
STATE OF CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE



2011 ANNUAL REPORT

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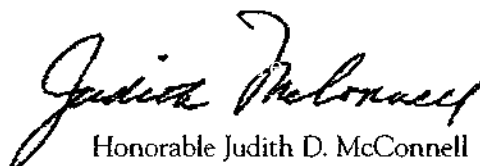
INTRODUCTION

Fifty years ago, the Commission on Judicial Performance submitted a report to the Governor of its activities in 1961, the first year of its operations. The page and a half report chronicles the appointment of the first members of the Commission, the hiring of an executive secretary and a stenographer, and the opening of an office in the State Building in San Francisco. During the year, the Commission held five meetings and considered 68 matters. At the time, the only sanction was removal from office by the Supreme Court on recommendation by the Commission after formal proceedings. Then, as now, the great majority of the cases were closed by the Commission at an early stage as not warranting further action: "The bulk of these were from dissatisfied litigants and others who for various reasons had taken a dislike to a judge." The report notes that several cases of a more serious nature had been actively investigated by the Commission. Four judges had resigned while under investigation. No recommendation for removal or retirement had been filed with the Supreme Court by the end of 1961. The report concludes:

The merit of the Commission method has now been established. A state commission with authority to conduct inquiries and investigations and hold hearings on matters involving judges assures the public that any cases of misconduct, neglect of duties, habitual intemperance, and permanent disability will receive meaningful attention while encroachment on the proper independence of the judiciary is prevented.

The Commission's Annual Report for 2011 is considerably longer as the Commission now considers more than fifteen times as many complaints as when it began. Five constitutional amendments have brought significant changes to the Commission, including reposing authority for the imposition of sanctions in the Commission, establishing a majority of public members and opening proceedings to the public when formal charges are filed. Fifty years later, the merit of the commission process remains the assurance to the public – and the judiciary – that allegations of judicial misconduct or incapacity will be addressed without encroaching on the proper independence of the judiciary.

I would like to thank all of my fellow commissioners for their hard work and dedication this year. I would also like to express my appreciation to them for their voluntary participation in the Commission's first anti-bias training and for their commitment to continuing such trainings in the years to come. As "judges of the judges," they are well aware of the importance of the public's and the judiciary's confidence in their decisions.



Honorable Judith D. McConnell

Chairperson

COMMISSION ON JUDICIAL PERFORMANCE
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TABLE OF CONTENTS

	Page
COMMISSION MEMBERS	i
SPECIAL MASTERS	v
 I. OVERVIEW OF THE COMPLAINT PROCESS	
The Authority of the Commission on Judicial Performance	1
How Matters Are Brought Before the Commission	1
Judicial Misconduct	1
What the Commission Cannot Do	1
Review and Investigation of Complaints	1
Action the Commission Can Take	2
Confidential Dispositions	2
Public Dispositions	2
Confidentiality	2
 II. LEGAL AUTHORITY AND COMMISSION PROCEDURES	
Legal Authority	3
Recent Changes in the Law	3
California Constitution, Government Code and Code of Civil Procedure Section 170.9	3
Commission Rules and Policy Declarations	3
Rules of Court	4
Code of Judicial Ethics	4
Commission Procedures	4
Commission Review of Complaints	4
Investigation at the Commission's Direction and Disposition of Cases	
Without Formal Proceedings	4
Deferral of Investigation	5
Monitoring	5
Formal Proceedings	5
Hearing	5
Commission Consideration Following Hearing	6
Disposition of Cases After Hearing	6
Release of Votes	6
Supreme Court Review	6
Statute of Limitations	6
Standard of Proof	6
Confidentiality of Commission Proceedings	6

III. 2011 STATISTICS – ACTIVE AND FORMER JUDGES

Complaints Received and Investigated	9
New Complaints	9
Staff Inquiries and Preliminary Investigations	9
Formal Proceedings	9
Deferral of Investigation.....	10
Complaint Dispositions.....	10
Closed Without Discipline	10
Closed With Discipline	11
Resignations and Retirements	11
10-Year Summary of Commission Activity	11
Chart on 2011 Complaint Dispositions	12
Chart on Types of Conduct Resulting in Discipline.....	13
Chart on 10-Year Summary of Commission Activity	14

IV. CASE SUMMARIES

Public Discipline	15
Public Censure by the Commission.....	15
Public Admonishment by the Commission.....	16
Private Discipline	23
Private Admonishments	23
Advisory Letters	24

V. SUBORDINATE JUDICIAL OFFICERS

Commission Procedures	27
2011 Statistics.....	28
Complaints Received and Investigated.....	28
Cases Concluded	28

VI. JUDICIAL DISABILITY RETIREMENT

Voluntary Disability Retirement	31
Involuntary Disability Retirement	31
2011 Statistics.....	32

VII. COMMISSION ORGANIZATION, STAFF AND BUDGET

Commission Organization and Staff.....	33
2011-2012 Budget.....	34
2010-2011 Budget.....	34

APPENDIX

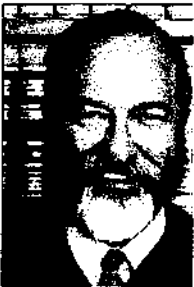
1. GOVERNING PROVISIONS.....	37
2. CALIFORNIA CODE OF JUDICIAL ETHICS.....	39
3. COMPLAINT FORM	63
4. COMMISSION PROCEEDINGS CHART	67

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.

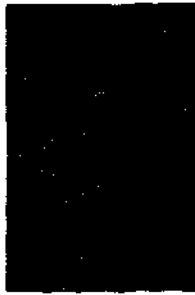


HON. JUDITH D. MCCONNELL, CHAIRPERSON, was appointed to the Commission as the Court of Appeal judicial member by the Supreme Court March 30, 2005, and reappointed January 8, 2009; her term ends February 28, 2013. Justice McConnell has served as the Commission's chairperson since March 2009; she served 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 as 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.

COMMISSION MEMBERS



Ms. MARY LOU ARANGUREN was appointed to the Commission as a public member by the Senate Committee on Rules September 5, 2011; her term ends February 28, 2013. She resides in Alameda County. Ms. Aranguren is a certified court interpreter in Spanish/English and currently works for the Alameda County Superior Court. Ms. Aranguren previously worked as a labor representative for the California Federation of Interpreters, and served as legislative director during the development and implementation of the Trial Court Interpreter Employment and Labor Relations Act, which created 800 jobs for interpreters in the court system. Ms. Aranguren is involved in professional development and education activities for interpreters and in language access advocacy.

She is a member of the California Labor Federation, and its appointee to the State Bar of California's Access to Justice Commission. Ms. Aranguren holds a Bachelor of Arts degree in Communications from San Francisco State University.



ANTHONY P. CAPOZZI, ESQ., was appointed to the Commission as a lawyer member by the Governor 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.



NANCI NISHIMURA, ESQ., was appointed to the Commission as a lawyer member by the Governor May 12, 2011; her term ends February 28, 2015. She resides in San Mateo County. Ms. Nishimura is a partner at Cotchett, Pitre & McCarthy, LLP. She was a legislative assistant to Senator Daniel Inouye, and a clerk to the Overseas Private Investment Corporation and the U.S. International Trade Commission. Prior to law, Ms. Nishimura was a business development consultant to major corporations in Japan. She served on the Judicial Nominees Evaluation Commission from 2004 to 2008. She is involved in professional and non-profit organizations, including the Board of Governors of California Women Lawyers, the Board of Trustees of the Asian Art Museum, and the

Board of Trustees of the California Science Center Foundation. Ms. Nishimura received her law degree from The Catholic University of America, Washington, D. C., and a Bachelor of Arts in Psychology and Master of Arts in International Relations from the University of Southern California.



