to conduct an arraignment on short notice, the Commission pointed out that Judge Edwards had provided no information as to what, if any, specific efforts were made to get a visiting judge to conduct the arraignment before he presided over the matter. In addition, the Commission found that the court would not have lost jurisdiction if the defendant had not been arraigned within 48

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hours of arrest, and that there was no evidence that the defendant would have been released if not arraigned within that time. Finally, the Commission found that the judge's hugging the defendant in open court created the appearance of bias and impropriety. The Commission concluded that the judge's conduct was contrary to canons 1, 2, 2A, and 3E.

In another criminal case, Judge Edwards was disqualified pursuant to a peremptory challenge filed by the prosecution two days before the date set for the defendant's arraignment. On the arraignment date, the defendant failed to appear at the Weaverville courthouse. Judge Edwards recused himself, but also ordered that the matter be set for arraignment about three weeks later at a different court facility, in Hayfork, on a calendar he knew he would be handling, as the judge knew the defendant would be in the Hayfork court on that day. Judge Edwards intended to tell the defendant that he must appear in Weaverville. The defendant appeared in Hayfork on the date set, and Judge Edwards set a date for him to appear in Weaverville before the other judge.

The Commission found that it was improper for Judge Edwards to set the matter after he was recused. The Commission stated that this exceeded the scope of action permitted after disqualification under Code of Civil Procedure section 170.4, and that the apparent purpose for the irregular procedure was to help a defendant who had failed to appear, which at a minimum gave the appearance of preferential treatment. The Commission concluded that the judge's conduct violated canons 2A and 3E(1).

Next, the Commission found that Judge Edwards had abused his authority by dismissing certain infractions and misdemeanors on the ground that the defendants lived in Hayfork but were cited by law enforcement to appear in Weaverville. There was no court order or other requirement that the initial appearance of a Hayfork resident be in Hayfork, and the judge's decision to dismiss rather than transfer the cases created an appearance of impropriety and appearance of bias against the prosecution, contrary to canons 2 and 2A. The Commission took note of a case in which

the appellate division of the superior court found an abuse of discretion and set aside the dismissal, stating that court convenience and issues of court administration are issues external to the case, and therefore cannot be grounds for dismissal pursuant to Penal Code section 1385.

The Commission found, in addition, that despite having a light caseload, Judge Edwards had sometimes unreasonably delayed ruling on submitted matters. Between 2005 and 2008, Judge Edwards decided at least four matters that had been under submission for over 90 days; delays ranged from one day to 29 days beyond the 90-day limit. The judge signed one salary affidavit falsely stating that he had no matters pending and undecided that had been under submission for more than 90 days; however, he apparently was not aware that the affidavit was false when he signed it. The Commission pointed out that unreasonable delay in deciding submitted matters is contrary to canon 3B(8), and that submitting a false salary affidavit, even if not done intentionally, undermines public confidence in the judiciary and violates canons 1 and 2A.

The Commission also found that on a day when he was not presiding in Hayfork, Judge Edwards took the clerk and deputy marshal of the Hayfork court to lunch in his private plane; the clerk did not return to the locked court facility until 2:45 to 3:00 p.m. because she was with Judge Edwards. Judge Edwards did not contact anyone in Weaverville. Although he had a few matters on calendar in Weaverville at 1:30 p.m., he did not return to Weaverville until about 3:30 p.m.; the other judge handled the matters at about 3:00 p.m.

The court executive officer asked to meet with the clerk about the incident. The day after that meeting, Judge Edwards wrote a letter to the court executive officer in which he stated, "If for some strange reason it is not absolutely clear, I am the one and the only one responsible for getting [the clerk] back to work by 1:00 p.m." The judge went on to state that he could take an employee to lunch, even an extended lunch, because "I am the employer and I can do that." The judge directed the court executive officer to take anything having to do with the incident out of the clerk's personnel

file, and to pay her overtime for calling her into the court executive officer's office after work hours.

The Commission found that Judge Edwards's conduct on the day of the lunch reflected a disregard of the court's obligation to the public, undermined confidence in the integrity of the judiciary, and created the appearance of favoritism, in violation of canons 1 and 2A. In addition, the Commission found that the letter to the court executive officer was contrary to canon 3B(4) and created an appearance of favoritism.

In another matter, the Commission found that Judge Edwards commented in a crowded courtroom that a certain misdemeanor was "just another example of the DA overcharging." The Commission concluded that the comment violated canon 3B(4) and created an appearance that Judge Edwards was biased against the district attorney's office.

Finally, the Commission found that Judge Edwards allowed a potential juror, whom he knew personally, to wear a tinfoil hat when he reported for jury duty; although the judge knew that the potential juror was joking, he did not acknowledge him or ask him to remove the hat. The Commission concluded that the judge's conduct was contrary to canon 3B(3).

The Commission determined that the conduct of Judge Edwards in these matters was, at a minimum, improper action.

**Public Admonishment of
Judge John T. Doyle
October 21, 2010**

Judge John T. Doyle of the Los Angeles County Superior Court was publicly admonished for prejudicial misconduct, pursuant to Commission Rules 115-116 (governing public admonishments).

The Commission found that Judge Doyle caused a traffic collision while driving under the influence of alcohol; breath tests showed that he had blood alcohol levels of .21 and .20. The judge was charged with violating Vehicle Code sections 23152(a) and (b), and was convicted on a plea of nolo contendere of violating Vehicle Code section 23152(b).

The Commission found that Judge Doyle's unlawful action evidenced a serious disregard of the principles of personal and official conduct embodied in the California Code of Judicial Ethics, including canons 1 and 2A. In addition, the Commission found that the judge's unlawful conduct was prejudicial to the administration of justice and brought the judicial office into disrepute, within the meaning of article VI, section 18, subdivision (d) of the California Constitution.

**Public Admonishment of
Judge John B. Gibson
December 14, 2010**

Judge John B. Gibson of the San Bernardino County Superior Court was publicly admonished for conduct that constituted, at a minimum, improper action, pursuant to Commission Rules 115-116 (governing public admonishments).

The Commission found that Judge Gibson failed to be patient, dignified and courteous toward two attorneys who appeared in a criminal case. The case was before the judge in the morning for assignment to a trial department. A male attorney, appearing in place of the female attorney representing the defendant, announced that the defense was ready for trial, but that the defense witnesses had not been subpoenaed to appear until the following week. Judge Gibson displayed irritation, impatience and sarcasm toward the attorney because the witnesses had been subpoenaed for the following week. Later the same day, the female attorney appeared before the judge and explained why the witnesses had been subpoenaed for the following week. Although Judge Gibson told the attorney that she was probably right in her reasoning, he also displayed sarcasm and annoyance toward her in open court. Later the same day, Judge Gibson ordered the female attorney and another attorney from the same office into his chambers, where he made rude, insensitive and inappropriate remarks to the female attorney about the male attorney who had appeared for her. The judge exhibited irritation toward the female attorney, and made a statement about the male attorney to the effect of, "He was incompetent and just stood in the courtroom scratching his balls and picking his nose," or "He was incompetent

and just stood in the courtroom scratching his ass and picking his nose." The judge accompanied this remark with gestures indicating those actions.

In another matter, Judge Gibson, while standing in the hallway beside his chambers with a male attorney and a female attorney, told a story about being intimidated by a prosecutor when he was a young defense attorney and the two of them were standing at a urinal. While telling the story, Judge Gibson gestured in front of his groin as if he were using a urinal.

On another occasion, Judge Gibson referred to a tall, thin female attorney with short hair who appeared before him as a "Q-tip."

The Commission found that Judge Gibson's conduct constituted a violation of canons 1, 2A, and 3B(4), and constituted, at a minimum, improper action.

In taking this action, the Commission took into account Judge Gibson's public admonishment in 2000 for similar insensitive and inappropriate conduct toward individuals with whom he dealt in an official capacity.

Public Admonishment of Judge Melissa N. Widdifield December 14, 2010

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

The Commission found that Judge Widdifield drove her vehicle with a blood alcohol level of approximately .09 percent. The judge was charged with violating Vehicle Code sections 23152(a) and 23152(b). She entered a plea of nolo contendere to alcohol-related reckless driving, a violation of Vehicle Code section 23103(a), pursuant to Vehicle Code section 23103.5.

The Commission found that Judge Widdifield's unlawful action evidenced a serious disregard of the principles of personal and official conduct embodied in the California Code of Judicial Ethics, including canons 1 and 2A. In addition,

the Commission found that the judge's unlawful conduct was prejudicial to the administration of justice and brought the judicial office into disrepute, within the meaning of article VI, section 18, subdivision (d) of the California Constitution.

PRIVATE DISCIPLINE

Private admonishments and advisory letters issued in 2010 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.

The Commission may consider private discipline in subsequent proceedings, particularly when the judge has repeated the conduct for which the judge was previously disciplined.

In 2010, the Commission imposed eight private admonishments.

1. In two civil cases, a judge failed to be patient, dignified and courteous, and engaged in conduct giving rise to an appearance that the judge was not impartial. In one of the cases, the judge made a statement that reflected prejudgment while a party was testifying before the jury. In the other case, the judge made sarcastic and discourteous comments to an attorney at a hearing. Later at the jury trial, the judge chastised a testifying party and that party's expert witness, and made statements that made it appear that the judge

was assuming an adversarial role. The judge also delayed decision in four civil cases; delays ranged from a few days to more than three months beyond the 90-day limit. Also, in a number of cases, the judge required jurors to return daily at 10:00 a.m. even though the judge's morning calendar did not finish until late morning and sometimes trial did not resume until after lunch, causing the jurors to wait in the hallway for several hours.

2. A judge failed to appreciate limits to the judge's role in certain matters. The judge tried to order a juvenile to court to check up on the juvenile when no case was pending. In another matter, the judge enlisted court staff to drive a juvenile, whose case was pending before the judge, to a medical appointment. The judge also attended the appointment and participated in the execution of a medical release form. In a criminal matter, the judge applauded while sentencing a defendant to prison and encouraged courtroom spectators to wave good-bye. In another criminal case, the judge improperly completed a report for a state agency that only the prosecutor was authorized to complete.

3. During restraining order proceedings, a judge ordered the respondent into custody without following any contempt procedures or imposing a sentence for contempt, and improperly kept the respondent in custody for about six hours before conducting a hearing.

4. A judge engaged in an abuse of authority by issuing an overbroad restraining order.

5. For over a year, in collection cases in which the defendant had been granted a full or partial fee waiver, a judge maintained a practice of requiring the prevailing plaintiff to pay the defendant's first appearance fee before a judgment would be issued. The appearance fee was then added to the judgment to be recovered from the defendant. There was no legal authority for such fee shifting.

