State of California
Commission on Judicial Performance

2016 Annual Report

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INTRODUCTION

The Commission on Judicial Performance, the first judicial disciplinary body of its kind, was established by legislative constitutional amendment approved by voters in 1960 as an independent state agency. The commission's mandate has always been threefold: to protect the public, enforce rigorous standards of judicial conduct and maintain public confidence in the integrity and independence of the judicial system. The composition of the commission's membership—six public members, two attorneys, one appellate court justice and two superior court judges—brings a diverse set of viewpoints to ensure that the perspectives of the judiciary, the legal community and the public are considered in determining the outcome of any particular case.

While the vast majority of California judges are committed to maintaining the high standards expected of the judiciary, an effective method of disciplining judges who engage in misconduct is essential to the functioning of our judicial system. The commission's proceedings provide a fair and appropriate mechanism to preserve the integrity of the judicial process. Some have expressed frustration because not all of the commission's work and deliberations are made public. While some aspects of the disciplinary process and the commission's work have become more open over the years, California voters have consistently allowed for confidentiality in recognition of the important interests it protects. Confidentiality encourages complainants and witnesses to come forward without fear of reprisal or possible retribution while also protecting a judge's reputation and the integrity of the judicial process from unwarranted and frivolous complaints.

In 2016, the commission received a grant from the State Justice Institute to help establish a mentoring program for judges where an investigation has identified problematic treatment of litigants and others appearing before the judge. The program has begun as a pilot program in Northern California. An eligible judge who elects to participate will work for up to two years with a mentor judge who has been trained from a curriculum designed by other judges, ethicists and a counselor. The judge's success or lack of success in completing the program will be taken into consideration by the commission in determining the appropriate disposition of the matter. Should problems reoccur, the commission may take into consideration that the judge was previously given the opportunity to participate in the mentoring program. Poor judicial demeanor is one of the most common complaints to the commission and most frequently disciplined conduct, yet is rarely sufficiently serious to warrant removal of a judge from office. When removal is ordered, it is often after a succession of disciplinary sanctions that have been to no avail. The commission believes that a mentoring program, supplemented with educational and other resources for skills development, might effectively and efficiently foster changed behavior in judges. This would have the dual benefits of disengaging the judges from the disciplinary system and protecting the public.

I would like to thank the members of the judiciary, court staff, the legal community and the members of the public for their assistance in aiding the commission to fulfill its important function. I must also extend my sincere gratitude to the commission staff and the commission members who worked tirelessly throughout the year to ensure public confidence in the judiciary and in the judicial system.

It has been an honor to serve on the commission and I look forward to the commission's continuing service to all who live in the State of California.

Anthony P. Capozzi, Esq.
Chairperson

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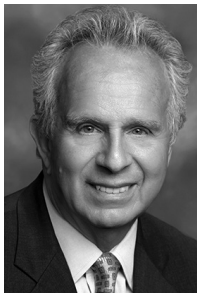
Commission Members

Pursuant to California Constitution, article VI, section 8, the commission is composed of 11 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 10 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.



Anthony P. Capozzi, Esq., Chairperson, was appointed to the commission as a lawyer member by the Governor April 6, 2010, and reappointed December 23, 2013; his term ends February 28, 2017. Mr. Capozzi has served as the commission's chairperson since March 2016; he served as vice-chairperson of the commission from 2013 to 2016. He resides in Fresno and Monterey Counties. 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 representative and co-chair of the Ninth Circuit Judicial Conference; co-chair of the Bench Bar Coalition; president of the State Bar of California, 2003 to 2004; member of the Access and Fairness Commission, 2004 to 2005; and member of the Judicial Council, 2005 to 2010. Mr. Capozzi has served as the legal and political analyst for ABC Channel 30, KFSN-TV in the Central Valley since 2005. He has served as president and is currently a member 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. In March of 2013, Mr. Capozzi was inducted as a fellow of the American College of Trial Lawyers. In June of 2015, Mr. Capozzi was awarded the Bernie E. Witkin Lifetime Achievement Award from the Fresno County Bar Association.

Hon. Ignazio J. Ruvolo, Vice-Chairperson, was appointed to the commission as the Court of Appeal judicial member by the Supreme Court May 1, 2013; his term ends February 28, 2017. Justice Ruvolo has served as the vice-chairperson of the commission since March 2016. Justice Ruvolo has served as the presiding justice of Division Four of the Court of Appeal, First Appellate District since 2006; he served as an associate justice in Division Two from 1996 to 2006. Prior to his appointment to the appellate bench, Justice Ruvolo was a superior court judge in Contra Costa County. Justice Ruvolo has served on the State Bar Commission for the Revision of the Rules of Professional Conduct, and the San Francisco Bar Association's Ethics Committee. Justice Ruvolo has been a member, vice-chair, and chair of the California Judges Association's Judicial Ethics Committee, a member of the American Bar Association's Litigation Section Committee on Professional Responsibility, chair and special advisor to the State Bar of California's Committee on Professional Responsibility and Conduct, and founder and chair of the Contra Costa County Bar Association's Ethics Committee. Justice Ruvolo

also has been a member of the Judicial Council's Task Force on Jury Instructions, Advisory Committee on Civil and Small Claims Actions, and Appellate Advisory Committee; the Center for Judicial Education and Research's Planning Committee; and the California Judicial College. Before being appointed to the superior court bench, Justice Ruvolo was a trial attorney with the U.S. Department of Justice and an attorney with a Bay Area law firm. He was honored with a formal commendation from the Director of the U.S. Marshal Service, the Trial Judge of the Year Award by the Alameda Contra Costa Trial Lawyers Association, and the Appellate Justice of the Year Awards by the San Francisco Trial Lawyers Association and the Italian American Bar Association of Northern California. He has served as an adjunct professor at the University of California, Hastings College of the Law, Golden Gate University School of Law, and the John F. Kennedy School of Law. Justice Ruvolo graduated magna cum laude in 1972 from the University of San Diego School of Law, where he served as editor-in-chief of the San Diego Law Review, and he received a Masters of Law degree from the University of Virginia.

Ms. Mary Lou Aranguren was appointed to the commission as a public member by the Senate Committee on Rules September 5, 2011, and reappointed March 1, 2013; her term ends February 28, 2017. 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.

Ms. Sarah Kruer Jager was appointed to the commission as a public member by the Speaker of the Assembly March 1, 2016; her term ends February 28, 2019. She resides in San Diego County. Ms. Kruer Jager is a partner of Monarch Group, a private real estate investment and development firm based in San Diego and focused on the entitlement, development, and acquisition of institutional quality apartment communities in the Western U.S. Ms. Kruer Jager joined Monarch in 2005 and is responsible for sourcing, underwriting, and managing investments as well as developing and managing relationships with Monarch's capital partners. During her tenure, Ms. Kruer Jager has acquired, developed, and sold over $1 billion in real estate investments throughout the Western U.S. Prior to joining Monarch, she worked at UBS Investment Bank in Chicago in the Mergers & Acquisitions and Diversified Industrials Groups. Ms. Kruer Jager attended the University of Michigan, where she was awarded a four-year full tuition athletic scholarship as a member of the Division I Varsity Women's Golf Team. Her academic and athletic honors include being named by the National Golf Coaches Association to the Division I All-American Scholar Golf Team and receiving Academic All-Big Ten Conference Honors. Ms. Kruer Jager graduated from the University of Michigan Stephen M. Ross School of Business with a Bachelor of Business Administration degree with High Distinction. She received her MBA from The Wharton School of the University of Pennsylvania with a major in Finance. Ms. Kruer Jager is a member of the Urban Land Institute and its Bronze Multifamily Council. She is also a founding advisory board member of Run Women Run and a member of the San Diego Community College District Citizens' Oversight Committee following her appointment by the Board of Trustees for the District. Previously, Ms. Kruer Jager served as a member of the California Task Force on Youth and Workplace Wellness following her appointment by California State Assembly Speaker Karen Bass.

Ms. Pattyl Aposhian Kasparian was appointed to the commission as a public member by the Senate Committee on Rules April 15, 2015; her term ends February 28, 2019. She resides in Los Angeles County. She serves as the Vice President of Marketing and Development for the Caltech Employees Federal Credit Union. She oversees two departments, Marketing and Business Development, in conjunction with relationship management with the extended California Institute of Technology community, which includes the Jet Propulsion Laboratory and Huntington Botanical Gardens. Currently, Ms. Kasparian serves as a board member of the Armenian National Committee of America Western Region as well as a board member of the Caltech Y, a board composed of faculty, JPL and Caltech staff, alumni and students dedicated to the enhancement of student life. Ms. Kasparian is a member of numerous professional and nonprofit organizations, including the Credit Union Executive Society, House of Armenia, ACF Trust Fund, and school Parent Support Committee. She received a Bachelor of Arts degree in Journalism from California State University, Northridge and an Executive Master in Business Administration degree from Pepperdine University School of Business and Management. Ms. Kasparian is also a licensed Real Estate Broker in the State of California.

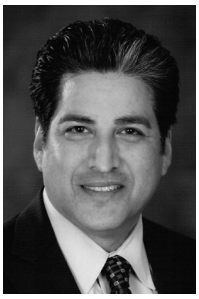
Hon. Thomas M. Maddock was appointed to the commission as a superior court judicial member by the Supreme Court April 1, 2013; his term ends February 28, 2017. Judge Maddock has served on the Contra Costa County Superior Court since his appointment in 1998. His primary assignment is Juvenile Dependency and Delinquency, and he has served as an unlimited civil trial judge, a felony trial judge, and a felony calendar judge. In addition, Judge Maddock has been a supervising judge, assistant presiding judge, and presiding judge of the Contra Costa County Superior Court, and has been reelected judge three times. In 2006, Judge Maddock was appointed to the Judicial Council and currently is the chair of the council's Advisory Committee on Court Security. He previously sat on the Trial Court Budget Working Group, the council's Advisory Committee on Financial Accountability and Efficiency, and served as a faculty member for the Center for Judicial Education and Research. Judge Maddock was previously a member of the California Judges Association's Board of Directors. He has a long career of committed public service as a deputy district attorney for Contra Costa and El Dorado counties, public advisor to the California Energy Commission, deputy director of the California Department of Consumer Affairs, chief deputy director of the Department of Veterans Affairs, and undersecretary of the Youth and Adult Correctional Agency. Judge Maddock also served in the U.S. Coast Guard on active duty and in the reserves, and was honored with the Humanitarian Service Medal and the Coast Guard Achievement Medal. He retired from the Coast Guard as a Captain. Judge Maddock received his Bachelor of Arts degree in Economics from the University of California, Davis in 1968, and his law degree from the University of California, Hastings College of the Law in 1977.

Dr. Michael A. Moodian was appointed to the commission as a public member by the Governor July 16, 2015; his term ends February 28, 2017. He resides in Orange County. Dr. Moodian is a faculty member for Chapman University's College of Educational Studies, and he serves as chair of the Santa Margarita Catholic High School Consultative School Board, founding chair of the United Nations Association of Orange County Advisory Board, a member of the UC Irvine Olive Tree Initiative Advisory Board, and former chairman of the World Affairs Council of Orange County. He edited a textbook in 2009 that examines the application of cultural comprehension to organizations and the measurement of intercultural competence. The book is cited by the Association of American Colleges & Universities in establishing national learning standards. Dr. Moodian has presented his research at various national and international conferences and has served as an expert commentator on several television and radio programs. Based on his interest in local history, he wrote a short book on the

ranch history of South Orange County and North San Diego County. Dr. Moodian often speaks to K-12 and community groups on South Orange County's indigenous American activity, the Portola Expedition, Mexican governance of the land, and 20th century ranching activity. Chapman University named him Teacher of the Year at its Irvine center in 2009, and OC Metro named him a 40 Under 40 honoree in 2010. Additionally, he was one of 18 Americans (and the only California resident) selected by the European Union to travel to Brussels in 2012 as a citizen diplomat to discuss education policy with EU officials. Dr. Moodian earned a Doctor of Education degree in Organizational Leadership from Pepperdine University, and a Master of Arts degree in Communications and Bachelor of Arts degree in Communications and Sociology from California State University, Fullerton.

Nanci E. Nishimura, Esq., was appointed to the commission as a lawyer member by the Governor May 12, 2011, and reappointed February 25, 2015; her term ends February 28, 2019. She resides in San Mateo County. Ms. Nishimura is a partner at Cotchett, Pitre & McCarthy, LLP, where her practice focuses on antitrust and business litigation. 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. In 2015, she was selected to serve on the White House Initiative on Asian American Pacific Islanders, as part of the President's Commission on Asian American Pacific Islanders. This select group provides strategic guidance to the President and Cabinet on access to higher education, healthcare, and entrepreneurial opportunities. In 2015, she was appointed by U.S. Senator Barbara Boxer to serve on the Judicial Appointments Committee for the Northern District of California. She is involved in numerous professional and nonprofit organizations, including the Board of Trustees of the California Science Center Foundation and the Commission and Board of Trustees of the Asian Art Museum Foundation, San Francisco. Ms. Nishimura received her law degree from The Catholic University of America, Washington, D.C., and a Bachelor of Arts degree in Psychology and Master of Arts degree in International Relations from the University of Southern California.

Mr. Richard Simpson was appointed to the commission as a public member by the Speaker of the Assembly June 17, 2013; his term ends February 28, 2017. He resides in Sacramento County. Mr. Simpson is a retired senior adviser for the Speaker of the California State Assembly. He served as a senior advisor for eight Assembly Speakers. He served for two years as Chief of Staff for the Senate Education Committee and for more than six years as Chief Consultant for the Assembly Education Committee. In 1999, Mr. Simpson served for six months as the first Legislative Secretary for California Governor Gray Davis. He has either written or played a key role in developing most of California's major education reforms of the past three decades, including the Class Size Reduction program, the laws creating California's system of academic standards and assessment, California's school facilities financing laws, and the recent law creating a new structure for school accountability. Mr. Simpson also drafted the budget reform measures contained in Propositions 1A and 1B for the 2009 special election and the education sections of Governor Edmund G. Brown, Jr.'s Proposition 30 in 2012. He was the Assembly's lead negotiator on the annual budget for public education. He served for 12 years as an elected trustee of the Sacramento County Board of Education and was elected president of that board three times. Mr. Simpson is a frequent speaker at statewide conferences and has received numerous awards for public service. He received his Bachelor of Arts degree in Economics from the University of California, Santa Cruz and earned a Master's degree in Public Policy from the Graduate School of Public Policy at the University of California, Berkeley.



Mr. Adam N. Torres was appointed to the commission as a public member by the Governor May 12, 2011, and reappointed February 25, 2015; his term ends February 28, 2019. He resides in Riverside County. Mr. Torres is Executive Director of the San Manuel Gaming Commission where he oversees the commission's operations with an emphasis on licensing, audit, internal controls, compliance, investigations and surveillance. Previously, he was Managing Director of Business Intelligence and Investigations from 2011 to 2015 at Stroz Friedberg where his expert area of focus was white collar investigations, intelligence and due diligence and security consulting. He was appointed by the President of the United States as the Marshal for the Central District of California from 2003 to 2010, where he was responsible for the protection of the federal courts, pre-sentenced federal prisoners, apprehension of fugitives, and asset forfeitures. At the Internal Revenue Service, Mr. Torres was a Supervisory Special Agent from 2000 to 2003, Special Agent from 1993 to 2000 and Revenue Agent from 1986 to 1992. As a Revenue Agent, he conducted audits of large and complex financial structures; and as a Supervisory Special Agent and Special Agent, he led and conducted criminal investigations for tax evasion, money laundering, public corruption and a variety of other financial crimes and fraud. While at the IRS, he also served as an Equal Employment Opportunity Investigator conducting investigations of EEO violations for the Department of the Treasury. Mr. Torres has been recognized by a variety of governmental, private and professional organizations for outstanding service. He is a Certified Fraud Specialist and licensed Private Investigator and holds a Bachelor of Science degree in Business Administration/Accounting from California State University, San Bernardino.

Hon. Erica R. Yew was appointed to the commission as a superior court judicial member by the Supreme Court December 10, 2010, and reappointed March 1, 2011 and March 1, 2015; her term ends February 28, 2019. Judge Yew served as the commission's chairperson from 2013 to 2016, and as its vice-chairperson in 2012 and 2013. Judge Yew sits on the Santa Clara County Superior Court, to which she was appointed in October 2001. She was a member of the Judicial Council from 2009 to 2012, and a member of the California State Bar Board of Governors from 2000 to 2001. She serves on the Judicial Council's Advisory Committee on Providing Access and Fairness and the California Commission on Access to Justice. Among her judicial assignments, Judge Yew has presided over a dependency drug treatment court and has spoken nationally on the topic of problem-solving courts. Judge Yew has also served on the Judicial Council's Task Force on Self-Represented Litigants and has taught on a number of topics for the Center for Judicial Education and Research and other entities. Prior to her appointment to the bench, Judge Yew was a civil litigator and graduated from the University of California, Hastings College of the Law and with honors from the University of California, Berkeley. She has received a number of awards for her community service and work as a judge, including Trial Judge of the Year in 2015 from the Santa Clara County Trial Lawyers Association and Outstanding Jurist of the Year in 2016 from the Santa Clara County Bar Association.

Outgoing Commission Members

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 ended February 28, 2015, but she continued to serve until March 1, 2016.

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 6 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 2016:

Honorable George J. Abdallah
Superior Court of San Joaquin County

Honorable M. Kathleen Butz
Court of Appeal, Third Appellate District

Honorable Victoria G. Chaney
Court of Appeal, Second Appellate District, Division One

Honorable Carol D. Codrington
Court of Appeal, Fourth Appellate District, Division Two

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

Honorable Russell L. Hom
Superior Court of Sacramento County

Honorable Louis R. Mauro
Court of Appeal, Third Appellate District

Honorable Anthony J. Mohr
Superior Court of Los Angeles County

Honorable Vincent J. O'Neill, Jr.
Superior Court of Ventura County

Honorable Stanford E. Reichert
Superior Court of San Bernardino County

Honorable Randy Rhodes
Superior Court of Los Angeles County

Honorable Clay M. Smith
Superior Court of Orange County

Honorable Theodore M. Weathers
Superior Court of San Diego County

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 2016 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 (see complaint form in Appendix 3). 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 substance abuse, using court resources for personal business, or misuse of the judicial title.

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.

Actions 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 that became final in 2016 is summarized, without identifying the judge involved, in Section IV. Summaries of private discipline from prior years are available on the commission's website at http://cjp.ca.gov.

Actions the Commission Can Take

Close (Dismissal)
Advisory Letter
Private Admonishment
Public Admonishment
Public Censure
Removal or Involuntary Retirement

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 consist of 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.

Review

A judge may petition the Supreme Court for review of an admonishment, censure, removal or involuntary retirement determination. A judge may petition the Supreme Court for a writ of mandate to challenge an advisory letter.

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.

II.
Legal Authority and Commission Procedures

Legal Authority

Recent Changes in the Law

In 2016, there were no substantive changes to the California Constitution, Government Code, Code of Civil Procedures or Rules of Court, relating to the work of the commission. The Supreme Court of California adopted amendments to the California Code of Judicial Ethics in 2016. In 2016, the commission adopted an interim amendment to rule 102 relating to confidentiality, as explained below.

A list of all of the provisions governing the commission's work is contained in Appendix 1 and the governing provisions are available on the commission's website at http://cjp.ca.gov.

California Constitution, Government Code and Code of Civil Procedure

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, 1998 and most recently in 2002, 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 1, 2017, the commission adopted $420 as the adjusted gift limit, for purposes of Code of Civil Procedure section 170.9.

In 2015, Code of Civil Procedure section 2093 and Government Code section 1225 were amended. These statutes permit a judicial officer, among others, to administer oaths or affirmations. Under the amendments, all former judges and justices are required to submit a medical certification with their applications for certification to administer oaths and affirmations, and the commission is required to issue a certification to administer oaths and affirmations, valid for five years from the date of issuance, to an applicant if his or her medical certification indicates that he or she does not have a medical condition that would impair his or her ability to administer oaths and affirmations. If the applicant's medical certification indicates that he or she has a medical condition that could impair his or her ability to administer oaths and affirmations, but does not do so at the time of the submission of the medical certification, the commission is required to issue a certification to administer oaths and affirmations valid for only two years. Former judges and justices certified before January 1, 2016, were permitted to continue to administer oaths and affirmations until January 1, 2017, before needing to reapply for certification pursuant to the amended provisions. As of January 1, 2017, all former judges and justices must be certified in accordance with the new requirements in order to administer oaths and affirmations.

Commission Rules and Policy Declarations

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

The Rules of the Commission on Judicial Performance, rules 101 through 138, were adopted by the commission on October 24, 1996, and took effect December 1, 1996. The rules have been amended periodically thereafter. In 2016, the commission implemented a pilot mentoring program in Northern California. Judges who receive complaints of misconduct arising from allegations of poor demeanor may agree to participate in confidential mentoring for up to two years to redress demeanor problems. Mentor judges were trained from a curriculum designed by judges, ethicists and a counselor. In conjunction with implementation of the pilot program, effective June 29, 2016, and oper-

ative until June 28, 2018, the commission adopted interim amendment rule 102(q), which provides for disclosure of information to a mentor judge as part of the mentoring program.

Policy Declaration 3.5 of the Commission on Judicial Performance provides that every two years, in even-numbered years, the commission shall review its rules and any proposed enactments, amendments or repeals. In 2016, the commission invited submission of rule proposals, which at the end of 2016 were pending review. After review, any rule enactment, amendment, or repeal being considered by the commission will be circulated for public comment.

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. No changes were made to the policy declarations in 2016.

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 the presiding judge concerning the oversight of judges and subordinate judicial officers. No amendments were made to the Rules of Court pertaining to the commission in 2016.

Code of Judicial Ethics

The California 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. Effective December 1, 2016, the Supreme Court amended canons 3E and 5B of the Code of Judicial Ethics. Advisory committee commentary was added to canon 3E(1), which interprets the term "proceeding" to include prefiling judicial determinations. The amendment to canon 3E(5)(a) and the addition of canon 3E(6), along with commentary, extend similar disqualification provisions to appellate justices as those applying to trial court judges. Canon 5B amendments include changing terminology regarding misleading statements in judicial campaigns and in the judicial appointment process.

The Code of Judicial Ethics, with strikethroughs and underlining to show recent amendments, is included in Appendix 2 with dates of adoption and amendments noted.

Commission Procedures

To view a flowchart of commission proceedings from complaint to commission consideration and decision, see Appendix 5.

Commission Review of Complaints

The commission considers the allegations of each 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. (Commission Rule 109.) 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.

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 legal 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.) Some 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, and when criminal or other proceedings involving the judge are pending. While deferral of an investigation may result in delay in commission proceedings, deferral is often appropriate to ensure that complaints before the commission do not affect court proceedings. Deferral while a reviewing court or other tribunal completes its adjudication reduces the potential for duplicative proceedings and inconsistent adjudications. At each meeting, the commission receives a report regarding the status of each deferred matter. The number of cases deferred in 2016 and the reasons for the deferrals are listed in charts on page 10.

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.

Mentoring

In 2016, the commission instituted a pilot program in Northern California for judges where an investigation has identified a problem with the judge's treatment of others appearing before the judge. Eligible judges will be able to participate in a confidential mentoring process for up to two years. Mentor judges were trained from a curriculum designed by judges, ethicists and a counselor. The judge's success or lack of success in the program will be taken into consideration in determining the

appropriate disposition of the investigation, which shall be suspended for the period of mentoring. Should demeanor problems reoccur, the judge's prior participation in a mentoring program can be considered by the commission as an aggravating factor.