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 is a retired public affairs professional and spent 30 years with a Fortune 500 Company. 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, as a member of the Board of Directors of the George Moscone Institute for Public Service, 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, and reappointed March 17, 2011; her term ends February 28, 2015. She resides in Alameda County. Ms. Dillard Smith is a strategy and fund development consultant. She is currently a law student at the University of California, Hastings College of the Law. Formerly, Ms. Dillard Smith was senior advisor to Mayor Gavin Newsom and Director of Violence Prevention for the Mayor's Office of Criminal Justice in San Francisco. She also has 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 a member of the Oakland Fund for Children and Youth Planning and Oversight Committee. She is affiliated with a variety of non-profit 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, and reappointed July 11, 2011; her term ends February 28, 2015. She resides in Los Angeles County. From 1999 to 2002, Ms. Talcott served as a public member on the Judicial Nominees Evaluation Commission; from 2003 to 2006, she served on that commission's review committee, and was chair of the committee between 2005 and 2006. She received a Bachelor of Arts degree in Political Science from the University of California, Berkeley. Ms. Talcott has a background in advertising; she worked at Young and Rubicam International, Inc., as a producer and casting director, then as a freelance casting director. She has been involved in the volunteer sector of the Los Angeles art community, where she co-curated one of the early exhibitions at the Craft and Folk Art Museum. She was involved in the start-up phase of the Museum of Contemporary Art, and has served the Los Angeles County Museum of Art as chairperson of one of its councils. She has also served as a board member of a national association of art museum volunteer committees. She presently works as an interior designer.

COMMISSION MEMBERS



MR. ADAM N. TORRES was appointed to the Commission as a public member by the Governor May 12, 2011; his term ends February 28, 2015. He resides in Riverside County. Mr. Torres is a managing director of business intelligence and investigations at Stroz Friedberg. Previously, he was the United States Marshal for the Central District of California from 2003 to 2010. At the Internal Revenue Service, Mr. Torres was a supervisory special agent from 2000 to 2003, a special agent from 1993 to 2000 and a revenue agent from 1986 to 1992. Mr. Torres received a Bachelor of Science degree in Accounting from California State University, San Bernardino.



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 an unexpired 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 serves 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 at Berkeley.

OUTGOING COMMISSION MEMBERS

PETER E. FLORES, ESQ., was appointed to the Commission as a lawyer member by the Governor August 17, 2007. His term ended February 28, 2011.

MR. SAMUEL A. HARDAGE was appointed to the Commission as a public member by the Governor August 17, 2007. His term ended February 28, 2011.

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 continued to serve until September 5, 2011.

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 2011:

Honorable Donald Cole Byrd Superior Court of Glenn County
Honorable Jacqueline A. Connor Superior Court of Los Angeles County
Honorable Maria P. Rivera Court of Appeal, First 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 2011 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 2011 is summarized, without identifying the judge involved, in Section IV. Summaries from prior years are available on the Commission's website 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 2011, there were no substantive changes to the California Constitution, the California Rules of Court, the California Government Code or the Code of Civil Procedure relating to the work of the Commission. There also were no changes to the Code of Judicial Ethics. In 2011, the Commission approved various changes to its rules and policy declarations. The amendments are summarized below.

The provisions governing the Commission's work are available on the Commission's website at <http://cjp.ca.gov>.

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' and subordinate judicial officers' receipt of gifts and honoraria, set forth in Code of Civil Procedure section 170.9. On February 28, 2011, the Commission adopted \$370.00 as the adjusted gift limit, for purposes of Code of Civil Procedure section 170.9.

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 Perfor-

mance, 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.

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.

On March 23, 2011, following circulation of the proposed changes for public comment, the Commission adopted amendments to its rules:

Rule 102 was amended to add subdivision (p), authorizing the Commission to disclose information revealing possible violations of the Political Reform Act to the Fair Political Practices Commission. Rule 109 was amended to add subsection (5) to subdivision (c), which authorizes the Commission to conduct a staff inquiry or preliminary investigation of a complaint against a subordinate judicial officer that was closed by the local court because the subordinate judicial officer resigned or retired. Rule 122(g) (2) was amended to extend provisions concerning discovery depositions until December 31, 2012. Rule 129(b) was amended to authorize the special masters to shorten the time for submission of proposed findings of fact and conclusions of law in formal proceedings. Rule 129(c) was amended to shorten the time for submission of the report of the special masters and to provide for extensions of time. Subdivision (c) of rule 130, which authorized the submission of reply briefs to the Commission during formal proceedings, was deleted.

Following public comment on interim rule amendments which were adopted in March 2011, the Commission adopted further amendments to the interim rules on October 19, 2011:

Amendments were adopted to rules 114(b) and 116(b) concerning newly presented evidence at a judge's appearance before the Commission to object to a notice of intended private or public admonishment, and to rule 111.5 concerning correction of an advisory letter. Rules 114 (a) and (d), 116 (a) and (d), and 108(e) were amended to state that a judge

may demand an appearance before the Commission to “object” to, rather than to “contest,” a notice of intended admonishment. Similar amendments were made to policy declarations 2.1 and 3.9. [See the Commission’s website at www.cjp.ca.gov under “Governing Provisions” for the Report Concerning Adoption on October 19, 2011, of Amendments to Rules of the Commission on Judicial Performance.]

Rules of Court

The Rules of Court that pertain to Commission proceedings concern the review by the Supreme Court of a Commission discipline determination, proceedings involving a justice of the Supreme Court, and the responsibilities of presiding judges concerning the oversight of judges and subordinate judicial officers. No amendments were made to the Rules of Court pertaining to the Commission in 2011.

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 2011.

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).)

III. 2011 STATISTICS ACTIVE AND FORMER JUDGES

COMPLAINTS RECEIVED AND INVESTIGATED

In 2011, there were 1,786 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 374 commissioners and referees. The Commission's handling of complaints involving commissioners and referees is discussed in Section V.

JUDICIAL POSITIONS As of December 31, 2011	
Supreme Court	7
Court of Appeal	105
Superior Courts	1,674
Total	1,786

New Complaints

In 2011, the Commission considered 1,158 new complaints about active and former California judges. The 1,158 complaints named a total of 1,446 judges (862 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.

2011 CASELOAD – JUDGES	
Cases Pending 1/1/11	148
New Complaints Considered	1,158
Cases Concluded	1,138
Cases Pending 12/31/11	151
Discrepancies in totals are due to consolidated complaints/dispositions.	

In 2011, the Commission considered 163 complaints about subordinate judicial officers. These cases are discussed in Section V.

The Commission office also received over 500 complaints in 2011 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 2011, the Commission ordered 95 staff inquiries and 77 preliminary investigations.

INVESTIGATIONS COMMENCED IN 2011	
Staff Inquiries	95
Preliminary Investigations	77

Formal Proceedings

At the beginning of 2011, there was one formal proceeding pending before the Commission. This matter was concluded in 2011.

The Commission instituted formal proceedings in one case during 2011. This matter remained pending before the Commission at the end of the year.

FORMAL PROCEEDINGS	
Pending 1/1/11	1
Commenced in 2011	1
Concluded in 2011	1
Pending 12/31/11	1

III.
2011 STATISTICS – ACTIVE AND FORMER JUDGES

DEFERRAL OF INVESTIGATION

As discussed on page 5, the Commission may defer an investigation under certain circumstances. At the beginning of 2011, 24 deferred matters were pending. The Commission ordered 25 matters deferred during 2011. Thirteen matters were returned to the Commission's active calendar, considered and concluded by the Commission in 2011. Five matters were returned to the active calendar and remained pending before the Commission at the end of 2011. Thirty-one matters remained deferred at the end of the year.

DEFERRED INVESTIGATIONS

Pending 1/1/11.....	24
Investigations deferred in 2011	25
Deferred investigations returned to active calendar and concluded in 2011	13
Investigations returned to the active calendar and pending 12/31/11	5
Deferred investigations pending 12/31/11	31

REASONS INVESTIGATIONS WERE DEFERRED IN 2011

Deferred pending resolution of underlying case	5
Deferred pending appeal or other review	11
Deferred pending civil, criminal or administrative investigation or proceeding	10
Deferred pending rule 112 monitoring	0
One investigation was deferred on 2 separate occasions for different reasons	

COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the Commission in 2011, regardless of when the complaints were received.¹ In 2011, the Commission concluded a total of 1,138 cases. The average time period from the filing of a complaint to the disposition was 4 months. A chart of Complaint Dispositions of all cases completed by the Commission in 2011 is included on page 12.

