
STATE OF CALIFORNIA

COMMISSION ON JUDICIAL PERFORMANCE



2020 ANNUAL REPORT

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INTRODUCTION

The year 2020 has been extraordinary in many ways. In the 60 years since the Commission was created, we have not seen the challenges and difficulties that have impacted everyone during this trying time. The COVID-19 pandemic has turned our world upside down and has unfortunately led to tragic consequences for many. But, in this difficult time, people have risen to the occasion to make sure we can continue to function as a society. This was the case here at the Commission. The employees at the Commission have stepped up to put in long hours, working remotely from home, not having the resources that they would normally have, to ensure that the functions and goals of the Commission continue to be met. The constitutional mandate of the Commission on Judicial Performance is to protect the public. No one here at the Commission has lost sight of this mandate during these trying times.

Despite the roadblocks, this has been a very productive year here at the Commission. We have worked diligently to implement the recommendations that the State Auditor asked of the Commission in the audit. We have added an investigations supervisor, who helps oversee investigations. We have also obtained a new case management system that, among other things, should allow people, starting in January 2021, to more easily file complaints through the Commission's new online complaint form published to the Commission's website. We also conducted a public meeting, remotely, that allowed members of the public to listen, make comments, and ask questions of our rules committee regarding proposed rule changes.

Beginning in March 2020, the Commission conducted all of our regularly scheduled meetings remotely, and we were able to consider each and every complaint filed. This allowed us to handle matters as they came in and not get backlogged, despite the state-wide shutdown. During these meetings, we continued to have appearances by judges who wanted to be heard regarding their tentative discipline. With the cooperation of the California Supreme Court, letting us use its courtroom, we were also able to conduct a public formal proceedings hearing with several Commission members appearing in person, as well as the judicial officer, his attorney, and the examiner who prosecuted the case (while properly socially distancing and wearing masks). The other members of the Commission were able to appear and participate remotely, and members of the public were able to view the hearing via livestream.

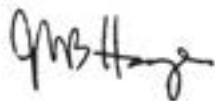
The Commission continued to participate in training programs throughout the year, again remotely. This included presentations at new judges' orientations and community outreach. Also, in 2020 the Supreme Court selected a number of judicial officers to serve as Special Masters. We conducted a training session for the new group, so that they will be prepared to handle evidentiary hearings for future formal proceedings.

The Commission expanded our mentoring program to the southern part of the State. We enlisted and trained a group of volunteer judges who will be available for mentoring services. This will allow judges from the entire State to, when appropriate, take advantage of the mentoring services for up to two years to help deal with issues that lead to misconduct and hope to prevent the conduct from happening again in the future.

Gregory Dresser, the Director-Chief Counsel, continued to show his leadership skills by making difficult decisions while being forced to shut down all in-person working. He did an outstanding job at transitioning to remote work for the entire Commission. His guidance allowed us all to continue to perform all of our core functions and kept us moving forward. Charlene M. Drummer, the Legal Advisor to Commissioners, also continued to show her remarkable skills. Her insight, intellect and work ethic helped guide the Commissioners through some difficult issues throughout the year. I cannot imagine where we would be this year without both Mr. Dresser and Ms. Drummer.

After two years, Nanci E. Nishimura decided to step down as chairperson. Even though her role changed, she continued to help with the implementation of the audit recommendations, as well as provide leadership and guidance. Dr. Michael A. Moodian was elected as vice-chairperson and brought his strong intellect and moral compass to help resolve difficult issues. Attorney Anthony P. Capozzi, after 10 years, left the Commission. His vast experience and perspective are substantially missed. Attorney Victor E. Salazar joined the Commission, and he has already made meaningful impact.

I cannot properly express in words my gratitude toward the entire staff at the Commission. Each and every person performed above and beyond expectations to keep us all staying afloat during this exceptionally challenging year. Because of this professional, skilled and dedicated staff, we were able to continue to work towards our goals to protect the public and maintain the integrity of the judiciary.



Honorable Michael B. Harper
Chairperson

COMMISSION ON JUDICIAL PERFORMANCE 2020 ANNUAL REPORT

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COMMISSION MEMBERS

Pursuant to California Constitution, article VI, section 8, the commission is composed of 11 members: 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; one justice of a court of appeal and two judges of superior courts appointed by the Supreme Court; and two attorneys appointed by the Governor. 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 may 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.



HON. MICHAEL B. HARPER, CHAIRPERSON, was appointed to the commission as a superior court judicial member by the Supreme Court to a term commencing March 1, 2017; his term ends February 28, 2021. He was elected chairperson of the commission in May 2020, and served as vice-chairperson of the commission 2018 to 2020. Judge Harper has served on the Trinity County Superior Court since his appointment in 2014, and he was retained by voters in a 2016 election. Since 2018, he has served as presiding judge of the Trinity County Superior Court.

Judge Harper's court assignments have included civil, small claims, dependency, and criminal cases. He has served as the court's assistant presiding judge and presiding judge of the Juvenile Court, and administers the Peer Court. Judge Harper also provides judicial assistance, as required, to the neighboring superior courts in Humboldt and Shasta Counties. Prior to his appointment to the bench, Judge Harper served for 20 years conducting investigations and prosecutions as Trinity County District Attorney, and as deputy district attorney for Trinity, Sacramento, and Placer County District Attorneys' Offices. He graduated from the University of the Pacific, McGeorge School of Law, and received a Bachelor of Arts degree in Political Science from the University of California, Berkeley.

COMMISSION MEMBERS



DR. MICHAEL A. MOODIAN, VICE-CHAIRPERSON, was appointed to the commission as a public member by the Governor July 16, 2015, and reappointed February 21, 2017; his term ends February 28, 2021. He was elected vice-chairperson of the commission in May 2020. He resides in Orange County. Dr. Moodian is a faculty member of Chapman University's Attallah College of Educational Studies, and he serves as a member and former Chair of the Santa Margarita Catholic High School Consultative School Board, a member of the UC Irvine Olive Tree

Initiative Advisory Board, and former chairperson 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 Portolá Expedition, Mexican governance of the land, and 20th century ranching activity. 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.



HON. WILLIAM S. DATO was appointed to the commission as the Court of Appeal judicial member by the Supreme Court April 1, 2018; his current term ends February 28, 2021. Justice Dato has been an associate justice of Division One of the Court of Appeal, Fourth Appellate District since 2017. Previously, he was a judge of the San Diego County Superior Court for 13 years, serving as a branch supervising judge, presiding judge of the court's appellate division, and in a variety of substantive assignments including civil, criminal, family law, and both adult and juvenile drug court.

Prior to his appointment to the bench, Justice Dato was a certified appellate law specialist in private practice and worked as an appellate court staff attorney with the California Supreme Court and California Court of Appeal. He has also been an adjunct professor at both the University of San Diego School of Law and California Western School of Law, teaching appellate practice and products liability. Justice Dato received his law degree from University of California, Los Angeles in 1980 and his Bachelor of Arts degree in Political Science and Economics from San Diego State University in 1977.

COMMISSION MEMBERS



HON. EDUARDO “EDDIE” DE LA RIVA was appointed to the commission as a public member by the Speaker of the Assembly January 1, 2018; his term ends February 28, 2021. He resides in Los Angeles County. The Honorable Eddie De La Riva is currently Mayor of the City of Maywood. He previously served as council member of the Maywood City Council from 2014 to 2018. Mayor De La Riva received his Bachelor of Arts degree in Chicano Studies from the University of California, Los Angeles, with a minor in Public Policy and a specialization in Urban Planning.



MS. SARAH KRUER JAGER was appointed to the commission as a public member by the Speaker of the Assembly March 1, 2016; her term ended February 28, 2019. She was reappointed to the commission as a public member by the Senate Rules Committee, effective March 1, 2019; her term ends February 28, 2023. 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. She joined Monarch in 2005. Ms. Kruer Jager works closely with Monarch’s founding partners to set the firm’s strategic direction and oversees day-to-day business activities for all of Monarch’s wholly owned and joint venture investments. In this capacity, she leads the acquisition, predevelopment, disposition, and asset management functions and manages relationships with Monarch’s capital partners. During her tenure at Monarch, Ms. Kruer Jager has acquired, developed, and sold over \$1 billion in real estate investments throughout the Western U.S. Prior to Monarch, she worked at UBS Investment Bank in Chicago in the Mergers & Acquisitions and Diversified Industrials Groups. Ms. Kruer Jager is passionate about her community, as well as leveling the playing field for young women in sports and business. She is currently involved in the following civic and industry organizations in addition to the commission. Ms. Kruer Jager is a member of the Urban Land Institute and its Bronze Multifamily Council. She is a member of Up for Growth and its California Steering Committee. She is also a member of the Burnham-Moores Center for Real Estate policy advisory board at the University of San Diego, a community advisory board member of CalPrivate Bank, and a founding advisory board member of Run Women Run. 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 and received her MBA from The Wharton School of the University of Pennsylvania with a major in Finance. She was awarded a four-year full tuition athletic scholarship as a member of the University of Michigan Division I Varsity Women’s Golf Team. Ms. Kruer Jager’s 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.

COMMISSION MEMBERS



Ms. KAY COOPERMAN JUE was appointed to the commission as a public member by the Speaker of the Assembly March 7, 2019; her term ends February 28, 2023. She resides in Los Angeles County. Ms. Jue was a securities law paralegal with a Los Angeles law firm before retiring in 2019. She has been interested in the law since her college days. After graduation, she worked as a newswire and newspaper reporter specializing in covering courts and legal affairs, including reporting on dozens of court hearings and trials and conducting interviews of judges and attorneys. In 1983, the Orange County Bar Association honored her with its Media Award for Excellence in Legal Reporting. She switched to television news, where she worked as a news writer, field producer, associate producer, and producer. She won an Emmy Award in 1993 for best 60-minute newscast in the Los Angeles market. After 20 years in news, Ms. Jue switched to public relations, working first at UCLA and later as a sole practitioner managing media relations for a law firm and a law school among other clients. She became a paralegal in 2011. In November 2020, Ms. Jue concluded two terms on the Palos Verdes Library District Board of Library Trustees after declining to seek re-election. Ms. Jue earned her Bachelor of Arts degree in journalism and political science from California State University, Long Beach. She earned her paralegal certificate, graduating with distinction, from UCLA Extension's Paralegal Training Program.



HON. LISA B. LENCH was appointed to the commission as a judicial member by the Supreme Court May 1, 2019; her term ends February 28, 2023. Judge Lench serves as a judge on the Los Angeles County Superior Court, to which she was appointed in November 2001 and sworn in the following January. Judge Lench is currently assigned to a complex criminal trial court. She has had a variety of assignments on the bench, including a criminal master calendar court, felony trial court, and misdemeanor calendar and trial courts. Judge Lench serves on the Supreme Court Advisory Committee on the Code of Judicial Ethics. She was previously chair and vice-chair and was a member of the California Judges Association's Judicial Ethics Committee, was a member of the Center for Judicial Education and Research Ethics Advisory/Curriculum Committee, and is an ethics instructor for the Center for Judicial Education and Research, including at the B.E. Witkin Judicial College. Prior to her appointment to the bench, Judge Lench was a deputy chief for the U.S. Attorney's Office for the Central District of California in the Narcotics Section. She graduated from Loyola Marymount University, Loyola Law School, and received a Bachelor of Science degree in Social Ecology from the University of California, Irvine.

COMMISSION MEMBERS



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 ended February 28, 2019, but she continues to serve pending appointment of a successor. Ms. Nishimura served as chairperson of the commission 2018 to 2020, and served as acting vice-chairperson of the commission in 2017 and 2018. 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, Ms. Nishimura 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, a select bipartisan coalition now known as the Leaders Forum, for which she serves as co-chair to provide strategic guidance on national policy initiatives. In 2015, she was appointed by U.S. Senator Barbara Boxer to serve on the Judicial Appointments Committee for the Northern District of California. In 2020, Ms. Nishimura was named one of 50 Top Women Lawyers in California, and in 2019, was named one of the Top 100 Lawyers in California for the second time. 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.



VICTOR E. SALAZAR, Esq., was appointed to the commission as a lawyer member by the Governor April 6, 2020; his term ends February 28, 2021. He resides in Fresno County. Mr. Salazar has been a sole practitioner since 1993. He was the county clerk for the County of Fresno from 2001 to 2012. Mr. Salazar was managing attorney at Central California Legal Services from 1998 to 2001. He was an attorney at Forrest and McLaughlin from 1997 to 1998. Mr. Salazar was assistant general counsel at the Agricultural Labor Relations Board from 1995 to 1997 and staff counsel for the Department of Fair Employment and Housing from 1993 to 1995. Mr. Salazar is a member of the State Bar Pro Bono Program. He is a member of the board of directors for Poverello House Inc., Proteus Inc., and the Central California Employment Round Table. Mr. Salazar earned his law degree from San Joaquin College of Law.

COMMISSION MEMBERS



MR. RICHARD SIMPSON was appointed to the commission as a public member by the Senate Rules Committee September 7, 2018; his term ends February 28, 2021. Mr. Simpson previously served on the commission as a public member appointed by the Speaker of the Assembly from June 17, 2013 until December 31, 2017. Mr. Simpson served as vice-chairperson of the commission in 2017. He resides in Sacramento County. Mr. Simpson is a retired Deputy Chief of Staff for the Speaker of the California State Assembly. He served as a senior advisor for nine 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. Mr. Simpson 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. In October of 2019, Governor Gavin Newsom appointed Mr. Simpson to the California Law Revision Commission. 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 ended February 28, 2019, but he continues to serve pending appointment of a successor. 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, compliance, investigations and surveillance. Previously, he was Managing Director of Business Intelligence and Investigations from 2011 to 2015 at an international risk management firm where his expert area of focus was white collar investigations, intelligence and due diligence, and security consulting. Mr. Torres also served on the California State Bar Discipline Standards Task Force where he assisted with review and revision of the Standards for Attorney Sanctions for Professional Misconduct. 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

COMMISSION MEMBERS

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.

OUTGOING COMMISSION MEMBERS

ANTHONY P. CAPOZZI, Esq., was appointed to the commission as a lawyer member by the Governor April 6, 2010, and reappointed December 23, 2013; his term ended February 28, 2017, but he continued to serve until the appointment of a successor in 2020. Mr. Capozzi served as the commission's chairperson from 2016 to 2017, and as its vice-chairperson from 2013 to 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 9 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 2020:

Honorable M. Kathleen Butz

Court of Appeal, Third Appellate District

Honorable Judith L. Haller

Court of Appeal, Fourth Appellate District, Division One

Honorable Louis R. Hanoian

Superior Court of San Diego County

Honorable Douglas Hatchimonji

Superior Court of Orange County

Honorable Russell L. Hom

Superior Court of Sacramento County

Honorable William D. Lehman

Superior Court of Imperial 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 2020 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, either through the commission's online complaint form, or by mail or fax (see complaint form in Appendix 3 and commission's website <https://cjp.ca.gov>). 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 improper 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.

I. OVERVIEW OF THE COMPLAINT PROCESS

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 that establishes that the complaint lacks merit, the judge is asked to comment on the allegations.

ACTION THE COMMISSION CAN TAKE

Confidential Dispositions

After an investigation, the commission has several options. If the allegations are found to be untrue or unprovable, the commission will close the case without action against the judge and so notify the complainant. If, after an investigation and an opportunity for comment by the judge, the commission determines that improper conduct occurred, but the misconduct was relatively minor, the commission may issue an advisory letter to the judge. In an advisory letter, the commission advises caution or expresses disapproval of the judge's conduct.

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

Advisory letters and private admonishments are confidential. The commission and its staff ordinarily cannot advise anyone, even the person who lodged the complaint, of the nature of the discipline that has been imposed. The commission's rules provide, however, 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 2020 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 <https://cjp.ca.gov>.

I. OVERVIEW OF THE COMPLAINT PROCESS

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.

ACTION THE COMMISSION CAN TAKE

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

II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

LEGAL AUTHORITY

Recent Changes in the Law

In 2020, there were no substantive changes to the California Constitution, Government Code, Code of Civil Procedure, 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 2020. The commission approved various changes to its rules and policy declarations in 2020, 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 <https://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 restrictions on the receipt of gifts and honoraria by judges and subordinate judicial officers, as set forth in Code of Civil Procedure section 170.9. On February 23, 2021, the commission adopted \$470, as the adjusted gift limit, for purposes of Code of Civil Procedure section 170.9.

Commission Rules and Policy Declarations

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

The Rules of the Commission on Judicial Performance, rules 101 through 138, were adopted by the commission on October 24, 1996, and took effect December 1, 1996. The commission has periodically amended the rules thereafter. The commission enacted five rule amendments in 2020.

On January 29, 2020, the commission extended the operative date of interim rule 102(q) (Disclosure of information to mentor judge) through December 31, 2022, unless, after review, it is reenacted by the commission.

II.

LEGAL AUTHORITY AND COMMISSION PROCEDURES

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. During its 2020 biennial rules review, the commission solicited proposed amendments to its rules, and invited public comment and response on proposals for revisions to some of its rules. The commission also held a public meeting using remote technology (Zoom) to discuss proposed rule changes, operational statistics, and complaint data trends.

