

COMMITTEE TO REVIEW THE OPERATIONS AND STRUCTURE OF THE COMMISSION ON JUDICIAL PERFORMANCE

APRIL 19, 2022

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MANDATE

The purpose of a commission disciplinary proceeding is not punishment, but rather:

- The protection of the public,
- The enforcement of rigorous standards of judicial conduct, and
- The maintenance of public confidence in the integrity and independence of the judicial system.

LEGAL ERROR

“Mere legal error, without more, however, is insufficient to support a finding that a judge has violated the Code of Judicial Ethics and thus should be disciplined.”

Oberholzer v. Commission on Judicial Performance (1999) 20 Cal.4th 371, 398.

See also CJP Rule 111.4 (“Discipline ... shall not be imposed for mere legal error without more ...”)

CJP's AUTHORITY

- **In 1960, voters approved amendment to California Constitution to establish CJP as independent state agency.**
- **In 1994, voters passed Proposition 190. Among other amendments to the Constitution, Prop 190 changed the structure of the CJP to have a majority of public members. Prop 190 also made discipline issued by the CJP self-executing.**

Work of the Committee— Government Code §§ 68770, et seq.

- **The Committee shall appoint a chairperson.
(§ 68771(b))**
- **The Committee shall make recommendations to improve CJP's ability to carry out its mandate.
(§ 68772)**

Work of the Committee— Government Code §§ 68770, et seq.

- **The Committee shall review:**
 - ❖ **Auditor's Report**
 - ❖ **Structure and operations of CJP**
 - ❖ **Structure and operations of judicial discipline agencies in other big states**

(§ 68772(a)(1))

Work of the Committee— Government Code §§ 68770, et seq.

- **Before formulating recommendations, conduct one hearing to accept public comment regarding possible changes to structure and operations of CJP.
(§ 68772(a)(2)(A))**
- **Conduct another hearing to accept public comments on its tentative recommendations.
(§ 68772(a)(2)(B))**

Work of the Committee— Government Code §§ 68770, et seq.

- **Study and make recommendations about whether there should be changes to:**
 - ❖ **Number of CJP members**
 - ❖ **Structure of Commission**
 - ❖ **Levels of discipline and remedies**
 - ❖ **Funding needed to support recommendation**
 - ❖ **Et cetera**

(§§ 68772(a)(3))

Work of the Committee— Government Code §§ 68770, et seq.

- **Seek input from everyone.
(§ 68772(a)(4))**
- **Complete written report by March 30, 2023 (and
distribute).
(§ 68772(d))**

CJP: CONSTITUTIONAL PROVISIONS

- **Article VI, Sections 8, 18, 18.1, and 18.5**
- **Composition:**
 - ❖ **Six members of the public**
 - ❖ **Two attorneys**
 - ❖ **Two superior court judges**
 - ❖ **One court of appeal justice****(§ 8(a))**
- **Terms: two four-year terms; maximum of ten years**
(§ 8(a))

CJP: CONSTITUTIONAL PROVISIONS

- **Judge continues to draw salary, after removal decision by commission, while petition for review pending with California Supreme Court.
(§ 18(a))**
- **CJP may retire a judge for disability that interferes with judge's duties.
(§ 18(d))**

CJP: CONSTITUTIONAL PROVISIONS

- **Statute of limitations: six years prior to judge's current or last term.
(§ 18(d))**
 - ❖ **Not tolled by filing of charges**
- **Decisions of CJP are self-executing, but judge can petition for discretionary review by Supreme Court.
(§ 18(d))**

CJP: CONSTITUTIONAL PROVISIONS

- **Levels of discipline:**
 - ❖ **Removal (censure & bar)**
 - ❖ **Censure**
 - ❖ **Public admonishment**
 - ❖ **Private admonishment**
 - ❖ **Advisory letter**

(§ 18(d))

CJP: CONSTITUTIONAL PROVISIONS

- **Types of private dispositions in other states: counseling (or recommendation for same); informal meeting with commission to discuss problems; order of additional education; “dismissal with expression of concern or warning.”**