TYPE OF COURT CASE UNDERLYING COMPLAINTS CONCLUDED IN 2011

Criminal	40%
General Civil	21%
Family Law	16%
Small Claims/Traffic	9%
All Others	9%

5% 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 2011, after obtaining the information necessary to evaluate the complaints, the Commission determined that there was not a sufficient showing of misconduct in 995 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 99 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 2011 may have commenced in prior years. Cases or portions of cases pending at the end of 2011 are not included in complaint disposition statistics.

SOURCE OF COMPLAINTS CONCLUDED IN 2011	
Litigant/Family/Friend.....	87%
Attorney.....	4%
Judge/Court Staff.....	3%
All Other Complainants (including citizens).....	4%
Source Other than Complaint.....	2%
(includes anonymous letters, news reports)	

Closed With Discipline

In 2011, the Commission publicly censured one judge and imposed five public admonishments. The Commission also issued ten private admonishments and 26 advisory letters. Each of these cases is summarized in Section IV.

A chart of the Types of Conduct Resulting in Discipline in 2011 appears on page 13. 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.

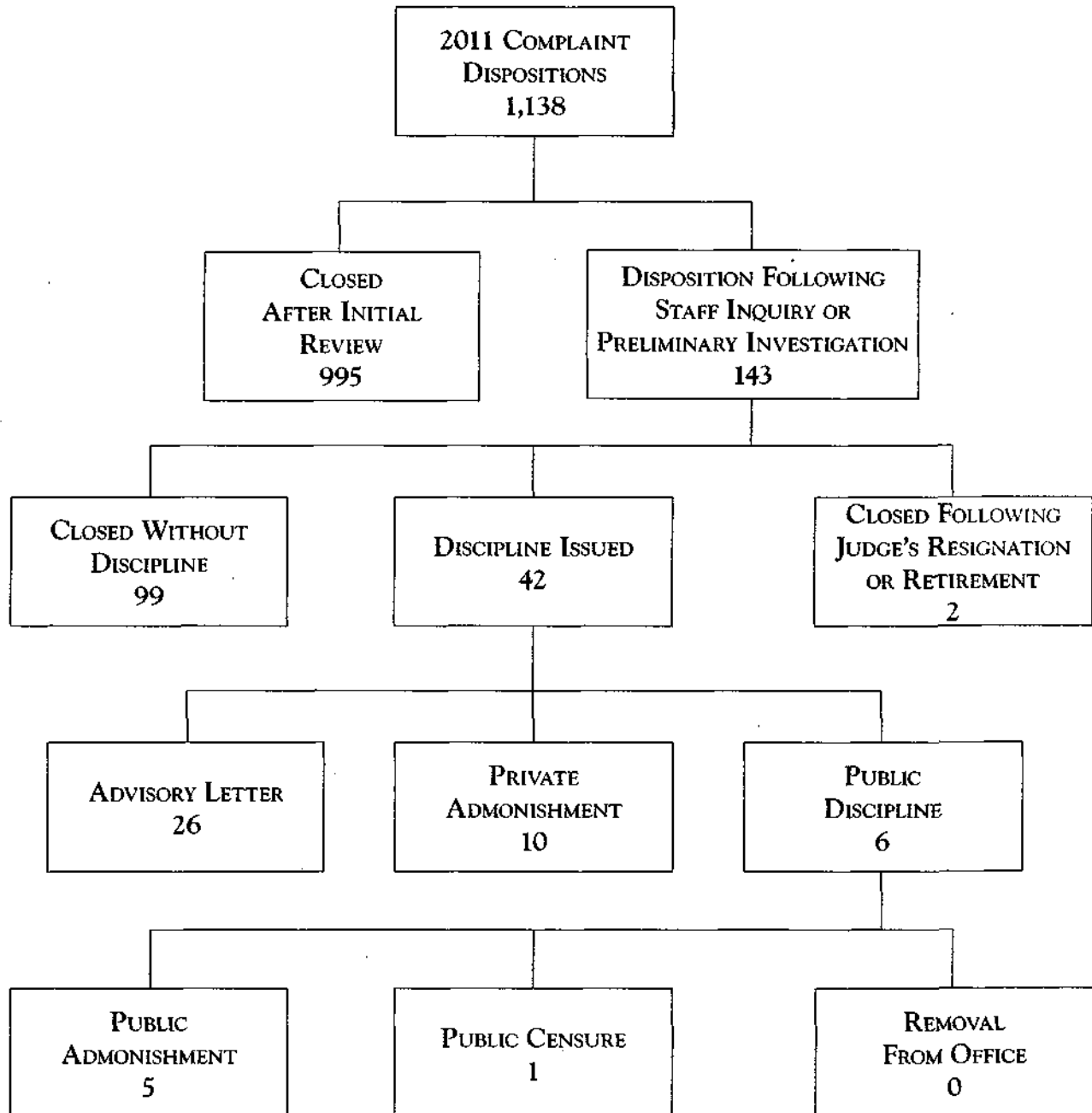
Resignations and Retirements

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 2011, the Commission closed two 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 14.

2011
COMPLAINT DISPOSITIONS



*See "Closed with Discipline" at page 11 of text.

TYPES OF CONDUCT RESULTING IN DISCIPLINE IN 2011*

The types of conduct are listed in order of prevalence. The numbers 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 misconduct. 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, it was counted only once.

FAILURE TO ENSURE RIGHTS
[12]

DEMEANOR/DECORUM
(includes inappropriate humor)
[10]

ON-BENCH ABUSE OF AUTHORITY
IN PERFORMANCE OF
JUDICIAL DUTIES
[7]

DISQUALIFICATION/DISCLOSURE/
POST-DISQUALIFICATION
CONDUCT
[6]

BIAS OR APPEARANCE OF BIAS
NOT DIRECTED TOWARD A
PARTICULAR CLASS
(includes embroilment, prejudgment, favoritism)
[6]

ABUSE OF
CONTEMPT/SANCTIONS
[6]

OFF-BENCH ABUSE OF OFFICE/
MISUSE OF COURT INFORMATION
(includes improper use
of office stationery)
[5]

DECISIONAL DELAY/
FALSE SALARY AFFIDAVITS
[4]

EX PARTE COMMUNICATIONS
[4]

IMPROPER POLITICAL ACTIVITIES
[3]

BIAS OR APPEARANCE OF BIAS
TOWARD A PARTICULAR CLASS
[2]

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

SEXUAL HARASSMENT/
INAPPROPRIATE WORKPLACE
GENDER COMMENTS
[1]

FAILURE TO COOPERATE/LACK
OF CANDOR WITH REGULATORY
AUTHORITIES
[1]

COMMENT ON A PENDING CASE
[1]

MISUSE OF COURT RESOURCES
[1]

* See "Closed With Discipline" at page 11 of text.

III.
2011 STATISTICS – ACTIVE AND FORMER JUDGES

10-YEAR SUMMARY OF COMMISSION ACTIVITY

NEW COMPLAINTS CONSIDERED BY COMMISSION

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
	918	1,011	1,114	965	1,019	1,077	909	1,161	1,176	1,158

COMMISSION INVESTIGATIONS COMMENCED

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Staff Inquiries	58 (6%)	55 (5%)	91 (8%)	55 (6%)	67 (7%)	55 (5%)	70 (8%)	102 (9%)	101 (9%)	95 (8%)
Preliminary Investigations	37 (4%)	48 (5%)	47 (4%)	41 (4%)	51 (5%)	54 (5%)	42 (5%)	63 (5%)	101 (9%)	77 (7%)
Formal Proceedings Instituted	4 (<1%)	3 (<1%)	2 (<1%)	4 (<1%)	5 (<1%)	1 (<1%)	2 (<1%)	1 (<1%)	2 (<1%)	1 (<1%)