Formal Proceedings

After a preliminary investigation, in cases involving allegations of serious misconduct, the commission may initiate formal proceedings. (Commission Rule 118.) Formal proceedings also may be instituted when a judge rejects a private or public admonishment and files a demand for formal proceedings. (Commission Rules 114, 116.) When formal proceedings are commenced, the commission issues a notice of formal proceedings, which constitutes a formal statement of the charges. The judge's answer to the notice of charges is served and filed with the commission within 20 days after service of the notice. (Commission Rules 118(a), (b), 119(b), 119.5.) Extensions of time to respond to a notice of charges are governed by the rules. (Commission Rules 108, 119.)

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

The commission may disqualify a judge from performing judicial duties once formal proceedings are instituted if the judge's continued service is causing immediate, irreparable, and continuing public harm. (Commission Rule 120.)

Hearing

After the judge has filed an answer to the charges, the commission sets the matter for a hearing. (Commission Rule 121(a).) As an alternative to hearing the case itself, the commission may request the Supreme Court to appoint three special masters to hear and take evidence in the matter and to report to the commission. (Commission Rule 121(b).) The Supreme Court has selected a pool of approximately 45 experienced jurists who have received training to serve as special masters in commission proceedings.

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

Commission Consideration Following Hearing

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

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

Disposition of Cases After Hearing

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

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

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

After formal proceedings, the commission may also close the matter with an advisory letter to the judge or former judge, or close the case without discipline.

Release of Votes

Commission decisions in both public and private discipline include the votes of the individual commission members.

Supreme Court Review

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

Statute of Limitations

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

Standard of Proof

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

Confidentiality of Commission Proceedings

California Constitution, article VI, section 18(i)(1) authorizes the commission to provide for the confidentiality of complaints to and investigations by the commission. The commission's rules provide that complaints and investigations are confidential, subject to certain exceptions, for example, when public safety may be compromised, when information reveals possible criminal conduct, and when judges retire or resign during proceedings. (Commission Rule 102(f)-(q); Policy Declarations 4.1-4.6.) During the course of a staff inquiry or preliminary investigation, persons questioned or interviewed are advised that the inquiry or investigation is confidential. (Policy Declaration 1.9; *Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 528.)

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

After final resolution of a case, the rules require the commission to disclose to the person who filed the complaint that the commission has found no basis for action against the judge or determined not to proceed further in the matter, has taken an appropriate corrective action (the nature of which is not disclosed), or has imposed public discipline. The name of the judge is not used in any written communications to the complainant unless the proceedings are public. (Commission Rule 102(e).)

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

III.
Active and Former Judges
2016 Statistics

Complaints Received and Investigated

In 2016, there were 1,842 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 251 commissioners and referees. The commission's handling of complaints involving commissioners and referees is discussed in Section V.

Judicial Positions
As of December 31, 2016

Supreme Court	7
Courts of Appeal	105
Superior Courts	1,730
Total	**1,842**

New Complaints

In 2016, the commission considered 1,234 new complaints about active and former California judges. The 1,234 complaints named a total of 1,443 judges (894 different judges).

2016 Caseload—Judges

Cases Pending 1/1/16	112
New Complaints Considered	1,234
Cases Concluded	1,210
Cases Pending 12/31/16	122

Discrepancies in totals are due to consolidated complaints/dispositions.

In 2016, the commission considered 96 complaints about subordinate judicial officers. These cases are discussed in Section V.

The commission office also received 454 complaints in 2016 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 2016, the commission ordered 85 staff inquiries and 76 preliminary investigations.

Investigations Commenced in 2016

Staff Inquiries	85
Preliminary Investigations	76

Formal Proceedings

At the beginning of 2016, there were three formal proceedings pending before the commission: *Inquiry Concerning Judge Valeriano Saucedo*, No. 194; *Inquiry Concerning Judge John A. Trice*, No. 196; *Inquiry Concerning Judge Edmund W. Clarke, Jr.*, No. 197. In the *Saucedo* matter, the commission issued a decision in December 2015, but the time for the judge to file a petition for review in the California Supreme Court had not expired by the end of 2015.[1] The judge filed a petition for review in March 2016, which was denied by the Supreme Court in May 2016. The *Trice* matter was concluded in 2016. The commission issued a decision in the *Clarke* matter in September 2016. The judge submitted a petition for review of the commission's determination

[1] The *Saucedo* matter was not final at the end of 2015; it was not included in the complaint disposition statistics for 2015. It is included in the 2016 statistics.

in December 2016, which was pending before the Supreme Court at the end of the year.[2]

During 2016, the commission instituted formal proceedings in one matter (*Inquiry Concerning Judge Gary G. Kreep*, No. 198), which remained pending before the commission.

Formal Proceedings

Pending 1/1/16	3
Commenced in 2016	1
Concluded in 2016	2
Pending 12/31/16	2

Deferral of Investigation

As discussed on page 5, the commission may defer an investigation under certain circumstances. At the beginning of 2016, 10 pending matters had been deferred. The commission ordered 9 matters deferred during 2016. Four matters were returned to the commission's active calendar and were considered and concluded by the commission in 2016. Four matters were returned to the active calendar and remained pending before the commission at the end of 2016. Eleven matters remained deferred at the end of the year.

Deferred Investigations

Pending 1/1/16	10
Investigations deferred in 2016	9
Deferred investigations returned to active calendar and concluded in 2016	4
Investigations returned to the active calendar and pending 12/31/16	4
Deferred investigations pending 12/31/16	11

Discrepancies in totals are due to consolidated complaints/dispositions.

Reasons Investigations Were Deferred in 2016

Deferred pending resolution of underlying case	4
Deferred pending appeal or other review	2
Deferred pending civil, criminal or administrative investigation or proceeding	0
Deferred pending rule 112 monitoring	2
Deferred pending mentoring	1

Complaint Dispositions

The following case disposition statistics are based on cases completed by the commission in 2016, regardless of when the complaints were received.[3] In 2016, the commission concluded a total of 1,210 cases. The average time period from the filing of a complaint to the disposition was 3.30 months. A chart of Complaint Dispositions of all cases completed by the commission in 2016 is included on page 12.

Type of Court Case Underlying Complaints Concluded in 2016

Criminal	42%
General Civil	20%
Family Law	18%
Small Claims/Traffic	6%
All Others	10%

4% of the complaints did not arise out of court cases. These complaints concerned off-bench conduct, such as the handling of court administration and political activity.

[2] The *Clarke* matter is not included in the complaint disposition statistics for 2016.

[3] Staff inquiries and preliminary investigations in the cases closed in 2016 may have commenced in prior years. Cases or portions of cases pending at the end of 2016 are not included in complaint disposition statistics.

Closed Without Discipline

In 2016, after obtaining the information necessary to evaluate the complaints, the commission determined that there was not a sufficient showing of misconduct in 1,079 of the complaints. In other words, there was an absence of facts which, if true and not otherwise explained, might constitute misconduct. A substantial percentage alleged legal error not involving misconduct or expressed dissatisfaction with a judge's decision. The commission closed these complaints without staff inquiry or preliminary investigation.

Following staff inquiry or preliminary investigation, the commission closed another 81 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.

In closing one matter, a preliminary investigation involving Judge Aaron Persky of the Santa Clara County Superior Court, the commission issued an explanatory statement pursuant to California Constitution, article VI, section 18(k), because of the widespread public attention the matter had received. A copy of the explanatory statement is included as Appendix 4.

Source of Complaints Concluded in 2016

Litigant/Family/Friend	88%
Attorney	3%
Judge/Court Staff	2%
All Other Complainants (including members of the public)	5%
Source Other Than Complaint (includes anonymous letters, news reports)	2%

Closed with Discipline

In 2016, the commission removed one judge, publicly censured one judge and imposed six public admonishments. The commission also issued 11 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 2016 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.

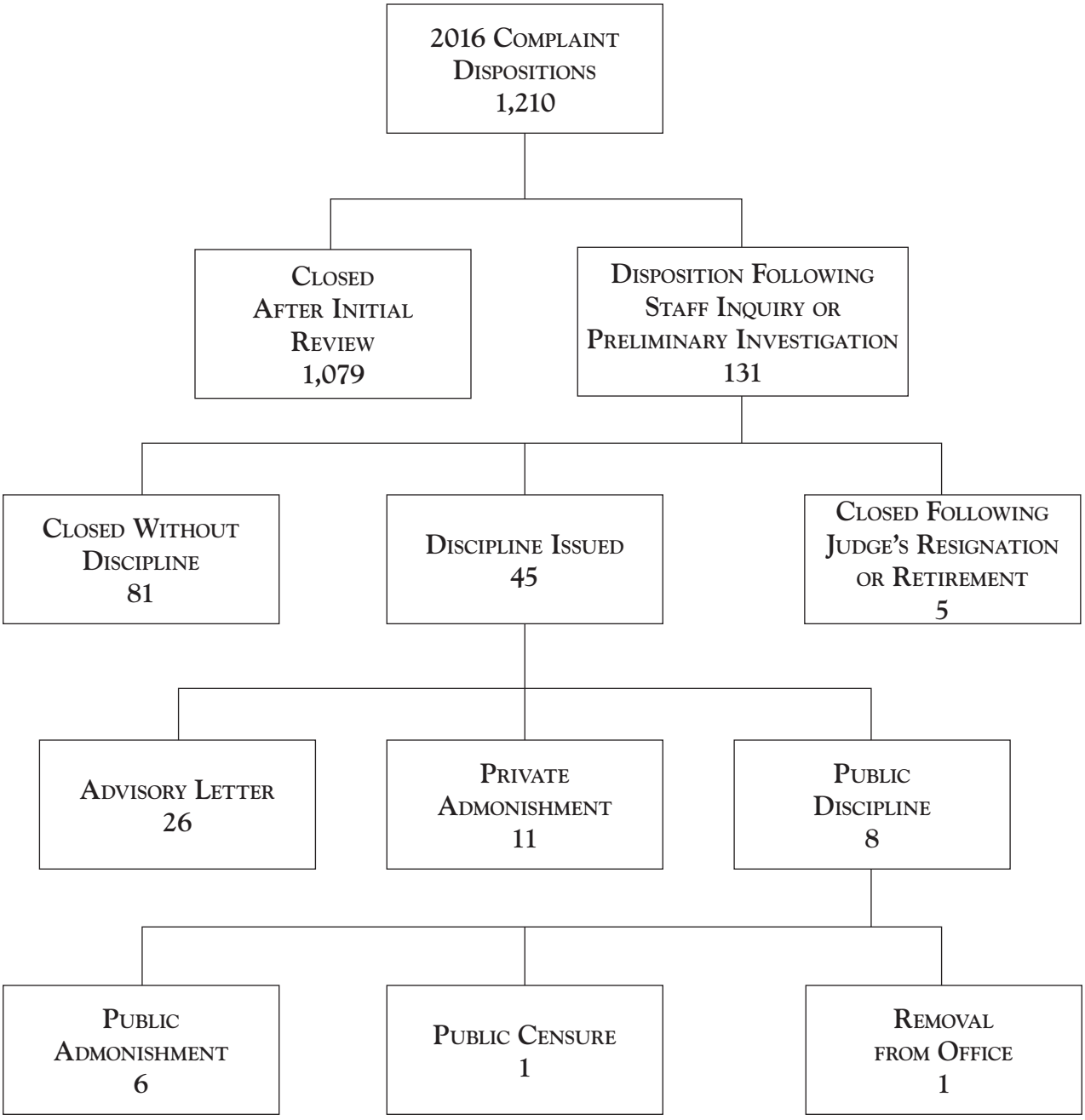
Resignations and Retirements

The California 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 2016, the commission closed five matters without discipline when the judge resigned or retired with an investigation pending.

10-Year Summary of Commission Activity

A chart summarizing statistics on commission activities over the past 10 years appears on page 14.

2016
Complaint Dispositions



Types of Conduct Resulting in Discipline in 2016*

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.

Bias or Appearance of Bias Not Directed Toward a Particular Class
(includes embroilment, prejudgment, favoritism)
[10]

Disqualification/Disclosure/ Post-Disqualification Conduct
[10]

Ex Parte Communications
[10]

Failure to Ensure Rights
[8]

Demeanor/Decorum
[7]

Decisional Delay, False Salary Affidavits
[6]

On-Bench Abuse of Authority in Performance of Judicial Duties
[6]

Miscellaneous Off-Bench Conduct
[4]

Abuse of Contempt/Sanctions
[3]

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

Off-Bench Abuse of Office/ Misuse of Court Information
[3]

Improper Political Activities
[2]

Nonperformance of Judicial Functions/ Attendance/Sleeping
[2]

Gifts/Loans/Favors/Ticket Fixing
[1]

Improper Business, Financial or Fiduciary Activities
[1]

Misuse of Court Resources
[1]

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

10-Year Summary of Commission Activity

New Complaints Considered by Commission

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
	1,077	909	1,161	1,176	1,158	1,143	1,209	1,212	1,245	1,234

Commission Investigations Commenced

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Staff Inquiries	55 (5%)	70 (8%)	102 (9%)	101 (9%)	95 (8%)	72 (6%)	53 (4%)	84 (7%)	69 (6%)	85 (7%)
Preliminary Investigations	54 (5%)	42 (5%)	63 (5%)	101 (9%)	77 (7%)	80 (7%)	102 (8%)	101 (8%)	83 (7%)	76 (6%)
Formal Proceedings Instituted	1 (<1%)	2 (<1%)	1 (<1%)	2 (<1%)	1 (<1%)	2 (<1%)	0 (0%)	2 (<1%)	3 (<1%)	1 (<1%)

Disposition of Commission Cases

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total Dispositions	1,058	892	1,115	1,133	1,138	1,152	1,181	1,174	1,231	1,210
Closed After Initial Review	975 (92%)	805 (90%)	1,007 (90%)	988 (87%)	995 (87%)	1,000 (87%)	1,061 (90%)	1,039 (89%)	1,103 (90%)	1,079 (89%)
Closed Without Discipline After Investigation	45 (4%)	48 (5%)	74 (7%)	96 (8%)	99 (9%)	106 (9%)	88 (8%)	90 (8%)	86 (7%)	81 (7%)
Advisory Letter	20 (2%)	18 (2%)	25 (2%)	31 (3%)	26 (2%)	30 (3%)	21 (2%)	29 (2%)	26 (2%)	26 (2%)
Private Admonishment	9 (<1%)	7 (<1%)	3 (<1%)	8 (<1%)	10 (<1%)	6 (<1%)	7 (<1%)	9 (<1%)	11 (<1%)	11 (<1%)
Public Admonishment	5 (<1%)	7 (<1%)	2 (<1%)	4 (<1%)	5 (<1%)	5 (<1%)	1 (<1%)	3 (<1%)	2 (<1%)	6 (<1%)
Public Censure	1 (<1%)	0 (0%)	1 (<1%)	3 (<1%)	1 (<1%)	1 (<1%)	1 (<1%)	2 (<1%)	2 (<1%)	1 (<1%)
Removal	2 (<1%)	2 (<1%)	0 (0%)	0 (0%)	0 (0%)	1 (<1%)	0 (0%)	0 (0%)	0 (0%)	1 (<1%)
Judge Retired or Resigned with Proceedings Pending	1 (<1%)	5 (<1%)	3 (<1%)	3 (<1%)	2 (<1%)	3 (<1%)	2 (<1%)	2 (<1%)	1 (<1%)	5 (<1%)

IV.
Active and Former Judges 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 2016 are summarized in this section. All public decisions in commission cases are available on the commission's website at http://cjp.ca.gov.

Removal from Office by the Commission

In December of 2015, the commission issued an order of removal of Judge Valeriano Saucedo of the Tulare County Superior Court. In March 2016, Judge Saucedo filed a petition for review in the California Supreme Court which was denied in May 2016. Because the matter was not concluded at the end of 2015, it was not included in the 2015 case disposition statistics. It is included in the 2016 statistics.

Order of Removal of Judge Valeriano Saucedo December 1, 2015

Judge Valeriano Saucedo of the Tulare County Superior Court was removed by the commission for willful misconduct and conduct prejudicial to the administration of justice that brings the judicial office into disrepute. The commission's action concluded formal proceedings, during which there was a hearing before special masters and an appearance before the commission. The commission's decision was final on December 31, 2015; however, the period for seeking review by the Supreme Court had not expired.

The commission found that the judge engaged in a highly improper course of conduct toward his courtroom clerk. The judge created and sent to his own home an unsigned letter, addressed to the clerk's husband at his place of employment, accusing the clerk in crude terms of having an affair with a court bailiff. The judge showed the letter to his clerk, and offered to intercept the letter before it was delivered to her husband, in an attempt to foster a close personal relationship with her. The judge did not report the letter to his presiding judge, court administration, or law enforcement (although the clerk insisted that it should be reported), and told the clerk not to report it and that she could be fired if she reported it. Later that day, the judge told the clerk that he had called the husband's place of business and had the letter intercepted before it was delivered to him; in the commission proceedings, the judge admitted that these statements were false, and that he never contacted anyone at the clerk's husband's place of business.

During the next two months, Judge Saucedo sent the clerk hundreds of text messages of a personal nature, gave her approximately $26,000 in gifts, including a BMW automobile and a Disneyland trip package for her family, and provided legal advice to her son. The special masters and the commission found that Judge Saucedo inappropriately pressured his clerk to have a close personal relationship with him both directly and by giving her valuable gifts, knowing that she was vulnerable because she had limited financial resources.

During an exchange of text messages about the judge's supplying funds for the purchase of the car and the trip to Disneyland, Judge Saucedo pressured the clerk about the necessity of being a "special friend" if his financial support was to continue. The clerk responded that she intended to stop telling lies to her family and friends, and stated that "[t]his has gone bad." The judge said that he would resign as judge the next day, and that his career was "toast." The clerk replied, saying she expected the judge to follow through with the cost of her family's trip and the car as promised, that she did not want to hear another word about their relationship status, and that she considered the judge a friend and nothing else.

The judge asked the clerk to call; she refused to call or text. He then texted that his career was "toast" unless she talked to him; he wrote that he was "[i]n the garage committing suicide" and that he had "the red car running with the door down." The clerk replied that she would call 911, and said that she would not say anything if he followed through with what she had asked. She also told him to stop calling. The judge replied, thanking her for sparing his life and career.

Judge Saucedo paid the remaining balance for the car ($14,000), and deposited $200 in the clerk's account. The clerk thereafter told the judge that she needed the money for the Disneyland trip that had been arranged for her family after he promised to pay for it, and also told him that she was going to ask for a transfer out of his department. The next day, during a criminal proceeding, the judge handed the clerk a typewritten note while she was sitting at her courtroom desk. The note contained an allegation that the previous day, the clerk had threatened to go to Human Resources unless the judge deposited $8,000 in her account, and stated that he had deposited the money in her account. The note directed the clerk to "[p]lease stop," and set forth the Penal Code provisions defining extortion.

During the hearing before the special masters, Judge Saucedo denied writing the anonymous letter and other essential facts of the case, and claimed that he was only "mentoring" the clerk. The special masters and the commission found that the judge's testimony lacked credibility. The commission pointed out that the judge's claims were at odds with documentary evidence such as text messages and notes to the clerk, assertions made in documents he signed, and prior statements. The commission also noted that the judge had admitted lying about having called someone at the clerk's husband's place of business to have the anonymous letter intercepted, and that he had encouraged his clerk to lie about his gifts to her.

The commission found that Judge Saucedo's conduct in writing the anonymous letter, failing to report it, and using it as a means to promote a closer relationship with his clerk violated the Code of Judicial Ethics, canon 1 (requiring judges to personally observe high standards of conduct so that the integrity and independence of the judiciary is preserved), canon 2 (requiring judges to avoid impropriety and the appearance of impropriety in all of the judge's activities), and canon 2A (requiring judges to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary). The commission also found that Judge Saucedo's conduct that included giving his clerk substantial monetary and tangible gifts over a two-month period as a means to convince her to become involved in a closer personal relationship violated canons 1, 2, and 2A, as well as canon 3C(5), which requires judges to avoid nepotism and favoritism. In addition, the commission found that Judge Saucedo's extortion allegation, and the manner in which he made the accusation, violated canons 1, 2, and 2A, as well as canon 2B(1), which provides that a judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, and shall not convey or permit others to convey the impression that any individual is in a special position to influence the judge. The commission found that the judge interrupted court proceedings to hand his clerk the note accusing her of extortion and that, by doing so, he improperly used the power of his judicial office to intimidate the clerk and seek to ensure her silence regarding his conduct during the previous two months. He did not report the claimed extortion demand to law enforcement or court officials. The commission also found that the judge's conduct in providing the clerk's son with legal advice violated canon 4G, which precludes judges from practicing law.

The commission concluded that each of Judge Saucedo's canon violations constituted, at a minimum, prejudicial misconduct. The judge acted in bad faith with respect to the entire course of conduct proven at the hearing. The commission found that Judge Saucedo clearly knew that making extortion allegations against his clerk while he was on the bench was not within his judicial powers and that, at the very least, the judge engaged in this conduct with a conscious disregard for the limits of his judicial authority.

The commission found that Judge Saucedo was acting in a judicial capacity when he called

his clerk into chambers to show her the anonymous letter, instructed her not to report it to court administration, and told her that reporting the letter could result in her being fired. The judge was acting in a supervisory capacity because he was giving his clerk advice about a court personnel matter. The commission also concluded that Judge Saucedo was acting in a judicial capacity when he handed his clerk the note accusing her of extortion in court. Since the judge was acting in a judicial capacity in these two instances, his unjudicial conduct, committed in bad faith, constituted willful misconduct. In all other instances, he engaged in prejudicial misconduct. The commission also stated that even if Judge Saucedo had not been acting in a judicial capacity during his initial meeting with the clerk and when he handed her the extortion note, the entirety of his conduct warranted removal, pointing out that a judge may be removed for prejudicial misconduct, as well as willful misconduct.

The commission rejected Judge Saucedo's plea for censure, rather than removal, stressing that the judge had engaged in a calculated course of egregious misconduct involving dishonesty and subterfuge. In addition to engaging in misconduct that demonstrated a profound lack of veracity and integrity, the judge was not truthful during the investigation or the hearing; this included lying under oath at the hearing before the special masters. The commission took note of the nature and number of acts of misconduct, and the fact that Judge Saucedo failed to show appreciation for the serious nature of his misconduct, instead blaming the clerk and minimizing the gravity of his misconduct. In addition, the commission noted the impact of the judge's conduct on the public's perception of the judiciary.

The commission expressed its recognition and appreciation of the judge's many contributions to his community and the legal profession and his lack of prior discipline during his 10 years on the bench, but stated that his distinguished career and lack of prior discipline could not undo his egregious misconduct. The commission pointed out that there can be no mitigation for maliciously motivated unjudicial conduct. In conclusion, the commission stated that certain misconduct is so completely at odds with the core qualities and role of a judge that no amount of mitigation can obviate the need for removal in order to fulfill the commission's mandate to protect the public, enforce high standards of judicial conduct, and maintain public confidence in the integrity of the judiciary.

Public Censure by the Commission

In 2016, the commission imposed one public censure.

Public Censure of Judge John A. Trice February 4, 2016

Judge John A. Trice of the San Luis Obispo County Superior Court was censured pursuant to a stipulation that resolved the matters included in a notice of formal proceedings, under commission rule 127. Judge Trice expressly admitted that the facts stated in the stipulation were true and that he agreed with the stated legal conclusions.

In 1990, judgment was entered in the marital dissolution case of Judge Trice, who was then an attorney. The judgment, and a marital settlement agreement he signed, required him to pay his ex-wife her interest in his future military retirement and pension benefits "as and when received." A formula was provided to calculate her share of the pension benefit.