On October 9, 2020, the commission adopted the following additions and amendments to its rules. A new subdivision (c) was added to rule 125 (Evidence) to make settlement negotiations inadmissible in formal proceedings. The purpose of the amendment is to encourage settlement negotiations by keeping them confidential and preventing them from being used by either party to attempt to influence findings of fact by the special masters or decisions regarding the level of discipline by the commission in formal proceedings. A new subdivision (c) was added to rule 128 (Amendments to Notice or Answer; Dismissals) stating that the special masters may not dismiss any charge contained in the notice of formal proceedings. The purpose of the amendment is to clarify that the special masters who preside over formal proceedings lack the authority to rule on motions to dismiss charges. The authority to rule on such motions rests with the commission. (See rules 119(a) and 121(b).) Rule 129 (Report of Masters) was amended to clarify that the deadlines for the submission of proposed findings of fact and conclusions of law to the special masters, and the submission of the special masters' report to the commission, run from the receipt of the transcript of the last day of the evidentiary hearing, and not the date of closing arguments. The purpose of the amendment is to ensure consistency in the application of the rule, which has been interpreted in inconsistent ways, and to minimize delay in formal proceedings. Subdivision (h) to rule 138 (Definitions) was amended to clarify that "mailing" includes "emailing." The purpose of the amendment is to clarify that emailing is an additional permissible means of transmitting documents. See the commission's website at <https://cjp.ca.gov> under "Legal Authority" for the Report Concerning Adoption of Additions and Amendments to Rules of the Commission on Judicial Performance October 21, 2020.

The Policy Declarations of the Commission on Judicial Performance detail internal procedures and existing policy. The commission substantially revised the policy declarations in 1997, and has amended them periodically thereafter. In 2020, the commission amended policy declaration 3.5 (Review of Commission Rules, Proposed Changes) to allow the commission to correct inadvertent, non-substantive errors in commission rules without circulating the revision for public comment and issuing a public report.

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 2020.

II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

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 July 1, 2020, the Supreme Court adopted amendments to several canons and commentary. Amendments to Canon 3B(9) and its related Advisory Committee Commentary allow a judge to comment publicly about a pending case when that case is used as criticism of a judge during a judicial election or recall campaign, but only if the public comment would not reasonably be expected to affect the outcome or impair the proceeding’s fairness. Judges had been prohibited from making any public comment about a pending case. Advisory Committee Commentary to Canon 2B states that a judge may not comment on, recommend, or criticize a business, product, or service on social networking sites if it is reasonably likely the judge can be identified as a judge. Canon 4C(3)(d)(i) and its related Advisory Committee Commentary allow a judge to raise funds from retired judges who are not serving in the Temporary Assigned Judges Program, practicing law, or providing alternative dispute resolution services. Canon 4D(6)(d) allows an exception to accepting gifts of discounted or complimentary membership in a bar-related association. Canon 4E(1) allows a judge to act as a health care representative for a person whose preexisting relationship with the judge would prevent the judge from hearing a case involving that person. Previously, judges could only act as a fiduciary for family members. Advisory Committee Commentary to Canon 5A allows a judge to publicly oppose a judicial candidate. Judges are currently prohibited from publicly endorsing or opposing a candidate for nonjudicial office. A judge, however, could previously endorse a judicial candidate publicly. Advisory Committee Commentary to Canon 5B(4) adds to commentary on solicitation of campaign funds and endorsements in judicial elections, referencing Government Code section 8314. That statute prohibits elected officials from using public resources, including buildings, telephones, and state-compensated time, for a campaign activity. In addition, the court adopted technical amendments to change all references to the “Assigned Judges Program” to the “Temporary Assigned Judges Program” as referenced in Canon 3D(3), Canon 5B(4), the Advisory Committee Commentary to Canon 6A, Canon 6B, Canon 6C, and the Advisory Committee Commentary to Canon 6C.

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

COMMISSION PROCEDURES

To view a table of commission proceedings from complaint to commission consideration and decision, see Appendix 4.

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LEGAL AUTHORITY AND COMMISSION PROCEDURES

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. To assist the commission in its initial review of the complaint, however, 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 tentative private admonishment or a notice of tentative 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 tentative 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 tentative private or public admonishment are given by prepaid certified

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LEGAL AUTHORITY AND COMMISSION PROCEDURES

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 2020 and the reasons for the deferrals are listed in charts on pages 14 and 15.

Monitoring

In the course of a preliminary investigation, the commission may monitor a 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 program in Northern California for judges where an investigation has identified a problem with the judge’s treatment of others appearing before the judge. In 2020, mentors completed training for the Southern California mentor program. Eligible judges are 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 recur, 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 tentative private or public admonishment and files a demand for formal proceedings. (Commission Rules 114, 116.)

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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 temporarily disqualify a judge from performing judicial duties once formal proceedings are instituted if the commission determines that there is substantial evidence that the judge's continued service poses a threat of serious harm to the public or to the administration of justice. (Commission Rule 120.)

HEARING

After the judge has filed an answer to the charges, or the time for filing has expired, 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 60 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:

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LEGAL AUTHORITY AND COMMISSION PROCEDURES

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

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

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

Release of Votes

Commission decisions in both public and private discipline include an identification of 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

II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

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)-(r); 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 2020 STATISTICS

COMPLAINTS RECEIVED AND INVESTIGATED

In 2020, there were 1,868 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 250 commissioners and referees. The commission's handling of complaints involving commissioners and referees is discussed in Section V.

JUDICIAL POSITIONS

As of December 31, 2020

Supreme Court.....	7
Courts of Appeal.....	106
Superior Courts.....	1,755
Total	1,868

New Complaints

In 2020, the commission considered 1,063 new complaints about active and former California judges. The 1,063 complaints named 1,320 judges (a total of 874 different judges).

2020 CASELOAD—JUDGES

Cases Pending 1/1/20.....	108
New Complaints Considered.....	1,063
Cases Concluded.....	1,050
Cases Pending 12/31/20.....	90

Discrepancies in totals are due to consolidated complaints/dispositions.

In 2020, the commission considered 64 new complaints about subordinate judicial officers. These cases are discussed in Section V.

III.

ACTIVE AND FORMER JUDGES—2020 STATISTICS

The commission office also received 263 complaints in 2020 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, referred complainants to appropriate agencies.

Staff Inquiries and Preliminary Investigations

In 2020, the commission ordered 23 staff inquiries and 82 preliminary investigations.

INVESTIGATIONS COMMENCED IN 2020

Staff Inquiries.....	23
Preliminary Investigations.....	82

Formal Proceedings

At the beginning of 2020, there were two formal proceedings pending before the commission: *Inquiry Concerning Judge John T. Laettner*, No. 203; and *Inquiry Concerning Justice Jeffrey W. Johnson*, No. 204.

In the *Laettner* matter, the commission issued a decision on November 6, 2019, but the time for the judge to file a petition for review in the California Supreme Court had not expired by the end of 2019. The judge filed a petition for review on February 3, 2020, which was denied by the California Supreme Court on June 10, 2020, and the judge filed a petition for writ of certiorari on November 24, 2020, which was denied by the United States Supreme Court on December 14, 2020.¹

In the *Johnson* matter, the commission issued a decision on June 2, 2020. The judge submitted a petition for review on August 31, 2020 in the California Supreme Court, which remained pending at the end of 2020.

During 2020, the commission commenced formal proceedings in one matter: *Inquiry Concerning Judge Jeffrey G. Bennett*, No. 206. *The Bennett* matter was concluded in 2020.

¹ The *Laettner* matter was not final at the end of 2019; it was not included in the complaint disposition statistics for 2019. It is included in the 2020 statistics.

III.

ACTIVE AND FORMER JUDGES—2020 STATISTICS

FORMAL PROCEEDINGS

Pending 1/1/20	2
Commenced in 2020	1
Concluded in 2020	2
Pending 12/31/20	1

DEFERRAL OF INVESTIGATION

As discussed on page 8, the commission may defer an investigation under certain circumstances. At the beginning of 2020, 22 pending matters had been deferred. The commission ordered 11 matters deferred during 2020. Seven matters were returned to the commission's active calendar, considered, and concluded by the commission in 2020. Ten matters were returned to the active calendar and remained pending before the commission at the end of 2020. Seventeen matters remained deferred at the end of the year.

DEFERRED INVESTIGATIONS

Pending 1/1/20	22
Investigations deferred in 2020	11
Deferred investigations returned to active calendar and concluded in 2020	7
Investigations returned to the active calendar and pending 12/31/20	10
Deferred investigations pending 12/31/20	17
Discrepancies in totals are due to consolidated complaints/dispositions	

III.

ACTIVE AND FORMER JUDGES—2020 STATISTICS

REASONS INVESTIGATIONS WERE DEFERRED IN 2020

Deferred pending resolution of underlying case.....	8
Deferred pending appeal or other review.....	2
Deferred pending civil, criminal or administrative investigation or proceeding.....	0
Deferred pending rule 112 monitoring.....	0
Deferred pending mentoring.....	1

COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the commission in 2020, regardless of when the complaints were received.² In 2020, the commission concluded a total of 1,050 cases. The average time period from the filing of a complaint to the disposition was 2.95 months. A chart of Complaint Dispositions of all cases completed by the commission in 2020 is included on page 18.

² Staff inquiries and preliminary investigations in the cases closed in 2020 may have commenced in prior years. Cases or portions of cases pending at the end of 2020 are not included in complaint disposition statistics.

III. ACTIVE AND FORMER JUDGES—2020 STATISTICS

TYPE OF COURT CASE UNDERLYING COMPLAINTS CONCLUDED IN 2020

Criminal	34%
General Civil	20%
Family Law	24%
Small Claims/Traffic	6%
All Others	11%

5% of the complaints did not arise out of court cases. These complaints concerned off-bench conduct, such as the handling of court administration and political activity.

Closed Without Discipline

In 2020, after obtaining the information necessary to evaluate the complaints, the commission determined that there was not a sufficient showing of misconduct in 960 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 65 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.

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ACTIVE AND FORMER JUDGES—2020 STATISTICS

SOURCE OF COMPLAINTS CONCLUDED IN 2020

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

Closed With Discipline

In 2020, the commission removed one judge, publicly censured one judge and imposed four public admonishments. The commission also issued nine private admonishments and nine advisory letters. Each of these cases is summarized in Section IV.

A chart of the Types of Conduct Resulting in Discipline in 2020 appears on page 19. 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. If, however, 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 2020, the commission closed one matter 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 20.

III.
ACTIVE AND FORMER JUDGES—2020 STATISTICS

2020 COMPLAINT DISPOSITIONS

Complaint Dispositions 1,050		
Closed After Initial Review 960	Disposition Following Staff Inquiry or Preliminary Investigation 90	
Disposition Following Staff Inquiry or Preliminary Investigation		
Closed Without Discipline 65	Discipline Issued 24	Closed Following Judge’s Resignation or Retirement 1
Discipline Issued		
Advisory Letter 9	Private Admonishment 9	Public Discipline 6
Public Discipline		
Public Admonishment 4	Public Censure 1	Removal From Office 1

III.
ACTIVE AND FORMER JUDGES—2020 STATISTICS

TYPES OF CONDUCT RESULTING IN DISCIPLINE IN 2020

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.

TYPES OF CONDUCT RESULTING IN DISCIPLINE IN 2020*	
Bias or Appearance of Bias Not Directed Toward a Particular Class (includes embroilment, prejudgment, favoritism)	10
Demeanor/Decorum	9
Failure to Ensure Rights	8
Disqualification/Disclosure/Post-Disqualification Conduct	6
Ex Parte Communications	4
Bias or Appearance of Bias Toward a Particular Class	2
Decisional Delay, False Salary Affidavits	2
Improper Political Activities	2
Miscellaneous Off-bench Conduct	2
On-bench Abuse of Authority in Performance of Judicial Duties	2
Sexual Harassment/Inappropriate Workplace Gender Comments	2
Abuse of Contempt/Sanctions	1
Administrative Malfeasance (includes conflicts between judges, failure to supervise staff, delay in responding to complaints about commissioners)	1
Failure to Cooperate/Lack of Candor with Regulatory Authorities	1
Gifts/Loans/Favors/Ticket-Fixing	1
Improper Business, Financial or Fiduciary Activities	1
Off-bench Abuse of Office/Misuse of Court Information	1

*See “Closed With Discipline” at page 17 of text.

III.
ACTIVE AND FORMER JUDGES—2020 STATISTICS

10-YEAR SUMMARY OF COMMISSION ACTIVITY

New Complaints Considered by Commission										
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
	1,158	1,143	1,209	1,212	1,245	1,234	1,251	1,246	1,241	1,063

Commission Investigations Commenced										
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Staff Inquiries	95 (8%)	72 (6%)	53 (4%)	84 (7%)	69 (6%)	85 (7%)	84 (7%)	52 (4%)	40 (3%)	23 (2%)
Preliminary Investigations	77 (7%)	80 (7%)	102 (8%)	101 (8%)	83 (7%)	76 (6%)	95 (8%)	80 (6%)	79 (6%)	82 (7%)
Formal Proceedings Instituted	1 (<1%)	2 (<1%)	0 (0%)	2 (<1%)	3 (<1%)	1 (<1%)	3 (<1%)	2 (<1%)	1 (<1%)	1 (<1%)

Disposition of Commission Cases										
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Total Dispositions	1,138	1,152	1,181	1,174	1,231	1,210	1,229	1,251	1,209	1,050
Closed After Initial Review	995 (87%)	1,000 (87%)	1,061 (90%)	1,039 (89%)	1,103 (90%)	1,079 (89%)	1,081 (88%)	1,118 (89%)	1,129 (93%)	960 (91%)
Closed Without Discipline After Investigation	99 (9%)	106 (9%)	88 (8%)	90 (8%)	86 (7%)	81 (7%)	106 (9%)	91 (7%)	55 (5%)	65 (6%)
Advisory Letter	26 (2%)	30 (3%)	21 (2%)	29 (2%)	26 (2%)	26 (2%)	21 (2%)	23 (2%)	13 (1%)	9 (<1%)
Private Admonishment	10 (<1%)	6 (<1%)	7 (<1%)	9 (<1%)	11 (<1%)	11 (<1%)	13 (1%)	11 (1%)	5 (<1%)	9 (<1%)
Public Admonishment	5 (<1%)	5 (<1%)	1 (<1%)	3 (<1%)	2 (<1%)	6 (<1%)	3 (<1%)	6 (<1%)	4 (<1%)	4 (<1%)
Public Censure	1 (<1%)	1 (<1%)	1 (<1%)	2 (<1%)	2 (<1%)	1 (<1%)	2 (<1%)	1 (<1%)	2 (<1%)	1 (<1%)
Removal	0 (0%)	1 (<1%)	0 (0%)	0 (0%)	0 (0%)	1 (<1%)	0 (0%)	0 (0%)	0 (0%)	1 (<1%)
Judge Retired or Resigned with Proceedings Pending	2 (<1%)	3 (<1%)	2 (<1%)	2 (<1%)	1 (<1%)	5 (<1%)	3 (<1%)	1 (<1%)	1 (<1%)	1 (<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 and/or that became final in 2020 are summarized in this section. All public decisions in commission cases are available on the commission's website at <https://cjp.ca.gov>.

REMOVAL FROM OFFICE BY THE COMMISSION

In November 2019, the commission issued an order of removal of Judge John T. Laettner of the Contra Costa County Superior Court. In February 2020, Judge Laettner filed a petition for review in the California Supreme Court, which was denied in June 2020. In November 2020, the judge submitted a petition for writ of certiorari in the United States Supreme Court. That petition was denied in December 2020. Because the matter was not concluded at the end of 2019, it was not included in the 2019 case disposition statistics. It is included in the 2020 statistics.

In June 2020, the commission issued an order of removal of Justice Jeffrey W. Johnson of the Court of Appeal, Second Appellate District, Division One. In August 2020, Justice Johnson filed a petition for review in the California Supreme Court. Because the matter was still pending at the end of 2020, it is not included in the 2020 statistics but is summarized in this section.

Order of Removal of Judge John T. Laettner November 6, 2019

The commission ordered that Judge John T. Laettner of the Contra Costa County Superior Court be removed from office. The commission's action concluded formal proceedings, during which there was an evidentiary hearing before three special masters, appointed by the California Supreme Court, and an appearance by Judge Laettner before the commission.

The commission concluded that Judge Laettner engaged in five acts of willful misconduct and eleven acts of prejudicial misconduct. Judge Laettner's misconduct was aggravated by his lack of candor during the proceedings and by his selective and limited acknowledgment of his misconduct, warranting Judge Laettner's removal from the bench.

The commission determined, in general, that Judge Laettner's misconduct reflected a pattern of engaging with attorneys who appeared before him in a manner governed by his emotions, rather than by the Code of Judicial Ethics. Judge Laettner's desire to have certain attorneys like him and not be "mad at him," and actions that he took when he was angry or upset with them, drove this pattern of misconduct.

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ACTIVE AND FORMER JUDGES—CASE SUMMARIES

In addition, Judge Laettner engaged in a pattern of inappropriate treatment of women in his courtroom that reflected bias based on gender, as well as physical appearance; some of the misconduct also constituted sexual harassment.

The commission specifically found that Judge Laettner engaged in the following acts of misconduct: (1) denying due process to two different defendants who appeared before him; (2) engaging in ex parte conversations with two different attorneys who appeared before him; (3) engaging in gender bias vis-à-vis different women who appeared before him as counsel of record; and (4) engaging in other acts of gender bias, including sexual harassment, as well as other misconduct.

