

**POLICY DECLARATIONS OF THE  
COMMISSION ON JUDICIAL PERFORMANCE**

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## **PREAMBLE**

In consideration of the need for both uniformity and continuity of procedure and equitable, expeditious resolution of recurrent and detailed issues of procedure, the commission has authorized the formulation of the following policy declarations detailing commission policies, procedures and practices. These policy declarations are to reflect internal procedural detail neither duplicative of nor inconsistent with constitutional mandate or statutes or commission rules. These policy declarations are based upon concepts of utility, experience, and fair hearing of matters before the commission.

Rules referred to in the policy declarations are Rules of the Commission on Judicial Performance.

## **TITLE**

These policy declarations shall be known and may be cited as the Policy Declarations of the Commission on Judicial Performance.

## **DIVISION I. COMPLAINTS AND INVESTIGATIONS**

### **1.1 Anonymous Complaints**

Staff will evaluate anonymous complaints for merit; if a complaint is deemed sufficiently meritorious, it will be placed on the oversight agenda for consideration by the commission as to whether or not it should be docketed.

[Approved 5/28/97.]

#### **1.1.5 Reconsideration of Complaints Closed Upon Initial Review**

If a matter is closed by the commission at initial review because a complaint does not state sufficient facts or information to establish a prima facie case of misconduct, the complainant shall be informed that if further new information is provided, it will be reviewed and, if sufficient, the complaint will be reconsidered.

[Approved 6/28/17.]

### **1.2 Staff Inquiries [Repealed]**

[Repealed 12/7/22; Approved 5/28/97.]

### **1.3 Staff Inquiry Letters [Repealed]**

[Repealed 12/7/22; Approved 5/28/97.]

### **1.4 Preliminary Investigations**

The purpose of a preliminary investigation is to determine whether formal proceedings should be instituted and a hearing held.

At the conclusion of a preliminary investigation, or at the conclusion of a period of monitoring under rule 112, the commission may take any of the following actions:

- (1) Close the matter;
- (2) Issue a notice of tentative advisory letter, private admonishment or public admonishment; or
- (3) Institute formal proceedings.

A judge must receive a preliminary investigation letter and be afforded an opportunity to respond before a notice of tentative advisory letter, private admonishment or public admonishment may issue or formal proceedings may be instituted.

[Approved 5/28/97; amended 6/26/19, 12/7/22.]

### **1.5 Preliminary Investigation Letters**

A preliminary investigation letter provides the judge notice of the investigation and the nature of the charge under review and may include: the date of the conduct; the location(s) where the conduct occurred; if applicable, the name of the case(s) or identification of the court proceeding(s) in relation to which the conduct occurred. If the investigation concerns statements made by or to the judge, the letter may also include the text or summaries of the comments.

The purpose of the preliminary investigation letter is to afford the judge an opportunity to provide such matters as the judge may choose including information about the factual aspects of the allegations and other relevant comment.

[Approved 5/28/97.]

## **1.6 Authorization for Preliminary Investigations Between Meetings**

In instances where a matter comes to the attention of the commission between meetings, which on its face appears to warrant a preliminary investigation and there has already been direct communication with the subject judge or other exigent circumstances exist, an effort should be made, whenever possible, to poll all of the commission members for authorization of a preliminary investigation. If, in the discretion of the chairperson or acting chairperson, polling all of the members is not feasible, the chairperson or acting chairperson may authorize the preliminary investigation. When a preliminary investigation is authorized without a poll of the members, the members shall be promptly notified of the action taken.

[Approved 5/28/97; amended 12/7/22.]

### **1.6.5 Authorization for Supplemental Preliminary Investigation Letters Between Meetings**

When a judge's response to a preliminary investigation letter fails to respond to an allegation in the letter or reveals additional instances or a variation of the same conduct that is the subject of the commission's investigation, the chairperson or acting chairperson may authorize staff to send a supplemental letter to obtain the judge's explanation concerning the omitted, additional or variation of the allegations.

[Approved 2/1/17; amended 12/7/22.]

## **1.7 Preliminary Investigation Letters Not Authorized or Determined Not to Be Warranted**

At the time a preliminary investigation is authorized by the commission, the authorization may or may not include writing the judge a letter, in addition to other investigation. If information acquired during the preliminary investigation establishes that there is no basis for further proceedings, the preliminary investigation may be closed without the judge being contacted. A preliminary investigation letter authorized by the commission need not be sent if information obtained by staff before the letter is sent shows that the letter may not be warranted.

[Approved 5/28/97; amended 12/7/22.]

## **1.8 Cases Removed From Active Calendar**

The commission may defer its consideration of a pending preliminary investigation and direct that the matter be removed from the commission's active calendar. Circumstances which may warrant deferral in the commission's consideration of a matter include: 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; when criminal or other proceedings involving the judge are pending. In appropriate cases, the complainant may be notified that the commission has deferred action on the complaint.

When a matter is removed from the commission's active calendar, it shall be placed on the commission agenda at every meeting, and subject to active consideration at the discretion of the commission.

[Approved 5/28/97; amended 3/22/17, 12/7/22.]

## **1.9 Admonishments to Persons Giving Interviews and Statements**

In the course of a preliminary investigation, persons questioned or interviewed to ascertain the validity of allegations shall be admonished that the investigation is confidential under the California Constitution and commission rules. When it appears that there may be use of the elicited information in connection with possible testimony or discovery, the person providing the information shall be so advised.

[Approved 5/28/97; amended 12/7/22.]

## **1.10 Consent, Preservation of Witness Interviews and Statements**

Consent to mechanical recording may be obtained from interviewees. Statements and interviews may be transcribed and preserved, and may be submitted to interviewees for signature and verification.

[Approved 5/28/97.]