DISPOSITION OF COMMISSION CASES

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Total Dispositions	901	993	1,080	954	1,023	1,058	892	1,115	1,133	1,138
Closed after Initial Review	830 (92%)	906 (91%)	993 (92%)	876 (92%)	919 (90%)	975 (92%)	805 (90%)	1,007 (90%)	988 (87%)	995 (87%)
Closed without Discipline after Investigation	40 (4%)	62 (6%)	60 (6%)	51 (5%)	64 (6%)	45 (4%)	48 (5%)	74 (7%)	96 (8%)	99 (9%)
Advisory Letter	17 (2%)	16 (2%)	13 (1%)	12 (1%)	16 (2%)	20 (2%)	18 (2%)	25 (2%)	31 (3%)	26 (2%)
Private Admonishment	6 (<1%)	2 (<1%)	8 (<1%)	6 (<1%)	7 (<1%)	9 (<1%)	7 (<1%)	3 (<1%)	8 (<1%)	10 (<1%)
Public Admonishment	1 (<1%)	1 (<1%)	3 (<1%)	4 (<1%)	9 (<1%)	5 (<1%)	7 (<1%)	2 (<1%)	4 (<1%)	5 (<1%)
Public Censure	4 (<1%)	1 (<1%)	0 (0%)	2 (<1%)	4 (<1%)	1 (<1%)	0 (0%)	1 (<1%)	3 (<1%)	1 (<1%)
Removal	0 (0%)	2 (<1%)	1 (<1%)	0 (0%)	1 (<1%)	2 (<1%)	2 (<1%)	0 (0%)	0 (0%)	0 (0%)
Judge Retired or Resigned with Proceedings Pending	3 (<1%)	3 (<1%)	2 (<1%)	4 (<1%)	3 (<1%)	1 (<1%)	5 (<1%)	3 (<1%)	3 (<1%)	2 (<1%)

IV. CASE SUMMARIES

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

PUBLIC DISCIPLINE

Public discipline decisions issued by the Commission in 2011 are summarized in this section. All public decisions in Commission cases are available on the Commission's website at <http://cjp.ca.gov>.

PUBLIC CENSURE BY THE COMMISSION

In 2011, the Commission imposed one public censure.

In September of 2010, the Commission issued an order of public censure of Judge Joseph W. O'Flaherty of the Placer County Superior Court. On December 20, 2010, Judge O'Flaherty filed a petition for review in the California Supreme Court which was denied March 16, 2011. Because the matter was not concluded as of the end of 2010, it was not included in the 2010 case disposition statistics. It is included in the 2011 statistics.

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

Judge Joseph W. O'Flaherty, a judge of the Placer County Superior Court, was ordered publicly censured for willful misconduct. The Commission's action concluded formal proceedings, during which there was a hearing before special masters and a hearing before the Commission. The judge's petition for review in the California Supreme Court was denied in March 2011.

The Commission and the special masters found that Judge O'Flaherty ordered a small claims plaintiff to have no contact with three women and to stay away from a credit union, without complying with any of the procedural requirements for the issuance of a restraining order and without affording the person who was the subject of the order notice or an opportunity to be heard. The Commission,

like the special masters, rejected Judge O'Flaherty's contention that his actions were justified and necessary to address an emergency situation brought about by the plaintiff's harassing and intimidating conduct toward the women, finding that the evidence did not support the assertion that the plaintiff had engaged in such conduct. The Commission found that the order was based on comments and reactions of the women after the plaintiff left the courtroom; the women had not filed a petition for a restraining order or described any conduct by the plaintiff that would justify issuance of a restraining order. The Commission noted that Judge O'Flaherty was familiar with the procedural requirements for issuance of a restraining order and knew that he was not complying with those requirements when he issued the no-contact order.

In the small claims case, an independent car dealer alleged that a credit union employee had made derogatory comments about independent car dealers, which caused a buyer to break a contract with him for the sale of a car. The plaintiff sued the credit union and the buyer. The plaintiff and three women—the buyer, the credit union employee, and her supervisor—appeared for the hearing. At the hearing, Judge O'Flaherty interrupted the plaintiff numerous times with questions and comments generally critical of his defamation claim, and said that the plaintiff was “getting emotional” when he stated that the witnesses were not telling the truth. After the plaintiff said that the judge would not let him prove his case and could dismiss it, the judge did so, and the plaintiff left the courtroom. The three women then spoke among themselves, calling the plaintiff a “lunatic” and saying that they were afraid of him.

Judge O'Flaherty, overhearing these comments, ordered the bailiff to bring the plaintiff back to the courtroom. When the plaintiff returned, the judge said that he was concerned about him and believed that he had been abusing the women. The judge said that he was not going to issue a “formal restraining order,” as he had a right to do, but that he was ordering the plaintiff to have no contact with

the three women, or go to the branch of the credit union, where the incident giving rise to the lawsuit occurred, for 90 days. Court minutes memorializing this order were issued, although the Commission did not find substantial evidence to establish that the judge reviewed them on the day of the hearing.

The special masters and the Commission, after viewing the videotape of the small claims hearing and considering all the evidence, found that the plaintiff did not engage in intimidating or threatening conduct on the day of the hearing, and had not engaged in such conduct toward the women before the hearing. The masters and the Commission agreed that Judge O'Flaherty had ordered that the plaintiff not have contact with the three women, despite the fact that the legal requirements for issuance of such an order—the filing of an affidavit by the person requesting the order showing reasonable proof of harassment as defined by statute, and that great or irreparable harm would result to the person being harassed—had not been met. The Commission found that Judge O'Flaherty was aware of these requirements, based on his extensive experience handling harassment petitions, and knew that he did not have authority to issue a no-contact order. Finally, the Commission and the masters found that although it was not inappropriate under the circumstances for the judge to have the plaintiff brought back to the courtroom, his subsequent conduct demonstrated embroilment and a lack of impartiality. The Commission, like the masters, found that the plaintiff was denied basic due process rights, since he was not informed of the factual basis of the no-contact order, and was not given an opportunity to ask questions or respond to the accusation that he had harassed the women.

The masters and the Commission concluded that Judge O'Flaherty engaged in willful misconduct. The Commission pointed out that the judge's conduct was unjudicial because it violated canons 1, 2A, 3B(2) and 3B(7), and that he acted in bad faith because he consciously disregarded the limits of his judicial authority in issuing the no-contact order, regardless of his motivation.

Turning to the question of discipline, the Commission noted that Judge O'Flaherty had been 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 found that despite having been publicly admonished for conduct reflecting abuse of authority and disregard of the law, Judge O'Flaherty continued to show no acceptance or understanding of the limits of his authority. The Commission found a "disturbing similarity" between the conduct in the current matter and the conduct in the 2004 admonishment, noting that in both cases, the judge had demonstrated a willingness to circumvent the law in favor of procedures he considered more effective. Addressing the impact of the judge's misconduct on the litigants and the judicial system, the Commission pointed out that the plaintiff's rights were violated and that the judge's misconduct had an adverse impact on the reputation of the judiciary. The Commission concluded that public censure was the appropriate discipline.

PUBLIC ADMONISHMENT BY THE COMMISSION

The Commission may publicly admonish a judge for improper action or dereliction of duty. In 2011, the Commission issued five public admonishments.

Public Admonishment of Judge Harvey Giss March 16, 2011

Judge Harvey Giss 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 Giss had presided in a criminal case in which the prosecutor and counsel for co-defendants were discussing off the record the prospects for a plea agreement, while the defendants were in a holding cell but a family member of one of the defendants was in the courtroom. According to Judge Giss, it appeared to him that counsel wished him to intercede and explain the potential benefits of the plea offer to the defendants, which the judge did not believe he could do. Judge Giss made a remark to the effect that he guessed that the only thing that would

make the defendants plead was for him to come out in a white sheet and a pointy hat, which the judge indicated he would not do. The judge's remark alluded to the Ku Klux Klan and the fact that both defendants were African-American.

Two days later, the defense requested that the judge recuse from the case based on his remark and the defendants' concern regarding his impartiality. While conceding that he had made a "bad statement," the judge also remarked, "People don't have a sense of humor anymore." The judge's remark alluding to the Ku Klux Klan eventually resulted in his recusal from the case.

The Commission found that the judge should have known that his insensitive courtroom reference to a history of violence toward persons of the defendants' ancestry, whether intended to make a valid point about his role as a judge or in jest, was offensive and inappropriate. The Commission concluded that the remark was contrary to canons 2, 3B(4), and 3B(5), and constituted, at a minimum, improper action.

**Public Admonishment of
Judge Nancy Pollard
July 13, 2011**

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

The Commission found that Judge Pollard had presided over a hearing on a petition for a restraining order filed by a woman against her former boyfriend. The woman alleged that her former boyfriend had engaged in acts of violence during their relationship such as throwing rocks at her, spitting on her, choking her, and throwing protein powder, and that he had destroyed some of her property.

