
**STATE OF CALIFORNIA
COMMISSION ON JUDICIAL PERFORMANCE**



2023 ANNUAL REPORT

**455 Golden Gate Avenue, Suite 14400
San Francisco, California 94102
(415) 557-1200
<https://cjp.ca.gov>**

INTRODUCTION

It is a privilege and an honor to serve as the chair of the California Commission on Judicial Performance (CJP) and present the 2023 Annual Report to you. The CJP is uniquely positioned in our state’s legal landscape, tasked with a mandate “to protect the public, enforce rigorous standards of judicial conduct and maintain public confidence in the integrity and independence of the judicial system.”

California made history in 1960 by becoming the first state in the United States to establish (by voter mandate) a judicial watchdog agency. Since then, all 50 states and the District of Columbia have established similar entities. Several countries internationally have also implemented similar bodies to address judicial misconduct.

The commission initially comprised nine members: five judges, two lawyers, and two public members. However, in 1994, Proposition 190 introduced more than a dozen significant modifications. Notably, voters adjusted the commission’s composition, reducing the number of judges from five to three, increasing the public members from two to six, and maintaining the two lawyer positions.

The commission’s jurisdiction includes all current and former California judges for any misconduct during their time on the bench. Additionally, it shares jurisdiction with local courts concerning commissioners and referees.

The commission handled approximately 1,500 complaints last year. The CJP intake staff reviews, clarifies, and creates memorandums for each complaint, and commission members vote to investigate or close complaints. Investigations can involve contacting witnesses, reviewing records, and legal research. The CJP staff prepares thorough memorandums, and commission members discuss evidence and potential misconduct. If needed, the staff conducts follow-up investigations. If the commission determines that discipline is warranted, it sends a tentative discipline letter to the judge. If contested, the commission conducts an appearance, where the judge can present argument on the tentative discipline, or the commission authorizes a formal trial before special masters.

We take pride in the ongoing success of our mentoring program, particularly its statewide expansion. This extension enables Northern and Southern California judges to benefit from commission mentoring services for as many as two years. Mentors provide individual support to judges facing issues that may have led to misconduct allegations, aiming to prevent future misconduct.

Within the pages of this annual report, you will find information on various aspects of our commission's work, including the complaint process, our legal authority, and commission procedures. The report also provides case studies and the statistics of active and former judge cases in 2023.

In closing, I thank Director-Chief Counsel Gregory Dresser, Legal Advisor Emma Bradford, and the attorneys and administrative personnel who serve on our staff for their hard work and tireless efforts during the year. I also thank the commission members I serve alongside for the time and care they take in reviewing each case that comes before us.

For those interested in learning more about the CJP and its role in safeguarding the integrity of our judicial system, I encourage you to visit our website: <https://cjp.ca.gov>.

Thank you for your continued interest and support.



Dr. Michael A. Moodian
Chairperson

**COMMISSION ON JUDICIAL PERFORMANCE
2023 ANNUAL REPORT**

TABLE OF CONTENTS

	Page
COMMISSION MEMBERS	i
SPECIAL MASTERS	viii
I. OVERVIEW OF THE COMPLAINT PROCESS	1
The Authority of the Commission on Judicial Performance	1
How Matters Are Brought Before the Commission	1
Judicial Misconduct.....	1
What the Commission Cannot Do	2
Review and Investigation of Complaints	2
Action the Commission Can Take	2
Confidential Dispositions	2
Public Dispositions.....	3
Review.....	4
Confidentiality	4
II. LEGAL AUTHORITY AND COMMISSION PROCEDURES	5
Legal Authority.....	5
Recent Changes in the Law.....	5
California Constitution, Government Code, and Code of Civil Procedure	5
Commission Rules and Policy Declarations	5
Rules of Court.....	6
Code of Judicial Ethics	6
Commission Procedures	6
Commission Review of Complaints	7
Investigation at the Commission’s Direction.....	7
Disposition of Cases Without Formal Proceedings.....	7
Deferral of Investigation.....	8
Monitoring	8

Mentoring	9
Formal Proceedings.....	9
Hearing	10
Commission Consideration Following Hearing	10
Disposition of Cases After Hearing	10
Release of Votes.....	11
Supreme Court Review.....	11
Statute of Limitations	11
Standard of Proof.....	11
Confidentiality of Commission Proceedings	11
III. ACTIVE AND FORMER JUDGES 2023 STATISTICS	13
Complaints Received and Investigated	13
New Complaints.....	13
Preliminary Investigations	14
Formal Proceedings.....	14
Deferral of Investigation.....	15
Complaint Dispositions	16
Closed Without Discipline	16
Closed With Discipline	17
Resignations and Retirements.....	17
10-Year Summary of Commission Activity	17
2023 Complaint Dispositions	18
Type of Conduct Resulting in Discipline in 2023	19
Chart on 2023 10-Year Summary of Commission Activity	20
IV. ACTIVE AND FORMER JUDGES CASE SUMMARIES	21
Public Discipline	21
Public Censures by the Commission	21
Public Admonishments by the Commission.....	29
Private Discipline	39
Private Admonishments	40
Advisory Letters	41

V. SUBORDINATE JUDICIAL OFFICERS	46
Commission Procedures.....	46
2023 Statistics.....	47
Complaints Received and Investigated.....	47
Cases Concluded.....	48
Summaries of Disciplinary Action.....	49
Public Discipline.....	49
Private Discipline	55
VI. JUDICIAL DISABILITY RETIREMENT	56
Voluntary Disability Retirement.....	56
Involuntary Disability Retirement.....	57
2023 Statistics.....	57
VII. COMMISSION ORGANIZATION, STAFF, AND BUDGET	58
Commission Organization and Staff.....	58
2023-2024 Budget	59
2022-2023 Budget	59
APPENDIX	61
1. GOVERNING PROVISIONS	62
2. CALIFORNIA CODE OF JUDICIAL ETHICS	63
3. COMPLAINT FORM	122
4. TABLE OF COMMISSION PROCEEDINGS	123

COMMISSION MEMBERS

Pursuant to California Constitution, article VI, section 8, the commission is composed of 11 members: six lay citizens, two appointed by the Governor, two appointed by the Senate Committee on Rules, and two appointed by the Speaker of the Assembly; one justice of a Court of Appeal and two judges of superior courts appointed by the Supreme Court; and two attorneys appointed by the Governor. Members are appointed to four-year terms. A member whose term has expired may continue to serve until the vacancy has been filled by the appointing authority; however, no member may serve for more than a total of 10 years. The commission meets approximately seven times a year. The members do not receive a salary, but are reimbursed for expenses relating to commission business. The members of the commission elect a chairperson and vice-chairperson annually.



DR. MICHAEL A. MOODIAN, CHAIRPERSON, was appointed to the commission as a public member by the Governor July 16, 2015, and reappointed February 21, 2017, and April 29, 2021; his term ends February 28, 2025. Dr. Moodian was elected chairperson of the commission in 2023 and served as vice-chairperson of the commission from 2020 to 2023. He resides in Orange County. Dr. Moodian is a faculty member of Chapman University's Attallah College of Educational Studies, and a cofounder of the Orange County Sustainability Decathlon, which took place in October 2023. He edited a textbook in 2009 that examines the application of cultural comprehension to organizations and the measurement of intercultural competence. The book is cited by the Association of American Colleges & Universities in establishing national learning standards. Dr. Moodian has presented his research at various national and international conferences and has served as an expert commentator on several television and radio programs. The Orange County Register named him to its Most Influential People in Orange County list three consecutive years (2021-2023). Dr. Moodian earned a Doctor of Education degree in Organizational Leadership from Pepperdine University, and a Master of Arts degree in Communications and Bachelor of Arts degree in Communications and Sociology from California State University, Fullerton.

COMMISSION MEMBERS



HON. LISA B. LENCH, VICE-CHAIRPERSON, was appointed to the commission as a superior court judicial member by the Supreme Court May 1, 2019, and reappointed to a term commencing March 1, 2023; her term ends February 28, 2027. Judge Lench was elected vice-chairperson of the commission in 2023. She serves as a judge on the Los Angeles County Superior Court, to which she was appointed in November 2001 and sworn in the following January. Judge Lench is currently assigned to a complex criminal trial court. She has had a variety

of assignments on the bench, including a criminal master calendar court, felony trial court, and misdemeanor calendar and trial courts. Judge Lench serves on the Supreme Court Advisory Committee on the Code of Judicial Ethics. She was previously chair and vice-chair and was a member of the California Judges Association's Judicial Ethics Committee, was a member of the Center for Judicial Education and Research Ethics Advisory/Curriculum Committee, and is an ethics instructor for the Center for Judicial Education and Research. Prior to her appointment to the bench, Judge Lench was a deputy chief for the U.S. Attorney's Office for the Central District of California in the Narcotics Section. She graduated from Loyola Marymount University, Loyola Law School, and received a Bachelor of Science degree in Social Ecology from the University of California, Irvine.



HON. WILLIAM S. DATO was appointed to the commission as the Court of Appeal judicial member by the Supreme Court April 1, 2018, and reappointed to a term commencing March 1, 2021; his current term ends February 28, 2025. Justice Dato has been an associate justice of Division One of the Court of Appeal, Fourth Appellate District since 2017. Previously, he was a judge of the San Diego County Superior Court for 13 years, serving as a branch supervising judge, presiding judge of the court's appellate division,

and in a variety of substantive assignments including civil, criminal, family law, and both adult and juvenile drug court. Prior to his appointment to the bench, Justice Dato was a certified appellate law specialist in private practice and worked as an appellate court staff attorney with the California Supreme Court and California Court of Appeal. He has also been an adjunct professor at both the University of San Diego School of Law and California Western School of Law, teaching appellate practice and products liability. Justice Dato received his law degree from University of California, Los Angeles in 1980 and his Bachelor of Arts degree in Political Science and Economics from San Diego State University in 1977.

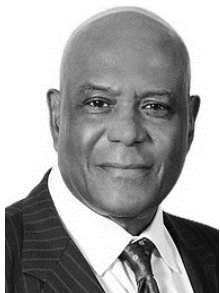
COMMISSION MEMBERS



HON. EDUARDO "EDDIE" DE LA RIVA was appointed to the commission as a public member by the Speaker of the Assembly January 1, 2018, and reappointed to a term commencing March 1, 2021; his current term ends February 28, 2025. He resides in Los Angeles County. The Honorable De La Riva is currently Mayor of the City of Maywood. He previously served as council member of the Maywood City Council from 2014 to 2018. The Honorable De La Riva received his Bachelor of Arts degree in Chicano Studies from the University of California, Los Angeles, with a minor in Public Policy and a specialization in Urban Planning.



HON. MICHAEL B. HARPER was appointed to the commission as a superior court judicial member by the Supreme Court to a term commencing March 1, 2017, and reappointed to a term commencing March 1, 2021; his term ends February 28, 2025. He served as chairperson of the commission from 2020 to 2023, and served as vice-chairperson of the commission from 2018 to 2020. Judge Harper has served on the Trinity County Superior Court since his appointment in 2014, and he was retained by voters in a 2016 election. Since 2018, he has served as presiding judge of the Trinity County Superior Court. Judge Harper's court assignments have included civil, small claims, dependency, and criminal cases. He has served as the court's assistant presiding judge and presiding judge of the Juvenile Court, and administers the Peer Court. Judge Harper also provides judicial assistance, as required, to the neighboring superior courts in Humboldt and Shasta Counties. Prior to his appointment to the bench, Judge Harper served for 20 years conducting investigations and prosecutions as Trinity County District Attorney, and as deputy district attorney for Trinity, Sacramento, and Placer County District Attorneys' Offices. He graduated from the University of the Pacific, McGeorge School of Law, and received a Bachelor of Arts degree in Political Science from the University of California, Berkeley.



RICKEY IVIE, ESQ., was appointed to the commission as a lawyer member by the Governor May 27, 2021, and reappointed to a term commencing March 1, 2023; his term ends February 28, 2027. He resides in Los Angeles County. Mr. Ivie is a Founding Partner of Ivie McNeill Wyatt Purcell & Diggs, a practicing Litigation Attorney, and a Community Leader passionate about diversity and serving others. IMW is a multi-cultural law firm. Since joining IMW in 1980, Mr. Ivie has remained dedicated to building and leading a diverse legal team that excels in providing

COMMISSION MEMBERS

legal services to the diverse global community. Under his leadership, IMW has grown into a secure and inspiring workplace for all employees. Mr. Ivie provides legal service to individuals, government entities, and well-known businesses including restaurants, entertainment companies, insurance companies, and commercial construction businesses. He handles a range of legal cases related to personal injury, wrongful death, civil rights violations, contract disputes, trademark, copyright, corporate and commercial litigation. Over four decades, Mr. Ivie has tried numerous jury and court trials, including precedent-setting cases that have changed the practice of law and improved the lives of millions of people. Mr. Ivie received his law and undergraduate degrees from the University of California, Los Angeles. He served as Chairman of the Board of the UCLA Black Alumni Association for over 10 years, working to maintain diversity at the university and raise funds for scholarships for African American students. Mr. Ivie is a member of the State Bar of California and is admitted to the United States Court of Appeals, Ninth Circuit, and the United States Supreme Court. He has spoken at State Bar of California events on topics such as ethics, effective fee agreements, interacting with judges and opening a law office.



MS. SARAH KRUER JAGER was appointed to the commission as a public member by the Speaker of the Assembly March 1, 2016; her term ended February 28, 2019. She was reappointed to the commission as a public member by the Senate Rules Committee, effective March 1, 2019; her term ended February 28, 2023, but she continued to serve pending appointment of a successor. She resides in San Diego County. Ms. Kruer Jager is a partner of Monarch Group, a private real estate investment and development firm based in San Diego and focused on the entitlement, development, and acquisition of institutional quality apartment communities in the Western U.S. She joined Monarch in 2005. Ms. Kruer Jager works closely with Monarch's founding partners to set the firm's strategic direction and oversees day-to-day business activities for all of Monarch's wholly owned and joint venture investments. In this capacity, she leads the acquisition, predevelopment, disposition, and asset management functions and manages relationships with Monarch's capital partners. During her tenure at Monarch, Ms. Kruer Jager has acquired, developed, and sold over \$1 billion in real estate investments throughout the Western U.S. Prior to Monarch, she worked at UBS Investment Bank in Chicago in the Mergers & Acquisitions and Diversified Industrials Groups. Ms. Kruer Jager is passionate about her community, as well as leveling the playing field for young women in sports and business. She is currently involved in the following civic and industry organizations in addition to the commission. Ms. Kruer Jager is a member of the Urban Land Institute and its Bronze Multifamily Council. She is a member of Up for Growth and its California Steering Committee. She is

COMMISSION MEMBERS

also a member of the Burnham-Moores Center for Real Estate policy advisory board at the University of San Diego, a community advisory board member of CalPrivate Bank, and a founding advisory board member of Run Women Run. Ms. Kruer Jager graduated from the University of Michigan Stephen M. Ross School of Business with a Bachelor of Business Administration degree with High Distinction and received her MBA from The Wharton School of the University of Pennsylvania with a major in Finance. She was awarded a four-year full tuition athletic scholarship as a member of the University of Michigan Division I Varsity Women's Golf Team. Ms. Kruer Jager's academic and athletic honors include being named by the National Golf Coaches Association to the Division I All-American Scholar Golf Team and receiving Academic All-Big Ten Conference Honors.



MS. KAY COOPERMAN JUE was appointed to the commission as a public member by the Speaker of the Assembly March 7, 2019, and reappointed to a term commencing March 1, 2023; her term ends February 28, 2027. She resides in Los Angeles County. Ms. Jue was a securities law paralegal with a Los Angeles law firm before retiring in 2019. She has been interested in the law since her college days. After graduation, she worked as a newswire and newspaper reporter

specializing in covering courts and legal affairs, including reporting on dozens of court hearings and trials and conducting interviews of judges and attorneys. In 1983, the Orange County Bar Association honored her with its Media Award for Excellence in Legal Reporting. She switched to television news, where she worked as a news writer, field producer, associate producer, and producer. She won an Emmy Award in 1993 for best 60-minute newscast in the Los Angeles market. After 20 years in news, Ms. Jue switched to public relations, working first at UCLA and later as a sole practitioner managing media relations for a law firm and a law school among other clients. She became a paralegal in 2011. In November 2020, Ms. Jue concluded two terms on the Palos Verdes Library District Board of Library Trustees after declining to seek re-election. Ms. Jue earned her Bachelor of Arts degree in journalism and political science from California State University, Long Beach. She earned her paralegal certificate, graduating with distinction, from UCLA Extension's Paralegal Training Program.

COMMISSION MEMBERS



MANI SHEIK, ESQ., was appointed to the commission as a lawyer member by the Governor May 26, 2023; his term ends February 28, 2025. He resides in Marin County. Mr. Sheik has been the Principal at Sheik Law, Inc., since 2014. He was an associate at several firms between 2006 and 2014, including Miller Law Group, Curiale Hirschfeld Kraemer LLP, Coblentz Patch Duffy & Bass LLP, and Reed Smith LLP. Mr. Sheik earned a Juris Doctor degree from the University of California, Berkeley School of Law; a Master of Public Health in International Health from Johns Hopkins School of Public Health; and a Bachelor of Science degree in Biological Sciences from the University of California, Irvine.



MR. RICHARD SIMPSON was appointed to the commission as a public member by the Senate Rules Committee September 7, 2018; his term ended February 28, 2021, but he continues to serve pending appointment of a successor. Mr. Simpson previously served on the commission as a public member appointed by the Speaker of the Assembly from June 17, 2013 until December 31, 2017. Mr. Simpson served as vice-chairperson of the commission in 2017. He resides in Sacramento County. Mr. Simpson is a retired Deputy Chief of Staff for the Speaker of the California State Assembly. He served as a senior advisor for nine Assembly Speakers. He served for two years as Chief of Staff for the Senate Education Committee and for more than six years as Chief Consultant for the Assembly Education Committee. In 1999, Mr. Simpson served for six months as the first Legislative Secretary for California Governor Gray Davis. He has either written or played a key role in developing most of California's major education reforms of the past three decades, including the Class Size Reduction program, the laws creating California's system of academic standards and assessment, California's school facilities financing laws, and a recent law creating a new structure for school accountability. Mr. Simpson also drafted the budget reform measures contained in Propositions 1A and 1B for the 2009 special election and the education sections of Governor Edmund G. Brown, Jr.'s Proposition 30 in 2012. Mr. Simpson was the Assembly's lead negotiator on the annual budget for public education. He served for 12 years as an elected trustee of the Sacramento County Board of Education and was elected president of that board three times. In October of 2019, Governor Gavin Newsom appointed Mr. Simpson to the California Law Revision Commission. He received his Bachelor of Arts degree in Economics from the University of California, Santa Cruz and earned a Master's degree in Public Policy from the Graduate School of Public Policy at the University of California, Berkeley.

COMMISSION MEMBERS



Ms. BEATRIZ E. TAPIA was appointed to the commission as a public member by the Governor April 29, 2021, and reappointed to a term commencing March 1, 2023; her term ends February 28, 2027. She resides in Los Angeles County. Ms. Tapia has been Chair of the Department of Chicana/o Studies at East Los Angeles College since 2019 and a Professor in the Department since 2007. She was Adjunct Faculty for the Women’s Studies Program at Santiago Canyon College in 2007. Ms. Tapia held several positions at California State University, Fullerton from 2005 to 2007, including Adjunct Professor for the Women and Gender Studies Department, Chicana and Chicano Studies Department, and Sociology Department. She was a Lecturer for the Chicana/o Studies Department at California State University, Los Angeles from 2001 to 2003. Ms. Tapia earned a Master of Arts degree in Ethnic Studies and a Bachelor of Arts degree in Sociology from the University of California, Berkeley. She is a member of the National Association of Chicana and Chicano Studies.

SPECIAL MASTERS

Pursuant to commission rule 121(b), as an alternative to hearing a case itself, the commission may request the appointment of special masters – usually three – by the Supreme Court to preside over a hearing and take evidence in a formal proceeding. As further discussed on page 10 of this report, at the conclusion of the hearing and after briefing by the parties, the special masters prepare a report of findings of fact and conclusions of law for the commission. The commission also may appoint a special master to assist in a disability retirement matter.

The commission wishes to recognize the following judges for their service as special masters in commission matters in 2023:

Honorable Janet M. Frangie

Superior Court of California, County of San Bernardino

Honorable Barbara A. Kronlund

Superior Court of California, County of San Joaquin

Honorable Therese M. Stewart

Court of Appeal, First Appellate District, Division Two

I.

OVERVIEW OF THE COMPLAINT PROCESS

THE AUTHORITY OF THE COMMISSION ON JUDICIAL PERFORMANCE

The Commission on Judicial Performance is the independent state agency responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges (pursuant to article VI, section 18 of the California Constitution). Its jurisdiction includes all active California judges. The commission also has authority to impose certain discipline on former judges, and the commission has shared authority with local courts over court commissioners and referees. In addition, the Director-Chief Counsel of the commission is designated as the Supreme Court's investigator for complaints involving State Bar Court judges. The commission does not have authority over temporary judges (also called judges pro tem) or private judges. In addition to its disciplinary functions, the commission is responsible for handling judges' applications for disability retirement.

This section describes the commission's handling and disposition of complaints involving judges. The rules and procedures for complaints involving commissioners and referees, and statistics concerning those matters for 2023, are discussed in Section V, Subordinate Judicial Officers.

HOW MATTERS ARE BROUGHT BEFORE THE COMMISSION

Anyone may make a complaint to the commission. Complaints must be in writing (see complaint form in Appendix 3). The commission also considers complaints made anonymously and matters it learns of in other ways, such as from news articles or from information received in the course of a commission investigation.

JUDICIAL MISCONDUCT

The commission's authority is limited to investigating alleged judicial misconduct and, if warranted, imposing discipline. Judicial misconduct usually involves conduct in conflict with the standards set forth in the Code of Judicial Ethics (see Appendix 2). Examples of judicial misconduct include intemperate courtroom conduct (such as yelling, rudeness, or profanity), improper communication with only one of the parties in a case, failure to disqualify in cases in which the judge has or appears to have a financial or personal interest in the outcome, delay in performing judicial duties, and public comment about a pending case. Judicial misconduct also may involve improper off-the-bench

I. OVERVIEW OF THE COMPLAINT PROCESS

conduct such as substance abuse, using court resources for personal business, or misuse of the judicial title.

WHAT THE COMMISSION CANNOT DO

The commission is not an appellate court. The commission cannot change a decision made by any judicial officer. When a court makes an incorrect decision or misapplies the law, the ruling can be changed only through appeal to the appropriate reviewing court.

The commission cannot provide legal assistance or advice to individuals or intervene in litigation on behalf of a party.

REVIEW AND INVESTIGATION OF COMPLAINTS

At commission meetings, which occur approximately every seven weeks, the commission decides upon the action to take with respect to each new complaint.

Many of the complaints considered by the commission do not involve judicial misconduct. These cases are closed by the commission after initial review.

When a complaint states facts which, if true and not otherwise explained, would be misconduct, the commission orders an investigation into the matter. Investigations may include interviewing witnesses, reviewing court records and other documents, and observing the judge while court is in session. Unless evidence is uncovered which establishes that the complaint lacks merit, the judge is asked to comment on the allegations.

ACTION THE COMMISSION CAN TAKE

Confidential Dispositions

After an investigation, the commission has several options. If the allegations are found to be untrue or unprovable, the commission will close the case without action against the judge and so notify the complainant. If, after an investigation and an opportunity for comment by the judge, the commission determines that improper conduct occurred, but the misconduct was relatively minor, the commission may issue an advisory letter to the judge. In an advisory letter, the commission advises caution or expresses disapproval of the judge's conduct.

When more serious misconduct is found, the commission may issue a private admonishment. A private admonishment consists of a notice sent to the judge containing a description of the improper conduct and the conclusions reached by the commission.

Advisory letters and private admonishments are confidential. The commission and its staff ordinarily cannot advise anyone, even the person who lodged the complaint, of the nature of the discipline that has been imposed. The

I.
OVERVIEW OF THE COMPLAINT PROCESS

commission's rules provide, however, that upon completion of an investigation or proceeding, the person who lodged the complaint will be advised either that the commission has closed the matter or that appropriate corrective action has been taken. The California Constitution also provides that, upon request of the governor of any state, the President of the United States, or the Commission on Judicial Appointments, the commission will provide the requesting authority with the text of any private admonishment or advisory letter issued to a judge who is under consideration for a judicial appointment.

Each advisory letter and private admonishment that became final in 2023 is summarized, without identifying the judge involved, in Section IV. Summaries of private discipline from prior years are available on the commission's website at <https://cjp.ca.gov>.

Public Dispositions

In cases involving more serious misconduct, the commission may issue a public admonishment or a public censure. This can occur after a hearing or without a hearing if the judge consents. The nature and impact of the misconduct generally determine the level of discipline. Both public admonishments and public censures consist of notices that describe a judge's improper conduct and state the findings made by the commission. Each notice is sent to the judge and made available to the complainant, the press, and the general public. In cases in which the conduct of a former judge warrants public censure, the commission may also bar the judge from receiving assignments from any California state court.

In the most serious cases, the commission may determine—following a hearing—to remove a judge from office. Typically, these cases involve persistent and pervasive misconduct. In cases in which a judge is no longer capable of performing judicial duties, the commission may determine—again, following a hearing—to involuntarily retire the judge from office.

ACTION THE COMMISSION CAN TAKE
Close (Dismissal)
Advisory Letter
Private Admonishment
Public Admonishment
Public Censure
Removal or Involuntary Retirement

I. OVERVIEW OF THE COMPLAINT PROCESS

REVIEW

A judge may petition the Supreme Court for review of an admonishment, censure, removal, or involuntary retirement determination. A judge may petition the Supreme Court for a writ of mandate to challenge an advisory letter.

CONFIDENTIALITY

Under the California Constitution and the commission's rules, complaints to the commission and commission investigations are confidential. The commission ordinarily cannot confirm nor deny that a complaint has been received or that an investigation is under way. Persons contacted by the commission during an investigation are advised regarding the confidentiality requirements.

After the commission orders formal proceedings, the charges and all subsequently filed documents are made available for public inspection. Any hearing on the charges is also public.

II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

LEGAL AUTHORITY

Recent Changes in the Law

In 2023, there were no substantive changes to the California Constitution, Code of Civil Procedure, or Government Code, relating to the work of the commission. There were also no changes to the California Code of Judicial Ethics, nor the commission's rules and policy declarations in 2023. In 2023, various substantive and nonsubstantive changes were made to the Rules of Court, relating to the commission's work. The amendments are summarized below.

A list of all of the provisions governing the commission's work is contained in Appendix 1 and the governing provisions are available on the commission's website at <https://cjp.ca.gov>.

California Constitution, Government Code, and Code of Civil Procedure

The Commission on Judicial Performance was established by legislative constitutional amendment approved by the voters in 1960. The commission's authority is set forth in article VI, sections 8, 18, 18.1, and 18.5 of the California Constitution. In 1966, 1976, 1988, 1994, 1998, and, most recently, in 2002, the Constitution was amended to change various aspects of the commission's work.

