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# **STATE OF CALIFORNIA**

## **COMMISSION ON JUDICIAL PERFORMANCE**



## **2022 ANNUAL REPORT**

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San Francisco, California 94102  
(415) 557-1200  
<https://cjp.ca.gov>**

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## INTRODUCTION

I am often asked how I feel about serving on the Commission on Judicial Performance. I can say without a doubt that I truly love my work on the commission and, as I reflect on my time here, what has consistently impressed me the most is the hard work, dedication, and professionalism of each and every member of the commission staff.

The commission receives over 1,200 complaints a year. The intake staff process each complaint, conduct an initial review of the allegations and the potentially relevant law, sometimes re-contact the complainant to clarify issues, and write a summary memorandum of the matter. The commission members review the memorandums and then either vote to open an investigation or vote to close every single complaint that the commission receives.

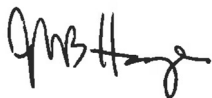
If an investigation is opened, the investigation staff must then contact and interview witnesses, review court records and other documents, order and review any transcripts, order and review any video, and sometimes conduct a court observation, if authorized by the commission members. Then the staff must conduct research of the law on each issue raised. The judge being investigated will often provide information that the staff will use to conduct follow-up work.

The staff will then prepare a thorough memorandum of each investigation, and the commission members review every memorandum and discuss and debate whether there is clear and convincing evidence that judicial misconduct has occurred and, if so, what level of discipline is warranted. Sometimes, the commission members will ask staff to conduct follow-up investigation to answer certain questions and then staff will submit an updated memorandum.

If the commission members determine that discipline is warranted, staff will prepare the detailed tentative discipline letter to send to the judge and the judge's attorney. If a judge asks to have an appearance before the commission to contest the discipline, staff must prepare for the judge's appearance. If the matter goes to a formal proceeding, staff must prepare, spending countless hours, for a full-blown trial before special masters.

The amount of time and effort spent by staff on each and every matter is truly mind-boggling. All the while, everyone at the commission is constantly staying true to the commission's constitutional mandate: to protect the public, enforce rigorous standards of judicial conduct, and maintain public confidence in the integrity and independence of the judicial system.

I often tell people that, in serving on the commission, I am privileged to be working at the best law firm in California. Thank you goes out to the entire staff at the commission. You all do a wonderful job and I am so proud to be part of this amazing organization.



Judge Michael B. Harper  
Chairperson

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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, and reappointed to a term commencing March 1, 2021; his current term ends February 28, 2025. He was elected chairperson of the commission in May 2020, and served as vice-chairperson of the commission from 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.

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## COMMISSION MEMBERS

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**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, and April 29, 2021; his current term ends February 28, 2025. 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 a cofounder of the Orange County Sustainability Decathlon, which will take place in 2023. 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. The Orange County Register in 2021 named him to its Most Influential People in Orange County list. 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, and reappointed to a term commencing March 1, 2021; his current term ends February 28, 2025. 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.



**HON. EDUARDO "EDDIE" DE LA RIVA** was appointed to the commission as a public member by the Speaker of the Assembly January 1, 2018, and reappointed to a term commencing March 1, 2021; his current term ends February 28, 2025. 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.

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## COMMISSION MEMBERS

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**RICKEY IVIE, Esq.**, was appointed to the commission as a lawyer member by the Governor May 27, 2021; his term ends February 28, 2023. He resides in Los Angeles County. Mr. Ivie is a Founding Partner of Ivie McNeill Wyatt Purcell & Diggs, a practicing Litigation Attorney, and a Community Leader passionate about diversity and serving others. IMW is a multi-cultural law firm. Since joining IMW in 1980, Mr. Ivie has remained dedicated to building and leading a diverse legal team that excels in providing legal services to the diverse global community. Under his leadership, IMW has grown into a secure and inspiring workplace for all employees. Mr. Ivie provides legal service to individuals, government entities, and well-known businesses including restaurants, entertainment companies, insurance companies, and commercial construction businesses. He handles a range of legal cases related to personal injury, wrongful death, civil rights violations, contract disputes, trademark, copyright, corporate, and commercial litigation. Over four decades, Mr. Ivie has tried numerous jury and court trials, including precedent-setting cases that have changed the practice of law and improved the lives of millions of people. Mr. Ivie received his law and undergraduate degrees from the University of California, Los Angeles. He served as Chairman of the Board of the UCLA Black Alumni Association for over 10 years, working to maintain diversity at the University and raise funds for scholarships for African American students. Mr. Ivie is a member of the State Bar of California and is admitted to the United States Court of Appeals, Ninth Circuit, and the United States Supreme Court. He has spoken at State Bar of California events on topics such as ethics, effective fee agreements, interacting with judges, and opening a law office.



**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

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## COMMISSION MEMBERS

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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.



**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.

## COMMISSION MEMBERS

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**HON. LISA B. LENCH** was appointed to the commission as a superior court 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. 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.



**MR. RICHARD SIMPSON** was appointed to the commission as a public member by the Senate Rules Committee September 7, 2018; his term ended February 28, 2021, but he continues to serve pending appointment of a successor. 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. He 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 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.



## COMMISSION MEMBERS

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**Ms. BEATRIZ E. TAPIA** was appointed to the commission as a public member by the Governor April 29, 2021; her term ends February 28, 2023. She resides in Los Angeles County. Ms. Tapia has been Chair of the Department of Chicana/o Studies at East Los Angeles College since 2019 and a Professor in the Department since 2007. She was Adjunct Faculty for the Women's Studies Program at Santiago Canyon College in 2007. Ms. Tapia held several positions at California State University, Fullerton from 2005 to 2007, including Adjunct Professor for the Women and Gender Studies Department, Chicana and Chicano Studies

Department, and Sociology Department. She was a Lecturer for the Chicana/o Studies Department at California State University, Los Angeles from 2001 to 2003. Ms. Tapia earned a Master of Arts degree in Ethnic Studies and a Bachelor of Arts degree in Sociology from the University of California, Berkeley. She is a member of the National Association of Chicana and Chicano Studies.

## OUTGOING COMMISSION MEMBERS

**VICTOR E. SALAZAR, Esq.**, was appointed to the commission as a lawyer member by the Governor April 6, 2020, and reappointed April 29, 2021; his term ended August 14, 2022, when he resigned.

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## 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 10 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 2022:

**Honorable George Abdallah**

Superior Court of California, County of San Joaquin

**Honorable Judith M. Ashmann-Gerst**

Court of Appeal, Second Appellate District, Division Two

**Honorable Patricia D. Benke (Ret.)**

Court of Appeal, Fourth Appellate District, Division One

**Honorable Janet M. Frangie**

Superior Court of California, County of San Bernardino

**Honorable Barbara A. Kronlund**

Superior Court of California, County of San Joaquin

**Honorable Therese M. Stewart**

Court of Appeal, First Appellate District, Division Two

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# 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 2022 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 (see complaint form in Appendix 3). 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 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

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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 which 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 2022 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

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### 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.

#### **ACTION THE COMMISSION CAN TAKE**

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

### 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.

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## **II. LEGAL AUTHORITY AND COMMISSION PROCEDURES**

### **LEGAL AUTHORITY**

#### **Recent Changes in the Law**

In 2022, there were no substantive changes to the California Constitution, Code of Civil Procedure, Government Code, or Rules of Court, relating to the work of the commission. There were also no changes to the California Code of Judicial Ethics in 2022. The commission approved various changes to its rules and policy declarations in 2022. The amendments are summarized 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, 2023, the commission adopted \$530, 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.

Without first circulating it for public comment, under exigent circumstances, policy declaration 3.5(3) of the Policy Declarations of the Commission on Judicial Performance allows the commission to adopt, amend, or suspend a rule on an interim basis, and on a permanent basis after it has been circulated for public comment.

During 2022, the commission amended two rules on an interim basis. At its meeting on February 2, 2022, the commission amended rule 119.5 (Filing with the Commission

## II.

### LEGAL AUTHORITY AND COMMISSION PROCEDURES

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During Formal Proceedings) to eliminate the requirement that the original of documents filed electronically in formal proceedings must be delivered to the commission office by mail or hand delivery within five calendar days of the electronic filing. The interim amendment also eliminated facsimile, hand delivery, and mail filings in formal proceedings. At its meeting on March 23, 2022, the commission amended interim rule 102(s) (Disclosure to respondent in formal proceedings) to allow discovery of additional items to which a judge may be entitled should an investigation proceed to formal proceedings.