Judge Trice received monthly retirement payments beginning in July 2012. Although he had the ability to contact his ex-wife and interacted with her at their son's wedding, he did not tell her he had retired and was receiving his pension benefits. Instead of paying his ex-wife her share of the pension benefits "as and when received," Judge Trice set up monthly transfers, based on what he thought his ex-wife was owed, from a savings account into a separate checking account owned solely by him and his current wife.

In April 2014, Commissioner Patrick Perry, who had represented Judge Trice's ex-wife in the 1990 dissolution proceedings, asked her if she was aware that Judge Trice had retired from the military and if she was receiving her share of his military pension. She contacted an attorney. In May

2014, Judge Trice told her attorney he had not made payments to his ex-wife because Commissioner Perry had told him he was not responsible for initiating the payments and that it was her responsibility to initiate the process. Judge Trice made similar statements to Judge Barry LaBarbera and the court executive officer (CEO). Judge Trice's statements about advice he had received from Commissioner Perry were untrue.

In July 2014, Judge Trice signed a stipulation to pay pension benefit arrears to his ex-wife and to arrange for future direct payment to her from the military. Judge Trice asked Judge LaBarbera to sign it and a related order. Although Judge Trice had not discussed this with his ex-wife's attorney, and he had no authority to determine who would handle the matter, he directed the CEO to submit the documents to Judge LaBarbera, who signed them.

The commission found that Judge Trice's failure to comply with a court order that he make payments to his ex-wife "as and when" his military benefits were received was an affront to the authority and dignity of the judicial system he serves, and that his failure to advise her that he was retired and receiving the pension benefits violated his fiduciary duties to her as set forth in Family Code sections 721 and 2102. The commission concluded that these actions constituted prejudicial misconduct and violated canons 1 (a judge shall personally observe high standards of conduct so that the integrity of the judiciary will be preserved), 2 (a judge shall avoid impropriety and the appearance of impropriety), and 2A (a judge shall respect and comply with the law and act in a manner that promotes public confidence in the integrity and impartiality of the judiciary). The commission also found that Judge Trice's untrue statements about advice he received from Commissioner Perry constituted prejudicial misconduct and violated canons 1, 2, and 2A. The commission further found that by directing who would handle his stipulation and order, Judge Trice committed willful misconduct, abused his authority, and violated canons 1, 2, 2A, and 2B(2) (a judge shall not use the judicial position to advance personal interests).

In addition, in 2013, Judge Dodie Harman, then the assistant presiding judge and supervising judge of the criminal team, which included Judge Trice, sent him an email saying that she had been looking for him to talk about covering the next day's calendars, and asking where he had been that afternoon since he did not check with her before leaving and whether he would be available to help with the next day's calendars. Judge Trice's response to Judge Harman, in an email he copied to the CEO, the presiding judge, and two other judges, included disparaging comments ("I was elected by the citizens of our county, unlike you") and undignified, discourteous comments ("Pathetic. . . . get a life," "The Court will be better off without you in some position of assumed power"). He also implied that he would not speak to Judge Harman without a "witness or reporter" present. The commission found that Judge Trice's conduct violated canons 1, 2A, 3B(4) (a judge shall be patient, dignified and courteous to those with whom the judge deals in an official capacity), and 3C(2) (a judge shall cooperate with other judges and court officials in the administration of court business) and constituted improper action at a minimum.

Judge Trice was also disciplined for violating canon 3C(2) in another matter. In October 2014, the judges agreed to continue a policy and practice of random rotation of court reporters, even though some judges complained about having to work with a certain court reporter. When a rotation schedule was sent assigning that court reporter to Judge Trice's department, he responded that he would "not work with" her. The CEO replied that the rotations were part of a labor agreement, that none of the judges had been able to exclude a particular reporter from their courtrooms, and that the process should be fair to the other judges and reporters. Judge Trice again said he would "not work with her" and wrote, "She [the court reporter] either moves, or the [presiding judge] can move me and my staff. I will not call my calendar on Tuesday with her in the courtroom. I will order her out of the room in public view." He requested that a special judges' meeting be scheduled "[i]f there is still resistance to this," but withdrew the request the next day. The commission found that Judge Trice's statement that he would refuse to call his calendar if the court reporter was in the courtroom and would "order her out of the room

in public view" was intemperate, inconsistent with his duty to cooperate with court officials in the administration of court business, and violated canons 1, 2A, 3B(4), 3C(1) (a judge shall not, in the performance of administrative duties, engage in speech or conduct that would reasonably be perceived as bias or prejudice), and 3C(2), and constituted improper action at a minimum.

Judge Trice was also disciplined for failing to disclose on the record his close personal friendship with a criminal defense attorney who appeared frequently in his court. He claimed the prosecutors were aware of his relationship with the attorney. The commission found that even if the friendship did not require disqualification, Judge Trice's failure to disclose the relationship on the record violated canon 3E(2) (duty to disclose on the record information that is reasonably relevant to the question of disqualification) and constituted improper action at a minimum.

In determining that a public censure was the appropriate sanction, the commission considered Judge Trice's acknowledgement that he engaged in multiple incidents of misconduct and that his prior discipline during 13 years on the bench was limited to a 2012 advisory letter for continuing to preside over matters in a case after "voluntarily recusing" from a new trial motion.

Public Admonishment by the Commission

The commission may publicly admonish a judge for improper action or dereliction of duty. In 2016, the commission issued six public admonishments that became final. A seventh admonishment issued by the commission was the subject of a petition for review that was still pending before the Supreme Court at the end of the year.

Public Admonishment of Judge Christopher G. Wilson January 22, 2016

Judge Christopher G. Wilson of the Humboldt County Superior Court was publicly admonished by the commission for conduct that constituted, at a minimum, improper action, pursuant to commission rules 115-116 (governing public admonishments).

The commission found that Judge Wilson engaged in improper conduct when he signed and submitted false salary affidavits on eight occasions between 2011 and 2014 and received his salary for judicial office in violation of law on six occasions in 2013 and 2014. The California Constitution provides that a judge "may not receive the salary for the judicial office held by the judge while any cause before the judge remains pending and undetermined for 90 days after it has been submitted for decision." (California Constitution, article VI, section 19.) Government Code section 68210 provides that no judge "shall receive his salary unless he shall make and subscribe before an officer entitled to administer oaths, an affidavit stating that no cause before him remains pending and undetermined for 90 days after it has been submitted for decision."

The commission acknowledged that a judge's workload may make prompt decision of all matters submitted to the judge impossible, particularly in counties like Humboldt where the average workload appears to exceed the statewide average. However, that does not justify the execution of false salary affidavits or the unlawful receipt of salary for judicial office. The commission found that the judge's conduct violated his duties under canon 2A to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity of the judiciary.

In determining that public admonishment was the appropriate sanction, the commission noted that Judge Wilson received a private admonishment in 2007 for deciding matters in seven cases between 168 and 277 days after they were taken under submission, signing three false salary affidavits, and failing to disclose in criminal cases his dispute and ongoing negotiations with the district attorney over disclosure of his salary affidavits and pay records.

Public Admonishment of Judge Joseph E. Bergeron January 25, 2016

Judge Joseph E. Bergeron of the San Mateo County Superior Court was publicly admonished by the commission for conduct that constituted, at a minimum, improper action, pursuant to

commission rules 115-116 (governing public admonishments).

The commission found that Judge Bergeron treated certain women at court inappropriately, despite having been warned by the court about his behavior. In August 2014, when a courtroom clerk temporarily assigned to his courtroom stood up to retrieve a file from the bench where he was presiding, he asked her whether she played baseball and, before she could respond, tossed a crumpled calendar at her, which hit her in the chest and fell to the floor. The clerk, who was taken aback, responded, "I guess not." After the next matter concluded, the judge again tossed a crumpled calendar at the clerk, which hit her in the chest and fell to the floor. Judge Bergeron acknowledged that his actions were discourteous and undignified.

On a different occasion in 2014, Judge Bergeron, who had not yet arrived at court, telephoned the clerk's station while a different courtroom clerk temporarily assigned to his department was on a telephone call regarding a jury panel scheduled to arrive at 9:00 or 9:15 a.m. He left a voicemail message stating that he did not know who his clerk would be that day, that he would arrive at court between 9:30 a.m. and 9:45 a.m., and that the jurors should not be sent to his courtroom. He asked the clerk to call him back, but she did not because he did not provide a telephone number in his message. When Judge Bergeron arrived at court, he called the clerk's supervisor from his chambers and complained about the clerk in a very stern, very loud voice, yelling words to the effect of, "She didn't call back. She didn't even pick up the message. You are putting people in here who can't follow instructions." The judge's complaints about the clerk were so loud that the clerk and others in the courtroom, but not jurors, heard them. Judge Bergeron acknowledged raising his voice and overreacting to the situation.

On a third occasion in 2014, Judge Bergeron was presiding over a calendar in a different courtroom. A female deputy district attorney came in to the department's conference room to pre-try a criminal matter. As she was leaving, Judge Bergeron asked her if her office was across the hall. When she said it was, he inquired about the availability of coffee there in a manner that conveyed that he would like her to bring him coffee. She responded by asking the judge, in a sarcastic manner intended to convey the impropriety of his request, what kind of coffee he would like and whether he would like cream and sugar. He responded, "I'll make it easy for you" and said he would take his coffee black. As the deputy district attorney was leaving, the judge said, "If I had cash [or money], I'd give you a tip." She returned with the judge's cup of coffee and said, again intending to convey with sarcasm the impropriety of his request, "Here is your coffee. Is there anything else I can do for you, Your Honor? Can I iron your shirts?" The judge remarked, "Well, at noon if it's still raining outside I can give you my keys, and you can go get my car."

The commission found that the judge's conduct violated canons 1 (duty to maintain high standards of conduct), 2A (duty to act in a manner that promotes public confidence in the judiciary), and 3B(4) (duty to be patient, dignified and courteous to those with whom he deals in an official capacity).

In determining that public admonishment was the appropriate sanction, the commission noted that in October 2013, the court's presiding judge and court executive officer told Judge Bergeron that six female court employees had complained that he had treated them in a rude, abrasive and condescending manner, and that it was imperative that Judge Bergeron alter his behavior and prevent future complaints.

The commission also noted that Judge Bergeron had been privately disciplined on two prior occasions. In April 2014, the commission privately admonished him for embroilment and abuse of authority. After a clerk alleged that an attorney in a matter pending before the judge had grabbed the clerk's arm in the courtroom, Judge Bergeron summoned the attorney to a proceeding to address the attorney's actions and conducted that proceeding without having jurisdiction to do so, failed to advise the attorney of the nature of the proceeding or of his rights, relied on the unsworn testimony of a third party without affording the attorney the opportunity to be

heard, questioned the attorney and asked him if he wanted to testify, and asserted that the attorney had committed a crime while the incident was still under investigation by law enforcement. The commission found that the judge's actions violated canons 1 and 2A. In 2004, Judge Bergeron received an advisory letter for violating canon 3B(7)'s prohibition on ex parte communications. He failed to place on the record, prior to meeting with deliberating jurors, a stipulation reflecting counsel's consent to the meeting and he continued meeting with jurors after counsel objected to some of the judge's prior meetings with jurors and stated that all communication with the jury should be made in open court.

Public Admonishment of Judge Henry J. Walsh February 10, 2016

Judge Henry J. Walsh of the Ventura County Superior Court was publicly admonished by the commission for conduct that constituted, at a minimum, improper action, pursuant to commission rules 115-116 (governing public admonishments).

The commission found that after Judge Walsh was reelected in June 2012, he engaged in a pattern of failing to disclose the campaign contributions of attorneys who appeared before him. For example, in July 2012, Judge Walsh presided over a hearing on a defendant's motion for summary judgment without disclosing on the record that he had received a $1,499 contribution from the defendant's lead attorney, a $1,000 contribution from that attorney's law partner, and a $250 contribution from the plaintiff's attorney.

The commission found that Judge Walsh's conduct violated canon 3E(2) (judges must disclose on the record information reasonably relevant to the question of disqualification), and Code of Civil Procedure section 170.1, subdivision (a)(9)(C), which requires judges to disclose on the record campaign contributions of $100 or more received from a party or lawyer in a matter that is before the court. The commission found that the judge's failure to disclose campaign contributions after the election deprived the parties and attorneys appearing before him of information to which they were entitled and could give rise to public distrust in the independence and impartiality of the judiciary.

Public Admonishment of Judge Stuart Scott February 17, 2016

Judge Stuart Scott of the Santa Clara County Superior Court was publicly admonished by the commission for conduct that constituted, at a minimum, improper action, pursuant to commission rules 115-116 (governing public admonishments).

In February 2015, Judge Scott presided over a jury trial in a criminal case. Less than three hours after the jury found the defendant guilty, the judge asked to speak to the prosecutor privately. Before they met in the judge's chambers, the prosecutor told the judge that she was looking forward to getting his feedback on her performance in trial, but that several people in her office had told her that it was necessary to wait until after sentencing. Judge Scott told the prosecutor not to worry and that they would be discreet. Judge Scott then closed his chambers door and told the prosecutor to sit down. He told the prosecutor she had done a great job. She interrupted to say that she had pending matters in the department next door with the deputy public defender who had opposed her in the trial, who might be waiting for her. Judge Scott again said not to worry, that they would be discreet, and that she should just "sit tight." He then gave her additional feedback on her trial technique and made negative comments about defense counsel. She again told Judge Scott she might have to leave, and he said not to worry and that this would be discreet. After they discussed what sentence might be imposed on the defendant, the prosecutor told the judge she had several readiness conferences next door and had to go. As she left Judge Scott's chambers, he said, "This conversation never happened."

Two and a half weeks later, after the prosecutor reported the conversation to her supervisor, an article about the incident appeared in the San Jose Mercury News. Judge Scott reported the incident to the commission shortly thereafter.

The commission found that Judge Scott violated canon 3B(7) when he knowingly engaged in improper ex parte communication about a case that was pending sentencing before him. The commission also found that the judge's conduct violated canon 2A, which requires judges to conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Public Admonishment of Judge Patrick E. Connolly March 23, 2016

Judge Patrick E. Connolly of the Los Angeles County Superior Court was publicly admonished by the commission for conduct that constituted, at a minimum, improper action, pursuant to commission rules 115-116 (governing public admonishments).

The commission found that Judge Connolly was embroiled and abused his authority by setting multiple post-trial hearings, including an ex parte evidentiary hearing, relating to statements a defense attorney made at sidebar during a July 2010 criminal trial, without citing the attorney for contempt or issuing an order to show cause (OSC) re contempt. The commission found that the judge failed to give the attorney notice of the subjects of his inquiry prior to conducting the evidentiary hearing, engaged in improper ex parte communications before the hearing, and improperly excluded the attorney from part of the hearing.

During a jury trial, after Judge Connolly called for a sidebar conference to ask defense counsel for an offer of proof, defense counsel said his courtroom observer had reported seeing the prosecutor signal a police officer witness by slowly shaking her head. Judge Connolly told defense counsel that his statement was "outrageous" and that they would "take this up at a later time."

After the defendant was acquitted, Judge Connolly set six hearings over six months relating to defense counsel's statement, even though the statement does not appear to have constituted contempt of court. The commission determined that the judge abused his authority by setting the hearings without citing either attorney for contempt or issuing an OSC re contempt. Citing *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 857, the commission noted that ordering a person to appear in court when no matter requiring the person's attendance is pending is a serious misuse of the judicial office. At the outset of the hearings, Judge Connolly contacted a judge in a different courthouse to obtain information and transcripts relating to another possible contempt matter involving other statements by the same defense attorney that reflected negatively on a prosecutor. Judge Connolly continued at least two hearings to obtain transcripts from this unrelated case. The commission found that these actions gave the appearance that the judge was not acting as an impartial factfinder, but was conducting an independent investigation into defense counsel's conduct, that he was embroiled and biased against defense counsel, and that his conduct violated canons 2A (duty to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary) and 3B(5) (duty to refrain from speech or other conduct that would reasonably be perceived as bias or prejudice).

On February 3, 2011, Judge Connolly presided over an evidentiary hearing with the apparent intention to obtain evidence that could be used in future contempt proceedings. Before the hearing, the judge engaged in improper ex parte communications when he met privately in his chambers with a deputy district attorney who was representing the prosecutor in the underlying case. The substance of their discussion was not disclosed to defense counsel. The meeting in chambers and the failure to disclose its substance to defense counsel violated canon 3B(7) and gave rise to an appearance of impropriety and bias in violation of canons 2A and 3B(5).

Judge Connolly conducted part of the February 3 hearing with the prosecutor and her attorney excluded from the courtroom, and excluded defense counsel from part of the hearing. Defense counsel correctly maintained that the court lacked authority to conduct the hearing and objected to his improper exclusion from the hearing. In defense counsel's absence,

Judge Connolly called his court reporter as a witness and permitted the deputy district attorney to call two witnesses. The judge also provided the district attorney's office, but not defense counsel, with transcript excerpts pertaining to two occasions during the trial on which defense counsel had arguably questioned the integrity of the prosecutor, and informed the prosecution that he was inquiring into both incidents. After the witnesses testified, Judge Connolly called defense counsel back into the courtroom, said he would file an OSC re contempt on February 23, 2011, and ordered defense counsel to appear on that date. On February 23, 2011, Judge Connolly took the contempt matter off calendar. The commission found that the February 3 evidentiary hearing and the ex parte manner in which it was conducted constituted an abuse of authority. No cause was pending before Judge Connolly at the time, neither attorney had been cited for contempt, no OSC's re contempt had been issued, and the underlying case had concluded months earlier. Judge Connolly's determination to proceed with an evidentiary hearing gave the appearance that he was conducting an independent investigation into both attorneys' conduct, which was beyond the scope of his authority. He also violated defense counsel's procedural rights by excluding him from part of the hearing over his objection with no legal basis, and failing to give him notice of the specific subjects of his inquiry.

In imposing this public admonishment, the commission considered as an aggravating factor Judge Connolly's 2010 private admonishment for his use of profanity in a judicial profile interview and in chambers discussions with attorneys.

Public Admonishment of Judge Jaime R. Román May 16, 2016

Judge Jaime R. Román of the Sacramento County Superior Court was publicly admonished by the commission for conduct that constituted, at a minimum, improper action, pursuant to commission rules 115-116 (governing public admonishments).

The commission found that Judge Román abused his authority and violated due process rights of individuals appearing before him when ordering an individual incarcerated for contempt; ordering the payment of monetary sanctions, attorney fees and costs; and granting ex parte relief. The commission also found that Judge Román's conduct in one of the sanctions matters raised an appearance of a lack of impartiality and embroilment.

In a criminal case, Judge Román held a witness in contempt of court for allegedly making an obscene gesture when he was being sworn to testify. The judge did not inform the witness that he was being charged with contempt and did not give the witness the opportunity to speak on his behalf before sentencing him. The commission determined that Judge Román's actions constituted abuse of the contempt power and abuse of authority, violated the witness's due process rights, and violated canons 2A (a judge shall respect and comply with the law and act in a manner that promotes public confidence in the integrity and impartiality of the judiciary) and 3B(7) (a judge shall accord to every person who has a legal interest in a proceeding the "full right to be heard according to law"). The commission also found that the judge violated canon 2A by failing to issue a written order reciting the evidentiary facts supporting the contempt finding, as required by statute. In the same case, Judge Román sanctioned defense counsel $150 for failure to appear to discuss jury instructions as the judge had ordered. The judge did not give the attorney notice that he was contemplating a monetary sanction and never stated the statutory basis for the sanction. The commission determined that the judge abused his authority and violated due process by imposing a monetary sanction without prior notice, and that his conduct violated canons 2A and 3B(7).

In a family law case, Judge Román awarded the petitioner $59,000 in attorney's fees and costs, even though the petitioner had not requested the awards and the judge had not provided notice to the respondent or her attorney that he was contemplating such awards. The judge's order also failed to include the findings required by Family Code section 2030, subdivision (a)(2). Judge Román vacated the order nearly two

months later, after the respondent filed a motion to vacate. The commission determined that the judge abused his authority, violated due process, and violated canons 2A and 3B(7) by issuing the awards without notice or an opportunity to respond. The commission also found that the judge's comments in his initial order reflected embroilment, and that both of the judge's orders raised an appearance of a lack of impartiality and embroilment in violation of canon 2A.

In another family law case, the respondent filed an ex parte motion and declaration asking the court to order the petitioner to immediately turn over certain alleged belongings of their 16-year-old child, including her iPhone and iPad. Nothing in the respondent's declaration provided a basis for granting relief without notice. At the hearing, the petitioner's attorney objected on the ground that the respondent had not provided notice of the demand, other than by fax the night before the hearing, and that the petitioner (who was absent) therefore had no opportunity to respond. Judge Román nevertheless ordered the petitioner to turn over the phone and iPad forthwith. The commission determined that Judge Román thereby abused his authority, violated the father's due process rights, and violated canons 2A and 3B(7).

Public Admonishment of Judge Edmund W. Clarke, Jr. September 29, 2016

Following formal proceedings (Commission Rule 118, et seq.), the commission issued a decision imposing a public admonishment on Judge Edmund W. Clarke, Jr., of the Los Angeles County Superior Court. He filed a petition for review in the Supreme Court, pursuant to article VI, section 18(d) of the California Constitution, in December 2016. Because the matter was still pending at the end of 2016, it is not included in the 2016 statistics but is summarized here.

The commission found that Judge Clarke engaged in a pattern of discourteous and undignified treatment of jurors while presiding over jury selection in a criminal case in May 2014. One prospective juror ("juror 7122") complained that the woman who checked in the jurors had been "really disrespectful…." Although Judge Clarke had already dismissed the juror for hardship, he ordered the juror to stay and tell him "about that at the end of the day," and told the juror, "[G]o to the hall and stay and come in, act like an adult and you can face her and tell me everything she did wrong." Juror 7122 went into the hallway, where she was seen crying. After the next juror remarked, "Hate to follow that[,]" Judge Clarke responded, "Trust me, it would be hard not to look good after that."

Approximately an hour later, near the end of the afternoon session, juror 7122 was called back into the courtroom, where Judge Clarke questioned her. After she apologized and said she should have kept her mouth shut, Judge Clarke said, "Tell me what my clerk said that caused you to personally go after her like that." Juror 7122 responded that when she had told the clerk that she was having anxiety, the clerk responded, "Well, I have anxiety too. You guys back up," and that, based on the clerk's tone and gestures, the juror thought the clerk was making a public joke of the juror's anxiety.

Although the juror apologized, Judge Clarke said she had attacked the clerk with her criticism and, after confirming that she worked as a waitress, asked her how she would feel if he came into her establishment and unfairly criticized her loudly in front of her manager and other employees. He went on, stating, among other things, "Every trial there's someone who tries to lie to me. There's a lot of good people, but there's plenty of liars. [¶] So if you came here thinking that this was going to be Disneyland and you were getting an E Ticket and have good time [*sic*], I'm afraid you have no sense of what is going on in this building. [¶] Now, seven years ago the first clerk that was assigned to me, she's still here. The only clerk I've ever had. One juror, in all that time, out of thousands, has ever complained about her. That's you. [¶] You can leave now knowing that's what you accomplished. Goodnight." Judge Clarke acknowledged that he was angry at the juror and she had gotten "under [his] skin," and that he was defensive and felt as if she had attacked a person in his family.