The commission is subject to Government Code sections 68701 through 68756. Additionally, the Government Code controls the commission's handling of disability retirement applications, pursuant to sections 75060 through 75064 and sections 75560 through 75564.

The commission is responsible for enforcement of restrictions on the receipt of gifts and honoraria by judges and subordinate judicial officers, as set forth in Code of Civil Procedure section 170.9. On February 23, 2023, the commission adopted \$530 as the adjusted gift limit, for purposes of Code of Civil Procedure section 170.9.

Commission Rules and Policy Declarations

Article VI, section 18(i) of the Constitution authorizes the commission to make rules for conducting investigations and formal proceedings.

The Rules of the Commission on Judicial Performance, rules 101 through 138, were adopted by the commission on October 24, 1996, and took effect December 1, 1996. The commission has periodically amended the rules thereafter.

II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

Policy Declaration 3.5 of the Commission on Judicial Performance provides that every two years, in even-numbered years, the commission shall review its rules and any proposed enactments, amendments, or repeals. The commission's next biennial rules review is in 2024.

The Policy Declarations of the Commission on Judicial Performance detail internal procedures and existing policy. The commission substantially revised the policy declarations in 1997, and has amended them periodically thereafter. The commission made no changes to its policy declarations in 2023.

Rules of Court

The Rules of Court that pertain to commission proceedings concern the review by the Supreme Court of a commission discipline determination, proceedings involving a justice of the Supreme Court, and the responsibilities of the presiding judge concerning the oversight of judges and subordinate judicial officers.

Effective September 1, 2023, the Judicial Council adopted rule 10.1014 of the California Rules of Court, promoting the efficient, effective, and proper administration of the Courts of Appeal by increasing the accountability of administrative presiding justices and presiding justices. The rule allows anyone to submit a contention that an administrative presiding justice or a presiding justice has not properly addressed nor managed an important matter related to the administration of a Court of Appeal or a division of a Court of Appeal. According to the new rule and advisory committee comment, the confidential contention procedure does not preclude presiding justices from providing a notice or referral to the commission or forwarding to the commission any requested information.

Code of Judicial Ethics

The California Constitution requires the Supreme Court to make rules “for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns,” to be referred to as the “Code of Judicial Ethics” (California Constitution, article VI, section 18(m)). All members of the judiciary must comply with the code. As stated in the preamble to the code, “Compliance is required to preserve the integrity of the bench and to ensure the confidence of the public.” The Supreme Court adopted the Code of Judicial Ethics effective January 1996. There were no changes to the code in 2023.

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

COMMISSION PROCEDURES

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

II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

Commission Review of Complaints

The commission considers the allegations of each complaint about a California judge and determines whether sufficient facts exist to warrant investigation or whether the complaint is unfounded and should not be pursued. (Commission Rule 109.) Until the commission has authorized an investigation, the commission's staff does not contact the judge or any court personnel. To assist the commission in its initial review of the complaint, however, the commission's legal staff will research any legal issues and may obtain additional relevant information from the complainant or the complainant's attorney.

Investigation at the Commission's Direction

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

Commission investigations may include contacting witnesses, reviewing court records and other documents, observing courtroom proceedings, and conducting such other investigation as the issues may warrant. If the investigation reveals facts that warrant dismissal of the complaint, the complaint may be closed without the judge being contacted. Otherwise, the judge is asked in a letter to comment on the allegations.

A judge has 20 days from the date of mailing to respond to an investigation letter. (Commission Rule 111.) Extensions of time to respond to investigation letters are governed by the rules. (Commission Rule 108.)

Disposition of Cases Without Formal Proceedings

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

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

II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

envelopes containing such notices “personal and confidential” and does not use the inscription “Commission on Judicial Performance” on the envelopes. (Commission Rule 107(a).)

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

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

Deferral of Investigation

The commission may defer an investigation of a pending matter under certain circumstances. Deferral may be warranted under policy declaration 1.8, when the case from which the complaint arose is still pending before the judge, when an appeal or ancillary proceeding is pending in which factual issues or claims relevant to the complaint are to be resolved, or when criminal or other proceedings involving the judge are pending. While deferral of an investigation may result in delay in commission proceedings, deferral is often appropriate to ensure that complaints before the commission do not affect court proceedings. Deferral while a reviewing court or other tribunal completes its adjudication reduces the potential for duplicative proceedings and inconsistent adjudications. At each meeting, the commission receives a report regarding the status of each deferred matter. The number of cases deferred in 2023 and the reasons for the deferrals are listed in charts on page 15.

Monitoring

In the course of a preliminary investigation, the commission may monitor a judge’s conduct, pursuant to commission rule 112, deferring termination of the investigation for up to two years. Monitoring may include periodic courtroom

II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

observation, review of relevant documents, and interviews with persons who have appeared before the judge. The judge is notified that a period of monitoring has been ordered and is advised in writing of the type of behavior for which the judge is being monitored. Monitoring may be used when the preliminary investigation reveals a persistent but correctable problem, such as demeanor that could be improved.

Mentoring

In 2016, the commission instituted a mentor program in Northern California for judges where an investigation has identified a problem with the judge's treatment of others appearing before the judge. In 2020, mentors completed training for the Southern California mentor program. Eligible judges are able to participate in a confidential mentoring process for up to two years. Mentor judges were trained from a curriculum designed by judges, ethicists, and a counselor. A judge's success or lack of success in the program will be taken into consideration in determining the appropriate disposition of an investigation, which shall be suspended for the period of mentoring. Should demeanor problems reoccur, the judge's prior participation in a mentoring program can be considered by the commission as an aggravating factor. (Commission Rule 102(q).)

Formal Proceedings

After a preliminary investigation, in cases involving allegations of serious misconduct, the commission may initiate formal proceedings. (Commission Rule 118.) Formal proceedings also may be instituted when a judge rejects a private or public admonishment and files a demand for formal proceedings. (Commission Rule 114.) When formal proceedings are commenced, the commission issues a notice of formal proceedings, which constitutes a formal statement of the charges. The judge's answer to the notice of charges is served and filed with the commission within 20 days after service of the notice. (Commission Rules 118(a), (b), 119(b), 119.5.) Extensions of time to respond to a notice of charges are governed by the rules. (Commission Rules 108, 119.)

The rules provide for discovery between the parties after formal proceedings are initiated. A judge receives discovery from the commission when the notice of formal proceedings is served. (Commission Rule 122.)

The commission may temporarily disqualify a judge from performing judicial duties once formal proceedings are instituted if the commission determines that there is substantial evidence that the judge's continued service poses a threat of serious harm to the public or to the administration of justice. (Commission Rule 120.)

II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

HEARING

After the judge has filed an answer to the charges, or the time for filing has expired, the commission sets the matter for a hearing. (Commission Rule 121(a).) As an alternative to hearing the case itself, the commission may request the Supreme Court to appoint three special masters to hear and take evidence in the matter and to report to the commission. (Commission Rule 121(b).) The Supreme Court has selected a pool of approximately 60 experienced jurists who have received training to serve as special masters in commission proceedings.

As in all phases of commission proceedings, the judge may be represented by counsel at the hearing. The evidence in support of the charges is presented by an examiner appointed by the commission (see Section VII, Commission Organization and Staff). The California Evidence Code applies to the hearings. (Commission Rule 125(a).)

Commission Consideration Following Hearing

Following the hearing on the formal charges, the special masters file a report with the commission. The report includes a statement of the proceedings and the special masters' findings of fact and conclusions of law with respect to the issues presented by the notice of formal proceedings and the judge's answer. (Commission Rule 129.) Upon receipt of the masters' report, the judge and the examiner are given the opportunity to file objections to the report and to brief the issues in the case to the commission., The parties are given the opportunity to be heard orally before the commission, prior to a decision by the commission. (Commission Rules 130, 132.)

Amicus curiae briefs may be considered by the commission when it is demonstrated that the briefs would be helpful to the commission in its resolution of the pending matter. (Commission Rule 131.)

Disposition of Cases After Hearing

The following are actions that may be taken by the commission pursuant to article VI, section 18 of the California Constitution after a hearing on the formal charges, unless the case is closed without discipline:

- Publicly censure or remove a judge for action that constitutes willful misconduct in office, persistent failure or inability to perform the judge's duties, habitual intemperance in the use of intoxicants or drugs, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.
- Publicly or privately admonish a judge found to have engaged in an improper action or dereliction of duty.

II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

- Retire a judge for disability that seriously interferes with the performance of the judge's duties and is or is likely to become permanent.

In cases involving former judges, the commission may publicly censure or publicly or privately admonish the former judge. The Constitution also permits the commission to bar a former judge who has been censured from receiving an assignment from any California state court.

After formal proceedings, the commission may also issue an advisory letter to the judge or former judge, or close the case without discipline.

Release of Votes

Commission decisions in both public and private discipline include an identification of the votes of the individual commission members.

SUPREME COURT REVIEW

A judge may petition the California Supreme Court for review of a commission determination to admonish, censure, or remove the judge. Review is discretionary. If the Supreme Court so chooses, its review may include an independent de novo review of the record. (California Constitution, article VI, section 18(d).) A judge may petition the Supreme Court for a writ of mandate to challenge an advisory letter. California Rules of Court, rules 9.60 and 9.61 govern petitions for review of commission determinations.

STATUTE OF LIMITATIONS

A judge may be censured or removed, or a former judge censured, only for action occurring not more than six years prior to the commencement of the judge's current term or a former judge's last term. (California Constitution, article VI, section 18(d))

STANDARD OF PROOF

The standard of proof in commission proceedings is proof by clear and convincing evidence sufficient to sustain a charge to a reasonable certainty. (*Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 275.)

CONFIDENTIALITY OF COMMISSION PROCEEDINGS

California Constitution, article VI, section 18(i)(1) authorizes the commission to provide for the confidentiality of complaints to, and investigations by, the commission. The commission's rules provide that complaints and investigations are confidential, subject to certain exceptions, including, when public safety may be compromised, when information reveals possible criminal conduct, and when judges retire or resign during proceedings. (Commission Rule 102(f)-(s); Policy Declarations 4.1-4.6.) During the course of a preliminary investigation, persons

II. LEGAL AUTHORITY AND COMMISSION PROCEDURES

questioned or interviewed are advised that the inquiry or investigation is confidential. (Policy Declaration 1.9; *Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 528.)

The Constitution provides that when formal proceedings are instituted, the notice of charges, the answer, and all subsequent papers and proceedings are open to the public. (California Constitution, article VI, section 18(j); see also Commission Rule 102(b).)

After final resolution of a case, the rules require the commission to disclose to the person who filed the complaint that the commission has found no basis for action against the judge or determined not to proceed further in the matter, has taken an appropriate corrective action (the nature of which is not disclosed), or has imposed public discipline. The name of the judge is not used in any written communications to the complainant unless the proceedings are public. (Commission Rule 102(e).)

The commission is also required to provide the text of any private admonishment, advisory letter, or other disciplinary action to appointing authorities upon request. (California Constitution, article VI, section 18.5.)

III. ACTIVE AND FORMER JUDGES 2023 STATISTICS

COMPLAINTS RECEIVED AND INVESTIGATED

In 2023, there were 1,868 judgeships within the commission’s jurisdiction. In addition to jurisdiction over active judges, the commission has authority to impose certain discipline upon former judges for conduct while they were active judges.

The commission’s jurisdiction also includes California’s 276 commissioners and referees. The commission’s handling of complaints involving commissioners and referees is discussed in Section V.

JUDICIAL POSITIONS	
As of December 31, 2023	
Supreme Court.....	7
Courts of Appeal	106
Superior Courts	1,755
Total.....	1,868

New Complaints

In 2023, the commission considered 1,570 new complaints about active and former California judges. The 1,570 complaints named 1,921 judges (a total of 1,072 different judges).

2023 CASELOAD - JUDGES	
Cases Pending 1/1/23	162
New Complaints Considered	1,570
Cases Concluded	1,535
Cases Pending 12/31/23	131
Discrepancies in totals are due to consolidated complaints/dispositions.	

III.
ACTIVE AND FORMER JUDGES—2023 STATISTICS

In 2023, the commission considered 77 complaints about subordinate judicial officers. These cases are discussed in Section V.

The commission also received 325 complaints in 2023 concerning individuals and matters that did not come under the commission’s jurisdiction: federal judges, former judges for matters outside the commission’s jurisdiction, judges pro tem (temporary judges), workers’ compensation judges, other government officials, and miscellaneous individuals. Commission staff responded to each of these complaints and, when appropriate, referred complainants to relevant agencies.

Preliminary Investigations

In 2023, the commission ordered 153 preliminary investigations.

INVESTIGATIONS COMMENCED IN 2023
Preliminary Investigations..... 153

Formal Proceedings

At the beginning of 2023, there was one formal proceeding pending before the commission, which remained pending.

FORMAL PROCEEDINGS	
Pending 1/1/23	1
Commenced in 2023	0
Concluded in 2023	0
Pending 12/31/23	1

III.
ACTIVE AND FORMER JUDGES—2023 STATISTICS

DEFERRAL OF INVESTIGATION

The commission may defer an investigation under certain circumstances, as discussed on page 8. At the beginning of 2023, 46 pending matters had been deferred. The commission ordered 30 matters deferred during 2023. Twenty-one matters were returned to the commission’s active calendar, considered, and concluded by the commission in 2023. Fifteen matters were returned to the active calendar and remained pending before the commission at the end of 2023. Forty matters remained deferred at the end of the year.

DEFERRED INVESTIGATIONS	
Pending 1/1/23.....	46
Investigations deferred in 2023.....	30
Deferred investigations returned to active calendar and concluded in 2023.....	21
Investigations returned to the active calendar and pending 12/31/23.....	15
Deferred investigations pending 12/31/23.....	40
Discrepancies in totals are due to consolidated complaints/dispositions	

REASONS INVESTIGATIONS WERE DEFERRED IN 2023	
Deferred pending resolution of underlying case.....	22
Deferred pending appeal or other review.....	5
Deferred pending civil, criminal or administrative investigation or proceeding	0
Deferred pending rule 112 monitoring	0
Deferred pending mentoring	3

III.
ACTIVE AND FORMER JUDGES—2023 STATISTICS

COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the commission in 2023, regardless of when the complaints were received.¹ In 2023, the commission concluded a total of 1,535 cases. The average time period from the filing of a complaint to the disposition was 4.14 months. A chart of Complaint Dispositions of all cases completed by the commission in 2023 is included on page 18.

TYPE OF COURT CASE UNDERLYING COMPLAINTS CONCLUDED IN 2023	
Criminal	31%
General Civil.....	29%
Family Law	22%
Small Claims/Traffic	6%
All Others.....	9%
3% of the complaints did not arise out of court cases. These complaints concerned off-bench conduct, such as the handling of court administration and political activity.	

Closed Without Discipline

In 2023, after obtaining the information necessary to evaluate the complaints, the commission determined that there was not a sufficient showing of misconduct in 1,424 of the complaints. In other words, there was an absence of facts which, if true and not otherwise explained, might constitute misconduct. A substantial percentage alleged legal error not involving misconduct or expressed dissatisfaction with a judge’s decision. The commission closed these complaints without preliminary investigation.

Following preliminary investigation, the commission closed another 76 matters without discipline. In these cases, investigation showed that the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation.

¹ Preliminary investigations in the cases closed in 2023 may have commenced in prior years. Cases or portions of cases pending at the end of 2023 are not included in complaint disposition statistics.

III.
ACTIVE AND FORMER JUDGES—2023 STATISTICS

SOURCE OF COMPLAINTS CONCLUDED IN 2023	
Litigant/Family/Friend.....	88%
Attorney.....	5%
Judge/Court Staff.....	2%
All Other Complainants.....	3%
(including members of the public)	
Source Other Than Complaint.....	2%
(includes anonymous letters, news reports)	

Closed With Discipline

In 2023, the commission publicly censured two judges, and imposed three public admonishments. The commission also issued 10 private admonishments and 19 advisory letters. Each of these cases is summarized in Section IV.

A chart of the Types of Conduct Resulting in Discipline in 2023 appears on page 19. The types of conduct are listed in order of prevalence. The numbers on the chart indicate the number of times each type of conduct resulted in discipline. A single act of misconduct was counted once and assigned to the category most descriptive of the wrongdoing. If multiple types of misconduct were involved in a single case, each different type of conduct was counted and assigned to the appropriate category. If, however, the same type of conduct occurred on multiple occasions in a single case, the conduct was counted only once.

Resignations and Retirements

The California Constitution authorizes the commission to continue proceedings after a judge retires or resigns and, if warranted, to impose discipline upon the former judge. When a judge resigns or retires during proceedings, the commission determines whether to continue or close the case and, if the case is closed, whether to refer the matter to another entity such as the State Bar. In 2023, the commission closed one matter without discipline when the judge resigned or retired with an investigation pending.

10-YEAR SUMMARY OF COMMISSION ACTIVITY

A chart summarizing statistics on commission activities over the past 10 years appears on page 20.

**III.
ACTIVE AND FORMER JUDGES—2023 STATISTICS**

2023 COMPLAINT DISPOSITIONS

Complaint Dispositions 1,535		
CLOSED AFTER INITIAL REVIEW 1,424	DISPOSITION FOLLOWING PRELIMINARY INVESTIGATION 111	
DISPOSITION FOLLOWING PRELIMINARY INVESTIGATION		
CLOSED WITHOUT DISCIPLINE 76	DISCIPLINE ISSUED 34	CLOSED FOLLOWING JUDGE'S RESIGNATION OR RETIREMENT 1
DISCIPLINE ISSUED		
ADVISORY LETTER 19	PRIVATE ADMONISHMENT 10	PUBLIC DISCIPLINE 5
PUBLIC DISCIPLINE		
PUBLIC ADMONISHMENT 3	PUBLIC CENSURE 2	REMOVAL FROM OFFICE 0

**III.
ACTIVE AND FORMER JUDGES—2023 STATISTICS**

TYPES OF CONDUCT RESULTING IN DISCIPLINE IN 2023

The types of conduct are listed in order of prevalence. The numbers indicate the number of times each type of conduct resulted in discipline. A single act of misconduct was counted once and assigned to the category most descriptive of the misconduct. If multiple types of misconduct were involved in a single case, each different type of conduct was counted and assigned to the appropriate category. However, if the same type of conduct occurred on multiple occasions in a single case, it was counted only once.

TYPES OF CONDUCT RESULTING IN DISCIPLINE IN 2023*

MISCONDUCT	NUMBER OF ACTS
DISQUALIFICATION/DISCLOSURE/POST-DISQUALIFICATION CONDUCT	12
DEMEANOR/DECORUM	10
FAILURE TO ENSURE RIGHTS	6
ABUSE OF CONTEMPT/SANCTIONS	5
BIAS OR APPEARANCE OF BIAS NOT DIRECTED TOWARD A PARTICULAR CLASS (includes embroilment, prejudgment, favoritism)	4
ADMINISTRATIVE MALFEASANCE (includes conflicts between judges, failure to supervise staff, delay in responding to complaints about commissioners)	3
EX PARTE COMMUNICATIONS	3
OFF-BENCH ABUSE OF OFFICE/MISUSE OF COURT INFORMATION	3
BIAS OR APPEARANCE OF BIAS TOWARD A PARTICULAR CLASS	2
NON-PERFORMANCE OF JUDICIAL FUNCTIONS/ATTENDANCE/SLEEPING	2
ON-BENCH ABUSE OF AUTHORITY IN PERFORMANCE OF JUDICIAL DUTIES	2
ALCOHOL OR DRUG RELATED CRIMINAL CONDUCT	1
FAILURE TO COOPERATE/LACK OF CANDOR WITH REGULATORY AUTHORITIES	1
IMPROPER BUSINESS, FINANCIAL OR FIDUCIARY ACTIVITIES	1
MISCELLANEOUS OFF-BENCH CONDUCT	1
MISUSE OF COURT RESOURCES	1
SEXUAL HARASSMENT/INAPPROPRIATE WORKPLACE GENDER COMMENTS	1

*See “Closed with Discipline” at page 17 of text.

III.
ACTIVE AND FORMER JUDGES—2023 STATISTICS

10-YEAR SUMMARY OF COMMISSION ACTIVITY

NEW COMPLAINTS CONSIDERED BY COMMISSION

Year	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Complaints	1,212	1,245	1,234	1,251	1,246	1,241	1,063	1,253	1,414	1,570

COMMISSION INVESTIGATIONS COMMENCED

Year	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Staff Inquiries	84 (7%)	69 (6%)	85 (7%)	84 (7%)	52 (4%)	40 (3%)	23 (2%)	17 (1%)	6 (<1%)	N/A
Preliminary Investigations	101 (8%)	83 (7%)	76 (6%)	95 (8%)	80 (6%)	79 (6%)	82 (7%)	127 (10%)	114 (8%)	153 (10%)
Formal Proceedings Instituted	2 (<1%)	3 (<1%)	1 (<1%)	3 (<1%)	2 (<1%)	1 (<1%)	1 (<1%)	1 (<1%)	1 (<1%)	1 (<1%)

DISPOSITION OF COMMISSION CASES

Year	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Total Dispositions	1,174	1,231	1,210	1,229	1,251	1,209	1,050	1,196	1,385	1,535
Closed After Initial Review	1,039 (89%)	1,103 (90%)	1,079 (89%)	1,081 (88%)	1,118 (89%)	1,129 (93%)	960 (91%)	1,112 (93%)	1,294 (93%)	1,424 (93%)
Closed Without Discipline After Investigation	90 (8%)	86 (7%)	81 (7%)	106 (9%)	91 (7%)	55 (5%)	65 (6%)	62 (5%)	60 (4%)	76 (5%)
Advisory Letter	29 (2%)	26 (2%)	26 (2%)	21 (2%)	23 (2%)	13 (1%)	9 (<1%)	11 (1%)	20 (1%)	19 (1%)
Private Admonishment	9 (<1%)	11 (<1%)	11 (<1%)	13 (1%)	11 (1%)	5 (<1%)	9 (<1%)	4 (<1%)	5 (<1%)	10 (<1%)
Public Admonishment	3 (<1%)	2 (<1%)	6 (<1%)	3 (<1%)	6 (<1%)	4 (<1%)	4 (<1%)	3 (<1%)	3 (<1%)	3 (<1%)
Public Censure	2 (<1%)	2 (<1%)	1 (<1%)	2 (<1%)	1 (<1%)	2 (<1%)	1 (<1%)	0 (0%)	1 (<1%)	2 (<1%)
Removal	0 (0%)	0 (0%)	1 (<1%)	0 (0%)	0 (0%)	0 (0%)	1 (<1%)	1 (<1%)	0 (0%)	0 (0%)
Judge Retired or Resigned with Proceedings Pending	2 (<1%)	1 (<1%)	5 (<1%)	3 (<1%)	1 (<1%)	1 (<1%)	1 (<1%)	3 (<1%)	2 (<1%)	1 (<1%)

IV. ACTIVE AND FORMER JUDGES CASE SUMMARIES

The following case summaries pertain to active and former judges. See Section V for information regarding discipline of subordinate judicial officers.

PUBLIC DISCIPLINE

Public discipline decisions issued by the commission that became final in 2023 are summarized in this section. All public decisions in commission cases are available on the commission's website at <https://cjp.ca.gov>.

PUBLIC CENSURES BY THE COMMISSION

In 2023, the commission imposed two public censures.

Public Censure of Judge Richard A. Vlavianos February 8, 2023

Pursuant to a stipulation, the Commission on Judicial Performance publicly censured Judge Richard A. Vlavianos of the San Joaquin County Superior Court for (1) using his title, court resources, and a report prepared for the court to promote a non-profit organization he had created to assist DUI offenders; creating the appearance that he was working with private industry affiliates who stood to profit from the organization's success; misleading court employees to induce their participation in the organization's launch; and prevaricating with the court's presiding judges in discussions about the organization; (2) failing to fully apprise criminal defendants of their rights; (3) making remarks to defendants that created the appearance of bias, failing to safeguard the constitutional right to counsel for an unrepresented defendant, and threatening a deputy public defender with contempt when she objected; (4) exhibiting poor demeanor toward a deputy district attorney; (5) engaging in improper ex parte communications about, and embroiling himself with, two parole re-entry court defendants; and (6) discussing with a court staff member a represented defendant's conduct, the defendant's alleged refusal to participate in a program in good faith, and an appropriate response by the court, without including defense counsel or the deputy district attorney.

(1) From approximately 2008 until January 2022, Judge Vlavianos presided over his court's multi-track DUI program. In July 2021, the judge formed the non-profit corporation Association of Comprehensive Collaborative and Equitable

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

Supervision and Services (ACCESS). The judge served as chair of the board and chief executive officer.

In that role, Judge Vlavianos authorized publication of a promotional website that described ACCESS as “a new national non-profit organization that provides education and training for high risk, repeat DUI offenders who do not have high treatment needs. This program has been led by the Honorable Richard A. Vlavianos since 2008....” ACCESS’s website prominently featured a photograph of Judge Vlavianos, wearing his judicial robe, and identified him as a judge of San Joaquin County Superior Court. ACCESS also issued a press release that used the judge’s judicial title and described him as “Chair of ACCESS and California Superior Court Judge Richard A. Vlavianos.”

In October 2021, pursuant to a contract with the court, Northwest Professional Consortium Research (NPC) evaluated the court’s multi-track DUI program and wrote four reports, including a cost-benefit analysis and longitudinal study. The court paid NPC \$240,500.

Conflating “the ACCESS court model” with the court’s DUI program, the judge appropriated the content of the NPC study to market ACCESS without the court’s permission. Even though ACCESS had only been created in 2021, its website stated, “5,200 DUI recidivists have participated in ACCESS since 2008, with 80% completing the program successfully,” and contained data and graphs from the NPC study, republished under the ACCESS logo and captioned “ACCESS Multi-track Court Model.”

In forming ACCESS, Judge Vlavianos partnered with individuals whose companies did business with the court and whose services DUI court participants regularly used.

West Huddleston was the Chief Financial Officer of ACCESS, a member of the ACCESS Board of Directors, and the Chief Software Business Officer at SCRAM Systems, a company that sells alcohol monitoring software and hardware solutions to courts and agencies. Judge Vlavianos sought to have the court contract with SCRAM for case management software services, at a cost of \$70,000-100,000.

Jacqui Sheehey was a member of the ACCESS Board of Directors and employed as the Director of Marketing at AverHealth, a private drug and alcohol testing company. In 2020, at the judge’s recommendation, the court ended its existing contract for drug testing and contracted with AverHealth, at a cost of \$146,000.

On December 2, 2021, Judge Vlavianos canceled his morning high-risk DUI treatment calendar and suggested that three collaborative court staff members attend a Sacramento press conference that he told them was to publicize the

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

results of the NPC study. In fact, the primary purpose of the press conference was to “launch” ACCESS, and Judge Vlavianos used court employees to promote ACCESS during court time. At the press conference, the judge made remarks about “ACCESS’s program” that conflated it with the court’s DUI program.

On December 20, 2021, the Stockton Record listed “Richard A. Vlavianos” as CEO of ACCESS in a fictitious business name statement and a television station aired an interview in which the judge discussed ACCESS. During the interview, which had been conducted in his chambers, the judge misrepresented the source of funding for ACCESS, stating that the program was paid for by funds received from the California Office of Traffic and Safety and the Judicial Council.