Policy declaration 3.5 provides that every two years, in even-numbered years, the commission shall review its rules and any proposed enactments, amendments, or repeals. During its 2022 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 to discuss proposed rule changes, operational statistics, and complaint data trends.

On December 7, 2022, the commission adopted the following amendments to its rules. The commission adopted interim rule 102(q) on a permanent basis, which provides an exception to confidentiality to allow the commission to disclose relevant information regarding a mentee judge to a mentor judge when a judge has agreed to participate in a mentoring program. The commission adopted interim rule 102(s) on a permanent basis, to provide an exception to confidentiality for disclosure of relevant statements by a judge during an investigation to a respondent judge in formal proceedings. The commission repealed rule 110 to eliminate staff inquiries and avoid delay of disposition of an investigation when an initial staff inquiry must be returned to the commission with a recommended elevation to a preliminary investigation; the commission determined there does not appear to be any significant benefit to retaining staff inquiries as an alternative to preliminary investigations. The commission amended rules 111, 113, and 114, and repealed rules 111.5, 115, and 116 to more clearly acknowledge that advisory letters constitute discipline; to expand the rights of judges who receive advisory letters by eliminating correction requests and providing for appearances before the commission to contest advisory letters; and to bring more uniformity to procedures for contesting discipline short of a censure or removal. The commission adopted interim amendments to rule 119.5 on a permanent basis to streamline the procedures for filing documents in formal proceedings, and to eliminate the requirement of paper filings, in line with the commission's aim of moving to a mainly electronic filing and case management system. The commission amended rule 126 to clarify that a respondent judge in formal proceedings is entitled to transcripts without cost. See the commission's website at <https://cjp.ca.gov> under "Legal Authority" for the full Report Concerning Adoption of Amendments to Rules of the Commission on Judicial Performance December 30, 2022.

Due to the rule changes concerning advisory letters and staff inquiries, the commission adopted ancillary changes to its rules and policy declarations, as follows: (a) amendments to rules 102(s), 104, 106, 107, 108, 109, 111.4, 116.5, 123, 125, and 134; (b) amendments to policy declarations 1.4, 1.6, 1.6.5, 1.7, 1.8, 1.9, 1.14, 2.1, and 3.9; and (c) repeal of policy declarations 1.2, 1.3, and 2.1.5.

## II.

### LEGAL AUTHORITY AND COMMISSION PROCEDURES

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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. On December 7, 2022, the commission adopted various changes to its policy declarations. The commission amended policy declaration 2.5 to replace an outdated reference to “Administrative Office of the Courts” with “Judicial Council.” The commission amended policy declaration 5.4(8) and (9) to clarify that when the commission tentatively denies a disability retirement application and/or makes a tentative determination that the disability was not predominantly a result of injury arising out of and in the course of judicial service, the judge has the option to request an evidentiary hearing or first submit a request to submit additional information; if after considering the additional information the commission still determines that the disability is not predominantly a result of injury arising out of and in the course of judicial service, the judge may then request an evidentiary hearing. The commission amended policy declaration 6.1(1)(c) to add that a commission member who served as a judge in any proceedings that are the subject of an investigation should recuse. The commission amended policy declarations 6.5(3) and 7.1(1)(i) to include a reference to Code of Judicial Ethics canon 3B(5) for specification of protected characteristics or membership in a group or class.

#### **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 2022.

#### **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. There were no changes to the code in 2022.

The Code of Judicial Ethics is included in Appendix 2 with dates of adoption and amendments noted.

### **COMMISSION PROCEDURES**

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



## II.

### LEGAL AUTHORITY AND COMMISSION PROCEDURES

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#### **Commission Review of Complaints**

The commission considers the allegations of each complaint about a California judge and determines whether to make a preliminary 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**

When the commission determines that a complaint warrants investigation, the commission directs legal staff to investigate the matter and report back to the commission. Prior to the December 7, 2022 rule amendments, there were two levels of investigation: a staff inquiry and a preliminary investigation. (Commission Rule 109; Policy Declaration 1.4; former Policy Declaration 1.2.) Some cases began with a staff inquiry. In more serious matters, the commission may have commenced with a preliminary investigation. Effective December 7, 2022, all investigations 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 investigation letter. (Commission Rule 111.) Extensions of time to respond to investigation letters are governed by the rules. (Commission Rule 108.)

#### **Disposition of Cases Without Formal Proceedings**

After a preliminary investigation, the commission has various options. The commission may close the case without action. (Commission Rule 111; Policy Declaration 1.4.) The commission may issue a notice of tentative advisory letter, private admonishment, or public admonishment, depending upon the seriousness of the misconduct. (Commission Rule 113; Policy Declaration 1.4.) The commission also may institute formal proceedings, as discussed below.

All notices of preliminary investigation or tentative advisory letter, private admonishment, or public admonishment are sent to the judge at court, unless otherwise requested. Notices that relate to a preliminary investigation or tentative advisory letter, private admonishment, or public admonishment are given by prepaid certified 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).)

## II.

### LEGAL AUTHORITY AND COMMISSION PROCEDURES

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Within 30 days of the mailing of a notice of tentative advisory letter, private admonishment, or public admonishment, a judge has various options. The judge may accept the tentative discipline, and the discipline becomes final. The judge may file a written demand for an appearance before the commission, statement of the judge's objections to the tentative discipline, and waiver of any applicable right to formal proceedings or review by the Supreme Court; after the appearance, the commission may close the matter without discipline, issue discipline per the tentative, or issue lesser discipline. (Commission Rule 114; Policy Declaration 2.1.) A judge who receives a tentative private or public admonishment may also demand formal proceedings, as discussed below. (Commission Rule 114(c).)

During a preliminary investigation or discipline proceeding under commission rules 113 to 114, the commission may authorize legal staff or other designated attorney to negotiate with the judge a resolution of any matter at issue, or the judge may initiate settlement discussions with legal staff or other designated attorney. The commission may accept the proposed resolution, reject it, or return it to the judge and legal staff or other designated attorney to consider modifications to it. (Commission Rule 116.5.) After formal proceedings are instituted, settlement negotiations are governed by commission rule 127.

#### **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 2022 and the reasons for the deferrals are listed in charts on page 14.

#### **Monitoring**

In the course of a preliminary investigation, the commission may monitor a judge's conduct, pursuant to commission 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.



## II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

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### **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. (Commission Rule 102(q).)

### **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 private or public admonishment and files a demand for formal proceedings. (Commission Rule 114.) 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).)

## II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

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### **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:

- 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 issue 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.

## II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

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### 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 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)-(s); Policy Declarations 4.1-4.6.) During the course of a staff inquiry (under former Commission Rule 110) 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.)

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### III.

## ACTIVE AND FORMER JUDGES

### 2022 STATISTICS

#### COMPLAINTS RECEIVED AND INVESTIGATED

In 2022, 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 254 commissioners and referees. The commission's handling of complaints involving commissioners and referees is discussed in Section V.

#### JUDICIAL POSITIONS

As of December 31, 2022

Supreme Court.....	7
Courts of Appeal.....	106
Superior Courts.....	1,755
<b>Total.....</b>	<b>1,868</b>

#### New Complaints

In 2022, the commission considered 1,414 new complaints about active and former California judges. The 1,414 complaints named 1,005 judges (a total of 863 different judges).

#### 2022 CASELOAD—JUDGES

Cases Pending 1/1/22.....	127
New Complaints Considered.....	1,414
Cases Concluded.....	1,385
Cases Pending 12/31/22.....	162

Discrepancies in totals are due to consolidated complaints/dispositions.

In 2022, the commission considered 87 complaints about subordinate judicial officers. These cases are discussed in Section V.

### III.

## ACTIVE AND FORMER JUDGES—2022 STATISTICS

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The commission office also received 295 complaints in 2022 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 2022, the commission ordered 6 staff inquiries and 114 preliminary investigations.

#### INVESTIGATIONS COMMENCED IN 2022

Staff Inquiries .....	6
Preliminary Investigations .....	114

### Formal Proceedings

At the beginning of 2022, there was one formal proceedings pending before the commission, which concluded in 2022. The commission instituted one formal proceedings in 2022, which remained pending before the commission.

#### FORMAL PROCEEDINGS

Pending 1/1/22 .....	1
Commenced in 2022 .....	1
Concluded in 2022 .....	1
Pending 12/31/22 .....	1

### III.

## ACTIVE AND FORMER JUDGES—2022 STATISTICS

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### DEFERRAL OF INVESTIGATION

As discussed on page 8, the commission may defer an investigation under certain circumstances. At the beginning of 2022, 29 pending matters had been deferred. The commission ordered 45 matters deferred during 2022. Seven matters were returned to the commission's active calendar, considered, and concluded by the commission in 2022. Twenty-one matters were returned to the active calendar and remained pending before the commission at the end of 2022. Forty-six matters remained deferred at the end of the year.

