

From: [REDACTED]
Sent: Sunday, April 10, 2022 11:47 AM
To: [REDACTED]
Subject: Fw: Reaching out

Hi,

I understand that you are on the Committee to Review the Operations and Structure of the Commission on Judicial Performance

I have almost 15 years of experience with California Judiciary and the atrocities they have committed, which is worst than what Nazis did to Jews. I have seen corruption of the highest level, including a written \$10,000 demand ("kids for cash") to start visitation with my own children.

It might add tremendous value to you, in your role if we can have a 10 minute phone conversation, so you can be meaningfully effective in carrying the community's voice

Thank you

From: [REDACTED]
Sent: Tuesday, April 12, 2022 5:39 PM
To: CJP Committee Public Comment <committeepubliccomment@cjp.ca.gov>
Cc: [REDACTED]
Subject: Letter to Committee

Signed letter sent by priority mail today.

[REDACTED]

Michael Traynor



Via priority mail and email

April 12, 2022

Committee to Review the Operations and Structure of the Commission on
Judicial Performance
c/o Gregory Dresser, Director-Chief Counsel
Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, CA 94102
CommitteePublicComment@cjp.ca.gov

Dear Members of the Committee:

Please consider the following recommendations to "improve the commission's ability to carry out its mission to protect the public, enforce rigorous standards of judicial conduct, and maintain public confidence in the integrity and independence of the judiciary" (Gov. Code § 68772):

Re "The appropriate discipline and remedies available to the commission when it imposes discipline" (Gov. Code § 68772(a)(3)(D):

- **Augment available sanctions by authorizing corrective action:** The Commission's authority to require corrective action is deficient. California State Auditor, *Commission on Judicial Performance Weaknesses in Its Oversight Have Created Opportunities for Judicial Misconduct to Persist* 43-44 (April 2019). The National Center for State Courts also has relevant information on its website, including links to state commission websites, <https://www.ncsc.org/topics/judicial-officers/ethics/state-links>, and this comparative study, Cynthia Gray, *A Study of State Judicial Sanctions* (2002), https://www.ncsc.org/data/assets/pdf_file/0026/18881/study-of-state-judicial-discipline-sanctions.pdf. Corrective

action would be a useful remedial measure; it should be accompanied by monitoring for compliance.

- **Strengthen the CJP's mentoring efforts:** "A light touch often can be more effective than a heavy hand." Michael Traynor, *Some Friendly Suggestions for the Federal Judiciary About Accountability*, 168 U. Penn. L. Rev. Online 128, 147 (2020), <https://www.pennlawreview.com/wp-content/uploads/2020/06/Traynor-Proof.pdf>. The State Auditor's Report noted the importance of mentoring (pp. 43-44). The CJP report discusses it briefly (p. 8). The Committee should inquire into the status of this effort and recommend ways to strengthen it. (The U. Penn article cited contains other suggestions and references, *e.g.*, on workplace conduct, that may bear on the Committee's review.)

Re "(E) The policies and procedures governing the commission's operations:" and "(H) Whether changes to the Constitution and statutes of the State of California, Rules of Court, and rules of the commission are needed:"

- **Ask if the disability retirement system needs improvement:** The CJP describes disability in its annual report (pp. 47-48). There now is a question whether judges disabled by illness, impairment, or age have an adequate economic incentive to seek disability retirement instead of hanging on and subordinating the interests of justice to personal economic interests.
- **Make data transparent and readily accessible:** Jon Eisenberg, an esteemed lawyer and past president of the California Academy of Appellate Lawyers, painstakingly developed relevant data and effectively exposed inexcusable and systemic delay and injustice in criminal cases in the Third District Court of Appeal. Defendants whose convictions or sentences were eventually reversed or modified served unnecessary time in prison. Some appeals became moot because the defendants had already served an unjust sentence. Crime victims whose restitution awards depended on a final determination waited years and I understand sometimes died before the requisite determination issued. Instead of putting concerned members of the public to the heroic and extraordinary investigation and detailed

analysis that Mr. Eisenberg accomplished, the relevant data should be transparent and readily accessible.

- **Ask the CJP whether it can both protect confidentiality and assist the Judicial Council in carrying out its constitutional responsibilities:** Under the California Constitution (art. VI, §. 6(d)), the Judicial Council's constitutional responsibilities include: "To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute. The rules adopted shall not be inconsistent with statute." In addition, the Supreme Court of California recommended that the Judicial Council investigate the matters raised by Mr. Eisenberg in his writ petition challenging the Third District's systemic denials of calendar preference for criminal appeals. (*Eisenberg v. Third District Court of Appeal*, No. S269691.) The Judicial Council presently declines to do so. In its official response to the California Academy of Appellate Lawyers (copy attached of Judicial Council letter of April 5, 2022), it stated:
 - "It is our understanding, from newspaper accounts, that a complaint has been filed with the Commission on Judicial Performance (CJP) concerning this matter, and that the CJP is conducting an investigation, consistent with its constitutional mandate. By law, ongoing CJP investigatory proceedings are deemed confidential until, if and when, the commission initiates formal proceedings (Cal. Const., art. VI, § 18(i)(1); Rules of Com. on Jud. Performance, rule 102). Any council action concurrent with that of the CJP could risk breaching the confidentiality of the commission's investigation. It also raises the prospect of creating evidentiary problems involving the attorney-client privilege and the protected deliberative process of our courts that may be implicated in their inquiry. Under these circumstances, and because the court's order was not a directive but a recommendation, it is inappropriate for the council to consider any action at this time. We will, therefore, wait until the commission has concluded its investigation and any potential proceedings before evaluating possible next steps.

Like you, the Judicial Council also expresses no view on the merits of the issues raised. Nevertheless, the council will continue to monitor this matter and will consider any appropriate response, consistent with its responsibilities, after the CJP has completed its work."