After learning of the judge’s involvement with ACCESS, then-Presiding Judge Xapuri Villapudua convened a meeting with Judge Vlavianos and incoming Presiding Judge Michael Coughlan. Judge Vlavianos was not forthright with his judicial colleagues about the amount and source of funding received by ACCESS or the nature of the press event. He initially downplayed his involvement in ACCESS, which he described as simply a training program for judges, and said that two or three other California judges were members of the board and participation was allowed under the Code of Judicial Ethics. He did admit that he had misled court staff about the press conference.

When the other judges asked about the funding source for ACCESS’s administrative or operational costs, Judge Vlavianos said numerous times that ACCESS was a “nonprofit.” When asked how ACCESS paid for its website, the judge said ACCESS received \$150,000 in what he claimed was “seed money” from the Foundation for Advancing Alcohol Responsibility, an organization where he served as a judicial advisory board member and that employed ACCESS’s secretary. In his response to the commission’s preliminary investigation letter, the judge represented that ACCESS used those funds to pay a consultant who was married to ACCESS’s secretary.

Judge Villapudua told Judge Vlavianos that it was improper to use his judicial position to further the interests of an entity involved in marketing a product to be used (and purchased) by collaborative courts. Judge Villapueda ordered Judge Vlavianos to immediately get an advisory opinion from the California Judges Association Ethics Committee and to remove all reference to himself and the court from the ACCESS website. On December 22, 2021, Judge Vlavianos told Judge Villapudua and Judge Coughlan that the ACCESS website was down, that he had resigned from the ACCESS board, and that he would seek an ethics opinion. Judge Vlavianos did not procure such an ethics opinion.

On December 23, 2021, Judge Villapudua held a second meeting with Judge Vlavianos, Judge Coughlan, and the incoming assistant presiding judge, Judge

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

Gus Barrera. At that meeting, Judge Villapudua removed Judge Vlavianos from his collaborative court assignment and prohibited him from contact with staff or attorneys involved in the program.

The commission found that Judge Vlavianos’s misconduct constituted, at a minimum, conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(2) While presiding over DUI cases, Judge Vlavianos automatically ordered any defendant who appeared before him who was convicted of a second (or more) DUI charge to the multi-track DUI court that he had created. He had all defendants with second and third DUIs “screened” into a lower-risk (“monitoring”) or higher-risk (“treatment”) track. He failed to fully advise DUI court defendants of the consequences of their pleas, in violation of their rights.

Prior to arraignment, the judge told defendants that, if they were pleading guilty or no contest to a second or third DUI, they would get a case manager, who worked for the court, and that the case manager’s job would be to help them successfully complete probation. The judge told defendants they would have “some safety enhancements,” have alcohol or drug monitoring for one year, and would be required to abstain from alcohol and drug consumption during that period. The judge told defendants they would have to report back to the court.

Judge Vlavianos’s statements to defendants did not explicitly refer to “treatment court” or “treatment track,” and the first time a DUI court defendant on the treatment track heard those terms was at sentencing after entering a plea. After sentencing, all DUI court defendants would be instructed to sign up for monitoring for one year at an out-of-pocket cost of up to \$4,000 (assuming the individual was ineligible for grant funding). Prior to accepting pleas, the judge did not inform the defendants that there was a cost for monitoring, how frequently they would be required to return to court, the nature of treatment, or the possible consequences for non-compliance. At sentencing, the judge told defendants that their jail sentences and fines were stayed, without always explaining that the stay was temporary and that, after successfully completing treatment court, defendants would still be required to complete their mandatory sentences and pay their mandatory fines.

The commission found that the judge’s conduct had the effect of coercing defendants into participating in the treatment court.

(3) On July 14, 2021, Judge Vlavianos presided over a misdemeanor DUI arraignment calendar. At the outset of the hearing, while reading defendants their rights, the judge said that, if defendants wanted an attorney but could not afford one, he would have them fill out a financial form and recall their case later in the calendar, then appoint an attorney if he could make a finding of indigency. When Deputy Public Defender Kimberly Angulo made a small wave toward the

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

defendants to identify herself as the public defender in court that day, the judge immediately stopped talking and said sternly, in a raised voice, “Ms. Angulo! No communication!”

For the first three matters he called, Judge Vlavianos asked the defendants if they wanted to “take care of” their cases, and made remarks to the effect of, “I love it when people come in, take responsibility, and take care of things,” and that he was having a good morning because people were “taking care of things” that day.

When he called *People v. Hasnat Joiya*, Judge Vlavianos asked the defendant if he wanted to know what would happen if he wanted to “take care of” the case today. After a brief exchange, Joiya said he was not familiar with court proceedings and wanted to talk with an attorney. Judge Vlavianos directed Joiya’s attention to Deputy District Attorney Jessica Wong and solicited the People’s offer from Wong. Joiya asked the judge if he could talk about what happened, and the judge responded, “Yes, tell me what happened.” When Joiya began talking about one of the alleged incidents, Angulo interrupted and said, “Your Honor, can you please advise him that anything he says can be used against him?” Frustrated with Angulo, the judge said in a stern, raised voice that he would not advise Joiya and told her to stop talking. After Joiya told his story, the judge asked Wong, “Does this change anything for you?” Wong said she did not understand Joiya because of his accent. The judge proceeded to talk to Joiya about the People’s offer. Angulo interjected and said she believed it was inappropriate for the judge to be talking with Joiya about resolving his case because he had already told the court he did not understand the legal concepts and requested an attorney. Judge Vlavianos said, in a stern, raised voice, that Angulo would be in contempt of court if she continued and ordered her not to speak. The judge asked Joiya how long he would want to consult with an attorney but did not ask Joiya whether he could afford an attorney or whether he required an interpreter.

The commission found that the judge’s remarks to defendants gave the appearance of bias, prejudgment, and intent to coerce defendants into accepting plea offers, and interfered with the right to counsel. In addition, the commission found that the judge’s discussion with Joiya after Joiya had requested counsel constituted an abuse of authority, and that his conduct toward Angulo constituted an abuse of authority and was discourteous.

(4) On various occasions during criminal proceedings in open court, Judge Vlavianos said words to the effect of, “The DA wants to put you in jail, but I’m not going to do that”; “Probation, do you really think this person deserves to go to prison?”; “The DA wants to send you away, how do you feel about that?”; and

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

that a deputy district attorney was “addicted to jail,” “coming from a position of anger,” and “coming from a position of fear.”

The commission determined that these remarks were discourteous and gave the appearance of bias.

(5) From 2013 through 2021, Judge Vlavianos oversaw the parole re-entry court, a collaborative court for people who have been released from prison and violated the terms of their parole and who have a history of substance abuse or mental health issues. In parole re-entry court matters involving Carlos Haro and LaTolia Gould, Judge Vlavianos authorized the jail to add an alert to its internal database that instructed jail employees to call him immediately on his personal cell phone if either defendant was brought into custody.

The commission found that Judge Vlavianos’s instruction gave the appearance that he intended to order the release of Haro or Gould without a court hearing if they were brought into custody, gave the appearance of embroilment and bias, and constituted an abuse of authority.

(6) On September 1, 2021, Court Analyst Shelly Haynes emailed Judge Vlavianos and other collaborative court staff seeking advice because a defendant had sent a case manager she supervised inappropriate text messages, blamed the court for ruining his life, and said he would not comply with any collaborative court requirements. In an email sent only to Haynes, Judge Vlavianos stated that subjective personal beliefs and frustrations should not drive the response to the defendant, that the defendant’s conduct should be the subject of a team discussion, and that it would not be appropriate for Haynes to speak with the defendant. Haynes replied only to the judge, reiterating her request for help from the team on behalf of the case manager. In a second email message to Haynes only, the judge stated, in part:

I have told Officer Siv to stand down and let it play out in court....
The appropriate mechanism is for the information to come out in the briefing. The Judge can then react to his behavior (no CBI) and the responsibility for it will clearly be on him. There appears to be no public safety emergency at this point and an arrest by SPD at this point will only likely cause more blaming of the system which would be contraindicated.

Judge Vlavianos improperly discussed a represented defendant’s conduct, the defendant’s alleged refusal to participate in the program in good faith, and what might be an appropriate response by the court, without including either defense counsel or the deputy district attorney.

The commission concluded that Judge Vlavianos’s misconduct was seriously at odds with the canons and expected judicial behavior. In mitigation, the

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

commission considered that the judge has a history of service to his community, served as a judge for 24 years with no prior discipline, engaged in demeanor training and found a mentor judge to counsel him on demeanor, and acknowledged that he engaged in multiple acts of misconduct and that a censure was the appropriate sanction.

Public Censure of Judge Howard H. Shore December 13, 2023

Pursuant to a stipulation, the Commission on Judicial Performance issued a severe public censure to Judge Howard H. Shore of the San Diego Superior Court for a serious dereliction of duty. Specifically, in 2021 and 2022, Judge Shore was absent from court, without approval or authorization, on at least 155 court days. He was not present in the courthouse on a single Friday between May 28, 2021, and November 18, 2022. Further, Judge Shore’s absences exceeded his available vacation time by 87 days.

In November 2022, it came to the attention of the presiding judge of San Diego County Superior Court that Judge Shore had been difficult to engage, due to his frequent absences, and that Judge Shore did not complete required absence requests in advance of planned days off. Court records showed Judge Shore as “Off” nearly every Friday, though Judge Shore had not submitted any absence requests for those days.

Because the presiding judge had not authorized Judge Shore to take leave on Fridays or work from home, the presiding judge undertook an investigation. The investigation revealed Judge Shore’s absences without approval, noted above: absences of at least 155 days, including nearly every Friday, which exceeded Judge Shore’s vacation time by 87 days.

On December 1, 2022, the presiding judge and the assistant presiding judge met with Judge Shore to discuss Judge Shore’s frequent absences. Judge Shore initially stated that: (1) he did not believe that he had taken time off without a formal request; (2) he barely took any vacation; and (3) he did not regularly take Fridays off. Later, Judge Shore agreed that he had not been working on most Fridays. He later explained that he had been traveling to Los Angeles on most of those Fridays to assist with family needs, and to comply with Orthodox Jewish religious mandates for the Sabbath. Judge Shore subsequently stated to the presiding judge and assistant presiding judge that he had rationalized taking Fridays off regularly because he took work home at night, and because he saw other judges leaving early. Judge Shore acknowledged that he was aware judges are not entitled to compensatory time for work outside of normal court hours.

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

Judge Shore emailed the presiding judge later on December 1, 2022, explaining his absence on 26 days in 2021 and 33 days in 2022. Judge Shore then sent another email, stating, in part, “The Fridays I didn’t come in were Fridays I went to L.A. But the Fridays I didn’t go to L.A., I would come to work. Since I didn’t need staff on Fridays, there would be no one to verify my attendance. I would work in chambers, and the courtroom would be dark. The problem is, I have no records of when I was in San Diego on a Friday. But it would be inaccurate to say I took every Friday off. If I wasn’t going to L.A., there would be nothing else to occupy my time and no reason for me not to come to work.” Judge Shore continued, “I definitely did not take every Friday off.”

In fact, in 2021 and 2022, as noted, Judge Shore was absent, without approval or authorization, on at least 155 court days. And he was not present in the courthouse on a single Friday between May 28, 2021, and November 18, 2022.

In stipulating to a severe public censure, Judge Shore conceded that his routine absences from the courthouse, without authorization or approval, constituted prejudicial misconduct, which is “conduct prejudicial to the administration of justice that brings the judicial office into disrepute.” (Cal. Const., art. VI, § 18, subd. (d).)

The commission stated, “Public confidence in the integrity of the judiciary is seriously undermined when a judge routinely leaves the courthouse early without approval. Taxpayers of the State of California have a right to expect that judges are available to provide the services for which they are paid.” (Censure of Judge Christopher J. Sheldon (2009), p. 5.) The commission further noted, as stated by Judge Rothman, “The public does not owe judges extra time off, or anything other than what the law allows, in gratitude for the hard work judges must expend.” (Rothman et al., Cal. Judicial Conduct Handbook (4th ed. 2017) § 6:11, p. 350.) The commission determined that, by regularly absenting himself from the courthouse on Fridays over a two-year period, Judge Shore’s conduct “demonstrated a flagrant disregard for his obligations to his fellow judges, the public, and the reputation of the judiciary,” (Censure of Judge Christopher J. Sheldon, *supra*, at p. 4) and that Judge Shore’s conduct seriously undermined public confidence in the integrity of the judiciary and cast disrepute on the judicial office.

In mitigation, Judge Shore served 33 years as a judicial officer without discipline, expressed contrition, and modified his conduct. Further, Judge Shore cooperated fully and honestly with the commission and stipulated to the imposition of the severe public censure as the appropriate sanction that is commensurate with his admitted serious wrongdoing.

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

PUBLIC ADMONISHMENTS BY THE COMMISSION

The commission may publicly admonish a judge for improper action or dereliction of duty. In 2023, the commission issued three public admonishments of judges that became final.

Public Admonishment of Judge Lillian Vega Jacobs June 29, 2023

The Commission on Judicial Performance publicly admonished Judge Lillian Vega Jacobs of the Los Angeles County Superior Court for driving under the influence of alcohol, being convicted of driving under the influence of alcohol, and driving with a blood alcohol content of twice the legal limit.

On August 16, 2022, at approximately 11:16 p.m., a police officer stopped Judge Jacobs on suspicion of driving under the influence after he observed her driving “very slowly” and weaving back and forth in her lane. When the officer approached the judge’s car door, he could “smell a strong odor of an alcoholic beverage.” The judge’s speech was slightly slurred, and she was unsteady on her feet during field sobriety testing.

The judge was arrested for driving under the influence of alcohol. At the police station, she submitted to a chemical test two hours after her arrest that yielded blood alcohol levels of 0.169, 0.170, 0.166, and 0.160, all at least twice the legal limit.

On September 26, 2022, the judge was charged with operating a vehicle under the influence of an alcoholic beverage and driving with a blood alcohol content of 0.08% or more. The second charge was later dropped. On November 16, 2022, the judge pleaded guilty, and she was sentenced to three years of informal probation.

Public Admonishment of Former Judge Derek W. Hunt August 31, 2023

The Commission on Judicial Performance publicly admonished former judge Derek W. Hunt of the Orange County Superior Court for misconduct in three matters: (1) in a defamation action, Judge Hunt stated that the plaintiff was “hypersensitive,” a “snowflake,” needed to “litigate like a grown-up,” and offered to dismiss the case to make it “easier” for the plaintiff to appeal; (2) in a separate matter, after the Court of Appeal vacated an order that he had issued, Judge Hunt sent an email to a Court of Appeal justice about the case; and (3) in an unlawful detainer action, Judge Hunt intentionally disregarded the law in denying

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

relief from a default judgment against a commercial tenant and made discourteous comments.

(1) In February 2022, Mohammad Abuershaid, using a fictitious name, filed a defamation lawsuit alleging that a senior member of the district attorney’s office routinely referred to him as a terrorist and that those remarks had become public. Judge Hunt, *sua sponte*, set a hearing on an order to show cause (OSC) why the court should not stay the case until Abuershaid amended the complaint to reflect his legal name.

At the OSC hearing on July 8, 2022, Judge Hunt stated:

But I’m going to talk about the defamation case, which is brought by a deputy public defender who has filed his case under a fictitious name. He will now be known as Mr. Doe until I’m finished with this. He did that because he says that if his real name were made public, the alleged defamation, which meant that somebody had called him a “terrorist,” would damage his professional reputation as a deputy public defender.

Now, I bet I’m older than everybody on the line right here, so it’s true, the world has changed since I grew up. And we have become in my lifetime rather what I consider to be hypersensitive to people’s feelings. You know, I have even heard about young people being described as “snowflakes” because they are supposedly so insecure that they need to have what are called “safe spaces” if they are confronted with situations or things that they are unfamiliar with.

But I cannot believe that there’s a public policy in the state of California that permits adults to bring lawsuits under fictitious names just because of their transient, personal feelings having been hurt or damaged. I’m talking about adults here. Adulthood means a recognition that life routinely brings adversely [*sic*]. It means self-sufficiency. It means strength of mind, courage, and wisdom, and resilience. You’re talking about an old-fashioned person here. And I believe in those things. And honestly, I bet those of you who don’t have a case hanging there believe those things, too, about adults. Adulthood routinely brings adversity. The law expects—routinely, it expects the characteristics I’ve listed are a normal condition of adulthood. It is only when those qualities that I’ve just listed are proved to be abnormally lacking, like cases of mental illness or stuff like that, that the law will recreate [*sic*] some very closely-edged exceptions, all consistent with due process by the way.

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

Anyway, Mr. Murray [*sic*], I mean I'll take your arguments to the contrary, but my tentative ruling will be, as you get to put in your brief an alternative, to give you a week to amend your complaint. Tell your client to step up to the bar and give his name and litigate like a grown-up. And if you do, I will give the defendant 14 days to respond to the new complaint.

In his response to the commission's preliminary investigation letter, Judge Hunt argued that his remarks reflected "a different generation giving advice and insight to a younger generation, each of whom was speaking a different language" and that his discussion about cultural changes and heightened sensitivities of young people was interpreted negatively. The commission stated that his "remarks, on their face...insinuated that Mr. Abuershaid was 'hypersensitive,' was a 'snowflake,' and needed to 'litigate like a grown-up.'" Further, the remarks were gratuitous and unrelated to whether Mr. Abuershaid could legally file a complaint with a fictitious name." Rejecting Judge Hunt's argument that his "snowflake" remark "was collateral and not directed at the plaintiff," the commission determined that, as Judge Hunt made the remark while also referring to Abuershaid as "hypersensitive," having hurt feelings, and instructing him to "litigate like a grown-up," "the remark was not collateral but was personal, critical, and created the appearance of bias against Mr. Abuershaid."

When Abuershaid's counsel, Matthew Murphy, contended that the case was not about his client's "hurt feelings," but about defamation per se, Judge Hunt stated, "It actually may not be [defamation] per se. The material that you've alleged does not mention that guy's name. It doesn't even mention his name." The commission found that this remark gave the appearance that the judge had prejudged the case before the parties had presented any evidence.

Noting that media coverage of the allegedly defamatory remarks had mentioned his client's name, Murphy argued that having a senior member of the district attorney's office refer to Abuershaid as a terrorist affected his client's ability to make a living as an attorney. The judge suggested that Murphy was trying to get the case before the Court of Appeal and offered to dismiss the case to make it "easier" for him to appeal, as follows.

THE COURT: Let me come back to Mr. Murphy. I said my ruling is going to be to give you a week to file an amended complaint. It sounds to me like you really want to put this up in front of the DCA.

MR. MURPHY: Well, Your Honor, I want as much time as the court will give me. So--

THE COURT: Well, right now, I just want to figure out what I'm supposed to do. I'm happy to do that, give you a chance to

IV.
ACTIVE AND FORMER JUDGES—CASE SUMMARIES

amend the complaint in seven days and just move forward with the lawsuit. But if you want to make this a catalyst for getting your case in front of the DCA, if you don't mind, I'll just dismiss the case for failure to--

MR. MURPHY: No, I do mind that, Your Honor. Of course[,] I mind that. I mean, what kind of statement is that from the court, that I don't mind that you're going to dismiss the case? And I don't understand where that even comes from, judge. Of course[,] I mind.

THE COURT: Well, it--

MR. MURPHY: And I'm sorry, Your Honor. It would be malpractice for me to agree to that. So[,] with the court's permission--

THE COURT: All right. I'll do what I said [*sic*] was going to do. I'll do what I said--

MR. MURPHY: --I need to research this[,] and I need to put it together. And we're--this is something that is going to be devastating for my client, as flippant as people may be from the county and others, regarding the impact that this has on this man. I would like all of the time that this court is willing to give me so that I can properly research this and submit it to the DCA. And, no, I'm not asking for a dismissal from the court. I don't even know where that comes from.

THE COURT: Where it comes from is it might be able to expedite your situation between me and Judge Howard and getting it in front of the DCA. Forget it. I just thought it would make it easier on you. I will just go back to my original tentative ruling. I'll give you a week to amend the complaint. And if that amended complaint does not come in in seven days, I will then dismiss the case without prejudice.

The commission found that Judge Hunt's comments were discourteous, gave the appearance of embroilment, and suggested that he had prejudged the outcome of the case and would dismiss it for improper reasons unrelated to its merits.

(2) In a civil action, on June 23, 2022, the judge granted the defendant's ex parte request to shorten time for the hearing on its motion for summary judgment. On September 27, 2022, in response to the plaintiff's petition for a writ of mandate and request for a stay, the Presiding Justice of the Fourth District

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

Court of Appeal, Kathleen O’Leary, signed a decision vacating the Judge Hunt’s order and issued an alternative writ or order to show cause.

The next day, Judge Hunt sent Justice O’Leary an email that stated: “I may be stupid, but I know when someone is saving face.” When Justice O’Leary received the email, she questioned whether it was from a judge and reported it by email to the presiding judge and the assistant presiding judge of Orange County Superior Court. Believing the email was a spoof, Justice O’Leary alerted California Highway Patrol personnel.

In his response to the preliminary investigation letter and at his appearance before the commission, Judge Hunt acknowledged that he should not have sent the email, expressed remorse, and said that, upon realizing his error, he immediately apologized to Justice O’Leary. The commission concluded that the judge’s email was an improper ex parte communication with the Court of Appeal, gave the appearance of embroilment, and was discourteous and intemperate.

(3) On November 19, 2020, Shapell Social Rental Properties filed a commercial unlawful detainer action against Chico’s FAS, Inc. (CFI) for failing to pay rent. CFI requested that Shapell direct communications concerning CFI or the lease for its stores to the law firm it had retained for real estate disputes arising out of the effects of COVID-19.

On November 20, however, Shapell had a registered process server serve the summons and complaint on an employee of a CFI store in Laguna Niguel, instead of sending it to CFI’s counsel, CFI’s agent for service of process, and/or its corporate headquarters. Shapell also mailed copies of the summons and complaint to the store, but not to CFI’s counsel or its corporate headquarters. CFI did not timely respond to the complaint.

On December 11, Shapell requested entry of a default judgment against CFI and improperly sent a copy of the request to the store in Laguna Niguel. Shapell’s counsel did not notify CFI’s counsel of its intent to request an entry of default or send a copy of the request to CFI’s corporate headquarters. The court entered a default judgment on December 22, 2020. CFI only learned of the default judgment when Shapell’s attorney emailed CFI’s attorney informing her that the court had entered a default judgment.

In March 2021, CFI filed a motion to set aside the default. At an April 23 hearing, CFI’s attorney presented evidence that Shapell did not properly serve the documents at CFI’s corporate headquarters in Florida, on CFI’s registered agent for service of process in California, or on its law firm.

During the hearing, Judge Hunt made the following comments to CFI’s attorney:

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

- “I mean, I’ve got very little indication that your client took it seriously.”
- “I’ve got a lot of indication that your client was just dragging its feet, hoping that this would go away.”
- “But I’m getting a very uncomfortable position about this tenant playing pretty fast and loose with whether they pay rent or not, or whether they want to be there or not.”

After hearing oral argument, Judge Hunt took the matter under submission. Subsequently, he issued a minute order denying CFI’s motion to set aside the default. CFI appealed, and the Court of Appeal reversed Judge Hunt’s order.

The commission determined that, when he denied CFI’s relief from the default judgment, Judge Hunt intentionally disregarded the law on default judgments, abused his authority and discretion, and disregarded CFI’s fundamental right to a hearing on its potential eviction. It noted that CFI had presented uncontroverted evidence that the way Shapell served the complaint and the request for default deprived CFI of actual notice, and that the Court of Appeal had concluded that “[t]he trial court had no discretion to find otherwise.” The commission found that the judge “ignored that evidence and instead questioned CFI’s integrity and credibility. As the Court of Appeal noted, ‘The trial court [usually] determines the credibility of witnesses presenting testimony by declaration. [Citations.] But we are not bound by credibility determinations that are arbitrary or unreasonable.... The record in the present case does not support a finding that [CFI’s attorneys] lacked credibility.... There were no conflicts in the declarations for the trial court to resolve.’”

The commission also concluded that the judge’s accusation that CFI was not taking the unlawful detainer action “seriously,” was “dragging its feet, hoping [it] would go away,” and was “playing pretty fast and loose with whether they pay rent or not” reflected poor demeanor and gave the appearance of bias against CFI and prejudice of the underlying action.

Rejecting Judge Hunt’s argument that his remarks were “entirely within what is expected and permitted of a judicial officer in colloquy with counsel regarding contested legal matters,” the commission concluded that his “comments were discourteous and unnecessary and his focus on CFI’s failure to pay rent for several months...created the appearance of bias and prejudice in the [unlawful detainer] action.” It also concluded, as had the Court of Appeal, that Judge Hunt “completely ignored the ethical and statutory violation committed by Shapell’s counsel.” The commission rejected the judge’s argument that the issue of Shapell’s counsel’s ethical violation had not been raised before him, stating that CFI had raised the argument in its motion to set aside the default and adding

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

that it was not necessary to a finding of misconduct whether the issue was raised at the hearing.

In aggravation, the commission noted the judge’s prior discipline. In July 2022, the commission publicly admonished the judge for misconduct in four civil cases, including denying parties a full right to be heard before making orders in their cases, making remarks reflecting poor demeanor, and engaging in conduct that gave an appearance of bias. In 2009, the commission issued an advisory letter to Judge Hunt for discussing with a reporter for a legal newspaper a case in which Judge Hunt had presided over trial and post-trial proceedings, which was then pending, and about to be argued, in the Court of Appeal. The commission noted that some of Judge Hunt’s misconduct “is substantially similar to that for which the judge has already been disciplined” and that Judge Hunt had engaged in some of the misconduct after the commission wrote to him in connection with the prior investigation and after it issued the public admonishment in July 2022. In further aggravation, the commission noted that the judge had failed to fully appreciate the impropriety of his misconduct.

Public Admonishment of Judge Emily T. Spear September 6, 2023

The Commission on Judicial Performance publicly admonished Judge Emily T. Spear of the Los Angeles County Superior Court for misconduct in 2021 and 2022, while she was assigned to the Family Law Division at the Compton Courthouse of the Los Angeles County Superior Court. The commission issued the public admonishment to Judge Spear (1) for unauthorized and undocumented full-day absences and routine unauthorized and undocumented early departures from the courthouse; (2) for making disparaging and profane remarks about another judge to a court commissioner that, due to her carelessness, were heard by several judicial colleagues at the beginning of a remote court meeting; (3) for displaying hostility and annoyance toward her supervising judge during discussions of her absences; and (4) to extend her vacation, for making false representations to her supervising judge and unilaterally manipulating matters on her calendar.

(1) In 2021, Judge Spear was absent from the courthouse 11 days without receiving prior permission from or notifying her supervising judge or her family court colleagues, and she failed to document her absences in Checkboard, the court’s attendance tracking program. Because she was absent on two consecutive court days in March, two petitions for temporary domestic violence restraining orders, which should have been handled immediately, sat without being ruled on for multiple days.

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

Throughout 2021, Judge Spear left the courthouse early to work from home two to three times per week, sometimes before noon. She typically failed to obtain the required prior permission from her supervising judge before leaving court, and she did not document her half-day absences.