#### DEFERRED INVESTIGATIONS

Pending 1/1/22.....	29
Investigations deferred in 2022.....	45
Deferred investigations returned to active calendar and concluded in 2022.....	7
Investigations returned to the active calendar and pending 12/31/22.....	21
Deferred investigations pending 12/31/22.....	46
Discrepancies in totals are due to consolidated complaints/dispositions	

#### REASONS INVESTIGATIONS WERE DEFERRED IN 2022

Deferred pending resolution of underlying case.....	35
Deferred pending appeal or other review.....	2
Deferred pending civil, criminal or administrative investigation or proceeding.....	4
Deferred pending rule 112 monitoring.....	0
Deferred pending mentoring.....	4

### III.

## ACTIVE AND FORMER JUDGES—2022 STATISTICS

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### COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the commission in 2022, regardless of when the complaints were received.<sup>1</sup> In 2022, the commission concluded a total of 1,385 cases. The average time period from the filing of a complaint to the disposition was 3.06 months. A chart of Complaint Dispositions of all cases completed by the commission in 2022 is included on page 17.

#### TYPE OF COURT CASE UNDERLYING COMPLAINTS CONCLUDED IN 2022

Criminal.....	31%
Family Law.....	25%
General Civil.....	25%
Small Claims/Traffic.....	7%
All Others.....	9%

3% 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 2022, after obtaining the information necessary to evaluate the complaints, the commission determined that there was not a sufficient showing of misconduct in 1,294 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 60 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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<sup>1</sup> Staff inquiries and preliminary investigations in the cases closed in 2022 may have commenced in prior years. Cases or portions of cases pending at the end of 2022 are not included in complaint disposition statistics.

### III.

## ACTIVE AND FORMER JUDGES—2022 STATISTICS

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### SOURCE OF COMPLAINTS CONCLUDED IN 2022

Litigant/Family/Friend.....	90%
Attorney.....	3%
Judge/Court Staff.....	1%
All Other Complainants..... (including members of the public)	4%
Source Other Than Complaint..... (includes anonymous letters, news reports)	2%

### Closed With Discipline

In 2022, the commission publicly censured one judge, and imposed three public admonishments. The commission also issued five private admonishments and twenty advisory letters. Each of these cases is summarized in Section IV.

A chart of the Types of Conduct Resulting in Discipline in 2022 appears on page 18. 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 2022, the commission closed two matters 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 19.



**III.**  
**ACTIVE AND FORMER JUDGES—2022 STATISTICS**

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**2022 COMPLAINT DISPOSITIONS**

Complaint Dispositions 1,385		
Closed After Initial Review 1,294	Disposition Following Staff Inquiry or Preliminary Investigation 91	
Disposition Following Staff Inquiry or Preliminary Investigation		
Closed Without Discipline 60	Discipline Issued 29	Closed Following Judge’s Resignation or Retirement 2
Discipline Issued		
Advisory Letter 20	Private Admonishment 5	Public Discipline 4
Public Discipline		
Public Admonishment 3	Public Censure 1	Removal From Office 0

III.  
**ACTIVE AND FORMER JUDGES—2022 STATISTICS**

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**TYPES OF CONDUCT RESULTING IN DISCIPLINE IN 2022**

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 2022\***

<b>MISCONDUCT</b>	<b>NUMBER OF ACTS</b>
<b>Demeanor/Decorum</b>	<b>7</b>
<b>Bias or Appearance of Bias Not Directed Toward a Particular Class</b> (includes embroilment, prejudgment, favoritism)	<b>5</b>
<b>Decisional Delay, False Salary Affidavits</b>	<b>4</b>
<b>Failure to Ensure Rights</b>	<b>4</b>
<b>Improper Political Activities</b>	<b>4</b>
<b>Abuse of Contempt/Sanctions</b>	<b>3</b>
<b>Disqualification/Disclosure/Post-Disqualification Conduct</b>	<b>3</b>
<b>Ex Parte Communications</b>	<b>3</b>
<b>Off-bench Abuse of Office/Misuse of Court Information</b>	<b>3</b>
<b>Bias or Appearance of Bias Toward a Particular Class</b>	<b>2</b>
<b>On-bench Abuse of Authority in Performance of Judicial Duties</b>	<b>2</b>
<b>Administrative Malfeasance</b> (includes conflicts between judges, failure to supervise staff, delay in responding to complaints about commissioners)	<b>1</b>
<b>Alcohol or Drug Related Criminal Conduct</b>	<b>1</b>
<b>Miscellaneous Off-bench Conduct</b>	<b>1</b>

\*See “Closed With Discipline” at page 16 of text.

**III.**  
**ACTIVE AND FORMER JUDGES—2022 STATISTICS**

**10-YEAR SUMMARY OF COMMISSION ACTIVITY**

**New Complaints Considered by Commission**

Year	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Complaints	1,209	1,212	1,245	1,234	1,251	1,246	1,241	1,063	1,253	1,414

**Commission Investigations Commenced**

Year	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Staff Inquiries	53 (4%)	84 (7%)	69 (6%)	85 (7%)	84 (7%)	52 (4%)	40 (3%)	23 (2%)	17 (1%)	6 (<1%)
Preliminary Investigations	102 (8%)	101 (8%)	83 (7%)	76 (6%)	95 (8%)	80 (6%)	79 (6%)	82 (7%)	127 (10%)	114 (8%)
Formal Proceedings Instituted	0 (0%)	2 (<1%)	3 (<1%)	1 (<1%)	3 (<1%)	2 (<1%)	1 (<1%)	1 (<1%)	1 (<1%)	1 (<1%)

**Disposition of Commission Cases**

Year	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Total Dispositions	1,181	1,174	1,231	1,210	1,229	1,251	1,209	1,050	1,196	1,385
Closed After Initial Review	1,061 (90%)	1,039 (89%)	1,103 (90%)	1,079 (89%)	1,081 (88%)	1,118 (89%)	1,129 (93%)	960 (91%)	1,112 (93%)	1,294 (93%)
Closed Without Discipline After Investigation	88 (8%)	90 (8%)	86 (7%)	81 (7%)	106 (9%)	91 (7%)	55 (5%)	65 (6%)	62 (5%)	60 (4%)
Advisory Letter	21 (2%)	29 (2%)	26 (2%)	26 (2%)	21 (2%)	23 (2%)	13 (1%)	9 (<1%)	11 (1%)	20 (1%)
Private Admonishment	7 (<1%)	9 (<1%)	11 (<1%)	11 (<1%)	13 (1%)	11 (1%)	5 (<1%)	9 (<1%)	4 (<1%)	5 (<1%)
Public Admonishment	1 (<1%)	3 (<1%)	2 (<1%)	6 (<1%)	3 (<1%)	6 (<1%)	4 (<1%)	4 (<1%)	3 (<1%)	3 (<1%)
Public Censure	1 (<1%)	2 (<1%)	2 (<1%)	1 (<1%)	2 (<1%)	1 (<1%)	2 (<1%)	1 (<1%)	0 (0%)	1 (<1%)
Removal	0 (0%)	0 (0%)	0 (0%)	1 (<1%)	0 (0%)	0 (0%)	0 (0%)	1 (<1%)	1 (<1%)	0 (0%)
Judge Retired or Resigned with Proceedings Pending	2 (<1%)	2 (<1%)	1 (<1%)	5 (<1%)	3 (<1%)	1 (<1%)	1 (<1%)	1 (<1%)	3 (<1%)	2 (<1%)

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## 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 that became final in 2022 are summarized in this section. All public decisions in commission cases are available on the commission's website at <https://cjp.ca.gov>.

#### PUBLIC CENSURES BY THE COMMISSION

In 2022, the commission imposed one public censure.

#### Public Censure of Michael J. Mulvihill, Jr. October 27, 2022

Pursuant to a stipulation (Commission Rule 127), the Commission on Judicial Performance publicly censured Judge Michael J. Mulvihill, Jr., of the San Joaquin County Superior Court for (1) driving under the influence with a blood alcohol content of 0.25 percent, causing an accident, attempting to leave the scene of the accident, falsely informing bystanders that he was a truck driver to try to persuade them to let him leave the scene, misleading law enforcement officers about the cause of the accident, and underreporting to law enforcement the amount of alcohol he had consumed; and (2) during a proceeding, calling a litigant a "smart aleck," accusing her of being "smart-alecky," criticizing her tone of voice, and stating, sarcastically: "I understand what they were going to testify about, ma'am, I'm not an idiot, okay."

