

STATE OF CALIFORNIA

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



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MARCH 27, 2023

REPORT AND RECOMMENDATIONS



STATE OF CALIFORNIA

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



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March 27, 2023

To the Governor, the Commission on Judicial Performance, the Supreme Court, the President pro Tempore of the Senate, the Chair of the Senate Committee on the Judiciary, the Speaker of the Assembly, the Chair of the Assembly Judiciary Committee, and the People of the State of California:

Pursuant to Sections 68770-72 of the California Government Code, the Committee to Review the Operations and Structure of the Commission on Judicial Performance respectfully submits this Report of its findings and recommendations and concludes its work.

With appreciation for the opportunity to have served,

Beth Krom, Chair
Maxine Anderson
Hon. M. Lucy Armendariz
Cheryl Boudreau
Emma Bradford
Frances Burton
Gregory Dresser
Michael Flad
Hon. Michael B. Harper
Hon. Teri Jackson
Richard Long
Morris Ratner
Richard Simpson
Robert H. Tembeckjian

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INTRODUCTION

In 1960, California became the first state to establish an independent constitutional entity to evaluate and investigate complaints of judicial misconduct and, where appropriate, to discipline those judges found to have engaged in ethical misconduct: the California Commission on Judicial Performance (“CJP”). Today, all 50 states, the District of Columbia and several US territories have [adopted](#) similar mechanisms for the enforcement of judicial ethics, either by constitutional amendment, statutory enactment or court rule.¹ Prior to the advent of such judicial conduct commissions, matters of judicial discipline were typically reserved to the courts, where self-enforcement was not especially robust.

The goal of all such commissions is to protect the public by vigorously enforcing judicial ethics and promoting high standards of conduct for judges. While judges must be free to decide cases on the merits, without untoward or otherwise inappropriate influences, they must also be held to account for unethical behavior or other conduct – on or off the bench – that is prejudicial to the administration of justice or otherwise brings the judiciary into disrepute.

Judicial conduct commissions are not courts. Without exception, they have no authority to reverse a judge’s rulings, remand a case for retrial or otherwise act

¹ The form and structure of such entities, and where in state government they are housed, vary from state to state. While they are variously labeled commissions, boards, councils, or offices, for purposes of this Report, the word “commission” is used.

as an appellate body. Even where they find that a judge was biased or otherwise improperly influenced in the disposition of a case, a commission may discipline the judge, but the aggrieved litigants must resort to the courts for further action on the case itself.

The CJP

CJP is established in the California [Constitution](#), composed of three judges, two attorneys and six lay citizens who serve four-year terms on appointment of either the Governor, the Supreme Court, the Senate Rules Committee, or the Speaker of the Assembly.

CJP has disciplinary jurisdiction over approximately 1,900 judges and 250 court commissioners and referees throughout the state. It enforces the California [Code of Judicial Ethics](#) and may determine that a judge be issued an advisory letter, privately admonished, publicly admonished,² publicly censured, or removed or retired from office. In certain circumstances, such as upon conviction of a felony or any crime involving moral turpitude, a judge may be suspended from office.³

As of January 1, 2023, CJP was authorized to employ 28 staff, including 17 attorneys. As authorized, CJP currently employs 28 staff. Under the

² Prior to 1995, public admonishments were called public reprovls.

³ Suspension is an interim disposition. CJP does not have the authority to impose suspension as a final sanction.

supervision of senior attorneys: Intake Attorneys review and evaluate new complaints; Investigating Attorneys conduct inquiries that have been authorized by the CJP commissioners; Trial Counsel and Assistant Trial Counsel present cases that have been authorized by the CJP commissioners for formal disciplinary hearings before Special Masters, seeing them through to conclusion, which may include submitting briefs and presenting oral argument to the commission and Supreme Court.

CJP receives and processes approximately 1,300 complaints per year. From 1995 through 2022, it rendered 13 removals, 43 public censures, 117 public admonishments or reprovls, and 200 private admonishments. It also issued 668 advisory letters.

The 2019 Audit Report and Subsequent Follow-up

In 2019, the California State Auditor issued a report that recommended changes to the structure and operations of the CJP. The audit was initiated in the wake of significant media attention focused on the judicial disciplinary system in conjunction with a controversial sentence imposed by a Superior Court Judge on a defendant convicted of sexual assault, although neither CJP nor any of its counterparts in other states has the authority of an appellate court to review and substitute its own judgment as to the merits of a judge's rulings. (See Appendix 4 of CJP's [2016 Annual Report](#).)

The [Audit Report](#) directed three recommendations to the Legislature and twelve to CJP, all of which this Committee considered and reports upon here.

The Auditor subsequently [evaluated](#) various policy and procedural changes that CJP implemented in response to the 2019 Audit Report, which this Committee also considered and reports upon here. The Auditor found that CJP had “fully implemented” most of the 12 recommendations directed to it, and this Report makes note of those updated findings.

The Auditor also found that the Legislature had implemented one of the three recommendations directed to it, and this Report makes note of that updated finding. While the Auditor’s update found that the Legislature had not acted on two of the three recommendations directed to it, the Legislature *did* create this Committee to examine the Audit Report and issue its own findings and recommendations.

The Committee’s Legislative Mandate

On July 16, 2021, the Legislature authorized the 15-member Committee to Review the Operations and Structure of the California Commission on Judicial Performance, with a mandate to issue a report about its findings and recommendations by March 30, 2023, to the following:

- The Governor,
- The CJP,
- The Supreme Court,

- The President pro Tempore of the Senate and the Chair of the Senate Committee on Judiciary,
- The Speaker of the Assembly and the Chair of the Assembly Committee on Judiciary, and
- The public, including by providing the report to the commission, so that the commission may make the report available on the commission's internet website.

The Committee's substantive responsibilities include the following, as set forth by the Legislature in [Section 68772 of the California Government Code](#) (Gov. Code § 68772):

- (1) Review and consider the following:
 - (A) All findings and recommendations of the California State Auditor in Audit 2016-137.
 - (B) The existing structure and operations of the commission.
 - (C) The existing structures and operations of judicial discipline commissions of other states that are similar in population to the State of California.
- (2) Hold at least two hearings to accept comments from the public about possible changes in the operations and structure of the commission that would 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. (The legislation set forth [guidelines](#) as to the timing and purpose of such public hearings.)
- (3) Study and make recommendations whether any of the following should be changed in order 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:

- (A) The number of commission members.
- (B) The allocation of appointments to the commission among the appointing authorities.
- (C) The structure of the commission.
- (D) The appropriate discipline and remedies available to the commission when it imposes discipline.
- (E) The policies and procedures governing the commission's operations.
- (F) Whether the commission currently has adequate financial and personnel resources.
- (G) What, if any, specific funding is necessary to support any recommended improvements to the commission.
- (H) Whether changes to the Constitution and statutes of the State of California, Rules of Court, and rules of the commission are needed.

The Committee's Organization

Appointment of the 15 Committee members was completed in the spring of 2022, and as directed in statute, was comprised of the following:

1. The director of CJP: Gregory Dresser
2. The chair of CJP: Hon. Michael B. Harper
3. A current or former member of CJP: Richard Simpson
4. The legal advisor to the CJP Commissioners: Emma Bradford
5. Two public members appointed by the Senate Rules Committee: Professor Cheryl Boudreau and Frances Burton
6. Two public members appointed by the Speaker of the Assembly: Michael Flad and Richard Long
7. Seven members appointed by the Governor:
 - A. Two active judges, one of whom shall be a justice of a court of appeal: Hon. Lucy Armendariz and Hon. Teri Jackson

- B. Three members of the public: Maxine Anderson, Marvin Deon⁴ and Beth Krom
- C. One director of a judicial conduct commission from another state similar in population to California: Robert H. Tembeckjian
- D. One law professor or other person who is recognized as an expert in judicial ethics: Morris Ratner

Committee member biographies are set forth in Appendix A.

As set forth in the statute, the Committee appointed a chairperson and established subcommittees.⁵ Among other things, a [web page](#) was promptly created to house pertinent information about the Committee and its work. An organizational and informational meeting was held on April 19, 2022. The Committee met thereafter on July 11-12, 2022, September 14-15, November 14-15, 2022, February 14-15, 2023, and March 20, 2023.