On September 1, 2021, Judge Spear left the courthouse at 11:30 a.m., without prior authorization, after she had been counseled not to leave the court without prior authorization. And she did not document her half-day absence.

In her response to the commission’s preliminary investigation letter, Judge Spear admitted to these unauthorized and undocumented absences and early departures. The commission found unpersuasive Judge Spear’s contentions that she did not know that she was expected to be at court during work hours and that she needed authorization to work from home. The commission also concluded that, even if, as the judge contended, she was too ill to work on all of the days she was not at the courthouse when she was expected to be there, she was still obligated to seek prior authorization from, or at least notify, her supervising judge, and she did neither. The commission found irrelevant the judge’s argument that she was unable to document her absences because Checkboard only permits the documentation of half- or full-day absences, not shorter absences, because many of her absences were undocumented half- and full-day absences. The commission found that Judge Spear’s assertion that, because judges have “unlimited sick pay,” the commission should not be bothered with a judge’s failure to document absences properly, was misguided, because the commission is concerned with excessive judicial absences and rule 10.603(c)(4)(A) of the California Rules of Court requires presiding judges to notify the commission of: “(i) A judge’s substantial failure to perform judicial duties, including any habitual neglect of duty, persistent refusal to carry out assignments as assigned by the presiding judge, or persistent refusal to carry out the directives of the presiding judge as authorized by the rules of court; or (ii) Any absences caused by disability totaling more than 90 court days in a 12-month period....” Finally, the commission noted that the judge had submitted no evidence to support her claim that judicial officers at her courthouse were not required to get formal approval before leaving early.

(2) On the morning of October 21, 2021, Judge Spear and her family law colleague, Judge Esther Kim, debated, through their judicial assistants, which of them should be assigned to a particular civil harassment restraining order matter. Judge Spear then logged on remotely to the weekly meeting of the Compton bench officers. Before the meeting began, but after many judicial officers had joined, Judge Spear separately telephoned the third family law bench officer in Compton, Commissioner Kimberly Dotson. Apparently believing that she was muted from the courthouse-wide meeting, Judge Spear said words to the effect

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

of: “Esther doesn’t want to do her fucking job,” and “She won’t fucking take it even though it’s her fucking case.”

In her response to the preliminary investigation letter, Judge Spear acknowledged that she had created an “uncomfortable and sad situation,” but noted that she had intended her remarks to be private and that she had apologized to Judge Kim.

(3) On December 20, 2021, Supervising Judge Amy Pellman counseled Judge Spear about her absences and early departures from court. Judge Spear made statements that conveyed annoyance at having to meet in person with Judge Pellman, specifically, complaining about having to drive to downtown Los Angeles (to the Stanley Mosk Courthouse, where Judge Pellman presides) from Compton and telling Judge Pellman that she needed to get back to Redondo Beach (where she lives). In addition, Judge Spear was hostile toward Judge Pellman during the meeting, and she exhibited no remorse for the conduct for which Judge Pellman counseled her, took no responsibility for her actions, and conveyed no recognition of how her unauthorized absences and early departures could undermine public confidence in the integrity and impartiality of the judiciary or adversely affect her judicial colleagues.

The day after Supervising Judge Pellman counseled Judge Spear, Judge Pellman telephoned Judge Spear to again counsel her about prioritizing her judicial responsibilities and not inconveniencing her judicial colleagues. Judge Spear had been scheduled to cover another judge’s calendar that afternoon, but mid-morning, she informed the site supervising judge that she had personal lunch plans and would not be back in time to cover the calendar. During the counseling call, Judge Spear exhibited annoyance toward Judge Pellman and remarked, sarcastically, “I didn’t know I had to tell people about my personal lunch plans,” or words to that effect.

In her response to the commission’s preliminary investigation, Judge Spear admitted that she was annoyed with Judge Pellman for summoning her downtown for the December 20 meeting, but she implied that her annoyance was justified because Judge Pellman had scheduled the meeting without disclosing the purpose and on short notice, which Judge Spear characterized as “an ambush.” Judge Spear also argued that, by scheduling a 2:30 p.m. meeting without notice, Judge Pellman “essentially displayed a total disregard for Judge Spear’s childcare issues.” The commission found that contention unpersuasive, noting that, as she had been counseled during that meeting, Judge Spear, like all judges, is expected to work a full day at the courthouse, absent exceptional circumstances and prior authorization. Judge Spear did not deny the allegations that, during the meeting, she was hostile, exhibited no remorse, took no responsibility for her actions, and conveyed no recognition of the consequences

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

of her conduct. She also did not deny the allegations that she had been disrespectful toward Judge Pellman when they spoke by telephone on December 21.

(4) Judge Spear had been scheduled to be on vacation the week beginning Tuesday, September 6, 2022, and Judge Kim was scheduled to cover Judge Spear's calendar that week. A few weeks before the scheduled time off, Judge Spear sought to extend her vacation to include the entire week of September 12. When Judge Spear asked the site supervising judge for Compton, Judge Connie Quinones, if she could take the week of September 12 off (in addition to the previously scheduled week of September 6), Judge Quinones denied the request because Judge Spear had insufficient vacation time, and no other bench officer was available to cover her calendar that week. Thereafter, Judge Spear emailed Supervising Judge Pellman to request "pro tem coverage" for the week of September 12 because she had pre-paid travel arrangements. Judge Spear stated that "minimal coverage" was needed because "only a few restraining orders and TROs" were on her calendar. She did not disclose that Judge Quinones had already denied her vacation request. Supervising Judge Pellman responded promptly, explaining that requests for vacation should be directed to Judge Quinones, as the site supervising judge. In another email later that day, Judge Pellman informed Judge Spear that she had learned that Judge Quinones had already denied the vacation request and noted that, contrary to Judge Spear's representation, there were "quite a few cases on [her] calendar that week."

Judge Spear sought to begin her scheduled vacation earlier by taking off Friday, September 2. Judge Spear did not ask Judge Quinones or Judge Pellman for the day off; instead, she instructed her judicial assistant to continue the hearings scheduled in her department on Friday, September 2, to Tuesday, September 6, when she would be on vacation and Judge Kim would be covering her calendar. Judge Spear did not discuss moving the hearings with Judge Kim, Judge Quinones, or Judge Pellman. When Judge Kim discovered the continued matters, she notified Judge Pellman, who telephoned Judge Spear and counseled her that it was not acceptable to move cases onto another judge's calendar without asking first. Judge Spear told Judge Pellman that Judge Kim had instructed her to continue the matters to September 6, which was not true. In a subsequent call, on or about the same day, Judge Pellman explained to Judge Spear again why moving her cases onto another judge's calendar without first discussing it with that judge was problematic. Judge Spear did not appear to understand the problem with doing so, and she expressed exasperation with Judge Pellman, telling her that she was repeating herself. When Judge Pellman reminded Judge Spear that she was trying to help her and had always shown respect for her and expected the same respect in return, Judge Spear

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

responded, “Well, don’t you get annoyed when lawyers repeat themselves?” or words to that effect.

In her response to the preliminary investigation letter, Judge Spear admitted that it was a “mistake in judgment” for her to ask Judge Pellman for the week of September 12 off without disclosing that Judge Quinones had already denied the request. She explained that she did so because she thought Judge Quinones had only denied the request because Judge Quinones was “mad” at her. Judge Spear did not deny the allegations that she misled Judge Pellman about the number of matters on her calendar the week of September 12, or that she falsely told Judge Pellman that Judge Kim had told her to continue the September 2 matters. She also did not deny the allegation that she treated Judge Pellman disrespectfully during the August 24 telephone conversation. With respect to the allegation that she had improperly and unilaterally continued hearings from her September 2 calendar to September 6, Judge Spear responded only that she “rescheduled the matters she had control over and believes they were all timely heard.”

The commission acknowledged that “judges must, from time to time, continue matters because of personal circumstances, and that doing so is not necessarily misconduct. But here, Judge Spear’s entire course of conduct surrounding her efforts to extend her September 2022 vacation reflects manipulation and dishonesty to get what she wanted, even though she did not have sufficient vacation time to cover the days off she sought.”

The judge argued in mitigation that her health problems—which she characterized as significant, serious, and potentially life threatening—were well known to her supervising judges and the cause of the majority of her misconduct and that “she has received ‘glowing’ and ‘outstanding’ reviews of her current performance from her supervising judges.” The commission stated, however, that the judge “presented minimal evidence in support of her claim” about her health and no evidence to support her claim about performance reviews from her current assignment. The commission also noted that, although at her appearance before it, Judge Spear acknowledged the impropriety of some of her conduct, “in her response to the preliminary investigation she consistently defended her conduct and directed blame towards her colleagues and supervising judges.” In aggravation, the commission noted the number of incidents, the judge’s lack of insight into the seriousness of her misconduct, and the fact that some of her misconduct reflected a lack of integrity.

PRIVATE DISCIPLINE

Private admonishments and advisory letters that became final in 2023 are summarized below. In order to maintain confidentiality, certain details of the cases have been omitted or obscured, making the summaries less informative

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

than they otherwise might be. Because these summaries are intended in part to educate judges and the public, and to assist judges in avoiding inappropriate conduct, the commission believes it is better to describe the conduct in abbreviated form than to omit the summaries altogether.

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

PRIVATE ADMONISHMENTS

Private admonishments are designed in part to correct problems at an early stage in the hope that the misconduct will not be repeated or escalate, thus serving the commission's larger purpose of maintaining the integrity of the California judiciary.

The commission may consider private discipline in subsequent proceedings, particularly when the judge has repeated the conduct for which the judge was previously disciplined.

In 2023, 10 private admonishments became final.

1. The judge engaged in a pattern of discourteous and undignified conduct with inexperienced public defenders. The judge made comments that were gratuitous and demeaning, could reasonably be expected to impair the attorney-client relationship, and conveyed an appearance of embroilment and bias against the attorneys. The judge also improperly discussed personal experiences, which created the appearance of a lack of impartiality, and raised the judge's voice in some of the discourteous interactions.
2. The judge intentionally delayed striking a procedurally-deficient peremptory challenge filed by an attorney, so that, if thereafter, the attorney filed an amended challenge, the amended challenge would be untimely. In a separate matter, the judge, without authority, ordered a party to pay attorneys' fees as a sanction. The judge's conduct in imposing the attorneys' fees as a sanction was not mere legal error because, in making the order, the judge abused the judge's authority and disregarded the party's due process rights.
3. In several dependency matters, the judge disregarded the fundamental rights to be heard and to due process, abused the judge's authority, and engaged in conduct reflecting bias and prejudgment. In one matter, the judge also made discourteous comments to a party.
4. The judge initiated an ex parte contact with a juror and failed to disclose the ex parte contact to counsel. The judge improperly questioned an attorney, giving the appearance that the judge believed the attorney had complained about the judge. The judge also made a discourteous comment, in open court, regarding a female attorney's physical appearance.

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

5. The judge ruled on habeas petitions without timely disclosing, on the record, family members' employment in offices that represented parties or real parties in interest to the habeas petitions. The judge's misconduct was aggravated by prior discipline.

6. At a hearing, the judge made comments to a self-represented litigant that constituted improper legal advice and conveyed the appearance of embroilment and bias. The judge also threatened the opposing party with contempt and incarceration without a legal basis. The judge made other harsh, demeaning, and intimidating comments during the hearing.

7. The judge repeatedly failed to cooperate with the presiding judge and court officials in connection with performing the judge's judicial assignment. The judge's conduct adversely affected public confidence in the judiciary and brought the judiciary into disrepute.

8. The judge made social media posts, giving the appearance of partiality and that certain attorneys were in a special position to influence the judge. The judge engaged in ex parte contacts about a matter, from which the judge would have been disqualified, with the judge before whom the matter was pending.

9. In numerous dependency matters, the judge disregarded the fundamental rights of parties by conducting hearings without proper notice to affected parties and without providing those parties with an opportunity to testify and cross-examine witnesses.

10. During a small claims trial, the judge used language that constituted a direct and personal attack against a litigant whereby the judge surrendered the judge's neutrality and joined the fray. The judge made other demeaning, discourteous, and undignified comments during the trial. The judge's comments also gave the appearance of bias and prejudgment. The judge's misconduct was aggravated by prior discipline.

ADVISORY LETTERS

As noted by the California Supreme Court in *Oberholzer v. Commission on Judicial Performance* (1999) 20 Cal.4th 371, 393: "Advisory letters may range from a mild suggestion to a severe rebuke." An advisory letter may be issued when the impropriety is isolated or relatively minor, or when the impropriety is more serious but the judge has demonstrated an understanding of the problem and has taken steps to improve. An advisory letter is especially useful when there is an appearance of impropriety. An advisory letter might be appropriate when there is actionable misconduct offset by substantial mitigation.

In 2023, 19 advisory letters became final.

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

Abuse of Contempt/Sanctions

Before sending a person to jail for contempt or imposing a fine, judges are required to provide due process of law, including strict adherence to the procedural requirements contained in the Code of Civil Procedure. Ignorance of these procedures is not a mitigating but an aggravating factor. (*Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 533.)

1. The judge failed to comply with procedural and statutory requirements for direct contempt and improperly held a self-represented defendant, who refused to enter a plea, in direct contempt. The judge also improperly revoked the defendant's own-recognition custody status without legal basis or an opportunity to be heard.

Demeanor and Decorum

A judge "shall require order and decorum in proceedings before the judge" and "shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity...." (Canons 3B(3), (4).)

2. In several matters, the judge exhibited poor demeanor and impatience, often toward self-represented litigants, including eye-rolling and making discourteous comments. On several occasions, the judge made remarks in open court that conveyed the appearance that the judge was unprepared or inattentive, undermining public confidence in the judiciary. The judge's misconduct was aggravated by prior discipline. The judge's misconduct was significantly mitigated by the judge's successful completion of the commission's mentoring program.

3. The judge demonstrated poor demeanor (including telling an attorney to "shut up") and had received prior discipline for poor demeanor.

Disqualification/Disclosure/Post-Disqualification Conduct

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

4. The judge presided over three matters without disqualifying or disclosing on the record, at the earliest practicable opportunity, a family member's employment as an attorney for a governmental entity that was a party to the actions.

5. The judge failed to disqualify from two proceedings at which an attorney, with whom the judge had a personal relationship (including a personal social media connection), appeared as counsel of record. The judge also failed to fully

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

disclose the judge's personal relationship with that attorney at those two proceedings, as well as at a third proceeding where the same attorney appeared as counsel of record.

6. The judge failed to make reasonable efforts to keep informed of personal financial interests. The judge failed to disclose and recuse, or seek a waiver from counsel of record, in a number of cases where disclosure and recusal were required. The judge's misconduct was mitigated by several factors.

7. The judge failed to make reasonable efforts to keep informed of personal financial interests. The judge failed to disclose and recuse, or seek a waiver from counsel of record, in a number of cases where disclosure and recusal were required. The judge's misconduct was mitigated by several factors.

8. The judge inadvertently took numerous actions in a case after being disqualified by means of a peremptory challenge, including issuing a bench warrant, sentencing the defendant, and finding a violation of probation.

9. The judge improperly observed proceedings in a case from within the well of the courtroom (i.e., in front of the bar) after having been disqualified from the case.

10. The judge failed to disqualify from presiding over a matter involving a defendant whom the judge, while an attorney, had previously represented in a matter for which the prosecution sought a sentence enhancement for a prior strike.

11. The judge failed to make reasonable efforts to keep informed of personal financial interests. The judge failed to disclose and recuse, or seek a waiver from counsel of record, in a number of cases where disclosure and recusal were required.

Failure to Ensure Rights

Society's commitment to institutional justice requires that judges be solicitous of the rights of persons who come before the court. (See *Geiler v. Commission on Judicial Qualifications* (1973) 10 Cal.3d 270, 286.)

12. Without a pending motion or providing notice and an opportunity to be heard to the affected parties, the judge improperly used a nunc pro tunc order to make a substantive change to an order entered by another judge.

13. In a dependency matter, the judge disregarded a litigant's fundamental rights by conducting a hearing without proper notice and without providing an opportunity to be heard and to cross-examine witnesses.

IV. ACTIVE AND FORMER JUDGES—CASE SUMMARIES

Off-Bench Improprieties

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

14. The judge improperly provided a letter attesting to the good character of an attorney involved in State Bar discipline proceedings, without a subpoena or an official request from the State Bar.

15. The judge improperly provided a letter attesting to the good character of an attorney involved in State Bar discipline proceedings, without a subpoena or an official request from the State Bar.

On-Bench Abuse of Authority in Performance of Judicial Duties

Acts in excess of judicial authority may constitute misconduct, particularly where a judge deliberately disregards the requirements of fairness and due process. (See *Gonzalez v. Commission on Judicial Performance* (1983) 33 Cal.3d 359, 371, 374; *Cannon v. Commission on Judicial Qualifications* (1975) 14 Cal.3d 678, 694.)

16. The judge improperly entered a temporary restraining order at a time when there was no TRO application pending and without providing the affected parties notice and an opportunity to be heard. The judge also entered the order when the judge did not have jurisdiction over the matter.

More Than One Type of Misconduct

Some cases involved more than one type of misconduct.

17. At numerous hearings, the judge made discourteous and sarcastic comments to self-represented litigants. The judge also ruled out of pique, became embroiled in a matter after a litigant filed a motion to disqualify the judge for cause, improperly threatened to sanction litigants, and made comments that reflected gender and socioeconomic bias. The judge's misconduct was significantly mitigated by the judge's successful completion of the commission's mentoring program.

18. At a hearing, the judge made a statement that created the appearance of gender bias. The judge also ordered sanctions against self-represented litigants without providing notice and an opportunity to be heard.

19. The judge became embroiled in a matter and made discourteous comments to a litigant at two separate hearings. After recusing from the matter,

IV.
ACTIVE AND FORMER JUDGES—CASE SUMMARIES

the judge had an improper ex parte communication with another judge subsequently assigned to the matter.

V. SUBORDINATE JUDICIAL OFFICERS

Since June of 1998, the commission has shared authority with the superior courts for the discipline of subordinate judicial officers, attorneys employed by California’s state courts to serve as court commissioners and referees. In 2023, there were 276 authorized subordinate judicial officer positions in California.

SUBORDINATE JUDICIAL OFFICERS AUTHORIZED POSITIONS	
AS OF DECEMBER 31, 2023	
Court Commissioners.....	224
Court Referees	52
Total	276

COMMISSION PROCEDURES

The constitutional provisions governing the commission’s role in the oversight and discipline of court commissioners and referees expressly provide that the commission’s jurisdiction is discretionary. Each superior court retains initial jurisdiction to discipline subordinate judicial officers or to dismiss them from its employment and also has exclusive authority to respond to complaints about conduct problems outside the commission’s constitutional jurisdiction. Since the local court’s role is primary, the commission’s rules require that complaints about subordinate judicial officers be made first to the local court. (Commission Rule 109(c)(1).)

Complaints about subordinate judicial officers come before the commission in a number of ways. First, when a local court completes its disposition of a complaint, the complainant has the right to seek review by the commission. When closing the complaint, the court is required to advise the complainant to seek such review within 30 days. (California Rules of Court, rule 10.703(k)(2)(B); Commission Rule 109(c)(1).) Second, a local court must notify the commission when it disciplines a subordinate judicial officer for conduct that, if alleged against a judge, would be within the jurisdiction of the commission. (California Rules of Court, rule 10.703(j)(1); Commission Rule 109(c)(3).) Third, a local court must notify the commission if a subordinate judicial officer resigns while a preliminary or formal investigation is pending concerning conduct that, if alleged against a judge, would be within the jurisdiction of the commission, or under circumstances that would lead a reasonable person to conclude that the resignation was due, at least in part, to a complaint or allegation of misconduct. (California Rules of

V. SUBORDINATE JUDICIAL OFFICERS

Court, rule 10.703(j)(2); Commission Rule 109(c)(3), (4).) Lastly, the commission may investigate or adjudicate a complaint against a subordinate judicial officer at the request of a local court. (California Rules of Court, rule 10.703(g)(2); Commission Rule 109(c)(2).)

When a matter comes to the commission after disposition by a local court, the commission may commence an investigation of the subordinate judicial officer if it appears that the court has abused its discretion by failing to investigate sufficiently, by failing to impose discipline, or by imposing insufficient discipline. When a court commissioner or referee has resigned while an investigation is pending or has been terminated by the local court, the commission may commence an investigation to determine whether to conduct a hearing concerning the individual's fitness to serve as a subordinate judicial officer.

To facilitate the commission's review of complaints and discipline involving subordinate judicial officers, the California Rules of Court require superior courts to adopt procedures to ensure that complaints are handled consistently and that adequate records are maintained. (See California Rules of Court, rules 10.603(c)(4)(C) and 10.703.) Upon request by the commission, the superior court must make its records concerning a complaint available to the commission.

The Constitution requires the commission to exercise its disciplinary authority over subordinate judicial officers using the same standards specified in the Constitution for judges. Thus, the rules and procedures that govern investigations and formal proceedings concerning judges also apply to matters involving subordinate judicial officers. In addition to other disciplinary sanctions, the Constitution provides that a person found unfit to serve as a subordinate judicial officer after a hearing before the commission shall not be eligible to serve as a subordinate judicial officer. The Constitution also provides for discretionary review of commission determinations upon petition by the subordinate judicial officer to the California Supreme Court.

2023 STATISTICS

Complaints Received and Investigated

In 2023, the commission reviewed 77 new complaints about subordinate judicial officers. Because the superior courts were required to conduct the initial investigations, the commission's function primarily entailed reviewing the local courts' actions to determine whether there was any basis for further investigation or action by the commission.

In 2023, the commission commenced two preliminary investigations.

**V.
SUBORDINATE JUDICIAL OFFICERS**

RULE UNDER WHICH NEW COMPLAINTS WERE SUBMITTED	
Rule 109(c)(1) – appeal from local court’s disposition.....	66
Rule 109(c)(2) – at the request of a local court	0
Rule 109(c)(3) – notification by local court of discipline.....	2
Rule 109(c)(4) – notification by local court of resignation with investigation pending	0
Rule 109(c)(5) – subordinate judicial officer retires or resigns before court receives complaint.....	9

2023 CASELOAD – SUBORDINATE JUDICIAL OFFICERS	
Cases Pending 1/1/23	3
New Complaints Considered	77
Cases Concluded	78
Cases Pending 12/31/23	2

Cases Concluded

In 2023, the commission concluded its review of 78 complaints involving subordinate judicial officers. The commission closed 75 of these matters after initial review because it determined that the superior court’s handling and disposition of the complaints was adequate and that no further proceedings were warranted. Following investigation, the commission imposed one public admonishment, one private admonishment, and closed one case without discipline.

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

V.
SUBORDINATE JUDICIAL OFFICERS

**TYPE OF COURT CASE UNDERLYING
SUBORDINATE JUDICIAL OFFICER
COMPLAINTS CONCLUDED IN 2023**

Small Claims	38%
Family Law	33%
General Civil	19%
Criminal	4%
All Others.....	4%
(including off-bench)	
Traffic	2%

**SOURCE OF COMPLAINTS
INVOLVING SUBORDINATE JUDICIAL OFFICERS
CONCLUDED IN 2023**

Litigant/Family/Friend.....	92%
Judge/Court Staff	5%
All Other Complainants	3%
Attorney.....	0%
Source Other Than Complaint	0%
(includes anonymous letters, news reports)	

SUMMARIES OF DISCIPLINARY ACTION

PUBLIC DISCIPLINE

In 2023, the commission imposed one public admonishment on a subordinate judicial officer.

V.
SUBORDINATE JUDICIAL OFFICERS

**Public Admonishment of
Commissioner Wendy M. Harris
August 29, 2023**

The Commission on Judicial Performance publicly admonished Commissioner Wendy M. Harris of the Riverside County Superior Court for being discourteous, argumentative, impatient, and demeaning during two hearings, occurring over two consecutive days, on a custody dispute and request for a domestic violence restraining order and appearing to be embroiled in the proceedings.

In *H. v. B.*, in January 2022, Commissioner Harris ordered that the father, Mr. B, and mother, Ms. H, share joint physical custody of their daughter. Mr. B had custody during the week, and Ms. H had visitation on weekends. In February, Ms. H sought orders to change custody and also sought a domestic violence restraining order. She alleged that Mr. B was responsible for their daughter living in unsafe and inappropriate conditions in a motel in Los Angeles, that their daughter had not been enrolled in the school district “for months,” and that, on January 12, Mr. B sent the girl to the Midwest to live with “unknown persons,” while he stayed behind in California. Ms. H alleged that she “recovered” the child on February 6.

On March 16, Commissioner Harris presided over a hearing. Mr. B was personally present in court; Ms. H was not present. Neither party was represented by counsel. On the record, Mr. B explained that, sometime after the last court hearing, he sent his daughter to be with “family” in the Midwest, and that the child had been in Ms. H’s physical custody since February 6. (The next day, Mr. B described the person in the Midwest as “a close friend,” whom he considers to be family.) Commissioner Harris did not ask why the child was sent out of state without permission but asked Mr. B, “Sir, do you want me to try to recover the child and return the child to you?” He responded, “Yes, ma’am.”

Commissioner Harris then allegedly directed the courtroom clerk to reach Ms. H by phone, stating: “I need [Ms. H] in here. These are her motions. But I’m more concerned about her picking up the child and keeping the child, violating my order.” Back on the record after a break in the proceedings, Ms. H explained by phone that she was waiting for the bus to take her to the courthouse. The following exchange occurred:

THE COURT: All right. Why are we not in court today, ma’am?

MS. H: Okay. Actually, I was working hard to get there this morning. I just had my baby girl. She is six days old. I took [my daughter] to school, and so me and baby were getting our way over there. And you guys called me right as I’m standing here at the bus stop . . . I was working hard to get there. The earliest I can drop [my daughter] off at school is 8:20. The gates open for

V.
SUBORDINATE JUDICIAL OFFICERS

breakfast, so I always take her there for breakfast. And then immediately me and baby made our way to the bus stop--

THE COURT: No. Hold on. Hold on. Hold on. No. Why do you have this child? You're only supposed to have the child on the weekends.

MS. H: Okay. So--

THE COURT: Hold on. I need you to bring the child to the school-- to my courthouse, and I'll see you when you get here.

MS. H: Oh, well, that--I don't know how that's going to work. She actually--

THE COURT: Well, hold on. Hold on. Hold on. How that's going to work is you're going to bring the child to this courthouse, because you're in violation of my court order. If you do not, I can tell you that I have measures to retrieve that child.

MS. H: Hello?

THE COURT: Hold on.

MS. H: Well, maybe we can go through that, because she--

THE COURT: Ma'am, please--ma'am, please stop talk--ma'am, please stop talking and listen to what I have to tell you.

MS. H: (Unintelligible.)

THE COURT: Ma'am--

MS. H: You are exposing my child to a lot, allowing that man to see my child.

THE COURT: Ma'am--ma'am--

MS. H: I'm not going to do that--

THE COURT: All right. I find the Court--I find that the petitioner is--

MS. H: You're not --

THE COURT: --is not present--Please mute her.

THE CLERK: She's muted.

THE COURT: I find the petitioner is in violation of my court's order. She has said she is not going to return the child. I am appointing the Child Abduction Unit to retrieve this minor child.