Findings of fact and conclusions of law

(1) Denying defendants due process

The commission found that, after a hearing in the *People v. Stephanie Imlay* cases, Judge Laettner remanded the defendant without exonerating and resetting bail in open court, and without providing an opportunity for the defendant's counsel, Deputy Public Defender Krista Della-Piana, to be heard. DPD Della-Piana testified that Judge Laettner did not revoke the defendant's bail, or raise and reset bail, in her presence, and also did not give her an opportunity to be heard on the subject of defendant's bail. For several reasons, the special masters found that Judge Laettner was not credible when he testified that he (i) exonerated and reset the defendant's bail in open court, and (ii) provided DPD Della-Piana with an opportunity to be heard. The masters also found that Judge Laettner was not credible in explaining why his order exonerating and resetting bail was not reflected in the transcript of the proceeding and that the "only reasonable inference" from the evidence was that he did not exonerate and reset bail in open court. The commission adopted these findings of fact.

The commission determined that the denial of due process to the defendant in *Imlay* constituted prejudicial misconduct and violated canons 1, 2, 2A, 3B(2), and 3B(7).

In a separate matter, *People v. Harlyn Ventura*, Judge Laettner failed to provide the defendant with notice and an opportunity to be heard with respect to the revocation of his own-recognizance (OR) release and remand, and failed to reject, in open court, a peremptory challenge that the defendant's attorney had filed. The masters found that Judge Laettner was not credible when he testified that he revoked the defendant's OR release and remanded him, and denied the peremptory challenge as untimely, in open court. The revocation of the OR release and remand of the defendant are not reflected in the transcript of the proceedings, nor are they mentioned in notes taken by Judge Laettner during an in-chambers conference or when he was later on the bench. Similarly, Judge Laettner's rejection of the peremptory challenge is not reflected in the transcript, court minutes, or Judge Laettner's contemporaneous notes. The commission adopted these findings of fact.

The commission determined that the denial of due process to the defendant in *Ventura* constituted willful misconduct and violated canons 1, 2, 2A, 3, and 3B(2).

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(2) Ex parte contacts with attorneys

Prior to another hearing in the *Imlay* cases, Judge Laettner asked to speak to the prosecutor, and spoke with the prosecutor, in chambers, outside the presence of the defendant's counsel, DPD Della-Piana. During this ex parte communication, Judge Laettner asked the prosecutor what he wanted to do "on these matters[.]" When Judge Laettner and the prosecutor returned to the courtroom, and DPD Della-Piana made a record that the ex parte communication had occurred, Judge Laettner responded, "Well, you really don't have any idea what I discussed with [the prosecutor]. First off, you weren't present."

At the evidentiary hearing, DPD Della-Piana testified that, two weeks later, Judge Laettner explained his reason for the ex parte communication: "You want me to tell you why I—why I only brought in [the prosecutor]? I was mad at you. I was mad at you about the *Imlay* case. I was still mad at you that day." The masters found this testimony credible. They also found that Judge Laettner's "petulant" response to DPD Della-Piana's question about the ex parte communication, quoted above, is consistent with him being mad at her.

The special masters rejected Judge Laettner's contention that his communication with the prosecutor was permitted by an exception to the prohibition on ex parte communications. That exception requires prompt disclosure to the attorney who was not present for the communication, and Judge Laettner's petulant response did not constitute the required prompt disclosure. The commission adopted these findings of fact.

The commission determined that this ex parte communication constituted willful misconduct and violated canons 1, 2, 2A, 3B(2), 3B(4), and 3B(7).

On another occasion, Judge Laettner asked to speak with DPD Della-Piana in chambers about the *Imlay* cases. During that conversation, Judge Laettner told her that she was a "hard one" and also told her, "[Y]our parents hadn't spanked you enough." During his testimony, Judge Laettner twice denied that he spoke with DPD Della-Piana about *Imlay* during this conversation. The masters found that this testimony was impeached by Judge Laettner's Answer to the Notice of Formal Proceedings, in which he stated that he did not deny speaking about *Imlay* during that conversation.

The commission determined that this ex parte communication constituted willful misconduct and violated canons 1, 2, 2A, 3B(4), 3B(5)(a), and 3B(7).

Judge Laettner presided over a separate matter, *In re Eric B.*, which involved a mentally ill juvenile, who was represented by DPD Della-Piana. Several days after a hearing in *Eric B.*, Judge Laettner approached DPD Della-Piana in a courthouse hallway among, what Judge Laettner described as, "basically a sea of jurors." Judge Laettner testified that he spoke to DPD Della-Piana because he "wanted to make sure everything was okay" and "wanted to say in general terms that [he] was not insensitive to people who are mentally ill[.]" but denied that he discussed the *Eric B.* case. DPD Della-Piana testified that Judge Laettner did mention the *Eric B.* case and told her that she should not be upset with him about the case. The masters found that Judge Laettner did specifically reference the *Eric B.* case and that, under the circumstances, "any reasonable trial lawyer" would have understood Judge Laettner to be addressing that case. The masters also found that the

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conversation was undignified and created the appearance of impropriety, as it took place among a “sea of jurors” who had appeared before Judge Laettner in connection with their jury service. The commission adopted these findings of fact.

The commission determined that this ex parte communication constituted willful misconduct and violated canons 1, 2, 2A, 3B(4), 3B(5)(a), and 3B(7). The commission found it aggravating that Judge Laettner had this ex parte communication in the presence of jurors serving in his courtroom.

(3) Gender bias toward women who appeared as attorneys

The masters determined, in five separate sub-counts, that Judge Laettner engaged in gender bias with respect to DPD Della-Piana. Two of the sub-counts involved Judge Laettner’s conversations with DPD Della-Piana about *Imlay* and *Eric B.*, as described above.

The masters found that all of the following occurred. On one occasion, Judge Laettner said to DPD Della-Piana, “Sometimes having you in here is like having a teenage daughter—you constantly argue with me and you just keep talk, talk, talking until you get what you want[.]”

On another occasion, when DPD Della-Piana covered an appearance for a DPD who represented a defendant and told Judge Laettner that the colleague could appear after a meeting, Judge Laettner said, “No, I want it to be you[.]” Judge Laettner later set a hearing in the matter for a date that the other DPD was not available, so that DPD Della-Piana would have to appear before him again. The masters found not credible Judge Laettner’s testimony that he was confused about who actually represented the defendant.

Also, on approximately 10 to 15 different occasions in 2016-2017, Judge Laettner asked DPD Della-Piana to approach the bench, so that he could check to see if she was mad at him.

The commission adopted these findings of fact. The commission determined that this misconduct violated canons 1, 2, 2A, 3B(4), 3B(5)(a), and 3B(7). The commission determined that the misconduct in three of the sub-counts, including the sub-counts described in the previous section, constituted willful misconduct, and that the misconduct constituted prejudicial misconduct in the other two sub-counts.

The masters also determined, in seven separate sub-counts, that Judge Laettner engaged in gender bias toward other women who appeared as attorneys in his courtroom. For example, Judge Laettner frequently asked one DPD personal questions, including asking whether she had a boyfriend, called her his “favorite,” and implied that she could get him to do what she wanted. Judge Laettner repeatedly told another DPD that she looked like an actress on a television show that he watched, often saying, “I saw you on TV last night.” Judge Laettner also said that this DPD was his “favorite attorney,” and said to her, “I just can’t say no to you,” on five to ten different occasions. Judge Laettner also told grand jurors, on five or six occasions, that a deputy district attorney was “beautiful” or “lovely.” Judge Laettner identified another DPD who appeared before him as “the attractive young Asian woman.”

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The commission adopted these findings of fact and determined that this misconduct violated canons 1, 2A, 2B(1), 3B(4), and 3B(5)(a). The commission adopted the masters' legal conclusion that some of the noted misconduct constituted prejudicial misconduct. As some of the sub-counts involved misconduct that fell outside the statute of limitations, the commission did not reach a legal conclusion about the level of misconduct for those sub-counts, but considered the sub-counts for the purpose of evaluating Judge Laettner's honesty during the proceedings before the commission.

(4) Additional gender bias; sexual harassment

The masters determined, in six separate sub-counts, that Judge Laettner made unwelcome, undignified, discourteous, and offensive comments to and about other women who appeared or worked in his courtroom.

The masters made the following findings of fact. Judge Laettner made comments about the appearance of the court reporter who worked in his courtroom that made her uncomfortable. For example, Judge Laettner said to her, "You're so pretty. I don't know how you do it." And "You are hot." Other witnesses testified that Judge Laettner referred to the court reporter as "very pretty" or "beautiful," when introducing her to a jury. The court reporter testified that she stopped working in Judge Laettner's department after years of unwelcome and inappropriate comments about her and other women who appeared or were present in his courtroom. The commission adopted these findings of fact.

The commission determined that this misconduct violated canons 1, 2A, 3B(4), 3B(5)(a), and 3B(5)(b), and that it constituted prejudicial misconduct. The commission also found that Judge Laettner committed sexual harassment by creating a hostile work environment that caused the court reporter to leave his department.

In other sub-counts, the masters found that, while presiding over a domestic violence case, Judge Laettner said, in open court: "On a lighter note, I can take judicial notice that women can drive you crazy." Judge Laettner testified that, after his supervising judge contacted him about the comment, the two of them "had a chuckle" about it. The masters found it particularly aggravating that Judge Laettner made this comment while on the bench in the presence of multiple individuals. The masters also noted that the comment could not be considered in isolation, as it was consistent with many other incidents where Judge Laettner's comments to or about women were inappropriate and undignified.

The masters also found that Judge Laettner commented to female defendants that they were "pretty" and should avoid drinking and driving, or tattoos. The masters stated, "An observer might construe such references to the physical appearance of a litigant to imply that there is a different standard of justice based upon appearance." Judge Laettner also remarked, during a discussion with a litigant, that he "always wonder[ed] what fat people were thinking when they get tattoos."

The commission adopted these findings of fact. The commission determined that this misconduct violated canons 1, 2, 2A, 3B(4), and 3B(5)(a), and that some of this misconduct constituted prejudicial misconduct and some constituted improper action. (The commission did not consider the misconduct that constituted improper action as a basis for Judge Laettner's removal.)

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(5) Other misconduct

The commission found that Judge Laettner sometimes failed to disclose on the record his son's employment with the Contra Costa County District Attorney's Office, which he knew he should do. This violated canon 3E(2)(a) and constituted improper action. (The commission did not consider this misconduct as a basis for Judge Laettner's removal.)

The masters found that Judge Laettner engaged in improper communications with some deputy public defenders regarding their use of peremptory challenges against him. The masters also found different aspects of Judge Laettner's testimony about this count to be "not credible." The commission adopted these findings. As the relevant conduct occurred outside of the statute of limitations, the commission only considered this count for the purpose of evaluating Judge Laettner's honesty during the proceedings.

Discipline

In evaluating the nature and seriousness of Judge Laettner's misconduct, the commission found that Judge Laettner committed five acts of willful misconduct and eleven acts of prejudicial misconduct. The commission noted that "[t]his is a significant amount of misconduct."

The commission confirmed that honesty and integrity are foremost among the factors in determining discipline. In evaluating Judge Laettner's honesty and integrity in the proceedings, the commission highlighted that the masters stated in their report that Judge Laettner was not credible in six instances and that his testimony was impeached in another. The masters also determined that Judge Laettner was "not credible or not truthful as it relates to his testimony concerning several of the events" at issue, and that his "lack of candor regarding several of the allegations is troubling." In addition, the commission determined that, during his appearance before the commission, Judge Laettner made an additional assertion that seemed disingenuous.

The commission determined that Judge Laettner's misconduct was further aggravated by (1) his failure to acknowledge, and take full responsibility for, much of his misconduct, and (2) the negative impact that Judge Laettner's conduct had on the careers of others.

Given the extent of Judge Laettner's misconduct, his lack of candor during the proceedings, and his selective and limited acknowledgment of his misconduct, the commission concluded that Judge Laettner's removal from the bench was the appropriate discipline.

**Order of Removal of
Justice Jeffrey W. Johnson
June 2, 2020**

The commission ordered that Justice Jeffrey W. Johnson of the Court of Appeal, Second Appellate District, Division One, be removed from office. The commission's action concluded formal proceedings, during which there was an evidentiary hearing before three special masters, appointed by the California Supreme Court, and an

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appearance by Justice Johnson before the commission. Justice Johnson filed a petition for review in the California Supreme Court; that petition was pending at the end of 2020.

The commission concluded that Justice Johnson engaged in 18 acts of prejudicial misconduct. Among other misconduct, Justice Johnson engaged in the unwanted touching of five women and in conduct that would reasonably be perceived as sexual harassment of seven women at his court, misused the prestige of his position and demeaned his judicial office by attempting to develop personal relationships with three young women, further demeaned his office by offensive conduct toward a fourth woman, and engaged in undignified conduct on multiple occasions while intoxicated. Justice Johnson's misconduct was aggravated by his refusal to admit his most serious sexual misconduct and to admit to intoxication at the courthouse and while holding himself out as an appellate justice at functions outside of court. The commission also determined that, during the formal proceedings, Justice Johnson engaged in a lack of candor, including making intentional misrepresentations and offering untruthful testimony under oath. Justice Johnson's misconduct was also aggravated because he undermined public esteem for the integrity of the judiciary and harmed numerous people.

The commission specifically found that Justice Johnson engaged in the acts of misconduct described below.

(1) Sexual harassment of Justice Victoria Chaney

On the first night of the National Judicial College in Reno in 2010, which Justices Johnson and Chaney attended, the justices had dinner together, where Justice Johnson drank alcohol. When they returned to their hotel, Justice Johnson escorted Justice Chaney to her hotel room and followed her into her hotel room uninvited, which made Justice Chaney feel uncomfortable.

In early 2010, in Justice Johnson's chambers, Justice Johnson told Justice Chaney that he wanted to have an affair with her and that they were "perfect together," or words to that effect. Although Justice Chaney rebuffed his advances, within the next two months, Justice Johnson again asked her to have an affair with him.

In approximately the summer of 2010, when Justice Johnson saw Justice Chaney in the courthouse hallway after she had presided over a difficult hearing, he said to her, "Well, I should kiss and squeeze your titties to make you feel better," or words to that effect, and then squeezed one of her breasts.

On multiple occasions between 2010 and 2014, and beginning again in 2017, while they were alone, Justice Johnson hugged Justice Chaney and pressed against her entire body, intentionally touched her breast, and made comments, such as "Mmm-mmm," and "You feel good."

Between January 2010 and June 2018, Justice Johnson occasionally patted Justice Chaney on the buttocks while walking into oral argument. During the same period, Justice Johnson made comments, such as "You're happy to see me," or "Looking good today," and made sounds, such as "Mmm, mmm, mmm," while looking at Justice Chaney's chest when she was wearing a sweater and the outline of her nipple was visible.

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At a holiday party at a restaurant in December 2013, Justice Chaney and a research attorney approached and stood close to Justice Johnson near a bar at the restaurant. Justice Johnson squeezed Justice Chaney against him as she stood next to him. Justice Johnson told Justice Chaney that it could not be sexual harassment because they were both on the same level. In December 2017, during a discussion about sexual harassment, Justice Johnson said to Justice Chaney, “You would never report me [for sexual harassment], would you?” or words to that effect, and he was not joking when he said it.

The commission and the masters determined that Justice Johnson’s conduct toward Justice Chaney was unwelcome, undignified, discourteous, and offensive, would reasonably be perceived as sexual harassment, and violated canons 1, 2, 2A, 3B(4), 3B(5), 3C(1), and 4A(2).

(2) Conduct toward CHP officer

Between October 2013 and May 2016, when Officer Tatiana Sauquillo was assigned to the Judicial Protection Section of the California Highway Patrol, Justice Johnson told her that she looked good in her uniform and that he liked what she was wearing, and made unflattering comments about his wife in comparison to the officer. Justice Johnson made the comments, which made the CHP officer uncomfortable, while he and the officer were in his chambers and in court hallways, and while the officer drove him places. The commission and the masters determined that Justice Johnson’s comments to the officer about her appearance would reasonably be perceived as sexual harassment, constituted prejudicial misconduct, and violated canons 1, 2, 2A, 3B(4), and 3C(1).

(3) Conduct toward court research attorney Jessica Butterick

Jessica Butterick is a research attorney who works for the Court of Appeal. In September 2015, she encountered Justice Johnson while she was temporarily working near his chambers. Justice Johnson asked her what she was doing there and, while stroking her arm between her elbow and shoulder, said, “Well, we got to get you back over here more often.” This made Ms. Butterick feel uncomfortable. Two months later, Ms. Butterick told other attorneys that she would not take an office near Justice Johnson’s chambers because she felt uncomfortable being so close to his chambers.

In February or March 2018, Ms. Butterick again encountered Justice Johnson in a court hallway. Ms. Butterick corrected Justice Johnson’s misimpression that she was new to the court and that she and Justice Johnson had never before met. Justice Johnson reached out to shake Ms. Butterick’s hand for what she thought was an unusual amount of time and spoke with her in an overly familiar manner that made her feel uncomfortable. Later that week, Justice Johnson saw Ms. Butterick in the court hallway again, said, “Twice in one week,” and briefly stroked her arm, which was unwelcome.

The commission and the masters determined that this conduct would reasonably be perceived as sexual harassment, constituted prejudicial misconduct, and violated canons 1, 2, 2A, 3B(4), and 3C(1).

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(4) Conduct toward court research attorney Andrea Blatchford

Andrea Blatchford is a court research attorney who worked on Justice Johnson's staff for five months in 2018. One day, in about May 2018, Justice Johnson initiated two conversations with Ms. Blatchford about her tattoos, including where they were located on her body.