- Although the Judicial Council's response is not surprising, it is out of step with other proceedings in which a claim of privilege or confidentiality is addressed or compartmentalized without halting or interfering with an investigation or proceeding. For example, a lawsuit can go into a discovery or trial stage notwithstanding a claim of attorney-client privilege or even a claim that classified national security information is implicated; and a legislative inquiry or grand jury proceeding does not need to be halted because a president or former president claims executive privilege.
- The Committee should publicly ask the CJP questions such as the following:
 - Is the CJP unable to protect confidentiality while also helping the Judicial Council discharge its investigative responsibility?
 - Did the CJP ask the Judicial Council to delay an investigation?
 - Did the Judicial Council formulate its confidentiality rationale without first consulting the CJP, which has primary responsibility for confidentiality?
 - Does confidentiality at all times take priority over the improvement of the administration of justice, the building of public confidence in the judiciary, and the public interest in robust discussion of institutions of government?
 - Can the CJP demonstrate convincingly that its interpretation and application of Rule 102 on confidentiality are (a) authorized by the Constitution of California, art. VI, § 18(i)(1) *and* adopted in accordance with the procedures for public comment and adoption in its Policy Declaration 3.5 and applicable administrative law; *and* (b) consistent with the First Amendment to the Constitution of the United States and the applicable strict

scrutiny requirement? (See, e.g., Jon Eisenberg letter to Committee, April 12, 2022; and Cynthia Gray, *How Judicial Conduct Commissions Work*, 28 Justice System J. 405, 409-412 (no. 3. 2007).)

Those of you on the Committee who have experience dealing with similar matters will no doubt have probing questions. Please ask them; and, except for necessary redactions to protect valid assertions of confidentiality, please make the responses public.

- **Recommend an authoritative statement that calendar preferences will be followed, that judicial cronyism will not be tolerated, and that judges will not subordinate their responsibility to achieve justice in each case before them to their personal economic interests:** The delay in the Third DCA appears largely attributable to the court's disregard of the requisite calendar preference for criminal appeals, the personal economic interests of ailing or aging justices to secure a larger retirement benefit for themselves or their families, and the persistent neglect of judicial responsibility. The injustices are aggravated by the CJP's failure to act on Mr. Eisenberg's complaint that he filed on January 26, 2021, the Supreme Court of California's denial of the writ he sought, the weak recommendation it made that the Judicial Council conduct an investigation, and the Judicial Council's failure and refusal to do so.

You have many issues before you. These are just a few. To maintain public confidence in the integrity and independence of the judiciary as a cornerstone of liberty, this Committee should make critical, strong, and public recommendations. See, e.g., Michael Traynor, *Judicial Independence: A Cornerstone of Liberty: Golden Gate University School of Law Jesse Carter Distinguished Speaker Series*, 37 Golden Gate U. L. Rev. 407 (2007), <https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1951&context=ggulrev>.

Respectfully submitted,

Michael Traynor

Text of Letter from Judicial Council to California Academy of Appellate Lawyers, April 5, 2022 (copy attached)

JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue . San Francisco, California 94102-3688

Telephone 415-865-4200 . Fax 415-865-4205 . TDD 415-865-4272

TANI G. CANTIL - SAKAUYE Chief Justice of California Chair of the
Judicial Council

MARTIN HOSHINO Administrative Director April 5, 2022

VIA EMAIL

Mr. Michael G. Colantuono, First Vice President

Ms. Laurie J. Hepler, Second Vice President

Mr. Joseph P. Mascovich, Secretary/Treasurer

California Academy of Appellate Lawyers

Dear Mr. Colantuono, Ms. Hepler, and Mr. Mascovich:

On behalf of the Chief Justice and the Judicial Council, I am acknowledging receipt of your letter of March 29, 2022, about the California Supreme Court's order concerning the Third District Court of Appeal's disposition of criminal appeals. We share your goal regarding the efficient administration of justice and concerns about any delays of justice and due process. The timely administration of justice and the protection of an individual's due process rights are cornerstones for a functioning judiciary. It is our understanding, from newspaper accounts, that a complaint has been filed with the Commission on Judicial Performance (CJP) concerning this matter, and that the CJP is conducting an investigation, consistent with its constitutional mandate. By law, ongoing CJP investigatory proceedings are deemed confidential until, if and when, the commission initiates formal proceedings (Cal. Const., art. VI, § 18(i)(1); Rules of Com. on Jud. Performance, rule 102). Any council action concurrent with that of the CJP could risk breaching the confidentiality of the commission's investigation. It also raises the prospect of creating evidentiary problems involving the attorney-client privilege and the protected deliberative process of our courts that may be implicated in their inquiry.

Under these circumstances, and because the court's order was not a directive but a recommendation, it is inappropriate for the council to

consider any action at this time. We will, therefore, wait until the commission has concluded its investigation and any potential proceedings before evaluating possible next steps. Like you, the Judicial Council also expresses no view on the merits of the issues raised. Nevertheless, the council will continue to monitor this matter and will consider any appropriate response, consistent with its responsibilities, after the CJP has completed its work.

Sincerely,

Martin Hoshino
Administrative Director and Secretary to the Judicial Council

MH/tc
cc: Hon. Tani G. Cantil-Sakauye, Chief Justice of California

From: [REDACTED]
Sent: Tuesday, April 12, 2022 12:55 PM
To: CJP Committee Public Comment <committeepubliccomment@cjp.ca.gov>
Subject: written comments for Committee's 4.19.22 public meeting

Please see the attached letter, which I submit pursuant to the Committee's call for written comments in connection with the Committee's public meeting scheduled for April 19, 2022.



April 12, 2022

Committee to Review the Operations and Structure of the
CJP c/o Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, California 94102

Dear Committee members:

I submit this comment for the Committee's public meeting of April 19, 2022, to address confidentiality of CJP complaints, investigations, and proceedings. I urge the Committee to reconsider its existing confidentiality rule—Rule 102 of the Rules of the Commission on Judicial Performance—in light of Rule 11 of the ABA Model Rules for Judicial Disciplinary Enforcement and confidentiality rules for judicial discipline commissions in many other states. Commission Rule 102 is substantially flawed and potentially in conflict with constitutional law developments since its promulgation in 1996.

