State of California
Commission on Judicial Performance

2009 Annual Report

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INTRODUCTION

Judicial discipline serves an important yet discrete function in enforcing high standards of judicial conduct. Through its review and investigation of complaints, the Commission on Judicial Performance often learns of issues involving judges or the court system that are beyond the Commission's purview, but which deserve attention. The Commission is committed to bringing these issues to the attention of appropriate bodies for consideration, such as the Judicial Council, the Administrative Office of the Courts, the Center for Judicial Education and Research, and to presiding judges and individual courts. The Commission also brings to the Supreme Court's attention matters that fall within its constitutional mandate to adopt ethical standards for judges and judicial candidates.

In 2007, the Commission proposed that the Supreme Court establish an official body to give ethics advice to judges and to develop a body of official advisory opinions on judicial ethics issues. In December 2009, the Court appointed the initial members of its Committee on Judicial Ethics Opinions. We look forward to California providing this valuable service which is available to judges in more than 40 other states and the District of Columbia.

Before voters approved Proposition 190, effective March 1995, the Supreme Court had the sole authority to impose disciplinary sanctions for judicial misconduct. Proposition 190 authorizes the Commission to impose all disciplinary sanctions itself, subject to the Court's discretionary review. The Court's pre-Proposition 190 decisions, and post-Proposition 190 decisions in which the Court granted review, are published in the Official Reports. The Commission's post-Proposition 190 decisions that the Court did not review, however, have been available only on the Commission's Web site. To improve accessibility, the Court has now approved the publication of these decisions as follows: decisions filed between February 11, 1997 and June 26, 2008, will be published in a supplement to Cal.4th, and later decisions will be published in supplements to the Official Reports as they are issued. Commission decisions with stipulated dispositions will not be included, but all decisions are available on its Web site at http://cjp.ca.gov.

I thank my fellow Commission members and the Commission staff for their dedication and hard work this past year. Despite budget reductions and fewer resources, the Commission accomplished important work without significant delay or compromise.

Honorable Judith D. McConnell
Chairperson

COMMISSION ON JUDICIAL PERFORMANCE
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Commission Members

Pursuant to California Constitution, article VI, section 8, the Commission is composed of eleven members: one justice of a court of appeal and two judges of superior courts appointed by the Supreme Court; two attorneys appointed by the Governor; and 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. 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 shall serve for more than a total of ten 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.

Commission Members – 2009

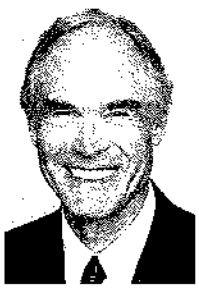
Hon. Judith D. McConnell, Chairperson, was appointed to the Commission as the Court of Appeal judicial member by the Supreme Court March 30, 2005, and reappointed January 8, 2009; her term ends February 28, 2013. Justice McConnell has served as the Commission's chairperson since March 2009; she served as its vice-chairperson in 2007 and 2008. She resides in San Diego County. Justice McConnell has served as the Administrative Presiding Justice of the Court of Appeal, Fourth Appellate District, since 2003; she served as Associate Justice from 2001 to 2003. From 1978 to 1980, she was a judge of the San Diego Municipal Court and, from 1980 to 2001, a judge of the San Diego Superior Court. Prior to her appointment to the bench, she was in private law practice in San Diego. She also worked for the California Department of Transportation. Justice McConnell received her law degree from the University of California, Berkeley, Boalt Hall School of Law, in 1969. She served as a member and vice-chair of the Judicial Council Task Force on Jury System Improvement from 1998 to 2003, and as chair of the Task Force on Judicial Ethics Issues from 2003 to 2004.

Hon. Katherine Feinstein, Vice-Chairperson, was appointed to the Commission as a superior court judicial member by the Supreme Court March 1, 2007; her term ends February 28, 2011. Judge Feinstein has served as the Commission's vice-chairperson since March 2009. She resides in San Francisco. Judge Feinstein currently serves as Assistant Presiding Judge of the San Francisco County Superior Court. Since taking the bench in 2000, she has presided over both civil and criminal calendars and jury trials. Judge Feinstein also served as Supervising Judge of San Francisco's Unified Family Court. Before becoming a judge, she served as a deputy district attorney and a deputy city attorney. She was also director of the Mayor's Office of Criminal Justice and a member of the San Francisco Police Commission. Judge Feinstein is a 1984 graduate of Hastings College of the Law and a Phi Beta Kappa graduate of the University of California, Berkeley.

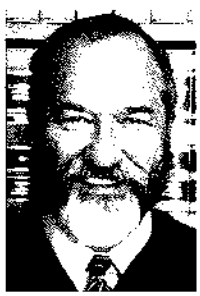
Peter E. Flores, Jr., Esq., was appointed to the Commission as a lawyer member by the Governor August 17, 2007; his term ends February 28, 2011. He resides in San Francisco. Mr. Flores is a deputy attorney general prosecuting criminal cases throughout Northern California for the California Attorney General's Office. Mr. Flores received his Bachelor of Arts degree from Stanford University and his law degree from Boalt Hall School of Law at the University of California, Berkeley, in 1993. From 1995 to 2005, he served as a deputy district attorney for the Sacramento County District Attorney's Office. Prior to that, he was an associate with the law firm of Littler, Mendelson, Fastiff,

Tichy & Mathiason in San Francisco. Mr. Flores is president of California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (CASE). He serves as a board member of the Criminal Law Section of the California State Bar, and is a member of the Hispanic National Bar Association, the California La Raza Lawyers Association and the San Francisco La Raza Lawyers Association.

Marshall B. Grossman, Esq., was appointed to the Commission as a lawyer member by the Governor April 10, 2001, and reappointed March 1, 2005; his term ended February 28, 2009, but he continues to serve pending the appointment of a successor. He served as the Commission's chairperson in 2005 and 2006 and its vice-chairperson in 2004. Mr. Grossman resides in Los Angeles County. He is a partner in the law firm of Bingham McCutchen LLP. He attended the University of California, Los Angeles, and received his law degree from the University of Southern California in 1964, where he was Production Editor of the Law Review and Order of the Coif. He has served on the boards of the Beverly Hills Bar Association, Association of Business Trial Lawyers, Legal Aid Foundation, Public Counsel and United Way. He served on the Coastal Commission for many years, and is currently on the boards of Jewish Big Brothers/Big Sisters and the American Jewish Committee.



Mr. Samuel A. Hardage was appointed to the Commission as a public member by the Governor August 17, 2007; his term ends February 28, 2011. He resides in San Diego County. Mr. Hardage is the Chairman of a San Diego-based company, The Hardage Group, which owns and operates hotels in 11 states. He has been active in the real estate industry for over three decades, developing, constructing and managing projects, including hotels, high-rise office buildings, apartments and warehouses. He is an active supporter of a number of professional associations, private companies and civic organizations. Mr. Hardage serves as the Founding Chairman of the Board of the Vision of Children Foundation, a nonprofit organization benefiting children with hereditary, genetic vision disorders. He is also the Founding Chairman of The Project for California's Future and a Founding Board Member of the Village Christian Foundation. He serves on Pepperdine University's School of Public Policy Board of Visitors. He is a past board member of Sonoma Cutrer Vineyards, and is currently a partner of Emeritus Vineyards. Mr. Hardage is a graduate of the U.S. Air Force Academy and received his MBA from Harvard Business School. He was elected Delegate to the White House Conference on Small Business in 1980 and was appointed by President Reagan to the President's Commission on Industrial Competitiveness in 1983. He was the Republican nominee for Governor of Kansas in 1982.



Hon. Frederick P. Horn was appointed to the Commission as a superior court judicial member by the Supreme Court October 22, 2003, and reappointed March 1, 2005, and January 8, 2009; his term ends February 28, 2013. Judge Horn served as the Commission's chairperson in 2007 and 2008 and as its vice-chairperson in 2005 and 2006. Judge Horn resides in Orange County. He has been a judge of the Orange County Superior Court since 1993; he was a judge of the Orange County Municipal Court, Harbor Judicial District, from 1991 to 1993. From 2002 to 2006, he served as presiding judge of the Orange County Superior Court. Prior to his appointment to the bench, he was a prosecutor with the Los Angeles District Attorney's Office. Judge Horn received his law degree from the University of West Los Angeles in 1974, where he wrote for and served as staff on the Law Review. He was the Chair of the Trial Court Presiding Judges Advisory Committee of the California Judicial Council from 2002 to 2006. He is a member of the faculty of the Judicial College, the New Judges Orientation Program, and the Continuing Judicial Studies Program.

Ms. Barbara Schraeger was appointed to the Commission as a public member by the Senate Committee on Rules September 14, 2001, and reappointed March 1, 2005; her term ended February 28, 2009, but she continues to serve pending the appointment of a successor. She resides in Marin County. Ms. Schraeger is currently the vice-chair of the Board of Directors of the Institute on Aging. She practiced in the field of organizational consulting for twenty years, serving as the Director of the San Francisco Labor-Management Work Improvement Project and as an instructor at the University of San Francisco in Human Relations and Organizational Behavior. Ms. Schraeger received a Bachelor of Arts degree in English from the University of Wisconsin and a Master of Arts in American Literature from New York University.