MS. H: You can't--I just had--

V.
SUBORDINATE JUDICIAL OFFICERS

THE COURT: The father--the father will have sole legal, sole physical custody of the minor child. Mother will have no visitation since she is refusing to comply with my court's order.

THE CLERK: She hung up.

THE COURT: I know. Sir, have a seat. We'll get you some paperwork. You'll need to fill it out. Take it out over [sic] to the district attorney's office, and they will retrieve the child for you. All right?

MR. B: Thank you, Judge.

THE COURT: Have a seat.

MR. B: Thank you.

That afternoon, Ms. H appeared in person before Commissioner Harris, while Mr. B appeared by telephone for a proceeding described in the minutes as "Hearing re: Return minor child to father set for 03/17/22 at 8:30 a.m." Also present in the courtroom from the Child Abduction Unit were a deputy district attorney and an investigator. Commissioner Harris did not give the DDA or the investigator an opportunity to speak. Instead, Commissioner Harris argued with Ms. H. The judge addressed Ms. H's supposed poor conduct in court (both on this date and prior occasions) and her purported violation of court orders, and Ms. H repeatedly asserted that ordering her daughter back to the custody of Mr. B was not in the child's best interest. Ms. H attempted to discuss, as her papers alleged, Mr. B's inappropriate activity in front of their daughter, at one point adding: "[Mr. B] sent her out of state, and the people out of state returned her to me. I was trying to let you know that." Commissioner Harris did not respond in any way to this information and instead repeatedly asked Ms. H to answer the question: "Will you be here tomorrow with the child, yes or no?" Ms. H attempted to explain why that would not be in the best interest of her daughter, but Commissioner Harris did not permit her to explain why. Commissioner Harris said to Ms. H: "[Y]ou're digging a ditch," and "You're digging a grave." Commissioner Harris did not ask any questions or otherwise address with Ms. H, or anyone else, the allegations that were the basis for Ms. H's request for a domestic violence restraining order and request for orders.

Because Mr. B, who was on the phone, could not physically arrive at the courthouse before the close of business that afternoon, Commissioner Harris ordered Ms. H to bring the child to court at 8:30 a.m. the next day to hand her over. Commissioner Harris informed Ms. H that if she did not appear at 8:30 a.m. with the child, Commissioner Harris would issue a bench warrant for Ms. H's arrest.

V.
SUBORDINATE JUDICIAL OFFICERS

Later that day, Commissioner Harris “self-reported” her handling of the proceedings to her supervising judge, Judge Jennifer Gerard, and asked Judge Gerard to observe the next day’s proceedings via livestream.

On March 17, Ms. H, Mr. B, and their daughter appeared before Commissioner Harris at 8:30 a.m., as ordered. (The daughter was taken to the child interview room at the beginning of the hearing.) Also present were the members of the DA’s Child Abduction Unit who had attended the hearing the day before, plus two additional DDAs with supervisory roles in the unit, all of whom made appearances for the record. Judge Gerard observed via livestream.

Once on the record, Commissioner Harris immediately relieved the members of the Child Abduction Unit. Commissioner Harris questioned Mr. B about whether the child was attending school and whether he sent the child out of state. During this exchange, Commissioner Harris interrupted Mr. B several times and did not allow him a full opportunity to speak.

Ultimately, based on her finding that Mr. B failed to enroll the child in school and sent the child out of state without notice or permission, Commissioner Harris awarded sole legal and physical custody of the child to Ms. H; ordered that the child “not be removed” from the school she was attending or the state; and ordered that Mr. B have supervised visitation until the next court date in May.

As Mr. B was in the process of explaining why he sent the child to the Midwest, Commissioner Harris criticized him for sending the child out of state, and he became argumentative, because, according to him, Ms. H had spent three years in prison. Commissioner Harris responded that Mr. B and Ms. H. “can stop bringing up all the past -- because, quite frankly, the two of you have horrible pasts, both of you. You’re both convicted felons, and you both are on parole currently. So you both have issues.” She then had the following exchange with Mr. B:

MR. B: Yeah, but--

THE COURT: All right?

MR. B: My thing, Your Honor, is this--

THE COURT: Sir, I’ve made an order. You’re either going to follow it-- and so are you--because you see what happens when you don’t follow the court order.

MR. B: How did we get from this order--

THE COURT: Sir--

MR. B: --to what it was yesterday?

THE COURT: Sir--

V.
SUBORDINATE JUDICIAL OFFICERS

MR. B: You called me yesterday and said to come get my child. Now you're telling me not to.

THE COURT: Correct.

MR. B: Help me out here to understand.

THE COURT: Sir, I just made a record of why I believe, pursuant to Family Code [s]ection 3011, that at this time the child is better suited to be in mom's custody--

Despite having failed to adequately review the moving papers before the hearing and to ask about the issues raised in the papers or by the parties' statements in court, Commissioner Harris ended the court day by stating that she intended to remove the child from Ms. H's custody and return her to the custody of Mr. B.

On March 17, without any additional evidence or any change in the evidence available to her from the previous day, Commissioner Harris dismissed the DDAs and changed her order, awarding sole legal and physical custody of the daughter to Ms. H.

Presiding Judge John Monterosso issued a written reprimand to Commissioner Harris, effective June 20, 2022. The written reprimand found that "[t]he serious nature of [Commissioner Harris's] conduct [was] compounded by the fact that prior oral counseling [in October 2021] concerning similar conduct ha[d] been unsuccessful."

The commission determined that, on March 16, Commissioner Harris made no reference to having reviewed the request for a domestic violence restraining order and request for orders; did not ask any questions regarding the substantive issues raised in those requests; did not ask any questions regarding the child being sent out of state (even though the issue was raised in the moving papers and Ms. H alleged, and Mr. B admitted on the record, that he sent the child to the Midwest); did not ask the Child Abduction Unit to address the court, even though she had summoned it and it may have had relevant information; and denied Ms. H a meaningful opportunity to explain why Ms. H had custody of her daughter, giving the appearance of prejudgment and bias.

In aggravation, the commission noted Commissioner Harris's prior discipline by the presiding judge regarding her poor temperament in the handling of another family law matter. In mitigation, it noted that Commissioner Harris had sought guidance from her supervising judge, "took full responsibility" for her conduct, and attended classes.

V.
SUBORDINATE JUDICIAL OFFICERS

PRIVATE DISCIPLINE

The commission issued one private admonishment to a subordinate judicial officer in 2023.

1. The subordinate judicial officer improperly considered and initiated ex parte communications, reflecting a disregard of fundamental rights, and creating an appearance of bias and coordination with law enforcement.

VI. JUDICIAL DISABILITY RETIREMENT

VOLUNTARY DISABILITY RETIREMENT

In addition to its disciplinary function, the commission is responsible for evaluating and acting upon judges' applications for disability retirement. This responsibility is shared with the Chief Justice of the California Supreme Court. Disability retirement proceedings are confidential, with limited exceptions. The application procedure is set forth in Division V of the commission's policy declarations, which are available on the commission's website at <https://cjp.ca.gov>.

Judges are eligible to apply for disability retirement after either four or five years on the bench, depending on when they took office. This prerequisite does not apply if the disability results from injury or disease arising out of and in the course of judicial service.

The statutory test for disability retirement is a mental or physical condition that precludes the efficient discharge of judicial duties and is permanent or likely to become so. The applicant judge is required to prove that this standard is satisfied. The judge must provide greater support for the application and satisfy a higher burden of proof if the application is filed while disciplinary proceedings are pending, if the judge has been defeated in an election, or if the judge has been convicted of a felony.

Judicial disability retirement may afford substantial lifetime benefits. Applications, accordingly, are carefully scrutinized by both the commission and the Chief Justice. In most cases, the commission will appoint an independent physician to review medical records, examine the judge, and report on whether the judge meets the test for disability retirement. Because the law requires that the disability be permanent or likely to become so, the applicant judge must exhaust all reasonable treatment options before a decision on the application can be made. If the commission finds that the judge is disabled, but may recover with treatment, the commission will keep the application open and closely monitor the judge's progress, requiring regular medical reports and frequent medical examinations. Disability retirement will be approved only if the record, including the opinion of the commission's independent medical examiner, establishes that further treatment would be futile. If the commission determines that an application should be granted, it is referred to the Chief Justice for consideration. A judge whose application is denied is given an opportunity to seek review of the denial of benefits.

Once a judge retires on disability, the commission may review the judge's medical status every two years, prior to age 65, to ascertain whether he or she

VI. JUDICIAL DISABILITY RETIREMENT

remains disabled. A judge who is no longer disabled becomes eligible to sit on assignment, at the discretion of the Chief Justice. Should an eligible judge refuse an assignment, the disability retirement allowance ceases.

The Judges' Retirement System has authority to terminate disability retirement benefits if the judge earns income from activities "substantially similar" to those which he or she was unable to perform due to disability. Accordingly, the commission's policy declarations require physicians, who support a judge's disability retirement application, to specify the judicial duties that cannot be performed due to the condition in question. When the commission approves an application, it may prepare findings specifying those duties. Upon request of the Judges' Retirement System, the commission may provide information about a disability retirement application to assist in determining whether to terminate benefits.

INVOLUNTARY DISABILITY RETIREMENT

On occasion, a judge is absent from the bench for medical reasons for a substantial period of time, but does not apply for disability retirement. If the absence exceeds 90 court days in a 12-month period, the presiding judge is required to notify the commission. Because the absent judge is not available for judicial service, the commission will invoke its disciplinary authority and conduct an investigation, which may include an independent medical examination. Should the investigation establish that the judge is disabled or displays a persistent failure or inability to perform judicial duties, the commission will institute formal proceedings, which may lead to discipline or involuntary disability retirement.

2023 STATISTICS

One disability retirement application was pending before the commission at the beginning of 2023.

The commission received two disability retirement applications during 2023. One was granted and one was pending at the end of 2023.

VII. COMMISSION ORGANIZATION, STAFF AND BUDGET

COMMISSION ORGANIZATION AND STAFF

The commission has 29 authorized staff positions. The commission's authorized positions include 17 attorneys, 11 support staff, and 1 temporary staff position.

The Director-Chief Counsel heads the agency and reports directly to the commission. The Director-Chief Counsel oversees the intake and investigation of complaints and the commission examiner's handling of formal proceedings. The Director-Chief Counsel is also the primary liaison between the commission and the judiciary, the public, and the media. Gregory Dresser serves as Director-Chief Counsel.

The commission's staff counsel includes intake attorneys who are responsible for reviewing and evaluating new complaints, and investigating attorneys who are responsible for conducting preliminary investigations.

The commission appoints an attorney to serve as examiner during formal proceedings. Trial Counsel serves as examiner during formal proceedings, aided by Assistant Trial Counsel. The examiner is responsible for preparing cases for hearing before special masters, including presenting the evidence that supports the charges and briefing. The examiner also presents cases orally and in writing in hearings before the commission and the California Supreme Court.

One member of the commission's legal staff, the Legal Advisor to Commissioners, is solely responsible for assisting the commission in its deliberations during its adjudication of contested matters and for coordinating formal hearings. That attorney does not participate in the investigation or prosecution of cases and reports directly to the commission. Emma Bradford serves as Legal Advisor.

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

ORGANIZATIONAL CHART			
COMMISSION MEMBERS			
Director-Chief Counsel			Legal Advisor to Commissioners
Office of Trial Counsel 3 Attorneys 2 Legal Assistants to Trial Counsel*	Investigation Staff 4 Intake Attorneys 8 Investigating Attorneys 4 Legal Assistants	Administrative Staff 2½ Administrative Assistants 1 Legal Assistant 1 Facilities Officer	½ Administrative Assistant

* One position is vacant.

2023-2024 BUDGET

The commission’s budget is separate from the budget of any other state agency or court. For the current 2023-2024 fiscal year, the commission’s budget is \$6,893,000.

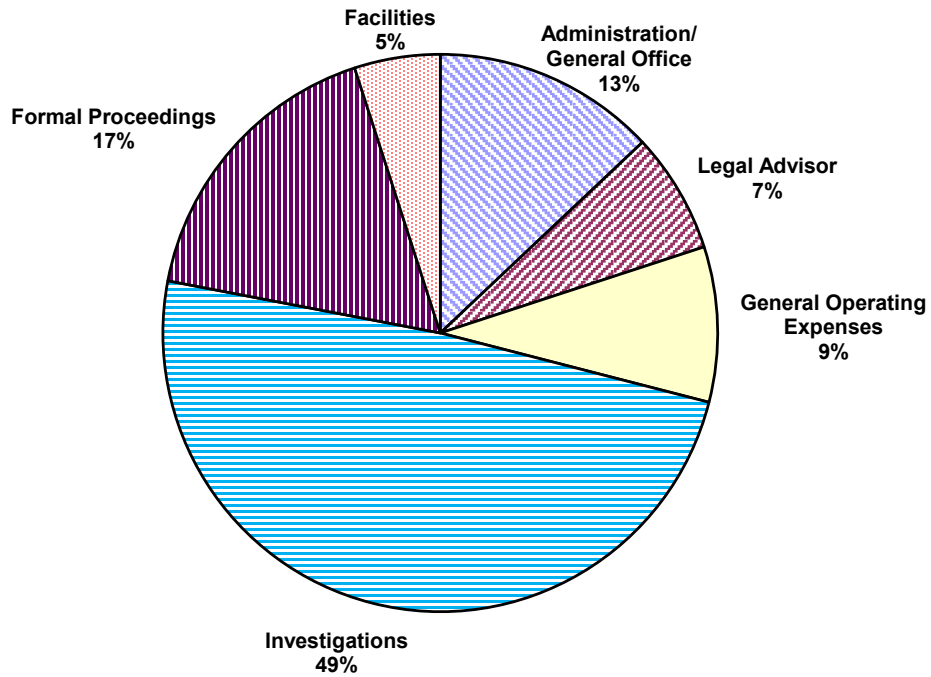
The commission’s constitutional mandate is the investigation of allegations of misconduct and the imposition of discipline. The members of the commission receive no salaries, only reimbursement of expenses relating to commission business. Because the performance of the commission’s core functions is dependent upon the services of its legal and support staff, the commission’s budget is largely allocated to personnel expenses.

2022-2023 BUDGET

The commission’s final budget appropriation for the 2022-2023 fiscal year was \$7,210,000. Final expenditures totaled \$6,337,836. Approximately 49% of the commission’s budget supported the intake and investigation functions and approximately 24% was used in connection with formal proceedings. The remaining 27% went toward sustaining the general operations of the commission, including facilities, administrative staff, supplies, and security.

VII.
COMMISSION ORGANIZATION, STAFF AND BUDGET

**Commission on Judicial Performance
2022-2023 Actual Expenditures
\$6,337,836**



APPENDIX

APPENDIX 1. GOVERNING PROVISIONS

The following provisions governing the Commission on Judicial Performance are available on the commission's website at <https://cjp.ca.gov>.

California Constitution, Article VI, Sections 8, 18, 18.1 and 18.5

Rules of the Commission on Judicial Performance

Policy Declarations of the Commission on Judicial Performance

**California Rules of Court
(provisions pertaining to the Commission on Judicial Performance)**

**California Government Code
(provisions pertaining to the Commission on Judicial Performance)**

California Code of Civil Procedure Section 170.9

APPENDIX 2.
CALIFORNIA CODE OF JUDICIAL ETHICS
Adopted by the Supreme Court of California

Amended by the Supreme Court of California effective July 1, 2020; adopted effective January 15, 1996; previously amended March 4, 1999, December 13, 2000, December 30, 2002, June 18, 2003, December 22, 2003, January 1, 2005, June 1, 2005, July 1, 2006, January 1, 2007, January 1, 2008, April 29, 2009, January 1, 2013, January 21, 2015, August 19, 2015, December 1, 2016, and October 10, 2018.

TABLE OF CONTENTS.....	PAGE
<i>Preface</i>	64
<i>Preamble</i>	65
<i>Terminology</i>	66
Canon 1. <i>A judge shall uphold the integrity and independence of the judiciary.</i>	70
Canon 2. <i>A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities.</i>	71
Canon 3. <i>A judge shall perform the duties of judicial office impartially, competently, and diligently.</i>	76
Canon 4. <i>A judge shall so conduct the judge’s quasi-judicial and extrajudicial activities as to minimize the risk of conflict with judicial obligations.</i>	94
Canon 5. <i>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.</i>	107
Canon 6. <i>Compliance with the Code of Judicial Ethics.</i>	112

PREFACE

Formal standards of judicial conduct have existed for more than 65 years. The original Canons of Judicial Ethics promulgated by the American Bar Association were modified and adopted in 1949 for application in California by the Conference of California Judges (now the California Judges Association).

In 1969, the American Bar Association determined that then current needs and problems warranted revision of the canons. In the revision process, a special American Bar Association committee, headed by former California Chief Justice Roger Traynor, sought and considered the views of the bench and bar and other interested persons. The American Bar Association Code of Judicial Conduct was adopted by the House of Delegates of the American Bar Association August 16, 1972.

Effective January 5, 1975, the California Judges Association adopted a new California Code of Judicial Conduct adapted from the American Bar Association 1972 Model Code. The California code was recast in gender-neutral form in 1986.

In 1990, the American Bar Association Model Code was further revised after a lengthy study. The California Judges Association again reviewed the model code and adopted a revised California Code of Judicial Conduct on October 5, 1992.

Proposition 190 (amending Cal. Const., art. VI, § 18, subd. (m), operative March 1, 1995) created a new constitutional provision that states, “The Supreme Court shall make rules for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns. These rules shall be referred to as the Code of Judicial Ethics.”

The Supreme Court formally adopted the 1992 Code of Judicial Conduct in March 1995, as a transitional measure pending further review.

The Supreme Court formally adopted the Code of Judicial Ethics effective January 15, 1996.

The Supreme Court has formally adopted amendments to the Code of Judicial Ethics on several occasions. The Advisory Committee Commentary is published by the Supreme Court Advisory Committee on the Code of Judicial Ethics.

PREAMBLE

Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to this code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and must strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and is a highly visible member of government under the rule of law.

The Code of Judicial Ethics (“code”) establishes standards for ethical conduct of judges on and off the bench and for candidates for judicial office.* The code consists of broad declarations called canons, with subparts, and a terminology section. Following many canons is a commentary section prepared by the Supreme Court Advisory Committee on the Code of Judicial Ethics. The commentary, by explanation and example, provides guidance as to the purpose and meaning of the canons. The commentary does not constitute additional rules and should not be so construed. All members of the judiciary must comply with the code. Compliance is required to preserve the integrity* of the bench and to ensure the confidence of the public.

The canons should be read together as a whole, and each provision should be construed in context and consistent with every other provision. They are to be applied in conformance with constitutional requirements, statutes, other court rules, and decisional law. Nothing in the code shall either impair the essential independence* of judges in making judicial decisions or provide a separate basis for civil liability or criminal prosecution.

The code governs the conduct of judges and candidates for judicial office* and is binding upon them. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, requires a reasoned application of the text and consideration of such factors as the seriousness of the transgression, if there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

TERMINOLOGY

Terms explained below are noted with an asterisk (*) in the canons where they appear. In addition, the canons in which these terms appear are cited after the explanation of each term below.

“Candidate for judicial office” is a person seeking election to or retention of a judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support. See Preamble and Canons 3B(9) (Commentary), 3E(2)(b)(i), 3E(3)(a), 5, 5A, 5A (Commentary), 5B(1), 5B(2), 5B(3), 5B(4), 5B (Commentary), 5B(4) (Commentary), 5C, 5D, and 6E.

“Fiduciary” includes such relationships as executor, administrator, trustee, and guardian. See Canons 3E(5)(d), 4E(1), 4E(2), 4E(3), 4E (Commentary), 6B, and 6F (Commentary).

“Gender identity” means a person’s internal sense of being male, female, a combination of male and female, or neither male nor female. See Canons 2C, 2C (Commentary), 3B(5), 3B(6), 3C(1), and 3C(3).

“Gender expression” is the way people communicate or externally express their gender identity to others, through such means as pronouns used, clothing, appearance, and demeanor. See Canons 2C, 2C (Commentary), 3B(5), 3B(6), 3C(1), and 3C(3).

“Gift” means anything of value to the extent that consideration of equal or greater value is not received, and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. See Canons 4D(5), 4D(5) (Commentary), 4D(6), 4D(6)(a), 4D(6)(b), 4D(6)(b) (Commentary), 4D(6)(d), 4D(6)(f), 4D(6)(i), 4D(6)(i) (Commentary), 4D(6) and 4D(7) (Commentary), 4H (Commentary), 5A (Commentary), 5B(4) (Commentary), 6D(2)(c), and 6D(7).

“Impartial,” “impartiality,” and “impartially” mean the absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as the maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 1 (Commentary), 2A, 2 and 2A (Commentary), 2B (Commentary), 2C (Commentary), 3, 3B(9) (Commentary), 3B(10) (Commentary), 3B(12), 3B(12) (Commentary), 3C(1), 3C(5), 3E(4)(b), 3E(4)(c),

2.

CALIFORNIA CODE OF JUDICIAL ETHICS TERMINOLOGY

4A(1), 4A (Commentary), 4C(3)(b) (Commentary), 4C(3)(c) (Commentary), 4D(1) (Commentary), 4D(6)(a) (Commentary), 4D(6)(b) (Commentary), 4D(6)(g) (Commentary), 4D(6)(i) (Commentary), 4H (Commentary), 5, 5A, 5A (Commentary), 5B (Commentary), 5B(4) (Commentary), 6D(2)(a), and 6D(3)(a)(vii).

“Impending proceeding” is a proceeding or matter that is imminent or expected to occur in the near future. The words “proceeding” and “matter” are used interchangeably, and are intended to have the same meaning. See Canons 2 and 2A (Commentary), 3B(7), 3B(7)(a), 3B(9), 3B(9) (Commentary), 4H (Commentary), and 6D(6). “Pending proceeding” is defined below.

“Impropriety” includes conduct that violates the law, court rules, or provisions of this code, as well as conduct that undermines a judge’s independence, integrity, or impartiality. See Canons 2, 2 and 2A (Commentary), 2B (Commentary), 2C (Commentary), 3B(9) (Commentary), 4D(1)(b) (Commentary), 4D(6)(g) (Commentary), 4D(6)(i) (Commentary), 4H, and 5.

“Independence” means a judge’s freedom from influence or control other than as established by law. See Preamble, Canons 1, 1 (Commentary), 2C, 4C(2) (Commentary), 4D(6)(a) (Commentary), 4D(6)(g) (Commentary), 4D(6)(i) (Commentary), 4H(3) (Commentary), 5, 5A (Commentary), 5B (Commentary), and 6D(1).

“Integrity” means probity, fairness, honesty, uprightness, and soundness of character. See Preamble, Canons 1, 1 (Commentary), 2A, 2 and 2A (Commentary), 2B (Commentary), 2C (Commentary), 3B(9) (Commentary), 3C(1), 3C(5), 4D(6)(a) (Commentary), 4D(6)(b) (Commentary), 4D(6)(g) (Commentary), 4D(6)(i) (Commentary), 4H (Commentary), 5, 5A (Commentary), 5B (Commentary), and 6D(1).

“Knowingly,” “knowledge,” “known,” and “knows” mean actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances. See Canons 2B(2)(b), 2B(2)(e), 2C (Commentary), 3B(2) (Commentary), 3B(7)(a), 3B(7)(a) (Commentary), 3D(2), 3D(5), 3E(5)(f), 5B(1)(b), 6D(3)(a)(i), 6D(3)(a) (Commentary), 6D(4) (Commentary), and 6D(5)(a).

“Law” means constitutional provisions, statutes, court rules, and decisional law. See Canons 1 (Commentary), 2A, 2C (Commentary), 3A, 3B(2), 3B(7), 3B(7)(c), 3B(8), 3B(8) (Commentary), 3B(12) (Commentary), 3E(1), 4C(3)(c) (Commentary), 4F, and 4H.

“Law, the legal system, or the administration of justice.” When a judge engages in an activity that relates to the law, the legal system, or the administration of justice, the judge should also consider factors such as whether the activity upholds the integrity, impartiality, and independence of the judiciary (Canons 1 and 2A), whether the activity impairs public confidence in the judiciary (Canon 2), whether the judge is allowing the activity to take precedence over judicial duties (Canon 3A), and whether engaging in the activity would cause the judge to be disqualified (Canon 4A(4)). See Canons 4B (Commentary), 4C(1), 4C(1) (Commentary), 4C(2), 4C(2) (Commentary), 4C(3)(a), 4C(3)(b) (Commentary), 4C(3)(d)(ii), 4C(3)(d) (Commentary), 4D(6)(d), 4D(6)(e), 5A (Commentary), 5D, and 5D (Commentary).

“Member of the judge’s family” means a spouse, registered domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Canons 2B(3)(c), 2B (Commentary), 4C(3)(d)(i), 4D(1) (Commentary), 4D(2), 4D(5) (Commentary), 4E(1), and 4G (Commentary).

“Member of the judge’s family residing in the judge’s household” means a spouse or registered domestic partner and those persons who reside in the judge’s household and who are relatives of the judge, including relatives by marriage or persons with whom the judge maintains a close familial relationship. See Canons 4D(5), 4D(5) (Commentary), 4D(6), 4D(6)(b) (Commentary), 4D(6)(f) and 6D(2)(c).

“Nonpublic information” means information that, by law, is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order, impounded, or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. Nonpublic information also includes information from affidavits, jury results, or court rulings before it becomes public information. See Canons 3B(11) and 6D(8)(a).

“Pending proceeding” is a proceeding or matter that has commenced. A proceeding continues to be pending through any period during which an appeal may be filed and any appellate process until final disposition. The words

2.

CALIFORNIA CODE OF JUDICIAL ETHICS TERMINOLOGY

“proceeding” and “matter” are used interchangeably, and are intended to have the same meaning. See Canons 2 and 2A (Commentary), 2B(3)(a), 3B(7), 3B(9), 3B(9) (Commentary), 3E(5)(a), 4H (Commentary), and 6D(6). “Impending proceeding” is defined above.

“Political organization” means a political party, political action committee, or other group, the principal purpose of which is to further the election or appointment of candidates to nonjudicial office. See Canon 5A.

“Registered domestic partner” means a person who has registered for domestic partnership pursuant to state law or who is recognized as a domestic partner pursuant to Family Code section 299.2. See Canons 3E(5)(d), 3E(5)(e), 3E(5)(i), 4D(6)(d), 4D(6)(f), 4D(6)(j), 4H(2), 5A (Commentary), 6D(3)(a)(v), and 6D(3)(a)(vi).

“Require.” Any canon prescribing that a judge “require” certain conduct of others means that a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Canons 3B(3), 3B(4), 3B(6), 3B(8) (Commentary), 3B(9), 3C(3), 6D(1), 6D(2)(a), and 6D(6).

“Service organization” includes any organization commonly referred to as a “fraternal organization.” See Canons 3E(5)(d), 4C(2) (Commentary), 4C(3)(b), 4C(3)(b) (Commentary), 4C(3)(d) (Commentary), 4D(6)(j), and 6D(2)(b).