In April or May 2018, Justice Johnson asked Ms. Blatchford several questions about her boyfriend that Ms. Blatchford felt were too personal. In June 2018, Justice Johnson asked Ms. Blatchford, "Oh, is your boyfriend Black?" When Ms. Blatchford replied, "No," Justice Johnson asked, "Have you ever dated Black guys?" When Ms. Blatchford replied, "Yes," Justice Johnson said, "Well, I guess you went back then." Ms. Blatchford understood that Justice Johnson was referencing the joke, "Once you go Black, you never go back." The comment made Ms. Blatchford very uncomfortable, partly because, as she put it, it was a "very explicit reference to the stereotype that Black men are well-endowed[.]"

At a staff lunch in May 2018, during a conversation about a television interview with Stormy Daniels, a court research attorney said that she did not believe that the sexual contact between Ms. Daniels and President Donald Trump was consensual. Justice Johnson commented, "To me, it just sounded like it was pedestrian sex." This comment made Ms. Blatchford uncomfortable, because the conversation had been about consent versus coercion, not sex.

During a chambers conversation involving Justice Johnson, Justice Helen Bendix, and Ms. Blatchford, Justice Bendix mentioned her gynecologist appointment. During the conversation, Justice Johnson mentioned a prostate exam, and said, "But it's not like we get aroused during those exams." This made Ms. Blatchford uncomfortable, because, as she put it, Justice Johnson was again "injecting sex into a conversation that really had nothing to do with sex."

The commission and the masters determined that the conduct was part of a pattern that would reasonably be perceived as sexual harassment, constituted prejudicial misconduct, and violated canons 1, 2, 2A, 3B(4), and 3C(1).

(5) Conduct toward other women at the Court of Appeal

Justice Johnson engaged in inappropriate conduct toward other Court of Appeal employees, including two judicial assistants, another research attorney, and another Court of Appeal justice.

In 2013, Justice Chaney's judicial assistant, Trisha Velez, after declining several invitations to have coffee with Justice Johnson, had coffee with Justice Johnson on two occasions. On the second occasion, Justice Johnson told Ms. Velez that he was "unhappily married" and asked about her private life. In response to Ms. Velez saying that her first husband was a philanderer, Justice Johnson said that, if he were married to her, he "would never leave her bed," and that he liked her. This incident had a big impact on Ms. Velez and made her highly upset. During the five years following the coffee outings, Justice Johnson made comments like, "You're my favorite," "I love you," "I got

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your back,” and “We’re good,” and blew kisses at her. Justice Johnson also told other justices details about Ms. Velez’s private life that he learned from a mutual friend. Ms. Velez was embarrassed and horrified that the justices were discussing her personal life. The commission and the masters determined that this conduct was part of a pattern that would reasonably be perceived as sexual harassment, constituted prejudicial misconduct, and violated canons 1, 2, 2A, 3B(4), and 3C(1).

Between 2009 and 2012, when Katie Wohn worked as Justice Johnson’s research attorney, Justice Johnson made multiple comments about her appearance and how she smelled, including telling her that certain clothing “looked great” on her, and that she “smelled nice” and had “beautiful eyes.” During a lunch for her birthday in 2012, Justice Johnson told Ms. Wohn that, if he had been in high school with her, he would have been in love with her. This made Ms. Wohn very uncomfortable, and she felt it was a “lead-in to looking for more of a relationship” than a work relationship. The commission determined that Justice Johnson’s conduct would reasonably be perceived as sexual harassment, constituted prejudicial misconduct, and violated canons 1, 2, 2A, 3B(4), and 3C(1).

Between 2009 and 2011, Justice Johnson made comments to his judicial assistant about her appearance and how she smelled, including “You look hot,” and “You smell good,” that made her feel uncomfortable. The commission determined that Justice Johnson’s remarks would reasonably be perceived as sexual harassment and constituted prejudicial misconduct.

In about 2010, Justice Johnson told Justice Elizabeth Grimes, who was wearing workout clothes at lunchtime, something like, “You have the cutest little ass in the Second Appellate District.” Justice Johnson repeated the remark to Justice Chaney, who was present and asked what he had said. Justice Johnson made the remark in a public space where it could have been overheard by others. The commission and the masters determined that the remark was inappropriate and undignified in violation of canons 1, 2, 2A, and 3B(4), and constituted improper action.

(6) Discourteous treatment of court employees

Justice Johnson engaged in discourteous treatment of his judicial assistant, a research attorney who worked in his chambers, a research attorney who worked for Justice Chaney, and Justice Chaney. Justice Johnson’s conduct included calling his research attorney’s work “horrible” and “ignorant,” yelling at her and, on one occasion, stomping his feet while yelling at her. His conduct also included yelling in a demeaning fashion at Justice Chaney’s research attorney. The commission and the masters determined that this conduct constituted prejudicial misconduct and violated canons 1, 2, 2A, and 3B(4).

(7) Conduct toward other attorneys who are women

(a) Attorney Melanie Palmer

Melanie Palmer met Justice Johnson at a mentorship event for new attorneys in 2013. Thereafter, Ms. Palmer and Justice Johnson met for dinner during which Justice Johnson said that Ms. Palmer looked “young” and “pretty.” After dinner and drinks, Justice Johnson

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took Ms. Palmer back to his chambers, where he commented on her legs, told her that she was fit and beautiful, and suggested that his wife no longer cared about fitness. Justice Johnson said that he knew District Attorney Jackie Lacey, implying that he could help Ms. Palmer get a job at the district attorney's office, where she was interested in working. Over the course of the next few months, Justice Johnson sent sexually suggestive texts to Ms. Palmer, which made her feel uncomfortable and "gross." The commission and the masters determined that Justice Johnson's attempts to cultivate a personal relationship with Ms. Palmer, and taking advantage of his position as a respected justice to do so, brought the judicial office into disrepute, constituted prejudicial misconduct, and violated canons 1, 2, 2A, 2B(2), and 4A.

(b) Attorney Allison Schulman

Allison Schulman met Justice Johnson at a Consumer Attorneys Association of Los Angeles (CAALA) reception for graduates of its trial academy for newer attorneys. During the reception, Justice Johnson made Ms. Schulman feel uncomfortable by putting his hand on her arm and repeatedly grabbing her around her stomach and waist to turn her body around to talk to her. When Ms. Schulman went to leave the reception with a young male attorney, Justice Johnson grabbed Ms. Schulman's wrist and made comments about the male attorney, including that the attorney was going to "rape" her. As she started to exit, Justice Johnson pulled her forward and kissed her cheeks three times in a way that she described as "really wet" and "gross." There was strong, highly credible evidence that Justice Johnson was intoxicated at this event.

In September 2015, Ms. Schulman and Justice Johnson both attended a CAALA event in Las Vegas. During a party related to the event, Ms. Schulman, Justice Johnson, and two other people were sitting on a couch. At one point, Justice Johnson asked that Ms. Schulman sit right next to him on the couch. Ms. Schulman declined. Justice Johnson later offered to refer a case to Ms. Schulman, and said, "But I can only give it to you if you come sit right next to me." When Ms. Schulman started to walk away, Justice Johnson yelled at her.

The commission and the masters found that Justice Johnson's conduct toward Ms. Schulman violated his obligations to uphold the integrity of the judiciary, demeaned the judicial office, impaired the dignity and prestige of the Court of Appeal, and lent the prestige of the judicial office to advance his personal goals. The commission and the masters concluded that this constituted prejudicial misconduct and violated canons 1, 2, 2A, 2B(2), and 4A(2).

(c) Attorney Price Kent

In late 2009 or early 2010, the law firm where Price Kent worked hosted a bowling event, followed by a dinner at Maggiano's restaurant, both of which Justice Johnson attended. At the bowling alley, Justice Johnson discussed inappropriate personal subjects with young attorneys. Justice Johnson drank a lot of alcohol and discussed his views that "humans were not meant to be a monogamous race." Ms. Kent felt that Justice Johnson acted "flirtatious," "overly friendly," and "entitled" toward her. At the dinner, Justice Johnson asked to sit next to Ms. Kent. During the dinner, Justice Johnson invited

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Ms. Kent to his chambers and said he could help her with her career and networking. Also, during the dinner, Justice Johnson reached under the table, put his hand just over Ms. Kent's knee, and slid his hand up to the middle of her thigh. Ms. Kent was shocked, tried to remove Justice Johnson's hand, and said something to the effect of, "Are you kidding me?" Justice Johnson did not immediately remove his hand, and said something like, "What?" Ms. Kent was shocked and upset and immediately left the table. When Ms. Kent returned to the table to retrieve her belongings, Justice Johnson kept insisting that he walk her to her car. Ms. Kent repeatedly said, "No."

The commission and the masters concluded that Justice Johnson demeaned the judicial office, lent the prestige of the judicial office to advance his personal interests, committed prejudicial misconduct, and violated canons 1, 2, 2A, 2B(2), and 4A(2).

(d) Attorney Roberta Burnette

In October 2015, Roberta Burnette attended an Association of Business Trial Lawyers dinner at the Jonathan Club in Los Angeles. Justice Johnson also attended the event. When Ms. Burnette was alone at a table with Justice Johnson, Justice Johnson said to her, "You know, you're very voluptuous." In an attempt to brush off the comment and change the subject, Ms. Burnette mentioned that she was the principal violist in the Los Angeles Lawyers Philharmonic Orchestra. A little later in the conversation, Justice Johnson said, "So you play the viola?" When Ms. Burnette said, "Yes," he said, "You need to put your viola mouth on my big black dick." Ms. Burnette was shocked, tried to treat Justice Johnson's comment as a joke, and said, "Oh, no. You don't play the viola with your mouth. It's a string instrument. It's like a big violin." She pantomimed how to play a viola. Justice Johnson responded, "Oh, so you stroke it?" Ms. Burnette started to say, "Oh, no, no," and Justice Johnson blurted out, "You need to stroke my big black dick with your viola hand." Ms. Burnette then stood up, approached her then-boyfriend (now-spouse), and left immediately.

The commission and the masters concluded that Justice Johnson's conduct toward Ms. Burnette demeaned the judicial office and the integrity of the judiciary, constituted prejudicial misconduct, and violated canons 1, 2, 2A, and 4A(2).

(e) Attorney Taylor Wagniere

Taylor Wagniere met Justice Johnson when she served as an extern at the Court of Appeal in 2011. Between 2013 and 2015, Justice Johnson and Ms. Wagniere occasionally met for lunch or dinner. During that time, Justice Johnson sometimes commented on her physical appearance, wanted to know whom she was dating, and implied that their lunches or dinners were dates. Justice Johnson also told Ms. Wagniere that he was unhappily married. He once kissed her on the mouth, without her consent, which shocked her and made her feel uncomfortable. The commission and the masters concluded that Justice Johnson's conduct toward Ms. Wagniere constituted improper action and violated canons 1, 2, 2A, 2B(2), and 4A(2).

(8) Alcohol-related misconduct

The commission and the masters found that Justice Johnson engaged in seven instances of misconduct related to the consumption of alcohol and grouped them into

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three findings of prejudicial misconduct: one for a wedding he attended, one for the CAALA event in Los Angeles, and one for five incidents at the courthouse.

(a) Wedding

In September 2011, Justice Johnson officiated at the wedding of Assistant United States Attorney Julian Andre, Justice Johnson's friend and former extern, in Modesto, California. During the cocktail hour and dinner, Justice Johnson drank to excess. Around midnight, a staff member asked Justice Johnson to leave the establishment. Instead of complying, Justice Johnson demanded another alcoholic beverage and, when this was refused, he became loud, yelled, and acted in a belligerent manner. The confrontation was noticeable to the guests and was so unsettling that the groom's brother and at least two others were required to intervene and make clear to Justice Johnson that he needed to leave the premises. Those in attendance were aware of Justice Johnson's status as a Court of Appeal justice, and his intoxicated state was a topic of discussion among the wedding guests the next day.

(b) CAALA reception

As discussed above, Justice Johnson became highly intoxicated at a CAALA reception in Los Angeles, and engaged in inappropriate behavior with a young female attorney (Ms. Schulman) (grabbing her waist repeatedly, grabbing her wrist and pulling her toward him, kissing her on the cheeks, and telling her that the man she was going to leave with was going to "rape" her).

(c) Intoxication at and around the courthouse

In 2015, two court custodians saw Justice Johnson at the courthouse with two young women at approximately 1 a.m. The women appeared to be drunk. The women climbed on large lion statues in the lobby of the courthouse and took "selfies." One of the women fell off a statue and was laughing hysterically. Justice Johnson was acting nonchalantly and holding a brown paper bag. He looked at the custodians and shrugged his shoulders, saying, "What are you going to do?"

In 2016, a court employee saw Justice Johnson drunk in the courthouse at approximately 11 p.m.

In August or September 2016, two court employees saw Justice Johnson intoxicated at the courthouse late at night. Later, one employee saw Justice Johnson get into his car and heard Justice Johnson's vehicle hit something or the justice "slamm[ing] his brakes on so hard it sounded like he hit something."

During the summer of 2017, a court employee saw Justice Johnson walk into the Court of Appeal building at around 1 a.m., while he appeared to be severely inebriated.

In approximately December 2017, a court employee saw Justice Johnson in the courthouse hallway around 10 p.m. Justice Johnson was leaning against the wall, walking slowly, and stumbling a little bit, and appeared to be drunk.

The commission and the masters concluded that Justice Johnson's conduct at the wedding, at the CAALA reception, and at the courthouse demeaned the judicial

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office, constituted prejudicial misconduct, and violated canons 1, 2, 2A, and 4A(2). His undignified conduct also violated canon 3B(4). Although the wedding was a private event, a judge must expect to be the subject of constant public scrutiny and is prohibited from behaving with impropriety or the appearance of impropriety in both professional and personal conduct. Engaging in irresponsible and improper behavior in the courthouse “reflects an utter disrespect for the dignity and decorum of the court and is seriously at odds with a judge’s duty to avoid conduct that tarnishes the esteem of the judicial office in the public’s eye.” (Citation omitted.)

(9) Comments about Justices Chaney and Frances Rothschild

Justice Johnson referred to Justices Chaney and Rothschild as “nasty ass bitches” during conversations with CHP officers who were driving him in an official capacity. The masters concluded that the conduct violated canons 1, 2, 2A, and 3B(4), and stated, “Making personal remarks using profanity about a fellow judicial officer to a subordinate state employee places the judiciary in a negative light and undermines respect for the judiciary.” The commission adopted these legal conclusions and determined that the comments constituted prejudicial misconduct.

(10) Discipline

The commission determined that Justice Johnson’s misconduct required that the commission remove Justice Johnson from office. The commission considered several factors in determining the appropriate discipline.

(a) Number of acts of misconduct

In determining appropriate discipline, the commission considered the number of acts of misconduct in which Justice Johnson engaged. The number of acts of misconduct shows whether the conduct consisted of isolated incidents or a pattern that demonstrates a lack of judicial temperament. Justice Johnson committed 18 acts of prejudicial misconduct (based on 42 separate instances of proven misconduct). This was a substantial amount of misconduct, and some of it was quite egregious. The masters found the “particularly flagrant” nature of some of the misconduct and the “large number of victims” to be factors in aggravation. Unwanted touching is especially serious misconduct. Justice Johnson also engaged in patterns of making comments to women that were unseemly and particularly inappropriate coming from an appellate justice. Justice Johnson further displayed undignified behavior by becoming intoxicated on multiple occasions, and he had a pattern of acting “highly inappropriately with female attorneys when he is intoxicated....” The commission stated that Justice Johnson’s patterns of improper conduct demonstrate that he lacks the temperament and judgment required for his position.

(b) Honesty and integrity

The commission stated that foremost in its consideration of factors relevant to discipline is honesty and integrity. Honesty is a minimum qualification expected of every judge. The commission takes “particularly seriously a judge’s willingness to lie under oath to the three special masters appointed by the Supreme Court to make factual findings

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critical to [its] decision.” (Citation omitted.) “Lack of candor toward the commission is uniquely and exceptionally egregious.” (Citation omitted.)

The masters found that “Justice Johnson was not truthful in several aspects of his testimony and made affirmative misrepresentations about his behavior and the conduct of others[.]” They specifically mentioned his lack of honesty in connection with five of the ten counts. The commission found that Justice Johnson’s intentional fabrication and misrepresentation of facts during the evidentiary hearing, while he was under oath, was exceptionally egregious and demonstrated that he lacks the essential qualities of honesty and integrity that are required of a judge.

(c) Appreciation of misconduct; likelihood of future misconduct

In its decision, the commission noted: “A judge’s failure to appreciate or admit to the impropriety of his or her acts indicates a lack of capacity to reform.” (Citation omitted.) “Implicit in the lack of reform is the risk of yet further violations in the future.” (Citation omitted.)

The masters found that Justice Johnson denied numerous allegations, including allegations that Justice Johnson testified were “pure fabrication” or “malicious” lies, which the masters determined were proven by clear and convincing evidence. The masters also found that “Justice Johnson showed only limited insight into his misconduct as evidenced by his focus on blaming others for the more serious incidents[.]” They specifically rejected his assertion that he has accepted responsibility for his conduct and stated that, with respect to his most serious misconduct, “there is no evidence he has accepted responsibility for this behavior.” To the contrary, he attempted to shift the blame to the victims, accused them of lying, and suggested they were improperly influenced by third parties or advanced racial stereotypes. The commission and the masters found that Justice Johnson’s claims of stereotyping and racism were not supported by the evidence. The commission determined that Justice Johnson’s unfounded accusations compounded the injury the victims suffered as a result of his misconduct.