Mr. Lawrence J. Simi was appointed to the Commission as a public member by the Governor August 17, 2005, and reappointed September 13, 2009; his term ends February 28, 2013. He resides in San Francisco. Mr. Simi recently retired as a government relations director for Pacific Gas and Electric, where he worked for the past 29 years. Previously, he was a program manager for Mayors Alioto, Moscone and Feinstein in San Francisco. He has been a board member of a variety of civic and nonprofit organizations, including San Francisco's Commission on the Aging, the Mayor's Fiscal Advisory Committee, Self Help for the Elderly, Society for the Preservation of San Francisco's Architectural Heritage, Mission Education Project, United Cerebral Palsy Association, San Francisco Adult Day Health Network, and the Institute on Aging. Currently he serves as President of the Board of Directors of Pine View Housing Corporation, as a member of the Board of Directors of the Coro Center for Civic Leadership, and as a member of Senator Dianne Feinstein's Service Academy Advisory Board. Mr. Simi holds a Bachelor of Arts degree in Political Science from San Francisco State University and a Master of Arts in Government from California State University, Sacramento.

Ms. Maya Dillard Smith was appointed to the Commission as a public member by the Senate Committee on Rules June 27, 2007; her term ends February 28, 2011. She resides in Alameda County. Ms. Dillard Smith is a strategy consultant with Building Healthy Communities, an initiative of The California Endowment. Ms. Dillard Smith was formerly senior advisor to Mayor Gavin Newsom and Director of Violence Prevention for the Mayor's Office of Criminal Justice in San Francisco. She has also worked for the California Judicial Council, the U.S. Census Monitoring Board, the National Bureau of Economic Research and U.S. Representative Barbara Lee, Chair of the Congressional Black Caucus. A public safety expert and youth development specialist, Ms. Dillard Smith was the founding chairperson of the Oakland Violence Prevention and Public Safety Oversight Committee and currently serves on the Oakland Fund for Children and Youth Planning and Oversight Committee. She maintains an affiliation with a variety of nonprofit boards and professional networks. Ms. Dillard Smith received a Bachelor of Arts degree in Economics from the University of California, Berkeley, and a Master of Arts in Public Policy from Harvard University, John F. Kennedy School of Government.

Ms. Sandra Talcott was appointed to the Commission as a public member by the Speaker of the Assembly November 15, 2007; her term ends February 28, 2011. She resides in Los Angeles County. From 1999 to 2002, Ms. Talcott served as a public member on the Judicial Nominees Evaluation Commission; from 2003 to 2006, she served on that commission's review committee, and was chair of the committee between 2005 and 2006. She received a Bachelor of Arts degree in Political Science from the University of California, Berkeley. Ms. Talcott has a background in advertising; she worked at Young and Rubicam International, Inc., as a producer and casting director, then as a freelance

casting director. She has been involved in the volunteer sector of the Los Angeles art community, where she co-curated one of the early exhibitions at the Craft and Folk Art Museum. She was involved in the start-up phase of the Museum of Contemporary Art, and has served the Los Angeles County Museum of Art as chairperson of one of its councils. She has also served as a board member of a national association of art museum volunteer committees. She presently works as an interior designer.

Mr. Nathaniel Trives was appointed to the Commission as a public member by the Speaker of the Assembly October 3, 2007, and reappointed March 4, 2009; his term ends February 28, 2013. He resides in Los Angeles County. Mr. Trives is a former mayor of Santa Monica, California, and a retired Deputy Superintendent/Chief Government Relations Officer for the Santa Monica Community College District. He attended Santa Monica College, California State University, Los Angeles, and the University of California, Los Angeles. He is a former chair of the California Commission on Peace Officer Standards and Training. Mr. Trives served as a U.S. District Court special master, overseeing a consent decree governing the resolution of race and gender bias in the San Francisco Police Department. He has served on the board of the National Urban League, and is serving on the board of advisors of the Santa Monica UCLA Medical Center and the Pat Brown Institute, as well as numerous community based boards, including the Chamber of Commerce and the Convention and Visitors Bureau in Santa Monica. He is an emeritus professor of criminal justice at California State University, Los Angeles.

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 5 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 2009:

Honorable Gail A. Andler
Superior Court of Orange County

Honorable Bradley L. Boeckman
Superior Court of Shasta County

Honorable Dennis A. Cornell
Court of Appeal, Fifth Appellate District

Honorable Joyce M. Cram
Superior Court of Contra Costa County

Honorable Denise de Bellefeuille
Superior Court of Santa Barbara County

Honorable Stuart R. Pollak
Court of Appeal, First Appellate District

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 2009 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. The Commission also considers complaints made anonymously and matters it learns of in other ways, such as from news articles or from information received in the course of a Commission investigation.

Judicial Misconduct

The Commission's authority is limited to investigating alleged judicial misconduct and, if warranted, imposing discipline. Judicial misconduct usually involves conduct in conflict with the standards set forth in the Code of Judicial Ethics (see Appendix 2). Examples of judicial misconduct include intemperate courtroom conduct (such as yelling, rudeness, or profanity), improper communication with only one of the parties in a case, failure to disqualify in cases in which the judge has or appears to have a financial or personal interest in the outcome, delay in performing judicial duties, and public comment about a pending case. Judicial misconduct also may involve improper off-the-bench conduct such as driving under the influence of alcohol, using court stationery for personal business, or soliciting money from persons other than judges on behalf of charitable organizations.

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 in the matter. Investigations may include interviewing witnesses, reviewing court records and other documents, and observing the judge while court is in session. Unless evidence is uncovered which establishes that the complaint lacks merit, the judge is asked to comment on the allegations.

Action the Commission Can Take

Confidential Dispositions

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

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

Advisory letters and private admonishments are confidential. The Commission and its staff ordinarily cannot advise anyone, even the person who lodged the complaint, of the nature of the discipline that has been imposed. However, the Commission's rules provide 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 issued in 2009 is summarized, without identifying the judge involved, in Section IV. Summaries from prior years are available on the Commission's Web site at http://cjp.ca.gov.

Action the Commission Can Take

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

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 are notices that describe a judge's improper conduct and state the findings made by the Commission. Each notice is sent to the judge and made available to the complainant, the press and the general public. In cases in which the conduct of a former judge warrants public censure, the Commission also may bar the judge from receiving assignments from any California state court.

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

A judge may petition the Supreme Court to review an admonishment, censure, removal or involuntary retirement determination.

Confidentiality

Under the California Constitution and the Commission's rules, complaints to the Commission and Commission investigations are confidential. The Commission ordinarily cannot confirm or deny that a complaint has been received or that an investigation is under way. Persons contacted by the Commission during an investigation are advised regarding the confidentiality requirements.

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

II.
Legal Authority and Commission Procedures

Legal Authority

Recent Changes in the Law

In 2009, the Supreme Court amended the Code of Judicial Ethics, and the Commission adopted various changes to its rules and policy declarations. The amendments to the code and to the Commission's rules and policy declarations are summarized below.

California Constitution, Government Code, and Code of Civil Procedure Section 170.9

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 and most recently in 1998, 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 the restrictions on judges' receipt of gifts and honoraria, set forth in Code of Civil Procedure section 170.9. On February 9, 2009, the Commission adopted $370.00 as the adjusted gift limit for purposes of Code of Civil Procedure section 170.9.

The provisions governing the Commission's work are available on the Commission's Web site at http://cjp.ca.gov.

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 rules have been amended periodically thereafter. In January 2009, after circulating proposed changes for public comment, the Commission adopted amendments to rules 114(b), 116(b) and 108(e) and added subdivision (d) to rules 114 and 116 and subdivision (o) to rule 102. Amended rules 114(b) and 116(b) require a judge who demands an appearance to contest a notice of intended private or public admonishment to file written objections explaining the basis of the judge's objections to the admonishment. Pursuant to subdivision (d) to rules 114 and 116 and the amendment to rule 108(e), the 30 days provided to contest a notice of intended private or public admonishment may not be extended, but an extension of time to file a written statement of the judge's objections may be granted if a demand for an appearance has been timely filed. The addition of subdivision (o) to rule 102 authorizes the Commission to notify a judge, who is the subject of a complaint and has voluntarily provided information to the Commission concerning the complaint, that the complaint has been closed.

The Policy Declarations of the Commission on Judicial Performance detail internal procedures and existing policy. The Policy Declarations were substantially revised in 1997 and have been amended periodically thereafter. In October 2009, the Commission amended Policy Declaration 2.1 to increase the amount of time from 20 minutes to 30 minutes for a judge's oral presentation to the Commission when appearing to contest an intended private or public admonishment.

The Commission's Rules and Policy Declarations are available on the Commission's Web site at http://cjp.ca.gov.