The commission found that Judge Clarke's disparaging, discourteous treatment of the juror violated canons 1 (a judge shall uphold the integrity of the judiciary), 2 (a judge shall avoid impropriety and the appearance of impropriety), 2A (a judge shall act in a manner that promotes public confidence in the integrity and impartiality of the judiciary) and 3B(4) (a judge shall be patient, dignified and courteous to those with whom the judge deals in an official capacity), and constituted prejudicial misconduct. The commission also found that, by ordering juror 7122 to wait in the hall, Judge Clarke engaged in willful misconduct and violated canons 1, 2, 2A, 3B(4) and 3B(5) (a judge shall perform judicial duties without bias or prejudice). The commission stated that even if inquiring into the juror's complaint was within the judge's managerial duties, the responsibility entailed determining whether there was merit to the juror's complaint, not jumping to the conclusion that the complaint was meritless and immediately reprimanding her in open court.

The commission also determined that Judge Clarke engaged in improper action and violated canon 3B(4) when he accused another prospective juror of dishonesty in an intemperate and disparaging manner. After the juror wrote on her hardship request that she could not speak or understand English, but admitted she had been in the United States for 25 years, the judge accused her of trying to fool him, stating, among other things, that she better have a different reason why she wanted to be excused than that. After a Spanish interpreter arrived, he asked her why she had been crying. She said she felt ashamed that she did not know how to speak English and explained that she had been naturalized as a citizen when she was two years old and then sent to Mexico, where she lived until adulthood.

The commission also found that Judge Clarke violated canon 3B(4) when he joked about two prospective jurors' limited financial resources and revealed personal financial information in open court. One juror had written on her hardship form that she had $25 in her checking account. The judge commented it was "an impressive and convincing figure." After she thanked the judge for "not sharing it[,]" he remarked, "Well, every one of these lawyers spent more than that on lunch today." The juror was embarrassed and later cried about the incident. After the juror was excused and left the courtroom, the judge stated, "She has $25 in her checking account. I know you all eat for less than $25. Sometimes we don't. That's cutting it close." The commission rejected the judge's claim that he revealed the specific amount in the juror's checking account to provide the attorneys with a factual basis for the hardship excuse. He acknowledged excusing other jurors for financial hardship without giving the attorneys a factual basis and admitted that he did not reveal the amount in another juror's account to support his hardship excuse. And, the attorneys had agreed that the judge would handle hardship requests without their input, and none of them asked the factual basis for, or challenged, the judge's decision to excuse the juror. The commission concluded that the judge's comments and gratuitous disclosure of the amount in the juror's checking account was prejudicial misconduct. When members of the public give up their time for jury service, they do not expect to have their private financial information disclosed in open court or to be the brunt of jokes about their limited financial resources. Moreover, Judge Clarke revealed the amount in the juror's account even after she had thanked him for not doing so. Such conduct objectively undermines public respect for the judiciary.

Another juror wrote on his hardship form that he had $33 in his checking account. Judge Clarke said to him, "[You have a] little bit more than the other gal. [Thirty-three] bucks," and "You are putting her in the shade with that big account." The judge excused the juror and said, "Good luck on getting paid and being able to bring that number up a little bit better." The commission concluded that these comments were discourteous and undignified and violated canon 3B(4). The majority of the commission concluded that the judge's conduct undermined public esteem for the judiciary and thus constituted prejudicial misconduct. (Four commission members considered the judge's treatment of this juror to be improper action.)

In determining that public admonishment was the appropriate sanction, the commission considered that the misconduct demonstrated a pattern of discourteous, undignified treatment of jurors; that public esteem for the judicial system is harmed when a judge mistreats and belittles jurors, uses humor at a juror's expense, and retaliates against a juror for complaining about his clerk; that it appeared that the judge's conduct was intimidating to other jurors and caused general discomfort in the courtroom; and that the judge showed little appreciation of the impropriety of his conduct and its impact on the jurors to whom he made his comments.

Another factor that weighed in favor of public discipline was the judge's prior discipline. Less than six months before the conduct in this matter, Judge Clarke received an advisory letter for accusing a pro per criminal defendant of being "a ditherer, a dissembler, a poser and a fraud[]" and striking a disqualification motion based on this comment, rather than having it heard by another judge.

The commission rejected the argument of amicus curiae Alliance of California Judges that the commission should not impose discipline, but instead allow Judge Clarke's supervisor to handle the matter "locally." The commission found that the Alliance's suggestion that the judge's misconduct be handled by local judges, rather than the commission, reflects a misunderstanding of the role of the commission and runs contrary to the responsibility entrusted to the commission by the Constitution and the manifest intent of the voters (who changed the composition of the commission from a majority of judge members to a majority of public members).

Private Discipline

Private admonishments and advisory letters that became final in 2016 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 2016, 11 private admonishments became final.

1. A judge initiated an ex parte communication with a prosecutor regarding the merits of anticipated motions and settlement prospects in a criminal case pending before the judge. In another case, the judge made comments at sentencing that gave the appearance that the judge rejected probation department recommendations based on considerations outside the record.

2. A judge's treatment of a criminal defense attorney gave rise to an appearance of embroilment. Without an adequate legal basis, the judge set a hearing for an order to show cause re contempt against the attorney, but then failed to follow the procedures required for an order to show cause. When the attorney filed a motion to disqualify the judge for cause, the judge improperly questioned witnesses and argued with the attorney about the facts alleged in the motion.

3. During *Marsden* hearings, the judge made comments that conveyed that the judge had a special relationship with defense counsel and made discourteous remarks about the prosecutor that gave the appearance of a lack of impartiality. The judge exceeded the scope of the authorization for ex parte communications in a *Marsden* hearing by discussing the merits of the case and the defense, stating negative opinions about the governing law,

and giving advice to the defendant. In another case, the judge threatened to revoke a defendant's pro per status without sufficient grounds and handled the defendant's complaints about access to the law library without giving the defendant the opportunity to have the matter fairly adjudicated. The judge also disparaged the defendant for representing himself.

4. In multiple criminal cases, the judge failed to disclose a social relationship with the prosecutor. In a traffic matter, the judge did not schedule a hearing to settle the statement on appeal until seven months after the proposed statement was filed, in violation of the rule of court that requires the court to promptly set a hearing date.

5. A judge made a disparaging remark to a defendant and appeared to be reacting punitively by refusing to recall a bench warrant or allowing the defendant's attorney to be heard about bail. In other cases, the judge made gratuitous, discourteous remarks to prosecutors.

6. During a pretrial hearing, the judge threatened to relieve defense counsel without adequate grounds. The judge also made statements that highlighted defense counsel's lack of experience and that were likely to undermine the attorney-client relationship. In another case, the judge's demeaning remarks in open court about a defense attorney who was not in court gave the appearance of retaliation.

7. A judge misused the prestige of office in connection with a personal legal matter in a manner that gave the appearance that the judge was seeking to advance the judge's personal interest.

8. During remarks delivered prior to the start of calendars, the judge made derogatory comments about small claims litigants and the small claims process and repeatedly announced an arbitrary time limit for presentation of cases, which gave the impression that litigants should not expect a full and fair opportunity to be heard.

9. A judge submitted information ex parte to the reviewing court about a case decided by the judge.

10. A judge used a court clerk for personal business and gave instructions to the clerk which could reasonably be construed as a directive to issue an order in a matter from which the judge was disqualified. The judge failed to fulfill continuing professional obligations to a former client. While under investigation by the commission, the judge approached the clerk about the investigation in a manner that carried the potential to improperly influence the clerk.

11. A judge signed and submitted a letter to a sentencing judge on behalf of a defendant, whom the judge knew personally.

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 2016, 26 advisory letters became final.

Bias

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

1. A presiding judge made remarks about a litigant that created an appearance of bias.

2. During a criminal calendar not staffed by the district attorney's office, the judge made comments to a defendant that gave the appearance that the judge was not impartial and was trying to give the defendant an advantage in the proceedings. In another matter, the judge made statements about refiling a case that appeared to intrude on the district attorney's charging decision.

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.

3. A judge delayed issuing decisions on submitted matters in two family law cases. The decisions were issued approximately 110 days after submission.

4. A judge delayed in ruling on a submitted matter in a family law matter. The decision was issued about 120 days after the matter was submitted. The judge also signed one salary affidavit while the matter was under submission. There was no showing that the affidavit was knowingly false.

5. A judge engaged in substantial delays in ruling on two habeas petitions. The delays were each about seven months long.

6. Instead of either denying or returning post-conviction motions for discovery that were deficient and not properly served, the judge delayed acting on the motions for almost 10 months and then issued an order that did not dispose of any of the motions.

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).)

7. A supervising judge chastised and disparaged an individual for complaining about a subordinate judicial officer's handling of a case because the complainant was not a party to the case.

Disclosure and Disqualification

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

8. After being disqualified, the judge's contact with another judge created the appearance that the disqualified judge was choosing the successor judge.

9. After being disqualified from a case, the judge responded to an inquiry from the successor judge about the basis for an earlier ruling in the case.

10. Over an extended period, the judge failed to disclose a relative's employment with the district attorney's office when attorneys from that office appeared before the judge.

11. After an attorney filed a disqualification motion, the judge questioned the attorney about the attorney's intention to proceed.

12. A judge failed to disclose a close personal relationship with an attorney who supervised other attorneys appearing before the judge.

Ex Parte Communications

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

13. A judge contacted an individual ex parte about a temporary restraining order that the judge had signed, which resulted in the judge's disqualification from further proceedings.

14. A judge engaged in an ex parte meeting with a prosecutor about a pending case.

15. A judge contacted a probation officer ex parte about a report the probation officer had submitted.

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.)

16. A judge improperly allowed an attorney to be present with a party for a small claims proceeding after earlier advising the party that attorneys were not allowed to appear in small claims.

17. Over a year, the judge repeatedly extended a temporary conservatorship and continued the hearing on the conservatorship petition without ever requiring or receiving a current medical report or capacity declaration or directing that the conservatee be brought to court to be advised of the conservatee's rights

Improper Political Activities

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

18. A judge failed to comply with a Political Reform Act regulation regarding election campaign committees.

19. A judge failed to comply with a Political Reform Act regulation regarding election campaign committees.

Nonperformance of Judicial Functions

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

20. The judge frequently arrived at the courthouse after the judge's calendar was scheduled to start.

21. Due to a lack of diligence, a judge issued an order in excess of the court's jurisdiction.

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.)

22. A judge engaged in an abuse of authority in ordering a defendant physically restrained during court proceedings without the necessary showing.

More Than One Type of Misconduct

Some cases involved more than one type of misconduct.

23. After making efforts to comply with the requirement that a habeas petitioner be afforded the opportunity to reply to informal responses to habeas petitions, a judge denied the petitioner the opportunity to submit a reply. On one occasion, the judge denied a petition on the basis of an informal response that the judge knew had not been served on the petitioner.

24. A judge made injudicious remarks about a pro per defendant that suggested bias. When the remarks were cited in a motion to disqualify the judge for cause, the judge struck the motion on the grounds that the judge was not biased and no reasonable person would think that the judge was biased, thereby ruling on the merits of the disqualification motion, rather than having the matter decided by an assigned judge as required by law.

25. A judge received and acted upon an ex parte communication from the plaintiff in a case who arrived late to court after the case had been dismissed and the opposing party had left the courtroom. The judge did not give the opposing party notice or an opportunity to be heard before vacating the order of dismissal and resetting the matter for trial.

26. A judge attempted, in a private capacity, to help resolve a legal dispute between persons with whom the judge had a personal relationship, in violation of the prohibition on judges serving as mediators. After suit was filed, the judge engaged in other activities that appeared to lend the prestige of judicial office to advance the personal interests of another person.

V.
Subordinate Judicial Officers

Since June of 1998, the commission has shared authority with the superior courts for the discipline of subordinate judicial officers, attorneys employed by California's state courts to serve as court commissioners and referees. In 2016, there were 251 authorized subordinate judicial officer positions in California.

Subordinate Judicial Officers Authorized Positions

As of December 31, 2016

Court Commissioners	233
Court Referees	18
Total	**251**

Commission Procedures

The provisions of the California Constitution 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)(l).)

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(k)(2)(B); Commission Rule 109(c)(l).) 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(j)(l); Commission Rule 109(c)(3).) Third, a local court must notify the commission if a subordinate judicial officer resigns while an 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(j)(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.

2016 Statistics

Complaints Received and Investigated

In 2016, the commission reviewed 96 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 2016, the commission commenced two staff inquiries and four preliminary investigations.

Rule Under Which New Complaints Were Submitted

Rule 109(c)(1)—appeal from local court's disposition	92
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
Rule 109(c)(5)—subordinate judicial officer retires or resigns before court receives complaint	0

2016 Caseload—Subordinate Judicial Officers

Cases Pending 1/1/16	1
New Complaints Considered	96
Cases Concluded	95
Cases Pending 12/31/16	3

Discrepancies in totals are due to consolidated complaints/dispositions.

Cases Concluded

In 2016, the commission concluded its review of 95 complaints involving subordinate judicial officers. The commission closed 90 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 imposed one private admonishment, issued one advisory letter, closed two of the cases without discipline, and closed one case after formal proceedings were instituted when the commissioner resigned with the agreement not to serve or seek to serve in a judicial capacity (*Inquiry Concerning Commissioner Taylor Culver,* No. 199).

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

2016 Subordinate Judicial Officer Complaint Dispositions

Total complaint dispositions	95
Closed after initial review	90
After independent investigation by the commission:	
Private Admonishment	1
Advisory Letter	1
Closed Without Discipline	2
Conditional Close Pursuant to Stipulation	1

Summaries of Disciplinary Action

The commission issued one private admonishment and one advisory letter to subordinate judicial officers in 2016.

Private Admonishment

A subordinate judicial officer consulted with an attorney about a case pending before another judicial officer on the court and used court resources to do so.

Advisory Letter

A subordinate judicial officer engaged in conduct that appeared to be an attempt to intervene in another judicial officer's handling of proceedings.

Type of Court Case Underlying Subordinate Judicial Officer Complaints Concluded in 2016

Small Claims	39%
Family Law	25%
Traffic	15%
General Civil	10%
Criminal	1%
All Others (including off-bench)	10%

Source of Complaints Involving Subordinate Judicial Officers Concluded in 2016

Litigant/Family/Friend	91%
Judge/Court Staff	3%
Attorney	3%
All Other Complainants	2%
Source Other Than Complaint	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

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.

2016 Statistics

One disability retirement application was pending before the commission at the beginning of 2016.

The commission received seven disability retirement applications during 2016, all of which were granted. One matter remained pending at the close of 2016.

VII.
Commission Organization, Staff and Budget

Commission Organization and Staff

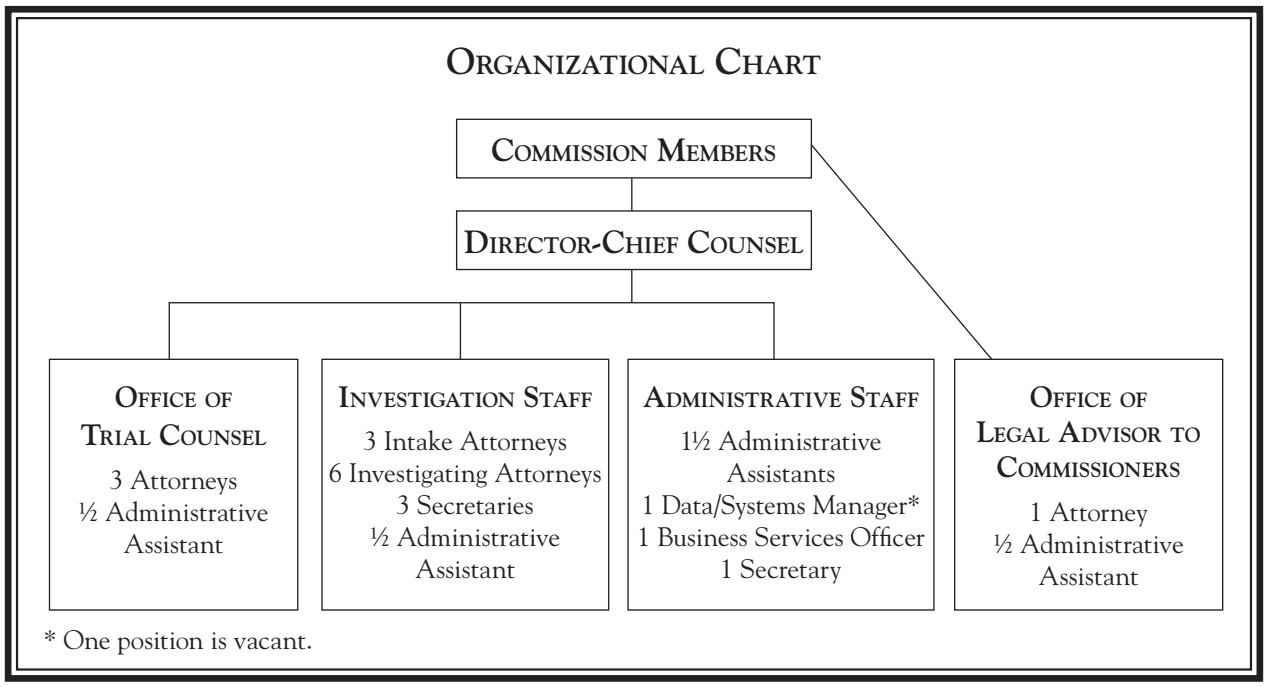
During 2016, the commission had 24 authorized staff positions.[4] This represents an overall staffing reduction of approximately 10% starting from fiscal year 2002-2003. The commission's authorized positions include 14 attorneys, 9 support staff, and 1 temporary staff position.

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.

The commission appoints an attorney to serve as examiner during formal proceedings. 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 coordinating 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.



[4] In the 2016-2017 fiscal year, the commission was authorized an attorney position.

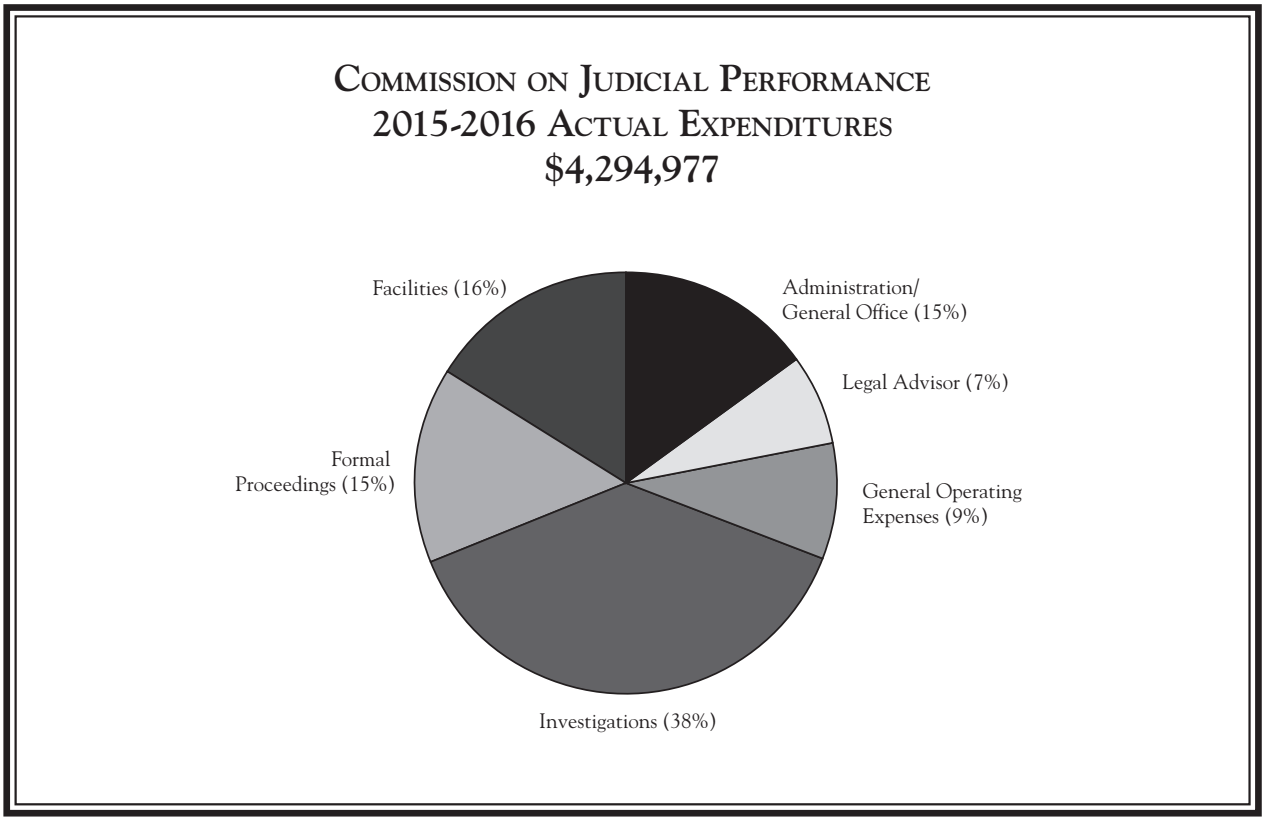
2016–2017 Budget

The commission's budget is separate from the budget of any other state agency or court. For the current 2016-2017 fiscal year, the commission's budget is $4,640,000. In the 2003-2004 fiscal year, and again in the 2008-2009 fiscal year, the commission's budget was reduced by 10%. None of the 20% reduction in 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. In spite of 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.

2015–2016 Budget

The commission's final budget appropriation for the 2015-2016 fiscal year was $4,406,000. Final expenditures totaled $4,294,977. Approximately 38% of the commission's budget supported the intake and investigation functions and approximately 22% was used in connection with formal proceedings. The remaining 40% went toward sustaining the general operations of the commission, including facilities, administrative staff, supplies, and security.



APPENDIX

APPENDIX 1.
GOVERNING PROVISIONS

The following provisions governing the Commission on Judicial Performance are available on the commission's website at http://cjp.ca.gov.

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

Rules of the Commission on Judicial Performance

Policy Declarations of the Commission on Judicial Performance

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

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

California Code of Civil Procedure Section 170.9

APPENDIX 2.

CALIFORNIA CODE OF JUDICIAL ETHICS

Adopted by the Supreme Court of California

Amended by the Supreme Court of California effective ~~August 19, 2015~~ December 1, 2016; adopted effective January 15, 1996; previously amended March 4, 1999, December 13, 2000, December 30, 2002, June 18, 2003, December 22, 2003, January 1, 2005, June 1, 2005, July 1, 2006, January 1, 2007, January 1, 2008, April 29, 2009, January 1, 2013, ~~and~~ January 21, 2015, and August 19, 2015.†

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† Underlining indicates new language; strikeouts indicate deleted language. See page 4 for summary of changes to the Code of Judicial Ethics.

Preface

Formal standards of judicial conduct have existed for more than 65 years. The original Canons of Judicial Ethics promulgated by the American Bar Association were modified and adopted in 1949 for application in California by the Conference of California Judges (now the California Judges Association).

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

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

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

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

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

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

The Supreme Court has formally adopted amendments to the Code of Judicial Ethics on several occasions. The Advisory Committee Commentary is published by the Supreme Court Advisory Committee on the Code of Judicial Ethics.

Preamble

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

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

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

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

Terminology

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

"Candidate for judicial office" is a person seeking election to or retention of a judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support. See Preamble and Canons 3E(2)(b)(i), 3E(3)(a), 5, 5A, 5A (Commentary), 5B(1), 5B(2), 5B(3), 5B (Commentary), 5C, 5D, and 6E.

"Fiduciary" includes such relationships as executor, administrator, trustee, and guardian. See Canons 3E(5)(d), 4E(1), 4E(2), 4E(3), 4E (Commentary), 6B, and 6F (Commentary).