On January 1, 2022, at approximately 5:51 p.m., Judge Mulvihill crashed his vehicle while driving under the influence of alcohol. Another driver videotaped the accident and uploaded the video to YouTube. The video was shared widely, and news broadcasts used portions of it in reporting the accident.

The video shows Judge Mulvihill's vehicle speeding as it approaches a bridge crossing a river, crashing into a sign and a barrier on one side of the roadway at the overpass, swerving and crashing into the curb and fencing on the other side of the roadway, and then coming to a stop. The judge's vehicle suffered significant damage: all airbags had deployed, the front right quarter of the vehicle was peeled back, the passenger side-view mirror was broken off, the left front tire was flat and separated from the rim, the right rear tire was pushed inward, and the rear passenger-side window was shattered.

After the accident and before law enforcement arrived, Judge Mulvihill tried to re-enter his vehicle, telling bystanders that he was going to drive home. The bystanders blocked Judge Mulvihill and tried to confiscate his keys, telling him that he was in no condition to drive. The judge tried to convince the bystanders to allow him to leave,

#### IV.

### ACTIVE AND FORMER JUDGES—CASE SUMMARIES

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falsely stating that this would be “extra bad” for him because he was a truck driver. After unsuccessful attempts to re-enter his vehicle, Judge Mulvihill walked away from the scene of the accident, but a bystander chased him on foot and convinced him to return.

The police officer who responded to the scene asked Judge Mulvihill what had happened. The judge said that he had been texting and driving; he did not say that he had been drinking alcohol or that he was intoxicated. The officer observed that Judge Mulvihill was swaying in place while standing and had glossy, red, watery eyes and slurred speech and asked Judge Mulvihill how much he had had to drink that night; Judge Mulvihill responded falsely: “I had two beers.”

The responding officer drove Judge Mulvihill to the police station, where another officer conducted field sobriety tests. Before beginning the tests, that officer asked Judge Mulvihill several questions, including where the accident had occurred. The judge described the location, stated that he had been “doing something stupid,” and explained that he had been on his phone, texting, while he was driving; he did not state that he had been drinking alcohol or that he was intoxicated. The officer then asked Judge Mulvihill what he had been drinking that night, and Judge Mulvihill falsely told the officer that he had consumed three pints of beer. After the officer conducted field sobriety tests, he arrested Judge Mulvihill for driving under the influence and texting while driving.

At 8:49 p.m., nearly three hours after the accident, Judge Mulvihill’s blood was drawn at a local hospital. The blood test revealed that Judge Mulvihill had a blood-alcohol concentration of 0.25 percent, more than three times the legal limit for driving.

Through counsel, on January 4, Judge Mulvihill promptly reported his arrest to the commission, as required by the Code of Judicial Ethics.

The district attorney’s office filed a criminal complaint, charging Judge Mulvihill with driving under the influence of alcohol and driving with a blood-alcohol concentration of 0.08 percent or more, each with an enhancement for driving with a blood-alcohol concentration of more than 0.15 percent. On May 25, Judge Mulvihill appeared in court and said that he would plead guilty and accept sentencing. On June 1, he was sentenced to 10 days in jail (with two days’ credit for time served and eight days stayed), three years of informal probation, and a nine-month DUI class.

On September 21, 2021, Judge Mulvihill presided over a proceeding in *Patrick Nguyen v. Julia Rapoza*, an unlawful detainer case. The judge called Rapoza a “smart aleck,” accused her of being “smart-alecky,” criticized her tone of voice, and stated, sarcastically: “I understand what they were going to testify about, ma’am, I’m not an idiot, okay.”

In mitigation, the commission noted that Judge Mulvihill has no prior discipline and no prior history of alcohol-related offenses or misconduct; promptly reported his arrest; admitted, accepted responsibility for, and expressed remorse and contrition for his conduct; and has taken significant steps to ensure that he does not drive under the influence of alcohol again. The commission noted that, since his arrest, Judge Mulvihill has attended daily Alcoholics Anonymous meetings and voluntarily enrolled in a continuous alcohol-monitoring program and individual counseling. Several of his

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colleagues submitted letters on his behalf, “attesting to his strong work ethic and fair administration of justice, and commending him for taking responsibility for his actions.”

The commission stated:

As to the DUI and related misconduct, the commission recognizes that all of the acts of misconduct included in the stipulation arose out of one drunken lapse of judgment to get behind the wheel of a car. However, that lapse is no more excusable here than when anyone else makes a similar mistake while under the influence. While there is no indication of any pattern or history of similar behavior by Judge Mulvihill, nonetheless, Judge Mulvihill’s conduct in driving under the influence of alcohol and his resulting criminal conviction are utterly irreconcilable with the minimum standards expected of a judge, and, as stipulated, with the requirements of canons 1 and 2A.

Judge Mulvihill’s conduct following the accident was egregious. Judge Mulvihill attempted to leave the scene of the accident, falsely informed bystanders that he was a truck driver to try to persuade them to allow him to leave the scene, misled law enforcement officers about the cause of the accident, and underreported to law enforcement the amount of alcohol he had consumed. Such conduct reflects poorly on Judge Mulvihill’s integrity and negatively impacts the public’s perception of him, and of the judiciary in general, and is seriously at odds with the canons and expected judicial behavior.

#### **PUBLIC ADMONISHMENTS BY THE COMMISSION**

The commission may publicly admonish a judge for improper action or dereliction of duty. In 2022, the commission issued three public admonishments of judges that became final.

#### **Public Admonishment of Judge Judith L. Meyer April 5, 2022**

The Commission on Judicial Performance publicly admonished Judge Judith L. Meyer of the Los Angeles County Superior Court for meeting with two police detectives who were being investigated for misconduct in a case over which she had presided and sending two letters to the police chief on official court stationery, the first endorsing and supporting the detectives and the second attempting to retract those statements.

On May 15, 2017, the judge presided over a pretrial hearing in *People v. Daniel Delatorre*. During the hearing, Deputy Public Defender Alison Hudak challenged the admissibility of evidence obtained by Long Beach Police Department Detectives Malcolm Evans and Todd Johnson, alleging that they had engaged in misconduct when they, through the district attorney, provided incorrect information regarding one witness, including misspelling his name, and used improper tactics when obtaining an identification from another witness. Deputy District Attorney Angie Christides did not contest DPD Hudak’s allegations about the detectives or call the detectives as

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witnesses to rebut the allegations. The judge stated on the record that “the behavior of the detectives is appalling and unethical and inappropriate” and later stated that “the prosecution, unfortunately, has been the victim, as well, of their own detectives.” The judge ruled that the prosecution could not call two of their three eyewitnesses. As a result, DDA Christides dismissed the case against Delatorre.

Approximately one week later, supervisors from the police department came to the judge’s chambers and told her that the department was investigating a complaint by DDA Christides about Detectives Evans and Johnson. In her response to the commission, the judge stated that this visit was brief, that she told the supervisors that she had issued orders based on the evidence presented to her at the hearing, that she would not discuss the matter with them in more detail, and that she would authorize the court reporter to provide them with a transcript of the proceedings.

On April 23, 2018, almost a year later, Detectives Evans and Johnson visited the judge in her chambers and showed her excerpts of the transcript from the *Delatorre* preliminary hearing. The transcript apparently addressed some of the evidentiary issues DPD Hudak had raised at the pretrial hearing and seemed to indicate that the detectives had not engaged in misconduct.

Immediately following the meeting, the judge wrote a letter on official stationery with the superior court seal addressed to the police chief. In the letter, the judge wrote that she felt “compelled to write ... on behalf” of the detectives, whom she had known for more than nine years. She described the “difficult position” she was put in during the case, in which, based on the representations of a “well-respected and trusted” DDA, she questioned the ethics of detectives whom she knew and felt were credible. The judge explained that she had since learned that those representations were inaccurate, that some of the conduct alleged was addressed during the preliminary hearing, and that this information was “readily available” to her. She characterized the allegations against the detectives as an “unfortunate misunderstanding.” The judge ended the letter: “[B]ased on the information I have at the present time, it appears that both detectives conducted themselves appropriately in this case, and I find no fault with their investigation.” She signed the letter with a typeface signature and her title, “Superior Court Judge,” and sent it to Detective Johnson by email, stating, “Please review. If you like it, I’ll send a copy to DA and Chief.” The judge did not tell Detective Johnson that the letter was a draft, nor did she mark the letter as a draft. Detective Johnson forwarded the letter to the police chief.