## **1.11 Independent Record of Witness Statements**

Where a witness statement or interview is not transcribed or recorded, it is not to be conveyed, commented upon or otherwise communicated to the commission by commission staff unless an independent memorialization of the

statement has been prepared by staff (a writing other than a case memorandum or report from staff to the commission).

[Approved 5/28/97.]

### **1.12 Investigation Subpoenas**

Commission investigation subpoenas may issue upon application to the commission chairperson, vice-chairperson or the designee of either, stating the name, address and title, if any, of the person from whom information is sought, and whether or not a statement under oath is to be taken.

[Approved 5/28/97.]

### **1.13 Witness Statements Under Oath**

When the statement of a witness is taken under oath pursuant to Government Code section 68750, the witness may be given an opportunity to review and make corrections to the transcript of the witness's testimony at the office of the court reporter before whom the statement was taken. A copy of the statement shall not otherwise be furnished to the witness unless formal proceedings are instituted in the matter in which the testimony was given and the witness's statement is discoverable under rule 122.

[Approved 6/25/98.]

### **1.14 Submission of Character Letters**

#### **(1) Written communications submitted during preliminary investigation**

During a preliminary investigation, written communications containing information related to the character of a judge who has a matter pending before the commission may be submitted to the commission. Such written communications must be delivered to the commission office, and shall not be delivered to individual commission members.

In determining the weight to be given to written character references, the commission may consider, but is not limited to, the following list of factors:

(a) The length of time the author of the written communication has known the judge, and the nature and extent of the author's contact with the judge;

(b) Whether the character reference is submitted in the form of a declaration signed under penalty of perjury; and

(c) Whether the information provided by a person other than a judge or subordinate judicial officer is based on personal knowledge.

Pursuant to canon 2B, character references submitted by judges or subordinate judicial officers must be based on personal knowledge.

(2) Written communications submitted after the initiation of formal proceedings

After the initiation of formal proceedings, written communications related to the character of the respondent judge may only be submitted by stipulation of the parties at the hearing held pursuant to rule 123 or rule 133. After the completion of the evidentiary hearing pursuant to rule 123 or 133, such communications shall not be accepted by the commission.

[Approved 5/22/08; amended 12/7/22.]

## **DIVISION II. DISCIPLINE, APPEARANCES AND FORMAL PROCEEDINGS**

### **2.1 Opposition to Tentative Advisory Letter, Tentative Private Admonishment and Tentative Public Admonishment; Statement of Objections and Appearance**

An appearance before the commission to object to the imposition of a tentative advisory letter, a tentative private admonishment or a tentative public admonishment under rule 114, means an opportunity for a judge to informally object to the imposition of discipline in argument before the commission based on the proceedings which resulted in the issuance of a notice of tentative discipline and the judge's statement of objections.

A judge's demand for an appearance after notice of a tentative advisory letter, tentative private admonishment, or tentative public admonishment under rule 114, shall include a written statement of the basis of the judge's objections to the tentative discipline. The appearance before the commission will be scheduled after receipt of the judge's demand for appearance and statement of objections. The commission may request further briefing.

At the appearance before the commission, the judge may appear with or without counsel. The appearance is not an evidentiary hearing and there is no testimony by witnesses. Argument shall be limited to oral presentation not to exceed thirty (30) minutes by the judge and thirty (30) minutes by trial counsel or

other attorney designated by the commission to present argument in support of the discipline.

[Approved 5/28/97; amended 10/6/09, 10/19/11, 6/26/19, 12/7/22.]

### **2.1.5 Limitation on Requests for Correction of Advisory Letters [Repealed]**

[Repealed 12/7/22; Approved 6/30/10.]

## **2.2 Date of Hearing**

Absent unusual circumstances, the evidentiary hearing on the charges set forth in a notice of formal proceedings shall be set to commence two to four months following the issuance under rule 118 of the notice of formal proceedings.

[Approved 5/28/97; amended 8/26/04.]

## **2.3 Prehearing Proceedings**

The commission or the special masters may require prehearing status statements, briefs or conferences (either by telephone or in person), or require any other appropriate prehearing proceeding. The purpose of such prehearing proceedings is to provide the commission or the special masters with pertinent information for prehearing and to ensure that the hearing proceeds efficiently. The masters may issue appropriate prehearing orders and may determine whether any such order needs be in writing.

[Approved 5/28/97; amended 8/26/04.]

### **2.3.5 Deposition Transcripts Taken Pursuant to Rule 122(g)**

The following procedures apply to the transcription of depositions taken pursuant to rule 122(g):

- (1) The party noticing the deposition shall arrange for a court reporter.
- (2) The party noticing the deposition shall bear the cost of the transcription.
- (3) The court reporter shall send written notice to the deponent, the judge, and the examiner when the original transcript of the deposition is available.

(4) The court reporter shall certify on the transcript of the deposition that the deponent was duly sworn and that the transcript is a true record of the testimony given.

(5) The original transcript shall be transmitted to the party noticing the deposition, at that party's expense. The other party and the deponent may obtain a copy of the transcript from the court reporter upon request and at the expense of that party or deponent.

(6) A copy of the transcript shall not be filed with the commission unless admitted at a hearing held pursuant to rule 123 or rule 133, or as an exhibit to a motion filed with the commission or the special masters.

[Approved 1/30/13.]

## **2.4 Agreed Statement and Discipline by Consent**

An agreed statement under rule 125(a) may be offered by the respondent judge and the examiner in place of all or part of the evidence after institution of formal proceedings. An agreement between the respondent judge and the examiner for discipline by consent under rule 127 may be submitted to the commission after institution of formal proceedings. The examiner is responsible for handling negotiations with the respondent judge or respondent judge's counsel concerning agreed statements and agreements for discipline by consent.

[Approved 5/28/97.]

## **2.5 Order Barring Assignments to Former Judges**

If the commission determines to bar a former judge from receiving an assignment, appointment to or reference of work from any California state court, pursuant to article VI, section 18(d) of the California Constitution, the order barring the judge from receiving assignments will be included in the commission's order of censure.