6. Due to embroilment, a judge failed to appoint a deputy public defender ("DPD") in a case, contrary to law; failed to subsequently disqualify from the DPD's cases; stated, in open court, that the DPD was incompetent; and had an ex parte discussion about a pending case with the DPD's supervisor.

7. A judge repeatedly used profanity while being interviewed by a reporter and the profanity appeared in the newspaper article. The judge used profanity with counsel in chambers.

8. A judge delegated responsibility to conduct case management conferences and status conferences to the judge's clerk. On one occasion, the judge used stationery imprinted with the judge's official title and court address to advance the judge's personal interests. The judge also used the judge's official title and court address on the judge's personal checks.

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 2010, the Commission issued 31 advisory letters.

Bias

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

1. In setting a probation violation hearing, a judge told the probationer that the judge was going to send the probationer to prison, and made other remarks that reflected prejudgment and a lack of impartiality.

2. During the lengthy criminal trial of an obstreperous proper defendant, a judge made disparaging and demeaning comments to the defendant and made improper threats, sometimes in the presence of the jury, in an attempt to control the defendant. At one point, the judge ordered the out-of-custody defendant placed in a holding cell without following proper procedures. The judge engaged

in conduct suggesting assumption of a prosecutorial role rather than that of an impartial arbiter. The advisory was strong.

3. After learning that a defendant's probation had terminated, a judge made several remarks that reflected embroilment, including asking the prosecutor to "keep tabs" on the defendant. The judge also failed to promote public confidence in the impartiality of the judiciary by suggesting that the judge would not hear challenges to an order the judge had signed when the judge lacked jurisdiction.

4. After a preliminary hearing, a judge ordered a defendant to undergo drug testing in a manner that suggested that the judge was assuming a law enforcement role rather than that of a neutral magistrate. The judge engaged in an ex parte communication with a sheriff's deputy about the testing. The advisory was strong.

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.)

5. A judge engaged in an abuse of authority by issuing sanctions without following due process procedures.

6. A judge's conduct in contempt proceedings against counsel gave rise to an appearance of embroilment and lack of impartiality. The judge did not follow procedures required for indirect contempt and failed to disqualify from the contempt proceedings when disqualification was required. In the order to show cause re: contempt and in verified answers to statements of disqualification, the judge made statements that were factually inaccurate and that made allegations against counsel appear more egregious. The advisory was strong.

7. A judge held an attorney in contempt without adhering to the substantive and proce-

dural requirements for contempt. The judge was new to the bench. The advisory was strong.

Improper Political Activities

"A judge or judicial candidate shall refrain from inappropriate political activity." (Canon 5.)

8. A judge engaged in improper political activity during the judge's campaign for judicial office by distributing campaign literature on county property.

9. A judge publicly endorsed a candidate for non-judicial office. The judge promptly arranged to have the endorsement removed.

10. A candidate for judicial office misrepresented the qualifications and present position of an opponent in the campaign.

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

11. A judge's active participation in a civil deposition of the person to whom the judge was engaged created the appearance that the judge was using the prestige of office to benefit that person and was acting as a legal advocate. Although the judge was not identified as a judge at the deposition, both parties knew of the judge's judicial position. When agreeing to testify at trial, the judge failed to exercise diligence to prevent the use of the judge's position and title at trial. The advisory was strong.

12. Under circumstances that warranted inquiry, a judge failed to inquire whether benefits from a lender might have been extended based on the judge's judicial status. The judge also failed to keep informed of the judge's financial interests and failed to accurately report those interests on the judge's Statements of Economic Interests. The advisory was strong.

13. A judge became involved in litigation in another county concerning a member of the judge's family. The judge filed a complaint with the Commission on Judicial Performance about the judge presiding over the case. The judge's family member thereafter filed a motion to disqualify that judge. The judge who complained gave the family member a copy of the CJP complaint, which clearly indicated the complainant was a judge, to attach to the disqualification motion.

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).)

14. A judge made disparaging comments about an attorney during a hearing on the attorney's motion for attorney's fees and in a tentative ruling that the judge posted on the court's Web site.

15. At the conclusion of a settlement conference in a civil case, a judge made a disparaging remark to the plaintiff, to the effect that the plaintiff should be institutionalized.

Ex Parte Communications

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

16. Without counsel present, a judge spoke in chambers with a juror during deliberations in a homicide case.

17. After conducting a hearing and making a ruling, a judge advised a litigant ex parte, through a court clerk, that the litigant could submit additional evidence. The opposing party was not informed of these discussions or that the judge's ruling might be changed. Later that day, the judge changed the ruling based on the judge's ex parte review of the additional evidence.

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.)

18. A judge heard that a judgment debtor, who had failed to appear at a debtor's examination and therefore was subject to arrest, was going to be in the courthouse at a particular time on other business. Without notice to the debtor, the judge had a clerk telephone the plaintiff's attorney ex parte and set another debtor's examination at the time the debtor was expected to be at court. While the debtor was at the courthouse, the judge had the debtor escorted to the judge's courtroom for the examination.

19. A judge allowed a member of the judge's family to attend a juvenile dependency calendar in the judge's courtroom, although the litigants were entitled to have proceedings be confidential.

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.)

20. When a judge was notified that an attorney was complaining to the court's executive officer about the court's trial setting practices, the judge ordered the attorney to the judge's courtroom, where the judge chastised the attorney and ordered the attorney to remain there while the judge summoned opposing counsel in one of the attorney's cases that was awaiting trial. That case was not pending before the judge. The advisory was strong.

21. At the conclusion of a small claims hearing, a judge engaged in an abuse of authority by ordering one party to stay away from the other party and ordering a party to receive counseling. The advisory was strong.

Administrative Malfeasance

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

22. A presiding judge did not properly respond to a complaint about a delay of more than a year in the issuance of a final statement of decision by a commissioner in a family law case. The judge's closing letter to the litigant stated there was no merit to the complaint even though the commissioner had admitted the substantial delay.

Decisional Delay

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

23. A pro per family law litigant brought a motion to modify child support which was heard the same day as the opposing party's motion to modify spousal support. The judge gave the parties two weeks for further briefing, after which the motions would be deemed submitted. Two months later, the judge decided only the spousal support motion. Two months thereafter, the pro per litigant began inquiring about the child support motion. The judge took no action until three months later, when the judge ordered a further hearing on child support issues.

Disclosure and Disqualification

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

24. A judge disclosed to the parties in a civil matter that one of the law firms in the case was representing a member of the judge's family, but did not disclose either that the judge had previously shared office space with the law firm or that the judge had social contacts with one of the firm's partners.

Public Comment

Canon 3B(9) prohibits judges from making public comment about a pending or impending proceeding in any court, with limited exceptions.

25. A judge made public comments about the litigants in a pending, highly publicized case.

Non-performance of Judicial Functions

A judge's failure to perform judicial duties or to perform assigned duties diligently conflicts with canon 3.

26. A judge was habitually late in taking the bench for the morning calendar.

More Than One Type of Misconduct

Some cases involved more than one type of misconduct.

27. A judge made remarks, in open court, to an attorney that reflected impatience, were undignified and demeaned the competence of the attorney. In another case, immediately after ruling in favor of one party, the judge met with that party's counsel in chambers on an unrelated matter, without offering an explanation to the other party, which created the appearance of impropriety.

28. A judge violated canon 3B(10) by commending two juries for their verdicts. In another case, the judge made a comment to an attorney that appeared sarcastic and may have reflected a lack of patience.

29. In an animal cruelty case, a judge failed to disclose the judge's extensive personal and professional activities involving animals. The judge also incarcerated the defendant under circumstances that appeared retaliatory and constituted an abuse of authority.

30. A judge's off-bench participation in law enforcement activities failed to promote public confidence in the integrity and impartiality of the judiciary. Also, while on the bench, the judge directed the bailiff to take the car keys of pro per defendants who were charged with, but had not been convicted of, driving without a valid license if they stated they had driven themselves to court.

IV.
CASE SUMMARIES

31. A judge failed to provide a party an opportunity to be heard before sanctioning the party for failure to appear. The judge also presided over two hearings in a family law matter in the absence of the minors' counsel, without proof in the record

of notice to the minors' counsel, under circumstances which should have compelled the judge to inquire about notice. The judge was new to the bench.

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 2010, there were 392 authorized subordinate judicial officer positions in California.

SUBORDINATE JUDICIAL OFFICERS AUTHORIZED POSITIONS	
As of December 31, 2010	
Court Commissioners	347
Court Referees	45
Total	392

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 disciplines a subordinate judicial officer for conduct

that, if alleged against a judge, would be within the jurisdiction of the Commission. (California Rules of Court, rule 10.703(k)(1); Commission Rule 109(c)(3).) Third, a local court must notify the Commission if a subordinate judicial officer resigns while a preliminary or formal investigation is pending concerning conduct that, if alleged against a judge, would be within the jurisdiction of the Commission, or under circumstances that would lead a reasonable person to conclude that the resignation was due, at least in part, to a complaint or allegation of misconduct. (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.

2010 STATISTICS

Complaints Received and Investigated

In 2010, the Commission reviewed 151 new complaints about subordinate judicial officers. 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 2010, the Commission commenced investigations in eight matters: three staff inquiries and five preliminary investigations.

RULE UNDER WHICH NEW COMPLAINTS WERE SUBMITTED

Rule 109(c)(1) – appeal from local court's disposition	148
Rule 109 (c)(2) – at the request of a local court	0
Rule 109(c)(3) – notification by local court of discipline.....	2
Rule 109(c)(4) – notification by local court of resignation with investigation pending.....	1

2010 CASELOAD – SUBORDINATE JUDICIAL OFFICERS

Cases Pending 1/1/10	4
New Complaints Considered.....	151
Cases Concluded	147
Cases Pending 12/31/10.....	5

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

Cases Concluded

In 2010, the Commission concluded its review of 147 complaints involving subordinate judicial officers. The Commission closed 143 of these matters after initial review because it determined that the superior courts' handling and disposition of the complaints were adequate and that no further proceedings were warranted. Following investigation, the Commission closed two of the cases without discipline, issued an advisory letter in one case, and closed one case when the commissioner resigned with the agreement not to serve or seek to serve in a judicial capacity. At the end of the year, five matters remained pending before the Commission.

