

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

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APRIL 19, 2022



# MANDATE

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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

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“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

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- **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.**

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- **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.**

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- **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.**

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- **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.**

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- **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.**

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

# CJP: CONSTITUTIONAL PROVISIONS

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- **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

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- **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

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- **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

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

**(§ 18(d))**

# CJP: CONSTITUTIONAL PROVISIONS

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- **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

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- **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

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- **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

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- **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

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- **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

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- **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

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- **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

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- **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

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- **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

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- **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

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- **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

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- **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

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

# CONSIDERATIONS REGARDING CJP STRUCTURE

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- **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

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