As to the limited conduct Justice Johnson admitted, the masters stated that, while they believed he understood that he overstepped boundaries, he continued to attempt to justify his behavior by arguing that he did not intend to offend, that he was “curious,” that he was attempting to create a positive relationship with others, and that he thought some women were “more sophisticated and would understand.” The commission determined that, to the extent that Justice Johnson admitted some of the less serious misconduct, he either minimized it or argued that it did not violate the canons.

Justice Johnson contended that much of his conduct was “within the bounds of tolerated or acceptable conduct in the not-so-distant past.” The commission noted, however, that much of Justice Johnson’s misconduct was clearly wrong at the time he was appointed in 2009. The commission stated that, “[w]hile it is true that social mores have evolved, it has never been acceptable for a judge to engage in unwelcome physical contact with women, or to engage in conduct that would reasonably be perceived as sexual harassment, especially at court.” The commission found that the evidence establishes that Justice Johnson was on notice about the impropriety of his behavior, yet continued to engage in such behavior, for years.

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At his appearance before the commission, Justice Johnson represented that he had undergone therapy and taken various classes, that he has stopped drinking, and that he has learned to be more cognizant of how his behavior affects others. The commission noted, however, that he only undertook education and abstinence after the proceedings before the commission began. Also, at his appearance, he did not admit his most serious sexual misconduct. The commission determined that this fact strongly supported its determination that Justice Johnson lacks the capacity to reform.

The commission found that the extent of Justice Johnson's lack of recognition of his misconduct created a significant risk that he would reoffend.

(d) Impact on judiciary and others

The commission determined that the adverse effects of Justice Johnson's misconduct on the individuals who were subjected to his actions, and the negative impact of his misconduct on public perception of the judiciary, were substantial aggravating factors. The commission noted that certain instances of Justice Johnson's misconduct occurred in the courthouse during court hours, and other instances occurred while he was holding himself out as an appellate justice at professional functions. Further, much of Justice Johnson's misconduct affected the working lives of women at the court. Justice Johnson's conduct also had an adverse impact on female attorneys who did not work at the court, but who encountered him at various law-related functions that he attended by virtue of his position as an appellate justice. Justice Johnson's displays of anger toward those with whom he worked also had an adverse impact on them. Justice Johnson's intoxication at the courthouse late at night, and often in the company of others, affected the custodians who were working there.

(e) Mitigation

Although Justice Johnson had no prior discipline, the commission gave this little weight, given the seriousness and extent of Justice Johnson's misconduct. Justice Johnson made significant contributions to the judiciary and to his community, but these facts do not mitigate the prejudicial misconduct in which he engaged.

(f) Other arguments about discipline

Among other arguments, Justice Johnson argued that the commission should not remove him from office because (1) the commission did not find that he engaged in any willful misconduct and (2) the commission had not previously disciplined him for misconduct. The commission specified that willful misconduct is not required for removal. The commission also noted that, of the 12 judges that the commission had previously removed from office, five had no prior discipline.

In determining that it should remove Justice Johnson from office, the commission stated: "Judges are expected to be honest, have integrity, uphold high personal standards, and treat everyone with dignity and respect, on or off the bench. Justice Johnson's conduct before, and during, this proceeding demonstrates that he does not meet these fundamental expectations."

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PUBLIC CENSURE BY THE COMMISSION

In 2020, the commission imposed one public censure.

**Public Censure of
Judge Jeffrey Bennett
March 25, 2020**

The commission censured Judge Jeffrey Bennett of the Ventura County Superior Court, pursuant to stipulation (Commission Rule 127). After the examiner for the commission had filed a notice of formal proceedings, Judge Bennett, through his counsel, and the examiner proposed a Stipulation for Discipline by Consent pursuant to Commission Rule 127(b). The commission approved the stipulation and issued the Decision and Order Imposing Censure pursuant to that stipulation. The commission determined that the misconduct, described in the stipulation, constituted five acts of prejudicial misconduct and one act of improper action (at a minimum).

Based on stipulated facts and legal conclusions and an agreement, the commission censured Judge Bennett for (1) telling an African-American defendant to stop “shucking and jiving”; (2) creating at least the appearance of retaliation against a deputy district attorney he believed had submitted a prior complaint to the commission against him, or who had provided information in connection with a commission investigation; (3) engaging in “undignified, discourteous, and offensive sexualized (or otherwise crude) conduct in the workplace”; (4) improperly commenting about peremptory challenges; (5) saying in open court that his bailiff “doesn’t know what the hell he’s talking about,” or words to that effect; and (6) engaging in a pattern of conduct that was undignified, discourteous, and offensive and conveyed, at a minimum, the appearance of bias against prosecutors.

(1) On March 11, 2015, an African-American defendant appeared before Judge Bennett regarding an outstanding warrant on a felony. When the defendant provided what the judge believed to be evasive answers to questions the judge asked, the judge asked the defendant to stop “shucking and jiving.”

This conduct violated canons 1, 2, 2A, 3B(4), and 3B(5), and constituted prejudicial misconduct.

(2) On May 17, 2016, the judge met in chambers with Deputy District Attorney (DDA) Marc Leventhal and defense counsel Victor Salas to discuss settlement of a criminal case. Salas entered chambers first and shook the judge’s hand. When Leventhal then greeted the judge and held out his hand, the judge stated that he was not sure he wanted to shake Leventhal’s hand, but did shake his hand. When Leventhal asked if something was the matter, Judge Bennett replied with a statement to the effect of, “Do you know how much trouble you have caused me? Do you know how much money I have had to pay lawyers because of you?” The judge then stated that someone had complained to the commission about his conduct in another matter in which Leventhal had appeared and that he had spent more than \$10,000 on lawyers and had to obtain personal references and testimonials to clear his name.

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The commission found that the judge's comments and conduct toward Leventhal "created, at a minimum, the appearance of retaliation based on the belief that Leventhal had complained to the commission..., or had assisted or cooperated with an investigation that the commission had performed." The commission also found that the judge's statements that his name had been "clear[ed]" and that he had had to pay lawyers \$10,000 for his defense were false.

This conduct violated canons 1, 2, 2A, 3B(4), 3B(5), and 3D(5), and constituted prejudicial misconduct.

(3) The judge "engaged in undignified, discourteous, and offensive sexualized (or otherwise crude) conduct in the workplace," as follows.

(a) The judge repeatedly stated, while in chambers and in the presence of DDA Elisabeth Main, that he was the "only one in the courthouse with the balls to make a ruling," or words to that effect.

(b) On January 17, 2018, while seated on the bench and wearing his judicial robe, and with his judicial assistant, a bailiff, and several attorneys present, the judge made a statement to the effect of, "Chicks really dug that car," referring to a Rolls Royce automobile he had been responsible for washing and had driven to a coffee shop while living in a guest house in Montecito.

(c) In 2016, while in chambers with two male attorneys, the judge stated that he had installed a telescope on the roof of his home or an outbuilding, but that he would not spend so much time with his telescope if he had "a 20-year-old smoking hot blonde wife," or words to that effect.

(d) In 2014, after a hearing involving two female attorneys on a motion to suppress evidence, the judge had his clerk ask the attorneys to return to his courtroom, and while standing in the hallway, told them, "I have the biggest balls in the courthouse. I'm probably the only judge who has the balls to admit when I've made the wrong decision[.]" or words to that effect, gesturing with his hand over his genital area.

(e) In January 2014, while in chambers with two female attorneys, the judge said that he gets a flu shot with the other judges at the employee health center but that "[t]he difference between me and them is I like to take my shot in the ass," or words to that effect. The judge laughed and then made a statement to the effect of, "I mean it, man. You should see their faces. They start to roll up their sleeves, and I just drop 'trou' and take my shot in the ass." The judge stood up and repeated the statement while pretending to unfasten his belt.

This conduct violated canons 1, 2, 2A, and 3B(4), and constituted prejudicial misconduct.

(4) Between April 16 and May 11, 2018, the People filed peremptory challenges against the judge in three criminal cases. During a sentencing hearing, the judge told a deputy district attorney that a case "got fouled up, by the way, for purposes of [the] record because people are filing papers against judges all over the place, judges are recused. You know, it's a difficult problem for the same reasons that the courthouse is, quite

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frankly, a mess often around here because people have personal agendas.” While in chambers with attorneys in another case, the judge made a statement to a deputy district attorney to the effect of, “Why are you guys papering me?” or “I know who’s papering me and I know why.” The judge also stated that a female prosecutor, who had moved to Orange County, told him that the Ventura County District Attorney’s Office had a policy of filing peremptory challenges against him.

This conduct violated canons 1, 2, and 2A, and constituted prejudicial misconduct.

(5) In the summer or fall of 2018, DDA Elisabeth Main appeared in the judge’s courtroom to handle a case involving possession of controlled substances in the jail. The judge had previously recused from cases involving the jail because he has a family member who works there. DDA Main spoke to the bailiff, and the bailiff told her that the case would probably be sent back to the master calendar department. When the case was called, Main repeated what the bailiff had told her. The judge stated in open court and in the bailiff’s presence, “He doesn’t know what the hell he’s talking about,” or words to that effect.

This conduct violated canons 1, 2, 2A, and 3B(4), and constituted, at a minimum, improper action.

(6) The judge “engaged in a pattern of conduct that was undignified, discourteous, and offensive, and that conveyed, at a minimum, the appearance of bias against prosecutors[.]” The decision describes 17 different incidents that led to this conclusion.

For example, in a chambers conference in which the People were represented by Deputy Attorney General Melissa Zubi, the judge stated that he had just finished an important environmental case with the Attorney General, and they messed that one up, too. When the judge made preliminary rulings that excluded most of the prosecution’s evidence, the deputy attorney general noted that she had no case if most of her evidence was excluded. The judge stated in response, “You can tell [Attorney General Xavier] Becerra that’s what he gets for going against my president,” or words to that effect. The judge also stated, “It’s my job to give the government a bad time,” or words to that effect.

On August 9, 2017, the judge granted a motion to suppress evidence in a criminal case. On August 10, the judge called the attorneys, including DDA Brandon Yeaton, back to his courtroom and told them that he had changed his mind and had decided to deny the motion. After excusing the attorneys, the judge asked Yeaton to approach the bench on an unrelated matter in which Yeaton needed his signature for an order of forfeiture. The judge signed the order and then began telling Yeaton about his time as a police officer, Chief DDA, and judge. While speaking about supervisors in the district attorney’s office, the judge made a statement to the effect of, “Tell [DDA Brent] Nibecker he’s an idiot. I’ve told him to his face, I don’t care.”

On October 17, 2011, while presiding over a misdemeanor hit-and-run case, the judge met in chambers with DDA Andrew Sullivant and Deputy Public Defender Randy Tucker to discuss a possible resolution. Tucker asked for a case disposition of credit for time served, restitution, fines, and no probation. The judge asked Sullivant if he was “going to make a big stink about that,” or words to that effect. Sullivant stated that he was not going

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to make a “big stink,” but would object. In response, the judge became angry, raised his voice, and used profanity, including the words “fucking” and “shit.” The judge stated that he had been waiting for an opportunity to address the issue of prosecutors “playing games like this,” or words to that effect, and admonished Sullivant about prosecutors agreeing to deals in chambers, then objecting on the record. The judge criticized other judges in the courthouse for “playing along with the prosecutors’ games,” or words to that effect. The judge said he was “sick” of being “bad mouthed” by attorneys in the district attorney’s office, both in the newspapers and otherwise, or words to that effect. The judge told Sullivant that, if he was going to object on the record, then he (the judge) was going to bring up a jury panel and put on a jury trial. The judge stated that there appeared to be pressure in the district attorney’s office to push cases to trial that should not be going to trial; that he got to where he was by “not going along with the program[]”; and that he knew all of the policies in the district attorney’s office. He asked Sullivant if he knew how he (the judge) knew about the policies and then stated, in a raised voice, “Because I wrote the fucking book,” or words to that effect, pointing his index finger at Sullivant.

This conduct violated canons 1, 2, 2A, 3B(4), 3B(5), and 3B(7), and constituted prejudicial misconduct.

The commission noted that the judge’s “misconduct mostly involves saying things no judge should say—comments and remarks that are offensive, undignified, discourteous, dishonest, sexist, profane, and create the appearance of bias and retaliation.”

In aggravation, the commission noted that, in 2015, the judge had received an advisory letter for stating about a defendant during sentencing: “He’s a dirtbag of the highest order.... What’s kind of burning me up right now is the fact that he was paid more than I’m paid, to sell cars, and then he stole money on top of it. How pathetic is that? You are really a piece of work.” In mitigation, the commission noted the judge’s acknowledgment of almost every charge in the notice of formal proceedings.

PUBLIC ADMONISHMENT BY THE COMMISSION

The commission may publicly admonish a judge for improper action or dereliction of duty. In 2020, the commission issued four public admonishments of judges that became final.

Public Admonishment of Judge Matthew Gary May 14, 2020

The commission publicly admonished Judge Matthew Gary of the Sacramento County Superior Court, pursuant to stipulation. Judge Gary, through his counsel, and commission trial counsel proposed a Stipulation for Discipline by Consent, pursuant to Commission Rule 116.5. The commission approved the stipulation and issued the Decision and Order Imposing Public Admonishment Pursuant to Stipulation. The commission determined that Judge Gary’s conduct, as described below, constituted, at a minimum, improper action.

Based on stipulated facts and legal conclusions and an agreement, the commission publicly admonished Judge Gary for misconduct in which Judge Gary engaged while presiding over a family law case. In that case, Judge Gary made comments that

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demonstrated embroilment and the appearance of bias and prejudgment, and that were discourteous and undignified. Such comments included accusations that the parents were damaging their child, as well as engaging in a discussion about religion with a witness. Judge Gary also improperly disparaged the case, the parties, witnesses, and counsel of record.

From January 2017 through December 2018, Judge Gary presided over numerous hearings in *In re Marriage of Battilana*. At those hearings, Judge Gary considered the mother's request to relocate with the parties' minor child to Oregon and for attorney fees, as well as an ex parte request regarding summer visitation and administration of the child's asthma medication. On April 17, 2018, the judge issued a decision and order on the relocation and custody issues. On May 29, the father filed for bankruptcy.

Judge Gary engaged in misconduct, as follows.

(1) Embroidment, bias, and prejudgment. Judge Gary made comments that reflected, or conveyed the appearance of, embroilment, bias, and prejudgment.

For example, prior to a long-cause hearing in January 2018, Judge Gary stated that he was "picking sides," that he "knew where the problems lie," and that "the parties are going to find themselves with nothing in the end."

During a December 7, 2018 hearing, Judge Gary stated, "I hate it that I have been brought into this personally. I hate it. That is not the role of a judge, and frankly, it's not the role of parties to involve a judge like has happened here." During the long-cause hearing in January 2018, Judge Gary stated that the *Battilana* case went on his "radar" on January 30, 2017, and by July 2017, he was thinking about the parties after work. He stated, "You were always on my radar.... And that in the end what I fully intended was that someone is going to win and someone is going to lose, and it will be big time. [¶] Judgment day is today. One of you will win. One of you will lose, and judgment day will be big time."

During an August 1, 2017 hearing, Judge Gary stated, "Way to go. Way to go. I'm done. [¶] Go off to trial, burn it all up. Good luck. [¶] And good luck to [the child], because it ain't going to turn out well for her. [¶] This is unbelievable."

These comments exhibited embroilment and the appearance of bias and prejudgment in violation of canons 2A and 3B(5).

(2) Accusing the parents of damaging their child. Throughout multiple proceedings, Judge Gary made remarks to and about the parents that were undignified and discourteous, could reasonably be perceived as reflecting bias or prejudice, and failed to promote public confidence in the integrity and impartiality of the judiciary. As examples, Judge Gary accused the parents of damaging their child ("[H]ow bad do you want to ruin your child," "And good luck to [the child], because it ain't going to turn out well for her," and "[S]he's going to get divorced. And your grandkid is going to go through the same things she's going through because this is all she knows."). Such remarks violated canons 2A, 3B(4), and 3B(5).

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(3) Discourteous remarks regarding a witness. Judge Gary made discourteous remarks to and about a witness, the child's paternal grandmother, during the long-cause hearing in January 2018. While questioning her, Judge Gary sarcastically asked if she knew whether the child's mother was a pharmacist. In addition, while questioning the mother, Judge Gary made a gratuitous remark about the grandmother "suffer[ing] a bout of amnesia." Judge Gary's conduct violated canons 3B(4) and 3B(5).

(4) Comments concerning death and religion. Judge Gary improperly injected religion and comments about everlasting life into the proceedings. Specifically, Judge Gary initiated a conversation with a witness over the purpose of religion, referenced the Bible (John 3:16), and discussed the promise of everlasting life. Judge Gary's improper introduction of religion into court proceedings created an appearance of bias and a lack of impartiality, contrary to canons 2A and canon 3B(5). The commission noted, "The bench is not a pulpit, nor soapbox for self-expression. A litigant is entitled to assume that a judge's attention will be focused entirely upon the relevant facts of his or her case, and that his or her cause will be judged dispassionately – without consideration of anyone's religion...." (Quoting Censure of Judge Jose A. Velasquez (1997) pp. 9-10.)

(5) Comments about bankruptcy filing and father's attorney. At a hearing after the father filed a bankruptcy petition, Judge Gary stated that the father's attorney "burned [him] every time he [could]." The judge said the attorney's conduct was "undignified" and "not professional," and "detracts from the quality of the bar." The commission found these remarks undignified and discourteous, and reasonably likely to interfere with the attorney-client relationship, in violation of canons 2A and 3B(4).