2010 SJO COMPLAINT DISPOSITIONS

Total complaint dispositions.....	147
Closed after initial review.....	143

After independent investigation by the Commission:

Closed without discipline	2
Advisory letter issued	1
Resignation pursuant to stipulation.....	1

V.
SUBORDINATE JUDICIAL OFFICERS

TYPE OF COURT CASE UNDERLYING
SUBORDINATE JUDICIAL OFFICER
COMPLAINTS CONCLUDED IN 2010

Small Claims.....	40%
Family Law.....	24%
Traffic.....	14%
General Civil.....	12%
Criminal.....	5%
All Others.....	5%
(including off-bench)	

SOURCE OF COMPLAINTS
INVOLVING SUBORDINATE
JUDICIAL OFFICERS
CONCLUDED IN 2010

Litigant/Family/Friend	93%
Judge/Court Staff.....	2.5%
Attorney	1.25%
Citizen.....	1.25%
All Other Complainants	2%

SUMMARY OF DISCIPLINARY ACTION

Private Discipline

The Commission issued one advisory letter to a subordinate judicial officer in 2010.

- A subordinate judicial officer delayed issuing a ruling in a family law matter for over one year.

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 judicial 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

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.

2010 STATISTICS

At the beginning of 2010, one disability retirement application was pending before the Commission. That application was granted in 2010.

The Commission received four disability retirement applications during 2010, all of which were granted. No disability retirement applications were pending at the end of the year.

RESTORATION TO CAPACITY FOR SERVICE

Pursuant to its authority under Government Code section 75060.6, the Commission determined that one judge, who had been granted disability retirement in 2004, was no longer incapacitated, and was therefore eligible for judicial assignment by the Chief Justice.

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 26% in 2010.

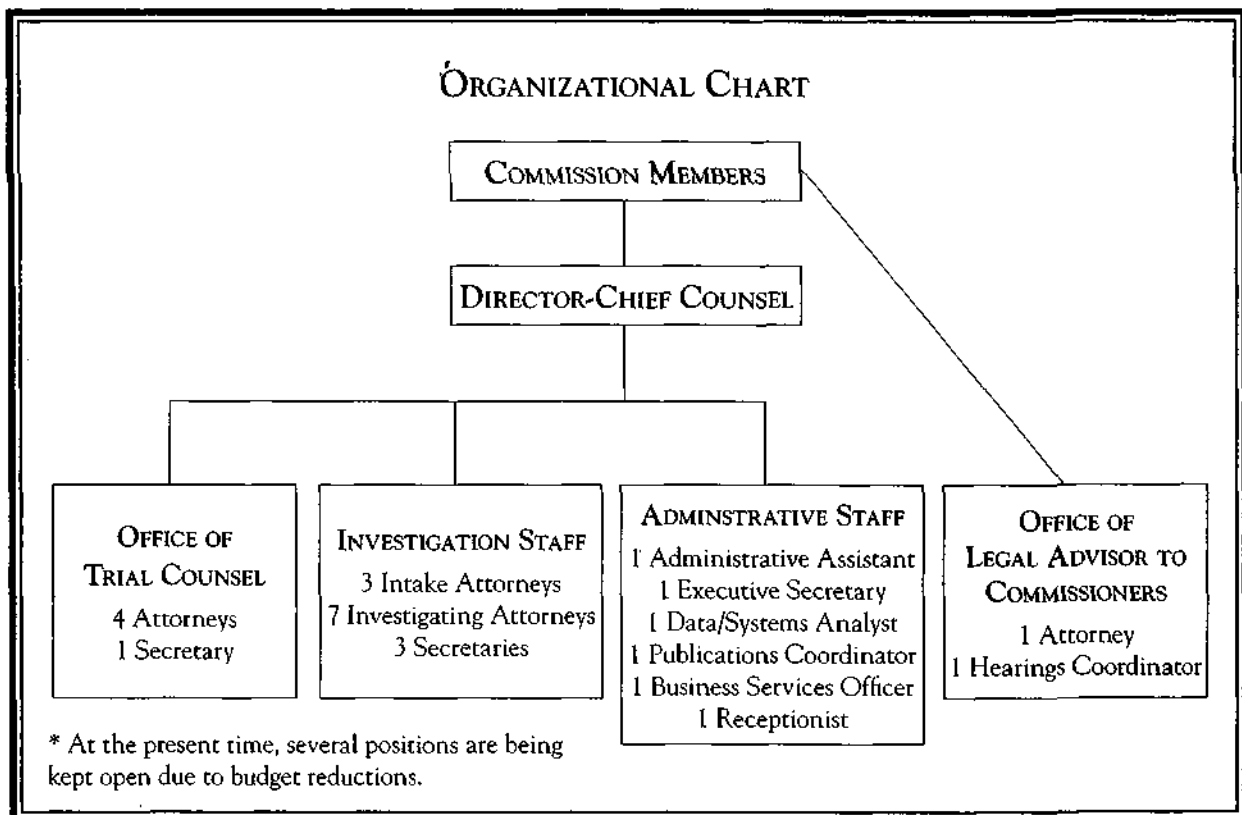
The Director-Chief Counsel heads the agency and reports directly to the Commission. The Director-Chief Counsel oversees the intake and investigation of complaints and the Commission examiner's handling of formal proceedings. The Director-Chief Counsel is also the primary liaison between the Commission 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 before special masters, including presenting the evidence that supports the charges and briefing. The examiner also 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.



VII.
COMMISSION ORGANIZATION, STAFF AND BUDGET

2010-2011 BUDGET

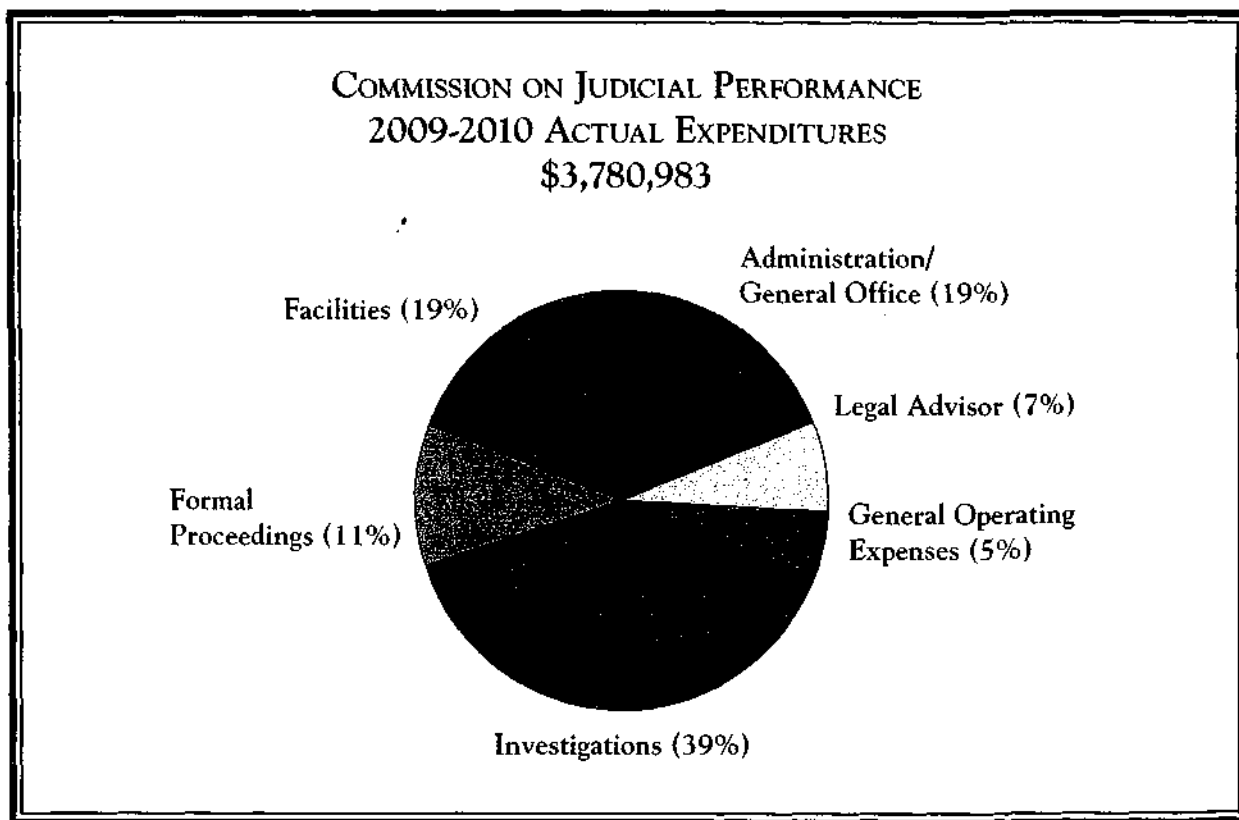
The Commission's budget is separate from the budget of any other state agency or court. For the current 2010-2011 fiscal year, the Commission's budget is \$4,081,000. In the 2003-2004 fiscal year, and again in the 2008-2009 fiscal year, the Commission's budget was reduced by 10% – a 20% reduction in the span of five years. None of the funding has been restored.

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 allo-

cated to personnel expenses. This leaves the Commission with few options for reducing expenditures. Despite reducing spending in nearly every aspect of its operations, since the 2003-2004 fiscal year, the Commission has had to maintain reduced staffing levels in order to achieve the required savings.

2009-2010 BUDGET

The Commission's final budget appropriation for the 2009-2010 fiscal year was \$4,071,482. Final expenditures totaled \$3,780,983. Approximately 39% of the Commission's budget supported the intake and investigation functions and approximately 18% was used in connection with formal proceedings. The remaining 43% went toward sustaining the general operations of the Commission, including facilities, administrative staff, supplies, and security.



APPENDIX

APPENDIX 1.

GOVERNING PROVISIONS

The following provisions governing the Commission on Judicial Performance are available on the Commission's Web site at <http://cjp.ca.gov>.

California Constitution, Article VI, Sections 8, 18, 18.1 and 18.5

Rules of the Commission on Judicial Performance

Policy Declarations of the Commission on Judicial Performance

California Rules of Court
(provisions pertaining to the Commission on Judicial Performance)

California Government Code
(provisions pertaining to the Commission on Judicial Performance)

California Code of Civil Procedure Section 170.9

APPENDIX 2.
CALIFORNIA CODE OF JUDICIAL ETHICS
Adopted by the Supreme Court of California

Amended by the Supreme Court of California effective April 29, 2009;
Previously amended March 4, 1999, December 13, 2000, December 30, 2002,
June 18, 2003, December 22, 2003, January 1, 2005, June 1, 2005, July 1, 2006,
January 1, 2007 and January 1, 2008.

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PREFACE

Formal standards of judicial conduct have existed for more than 50 years. The original Canons of Judicial Ethics promulgated by the American Bar Association were modified and adopted in 1949 for application in California by the Conference of California Judges (now the California Judges Association).

In 1969, the American Bar Association determined that current needs and problems warranted revision of the Canons. In the revision process, a special American Bar Association committee, headed by former California Chief Justice Roger Traynor, sought and considered the views of the bench and bar and other interested persons. The American Bar Association Code of Judicial Conduct was adopted by the House of Delegates of the American Bar Association August 16, 1972.