ABA Model Rule 11

ABA Model Rule 11 prescribes confidentiality rules for "proceedings" and for "information."

On the one hand, commission "proceedings" must be kept confidential *before* formal charges are filed but not *after* formal charges are filed. (ABA Model Rule 11(1).) There is no restriction on *who* must keep proceedings confidential before formal charges are *filed—everyone* must do so.

On the other hand, except for disciplinary counsel's work product and commission deliberations and records of deliberations, "information" relating to a complaint that is pending or has been dismissed without formal charges must be kept confidential only "by the commission and disciplinary counsel and their staffs." (ABA Model Rule 11(2).) Complainants, in contrast, are not required to keep such confidence and thus may publicly disclose information they learn from commission counsel or staff.

Thus, ABA Model Rule 11 requires only that *the commission and disciplinary counsel and their staffs* maintain the confidentiality of "information"

relating to a pending or dismissed CJP complaint, and only *before formal charges are filed*.

Nothing in Rule 11 requires a *complainant* to maintain confidentiality of such "information," at *any* time. In this way, ABA Model Rule 11 protects the free speech rights of complainants implicitly, by imposing confidentiality only on the commission, counsel, and staff.

707.395.0111 · 509 Tucker St. Healdsburg CA 95448 •

jon@eisenbergappeals.com

Confidentiality Rules in Other States

Historically, rules for judicial discipline commissions in some states have purported to bind complainants to confidentiality. Some still do so. More recently, however, the trend has been toward confidentiality rules that comport with First Amendment and policy considerations which disfavor such free speech restrictions.

Some states' rules, like ABA Model Rule 11, protect complainants' free speech rights *implicitly*, by imposing confidentiality only on the commission, its counsel, and its staff. (See, e.g., Rules of the Judicial Qualifications Com. of Georgia, Rule 11(A) ["All information regarding a disciplinary or incapacity matter of a judge shall be kept confidential by the Investigative Panel and Commission staff"]; Indiana Judicial Disciplinary Proceedings Rule 25 ["the Commission shall not publicly disclose information relating to a complaint, inquiry, or investigation"]; North Dakota Judicial Disciplinary Proceedings Rule 6 [following ABA Model Rule 11]; Oregon Rules of Procedure for the Commission on Judicial Fitness and Disability, Rule 6(c) ["Members of the Commission, masters ... and staff of the Commission shall not disclose or use any investigation testimony or documents"]; Rules of the Supreme Court of the State of New Hampshire, Rule 40(3)(a) [prohibiting disclosure only by commission "member," "staff," or "employee"]; New York Judiciary Law, § 46(1) [breach of confidentiality sanctionable only against "[a]ny staff member, employee or agent of the state commission on judicial conduct"]; Virgin Islands Supreme Court Rule 209 [following ABA Model Rule 11].)

Other states' rules protect the free speech rights of complainants by *expressly* authorizing complainants to disclose information they might learn during a commission investigation. (See, e.g., Kan. Rules Relating to Jud. Conduct, Rule 611(b)(3) [confidentiality rule "does not prohibit ... the complainant or the judge from disclosing the existence of a complaint or from disclosing any documents or correspondence filed by, served on, or provided to that person"]; Nev. Rev. Stats., § 1.4683(3) ["Nothing in this section prohibits a person who files a complaint with the Commission ... from disclosing at any time the existence or substance of a complaint, investigation or proceeding"]; N.J. Advisory Com. on Jud. Conduct, rule 2:15-20(d) [complainant "may make public statements regarding the disciplinary process, the filing and content of the allegations, and the disposition of the allegations"].)

Constitutional and Policy Considerations

Each of the above approaches-whether implicit or express recognition of complainants' free speech rights-comports with constitutional and policy considerations.

Any complainant confidentiality requirement lasting beyond the commission's decision whether to file formal charges indisputably violates the First

Amendment. (See *Kamasinski v. Judicial Review Council* (2d Cir. 1994) 44 F.3d 106, 109, 112 [unconstitutionality of judicial oversight entity's ban on public disclosure after completion of preliminary investigation; applying strict scrutiny standard], affirming *Kamasinski u. Judicial Review Council* (D.Conn. 1992) 797 F.Supp. 1083, 1097 [after completion of preliminary investigation, state may not prohibit complainant's disclosure of "his participation in the preliminary investigation (including information he has acquired by virtue of his personal interaction with the [entity's] inquiry)"]; *Cox v. McLean* (D. Montana 2014) 49 F.Supp.3d 765, 771 [*Kamasinski* "makes absolutely clear that such a perpetual ban [on disclosure after completion of the preliminary investigation] violates the First Amendment"].) Even a requirement of complainant confidentiality *before* the decision whether to file formal charges is constitutionally suspect.

Moreover, a right of complainants to speak publicly about a pending investigation serves the salutary purpose of "'fostering public confidence in the integrity of a self-policing judicial system'" by ensuring that the public "'knows that its government actively investigates allegations of judicial misconduct.'" (C. Gray, *How Judicial Conduct Commissions Work* (2007) 28 Justice System Journal 405, quoting *In re Johnstone* (Alaska 2000) 2 P.3d 1226, 1234.) In contrast, "a quiet, behind-the scenes resolution of matters" without a public airing "[keeps] from the public view information about the performance of the judiciary and also relieve[s] judges of responsibility for encouraging 'ageing and infirm' colleagues to leave the bench before their actions become inappropriate." (S. Washy, *Do Judges Protect Each Other? Confidentiality of Judicial Discipline Proceedings* (1995) 18 Justice System Journal 89, 91.)

Commission Rule 102

The CJP frequently cites article VI, section 18, of the California Constitution and Commission Rule 102 for the proposition that a CJP *investigation* is "confidential." Those citations do not support that proposition. Although article VI, section 18, provides that the CJP "may" provide for confidentiality of CJP investigations, Commission Rule 102(a) does not do so, but only provides for confidentiality of "papers filed with and proceedings before the commission." No CJP rule provides for confidentiality of CJP investigations.