All meetings of the Committee were public and livestreamed with interactive viewer capability, consistent with the [Bagley-Keene Open Meetings Act](#) (Gov. Code § 11120 *et seq.*). The views of those members of the public who attended were invited and heard at each meeting, either in person or virtually via video.

The Committee held public hearings on September 14, 2022, and February 14, 2023, at which various individuals and organizations presented their

⁴ Mr. Deon served a partial term and was not replaced upon his departure.

⁵ Beth Krom was designated Chair of this Committee; Richard Long and Frances Burton were designated as Secretaries; and the following subcommittees were created: Legal & Financial, Procedural & Administrative, Research & Report Development, and Technology & Logistics.

views either in person or virtually via video, including representatives of the California Judges Association, lawyers who represent judges before CJP, litigants, and representatives of the Center for Judicial Excellence. The first public hearing preceded the development of the Committee's draft report, and the second followed release of the draft report, which was thereafter amended in certain respects based on the Committee's consideration of the public and organizational input.

Video and/or audio recordings of the Committee's meetings are archived on the Committee's [webpage](#).

Throughout its tenure, the Committee also accepted written submissions from organizations and individuals, including litigants, attorneys, and others.

In sum, the Committee heard from a variety of interested parties, orally and/or in writing, making observations that broadened the Committee's perspective and informed its work. The Committee's [webpage](#) has links to the oral and written submissions.

Explanatory Notes About the Committee's Recommendations

On the pages that follow, each of the 15 recommendations in the 2019 State Auditor's Report is summarized, the Auditor's subsequent updates are noted, and this Committee's findings and recommendations are set forth and explained.

(Sections A and B, below.) Where more than one of the Auditor's recommendations addressed the same issue, this Report consolidates them.

As mandated, this Committee also examined certain matters pertinent to the operations and structure of the CJP that the Audit Report did not address. (Section C, below.)

Finally, having heard from significant various speakers about their concerns and frustrations on matters outside CJP's ambit and outside of this Committee's statutory charge, the Committee calls them to the attention of this Report's recipients, as they consider ways in which public confidence in the administration of justice may be enhanced. (Section D, below.)

Most of the Committee's recommendations were arrived at by consensus and formalized by a unanimous vote. Where there were dissents, this Report notes them. A summary of the Committee's recommendations and votes is set forth in Appendix B.

Some of the Committee's recommendations would require the commitment of financial and other resources beyond present levels. While it would be difficult for the Committee at this stage to calculate actual amounts, it is assumed that the Legislature, the Supreme Court and CJP would work collaboratively to ensure that appropriate funding is provided as to those recommendations in this report that are adopted.

**SECTION A: THE AUDIT REPORT'S
RECOMMENDATIONS TO THE LEGISLATURE**

Audit Recommendation 1(A): Unicameral versus Bicameral Structure

The fundamental structure of judicial discipline should be changed from the present “unicameral” system, in which CJP investigates and adjudicates matters of judicial misconduct, to a “bicameral” system, in which CJP would investigate but a second entity would adjudicate such matters. *This would require amending the Constitution.*

Auditor’s Update:

The Legislature has not acted. It should be noted, however, that the Legislature created this Committee with a mandate to report its own findings and recommendations on the Auditor’s Report.

Committee Findings and Recommendation

The Committee recommendation is to maintain the present CJP unicameral system, which is the way judicial ethics are enforced in the majority of states. The unicameral system has consistently been upheld as constitutional in federal and state courts, and it has not been shown to be unfair or to impede CJP’s operations. Adding a separate second structure to the disciplinary process not only would be very costly but also would increase the time it takes to discipline or exonerate a judge.

The unicameral model has not been identified as a matter of concern by judicial or citizen groups, nor has actual harm to the judiciary or the public been alleged, demonstrated, or ascribed to it. The Committee concluded that a change

from a unicameral to a bicameral structure would not achieve the goals identified in the Committee's statutory charge 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."

The unicameral model should be maintained, and the Constitution should not be amended to create a bicameral structure.

Audit Recommendation 1(B): Structure of Hearing Panels

Formal disciplinary hearings conducted by CJP should be held either before the entire 11-member CJP, or before a panel of three Special Masters, one of whom would be a judge and two of whom would be “public” members, *i.e.*, non-lawyers. *This would require amending the Constitution.*

Auditor’s Update:

The Legislature has not acted. It should be noted, however, that the Legislature created this Committee with a mandate to report its own findings and recommendations on the Auditor’s Report.

Committee Findings and Recommendation

The Committee recommendation is to maintain the present system, in which a panel of three judges is designated by the Supreme Court to serve as Special Masters to preside over formal disciplinary hearings. Apart from an obvious practical impediment – holding hearings before the entire 11-member CJP would be logistically challenging, especially in a multi-day proceeding – there are significant substantive considerations that compel this conclusion.

A formal disciplinary hearing is equivalent to a non-jury trial, and presiding over one requires the same skills as a trial judge. A record is transcribed. Evidentiary rulings are made. The opportunity to present a case against the accused must be facilitated, the rights of respondent-judges must be protected, and the integrity of the disciplinary process itself must be safeguarded, to ensure that

sanctions are based on sound records not vulnerable to appeal. This protects both the judiciary and the public.

Special Masters are judges who are specifically trained for service in disciplinary cases. CJP's public-protection mandate is promoted by proceedings that comport with due process and would more likely withstand appellate scrutiny, thereby contributing to the integrity of the disciplinary system. Assigning non-lawyers to preside over adjudicatory proceedings and make evidentiary rulings – responsibilities for which they have not been trained and for which admission to the bar is prerequisite – could undermine CJP's credibility and unnecessarily raise appealable issues. It is not merely coincidence that all states require judicial disciplinary hearing officers to be law-trained.

Since the report of the Special Masters and the full record of proceedings are submitted to the full CJP for ultimate decision, and a majority of CJP members are neither lawyers nor judges, the public is ably represented in the process at an appropriate point under the present system, which should not be disturbed.

Audit Recommendation 1(C): Remedial Dispositions

CJP should be authorized to institute “corrective actions” that would be considered discipline, subject to follow-up monitoring for compliance. *This would require amending the Constitution.*

Auditor’s Update:

The Legislature has not acted. It should be noted, however, that the Legislature created this Committee with a mandate to report its own findings and recommendations on the Auditor’s Report.

Committee Findings and Recommendation

The Committee recommends that CJP be authorized to impose such remedial actions as education, training, mentoring and/or monitoring, in conjunction with other types of disciplines. Such dispositions are useful in appropriate situations where the judge’s removal from office is not warranted but where, for example, the judge has demonstrated a correctable deficiency in substantive or procedural law, a disregard for decorous courtroom behavior, a need for rehabilitative treatment after an alcohol-related driving offense, etc.

CJP now implements “mentoring” or “monitoring” arrangements on consent of the subject judge. Authorizing CJP to *impose* such results in conjunction with other disciplines, such as censure or admonition, would allow CJP to implement this important tool without having to negotiate its terms with the disciplined judge.

Implementing this recommendation would require amending the Constitution.

Audit Recommendation 2: Funding
CJP should be adequately funded, and the Legislature should make a one-time appropriation of \$419,000 in the Budget Act of 2019 specifically for CJP to hire an investigations manager and update its electronic case management system.

Auditor's Update: The Legislature increased CJP's budget by \$1.5 million.

Committee Findings and Recommendation

The Committee recommends that CJP's funding be increased, consistent with our recommendations herein (A) to create a full-time Public Information Officer or Ombudsperson, (B) to facilitate educational and informational interactions between CJP and the public, the press, community groups, and bench and bar organizations, and (C) to increase the authorized number of attorneys and support staff from the current 28 to 37,⁶ which would facilitate the more timely disposition of complaints and investigations, as well as allow for more attention to educational and informational activities. Moreover, enhanced resources would complement the Audit Report's encouragement of more comprehensive inquiries, in that more staff and a bolstered travel budget would allow CJP to increase such valuable investigative activities as in-person interviews, site-visits, and courtroom observations across the state.

⁶ This would include the newly created position of Public Information Officer or Ombudsperson that the Committee recommends in its discussion of Audit Recommendation 3, below.

