



THE CJP  
SYSTEM:  
THE  
DEFENSE  
BAR  
EXPERIENCE

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# A Well Run System

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- Defense counsel as natural critic of the system
- Compressed timetable of investigations and proceedings
- **Caution:** The number of judges that are disciplined in relation to the number of complaints does not speak to whether the system is well run or not
  - The vast majority of judges are well-intentioned and strive to provide a public service through the application of the rule of law (*with those laws being promulgated by others*)
  - Many complaints allege legal error and are directed to the wrong governmental sector
  - Some complaints without merit and are rebutted through the presentation of documentary evidence and third-party witness testimony



# Formal Proceedings

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# Formal Proceedings (the public evidentiary hearing)

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- The current system has been successful: *WHY IS THAT?*
  - The 11-member Commission is the ultimate decision-maker, utilizing the findings of the Special Masters in its discretion
  - The Special Masters have the requisite legal training to conduct a trial with objections, the application of the rules of evidence, preparation of detailed conclusions of law, etc.
  - The Special Masters on the panel have the flexibility to act on short notice to attend a 1-3 week trial away from their home locale
  - Judicial officers who sit as Special Masters tend to be naturally critical of the conduct of their colleagues, if it violates the Code of Judicial Conduct



# Focus on Education and Mentorship

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- The Commission system is a public protection system, not a punitive system
- Public protection is enhanced by training and mentorship, as it reduces the likelihood of any repeat conduct
  - Note: The majority, and often the vast majority, of discipline relates to demeanor, which can be taught and reformed. A misunderstanding of the application of the complex Code of Judicial Conduct can also be remedied through training and mentorship, combined with diligence
- The Mentorship Program for demeanor violations has been highly successful, and should receive additional special funding for expansion



# Focus on Education and Mentorship

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## **Defense Counsel Experience:**

Most judges are very keen to learn from the Commission experience, and take great pains to reform their practices



Auditor  
Recommendation:  
Letting the Public  
Know about the  
Commission

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# Auditor Recommendation: Letting the Public Know About the Commission

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- A well-run disciplinary agency will have a helpful website that explains the purpose of the agency and is easily accessible
  - A simple Google search for "Judge Complaint California" brings up the CJP webpage entitled "Filing a Complaint" as the first hit
  - On the same page, it describes the difference between the Commission and the appellate courts that deal with alleged legal error
  - There is an easily accessible online complaint form
- Signage in the courtroom suffers from several issues:
  - High potential for consumer confusion
  - Potential for undermining the proceeding or judge
  - Lack of recognition of proliferation of remote appearances



# Fundamental Due Process to Judicial Officers

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- The Rules of the Commission on Judicial Performance
  - Enhancing the mentoring program (with mentoring as a proven methodology to correcting behavior that does not conform with the Canons)
  - Providing for the issuance of educational or warning letters
  - Expanding the process to achieve voluntary settlements (whereby judges voluntarily agree to a certain level of discipline)
  - Allowing judges discovery prior to formal proceedings, as a means of permitting them to better understand the allegations against them
- The standard of proof – clear and convincing evidence (same standard for all disciplinary agencies for professionals)



Questions?

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