(6) Additional misconduct. The commission found that the following comments and conduct of Judge Gary were discourteous and undignified: mocking the father's name ("it's a battle"), accusing the parties of engaging in excessive litigation and of "churning fees," remarking that an attorney was about to "come out of [his] underwear," commenting about the parties "lawyering up," telling the parties they could "bleed out" and to "grow up," repeatedly referring to the case as "contrived," stating that it was a "nothing case," and responding to the father's question about whether he should follow the mother's instructions, rather than the child's doctor's orders, by stating, "What part of that is hard to understand?" and "What you're doing is bickering. What that was, that was a challenge to my order now masquerading as some sort of valid question. No, it wasn't. It was just a challenge to the order. It was bickering." These remarks and conduct violated canons 2A and 3B(4).

The commission determined that Judge Gary's misconduct was significantly aggravated by the judge's prior discipline. Judge Gary received an advisory letter in 2014 for misconduct, including demeanor problems and the appearance of embroilment, in two family law matters.

In the first matter, a mother was contemptuous toward Judge Gary. When she asked to be arrested, the judge responded, "If your desire here today is so that you can be taken down and play the martyr, I won't give you that privilege." Judge Gary continued with the hearing and later warned the mother of the possibility of direct contempt if she continued to interrupt. After making a custody ruling, Judge Gary stated that he was

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finding the mother in direct contempt and sentenced her to five days in jail “commencing forthwith.” The commission found that Judge Gary failed to provide the mother an adequate opportunity to respond and offer an excuse or an apology before adjudicating the contempt and sentencing her to jail. The judge’s conduct violated canons 2 and 2A.

In the second matter, Judge Gary treated a mother in a rude manner and appeared to become embroiled in the proceedings. He invited the father to file a motion seeking sole custody of the child, by saying, “So I’m willing to give him sole legal, sole physical custody. I am willing to do that. If he only files the motion, that will be heard.... And if Mr. [A.] were to file a motion for sole legal and sole physical custody, given all that has happened, the Court would entertain it like it would entertain any other motion.” Judge Gary also remarked that the mother had “played” the males involved in the cases, and had played games with many people. The commission found that the judge’s treatment of the mother created the appearance of embroilment and prejudgment. The judge’s conduct violated canons 2A, 3B(4), and 3B(5).

Public Admonishment of Judge Robert L. Tamietti October 14, 2020

Based on a stipulation and the judge’s retirement and agreement not to serve in a judicial capacity in the future, the commission publicly admonished Judge Robert L. Tamietti for intruding into the charging authority of the district attorney, questioning a deputy district attorney about the filing of a peremptory challenge, choosing a successor judge to handle a case after his disqualification, engaging in improper ex parte communications with the district attorney, and engaging in conduct toward the district attorney that was discourteous and conveyed the appearance of bias, embroilment, and prejudgment. The commission concluded that the judge’s “misconduct reflected a loss of the neutrality required of judicial officers” and “created the appearance of bias against the local district attorney’s office, which undermines public respect for, and confidence in, the integrity and impartiality of the judiciary.” It explained that its decision to resolve the “matter with a public admonishment and to forgo formal proceedings and the possible imposition of higher discipline was conditioned upon Judge Tamietti’s agreement to retire and not to serve in a judicial capacity in the future,” noting that “this resolution adequately fulfills its mandate to protect the public from further possible misconduct.”

In one criminal case, on June 19, 2019, Judge Tamietti signed a warrant for the arrest of Anthony Coronado-Smith for annoying or molesting a child, a misdemeanor. The judge set bail at \$7,500, but did not impose any bail conditions.

Coronado-Smith was arrested on the warrant later that day. After interviewing Coronado-Smith, a police officer requested that bail be increased to \$150,000. Judge Tamietti authorized the increase by telephone, but again did not impose bail conditions, based on his expectation that Coronado-Smith would not post bail and would appear for arraignment within 48 hours of his arrest. On June 20, Coronado-Smith posted bond, was released, and was given an appearance date of September 30.

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On June 21, in an email with the subject line “Tony Coronado-Smith,” Judge Tamietti initiated an ex parte contact with Deputy District Attorney (DDA) Anna Tyner and asked, “Who is the DA [district attorney] on this child molest case? He bailed (to 9/30/19) and we need to get him in more quickly for bail conditions.” On June 24, in an email at 9:50 a.m., DDA Edward Grubaugh replied to Judge Tamietti, “It will be my case, Your Honor.” At 9:53 a.m., the judge responded by email, stating, “Thank you. He posted bail to September. I want to see him before then to impose bail conditions. Judge T.” At 2:34 p.m., DDA Grubaugh sent the following response: “I will do my best to bring him into court as soon as we make a filing decision, Your Honor. As of now, unfortunately, I have no reports to review.”

On September 4, in an email to DDA Grubaugh with the subject line “Coranado-Smith [sic],” the judge initiated another ex parte contact and stated, “We still have not seen a complaint on this case. What is up?” On September 6, at 11:37 a.m., DDA Grubaugh responded, “Further investigation and questions were taking place in the background. I am meeting with Truckee PD next week.”

On September 6, at 12:25 p.m., in an email to DDA Grubaugh, District Attorney (DA) Clifford Newell, Assistant District Attorney Christopher Walsh, and Presiding Judge Linda Sloven, Judge Tamietti stated: “He bonded out on June 20 and has been free without any conditions since then despite facing child molestation charges and having an extensive occupational and avocational history of dealing with minors. This level of ‘service’ is far below what the citizens of this community expect and deserve.”

At 3:07 p.m., DA Newell responded:

Good afternoon Judge Tamietti: Please do not try to influence my Office’s filing decisions. You have no idea what is going on in the case nor should you. A rush to filing could very well jeopardize a case and result in serious injustice. You can be assured the “level of service” to the citizens of Truckee is extensive and DDA Grubaugh is appropriately handling the matter. Regards, Cliff Newell

At 4:33 p.m., Judge Tamietti responded: “Baloney. When the inaction and/or inattention of your office or any other agency puts this community at risk I have a duty to speak up. If that offends you in this circumstance, so be it.”

The commission found that the judge’s conduct conveyed the appearance of bias against the district attorney’s office and that the “judge intruded into the charging authority of the executive branch of government, and engaged in conduct that was inconsistent with the proper role of a judge as a neutral arbiter.”

On September 19, DDA Grubaugh filed a felony complaint against Coronado-Smith and an “Invitation to the Honorable Judge Robert L. Tamietti to Recuse Himself.” The “Invitation” attached the judge’s emails and requested that the judge recuse himself to protect the rights of the defendant and ensure public confidence in the judiciary, but stated that “[t]he People do not believe Judge Tamietti holds actual bias in this case.” In a response filed the same day, Judge Tamietti stated that the “Invitation” did not set forth grounds that would require that he disqualify himself. On September 24, DDA Grubaugh

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filed a timely peremptory challenge, stating that Judge Tamietti was prejudiced against the People. “Instead of allowing the case to be reassigned as required by Code of Civil Procedure,” Judge Tamietti “questioned DDA Grubaugh about the challenge, suggested that he may have committed perjury, advised him of his Fifth Amendment right to remain silent, and alluded to a possible inquiry by the State Bar.” In addition, instead of notifying the presiding judge of the peremptory challenge so the case could be reassigned, Judge Tamietti improperly chose the successor judge, in violation of the Code of Civil Procedure.

The commission concluded that questioning a deputy district attorney about the filing of a peremptory challenge “reflected a loss of neutrality” and “appeared to be an attempt to improperly influence the deputy district attorney and to be retaliatory,” noting that a judge must accept a proper peremptory challenge without further inquiry.

In another criminal case, Anthony Torres was charged in a criminal complaint with assault with a deadly weapon, battery with serious bodily injury, and street terrorism (involving active participation in a criminal street gang), all felonies. The alleged assault occurred as a number of people were leaving a late night party, and the victim was seriously injured. At a preliminary hearing in August 2013, Judge Tamietti granted the prosecutor’s motion to dismiss the assault with a deadly weapon and street terrorism counts but, after hearing testimony, concluded that there was sufficient evidence to hold the defendant on the remaining count, battery with serious bodily injury.

On February 11, 2014, DA Newell asked that the case be dismissed because tainted witness statements prevented proof beyond a reasonable doubt. After several questions and comments about the evidence, Judge Tamietti stated:

I got a couple of problems here with this file. One is I have got a victim beaten within an inch of his life who thankfully survived. Two, I have got this insinuation, I’ll call it, of gang activity, which is a cancer that seems to be working its way into this community and to which most of the citizens of the community are oblivious. Sitting where I sit doing what I do, I’m a little less oblivious than average to that. And there was enough of an insinuation of gang involvement in this circumstance that it initially got charged as a gang case. And then the gang aspects of the case got dismissed, for whatever reason, some of which is attributable to your assistant DA’s statement that we are not, meaning you, are not prepared to try a gang case. And I think the citizens of this community are probably ready to have a gang case tried for a couple of reasons: One, to figure out, if in fact, that’s true; and two, to educate the community about the risks that are inherent in that insinuation into the society of this community. So I heard the preliminary. I remember what was said. And I haven’t seen the investigative work that the defendant’s investigator, for which I have signed a couple of orders, has performed, I don’t know what they say. I’m at a little bit of disadvantage there.

But the mere fact that people are not getting their stories straight or recanting their stories, there is a lot of different reasons that might be happening in a case that has gang insinuation. I’m not suggesting that I have any evidence of [sic]

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Mr. Torres, or any of his cohorts are pressuring witnesses, but I don't think that's a naive thing to assume that might be happening and might be an explanation for the result of some of the investigative works performed by the defense.

I would point out, which is my question to you, was whether your office had expended any investigative resources on this file? I don't see [Truckee police officers] Womack or Lopez here, so I don't know what their views are on that subject.

Judge Tamietti continued:

I'm also increasingly concerned, Mr. Newell, about the impact on this community about the absence of an assigned DA. You and I have spoken about that and I know you have tried and Ms. Ferguson has tried to fill the breach here... but it's not getting filled, and this community is suffering as a result, and we need to put a stop to that suffering. The citizens on this side of the pass are entitled to the same level of services as the citizens on the other side of the pass, and they're not getting it. And I'm pretty annoyed that—and it puts me in a pretty tough situation because I have to assert myself into cases where I shouldn't be responsible for doing that—but I have had to, and I have, and this is one of those cases in my view, I think no one has really picked up this ball and run with it as if it were their responsibility, and that's my primary problem with this pitch. I think it's a slipshod "let's get rid of this because it's going to be hard to try," and that's not a good reason to get rid of a case that's this serious, both to Mr. Torres and to the victim of the case.

When DA Newell stated that being on the record was not the appropriate context to discuss personnel issues, Judge Tamietti responded:

Hang on a second. I'm not talking personal [*sic*] issues. I'm talking about staffing of this branch, and that has nothing to do with a personal [*sic*] decision, that has to do with the service of citizen [*sic*] to this community. I'm not telling you how to run your office. What I'm telling you is the way it's being run up here is negatively affecting the operation of this branch and the citizens of this community.

DA Newell provided more details regarding the decision to move to dismiss the case, how the case was investigated, and his efforts to fill vacant DDA positions. After hearing arguments for dismissal, Judge Tamietti stated:

Well, I would observe that having been the felony judge on the other side of the county for five years, before I got this assignment, that had this crime happened in [the] Safeway parking lot of Grass Valley, it is my impression that a whole bunch more of resources would have been thrown at this case than would have been thrown at this one. If Mr. Torres was improperly charged, he deserves an apology. If he was properly charged, we ought to take the case to trial and let a jury of 12 citizens of this community decide whether or not witnesses who are recanting, have been pressured into recanting.

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I have some live testimony at the preliminary and most of it was 115³ from Detective Lopez, so I can't make any real independent assessment about those people's statements given to Detective Lopez and Detective Lopez isn't here to amplify on that. So I'm put in the very uncomfortable situation of not doing what I think is my best to protect the citizens of this community, which is the principal reason they gave me this job in the first place. So I don't like the spot I'm being put in here, Mr. Newell.

And I credit my disgust, in large part, to your office and its handling of this file. But I'll grant the motion without prejudice, dismiss the case, in return for his plea to the dead bang we found you with drugs indicia for sale.

In response to a question from the judge, the defendant stated that he had a tattoo of Marilyn Monroe on his arm. The judge asked DA Newell if he had any idea what it meant. DA Newell stated that the tattoo was potentially gang-affiliated, but that it could not be proved. The judge then responded, "That might go along with the 13 that's on his chest."

The commission found that Judge Tamietti's conduct was discourteous; conveyed the appearance of embroilment, bias against the DA's office, and prejudgment; and suggested that the judge had assumed a prosecutorial role.

On Monday, February 24, 2020, at 9:56 a.m., DA Newell sent an email to Judge Robert Tice-Raskin with the subject heading, "KNCO article," about a radio interview of an attorney in the DA's office who made comments about legislation related to pretrial release and detention and about the statute on pre-arraignment review. The email stated:

Good morning Judge, Hope you had a good weekend. Have you had a chance to listen to the whole interview in question? Chris had no idea how or what was excerpted from that interview. From my view he spoke negatively about another state's (there's a couple) well documented reform failure but [sic], followed with how it has given us opportunity to better craft ours. Not mentioned by the article is how judges need all the info, how it's incumbent on us to provide some of it and, Probation's role in completing the assessments thoroughly. Given the radio show in its entirety, I can't hold him to task for a reporter's inarticulate description or headline taken out of context. That said, I believe he could be more articulate on my Office's policy as it relates to SB10/ 1320.10, which is support. I will make that clear publically [sic] and, I will make sure, if he has any more public speaking, he uses the correct talking points. I am going to be on the radio myself later this week talking about it as well. I'll let you know when that is when I find out. I'm available all week if we need to discuss further.

Thank you, Cliff

At 10:50 a.m., Judge Tice-Raskin responded with an email addressed to DA Newell and copied to all other Nevada County Superior Court judges, including Judge Tamietti.

³ Proposition 115 amended the Constitution to allow hearsay evidence to be presented by qualified officers at a preliminary hearing.

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The email stated: “Mr. Newell, I have forwarded your thoughts to the whole bench. We will be in touch. Thanks. SRT”

At 1:15 p.m., Judge Tamietti responded to Judge Tice-Raskin’s email with an email addressed to DA Newell and the other judges. The email stated: “So if he was so horribly misquoted, why hasn’t he tried to get it corrected? More fecklessness from Newell.”

The commission found that Judge Tamietti’s conduct was discourteous and conveyed the appearance that the judge was biased against DA Newell.

In mitigation, the commission noted that the judge “has volunteered significant amounts of time to understaffed surrounding courts, and has taught at New Judges Orientation and judicial continuing education programs.” In aggravation, the commission noted that, in 2019, Judge Tamietti received an advisory letter for discourteous remarks about an attorney who was appearing before him in a civil case; the advisory letter noted that Judge Tamietti had participated in the commission’s mentoring program to address demeanor issues in 2017.

**Public Admonishment of
Judge Frank Roesch
October 15, 2020**

The commission publicly admonished Judge Frank Roesch for (1) interrogating a witness in a hostile manner in a civil jury trial, making sarcastic remarks, and mishandling (in multiple ways) the witness’s assertion of her Fifth Amendment privilege against self-incrimination, and (2) questioning the parties and counsel in an injudicious manner in a quiet title action. The commission found that the judge “displayed a lack of the dispassionate neutrality and the courtesy to others that is expected of judges[.]” explaining that the judge “believed, based on faulty assumptions, that his intervention in each case was justified” and that the basis for the discipline was “the misguided manner in which he attempted to address his misassumptions and the discourteous way he comported himself toward those appearing in court before him[.]”

In 2015, Judge Roesch presided over a jury trial in *Victaulic Co. v. American Home Assurance Co.*, regarding Victaulic’s claims against its insurers for breach of contract, bad faith, and punitive damages. After a three and one-half week trial, the jury awarded Victaulic \$55,333,581.11.

During the trial, Victaulic called Nancy Finberg, the director of complex claims for American Insurance Group, to testify as an adverse witness. The insurance defendants were members of AIG. Finberg had examined Victaulic’s coverage claims and determined that there was potential insurance coverage. She had also verified the insurers’ responses to Victaulic’s requests for admission in which the insurers denied coverage on legal grounds. In response to questions from Victaulic’s counsel, Finberg attempted to explain the distinction between her role as a claims handler and the insurers’ legal positions. With the jury present, the judge asked Finberg numerous aggressive and hostile questions, for example: “So you knew it was false when you verified it under penalty of perjury based on your own understanding of the underlying facts? Is that what you’re telling us?”

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When the jury was excused for lunch, the insurers' counsel moved for a mistrial on the ground that Judge Roesch's treatment of Finberg conveyed that he did not believe her. Judge Roesch denied the motion without explanation.

The next day, Finberg appeared with personal counsel, who informed the judge that Finberg would assert her Fifth Amendment privilege against self-incrimination in response to all substantive questions from either side. Judge Roesch responded, "Either side and me too, I'll bet." The judge then ordered that Finberg had to take the witness stand and assert the Fifth Amendment privilege before the jury. Judge Roesch permitted Finberg to assert a blanket claim of privilege against self-incrimination to all questions that would be asked of her. After she did so, Judge Roesch excused her, without allowing the insurance defendants to cross-examine her.

The Court of Appeal reversed the judgment due to Judge Roesch's misconduct and errors during the trial.