There are presently 17 attorneys on staff at CJP, including the Director/Chief Counsel, who directs the staff and CJP's day-to-day operations, and the Legal Advisor, who assists the commissioners in their adjudication of cases in the manner that a judicial law clerk would assist a court. Because responsibility for evaluating complaints and conducting investigations is assigned to "intake" and "investigating" attorneys on staff, CJP does not employ non-attorney investigators.

Comparatively, the New York State Commission on Judicial Conduct has 23 attorneys and 7 investigators on a staff of 46. While investigators assist the attorneys, they also have matters assigned to them in situations not expected to require litigation.

Since CJP processes around 1,300 complaints a year, the annual complaint-per-attorney ratio is 87 to 1. In New York, which processes around 2,000 complaints a year, the annual complaint-per-attorney/investigator ratio is 67 to 1.

CJP's fiscal year 2021-22 budget was \$6,896,000, compared to New York's, which was \$7,189,000 and is projected to increase to \$8,128,000 in the coming fiscal year. A budget for CJP comparable to New York's seems reasonable.

The Committee believes CJP is under-staffed. The proposed increase in the number of attorneys and support staff would align CJP's workload and staffing and would thus allow CJP to be more effective in performing its core function.

Audit Recommendation 3:

Courthouse Displays of Information as to CJP

All courthouses should publicly display information about CJP to enhance public awareness of CJP's role and to facilitate complaints.

Auditor's Update:

The Legislature has not acted. It should be noted, however, that the Legislature created this Committee with a mandate to report its own findings and recommendations on the Auditor's Report.

Committee Findings and Recommendation

The Committee recommends that more be done to raise CJP's public profile and to address what appears to be a significant underlying problem, *i.e.*, the widespread conflation of two very disparate concepts: disagreement with the outcome of a case and ethical wrongdoing by the judge. Many of the criticisms leveled at CJP pertain not to its enforcement of judicial ethics but, instead, to its appropriate and necessary refusal to address the merits of judicial decisions. CJP is not and should not become an appellate court. Pervasive misunderstanding of the role of the CJP appears to drive a good deal of the focus on and criticism of it.

Informational displays in courthouses may be a means to raise the Commission's profile and enhance public awareness of its role, though CJP itself does not manage and cannot on its own post such messaging at court facilities. In addition, the reach of such displays may be limited compared to electronic social media, particularly if their designs and placement were discreet and not intended to attract attention. Moreover, if the information they provided was curtailed, they

may raise false hopes among disappointed litigants seeking from CJP what it cannot provide: appellate relief. And that is an insight into the larger issue here: people in search of information at the courthouse are not limited to those who wish to complain about a judge.

The Committee believes efforts to inform and engage the public should be part of an overall program that would include creating a CJP Public Information Officer or Ombudsperson position, for more outreach to citizen groups, judicial associations, the press, etc. The person serving in such a role could also advise CJP regarding the tone and content of its communications with complainants, to help ensure that the vast majority whose issues fall outside CJP's jurisdiction understood why that is the case.⁷ But the greater need – to provide useful public information on a wide range of court related issues – would be well beyond the responsibility or ability of CJP.

A more effective and global approach would be for the Legislature to fully fund, via the Judicial Council of California, self-help centers in every courthouse, to provide information to the unrepresented or underrepresented litigants, and to increase their responsibility to include directing people to the appropriate entities for the filing of complaints.

⁷ CJP does not have administrative authority over court facilities. Should the Legislature or Supreme Court adopt this recommendation of the Auditor's Report, the responsibility, expense, and ongoing duty to install and maintain courthouse signage should not be charged to CJP.

**SECTION B: THE AUDIT REPORT'S
RECOMMENDATIONS TO THE CJP**

Audit Recommendation 4: Investigative Strategies

To ensure that it adequately investigates alleged judicial misconduct, CJP should implement processes to ensure that for each of its investigations, CJP's management reviews and approves an investigation strategy that includes all steps necessary to substantiate whether misconduct occurred.

Auditor's Update: CJP "fully implemented" this recommendation.

Committee's Findings and Recommendation

The Committee found that CJP staff attorneys submit written investigative strategies for each active case, which a senior staff officer reviews and approves. CJP protocols in this regard are consistent with most states, where senior staff approve strategies and oversee inquiries.

The Auditor found that this recommendation has been fully implemented, and the Committee has no further recommendations in this regard.

Audit Recommendation 5:

Investigations Manager

To ensure that it adequately investigates alleged judicial misconduct, CJP should create and fill a new investigations manager position and task that individual with reviewing and approving investigative strategies, as well as overseeing the execution of those strategies.

Auditor's Update:

CJP "fully implemented" this recommendation.

Committee's Findings and Recommendation

The Committee found that when funding was provided in FY 2020-21, CJP created a senior staff attorney position to manage or oversee investigations.

The Auditor found that this recommendation has been fully implemented. However, as noted above, the Committee believes the CJP remains understaffed and that additional attorney and support staffing is needed to ensure the CJP is effective.

Audit Recommendation 6: Qualitative Review of Closed Investigations
To ensure that it adequately investigates alleged judicial misconduct, CJP should expand the role of its legal advisor's office to include periodic reviews of the quality of closed investigations and, as warranted, to recommend changes to CJP's investigative practices.

Auditor's Update: CJP "fully implemented" this recommendation.

Committee's Findings and Recommendation

The Committee found that CJP's Legal Advisor conducts an annual review and reports to the CJP commissioners in writing, providing commentary on the thoroughness and soundness of selected investigations and making suggestions aimed at improving the quality and comprehensiveness of CJP's work.

The Auditor found that this recommendation has been fully implemented, and the Committee has no further recommendations in this regard.

Audit Recommendation 7: Patterns of Misconduct

To ensure that it leverages all available information to uncover misconduct, CJP should establish procedures for more regularly exercising its oversight authority to open investigations into patterns of potential misconduct. At a minimum, these procedures should require that intake attorneys assess complaints to identify when patterns of complaints merit recommending an investigation.

Auditor's Update: CJP "fully implemented" this recommendation.

Committee Findings and Recommendation

The Committee found that intake and investigating attorneys now routinely take potential patterns of misconduct into account when evaluating and investigating complaints.

It is a common practice for judicial conduct commissions to investigate not only complaints that appear to have merit but also matters that are reasonably related to the individual complaint at hand. A litigant who alleges that a judge was discourteous would not necessarily know whether the judge was having an isolated bad day or was generally disrespectful toward others. Were a disciplinary commission to limit itself to inquiring into the complainant's case alone, it could overlook a more serious problem that should be addressed. CJP appears appropriately sensitive to this issue.

The Auditor found that this recommendation has been fully implemented, and the Committee has no further recommendations in this regard.

Audit Recommendation 8:

Categorizing and Tracking Complaints

To allow it to detect potential judicial misconduct associated with legal errors, CJP should immediately direct its staff to use more appropriate allegation codes when closing complaints at intake. CJP should determine what data it will need to begin tracking so it can trend information – voluntarily provided by complainants – that could indicate complaints about legal error should be investigated because there is a risk that legal error is the result of underlying misconduct, such as bias. CJP should also develop procedures that indicate how often it will evaluate its data for such trends and establish guidelines for when trends warrant CJP staff recommending that the commission open an investigation.

Auditor’s Update:

CJP “fully implemented” this recommendation.

Committee Findings and Recommendation

The Committee found that CJP conducts an annual review to determine whether individual closed complaints alleging legal error by a particular judge appear, when viewed collectively, to indicate bias or other misconduct. This complements the heightened attention staff attorneys now pay to the possibility that an individual complaint of misconduct may be part of a more troubling pattern of misbehavior.

The Auditor found that this recommendation has been fully implemented, and the Committee has no further recommendations in this regard.

Audit Recommendation 9: Prior Complaints

To prevent the risk that it will fail to detect chronic judicial misconduct, CJP should create and implement procedures by October 2019 that require an investigator to review all prior complaints when investigating a judge and determine whether the prior complaints are similar to the current allegations. Further, the procedures should require that if a pattern of complaints indicates the potential for chronic misconduct, the investigator must recommend that the commission expand the investigation.

Auditor's Update: CJP "fully implemented" this recommendation.

Committee's Findings and Recommendation

The Committee found that staff memoranda to CJP commissioners regarding new complaints now regularly include a review of prior relevant complaints against the same judge. Where the commissioners authorize investigation, investigating attorneys formulate case plans that, among other things, assess whether there is a potential pattern of misconduct to investigate.