Shortly after the petitioner began testifying, the judge asked to address the respondent, and asked him where he was born, eliciting the response that he was born in California. The judge then said that she was "concerned about the throwing of rocks and the spitting," and stated, "Usually that is the kind of behavior I see in Middle Eastern clients...."

The judge added, "If the declaration says, 'He drags me around the house by the hair,' it's almost always a Hispanic client."

A little later in the restraining order hearing, during cross-examination of the petitioner and before the respondent testified or presented any evidence on his behalf, a question arose as to the relevance of evidence about when the relationship between the petitioner and the respondent had ended. Respondent's counsel argued that the evidence was relevant because the petitioner was angry that the respondent had broken up with her; the defense position was that this anger had caused her to fabricate the allegations and file the petition. Judge Pollard said that she might be angry, but that this was not the issue, and added, "The issue is he spit on her, he choked her, he pushed her, he threw protein powder all over the room, and he destroyed a lot of expensive property." The judge then stated that the respondent did not get to engage in such conduct. At the end of the hearing, the judge issued the requested restraining order and ordered the payment of restitution.

The Court of Appeal affirmed the orders, but included in its opinion a "Warning" to Judge Pollard about her comments concerning Middle Eastern and Hispanic males. The appellate court stated that such comments "suggest ethnic stereotyping that is inconsistent with the fair, impartial, and dispassionate administration of justice." While concluding that the judge's comments did not evidence bias against the defendant in the case before her, the appellate court pointed out that in the future, the judge's "statements about ethnic propensities of past litigants could compel the conclusion that the judge prejudged the case based on ethnicity." The Court of Appeal stated that a trial judge "should refrain from comments that suggest he or she has decided a credibility contest based on some matter outside the record," and that such statements "do not inspire public trust and confidence in our courts." The appellate court then found that Judge Pollard did not err in excluding evidence about the termination of the relationship between the petitioner and the respondent, and found that the evidence presented was sufficient to support issuance of the restraining order.

The Commission found that Judge Pollard's remarks about Middle Eastern and Hispanic men were contrary to canon 3B(5), and that the comments articulated stereotypes about two ethnic groups and their propensity to engage in certain types of domestic violence. The Commission agreed with the Court of Appeal that the comments suggested ethnic stereotyping that is inconsistent with the fair, impartial and dispassionate administration of justice, and that such remarks do not inspire public trust and confidence in the courts. The Commission noted Judge Pollard's admission that her remarks were inappropriate.

The Commission also found that Judge Pollard's comments during the cross-examination of the petitioner suggested that she had prejudged the facts before hearing any testimony offered by the respondent, contrary to canons 2A and 3B(5). The Commission noted that the judge's comments gave the appearance that she had already accepted the petitioner's version of events before hearing any testimony offered by the respondent, despite the fact that this was a hearing at which both sides were entitled to present evidence before a decision was made.

In a separate matter, Judge Pollard declared a mistrial in a family law case that had been pending before her for approximately four years, even though only a few hours of anticipated testimony remained, because the trial did not end within a five-hour period she had set for its completion and she was to be transferred, about six weeks later, from a family law assignment to a domestic violence assignment. The case, designated a long-cause matter, had been continued numerous times for various reasons. Eventually, the case was called for trial, and testimony was given on two days about a week apart. Judge Pollard set the matter for a date about two weeks later, from 9:00 a.m. to 3:00 p.m., stating, "we will finish," and "we are getting done." On that day, when it became evident that the testimony could not be completed by 3:00 p.m., Judge Pollard declared a mistrial.

The Court of Appeal issued a writ directing that the trial be completed before Judge Pollard regardless of her reassignment to a different court. The appellate court noted that the mistrial had been ordered over the objection of both parties

"for reasons peculiar to the judge's own calendar," and stated, "The abuse of discretion in granting the mistrial is manifest."

The Commission found that Judge Pollard's conduct in declaring the mistrial constituted an abuse of authority and failure to hear and decide a matter assigned to her, contrary to canon 3B(1).

The Commission rejected Judge Pollard's claim that declaring the mistrial was proper because the case had been converted from a long-cause matter to a short-cause matter when, at a hearing that took place more than two years before the mistrial was declared, the attorneys gave an estimate of three to four hours to complete the trial. The Commission found that even assuming a long-cause matter can be converted to a short-cause matter when the attorneys, at some point during the proceedings, give an estimate of five hours or less to complete the trial, the records of the case established that the estimate of three to four hours was superseded by later events, and the court and counsel continued to treat the matter as a long-cause matter.

The Commission also rejected Judge Pollard's contention that declaring the mistrial was proper because she had been specifically instructed by her supervising judge not to keep the matter when she transferred to her domestic violence assignment. The Commission pointed out that the supervising judge stated in a declaration that the case started trial with an estimate of three hours, and described his own actions as "suggesting" that Judge Pollard declare a mistrial. The Commission noted that even assuming that the supervising judge's discussions with Judge Pollard could be considered instructions, such instructions would not legitimize Judge Pollard's actions if they were based on incorrect information she had given to the supervising judge.

**Public Admonishment of
Judge Joan Comparet-Cassani
August 16, 2011**

Judge Joan Comparet-Cassani 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).

IV.
CASE SUMMARIES

The Commission found that after granting a criminal defendant's motion to proceed in pro per and relieving his court-appointed counsel, Judge Comparet-Cassani presided at a pretrial hearing at which the defendant submitted two motions. After receiving one of the motions, the judge stated that she did not believe the defendant had prepared the motion himself. She repeatedly restated this opinion when questioning the defendant about the motion, despite his insistence that he had. She ultimately concluded that the defendant was lying to the court about not having received legal assistance in preparing the motion, and on that basis she revoked his pro per status and appointed a bar panel attorney to represent him.

The defendant petitioned the Court of Appeal for a writ to restore his pro per status, and the prosecution filed a preliminary response conceding that the judge had improperly revoked his pro per status. The Court of Appeal then issued a notice of intention to grant the writ. Thereafter, Judge Comparet-Cassani ordered the defendant's pro per status reinstated.

In finding that Judge Comparet-Cassani engaged in misconduct, the Commission pointed out that a criminal defendant has a right to self-representation, although that right may be terminated by a trial judge when a defendant deliberately engages in serious and obstructionist misconduct. The Commission noted that Judge Comparet-Cassani had admitted, in the Commission's investigation, that she violated the defendant's right to self-representation, and that the fact that a pro per defendant did not prepare motions submitted to the court "is not a ground for a status change."

Addressing Judge Comparet-Cassani's claim that her actions were motivated by concern that the defendant was filing motions solely to delay the proceeding, the Commission noted that the record contained no reference to the defendant's trying to delay or obstruct the proceedings. The Commission found that the judge's revocation of the defendant's pro per status was based on two factors: her belief that the defendant had received legal assistance in preparing a motion, and her belief that he was lying about whether he had received such assistance. The Commission found that neither of

these factors, if true, provided a legal basis for the judge's action, and that her conduct constituted abuse of authority, disregard for the defendant's Sixth Amendment rights, and intentional disregard of the law. In addition, the Commission found that the conduct violated canons 2A and 3B(2).

The Commission further found that the judge's demeanor toward the defendant during the hearing was improper. Based on the transcript of the hearing, the Commission found that Judge Comparet-Cassani spoke to the defendant "in a harsh manner, repeatedly stated that she did not believe him, grilled him on cases cited in his motion, and stated three times that he was lying to the court," although the defendant remained respectful to the judge throughout the hearing. The Commission found that this conduct violated canons 2A and 3B(4).

In deciding that public admonishment was appropriate, the Commission viewed as aggravating factors two prior matters in which Judge Comparet-Cassani was disciplined for similar misconduct, involving abuse of authority toward a pro per criminal defendant and poor demeanor. In 2000, the judge was privately admonished, in part, for ordering a sheriff's deputy to activate an electronic stun belt being worn by a pro per criminal defendant, not to prevent courtroom violence, but because of the defendant's verbal interruptions. The admonishment included two prior incidents—one involving the defendant who was shocked, and one involving another defendant—in which the judge threatened to use the belt to control non-violent courtroom behavior. In 2006, Judge Comparet-Cassani received an advisory letter for making demeaning remarks in open court to a criminal defense attorney, in the presence of the attorney's client. The judge questioned the attorney about where and when she went to law school, when she passed the bar, and whether she was "up to" handling the case.