Effective January 5, 1975, the California Judges Association adopted a new California Code of Judicial Conduct adapted from the American Bar Association 1972 Model Code. The California code was recast in gender-neutral form in 1986.

In 1990, the American Bar Association Model Code was further revised after a lengthy study. The California Judges Association again reviewed the model code and adopted a revised California Code of Judicial Conduct on October 5, 1992.

Proposition 190 (amending Cal. Const., art. VI, § 18(m), effective March 1, 1995) created a new constitutional provision that states, "The Supreme Court shall make rules for the conduct of judges, both on and off the bench, and for judicial candidates* in the conduct of their campaigns. These rules shall be referred to as the Code of Judicial Ethics."

The Supreme Court formally adopted the 1992 Code of Judicial Conduct in March 1995, as a transitional measure pending further review.

The Supreme Court formally adopted the Code of Judicial Ethics effective January 15, 1996.

The Supreme Court formally adopted amendments to the Code of Judicial Ethics, effective April 15, 1996. The Advisory Committee Commentary is published by the Supreme Court Advisory Committee on the Code of Judicial Ethics.

PREAMBLE

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to this code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible member of government under the rule of law.

The Code of Judicial Ethics ("Code") establishes standards for ethical conduct of judges on and off the bench and for candidates for judicial office. The Code consists of broad declarations called Canons, with subparts, and a Terminology section. Following each Canon is a Commentary section prepared by the Supreme Court Advisory Committee on the Code of Judicial Ethics. The Commentary, by explanation and example, provides guidance as to the purpose and meaning of the Canons. The Commentary does not constitute additional rules and should not be so construed. All members of the judiciary must comply with the Code. Compliance is required to preserve the integrity of the bench and to ensure the confidence of the public.

The Canons should be read together as a whole, and each provision should be construed in context and consistent with every other provision. They are to be applied in conformance with constitutional requirements, statutes, other court rules, and decisional law. Nothing in the Code shall either impair the essential independence of judges in making judicial decisions or provide a separate basis for civil liability or criminal prosecution.

The Code governs the conduct of judges and judicial candidates* and is binding upon them. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, requires a reasoned application of the text and consideration of such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

TERMINOLOGY

Terms explained below are noted with an asterisk (*) in the Canons where they appear. In addition, the Canons in which terms appear are cited after the explanation of each term below.

"Appropriate authority" denotes the authority with responsibility for initiation of the disciplinary process with respect to a violation to be reported. See Commentary to Canon 3D.

"Candidate." A candidate is a person seeking election for or retention of judicial office by election. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election to nonjudicial office, unless on leave of absence. See Preamble and Canons 2B(3), the preliminary paragraph of 5, 5A, 5B, 5C, and 6E.

"Court personnel" does not include the lawyers in a proceeding before a judge. See Canons 3B(4), 3B(7)(b), 3B(9), and 3C(2).

"Fiduciary" includes such relationships as executor, administrator, trustee, and guardian. See Canons 4E, 6B, and 6F (Commentary).

"Law" denotes court rules as well as statutes, constitutional provisions, and decisional law. See Canons 1 (Commentary), 2A, 2C (Commentary), 3A, 3B(2), 3B(7), 3E, 4B (Commentary), 4C, 4D(6)(a)-(b), 4F, 4H, and 5D.

"Member of the judge's family" denotes a spouse, registered domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Canons 2B(2), 4D(1) (Commentary), 4D(2), 4E, 4G (Commentary), and 5A.

"Member of the judge's family residing in the judge's household" denotes a spouse or registered domestic partner and those persons who reside in the judge's household who are relatives of the judge including relatives by marriage, or persons with whom the judge maintains a close familial relationship. See Canons 4D(5) and 4D(6).

"Nonprofit youth organization" is any nonprofit corporation or association, not organized for the private gain of any person, whose purposes are irrevocably dedicated to benefiting and serving the interests of minors and which maintains its nonprofit status in accordance with applicable state and federal tax laws. See Canon 2C.

"Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to information that is sealed by statute or court order, impounded, or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Canon 3B(11).

"Political organization" denotes a political party, political action committee, or other group, the principal purpose of which is to further the election or appointment of candidates to nonjudicial office. See Canon 5A.

"Registered domestic partner" denotes a person who has registered for domestic partnership pursuant to state law or who is recognized as a domestic partner pursuant to Family Code section 299.2.

"Require." Any Canon prescribing that a judge "require" certain conduct of others means that a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Canons 3B(3), 3B(4), 3B(6), 3B(8) (Commentary), 3B(9), and 3C(2).

"Subordinate judicial officer." A subordinate judicial officer is, for the purposes of this Code, a person appointed pursuant to article VI, section 22 of the California Constitution, including, but not limited to, a commissioner, referee, and hearing officer. See Canon 6A.

"Temporary Judge." A temporary judge is an active or inactive member of the bar who, pursuant to article VI, section 21 of the California Constitution, serves or expects to serve as a judge once, sporadically, or regularly on a part-time basis under a separate court appointment for each period of service or for each case heard. See Canons 4C(3)(d)(i), 6A, and 6D.

CANON 1**A Judge Shall Uphold the Integrity and Independence of the Judiciary**

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective. A judicial decision or administrative act later determined to be incorrect legally is not itself a violation of this Code.

ADVISORY COMMITTEE COMMENTARY

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law* and the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violations of this Code diminish public confidence in the judiciary and thereby do injury to the system of government under law.

The basic function of an independent and honorable judiciary is to maintain the utmost integrity in decision making, and this Code should be read and interpreted with that function in mind.

[Adopted 1/15/96.]

CANON 2**A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities****A. Promoting Public Confidence**

A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

ADVISORY COMMITTEE COMMENTARY

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges.

A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by other members of the community and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge.

The test for the appearance of impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity, impartiality, and competence.

See also Commentary under Canon 2C.

B. Use of the Prestige of Judicial Office

(1) A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.

(2) A judge shall not lend the prestige of judicial office or use the judicial title in any manner, including any oral or written communication, to advance the pecuniary or personal interests of the judge or others. This Canon does not prohibit the following:

(a) A judge may testify as a character witness, provided the judge does so only when subpoenaed.

(b) A judge may, without a subpoena, provide the Commission on Judicial Performance with a written communication containing (i) factual information regarding a matter pending before the commission, or (ii) information related to the character of a judge who has a matter pending before the commission, provided that any such factual or character information is based on personal knowledge. In commission proceedings, a judge shall provide information responsive to a subpoena or when officially requested to do so by the commission.

(c) A judge may provide factual information in State Bar disciplinary proceedings and shall provide information responsive to a subpoena or when officially requested to do so by the State Bar.

(d) A judge may respond to judicial selection inquiries, provide recommendations (including a general character reference, relating to the evaluation of persons being considered for a judgeship), and otherwise participate in the process of judicial selection.

(e) A judge may serve as a reference or provide a letter of recommendation only if based on the judge's personal knowledge of the individual. These written communications may include the judge's title and be written on stationery that uses the judicial title.

(3) A judge shall not initiate communications with a sentencing judge or a probation or corrections officer, but may provide them with information for the record in response to an official request. A judge may initiate communications with a probation or corrections officer concerning a member of the judge's family,* provided the judge is not identified as a judge in the communication.

ADVISORY COMMITTEE COMMENTARY

A strong judicial branch, based on the prestige which comes from effective and ethical performance, is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Judges should distinguish between proper and improper use of the prestige of office in all of their activities.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of the judge or others. For example, a judge must not use the judicial position to gain advantage in a civil suit involving a member of the judge's family,* or use his or her position to gain deferential treatment when stopped by a police officer for a traffic offense.

As to the use of a judge's title to identify a judge's role in the presentation and creation of legal education programs and materials, see Commentary to Canon 4B. In contracts for publication of a judge's writings, a judge should retain control over the advertising, to the extent feasible, to avoid exploitation of the judge's office. As to the

acceptance of awards, see Canon 4D(6)(c) and Commentary.

This Canon does not afford judges a privilege against testifying in response to any official summons.

See also Canons 3D(1) and 3D(2) concerning a judge's obligation to take appropriate corrective action regarding other judges who violate any provision of the Code of Judicial Ethics and attorneys who violate any provision of the Rules of Professional Conduct.

This Canon does not preclude internal discussions among judges regarding the application of substantive or procedural provisions of law to any pending criminal or civil case.

C. Membership in Organizations

A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation.

This Canon does not apply to membership in a religious organization or an official military organization of the United States. So long as membership does not violate Canon 4A, this Canon does not bar membership in a nonprofit youth organization.*

ADVISORY COMMITTEE COMMENTARY

Membership of a judge in an organization that practices invidious discrimination gives rise to a perception that the judge's impartiality is impaired. This Canon exempts membership in religious and military organizations and, subject to Canon 4A, does not bar membership in nonprofit youth organizations.* These exemptions are necessary because membership in United States military organizations is subject to current valid military regulations, and religious beliefs are constitutionally protected. Membership in nonprofit youth organizations* is not barred to accommodate individual rights of intimate association and free expression. See also Canon 3E and its Commentary concerning disqualification and disclosure.

Canon 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership

rolls but rather depends on how the organization selects members and other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, national origin, or sexual orientation persons who would otherwise be admitted to membership.

Although Canon 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion, national origin, or sexual orientation, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by law* also violates Canon 2 and Canon 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Canon 2A for a judge to arrange a meeting at a club that the judge knows practices such invidious discrimination or for the judge to use such a club regularly. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary in violation of Canon 2A.

[Adopted 1/15/96; amended 6/19/03 and 1/1/08.]

CANON 3

A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

A. Judicial Duties in General

All of the judicial duties prescribed by law* shall take precedence over all other activities of every judge. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities

(1) A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified.

ADVISORY COMMITTEE COMMENTARY

Canon 3B(1) is based upon the affirmative obligation contained in the Code of Civil Procedure.

(2) A judge shall be faithful to the law* regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.*

(3) A judge shall require* order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require* similar conduct of lawyers and of all court staff and personnel* under the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (1) bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, or (2) sexual harassment.

(6) A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status against parties, witnesses, counsel, or others. This Canon does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status or other similar factors are issues in the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, full right to be heard according to law.* A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding, except as follows:

(a) A judge may obtain the advice of a disinterested expert on the law* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance

of the advice, and affords the parties reasonable opportunity to respond.

(b) A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(c) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(d) A judge may initiate ex parte communications, where circumstances require, for scheduling, administrative purposes, or emergencies that do not deal with substantive matters provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(e) A judge may initiate or consider any ex parte communication when expressly authorized by law* to do so.