Notice of an order barring a former judge from receiving assignments shall be given to the Chief Justice and to the Judicial Council for distribution to the presiding judges of the state courts.

[Approved 6/25/98; amended 12/7/22.]

## **2.6 Modification of Decision Following Formal Proceedings**

At any time before a commission determination to impose discipline upon a judge following formal proceedings becomes final under rule 136, the commission may modify the order regarding the disciplinary determination to eliminate any erroneous statement of fact or law in the order.

[Approved 6/29/05.]

## **2.7 Citation of Commission Decisions**

Citations to commission decisions following formal proceedings should be to the CJP Supplement to the Official California Reports in the following form: Inquiry Concerning \_\_\_\_\_ (year) (volume) Cal.4th CJP Supp. (page). Citations to public decisions not reported in the Official California Reports should be in the following form: [Censure/Censure and Bar/Public Admonishment] of Judge \_\_\_\_\_ (year) (page).

[Approved 6/30/10.]

## **DIVISION III. COMMISSION ADMINISTRATION**

### **3.1 Setting Regular and Special Meetings**

(1) Before the end of each calendar year, staff will propose a choice of dates for each meeting for the next calendar year. At its March organizational meeting, the commission will approve the meeting dates for the remainder of the year.

(2) A special meeting shall be called (a) upon not less than five (5) days notice by the chairperson or acting chairperson, or (b) upon notice of request of not less than four (4) members.

[Approved 5/28/97.]

### **3.2 Organizational Meeting; Election of Chairperson and Vice-Chairperson**

At its March meeting each year, the commission shall organize itself for the conduct of business for the ensuing year and shall select a chairperson and vice-chairperson.

[Approved 5/28/97.]

### **3.3 Preparation of Annual Report**

At the end of each calendar year, staff will prepare a draft annual report for circulation to the commission or such members as the commission delegates for review of the draft report. After the draft report is reviewed and suggestions made, staff will revise the draft report in accordance therewith and will submit the report in final form to the chairperson for approval for publication within the first quarter of the calendar year.

[Approved 5/28/97; amended 2/11/99.]

### **3.4 Availability of Commission Rules and Policy Declarations**

The rules and policy declarations of the commission will be published by the commission and distributed to the public upon request. The commission's rules and policy declarations are also to be published, to the extent possible, in legal publications including the California Official Reports Advance Sheets and other legal publications and on-line services.

[Approved 5/28/97; amended 2/11/99.]

### **3.5 Review of Commission Rules, Proposed Changes**

#### **(1) Biennial Rules Review**

Every two years, in even-numbered years, the commission shall review its rules, and any rule enactments, amendments or repeals proposed by commission members or staff, or third parties. Proposed changes to the rules by commission members or staff, or third parties which are received by the commission other than during its biennial rules review may be considered by the commission and either deferred to the next review of the rules or, in the commission's discretion, acted upon prior to the next biennial rules review pursuant to the procedures specified in this policy declaration.

#### **(2) Submission of Rule Proposals**

Proposed rules, amendments and repeals must be submitted in writing to the commission's office and include a statement of the specific purpose of the proposed rule, amendment or repeal and explain how the proposal would achieve the intended purpose. The commission or a designated member of staff may, in writing, solicit further information or clarification from the proponent of the rule, amendment or repeal.

### (3) Public Comment

All rule proposals submitted to the commission pursuant to subdivision (2) or by a member of the commission or commission staff shall be reviewed by the commission or the commission's rules committee. If, after review, the commission is considering the adoption of a proposed rule or amendment or the repeal of an existing rule, the proposal must be circulated for public comment. The invitation to comment shall include the express language of the proposal or proposed change and an explanation of the reason for the proposed change. There shall be a 60-day comment period, the expiration of which shall be noticed in the invitation to comment. The time to comment may be shortened to 30 days or extended to 90 days for good cause. Within 30 days after the expiration of the initial comment period, responses to comments submitted during the initial comment period may be submitted. The period to respond to comments may be shortened for good cause. All comments and responses shall be submitted in writing. The commission shall not consider any further comments or input after the expiration of the comment and response periods.

The commission may determine that exigent circumstances require it to adopt, amend, or suspend a rule on an interim basis without first circulating it for public comment. Before the rule is enacted, amended or repealed on a permanent basis, it shall be circulated for public comment according to the provisions of this policy declaration.

The commission may correct inadvertent, non-substantive errors in commission rules without circulating the revision for public comment and issuing a public report.

### (4) Commission Action on Proposal

As soon as feasible after the expiration of the comment and response periods, the commission shall review and consider all written comments and responses received and vote to adopt, modify, or reject the proposal. The commission may modify the proposed rule or amendment in view of the comments received and other considerations without seeking further public comment, unless the modification results in a significant change to the substance of the proposal. The adoption, amendment, or repeal of a rule becomes effective as of the date of the commission's action, unless otherwise specified.

### (5) Public Report

A final public report shall be issued as promptly as possible after the commission votes to adopt, reject or modify the proposed rule. The report shall

include the express language of the rule or amendment adopted by the commission and the language of any rule that was repealed by the commission. The report shall include a summary of any written comment submitted during the comment and response periods together with an explanation of why a change was made to accommodate the comment or the reasons for making no change. The commission may respond to repetitive comments as a group or summarily dismiss irrelevant comments.

#### (6) Public File

The commission shall maintain a public rules file. The file shall include copies of any rule proposals submitted to the commission pursuant to this policy declaration, written correspondence with proponents of a rule amendment, the invitation to comment circulated by the commission, any comments received during the public comment and response periods, the final public report, and any external reports, studies or documentary evidence relied on by the commission in reaching its determination on a proposed rule, amendment or repeal. Confidential information included in a public comment shall be redacted from the copy placed in the public file. Copies of any materials contained in the public file shall be provided to any member of the public upon request, subject to a reasonable administrative fee.