"Gift" means anything of value to the extent that consideration of equal or greater value is not received, and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. See Canons 4D(5), 4D(5) (Commentary), 4D(6), 4D(6)(a), 4D(6)(b), 4D(6)(b) (Commentary), 4D(6)(d), 4D(6)(f), 4H (Commentary), 5A (Commentary), 6D(2)(c), and 6D(7).

"Impartial," "impartiality," and "impartially" mean the absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as the maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 1 (Commentary), 2A, 2A (Commentary), 2B (Commentary), 2C (Commentary), 3, 3B(9) (Commentary), 3B(10) (Commentary), 3B(12), 3B(12) (Commentary), 3C(1), 3C(5), 3E(4)(b), 3E(4)(c), 4A(1), 4A (Commentary), 4C(3)(b) (Commentary), 4C(3)(c) (Commentary), 4D(1) (Commentary), 4D(6)(a) (Commentary), 4D(6)(b) (Commentary), 4D(6)(g) (Commentary), 4H (Commentary), 5, 5A, 5A (Commentary), 5B (Commentary), 6D(2)(a), and 6D(3)(a)(vii).

"Impending proceeding" is a proceeding or matter that is imminent or expected to occur in the near future. The words "proceeding" and "matter" are used interchangeably, and are intended to have the same meaning. See Canons 3B(7), 3B(7)(a), 3B(9), 3B(9) (Commentary), 4H (Commentary), and 6D(6). "Pending proceeding" is defined below.

"Impropriety" includes conduct that violates the law, court rules, or provisions of this code, as well as conduct that undermines a judge's independence, integrity, or impartiality. See Canons 2, 2A (Commentary), 2B (Commentary), 2C (Commentary), 3B(9) (Commentary), 4D(1)(b) (Commentary), 4D(6)(g) (Commentary), 4H, 5, and 5A (Commentary).

"Independence" means a judge's freedom from influence or control other than as established by law. See Preamble, Canons 1, 1 (Commentary), 2C, 4C(2) (Commentary), 4D(6)(a) (Commentary), 4D(6)(g) (Commentary), 4H(3) (Commentary), 5, 5A (Commentary), 5B (Commentary), and 6D(1).

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character. See Preamble, Canons 1, 1 (Commentary), 2A, 2A (Commentary), 2B (Commentary), 2C (Commentary), 3B(9) (Commentary), 3C(1), 3C(5), 4D(6)(a) (Commentary), 4D(6)(b) (Commentary), 4D(6)(g) (Commentary), 4H (Commentary), 5, 5A (Commentary), 5B (Commentary), and 6D(1).

"Knowingly," "knowledge," "known," and "knows" mean actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Canons 2B(2)(b), 2B(2)(e), 2C (Commentary), 3B(2) (Commentary), 3B(7)(a), 3B(7)(a) (Commentary), 3D(2), 3D(5), 3E(5)(f), 5B(1)(b), 6D(3)(a)(i), 6D(3)(a) (Commentary), 6D(4) (Commentary), and 6D(5)(a).

"Law" means constitutional provisions, statutes, court rules, and decisional law. See Canons 1 (Commentary), 2A, 2C (Commentary), 3A, 3B(2), 3B(7), 3B(7)(c), 3B(8), 3B(8) (Commentary), 3B(12) (Commentary), 3E(1), 4C(3)(c) (Commentary), 4F, and 4H.

"Law, the legal system, or the administration of justice." When a judge engages in an activity that relates to the law, the legal system, or the administration of justice, the judge should also consider factors such as whether the activity upholds the integrity, impartiality, and independence of the judiciary (Canons 1 and 2A), whether the

activity impairs public confidence in the judiciary (Canon 2), whether the judge is allowing the activity to take precedence over judicial duties (Canon 3A), and whether engaging in the activity would cause the judge to be disqualified (Canon 4A(4)). See Canons 4B (Commentary), 4C(1), 4C(1) (Commentary), 4C(2), 4C(2) (Commentary), 4C(3)(a), 4C(3)(b) (Commentary), 4C(3)(d)(ii), 4C(3)(d) (Commentary), 4D(6)(d), 4D(6)(e), 5A (Commentary), 5D, and 5D (Commentary).

"Member of the judge's family" means a spouse, registered domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Canons 2B(3)(c), 2B (Commentary), 4C(3)(d)(i), 4D(1) (Commentary), 4D(2), 4D(5) (Commentary), 4E(1), and 4G (Commentary).

"Member of the judge's family residing in the judge's household" means a spouse or registered domestic partner and those persons who reside in the judge's household and who are relatives of the judge, including relatives by marriage or persons with whom the judge maintains a close familial relationship. See Canons 4D(5), 4D(5) (Commentary), 4D(6), 4D(6)(b) (Commentary), 4D(6)(f) and 6D(2)(c).

"Nonpublic information" means information that, by law, is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order, impounded, or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. Nonpublic information also includes information from affidavits, jury results, or court rulings before it becomes public information. See Canons 3B(11) and 6D(8)(a).

"Pending proceeding" is a proceeding or matter that has commenced. A proceeding continues to be pending through any period during which an appeal may be filed and any appellate process until final disposition. The words "proceeding" and "matter" are used interchangeably, and are intended to have the same meaning. See Canons 2A (Commentary), 2B(3)(a), 3B(7), 3B(9), 3B(9) (Commentary), 3E(5)(a), 4H (Commentary), and 6D(6). "Impending proceeding" is defined above.

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

"Registered domestic partner" means a person who has registered for domestic partnership pursuant to state law or who is recognized as a domestic partner pursuant to Family Code section 299.2. See Canons 3E(5)(d), 3E(5)(e), 3E(5)(i), 4D(6)(d), 4D(6)(f), 4D(6)(j), 4H(2), 5A (Commentary), 6D(3)(a)(v), and 6D(3)(a)(vi).

"Require." Any canon prescribing that a judge "require" certain conduct of others means that a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Canons 3B(3), 3B(4), 3B(6), 3B(8) (Commentary), 3B(9), 3C(3), 6D(1), 6D(2)(a), and 6D(6).

"Service organization" includes any organization commonly referred to as a "fraternal organization." See Canons 3E(5)(d), 4C(2) (Commentary), 4C(3)(b), 4C(3)(b) (Commentary), 4C(3)(d) (Commentary), 4D(6)(j), and 6D(2)(b).

"Subordinate judicial officer." A subordinate judicial officer is, for the purposes of this code, a person appointed pursuant to article VI, section 22 of the California Constitution, including, but not limited to, a commissioner, referee, and hearing officer. See Canons 3D(3), 4G (Commentary), and 6A.

"Temporary Judge" means an active or inactive member of the bar who, pursuant to article VI, section 21 of the California Constitution, serves or expects to serve as a judge once, sporadically, or regularly on a part-time basis under a separate court appointment for each period of service or for each case heard. See Canons 3E(5)(h), 4C(3)(d)(i), 4C(3)(d) (Commentary), 6A, and 6D.

"Third degree of relationship" includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Canons 3E(5)(e), 3E(5)(i), and 6D(3)(a)(v).

Canon 1

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

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

ADVISORY COMMITTEE COMMENTARY: Canon 1

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

The basic function of an independent, impartial, and honorable judiciary is to maintain the utmost integrity* in decisionmaking, and this code should be read and interpreted with that function in mind.*

[Adopted 1/15/96; amended 1/1/13 and 8/19/15.]

Canon 2

A Judge Shall Avoid Impropriety* and the Appearance of Impropriety* in All of the Judge's Activities

A. Promoting Public Confidence

A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity* and impartiality* of the judiciary. A judge shall not make statements, whether public or nonpublic, that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

ADVISORY COMMITTEE COMMENTARY: Canons 2 and 2A

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

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

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

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

As to membership in organizations that practice invidious discrimination, see Commentary under Canon 2C.

As to judges making statements that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts, see Canon 3B(9) and its commentary concerning comments about a pending proceeding, Canon 3E(3)(a) concerning the disqualification of a judge who makes statements that commit the judge to a particular result, and Canon 5B(1)(a) concerning statements made during an election campaign that commit the candidate to a particular result. In addition, Code of Civil Procedure section 170.2, subdivision (b), provides that, with certain exceptions, a judge is not disqualified on the ground that the judge has, in any capacity, expressed a view on a legal or factual issue presented in the proceeding before the judge.*

B. Use of the Prestige of Judicial Office

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

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

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

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

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

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

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

(3) Except as permitted in subdivision (c) or otherwise authorized by law* or these canons:

(a) A judge shall not advance the pecuniary or personal interests of the judge or others by initiating communications with a sentencing judge or a representative of a probation department about a proceeding pending* before the sentencing judge, but may provide information in response to an official request. "Sentencing judge" includes a judge who makes a disposition pursuant to Welfare and Institutions Code section 725.

(b) A judge, other than the judge who presided over the trial of or sentenced the person seeking parole, pardon, or commutation of sentence, shall not initiate communications with the Board of Parole Hearings regarding parole or the Office of the Governor regarding parole, pardon, or commutation of sentence, but may provide these entities with information for the record in response to an official request.

(c) A judge may initiate communications concerning a member of the judge's family* with a representative of a probation department regarding sentencing, the Board of Parole Hearings regarding parole, or the Office of the Governor regarding parole, pardon, or commutation of sentence, provided the judge is not identified as a judge in the communication.

ADVISORY COMMITTEE COMMENTARY: Canon 2B

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

As to those communications that are permitted under this canon, a judge must keep in mind the general obligations to maintain high standards of conduct as set forth in Canon 1, and to avoid any impropriety or the appearance of impropriety* as set forth in Canon 2. A judge must also be mindful of Canon 2A, which requires a judge to act at all times in a manner that promotes public confidence in the integrity* and impartiality* of the courts.*

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

As to the use of a judge's title to identify a judge's role in the presentation and creation of legal education

programs and materials, see Commentary to Canon 4B. In contracts for publication of a judge's writings, a judge should retain control over the advertising, to the extent feasible, to avoid exploitation of the judge's office.

This canon does not afford a judge a privilege against testifying in response to any official summons.

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

Except as set forth in Canon 2B(3)(a), this canon does not preclude consultations among judges. Additional limitations on such consultations among judges are set forth in Canon 3B(7)(a).

C. Membership in Organizations

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

This canon does not apply to membership in a religious organization.

ADVISORY COMMITTEE COMMENTARY: Canon 2C

Membership by a judge in an organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation gives rise to a perception that the judge's impartiality is impaired. The code prohibits such membership by judges to preserve the fairness, impartiality,* independence,* and honor of the judiciary, to treat all parties equally under the law,* and to avoid impropriety* and the appearance of impropriety.**

Previously, Canon 2C contained exceptions to this prohibition for membership in religious organizations, membership in an official military organization of the United States and, so long as membership did not violate Canon 4A, membership in a nonprofit youth organization. The exceptions for membership in an official military organization of the United States and nonprofit youth organizations have been eliminated as exceptions to the canon. The exception for membership in religious organizations has been preserved.

Canon 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather depends on how the organization selects members and other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, gender, national origin, ethnicity, or sexual orientation persons who would otherwise be admitted to membership.

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

[Adopted 1/15/96; amended 6/19/03, 1/1/08, 1/1/13, 1/21/15 and 8/19/15.]

Canon 3

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

A. Judicial Duties in General

All of the judicial duties prescribed by law* shall take precedence over all other activities of

every judge. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities

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

ADVISORY COMMITTEE COMMENTARY: Canon 3B(1)

Canon 3B(1) is based upon the affirmative obligation contained in Code of Civil Procedure section 170.

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

ADVISORY COMMITTEE COMMENTARY: Canon 3B(2)

Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office. Canon 1 provides that an incorrect legal ruling is not itself a violation of this code.*

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

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

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

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

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the full right to be heard according to law.* Unless otherwise authorized by law,* a judge shall not independently investigate facts in a proceeding and shall consider only the evidence presented or facts that may be properly judicially noticed. This prohibition extends to information available in all media, including electronic. A judge shall not initiate, permit, or consider ex parte communications, that is, any communications to or from the judge outside the presence of the parties concerning a pending* or impending* proceeding, and shall make reasonable efforts to avoid such communications, except as follows:

(a) Except as stated below, a judge may consult with other judges. A judge shall not engage in discussions about a case with a judge who has previously been disqualified from hearing that matter; likewise, a judge who knows* he or she is or would be disqualified from hearing a case shall not discuss that matter with the judge assigned to the case. A judge also shall not engage in discussions with a judge who may participate in appellate review of the matter, nor shall a judge who may participate in appellate review of a matter engage in discussions with the judge presiding over the case.

A judge may consult with court personnel or others authorized by law,* as long as the communication relates to that person's duty to aid the judge in carrying out the judge's adjudicative responsibilities.

In any discussion with judges or court personnel, a judge shall make reasonable efforts to avoid receiving factual information that is not part of the record or an evaluation of that factual information. In such consultations, the judge shall not abrogate the responsibility personally to decide the matter.

For purposes of Canon 3B(7)(a), "court personnel" includes bailiffs, court reporters, court externs, research attorneys, courtroom clerks, and other employees of the court, but does not

include the lawyers in a proceeding before a judge, persons who are appointed by the court to serve in some capacity in a proceeding, or employees of other governmental entities, such as lawyers, social workers, or representatives of the probation department.

ADVISORY COMMITTEE COMMENTARY: Canon 3B(7)(a)

Regarding communications between a judge presiding over a matter and a judge of a court with appellate jurisdiction over that matter, see Government Code section 68070.5.

Though a judge may have ex parte discussions with appropriate court personnel, a judge may do so only on matters that are within the proper performance of that person's duties. For example, a bailiff may inform the judge of a threat to the judge or to the safety and security of the courtroom, but may not tell the judge ex parte that a defendant was overheard making an incriminating statement during a court recess. A clerk may point out to the judge a technical defect in a proposed sentence, but may not suggest to the judge that a defendant deserves a certain sentence.

A sentencing judge may not consult ex parte with a representative of the probation department about a matter pending before the sentencing judge.

This canon prohibits a judge from discussing a case with another judge who has already been disqualified. A judge also must be careful not to talk to a judge whom the judge knows would be disqualified from hearing the matter.*

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

> **(i)** the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and
>
> **(ii)** the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(c) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law* to do so or when authorized to do so by stipulation of the parties.

(d) If a judge receives an unauthorized ex parte communication, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

ADVISORY COMMITTEE COMMENTARY: Canon 3B(7)

An exception allowing a judge, under certain circumstances, to obtain the advice of a disinterested expert on the law has been eliminated from Canon 3B(7) because consulting with legal experts outside the presence of the parties is inconsistent with the core tenets of the adversarial system. Therefore, a judge shall not consult with legal experts outside the presence of the parties. Evidence Code section 730 provides for the appointment of an expert if a judge determines that expert testimony is necessary. A court may also invite the filing of amicus curiae briefs.*

An exception allowing a judge to confer with the parties separately in an effort to settle the matter before the judge has been moved from this canon to Canon 3B(12).

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

A judge is statutorily authorized to investigate and consult witnesses informally in small claims cases. Code of Civil Procedure section 116.520, subdivision (c).

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

ADVISORY COMMITTEE COMMENTARY: Canon 3B(8)

The obligation of a judge to dispose of matters promptly and efficiently must not take precedence over the judge's obligation to dispose of the matters fairly and with patience. For example, when a litigant is self-represented, a judge has the discretion to take reasonable steps, appropriate under the circumstances and consistent with the law and the canons, to enable the litigant to be heard. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.*

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

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

ADVISORY COMMITTEE COMMENTARY: Canon 3B(9)

The requirement that judges abstain from public comment regarding a pending or impending* proceeding continues during any appellate process and until final disposition. A judge shall make reasonable efforts to ascertain whether a case is pending* or impending* before commenting on it. This canon does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly.*

"Making statements in the course of their official duties" and "explaining the procedures of the court" include providing an official transcript or partial official transcript of a court proceeding open to the public and explaining the rules of court and procedures related to a decision rendered by a judge.

Although this canon does not prohibit a judge from commenting on cases that are not pending or impending* in any court, a judge must be cognizant of the general prohibition in Canon 2 against conduct involving impropriety* or the appearance of impropriety.* A judge should also be aware of the mandate in Canon 2A that a judge must act at all times in a manner that promotes public confidence in the integrity* and impartiality* of the judiciary. In addition, when commenting on a case pursuant to this canon, a judge must maintain the high standards of conduct, as set forth in Canon 1.*

Although a judge is permitted to make nonpublic comments about pending or impending* cases that will not substantially interfere with a fair trial or hearing, the judge should be cautious when making any such comments. There is always a risk that a comment can be misheard, misinterpreted, or repeated. A judge making such a comment must be mindful of the judge's obligation under Canon 2A to act at all times in a manner that promotes public confidence in the integrity* and impartiality* of the judiciary. When a judge makes a nonpublic comment about a case pending* before that judge, the judge must keep an open mind and not form an opinion prematurely or create the appearance of having formed an opinion prematurely.*

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

ADVISORY COMMITTEE COMMENTARY: Canon 3B(10)

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

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

(12) A judge may participate in settlement conferences or in other efforts to resolve matters in dispute, including matters pending before the judge. A judge may, with the express consent of the parties or their lawyers, confer separately with the parties and/or their lawyers during such resolution efforts. At all times during such resolution efforts, a judge shall remain impartial* and shall not engage in conduct that may reasonably be perceived as coercive.

ADVISORY COMMITTEE COMMENTARY: Canon 3B(12)

*While the judge plays an important role in overseeing efforts to resolve disputes, including conducting settlement discussions, a judge should be careful that efforts to resolve disputes do not undermine any party's right to be heard according to law.**

The judge should keep in mind the effect that the judge's participation in dispute resolution efforts may have on the judge's impartiality or the appearance of impartiality* if the case remains with the judge for trial after resolution efforts are unsuccessful. Accordingly, a judge may wish to consider whether: (1) the parties or their counsel have requested or objected to the participation by the trial judge in such discussions; (2) the parties and their counsel are relatively sophisticated in legal matters or the particular legal issues involved in the case; (3) a party is unrepresented; (4) the case will be tried by the judge or a jury; (5) the parties will participate with their counsel in settlement discussions and, if so, the effect of personal contact between the judge and parties; and (6) it is appropriate during the settlement conference for the judge to express an opinion on the merits or worth of the case or express an opinion on the legal issues that the judge may later have to rule upon.*

If a judge assigned to preside over a trial believes participation in resolution efforts could influence the judge's decisionmaking during trial, the judge may decline to engage in such efforts.

Where dispute resolution efforts of any type are unsuccessful, the judge should consider whether, due to events that occurred during the resolution efforts, the judge may be disqualified under the law from presiding over the trial. See, e.g., Code of Civil Procedure section 170.1, subdivision (a)(6)(A).*

C. Administrative Responsibilities

(1) A judge shall diligently discharge the judge's administrative responsibilities impartially,* on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity* of the judiciary. A judge shall not, in the performance of administrative duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (a) bias or prejudice, including but not limited to bias or prejudice based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment.

ADVISORY COMMITTEE COMMENTARY: Canon 3C(1)

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

(2) A judge shall maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.

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

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

(5) A judge shall not make unnecessary court appointments. A judge shall exercise the power of appointment impartially,* on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity* of the judiciary. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees above the reasonable value of services rendered.

ADVISORY COMMITTEE COMMENTARY: Canon 3C(5)

Appointees of a judge include assigned counsel and officials such as referees, commissioners, special masters, receivers, and guardians. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Canon 3C(5).

D. Disciplinary Responsibilities

(1) Whenever a judge has reliable information that another judge has violated any provision of the Code of Judicial Ethics, that judge shall take

appropriate corrective action, which may include reporting the violation to the appropriate authority. (See Commentary to Canon 3D(2).)

(2) Whenever a judge has personal knowledge,* or concludes in a judicial decision, that a lawyer has committed misconduct or has violated any provision of the Rules of Professional Conduct, the judge shall take appropriate corrective action, which may include reporting the violation to the appropriate authority.

ADVISORY COMMITTEE COMMENTARY: Canons 3D(1) and 3D(2)

Appropriate corrective action could include direct communication with the judge or lawyer who has committed the violation, other direct action, such as a confidential referral to a judicial or lawyer assistance program, or a report of the violation to the presiding judge, appropriate authority, or other agency or body. Judges should note that in addition to the action required by Canon 3D(2), California law imposes additional mandatory reporting requirements to the State Bar on judges regarding lawyer misconduct. See Business and Professions Code sections 6086.7 and 6086.8, subdivision (a), and California Rules of Court, rules 10.609 and 10.1017.

"Appropriate authority" means the authority with responsibility for initiation of the disciplinary process with respect to a violation to be reported.

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

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

(4) A judge shall cooperate with judicial and lawyer disciplinary agencies.

ADVISORY COMMITTEE COMMENTARY: Canons 3D(3) and 3D(4)

See Government Code section 68725, which requires judges to cooperate with and give reasonable assistance and information to the Commission on Judicial Performance, and rule 104 of the Rules of the Commission on Judicial Performance, which requires a respondent judge to cooperate with the commission in all proceedings in accordance with section 68725.

(5) A judge shall not retaliate, directly or indirectly, against a person known* or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

E. Disqualification and Disclosure

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

ADVISORY COMMITTEE COMMENTARY: Canon 3E(1)

The term "proceeding" as used in this canon encompasses prefiling judicial determinations. Thus, if a judge has a disqualifying interest in a matter, the judge is disqualified from taking any action in the matter, even if it predates the actual filing of a case, such as making a probable cause determination, signing a search or arrest warrant, setting bail, or ordering an own recognizance release. Interpreting "proceeding" to include prefiling judicial determinations effectuates the intent of the canon because it assures the parties and the public of the integrity and fairness of the judicial process.*

(2) In all trial court proceedings, a judge shall disclose on the record as follows:

(a) Information relevant to disqualification

A judge shall disclose information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification.

(b) Campaign contributions in trial court elections

(i) Information required to be disclosed

In any matter before a judge who is or was a candidate for judicial office* in a trial court election, the judge shall disclose any contribution or loan of $100 or more from a party, individual lawyer, or law office or firm in that matter as required by this canon, even if the amount of the contribution or loan would not require disqualification. Such disclosure shall consist of the name of the contributor or lender, the amount of each contribution or loan, the cumulative amount of the contributor's contributions or lender's loans, and the date of each contribution or loan. The judge shall make reasonable efforts to obtain current information regarding contributions or loans received by his or her campaign and shall disclose the required information on the record.

(ii) Manner of disclosure

The judge shall ensure that the required information is conveyed on the record to the parties and lawyers appearing in the matter before the judge. The judge has discretion to select the manner of disclosure, but the manner used shall avoid the appearance that the judge is soliciting campaign contributions.

(iii) Timing of disclosure

Disclosure shall be made at the earliest reasonable opportunity after receiving each contribution or loan. The duty commences no later than one week after receipt of the first contribution or loan, and continues for a period of two years after the candidate takes the oath of office, or two years from the date of the contribution or loan, whichever event is later.

ADVISORY COMMITTEE COMMENTARY: Canon 3E(2)(b)

Code of Civil Procedure section 170.1, subdivision (a)(9)(C) requires a judge to "disclose any contribution from a party or lawyer in a matter that is before the court that is required to be reported under subdivision (f) of Section 84211 of the Government Code, even if the amount would not require disqualification under this paragraph." This statute further provides that the "manner of disclosure shall be the same as that provided in Canon 3E of the Code of Judicial Ethics." Canon 3E(2)(b) sets forth the information the judge must disclose, the manner for making such disclosure, and the timing thereof.