That a judge has been the subject of multiple complaints is not in itself proof of wrongdoing or evidence of a pattern of misbehavior. Indeed, in California as throughout the country, the most significant numbers of complaints per year tend to come from litigants who are disappointed in the outcome of their cases, but who mistakenly believe their state's judicial disciplinary commission can either change the result and/or punish the judge for arriving at the "wrong" conclusion. In

settings such as family court, where the stakes (such as custody of minor children) are especially personal and deep, the losing party is apt to regard the process as unfair and the judge as insensitive.

CJP walks a tightrope in such matters. They must balance due process considerations that rightfully protect judges from being investigated on new complaints simply because there were previously unproven allegations against them, against the compelling public interest in identifying those jurists whose unfitness for office may not be evident from a single complaint but might become apparent in the aggregate. That the decision-making body – *i.e.*, the 11 CJP commissioners – is comprised of judges, lawyers, and a majority of lay members, who appear to act collegially and in good faith, should reassure both the judiciary and the public that this important balancing of rights and responsibilities is discharged thoughtfully.

The Auditor found that this recommendation has been fully implemented, and the Committee has no further recommendations in this regard.

Audit Recommendation 10: Public Outreach-1

To improve its transparency and accessibility to the general public, CJP should implement a plan to regularly engage in outreach activities that target the general public.

Audit Recommendation 13: Public Outreach-2

To improve public transparency and offer opportunities for the public to provide testimony on its proposed rules and operations, CJP should hold at least one public meeting during its biennial rulemaking process. It should ensure that it properly notifies the public about the meeting and provides the public the opportunity to comment at the meeting.

Auditor's Update: CJP "fully implemented" these recommendations.

Committee Findings and Recommendation

The Committee found that CJP holds an annual public meeting accessible via electronic livestream, that the agenda every other year includes discussion of agency rules, and that CJP engages in targeted outreach to various stakeholders, such as judicial and bar associations and civic associations. While such activities fulfilled the Auditor's recommendations, the Committee concluded that CJP could do more to raise its public profile and interact with the public, including those with limited internet access or skills, as follows:

- A. Create the position of Public Information Officer or Ombudsperson (i) to liaise with citizen groups, judicial and bar groups and other stakeholders, and the press, (ii) to advise CJP regarding the tone or content of its communications, especially when explaining why

complaints fall outside CJP's limited jurisdiction, and (iii) in appropriate cases, to explain CJP actions more fully to individuals who have submitted complaints, particularly where a complaint is dismissed as being outside the scope of CJP's authority.

- B. Create a graphically dynamic PowerPoint slide show of how the Commission operates, to be posted on CJP's website and used at public presentations.
- C. Publish a regular newsletter.
- D. Produce a Press Kit containing a brochure, a descriptive PowerPoint, recent newsletters, and recent clippings.
- E. Explore the production of radio and television public service announcements.
- F. Produce and mail informational postcards and flyers about CJP.
- G. More broadly advertise CJP's public meetings.

Audit Recommendation 11: CJP Website-1

To improve its transparency and accessibility to the general public, CJP should update its website to include better resources for complainants, including examples of high-quality complaints that illustrate what CJP looks for when evaluating a complaint to decide if it will open an investigation.

Audit Recommendation 12: CJP Website-2

To ensure that it expeditiously improves the public's ability to submit complaints, CJP should begin accepting complaints online upon updating its electronic case management system.

Auditor's Update: CJP "fully implemented" these recommendations.

Committee Findings and Recommendation

The Committee found that CJP now accepts complaints electronically via the [complaint portal](#) of its website, as well as by conventional mail. The CJP website also includes several fictionalized examples of [model complaints](#).

Nevertheless, as noted with regard to Recommendations 10 and 13 above, the Committee proposes additional enhancements within CJP's constitutional and statutory authority, to complement these important upgrades to the CJP website. The Committee believes that a comprehensive approach is the best way to improve public knowledge of CJP's role and activities, and consequently its standing within and beyond the court community.

Audit Recommendation 14: Office Location

To maximize the resources available for its core functions, CJP should immediately begin exploring options for relocating its office to a less expensive location and relocate as soon as possible.

Auditor's Update: CJP action on this recommendation is "pending."

Committee Findings and Recommendation

The Committee recommends that CJP should maintain its present San Francisco office. Whatever savings in rent that may be realized by moving would likely be offset by the significant expense and disruption of relocating and duplicating the security associated with the present state government building that houses CJP. Moreover, the present CJP location could accommodate the expansion of staff that this Committee recommends for CJP.

Significantly, the Judicial Council of California (JCC) is housed in the same building, as is the Governor's San Francisco office. This Committee has experienced first-hand the benefits of the association with the JCC, having had the use of its state-of-the-art electronic conferencing and livestreaming capabilities for its public meetings. CJP has access to this resource when necessary and available, at no cost, by virtue of its proximity to the JCC. Replicating such resources at a new location would be costly and unnecessarily duplicative.

The Committee considered a recommendation to establish an additional CJP office, in Southern California, given the state's large geographic size and

population, so as to (A) promote better public awareness of the agency, (B) facilitate more comprehensive investigations, particularly where in-person witness interviews, depositions, court observations, etc., would be necessary, and (C) relieve respondents and witnesses from having to travel to San Francisco, and SF-based staff from having to relocate for days or weeks at a time when required downstate. The proposal was defeated by vote of 12 to 2. On balance, the Committee concluded that it would be more cost-effective to increase CJP's budget for additional staff, increased intra-state travel during investigations, and technological resources for such purposes as increased video depositions.

Audit Recommendation 15: Reports to the Legislature
CJP should report in detail to the Legislature in 2020, 2021 and 2022 as to its progress in fulfilling the recommendations of the Audit Report.

Auditor's Update: CJP "fully implemented" this recommendation.

Committee Findings and Recommendation

The Committee believes that regular, informative communications between the Legislature and CJP are important responsibilities of both bodies, and it notes the good will and serious purpose evinced by the former in establishing this Committee and the latter in cooperating with it. The Committee recommends that in its annual budget requests and at other opportunities that may present themselves, CJP should continue to be as informative with the Legislature on its work and priorities as its statutory mandate of confidentiality would allow.

**SECTION C: POST-AUDIT ISSUES REGARDING CJP
IDENTIFIED AND CONSIDERED BY THE COMMITTEE**

Item 16: Statute of Limitations

The Statute of Limitations applicable to judicial misconduct and CJP Proceedings is inconsistent, unduly restrictive, and should be revised. *This would require amending the Constitution.*

Committee Findings and Recommendation

Generally, a Statute of Limitations (“SOL”) sets the maximum time a party has to *initiate* formal legal proceedings, dating back to when the alleged offense occurred. In California, unique to disciplinary cases against judges, CJP must *conclude* its proceedings against a judge within a defined period of time. That time varies, depending on the length of the particular judge’s term in office.

Under [Article VI, section 18\(d\)](#) of the California Constitution, CJP may only retire a judge for disability, and censure or remove a judge for misconduct, for “action occurring not more than 6 years prior to the commencement of the judge’s *current* term or of the former judge’s last term ... [emphasis added].”

Comparatively, in the majority of states, there is no SOL in judicial ethics and disciplinary matters. Yet even among the 14 states where there is some disciplinary SOL, California’s is unusual.

First, it is not uniform. A judge serving a 6-year term could only be disciplined for misconduct that occurred no more than 12 years earlier. Yet a

judge serving a 12-year term could be disciplined for misconduct that occurred 18 years earlier. In addition, the SOL applies only to the more egregious situations, where the misconduct warrants censure, removal from office, or retirement. Counterintuitively, there is no SOL for conduct that would result in less severe discipline, such as public or private admonishment. However, in fairness, it has been CJP's general practice to be guided by the existing SOL in all cases when considering the appropriate discipline to impose.

Second, a 6-year judge who is under investigation for conduct that occurred 12 years ago, but who is re-elected to a new 6-year term before the inquiry is completed, *could not* be disciplined, even if found guilty, because the clock would have been reset/shortened mid-proceeding. Yet a 12-year judge under investigation for the same misconduct *could* be disciplined even if re-elected to a new 12-year term before the inquiry was completed.