After learning that the district attorney’s office and public defender’s office had been provided with a copy of her letter, the judge sent a second letter to the police chief on May 31, also on official court stationery with the superior court seal. In the second letter, the judge stated that her earlier letter had been a draft and explained that she had forwarded it to the detectives by email and indicated that she would send the original. The judge’s second letter attempted to retract the statements she made in the first letter because that “draft seems to have caused some issues and misunderstandings.” The judge wrote that the purpose of her second letter was to clarify her intentions in the first letter, namely that she did not have a relationship with the detectives and “never intended to give a representation that [she had] an overall feeling about their general character.”



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The judge noted that neither DDA Christides nor DPD Hudak had referred her to the portions of the preliminary hearing transcript that addressed the allegations against the detectives and that she therefore made her rulings based on the evidence presented at the evidentiary hearing. In closing, the judge wrote that she intended for the second letter to “dispel any concerns anyone may have” about her integrity, and she wrote, “It distresses me greatly to think anyone considers me unfair or biased.” The judge signed the letter with her original signature and included her title, “Superior Court Judge.”

In at least one criminal case involving Detectives Evans and Johnson, the district attorney’s office produced the judge’s letters to defense counsel as Brady material (evidence known to the prosecution that is favorable to a defendant’s case and material to the issue of guilt or to punishment and that the prosecution is obligated to disclose to the defense). The Long Beach Post published an article entitled, “*Judge stirs controversy with secret letters to police in Long Beach murder case.*” The article quoted the judge’s statements during the evidentiary hearing, referred to at least one of the meetings she had with officers from the police department, and included excerpts from her two letters to the police chief.

The commission found that the judge’s meeting with the detectives and her first letter on their behalf gave the appearance that law enforcement had special access to her and were in a special position to influence her conduct and judgment. In her response to the commission, the judge noted that it is customary for law enforcement officers to have access to chambers to request warrants and other orders and that she had not known in advance the purpose of the detectives’ visit but acknowledged that she should have ended the meeting as soon as the detectives began to discuss the *Delatorre* matter. Before being contacted by the commission, and to prevent similar meetings, the judge instituted new screening procedures, including requiring that her bailiff or clerk screen the officers by obtaining their name, agency, and what the officers are seeking, before the judge allows them to enter her chambers.

The commission also found that the judge’s first letter to the police chief “lent the prestige of her judicial office and used her judicial title to advance the personal interests of the detectives by attempting to rehabilitate their reputations” and that her second letter “advanced her personal interests by attempting to retract her earlier statements in order to rehabilitate her own reputation.”

The commission found that the statements the judge made in both letters constituted nonpublic statements that might substantially interfere with a fair trial or hearing, as the detectives were involved in other cases pending before the court. The commission stated that “the content of the first letter, including the fact that Judge Meyer wrote it ‘on behalf’ of the detectives and commented positively on their ethics and competence, may have given the appearance of bias in favor of law enforcement and/or the detectives ... and conveyed the impression that the detectives had special access to the judge and were in a special position to influence her ....” The commission also found that the judge’s statements in the letters “initially endorsing and supporting the detectives and subsequently retracting those statements, were inconsistent with her duty to promote public confidence in the integrity and impartiality of the judiciary.” The commission



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concluded that the judge's conduct in sending both letters reflected a failure to observe the high standards of conduct that preserve the integrity and independence of the judiciary.

In mitigation, the commission noted that, prior to being contacted by the commission, the judge recognized that she had committed misconduct, accepted that her actions were improper, and expressed remorse. In addition to the remedial steps the judge adopted regarding law enforcement officers' access to her chambers, the judge also reported her errors to her supervising judges, sought their guidance, and conducted her own independent study on ways to improve as a judicial officer. The commission did not disagree with the judge's argument that she had been "well-intentioned," but it concluded that she "acted impulsively, without stopping to consider the potential consequences of her actions." It explained: "The antidote for jumping from emotion to mindless action is reflection. Reactions based on anger, sympathy, and other emotions have a high likelihood of being unproductive and unwise." (Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 1:43, p. 39.) Judge Meyer's repeated failure to stop and consider the potential impact of her actions negatively affects the public's perception of, and confidence in, the judiciary.

In aggravation, the commission considered the judge's prior discipline. In 2016, the judge had received a private admonishment for statements she made during two Marsden hearings criticizing the relevant law as "outrageous and ridiculous," commenting on the merits of the prosecution's case, making statements endorsing a defense attorney, and encouraging the defendant to keep the attorney based on her long relationship with the attorney and their status as former colleagues. The judge argued that her prior admonishment was not sufficiently similar to the current case to constitute an aggravating factor. Disagreeing, the commission concluded that the judge's "statements in support of the detectives are sufficiently similar to her previous statements endorsing an attorney in open court and conveying the impression that she has a relationship with an individual who may be in a special position to influence her judgment. More importantly, perhaps, both the prior discipline and the current circumstances reflect well-intentioned but imprudent comments which, upon minimal reflection, might not have been made."

**Public Admonishment of  
Justice Vance W. Raye  
June 1, 2022**

Based on a stipulation (Commission Rule 127) to facts and legal conclusions and an agreement for the justice's retirement and agreement not to serve as a judicial officer after retirement, the Commission on Judicial Performance publicly admonished Third District Court of Appeal Justice Vance W. Raye for (1) delay in deciding approximately 200 appellate matters over a 10-year period and (2) failing to properly exercise his authority as administrative presiding justice to prevent chronic delays in cases assigned to other justices on the court.

The justice retired effective June 1 and agreed not to seek or hold judicial office in the future, except in limited circumstances, including to facilitate decisions in matters assigned to him before retirement.

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Justice Raye had been the administrative presiding justice of the Third District Court of Appeal since 2010.

The commission noted that from 2011 to 2021, Justice Raye authored opinions in more than 1,200 matters, a substantial percentage of which were decided within one year after parties completed briefing in the matters. The commission emphasized, however, that, during that same period, “a significant number of cases languished for years,” and in approximately 200 matters assigned to Justice Raye, more than one year passed between the completion of briefing and the issuance of an opinion or dismissal of the matter. The delays in the cases were “pre-submission.” Cases in the Court of Appeal are not “submitted” until after oral argument is heard or waived. In the Third District, a case is not set for oral argument until there is a full draft memorandum on which at least two justices agree.

In Justice Raye’s oldest completed case, the parties dismissed the matter when seven years and nine months had elapsed after it was fully briefed. Two of Justice Raye’s cases were delayed between six and seven years; five between five and six years; 17 between four and five years; 29 between three and four years; and 45 between two and three years. In Justice Raye’s oldest pending case, a criminal matter with youthful offenders, the case had been fully briefed for eight years and seven months. The commission stated that the judge “failed to prioritize efforts so that older cases could be resolved before work began on newer ones.”

The commission acknowledged that the Third District had a high volume of cases. The commission, however, found that “virtually all” of the other justices on the court disposed of cases without a pattern of delay like Justice Raye’s, indicating that his delays could not be “attributed solely to an overburdened court.” Moreover, the commission noted that, after an inquiry from the commission, the percentage of cases assigned to Justice Raye that were decided more than one year after being fully briefed declined to approximately 7 percent from 14 to 35 percent, suggesting that Justice Raye could have decided matters in a timelier manner.

The commission found that the evidence did not show that the delay was caused by an intentional disregard of Justice Raye’s duties. It did, however, state that Justice Raye “was aware of his growing backlog of cases,” noting that he received monthly reports of assigned cases and the date of each assignment, and the justices at the Third District discussed “the court’s ‘growing backlog of appeals’ at several justices’ meetings and three court retreats from 2012 through 2018.”

The commission found that Justice Raye’s “conduct caused prejudice to civil litigants and criminal defendants.” It explained:

Prejudice can occur in civil cases by parties suffering from uncertainty as disputes remain unresolved, or the payments of money judgments are delayed. In criminal cases, appellants are prejudiced if they have served all or part of a reversed sentence, or when faded memories or lost evidence hamper resentencing hearings or retrials. Prejudice can also manifest as “increased anxiety, mistrust, hopelessness, fear, and depression” that “results from the very thwarting of the hope that liberty

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will be restored through a right that the State has guaranteed—the appellate process.”

The stipulation described six cases in which the delay was known to have caused prejudice.

The commission found that Justice Raye had not reduced “the impact of delay by prioritizing the delayed matters and taking into account the effect of delay on the parties in particular cases.”