"Contribution" includes monetary and in-kind contributions. See Cal. Code Regs., tit. 2, § 18215, subd. (b)(3). See generally Government Code section 84211, subdivision (f).

Disclosure of campaign contributions is intended to provide parties and lawyers appearing before a judge during and after a judicial campaign with easy access to information about campaign contributions that may not require disqualification but could be relevant to the question of disqualification of the judge. The judge is responsible for ensuring that the disclosure is conveyed to the parties and lawyers appearing in the matter. The canon provides that the judge has discretion to select the manner of making the disclosure. The appropriate manner of disclosure will depend on whether all of the parties and lawyers are present in court, whether it is more efficient or practicable given the court's calendar to make a written disclosure, and other relevant circumstances that may affect the ability of the parties and lawyers to access the required information. The following alternatives for disclosure are non-exclusive. If all parties are present in court, the judge may conclude that the most effective and efficient manner of providing disclosure is to state orally the required information on the record in open court. In the alternative, again if all parties are present in court, a judge may determine that it is more appropriate to state orally on the record in open court that parties and lawyers may obtain the required information at an easily accessible location in the courthouse, and provide an opportunity for the parties and lawyers to review the available information. Another alternative, particularly if all or some parties are not present in court, is that the judge may disclose the campaign contribution in a written minute order or in the official court minutes and notify the parties and the lawyers of the written disclosure. See California Supreme Court Committee on Judicial Ethics Opinions, CJEO Formal Opinion No. 2013-002, pp. 7-8. If a party appearing in a matter before the judge is represented by a lawyer, it is sufficient to make the disclosure to the lawyer.

In addition to the disclosure obligations set forth in Canon 3E(2)(b), a judge must, pursuant to Canon 3E(2)(a), disclose on the record any other information

that may be relevant to the question of disqualification. As examples, such an obligation may arise as a result of contributions or loans of which the judge is aware made by a party, lawyer, or law office or firm appearing before the judge to a third party in support of the judge or in opposition to the judge's opponent; a party, lawyer, or law office or firm's relationship to the judge or role in the campaign; or the aggregate contributions or loans from lawyers in one law office or firm.

Canon 3E(2)(b) does not eliminate the obligation of the judge to recuse himself or herself where the nature of the contribution or loan, the extent of the contributor's or lender's involvement in the judicial campaign, the relationship of the contributor or lender, or other circumstance requires recusal under Code of Civil Procedure section 170.1, and particularly section 170.1, subdivision (a)(6)(A).

(3) A judge shall disqualify himself or herself in accordance with the following:

(a) Statements that commit the judge to a particular result

A judge is disqualified if the judge, while a judge or candidate for judicial office,* made a statement, other than in a court proceeding, judicial decision, or opinion, that a person aware of the facts might reasonably believe commits the judge to reach a particular result or rule in a particular way in a proceeding.

(b) Bond ownership

Ownership of a corporate bond issued by a party to a proceeding and having a fair market value exceeding $1,500 is disqualifying. Ownership of a government bond issued by a party to a proceeding is disqualifying only if the outcome of the proceeding could substantially affect the value of the judge's bond. Ownership in a mutual or common investment fund that holds bonds is not a disqualifying financial interest.

ADVISORY COMMITTEE COMMENTARY: Canon 3E(3)(b)

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

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

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

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

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

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

(a) The appellate justice has ~~appeared or otherwise~~ served as a lawyer in the pending* proceeding, or has ~~appeared or~~ served as a lawyer in any other proceeding involving any of the same parties if that other proceeding related to the same contested issues of fact and law as the present proceeding, or has given advice to any party in the present proceeding upon any issue involved in the proceeding.

ADVISORY COMMITTEE COMMENTARY: Canon 3E(5)(a)

Canon 3E(5)(a) is consistent with Code of Civil Procedure section 170.1, subdivision (a)(2), which addresses disqualification of trial court judges based on prior representation of a party in the proceeding.

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

(c) The appellate justice represented a public officer or entity and personally advised or in any way represented that officer or entity concerning the factual or legal issues in the present proceeding in which the public officer or entity now appears.

(d) The appellate justice, his or her spouse or registered domestic partner,* or a minor child residing in the household, has a financial interest or is a fiduciary* who has a financial interest in the

proceeding, or is a director, advisor, or other active participant in the affairs of a party. A financial interest is defined as ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value exceeding $1,500. Ownership in a mutual or common investment fund that holds securities does not itself constitute a financial interest; holding office in an educational, religious, charitable, service,* or civic organization does not confer a financial interest in the organization's securities; and a proprietary interest of a policyholder in a mutual insurance company or mutual savings association or similar interest is not a financial interest unless the outcome of the proceeding could substantially affect the value of the interest. A justice shall make reasonable efforts to keep informed about his or her personal and fiduciary* interests and those of his or her spouse or registered domestic partner* and of minor children living in the household.

(e)(i) The justice or his or her spouse or registered domestic partner,* or a person within the third degree of relationship* to either of them, or the spouse or registered domestic partner* thereof, is a party or an officer, director, or trustee of a party to the proceeding, or

(ii) a lawyer or spouse or registered domestic partner* of a lawyer in the proceeding is the spouse, registered domestic partner,* former spouse, former registered domestic partner,* child, sibling, or parent of the justice or of the justice's spouse or registered domestic partner,* or such a person is associated in the private practice of law with a lawyer in the proceeding.

(f) The justice

(i) served as the judge before whom the proceeding was tried or heard in the lower court,

(ii) has personal knowledge* of disputed evidentiary facts concerning the proceeding, or

(iii) has a personal bias or prejudice concerning a party or a party's lawyer.

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

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

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

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

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

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

For purposes of Canon 3E(5)(h), "participating in discussions" or "has participated in discussions" means that the justice (i) solicited or otherwise indicated an interest in accepting or negotiating possible employment or service as an alternative dispute resolution neutral, or (ii) responded to an unsolicited statement regarding, or an offer of, such employment or service by expressing an interest in that employment or service, making any inquiry regarding the employment or service, or encouraging the person making the statement or offer to provide additional information about

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

For purposes of Canon 3E(5)(h), "party" includes the parent, subsidiary, or other legal affiliate of any entity that is a party and is involved in the transaction, contract, or facts that gave rise to the issues subject to the proceeding.

For purposes of Canon 3E(5)(h), "dispute resolution neutral" means an arbitrator, a mediator, a temporary judge* appointed under article VI, section 21 of the California Constitution, a referee appointed under Code of Civil Procedure section 638 or 639, a special master, a neutral evaluator, a settlement officer, or a settlement facilitator.

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

(j) The justice has received a campaign contribution of $5,000 or more from a party or lawyer in a matter that is before the court, and either of the following applies:

> **(i)** The contribution was received in support of the justice's last election, if the last election was within the last six years; or
>
> **(ii)** The contribution was received in anticipation of an upcoming election.

Notwithstanding Canon 3E(5)(j), a justice shall disqualify himself or herself based on a contribution of a lesser amount if required by Canon 3E(4).

The disqualification required under Canon 3E(5)(j) may be waived if all parties that did not make the contribution agree to waive the disqualification.

ADVISORY COMMITTEE COMMENTARY: Canon 3E

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

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

Canon 3E(4) sets forth the general standards for recusal of an appellate justice. The term "appellate justice" includes justices of both the Courts of Appeal and the Supreme Court. Generally, the provisions concerning disqualification of an appellate justice are intended to assist justices in determining whether recusal is appropriate and to inform the public why recusal may occur.

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

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

(6) It shall not be grounds for disqualification that the justice:

(a) Is or is not a member of a racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of such a group;

(b) Has in any capacity expressed a view on a legal or factual issue presented in the proceeding, except as provided in Canon 3E(5)(a), (b), or (c);

(c) Has as a lawyer or public official participated in the drafting of laws* or in the effort to pass or defeat laws,* the meaning, effect, or application of which is in issue in the proceeding unless the judge believes that his or her prior involvement was so well known* as to raise a reasonable doubt in the public mind as to his or her capacity to be impartial.*

ADVISORY COMMITTEE COMMENTARY: Canon 3E(6)

Canon 3E(6) is substantively the same as Code of Civil Procedure section 170.2, which pertains to trial court judges.

[Adopted 1/15/96; amended 4/15/96, 6/19/97, 3/4/99, 12/13/00, 6/18/03, 12/22/03, 1/1/05, 1/1/07, 1/1/08, 4/29/09, 1/1/13, ~~and~~ 8/19/15 and 12/1/16.]

Canon 4

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

A. Extrajudicial Activities in General

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

(1) cast reasonable doubt on the judge's capacity to act impartially,*

(2) demean the judicial office,

(3) interfere with the proper performance of judicial duties, or

(4) lead to frequent disqualification of the judge.

ADVISORY COMMITTEE COMMENTARY: Canon 4A

Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which he or she lives. Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions that may do so include inappropriate use of humor or the use of demeaning remarks. See Canon 2C and accompanying Commentary.*

Because a judge's judicial duties take precedence over all other activities (see Canon 3A), a judge must avoid extrajudicial activities that might reasonably result in the judge being disqualified.

B. Quasi-Judicial and Avocational Activities

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

ADVISORY COMMITTEE COMMENTARY: Canon 4B

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice,* including revision of substantive and procedural law* and improvement of criminal and juvenile justice. To the extent that time permits, a judge may do so, either independently or through a bar or judicial association or other group dedicated to the improvement of the law.* It may be necessary to promote legal education programs and materials by identifying authors and speakers by judicial title. This is permissible, provided such use of the judicial title does not contravene Canons 2A and 2B.*

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

C. Governmental, Civic, or Charitable Activities

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

ADVISORY COMMITTEE COMMENTARY: Canon 4C(1)

When deciding whether to appear at a public hearing or to consult with an executive or legislative body or public official on matters concerning the law, the legal system, or the administration of justice, a judge should consider if that conduct would violate any other provisions of this code. For a list of factors to consider, see the explanation of "law, the legal system, or the administration of justice" in the Terminology section. See also Canon 2B regarding the obligation to avoid improper influence.*

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

ADVISORY COMMITTEE COMMENTARY: Canon 4C(2)

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

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

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

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

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

ADVISORY COMMITTEE COMMENTARY: Canon 4C(3)

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

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

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

Service on the board of a homeowners association or a neighborhood protective group is proper if it is related to the protection of the judge's own economic interests. See Canons 4D(2) and 4D(4). See Canon 2B regarding the obligation to avoid improper use of the prestige of a judge's office.

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

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

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

ADVISORY COMMITTEE COMMENTARY: Canon 4C(3)(c)

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

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

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

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

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

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

ADVISORY COMMITTEE COMMENTARY: Canon 4C(3)(d)

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

When deciding whether to make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice a judge should consider whether that conduct would violate any other provision of this code. For a list of factors to consider, see the explanation of "law, the legal system, or the administration of justice" in the Terminology section.*

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

(e) A judge may encourage lawyers to provide pro bono publico legal services.

ADVISORY COMMITTEE COMMENTARY: Canon 4C(3)(e)

In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, as long as the judge does not employ coercion or abuse the prestige of judicial office.

D. Financial Activities

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

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

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

ADVISORY COMMITTEE COMMENTARY: Canon 4D(1)

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

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

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

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

(2) A judge may, subject to the requirements of this code, hold and manage investments of the judge and members of the judge's family,* including real estate, and engage in other remunerative activities. A judge shall not participate in, nor permit the judge's name to be used in connection with, any business venture or commercial advertising that indicates the judge's title or affiliation with the judiciary or otherwise lend the power or prestige of his or her office to promote a business or any commercial venture.

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

ADVISORY COMMITTEE COMMENTARY: Canon 4D(3)

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

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

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

ADVISORY COMMITTEE COMMENTARY: Canon 4D(5)

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

Canon 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5, although such contributions may give rise to an obligation by the judge to disqualify or disclose. See Canon 3E(2)(b) and accompanying Commentary and Code of Civil Procedure section 170.1, subdivision (a)(9).

Because a gift, bequest, or favor to a member of the judge's family residing in the judge's household* might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and urge them to take these constraints into account when making decisions about accepting such gifts,* bequests, or favors. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.**

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

(6) A judge shall not accept and shall discourage members of the judge's family residing in the judge's household* from accepting a gift,* bequest, favor, or loan from anyone except as hereinafter set forth, provided that acceptance would not reasonably be perceived as intended to influence the judge in the performance of judicial duties:

(a) a gift,* bequest, favor, or loan from a person whose preexisting relationship with the judge would prevent the judge under Canon 3E from hearing a case involving that person;

ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(a)

Upon appointment or election as a judge or within a reasonable period of time thereafter, a judge may attend an event honoring the judge's appointment or election as a judge provided that (1) the judge would otherwise be disqualified from hearing any matter involving the person or entity holding or funding the event, and (2) a reasonable person would not conclude that attendance at the event undermines the judge's integrity, impartiality,* or independence.**

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

ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(b)

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

(c) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

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

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

ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(e)

Acceptance of an invitation to a law-related function is governed by Canon 4D(6)(d); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Canon 4D(6)(g). See also Canon 4H(2) and accompanying Commentary.

(f) a gift,* award, or benefit incident to the business, profession, or other separate activity of

a spouse or registered domestic partner* or other member of the judge's family residing in the judge's household,* including gifts,* awards, and benefits for the use of both the spouse or registered domestic partner* or other family member and the judge;

(g) ordinary social hospitality;

ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(g)

Although Canon 4D(6)(g) does not preclude ordinary social hospitality, a judge should carefully weigh acceptance of such hospitality to avoid any appearance of impropriety or bias or any appearance that the judge is misusing the prestige of judicial office. See Canons 2 and 2B. A judge should also consider whether acceptance would affect the integrity,* impartiality,* or independence* of the judiciary. See Canon 2A.*

(h) an invitation to the judge and the judge's spouse, registered domestic partner,* or guest to attend an event sponsored by an educational, religious, charitable, service,* or civic organization with which the judge is associated or involved, if the same invitation is offered to persons who are not judges and who are similarly engaged with the organization.

(7) A judge may accept the following, provided that acceptance would not reasonably be perceived as intended to influence the judge in the performance of judicial duties:

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

(b) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges.

ADVISORY COMMITTEE COMMENTARY: Canons 4D(6) and 4D(7)

The references to such scholarships, fellowships, rewards, and prizes were moved from Canon 4D(6) to Canon 4D(7) because they are not considered to be gifts under this code, and a judge may accept them.*

E. Fiduciary* Activities

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

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

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

ADVISORY COMMITTEE COMMENTARY: Canon 4E

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

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

F. Service as Arbitrator or Mediator

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

ADVISORY COMMITTEE COMMENTARY: Canon 4F

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

G. Practice of Law

A judge shall not practice law.

ADVISORY COMMITTEE COMMENTARY: Canon 4G

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

to advance the interests of the judge or member of the judge's family. See Canon 2B.*

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

H. Compensation, Reimbursement, and Honoraria

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

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

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

(3) No judge shall accept any honorarium. "Honorarium" means any payment made in consideration for speech given, an article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. "Honorarium" does not include earned income for personal services that are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching or writing for a publisher, and does not include fees or other things of value received pursuant to Penal Code section 94.5 for performance of a marriage. For purposes of this canon, "teaching" includes presentations to impart educational information to lawyers in events qualifying for credit under Mandatory Continuing Legal Education, to students in bona fide educational institutions, and to associations or groups of judges.

ADVISORY COMMITTEE COMMENTARY: Canon 4H

Judges should not accept compensation or reimbursement of expenses if acceptance would appear to a reasonable person to undermine the judge's integrity, impartiality,* or independence.**

A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity,* or impartiality.* The factors a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include whether:*

***(a)** the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;*

***(b)** the funding comes largely from numerous contributors rather than from a single entity, and whether the funding is earmarked for programs with specific content;*

***(c)** the content is related or unrelated to the subject matter of a pending* or impending* proceeding before the judge, or to matters that are likely to come before the judge;*

***(d)** the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;*

***(e)** information concerning the activity and its funding sources is available upon inquiry;*

***(f)** the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge;*

***(g)** differing viewpoints are presented;*

***(h)** a broad range of judicial and nonjudicial participants are invited; or*

***(i)** the program is designed specifically for judges.*

*Judges should be aware of the statutory limitations on accepting gifts.**

[Adopted 1/15/96; amended 1/1/05, 1/1/07, 1/1/13 and 8/19/15.]

Canon 5

A Judge or Candidate for Judicial Office* Shall Not Engage in Political or Campaign Activity that is Inconsistent with the Independence,* Integrity,* or Impartiality* of the Judiciary

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

Judges and candidates for judicial office* shall comply with all applicable election, election campaign, and election campaign fundraising laws* and regulations.

ADVISORY COMMITTEE COMMENTARY: Canon 5

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

A. Political Organizations*

Judges and candidates for judicial office* shall not

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

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

(3) personally solicit funds for a political organization* or nonjudicial candidate; or make contributions to a political party or political organization* or to a nonjudicial candidate in excess of $500 in any calendar year per political party or political organization* or candidate, or in excess of an aggregate of $1,000 in any calendar year for all political parties or political organizations* or nonjudicial candidates.

ADVISORY COMMITTEE COMMENTARY: Canon 5A

This provision does not prohibit a judge or a candidate for judicial office from signing a petition to qualify a measure for the ballot, provided the judge does not use his or her official title.*

In judicial elections, judges are neither required to shield themselves from campaign contributions nor are they prohibited from soliciting contributions from anyone, including attorneys. Nevertheless, there are necessary limits on judges facing election if the appearance of impropriety is to be avoided. In soliciting campaign contributions or endorsements, a judge shall not use the prestige of judicial office in a manner that would reasonably be perceived as coercive. See Canons 1, 2, 2A, and 2B. Although it is improper for a judge to receive a gift* from an attorney subject to exceptions noted in Canon 4D(6), a judge's campaign may receive attorney contributions.*

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

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

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

Although family members of the judge or candidate for judicial office are not subject to the provisions of this code, a judge or candidate for judicial office* shall not avoid compliance with this code by making contributions through a spouse or registered domestic partner* or other family member.*

B. Conduct During Judicial Campaigns and Appointment Process

(1) A candidate for judicial office* or an applicant seeking appointment to judicial office shall not:

(a) make statements to the electorate or the appointing authority that commit the candidate or the applicant with respect to cases, controversies, or issues that are likely to come before the courts, or

(b) knowingly,* or with reckless disregard for the truth, ~~misrepresent~~ make false or misleading statements about the identity, qualifications, present position, or any other fact concerning himself or herself or his or her opponent or other applicants.

(2) A candidate for judicial office* shall review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee before its dissemination. A candidate shall take appropriate corrective action if the candidate learns of any misrepresentations made in his or her campaign statements or materials. A candidate shall take reasonable measures to prevent any misrepresentations being made in his or her support by third parties. A candidate shall take reasonable measures to ensure that appropriate corrective action is taken if the candidate learns of any misrepresentations being made in his or her support by third parties.

(3) Every candidate for judicial office* shall complete a judicial campaign ethics course approved by the Supreme Court no earlier than one year before or no later than 60 days after the filing of a declaration of intention by the candidate, the formation of a campaign committee, or the receipt of any campaign contribution, whichever is earliest. If a judge appears on the ballot as a result of a petition indicating that a write-in campaign will be conducted for the office, the judge shall complete the course no later than 60 days after receiving notice of the filing of the petition, the formation of a campaign committee, or the receipt of any campaign contribution, whichever is earliest.

Unless a judge forms a campaign committee or solicits or receives campaign contributions, this requirement does not apply to judges who are unopposed for election and will not appear on the ballot.

Unless an appellate justice forms a campaign committee or solicits or receives campaign contributions, this requirement does not apply to appellate justices.

ADVISORY COMMITTEE COMMENTARY: Canon 5B

The purpose of Canon 5B is to preserve the integrity of the appointive and elective process for judicial office and to ensure that the public has accurate information about candidates for judicial office.* Compliance with these provisions will enhance the integrity,* impartiality,* and independence* of the judiciary and better inform the public about qualifications of candidates for judicial office.**

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

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

Candidates for judicial office must disclose campaign contributions in accordance with Canon 3E(2)(b).*

The time limit for completing a judicial campaign ethics course in Canon 5B(3) is triggered by the earliest of one of the following: the filing of a declaration of intention, the formation of a campaign committee, or the receipt of any campaign contribution. If a judge's name appears on the ballot as a result of a petition indicating that a write-in campaign will be conducted, the time limit for completing the course is triggered by the earliest of one of the following: the notice of the filing of the petition, the formation of a campaign committee, or the receipt of any campaign contribution. A financial contribution by a candidate for judicial office to his or her own campaign constitutes receipt of a campaign contribution.*

C. Speaking at Political Gatherings

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

D. Measures to Improve the Law

A judge or candidate for judicial office* may engage in activity in relation to measures concerning improvement of the law, the legal system, or the administration of justice,* only if the conduct is consistent with this code.

ADVISORY COMMITTEE COMMENTARY: Canon 5D

When deciding whether to engage in activity relating to measures concerning the law, the legal system, or the administration of justice, such as commenting publicly on ballot measures, a judge must consider whether the conduct would violate any other provisions of this code. See the explanation of "law, the legal system, or the administration of justice" in the Terminology section.*

[Adopted 1/15/96; amended 4/15/96, 12/22/03, 1/1/07, 1/1/13, ~~and~~ 8/19/15 and 12/1/16.]

Canon 6

Compliance with the Code of Judicial Ethics

A. Judges

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

ADVISORY COMMITTEE COMMENTARY: Canon 6A

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

B. Retired Judge Serving in the Assigned Judges Program

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

4C(2)—Appointment to governmental positions

4E—Fiduciary* activities

C. Retired Judge as Arbitrator or Mediator

A retired judge serving in the Assigned Judges Program is not required to comply with Canon 4F of this code relating to serving as an arbitrator or mediator, or performing judicial functions in a private capacity, except as otherwise provided in the *Standards and Guidelines for Judicial Assignments* promulgated by the Chief Justice.

ADVISORY COMMITTEE COMMENTARY: Canon 6C

Article VI, section 6 of the California Constitution provides that a "retired judge who consents may be assigned to any court" by the Chief Justice. Retired judges who are serving in the Assigned Judges Program pursuant to the above provision are bound by Canon 6B, including the requirement of Canon 4G barring the practice of law. Other provisions of California law, and standards and guidelines for eligibility and service set by the Chief Justice, further define the limitations on who may serve on assignment.*

D. Temporary Judge,* Referee, or Court-Appointed Arbitrator[1]

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

(1) A temporary judge,* a referee, or a court-appointed arbitrator shall comply with Canons 1 [integrity* and independence* of the judiciary],

[1] Reference should be made to relevant commentary to analogous or individual canons cited or described in this canon and appearing elsewhere in this code.