Third, requiring CJP to *conclude* rather than *commence* disciplinary proceedings within such a narrow and shifting time frame is not only contrary to the standard application of SOLs throughout the country, it allows the accused to "run out the clock" by dilatory tactics not uncommon in any litigation.

The issues before the Committee were (A) whether such SOLs should apply at all to those holding such high public office as judgeships and, if so, (B) whether the inconsistent and restrictive rules applicable to judicial disciplinary matters in

California should be revised. The Committee engaged in extended, rigorous, good-faith debate on the SOL over the course of two meetings, over which the prevailing sentiments evolved. Ultimately, the Committee came to three conclusions.

First, after considering whether the SOL should be eliminated altogether, the Committee concluded that an SOL would be appropriate in judicial disciplinary matters. SOLs have been enacted in all states as to most crimes and civil claims, on the theory that there should be some reasonable point beyond which citizens should not fear prosecution or litigation over long-ago events, where a defense would be unfairly hampered by such factors as fading memories, lost or damaged records, and witnesses who had died, relocated or were otherwise unavailable. In California, SOLs have historically been applied to virtually all licensed professionals, including attorneys and judges.

Second, the Committee concluded that the present SOL is inconsistent in that it is calculated from the commencement of a judge's present term and therefore goes back farther for some judges than others. Since some judges under present law would be subject to discipline for misconduct that occurred 12 years ago, and others would be liable for misconduct that occurred 18 years ago, the Committee determined that a 15-year SOL applicable to all judges was reasonable.

Third, the Committee concluded that the present SOL is unduly restrictive, in that CJP must *conclude*, not *commence* its proceedings within the SOL timeframe. The Committee was apprised of examples in which serious claims of misconduct were dropped because they were discovered too close to the end of a judge's present term to be investigated and litigated. This included matters in which formal charges had been authorized and disciplinary hearings commenced but not concluded because time ran out.

Surely no one would reasonably argue that a minor ethical violation just outside the SOL – say, 13 years ago – should result in discipline if first brought to CJP's attention so long after the fact. But surely no one would reasonably argue that egregious misconduct that occurred 13 years ago – such as sexual abuse or racism that only recently came to light – should be excused from accountability, despite the passage of time, if the evidence of wrongdoing is clear and convincing. Such egregious misconduct may be rare, and a responsible commission would not discipline a judge for unproved or unprovable old (or, for that matter, new) behavior. But the damage to public confidence in the administration of justice would be immeasurable if [judges proven to have engaged in serious misconduct calling into question their fitness to serve](#) were to escape disciplinary consequences, simply because the misconduct occurred 13 years ago and was protected by a 12-year SOL, whereas the same behavior would have resulted in

removal had it occurred even one day before the SOL ran out. Therefore, a fair and reasonable corollary to any SOL would be to ensure that there be no time-limit as to investigating and disciplining judges for (A) conduct that would presently constitute a felony or (B) any other conduct that would involve moral turpitude.

For the foregoing reasons, the Committee recommends that a uniform SOL of 15 years be adopted for judicial disciplinary cases, that the SOL be tolled in a particular matter when CJP authorizes investigation of a particular complaint, and that there be no SOL or other time constraint as to investigating and adjudicating complaints for conduct that would presently constitute a felony or for any other conduct that would involve moral turpitude.⁸

⁸ “Tolling” the SOL means to suspend it, *i.e.*, to stop the clock so as to prevent expiration of the time in which a matter may be commenced or completed.

Item 17: Standard of Proof

Discipline should be imposed on a judge where the misconduct is proved by *clear and convincing* evidence.

Committee Findings and Recommendation

There are various standards of proof in American civil, administrative, and criminal law, by which the party with the burden of persuasion— *i.e.*, the CJP attorneys in judicial disciplinary cases, a District Attorney in criminal cases, the plaintiff in a civil suit, or an agency attorney in an administrative proceeding — must establish their case.

- *Preponderance of the Evidence*: The adjudicator must find that the CJP attorneys demonstrated that it is more likely than not that the alleged misconduct occurred. This is the least stringent standard, typically applied to issues presented in civil cases.
- *Clear and Convincing*: The adjudicator must find that the CJP attorneys demonstrated that a particular fact or charge is highly and substantially more likely than not to be true. This is an intermediate standard, typically applied in civil cases for claims of fraud and to establish punitive damages. It also applies to the removal of children from their parents' custody. *See*, Welfare & Institutions Code section 361(c).
- *Beyond a Reasonable Doubt*. The adjudicator must find to a moral (not mathematical) certainty that the only logical explanation that can be derived from the facts is that the defendant committed the alleged crime, and that no other logical explanation can be inferred or deduced from the evidence. This is the highest standard, typically applied in criminal cases.

As determined by the California courts, in CJP proceedings, as well as in attorney disciplinary cases, the *Clear and Convincing* standard applies. Thus, CJP

applies the standard proposed by the American Bar Association in the [Model Rules for Judicial Disciplinary Enforcement](#), as do most other states. Six states, including New York and Texas, utilize *Preponderance of the Evidence*.⁹

In view of its mandate to propose measures that might “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,” the Committee considered a proposal to recommend a constitutional amendment to change the evidentiary standard applicable to CJP from *Clear and Convincing* to *Preponderance of the Evidence*, on the theory that (1) holding judges to the highest standards of conduct should not require a more challenging quantum of proof in order to discipline them, (2) a change in the standard would logically allow CJP to capture more instances of judicial misconduct and make it possible for the CJP to better identify patterns of misconduct, (3) the establishment of a standard of *Preponderance of the Evidence* by Constitutional amendment would not violate the separation of powers doctrine, (4) judicial disciplinary proceedings are not like criminal proceedings and instead are sui generis, making it possible to adopt a lower standard of proof, and (5) the application of the lower standard in multiple other states suggests that the use of that standard would not unfairly diminish judges’ faith in the disciplinary process.

⁹ The other four are Maine, Michigan, Rhode Island, and Utah.

After robust, good-faith debate on the merits and discussion of alternatives, such as imposing lesser disciplines where the proof met the *Preponderance of the Evidence* standard and more severe disciplines where the evidence was *Clear and Convincing*, the Committee by vote of 9 to 5 recommends that the standard remain *Clear and Convincing*.

Item 18: The Range of Authorized Disciplines and Dispositions
The range of disciplines and non-disciplinary dispositions that CJP may render should be somewhat expanded.

Committee Findings and Conclusions

Presently Available Disciplines. At present, CJP may issue the following [disciplinary determinations](#):

- Advisory Letter (Private)
- Private Admonishment
- Public Admonishment
- Public Censure
- Removal from Office / Involuntary Retirement

With certain limitations, CJP may also [refer](#) or [disclose](#) matters to other entities.

Suspension. Recognizing the significant gap between the two most severe sanctions that may be imposed on a judge – censure and removal from office – suspension of a judge (with or without pay) is available as a discipline in 40 states. A competing theory holds that conduct serious enough to warrant suspension should result in removal, which incidentally would not create delays in the court’s docket, or complicate the court’s administrative functions, due to the suspended judge’s prolonged absence. Suspension is not an authorized sanction in California, although a judge may be suspended as an interim measure in certain circumstances, such as when [charged in a criminal matter with a felony](#). It is not uncommon,

however, to condition a censure on the judge's agreement to leave office rather than seek a new term. In view of the foregoing, the Committee agreed by vote of 9 to 5 *not* to recommend that suspension be added to the disciplines CJP may impose.

Referral. Recognizing that each complaint is unique, and that no list can comprehensively cover all the circumstances that might warrant CJP to refer a matter elsewhere, the Committee recommends that CJP's authority to refer all or part of complaint and pertinent documents be broadened as follows:

If during the course of or after an investigation or hearing, the commission determines that the complaint or any allegation thereof warrants action within the powers of a court, a law enforcement or prosecuting authority, or another disciplinary body or agency of government, the commission shall refer such complaint or the appropriate allegations thereof, and any evidence or material related thereto, to such entity for such action as may be deemed proper or necessary.

This might require a constitutional amendment. In the meantime, the Committee recommends that CJP's annual reports make note of the number of referrals it made during the year, and to whom, with general descriptions that suitably omit identifying information that would otherwise be confidential according to law.