[Approved 5/28/97; amended 2/4/04, 12/5/13, 7/11/18, 7/1/20.]

### **3.6 Policy Declarations**

When there is commission approval for staff to draft a policy declaration, any proposed enactment, amendment or repeal shall be submitted to each commission member for consideration at a duly convened meeting of the commission at which a vote thereon is taken. The commission may have the proposed enactment, amendment or repeal reviewed by the rules committee prior to a vote by the commission.

[Approved 5/28/97; amended 1/30/13.]

### **3.7 Staff Authorization for Announcements Between Meetings**

When the director believes an announcement pursuant to California Constitution, article VI, section 18(k) or pursuant to rule 102(c) is appropriate between meetings in a particular proceeding, the director shall so advise the chairperson or acting chairperson. An effort should be made, whenever possible, to poll all of the members for authorization of the announcement. If, in the discretion of the chairperson or acting chairperson, polling all of the members is

not feasible, the chairperson or acting chairperson may authorize the announcement. When an announcement is authorized without a poll of the members, the members shall be promptly notified of the action taken.

[Approved 5/28/97.]

### **3.7.5 Announcement at Conclusion of Previously-Announced Investigation**

When the commission has issued a public statement announcing or confirming that a matter is under investigation pursuant to article VI, section 18(k) or pursuant to rule 102(c), at the conclusion of the investigation, the commission shall issue a public statement indicating that the previously-announced investigation has been completed. If the matter has been concluded by the commission, the announcement shall so state. If the commission has instituted formal proceedings, the announcement shall so state, and the announcement may include an explanation of formal proceedings.

[Approved 2/11/99.]

### **3.8 Duties of Trial Counsel**

Trial counsel shall serve as examiner in formal proceedings instituted by the commission and shall represent the commission in litigation before the California Supreme Court and other courts when directed to do so by the commission. Trial counsel shall serve under the direction of the commission's director-chief counsel.

[Approved 5/28/97.]

### **3.9 Legal Advisor to Commissioners**

The commission has established the position of legal advisor to commissioners and shall designate an attorney to serve in that capacity. The legal advisor reports directly to the commission and shall assist the commission in its adjudicatory function, including in its consideration and adjudication of matters in which formal proceedings have been instituted and matters in which judges demand an appearance before the commission to object to a tentative advisory letter, private admonishment or public admonishment.

The legal advisor shall not participate in the investigation of complaints or prosecution of charges against judges. If the legal advisor previously participated in an investigation or adversarial proceeding in another capacity as

an attorney for the commission, he or she shall not assist the commission in its deliberations or adjudication of that matter absent a written waiver by the judge.

The legal advisor shall present to the commission proposals for disposition of matters in which formal proceedings have been instituted which have been jointly offered by trial counsel and the judge or judge's counsel. After institution of formal proceedings, the legal advisor shall be responsible for requesting the appointment of special masters by the Supreme Court and shall serve as the commission's liaison to special masters appointed in formal proceedings.

The legal advisor shall perform such additional duties as may be assigned by the commission that do not require or cause the legal advisor to participate in the commission's investigatory or prosecutorial functions.

[Approved 5/28/97; amended 8/26/04, 10/19/11, 6/26/19, 12/7/22.]

### **3.10 Records Disposition Policy**

At the beginning of each calendar year, the commission shall destroy all files which did not result in an advisory letter, public or private admonishment, public reproof, censure, removal or involuntary retirement, resignation or retirement with proceedings pending, or finding that a person was unfit to serve as a subordinate judicial officer as follows:

- (1) Files involving complaints against municipal or superior court judges dated or docketed by the commission in the thirteenth year prior to the new calendar year; and
- (2) Files involving complaints against appellate or Supreme Court justices dated or docketed by the commission in the nineteenth year prior to the new calendar year; and
- (3) Files involving complaints against subordinate judicial officers dated or docketed by the commission in the thirteenth year prior to the new calendar year.

[Approved 5/28/97; amended 2/11/99.]

### **3.11 Biennial Adjustment of Gift Limitation Amount**

- (1) Code of Civil Procedure section 170.9(a) limits to \$250 the total value of gifts that an individual judge may accept from any single source in any calendar year. Section 170.9(d) requires that the commission adjust that amount

biennially to reflect changes in the Consumer Price Index, rounded to the nearest \$10. Since section 170.9(d) took effect January 1, 1995, an adjustment must be made in subsequent odd-numbered years (commencing in 1997).

(2) The adjusted gift limitation amount shall apply as of January 1 of the year in which the adjustment is announced and shall remain in effect until January 1 of the next odd-numbered year.

(3) The adjusted gift limitation amount shall be calculated by the commission as follows:

(a) The base dollar amount (\$250) shall be increased or decreased by the percentage change in the annual average California Consumer Price Index (CCPI) for all urban consumers from the base year (1994) to the end of the calendar year immediately preceding the year of adjustment.

(b) Formula: The base dollar amount (\$250) is multiplied by a fraction whose numerator is the annual average CCPI for the even-numbered year preceding the year of adjustment and whose denominator is the 1994 annual average CCPI (151.5). The resulting dollar amount is rounded to the nearest \$10, unless that amount ends in the numeral five with no cents, in which case it is not rounded in either direction.

[Approved 5/28/97.]

### **3.12 Extensions of Time**

Unnecessary delay in commission proceedings is incompatible with the commission's mandate to protect the public and the judiciary in general. Accordingly, extensions of time are disfavored.

[Approved 8/26/04.]

### **3.13 Procedures and Standards for Staff Recusal**

(1) The chairperson of the commission or the chairperson's designee shall be informed if any member of legal staff, the director, or the legal advisor has any possible conflicts of interest involving either a case assigned to him or her or any other case pending before the commission and of information that might be considered relevant to the question of disqualification, even if the attorney believes there is no actual basis for disqualification.