ADVISORY COMMITTEE COMMENTARY

The proscription against communications concerning a proceeding includes communications from lawyers, law professors, and other persons who are not participants in the proceeding, except to the limited extent permitted by the exceptions noted in Canon 3B(7).

This Canon does not prohibit a judge from initiating or considering an ex parte communication when authorized to do so by stipulation of the parties.

This Canon does not prohibit court staff from communicating scheduling information or carrying out similar administrative functions.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file an amicus curiae brief.

A judge must not independently investigate facts in a case and must consider only the evidence presented, unless otherwise authorized by law.*

For example, a judge is statutorily authorized to investigate and consult witnesses informally in small claims cases.

(8) A judge shall dispose of all judicial matters fairly, promptly, and efficiently. A judge shall manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law.

ADVISORY COMMITTEE COMMENTARY

The obligation of a judge to dispose of matters promptly and efficiently must not take precedence over the judge's obligation to dispose of the matters fairly and with patience. For example, when a litigant is self-represented, a judge has the discretion to take reasonable steps, appropriate under the circumstances and consistent with the law and the canons, to enable the litigant to be heard. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to require* that court officials, litigants, and their lawyers cooperate with the judge to that end.

(9) A judge shall not make any public comment about a pending or impending proceeding in any court, and shall not make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require* similar abstention on the part of court personnel* subject to the judge's direction and control. This Canon does not prohibit judges from making statements in the course of their official duties or from explaining for public information the procedures of the court, and does not apply to proceedings in which the judge is a litigant in a personal capacity. Other than cases in which the judge has personally participated, this Canon does not prohibit judges from discussing in legal education programs and materials, cases and issues pending in appellate courts. This educational exemption does not apply to cases over which the judge has presided or to comments or discussions that might interfere with a fair hearing of the case.

ADVISORY COMMITTEE COMMENTARY

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Canon does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

ADVISORY COMMITTEE COMMENTARY

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information* acquired in a judicial capacity.

ADVISORY COMMITTEE COMMENTARY

This Canon makes it clear that judges cannot make use of information from affidavits, jury results, or court rulings, before they become public information, in order to gain a personal advantage.

C. Administrative Responsibilities

(1) A judge shall diligently discharge the judge's administrative responsibilities impartially, on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity of the judiciary. A judge shall maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.

ADVISORY COMMITTEE COMMENTARY

In considering what constitutes a conflict of interest under this Canon, a judge should be informed by Code of Civil Procedure section 170.1(a)(6).

(2) A judge shall require* staff and court personnel* under the judge's direction and control to observe appropriate standards of conduct and to refrain from manifesting bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to ensure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary court appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees above the reasonable value of services rendered.

ADVISORY COMMITTEE COMMENTARY

Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, court reporters, court interpreters, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Canon 3C(4).

(5) A judge shall perform administrative duties without bias or prejudice. A judge shall not, in the performance of administrative duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (1) bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, or (2) sexual harassment.

D. Disciplinary Responsibilities

(1) Whenever a judge has reliable information that another judge has violated any provision of the Code of Judicial Ethics, the judge shall take or initiate appropriate corrective action, which may include reporting the violation to the appropriate authority.*

(2) Whenever a judge has personal knowledge that a lawyer has violated any provision of the Rules

of Professional Conduct, the judge shall take appropriate corrective action.

(3) A judge shall promptly report in writing to the Commission on Judicial Performance when he or she is charged in court by misdemeanor citation, prosecutorial complaint, information, or indictment, with any crime in the United States as specified below. Crimes that must be reported are: (1) all crimes, other than those that would be considered misdemeanors not involving moral turpitude or infractions under California law; and (2) all misdemeanors involving violence (including assaults), the use or possession of controlled substances, the misuse of prescriptions, or the personal use or furnishing of alcohol. A judge also shall promptly report in writing upon conviction of such crimes.

If the judge is a retired judge serving in the Assigned Judges Program, he or she shall promptly report such information in writing to the Chief Justice rather than to the Commission on Judicial Performance. If the judge is a subordinate judicial officer, he or she shall promptly report such information in writing to both the presiding judge of the court in which the subordinate judicial officer sits and the Commission on Judicial Performance.

ADVISORY COMMITTEE COMMENTARY

Appropriate corrective action could include direct communication with the judge or lawyer who has committed the violation, other direct action if available, or a report of the violation to the presiding judge, appropriate authority, or other agency or body. Judges should note that in addition to the action required by Canon 3D(2), California law imposes additional reporting requirements regarding lawyers.*

E. Disqualification

(1) A judge shall disqualify himself or herself in any proceeding in which disqualification is required by law.*

(2) In all trial court proceedings, a judge shall disclose on the record information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification.

(3) Ownership of a corporate bond issued by a party to a proceeding and having a fair market value exceeding one thousand five hundred dollars is disqualifying. Ownership of government bonds issued by a party to a proceeding is disqualifying only if the outcome of the proceeding could substantially affect the value of the judge's bond. Ownership in a mutual or common investment fund that holds bonds is not a disqualifying financial interest.

ADVISORY COMMITTEE COMMENTARY

The distinction between corporate and government bonds is consistent with the Political Reform Act (see Gov. Code, § 82034), which requires disclosure of corporate bonds, but not government bonds. Canon 3E(3) is intended to assist judges in complying with Code of Civil Procedure section 170.1 (a)(3) and canon 3E(5)(d).

(4) An appellate justice shall disqualify himself or herself in any proceeding if for any reason:

(a) the justice believes his or her recusal would further the interest of justice; or

(b) the justice substantially doubts his or her capacity to be impartial; or

(c) the circumstances are such that a reasonable person aware of the facts would doubt the justice's ability to be impartial.

(5) Disqualification of an appellate justice is also required in the following instances:

(a) The appellate justice has appeared or otherwise served as a lawyer in the pending matter, or has appeared or served as a lawyer in any other matter involving any of the same parties if that other matter related to the same contested issues of fact and law as the present matter.

(b) Within the last two years, (i) a party to the proceeding, or an officer, director or trustee thereof, either was a client of the justice when the justice was engaged in the private practice of law or was a client of a lawyer with whom the justice was associated in the private practice of law; or (ii) a lawyer in the proceeding was associated with the justice in the private practice of law.

(c) The appellate justice represented a public officer or entity and personally advised or in any way represented such officer or entity concerning

the factual or legal issues in the present proceeding in which the public officer or entity now appears.

(d) The appellate justice, or his or her spouse or registered domestic partner, or a minor child residing in the household, has a financial interest or is a fiduciary who has a financial interest in the proceeding, or is a director, advisor, or other active participant in the affairs of a party. A financial interest is defined as ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value exceeding one thousand five hundred dollars. Ownership in a mutual or common investment fund that holds securities does not itself constitute a financial interest; holding office in an educational, religious, charitable, fraternal or civic organization does not confer a financial interest in the organization's securities; and a proprietary interest of a policyholder in a mutual insurance company or mutual savings association or similar interest is not a financial interest unless the outcome of the proceeding could substantially affect the value of the interest. A justice shall make reasonable efforts to keep informed about his or her personal and fiduciary interests and those of his or her spouse or registered domestic partner and of minor children living in the household.

(e) The justice or his or her spouse or registered domestic partner, or a person within the third degree of relationship to either of them, or the spouse or registered domestic partner thereof, is a party or an officer, director or trustee of a party to the proceeding, or a lawyer or spouse or registered domestic partner of a lawyer in the proceeding is the spouse, registered domestic partner, former spouse, former registered domestic partner, child, sibling, or parent of the justice or of the justice's spouse or registered domestic partner, or such a person is associated in the private practice of law with a lawyer in the proceeding.

(f) The justice (i) served as the judge before whom the proceeding was tried or heard in the lower court, (ii) has a personal knowledge of disputed evidentiary facts concerning the proceeding, or (iii) has a personal bias or prejudice concerning a party or a party's lawyer.

(g) A temporary or permanent physical impairment renders the justice unable properly to perceive the evidence or conduct the proceedings.

(h) The justice has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding prospective employment or service as a dispute resolution neutral, or has been engaged in such employment or service, and any of the following applies:

(i) The arrangement is, or the prior employment or discussion was, with a party to the proceeding;

(ii) The matter before the justice includes issues relating to the enforcement of either an agreement to submit a dispute to an alternative dispute resolution process or an award or other final decision by a dispute resolution neutral;

(iii) The justice directs the parties to participate in an alternative dispute resolution process in which the dispute resolution neutral will be an individual or entity with whom the justice has the arrangement, has previously been employed or served, or is discussing or has discussed the employment or service; or

(iv) The justice will select a dispute resolution neutral or entity to conduct an alternative dispute resolution process in the matter before the justice, and among those available for selection is an individual or entity with whom the justice has the arrangement, with whom the justice has previously been employed or served, or with whom the justice is discussing or has discussed the employment or service.

For purposes of this canon, "participating in discussions" or "has participated in discussions" means that the justice solicited or otherwise indicated an interest in accepting or negotiating possible employment or service as an alternative dispute resolution neutral or responded to an unsolicited statement regarding, or an offer of, such employment or service by expressing an interest in that employment or service, making any inquiry regarding the employment or service, or encouraging the person making the statement or offer to

provide additional information about that possible employment or service. If a justice's response to an unsolicited statement regarding, a question about, or offer of, prospective employment or other compensated service as a dispute resolution neutral is limited to responding negatively, declining the offer, or declining to discuss such employment or service, that response does not constitute participating in discussions.

For purposes of this canon, "party" includes the parent, subsidiary, or other legal affiliate of any entity that is a party and is involved in the transaction, contract, or facts that gave rise to the issues subject to the proceeding.

For purposes of this canon, "dispute resolution neutral" means an arbitrator, a mediator, a temporary judge appointed under section 21 of article VI of the California Constitution, a referee appointed under Code of Civil Procedure section 638 or 639, a special master, a neutral evaluator, a settlement officer, or a settlement facilitator.

(i) The justice's spouse or registered domestic partner or a person within the third degree of relationship to the justice or his or her spouse or registered domestic partner, or the person's spouse or registered domestic partner, was a witness in the proceeding.

ADVISORY COMMITTEE COMMENTARY

Canon 3E(1) sets forth the general duty to disqualify applicable to a judge of any court. Sources for determining when recusal or disqualification is appropriate may include the applicable provisions of the Code of Civil Procedure, other provisions of the Code of Judicial Ethics, the Code of Conduct for United States Judges, the American Bar Association's Model Code of Judicial Conduct, and related case law.

The decision whether to disclose information under Canon 3E(2) is a decision based on the facts of the case before the judge. A judge is required to disclose only information that is related to the grounds for disqualification set forth in Code of Civil Procedure section 170.1.