Non-Disciplinary Comment. Recognizing that there are situations in which a judge may have engaged in behavior that did not violate a disciplinary rule but that nevertheless warrants comment, the Committee recommends that CJP be

authorized to provide confidential, non-disciplinary written comment in the nature of “best-practice” recommendations, particularly where such practices might improve understanding and communications between litigants and the courts, and demystify what to many people is the forbidding image projected by the court system. This might require a constitutional amendment.

Item 19: Stipulated Dispositions

Stipulated disciplines or other dispositions serve an important purpose and facilitate the prompt resolution of disputes.

Committee Findings and Recommendation

The Committee heard from attorneys who have represented judges before CJP, some of whom asked that CJP be encouraged to enter into more agreed-upon disciplinary dispositions.

The Committee agrees that when both sides agree on the outcome, abbreviating the process with a stipulated disposition serves the public interest, expedites matters, and conserves resources. However, the Committee detected no reluctance by CJP to enter into such stipulations. Rather, in California as elsewhere, especially in cases where the judge's removal from office is *not* sought, the inability to resolve a matter by stipulation is more likely to derive from the accused judges' reluctance to admit some of the misconduct or their interest in softening the language describing the wrongdoing.

The Committee recommends that CJP continue its practice of considering stipulated dispositions wherever appropriate and possible.

Item 20: Pre-Hearing or Pre-Charge Discovery

CJP's discovery obligations should not be expanded to include investigatory material.

Committee Findings and Recommendation

The Committee heard from judicial officers and attorneys who have represented judges before CJP, some of whom asked that CJP's discovery obligation be broadened.

Generally, in disciplinary matters, "discovery" is the process whereby the prosecuting entity (in this case, CJP) – in advance of the formal disciplinary hearing – makes available to defense counsel the documents it intends to introduce into the record, the names of witnesses it will call, the statements those witnesses made during the investigation, etc. Some states, such as New York, also require defense counsel to provide discovery to the judicial conduct commission – again, in advance of the hearing.

The Committee concluded that expanding discovery to the *investigative* stage of CJP inquiries would not only be uncommon but also unwise. It would interfere with such important goals as (A) protecting complainant and witness confidentiality, and (B) safeguarding CJP inquiries from potential interference by judges and others. Since the vast majority of investigations do not result in discipline of the judge, there is no compelling reason to disrupt CJP's practice in this regard, nor has there been any showing that it has led to unfair results.

Item 21: Expanded Statistical Tracking

Should complaints be tracked for racial, gender and ethnic characteristics?

Committee Findings and Recommendation

CJP tracks the complaints it receives by various indices: judicial position, geographic location, complaint type, complainant profile (*e.g.*, litigant, attorney, public official), case type (*e.g.*, criminal, civil).

The Committee heard from some speakers who were legitimately concerned about identifying and mitigating the impact of both overt and implicit bias, and who recommended that complaints to CJP be tracked by additional criteria, such as race, gender, and ethnicity. Such information would be valuable, though collecting it comprehensively enough to draw meaningful conclusions would be challenging. How judges and complainants self-identify would not readily be apparent from a complaint, nor could such information be compelled.¹⁰

However, recognizing the value in having such data available, and aware that the Judicial Council has successfully collected such data from California's judiciary on a voluntary basis, the Committee recommends that statistical tracking for racial, gender, ethnic and other demographic data be pursued by CJP and

¹⁰ Affirmatively reaching out for demographic details from a judge against whom a complaint was made could also compromise the statutory mandate of confidentiality under which CJP operates. For example, where a complaint is frivolous and dismissed on initial review, without need for the judge to respond, the first and only time the judge would know there had been a complaint would be when CJP asked that judge for demographic information.

funded by the Legislature. The Committee has also recommended other steps aimed at identifying patterns of judicial misconduct that may be motivated by bias (see discussions of Recommendations 7 and 8).

Item 22: CJP Communications to Complainants and Judges
Are CJP's dispositional letters to complainants and judges appropriately explanatory?

Committee Findings and Recommendation

It is not uncommon for the role of judicial conduct commissions to be misunderstood. It is therefore not unusual for complainants who have already been disappointed by the outcome of a court proceeding to be disappointed again when CJP dismisses their complaint against the judge.

Nor is it uncommon for judges to feel misunderstood and unappreciated by, and sometimes fearful of, judicial oversight bodies empowered to discipline them.

There is an opportunity in every such situation for a judicial disciplinary commission to correct prevailing misconceptions.

The Committee heard examples of CJP's dispositional letters as to complaints that were dismissed, which appeared to be appropriately descriptive in explaining the basis for CJP's action. The Committee encourages CJP to continue taking advantage of the opportunity provided by such letters to underscore that all CJP commissioners see and decide all complaints, that the majority of commissioners are neither lawyers nor judges, that CJP is not a court with appellate power to reverse a judge's ruling, that a particular grievance was administrative rather than ethical in nature, etc.

Item 23: CJP Composition and Appointing Authorities

Should the basic structure of CJP be revised, such as expanding or reducing the number of members or changing the present method of appointing members?

Committee Findings and Recommendation

The basic structure of CJP, including its membership and appointing authorities, are similar to those of most other states, where leaders of the executive, legislative and judicial branches all play a role in the appointment process but none dominates, and where the commissioners represent a careful balance of judges, lawyers, and laypeople.

The Committee has heard no proposals and has not itself identified any reason to change the number of CJP members, the composition of CJP membership or the appointing authorities. Even where they raised concerns about particular aspects of CJP's operations or decisions, none of the organizations or individuals who presented views to the Committee sought to change either the makeup of CJP commissioners or the government officials who appoint them.

The Committee recommends no change to the basic structure of CJP.

**SECTION D: POST-AUDIT
ISSUES BEYOND THE AMBIT OF CJP**

Much of the public comment addressed to the Committee focused on matters related only tangentially, if at all, to CJP, especially regarding Family Court issues. These comments covered subjects including: (1) disagreement with the outcomes of individual cases; (2) complaints about the level of support available to litigants who cannot afford attorneys and lack the resources to pursue appeals; and (3) the underlying substantive law that allocates rights and burdens and vests in judges the responsibility and authority to make difficult choices that affect litigants in extremely personal ways, on matters such as custody and visitation.

Some of the suggestions offered to enhance public confidence in the courts and the disciplinary system are not within the purview of CJP or the Committee's mandate to review CJP's structure and operations. Nevertheless, because they were voiced during Committee proceedings, frequently and passionately, communicating them to the Governor, the Legislature, and the Supreme Court seems appropriate.

Item 24:

Judicial Mentors

While there is a program under which new judges are assigned a mentor – usually an experienced colleague or retired judge – the Committee recommends that the Supreme Court and Legislature study and consider mandating that such mentorships are implemented universally, not only for judges entirely new to the bench but also for judges who move from one assignment to another.

Item 25:

Electronically Capturing Court Proceedings

Most court proceedings in California, as throughout the United States, are public and open to spectators. As a practical matter, however, access is limited to those who reside or work close to a particular court and have the time and means to physically appear and observe cases. Access would be dramatically increased, and appreciation for the law, the legal system and the administration of justice would be greatly enhanced, if people had ready access to the process. Technological advances make such access more possible than ever. In the interests of justice, accountability, and transparency, the Committee recommends that the Legislature and the Supreme Court implement a pilot project in electronically capturing court proceedings. To the extent such measures would allow CJP to more effectively assess complaints about judicial conduct during proceedings (including complaints about demeanor), they would be especially valuable.

Item 26: Court Reporting Services

The Committee heard from a number of sources about backlogs created by a shortage of court reporters – a situation not unique to California. Among other things, delays in trial transcript production can impede the appellate process, and it can affect CJP’s ability to determine expeditiously whether allegations of on-the-bench misbehavior are supported by a record of the proceedings. The Committee recommends that the Legislature and the Supreme Court study the issue and commit the resources necessary to train and deploy court reporters equivalent to the need.

Item 27: Judicial Performance Evaluations

A number of public speakers at Committee meetings suggested that judges should be subject to periodic performance evaluations. Although the purposes and criteria for any evaluation scheme would have to avoid encroaching on the independence of the judiciary, intelligently crafted assessments could be a valuable tool in the continuing education and training of judicial officers. The Committee recommends that the Judicial Council of California and the Legislature study and eventually implement a protocol for judicial performance evaluations.