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

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

(a) Comply with Canons 2B(1) [not allow family or other relationships to influence judicial conduct], 3B(1) [hear and decide all matters unless disqualified], 3B(2) [be faithful to and maintain competence in the law*], 3B(5) [perform judicial duties without bias or prejudice], 3B(7) [accord full right to be heard to those entitled; avoid ex parte communications, except as specified], 3B(8) [dispose of matters fairly and promptly], 3B(12) [remain impartial* and not engage in coercive conduct during efforts to resolve disputes], 3C(1) [discharge administrative responsibilities without bias and with competence and cooperatively], 3C(3) [require* staff and court personnel to observe standards of conduct and refrain from bias and prejudice], and 3C(5) [make only fair, necessary, and appropriate appointments];

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

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

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

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

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

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

(iii) the temporary judge,* within the past five years, has given legal advice to, or served as a lawyer (as defined in Code of Civil Procedure section 170.1, subdivision (a)(2)), except that this provision requires disqualification if the temporary judge* represented a party in the past five years rather than the two-year period specified in section 170.1, subdivision (a)(2) for a party in the present proceeding;

ADVISORY COMMITTEE COMMENTARY: Canon 6D(3)(a)(iii)

The application of Canon 6D(3)(a)(iii), providing that a temporary judge is disqualified if he or she has given legal advice or served as a lawyer for a party to the proceeding in the past five years, may depend on the type of assignment and the amount of time available to investigate whether the temporary judge* has previously represented a party. If time permits, the temporary judge* must conduct such an investigation. Thus, if a temporary judge* is privately compensated by the parties or is presiding over a particular matter known* in advance of the hearing, the temporary judge* is presumed to have adequate time to investigate. If, however, a temporary judge* is assigned to a high volume calendar, such as traffic or small claims, and has not been provided with the names of the parties prior to the assignment, the temporary judge* may rely on his or her memory to determine whether he or she has previously represented a party.*

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

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

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

(vii) for any reason:

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

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

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

(viii) the temporary judge* has received a campaign contribution of $1,500 or more from a party or lawyer in a matter that is before the court and the contribution was received in anticipation of an upcoming election.

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

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

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

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

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

For the purposes of Canon 6D(3)(c), the definitions of "participating in discussions," "has participated in discussions," "party," and "dispute resolution neutral" are set forth in Code of Civil Procedure section 170.1, subdivision (a)(8), except that the words "temporary judge" shall be substituted for the word "judge" in such definitions.

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

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

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

ADVISORY COMMITTEE COMMENTARY: Canon 6D(3)(d)

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

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

ADVISORY COMMITTEE COMMENTARY: Canon 6D(4)

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

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

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

(b) In all proceedings, disclose in writing or on the record membership of the temporary judge,* referee, or court-appointed arbitrator in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation, except for membership in a religious organization.

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

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

(b) Explanations about the procedures of the court.

(7) From the time of appointment and continuing for two years after the case is no longer pending* in any court, a temporary judge,* referee, or court-appointed arbitrator shall under no circumstances accept a gift,* bequest, or favor from a party, person, or entity whose interests have come before the temporary judge,* referee, or court-appointed arbitrator in the matter. The temporary judge,* referee, or court-appointed arbitrator shall discourage family members residing in the household of the temporary judge,* referee, or court-appointed arbitrator from accepting any benefits from such parties, persons or entities during the time period stated in this subdivision. The demand for or receipt by a temporary judge,* referee, or court-appointed arbitrator of a fee for his or her services rendered or to be rendered would not be a violation of this canon.

(8) A temporary judge,* referee, or court-appointed arbitrator shall, from the time of notice and acceptance of appointment and

continuing indefinitely after the termination of the appointment:

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

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

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

(9)(a) A temporary judge* appointed under rule 2.810 of the California Rules of Court, from the time of the appointment and continuing indefinitely after the termination of the appointment, shall not use his or her title or service as a temporary judge* (1) as a description of the lawyer's current or former principal profession, vocation, or occupation on a ballot designation for judicial or other elected office, (2) in an advertisement about the lawyer's law firm or business, or (3) on a letterhead, business card, or other document that is distributed to the public identifying the lawyer or the lawyer's law firm.

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

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

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

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

ADVISORY COMMITTEE COMMENTARY: Canon 6D

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

E. Judicial Candidate

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

F. Time for Compliance

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

ADVISORY COMMITTEE COMMENTARY: Canon 6F

If serving as a fiduciary when selected as a judge, a new judge may, notwithstanding the prohibitions in Canon 4E, continue to serve as a fiduciary* but only for that period of time necessary to avoid adverse consequences to the beneficiary of the fiduciary* relationship and in no event longer than one year.*

G. (Canon 6G repealed effective June 1, 2005; adopted December 30, 2002.)

H. Judges on Leave Running for Other Public Office

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

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

4C(1)—Appearing at public hearings

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

ADVISORY COMMITTEE COMMENTARY: Canon 6H

These exceptions are applicable only during the time the judge is on leave while running for other public office. All of the provisions of this code will become applicable at the time a judge resumes his or her position as a judge. Conduct during elections for judicial office is governed by Canon 5.

[Adopted 1/15/96; amended 4/15/96, 3/4/99, 1/1/05, 7/1/06, 1/1/07, 1/1/08, 1/1/13, 1/21/15 and 8/19/15.]

APPENDIX 3.

COMPLAINT ABOUT A CALIFORNIA JUDGE, COURT COMMISSIONER OR REFEREE

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

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

Today's date:

Your name:

Your telephone number:

Your address:

Your attorney's name:

Your attorney's telephone number:

Name of judge:

OR

Name of court commissioner or referee:

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

Court:

County:

Name of case and case number:

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

Return to: Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, California 94102
Telephone: (415) 557-1200
Fax: (415) 557-1266 **6/09**

APPENDIX 4.

COMMISSION ON JUDICIAL PERFORMANCE CLOSES INVESTIGATION OF JUDGE AARON PERSKY

The Commission on Judicial Performance (commission) is the independent state agency responsible for investigating complaints of judicial misconduct involving state court judges and for imposing discipline. Pursuant to article VI, section 18 of the California Constitution, the commission may impose sanctions for judicial misconduct ranging from confidential discipline to removal from office. Judicial misconduct usually involves conduct inconsistent with the standards set forth in the California Code of Judicial Ethics. The commission can only impose discipline on a judge if there is clear and convincing evidence of judicial misconduct.

The commission received thousands of complaints and petitions about Santa Clara County Superior Court Judge Aaron Persky's June 2, 2016 sentencing of Brock Allen Turner, a Stanford University student-athlete who was convicted of sexually assaulting an unconscious woman behind a dumpster outside a college party. The sentence imposed—six months in county jail plus three years of probation and lifetime sex offender registration—was widely criticized as being too lenient, and triggered significant public outrage and media coverage. Because Judge Persky's sentencing of Turner and the complaints to the commission received widespread public attention, the commission issues this explanatory statement pursuant to article VI, section 18(k) of the California Constitution.

The complaints submitted to the commission primarily alleged that: (1) Judge Persky abused his authority and displayed bias in his sentencing of Turner; (2) the sentence was unlawful; (3) the judge displayed gender bias and failed to take sexual assault of women seriously; (4) the judge exhibited racial and/or socioeconomic bias because a non-white or less privileged defendant would have received a harsher sentence; and (5) the judge's history as a student-athlete at Stanford University caused him to be biased in favor of Turner and that he should have disclosed his Stanford affiliation or disqualified himself from handling the case.

Many complainants asked the commission to ensure that the sentencing in this case matches both the crime and the jury's verdict and to be sure that justice is done. The commission is not a reviewing court—it has no power to reverse judicial decisions or to direct any court to do so—irrespective of whether the commission agrees or disagrees with a judge's decision. It is not the role of the commission to discipline judges for judicial decisions unless bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law, or any purpose other than the faithful discharge of judicial duty is established by clear and convincing evidence. (*Oberholzer v. Commission on Judicial Performance* (1999) 20 Cal.4th 371, 395-399.)

The commission has concluded that there is not clear and convincing evidence of bias, abuse of authority, or other basis to conclude that Judge Persky engaged in judicial misconduct warranting discipline. First, the sentence was within the parameters set by law and was therefore within the judge's discretion. Second, the judge performed a multi-factor balancing assessment prescribed by law that took into account both the victim and the defendant. Third, the judge's sentence was consistent with the recommendation in the probation report, the purpose of which is to fairly and completely evaluate various factors and provide the judge with a recommended sentence. Fourth, comparison to other cases handled by Judge Persky that were publicly identified does not support a finding of bias. The judge did not preside over the plea or sentencing in one of the cases. In each of the four other cases, Judge Persky's sentencing decision was either the result of a negotiated agreement between the prosecution and the defense, aligned with the recommendation of the probation department, or both. Fifth, the judge's contacts with Stan-

ford University are insufficient to require disclosure or disqualification. A detailed discussion of the commission's analysis is set forth below.

Overview of the *Turner* Case

On January 18, 2015, Brock Turner, a 19-year-old Stanford University freshman and member of the swim team, was caught sexually assaulting an unconscious woman behind a dumpster outside a college party. Two passersby witnessed the attack, called 911, and then chased and detained Turner while they waited for law enforcement to arrive.

On March 30, 2016, a jury convicted Turner of three felony charges. Turner was found guilty of violating Penal Code section 220(a)(1), assault with intent to commit rape, Penal Code section 289(e), sexual penetration of an intoxicated person with a foreign object (based on digital penetration) and Penal Code section 289(d), sexual penetration of an unconscious person with a foreign object (again, based on digital penetration). The convictions for violating Penal Code sections 289(d) and 289(e) were for the same conduct and therefore were punishable by a total of three, six, or eight years in state prison for both violations. The Penal Code section 220(a)(1) violation was punishable by two, four, or six years in state prison. Altogether, Turner faced a maximum of 14 years in prison. At the time Turner was sentenced, the Penal Code allowed for a downward departure to probation instead of a state prison term for convictions like Turner's upon a judicial finding that the case was "unusual" and that "the interests of justice would best be served if the person is granted probation." [1]

The district attorney's office sought a six-year state prison sentence for Brock Turner. Defense counsel urged the court to impose a more lenient sentence of four months in county jail plus three to five years of probation. In a 16-page report, the probation department recommended that the judge impose "a moderate county jail sentence, formal probation [for three years], and sexual offender treatment..." (The maximum sentence in a county jail permitted by law is one year.)

At the June 2, 2016 sentencing hearing, the victim made a lengthy oral statement and submitted a 12-page written statement. After hearing from the victim, the prosecutor, Turner's father, and Turner himself, Judge Persky took a short recess and then returned and announced his indicated sentence. The judge noted at the outset of his remarks that the sentencing decision was a difficult one.

> And as I'm sure everyone in the court can appreciate and as was stated several times today, it is a difficult decision. And I just want to, before I give my tentative decision, read something from [Jane's] statement, which I think is appropriate—actually, two things from her statement. [¶] She gave a very eloquent statement today on the record, which was a briefer version of what was submitted to the Court. [¶] Let me just say for the record that I have reviewed everything, including the sentencing memorandum, the probation report, the attachments to the probation report, and the respective sentencing memoranda. [¶] And so [Jane] wrote in her written statement, [as read] 'Ruin a life, one life, yours. You forgot about mine. Let me rephrase for you. "I want to show people that one night of drinking can ruin two lives"—you and me.['] [¶] 'You are the cause; I am the effect. You have dragged me through this hell with you, dipped me back into that night again and again. You knocked down both our towers. I collapsed at the same time you did. Your damage was concrete: Stripped of titles, degrees, enrollment. My damage was internal, unseen. I carry it with me. You took away my worth, my privacy, my energy, my time, my safety, my intimacy, my confidence, my own voice, until today.' [¶] And then later on in her written statement, she writes, [as read] 'If you think I was spared, came out unscathed, that today I ride off into the sunset while you suffer the greatest blow, you are mistaken. Nobody wins. We

[1] On September 30, 2016, Governor Jerry Brown signed into law Assembly Bill 2888, which amended Penal Code section 1203.065 to prohibit courts from granting probation instead of a state prison sentence to anyone convicted of Penal Code section 289(d) or 289(e).

> have all been devastated. We have all been trying to find some meaning in all of this suffering.' [¶] And here—I think this is relevant to the—to the sentencing decision—she writes, [as read] 'You should have never done this to me. Secondly, you should never have made me fight so long to tell you you should never have done this to me. But here we are. The damage is done. No one can undo it. And now we both have a choice. We can let this destroy us. I can remain angry and hurt, and you can be in denial. Or we can face it head on: I accept the pain; you accept the punishment; and we move on.'

(R.T. 29:10-30:19.)

Then, the judge announced that his tentative decision was to find unusual circumstances and grant probation instead of a state prison sentence, as recommended by the probation department, to begin with six months in county jail. The judge then stated:

> I understand that—as I read—that [Jane's] life has been devastated by these events, by the—not only the incidents that happened, but the—the criminal process has had such a debilitating impact on people's lives, most notably [Jane] and her sister. [¶] And, also, the—one other factor, of course, is the media attention that has been given to this case, which compounds the difficulties that participants in the criminal process face. [¶] So I acknowledge that devastation. [¶] And—and to me, the—not only the—the incident, but the criminal proceedings—preliminary hearing, trial, and the media attention given to this case—has—has in a—in a—in a way sort of poisoned the lives of the people that have been affected by the defendant's actions. [¶] And in my decision to grant probation, the question that I have to ask myself, again, consistent with those Rules of Court, is: Is state prison for this defendant an antidote to that poison? Is incarceration in state prison the right answer for the poisoning of [Jane's] life? [¶] And trying to balance the factors in the Rules of Court, I conclude that it is not and that justice would best be served, ultimately, with a grant of probation.

(R.T. 31:4-25.)

Judge Persky explained that probation was prohibited for violations of Penal Code section 220 except in unusual cases where the interest of justice would best be served. The judge then cited the California Rules of Court, which sets forth factors that "may indicate the existence of an unusual case in which probation may be granted if otherwise appropriate." (Cal. Rules of Court, rule 4.413.) Applying California Rules of Court, rule 4.413(c)(2)(C), the judge found that Turner's youth and lack of a significant record reduced his culpability, thereby overcoming the statutory limitation on probation.[2] The judge then identified and discussed each of the 17 factors outlined in California Rules of Court, rule 4.414.

The judge found the following crime-related criteria to be relevant to his decision:

- the nature, seriousness, and circumstances of the crime as compared to other instances of the same crime
- the vulnerability of the victim
- whether the defendant inflicted physical or emotional injury
- whether the defendant was an active participant in the crime
- whether the defendant demonstrated criminal sophistication

With respect to the vulnerability of the victim, the judge stated, "And the victim in this case was extremely vulnerable. That's an element of the crime with respect to Counts 2 and 3, but not with respect to Count 1. So I have considered that." (R.T. 33:23-26.) As to the factor relating to the physical or emotional injury inflicted by the defendant, the

[2] Judge Persky noted that although the probation department implied in its report that because Turner was intoxicated at the time of the assault, this would be another basis for overcoming the statutory prohibition of probation pursuant to California Rules of Court, rule 4.413(c)(1)(A), the judge was "not relying on that circumstance" and did not "attach very much weight to that." (R.T. 32:15, 33:19-20.)

judge stated, "And as we've heard today, as I heard at trial, there was both physical and devastating emotional injury inflicted on the victim. That weighs, obviously, in favor of denying probation." (R.T. 33:28-34:3.)

The judge found the following defendant-related criteria to be relevant to his decision:

- the defendant's prior criminal record
- the defendant's willingness and ability to comply with the terms of probation
- the likely effect of imprisonment on the defendant
- the adverse collateral consequences on the defendant from the felony conviction
- whether the defendant is remorseful
- whether or not the defendant was likely be a danger to others

With respect to the factor relating to the likely effect of imprisonment on the defendant, the judge indicated that he believed probation was appropriate because "a prison sentence would have a severe impact on [Turner]," acknowledging that a state prison sentence would have a severe impact on a defendant "in any case," but, he said, "I think it's probably more true with a youthful offender sentenced to state prison at a—a young age." (R.T. 35:22-26.)

With respect to the factor relating to the likelihood of future dangerousness, the judge stated that he believed Turner "will not be a danger to others." (R.T. 38:5.) The probation department had evaluated the defendant's dangerousness using two assessment tools and advised in its report to the court that Turner was not very likely to re-offend. Specifically, the probation department reported that Turner had received a score of 3 on the Static-99R, an actuarial measure of sexual offense recidivism, which placed him in the "Low-Moderate Risk Category for being charged or convicted of another sexual offense." Probation also assessed Turner using the Corrections Assessment Intervention System (CAIS), "a standardized, validated assessment and case management system developed by the National Council on Crime and Delinquency [which] assesses a defendant's criminogenic needs and risk to re-offend." The probation department reported that the CAIS had determined that Turner needed to learn new coping skills and get treatment relating to drug and alcohol abuse, and that he would benefit from family therapy. The probation report stated that each of these needs could be addressed while he was on probation.

After the judge announced his indicated sentence, the prosecutor made a statement, urging the judge to impose (at a minimum) the maximum time in county jail (i.e., a year) and not just six months. Defense counsel then made a statement, noting that "the Court's recitation of the Court's view of the Judicial Council rules and the sentencing factors is certainly one of the most complete and thorough that I've heard in any case for some time." (R.T. 43:25-28.) A deputy probation officer then spoke on behalf of the probation department, urging the court to follow its tentative decision. She indicated that the probation department had followed statutory guidelines, had balanced "the character of the defendant and facts of the case," and had submitted an "unbiased," "fair and complete recommendation." (R.T. 44:23-45:7.) Thereafter, Judge Persky announced that he would adopt his tentative decision and he read the terms of probation into the record, including the requirements that Turner register as a lifetime sex offender and submit to random drug and alcohol testing.[3]

Turner filed a notice of appeal on June 2, 2016, immediately after the sentence was imposed. The appeal is still pending. On Friday, September 2, 2016, Brock Turner was released after serving three months in county jail.[4]

[3] On July 25, 2016, the terms of Turner's probation were revised to include the requirement that he undergo drug and alcohol counseling. The probation department requested the revision after Turner was caught lying about his high school drug and alcohol use.

[4] Turner appears to have served half of his county jail sentence. Penal Code section 4019(b)-(c) dictates that for each four-day period spent in county jail, two days is deducted from the inmate's sentence, reducing the sentence by half.

The Sentence Imposed on Brock Turner Was Not Unlawful

The sentence imposed in the *Turner* case has been widely criticized by complainants as inadequate punishment in light of the crime committed. Some complainants believe that Judge Persky's sentencing decision was not lawful. The sentence imposed by Judge Persky, however, was within the parameters set by Penal Code section 1203.065(b) and therefore was not unlawful. The transcript of the *Turner* sentencing hearing reflects the judge's finding that Turner's youth and lack of a significant record reduced his culpability, thereby overcoming the statutory limitation on probation. The transcript also reflects the judge's consideration of the factors that the rules require a court to consider to determine whether probation is appropriate instead of a state prison sentence.

Some complainants also believe that the judge's sentencing decision constituted an abuse of his discretion. In particular, some suggest that it was improper for the judge to consider Turner's youth and his level of intoxication as mitigating factors. Others believe that the judge gave unfair mitigating weight to what he perceived was Turner's remorse. Even if it were improper for the judge to assess those factors as he did, those issues are properly addressed on appeal. Canon 1 of the Code of Judicial Ethics states explicitly that "[a] judicial decision or administrative act later determined to be incorrect legally is not itself a violation of this Code." Under the standard set by the California Supreme Court, even if the judge failed to follow a statute or abused his discretion, the commission cannot impose discipline unless the error "clearly and convincingly reflect[ed] bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law, or any purpose other than the faithful discharge of judicial duty . . . ." (*Oberholzer v. Commission on Judicial Performance, supra*, 20 Cal.4th 371, 395-399.) As discussed in more detail below, there is not clear and convincing evidence of bias or any other factor required for a finding of judicial misconduct.

There is Not Clear and Convincing Evidence of Judicial Bias

The presence or absence of judicial bias has been established in some cases by examining whether a judge's remarks or conduct reflected bias. (See, e.g., *In re Glickfeld* (1971) 3 Cal.3d 891; *Public Admonishment of Judge Johnson* (2012).) Bias has also been assessed in some instances by examining decisions in other similar cases. (See, e.g., In re Complaint of Judicial Misconduct (9th Cir. 2014) 751 F.3d 611.)

1. Judge Persky's Remarks at the *Turner* Sentencing Hearing

When granting probation for certain sex offenses under Penal Code section 1203.065(b), judges are required to specify on the record the circumstances indicating that the interests of justice would best be served by that disposition. When probation is granted, judges are also required to state the primary factor or factors that support the judge's exercise of discretion to grant probation. (Cal. Rules of Court, rule 4.406.)

Some complainants contend that the judge's remark at the *Turner* sentencing hearing that Turner "will not be a danger to others" reflected bias. As discussed above, future dangerousness is one of the factors that a judge must consider when deciding whether to grant or deny probation. (See Cal. Rules of Court, rule 4.414(b)(8).) Moreover, the remark tracked the results of two clinical tests of Turner's future dangerousness contained in the probation report.

Some complainants contend that Judge Persky's statement that a prison sentence would "have a severe impact on [Turner]" reflected bias. Again, the likely impact of imprisonment on the defendant is one of the factors to be considered in determining whether probation is appropriate. (See Cal. Rules of Court, rule 4.414(b)(5).) Moreover, the judge acknowledged that state prison is likely to have a severe impact on a defendant "in any case," and, he explained, "I think it's probably more true with a youthful offender sentenced to state prison at a – at a young age."

The transcript from the sentencing hearing does not support the contention that the judge was implicitly referencing Turner's race, socioeconomic status, Stanford affiliation, or role as a college athlete when he remarked on the "severe impact" that prison would have, or when he said that Turner "will not be a danger to others." The transcript also does not support the allegation that the judge did

not objectively consider the damage to the victim and expressed no sympathy for the victim.

In sum, the commission concluded that neither the judge's statements about the impact of prison and the defendant's future dangerousness—factors that the judge was required to address on the record—nor any other remarks made by Judge Persky at the sentencing hearing constitute clear and convincing evidence of judicial bias.

Cases in which judges have been reversed and disciplined for making statements that reflect bias stand in stark contrast to the *Turner* case.[5] For example, in the case of *People v. Beasley* (1970) 5 Cal.App.3d 617, the Court of Appeal reversed the trial court's order of probation and dismissal of various rape, robbery, and kidnapping charges. In open court, the judge referred to the victim as the "alleged victim" and ridiculed the police inspector who accompanied her to the defendants' probation hearing and his superior officer who had instructed the inspector to accompany the victim to court. The appellate court found that Judge Glickfeld's "incomprehensible tirade" against the victim, her police inspector attendant, and his supervisor indicated "a lack of the *impartial* discretion, guided by fixed legal principles in conformity with the spirit of the law, required by *People v. Russel* [(1968)] 69 Cal.2d 187, 194." (*People v. Beasley, supra,* 5 Cal. App.3d at p. 633, italics in original.) In 1971, a year after the appellate decision in *Beasley*, the California Supreme Court censured Judge Glickfeld. The commission's recommendation for discipline was based on the remarks referred to in the appellate decision and on the judge's referral to the victim, during an in-chambers conversation at which the victim was present, as a "horse's ass." The Supreme Court censured Judge Glickfeld for referring to the victim "in an insulting and inexcusable manner" during a conversation in chambers, and for his "intemperate" remarks in open court. (*In re Glickfeld, supra,* 3 Cal.3d 891.)

More recently, in 2012, the commission publicly admonished Judge Derek Johnson for remarks he made at the sentencing hearing in a rape case that created the impression that he could not be impartial in rape cases where the victim suffered no serious bodily injury showing resistance. The judge relied on his own "expert opinion," based on his experience as a prosecutor, saying, "I'm not a gynecologist, but I can tell you something: If someone doesn't want to have sexual intercourse, the body shuts down. The body will not permit that to happen unless a lot of damage is inflicted . . . ." The judge also said that the case "trivializes a rape," was "technical," and was "more of a crim law test than a real live criminal case." (*Public Admonishment of Judge Johnson* (2012).)

2. Judge Persky's Sentencing Decisions in Other Similar Cases

In the wake of the *Turner* sentencing decision, some have pointed to other criminal cases handled by Judge Persky as proof of his bias in favor of white and/or privileged male defendants, particularly college athletes, and/or of his failure to take violence against women seriously. The commission concluded that the cases cited in support of that proposition do not provide clear and convincing evidence of judicial bias.