Throughout the time he served as presiding justice, Justice Raye was aware that “there were chronic delays in cases assigned to some of the other justices on the court. From January 2011 through March 2021, the decisions in 1,861 matters were delayed for more than one year from the completion of the briefing on the appeal; 768 of those cases were pending for more than two years after the completion of the briefing in the case.” Although Justice Raye circulated target standards for the timely processing of appeals in 2012 and reaffirmed the standards in 2015 and 2018, “the standards were often excused.” Although he “took various steps to reassign cases or pause assignments to chambers that were particularly backlogged,” he knew that “these steps did not resolve the chronic delays,” and at times, “burdened the justices on the court who had fewer older cases.” The commission noted that, although Justice Raye repeatedly discussed the issue of delay with the other justices, he did not “propose and advocate changes to court procedure that would ensure the prompt resolution of older cases.” As a result, he did not fulfill his administrative responsibility and failed “to provide a forum for the expeditious resolution of appellate disputes.”

The commission found the following.

The delays affected the parties to the appeals. In some cases, the appeals became moot as a result of the passage of time. In other cases, one or more of the parties in the case suffered adverse economic impacts from the delays. Some defendants in criminal cases served time that would not have been served had the court issued a decision at an earlier date, and others had served their full term of probation, subject to conditions that were ultimately found to be improper.

Statutes require that courts give calendar preference to juvenile and criminal cases over civil and other cases. The commission concluded that “both with respect to the court as a whole (in his role as presiding justice) and as to cases assigned to him personally, [Justice Raye] failed to encourage and adopt reasonable procedures to ensure that priority and older cases were decided first.”

In aggravation, the commission noted the length of the delays, the number of delayed cases, and the prejudice to litigants. In mitigation, the commission noted that Justice Raye resolved most of his aged matters promptly after being contacted by the commission, that he had been a bench officer for more than three decades and had not been the subject of prior discipline, that he had authored over 3,600 opinions and participated as a panel member in over 7,000 others, and that he stipulated to the resolution, “bringing the matter to conclusion and saving the commission the expenditure of further staff resources in investigating and resolving this matter.”

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**Public Admonishment of  
Judge Derek W. Hunt  
July 5, 2022**

The Commission on Judicial Performance publicly admonished Judge Derek W. Hunt of Orange County Superior Court for, in four cases, making remarks reflecting poor demeanor and engaging in conduct that gave an appearance of bias and, in three of those cases, denying the parties a full right to be heard.

In one of the cases, on June 19, 2018, a defendant, recently added to a construction dispute, filed a motion to dismiss for untimely service. The motion was set for a hearing on July 24.

On July 10, two weeks before the scheduled hearing date, the parties appeared before the judge on unrelated motions. The judge announced his intention also to address the motion to dismiss, even though the plaintiffs' opposition was not due until the following day and had not yet been filed. When plaintiffs' counsel said that the hearing on the motion to dismiss and another motion were not scheduled for that day, Judge Hunt said, "I was told they were advanced to today, and whether you like it or not, I'm going to deal with them, and you can figure out what you're going to do with it." Judge Hunt then stated that he intended to grant the motion to dismiss, without prejudice. When plaintiffs' counsel later asked if he could file his opposition that day, the judge responded, "The way it works is, file when you can. I'm not going to turn it down. I start reading. And when I get bored, I stop reading .... Put the good stuff up front." Judge Hunt subsequently took the motion under submission, stating, "I have to go back and review this. And don't be surprised if you see there's not much changed between what the minute order will say and what I already said, but if you get open—that's why you're here. You're here to get me to think about it."

Although the plaintiffs filed an opposition that evening, the minute order stated that the judge had granted the motion to dismiss at the hearing. The plaintiffs filed a motion for reconsideration on the grounds that the judge had ruled without considering their opposition. The judge denied the motion, without explanation or a hearing.

The Court of Appeal reversed the dismissal on the merits and remanded the matter for a new hearing on the motion to dismiss.

The commission found that by "advancing the hearing on the motion to dismiss by two weeks, without notice to the parties, and although the plaintiffs had not yet filed an opposition," Judge Hunt denied the parties a full opportunity to be heard. The commission also found that "the judge's apparent disregard of plaintiffs' statements that they did not know the hearing would proceed that day and were unprepared, and his remarks to plaintiffs—that he was proceeding whether they 'like[d] it or not,' would stop reading their opposition when he got 'bored,' and that they should not be 'surprised' if not much changed between what he said at the hearing and what the minute order said—were discourteous and gave an appearance of bias and prejudgment."

In a second case (involving product defect claims), on December 18, 2020, the judge presided over a hearing on the defendant's demurrer and motion to strike. During the

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hearing, the judge stated that he believed that the plaintiffs were members of a class in an action pending in federal court against the defendant and its parent company. The judge stated, “So if that’s the case, I don’t see any reason why I should concern myself with today’s demurrer, or for that matter, with anything else about the case until the class action’s resolved.... I am ordering the case stayed.”

When the plaintiffs’ attorney attempted to explain that the plaintiffs had opted out of the class in the federal action, the judge cut him off midsentence, saying, “You know what? I don’t care. This is going to be stayed. This is ridiculous. This is just an attenuating litigation where it needn’t happen.”

Finding that the judge abused his discretion by declining to listen to the plaintiffs’ explanation and refusing to hear the demurrer, the Court of Appeal issued a peremptory writ of mandate, directing the trial court to vacate its order staying the underlying action. The appellate court observed that, if the judge had simply allowed the plaintiffs an opportunity to be heard, he would have learned that the plaintiffs had opted out of the class, and the demurrer hearing could have proceeded.

The commission found that, by staying the case based on a misunderstanding that could have been clarified if the judge had permitted counsel to explain, the judge violated his duty to accord a full and fair hearing. The commission found that his “precipitous action” and remarks to counsel also violated his duty to be patient, dignified, and courteous to those appearing before him.

In a third case (involving claims for personal injury), on May 10, 2021, the attorneys appeared before the judge by telephone and informed him that they had settled the case but had not completed written settlement agreements. Plaintiff’s counsel had earlier filed a notice of settlement, which contained mandatory language stating that an order to show cause hearing regarding dismissal must be set within 45 days. The judge informed plaintiff’s counsel that he would not wait that long because it would “clog up” the docket and set the order to show cause regarding dismissal for the following Monday, May 17. The judge informed the parties that the hearing would be taken off calendar if the parties submitted signed settlement agreements before the hearing. On May 13, plaintiff’s counsel filed the requisite settlement statements electronically, and plaintiff’s counsel attempted multiple times to contact the judge’s department to confirm that the May 17 order to show cause hearing was no longer on calendar; they were not able to speak with anyone directly or leave a message because the courtroom voicemail was full. Plaintiff’s counsel attempted, with defense counsel, to appear telephonically for the order to show cause hearing on May 17, only to be informed by CourtCall that the hearing was not reflected on the judge’s calendar. On May 17, Judge Hunt proceeded with the hearing in the parties’ absence, and he dismissed the case without prejudice. As a result of the dismissal, the plaintiff was unable to recover the amounts to which multiple defendants in the case had agreed and was forced to settle with only one of the defendants for a nominal sum.

The commission found that Judge Hunt’s handling of the matter denied the parties a full and fair right to be heard and that he was impatient and discourteous.

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The commission noted that in these three matters the judge “appeared to give great priority to acting promptly in the matters before him.” In his response to the commission’s preliminary investigation letter, the judge “acknowledged the need to reach a balance between being effective and fair and listening to the parties, and resolving matters quickly and efficiently.”

In a fourth matter, on May 17, 2019, the judge presided over a hearing on the plaintiff’s motion for attorney fees, pursuant to the terms of the parties’ settlement agreement. The plaintiff sought nearly \$165,000 in attorney fees and costs, which the defendants opposed, arguing, in part, that the judge had the discretion to greatly reduce the fees. After hearing the motion and taking the matter under submission, the judge issued a ruling by minute order, awarding the plaintiff \$1,000 in attorney fees. The minute order did not mention any award for costs or include any findings, calculations, or explanation for the decision.

The Court of Appeal reversed and remanded the matter for reconsideration by the trial court, finding that the judge had abused his discretion by “arbitrarily reducing the fees and costs to a total of \$1,000 without explanation.” The court stated that, while a trial court is not required to issue a statement of decision regarding attorney fee awards, a judge must give some explanation for large cuts to the amount requested or the lodestar (the counsel’s reasonable hourly rate multiplied by the hours reasonably expended). The Court of Appeal found that the judge’s award of \$1,000 bore no relationship to the attorney’s hourly rate, the number of hours claimed by plaintiff’s counsel, “or even the reductions suggested by defendants in their opposition.”