(2) The chairperson or the chairperson's designee shall make a determination as to whether the attorney shall be recused or other action taken. The commission shall be apprised at each meeting of any conflicts or potential conflicts brought to the attention of the chairperson. The commission may overrule or modify any resolution of a conflict by the chairperson.

(3) An attorney shall be recused under the following circumstances:

(a) The attorney in the course of a previous representation of a client has received confidential information that has any relevance to a commission investigation;

(b) The attorney has personal knowledge of disputed evidentiary facts concerning the proceedings;

(c) The attorney has a current personal, financial, or professional relationship with the judge, the judge's counsel, or the complainant;

(d) The attorney has a previous personal, financial, or professional relationship with the judge, the judge's counsel, or the complainant which casts a substantial doubt on the attorney's ability to be impartial;

(e) The attorney's spouse or partner has a personal, financial, or professional relationship with the judge, the judge's counsel, or the complainant which casts a substantial doubt on the attorney's ability to be impartial;

(f) Where a reasonable person aware of the facts would entertain a substantial doubt that the attorney would be impartial.

(4) In the event an attorney other than the director is recused, the recused attorney shall not review any materials concerning the matter or discuss the matter with commission staff. The recusal shall be noted prominently in the file and commission staff shall be directed not to circulate any materials concerning the matter to the recused attorney, not to consult with the recused attorney concerning the matter and not to discuss the matter in the presence of the recused attorney. The entire legal staff need not be recused from the matter unless the commission determines that the recused attorney's conflict casts a substantial doubt on the ability of the entire staff to be impartial. The recusal of the attorney shall be noted in the commission's minutes.

(5) In the event the director is recused, the entire legal staff, excluding the legal advisor, shall be recused. The commission may obtain outside counsel to handle intake, investigation, and any further proceedings involving the case, including acting as media contact, without consultation with the director or legal staff. The recusal of the director shall be noted in the commission's minutes.

(6) In the case of a recusal of the legal advisor or trial counsel, the commission may designate a member of legal staff or obtain outside counsel to advise the commission or act as examiner.

[Approved 6/30/10.]

### **3.14 Certification Applications: Confidentiality**

The commission shall treat as confidential any information which is presented to the commission by a former judge or justice for certification to administer oaths or affirmations pursuant to Code of Civil Procedure Section 2093 and Government Code Section 1225 for retirement purposes, except the fact that a certification is in effect may be revealed.

[Approved 12/1/15.]

## **DIVISION IV. DISCLOSURE OF INFORMATION**

### **4.1 Public Safety**

The disclosure of information concerning a threat to public safety under rule 102(f) may be made by the chairperson, the director or the designee of either.

[Approved 5/28/97.]

### **4.2 Disclosure of Information to Prosecuting Authorities**

When, in the course of evaluating complaints or conducting investigations, commission staff acquires information revealing possible criminal conduct by a judge, former judge or by any other individual or entity, such information shall be brought to the attention of the commission at the earliest possible opportunity for consideration of a referral of the information to prosecuting authorities. Such a referral requires a vote of a majority of the commission members.

[Approved 5/28/97.]

#### **4.3 Disclosure of Disciplinary Records to Public Entity Upon Request/With Consent of Judge**

When a judge requests or consents to the release of commission records of disciplinary action under rule 102(h), the judge's request must be made in writing to the commission office. If the judge is consenting to a request by a public entity for records of disciplinary action, the judge's written consent and a copy of the entity's request must be received by the commission office. Copies of any information released to the public entity shall be provided simultaneously to the judge requesting or consenting to the release of records.

[Approved 5/28/97.]

#### **4.4 Disclosure of Records of Disciplinary Action to Appointing Authorities**

Requests by an appointing authority for records of disciplinary action pursuant to California Constitution, article VI, section 18.5 or rule 102(i) must be made in writing to the commission office. Copies of any information provided to the appointing authority shall be provided simultaneously to the applicant judge.

[Approved 5/28/97.]

#### **4.5 Disclosure of Information Regarding Pending Proceedings to Appointing Authorities**

Requests by an appointing authority for information regarding pending investigations or proceedings pursuant to rule 102(j) must be made in writing to the commission office. Copies of any information provided to the appointing authority shall be provided simultaneously to the applicant judge.

[Approved 5/28/97.]

#### **4.5.5 Limitation on Disclosure to Appointing Authorities – Complaints Not Yet Reviewed by the Commission**

When responding to a request for information regarding pending investigations from appointing authorities (rule 102(j)), the director-chief counsel shall state that the commission's discretionary authority to release information concerning pending investigations does not encompass comment on any complaint that may have been received by the commission and has not yet been

reviewed by the commission to determine whether or not to authorize an investigation or whether any such complaint exists.

[Approved 3/13/02.]

#### **4.6 Disclosure of Information to Public Entities**

The release of information to a public entity, pursuant to rule 102, subsections (k) or (p), requires a vote of a majority of the commission members. The commission may, in its discretion, notify the judge, former judge, subordinate judicial officer or former subordinate judicial officer, that such disclosure is being made. Copies of any information being disclosed to the public entity may, in the commission's discretion, be made available to the judge, former judge, subordinate judicial officer or former subordinate judicial officer, who is the subject of the disclosure.

[Approved 5/28/97; amended 1/29/03, 12/6/17.]

### **DIVISION V. DISABILITY RETIREMENT APPLICATIONS**

#### **5.1 Disability Applications: Confidentiality**

The commission shall treat as confidential any information which is presented to the commission by a judge for retirement purposes, except as follows:

(1) The fact and date that an application has been filed and has been approved or rejected or remains pending may be revealed.