CJP: CONSTITUTIONAL PROVISIONS

- **Types of public discipline in other states: suspension (with or without pay (including indefinite suspension)); any sanction that will curtail misconduct; fine; civil penalty; costs; cease & desist order; limitations/conditions on performance of duties; probation with conditions; attend training/education; issue public apology.**

CJP: CONSTITUTIONAL PROVISIONS

- **CJP has authority to make rules regarding:**
 - ❖ **Proceedings before it**
 - ❖ **Confidentiality of complaints and investigations (§ 18(i))**
- **Once initiated, formal proceedings (including papers, hearings, and trial) are public. (§ 18(j))**

CJP: CONSTITUTIONAL PROVISIONS

- **CJP's budget is separate from other state agencies and judiciary.
(§ 18(I))**
- **CJP has discretionary (and secondary) jurisdiction over subordinate judicial officers (SJOs).
(§ 18.1)**

ADMONISHMENT PROCEDURES

- **After completion of investigation, CJP can send notice of tentative private or public admonishment.**
- **Judge can:**
 - ❖ **Accept discipline**
 - ❖ **Request an appearance**
 - ❖ **Demand formal proceedings**

ADMONISHMENT PROCEDURES

- **To request an appearance, judge must:**
 - ❖ **Waive formal proceedings and Supreme Court review**
 - ❖ **Request within 30 days**
 - ❖ **Object in writing**
- **Appearance is confidential.**
- **After appearance, CJP can affirm or lower (but not raise) discipline (or close).**

FORMAL PROCEEDINGS

- **Examiner (trial counsel) files and serves charging document (notice of formal proceedings).**
- **Judge files answer and receives discovery.**
- **Documents and proceedings are public after charges filed.**

FORMAL PROCEEDINGS

- **Supreme Court appoints three special masters to conduct evidentiary hearing (trial).**
 - ❖ **Special masters = at least one Court of Appeal justice; at least one (usually two) Superior Court judges**
- **Evidence Code applies.**
- **Special masters conduct evidentiary hearing.**
- **Parties submit post-hearing briefs to special masters.**

FORMAL PROCEEDINGS

- **Special masters submit report to CJP with recommended findings of fact and conclusions of law.**
- **Parties submit briefs to CJP.**
- **Final appearance/argument before CJP.**
- **CJP can impose any level of discipline (or close).**
- **After CJP decision, judge can petition for (discretionary) review by Supreme Court.**

STRUCTURE OF CJP

- **CJP has unitary structure.**
- **Majority of judicial discipline agencies in U.S. have unitary structure.**
- **CJP members vote on whether to open investigation.**
- **After investigation, CJP members vote to close, impose (certain) discipline, or initiate formal proceedings.**

STRUCTURE OF CJP

- **Separation of functions for:**
 - ❖ **Adjudication**
 - ❖ **After formal proceedings commence**
- **Legal Advisor reports directly to CJP.**
- **Other governmental bodies have unitary structure.**

CONSIDERATIONS REGARDING CJP STRUCTURE

- **Due process considerations.**
- **Cal. Supreme Court cases:**
 - ❖ ***Adams v. CJP* (1995) 10 Cal.4th 866, 880-882**
 - ❖ ***Kloepfer v. CJP* (1989) 49 Cal.3d 826, 833-835**
- **Audit Report recommends separate “investigative body” and separate “disciplinary body.”**

CONSIDERATIONS REGARDING CJP STRUCTURE

- **Disciplinary body: “Commissioners who issue discipline are only aware of proven allegations.”**
- **“Best practice.”**

CONSIDERATIONS REGARDING CJP STRUCTURE

- **Questions/Considerations:**
 - ❖ **Who would adjudicate?**
 - ❖ **Would all alleged misconduct be the subject of public charges?**
 - ❖ **How would adjudicative body avoid exposure to unproven charges?**

CONSIDERATIONS REGARDING CJP STRUCTURE

- **Audit Report recommends that three commission members, including two public members, preside over evidentiary hearings.**
- **Change from historic use of Special Masters.**