In his response to the commission’s preliminary investigation letter, Judge Hunt stated that, although he had failed to give the reasons for his order, it was based on the conduct of the litigation before him. The commission found that, regardless of whether the award was substantively warranted, awarding less than one percent of the requested attorney fees and costs, “without explanation, gave the appearance that the judge acted arbitrarily and was not impartial.” It concluded that the judge had failed to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

In aggravation, the commission considered a 2009 advisory letter finding that Judge Hunt had publicly commented on a pending case when he discussed with a reporter for a legal newspaper a case in which the judge had presided over trial and post-trial proceedings, and that was still pending and about to be argued before the Court of Appeal.

### PRIVATE DISCIPLINE

Private admonishments and advisory letters that became final in 2022 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.



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Summaries of private discipline since 1998 are available on the commission’s website at <https://cjp.ca.gov>.

#### 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 2022, five private admonishments became final.

1. During a campaign for judicial office, the judge engaged in violations of the Political Reform Act. The judge did not correct the violations before the election.

2. During a hearing, the judge abused the contempt power by remanding an unrepresented criminal defendant into custody without following required contempt procedures.

3. The judge engaged in multiple acts of misconduct in connection with a contempt proceeding, including conduct reflecting a disregard for the fundamental rights of the contemnor. In three other matters, the judge engaged in a pattern of poor demeanor and a failure to provide a full opportunity for both self-represented litigants and attorneys to be heard.

4. The judge engaged in a pattern of poor demeanor directed at both attorneys and litigants appearing before the judge. The judge’s conduct also gave rise to an appearance of bias against, or favoritism toward, certain attorneys.

5. On several occasions, the judge improperly used the judicial title and prestige of judicial office to benefit an attorney.

#### 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 2022, 20 advisory letters became final.

#### Abuse of Contempt/Sanctions

Before sending a person to jail for contempt or imposing a fine, judges are required to provide due process of law, including strict adherence to the procedural requirements

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contained in the Code of Civil Procedure. Ignorance of these procedures is not a mitigating but an aggravating factor. (*Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 533.)

1. During a hearing, the judge improperly remanded a self-represented litigant into custody for direct contempt, without promptly conducting a direct contempt proceeding, as required. When the judge held a delayed contempt hearing the next day, the judge failed to accord the litigant the due process rights associated with indirect contempt proceedings.

#### **Bias**

Judges are required to discharge both judicial duties and administrative responsibilities without bias or prejudice. (Canons 3B(5), 3C(1).)

2. At sentencing, the judge made comments that gave an appearance of bias against the criminal defendant for exercising the right to a jury trial.

3. At a criminal hearing, the judge made comments that were critical of the district attorney's office, creating an appearance of bias or prejudice.

#### **Decisional Delay/False Salary Affidavits**

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.

4. An appellate justice engaged in a pattern of decisional delay, and failed to accord calendar preference, as required by law, to some juvenile and criminal cases. There were mitigating factors.

5. The judge delayed in ruling on a motion in a criminal case. Although the ruling was made within 90 days, the delay was unreasonable in light of the surrounding circumstances.

6. In several matters, the judge engaged in dilatory practices, resulting in significant delays in holding hearings and issuing rulings.

#### **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...." (Canons 3B(3), (4).)

7. During a hearing, the judge made an undignified and discourteous remark to a witness.



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**Disqualification/Disclosure/Post-disqualification Conduct**

Judges must disqualify themselves under certain circumstances and trial judges must make appropriate disclosures to those appearing before them. (Canon 3E.)

8. The judge presided over a criminal matter in which the judge, as a public defender, had previously represented the defendant.

**Ex Parte Communications**

Unless expressly allowed by law or expressly agreed to by the opposing party, ex parte communications are improper. (Canon 3B(7).)

9. The judge conducted an online search about a litigant, and failed to disclose both the independent investigation and the resulting ex parte information.

10. In a family law matter, the judge conducted independent investigations and engaged in ex parte communications.

**Improper Political Activities**

“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.” (Canon 5.)

11. During a campaign for judicial office, the judge engaged in a violation of the Political Reform Act. The judge did not correct the violation before the election.

12. The judge violated the Political Reform Act, during a period of time when the judge was not running for office.

**Off-bench Improprieties**

A judge is required to respect and comply with the law and to act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. (Canon 2A and Commentary.)

13. The judge, in private life, violated a county ordinance and made discourteous remarks in connection with the violation.

14. The judge used the judicial title and prestige of office to promote the judge’s own interests.

15. The judge used the judicial title and prestige of office to advance the personal and pecuniary interests of the judge and the judge’s relative.

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**More Than One Type of Misconduct**

Some cases involved more than one type of misconduct.

**16.** During a criminal trial, the judge refused to permit counsel to ask clarifying questions about a ruling, and made sarcastic, discourteous comments to defense counsel.

**17.** The judge permitted and initiated several ex parte communications with a deputy public defender about a matter. The judge also improperly independently investigated the matter, including initiating another ex parte communication as a part of that investigation. The judge improperly issued ex parte orders without providing the prosecutor with an opportunity to be heard. The judge created an appearance of impropriety by scheduling a follow-up hearing before another judicial officer whom the judge had consulted about the matter.

**18.** In a criminal case, the judge failed to disclose information relevant to disqualification. In another case, the judge responded to a question from the jury in the absence of, and without notice to, the parties and counsel, and failed to disclose the communication.

**19.** The judge made discourteous remarks to two participants at a hearing, including remarks that gave the appearance of bias based on national origin or ethnicity.

**20.** In several matters, the judge failed to disclose information reasonably relevant to the question of disqualification, including campaign contributions. The judge also improperly injected the judge's personal experience into a proceeding, giving the appearance of bias toward a protected class.

**DISMISSAL OF FORMAL PROCEEDINGS**

In one matter, the commission dismissed formal proceedings after hearings and a report by the special masters.

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## V. SUBORDINATE JUDICIAL OFFICERS

Since June 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 2022, there were 254 authorized subordinate judicial officer positions in California.

### SUBORDINATE JUDICIAL OFFICERS AUTHORIZED POSITIONS

As of December 31, 2022

Court Commissioners .....	249
Court Referees .....	5
<b>Total</b> .....	<b>254</b>

### 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)(1).)

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)(1).) 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)(1); 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

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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**

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**2022 STATISTICS**

**Complaints Received and Investigated**

In 2022, the commission reviewed 87 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 2022, the commission commenced one staff inquiry and three preliminary investigations.

**RULE UNDER WHICH NEW  
COMPLAINTS WERE SUBMITTED**

Rule 109(c)(1)—appeal from local court's disposition .....	71
Rule 109(c)(2)—at the request of a local court .....	0
Rule 109(c)(3)—notification by local court of discipline .....	3
Rule 109(c)(4)—notification by local court of resignation with investigation pending .....	0
Rule 109(c)(5)—subordinate judicial officer retires or resigns before court receives complaint .....	13

**2022 CASELOAD –  
SUBORDINATE JUDICIAL OFFICERS**

Cases Pending 1/1/22 .....	2
New Complaints Considered .....	87
Cases Concluded .....	86
Cases Pending 12/31/22 .....	3

**V.**  
**SUBORDINATE JUDICIAL OFFICERS**

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**Cases Concluded**

In 2022, the commission concluded its review of 86 complaints involving subordinate judicial officers. The commission closed 83 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 advisory letter and closed two cases without discipline.

At the end of the year, three matters remained pending before the commission.

**2022 SUBORDINATE JUDICIAL OFFICER  
COMPLAINT DISPOSITIONS**

Total complaint dispositions.....	86
Closed after initial review.....	83
After independent investigation by the commission:	
Advisory Letter.....	1
Closed Without Discipline.....	2

**TYPE OF COURT CASE UNDERLYING  
SUBORDINATE JUDICIAL OFFICER  
COMPLAINTS CONCLUDED IN 2022**

Family Law.....	29%
Small Claims.....	29%
Traffic.....	23%
General Civil.....	10%
Criminal.....	3%
All Others.....	6%
(including off-bench)	

**SOURCE OF COMPLAINTS  
INVOLVING SUBORDINATE JUDICIAL  
OFFICERS CONCLUDED IN 2022**

Litigant/Family/Friend.....	89%
Attorney.....	6%
Judge/Court Staff.....	3%
All Other Complainants.....	1%
Source Other Than Complaint.....	1%

**V.**  
**SUBORDINATE JUDICIAL OFFICERS**

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**SUMMARIES OF DISCIPLINARY ACTION**

The commission issued one advisory letter to a subordinate judicial officer in 2022.