Item 28:

Family Court

Many people who addressed the Committee were Family Court litigants, including parents who had lost custody of children or were otherwise aggrieved in such court proceedings. Litigation in any court can give rise to emotions. In Family Court, where the stakes are always high and the interactions are intensely personal, passions run deep, disappointments are acute, and anger may be directed at the judge who made the tough decision. Judges as well as litigants are subject to the stresses that such difficult cases generate, and there is no basis to conclude that family court judges are any less dedicated to the law and justice than their colleagues on other benches.

Frustrated litigants often seek redress for their litigation disappointments from CJP, which is not designed to and cannot provide it. Even if CJP were to conclude that a particular judge was motivated by bias or some other impropriety to rule against a particular litigant, it could discipline the judge but not overturn the ruling. For that, the litigants would still have to resort to the courts.

Are there issues unique to the structure or nature of Family Court matters that might be addressed by the Legislature or the Supreme Court and, if found problematic, amenable to reform? For example, in addition to ensuring that these courts are sufficiently resourced to adjudicate the cases and issues brought before them in a timely manner, should they also perform an educational function, particularly for the benefit of the self-

represented or under-represented who may not know their options? This Committee was not structured to explore such matters, which are sufficiently complex as to require their own focused study. The Committee recommends that such a study be considered, either by the Legislature or the Judicial Council.

Acknowledgements

The Committee thanks the Judicial Council of California for generously making available its conference center and electronic communication resources, which facilitated the Committee's activities and made it possible via livestreaming for the public to follow and participate in its discussions and proceedings.

The Committee is grateful for the legal advice and guidance provided by Amy Ackerman, a Partner with the Renne Public Law Group (RPLG). The Committee also thanks Senior Analyst Luke Jensen and Legal Assistant Nicholas Moore of RPLG for their contemporaneous note-taking assistance at meetings.

The Committee especially appreciates the collegial, patient, and inexhaustible assistance of CJP's administrative staff in all aspects of this project, particularly Anne Smith, Janet Ramirez, Malissa Thomas, Amy Ladine, Gustavo Palma, and Christine Mana.

APPENDIX A

Committee Member Biographies

Maxine Anderson is a Director for the League of Women Voters of California. She first came to the San Francisco League, where she was recruited to Voter Service work, through her political activity during the 2004 election. She has served on the San Francisco League board and as chair of its Advocacy and Action Committee. She also currently serves on the state League's Criminal Justice Reform Committee. The San Francisco Human Rights Commission awarded her the HERO award for her outstanding contributions to voting rights. Maxine was born, raised and attended public schools in Chicago, then earned a BA in History at the University of Illinois in Urbana. She has worked in both the private and public sectors: first as a private industry insurance adjuster and finally as a claims adjuster in San Francisco's City Attorney's Office, until retirement. She was appointed to this Committee by the Governor.

Lucy Armendariz has served as a Judge at the Los Angeles County Superior Court since 2018. She was a Judge at the State Bar Court of California from 2007 to 2018. Judge Armendariz was Chief of Staff and Counsel in the Office of the California State Senate Majority Leader from 2002 to 2007. She was Ombudsman at the California Department of Corrections and Rehabilitation from 1999 to 2002. Judge Armendariz earned a Juris Doctor degree from the University of California College of the Law, San Francisco. She is a member of Hispanas Organized for Political Equality and an Advisory Board Member of the Latina Lawyers Bar Association. She was appointed to this Committee by the Governor.

Cheryl Boudreau is a Professor in the Department of Political Science at the University of California, Davis, having joined the faculty in 2007. She received her B.A. from Washington University in St. Louis and her Ph.D. in political science from the University of California, San Diego. Her research examines whether and when different types of political information help voters to make informed political decisions. She currently serves as an Associate Principal Investigator for Time-Sharing Experiments in the Social Sciences (TESS). Her work has appeared in such publications as the *American Journal of Political Science*, *Journal of Politics*, *Political Behavior*, and *Political Communication*. She was appointed to this Committee by the Senate Rules Committee.

Emma Bradford is the Legal Advisor to the Commissioners at the Commission on Judicial Performance (CJP). She previously served as an investigating attorney, trial counsel, and investigations supervisor for the Commission. She graduated from Trinity College, University of Dublin, and received her law degree from the University of California College of the Law, San Francisco. Prior to joining the Commission, she was in private practice at the law firm of Nolan, Armstrong & Barton. She is a representative of CJP to this Committee.

Fran Burton was a Policy Consultant at the State Senate for many years, concluding her tenure as the primary health and human services policy consultant to two Senate Presidents Pro Tempore. She participated in negotiations for welfare reform, development of the CAL WORKS Program, and creation of the Healthy Families Program. In the Executive Branch, Ms. Burton was Associate Secretary of Programs and Legislation for the Health and Human Services Agency, Deputy Director of Legislation and Public Affairs for the Department of Alcohol and Drug Programs, and Deputy Director for Legislative and Governmental Affairs for the Department of Health Services. Before retiring, she worked as an independent consultant. Ms. Burton holds a B.A. in Social Work and a Master of Social Work from the California State University at Sacramento. She has served on the Community Advisory Board of the U.C. Davis Health System and the Sacramento County Health Advisory Board. She was a member of the Citizens Academy created by the Sacramento County District Attorney in partnership with the Sacramento County Sheriff's Department, Sacramento Police Department and Sacramento County Probation Department. She also served as a Member and as Chair of the Dental Board of California, which licenses, regulates and disciplines dentists and dental assistants. She was appointed to this Committee by the Senate Rules Committee.

Marvin Deon is Chief Legislative Representative for the County of Los Angeles. He previously served as Vice President of California Policy at Common Sense Media from 2020 to 2022, Chief of Staff in the Office of California State Senator Nancy Skinner from 2016 to 2020, Senior Policy Advisor for Nextgen Climate California in 2016, Principal Consultant for the Assembly Committee on Public Safety Budget from 2011 to 2016, and as a Finance Budget Analyst for the Department of Finance from 2006 to 2011. He was appointed to this Committee by the Governor.

Gregory Dresser has served as the Director and Chief Counsel at the California Commission on Judicial Performance (CJP) since October 2017. He was previously on the executive team in the Office of the Chief Trial Counsel of the

State Bar of California, including service for more than a year as interim Chief Trial Counsel. Prior to his work for the State Bar, Mr. Dresser was a litigation and trial attorney at Morrison & Foerster LLP in San Francisco for more than 25 years. Mr. Dresser received his law degree from the University of Chicago, and his undergraduate degree from the University of Pennsylvania. He is a representative of CJP to this Committee.

Michael Flad is the Assistant City Manager for Jurupa Valley. He previously served for eight years as City Manager for South Gate, where he played an integral part in bringing about their East Los Angeles Community College campus, METRO rail line stations, Azalea retail development, homeless transitional housing, the Urban Orchard Park project, and the region's Frank Gehry-designed performing arts center. Mr. Flad served for over 23 years in various Burbank City agencies and departments – including Police, Finance, Risk Management, Community Development, and Parks/Recreation/Community Development – finishing up with four years as Burbank's City Manager. Over the years, Mr. Flad has been appointed to nearly two dozen committees and boards, including the Workforce Investment Board, the School District Partnership Advisory Committee, Traffic and Transportation Committee and various YMCA, and Boys and Girls Club advisory committees and is a past president of his local Rotary International Club. At the state level, he was recently appointed to the State of California's Strategic Growth Council. Mr. Flad is a graduate of UCLA with a degree in Political Science. He also holds a Master's Degree in Public Administration from California State University, Northridge. He was appointed to this Committee by the Speaker of the Assembly.

Michael B. Harper is Presiding Judge of the Trinity County Superior Court, on which he has served since 2014. He also provides judicial assistance, as required, to the neighboring superior courts in Humboldt and Shasta Counties. Judge Harper is Chair of the Commission on Judicial Performance (CJP), having previously served as Vice Chair. Prior to his appointment to the bench, Judge Harper served for 20 years as Trinity County District Attorney, and as deputy district attorney for the 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. He is a representative of CJP to this Committee.

Teri Jackson has served as Presiding Justice of the First District Court of Appeal, Division Five, since 2021 and served as an Associate Justice on the First District Court of Appeal, Division Three, from 2020 to 2021. She served as a Judge at the

San Francisco County Superior Court from 2002 to 2019. Justice Jackson was Counsel at Orrick, Herrington & Sutcliffe LLP from 1997 to 2002. She was an Assistant District Attorney at the San Francisco District Attorney's Office from 1984 to 1997. She earned a Juris Doctor degree from the Georgetown University Law Center. She was appointed to this Committee by the Governor.