Rules of Court

No amendments were made to the Rules of Court pertaining to the Commission in 2009.

Code of Judicial Ethics

The 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. In April 2009, the Supreme Court amended Canon 3C(1) concerning the administrative responsibilities of judges, stating that judges should discharge their duties impartially, on the basis of merit, without bias in a manner that promotes confidence in the integrity of the judiciary.

The Code of Judicial Ethics is included in Appendix 2.

COMMISSION PROCEDURES

Commission Review of Complaints

The Commission considers each written 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. Until the Commission has authorized an investigation, the Commission's staff does not contact the judge or any court personnel. However, to assist the Commission in its initial review of the complaint, the Commission's legal staff will research any legal issues and may obtain additional relevant information from the complainant or the complainant's attorney. (Commission Rule 109.)

Investigation at the Commission's Direction and Disposition of Cases Without Formal Proceedings

When the Commission determines that a complaint warrants investigation, the Commission directs staff to investigate the matter and report back to the Commission. There are two levels of investigation: a staff inquiry and a preliminary investigation. (Commission Rule 109; Policy Declarations 1.2, 1.4.) Most cases begin with a staff inquiry. In more serious matters, the Commission may 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 inquiry or investigation letter. (Commission Rules 110, 111.) Extensions of time to respond to inquiry and investigation letters are governed by the rules. (Commission Rule 108.)

Following a staff inquiry, the Commission may take one of three actions. If the facts do not support a showing that misconduct has occurred, the Commission will close the case without any action against the judge. If improper conduct is found, but the misconduct was relatively minor or isolated or the judge recognized the problem and took steps to improve, the Commission may issue an advisory letter. (Commission Rule 110; Policy Declaration 1.2.) If serious issues remain after a staff inquiry, the Commission will authorize a preliminary investigation. (Commission Rule 109; Policy Declarations 1.2, 1.4.)

After a preliminary investigation, the Commission has various options. The Commission may close the case without action or may issue an advisory letter. (Commission Rule 111; Policy Declaration 1.4.) The Commission also may issue a notice of intended private admonishment or a notice of intended public admonishment, depending upon the seriousness of the misconduct. (Commission Rules 113, 115; Policy Declaration 1.4.) The Commission also may institute formal proceedings, as discussed below.

All notices of staff inquiry, preliminary investigation, or intended private or public admonishment are sent to the judge at court, unless otherwise requested. Notices that relate to a staff inquiry are given by first class mail, and notices that relate to a preliminary investigation or intended private or public admonishment are given by prepaid certified mail, return receipt requested. The Commission marks envelopes containing such notices "personal and confidential" and does not use the inscription "Commission on Judicial Performance" on the envelopes. (Commission Rule 107(a).)

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.

Monitoring

In the course of a preliminary investigation, the Commission may monitor the judge's conduct, pursuant to rule 112, deferring termination of the investigation for up to two years. Monitoring may include periodic courtroom observation, review of relevant documents, and interviews with persons who have appeared before the judge. The judge is notified that a period of monitoring has been ordered and is advised in writing of the type of behavior for which the judge is being monitored. Monitoring may be used when the preliminary investigation reveals a persistent but correctable problem, such as demeanor that could be improved.

Formal Proceedings

After 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 Rules 114, 116.) 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 disqualify a judge from performing judicial duties once formal proceedings are instituted if the judge's continued service is causing immediate, irreparable and continuing public harm. (Commission Rule 120.)

Hearing

After the judge has filed an answer to the charges, 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 45 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. Prior to a decision by the Commission, the parties are given the opportunity to be heard orally before the Commission. (Commission Rules 130, 132.)

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

Disposition of Cases After Hearing

The following actions may be taken by the Commission pursuant to article VI, section 18 of the California Constitution after a hearing

on the formal charges, unless the case is closed without discipline:

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

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

After formal proceedings, the Commission may also close the matter with an advisory letter to the judge or former judge.

Release of Votes

The Commission discloses the votes of the individual Commission members on disciplinary determinations reached after formal proceedings are instituted. The Commission also releases individual votes on public admonishments.

SUPREME COURT REVIEW

A judge may petition the California Supreme Court to review 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).) California Rules of Court 9.60 and 9.61 govern petitions for review of Commission determinations.

STATUTE OF LIMITATIONS

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

STANDARD OF PROOF

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

CONFIDENTIALITY OF COMMISSION PROCEEDINGS

California Constitution, article VI, section 18(i)(1) authorizes the Commission to provide for the confidentiality of complaints to and investigations by the Commission. The Commission's rules provide that complaints and investigations are confidential, subject to certain exceptions, for example, when public safety may be compromised, when information reveals possible criminal conduct, and when judges retire or resign during proceedings. (Commission Rule 102(f)-(n); Policy Declarations 4.1-4.6.) During the course of a staff inquiry or preliminary investigation, persons questioned or interviewed are advised that the inquiry or investigation is confidential. (Policy Declaration 1.9; *Ryan v. Commission on Judicial Performance* (1988) 45 Cal.3d 518, 528.)

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

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

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

III.
2009 Statistics
Active and Former Judges

Complaints Received and Investigated

In 2009, there were 1,755 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 411 commissioners and referees. The Commission's handling of complaints involving commissioners and referees is discussed in Section V.

Judicial Positions
As of December 31, 2009

Supreme Court	7
Court of Appeal	105
Superior Courts	1,643
Total	**1,755**

New Complaints

In 2009, the Commission considered 1,161 new complaints about active and former California judges. The 1,161 complaints named a total of 1,406 judges (856 different judges). The complaints set forth a wide array of grievances. A substantial percentage alleged legal error not involving misconduct or expressed dissatisfaction with a judge's decision.

2009 Caseload – Judges

Cases Pending 1/1/09	97
New Complaints Considered	1,161
Cases Concluded	1,115
Cases Pending 12/31/09	130

Discrepancies in totals are due to consolidated complaints/dispositions.

In 2009, the Commission considered 153 complaints about subordinate judicial officers. These cases are discussed in Section V.

The Commission office also received over 500 complaints in 2009 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, made referrals.

Staff Inquiries and Preliminary Investigations

In 2009, the Commission ordered 102 staff inquiries and 63 preliminary investigations.

Investigations Commenced in 2009

Staff Inquiries	102
Preliminary Investigations	63

Formal Proceedings

At the beginning of 2009, there were two formal proceedings pending before the Commission. One of these matters was concluded in 2009.

The Commission instituted formal proceedings in one case during 2009. Two matters remained pending before the Commission at the end of the year.

Formal Proceedings

Pending 1/1/09	2
Commenced in 2009	1
Concluded in 2009	1
Pending 12/31/09	2

Complaint Dispositions

The following case disposition statistics are based on cases completed by the Commission in 2009, regardless of when the complaints were received.[1] In 2009, the Commission concluded a total of 1,115 cases. The average time period from the filing of a complaint to the disposition was 4.4 months. A chart of Complaint Dispositions of all cases completed by the Commission in 2009 is included on page 10.

Type of Court Case Underlying Complaints Concluded in 2009

Criminal	40%
General Civil	24%
Family Law	17%
Small Claims/Traffic	7%
All Others	8%

4% 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.

Source of Complaints Concluded in 2009

Litigant/Family/Friend	88%
Attorney	5%
Judge/Court Staff	2%
All Other Complainants (including citizens)	3%
Source Other than Complaint (includes anonymous letters, news reports)	2%

Closed Without Discipline

In 2009, after obtaining the information necessary to evaluate the complaints, the Commission determined that there was not a sufficient showing of misconduct in 1,007 of the complaints. In other words, there was an absence of facts which, if true and not otherwise explained, might constitute misconduct. The Commission closed these complaints without staff inquiry or preliminary investigation.

Following staff inquiry or preliminary investigation, the Commission closed another 74 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.

Closed With Discipline

In 2009, the Commission publicly censured one judge and imposed two public admonishments. The Commission also issued three private admonishments and 25 advisory letters. Each of these cases is summarized in Section IV.

A chart of the Types of Conduct Resulting in Discipline in 2009 appears on page 11. 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. However, if the same type of conduct occurred on multiple occasions in a single case, the conduct was counted only once.