Article VI, section 18, as amended in 1994, states: "The commission *shall* make rules for the investigation of judges. The commission *may* provide for the confidentiality of complaints to and investigations by the commission." (Cal. Const., art. VI, § 18(i)(1), emphasis added.) Thus, although article VI, section 18(i)(1), makes mandatory the CJP's promulgation of rules for CJP investigations, it only makes *discretionary* a provision for *confidentiality* of CJP investigations. Commission Rule 102 does not perform that discretionary task.

Commission Rule 102 provides in pertinent part: "Except as provided in this rule, all *papers filed with and proceedings before the commission* shall be confidential." (Commission Rule 102(a), emphasis added.) An investigation is not a "paper□filed with ... the commission." (*Ibid.*) Indeed, not even a CJP complaint is a "paper□filed with ... the commission" (*ibid.*)-and thus Commission Rule 102 does not make CJP complaints confidential. Commission Rule 138(i) states: "To be filed, a document must be accompanied by a proof of service of the document upon the other party or parties." CJP complaints do not require a proof of service.

Nor is a CJP investigation a "proceeding□before the commission." (Commission Rule 102(a).) Article VI, section 18(i), distinguishes between an "investigation" (see Cal. Const., art. VI, § 18(i)(1) ["The commission shall make rules for the investigation of judges"]) and "proceedings" (see Cal. Const., art. VI, § 18(i)(2) ["The commission shall make rules for formal proceedings against judges"]). California case law recognizes this dichotomy in observing that an investigation may or may not lead to a disciplinary proceeding. (See, e.g., *Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 8, 12, 13; *Lebbos v. State Bar* (1985) 165 Cal.App.3d 656, 670.) Other states' rules for judicial discipline commissions also maintain this distinction. (See, e.g., Kan. Rules Relating to Jud. Conduct, rule 611(a) [distinguishing between "complaints, investigations, reports, correspondence, proceedings, and Commission records"]; New York Judiciary Law, § 45(1) [distinguishing between "complaints, correspondence, commission proceedings and transcripts thereof"].)

A "proceeding" before the CJP occurs "when the commission acts in an adjudicatory capacity." (*Recorder v. Commission on Judicial Performance* (1999) 72 Cal.App.4th 258, 281.) In contrast, when the CJP conducts a preliminary investigation, the CJP is not acting in an adjudicatory capacity. The State Auditor makes this distinction in noting that "best practices recommend a bicameral structure for judicial oversight commissions that separates the functions of investigating and disciplining judges." (Cal. State Auditor, *Commission on Judicial Performance: Weaknesses in Its Oversight Have Created Opportunities for Judicial Misconduct to Persist* (April 2019) p. 36.)

Commission Rule 102(a) provides for confidentiality of some CJP proceedings-specifically, for the issuance of an advisory letter or a private admonishment-while Commission Rule 102(b) provides for some public disclosures after the CJP institutes formal proceedings. Nowhere, however, does Commission Rule 102 provide for confidentiality of investigations.

Investigation confidentiality is addressed only in CJP Policy Declaration 1.9, which states: "In the course of a staff inquiry or preliminary investigation, persons questioned or interviewed to ascertain the validity of allegations *shall be admonished that the inquiry or investigation is confidential* under the California Constitution and commission rules." (Policy Declarations of the Com. on Judicial

Performance, decl. 1.9, emphasis added.) But CJP Policy Declarations cannot have the binding force of a Commission Rule, given that they are not adopted in accordance with the public notice and comment requirements that CJP Policy Declaration 3.5 prescribes for rulemaking. (See CJP Policy Declaration 3.6 ["When there is commission approval for staff to draft a policy declaration, any proposed enactment, amendment or repeal shall be submitted to each commission member for consideration at a duly convened meeting of the commission at which a vote thereon is taken"].) Any attempt to treat CJP Policy Declaration 1.9 as a rule that binds a complainant to investigation confidentiality would make it void for lack of compliance with the CJP's own rulemaking procedures. (Cf. *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 570-572 [agency regulations not adopted in accordance with public notice and comment provisions of Administrative Procedure Act are void]; see generally New York State Commission on Judicial Conduct, Policy Manual (Aug. 2020) p. 1 [commission's "policies are directory, rather than mandatory"].)

Summing Up

Commission Rule 102(a) as promulgated in 1996 is confusing, opaque, and out of step with subsequent developments in constitutional law. Even the CJP is misinterpreting it. It is long overdue for an overhaul. I urge this Committee to seek guidance from ABA Model Rule 11 and the state confidentiality rules discussed above.

Very truly yours,

JonB. Eisenberg

From: [REDACTED]

Sent: Thursday, April 14, 2022 8:55 PM

To: CJP Committee Public Comment <committeepubliccomment@cjp.ca.gov>

Subject: Written Comments to Committee to Review the Operations and Structure of CJP

Even when they're wrong, DEAD WRONG, judges insist they are right. We have the power to hold judges accountable, by repealing the law establishing the Commission on Judicial Performance protection racket, and enacting legislation to prevent judges organizations from lobbying the legislature. Yes, judges have two lobbyists. Judges today don't simply apply the law, they use lobbyists to make the law, setting public policy in place. In the formation of the Commission on Judicial Performance judges reasoned, "Why should the public be imposed upon?" I believe the problem with Judicial Conduct Commissions is in their genesis. They exist, we are told, because private citizens are incapable of regulating public officials themselves, because, we are told, private citizens are bad or stupid or irresponsible or all of the above. Well, are YOU? Instead, laws could be changed to allow grand juries to investigate judges. The judiciary is not supposed to be independent of the checks and balances of our system of government. Individual judges have a mandate to be independent --but judges cannot be independent when they act and rule as a powerful group. The Commission on Judicial Performance says: "The fact that a judges conduct violates the canons does not necessarily mean that it constitutes judicial misconduct," and complaints are mostly dismissed. WHAT! And many legislators are reluctant to tamper with the hallowed principle of judicial independence, although they have the authority to impeach judges. In order to achieve independence and prevent chaos from ruling in our courts the judicial branch as a whole must be accountable. Judicial accountability requires that the public must be able to see that justice is being done. This demands that the public is allowed to review the overall efficiency and effectiveness of the justice system. To accomplish these goals people must effectively supervise the conduct of judges and oversee the proper use of public resources and deliver swift removal to judges who abuse their authority. Secrecy harms the public interest.