The commission found that Judge Roesch's "questioning of Finberg was inappropriately aggressive and conveyed to the jury that he questioned her credibility. As stated by the appellate court, '[A]ny fair reading of the record reveals that the court acted in a way that from every indication was hostile to Finberg—and that it did not believe her.' [Citation.] Judge Roesch's improper treatment of Finberg included sarcastic and gratuitous remarks related to her (e.g., 'Good luck, Mr. Jean [defense counsel],' and 'Either side and me too, I'll bet')." The commission also agreed with the appellate court's finding that Judge Roesch "improperly acted as an advocate for Victaulic by intervening in the case and cross-examining Finberg as he did."

The commission also agreed with the appellate court's finding that Judge Roesch's handling of Finberg's assertion of her Fifth Amendment privilege against self-incrimination was improper. The appellate court had found that Judge Roesch's requirement that Finberg assert the Fifth Amendment in front of the jury was "hard to comprehend, in light of the authorities." The commission also stated: "Despite knowing the law on this issue, the judge allowed Finberg to invoke the privilege on a blanket basis and declined to conduct the particularized inquiry required by law. He asserted that he did this because he believed he had 'buy-in' from counsel. Having attorneys agree to something the law does not permit does not obviate the judge's duty to respect and comply with the law. The judge's action in this regard constituted an intentional disregard of the law."

The commission also found that the judge's denial of the insurers' right to rehabilitate Finberg or give her a chance to explain her prior testimony "reflected a disregard for the insurers' fundamental right to cross-examination[,]" noting that the appellate court found that allowing Finberg's testimony to remain in the case, rather than excluding it, had a "devastating effect."

Finally, the commission found that the judge's conduct reflected embroilment. It explained:

Judge Roesch believed—erroneously—that Finberg had testified falsely, and he inserted himself into Victaulic's examination of her in an effort to establish that for the jury. Rather than acting as an impartial jurist, he persisted in questioning

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her in an overly forceful manner, required her to assert the Fifth Amendment in front of the jury, and did not permit her to be questioned by the insurers, who repeatedly asked him for the opportunity to do so. Judge Roesch acknowledged that he overstepped his role as a trial judge and that his course of conduct related to Finberg's testimony was misguided. His interaction with Finberg, and the issues that presented themselves in connection with her testimony, reflected a loss of neutrality that is the hallmark of embroilment.

In July 2017, Judge Roesch presided over a case in which Alvin Cox, trustee of a certain trust, sought a quiet title judgment for property left by Regete Gruhn to Barbara Blumberg. After Gruhn died in 2008, Blumberg decided not to probate the will. In 2016, she entered into a purchase agreement with Cox. There was no opposition to the quiet title judgment. Caroline Gegg represented Cox.

At a second hearing, Blumberg testified that she was present at Gruhn's attorney's office when Gruhn signed her will. Judge Roesch asked her, "And you are the principal beneficiary under this will and the lawyer permitted you to be present when it's signed?" Blumberg responded, "No. He made me leave the room at some point." Judge Roesch then stated:

I used to write wills for a living. That—for a lawyer to have permitted the principal beneficiary of a will to come with the person who made the will and to be in the same building or on the same block at the time of the signing absolutely opens the door for a challenge based on undue influence. Now, maybe it's true, maybe it's not. Nobody is raising that issue, but....

Gegg had represented that Cox had paid all back property taxes. The county had recently sent a notice of proposed escape assessment. That supplemental assessment had not been paid, according to Cox, because the county had not yet provided the bill. Judge Roesch "aggressively questioned Cox," and argued with Gegg, about the payment of the supplemental taxes, apparently concerned that, if he approved the quiet title judgment, the county's supplemental tax claim would be unpaid and that Cox and Gegg were intentionally attempting to avoid the obligation. After an extensive back-and-forth on the issue, Judge Roesch dismissed the case with prejudice. Cox appealed.

The Court of Appeal reversed the judgment and remanded the matter for entry of an order quieting title to the property, subject to the obligation to pay any supplemental real property tax that may be assessed. The appellate court stated: "The fact that real property taxes had gone into arrears while Barbara Blumberg owned the property can hardly be attributed to plaintiff [Cox], who paid all back taxes that were due, nor can plaintiff be faulted for not yet having paid a supplemental assessment that had not yet been made."

The commission found that the judge displayed poor demeanor and that his conduct "reflected embroilment." It explained:

His discourteous comments include: "What you're telling me is that Ms. Blumberg did not pay the supplemental taxes and left the county begging"; "If [the] answer is if you had gotten the deed at the last hearing, the county would never get

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its money”; “Well, if you asked them to generate them last week, what do you expect?”; “Well, if you had given them notice when Regete Gruhn died[.]... All they knew was nobody was paying the taxes”; and “My concern is that it appears to me that you are seeking a qui[et] title judgment that has the effect of cheating somebody.”

...Rather than remain neutral, the judge repeatedly engaged the parties and counsel in a manner that conveyed his concern that the parties were “cheating somebody.” But the appellate court found that “the circumstances certainly do not evince an intent to cheat or negate [Cox’s] entitlement to an order confirming the trust’s ownership of the property.”

Judge Roesch argued that he was merely exercising his “gatekeeping” function because he believed there should have been a probate proceeding to transfer the property to Blumberg before the sale to Cox, rather than a quiet title action, and that a supplemental assessment would not be enforceable if the petition to quiet title were granted. The commission noted, however, the appellate court finding that there were ways to protect the county’s right to a future supplemental assessment and stated that “even if the judge had been correct about his concerns, he could have conveyed those concerns to the parties and counsel without resorting to unduly harsh language.”

In aggravation, the commission considered an advisory letter the judge received in 2011 for making discourteous remarks to a self-represented litigant. The judge had argued that his prior discipline was not relevant, but the commission “disagreed because it concerns the judge’s discourteous treatment of those appearing before him, which also occurred here.”

Public Admonishment of Judge David A. Mason December 8, 2020

The commission issued a severe public admonishment of former Judge David A. Mason of the Modoc County Superior Court, pursuant to stipulation. Judge Mason, through his counsel, and the director of the commission proposed a Stipulation for Discipline by Consent, pursuant to Commission Rule 116.5. The commission approved the stipulation and issued the Decision and Order Imposing Severe Public Admonishment Pursuant to Stipulation. The commission’s decision to accept the stipulation was conditioned on Judge Mason’s agreement not to serve in a judicial capacity ever again in the future. The commission determined that Judge Mason’s conduct, as described below, constituted, at a minimum, improper action.

The commission issued the severe public admonishment of Judge Mason for his continuing failure to disclose in many cases his personal relationship with an attorney even after being publicly admonished in 2019 for failing to do so, his lack of candor in two responses to the commission, and his discourtesy to the Modoc County District Attorney.

In December 2019, the commission publicly admonished Judge Mason for failing to disclose his personal relationship with Tom Gifford every time Gifford appeared before him as an attorney in a case. During the commission investigation prior to issuing that

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public admonishment, Judge Mason provided the commission with a “comprehensive disclosure” regarding his relationship with Gifford that he said would be published in his department and made available for attorneys appearing in new matters involving Gifford.

The disclosure that Judge Mason made following the 2019 public admonishment (hereafter “alternate disclosure”) was, however, “materially different” from what he had provided to the commission. The alternate disclosure stated that the judge dined at Gifford’s home and in public with Gifford and his wife, “but create[d] the misimpression that all of those dinners occurred prior to 2009[.]” without disclosing that they had dined together in 2017. Although the alternate disclosure stated that the judge twice visited Gifford in Texas, it did not disclose the dates and lengths of the trips, and “improperly minimized” the judge’s contacts with Gifford. In addition, by referring to the Texas trips prior to mentioning a 2013 trip to Italy with Gifford, the judge “created the false impression that the Texas visits occurred prior to 2013.” The alternate disclosure also “improperly minimized” the judge’s contacts with Gifford by failing to disclose the duration and purpose of the trip to Italy. Judge Mason’s 2019 response to the commission lacked candor by providing “a disclosure that was materially different from the actual disclosure that he gave to parties who appeared before him in court[.]”

When the commission contacted Judge Mason in April 2020 “concerning the disparate disclosures and an apparent lack of candor,” he stated that the alternate disclosure was used throughout 2019, and that it had been “published in the courtroom and at the clerk’s office continuously over the last year....” In fact, however, Judge Mason had not made any disclosure in many cases in which Gifford appeared from May to December 2019. Moreover, after the commission issued the 2019 public admonishment, Gifford continued to appear regularly before Judge Mason in both criminal and civil cases, but Judge Mason failed to properly disclose on the record information about his relationship with Gifford that was reasonably relevant to the question of disqualification.

For example, on December 10, 2019, in a criminal case, the judge stated, “I don’t know if you heard my disclosure. Mr. Gifford and I have been friends for years, we practiced law against one another and developed a friendship. It’s kind of spelled out there.” On December 18, in another criminal case, the judge stated, “I have a long standing friendship with Mr. Gifford. We haven’t had any social connection in person for probably a year and a half or two years. But in the past I’ve visited the home that he owns in Corpus Christi, Texas. I’ve also had dinner with him and his wife and other friends on two occasions since I’ve been a Judge. And early on in my career as a judge I went to – took a trip to Italy with Mr. Gifford and his wife. [¶] All of those things being said, I do not believe that I am unable to be fair and unbiased, and I do not recuse myself.” These disclosures “were misleading and improperly minimized the judge’s contacts with Mr. Gifford, and failed to comport with the... disclosure referenced in the judge’s letter to the commission. Also,... by referring to a written disclosure, former Judge Mason failed to make a disclosure on the record.”

In 14 cases where Gifford represented a party on various dates after Judge Mason’s 2019 public admonishment, Judge Mason “read the alternate disclosure verbatim at some point during his calendar, but did not ensure that the defendants were present to hear

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the disclosure....” In five other cases, Judge Mason failed to disclose his relationship with Gifford at the first appearance in a case in which Gifford represented a party. In 22 cases, although minute orders indicated that Judge Mason disclosed his relationship with Gifford, the transcripts and recordings did not reflect that he made a disclosure on the record.

Sometime between October 29 and December 16, 2019, the judge orally disclosed in chambers to two attorneys and two probation department employees that he had brought a pennant from Gifford’s alma mater and placed it in Gifford’s mail slot to give to Gifford as a present. The judge failed to disclose the gift on the record in any case.

On December 18, 2019, in a criminal case, after reading the alternate disclosure verbatim, the judge stated, “So you’re going to hear that all the time, and you’re going to be sick of hearing it, just like I get sick of reading it, but it’s – it’s what I have to do.” The commission found that the judge’s “comments were gratuitous and trivialized the importance of complying with his duty to disclose on the record information[] concerning his relationship” with Gifford.

On June 23, 2020, the judge conducted a chambers conference with Modoc County District Attorney (DA) Sophia Meyer, a deputy district attorney, probation department employees, the defense attorney, a bailiff, and the court clerk. DA Meyer had filed a violation of a slow plea in an underlying case, as well as a new case, and the defendant requested a jury trial. The judge stated that he thought DA Meyer’s office was “unprofessional and stupid for exercising prosecutorial discretion and filing a case[,]” and that the district attorney’s office was “unprofessional and superfluous.” DA Meyer responded that she did not appreciate being called unprofessional. The judge then said, “Well, maybe unprofessional is not the word. In my opinion, the DA’s office is stupid for filing this.” On July 7, the judge told DA Meyer that he was “not accusing anyone in particular, but the DA’s office as a whole was unprofessional.” The Modoc County DA’s office only has two attorneys in addition to support staff. Calling the DA’s office “stupid” and “unprofessional,” especially in the presence of others, was a failure to be patient, dignified, and courteous.

The commission concluded that the judge’s “persistent failure to comply” with the disclosure requirements “reflects an unacceptable lack of concern on his part about the public’s perception of the integrity and fairness of the judiciary.” The commission considered the judge’s “prior public admonishment for related misconduct to be a significantly aggravating factor[]” and found that his lack of candor toward the commission was “particularly grievous.”

PRIVATE DISCIPLINE

Private admonishments and advisory letters that became final in 2020 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 <https://cjp.ca.gov>.

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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 2020, nine private admonishments became final.

1. The judge initiated an improper ex parte communication with an individual with an interest in a matter. In a separate matter, the judge improperly barred a witness from consulting with counsel before the witness testified under oath in a proceeding. In that matter, the judge also made remarks reflecting embroilment. In another matter, the judge improperly instructed an attorney to stop filing peremptory challenges in a particular type of case.

2. In infraction matters, the judge accepted pleas without advising the parties of their right to confront their accuser and their privilege against self-incrimination, and without calling their cases, although the parties had been ordered to appear in court. The judge's misconduct was aggravated by prior discipline.

3. The judge made false statements to litigants that tended to harm public confidence in the integrity and impartiality of the judiciary.

4. The judge used the judge's court email, which included the judge's judicial title, to advance a personal interest.

5. The judge inadvertently used the judge's court email to communicate with opposing parties in a matter over which the judge did not preside. In part, the judge acted as a mediator by seeking to facilitate an agreement between the parties. In part, the judge engaged in the practice of law by acting as an advocate on behalf of one of the parties.

6. In a civil case, the judge misused the contempt power, engaged in improper ex parte communication, and abused the judge's authority by recalling the case three times when no issue was pending before the court. The judge also elicited testimony from one of the parties in the absence of the other party, and instructed one party to report the other party's conduct to law enforcement.

7. During a campaign for judicial office, the judge engaged in violations of the Political Reform Act.

8. During a campaign for judicial office, the judge engaged in violations of the Political Reform Act.

9. The judge maintained an email account and social media accounts with identifying information that cast doubt on the judge's capacity to act impartially. The judge posted a comment on social media that constituted an improper use of the judge's title and position to promote the pecuniary interest of another. The judge's misconduct was aggravated by prior discipline.

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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 2020, nine 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. During a hearing and jury trial in a criminal matter, the judge made comments to and about a witness that were discourteous and reflected embroilment.

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.

2. The judge delayed, beyond statutory deadlines, decisions and rulings on more than one petition for writ of habeas corpus, and received salary payments when one habeas matter was pending and undetermined for more than 90 days. The judge’s misconduct was mitigated by various factors, including remedial actions undertaken by the judge.

3. An appellate justice delayed decision in an appeal by finalizing an opinion in the case several years after the case was fully briefed and assigned to the justice.

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).)

4. During a hearing in a case with the litigant present, the judge addressed the litigant’s attorney in a manner that was impatient, discourteous, and demeaning. Some of the judge’s remarks were of a nature that could be expected to impair the attorney-client relationship.

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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.)

5. The judge failed to comply with procedural requirements for an attorney's motion to withdraw as counsel and denied the client the right to be heard.

Gifts/loans/favors/ticket-fixing

6. The judge accepted donations in violation of the no-gifts rule. The judge received mitigation as the result of challenging personal circumstances.

More Than One Type of Misconduct

Some cases involved more than one type of misconduct.

7. The judge made improper and undignified comments to a litigant at a hearing. The judge proceeded with another hearing in the absence of the litigant's attorney. In another matter, the judge improperly commented on an exercise of a challenge for cause.

8. During a trial, the judge made a statement to the jury that reflected embroilment and raised an appearance of lack of impartiality. The judge later made statements to an attorney in the action that were argumentative, discourteous, and reflected embroilment. In another action, the judge addressed a party in a manner that was discourteous.

9. In two proceedings, the judge issued orders without allowing the affected parties a full opportunity to be heard and to cross-examine witnesses. In a separate proceeding, the judge altered a previously-issued order out of pique.

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 2020, there were 250 authorized subordinate judicial officer positions in California.

SUBORDINATE JUDICIAL OFFICERS AUTHORIZED POSITIONS

As of December 31, 2020

Court Commissioners	240
Court Referees	10
Total	250

COMMISSION PROCEDURES

The constitutional provisions governing the commission's role in the oversight and discipline of court commissioners and referees expressly provide that the commission's jurisdiction is discretionary. Each superior court retains initial jurisdiction to discipline subordinate judicial officers or to dismiss them from its employment and also has exclusive authority to respond to complaints about conduct problems outside the commission's constitutional jurisdiction. Since the local court's role is primary, the commission's rules require that complaints about subordinate judicial officers be made first to the local court. (Commission Rule 109(c)(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 a preliminary or formal investigation is pending concerning conduct that, if alleged against a judge, would be within the jurisdiction of the commission, or under circumstances that would lead a reasonable person to conclude that the resignation was due, at least in part, to a complaint or allegation of misconduct. (California Rules of Court, rule 10.703(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).)

V. SUBORDINATE JUDICIAL OFFICERS

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.

V.
SUBORDINATE JUDICIAL OFFICERS

2020 STATISTICS

Complaints Received and Investigated

In 2020, the commission reviewed 64 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 2020, the commission commenced one preliminary investigation.

**RULE UNDER WHICH NEW
COMPLAINTS WERE SUBMITTED**

Rule 109(c)(1) – appeal from local court's disposition	57
Rule 109(c)(2) – at the request of a local court	2
Rule 109(c)(3) – notification by local court of discipline	0
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	4

**2020 CASELOAD –
SUBORDINATE JUDICIAL OFFICERS**

Cases Pending 1/1/20	3
New Complaints Considered	64
Cases Concluded	66
Cases Pending 12/31/20	1

V. SUBORDINATE JUDICIAL OFFICERS

Cases Concluded

In 2020, the commission concluded its review of 66 complaints involving subordinate judicial officers. The commission closed 63 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 and closed two cases without discipline.