**ADVISORY LETTER**

1. A commissioner violated the Political Reform Act.

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## **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.

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



## VI. JUDICIAL DISABILITY RETIREMENT

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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.

### 2022 STATISTICS

No disability retirement applications were pending before the commission at the beginning of 2022.

The commission received three disability retirement applications during 2022. Two were granted and one was pending at the end of 2022.

## VII. COMMISSION ORGANIZATION, STAFF, AND BUDGET

### COMMISSION ORGANIZATION AND STAFF

The commission has 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 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. Emma Bradford serves as Legal Advisor.

### ORGANIZATIONAL CHART

COMMISSION MEMBERS			
DIRECTOR-CHIEF COUNSEL			LEGAL ADVISOR TO COMMISSIONERS
<b>Office of Trial Counsel</b>  3 Attorneys 1 Legal Assistant to Trial Counsel	<b>Investigation Staff</b>  4 Intake Attorneys 8 Investigating Attorneys 4 Legal Assistants	<b>Administrative Staff</b>  2½ Administrative Assistants 2 Legal Assistants	½ Administrative Assistant

**VII.**  
**COMMISSION ORGANIZATION, STAFF AND BUDGET**

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**2022-2023 BUDGET**

The commission's budget is separate from the budget of any other state agency or court. For the current 2022-2023 fiscal year, the commission's budget is \$6,913,000.

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.

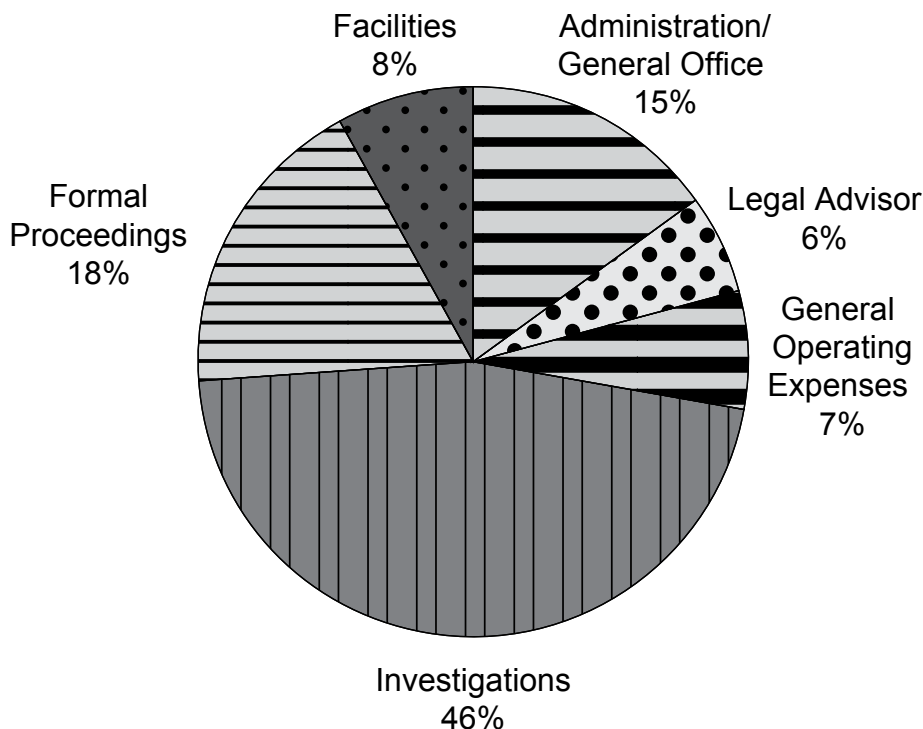
**2021-2022 BUDGET**

The commission's final budget appropriation for the 2021-2022 fiscal year was \$6,896,000. Final expenditures totaled \$5,687,680. Approximately 46 percent of the commission's budget supported the intake and investigation functions and approximately 24 percent was used in connection with formal proceedings. The remaining 30 percent went toward sustaining the general operations of the commission, including facilities, administrative staff, supplies, and security.

**COMMISSION ON JUDICIAL PERFORMANCE**

**2021-2022 ACTUAL EXPENDITURES**

**\$5,687,680**





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## **APPENDIX**

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## **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**

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## APPENDIX 2.

### CALIFORNIA CODE OF JUDICIAL ETHICS

#### Adopted by the Supreme Court of California

Amended by the Supreme Court of California effective 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, December 1, 2016, and October 10, 2018.

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**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 7/1/20.]

**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 7/1/20.]

**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. See 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.*

[Adopted 1/15/96; amended 4/15/96, 6/19/97, 3/4/99, 12/13/00, 6/18/03, 12/22/03, 1/1/05, 1/1/07, 1/1/08, 4/29/09, 1/1/13, 8/19/15, 12/1/16, 10/10/18, and 7/1/20.]

**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, court-appointed arbitrators, hearing officers, 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, court-appointed arbitrators, hearing officers, 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;

(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 7/1/20.]

**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 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 7/1/20.]

## 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 Arbitrator<sup>1</sup>**

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

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<sup>1</sup> Reference should be made to relevant commentary to analogous or individual canons cited or described in this canon and appearing elsewhere in this code.

temporary judge,\* referee, or court-appointed arbitrator. A temporary judge,\* 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 7/1/20.]

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**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**

**11/17**



## APPENDIX 4.

### TABLE OF COMMISSION PROCEEDINGS

<b>1. COMPLAINT FILED</b>
<b>2. COMPLAINT EVALUATION</b>
<p style="text-align: center;"><b>3. INITIAL COMMISSION MEETING</b></p> <p><u>Review complaint and staff evaluation</u></p> <p><b>Possible actions:</b></p> <ul style="list-style-type: none"> <li>• Close complaint</li> <li>• Commence preliminary investigation (see step 4)</li> </ul>
<p style="text-align: center;"><b>4. COMMISSION MEETING FOLLOWING PRELIMINARY INVESTIGATION</b></p> <p><u>Review staff report and results of investigation</u></p> <p><b>Possible actions:</b></p> <ul style="list-style-type: none"> <li>• Close complaint</li> <li>• Issue notice of tentative advisory letter* (see step 5)</li> <li>• Issue notice of tentative <i>private</i> admonishment* (see step 5)</li> <li>• Issue notice of tentative <i>public</i> admonishment* (see step 5)</li> <li>• Institute formal proceedings* (see step 7)</li> </ul> <p>*only if judge has been notified and given opportunity to respond to allegations</p>
<p style="text-align: center;"><b>5. JUDGE'S OPTIONS</b></p> <p><u>If a notice of tentative advisory letter is issued</u></p> <ul style="list-style-type: none"> <li>• Accept the advisory letter</li> <li>• Demand an appearance before the commission and waive the ability to petition the Supreme Court for a writ of mandate (see step 6)</li> <li>• Petition the Supreme Court for a writ of mandate (see steps 8 and 9)</li> </ul> <p><u>If a notice of tentative admonishment is issued</u></p> <ul style="list-style-type: none"> <li>• Accept the admonishment</li> <li>• Demand an appearance before the commission and waive any right to formal proceedings (see step 6)</li> <li>• Reject the tentative admonishment and demand formal proceedings (see step 7)</li> </ul>

## **6. APPEARANCE BEFORE COMMISSION TO CONTEST TENTATIVE ADVISORY LETTER OR ADMONISHMENT**

Review record, judge's objections and argument

**Possible actions:**

- Close matter without disciplinary action
- Issue discipline per the tentative
- Issue lesser discipline

## **7. FORMAL PROCEEDINGS INSTITUTED**

**A. Evidentiary Hearing Before Special Masters**

**B. Special Masters' Report to Commission**

**C. Appearance Before Commission**

Review record, special masters' report, and parties' briefs and arguments

**Possible actions (see steps 8 and 9):**

- Removal/Retirement
- Public censure
- Public admonishment
- Private admonishment
- Advisory letter
- Close case

## **8. JUDGE'S OPTIONS FOLLOWING COMMISSION DECISION**

- Accept commission action
- Petition Supreme Court for review (all sanctions except advisory letter)
- Petition Supreme Court for writ of mandate (if advisory letter)

## **9. SUPREME COURT ACTION FOLLOWING PETITION BY JUDGE**

- Grant review; affirm or reverse commission decision
- Deny review