(2) If the Judges' Retirement System (JRS) submits a written request for information concerning a particular disability retirement application pursuant to Government Code section 75080(d) or 75580(a), the commission shall provide to JRS any information that the commission deems necessary to a full understanding of the commission's action, in furtherance of the statutory scheme embodied in articles 3 and 4 of the Judges' Retirement Law and articles 4 and 6 of the Judges' Retirement System II (JRS II). The commission shall furnish the judge in question with a copy of any documents provided to JRS. All information released under this section shall remain confidential and privileged.

[Approved 5/28/97; amended 6/21/00, 8/26/04, 1/30/13.]

## **5.2 Disability Applications: Medical Consultants**

The commission may arrange with the University of California Medical Centers and/or other qualified medical practitioners for medical consultants to provide independent medical examinations for disability retirement applicants, to assist the commission as necessary in evaluating disability retirement applications under Government Code sections 75060 and 75560.1, making findings under policy declaration 5.4(4) in order to facilitate implementation of Government Code sections 75080(d) and 75580(a), and/or reevaluating the medical status of a judge retired on disability under Government Code sections 75060.6 and 75560.6.

[Approved 5/28/97; amended 6/21/00, 1/30/13.]

## **5.3 Reexamination of Judges Retired for Disability**

When approving a request for disability retirement, the commission shall decide on a case-by-case basis whether and when the judge shall be required to be reexamined pursuant to Government Code section 75060.6 or 75560.6. Notwithstanding such decision, a judge retired for disability may be required to undergo reexamination pursuant to Government Code section 75060.6 or 75560.6.

[Approved 5/28/97; amended 1/30/13.]

## **5.4 Procedure in Disability Retirement Matters**

(1) An application for disability retirement must include: a consent to disability retirement, executed by the judge or, in an application by a JRS II judge, a family member or legal representative acting on behalf of the judge pursuant to Government Code section 75560.1(a), and a medical certificate of disability, executed under penalty of perjury by a licensed physician. To complete the application, the commission ordinarily will require a medical report prepared by that physician in support of certification, which shall include a statement specifying the nature of the judicial duties that cannot be efficiently discharged due to the judge's disability, and all pertinent medical documentation.

A judge seeking the disability retirement allowance provided under Government Code section 75560.4(b) must inform the commission in the judge's consent to disability retirement that the judge is seeking a determination by the commission whether the disability is predominantly a result of injury arising out of and in the course of judicial service. The commission will not make a determination whether the injury is predominantly a result of injury arising out of

and in the course of judicial service if the judge is entitled to 65 percent of the judge's final compensation on the effective date of the disability retirement under Government Code section 75560.4(a).

(2) When a judge submits an application for disability retirement, the commission will advise the judge if the certifying physician's report or other medical documentation supporting the application is inadequate, and will give the judge thirty (30) days to supply more complete data. The judge shall cooperate in obtaining any medical/psychiatric records the commission or the special master needs in evaluating the judge's disability application.

(3) Following receipt of a complete application, the commission may request review of medical reports and documents by independent consultants and/or medical examiners. One or more independent medical examinations and/or additional medical information may be requested within one hundred twenty (120) days of the first commission meeting after receipt of complete medical records. This time may be extended for good cause. If an independent medical examination is conducted, the commission will provide a copy of the examiner's report to the judge. If the examiner concludes that the judge suffers from a disability that precludes the efficient discharge of judicial duties and is permanent or likely to become so, the examiner's report shall include a statement specifying the nature of the judicial duties that cannot be efficiently discharged due to the disability.

If the judge has informed the commission that the judge is seeking a disability retirement allowance pursuant to Government Code section 75560.4(b), the examiner's report shall also set forth the examiner's opinion whether the disability is predominantly a result of injury arising out of and in the course of judicial service and the basis for that opinion.

(4) Within sixty (60) days of the first commission meeting after receipt of all reports by consultants and medical examiners, the commission will: approve the application, or tentatively deny it, or extend its time to act on the application for good cause, "good cause" to include circumstances in which the judge's condition cannot yet be deemed permanent or likely to become so, within the meaning of Government Code section 75060 or 75560.1. If the commission extends its time to act, notice of such extension shall be provided to the judge.

(5) If the commission approves the application, the commission will refer the application to the Chief Justice. If the Chief Justice approves the application, the Judges' Retirement System will be informed that the disability application has been approved. The commission may also prepare a statement of findings

specifying the nature of the judicial duties that cannot be efficiently discharged due to the disability.

(6) If the commission tentatively denies the application, or approves the application but tentatively determines that the disability is not predominantly a result of injury arising out of and in the course of judicial service, the commission will within thirty (30) days issue a tentative decision setting forth the reasons for the denial. The tentative decision will be provided to the judge upon issuance.

(7) If the commission approves the disability application, but tentatively determines that the disability is not predominantly a result of injury arising out of and in the course of judicial service, the commission will refer the application to the Chief Justice. If the Chief Justice approves the application, Judges' Retirement System will be informed that the disability application has been approved, subject to a pending determination whether or not the disability is predominantly a result of injury arising out of and in the course of judicial service.

(8) A tentative denial of the disability application or a tentative determination that the disability is not predominantly a result of injury arising out of and in the course of judicial service becomes final thirty (30) days after issuance unless, within thirty (30) days of the tentative denial, or tentative determination, the judge (1) files a request to submit additional information to the commission, or (2) files a request for an evidentiary hearing to contest the tentative denial or tentative determination. A request to submit additional information shall explain the relevance of the additional information to the commission's determination(s). A request to submit additional information does not preclude the judge from requesting an evidentiary hearing, if, after considering the additional information, the commission does not change its tentative denial of the disability application, or tentative determination that the disability is not predominantly a result of injury arising out of and in the course of judicial service. A request for an evidentiary hearing shall specify the factual and legal issues to be contested at the evidentiary hearing.