**Public Admonishment of
Judge James R. Wagoner
September 13, 2011**

Judge James R. Wagoner of the El Dorado County Superior Court was publicly admonished for conduct that constituted, at a minimum,

improper action pursuant to Commission Rules 115-116 (governing public admonishments).

The Commission found that while Judge Wagoner was on the bench one Friday morning, he received a report that a woman in the courthouse lobby was using her cell phone to take pictures or videos of people in the lobby who were involved in dependency court proceedings. The judge recessed the proceedings in his court, removed his robe, and went to the lobby with two bailiffs to contact the woman about her reported conduct.

In the lobby, Judge Wagoner ordered the woman to immediately report to his courtroom for a hearing about her conduct. The woman, who was not involved in any matter pending before Judge Wagoner, did not comply, and asked to speak with her attorney. The judge repeated his order and warned the woman that if she continued to refuse to comply, she would be cited for contempt of court. She did not comply, and the judge directed the bailiffs to arrest her for contempt. The woman was handcuffed and escorted to a jury room. Her cell phone and an audio recording device in her possession were confiscated. She was held in the jury room for approximately 40 minutes and then taken to jail pursuant to a remand order issued by the judge. The order stated that the woman was charged with contempt of court, that the matter was set for arraignment before the judge the following Monday, and that bail was set at \$5,000. The woman was in jail approximately three hours before she was able to post bail.

The same day, after the arrest, Judge Wagoner issued an order to show cause re: contempt. The OSC stated that the woman was cited for contempt for willfully disobeying a court order. The judge's declaration, included in the OSC, stated that the judge had been made aware by staff that the woman was photographing and/or recording private parties in the courthouse lobby, including parties to confidential juvenile proceedings. The declaration stated that the judge went to the lobby to direct the woman to the courtroom for a hearing on the matter, as this "was disruptive to the court proceedings and could possibly involve criminal conduct," and that she refused to comply. The declaration went on to state that the conduct "was disruptive to the business of the court and the parties involved," and

that it appeared that the woman was attempting to continue the recording and/or destroy evidence of her conduct. In addition, the declaration stated that the woman had a recorder secreted on her person that appeared to be operating when she was taken into custody.

After the woman entered a not guilty plea, the matter was set for trial before Judge Wagoner. When she appeared with her attorney for the contempt hearing, the woman apologized to the court, stating that she did not purposely cause a disruption and meant no disrespect. She denied that she had been taking pictures. Her attorney noted that his client had been sitting near the bailiffs at the metal detector that morning, and that nothing she did caused them to respond or speak to her. Judge Wagoner found the woman in contempt and sentenced her to five days in jail, with credit for one day served and the other days stayed for one year on condition she obey all laws and lawful orders of the court.

The Commission determined that Judge Wagoner's actions constituted abuse of the contempt power and violated the woman's due process rights. The Commission found that the judge's order that the woman immediately report to his courtroom was not a valid order on which a contempt charge could be based. Since the woman's conduct did not occur in his courtroom or involve a proceeding pending before him, the judge had no jurisdiction over her and could not order her to appear before him. The Commission pointed out that courthouse security issues are properly handled by sheriff's deputies, and that the deputies could have warned or arrested the woman if her conduct had been improper. By intervening and ordering the woman to attend a hearing on "creating a disturbance in the courthouse," Judge Wagoner gave the appearance of having assumed a law enforcement role, contrary to canon 2A.

The Commission rejected Judge Wagoner's argument that he had authority to order the woman to his courtroom for a hearing pursuant to the court's statutory and inherent powers to preserve order, finding that such power could not be used to order a citizen to attend a hearing concerning conduct that occurred outside the courtroom and had no connection to a pending proceeding. The

IV.
CASE SUMMARIES

Commission pointed out that under Code of Civil Procedure section 128(a)(1)(2), the court has power to enforce order "in its immediate presence" and "in the proceedings before it," and that under Code of Civil Procedure section 1209(a)(1), a court's authority to find a person in contempt for disorderly conduct is limited to conduct "toward the judge while holding the court, tending to interrupt the due course of a trial or other judicial proceeding." The Commission also found that reports of disruptive conduct on prior occasions did not give the judge authority to order the woman to go to his courtroom or to have her arrested for contempt.

The Commission found that Judge Wagoner failed to comply with proper contempt procedures by remanding the woman to jail without a hearing. The Commission pointed out that it is misconduct to incarcerate someone for contempt without following proper procedures, which include notice and an opportunity to be heard, and that Judge Wagoner was obligated to know or research proper contempt procedures. In addition, the Commission found that the judge wrongly adjudicated the matter as one of direct rather than indirect contempt, noting that direct contempt can only occur in open court or in chambers. The Commission further found that the conditions the judge placed on the contempt sentence, effectively placing the woman on probation for a year, were not authorized by law, as contempt may only be punished by a fine of up to \$1,000 or a sentence of up to five days, or both. Lastly, the Commission found that Judge Wagoner failed to comply with proper contempt procedures by failing to issue an order that recited the evidentiary facts supporting the contempt finding. Citing past Commission and California Supreme Court cases, the Commission stressed that the contempt power, which permits a single official to deprive a person of his fundamental liberty interest without all the procedural safeguards normally accompanying such a deprivation, must be used with great prudence and caution, and that it is essential that judges know and follow proper procedures in exercising this power.

In determining the level of discipline, the Commission found that the judge's conduct was aggravated by the fact that he used the contempt power to incarcerate someone over whom he had

no jurisdiction. In addition, the Commission found that the conduct was aggravated by the fact that the judge received an advisory letter in 2009 for abusing his authority with regard to individuals who were not before him. In that matter, the judge wrote a letter to a married couple who had submitted information to the grand jury, ordering them to "cease and desist" contact with the grand jury about matters as to which they had been advised that the grand jury no longer desired contact. The judge improperly threatened to enforce the order with sanctions such as contempt.

**Public Admonishment of
Former Judge Paul E. Zellerbach
November 3, 2011**

Judge Paul E. Zellerbach, a former judge of the Riverside 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 Zellerbach made comments about the district attorney's office that created an appearance of bias and were disparaging, undignified and discourteous. In a criminal case in which a defendant was seeking discovery to prove that the district attorney had a conflict of interest in prosecuting the case, the judge told a prosecutor whose handling of the discovery issue he considered inadequate that he was faced "all the time...these days" with the issue of prosecutors "not doing their job properly." In the same case, the judge made a reference to the district attorney's "PR firm." The Commission found that the judge's concerns and frustrations over problems faced by the courts in his county, which he attributed to the policies of the district attorney, did not excuse his comments; the Commission noted that a judge "must stay above the fray of political discord in the performance of judicial duties." The Commission found that the judge's comments violated canons 1, 2A, 3B(4), and 3B(5).

The Commission also found that Judge Zellerbach failed to disclose on the record the fact that he was actively considering running for district attorney against the incumbent district attorney when he presided in the criminal case described above. Six days before the hearing (which took

IV.
CASE SUMMARIES

place about fifteen months before the election), the judge had asked a representative of a political action committee of a local firefighters' association whom the association was going to endorse, and said that he might run for district attorney. The Commission found that this information was reasonably relevant to the question of disqualification, since a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. Consequently, disclosure was required, and the failure to disclose violated canons 1, 2A, and 3E(2). The Commission stated that although the judge was not necessarily required to disclose this information in all criminal cases, disclosure was required in the case before him because it involved issues concerning the incumbent district attorney.

The Commission found that about a week later, the judge addressed a gathering of the county's District Attorneys Association on the subject of its endorsement of a candidate for district attorney. The judge recommended that the association delay its decision about whom to endorse, referred to public criticism of policies adopted by the incumbent district attorney, and compared the way the office had run when he worked there with the way it was being run at that time. The Commission found that by recommending that the association delay its endorsement decision, the judge engaged in political activity that may have created the appearance of political bias or impropriety, and gave the appearance that he was opposing a candidate for nonjudicial office. The Commission found that this conduct violated canons 1, 2A, 5, and 5A(2).