At the end of the year, one matter remained pending before the commission.

2020 SUBORDINATE JUDICIAL OFFICER COMPLAINT DISPOSITIONS

Total complaint dispositions	66
Closed after initial review	63
After independent investigation by the commission:	
Private Admonishment	1
Closed without discipline	2

TYPE OF COURT CASE UNDERLYING SUBORDINATE JUDICIAL OFFICER COMPLAINTS CONCLUDED IN 2020

Small Claims	36%
Family Law	33%
Traffic	6%
General Civil	11%
Criminal	5%
All Others	9%
(including off-bench)	

V.
SUBORDINATE JUDICIAL OFFICERS

**SOURCE OF COMPLAINTS
INVOLVING SUBORDINATE JUDICIAL
OFFICERS CONCLUDED IN 2020**

Litigant/Family/Friend.....	93%
Judge/Court Staff.....	6%
Attorney.....	1%
All Other Complainants.....	0%
Source Other Than Complaint.....	0%

SUMMARIES OF DISCIPLINARY ACTION

The commission issued one private admonishment to a subordinate judicial officer in 2020.

Private Admonishment

The judicial officer failed to disclose that the judicial officer's spouse had a financial interest (1) in services provided in cases over which the judicial officer presided, and (2) in an administrative matter. The discipline included additional conditions.

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 <https://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.

VI.

JUDICIAL DISABILITY RETIREMENT

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.

2020 STATISTICS

No disability retirement applications were pending before the commission at the beginning of 2020.

The commission received two disability retirement applications during 2020, which were granted. One disability application was pending at the end of the year.

VII. COMMISSION ORGANIZATION, STAFF AND BUDGET

COMMISSION ORGANIZATION AND STAFF

Beginning July 2020, the commission had 28 authorized staff positions. The commission's authorized positions include 17 attorneys, 10 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. Gregory Dresser serves as Director-Chief Counsel.

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. Charlene M. Drummer serves as Legal Advisor.

ORGANIZATIONAL CHART			
COMMISSION MEMBERS			
DIRECTOR-CHIEF COUNSEL			LEGAL ADVISOR TO COMMISSIONERS
Office of Trial Counsel 4 Attorneys* 1 Administrative Assistant	Investigation Staff 4 Intake Attorneys 7 Investigating Attorneys 4 Secretaries	Administrative Staff 2½ Administrative Assistants 1 Data/Systems Manager* 1 Secretary	½ Administrative Assistant

* Two positions are vacant.

VII.
COMMISSION ORGANIZATION, STAFF AND BUDGET

2020-2021 BUDGET

The commission's budget is separate from the budget of any other state agency or court. For the current 2020-2021 fiscal year, the commission's budget is \$6,809,000.

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.

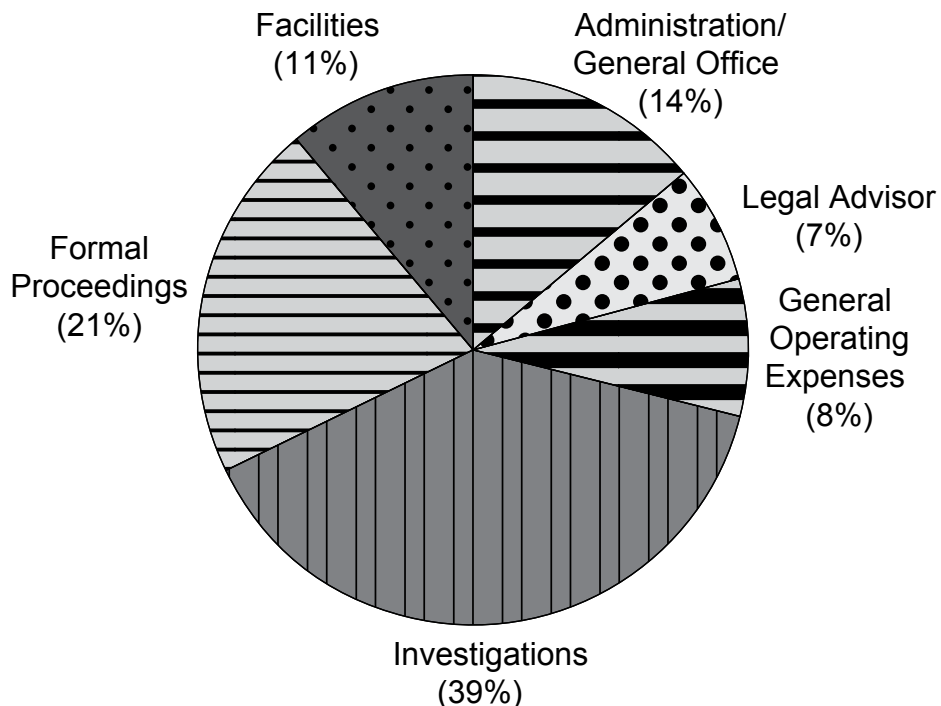
2019-2020 BUDGET

The commission's final budget appropriation for the 2019-2020 fiscal year was \$5,452,000. Final expenditures totaled \$5,430,829. Approximately 39% of the commission's budget supported the intake and investigation functions and approximately 28% was used in connection with formal proceedings. The remaining 33% went toward sustaining the general operations of the commission, including facilities, administrative staff, supplies, and security.

COMMISSION ON JUDICIAL PERFORMANCE

2019-2020 ACTUAL EXPENDITURES

\$5,430,829



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APPENDIX

APPENDIX 1. GOVERNING PROVISIONS

The following provisions governing the Commission on Judicial Performance are available on the commission's website at <https://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 ~~October 10, 2018~~ July 1, 2020; 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, January 21, 2015, August 19, 2015, and December 1, 2016, and October 10, 2018.[†]

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[†] Underlining indicates new language; strike-throughs indicate deleted language.
See page 6 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 3B(9) (Commentary), 3E(2)(b)(i), 3E(3)(a), 5, 5A, 5A (Commentary), 5B(1), 5B(2), 5B(3), 5B(4), 5B (Commentary), 5B(4) (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).

“Gender identity” means a person’s internal sense of being male, female, a combination of male and female, or neither male nor female. See Canons 2C, 2C (Commentary), 3B(5), 3B(6), 3C(1), and 3C(3).

“Gender expression” is the way people communicate or externally express their gender identity to others, through such means as pronouns used, clothing, appearance, and demeanor. See Canons 2C, 2C (Commentary), 3B(5), 3B(6), 3C(1), and 3C(3).

“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), 4D(6)(i), 4D(6)(i) (Commentary), 4D(6) and 4D(7) (Commentary), 4H (Commentary), 5A (Commentary), 5B(4) (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, 2 and 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), 4D(6)(i) (Commentary), 4H (Commentary), 5, 5A, 5A (Commentary), 5B (Commentary), 5B(4) (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 2 and 2A (Commentary), 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, 2 and 2A (Commentary), 2B (Commentary), 2C (Commentary), 3B(9) (Commentary), 4D(1)(b) (Commentary), 4D(6)(g) (Commentary), 4D(6)(i) (Commentary), 4H, and 5.

“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), 4D(6)(i) (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, 2 and 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), 4D(6)(i) (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 2 and 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).

[Adopted 1/15/96; amended 1/1/05, 1/1/07, 1/1/08, 1/1/13, 1/21/15, 8/19/15, 10/10/18, and 7/1/2020.]

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.*

A judge must exercise caution when engaging in any type of electronic communication, including communication by text or email, or when participating in online social networking sites or otherwise posting material on the Internet, given the accessibility, widespread transmission, and permanence of electronic communications and material posted on the Internet. The same canons that govern a judge's ability to socialize and communicate in person, on paper, or over the telephone apply to electronic communications, including use of the Internet and social networking sites. These canons include, but are not limited to, Canons 2B(2) (lending the prestige of judicial office), 3B(7) (ex parte communications), 3B(9) (public comment about pending or impending proceedings*), 3E(2) (disclosure of information relevant to disqualification), and 4A (conducting extrajudicial activities to avoid casting doubt on the judge's capacity to act impartially,* demeaning the judicial office, or frequent disqualification).*

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.*

If a judge posts on social networking sites such as Facebook or crowdsourced sites such as Yelp or Trip Advisor, the judge may not lend the prestige of judicial office to advance the pecuniary or personal interests of the judge or others. For example, a judge may not comment on, recommend, or criticize businesses, products, or services on such sites if it is reasonably likely that the judge can be identified as a judge.

See canon 4C(3)(d)(iv) prohibiting the use of the prestige of judicial office for fundraising or membership solicitation, but allowing a judge to 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).

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, gender identity,* gender expression,* 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, gender identity, gender expression,* 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, gender identity, gender expression,* 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, 8/19/15, 10/10/18, and 7/1/2020.]

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, prejudice, or harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity,* gender expression,* 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 (a) manifesting, by words or conduct, bias, prejudice, or harassment based upon race, sex, gender, gender identity,* gender expression,* religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment against parties, witnesses, counsel, or others. This canon does not preclude legitimate advocacy when race, sex, gender, gender identity,* gender expression,* 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 presiding over a case shall not engage in discussions about that case with a judge who has previously been disqualified from hearing that case; 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 who is presiding over a case from discussing that case with another judge who has already been disqualified from hearing that case. 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. In connection with a judicial election or recall campaign, this canon does not prohibit any judge from making a public comment about a pending* proceeding, provided (a) the comment would not reasonably be expected to affect the outcome or impair the fairness of the proceeding, and (b) the comment is about the procedural, factual, or legal basis of a decision about which a judge has been criticized during the election or recall campaign. 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.

The provision allowing a judge to make a public comment about a pending* decision that is the subject of criticism during an election campaign applies to all judicial elections, including recall elections. Depending on the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the decision. For purposes of this provision, a recall campaign begins when a judge is served with a notice of intention to circulate a recall petition (see Elec. Code, § 11006), and a judicial election campaign begins when a judge or candidate for judicial office* files a declaration of intention of candidacy for judicial office (see Elec. Code, § 8023).

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, prejudice, or harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity,* gender expression,* 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 (a) manifesting bias, prejudice, or harassment based upon race, sex, gender, gender identity,* gender expression,* religion, national origin, ethnicity, disability, age, sexual orientation,

marital status, socioeconomic status, or political affiliation, or (b) sexual harassment 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, writing about the misconduct in a judicial decision, or 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 Temporary 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 served as a lawyer in the pending* proceeding, or has 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 either 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* or a person within the third degree of relationship* to the justice or his or her spouse or registered domestic partner,* or the person’s spouse or registered domestic partner,* was a witness in the proceeding.

(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.

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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,~~* and retired judges who serve in the Temporary Assigned Judges Program, practice law, or provide alternative dispute resolution services);

(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,~~* and retired judges who serve in the Temporary Assigned Judges Program, practice law, or provide alternative dispute resolution services) 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 organization'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. Gifts* that are permitted by Canons 4D(6) (a) through (i) may only be accepted if the gift,* bequest, favor, or loan would neither influence nor 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 a discounted or complimentary membership in a bar-related association, 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.

(i) a nominal gift,* provided the gift* is not from a lawyer, law firm, or other person likely to appear before the court on which the judge serves, unless one or more of the exceptions in this canon applies.

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

For example, nominal gifts include snacks or a token memento from jurors, keychains or pens provided by vendors at legal conferences, or handicrafts or art projects from students.*

A judge should carefully weigh acceptance of any nominal gift 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.*

(7) A judge may accept the following, provided that doing so would neither influence nor 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;

(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. A judge may, however, act as a health care representative pursuant to an advance health care directive for a person whose preexisting relationship with the judge would prevent the judge from hearing a case involving that person under Canon 3E(1).

(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 a 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 Minimum 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, 8/19/15, 10/10/18, and 7/1/2020.]

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.*

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 or oppose a candidate for judicial office. Such endorsements positions 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, 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 knowingly making false or misleading statements during an election campaign because doing so would violate Canons 1 and 2A, and may violate other canons.

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.*

(4) In judicial elections, judges may solicit campaign contributions or endorsements for their own campaigns or for other judges and attorneys who are candidates for judicial office.* Judges are permitted to solicit such contributions and endorsements from anyone, including attorneys and other judges, except that a judge shall not solicit campaign contributions or endorsements from California state court commissioners, referees, court-appointed arbitrators, hearing officers, and retired judges serving in the Temporary Assigned Judges Program, or from California state court personnel. 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.

ADVISORY COMMITTEE COMMENTARY: Canon 5B(4)

Regarding campaign contributions for a judge's own campaign, see Canon 3E(2)(b) and accompanying Commentary addressing disclosure of campaign contributions. See also Code of Civil Procedure section 170.1, subdivision (a)(9), which provides that a judge is disqualified if the judge has received a campaign contribution exceeding \$1,500 from a party or an attorney in the proceeding. 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. See also Government Code section 8314, which prohibits any elected state or local officer from using public resources, including buildings, telephones, and state-compensated time, for a campaign activity. Under section 8314, subdivision (b)(2), "campaign activity" does not include "the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities."*

Even though it is permissible for a judge to solicit endorsements and campaign funds for attorneys who are candidates for judicial office, the judge must be cautious. Such solicitation may raise issues of disqualification and disclosure under Code of Civil Procedure section 170.1, subdivision (a), and Canon 3E. Even if the judge is not disqualified, disclosure may be required under Canon 3E(2)(a). For example, a judge who has solicited campaign funds or endorsements for a candidate who is an attorney must consider disclosing that solicitation in all cases in which the attorney candidate appears before the judge. The judge should also consider Canon 4A(1) and Canon 4A(4), which require a judge to conduct extrajudicial activities so they do not cast reasonable doubt on the judge's capacity to act impartially* or lead to frequent disqualification.*

"Judicial elections" includes recall elections.

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, 8/19/15, 12/1/16, 10/10/18, and 7/1/2020.]

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 Temporary 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 Temporary 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 Temporary 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 Temporary 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 Temporary Assigned Judges Program pursuant to the above provision are bound by Canon 6B, including the requirement of Canon 4G barring the practice of law. Other provisions of California law, and standards and guidelines for eligibility and service set by the Chief Justice, further define the limitations on who may serve on assignment.*

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

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

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

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.

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, 8/19/15, and 7/1/2020.]

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:

Date conduct occurred:

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

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APPENDIX 4.

TABLE OF COMMISSION PROCEEDINGS

1. COMPLAINT FILED
2. COMPLAINT EVALUATION
3. INITIAL COMMISSION MEETING
<p><u>Review complaint and staff evaluation</u></p> <p>Possible actions:</p> <ul style="list-style-type: none"> • Close complaint • Open staff inquiry (see step 4A) • Commence preliminary investigation (see step 4B)
4A. STAFF INQUIRY
<p style="text-align: center;">COMMISSION MEETING FOLLOWING STAFF INQUIRY</p> <p><u>Review staff report and results of investigation</u></p> <p>Possible actions:</p> <ul style="list-style-type: none"> • Close complaint • Issue advisory letter* (see step 5) • Elevate matter to preliminary investigation (see step 4B) <p>*only if judge has been notified and given opportunity to respond to allegations</p>
4B. PRELIMINARY INVESTIGATION
<p style="text-align: center;">COMMISSION MEETING FOLLOWING PRELIMINARY INVESTIGATION</p> <p><u>Review staff report and results of investigation</u></p> <p>Possible actions:</p> <ul style="list-style-type: none"> • Close complaint • Issue advisory letter* (see step 5) • Issue notice of tentative <i>private</i> admonishment* (see step 5) • Issue notice of tentative <i>public</i> admonishment* (see step 5) • Institute formal proceedings* (see step 8) <p>*only if judge has been notified and given opportunity to respond to allegations</p>

4.
COMMISSION PROCEEDINGS

5. JUDGE'S OPTIONS

If an advisory letter is issued

- Accept advisory letter issued
- Apply for correction of advisory letter issued (see step 6)
- Petition Supreme Court for writ of mandate (see steps 9 and 10)

If a notice of tentative admonishment is issued

- Accept admonishment
- Demand appearance before commission to contest tentative admonishment (see step 7)
- Reject tentative admonishment and demand formal proceedings (see step 8)

6. APPLICATION FOR CORRECTION OF ADVISORY LETTER

Review record and judge's application

Possible actions:

- Withdraw advisory letter
- Correct advisory letter
- Deny application for correction

**7. APPEARANCE BEFORE COMMISSION TO
CONTEST ADMONISHMENT**

Review record, judge's objections and argument

Possible actions:

- Close complaint
- Issue advisory letter
- Issue private admonishment
- Issue public admonishment (if tentative public admonishment was issued)

8. FORMAL PROCEEDINGS INSTITUTED

**8A. Evidentiary Hearing Before Special Masters
and
8B. Special Masters' Report to Commission**

4.
COMMISSION PROCEEDINGS

8C. APPEARANCE BEFORE COMMISSION

<p><u>Review record, special masters' report, and parties' briefs and arguments</u></p>

<p>Possible actions (see steps 9 and 10):</p>
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| <ul style="list-style-type: none">• Removal/Retirement• Public censure• Public admonishment• Private admonishment• Advisory letter• Close case |
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9. JUDGE'S OPTIONS FOLLOWING COMMISSION DECISION

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| <ul style="list-style-type: none">• Accept commission action• Petition Supreme Court for review (all sanctions except advisory letter)• Petition Supreme Court for writ of mandate (if advisory letter) |
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10. SUPREME COURT ACTION FOLLOWING PETITION BY JUDGE

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| <ul style="list-style-type: none">• Grant review; affirm or reverse commission decision• Deny review |
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