Beth Krom is a former City Councilmember and Mayor of Irvine. She currently offers consulting and coaching services through her business, Beth Krom Creative, Inc. A graduate of the University of Texas at Austin, Ms. Krom is a former teacher of the visually impaired and currently serves as a member of the Advisory Board for the Orange County Children's Therapeutic Arts Center and as a Board member on her neighborhood Homeowners Association. She was appointed to this Committee by the Governor.

Richard Long served as an upper elementary school teacher, junior/senior high school counselor, and assistant principal in charge of discipline and security at Redlands High School. He was president of the Redlands Teachers Association during the passage of Collective Bargaining legislation in the early 1970's. Mr. Long recently retired as Professor Emeritus of Counseling at San Bernardino Valley College and also served as president of the San Bernadino Community College District Faculty Association with extensive work in negotiating and grievance. He has a BA in English Literature and MA in Educational Counseling from the University of Redlands. He maintains California State credentials in Multiple-Subject Teaching, Secondary Counseling and Secondary Administration. He was appointed to this Committee by the Speaker of the Assembly.

Morris Ratner has been Provost and Academic Dean at the University of California College of the Law, San Francisco, since 2017, where he has been a Professor since 2012. He was a Visiting Assistant Professor at Harvard Law School from 2010 to 2012 and a Visiting Lecturer at Harvard Law School in 2009. Ratner was an Attorney at Lieff, Cabraser, Heimann & Bernstein LLP from 1993 to 2006 and at Morrison & Foerster from 1991 to 1993. He is a member of the American Association of Law Professors and the California State Bar. He earned a Juris Doctor degree from Harvard Law School. He was appointed to this Committee by the Governor.

Richard Simpson is a public member of the CJP. Prior to his retirement from state government in 2016, Mr. Simpson served as a senior advisor to nine Speakers of the California State Assembly on K-12 education policy and budget issues, and was also Deputy Chief of Staff for seven of those Speakers. He was senior staff to

both the Senate and Assembly Education Committees and was Legislative Secretary in the cabinet of Governor Gray Davis. Simpson also served three terms as an elected member of the Sacramento County Board of Education and is currently a member and former Chair of the California Law Revision Commission. He is a representative of CJP to the Committee.

Robert H. Tembeckjian has been Administrator and Counsel at the New York State Commission on Judicial Conduct since 2003, where he has served in several positions since 1976, including Deputy Administrator and Clerk of the Commission. Mr. Tembeckjian graduated from Syracuse University, earned a Master of Public Administration degree from the Harvard University Kennedy School of Government and a Juris Doctor degree from Fordham University School of Law. He was appointed to this Committee by the Governor.

APPENDIX B

Committee Recommendations and Votes

Present: Anderson, Armendariz, Boudreau, Bradford, Burton, Dresser, Flad, Harper, Jackson, Krom, Long, Ratner, Simpson, Tembeckjian

Audit Report/ Item Number	Committee Recommendation	Vote
1(A)	Maintain CJP's present unicameral structure.	14-0
1(B)	Maintain the present hearing panel/special master protocols.	14-0
1(C)	Authorize CJP to impose such remedial actions as education, training, mentoring and/or monitoring, in conjunction with other discipline.	14-0
2	Increase CJP funding to at least \$8.2 million, comparable to NY.	14-0
3	Raise CJP's profile by coordinated actions, <i>e.g.</i> , creating a PIO or Ombudsperson position, proactive outreach to civic and citizen organizations, the press, etc. The legislature should fully fund, via the Judicial Council of California, Self-Help Centers in every courthouse to increase their responsibility to include directing people to the appropriate entity for the filing of complaints.	14-0
4	Maintain the heightened post-Audit attention to investigative strategies and management reviews.	14-0
5	Maintain the post-Audit creation and role of the Investigations Manager.	14-0
6	Maintain the protocol of annual review and recommendations by CJP Legal Advisor of selected investigations.	14-0
7	Continue to inquire into possible patterns of misconduct when investigating complaints about single incidents.	14-0
8	Continue the post-Audit annual review, categorizing and tracking of complaints, alert for indications of bias that may only be apparent in cumulative context.	14-0
9	Continue to consider relevant prior complaints when evaluating new complaints of similar misconduct by the same judge.	14-0

10, 11, 12, 13	Continue public outreach such as biennial public meetings to review rules and policies; create PIO/Ombudsperson position (see item 3 above); publish periodic newsletters; produce press kits, explore public service ads; maintain post-Audit website improvements and further enhance it graphically.	14-0
14	Maintain CJP’s present office in San Francisco but increase funding to promote more travel for in-person interviews, on-site visits, court observations, etc., to facilitate more comprehensive investigations. Note: A corollary proposal to create a second CJP office in southern California was supported only by Ms. Burton and Mr. Tembeckjian.	14-0
15	Continue regular reports and interactions with the Legislature.	14-0
16	There should be a uniform Statute of Limitations (SOL) of 15 years for all judges as to judicial misconduct; the SOL should be tolled when the Commission authorizes investigation of a particular complaint; and there should be no SOL for conduct that would presently constitute a felony or for any conduct involving moral turpitude.	14-0
17	The standard of proof required to find misconduct and discipline a judge should remain <i>clear and convincing</i> and should not be changed to <i>preponderance of the evidence</i> .	9-5 ¹
18	The present range of disciplinary actions should be maintained. CJP’s authority to refer matters to other agencies should be broad, and CJP should include referral numbers in annual reports. CJP should be authorized to provide confidential, non-disciplinary written comment in the nature of “best-practice” recommendations aimed at averting future misconduct. Legislature should <i>not</i> add suspension as a discipline CJP may impose.	14-0 9-5 ²
19	CJP should continue its practice of considering stipulated dispositions wherever appropriate and possible.	14-0

¹ Committee members Anderson, Flad, Krom, Ratner and Tembeckjian dissented in favor of changing the standard of proof to *preponderance of the evidence*.

² Committee members Anderson, Boudreau, Flad, Krom and Tembeckjian dissented in favor of adding suspension as a sanction.

20	Discovery obligations should remain limited to situations in which a judge has been formally charged by CJP with misconduct; it should not be expanded to the investigative stage.	14-0
21	Statistical tracking for racial, gender, ethnic and other demographic data should be pursued by CJP and funded by the Legislature.	14-0
22	CJP should continue to be as explanatory and descriptive as possible in communicating its disposition of complaints to complainants and judges.	14-0
23	The composition of appointing authorities to CJP should not be changed.	14-0
24	Mandating judicial mentorships should be considered.	14-0
25	The Supreme Court and the Legislature should implement a pilot project in electronically capturing court proceedings.	14-0
26	Court reporting services should be enhanced.	14-0
27	Establishing a protocol for judicial performance evaluations should be studied and eventually implemented by the Judicial Council of California and the Legislature.	14-0
28	A study of issues unique to Family Court should be considered.	14-0

APPENDIX C

Useful Links

- [Webpage of the Committee to Review the Operations and Structure of the California Commission on Judicial Performance \(Committee\)](#)
 - Includes Committee meeting agendas, documents, electronic recordings of Committee meetings, and submissions by individuals and organizations.
- [The Committee's Statutory Authorization](#)
- [California Commission on Judicial Performance \(CJP\)](#)
 - [CJP Rules](#)
 - [CJP Annual Reports](#)
 - [California Constitution: Provisions Pertaining to CJP](#)
- [California Constitution](#)
- [California Code of Judicial Ethics](#)
- [California State Auditor's 2019 Report on CJP](#)
- [California State Auditor's Update on CJP](#)
- [National Center for State Courts \(NCSC\)](#)
 - [NCSC Center for Judicial Ethics](#)
- [American Bar Association, Model Rules for Judicial Disciplinary Enforcement](#)
- [Bagley-Keene Open Meetings Act](#)
- [Judicial Council of California](#)
- [California State Senate](#)
- [California State Assembly](#)
- [California Governor](#)
- [California Attorney General](#)
- [California Judges Association](#)
- [Center for Judicial Excellence](#)