In *People v. Raul Ramirez* (No. B1475841), the defendant sexually assaulted his roommate while she was conscious. Through counsel, Ramirez negotiated a deal in which he pleaded guilty to a violation of Penal Code section 289(a) in exchange for a three-year state prison sentence. Ramirez was never sentenced because he failed to appear at his sentencing hearing. Some have compared the three-year sentence that was to be imposed on Ramirez with Turner's lighter sentence, arguing that the only explanation for the disparity was Ramirez's Salvadoran nationality. However, although Judge Persky handled proceedings earlier in the case, it was not Judge Persky who handled the hearing at

[5] "A judge's comments during sentencing, however, are one type of in-court statement that commissions and courts are hesitant to subject to discipline, a reluctance based on concern that sanctions would discourage judges from articulating the bases for their sentencing decisions." (Gray, *The Line Between Legal Error and Judicial Misconduct: Balancing Judicial Independence and Accountability* (2004) 32 Hofstra Law Review 1245. See, e.g., *In re Inquiry Concerning Lichtenstein* (Colo. 1984) 685 P.2d 204; *In re Hocking* (Mich. 1996) 451 Mich. 1.)

which Ramirez entered his guilty plea, but another trial judge; thus, the *Ramirez* case cannot be used to demonstrate disparate treatment in sentencing by Judge Persky. In addition, the sentence to be imposed on Ramirez was the result of a negotiated agreement between the defense and the prosecution. Finally, Ramirez pleaded guilty to forcible sexual penetration of a conscious or unimpaired person, which carries a statutory mandatory minimum sentence of three years in state prison. California law explicitly prohibits a downward departure for a violation of Penal Code section 289(a) under any circumstances, whereas the Penal Code sections Brock Turner was convicted of violating permitted (at the time) a downward departure to probation in certain circumstances.

Some have pointed to Judge Persky's sentencing in *People v. Ming Hsuan Chiang* (No. B1475227), *People v. Ikaika Lukas Gunderson* (No. B1577341), and *People v. Keenan Smith* (No. B1581137), each of which involved domestic battery charges, and in *People v. Robert Chain* (No. B1473538), which involved possession of child pornography charges, as evidence of alleged bias in favor of defendants who are white or privileged or college athletes and as evidence that the judge does not take violence against women seriously.

In *Gunderson*, the judge accepted the defendant's guilty plea in May 2015, pursuant to a negotiated agreement between the defense and the prosecution. The judge's deferral of sentencing, and the judge's indication that he would allow a reduction of the felony charge to a misdemeanor charge at sentencing if the defendant complied with the plea conditions, were both part of the agreement. On March 10, 2016, after Gunderson failed to comply with the conditions of the plea, the judge sentenced the defendant on the felony charge. The sentence imposed aligned with the recommendation of the probation department.

In *Chiang*, the judge accepted the defendant's guilty plea in April 2016 and imposed a sentence in June 2016, pursuant to a negotiated agreement between the defense and the prosecution. The sentence imposed aligned with the recommendation of the probation department.

In *Smith*, Judge Persky accepted the defendant's guilty plea in March 2016, pursuant to a negotiated agreement between the defense and prosecution. The judge sentenced the defendant pursuant to that agreement. There was no probation report.

In *Chain*, Judge Persky accepted the defendant's guilty plea in June 2015. After discussions with the defense and the prosecution, the judge imposed a sentence to which the prosecution did not object. The sentence imposed aligned with the recommendation of the probation department.

Judges are required to consider a probation report although they are not required to follow it. (Pen. Code, § 1203(b)(3).) A county probation department is an arm of the superior court, and one of its main purposes is to assist the court in arriving at an appropriate disposition. (*People v. Villarreal* (1977) 65 Cal.App.3d 938, 945.) "It is also fundamental that the probation decision should not turn solely upon the nature of the offense committed, but 'should be rooted in the facts and circumstances of each case.' [citations omitted]" (*Ibid.*) Judge Persky's sentencing decisions in the *Chiang, Gunderson,* and *Smith* cases resulted from negotiated agreements between the defense and the prosecution, and the prosecution did not object to the sentence imposed in the *Chain* case. In three of the four cases, the judge's sentencing decisions aligned with the recommendations of the probation department (as it did in *Turner*). (There was no probation report in the fourth case.) Accordingly, these decisions do not provide clear and convincing evidence to support the contention that Judge Persky's decisions reflect personal bias in favor of white criminal defendants and/or more privileged criminal defendants, or that he takes crimes involving violence against women less seriously.

Judge Persky Was Neither Required to Disclose His Stanford Affiliation Nor Was He Required to Recuse Himself

Some complainants believe that Judge Persky should have disqualified himself from the *Turner* case because he, like Brock Turner, attended Stanford University and played sports while he was a student there. At the very least, they argue, the judge should have disclosed his Stanford connection. The commission determined that neither disclosure nor disqualification was required in the *Turner* case.

Code of Civil Procedure section 170.1 sets forth the circumstances requiring judicial disqualification. Code of Civil Procedure section 170.1(a)(6)(A)(iii) states that a judge shall be disqualified if "[f]or any reason [a] person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial." Canon 3E(2) requires judges to disclose on the record information that is reasonably relevant to the question of disqualification, even if the judge believes there is no basis for disqualification.

Judge Persky attended Stanford University in the 1980's. He earned a bachelor's degree in 1984 and a master's degree in 1985. As an undergraduate student, Judge Persky was the captain of the Stanford men's lacrosse team. Since finishing his studies more than three decades ago, the judge's contacts with Stanford University have been minimal. Excluding payments to a Stanford-affiliated preschool, and excluding a small 2014 contribution to a Stanford-affiliated children's hospital, Judge Persky and his spouse have donated small sums of money to Stanford University during the 31 years since he completed his studies, totaling $1,205. Most of these donations were to the Stanford Fund for Undergraduate Education. Judge Persky also has made two donations ($50 in 1997 and $100 in 1999) to the Stanford Men's Lacrosse Program, totaling $150. In addition to his financial contributions to Stanford University, the judge has had some non-financial ties to the university over the years. He is a lifetime member of the Stanford Alumni Association (a membership his mother purchased for him after he finished his studies); he has attended various alumni events and reunions over the years (for which he paid the prevailing alumni rate); and he has sporadically volunteered his time over the years (for alumni career networking and class reunions, and with a medical school psychiatry class). In sum, the judge has had minimal ties to the university since he graduated in 1985.

In *Leland Stanford Junior University v. Superior Court* (1985) 173 Cal.App.3d 403, a civil action was brought against Stanford and several public entities challenging certain development plans on campus. A motion to disqualify the trial judge was brought based on the facts that the judge was a graduate of Stanford Law School, a founder of the Santa Clara County chapter of the Stanford Law Society in the mid-1960's and the president of that chapter from 1969 to 1971, and a member of the law school's Board of Visitors from 1969 to 1972. Since then, the judge's only association with the school was "as a graduate attending graduate gatherings." (*Id.* at pp. 405-406.) The trial court disqualified the judge, but the appellate court reversed: "We conclude as a matter of law that the 'average person on the street,' aware of the facts, would find Judge Thompson's activities in and before 1972 both so remote and so unrelated to the management of Stanford's land and physical facilities as to raise no doubt as to Judge Thompson's ability to be impartial in this matter." (*Id.* at p. 408.)

In *McCartney v. Superior Court* (1990) 223 Cal. App.3d 1334, a breach of contract and related tort claims action was brought by a former student of the University of Southern California (USC) against that institution. The student appealed the denial of a motion to disqualify the trial court commissioner because the commissioner had attended USC over 30 years earlier. Citing *Leland Stanford Junior University v. Superior Court, supra,* 173 Cal.App.3d 403, the court concluded that no reasonable person would question the commissioner's impartiality. (*Id.* at p. 1340.)

More recently, in *Allphin v. United States* (Fed. Cir. 2014) 758 F.3d 1336, 300 former service members, who were discharged as a result of a program seeking to reduce the number of enlisted personnel serving in the Navy, brought a wrongful discharge action seeking reinstatement or damages. Appellants filed a motion seeking recusal of the judge based on her former employment at the Department of Justice from 1976 to 1987 and as an attorney for the Navy from 1987 to 1996. The federal circuit court affirmed the trial judge's denial of the motion, determining that her prior employment did not create a reasonable basis for questioning her impartiality. "Appellants' subjective beliefs about the judge's impartiality are irrelevant. The judge's prior work for the Department of Justice and the Navy over seventeen years ago does not raise a reasonable question as to her impartiality. A 'mere prior association [does not] form a reasonable basis for questioning a judge's impartiality.'" (*Id.* at p. 1344, citing *Maier v. Orr* (Fed. Cir. 1985) 758 F.2d 1578.)

In the underlying criminal action out of which the current claims against Judge Persky arise, Stanford University was not a party or counsel, thus making his association with his alma mater even more attenuated as a ground for recusal. In *Cline v. Sawyer* (Wyo. 1979) 600 P.2d 725, the Wyoming Supreme Court affirmed an order denying a party's disqualification challenge to the trial judge based on the relationship between the judge and the respondent, who attended the same university. As is pertinent here, the court noted: "The affidavit alleges that the judge and [respondents] attended the same university at the same time where 'they *may* have' belonged to the same fraternities or associations. Certainly such does not reflect a prejudgment of this case by the judge. It does not reflect a leaning of his mind in favor of [respondents] to the extent that it will sway his judgment or to the extent that he would make his decisions in the matter other than on the evidence placed before him." (*Id.* at p. 728, italics in original.)

The commission concluded that Judge Persky's ties to Stanford University do not constitute the kind of relationship or experience that required disclosure or recusal in the *Turner* case, and they are not sufficient to establish bias or favoritism for Brock Turner or any Stanford-affiliated litigant.

Conclusion

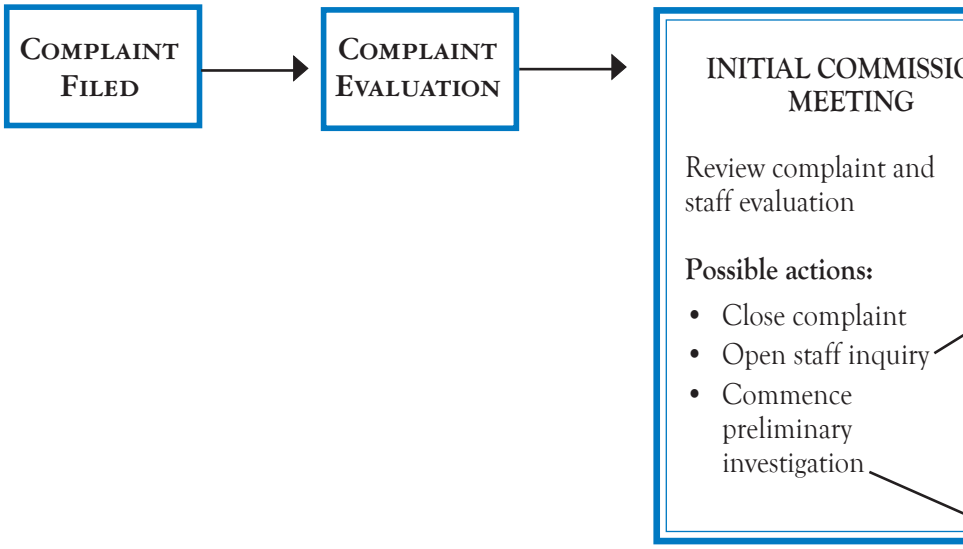
"An independent, impartial, and honorable judiciary is indispensable to justice in our society." (Cal. Code of Jud. Ethics, canon 1.)

> An independent judge is one who is able to rule as he or she determines appropriate, without fear of jeopardy or punishment. So long as the judge makes rulings in good faith, and in an effort to follow the law as the judge understands it, the usual safeguard against error or overreaching lies in the adversary system and appellate review.

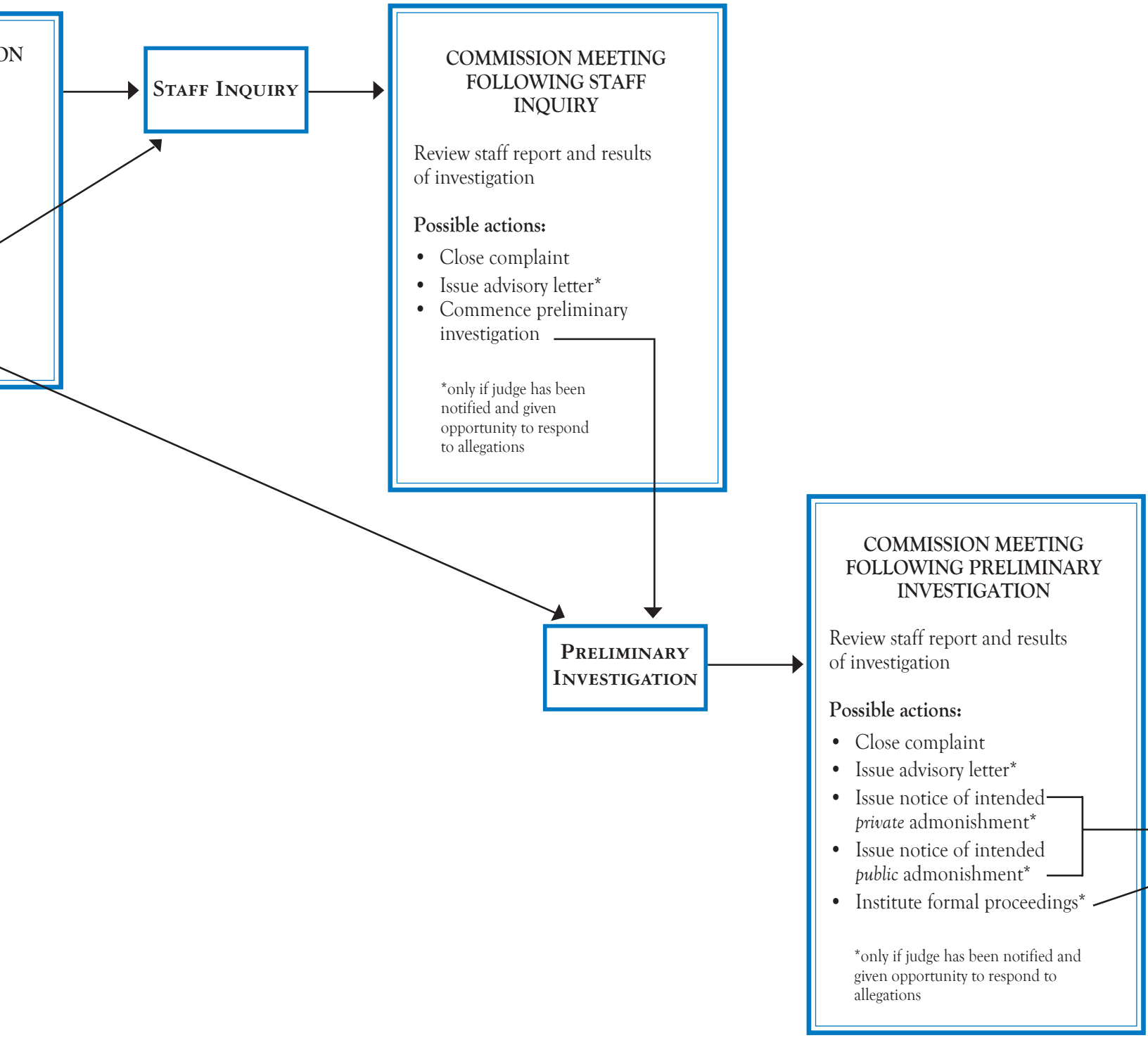
(Shaman, *et al.*, Judicial Conduct and Ethics (5th ed. 2013) Use of Power, § 2.02, p. 2-5.)

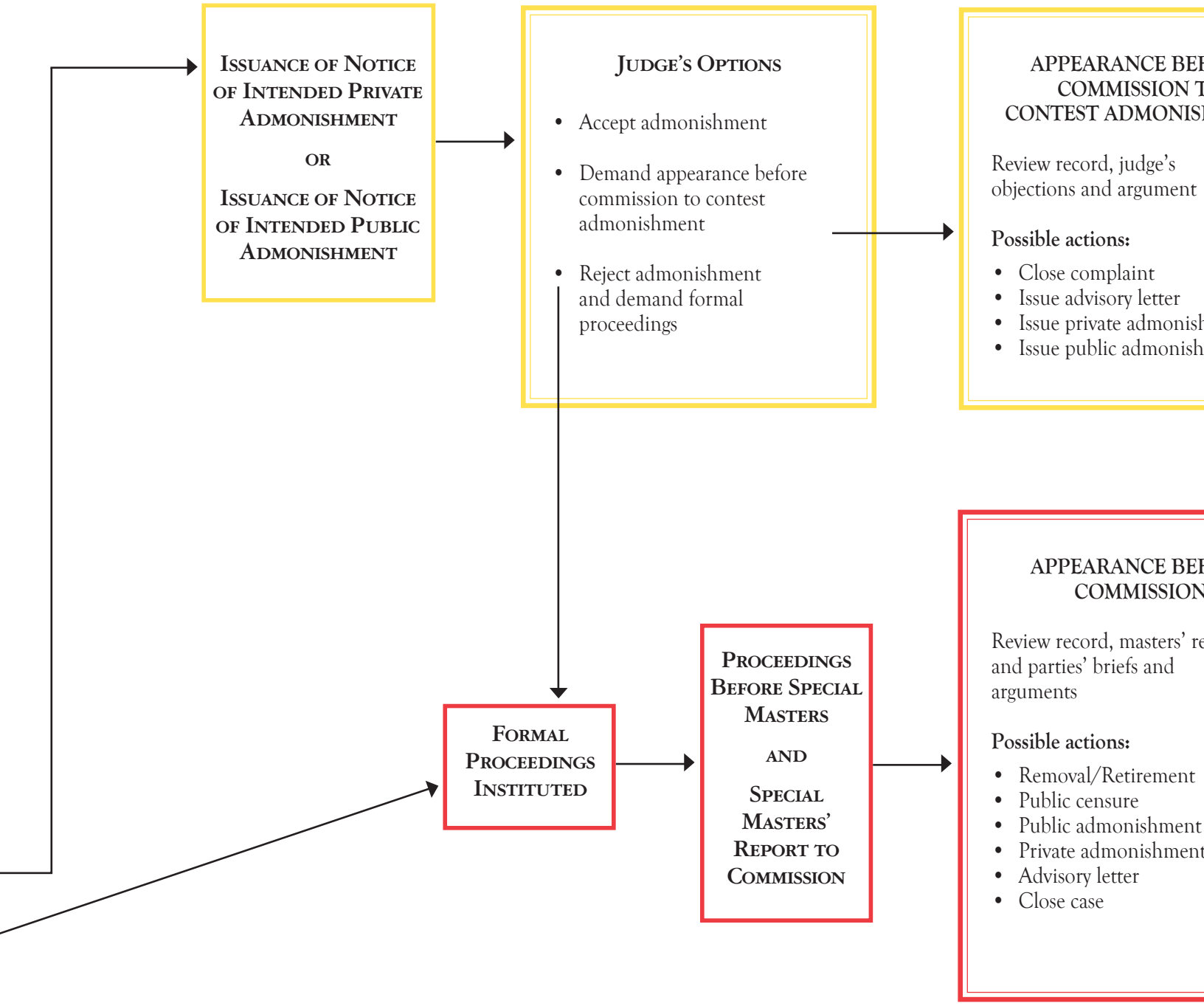
In this matter, the commission did not find clear and convincing evidence of misconduct by Judge Persky. Accordingly, the participating commission members voted unanimously to close, without discipline, its preliminary investigation of the complaints against the judge regarding his sentencing decision in the *Turner* case. Commission members Hon. Erica R. Yew of the Santa Clara County Superior Court and Mr. Richard Simpson are recused and did not participate in this matter.

APPENDIX 5.
COMMISSION PROCEEDINGS



COMMISSION PROCEEDINGS


ON
Staff Inquiry
COMMISSION MEETING FOLLOWING STAFF INQUIRY
Review staff report and results of investigation
Possible actions:
• Close complaint
• Issue advisory letter*
• Commence preliminary investigation
*only if judge has been notified and given opportunity to respond to allegations
Preliminary Investigation
COMMISSION MEETING FOLLOWING PRELIMINARY INVESTIGATION
Review staff report and results of investigation
Possible actions:
• Close complaint
• Issue advisory letter*
• Issue notice of intended private admonishment*
• Issue notice of intended public admonishment*
• Institute formal proceedings*
*only if judge has been notified and given opportunity to respond to allegations


Issuance of Notice of Intended Private Admonishment
or
Issuance of Notice of Intended Public Admonishment
Judge's Options
Accept admonishment
Demand appearance before commission to contest admonishment
Reject admonishment and demand formal proceedings
APPEARANCE BEF
COMMISSION T
CONTEST ADMONISI
Review record, judge's objections and argument
Possible actions:
Close complaint
Issue advisory letter
Issue private admonish
Issue public admonish
Formal Proceedings Instituted
Proceedings Before Special Masters
and
Special Masters' Report to Commission
APPEARANCE BEF
COMMISSION
Review record, masters' re
and parties' briefs and arguments
Possible actions:
Removal/Retirement
Public censure
Public admonishment
Private admonishment
Advisory letter
Close case

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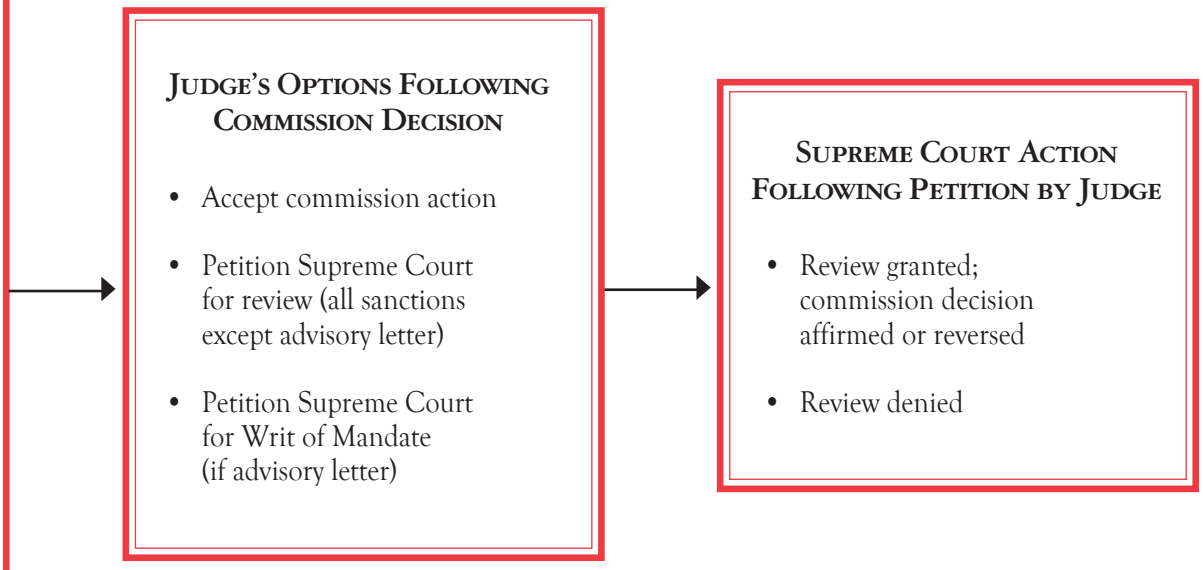
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