(9) If a judge's request to submit additional information is granted, the commission shall reconsider the tentative denial of the application or tentative work-related determination based on the new information submitted. Within sixty (60) days of the first commission meeting after receipt of the new information, the commission shall make a decision approving the application and referring it to the Chief Justice, or issue a tentative denial of the application. If requested, within sixty (60) days of the first commission meeting after receipt of the new information, the commission shall make a determination either that the disability is work-related and advise the Judges' Retirement System, or issue a tentative determination that the disability is not work-related.

(10) Within thirty (30) days of the first commission meeting after a judge requests an evidentiary hearing, the commission will appoint a special master authorized to take evidence on the matter, and to report to the commission. The proceedings before the special master are not a de novo review of the basis for the commission's tentative denial of the disability application or tentative determination regarding work-relatedness. The special master's report to the commission shall contain proposed findings of fact and conclusions of law on the issues specified in the judge's request for an evidentiary hearing and on any other issues raised by the parties during the proceedings, as deemed relevant by the special master.

(11) Upon appointment, the special master shall be given a copy of the judge's application for disability retirement, the commission's tentative denial of the application or tentative determination that the disability is not predominantly a result of injury arising out of and in the course of judicial service, and any medical and/or psychiatric reports considered by the commission. These documents may be considered by the special master in reaching proposed findings and conclusions.

(12) The special master may require briefing from the parties before and after the evidentiary hearing. The judge and the examiner shall submit a list of witnesses and exhibits to be presented at the evidentiary hearing within ten days prior to the hearing, unless otherwise specified by the special master.

(13) The California Evidence Code shall be applicable to an evidentiary hearing before a special master held pursuant to policy declaration 5.4(10).

(14) Within one hundred twenty (120) days after the appointment of a special master, the master will refer the matter back to the commission with a report containing proposed findings, unless the special master requests and is granted an extension of time from the chairperson or another member designated by the chairperson or the commission.

(15) Within sixty (60) days of the first commission meeting following such referral, the commission will make a decision approving the application and referring it to the Chief Justice or denying the application and advising the Chief Justice, or, pursuant to Government Code section 75560.4(b), determining either that the disability is predominantly a result of injury arising out of and in the course of judicial service or that it is not such an injury and advising Judges' Retirement System.

[Approved 5/28/97; amended 6/21/00, 1/30/13, 3/22/17, 12/7/22.]

## **5.5 Disability Applications: Burden of Proof**

Unless Government Code section 75062, 75063, or 75064, 75562, 75563 or 75564 applies, a judge seeking disability retirement must establish by a preponderance of the evidence that the judge is eligible for disability retirement under section 75560 or 75560.1 and that the judge is unable to discharge efficiently the duties of judicial office by reason of mental or physical disability that is or is likely to become permanent. A judge seeking benefits under section 75560.4(b) must establish by a preponderance of the evidence that the disability is predominantly a result of injury arising out of and in the course of judicial service.

[Approved 5/28/97; amended 1/30/13, 2/1/17.]

## **5.6 Procedure in Restoration to Capacity Matters**

(1) An application for restoration to capacity must be in writing, executed by the judge, and be accompanied by one or more medical reports sufficient to establish that the judge is no longer mentally or physically incapacitated and is capable of discharging efficiently the duties of judicial office.

(2) When a judge submits an application for restoration to capacity, the commission will advise the judge if the certifying physician's report or other medical documentation supporting the application is inadequate, and will give the judge thirty (30) days to supply more complete data.

(3) Following receipt of a complete application, the commission may request review of medical reports and documents by independent consultants and/or medical examiners. One or more independent medical examinations may be requested within one hundred twenty (120) days of the first commission meeting after receipt of complete medical records. This time may be extended for good cause. If an independent medical examination is conducted, the commission will provide a copy of the examiner's report to the judge.

(4) Within sixty (60) days of the first commission meeting after receipt of all reports by consultants and medical examiners, the commission will either approve the application or tentatively deny it.

(5) If the commission tentatively denies the application, the commission will within thirty (30) days issue a tentative decision setting forth the reasons for the denial. The tentative decision will be provided to the judge upon issuance.

(6) A tentative denial becomes final thirty (30) days after issuance unless, within thirty (30) days of the tentative denial, the judge files a request to

present additional evidence. Within thirty (30) days of the first commission meeting after such filing, the commission will appoint a special master authorized to take evidence, obtain additional medical information, and take any other steps the special master deems necessary to resolve the matter.

(7) Within one hundred eighty (180) days after the appointment of a special master, the master will refer the matter back to the commission with a report containing proposed findings.

(8) Within ninety (90) days of the first commission meeting following such referral, the commission will make a decision either approving the application for restoration to capacity or denying it.

[Approved 5/28/97.]

## **DIVISION VI. CODE OF ETHICS FOR COMMISSION MEMBERS**

### **Preface**

As the agency charged with enforcing standards of judicial conduct in order to maintain the integrity and independence of the judiciary, the California Commission on Judicial Performance (commission) recognizes the importance of observing high standards of ethical conduct in the performance of its responsibilities. The Code of Ethics (Code) set forth in these policy declarations describes ethical standards expected of a commission member. The Code does not confer any substantive or procedural due process rights other than those provided by law, or create a separate basis for civil liability or criminal prosecution.

For purposes of this Code, the judge who is the subject of a complaint, an investigation, or formal proceedings before the commission shall be referred to as the "subject judge."

### **6.1 Recusal**

(1) A commission member shall recuse himself or herself if:

(a) The member does not think he or she is able to act fairly and impartially in a matter;

(b) The member or an immediate family member is the subject of the investigation;

(c) The member served as a lawyer or a judge in any proceedings that are the subject of the investigation;

(d) The member has a case pending before the subject judge either as a litigant or in the member's capacity as a lawyer;

(e) A lawyer with whom the member practices is involved in the complaint;

(f) The member has a bias or prejudice for or against the subject judge; or

(g) A reasonable person aware of the facts would entertain a substantial doubt that the member would be able to be impartial.

