



Superior Court of California County of Orange

CHAMBERS OF
Erick L. Larsh
PRESIDING JUDGE

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September 9, 2022

Judge Erica Yew
Santa Clara Superior Court
Family Justice Center
194 N. First Street
San Jose, Ca 95113

Re: California Judges Association Response to Auditor's Recommendations for
Commission on Judicial Performance

Dear Judge Yew:

I am the current Presiding Judge of the Orange County Superior Court and have held this position since January 2021. Prior to that I was the Assistant Presiding Judge of our court from January 2019 through December 2020. Prior to this I held the position of Supervising Judge of the Central Panel of the Central Justice Center, the Supervising Judge of the West Justice Center, Supervising Judge of the Collaborative Courts and Supervising Judge of the Domestic Violence Courts. After 25 years on the bench and with my many years of leadership at the Orange County Superior Court I have had numerous occasions wherein I have participated in investigations of judicial officers on questions of conduct which involved the Commission on Judicial Performance (Commission).

I have testified on three separate cases in front of three different panels of Special Masters regarding Commission investigations and I have provided witness statements to the Commission involving a number of judicial officers. I have a broad foundation of having had to work with the Commission and though I am never enthusiastic to having had to develop a working relationship with the Commission, I have found that the Commission is thorough, conscientious, and careful in their investigation of judicial officers in Orange County Superior Court.

As you are aware, the role of the Presiding Judge with the Commission is limited to reporting responsibilities, providing all documentation requested, and cooperation with the Commission's investigation. Once an investigation has begun, I have found that the Commission's pursuit of the facts has included further inquiry for clarification and understanding, has demonstrated full consideration of the many different perspectives and viewpoints on the conduct questioned, and has resulted in conclusions supported by the evidence presented. I have also found that once a case rises to the level of Commission

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involvement, the Commission has worked diligently to come to a timely conclusion regarding their decisions in the matters.

I believe it is essential for proper Commission oversight and for the upholding of public confidence in the judiciary that special masters have the highest reputation for fairness, honesty and integrity, but are nonetheless, judges. Special Masters are required to understand evidence admissibility, to use legal reasoning through the guidance of challenging legal principals and the importance of not prejudging the proceedings before the presentation of evidence. Further judges selected to be special masters are still seen in our society as a symbol of fairness un beholden to an agenda when sitting in judgement in matters for which they are charged to oversee. These are all necessary factors to a fair finding of facts and conclusions of law in the publics eye.

In the three hearings that I have testified in before special masters, not one has reached conclusions that favored the outcome for the judge. This may not always be the case, but when the public observer can see that three separate judges, with their experience and understanding, can fairly judge one of their own regarding ethical conduct, it furthers the public confidence in our system of justice. Each of these hearings occurred over multiple days requiring the special masters' undivided attention and required written findings upon the conclusion of the hearing. Each of the judges subject to the proceedings was given a fair and exhaustive opportunity to present their case. When dealing with the discipline of judges, holding the Commission to the highest standard by requiring special masters to be judges, furthers the goal of Commission trustworthiness and credibility for all involved.

Finally, I have found that the Commission has been responsive to my questions regarding process and procedure that I have directed to them. As an example, a Presiding Judge has a duty to report to the Commission any judge that has been absent for more than 90 court days within a 12-month period. I had a judge I was supervising who become extremely ill and was going to pass the 90-court day threshold. The judge, fearful of involving the Commission on his / her future, asked to take vacation upon reaching the 90 days. A call to the Commission about the consequence of reporting the judge when they were suffering from a verifiable illness which would go beyond the 90 day limit. A Commission attorney reached out and explained that the Commission, upon my report, reaches out to the judge, verifies the condition and takes no action if the judge can return within a reasonable period of time. This type of open communication has been very helpful to me as the Presiding Judge and is exactly what happened in the above-mentioned situation.

My experience is that the current make-up and procedural approach of the Commission on Judicial Performance in California is a model of judicial oversight nationwide. I would encourage greater funding for the Commission which I believe would address some of the Auditor's concerns but structural change, from my experience with the Commission, would not accomplish a different result. Please feel free to contact me if you have any further questions or concerns regarding my thoughts.

Very Truly Yours,


Erick L. Larsh
Presiding Judge