Resignations and Retirements

The 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 2009, the Commis-

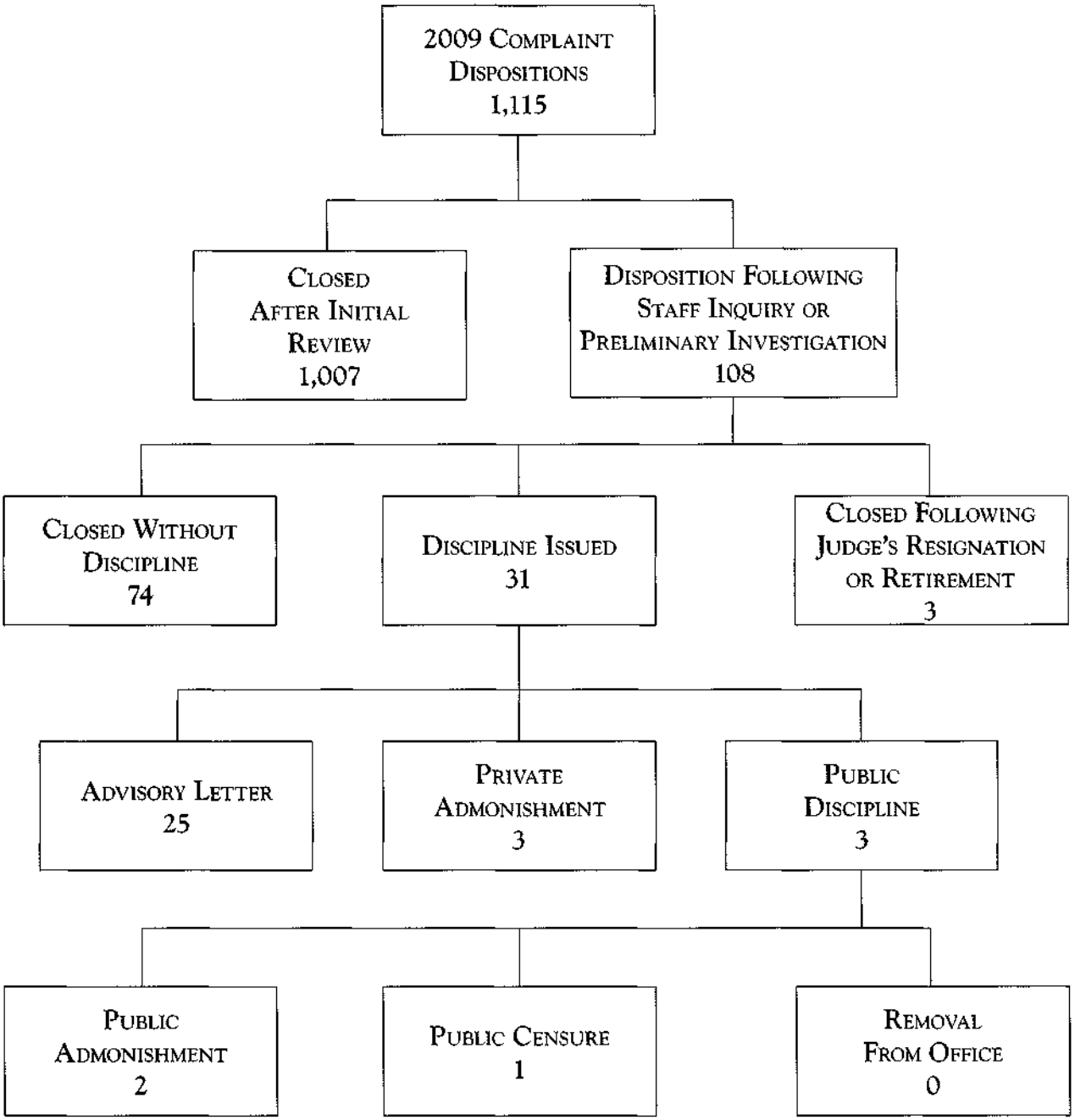
[1] Staff inquiries and preliminary investigations in the cases closed in 2009 may have commenced in prior years. Cases or portions of cases pending at the end of 2009 are not included in complaint disposition statistics.

sion closed three matters without discipline when the judge resigned or retired with an investigation pending. One of these cases was closed conditioned upon the judge's agreement not to serve or seek to serve in a judicial capacity or to sit on assignment.

10-Year Summary of Commission Activity

A chart summarizing statistics on Commission activities over the past 10 years appears on page 12.

2009
Complaint Dispositions



Types of Conduct Resulting in Discipline*

Demeanor/Decorum
(includes inappropriate humor)
[8]

Administrative Malfeasance
(includes conflicts between judges, failure to supervise staff, delay in responding to complaints about commissioners)
[6]

Failure to Ensure Rights
[6]

Disqualification/Disclosure/Post-Disqualification Conduct
[4]

Off-Bench Abuse of Office
(includes improper use of judicial stationery)
[4]

On-Bench Abuse of Authority in Performance of Judicial Duties
[4]

Non-Performance of Judicial Functions/Attendance/Sleeping
[3]

Ex Parte Communications
[3]

Bias or Appearance of Bias Not Directed Toward a Particular Class
(includes embroilment, prejudgment, favoritism)
[2]

Misuse of Court Resources
[2]

Abuse of Contempt/Sanctions
[1]

Comment on a Pending Case
[1]

Decisional Delay, False Salary Affidavits
[1]

Improper Political Activities
[1]

Miscellaneous Off-Bench Conduct
[1]

* See "Closed With Discipline" at page 8 of text.

10-Year Summary of Commission Activity

New Complaints Considered by Commission

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
	951	835	918	1,011	1,114	965	1,019	1,077	909	1,161

Commission Investigations Commenced

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Staff Inquiries	92 (10%)	50 (6%)	58 (6%)	55 (5%)	91 (8%)	55 (6%)	67 (7%)	55 (5%)	70 (8%)	102 (8%)
Preliminary Investigations	36 (4%)	47 (6%)	37 (4%)	48 (5%)	47 (4%)	41 (4%)	51 (5%)	54 (5%)	42 (5%)	63 (5%)
Formal Proceedings Instituted	3 (<1%)	6 (<1%)	4 (<1%)	3 (<1%)	2 (<1%)	4 (<1%)	5 (<1%)	1 (<1%)	2 (<1%)	1 (<1%)

Disposition of Commission Cases

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Total Dispositions	934	840	901	993	1,080	954	1,023	1,058	892	1,115
Closed after Initial Review	835 (89%)	746 (89%)	830 (92%)	906 (91%)	993 (92%)	876 (92%)	919 (90%)	975 (92%)	805 (90%)	1,007 (90%)
Closed without Discipline after Investigation	64 (7%)	66 (8%)	40 (4%)	62 (6%)	60 (6%)	51 (5%)	64 (6%)	45 (4%)	48 (5%)	74 (7%)
Advisory Letter	19 (2%)	19 (2%)	17 (2%)	16 (2%)	13 (1%)	12 (1%)	16 (2%)	20 (2%)	18 (2%)	25 (2%)
Private Admonishment	6 (<1%)	5 (<1%)	6 (<1%)	2 (<1%)	8 (<1%)	6 (<1%)	7 (<1%)	9 (<1%)	7 (<1%)	3 (<1%)
Public Admonishment	6 (<1%)	0 (0%)	1 (<1%)	1 (<1%)	3 (<1%)	4 (<1%)	9 (<1%)	5 (<1%)	7 (<1%)	2 (<1%)
Public Censure	1 (<1%)	2 (<1%)	4 (<1%)	1 (<1%)	0 (0%)	2 (<1%)	4 (<1%)	1 (<1%)	0 (<1%)	1 (<1%)
Removal	0 (0%)	1 (<1%)	0 (0%)	2 (<1%)	1 (<1%)	0 (0%)	1 (<1%)	2 (<1%)	2 (<1%)	0 (<1%)
Judge Retired or Resigned with Proceedings Pending	3 (<1%)	1 (<1%)	3 (<1%)	3 (<1%)	2 (<1%)	4 (<1%)	3 (<1%)	1 (<1%)	5 (<1%)	3 (<1%)

IV.
Case Summaries

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

Public Discipline

Public discipline decisions issued by the Commission in 2009 are summarized in this section. All public decisions in Commission cases are available on the Commission's Web site at http://cjp.ca.gov.

Public Censure by the Commission

In 2009, the Commission imposed one public censure.

Public Censure of Judge Christopher J. Sheldon April 15, 2009

Judge Christopher J. Sheldon of the Riverside County Superior Court was ordered publicly censured by the Commission pursuant to stipulation on April 15, 2009, for prejudicial misconduct. The stipulation included Judge Sheldon's agreement to tender his irrevocable resignation from judicial office, not to seek or hold judicial office in California, and not to seek or accept judicial assignment, appointment or reference of work from any California state court.

The Commission set forth in its decision the stipulated facts and legal conclusions on which discipline was based. It was stipulated that since August 2005, Judge Sheldon had been assigned to a juvenile dependency department with a calendar that routinely concluded before noon. The Commission found that, from early 2007 through late 2008, Judge Sheldon routinely left the courthouse for the day after the calendar concluded. He did not inform his supervising judges of his routine absences during court hours and did not seek or receive authorization for these half-day absences. On occasion, the juvenile delinquency judge in Indio handled ex parte dependency matters due to Judge Sheldon's afternoon absences. Judge Sheldon generally did not make himself available for other judicial work during these absences.

It was stipulated that the judge's failure to seek or receive authorization for his half-day absences violated California Rules of Court, rule 10.608(3). It was also stipulated that Judge Sheldon's conduct violated canons 1, 2A, and 3C(1) and constituted prejudicial misconduct.