The administration of law requires good moral character. Judges failure to follow THE RULES fosters disrespect for the law and undermines justice. Those who are charged with enforcing and upholding the laws must themselves scrupulously obey the law. They must lead by example. And that example must be based on principles of honesty, integrity, credibility and accountability. No one is above the law, especially those who are sworn to uphold it. That is, of course, unless you're a judge??

The notion that judges must be honest for the system to work is hardly profound. Many years have passed since our founders complained about judges who were obedient to their cronies, rather than the cause of justice. But a pure heart is not all that judges must bring to the bench. For the system to work as it should, judges must be honest, and without bias, and have no tilt in the cause that is being heard. Laws and Conduct Codes for judges are

intended to create the climate for integrity. But rather than disciplining wrongdoing by judges, it seems that the primary function of judicial conduct commissions is to protect judges from public complaints.

Judicial Conduct Commissions are failing in their responsibilities to protect the people from corrupt judges, despite their profligate budgets. Judges who have been caught engaging in misconduct and/or CRIME have been rewarded with paid vacations, well orchestrated institutional cover-ups, and substantial lifetime pensions, versus being held accountable and brought to justice. Worse yet, in most instances, judges who were found guilty of committing crimes and/or malfeasance/misconduct remained on the bench, and many of these judges had been previously caught doing misdeeds and/or had been doing misdeeds for many years and in some instances, for decades.

Are Judicial Conduct Commissions public review boards or protection rackets? The failure of Judicial Conduct Organizations to promote the proper administration of justice, by focusing efforts instead on ignoring, excusing, concealing and improperly labeling judicial crimes "misconduct," has prevented anyone from taking action against judges who violate the law and they want us to believe that no judicial act constitutes a criminal violation of the law and that even if a judicial act does criminally violate the law only a Judicial Conduct Commission can make that determination. Which they don't. They send private letters. If a judge executes a false salary affidavit, more commonly known as embezzlement, the judge gets a private letter. If a judge violates a litigant's constitutional rights, the judge gets a private letter. The litigant whose rights have been violated gets no relief and is left on his or her own to take costly action to protect their rights and often they are unable to take expensive corrective action. It doesn't matter to the Judicial Conduct Organization that embezzling funds or violating a person's due process rights, for example, are actually crimes. It doesn't matter to the Judicial Conduct Organization that judges conduct violates their oath of office to uphold the law or that judges conduct violates even the Code of Judicial Ethics. They just keep sending private letters and judges keep on discrediting their office. This allows judges to attack the very core of public safety through unchecked and unauthorized tampering with public policy in cases of wide public concern. The abandonment of the intended duty of Judicial Conduct Organizations --to protect the public from errant judicial officers, allowing judges who put their personal policy objectives above the law because they can get away with it without risk to their position on the public payroll --is evidence of what little regard these Organizations have for the safety, protection, rights and public funds of citizens.

The need for an independent judiciary is recognized throughout the free world. However, in return for judicial independence the trust we place in judges is that they will carry out their duties impartially. I define impartiality as the absolute recognition and application by judges of fidelity to the law. The law is not the exclusive property of the bench. It rightly belongs to the people. In the interest of preserving respect for the rule of law, the highest possible

standards must be applied to those who sit in judgment of others. Abuse of the public trust cannot and must not be tolerated. Corrupt practices in government strike at the heart of social order and justice.

From the Code of Judicial Ethics:

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 Code of Judicial Ethics ("code") establishes standards for ethical conduct of judges on and off the bench and for candidates for judicial office. 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.

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.

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.

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.

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.

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.

CANON 1 A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

CANON 2 A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

CANON 3 A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY

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

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

CANON 6 COMPLIANCE WITH THE CODE OF JUDICIAL ETHICS

Oath of office

I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.

SAMPLES OF WHAT IS OCCURRING IN CALIFORNIA COURTS

Riverside County Judge Eugene R. Bishop, who agreed to resign the bench on March 29, 2002 after admitting to charges then pending before the Commission on Judicial Performance. (Inquiry Concerning Judge Eugene R. Bishop, No. 161, Decision and Order Imposing Private Admonishment, February 4, 2002, California Commission on Judicial Performance.)

The Commission found that Judge Bishop had, "violated the mother's basic rights and exceeded it's jurisdiction in giving custody to the out-of-custody parent," (In re Shawn P., No. E022375), "violated the due process rights of the parents....ordering, without notice or a reasonable opportunity to be heard, that Emily.....be placed in a foster home and that there be no visitation....," (In re Emily D., No.IJ-11166), "violated the mother's right to basic due process under the federal and state constitutions and violated several statutes by removing the boys from their mother's custody....without....notice," (In re Daniel K., No.IJ-8816), and, "violated the due process rights of the father of Anthony B. by proceeding with hearings without adequate notice or a reasonable opportunity to be heard," (In re Anthony B., No.IJ-9898).

For all this Judge Bishop got a PRIVATE admonishment.

There are many judges who routinely exercise contempt for the law, violating parents and childrens basic rights, just like Judge Bishop did, or worse. These cases have had many witnesses. Who will speak out against these abuses? The public degradation and lasting devastation to the lives of those involved cannot be overstated and these families and their children must receive our attention and protection.