(2) If a member determines to recuse himself or herself:

(a) The member shall recuse himself or herself promptly;

(b) The recused member may, but is not required to, state the reason(s) for his or her recusal;

(c) The recused member shall leave the room, not comment further or otherwise participate in the commission's consideration of the matter from which the member is recused; and

(d) The recused member shall not receive further written materials on the matter from which the member is recused while the matter is pending before the commission.

[Adopted 1/31/07; amended 1/30/13, 12/7/22.]

## **6.2 Confidentiality**

(1) Confidentiality shall be maintained with regard to all new, pending, and closed matters pursuant to rule 102 and other applicable legal requirements.

(2) Members shall ensure that all confidential documents are secured. When the members are notified in writing (e.g., through the meeting minutes) that documents in selected matters may be discarded, members who choose to discard such documents shall ensure that they are destroyed. Members who choose to retain such documents shall ensure that they are secured.

(3) A member shall not use or disclose, for any purpose unrelated to commission duties, non-public or confidential information acquired in his or her capacity as a commission member.

[Adopted 1/31/07.]

### **6.3 Ex Parte Contacts**

(1) A member shall not initiate, permit, or consider ex parte communications regarding a matter pending or impending before the commission, other than authorized communications with other commission members and staff.

(2) If a member is contacted about a new or pending matter by a subject judge, a judge's attorney or other agent, or a subject judge's family or friends, the member shall not discuss the matter, but may refer the person to the director-chief counsel.

(3) If a member is contacted by a complainant, witness, or potential witness about a new, pending, or closed matter, the member shall not discuss the matter, but may refer the person to the director-chief counsel. Correspondence from complainants about commission business shall be referred to the director-chief counsel for acknowledgement and disposition.

(4) After the initiation of formal proceedings, commission members shall not initiate communications with or receive communications from the director-chief counsel, investigative staff, or trial counsel concerning the matter except as provided by commission rules or stipulation of all parties in the proceeding.

[Adopted 1/31/07; amended 12/13/07.]

### **6.4 Judicial Election Activities**

(1) A member of the commission shall not publicly support or oppose a candidate for election to judicial office in California while a member of the commission. For purposes of this guideline, both incumbent judges and attorneys seeking election to a judicial position are considered candidates for judicial office.

(2) A member of the commission shall not personally contribute funds directly to any candidate for election to judicial office in California while a member of the commission. If a commission member is a member of a partnership or professional corporation that contributes funds to candidates for judicial office in

California, the commission member should not participate in such contribution decisions. If a commission member is assessed a portion of any contribution made to a candidate for judicial office by the member's firm, the commission member's recusal from matters involving the judge may be appropriate under some circumstances. In assessing whether to recuse, relevant factors include: whether the amount of money assessed from the commission member is de minimis (less than \$10), whether the commission member's name is included in the firm name, the number of other partners in the member's firm, and the total number of judges in the county in which the judicial candidate was elected.

(3) A member of the commission who is also a member of the board of an organization which is involved in judicial election activities in California should exercise caution over his or her participation in such activities. A member of the commission should not participate in the organization's endorsements of or opposition to specific judicial candidates in California. Ideally, any publication of the organization's endorsement of or opposition to specific judicial candidates would state that the commission member on the board of the organization had not participated in the endorsement or opposition. In some instances, depending on the size of the organization, its purpose and its activities, the commission member should consider resigning from the organization's board if an appearance of conflict of interest or other impropriety cannot otherwise be avoided.

[Adopted 1/31/07; amended 3/28/18.]

## **6.5 Impropriety and Appearance of Impropriety**

(1) A member shall not lend the prestige of his or her commission office to advance his or her private interests or the interests of others; nor shall the member convey or permit others to convey the impression that they are in a special position to influence the commission.

(2) A member shall not be swayed by partisan interests, public clamor, or fear of criticism with respect to the conduct of commission business.

(3) In conducting commission business, a member shall refrain from manifesting by word or action bias or prejudice on the basis of a protected characteristic or on membership in a group or class as identified in canon 3B(5) against parties, witnesses, counsel, or others.

[Adopted 1/31/07; amended 12/7/22.]

## **DIVISION VII. DISCIPLINE**

### **7.1 Non-Exclusive Factors Relevant to Sanctions**

The following non-exclusive factors may be relevant in considering the appropriate discipline to be ordered. Because each case is considered on its own facts, the applicability and weight given to any factor is within the discretion of the commission.

- (1) Characteristics of Misconduct:
  - (a) The number of acts of misconduct;
  - (b) The nature and seriousness of the misconduct;
  - (c) Whether the misconduct occurred in the judge's official capacity or in the judge's private life;
  - (d) Whether the misconduct involved dishonesty or lack of integrity;
  - (e) Whether the misconduct was intentional, premeditated, negligent, or spontaneous;
  - (f) The nature and extent to which the misconduct has been injurious to other persons;
  - (g) Whether the judge was motivated by a desire to satisfy a personal or venal interest, vindictiveness, or an interest in justice, or compassion;
  - (h) Whether the misconduct undermines the integrity of the judiciary, respect for the judiciary or the administration of justice;
  - (i) Whether the misconduct involves unequal application of justice on the basis of a protected characteristic or on membership in a group or class as identified in canon 3B(5).
- (2) Service and Demeanor of the Judge:
  - (a) Whether the judge has acknowledged the acts occurred and has shown an appreciation of the impropriety of his or her acts;

- (b) Whether the judge cooperated fully and honestly in the commission proceedings;
- (c) Whether the judge has evidenced an effort to change or modify the conduct;
- (d) The judge's length of service in a judicial capacity;
- (e) Whether there has been prior disciplinary action concerning the judge;
- (f) Whether there are exceptional personal circumstances that warrant consideration;
- (g) The judge's reputation for administering his or her judicial duties in a fair, impartial, and dignified manner and for making positive contributions to the court or community.

[Approved 10/22/08; amended 12/7/22.]