The Commission found that by regularly absenting himself from the courtroom before noon without the approval of his supervising judges for a period of almost two years, Judge Sheldon had "demonstrated a flagrant disregard for his obligations to his fellow judges, the public, and the reputation of the judiciary." The Commission pointed out that a judge's responsibilities are not limited to the completion of the daily calendar, and that judges who conclude their calendars early in the day may be assigned other duties, including handling ex parte motions and presiding over cases other courts are unable to handle due to time limitations or disqualification. The Commission noted that unapproved absences can have a significant impact on the operation of the court, especially in a county such as Riverside with a longstanding and well-publicized backlog of cases.

The Commission noted that Judge Sheldon had received a public admonishment in 1998 for his conduct in handling his misdemeanor pretrial calendar from July 1995 to March 1996. Judge Sheldon frequently failed to take the bench or left the bench during portions of this calendar. He allowed the clerks to enter pleas and execute documents imposing sentence in his absence, and to stamp his signature on constitutional rights waiver forms. On occasion, Judge Sheldon left the courthouse or jogged on a courthouse staircase during his pretrial calendar. The Commission found that the judge's handling of his pretrial calendar violated canons 1, 2A, 3A, 3B(1) and 4A(3).

In discussing the appropriate level of discipline, the Commission noted Judge Sheldon's concession that he had engaged in prejudicial misconduct.

The Commission stated that Judge Sheldon had admitted violating rule 10.608(3) of the California Rules of Court, which requires that a judge request approval of the presiding judge for any intended absence of one-half day or more within a reasonable time before the intended absence. The Commission pointed out that Judge Sheldon also had violated canon 3C(1), which requires a judge to diligently discharge administrative responsibilities and to cooperate with other judges and court officials in the administration of court business. The Commission stated that public confidence in the integrity of the judiciary is seriously undermined when a judge routinely leaves the courthouse early without approval, and that the state's taxpayers have a right to expect judges to be available to provide the service for which they are paid. The Commission continued, "Judge Sheldon's routine of working part-time while being paid a full-time salary is utterly unacceptable and casts disrepute upon the judicial office." The Commission found that Judge Sheldon's misconduct was made even more egregious by the fact that he was publicly admonished in 1998 for conduct that included abandonment of his judicial responsibilities. The Commission stated its view that the purpose of Commission disciplinary proceedings – the protection of the public, the enforcement of rigorous standards of judicial conduct, and the maintenance of public confidence in the integrity of the judicial system – would be best served by the sanction of public censure with an agreement that Judge Sheldon would resign and would not at any time seek or hold judicial office or seek or accept judicial assignment.

Public Admonishment by the Commission

The Commission may publicly admonish a judge for improper action or dereliction of duty. In 2009, the Commission issued two public admonishments.

Public Admonishment of Former Judge Robert A. Schnider August 31, 2009

Judge Robert A. Schnider, retired from the Los Angeles County Superior Court, was publicly admonished for conduct that constituted, at a minimum, improper action, pursuant to Commission Rules 115-116 (governing public admonishments).

In his capacity as Family Law Supervising Judge for the Los Angeles County Superior Court for 2005, 2006, and 2007, Judge Schnider was responsible for supervising then-Commissioner Ann Dobbs, who served in the family law department from March 2001 until her retirement on October 31, 2007. The Commission found that Judge Schnider was aware that Commissioner Dobbs was not deciding all of her cases in a timely manner, but failed to take sufficient action to ensure that she did so. The Commission determined that Judge Schnider violated California Rules of Court, rule 10.603, by failing to adequately supervise Commissioner Dobbs, and violated rule 10.703 by failing to promptly respond to at least three complaints about her delay. Judge Schnider's conduct violated canons 3C(3), 3D(1), and 2A. [See Section V, Subordinate Judicial Officers, for a summary of the public censure of Commissioner Dobbs.]

As Family Law Supervising Judge, Judge Schnider had been delegated the duty of the presiding judge under California Rules of Court, rule 10.603(c)(3), to supervise and monitor the number of cases Commissioner Dobbs had under submission to ensure that no case under submission remained pending and undecided for longer than 90 days. The Los Angeles County Superior Court generated reports at the end of each month showing the cases each bench officer had under submission between 30 and 60 days, between 60 and 90 days, and for more than 90 days; these reports were and are given to all bench officers each month. If Commissioner Dobbs had any cases under submission for 30 to 60 days, Judge Schnider was required by rule 10.603(c)(3)(D) to contact and alert her, and to discuss ways to ensure that the cases in that category were timely decided. Between 2005 and 2007, the reports identified 34 of the commissioner's cases as being in the 30-to-60-day category. Judge Schnider did not contact Commissioner Dobbs to alert her and discuss ways to ensure that the cases would be timely decided.

If Commissioner Dobbs had cases under submission from 60 to 90 days, rule 10.603(c)(3)(E) required Judge Schnider to consider providing assistance to her. Between 2005 and 2007, the court's monthly reports identified 33 of the commissioner's cases as being in the 60-to-90-day category. Of

these, 16 had been under submission for more than 90 days when the report was issued. Judge Schnider informed the Commission that when he contacted Commissioner Dobbs about cases appearing on the reports, she told him that the cases had been decided or that the submission dates were erroneous or had been vacated. Judge Schnider did not verify her representations. Judge Schnider also took no action to determine whether Commissioner Dobbs was in compliance with the law governing the vacating of submission dates, which she often was not.

In 2006, Judge Schnider reduced the number of cases assigned to the commissioner. In 2006 and 2007, he transferred 354 of her cases to another judge. Commissioner Dobbs still did not complete all of her submitted cases on time. On two occasions in 2007, Judge Schnider gave the commissioner one week off to complete her submitted cases. During that time off, Commissioner Dobbs did not decide any submitted cases, and Judge Schnider took no action to determine whether she had decided any cases.

In 2007, in addition to having the information about Commissioner Dobbs's cases contained in the court's monthly reports, Judge Schnider was aware of several cases not listed in the reports that she had not decided within 90 days of submission. Judge Schnider took no action to determine why these cases were not included in the reports. Had he done so, he likely would have learned that Commissioner Dobbs was preparing the case status information for those reports herself, rather than allowing her courtroom clerk to do so in accordance with the standard court practice. Also, he likely would have discovered that her reporting did not accurately reflect the status of the cases she had under submission.

Judge Schnider also failed to promptly respond to at least three complaints from family law litigants about Commissioner Dobbs's delays, as required by rule 10.703. The judge took almost seven months to respond to a complaint about a delay of nearly five years; when he did, he conceded the delay. The judge never responded to a complaint from a litigant about an eleven-month delay, and he never responded to another litigant's complaint about a six-month delay. In addition, Judge Schnider never responded to two letters from an attorney about lengthy delays in two cases she had before Commissioner Dobbs.

At his appearance before the Commission and in his written objections to the Notice of Intended Public Admonishment issued by the Commission, Judge Schnider maintained that he had discharged his duty with respect to these complaints by repeatedly asking Commissioner Dobbs for her response to the complaints and taking her at her word when she assured him that she would respond to him soon. Judge Schnider was of the view that the commissioner's failure to provide a response to him relieved him of his obligation to investigate the complaints himself or to respond to the complainants. The Commission pointed out that the rules do not require the presiding judge or designee to wait indefinitely for a response from the subordinate judicial officer before responding to a complainant. To the contrary, rule 10.703(d) requires that complaints against subordinate judicial officers be processed promptly, and within 90 days to the extent reasonably possible.

Regarding Judge Schnider's argument that he was justified in relying on the representations of a well-respected subordinate judicial officer, the Commission noted that when Judge Schnider became supervising judge, he was informed that Commissioner Dobbs had problems with delay. Time after time, Commissioner Dobbs assured Judge Schnider that she would promptly decide her delayed cases and provide him with her responses to complaints from litigants, but she repeatedly and consistently failed to follow through on these assurances. Under the circumstances, the Commission found, Judge Schnider's continued reliance on her promises was unreasonable.

When Commissioner Dobbs retired in October 2007, Judge Schnider agreed to allow her to complete work on undecided cases at home. The commissioner took approximately 30 cases home with her; about half of them had been under submission for over 90 days, and the rest had been under submission for less than 90 days. Judge Schnider was aware of the commissioner's failure to decide many of these cases. During the three months after her retirement, Commissioner Dobbs completed none of the cases. The court eventually retrieved the files, and several judicial officers were required to review and

complete the cases. Mistrials were declared in at least 15 cases. Some cases were decided based upon the reporter's transcript of previous proceedings before Commissioner Dobbs; however, a number of cases had to be retried.

The Commission found that Judge Schnider's failure to properly discharge his duty to supervise Commissioner Dobbs resulted in significant financial and emotional harm to family law litigants and seriously undermined the integrity of the judiciary. The Commission concluded that Judge Schnider "was seriously derelict in discharging his duty to supervise Commissioner Dobbs and demonstrated a disregard for the concerns of litigants who complained about their delayed cases."