“Subordinate judicial officer.” A subordinate judicial officer is, for the purposes of this code, a person appointed pursuant to article VI, section 22 of the California Constitution, including, but not limited to, a commissioner, referee, and hearing officer. See Canons 3D(3), 4G (Commentary), and 6A.

“Temporary Judge” means an active or inactive member of the bar who, pursuant to article VI, section 21 of the California Constitution, serves or expects to serve as a judge once, sporadically, or regularly on a part-time basis under a separate court appointment for each period of service or for each case heard. See Canons 3E(5)(h), 4C(3)(d)(i), 4C(3)(d) (Commentary), 6A, and 6D.

“Third degree of relationship” includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Canons 3E(5)(e), 3E(5)(i), and 6D(3)(a)(v).

CANON 1

**A JUDGE SHALL UPHOLD THE INTEGRITY* AND
INDEPENDENCE* OF THE JUDICIARY**

An independent, impartial,* and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity* and independence* of the judiciary is preserved. The provisions of this code are to be construed and applied to further that objective. A judicial decision or administrative act later determined to be incorrect legally is not itself a violation of this code.

ADVISORY COMMITTEE COMMENTARY: Canon 1

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence* of judges. The integrity* and independence* of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law* and the provisions of this code. Public confidence in the impartiality* of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violations of this code diminish public confidence in the judiciary and thereby do injury to the system of government under law.*

The basic function of an independent, impartial, and honorable judiciary is to maintain the utmost integrity* in decisionmaking, and this code should be read and interpreted with that function in mind.*

CANON 2

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

A. Promoting Public Confidence

A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity* and impartiality* of the judiciary. A judge shall not make statements, whether public or nonpublic, that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts or that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.

ADVISORY COMMITTEE COMMENTARY: Canons 2 and 2A

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges.

A judge must avoid all impropriety and appearance of impropriety.* A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by other members of the community and should do so freely and willingly.*

A judge must exercise caution when engaging in any type of electronic communication, including communication by text or email, or when participating in online social networking sites or otherwise posting material on the Internet, given the accessibility, widespread transmission, and permanence of electronic communications and material posted on the Internet. The same canons that govern a judge's ability to socialize and communicate in person, on paper, or over the telephone apply to electronic communications, including use of the Internet and social networking sites. These canons include, but are not limited to, Canons 2B(2) (lending the prestige of judicial office), 3B(7) (ex parte communications), 3B(9) (public comment about pending or impending proceedings*), 3E(2) (disclosure of information relevant to disqualification), and 4A (conducting extrajudicial activities to avoid casting doubt on the judge's capacity to act impartially,* demeaning the judicial office, or frequent disqualification).*

The prohibition against behaving with impropriety or the appearance of impropriety* applies to both the professional and personal conduct of a judge.*

The test for the appearance of impropriety is whether a person aware of the facts might reasonably entertain a doubt that the judge would be able to act with integrity,* impartiality,* and competence.*

2.

CANON 2 CALIFORNIA CODE OF JUDICIAL ETHICS

As to membership in organizations that practice invidious discrimination, see Commentary under Canon 2C.

As to judges making statements that commit the judge with respect to cases, controversies, or issues that are likely to come before the courts, see Canon 3B(9) and its commentary concerning comments about a pending proceeding, Canon 3E(3)(a) concerning the disqualification of a judge who makes statements that commit the judge to a particular result, and Canon 5B(1)(a) concerning statements made during an election campaign that commit the candidate to a particular result. In addition, Code of Civil Procedure section 170.2, subdivision (b), provides that, with certain exceptions, a judge is not disqualified on the ground that the judge has, in any capacity, expressed a view on a legal or factual issue presented in the proceeding before the judge.*

B. Use of the Prestige of Judicial Office

(1) A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge.

(2) A judge shall not lend the prestige of judicial office or use the judicial title in any manner, including any oral or written communication, to advance the pecuniary or personal interests of the judge or others. This canon does not prohibit the following:

(a) A judge may testify as a character witness, provided the judge does so only when subpoenaed.

(b) A judge may, without a subpoena, provide the Commission on Judicial Performance with a written communication containing (i) factual information regarding a matter pending before the commission or (ii) information related to the character of a judge who has a matter pending before the commission, provided that any such factual or character information is based on personal knowledge.* In commission proceedings, a judge shall provide information responsive to a subpoena or when officially requested to do so by the commission.

(c) A judge may provide factual information in State Bar disciplinary proceedings and shall provide information responsive to a subpoena or when officially requested to do so by the State Bar.

(d) A judge may respond to judicial selection inquiries, provide recommendations (including a general character reference relating to the evaluation of persons being considered for a judgeship), and otherwise participate in the process of judicial selection.

(e) A judge may serve as a reference or provide a letter of recommendation only if based on the judge's personal knowledge* of the individual. These written communications may include the judge's title and may be written on stationery that uses the judicial title.

(3) Except as permitted in subdivision (c) or otherwise authorized by law* or these canons:

(a) A judge shall not advance the pecuniary or personal interests of the judge or others by initiating communications with a sentencing judge or a representative of a probation department about a proceeding pending* before the sentencing judge, but may provide information in response to an official request. "Sentencing judge" includes a judge who makes a disposition pursuant to Welfare and Institutions Code section 725.

(b) A judge, other than the judge who presided over the trial of or sentenced the person seeking parole, pardon, or commutation of sentence, shall not initiate communications with the Board of Parole Hearings regarding parole or the Office of the Governor regarding parole, pardon, or commutation of sentence, but may provide these entities with information for the record in response to an official request.

(c) A judge may initiate communications concerning a member of the judge's family* with a representative of a probation department regarding sentencing, the Board of Parole Hearings regarding parole, or the Office of the Governor regarding parole, pardon, or commutation of sentence, provided the judge is not identified as a judge in the communication.

ADVISORY COMMITTEE COMMENTARY: Canon 2B

A strong judicial branch, based on the prestige that comes from effective and ethical performance, is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. A judge should distinguish between proper and improper use of the prestige of office in all of his or her activities.

As to those communications that are permitted under this canon, a judge must keep in mind the general obligations to maintain high standards of conduct as set forth in Canon 1, and to avoid any impropriety or the appearance of impropriety* as set forth in Canon 2. A judge must also be mindful of Canon 2A,*

2.

CANON 2 CALIFORNIA CODE OF JUDICIAL ETHICS

which requires a judge to act at all times in a manner that promotes public confidence in the integrity and impartiality* of the courts.*

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of the judge or others. For example, a judge must not use the judicial position to gain advantage in a civil suit involving a member of the judge's family, or use his or her position to gain deferential treatment when stopped by a police officer for a traffic offense.*

If a judge posts on social networking sites such as Facebook or crowdsourced sites such as Yelp or Trip Advisor, the judge may not lend the prestige of judicial office to advance the pecuniary or personal interests of the judge or others. For example, a judge may not comment on, recommend, or criticize businesses, products, or services on such sites if it is reasonably likely that the judge can be identified as a judge.

See canon 4C(3)(d)(iv) prohibiting the use of the prestige of judicial office for fundraising or membership solicitation, but allowing a judge to be a speaker, guest of honor, or recipient of an award for public or charitable service, provided the judge does not personally solicit funds and complies with Canons 4A (1), (2), (3), and (4).

As to the use of a judge's title to identify a judge's role in the presentation and creation of legal education programs and materials, see Commentary to Canon 4B. In contracts for publication of a judge's writings, a judge should retain control over the advertising, to the extent feasible, to avoid exploitation of the judge's office.

This canon does not afford a judge a privilege against testifying in response to any official summons.

See also Canons 3D(1) and 3D(2) concerning a judge's obligation to take appropriate corrective action regarding other judges who violate any provision of the Code of Judicial Ethics and attorneys who violate any provision of the Rules of Professional Conduct.

Except as set forth in Canon 2B(3)(a), this canon does not preclude consultations among judges. Additional limitations on such consultations among judges are set forth in Canon 3B(7)(a).

C. Membership in Organizations

A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, gender identity,* gender expression,* religion, national origin, ethnicity, or sexual orientation.

This canon does not apply to membership in a religious organization.

ADVISORY COMMITTEE COMMENTARY: Canon 2C

Membership by a judge in an organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation gives rise to a perception that the judge's impartiality is impaired. The code prohibits such membership by judges to preserve the fairness, impartiality,* independence,* and honor of the judiciary, to treat all parties equally under the law,* and to avoid impropriety* and the appearance of impropriety.**

Previously, Canon 2C contained exceptions to this prohibition for membership in religious organizations, membership in an official military organization of the United States and, so long as membership did not violate Canon 4A, membership in a nonprofit youth organization. The exceptions for membership in an official military organization of the United States and nonprofit youth organizations have been eliminated as exceptions to the canon. The exception for membership in religious organizations has been preserved.

Canon 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather depends on how the organization selects members and other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, gender, gender identity, gender expression,* national origin, ethnicity, or sexual orientation persons who would otherwise be admitted to membership.*

Although Canon 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, gender, gender identity, gender expression,* religion, national origin, ethnicity, or sexual orientation, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by law* also violates Canon 2 and Canon 2A and gives the appearance of impropriety.* In addition, it would be a violation of Canon 2 and Canon 2A for a judge to arrange a meeting at a club that the judge knows* practices such invidious discrimination or for the judge to use such a club regularly. Moreover, public manifestation by a judge of the judge's knowing* approval of invidious discrimination on any basis gives the appearance of impropriety* under Canon 2 and diminishes public confidence in the integrity* and impartiality* of the judiciary in violation of Canon 2A.*

CANON 3

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

A. Judicial Duties in General

All of the judicial duties prescribed by law* shall take precedence over all other activities of every judge. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities

(1) A judge shall hear and decide all matters assigned to the judge except those in which he or she is disqualified.

ADVISORY COMMITTEE COMMENTARY: Canon 3B(1)

Canon 3B(1) is based upon the affirmative obligation contained in Code of Civil Procedure section 170.

(2) A judge shall be faithful to the law* regardless of partisan interests, public clamor, or fear of criticism, and shall maintain professional competence in the law.*

ADVISORY COMMITTEE COMMENTARY: Canon 3B(2)

Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office. Canon 1 provides that an incorrect legal ruling is not itself a violation of this code.*

(3) A judge shall require* order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require* similar conduct of lawyers and of all staff and court personnel under the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (a) bias, prejudice, or harassment, including but not limited to bias, prejudice, or harassment based

upon race, sex, gender, gender identity,* gender expression,* religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment.

(6) A judge shall require* lawyers in proceedings before the judge to refrain from (a) manifesting, by words or conduct, bias, prejudice, or harassment based upon race, sex, gender, gender identity,* gender expression,* religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment against parties, witnesses, counsel, or others. This canon does not preclude legitimate advocacy when race, sex, gender, gender identity,* gender expression,* religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, political affiliation, or other similar factors are issues in the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the full right to be heard according to law.* Unless otherwise authorized by law,* a judge shall not independently investigate facts in a proceeding and shall consider only the evidence presented or facts that may be properly judicially noticed. This prohibition extends to information available in all media, including electronic. A judge shall not initiate, permit, or consider ex parte communications, that is, any communications to or from the judge outside the presence of the parties concerning a pending* or impending* proceeding, and shall make reasonable efforts to avoid such communications, except as follows:

(a) Except as stated below, a judge may consult with other judges. A judge presiding over a case shall not engage in discussions about that case with a judge who has previously been disqualified from hearing that case; likewise, a judge who knows* he or she is or would be disqualified from hearing a case shall not discuss that matter with the judge assigned to the case. A judge also shall not engage in discussions with a judge who may participate in appellate review of the matter, nor shall a judge who may participate in appellate review of a matter engage in discussions with the judge presiding over the case.

A judge may consult with court personnel or others authorized by law,* as long as the communication relates to that person's duty to aid the judge in carrying out the judge's adjudicative responsibilities.

In any discussion with judges or court personnel, a judge shall make reasonable efforts to avoid receiving factual information that is not part of

the record or an evaluation of that factual information. In such consultations, the judge shall not abrogate the responsibility personally to decide the matter.

For purposes of Canon 3B(7)(a), “court personnel” includes bailiffs, court reporters, court externs, research attorneys, courtroom clerks, and other employees of the court, but does not include the lawyers in a proceeding before a judge, persons who are appointed by the court to serve in some capacity in a proceeding, or employees of other governmental entities, such as lawyers, social workers, or representatives of the probation department.

ADVISORY COMMITTEE COMMENTARY: Canon 3B(7)(a)

Regarding communications between a judge presiding over a matter and a judge of a court with appellate jurisdiction over that matter, see Government Code section 68070.5.

Though a judge may have ex parte discussions with appropriate court personnel, a judge may do so only on matters that are within the proper performance of that person’s duties. For example, a bailiff may inform the judge of a threat to the judge or to the safety and security of the courtroom, but may not tell the judge ex parte that a defendant was overheard making an incriminating statement during a court recess. A clerk may point out to the judge a technical defect in a proposed sentence, but may not suggest to the judge that a defendant deserves a certain sentence.

A sentencing judge may not consult ex parte with a representative of the probation department about a matter pending before the sentencing judge.

This canon prohibits a judge who is presiding over a case from discussing that case with another judge who has already been disqualified from hearing that case. A judge also must be careful not to talk to a judge whom the judge knows would be disqualified from hearing the matter.*

(b) A judge may initiate, permit, or consider ex parte communications, where circumstances require, for scheduling, administrative purposes, or emergencies that do not deal with substantive matters provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(c) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law* to do so or when authorized to do so by stipulation of the parties.

(d) If a judge receives an unauthorized ex parte communication, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

ADVISORY COMMITTEE COMMENTARY: Canon 3B(7)

An exception allowing a judge, under certain circumstances, to obtain the advice of a disinterested expert on the law has been eliminated from Canon 3B(7) because consulting with legal experts outside the presence of the parties is inconsistent with the core tenets of the adversarial system. Therefore, a judge shall not consult with legal experts outside the presence of the parties. Evidence Code section 730 provides for the appointment of an expert if a judge determines that expert testimony is necessary. A court may also invite the filing of amicus curiae briefs.*

An exception allowing a judge to confer with the parties separately in an effort to settle the matter before the judge has been moved from this canon to Canon 3B(12).

This canon does not prohibit court personnel from communicating scheduling information or carrying out similar administrative functions.

A judge is statutorily authorized to investigate and consult witnesses informally in small claims cases. Code of Civil Procedure section 116.520, subdivision (c).

(8) A judge shall dispose of all judicial matters fairly, promptly, and efficiently. A judge shall manage the courtroom in a manner that provides all litigants the opportunity to have their matters fairly adjudicated in accordance with the law.*

ADVISORY COMMITTEE COMMENTARY: Canon 3B(8)

The obligation of a judge to dispose of matters promptly and efficiently must not take precedence over the judge's obligation to dispose of the matters fairly and with patience. For example, when a litigant is self-represented, a judge has the discretion to take reasonable steps, appropriate under the circumstances and consistent with the law and the canons, to enable the litigant to be heard. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.*

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious

2.

CANON 3 CALIFORNIA CODE OF JUDICIAL ETHICS

in determining matters under submission, and to require that court officials, litigants, and their lawyers cooperate with the judge to those ends.*

(9) A judge shall not make any public comment about a pending* or impending* proceeding in any court, and shall not make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require* similar abstention on the part of staff and court personnel subject to the judge’s direction and control. This canon does not prohibit judges from making statements in the course of their official duties or from explaining the procedures of the court, and does not apply to proceedings in which the judge is a litigant in a personal capacity. In connection with a judicial election or recall campaign, this canon does not prohibit any judge from making a public comment about a pending* proceeding, provided (a) the comment would not reasonably be expected to affect the outcome or impair the fairness of the proceeding, and (b) the comment is about the procedural, factual, or legal basis of a decision about which a judge has been criticized during the election or recall campaign. Other than cases in which the judge has personally participated, this canon does not prohibit judges from discussing, in legal education programs and materials, cases and issues pending in appellate courts. This educational exemption does not apply to cases over which the judge has presided or to comments or discussions that might interfere with a fair hearing of the case.

ADVISORY COMMITTEE COMMENTARY: Canon 3B(9)

The requirement that judges abstain from public comment regarding a pending or impending* proceeding continues during any appellate process and until final disposition. A judge shall make reasonable efforts to ascertain whether a case is pending* or impending* before commenting on it. This canon does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly.*

“Making statements in the course of their official duties” and “explaining the procedures of the court” include providing an official transcript or partial official transcript of a court proceeding open to the public and explaining the rules of court and procedures related to a decision rendered by a judge.

The provision allowing a judge to make a public comment about a pending decision that is the subject of criticism during an election campaign applies to all judicial elections, including recall elections. Depending on the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the decision. For purposes of this provision, a recall campaign begins when a judge is served with a notice of intention to circulate a*

recall petition (see Elec. Code, § 11006), and a judicial election campaign begins when a judge or candidate for judicial office files a declaration of intention of candidacy for judicial office (see Elec. Code, § 8023).*

Although this canon does not prohibit a judge from commenting on cases that are not pending or impending* in any court, a judge must be cognizant of the general prohibition in Canon 2 against conduct involving impropriety* or the appearance of impropriety.* A judge should also be aware of the mandate in Canon 2A that a judge must act at all times in a manner that promotes public confidence in the integrity* and impartiality* of the judiciary. In addition, when commenting on a case pursuant to this canon, a judge must maintain the high standards of conduct, as set forth in Canon 1.*

Although a judge is permitted to make nonpublic comments about pending or impending* cases that will not substantially interfere with a fair trial or hearing, the judge should be cautious when making any such comments. There is always a risk that a comment can be misheard, misinterpreted, or repeated. A judge making such a comment must be mindful of the judge's obligation under Canon 2A to act at all times in a manner that promotes public confidence in the integrity* and impartiality* of the judiciary. When a judge makes a nonpublic comment about a case pending* before that judge, the judge must keep an open mind and not form an opinion prematurely or create the appearance of having formed an opinion prematurely.*

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

ADVISORY COMMITTEE COMMENTARY: Canon 3B(10)

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.*

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information* acquired in a judicial capacity.

(12) A judge may participate in settlement conferences or in other efforts to resolve matters in dispute, including matters pending before the judge. A judge may, with the express consent of the parties or their lawyers, confer separately with the parties and/or their lawyers during such resolution efforts. At all times during such resolution efforts, a judge shall remain impartial* and shall not engage in conduct that may reasonably be perceived as coercive.

ADVISORY COMMITTEE COMMENTARY: Canon 3B(12)

*While the judge plays an important role in overseeing efforts to resolve disputes, including conducting settlement discussions, a judge should be careful that efforts to resolve disputes do not undermine any party's right to be heard according to law.**

The judge should keep in mind the effect that the judge's participation in dispute resolution efforts may have on the judge's impartiality or the appearance of impartiality* if the case remains with the judge for trial after resolution efforts are unsuccessful. Accordingly, a judge may wish to consider whether: (1) the parties or their counsel have requested or objected to the participation by the trial judge in such discussions; (2) the parties and their counsel are relatively sophisticated in legal matters or the particular legal issues involved in the case; (3) a party is unrepresented; (4) the case will be tried by the judge or a jury; (5) the parties will participate with their counsel in settlement discussions and, if so, the effect of personal contact between the judge and parties; and (6) it is appropriate during the settlement conference for the judge to express an opinion on the merits or worth of the case or express an opinion on the legal issues that the judge may later have to rule upon.*

If a judge assigned to preside over a trial believes participation in resolution efforts could influence the judge's decisionmaking during trial, the judge may decline to engage in such efforts.

Where dispute resolution efforts of any type are unsuccessful, the judge should consider whether, due to events that occurred during the resolution efforts, the judge may be disqualified under the law from presiding over the trial. See, e.g., Code of Civil Procedure section 170.1, subdivision (a)(6)(A).*

C. Administrative Responsibilities

(1) A judge shall diligently discharge the judge's administrative responsibilities impartially,* on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity* of the judiciary. A judge shall not, in the performance of administrative duties, engage in speech, gestures, or other conduct that would reasonably be perceived as (a) bias, prejudice, or harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, gender identity,* gender expression,* religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment.

ADVISORY COMMITTEE COMMENTARY: Canon 3C(1)

In considering what constitutes a conflict of interest under this canon, a judge should be informed by Code of Civil Procedure section 170.1, subdivision (a)(6).

(2) A judge shall maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.

(3) A judge shall require* staff and court personnel under the judge's direction and control to observe appropriate standards of conduct and to refrain from (a) manifesting bias, prejudice, or harassment based upon race, sex, gender, gender identity,* gender expression,* religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, or (b) sexual harassment in the performance of their official duties.

(4) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to ensure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(5) A judge shall not make unnecessary court appointments. A judge shall exercise the power of appointment impartially,* on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity* of the judiciary. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees above the reasonable value of services rendered.

ADVISORY COMMITTEE COMMENTARY: Canon 3C(5)

Appointees of a judge include assigned counsel and officials such as referees, commissioners, special masters, receivers, and guardians. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by Canon 3C(5).

D. Disciplinary Responsibilities

(1) Whenever a judge has reliable information that another judge has violated any provision of the Code of Judicial Ethics, that judge shall take appropriate corrective action, which may include reporting the violation to the appropriate authority. (See Commentary to Canon 3D(2).)

2.

CANON 3 CALIFORNIA CODE OF JUDICIAL ETHICS

(2) Whenever a judge has personal knowledge,* or concludes in a judicial decision, that a lawyer has committed misconduct or has violated any provision of the Rules of Professional Conduct, the judge shall take appropriate corrective action, which may include reporting the violation to the appropriate authority.

ADVISORY COMMITTEE COMMENTARY: Canons 3D(1) and 3D(2)

Appropriate corrective action could include direct communication with the judge or lawyer who has committed the violation, writing about the misconduct in a judicial decision, or other direct action, such as a confidential referral to a judicial or lawyer assistance program, or a report of the violation to the presiding judge, appropriate authority, or other agency or body. Judges should note that in addition to the action required by Canon 3D(2), California law imposes additional mandatory reporting requirements to the State Bar on judges regarding lawyer misconduct. See Business and Professions Code sections 6086.7 and 6086.8, subdivision (a), and California Rules of Court, rules 10.609 and 10.1017.

“Appropriate authority” means the authority with responsibility for initiation of the disciplinary process with respect to a violation to be reported.

(3) A judge shall promptly report in writing to the Commission on Judicial Performance when he or she is charged in court by misdemeanor citation, prosecutorial complaint, information, or indictment with any crime in the United States as specified below. Crimes that must be reported are: (1) all crimes, other than those that would be considered misdemeanors not involving moral turpitude or infractions under California law; and (2) all misdemeanors involving violence (including assaults), the use or possession of controlled substances, the misuse of prescriptions, or the personal use or furnishing of alcohol. A judge also shall promptly report in writing upon conviction of such crimes.

If the judge is a retired judge serving in the Temporary Assigned Judges Program, he or she shall promptly report such information in writing to the Chief Justice rather than to the Commission on Judicial Performance. If the judge is a subordinate judicial officer,* he or she shall promptly report such information in writing to both the presiding judge of the court in which the subordinate judicial officer* sits and the Commission on Judicial Performance.

(4) A judge shall cooperate with judicial and lawyer disciplinary agencies.

ADVISORY COMMITTEE COMMENTARY: Canons 3D(3) and 3D(4)

See Government Code section 68725, which requires judges to cooperate with and give reasonable assistance and information to the Commission on Judicial Performance, and rule 104 of the Rules of the Commission on Judicial

Performance, which requires a respondent judge to cooperate with the commission in all proceedings in accordance with section 68725.

(5) A judge shall not retaliate, directly or indirectly, against a person known* or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

E. Disqualification and Disclosure

(1) A judge shall disqualify himself or herself in any proceeding in which disqualification is required by law.*

ADVISORY COMMITTEE COMMENTARY: Canon 3E(1)

The term “proceeding” as used in this canon encompasses prefiling judicial determinations. Thus, if a judge has a disqualifying interest in a matter, the judge is disqualified from taking any action in the matter, even if it predates the actual filing of a case, such as making a probable cause determination, signing a search or arrest warrant, setting bail, or ordering an own recognizance release. Interpreting “proceeding” to include prefiling judicial determinations effectuates the intent of the canon because it assures the parties and the public of the integrity and fairness of the judicial process.*

(2) In all trial court proceedings, a judge shall disclose on the record as follows:

(a) Information relevant to disqualification

A judge shall disclose information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification.

(b) Campaign contributions in trial court elections

(i) Information required to be disclosed

In any matter before a judge who is or was a candidate for judicial office* in a trial court election, the judge shall disclose any contribution or loan of \$100 or more from a party, individual lawyer, or law office or firm in that matter as required by this canon, even if the amount of the contribution or loan would not require disqualification. Such disclosure shall consist of the name of the contributor or lender, the amount of

each contribution or loan, the cumulative amount of the contributor's contributions or lender's loans, and the date of each contribution or loan. The judge shall make reasonable efforts to obtain current information regarding contributions or loans received by his or her campaign and shall disclose the required information on the record.

(ii) Manner of disclosure

The judge shall ensure that the required information is conveyed on the record to the parties and lawyers appearing in the matter before the judge. The judge has discretion to select the manner of disclosure, but the manner used shall avoid the appearance that the judge is soliciting campaign contributions.

(iii) Timing of disclosure

Disclosure shall be made at the earliest reasonable opportunity after receiving each contribution or loan. The duty commences no later than one week after receipt of the first contribution or loan, and continues for a period of two years after the candidate takes the oath of office, or two years from the date of the contribution or loan, whichever event is later.

ADVISORY COMMITTEE COMMENTARY: Canon 3E(2)(b)

Code of Civil Procedure section 170.1, subdivision (a)(9)(C) requires a judge to "disclose any contribution from a party or lawyer in a matter that is before the court that is required to be reported under subdivision (f) of section 84211 of the Government Code, even if the amount would not require disqualification under this paragraph." This statute further provides that the "manner of disclosure shall be the same as that provided in Canon 3E of the Code of Judicial Ethics." Canon 3E(2)(b) sets forth the information the judge must disclose, the manner for making such disclosure, and the timing thereof.

"Contribution" includes monetary and in-kind contributions. See Cal. Code Regs., tit. 2, § 18215, subd. (b)(3). See generally Government Code section 84211, subdivision (f).

Disclosure of campaign contributions is intended to provide parties and lawyers appearing before a judge during and after a judicial campaign with easy access to information about campaign contributions that may not require disqualification but could be relevant to the question of disqualification of the judge. The judge is responsible for ensuring that the disclosure is conveyed to the parties and lawyers appearing in the matter. The canon provides that the

judge has discretion to select the manner of making the disclosure. The appropriate manner of disclosure will depend on whether all of the parties and lawyers are present in court, whether it is more efficient or practicable given the court's calendar to make a written disclosure, and other relevant circumstances that may affect the ability of the parties and lawyers to access the required information. The following alternatives for disclosure are non-exclusive. If all parties are present in court, the judge may conclude that the most effective and efficient manner of providing disclosure is to state orally the required information on the record in open court. In the alternative, again if all parties are present in court, a judge may determine that it is more appropriate to state orally on the record in open court that parties and lawyers may obtain the required information at an easily accessible location in the courthouse, and provide an opportunity for the parties and lawyers to review the available information. Another alternative, particularly if all or some parties are not present in court, is that the judge may disclose the campaign contribution in a written minute order or in the official court minutes and notify the parties and the lawyers of the written disclosure. See California Supreme Court Committee on Judicial Ethics Opinions, CJEO Formal Opinion No. 2013-002, pp. 7-8. If a party appearing in a matter before the judge is represented by a lawyer, it is sufficient to make the disclosure to the lawyer.