Canon 3E(4) sets forth the general standards for recusal of an appellate justice. The term "appellate justice" includes justices of both the Courts of Appeal and the Supreme Court. Gener-

ally, the provisions concerning disqualification of an appellate justice are intended to assist justices in determining whether recusal is appropriate and to inform the public why recusal may occur.

However, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must promptly disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

In some instances, membership in certain organizations may have the potential to give an appearance of partiality, although membership in the organization generally may not be barred by Canon 2C, Canon 4, or any other specific canon. A judge holding membership in an organization should disqualify himself or herself whenever doing so would be appropriate in accordance with Canon 3E(1), 3E(4), or 3E(5) or statutory requirements. In addition, in some circumstances, the parties or their lawyers may consider a judge's membership in an organization relevant to the question of disqualification, even if the judge believes there is no actual basis for disqualification. In accordance with this Canon, a judge should disclose to the parties his or her membership in an organization, in any proceeding in which that information is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge concludes there is no actual basis for disqualification.

[Adopted 1/15/96; amended 4/15/96, 6/19/97, 3/4/99, 12/13/00, 6/18/03, 12/22/03, 1/1/05, 1/1/07, 1/1/08 and 4/29/09.]

CANON 4

A Judge Shall So Conduct the Judge's Quasi-Judicial and Extrajudicial Activities as to Minimize the Risk of Conflict with Judicial Obligations

A. Extrajudicial Activities in General

A judge shall conduct all of the judge's extrajudicial activities so that they do not

- (1) cast reasonable doubt on the judge's capacity to act impartially;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

ADVISORY COMMITTEE COMMENTARY

Complete separation of a judge from extra judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of a classification such as their race, sex, religion, sexual orientation, or national origin. See Canon 2C and accompanying Commentary.

B. Quasi-Judicial and Avocational Activities

A judge may speak, write, lecture, teach, and participate in activities concerning legal and nonlegal subject matters, subject to the requirements of this Code.

ADVISORY COMMITTEE COMMENTARY

As a judicial officer and person specially learned in the law,* a judge is in a unique position to contribute to the improvement of the law,* the legal system, and the administration of justice, including revision of substantive and procedural law* and improvement of criminal and juvenile justice. To the extent that time permits, a judge may do so, either independently or through a bar or judicial association or other group dedicated to the improvement of the law.*

It may be necessary to promote legal education programs and materials by identifying authors and speakers by judicial title. This is permissible, provided such use of the judicial title does not contravene Canons 2A and 2B.

Judges are not precluded by their office from engaging in other social, community, and intellectual endeavors so long as they do not interfere with the obligations under Canons 2C and 4A.

C. Governmental, Civic, or Charitable Activities

- (1) A judge shall not appear at a public hearing or officially consult with an executive or legislative body or public official except on matters concerning the law,* the legal system, or the administration of justice or in matters involving the judge's private economic or personal interests.

ADVISORY COMMITTEE COMMENTARY

See Canon 2B regarding the obligation to avoid improper influence.

- (2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law,* the legal system, or the administration of justice. A judge may, however, serve in the military reserve or represent a national, state, or local government on ceremonial occasions or in connection with historical, educational, or cultural activities.

ADVISORY COMMITTEE COMMENTARY

Canon 4C(2) prohibits a judge from accepting any governmental position except one relating to the law,* legal system, or administration of justice as authorized by Canon 4C(3). The appropriateness of accepting extrajudicial assignments must be assessed in light of the demands on judicial resources and the need to protect the courts from involvement in extrajudicial matters that may prove to be controversial. Judges shall not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary, or which constitute a public office within the meaning of the California Constitution, article VI, section 17.

Canon 4C(2) does not govern a judge's service in a nongovernmental position. See Canon 4C(3) permitting service by a judge with organiza-

tions devoted to the improvement of the law,* the legal system, or the administration of justice and with educational, religious, charitable, fraternal, or civic organizations not conducted for profit. For example, service on the board of a public educational institution, other than a law school, would be prohibited under Canon 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Canon 4C(3).

(3) Subject to the following limitations and the other requirements of this Code,

(a) a judge may serve as an officer, director, trustee, or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law,* the legal system, or the administration of justice provided that such position does not constitute a public office within the meaning of the California Constitution, article VI, section 17;

(b) a judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for profit;

ADVISORY COMMITTEE COMMENTARY

Canon 4C(3) does not apply to a judge's service in a governmental position*unconnected with the improvement of the law,* the legal system, or the administration of justice. See Canon 4C(2).

Canon 4C(3) uses the phrase, "Subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Canon 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Canon 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Canon 4C. For example, a judge is prohibited by Canon 4G from serving as a legal advisor to a civic or charitable organization.

Service on the board of a homeowners' association or a neighborhood protective group is proper if it is related to the protection of the

judge's own economic interests. See Canons 4D(2) and 4D(4). See Canon 2B regarding the obligation to avoid improper use of the prestige of a judge's office.

(c) a judge shall not serve as an officer, director, trustee, or nonlegal advisor if it is likely that the organization

(i) will be engaged in judicial proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member;

ADVISORY COMMITTEE COMMENTARY

The changing nature of some organizations and of their relationship to the law* makes it necessary for the judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. Some organizations regularly engage in litigation to achieve their goals or fulfill their purposes. Judges should avoid a leadership role in such organizations as it could compromise the appearance of impartiality.

(d) a judge as an officer, director, trustee, or nonlegal advisor, or as a member or otherwise

(i) may assist such an organization in planning fundraising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fundraising activities, except that a judge may privately solicit funds for such an organization from other judges (excluding court commissioners, referees, retired judges, and temporary judges*);

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law,* the legal system, or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fund-raising mechanism, except as permitted in Canon 4C(3)(d)(i);

(iv) shall not permit the use of the prestige of his or her judicial office for fundraising or membership solicitation but may be a speaker, guest of honor, or recipient of an award for public or charitable service provided the judge does not personally solicit funds and complies with Canon 4A(1), (2), and (3).

ADVISORY COMMITTEE COMMENTARY

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law,* the legal system, or the administration of justice, or a nonprofit educational, religious, charitable, fraternal, or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fundraising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing, or by telephone except in the following cases: (1) a judge may solicit other judges (excluding court commissioners, referees, retired judges, court-appointed arbitrators, and temporary judges*) for funds or memberships; (2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves; and (3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for fundraising or membership solicitation does not violate Canon 4C(3)(d), provided the letterhead lists only the judge's name and office or other position in the organization, and designates the judge's judicial title only if other persons whose names appear on the letterhead have comparable designations. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials, and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

D. Financial Activities

(1) A judge shall not engage in financial and business dealings that

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to appear before the court on which the judge serves.

ADVISORY COMMITTEE COMMENTARY

The Time for Compliance provision of this Code (Canon 6F) postpones the time for compliance with certain provisions of this Canon in some cases.

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to appear either before the judge personally or before other judges on the judge's court. A judge shall discourage members of the judge's family* from engaging in dealings that would reasonably appear to exploit the judge's judicial position or that involve family members in frequent transactions or continuing business relationships with persons likely to appear before the judge. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in Canon 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Canon 2B against the misuse of the prestige of judicial office.

In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1.

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family,* including real estate, and engage in other remunerative activities. A judge shall not participate in, nor permit the

judge's name to be used in connection with, any business venture or commercial advertising that indicates the judge's title or affiliation with the judiciary or otherwise lend the power or prestige of his or her office to promote a business or any commercial venture.

(3) A judge shall not serve as an officer, director, manager, or employee of a business affected with a public interest, including, without limitation, a financial institution, insurance company, or public utility.

ADVISORY COMMITTEE COMMENTARY

Although participation by a judge in business activities might otherwise be permitted by Canon 4D, a judge may be prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in any business activity if the judge's participation would involve misuse of the prestige of judicial office. See Canon 2B.

(4) A judge shall manage personal investments and financial activities so as to minimize the necessity for disqualification. As soon as reasonably possible, a judge shall divest himself or herself of investments and other financial interests that would require frequent disqualification.

(5) Under no circumstance shall a judge accept a gift, bequest, or favor if the donor is a party whose interests have come or are reasonably likely to come before the judge. A judge shall discourage members of the judge's family residing in the judge's household* from accepting similar benefits from parties who have come or are reasonably likely to come before the judge.

ADVISORY COMMITTEE COMMENTARY

In addition to the prohibitions set forth in Canon 4D(5) regarding gifts, other laws may be applicable to judges, including, for example, Code of Civil Procedure section 170.9 and the Political Reform Act of 1974 (Gov. Code, § 81000 et seq.).

Canon 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5.

Because a gift, bequest, or favor to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.**

The application of Canon 4D(5) requires recognition that a judge cannot reasonably be expected to anticipate all persons or interests that may come before the court.

(6) A judge shall not accept and shall discourage members of the judge's family residing in the judge's household* from accepting a gift, bequest, favor, or loan from anyone except as hereinafter provided:

(a) any gift incidental to a public testimonial, books, tapes, and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or registered domestic partner or guest to attend a bar-related function or an activity devoted to the improvement of the law,* the legal system, or the administration of justice;

(b) advances or reimbursement for the reasonable cost of travel, transportation, lodging, and subsistence which is directly related to participation in any judicial, educational, civic, or governmental program or bar-related function or activity, devoted to the improvement of the law,* the legal system, or the administration of justice;

ADVISORY COMMITTEE COMMENTARY

Acceptance of an invitation to a law-related function is governed by Canon 4D(6)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Canon 4D(6)(d).

(c) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or registered domestic partner or other member of the judge's family residing in the judge's household,* including gifts, awards, and benefits for the use of both the spouse or registered domestic partner or other family member and the judge, provided the gift, award, or benefit could not reasonably be

perceived as intended to influence the judge in the performance of judicial duties;

(d) ordinary social hospitality;

ADVISORY COMMITTEE COMMENTARY

Although Canon 4D(6)(d) does not preclude ordinary social hospitality between members of the bench and bar, a judge should carefully weigh acceptance of such hospitality to avoid any appearance of bias. See Canon 2B.

(e) a gift for a special occasion from a relative or friend, if the gift is fairly commensurate with the occasion and the relationship;

ADVISORY COMMITTEE COMMENTARY

A gift to a judge, or to a member of the judge's family residing in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Canon 4D(6)(f).*

(f) a gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Canon 3E;

(g) a loan in the regular course of business on the same terms generally available to persons who are not judges;

(h) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants.

E. Fiduciary Activities

(1) A judge shall not serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary,* except for the estate, trust, or person of a member of the judge's family,* and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary* if it is likely that the judge as a fiduciary* will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or minor or conservatee becomes engaged in contested proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary* capacity.