Public Admonishment of Judge Robert C. Coates December 2, 2009

Judge Robert C. Coates of the San Diego County Superior Court was publicly admonished for conduct that constituted, at a minimum, improper action, pursuant to Commission Rules 115-116 (governing public admonishments).

The Commission found that Judge Coates had persisted in a pattern of abuse of the prestige of judicial office and misuse of court resources in connection with personal and non-court matters, notwithstanding his prior discipline by the Commission for similar conduct, notwithstanding direction from his presiding judges that he cease such conduct, and notwithstanding advice he received from the California Judges Association (CJA) Ethics Committee to avoid such conduct. The Commission concluded that Judge Coates's conduct reflected a repeated refusal to comply with canon 2B(2), and that his recalcitrance manifested indifference towards the erosion of public confidence in the judiciary resulting from irresponsible behavior by judges.

The Commission noted that Judge Coates received a public admonishment in 2000 for a pattern of abuse of the prestige of judicial office and misuse of court resources in connection with personal matters from 1993 to 1998; the judge had made extensive use of court secretaries and other court resources to prepare more than 100 personal documents. In addition, Judge Coates received an advisory letter in 2000 for his use of court resources to prepare and send documents concerning civic activities in which he was involved; while the judge's involvement in these activities was not improper, his extensive use of court resources in connection with the activities was improper.

The Commission also pointed out that Judge Coates was counseled by the San Diego County Superior Court's presiding judge in 2005 to stop using the court's fax machine, employees and time to receive and/or send personal, non-court related material; Judge Coates responded that he would buy a fax machine for use at home, sending personal items to his personal secretary. In 2006, the court's next presiding judge advised Judge Coates that court computers should be used only to conduct court business, that all communications should promote public confidence in the impartiality of the judiciary, and that a communication Judge Coates had sent could be seen as an inappropriate endorsement. Judge Coates responded that he was "heartily sorry" and that he would be "much more careful." In 2008, the court's assistant presiding judge met with Judge Coates about his use of court email. Judge Coates told the assistant presiding judge that he was not aware that he had done anything wrong, but that he then understood the problem.

In his correspondence to the Commission in the current matter, Judge Coates stated that he had asked the CJA Ethics Committee for opinions several times each year to avoid problems with improper use of court resources. The Commission asked that he supply copies of these opinions. The documents provided by the judge showed that, while CJA stated that minimal use of court resources for personal purposes under normal circumstances might be considered permissible, he was repeatedly advised that, as he was being carefully scrutinized by his presiding judge, he should avoid using court resources for anything that was not strictly judicial business.

The Commission found that, notwithstanding his prior discipline, counseling, warnings from his presiding judges, and cautionary advice from CJA, Judge Coates abused the prestige of office and misused court resources in several instances.

In 2007, the judge asked his judicial secretary to type a letter he had handwritten and send it by fax to his health insurance company. The judge's two-page letter, supported by 14 pages of attachments, sought the company's approval of a medical procedure he had scheduled, and addressed his personal medical condition. The secretary prepared the letter, using plain paper and the judge's home address as directed, and sent it via fax the next day.

In 2008, Judge Coates had his judicial secretary prepare and send a letter on judicial stationery to the judge's financial institution, complaining of long wait times he had experienced when attempting to call to determine why a wire transfer he was expecting had not been deposited into his account.

The Commission found that both letters involved the misuse of court resources for personal purposes, in violation of canon 2A, and that the letter to the financial institution also violated canon 2B's prohibition on lending the prestige of judicial office to advance the pecuniary or personal interests of the judge or others.

Also in 2008, Judge Coates had his judicial secretary prepare and send a memorandum, written on court stationery and bearing the judge's official title, to the county undersheriff, addressing his concerns about the field training of the judge's former courtroom bailiff. The memorandum stated that the deputy's dream of serving in the field was "about to be dashed," that the deputy would make a "superb" field deputy if "given a good chance," and that "just maybe, this is the occasion for you to take a harder look at what has gone on, and what might be going on, in your training function." Judge Coates attached to his memorandum email correspondence from another deputy sheriff related to the issue. The memorandum was sent under a San Diego County Superior Court fax cover sheet, indicating that it was from "Judge Coates."

The Commission rejected Judge Coates's contention that he was merely providing a letter of recommendation, as permitted under canon 2B(2)(e). The Commission noted that the memorandum went beyond expressing the judge's personal observations as to his former bailiff's qualifications; it suggested that there were problems with the sheriffs department's training function, and incorporated email correspondence from another deputy sheriff expressing that deputy's views. In addition, the memorandum was not written in connection with a job application, but evidently in connection with the sheriffs department's decision whether to keep the former bailiff in the field training program.

Finally, in late 2008, Judge Coates sent a letter regarding global warming and climate change on plain paper to the director of a non-governmental organization. The judge described himself in the letter as President of Understanding Climate Change, Ltd., "a Project of the Mission Valley Rotary Club." The address provided in the letter for Understanding Climate Change was the address of the court and Judge Coates's department. Below the judge's title as President of Understanding Climate Change, his judicial title and chambers telephone number appeared. Although Judge Coates told the Commission that the letter was most likely prepared by his personal secretary and that he had no recollection of instructing the secretary to insert the address of the court or of noticing that the court address had been used, he did sign the letter and direct the secretary to send it by fax. The Commission found that Judge Coates's use of the court's address for his project made it appear that he was using his court as the office for a private organization, and that the use of his title gave the appearance that he was lending the prestige of office to advance the personal interests of others.

The Commission concluded that Judge Coates's conduct evidenced "a serious disregard of the principles of conduct embodied in the California Code of Judicial Ethics," including canons 2B(2) and 2A.

In determining that public admonishment was appropriate, the Commission noted that Judge Coates had been the subject of prior discipline, including the related 2000 public admonishment and advisory letter discussed above. The Commission pointed out that the 2000 public admonishment also addressed Judge Coates's pattern of demeaning and discourteous conduct toward court staff and persons appearing before him. In addition, the Commission noted that the judge received an advisory letter in 1988 for shouting and screaming at a litigant in a temporary restraining order proceeding, and received a private admon-

ishment in 1991 for sentencing a defendant in a speeding case based on his subjective diagnosis that the defendant was "addicted to something" and for calling a "hearing" and requiring the attendance of several attorneys to inquire into the operation of the Alternate Defender's Office.

PRIVATE DISCIPLINE

Private admonishments and advisory letters issued in 2009 are summarized below. In order to maintain confidentiality, certain details of the cases have been omitted or obscured, making the summaries less informative than they otherwise might be. Because these summaries are intended in part to educate judges and the public and to assist judges in avoiding inappropriate conduct, the Commission believes it is better to describe the conduct in abbreviated form than to omit the summaries altogether.

Summaries of private discipline since 1998 are available on the Commission's Web site at http://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 2009, the Commission imposed three private admonishments.

1. During trial, a judge contacted one of the counsel's supervisors ex parte to criticize the attorney's performance. The judge also threatened to order the court reporter to stop reporting, which would be contrary to a statute requiring that all proceedings be reported. In another matter, the judge shouted at counsel, failed to comply with the law regarding contempt and engaged in an abuse of authority in conducting the contempt proceeding. In a different case, the judge refused to appoint counsel when required to do so by law. In a separate matter, the judge made an inappropriately personal remark to a lawyer.

2. A judge engaged in inappropriate fundraising efforts on behalf of a candidate for judicial office, that included distribution of written materials that demeaned the judicial office. The judge also used court resources in connection with campaign activities.

3. A judge sent a letter to a local business on judicial stationery in which the judge complained about the termination of an employee and stated that the court and the judge would no longer use the business. The Commission found that the letter could be perceived as punitive and bullying.

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 2009, the Commission issued 25 advisory letters.

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...." (Canon 3B(3), (4).)

1. In a published interview, a judge used profanity, once in reference to a litigant.

2. A judge took two personal cell phone calls in open court during court proceedings and left the bench for at least five minutes for each call, returning without explanation or apology. The judge also made a disparaging remark to a small claims litigant.

3. A judge inappropriately stated in open court, in the presence of an attorney's client, that

the judge was considering reporting the attorney to the State Bar.

Bias

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

4. While meeting with counsel in chambers, a judge professed dislike of one parent in a dependency matter just prior to a hearing regarding custody.

On-Bench Abuse of Authority

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.)

5. A judge, who was advisor and supervisor of the grand jury, exceeded the judge's authority by sending a letter to individuals who had submitted information and requests to the grand jury, ordering them to "cease and desist" contact with the grand jury on any matter as to which they had been advised that the grand jury no longer needed or desired contact. The letter also advised them that violation of this order could result in sanctions including contempt, which could result in fines or incarceration.

6. A judge issued orders sealing court records without the requisite showing of cause and without following the procedures mandated by law.

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.)

7. The circumstances of a judge's consumption of alcoholic beverages in a bar during court hours created an appearance of impropriety.

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.)