In addition to the disclosure obligations set forth in Canon 3E(2)(b), a judge must, pursuant to Canon 3E(2)(a), disclose on the record any other information that may be relevant to the question of disqualification. As examples, such an obligation may arise as a result of contributions or loans of which the judge is aware made by a party, lawyer, or law office or firm appearing before the judge to a third party in support of the judge or in opposition to the judge's opponent; a party, lawyer, or law office or firm's relationship to the judge or role in the campaign; or the aggregate contributions or loans from lawyers in one law office or firm.

Canon 3E(2)(b) does not eliminate the obligation of the judge to recuse himself or herself where the nature of the contribution or loan, the extent of the contributor's or lender's involvement in the judicial campaign, the relationship of the contributor or lender, or other circumstance requires recusal under Code of Civil Procedure section 170.1, and particularly section 170.1, subdivision (a)(6)(A).

(3) A judge shall disqualify himself or herself in accordance with the following:

(a) Statements that commit the judge to a particular result

A judge is disqualified if the judge, while a judge or candidate for judicial office,* made a statement, other than in a court proceeding, judicial decision, or opinion, that a person aware of the facts might reasonably

believe commits the judge to reach a particular result or rule in a particular way in a proceeding.

(b) Bond ownership

Ownership of a corporate bond issued by a party to a proceeding and having a fair market value exceeding \$1,500 is disqualifying. Ownership of a government bond issued by a party to a proceeding is disqualifying only if the outcome of the proceeding could substantially affect the value of the judge's bond. Ownership in a mutual or common investment fund that holds bonds is not a disqualifying financial interest.

ADVISORY COMMITTEE COMMENTARY: Canon 3E(3)(b)

The distinction between corporate and government bonds is consistent with the Political Reform Act (see Gov. Code, § 82034), which requires disclosure of corporate bonds, but not government bonds. Canon 3E(3) is intended to assist judges in complying with Code of Civil Procedure section 170.1, subdivision (a)(3) and Canon 3E(5)(d).

(4) An appellate justice shall disqualify himself or herself in any proceeding if for any reason:

(a) the justice believes his or her recusal would further the interests of justice; or

(b) the justice substantially doubts his or her capacity to be impartial;* or

(c) the circumstances are such that a reasonable person aware of the facts would doubt the justice's ability to be impartial.*

(5) Disqualification of an appellate justice is also required in the following instances:

(a) The appellate justice has served as a lawyer in the pending* proceeding, or has served as a lawyer in any other proceeding involving any of the same parties if that other proceeding related to the same contested issues of fact and law as the present proceeding, or has given advice to any party in the present proceeding upon any issue involved in the proceeding.

ADVISORY COMMITTEE COMMENTARY: Canon 3E(5)(a)

Canon 3E(5)(a) is consistent with Code of Civil Procedure section 170.1, subdivision (a)(2), which addresses disqualification of trial court judges based on prior representation of a party in the proceeding.

(b) Within the last two years, (i) a party to the proceeding, or an officer, director or trustee thereof, either was a client of the justice when the justice was engaged in the private practice of law or was a client of a lawyer with whom the justice was associated in the private practice of law; or (ii) a lawyer in the proceeding was associated with the justice in the private practice of law.

(c) The appellate justice represented a public officer or entity and personally advised or in any way represented that officer or entity concerning the factual or legal issues in the present proceeding in which the public officer or entity now appears.

(d) The appellate justice, his or her spouse or registered domestic partner,* or a minor child residing in the household, has a financial interest or is either a fiduciary* who has a financial interest in the proceeding, or is a director, advisor, or other active participant in the affairs of a party. A financial interest is defined as ownership of more than a 1 percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value exceeding \$1,500. Ownership in a mutual or common investment fund that holds securities does not itself constitute a financial interest; holding office in an educational, religious, charitable, service,* or civic organization does not confer a financial interest in the organization's securities; and a proprietary interest of a policyholder in a mutual insurance company or mutual savings association or similar interest is not a financial interest unless the outcome of the proceeding could substantially affect the value of the interest. A justice shall make reasonable efforts to keep informed about his or her personal and fiduciary* interests and those of his or her spouse or registered domestic partner* and of minor children living in the household.

(e)(i) The justice or his or her spouse or registered domestic partner,* or a person within the third degree of relationship* to either of them, or the spouse or registered domestic partner* thereof, is a party or an officer, director, or trustee of a party to the proceeding, or

(ii) a lawyer or spouse or registered domestic partner* of a lawyer in the proceeding is the spouse, registered domestic partner,* former spouse,

former registered domestic partner,* child, sibling, or parent of the justice or of the justice's spouse or registered domestic partner,* or such a person is associated in the private practice of law with a lawyer in the proceeding.

(f) The justice

- (i) served as the judge before whom the proceeding was tried or heard in the lower court,
- (ii) has personal knowledge* of disputed evidentiary facts concerning the proceeding, or
- (iii) has a personal bias or prejudice concerning a party or a party's lawyer.

(g) A temporary or permanent physical impairment renders the justice unable properly to perceive the evidence or conduct the proceedings.

(h) The justice has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding prospective employment or service as a dispute resolution neutral, or has been engaged in such employment or service, and any of the following applies:

- (i) The arrangement is, or the prior employment or discussion was, with a party to the proceeding;
- (ii) The matter before the justice includes issues relating to the enforcement of either an agreement to submit a dispute to an alternative dispute resolution process or an award or other final decision by a dispute resolution neutral;
- (iii) The justice directs the parties to participate in an alternative dispute resolution process in which the dispute resolution neutral will be an individual or entity with whom the justice has the arrangement, has previously been employed or served, or is discussing or has discussed the employment or service; or
- (iv) The justice will select a dispute resolution neutral or entity to conduct an alternative dispute resolution process in the matter before

the justice, and among those available for selection is an individual or entity with whom the justice has the arrangement, with whom the justice has previously been employed or served, or with whom the justice is discussing or has discussed the employment or service.

For purposes of Canon 3E(5)(h), “participating in discussions” or “has participated in discussions” means that the justice (i) solicited or otherwise indicated an interest in accepting or negotiating possible employment or service as an alternative dispute resolution neutral, or (ii) responded to an unsolicited statement regarding, or an offer of, such employment or service by expressing an interest in that employment or service, making any inquiry regarding the employment or service, or encouraging the person making the statement or offer to provide additional information about that possible employment or service. If a justice’s response to an unsolicited statement regarding a question about, or offer of, prospective employment or other compensated service as a dispute resolution neutral is limited to responding negatively, declining the offer, or declining to discuss such employment or service, that response does not constitute participating in discussions.

For purposes of Canon 3E(5)(h), “party” includes the parent, subsidiary, or other legal affiliate of any entity that is a party and is involved in the transaction, contract, or facts that gave rise to the issues subject to the proceeding.

For purposes of Canon 3E(5)(h), “dispute resolution neutral” means an arbitrator, a mediator, a temporary judge* appointed under article VI, section 21 of the California Constitution, a referee appointed under Code of Civil Procedure section 638 or 639, a special master, a neutral evaluator, a settlement officer, or a settlement facilitator.

(i) The justice’s spouse or registered domestic partner* or a person within the third degree of relationship* to the justice or his or her spouse or registered domestic partner,* or the person’s spouse or registered domestic partner,* was a witness in the proceeding.

(j) The justice has received a campaign contribution of \$5,000 or more from a party or lawyer in a matter that is before the court, and either of the following applies:

(i) The contribution was received in support of the justice’s last election, if the last election was within the last six years; or

(ii) The contribution was received in anticipation of an upcoming election.

Notwithstanding Canon 3E(5)(j), a justice shall disqualify himself or herself based on a contribution of a lesser amount if required by Canon 3E(4).

The disqualification required under Canon 3E(5)(j) may be waived if all parties that did not make the contribution agree to waive the disqualification.

ADVISORY COMMITTEE COMMENTARY: Canon 3E

Canon 3E(1) sets forth the general duty to disqualify applicable to a judge of any court. Sources for determining when recusal or disqualification is appropriate may include the applicable provisions of the Code of Civil Procedure, other provisions of the Code of Judicial Ethics, the Code of Conduct for United States Judges, the American Bar Association’s Model Code of Judicial Conduct, and related case law.

The decision whether to disclose information under Canon 3E(2) is a decision based on the facts of the case before the judge. A judge is required to disclose only information that is related to the grounds for disqualification set forth in Code of Civil Procedure section 170.1.

Canon 3E(4) sets forth the general standards for recusal of an appellate justice. The term “appellate justice” includes justices of both the Courts of Appeal and the Supreme Court. Generally, the provisions concerning disqualification of an appellate justice are intended to assist justices in determining whether recusal is appropriate and to inform the public why recusal may occur.

The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must promptly disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

In some instances, membership in certain organizations may have the potential to give an appearance of partiality, although membership in the organization generally may not be barred by Canon 2C, Canon 4, or any other specific canon. A judge holding membership in an organization should disqualify himself or herself whenever doing so would be appropriate in accordance with Canon 3E(1), 3E(4), or 3E(5) or statutory requirements. In addition, in some circumstances, the parties or their lawyers may consider a judge’s membership in an organization relevant to the question of disqualification, even if the judge believes there is no actual basis for disqualification. In accordance with this

canon, a judge should disclose to the parties his or her membership in an organization, in any proceeding in which that information is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge concludes there is no actual basis for disqualification.

(6) It shall not be grounds for disqualification that the justice:

(a) Is or is not a member of a racial, ethnic, religious, sexual, or similar group and the proceeding involves the rights of such a group;

(b) Has in any capacity expressed a view on a legal or factual issue presented in the proceeding, except as provided in Canon 3E(5)(a), (b), or (c);

(c) Has as a lawyer or public official participated in the drafting of laws* or in the effort to pass or defeat laws,* the meaning, effect, or application of which is in issue in the proceeding unless the judge believes that his or her prior involvement was so well known* as to raise a reasonable doubt in the public mind as to his or her capacity to be impartial.*

ADVISORY COMMITTEE COMMENTARY: Canon 3E(6)

Canon 3E(6) is substantively the same as Code of Civil Procedure section 170.2, which pertains to trial court judges.

CANON 4

**A JUDGE SHALL SO CONDUCT THE JUDGE’S QUASI-JUDICIAL AND
EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF
CONFLICT WITH JUDICIAL OBLIGATIONS**

A. Extrajudicial Activities in General

A judge shall conduct all of the judge’s extrajudicial activities so that they do not

- (1) cast reasonable doubt on the judge’s capacity to act impartially,*
- (2) demean the judicial office,
- (3) interfere with the proper performance of judicial duties, or
- (4) lead to frequent disqualification of the judge.

ADVISORY COMMITTEE COMMENTARY: Canon 4A

Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which he or she lives. Expressions of bias or prejudice by a judge, even outside the judge’s judicial activities, may cast reasonable doubt on the judge’s capacity to act impartially as a judge. Expressions that may do so include inappropriate use of humor or the use of demeaning remarks. See Canon 2C and accompanying Commentary.*

Because a judge’s judicial duties take precedence over all other activities (see Canon 3A), a judge must avoid extrajudicial activities that might reasonably result in the judge being disqualified.

B. Quasi-Judicial and Avocational Activities

A judge may speak, write, lecture, teach, and participate in activities concerning legal and nonlegal subject matters, subject to the requirements of this code.

ADVISORY COMMITTEE COMMENTARY: Canon 4B

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice,* including revision of substantive and procedural law* and improvement of criminal and juvenile justice. To the extent that time permits, a judge may do so, either independently or through a bar or judicial association or other group dedicated to the improvement of the law.* It may be*

necessary to promote legal education programs and materials by identifying authors and speakers by judicial title. This is permissible, provided such use of the judicial title does not contravene Canons 2A and 2B.

Judges are not precluded by their office from engaging in other social, community, and intellectual endeavors so long as they do not interfere with the obligations under Canons 2C and 4A.

C. Governmental, Civic, or Charitable Activities

(1) A judge shall not appear at a public hearing or officially consult with an executive or legislative body or public official except on matters concerning the law, the legal system, or the administration of justice,* or in matters involving the judge's private economic or personal interests.

ADVISORY COMMITTEE COMMENTARY: Canon 4C(1)

When deciding whether to appear at a public hearing or to consult with an executive or legislative body or public official on matters concerning the law, the legal system, or the administration of justice, a judge should consider if that conduct would violate any other provisions of this code. For a list of factors to consider, see the explanation of "law, the legal system, or the administration of justice" in the Terminology section. See also Canon 2B regarding the obligation to avoid improper influence.*

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice.* A judge may, however, serve in the military reserve or represent a national, state, or local government on ceremonial occasions or in connection with historical, educational, or cultural activities.

ADVISORY COMMITTEE COMMENTARY: Canon 4C(2)

Canon 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system, or administration of justice as authorized by Canon 4C(3). The appropriateness of accepting extrajudicial assignments must be assessed in light of the demands on judicial resources and the need to protect the courts from involvement in extrajudicial matters that may prove to be controversial. Judges shall not accept governmental appointments that are likely to interfere with the effectiveness and independence* of the judiciary, or that constitute a public office within the meaning of article VI, section 17 of the California Constitution.*

Canon 4C(2) does not govern a judge's service in a nongovernmental position. See Canon 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system, or the administration of justice and with educational, religious, charitable, service,* or civic organizations not conducted for profit. For example, service on the board of a public educational institution, other than a law school, would be prohibited under Canon 4C(2), but service on the board of a public law school or any private educational institution would generally be permitted under Canon 4C(3).*

(3) Subject to the following limitations and the other requirements of this code,

(a) a judge may serve as an officer, director, trustee, or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice* provided that such position does not constitute a public office within the meaning of article VI, section 17 of the California Constitution;

(b) a judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, service,* or civic organization not conducted for profit;

ADVISORY COMMITTEE COMMENTARY: Canon 4C(3)

Canon 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system, or the administration of justice. See Canon 4C(2).*

Canon 4C(3) uses the phrase, "Subject to the following limitations and the other requirements of this code." As an example of the meaning of the phrase, a judge permitted by Canon 4C(3) to serve on the board of a service organization may be prohibited from such service by Canon 2C or 4A if the institution practices invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially* as a judge.*

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Canon 4C. For example, a judge is prohibited by Canon 4G from serving as a legal advisor to a civic or charitable organization.

Service on the board of a homeowners association or a neighborhood protective group is proper if it is related to the protection of the judge's own economic interests. See Canons 4D(2) and 4D(4). See Canon 2B regarding the obligation to avoid improper use of the prestige of a judge's office.

(c) a judge shall not serve as an officer, director, trustee, or nonlegal advisor if it is likely that the organization

(i) will be engaged in judicial proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

ADVISORY COMMITTEE COMMENTARY: Canon 4C(3)(c)

The changing nature of some organizations and of their relationship to the law makes it necessary for the judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. Some organizations regularly engage in litigation to achieve their goals or fulfill their purposes. Judges should avoid a leadership role in such organizations as it could compromise the appearance of impartiality.**

(d) a judge as an officer, director, trustee, nonlegal advisor, or as a member or otherwise

(i) may assist such an organization in planning fundraising and may participate in the management and investment of the organization's funds. However, a judge shall not personally participate in the solicitation of funds or other fundraising activities, except that a judge may privately solicit funds for such an organization from members of the judge's family* or from other judges (excluding court commissioners, referees, court-appointed arbitrators, hearing officers, temporary judges,* and retired judges who serve in the Temporary Assigned Judges Program, practice law, or provide alternative dispute resolution services);

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice;*

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fundraising mechanism, except as permitted in Canon 4C(3)(d)(i);

(iv) shall not permit the use of the prestige of his or her judicial office for fundraising or membership solicitation but may be a speaker, guest of honor, or recipient of an award for public or charitable service

2.

CANON 4 CALIFORNIA CODE OF JUDICIAL ETHICS

provided the judge does not personally solicit funds and complies with Canons 4A(1), (2), (3), and (4).

ADVISORY COMMITTEE COMMENTARY: Canon 4C(3)(d)

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system, or the administration of justice, or a nonprofit educational, religious, charitable, service,* or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fundraising mechanism. Solicitation of funds or memberships for an organization similarly involves the danger that the person solicited will feel obligated to respond favorably if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing, or by telephone except in the following cases: (1) a judge may solicit other judges (excluding court commissioners, referees, retired judges, court-appointed arbitrators, hearing officers, and temporary judges,* and retired judges who serve in the Temporary Assigned Judges Program, practice law, or provide alternative dispute resolution services) for funds or memberships; (2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves; and (3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.*

When deciding whether to make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system, or the administration of justice, a judge should consider whether that conduct would violate any other provision of this code. For a list of factors to consider, see the explanation of "law, the legal system, or the administration of justice" in the Terminology section.*

Use of an organization's letterhead for fundraising or membership solicitation does not violate Canon 4C(3)(d), provided the letterhead lists only the judge's name and office or other position in the organization, and designates the judge's judicial title only if other persons whose names appear on the letterhead have comparable designations. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials, and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

(e) A judge may encourage lawyers to provide pro bono publico legal services.

ADVISORY COMMITTEE COMMENTARY: Canon 4C(3)(e)

In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, as long as the judge does not employ coercion or abuse the prestige of judicial office.

D. Financial Activities

- (1) A judge shall not engage in financial and business dealings that
- (a) may reasonably be perceived to exploit the judge's judicial position, or
 - (b) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to appear before the court on which the judge serves.

ADVISORY COMMITTEE COMMENTARY: Canon 4D(1)

The Time for Compliance provision of this code (Canon 6F) postpones the time for compliance with certain provisions of this canon in some cases. A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to appear either before the judge personally or before other judges on the judge's court. A judge shall discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position or that would involve family members in frequent transactions or continuing business relationships with persons likely to appear before the judge. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification.*

Participation by a judge in financial and business dealings is subject to the general prohibitions in Canon 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety* or the appearance of impropriety* and the prohibition in Canon 2B against the misuse of the prestige of judicial office.*

In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1.

- (2) A judge may, subject to the requirements of this code, hold and manage investments of the judge and members of the judge's family,* including real estate, and engage in other remunerative activities. A judge shall not participate in, nor permit the judge's name to be used in connection with, any

business venture or commercial advertising that indicates the judge's title or affiliation with the judiciary or otherwise lend the power or prestige of his or her office to promote a business or any commercial venture.

(3) A judge shall not serve as an officer, director, manager, or employee of a business affected with a public interest, including, without limitation, a financial institution, insurance company, or public utility.

ADVISORY COMMITTEE COMMENTARY: Canon 4D(3)

Although participation by a judge in business activities might otherwise be permitted by Canon 4D, a judge may be prohibited from participation by other provisions of this code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in any business activity if the judge's participation would involve misuse of the prestige of judicial office. See Canon 2B.

(4) A judge shall manage personal investments and financial activities so as to minimize the necessity for disqualification. As soon as reasonably possible, a judge shall divest himself or herself of investments and other financial interests that would require frequent disqualification.

(5) Under no circumstance shall a judge accept a gift,* bequest, or favor if the donor is a party whose interests have come or are reasonably likely to come before the judge. A judge shall discourage members of the judge's family residing in the judge's household* from accepting similar benefits from parties who have come or are reasonably likely to come before the judge.

ADVISORY COMMITTEE COMMENTARY: Canon 4D(5)

In addition to the prohibitions set forth in Canon 4D(5) regarding gifts, other laws* may be applicable to judges, including, for example, Code of Civil Procedure section 170.9 and the Political Reform Act of 1974 (Gov. Code, § 81000 et seq.).*

Canon 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5, although such contributions may give rise to an obligation by the judge to disqualify or disclose. See Canon 3E(2)(b) and accompanying Commentary and Code of Civil Procedure section 170.1, subdivision (a)(9).

Because a gift, bequest, or favor to a member of the judge's family residing in the judge's household* might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and urge them to take these constraints*

into account when making decisions about accepting such gifts, bequests, or favors. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.**

The application of Canon 4D(5) requires recognition that a judge cannot reasonably be expected to anticipate all persons or interests that may come before the court.

(6) A judge shall not accept and shall discourage members of the judge's family residing in the judge's household* from accepting a gift,* bequest, favor, or loan from anyone except as hereinafter set forth. Gifts* that are permitted by Canons 4D(6)(a) through (i) may only be accepted if the gift,* bequest, favor, or loan would neither influence nor reasonably be perceived as intended to influence the judge in the performance of judicial duties:

(a) a gift,* bequest, favor, or loan from a person whose preexisting relationship with the judge would prevent the judge under Canon 3E from hearing a case involving that person;

ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(a)

Upon appointment or election as a judge or within a reasonable period of time thereafter, a judge may attend an event honoring the judge's appointment or election as a judge provided that (1) the judge would otherwise be disqualified from hearing any matter involving the person or entity holding or funding the event, and (2) a reasonable person would not conclude that attendance at the event undermines the judge's integrity, impartiality,* or independence.**

(b) a gift* for a special occasion from a relative or friend, if the gift* is fairly commensurate with the occasion and the relationship;

ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(b)

A gift to a judge, or to a member of the judge's family residing in the judge's household,* that is excessive in value raises questions about the judge's impartiality* and the integrity* of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Canon 4D(6)(a).*

(c) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(d) any gift* incidental to a public testimonial, or educational or resource materials supplied by publishers on a complimentary basis for official use, or a discounted or complimentary membership in a bar-related association, or an invitation to the judge and the judge's spouse or registered domestic partner* or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system, or the administration of justice;*

(e) advances or reimbursement for the reasonable cost of travel, transportation, lodging, and subsistence that is directly related to participation in any judicial, educational, civic, or governmental program or bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;*

ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(e)

Acceptance of an invitation to a law-related function is governed by Canon 4D(6)(d); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Canon 4D(6)(g). See also Canon 4H(2) and accompanying Commentary.

(f) a gift,* award, or benefit incident to the business, profession, or other separate activity of a spouse or registered domestic partner* or other member of the judge's family residing in the judge's household,* including gifts,* awards, and benefits for the use of both the spouse or registered domestic partner* or other family member and the judge;

(g) ordinary social hospitality;

ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(g)

Although Canon 4D(6)(g) does not preclude ordinary social hospitality, a judge should carefully weigh acceptance of such hospitality to avoid any appearance of impropriety or bias or any appearance that the judge is misusing the prestige of judicial office. See Canons 2 and 2B. A judge should also consider whether acceptance would affect the integrity,* impartiality,* or independence* of the judiciary. See Canon 2A.*

(h) an invitation to the judge and the judge's spouse, registered domestic partner,* or guest to attend an event sponsored by an educational, religious, charitable, service,* or civic organization with which the judge is associated or involved, if the same invitation is offered to persons who are not judges and who are similarly engaged with the organization.

(i) a nominal gift,* provided the gift* is not from a lawyer, law firm, or other person likely to appear before the court on which the judge serves, unless one or more of the exceptions in this canon applies.

ADVISORY COMMITTEE COMMENTARY: Canon 4D(6)(i)

For example, nominal gifts include snacks or a token memento from jurors, keychains or pens provided by vendors at legal conferences, or handicrafts or art projects from students.*

A judge should carefully weigh acceptance of any nominal gift to avoid any appearance of impropriety or bias or any appearance that the judge is misusing the prestige of judicial office. See Canons 2 and 2B. A judge should also consider whether acceptance would affect the integrity,* impartiality,* or independence* of the judiciary. See Canon 2A.*

(7) A judge may accept the following, provided that doing so would neither influence nor reasonably be perceived as intended to influence the judge in the performance of judicial duties:

(a) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants;

(b) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges.

ADVISORY COMMITTEE COMMENTARY: Canons 4D(6) and 4D(7)

The references to such scholarships, fellowships, rewards, and prizes were moved from Canon 4D(6) to Canon 4D(7) because they are not considered to be gifts under this code, and a judge may accept them.*

E. Fiduciary* Activities

(1) A judge shall not serve as executor, administrator, or other personal representative, trustee, guardian, attorney in fact, or other fiduciary,* except for the estate, trust, or person of a member of the judge's family,* and then only if such service will not interfere with the proper performance of judicial duties. A judge may, however, act as a health care representative pursuant to an advance health care directive for a person whose preexisting relationship with the judge would prevent the judge from hearing a case involving that person under Canon 3E(1).

2.

CANON 4 CALIFORNIA CODE OF JUDICIAL ETHICS

(2) A judge shall not serve as a fiduciary* if it is likely that the judge as a fiduciary* will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or minor or conservatee will be engaged in contested proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary* capacity.

ADVISORY COMMITTEE COMMENTARY: Canon 4E

The Time for Compliance provision of this code (Canon 6F) postpones the time for compliance with certain provisions of this canon in some cases.

The restrictions imposed by this canon may conflict with the judge's obligation as a fiduciary. For example, a judge shall resign as trustee if detriment to the trust would result from divestiture of trust holdings the retention of which would place the judge in violation of Canon 4D(4).*

F. Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.*

ADVISORY COMMITTEE COMMENTARY: Canon 4F

Canon 4F does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of his or her judicial duties.

G. Practice of Law

A judge shall not practice law.

ADVISORY COMMITTEE COMMENTARY: Canon 4G

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or member of the judge's family. See Canon 2B.*

This prohibition applies to subordinate judicial officers, magistrates, special masters, and judges of the State Bar Court.*

H. Compensation, Reimbursement, and Honoraria

A judge may receive compensation and reimbursement of expenses as provided by law* for the extrajudicial activities permitted by this code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.*

(1) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(2) Expense reimbursement shall be limited to the actual cost of travel, food, lodging, and other costs reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse, registered domestic partner,* or guest. Any payment in excess of such an amount is compensation.

(3) No judge shall accept any honorarium. "Honorarium" means any payment made in consideration for a speech given, an article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. "Honorarium" does not include earned income for personal services that are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching or writing for a publisher, and does not include fees or other things of value received pursuant to Penal Code section 94.5 for performance of a marriage. For purposes of this canon, "teaching" includes presentations to impart educational information to lawyers in events qualifying for credit under Minimum Continuing Legal Education, to students in bona fide educational institutions, and to associations or groups of judges.

ADVISORY COMMITTEE COMMENTARY: Canon 4H

Judges should not accept compensation or reimbursement of expenses if acceptance would appear to a reasonable person to undermine the judge's integrity, impartiality,* or independence.**

A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity,* or impartiality.* The factors a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include whether:*

(a) the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;

2.

CANON 4 CALIFORNIA CODE OF JUDICIAL ETHICS

(b) the funding comes largely from numerous contributors rather than from a single entity, and whether the funding is earmarked for programs with specific content;

(c) the content is related or unrelated to the subject matter of a pending or impending* proceeding before the judge, or to matters that are likely to come before the judge;*

(d) the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) information concerning the activity and its funding sources is available upon inquiry;

(f) the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge;

(g) differing viewpoints are presented;

(h) a broad range of judicial and nonjudicial participants are invited; or

(i) the program is designed specifically for judges.