ADVISORY COMMITTEE COMMENTARY

The Time for Compliance provision of this Code (Canon 6F) postpones the time for compliance with certain provisions of this Canon in some cases.

The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge shall resign as trustee if detriment to the trust would result from divestiture of trust holdings the retention of which would place the judge in violation of Canon 4D(4).*

F. Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.*

ADVISORY COMMITTEE COMMENTARY

Canon 4F does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of his or her judicial duties.

G. Practice of Law

A judge shall not practice law.

ADVISORY COMMITTEE COMMENTARY

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or member of the judge's family. See Canon 2B.*

This prohibition applies to subordinate judicial officers, magistrates, special masters, and judges of the State Bar Court.

H. Compensation and Reimbursement

A judge may receive compensation and reimbursement of expenses as provided by law* for the extrajudicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance

of judicial duties or otherwise give the appearance of impropriety.

(1) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(2) Expense reimbursement shall be limited to the actual cost of travel, food, lodging, and other costs reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or registered domestic partner or guest. Any payment in excess of such an amount is compensation.

ADVISORY COMMITTEE COMMENTARY

Judges should be aware of the statutory limitations on accepting gifts, including honoraria.

[Adopted 1/15/96; amended 1/1/05, and 1/1/07.]

CANON 5

**A Judge or Judicial Candidate* Shall
Refrain from Inappropriate
Political Activity**

Judges are entitled to entertain their personal views on political questions. They are not required to surrender their rights or opinions as citizens. They shall, however, avoid political activity that may create the appearance of political bias or impropriety. Judicial independence and impartiality should dictate the conduct of judges and candidates* for judicial office.

A. Political Organizations

Judges and candidates* for judicial office shall not

(1) act as leaders or hold any office in a political organization*;

(2) make speeches for a political organization* or candidate* for nonjudicial office or publicly endorse or publicly oppose a candidate for nonjudicial office; or

(3) personally solicit funds for a political organization* or nonjudicial candidate* or make contributions to a political party or political organization* or to a nonjudicial candidate in excess of five hundred dollars in any calendar year per political party or political organization* or candidate,* or in

excess of an aggregate of one thousand dollars in any calendar year for all political parties or political organizations* or nonjudicial candidates.*

ADVISORY COMMITTEE COMMENTARY

The term "political activity" should not be construed so narrowly as to prevent private comment.

This provision does not prohibit a judge from signing a petition to qualify a measure for the ballot without the use of the judge's official title.

In judicial elections, judges are neither required to shield themselves from campaign contributions nor are they prohibited from soliciting contributions from anyone including attorneys. Nevertheless, there are necessary limits on judges facing election if the appearance of impropriety is to be avoided. Although it is improper for a judge to receive a gift from an attorney subject to exceptions noted in Canon 4D(6), a judge's campaign may receive attorney contributions.

Although attendance at political gatherings is not prohibited, any such attendance should be restricted so that it would not constitute an express public endorsement of a nonjudicial candidate* or a measure not directly affecting the administration of justice otherwise prohibited by this Canon.

Subject to the monetary limitation herein to political contributions, a judge may purchase tickets for political dinners or other similar dinner functions. Any admission price to such a political dinner or function in excess of the actual cost of the meal shall be considered a political contribution. The prohibition in Canon 5A(3) does not preclude judges from contributing to a campaign fund for distribution among judges who are candidates for reelection or retention, nor does it apply to contributions to any judge or candidate* for judicial office.

Under this Canon, a judge may publicly endorse another judicial candidate.* Such endorsements are permitted because judicial officers have a special obligation to uphold the integrity and impartiality of the judiciary and are in a unique position to know the qualifications necessary to serve as a competent judicial officer.

Although members of the judge's family* are not subject to the provisions of this Code, a judge shall not avoid compliance with this Code by

making contributions through a spouse or registered domestic partner or other family member.

B. Conduct During Judicial Campaigns

A candidate* for election or appointment to judicial office shall not (1) make statements to the electorate or the appointing authority that commit the candidate* with respect to cases, controversies, or issues that could come before the courts, or (2) knowingly, or with reckless disregard for the truth, misrepresent the identity, qualifications, present position, or any other fact concerning the candidate* or his or her opponent.

ADVISORY COMMITTEE COMMENTARY

This code does not contain the "announce clause" that was the subject of the United States Supreme Court's decision in Republican Party of Minnesota v. White (2002) 536 U.S. 765. That opinion did not address the "commit clause," which is contained in Canon 5B(1). The phrase "appear to commit" has been deleted because, although judicial candidates cannot promise to take a particular position on cases, controversies, or issues prior to taking the bench and presiding over individual cases, the phrase may have been overinclusive.

Canon 5B(2) prohibits making knowing misrepresentations, including false or misleading statements, during an election campaign because doing so would violate Canons 1 and 2A, and may violate other canons.

C. Speaking at Political Gatherings

Candidates* for judicial office may speak to political gatherings only on their own behalf or on behalf of another candidate for judicial office.

D. Measures to Improve the Law

Except as otherwise permitted in this Code, judges shall not engage in any political activity, other than in relation to measures concerning the improvement of the law,* the legal system, or the administration of justice.

[Adopted 1/15/96; amended 12/22/03, and 1/1/07.]

CANON 6

Compliance with the Code of Judicial Ethics

A. Judges

Anyone who is an officer of the state judicial system and who performs judicial functions, including, but not limited to, a subordinate judicial officer, magistrate, court-appointed arbitrator, judge of the State Bar Court, temporary judge, and special master, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.

ADVISORY COMMITTEE COMMENTARY

For the purposes of this Canon, if a retired judge is serving in the assigned judges program, the judge is considered to "perform judicial functions." Because retired judges who are privately retained may perform judicial functions, their conduct while performing those functions should be guided by this Code.

B. Retired Judge Serving in the Assigned Judges Program

A retired judge who has filed an application to serve on assignment, meets the eligibility requirements set by the Chief Justice for service, and has received an acknowledgment of participation in the assigned judges program shall comply with all provisions of this Code, except for the following:

4C(2) - Appointment to governmental positions; and

4E - Fiduciary* activities.

C. Retired Judge as Arbitrator or Mediator

A retired judge serving in the assigned judges program is not required to comply with Canon 4F of this Code relating to serving as an arbitrator or mediator, or performing judicial functions in a private capacity, except as otherwise provided in the *Standards and Guidelines for Judges Serving on Assignment* promulgated by the Chief Justice.

ADVISORY COMMITTEE COMMENTARY

In California, article VI, section 6 of the California Constitution provides that a "retired judge who consents may be assigned to any court"

by the Chief Justice. Retired judges who are serving in the assigned judges program pursuant to the above provision are bound by Canon 6B, including the requirement of Canon 4G barring the practice of law. Other provisions of California law, and standards and guidelines for eligibility and service set by the Chief Justice, further define the limitations on who may serve on assignment.

D. Temporary Judge,* Referee, or Court-Appointed Arbitrator¹

A temporary judge, a person serving as a referee pursuant to Code of Civil Procedure section 638 or 639, or a court-appointed arbitrator shall comply only with the following Code provisions:

(1) A temporary judge, referee or court-appointed arbitrator shall comply with Canons 1 [integrity and independence of the judiciary], 2A [promoting public confidence], 3B(3) [order and decorum] and (4) [patient, dignified, and courteous treatment], 3B(6) [require lawyers to refrain from manifestations of any form of bias or prejudice], 3D(1) [action regarding misconduct by another judge] and (2) [action regarding misconduct by a lawyer], when the temporary judge, referee, or court-appointed arbitrator is actually presiding in a proceeding or communicating with the parties, counsel, or court personnel while serving in the capacity of a temporary judge, referee, or court-appointed arbitrator in the case.

(2) A temporary judge, referee, or court-appointed arbitrator shall, from the time of notice and acceptance of appointment until termination of the appointment:

(a) Comply with Canons 2B(1) [not allow family or other relationships to influence judicial conduct], 3B(1) [hear and decide all matters unless disqualified] and (2) [be faithful to and maintain competence in the law], 3B(5) [perform judicial duties without bias or prejudice], 3B(7) [accord full right to be heard to those entitled; avoid ex parte communications, except as specified] and (8) [dispose of matters fairly and promptly], 3C(1)

[discharge administrative responsibilities without bias and with competence and cooperatively], (2) [require staff and personnel to observe standards of conduct and refrain from bias and prejudice] and (4) [make only fair, necessary, and appropriate appointments];

(b) Not personally solicit memberships or donations for religious, fraternal, educational, civic, or charitable organizations from the parties and lawyers appearing before the temporary judge, referee, or court-appointed arbitrator;

(c) Under no circumstance accept a gift, bequest, or favor if the donor is a party, person, or entity whose interests are reasonably likely to come before the temporary judge, referee, or court-appointed arbitrator. A temporary judge, referee, or court-appointed arbitrator shall discourage members of the judge's family residing in the judge's household* from accepting benefits from parties who are reasonably likely to come before the temporary judge, referee, or court-appointed arbitrator.

(3) A temporary judge shall, from the time of notice and acceptance of appointment until termination of the appointment, disqualify himself or herself in any proceeding as follows:

(a) A temporary judge – other than a temporary judge solely conducting settlement conferences – is disqualified to serve in a proceeding if any one or more of the following is true:

(i) the temporary judge has personal knowledge (as defined in Code of Civil Procedure section 170.1(a)(1)) of disputed evidentiary facts concerning the proceeding;

(ii) the temporary judge has served as a lawyer (as defined in Code of Civil Procedure section 170.1(a)(2)) in the proceeding;

(iii) the temporary judge, within the past five years, has given legal advice to, or served as a lawyer (as defined in Code of Civil Procedure section 170.1(a)(2)), except that this provision requires disqualification if the temporary judge

¹ Reference should be made to relevant commentary to analogous or individual Canons cited or described in this Canon and appearing elsewhere in this Code.

represented a party in the past five years rather than the two-year period specified in section 170.1(a)(2)) for a party in the present proceeding;

(iv) the temporary judge has a financial interest (as defined in Code of Civil Procedure sections 170.1(a)(3) and 170.5) in the subject matter in the proceeding or in a party to the proceeding;

(v) the temporary judge, or the spouse or registered domestic partner of the temporary judge, or a person within the third degree of relationship to either of them, or the spouse or registered domestic partner of such a person is a party to the proceeding or is an officer, director, or trustee of a party;

(vi) a lawyer or a spouse or registered domestic partner of a lawyer in the proceeding is the spouse, former spouse, registered domestic partner, former registered domestic partner, child, sibling, or parent of the temporary judge or the temporary judge's spouse or registered domestic partner, or if such a person is associated in the private practice of law with a lawyer in the proceeding; or

(vii) for any reason:

(A) the temporary judge believes his or her recusal would further the interests of justice;

(B) the temporary judge believes there is a substantial doubt as to his or her capacity to be impartial; or

(C) a person aware of the facts might reasonably entertain a doubt that the temporary judge would be able to be impartial. Bias or prejudice toward an attorney in the proceeding may be grounds for disqualification.