8. In a criminal case, a judge refused to hear a motion to suppress that was properly before the judge.

9. A judge imposed an illegal and unconstitutional probation condition that reflected disregard of fundamental rights.

10. During the hearing on an application for a restraining order, a judge denied the petitioner's right to be heard by improperly refusing to consider the statutorily permitted grounds on which the application was based, namely, a pattern of harassing conduct.

11. A judge excused a represented party from the stand without offering the opposing party, a pro per litigant, an opportunity for cross-examination; the judge had offered the represented party's counsel the opportunity to cross-examine the pro per litigant.

Administrative Malfeasance

Judges are required to diligently discharge their administrative responsibilities. (Canon 3C.)

12. A supervising judge failed to report a written reprimand of a subordinate judicial officer to the Commission on Judicial Performance as required by California Rules of Court, rule 10.703.

13. A judge who was responsible for the handling of complaints against subordinate judicial officers under California Rules of Court, rule 10.703, failed to ensure the appropriate handling of litigants' complaints about a subordinate judicial officer.

14. A judge who was responsible for handling complaints about subordinate judicial officers under California Rules of Court, rule 10.703, failed to ensure timely responses to litigants' complaints about a subordinate judicial officer.

15. A judge who was responsible for handling complaints against subordinate judicial officers

under California Rules of Court, rule 10.703, approved a supervising judge's decision not to report a written reprimand of a subordinate judicial officer to the Commission on Judicial Performance, notwithstanding the reporting requirements of rule 10.703.

Public Comment

Canon 3B(9) prohibits judges from making public comment about a pending or impending proceeding in any court, with limited exceptions.

16. In a published interview, a judge made comments about a case the judge had heard, which was pending before the Court of Appeal, that violated the prohibition on public comment regarding pending cases.

Decisional Delay

Judges are required to perform the duties of judicial office diligently as well as impartially. (Canon 3.) Under California Constitution article VI, section 19, a judge may not receive the judge's salary while any submitted matters remain pending and undecided for more than 90 days.

17. A judge did not rule on a habeas petition for six months, and failed to rule on two subsequent habeas petitions filed by the same petitioner shortly before the judge's ruling on the initial petition.

Ex Parte Communications

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

18. A judge considered multiple ex parte communications from members of the public, including a message left on a court phone line, while presiding over sentencing in a criminal case.

19. A judge acted on an unnoticed, ex parte motion for continuance of a traffic trial. The defense did not have notice of the motion at any time before it was granted, and had no opportunity to object to the continuance or to have any input into setting a new trial date.

Non-performance of Judicial Functions

A judge's failure to perform judicial duties or to perform assigned duties diligently conflicts with canon 3.

20. A judge handled the multiple cases of a pro per probationer without the files and without ascertaining or reciting the case numbers on the record. The judge failed to implement previously promised action in the cases, including vacating future court dates. This failure, combined with errors by others, led to the probationer's being arrested and incarcerated for more than a week.

More Than One Type of Misconduct

Some cases involved more than one type of misconduct.

21. A judge improperly refused to hear a petition for temporary guardianship, thereby failing to provide the petitioner full right to be heard according to law. The judge also failed to be patient, dignified and courteous toward individuals appearing on the matter on two dates.

22. On several occasions, a judge failed to disclose on the record the close personal relationship between a member of the judge's courtroom staff and an attorney appearing before the judge. In another matter, the judge made demeaning remarks in open court about an attorney in the case.

23. In a written recusal order, a judge made disparaging, gratuitous statements about an attorney in the case. The tenor of the remarks the judge made to the attorney before recusing also appeared inconsistent with the judge's duty to be patient, dignified and courteous.

24. A judge wrote a letter – not on judicial stationery and not using the judicial title – on behalf of a litigant personally known to the judge for use in a case then pending before another judge in the judge's court. The letter contained what could be considered character testimony. In addition, the judge failed to disclose a relationship with an attorney appearing before the judge.

25. A judge's conduct at a hearing in a criminal case reflected embroilment. At the outset of the hearing, in open court and on the record, the judge accused the defendant of perjury and his lawyer of submitting false evidence and libeling the court. The judge also accused the attorney of

lack of judgment and credibility, reckless disregard for the truth, a lack of integrity, and willingness to aid and abet perjury. The judge then told the attorney he was not welcome in the judge's court. The judge did not recuse until after the hearing, even though grounds for disqualification existed at the beginning of the hearing.

V.
Subordinate Judicial Officers

Since June of 1998, the Commission has shared authority with the superior courts for the discipline of subordinate judicial officers (SJO's), attorneys employed by California's state courts to serve as court commissioners and referees. In 2009, there were 411 authorized subordinate judicial officer positions in California.

Subordinate Judicial Officers Authorized Positions

As of December 31, 2009

Court Commissioners	366
Court Referees	45
Total	411

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(l)(2)(B); Commission Rule 109(c)(1).) Second, a local court must notify the Commission when it imposes written or formal discipline or terminates a subordinate judicial officer. (California Rules of Court, rule 10.703(k)(1); Commission Rule 109(c)(3).) Third, a local court must notify the Commission if a referee or commissioner resigns while an investigation is pending. (California Rules of Court, rule 10.703(k)(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.

2009 STATISTICS

Complaints Received and Investigated

In 2009, the Commission reviewed 153 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 2009, the Commission conducted investigations in five matters: three preliminary investigations and two staff inquiries.

RULE UNDER WHICH NEW COMPLAINTS WERE SUBMITTED

Rule 109(c)(1) – appeal from local court's disposition	152
Rule 109 (c)(2) – at the request of a local court	1
Rule 109(c)(3) – notification by local court of discipline	0
Rule 109(c)(4) – notification by local court of resignation with investigation pending	0

2009 CASELOAD – SUBORDINATE JUDICIAL OFFICERS

Cases Pending 1/1/09	4
New Complaints Considered	153
Cases Concluded	154
Cases Pending 12/31/09	4

Discrepancies in totals are due to consolidated complaints/dispositions or reopened matters.

Cases Concluded

In 2009, the Commission concluded its review of 154 complaints involving subordinate judicial officers. The Commission closed 149 of these matters after initial review because it determined that the superior court's handling and disposition of the complaints were adequate and that no further proceedings were warranted. The Commission undertook investigations in five complaints. The Commission closed three of the cases without discipline, concluded one case with an advisory letter, and issued a public censure in one case. The public censure and advisory letter are summarized below.

At the end of the year, four matters remained pending before the Commission.

2009 SJO COMPLAINT DISPOSITIONS

Total complaint dispositions	154
Closed after initial review	149
After independent investigation by the Commission:	
Closed without discipline	3
Advisory letter issued	1
Public censure issued	1

TYPE OF COURT CASE UNDERLYING SUBORDINATE JUDICIAL OFFICER COMPLAINTS CONCLUDED IN 2009

Small Claims	39%
Family Law	26%
Traffic	14%
Criminal	9%
General Civil	7%
All Others (including off-bench)	5%

Source of Complaints Involving Subordinate Judicial Officers Concluded in 2009

Litigant/Family/Friend	94%
Attorney	2.5%
Judge/Court Staff	1%
All Other Complainants	2.5%

Summaries of Disciplinary Action

Public Discipline

In 2009, the Commission publicly censured one subordinate judicial officer.

Public Censure and Bar of Former Commissioner Ann Dobbs July 15, 2009

Ann Dobbs, a former commissioner of the Los Angeles County Superior Court, was disciplined pursuant to stipulation on July 15, 2009, for prejudicial misconduct, by imposition of a public censure and bar prohibiting her from seeking or holding judicial office, accepting a position or an assignment as a judicial officer, subordinate judicial officer or judge pro tem with any court in the state of California, or accepting a reference of work from any California state court, at any time in the future.

The Commission set forth in its decision the stipulated facts and legal conclusions on which discipline was based. It was stipulated that Ann Dobbs, who was a commissioner in the Family Law Department of the Los Angeles County Superior Court from March 2001 until her retirement on October 31, 2007, failed to decide numerous cases in a timely manner. When the commissioner retired, 15 cases over which she had presided had been under submission over 90 days without being decided, and another 14 cases had been under submission for less than 90 days without being decided; Commissioner Dobbs never decided any of these cases.

Under California law, judges are expected to decide matters submitted to them within 90 days of submission, and are prohibited from receiving a salary while any cause remains pending and undetermined for 90 days after it has been submitted for decision. While the 90-day period is not absolute, it has been used by the Commission and by the Supreme Court as a benchmark for determining delay in submitted cases. In addition, the advisory committee commentary to canon 3B(8) states that a judge "should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs," and requires judges to be expeditious in determining matters under submission. The Commission has stated that a judge's failure to decide family law matters can be particularly egregious in light of the harm to the parties caused thereby.