Sandra and Russell were married in San Diego. Russell, an attorney, divorced from his first wife, was admitted to the California State BAR in 1988 and practiced family law. Sandra was raising her two children Tara and Brian, who were nine and seven-years-of-age respectively when the couple married. Sandra operated a successful construction clean-up company to support her family. Later Sandra opened a women's clothing retail shop and organized fashion shows to raise donations for charity. The couple had two children. The family traveled together often. But there was a dark side. Russell was violently physically assaulting Sandra in the presence of the children, according to numerous police reports. Russell's physical attacks were not limited to Sandra. Child Protective Services records document the children's account of assaults by Russell and the resulting injuries to the children. Sandra, suffering from battered woman's syndrome feared that Russell would make good on his threats to take the children and the family home and leave her alone and destitute, if she left him. Sandra discovered that Russell was under investigation for stealing from numerous clients---when law enforcement officers arrived at the family home with a search warrant. A few weeks later, Russell was suspended from the practice of law by the State BAR while under investigation. After the family home was raided by police, but two weeks before being suspended from practice, Russell purchased a disability insurance policy. Dr. Rick Shacket, a proctologist who is the founder of the San Diego Hemorrhoid Care Medical Clinic, and who was a client of Russell's law practice, signed a form submitted to the disability insurance company representing that Russell was disabled from the practice of law. Dr. Shacket's diagnosis of Russell was depression caused by a bump to the head that occurred in an unreported car accident. Russell received approximately \$9,000.00 a month from the insurance company for nearly three years, while he was suspended (ooops, I mean....disabled) from practicing law. Eventually, Russell and Dr. Shacket were charged with tax fraud and health care fraud crimes they committed together from 1994-1999, (unrelated to Russell's disability claim), and the pair were convicted in 2001 & 2002, respectively, and sentenced to federal prison terms, restitution and fines by the Office of the United States Attorney.

During the several criminal investigations Sandra began divorce proceedings and obtained a domestic violence restraining order. In response, Russell attempted to implicate Sandra in his criminal activities. Sandra said she had no knowledge of her husband's criminal activities, cooperated with authorities and was exonerated from Russell's claims and never charged with any crime. After a court-ordered drug test, Russell was discovered to be abusing

methamphetamine and was admitted to a treatment facility, family court records show. Although Russell was still receiving disability payments from the insurance policy he purchased, he filed for and received social security disability payments of approximately \$1,200.00 per month. Yet, Russell failed to make court-ordered house payments on the family residence and the bank foreclosed. Sandra was able to borrow money from friends and relatives to pay the delinquent mortgage payments and keep the family home, at least for a while. The children became increasingly fearful about visiting with their father. Russell's solution was to request that the children's custody be changed. The San Diego County Family Court rushed to grant Russell custody of the children. No hearing was held, no witnesses testified, no evidence was presented. In fact, Sandra was given notice of this action just hours before it took place. Sandra's visits with the children were soon limited to supervised visits, again with no hearing, no evidence, no basis in fact or law for the restriction. When Russell plead guilty to the felony charges pending against him and was sentenced to serve 21 months in Nellus Federal Prison in North Las Vegas, Nevada, he again without adequate notice to Sandra, asked the family court to grant custody of the children to his mother while he was incarcerated. Russell also asked the court to discontinue all contact between the children and their mother Sandra. After carefully considering the matter for less than 30 seconds, the family court ordered the children in to the custody of Russell's mother and ordered the children to travel every other weekend from San Diego to Las Vegas, Nevada to have visitation with their father in prison. Judge Joan Lewis of the family court also decided at that time that the children could have no contact with their mother, Sandra. No visits, no phone calls, no letters, no gifts, no volunteering at the children's school, and the court extended its ruling to bar all maternal relatives including siblings that had been raised together. The rulings and orders of the San Diego family court--having no basis in fact and no support under the law--were granted solely on the power of the bench. (That's how they do it, court officers say when asked to explain.) The attorney representing Russell in his criminal matters practiced law in the same office as the court appointed attorney for the young children. Many attempts made to correct these rulings were blocked and the court file was ordered sealed. The order sealing the file barred even Sandra from having access to her family court records. (San Diego County Superior Court [domestic] case nos. d463896, ev00325, ev00176; [criminal] case nos. cr69219, cr35478, cr35335; [domestic violence by Russell against other persons] case nos. d340018, d186751.)

- **Former California attorney sentenced for tax fraud conspiracy** <http://www.justice.gov/archive/tax/txdv02067.htm>
- **Russell Dwayne Ward resigned with charges pending** <http://members.calbar.ca.gov/fal/Member/Detail/139383>
- **Russell Ward attempt to discharge disability insurance fraud in bankruptcy fails** <https://casetext.com/case/in-re-ward-6>
- **San Diego Doctor Sentenced.** On Oct. 25, 2002 in San Diego, Calif., Dr. Rick Shacket, was sentenced to 33 months in prison for conspiring to defraud the IRS. Shacket

participated in a tax fraud conspiracy with this former attorney, Russell D. Ward, from February 1994 through January 1999, resulting in a criminal tax loss of over \$370,000. Shacket and his former attorney created a sham corporation in Oregon called King Medical and created a false identity for Shacket. Shacket used King Medical and his false identity to receive and hide from the IRS diverted corporate funds from Shacket's medical practice. Shacket diverted over \$540,000 in corporate funds for his own use. As part of his plea, Shacket has paid the government \$370,000 in back taxes. <http://www.irs.gov/uac/The-Medical-Profession-and-Tax-Schemes>

- Dr. Rick Shacket is a board certified specialist in in colonoscopy, upper endoscopy, genital diseases, and anal rectal surgery. How he diagnosed Ward's brain injury remains a medical mystery. <http://www.phoenixnewtimes.com/news/arizonas-homeopathic-board-is-the-second-chance-for-doctors-who-may-not-deserve-one-6431898>