*Judges should be aware of the statutory limitations on accepting gifts.**

CANON 5

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE* SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE,* INTEGRITY,* OR IMPARTIALITY* OF THE JUDICIARY

Judges and candidates for judicial office* are entitled to entertain their personal views on political questions. They are not required to surrender their rights or opinions as citizens. They shall, however, not engage in political activity that may create the appearance of political bias or impropriety.* Judicial independence,* impartiality,* and integrity* shall dictate the conduct of judges and candidates for judicial office.*

Judges and candidates for judicial office* shall comply with all applicable election, election campaign, and election campaign fundraising laws* and regulations.

ADVISORY COMMITTEE COMMENTARY: Canon 5

The term “political activity” should not be construed so narrowly as to prevent private comment.

A. Political Organizations*

Judges and candidates for judicial office* shall not

- (1) act as leaders or hold any office in a political organization;*
- (2) make speeches for a political organization* or candidate for nonjudicial office, or publicly endorse or publicly oppose a candidate for nonjudicial office; or
- (3) personally solicit funds for a political organization* or nonjudicial candidate; or make contributions to a political party or political organization* or to a nonjudicial candidate in excess of \$500 in any calendar year per political party or political organization* or candidate, or in excess of an aggregate of \$1,000 in any calendar year for all political parties or political organizations* or nonjudicial candidates.

ADVISORY COMMITTEE COMMENTARY: Canon 5A

This provision does not prohibit a judge or a candidate for judicial office from signing a petition to qualify a measure for the ballot, provided the judge does not use his or her official title.*

Although attendance at political gatherings is not prohibited, any such attendance should be restricted so that it would not constitute an express public endorsement of a nonjudicial candidate or a measure not affecting the law, the legal system, or the administration of justice otherwise prohibited by this canon.*

Subject to the monetary limitation herein to political contributions, a judge or a candidate for judicial office may purchase tickets for political dinners or other similar dinner functions. Any admission price to such a political dinner or function in excess of the actual cost of the meal will be considered a political contribution. The prohibition in Canon 5A(3) does not preclude judges from contributing to a campaign fund for distribution among judges who are candidates for reelection or retention, nor does it apply to contributions to any judge or candidate for judicial office.**

Under this canon, a judge may publicly endorse or oppose a candidate for judicial office. Such positions are permitted because judicial officers have a special obligation to uphold the integrity,* impartiality,* and independence* of the judiciary and are in a unique position to know the qualifications necessary to serve as a competent judicial officer.*

Although family members of the judge or candidate for judicial office are not subject to the provisions of this code, a judge or candidate for judicial office* shall not avoid compliance with this code by making contributions through a spouse or registered domestic partner* or other family member.*

B. Conduct During Judicial Campaigns and Appointment Process

(1) A candidate for judicial office* or an applicant seeking appointment to judicial office shall not:

(a) make statements to the electorate or the appointing authority that commit the candidate or the applicant with respect to cases, controversies, or issues that are likely to come before the courts, or

(b) knowingly,* or with reckless disregard for the truth, make false or misleading statements about the identity, qualifications, present position, or any other fact concerning himself or herself or his or her opponent or other applicants.

(2) A candidate for judicial office* shall review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee before its dissemination. A candidate shall take appropriate corrective action if the candidate learns of any misrepresentations made in his or her campaign statements or materials. A candidate shall take reasonable measures to prevent any misrepresentations being made in his or

her support by third parties. A candidate shall take reasonable measures to ensure that appropriate corrective action is taken if the candidate learns of any misrepresentations being made in his or her support by third parties.

(3) Every candidate for judicial office* shall complete a judicial campaign ethics course approved by the Supreme Court no earlier than one year before or no later than 60 days after the filing of a declaration of intention by the candidate, the formation of a campaign committee, or the receipt of any campaign contribution, whichever is earliest. If a judge appears on the ballot as a result of a petition indicating that a write-in campaign will be conducted for the office, the judge shall complete the course no later than 60 days after receiving notice of the filing of the petition, the formation of a campaign committee, or the receipt of any campaign contribution, whichever is earliest.

Unless a judge forms a campaign committee or solicits or receives campaign contributions, this requirement does not apply to judges who are unopposed for election and will not appear on the ballot.

Unless an appellate justice forms a campaign committee or solicits or receives campaign contributions, this requirement does not apply to appellate justices.

ADVISORY COMMITTEE COMMENTARY: Canon 5B

The purpose of Canon 5B is to preserve the integrity of the appointive and elective process for judicial office and to ensure that the public has accurate information about candidates for judicial office.* Compliance with these provisions will enhance the integrity,* impartiality,* and independence* of the judiciary and better inform the public about qualifications of candidates for judicial office.**

This code does not contain the “announce clause” that was the subject of the United States Supreme Court’s decision in Republican Party of Minnesota v. White (2002) 536 U.S. 765. That opinion did not address the “commit clause,” which is contained in Canon 5B(1)(a). The phrase “appear to commit” has been deleted because, although candidates for judicial office cannot promise to take a particular position on cases, controversies, or issues prior to taking the bench and presiding over individual cases, the phrase may have been overinclusive.*

Canon 5B(1)(b) prohibits knowingly making false or misleading statements during an election campaign because doing so would violate Canons 1 and 2A, and may violate other canons.

The time limit for completing a judicial campaign ethics course in Canon 5B(3) is triggered by the earliest of one of the following: the filing of a declaration of intention, the formation of a campaign committee, or the receipt of any

campaign contribution. If a judge's name appears on the ballot as a result of a petition indicating that a write-in campaign will be conducted, the time limit for completing the course is triggered by the earliest of one of the following: the notice of the filing of the petition, the formation of a campaign committee, or the receipt of any campaign contribution. A financial contribution by a candidate for judicial office to his or her own campaign constitutes receipt of a campaign contribution.*

(4) In judicial elections, judges may solicit campaign contributions or endorsements for their own campaigns or for other judges and attorneys who are candidates for judicial office.* Judges are permitted to solicit such contributions and endorsements from anyone, including attorneys and other judges, except that a judge shall not solicit campaign contributions or endorsements from California state court commissioners, referees, court-appointed arbitrators, hearing officers, and retired judges serving in the Temporary Assigned Judges Program, or from California state court personnel. In soliciting campaign contributions or endorsements, a judge shall not use the prestige of judicial office in a manner that would reasonably be perceived as coercive. See Canons 1, 2, 2A, and 2B.

ADVISORY COMMITTEE COMMENTARY: Canon 5B(4)

Regarding campaign contributions for a judge's own campaign, see Canon 3E(2)(b) and accompanying Commentary addressing disclosure of campaign contributions. See also Code of Civil Procedure section 170.1, subdivision (a)(9), which provides that a judge is disqualified if the judge has received a campaign contribution exceeding \$1,500 from a party or an attorney in the proceeding. Although it is improper for a judge to receive a gift from an attorney subject to exceptions noted in Canon 4D(6), a judge's campaign may receive attorney contributions. See also Government Code section 8314, which prohibits any elected state or local officer from using public resources, including buildings, telephones, and state-compensated time, for a campaign activity. Under section 8314, subdivision (b)(2), "campaign activity" does not include "the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities."*

Even though it is permissible for a judge to solicit endorsements and campaign funds for attorneys who are candidates for judicial office, the judge must be cautious. Such solicitation may raise issues of disqualification and disclosure under Code of Civil Procedure section 170.1, subdivision (a), and Canon 3E. Even if the judge is not disqualified, disclosure may be required under Canon 3E(2)(a). For example, a judge who has solicited campaign funds or endorsements for a candidate who is an attorney must consider disclosing that*

solicitation in all cases in which the attorney candidate appears before the judge. The judge should also consider Canon 4A(1) and Canon 4A(4), which require a judge to conduct extrajudicial activities so they do not cast reasonable doubt on the judge's capacity to act impartially or lead to frequent disqualification.*

"Judicial elections" includes recall elections.

C. Speaking at Political Gatherings

Candidates for judicial office* may speak to political gatherings only on their own behalf or on behalf of another candidate for judicial office.*

D. Measures to Improve the Law

A judge or candidate for judicial office* may engage in activity in relation to measures concerning improvement of the law, the legal system, or the administration of justice,* only if the conduct is consistent with this code.

ADVISORY COMMITTEE COMMENTARY: Canon 5D

When deciding whether to engage in activity relating to measures concerning the law, the legal system, or the administration of justice, such as commenting publicly on ballot measures, a judge must consider whether the conduct would violate any other provisions of this code. See the explanation of "law, the legal system, or the administration of justice" in the Terminology section.*

CANON 6

COMPLIANCE WITH THE CODE OF JUDICIAL ETHICS

A. Judges

Anyone who is an officer of the state judicial system and who performs judicial functions including, but not limited to, a subordinate judicial officer,* a magistrate, a court-appointed arbitrator, a judge of the State Bar Court, a temporary judge,* or a special master, is a judge within the meaning of this code. All judges shall comply with this code except as provided below.

ADVISORY COMMITTEE COMMENTARY: Canon 6A

For the purposes of this canon, if a retired judge is serving in the Temporary Assigned Judges Program, the judge is considered to “perform judicial functions.” Because retired judges who are privately retained may perform judicial functions, their conduct while performing those functions should be guided by this code.

B. Retired Judge Serving in the Temporary Assigned Judges Program

A retired judge who has filed an application to serve on assignment, meets the eligibility requirements set by the Chief Justice for service, and has received an acknowledgment of participation in the Temporary Assigned Judges Program shall comply with all provisions of this code, except for the following:

4C(2)—Appointment to governmental positions

4E—Fiduciary* activities

C. Retired Judge as Arbitrator or Mediator

A retired judge serving in the Temporary Assigned Judges Program is not required to comply with Canon 4F of this code relating to serving as an arbitrator or mediator, or performing judicial functions in a private capacity, except as otherwise provided in the *Standards and Guidelines for Judicial Assignments* promulgated by the Chief Justice.

ADVISORY COMMITTEE COMMENTARY: Canon 6C

Article VI, section 6 of the California Constitution provides that a “retired judge who consents may be assigned to any court” by the Chief Justice. Retired judges who are serving in the Temporary Assigned Judges Program pursuant to

the above provision are bound by Canon 6B, including the requirement of Canon 4G barring the practice of law. Other provisions of California law, and standards and guidelines for eligibility and service set by the Chief Justice, further define the limitations on who may serve on assignment.*

D. Temporary Judge,* Referee, or Court-Appointed Arbitrator¹

A temporary judge,* a person serving as a referee pursuant to Code of Civil Procedure section 638 or 639, or a court-appointed arbitrator shall comply only with the following code provisions:

(1) A temporary judge,* a referee, or a court-appointed arbitrator shall comply with Canons 1 [integrity* and independence* of the judiciary], 2A [promoting public confidence], 3B(3) [order and decorum], 3B(4) [patient, dignified, and courteous treatment], 3B(6) [require* lawyers to refrain from manifestations of any form of bias or prejudice], 3D(1) [action regarding misconduct by another judge], and 3D(2) [action regarding misconduct by a lawyer], when the temporary judge,* referee, or court-appointed arbitrator is actually presiding in a proceeding or communicating with the parties, counsel, or staff or court personnel while serving in the capacity of a temporary judge,* referee, or court-appointed arbitrator in the case.

(2) A temporary judge,* referee, or court-appointed arbitrator shall, from the time of notice and acceptance of appointment until termination of the appointment:

(a) Comply with Canons 2B(1) [not allow family or other relationships to influence judicial conduct], 3B(1) [hear and decide all matters unless disqualified], 3B(2) [be faithful to and maintain competence in the law*], 3B(5) [perform judicial duties without bias or prejudice], 3B(7) [accord full right to be heard to those entitled; avoid ex parte communications, except as specified], 3B(8) [dispose of matters fairly and promptly], 3B(12) [remain impartial* and not engage in coercive conduct during efforts to resolve disputes], 3C(1) [discharge administrative responsibilities without bias and with competence and cooperatively], 3C(3) [require* staff and court personnel to observe standards of conduct and refrain from bias and prejudice], and 3C(5) [make only fair, necessary, and appropriate appointments];

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

(b) Not personally solicit memberships or donations for religious, service,* educational, civic, or charitable organizations from the parties and lawyers appearing before the temporary judge,* referee, or court-appointed arbitrator;

(c) Under no circumstance accept a gift,* bequest, or favor if the donor is a party, person, or entity whose interests are reasonably likely to come before the temporary judge,* referee, or court-appointed arbitrator. A temporary judge,* referee, or court-appointed arbitrator shall discourage members of the judge's family residing in the judge's household* from accepting benefits from parties who are reasonably likely to come before the temporary judge,* referee, or court-appointed arbitrator.

(3) A temporary judge* shall, from the time of notice and acceptance of appointment until termination of the appointment, disqualify himself or herself in any proceeding as follows:

(a) A temporary judge*—other than a temporary judge solely conducting settlement conferences—is disqualified to serve in a proceeding if any one or more of the following are true:

(i) the temporary judge* has personal knowledge* (as defined in Code of Civil Procedure section 170.1, subdivision (a)(1)) of disputed evidentiary facts concerning the proceeding;

(ii) the temporary judge* has served as a lawyer (as defined in Code of Civil Procedure section 170.1, subdivision (a)(2)) in the proceeding;

(iii) the temporary judge,* within the past five years, has given legal advice to, or served as a lawyer (as defined in Code of Civil Procedure section 170.1, subdivision (a)(2)), except that this provision requires disqualification if the temporary judge* represented a party in the past five years rather than the two-year period specified in section 170.1, subdivision (a)(2)) for a party in the present proceeding;

ADVISORY COMMITTEE COMMENTARY: Canon 6D(3)(a)(iii)

The application of Canon 6D(3)(a)(iii), providing that a temporary judge is disqualified if he or she has given legal advice or served as a lawyer for a party to the proceeding in the past five years, may depend on the type of assignment and the amount of time available to investigate whether the temporary judge* has previously represented a party. If time permits, the temporary judge* must conduct such an investigation. Thus, if a temporary judge* is privately*

compensated by the parties or is presiding over a particular matter known in advance of the hearing, the temporary judge* is presumed to have adequate time to investigate. If, however, a temporary judge* is assigned to a high volume calendar, such as traffic or small claims, and has not been provided with the names of the parties prior to the assignment, the temporary judge* may rely on his or her memory to determine whether he or she has previously represented a party.*

(iv) the temporary judge* has a financial interest (as defined in Code of Civil Procedure sections 170.1, subdivision (a)(3), and 170.5) in the subject matter in the proceeding or in a party to the proceeding;

(v) the temporary judge,* or the spouse or registered domestic partner* of the temporary judge,* or a person within the third degree of relationship* to either of them, or the spouse or registered domestic partner* of such a person is a party to the proceeding or is an officer, director, or trustee of a party;

(vi) a lawyer or a spouse or registered domestic partner* of a lawyer in the proceeding is the spouse, former spouse, registered domestic partner,* former registered domestic partner,* child, sibling, or parent of the temporary judge* or the temporary judge's spouse or registered domestic partner,* or if such a person is associated in the private practice of law with a lawyer in the proceeding;

(vii) for any reason:

(A) the temporary judge* believes his or her recusal would further the interests of justice;

(B) the temporary judge* believes there is a substantial doubt as to his or her capacity to be impartial;* or

(C) a person aware of the facts might reasonably entertain a doubt that the temporary judge* would be able to be impartial.* Bias or prejudice toward an attorney in the proceeding may be grounds for disqualification; or

(viii) the temporary judge* has received a campaign contribution of \$1,500 or more from a party or lawyer in a matter that is before the court and the contribution was received in anticipation of an upcoming election.

(b) A temporary judge* before whom a proceeding was tried or heard is disqualified from participating in any appellate review of that proceeding.

(c) If the temporary judge* has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding prospective employment or service as a dispute resolution neutral, or has been engaged in such employment or service, and any of the following applies:

(i) The arrangement or current employment is, or the prior employment or discussion was, with a party to the proceeding;

(ii) The temporary judge* directs the parties to participate in an alternative dispute resolution process in which the dispute resolution neutral will be an individual or entity with whom the temporary judge* has the arrangement, is currently employed or serves, has previously been employed or served, or is discussing or has discussed the employment or service; or

(iii) The temporary judge* will select a dispute resolution neutral or entity to conduct an alternative dispute resolution process in the matter before the temporary judge,* and among those available for selection is an individual or entity with whom the temporary judge* has the arrangement, is currently employed or serves, has previously been employed or served, or is discussing or has discussed the employment or service.

For the purposes of Canon 6D(3)(c), the definitions of “participating in discussions,” “has participated in discussions,” “party,” and “dispute resolution neutral” are set forth in Code of Civil Procedure section 170.1, subdivision (a)(8), except that the words “temporary judge” shall be substituted for the word “judge” in such definitions.

(d) A lawyer is disqualified from serving as a temporary judge* in a family law or unlawful detainer proceeding if in the same type of proceeding:

(i) the lawyer holds himself or herself out to the public as representing exclusively one side; or

(ii) the lawyer represents one side in 90 percent or more of the cases in which he or she appears.

ADVISORY COMMITTEE COMMENTARY: Canon 6D(3)(d)

Under Canon 6D(3)(d), “one side” means a category of persons such as landlords, tenants, or litigants exclusively of one gender.

(4) After a temporary judge* who has determined himself or herself to be disqualified from serving under Canon 6D(3)(a)–(d) has disclosed the basis for his or her disqualification on the record, the parties and their lawyers may agree to waive the disqualification and the temporary judge* may accept the waiver. The temporary judge* shall not seek to induce a waiver and shall avoid any effort to discover which lawyers or parties favored or opposed a waiver.

ADVISORY COMMITTEE COMMENTARY: Canon 6D(4)

Provisions addressing waiver of mandatory disqualifications or limitations, late discovery of grounds for disqualification or limitation, notification of the court when a disqualification or limitation applies, and requests for disqualification by the parties are located in rule 2.818 of the California Rules of Court. Rule 2.818 states that the waiver must be in writing, must recite the basis for the disqualification or limitation, and must state that it was knowingly made. It also states that the waiver is effective only when signed by all parties and their attorneys and filed in the record.*

(5) A temporary judge,* referee, or court-appointed arbitrator shall, from the time of notice and acceptance of appointment until termination of the appointment:

(a) In all proceedings, disclose in writing or on the record information as required by law,* or information that is reasonably relevant to the question of disqualification under Canon 6D(3), including personal or professional relationships known* to the temporary judge,* referee, or court-appointed arbitrator, that he or she or his or her law firm has had with a party, lawyer, or law firm in the current proceeding, even though the temporary judge,* referee, or court-appointed arbitrator concludes that there is no actual basis for disqualification; and

(b) In all proceedings, disclose in writing or on the record membership of the temporary judge,* referee, or court-appointed arbitrator in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation, except for membership in a religious organization.

(6) A temporary judge,* referee, or court-appointed arbitrator, from the time of notice and acceptance of appointment until the case is no longer pending in any court, shall not make any public comment about a pending* or impending* proceeding in which the temporary judge,* referee, or court-appointed arbitrator has been engaged, and shall not make any nonpublic comment that might substantially interfere with such proceeding. The temporary judge,* referee, or court-appointed arbitrator shall require* similar abstention on the part of staff and court personnel subject to his or her control. This canon does not prohibit the following:

- (a) Statements made in the course of the official duties of the temporary judge,* referee, or court-appointed arbitrator; and
- (b) Explanations about the procedures of the court.

(7) From the time of appointment and continuing for two years after the case is no longer pending* in any court, a temporary judge,* referee, or court-appointed arbitrator shall under no circumstances accept a gift,* bequest, or favor from a party, person, or entity whose interests have come before the temporary judge,* referee, or court-appointed arbitrator in the matter. The temporary judge,* referee, or court-appointed arbitrator shall discourage family members residing in the household of the temporary judge,* referee, or court-appointed arbitrator from accepting any benefits from such parties, persons or entities during the time period stated in this subdivision. The demand for or receipt by a temporary judge,* referee, or court-appointed arbitrator of a fee for his or her services rendered or to be rendered would not be a violation of this canon.

(8) A temporary judge,* referee, or court-appointed arbitrator shall, from the time of notice and acceptance of appointment and continuing indefinitely after the termination of the appointment:

- (a) Comply with Canon 3B(11) [no disclosure of nonpublic information* acquired in a judicial capacity] (except as required by law*);
- (b) Not commend or criticize jurors sitting in a proceeding before the temporary judge,* referee, or court-appointed arbitrator for their verdict other than in a court order or opinion in such proceeding, but may express appreciation to jurors for their service to the judicial system and the community; and

(c) Not lend the prestige of judicial office to advance his, her, or another person's pecuniary or personal interests and not use his or her judicial title in any written communication intended to advance his, her, or another person's pecuniary or personal interests, except to show his, her, or another person's qualifications.

(9)(a) A temporary judge* appointed under rule 2.810 of the California Rules of Court, from the time of the appointment and continuing indefinitely after the termination of the appointment, shall not use his or her title or service as a temporary judge* (1) as a description of the lawyer's current or former principal profession, vocation, or occupation on a ballot designation for judicial or other elected office, (2) in an advertisement about the lawyer's law firm or business, or (3) on a letterhead, business card, or other document that is distributed to the public identifying the lawyer or the lawyer's law firm.

(b) This canon does not prohibit a temporary judge* appointed under rule 2.810 of the California Rules of Court from using his or her title or service as a temporary judge* on an application to serve as a temporary judge,* including an application in other courts, on an application for employment or for an appointment to a judicial position, on an individual resume or a descriptive statement submitted in connection with an application for employment or for appointment or election to a judicial position, or in response to a request for information about the public service in which the lawyer has engaged.

(10) A temporary judge,* referee, or court-appointed arbitrator shall comply with Canon 6D(2) until the appointment has been terminated formally or until there is no reasonable probability that the temporary judge,* referee, or court-appointed arbitrator will further participate in the matter. A rebuttable presumption that the appointment has been formally terminated will arise if, within one year from the appointment or from the date of the last hearing scheduled in the matter, whichever is later, neither the appointing court nor counsel for any party in the matter has informed the temporary judge,* referee, or court-appointed arbitrator that the appointment remains in effect.

(11) A lawyer who has been a temporary judge,* referee, or court-appointed arbitrator in a matter shall not accept any representation relating to the matter without the informed written consent of all parties.

(12) When by reason of serving as a temporary judge,* referee, or court-appointed arbitrator in a matter, he or she has received confidential

information from a party, the person shall not, without the informed written consent of the party, accept employment in another matter in which the confidential information is material.

ADVISORY COMMITTEE COMMENTARY: Canon 6D

Any exceptions to the canons do not excuse a judicial officer's separate statutory duty to disclose information that may result in the judicial officer's recusal or disqualification.

E. Judicial Candidate

A candidate for judicial office* shall comply with the provisions of Canon 5.

F. Time for Compliance

A person to whom this code becomes applicable shall comply immediately with all provisions of this code except Canons 4D(4) and 4E and shall comply with Canons 4D(4) and 4E as soon as reasonably possible and in any event within a period of one year.

ADVISORY COMMITTEE COMMENTARY: Canon 6F

If serving as a fiduciary when selected as a judge, a new judge may, notwithstanding the prohibitions in Canon 4E, continue to serve as a fiduciary* but only for that period of time necessary to avoid adverse consequences to the beneficiary of the fiduciary* relationship and in no event longer than one year.*

G. (Canon 6G repealed effective June 1, 2005; adopted December 30, 2002.)

H. Judges on Leave Running for Other Public Office

A judge who is on leave while running for other public office pursuant to article VI, section 17 of the California Constitution shall comply with all provisions of this code, except for the following, insofar as the conduct relates to the campaign for public office for which the judge is on leave:

2B(2)—Lending the prestige of judicial office to advance the judge's personal interest

4C(1)—Appearing at public hearings

5—Engaging in political activity (including soliciting and accepting campaign contributions for the other public office).

ADVISORY COMMITTEE COMMENTARY: Canon 6H

These exceptions are applicable only during the time the judge is on leave while running for other public office. All of the provisions of this code will become applicable at the time a judge resumes his or her position as a judge. Conduct during elections for judicial office is governed by Canon 5.



APPENDIX 3.

COMPLAINT ABOUT A CALIFORNIA JUDGE, COURT COMMISSIONER OR REFEREE

*Confidential under California Constitution Article VI, Section 18,
and Commission Rule 102*

For information about the Commission on Judicial Performance and instructions on filling out and submitting this form, please visit the commission's website at <https://cjp.ca.gov>.

*** Indicates a required field**

Today's date:

Your name:*

Your pronouns (e.g., he/him, she/her, they/them):

Your email:*

Your telephone number:*

Your address:*

Your attorney's name (if any):

Your attorney's email:

Your attorney's telephone number:

Name of judge:*

OR Name of court commissioner or referee:*

(If your complaint involves a court commissioner or referee, you must first submit your complaint to the local court. If you have done so, please attach copies of your correspondence to and from that court.)

Court Level:*

County/Appellate District:*

Court case type (e.g., none, criminal, family law, small claims):*

Case name and number:

Your relationship to the case (e.g., litigant/family/friend, judge/court staff):*

Date or dates conduct occurred:*

Please specify what action or behavior of the judge, court commissioner, or referee is the basis of your complaint. Provide relevant dates and the names of others present. (Use additional pages if necessary.)*

**Return to: Commission on Judicial Performance
455 Golden Gate Avenue, Suite 14400
San Francisco, California 94102**

Telephone: (415) 557-1200

Fax: (415) 557-1266

4/23

**APPENDIX 4.
TABLE OF COMMISSION PROCEEDINGS**

1. COMPLAINT FILED

2. COMPLAINT EVALUATION

3. INITIAL COMMISSION MEETING

Review complaint and staff evaluation

Possible actions:

- Close complaint
- Open preliminary investigation (see step 4)

**4. COMMISSION MEETING FOLLOWING
PRELIMINARY INVESTIGATION**

Review staff report and results of investigation

Possible actions:

- Close complaint
- Issue notice of tentative advisory letter* (see step 5)
- Issue notice of tentative *private* admonishment* (see step 5)
- Issue notice of tentative *public* admonishment* (see step 5)
- Institute formal proceedings* (see step 7)

*only if judge has been notified and given opportunity to respond to allegations

4.
COMMISSION PROCEEDINGS

5. JUDGE'S OPTIONS

If a notice of tentative advisory letter is issued

- Accept the advisory letter
- Demand an appearance before the commission and waive the ability to petition the Supreme Court for a writ of mandate (see step 6)
- Petition the Supreme Court for a writ of mandate (see steps 8 & 9)

If a notice of tentative admonishment is issued

- Accept the admonishment
- Demand an appearance before the commission and waive any right to formal proceedings (see step 6)
- Reject the tentative admonishment and demand formal proceedings (see step 7)

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

Review record, judge's objections and argument

Possible actions:

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

4.
COMMISSION PROCEEDINGS

7. FORMAL PROCEEDINGS INSTITUTED

A. Evidentiary Hearing Before Special Masters

B. Special Masters' Report to Commission

C. Appearance Before Commission

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

Possible actions (see steps 8 and 9):

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

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

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

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

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