About four months before the election, the Commission found, the judge told an official of the local school district's Board of Education that he had decided to run for district attorney and would "love" the official's endorsement, or words to that effect. The judge continued to preside over criminal cases being handled by the district attorney's office for at least another twelve days, without disclosing on the record that he had decided to run or was seeking endorsements or other support for a campaign. The Commission found that disclosure was required because such information was reasonably relevant to the question of disqualification, and that the failure to disclose violated canons 1, 2A and 3E(2).

The judge went on a leave of absence from judicial office the next month; he returned two days after the election, in which he was elected district attorney. At that time, the judge's campaign had a substantial outstanding debt. After the leave ended, while he was still a judge, Judge Zellerbach allowed his judicial title to be used to solicit money from individuals to advance his interests in retiring the debt from his campaign for district attorney. Under canon 6H, the judge was allowed to use his judicial title in his campaign while he was on leave of absence, but once he returned to the bench, he was bound by canon 2B(2), which prevents a judge from using the judicial title to advance the pecuniary or personal interests of the judge or others. The Commission found that by allowing use of his title to raise money to retire the debt from a campaign for nonjudicial office, the judge violated canons 1, 2A, and 2B(2). Addressing the judge's explanation that his campaign organization did not consult him before using his judicial title in connection with fundraising events, the commission pointed out that ensuring compliance with his ethical obligations was ultimately the judge's responsibility, as he acknowledged.

Turning to the issue of discipline, the Commission stated that in deciding to impose a public admonishment, the Commission took into account the number of incidents of misconduct and Judge Zellerbach's history of discipline. In 2006, the judge received a public admonishment for attending a baseball game while a jury was deliberating in a murder case, without having arranged for another judge to take the verdict; when informed that a verdict had been reached, the judge was unwilling to authorize another judge to take the verdict, but did not return to take it himself. The Commission found that this was a serious dereliction of judicial duty, and that the judge failed to give his judicial duties precedence over all other activities. In 2003, the judge received an advisory letter for making harsh comments to a doctor who was late to court, and threatening to hold him in contempt. The Commission noted that in the matter before it, the judge also made harsh remarks to a person appearing before him; in addition, he engaged in a pattern of misconduct involving failure to properly consider his ethical obligations while actively considering

a run for nonjudicial office and in connection with his campaign for nonjudicial office.

PRIVATE DISCIPLINE

Private admonishments and advisory letters issued in 2011 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 website 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 2011, the Commission imposed ten private admonishments.

1. In a family law case, the judge ordered a change of custody at a hearing without prior notice to the parties and failed to rule on one party's request for accommodation under the Americans with Disabilities Act. In another family law case, the judge made inappropriate, overly personal remarks to a child during a chambers interview. The judge improperly sealed the transcript of the chambers interview over the objection of counsel and without complying with court rules governing the sealing of court records.

2. A judge used sexist and demeaning terms and gestures to female court staff. The judge sent

an inappropriate flirtatious email to another female court employee. The judge also used a court secretary to prepare personal correspondence and improperly used judicial stationery for the letters. In one of the letters, the judge abused the prestige of judicial office to advance the personal interests of another.

3. On the date a criminal case was set for trial, after relieving the defendant's attorney, the judge remanded the defendant for failing to obey the judge's order to be quiet, without following any of the procedures required for contempt. Before new counsel appeared, on the judge's own motion and off the record, the judge increased the defendant's bail significantly, which gave the appearance that the judge was acting out of pique and trying to coerce a guilty plea from the defendant.

4. After becoming a candidate for judicial office, the judge did not promptly remove endorsements of nonjudicial candidates which the judge had made prior to becoming a candidate. When contacted by the State Bar about these endorsements, the judge provided a date on which the judge became a candidate, without ensuring that the date was accurate. The date provided was inaccurate, which created the impression that the judge had promptly removed the improper endorsements. The judge also failed to file the paperwork required by law to begin soliciting campaign contributions. After taking office, to assist an attorney, the judge asked a specialized legal question of a judicial colleague and then forwarded the response to the attorney.

5. While presiding over two related cases, a judge engaged in a course of conduct that gave the appearance that the judge was embroiled. The judge contacted one litigant at home in the absence of counsel or any representative and discussed the case. The judge contended the parties consented to ex parte communications; however, there was no clear record of the consent of all parties, nor was the consent specific. The judge dismissed one of the proceedings without prior notice to the parties. The judge treated the attorneys who appealed that decision rudely, and made a comment in an order that undermined the integrity of the judicial system. In a separate matter, the judge bought stock

in a company while that company was a party in a case pending before the judge, which necessitated the judge's recusal from the case.

6. A judge publicly commented in news articles on a case pending in another court. The judge also appointed counsel in a case without disclosing a past professional relationship between the judge and counsel, and engaged in an improper ex parte communication with the attorney about the case. The judge also improperly struck a motion to disqualify the judge for cause, and made comments in an order on another disqualification motion that appeared to be false, undermining public confidence in the integrity of the judiciary.

7. A judge threatened to order parties and attorneys to appear at monthly settlement conferences if they did not agree to mediation, creating an appearance of coercion.

8. A judge had a pro per litigant taken into custody without following proper contempt procedures. The judge claimed the litigant had failed to follow an order by the judge, but no clear order was disobeyed.

9. A presiding judge failed to take appropriate corrective action after receiving reliable information about serious wrongdoing by another judge on the court.

10. A judge issued a peremptory writ of mandate without setting a briefing schedule as required by law, and before the time to respond to the petition had expired.

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 2011, the Commission issued 26 advisory letters.

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.)

1. A judge issued two sanctions orders to a party without notice in the manner prescribed by law.

2. A judge granted a motion to set aside a dismissal for excusable neglect by plaintiff's counsel. In the attorney's absence and without providing notice or a hearing, the judge ordered the attorney to pay sanctions. Also, the minute order failed to specify the reason for the sanctions.

3. During a hearing at which the opposing party and counsel were appearing by telephone, a litigant hit the mute button, briefly preventing the opposing party and attorney from hearing or participating in the proceedings. The judge immediately imposed monetary sanctions, without providing the litigant notice or an opportunity to be heard as required by law. (The transcript showed the litigant was seeking to tell the judge privately about the litigant's mental and medical issues that were hampering the litigant's participation in the proceedings.)

Bias

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

4. During a jury trial with a difficult pro per criminal defendant, the judge made a number of statements in the presence of the jury to the effect that the defendant was misrepresenting facts and was attempting to manipulate the proceedings; this created an appearance of lack of impartiality.

5. During a traffic calendar, the judge announced that the judge wanted to meet with the

police officers privately. When one of the traffic defendants expressed concern about the meeting, the judge called the defendant a demeaning name. The judge previously had met with law enforcement supervisors about their ticketing practices and presentation of evidence, which gave the appearance of alignment with law enforcement.

6. During a telephonic appearance, a pro per inmate plaintiff was able to hear the judge and the opposing counsel, but they could not hear the inmate and believed the inmate was not on the line. The judge made remarks that created the appearance the judge was coaching counsel about responding to the inmate's legal position. The judge also made a remark about the inmate's case being no different from other inmate cases, suggesting stereotyping of inmates' cases.

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.

7. A judge failed to rule promptly on five peremptory challenges. The delays ranged between 12 and 42 days.

8. A judge ruled on a habeas petition 114 days after it was filed; Rule of Court 4.551(a)(3) (A) requires a ruling within 60 days.

9. A judge delayed 10 months in deciding a motion to disqualify another judge, which had been assigned by the Judicial Council.

Demeanor and Decorum

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

10. During a hearing, the judge made a denigrating remark about a minor seeking a protective order.

11. A judge made denigrating comments to a pro per litigant who said he was an attorney in

another state, but had a different profession here. The judge's comments included a statement that the judge hoped the litigant was better at his other profession than at practicing law.

Disclosure and Disqualification

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

12. In a criminal case, the judge failed to disclose until the first day of trial that the judge's spouse worked for the district attorney's office. The defendant had made multiple appearances before the judge prior to trial.

13. A judge ruled upon a post-conviction petition without disclosing that the judge was married to the individual who, as district attorney, had prosecuted the petitioner. The judge's conflict was apparent from the file.

Ex Parte Communications

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

14. A judge engaged in multiple ex parte communications with attorneys and others while presiding over a criminal case, which ultimately necessitated the judge's recusal from the case. The ex parte communications exceeded the scope and terms of the attorneys' consent.