██████ and ██████ were married more than a dozen years and made their home in ██████ County, California. Unable to conceive, the attractive couple adopted a child, a beautiful little girl, and named her ██████. ██████ worked long hours as a fireman for the county. ██████ was a dedicated mother and faithful wife. Over the years violence became an unwelcome and increasingly common occurrence in the household and eventually ██████ was no longer willing to tolerate her husband's abuse, and the couple divorced. Incidents of violence continued with ██████ seeking protection from her husband's abuse from law enforcement and from the family court. ██████ lived with her mother, visited her father occasionally on weekends and witnessed her father's abuse. More and more often ██████ resisted going to visit with her father due to her growing fear of his violent temper. Apparently, to solve the problem of violence in the home and the complaints made by ██████, the court spontaneously removed ██████ from the custody and care of her mother and placed the child in the exclusive custody of her father. Not only was ██████'s custody changed, ██████ was not allowed to have any contact with her mother. According to court records, ██████'s court-appointed therapist wrote in a report: "██████ did make repeated references to her father's temper when I saw her," and that ██████'s father, "finds her [██████'s] grandiose, hysterical resistance too much to contend with," and that ██████ was, "emphatic that he does not wish to have custody of ██████," and that "he [██████] acknowledged some [episodes of] temper loss." Months after ██████'s custody change her reaction to being placed in to the sole custody of her father was documented in another report to the court. ██████'s therapist wrote: "██████ is very depressed refusing to bathe, dress, eat, sleep, and spent her days and nights only in front of the television [while] mourning the loss of having her mother in her daily life." ██████'s lawyer reported to the court that: "when custody was changed, ██████ was almost catatonic." Later, in ██████'s own letters to the court, written when she was 11-years-of-age, she stated: "I want to live with my mommy because I love her very much and I miss her. My mommy is a kind and caring person and if I had one wish I would live with my mommy." ██████ expressed her real concerns about her father, based upon her own independent viewpoint and experience. These expressions were disregarded and ██████ was

forced to grieve the loss of her mother, who the young girl was allowed to have no contact with over a significant period of time. No abuse allegations or abuse charges have ever been made against [REDACTED]. In the so-called judicial proceedings to switch custody to [REDACTED]'s father there was no opportunity for a hearing and no evidence was presented other than out of court statements made by court functionaries—[REDACTED]'s court appointed therapist and attorney. [REDACTED] arrived at court on that day for the purpose of an on calendar noticed motion only to find the court had an entirely different agenda, which [REDACTED] had no prior notice of. On many occasions [REDACTED] tried to correct the order, by hiring attorneys and filing appropriate legal documents, but these efforts were blocked, ignored and exploited by court officials, who continue to deny [REDACTED] and [REDACTED] relief through due process of law and observance of existing statutory laws and court rules. (See, [REDACTED] County Superior Court [family court] Case no. [REDACTED]---register of action available online at: [REDACTED]) [Footnote: Family court bench warrant issued for the arrest of [REDACTED] for failure to appear; bail set at \$30,000.00. Is issuance of a warrant for a party's failure to appear in a family court modification proceeding a remedy available at law? Here, the absent party provided a writing containing good cause for the party's inability to attend (party unable to attend due to injuries from a recent automobile accident). Were the court's only LEGALLY available remedies: to continue the matter, or conditions permitting—to take the matter off-calendar, to dismiss the absent party's motion, to grant the other party's motion?]

Court reforms will have important consequences for judges, and there is public debate as there should be about those consequences.

Checks and balances are important. Currently there are no checks and balances over the California judiciary. Judges oversee judges. The system of checks and balances is an important part of the Constitution. With checks and balances, each of the three branches of government can limit the powers of the others. This way, no one branch becomes too powerful.

Operation Greylord was one of the most important cases in the history of courtroom corruption investigations in the United States. There is one unsettling aspect of the Greylord investigation from which all judicial systems can learn. One of the key reasons corruption was able to grow and prosper in the courts was a "conspiracy of silence" -- the unwillingness of judges and lawyers alike to report wrongdoing.

Attorneys who oppose judges are retaliated against, their clients are retaliated against, and would you be surprised to know that they are sometimes disciplined and disbarred because they dared to challenge a judge? That's why it is CRITICAL for The People --our neighbors, co-workers, friends, everyone-- to be involved in keeping checks and balances on our court

system. The cost is too high to keep silent. The truth is what is important. Publicity not only exposes the problem but allows many people who would not otherwise have access to it, the information they need to not only to exercise their rights and protect themselves, but to take ACTION. The very possibility of adverse public reaction may aid in the correction of evils, which would otherwise escape detection. People not only have the power, authority and duty to make changes in their laws, but also the power, authority and duty to enforce their laws. However, under existing laws, judges have no accountability even when their rulings are malicious or corrupt. The time has come to change the laws governing judges conduct and take responsibility for the enforcement of these laws once established.

Together we must tell judges they have responsibility, not power.



COMMISSION ON JUDICIAL PERFORMANCE

PRIVATE DISCIPLINE SUMMARIES

[Private Discipline Summaries \(ca.gov\)](https://www.courts.ca.gov/private-discipline-summaries)

From: [REDACTED]
Sent: Friday, April 15, 2022 11:31 AM
To: CJP Committee Public Comment <committeepubliccomment@cjp.ca.gov>
Subject: Public comment from Los Angeles resident

Hello,

Please see my comments below. Thank you for including my comment.

My name is [REDACTED] and I live in [REDACTED]. I have been through the family court system for over two years and it has been nothing short of a horrifying nightmare. I tried to report our private judge for her misconduct and found there was no platform to do so. I also experienced significant discrimination and threats for calling out our initial judge who failed to take any action in my initial two ex-parte requests to protect my child. It is terrifying to me that our judges are not being held to strong standards of oversight. The 2019 California audit found that flaws in the CJP's investigative processes are allowing judicial misconduct to go undetected and uncorrected.

According to the audit, the Commission's operations and structure must change significantly to address the issues that this audit revealed. CJP must change its internal policies to address concerns about the planning and supervision of its investigations. The CJP must modernize and begin taking complaints online and over the phone, like every other state oversight body. I would urge this committee to also accept testimony by phone, and broadcast these hearings on the internet, to be as transparent and publicly accessible as possible. It should also be doing much more to make the public aware of their ability to report complaints, and how and where to do so. The CJP also needs to create a real data tracking system, to track patterns of misconduct or abuse across the courts.