ADVISORY COMMITTEE COMMENTARY

The application of Canon 6D(3)(a)(iii), providing that a temporary judge is disqualified if he or she has given legal advice or served as a lawyer for a party to the proceeding in the past five years, may depend on the type of assignment and the amount of time available to investigate whether the temporary judge has previously represented a party. If time permits, the temporary judge must conduct such an investigation. Thus, if a temporary judge is privately compensated by the parties

or is presiding over a particular matter known in advance of the hearing, the temporary judge is presumed to have adequate time to investigate. If, however, a temporary judge is assigned to a high volume calendar, such as traffic or small claims, and has not been provided with the names of the parties prior to the assignment, the temporary judge may rely on his or her memory to determine whether he or she has previously represented a party.

(b) A temporary judge before whom a proceeding was tried or heard is disqualified from participating in any appellate review of that proceeding.

(c) If the temporary judge has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding prospective employment or service as a dispute resolution neutral, or has been engaged in such employment or service, and any of the following applies:

(i) The arrangement or current employment is, or the prior employment or discussion was, with a party to the proceeding.

(ii) The temporary judge directs the parties to participate in an alternative dispute resolution process in which the dispute resolution neutral will be an individual or entity with whom the temporary judge has the arrangement, is currently employed or serves, has previously been employed or served, or is discussing or has discussed the employment or service.

(iii) The temporary judge will select a dispute resolution neutral or entity to conduct an alternative dispute resolution process in the matter before the temporary judge, and among those available for selection is an individual or entity with whom the temporary judge has the arrangement, is currently employed or serves, has previously been employed or served, or is discussing or has discussed the employment or service.

For the purposes of Canon 6D(3)(c), the definitions of "participating in discussions," "has participated in discussions," "party," and "dispute

resolution neutral" are set forth in Code of Civil Procedure section 170.1(a)(8), except that the words "temporary judge" shall be substituted for the word "judge" in such definitions.

(d) A lawyer is disqualified from serving as a temporary judge in a family law or unlawful detainer proceeding if in the same type of proceeding:

(i) the lawyer holds himself or herself out to the public as representing exclusively one side; or

(ii) the lawyer represents one side in 90 percent or more of the cases in which he or she appears.

ADVISORY COMMITTEE COMMENTARY

Under Canon 6D(3)(d), "one side" means a category of persons such as landlords, tenants, or litigants exclusively of one gender.

(4) After a temporary judge who has determined himself or herself to be disqualified from serving under Canon 6D(3)(a)-(d) has disclosed the basis for his or her disqualification on the record, the parties and their lawyers may agree to waive the disqualification and the temporary judge may accept the waiver. The temporary judge shall not seek to induce a waiver and shall avoid any effort to discover which lawyers or parties favored or opposed a waiver.

ADVISORY COMMITTEE COMMENTARY

Provisions addressing waiver of mandatory disqualifications or limitations, late discovery of grounds for disqualification or limitation, notification of the court when a disqualification or limitation applies, and requests for disqualification by the parties are located in rule 2.818 of the California Rules of Court. Rule 2.818 states that the waiver must be in writing, must recite the basis for the disqualification or limitation, and must state that it was knowingly made. It also states that the waiver is effective only when signed by all parties and their attorneys and filed in the record.

(5) A temporary judge, referee, or court-appointed arbitrator shall, from the time of notice and acceptance of appointment until termination of the appointment:

(a) In all proceedings, disclose in writing or on the record information as required by law, or information that is reasonably relevant to the question of disqualification under Canon 6D(3), including personal or professional relationships known to the temporary judge, referee, or court-appointed arbitrator, that he or she or his or her law firm has had with a party, lawyer, or law firm in the current proceeding, even though the temporary judge, referee, or court-appointed arbitrator concludes that there is no actual basis for disqualification; and

(b) In all proceedings, disclose in writing or on the record membership of the temporary judge, referee, or court-appointed arbitrator, in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation, except for membership in a religious or an official military organization of the United States and membership in a nonprofit youth organization so long as membership does not violate Canon 4A [conduct of extrajudicial activities].

(6) A temporary judge, referee, or court-appointed arbitrator, from the time of notice and acceptance of appointment until the case is no longer pending in any court, shall not make any public comment about a pending or impending proceeding in which the temporary judge, referee, or court-appointed arbitrator has been engaged, and shall not make any nonpublic comment that might substantially interfere with such proceeding. The temporary judge, referee, or court-appointed arbitrator shall require similar abstention on the part of court personnel subject to his or her control. This Canon does not prohibit the following:

(a) Statements made in the course of the official duties of the temporary judge, referee, or court-appointed arbitrator; and

(b) Explanations for public information about the procedures of the court.

(7) From the time of appointment and continuing for two years after the case is no longer pending in any court, a temporary judge, referee, or court-appointed arbitrator shall under no circumstances accept a gift, bequest, or favor from a party, person, or entity whose interests have come before the temporary judge, referee, or court-

appointed arbitrator in the matter. The temporary judge, referee, or court-appointed arbitrator shall discourage family members residing in the household of the temporary judge, referee, or court-appointed arbitrator from accepting any benefits from such parties, persons or entities during the time period stated in this subdivision. The demand for or receipt by a temporary judge, referee, or court-appointed arbitrator of a fee for his or her services rendered or to be rendered shall not be a violation of this Canon.

(8) A temporary judge, referee, or court-appointed arbitrator shall, from time of notice and acceptance of appointment and continuing indefinitely after the termination of the appointment:

(a) Comply with Canon 3(B)(11) [no disclosure of nonpublic information acquired in a judicial capacity] (except as required by law);

(b) Not commend or criticize jurors sitting in a proceeding before the temporary judge, referee, or court-appointed arbitrator for their verdict other than in a court order or opinion in such proceeding, but may express appreciation to jurors for their service to the judicial system and the community; and

(c) Not lend the prestige of judicial office to advance his, her, or another person's pecuniary or personal interests and not use his or her judicial title in any written communication intended to advance his, her, or another person's pecuniary or personal interests, except to show his, her, or another person's qualifications.

(9)(a) A temporary judge appointed under rule 2.810 of the California Rules of Court, from the time of appointment and continuing indefinitely after the termination of the appointment, shall not use his or her title or service as a temporary judge as a description of the lawyer's current or former principal profession, vocation, or occupation on a ballot designation for judicial or other elected office, in an advertisement about the lawyer's law firm or business, or on a letterhead, business card, or other document that is distributed to the public identifying the lawyer or the lawyer's law firm.

(b) This Canon does not prohibit a temporary judge appointed under rule 2.810 of the California Rules of Court from using his or her title or service as a temporary judge on an application to serve as a temporary judge, including an application in other courts, on an application for employment or for an appointment to a judicial position, on an individual resume or a descriptive statement submitted in connection with an application for employment or for appointment or election to a judicial position, or in response to a request for information about the public service in which the lawyer has engaged.

(10) A temporary judge, referee or court-appointed arbitrator shall comply with Canon 6D(2) until the appointment has been terminated formally or until there is no reasonable probability that the temporary judge, referee, or court-appointed arbitrator will further participate in the matter. A rebuttable presumption that the appointment has been formally terminated shall arise if, within one year from the appointment or from the date of the last hearing scheduled in the matter, whichever is later, neither the appointing court nor counsel for any party in the matter has informed the temporary judge, referee or court-appointed arbitrator that the appointment remains in effect.

(11) A lawyer who has been a temporary judge, referee, or court-appointed arbitrator in a matter shall not accept any representation relating to the matter without the informed written consent of all parties.

(12) When by reason of serving as a temporary judge, referee, or court-appointed arbitrator in a matter, he or she has received confidential information from a party, the person shall not, without the informed written consent of the party, accept employment in another matter in which the confidential information is material.

ADVISORY COMMITTEE COMMENTARY

Any exceptions to the Canons do not excuse a judicial officer's separate statutory duty to disclose information that may result in the judicial officer's recusal or disqualification.

E. Judicial Candidate

A candidate* for judicial office shall comply with the provisions of Canon 5.

F. Time for Compliance

A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Canons 4D(2) and 4F and shall comply with these Canons as soon as reasonably possible and shall do so in any event within a period of one year.

ADVISORY COMMITTEE COMMENTARY

If serving as a fiduciary when selected as a judge, a new judge may, notwithstanding the prohibitions in Canon 4F, continue to serve as fiduciary* but only for that period of time necessary to avoid adverse consequences to the beneficiary of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Canon 4D(2), continue in that activity for a reasonable period but in no event longer than one year.*

G. [Canon 6G adopted 12/30/02; repealed 6/1/05.]

H. Judges on Leave Running for Other Public Office

A judge who is on leave while running for other public office pursuant to article VI, section 17 of the California Constitution shall comply with all provisions of this Code, except for the following, insofar as the conduct relates to the campaign for public office for which the judge is on leave:

2B(2) – Lending the prestige of judicial office to advance the judge's personal interest;

2B(4) – Using the judicial title in written communications intended to advance the judge's personal interest;

4C(1) – Appearing at public hearings; and

5 – Engaging in political activity (including soliciting and accepting campaign contributions for the other public office).

ADVISORY COMMITTEE COMMENTARY

These exceptions are applicable only during the time the judge is on leave while running for other public office. All of the provisions of this Code will become applicable at the time a judge resumes his or her position as a judge.

Conduct during elections for judicial office is governed by Canon 5.

[Adopted 1/15/96; amended 4/15/96, 3/4/99, 1/1/05, 7/1/06, 1/1/07, and 1/1/08.]

APPENDIX 3.
COMPLAINT ABOUT A CALIFORNIA JUDGE,
COURT COMMISSIONER OR REFEREE

*Confidential under California Constitution
Article VI, Section 18, and Commission Rule 102*

For information about the Commission on Judicial Performance and instructions on filling out
and submitting this form, please visit our Web site at <http://cjp.ca.gov>

Name of judge:

OR

Name of court commissioner or referee:

(If your complaint involves a court commissioner or referee, you must first submit your complaint to the local court.
If you have done so, please attach copies of your correspondence to and from that court.)

Court:

County:

Name of case and case number:

**Please specify what action or behavior of the judge, court commissioner or referee is
the basis of your complaint. Provide relevant dates and the names of others present.**
(Use additional pages if necessary.)

**Return to: Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, California 94102**

Telephone: (415) 557-1200

Fax: (415) 557-1266

6/09