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.)

15. A judge delayed turning over to counsel a note from a juror pertaining to possible juror misconduct.

16. During a criminal trial, the judge summarily precluded the defense from presenting surrebuttal evidence, improperly ruling that the defense has no such right. The judge displayed impatience toward the defense attorney when the attorney objected.

17. At sentencing after a negotiated plea, the judge failed to afford the crime victim the opportunity to present a victim impact statement in person in open court, as required by law. The judge had read a victim impact statement submitted earlier.

18. A judge with administrative responsibilities adopted procedures for filings by pro per litigants that raised an appearance that the litigants received unequal treatment based on their indigency or lack of counsel.

19. While presiding over a misdemeanor probation violation, the judge refused the defendant's attorney's request to be heard on the issue of bail, denied the defendant bail and remanded the defendant into custody.

20. A judge to whom a case had been assigned for all purposes told the attorneys that their case was not going to trial because the judge settles every case, which appeared coercive and intended to deny their clients' right to trial.

Improper Political Activities

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

21. While a judge was a candidate for judicial office, the judge's campaign materials created a false impression about the judge's prior judicial experience.

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.)

22. A judge used judicial stationery to write to a court in another county regarding payment of the judge's traffic ticket because the judge was having trouble getting the court clerk to acknowledge that payment had been made.

23. A judge met with an officer seeking issuance of a warrant on a weekend when the judge was serving as duty judge. After the judge signed the warrant, the judge's teenage child expressed interest in accompanying the officer when the warrant was executed. The judge ascertained that it was acceptable to the officer for the judge's child to accompany the officer. The judge's child was thereby able to bypass the ordinary process for going on a police ride-along.

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.)

24. A judge occasionally spoke in a language other than English during court proceedings, including while giving criminal defendants group advisements of their constitutional rights. In a civil case, the judge made a ruling based only on speculation that a litigant had not fulfilled a certain procedural requirement, and misstated the law in articulating a different basis for the ruling, thus creating a misleading record.

More Than One Type of Misconduct

Some cases involved more than one type of misconduct.

25. A judge made unduly harsh and disparaging remarks to a pro per criminal defendant during a pretrial hearing. The judge also denied the defendant's motion to disqualify the judge for cause.

26. A judge engaged in ex parte communications with a witness. The judge improperly inferred the consent of the pro per parties from the fact that they did not object when the judge stated the intention to telephone the witness. When one party continued to express concern about the judge's ruling, the judge threatened to make an adverse ruling and used unduly harsh language.

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 2011, there were 374 authorized subordinate judicial officer positions in California.

SUBORDINATE JUDICIAL OFFICERS AUTHORIZED POSITIONS	
As of December 31, 2011	
Court Commissioners.....	328
Court Referees.....	46
Total.....	374

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.

2011 STATISTICS

Complaints Received and Investigated

In 2011, the Commission reviewed 163 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 2011, the Commission commenced one staff inquiry and eight preliminary investigations.

RULE UNDER WHICH NEW COMPLAINTS WERE SUBMITTED

Rule 109(c)(1) – appeal from local court's disposition	161
Rule 109 (c)(2) – at the request of a local court	0
Rule 109(c)(3) – notification by local court of discipline	3
Rule 109(c)(4) – notification by local court of resignation with investigation pending	1

Some complaints were submitted under more than one rule.

2011 CASELOAD – SUBORDINATE JUDICIAL OFFICERS

Cases Pending 1/1/11	5
New Complaints Considered	163
Cases Concluded	162
Cases Pending 12/31/11	5

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

Cases Concluded

In 2011, the Commission concluded its review of 162 complaints involving subordinate judicial officers. The Commission closed 157 of these matters after initial review because it determined that the superior court's handling and disposition of the complaints were adequate and that no further proceedings were warranted. Following investigation, the Commission closed four of the cases without discipline, 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.

2011 SJO COMPLAINT DISPOSITIONS

Total complaint dispositions	162
Closed after initial review	157

After independent investigation by the Commission:	
Closed without discipline	4
Resignation pursuant to stipulation	1

V.
SUBORDINATE JUDICIAL OFFICERS

TYPE OF COURT CASE UNDERLYING
SUBORDINATE JUDICIAL OFFICER
COMPLAINTS CONCLUDED IN 2011

Small Claims.....	32%
Family Law.....	28%
Traffic.....	16%
General Civil.....	8%
Criminal.....	6%
All Others.....	10%
(including off-bench)	

SOURCE OF COMPLAINTS
INVOLVING SUBORDINATE
JUDICIAL OFFICERS
CONCLUDED IN 2011

Litigant/Family/Friend.....	96%
Judge/Court Staff.....	<2%
Attorney.....	<2%
All Other Complainants.....	<1%

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 website 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.

2011 STATISTICS

No disability retirement applications were pending before the Commission at the beginning of 2011.

The Commission received three disability retirement applications during 2011, all of which were granted. No disability retirement applications were pending at the end of the year.

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 2011.

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.

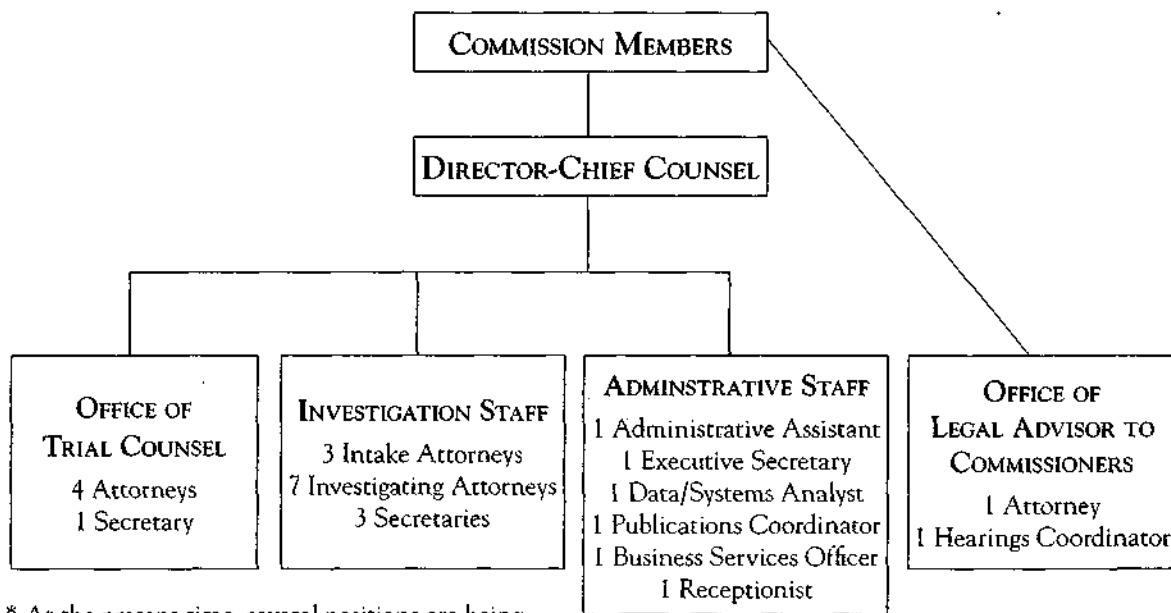
The Commission's Staff Counsel include intake attorneys who are responsible for reviewing and evaluating new complaints and investigating

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.

ORGANIZATIONAL CHART



VII.
COMMISSION ORGANIZATION, STAFF AND BUDGET

2011-2012 BUDGET

The Commission's budget is separate from the budget of any other state agency or court. For the current 2011-2012 fiscal year, the Commission's budget is \$4,181,000. 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 allocated 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.

2010-2011 BUDGET

The Commission's final budget appropriation for the 2010-2011 fiscal year was \$4,105,542. Final expenditures totaled \$3,716,778. Approximately 41% of the Commission's budget supported the intake and investigation functions and approximately 13% was used in connection with formal proceedings. The remaining 46% went toward sustaining the general operations of the Commission, including facilities, administrative staff, supplies, and security.

**COMMISSION ON JUDICIAL PERFORMANCE
2010-2011 ACTUAL EXPENDITURES
\$3,716,778**