The CJP should no longer allow judges to hear cases involving their peers. The audit found that this falls far short of the voters' intent to increase the public's role in judicial discipline with the passage of Proposition 190 in 1994. The audit also recommended commissioners of the CJP not be involved in both the investigatory and disciplinary functions; this is a huge conflict. Finally, the audit found that in over one third of cases investigators did not take all reasonable steps, interviewing witnesses, obtaining evidence, or observing the judges, to determine the existence or extent of alleged misconduct. The CJP needs to be forced to create strong binding best practices that force thorough, professional, and substantive investigations.

How can I be sure my judge is fairly and impartially adjudicating my case, if there are no repercussions or consequences for their misconduct. I strongly encourage this committee to select a public member as its leader, rather than a judge; and I hope this committee takes their role very seriously, and pushes hard for the systemic changes needed to our state's only judicial oversight body.

Thank you for taking the action needed to correct this.

Sincerely,

[REDACTED]

From: Jon Eisenberg <jon@eisenbergappeals.com>
Sent: Wednesday, April 6, 2022 5:30 PM
To: CJP Committee Public Comment <committeepubliccomment@cjpc.ca.gov>
Subject: writings referenced in letter to Committee, part 1 of 8

The attachment to this email is part 1 of 8 sets of redacted copies of writings to which my letter to the Committee refers and which I submit to the Committee along with the letter.

Jon B. Eisenberg
509 Tucker Street
Healdsburg, CA 95448
707-395-0111 (office)
510-305-7670 (mobile)
jon@eisenbergappeals.com

From: Jon Eisenberg <jon@eisenbergappeals.com>
Sent: Wednesday, April 6, 2022 5:32 PM
To: CJP Committee Public Comment <committeepubliccomment@cjpc.ca.gov>
Subject: writings referenced in letter to Committee, part 2 of 8

The attachment to this email is part 2 of 8 sets of redacted copies of writings to which my letter to the Committee refers and which I submit to the Committee along with the letter.

Jon B. Eisenberg
509 Tucker Street
Healdsburg, CA 95448
707-395-0111 (office)
510-305-7670 (mobile)
jon@eisenbergappeals.com

From: Jon Eisenberg <jon@eisenbergappeals.com>
Sent: Wednesday, April 6, 2022 5:33 PM
To: CJP Committee Public Comment <committeepubliccomment@cjpc.ca.gov>
Subject: writings referenced in letter to Committee, part 3 of 8

The attachment to this email is part 3 of 8 sets of redacted copies of writings to which my letter to the Committee refers and which I submit to the Committee along with the letter.

Jon B. Eisenberg
509 Tucker Street
Healdsburg, CA 95448
707-395-0111 (office)
510-305-7670 (mobile)
jon@eisenbergappeals.com

From: Jon Eisenberg <jon@eisenbergappeals.com>
Sent: Wednesday, April 6, 2022 5:33 PM
To: CJP Committee Public Comment <committeepubliccomment@cjpc.ca.gov>
Subject: writings referenced in letter to Committee, part 4 of 8

The attachment to this email is part 4 of 8 sets of redacted copies of writings to which my letter to the Committee refers and which I submit to the Committee along with the letter.

Jon B. Eisenberg
509 Tucker Street
Healdsburg, CA 95448
707-395-0111 (office)
510-305-7670 (mobile)
jon@eisenbergappeals.com

From: Jon Eisenberg <jon@eisenbergappeals.com>
Sent: Wednesday, April 6, 2022 5:34 PM
To: CJP Committee Public Comment <committeepubliccomment@cjpc.ca.gov>
Subject: writings referenced in letter to Committee, part 5 of 8

The attachment to this email is part 5 of 8 sets of redacted copies of writings to which my letter to the Committee refers and which I submit to the Committee along with the letter.

Jon B. Eisenberg
509 Tucker Street
Healdsburg, CA 95448
707-395-0111 (office)
510-305-7670 (mobile)
jon@eisenbergappeals.com

From: Jon Eisenberg <jon@eisenbergappeals.com>
Sent: Wednesday, April 6, 2022 5:35 PM
To: CJP Committee Public Comment <committeepubliccomment@cjpc.ca.gov>
Subject: writings referenced in letter to Committee, part 6 of 8

The attachment to this email is part 6 of 8 sets of redacted copies of writings to which my letter to the Committee refers and which I submit to the Committee along with the letter.

Jon B. Eisenberg
509 Tucker Street
Healdsburg, CA 95448
707-395-0111 (office)
510-305-7670 (mobile)
jon@eisenbergappeals.com

From: Jon Eisenberg <jon@eisenbergappeals.com>
Sent: Wednesday, April 6, 2022 5:36 PM
To: CJP Committee Public Comment <committeepubliccomment@cjpc.ca.gov>
Subject: writings referenced in letter to Committee, part 7 of 8

The attachment to this email is part 7 of 8 sets of redacted copies of writings to which my letter to the Committee refers and which I submit to the Committee along with the letter.

Jon B. Eisenberg
509 Tucker Street
Healdsburg, CA 95448
707-395-0111 (office)
510-305-7670 (mobile)
jon@eisenbergappeals.com

From: Jon Eisenberg <jon@eisenbergappeals.com>
Sent: Wednesday, April 6, 2022 5:37 PM
To: CJP Committee Public Comment <committeepubliccomment@cjpc.ca.gov>
Subject: writings referenced in letter to Committee, part 8 of 8

The attachment to this email is part 8 of 8 sets of redacted copies of writings to which my letter to the Committee refers and which I submit to the Committee along with the letter.

Jon B. Eisenberg
509 Tucker Street
Healdsburg, CA 95448
707-395-0111 (office)
510-305-7670 (mobile)
jon@eisenbergappeals.com