During all of the time Commissioner Dobbs served, the Los Angeles County Superior Court generated monthly reports which were given to all judicial officers, showing the cases each bench officer had under submission in three categories: between 30 and 60 days, between 60 and 90 days, and for more than 90 days. Between 2003 and 2007, Commissioner Dobbs's cases appeared in all three categories. At various times in 2006 and 2007, Commissioner Dobbs prepared the case status information for the reports herself, rather than allowing her courtroom clerk to do so. Her reporting sometimes did not accurately reflect the status of all the cases she had under submission. Some cases the commissioner had taken under submission never appeared on the reports, including some cases that were undecided for more than 90 days.

In 2006 and 2007, the court transferred some of Commissioner Dobbs's newly assigned matters to another judge on a weekly basis. During that period, 354 cases were transferred. Commissioner Dobbs still did not complete all of her submitted cases on time. On two occasions in 2007, Commissioner Dobbs was given one week off, during which she was to complete her submitted cases. During that time off, she did not complete any submitted cases.

In 2007, Commissioner Dobbs's supervising judge sent her three complaints from family law litigants about her delays in their cases. One of the complaints involved a delay of nearly five years; the other two involved delays of eleven

months and six months. While the commissioner acknowledged her receipt of the complaints to her supervising judge, she failed to respond to the allegations in the complaints.

When Commissioner Dobbs retired in October 2007, she agreed to complete work on undecided cases at home. She took home approximately 30 cases; about half had been under submission for more than 90 days, and the rest had been under submission for fewer than 90 days. During the three months after her retirement, Commissioner Dobbs did not complete any of these cases. On January 31, 2008, the court retrieved all of the files she had taken home. Several judicial officers were required to review and complete the commissioner's undecided cases. Mistrials were declared in at least 15 cases. Some cases were decided based upon the reporter's transcript of previous proceedings before the commissioner; however, a number of cases had to be retried.

The Commission found that former Commissioner Dobbs's conduct violated canons 1, 2A, 3B(8), and 3C(1), and constituted prejudicial misconduct. The Commission found that her misconduct caused significant harm to family law litigants and to the court, and seriously undermined the integrity of the judiciary.

The Commission was convinced that, in light of Commissioner Dobbs's failure to timely complete so many of her cases over a substantial period of time, there was a strong likelihood that the same pattern of delayed rulings on submitted matters would continue if she were to serve as a judicial officer in the future. Through her misconduct, the Commission stated, the commissioner "demonstrated an unconscionable disregard for the rights of litigants and the reputation of the judiciary." Her protracted delays "had a significant and palpable impact on the litigants, both financially and emotionally." The delays also had an adverse impact on the judiciary, both by damaging the public's esteem for the judiciary and by requiring the Los Angeles County Superior Court to expend its resources in investigating the delays, reassigning the commissioner's undecided cases to other judicial officers, and retrying a number of the cases.

Accordingly, the Commission concluded that the severe sanction of public censure and bar was necessary for the protection of the public and the reputation of the judiciary.

Private Discipline

The Commission issued one advisory letter to a subordinate judicial officer in 2009:

While presiding over the preliminary hearing of a defendant who was representing himself, a subordinate judicial officer repeatedly made and sustained the subordinate judicial officer's own objections to the defendant's cross-examination of a prosecution witness, thereby usurping the prosecutorial function and depriving the defendant of the right to be heard. The subordinate judicial officer also was rude to the defendant.

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 Web site at http://cjp.ca.gov.

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

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

Judicial disability retirement may afford substantial lifetime benefits. Applications, accordingly, are carefully scrutinized by both the Commission and the Chief Justice. In most cases, the Commission will appoint an independent physician to review medical records, examine the judge, and report on whether the judge meets the test for disability retirement.

Because the law requires that the disability be permanent or likely to become so, the applicant judge must exhaust all reasonable treatment options before a decision on the application can be made. If the Commission finds that the judge is disabled, but may recover with treatment, the Commission will keep the application open and closely monitor the judge's progress, requiring regular medical reports and frequent medical examinations. Disability retirement will be approved only if the record, including the opinion of the Commission's independent medical examiner, establishes that further treatment would be futile. If the Commission determines that an application should be granted, it is referred to the Chief Justice for consideration. A judge whose application is denied is given an opportunity to seek review of the denial of benefits.

Once a judge retires on disability, the Commission may review the judge's medical status every two years prior to age 65 to ascertain whether he or she remains disabled. A judge who is no longer disabled becomes eligible to sit on assignment, at the discretion of the Chief Justice. Should an eligible judge refuse an assignment, the disability retirement allowance ceases.

The Judges' Retirement System has authority to terminate disability retirement benefits if the judge earns income from activities "substantially similar" to those which he or she was unable to perform due to disability. Accordingly, the Commission's Policy 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.

2009 Statistics

At the beginning of 2009, two disability retirement applications were pending before the Commission. In one of these matters, the Commission had granted the disability retirement in 2008, but the judge requested the opportunity to present additional evidence concerning work-relatedness of the disability. That matter was concluded in 2009. The other pending disability retirement application was granted in 2009.

The Commission received one disability retirement application during 2009, which remained pending at the end of the year.

VII.
Commission Organization, Staff and Budget

Commission Organization and Staff

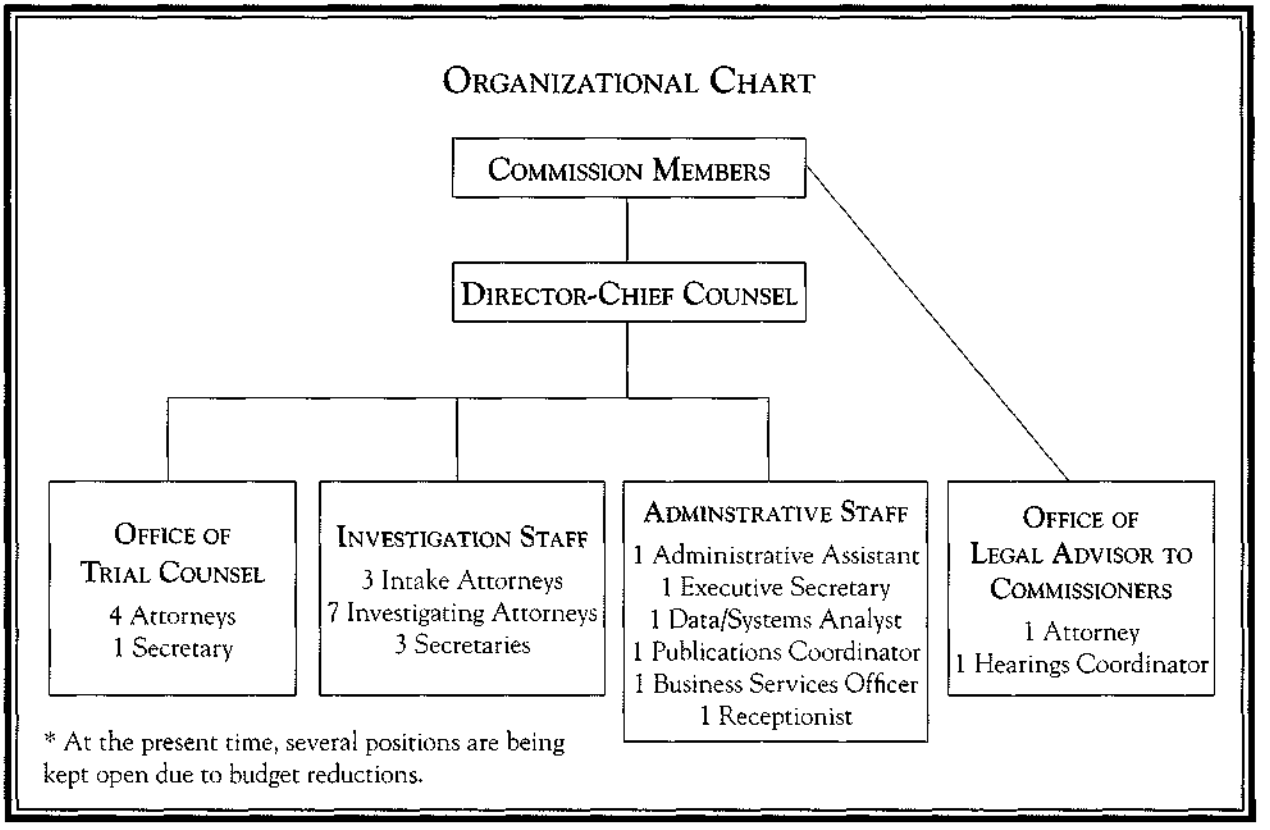
The Commission has 27 authorized staff positions: 16 attorneys and 11 support staff. Due to reductions in the Commission's budget over the last five years, as further discussed below, several positions have been kept vacant and others filled part time as a cost-saving measure. This resulted in an overall staffing reduction of approximately 26% in 2009.

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. Victoria B. Henley has served as Director-Chief Counsel since 1991.

The Commission's Staff Counsel include intake attorneys who are responsible for reviewing and evaluating new complaints and investigating attorneys who are responsible for conducting staff inquiries and preliminary investigations.

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.

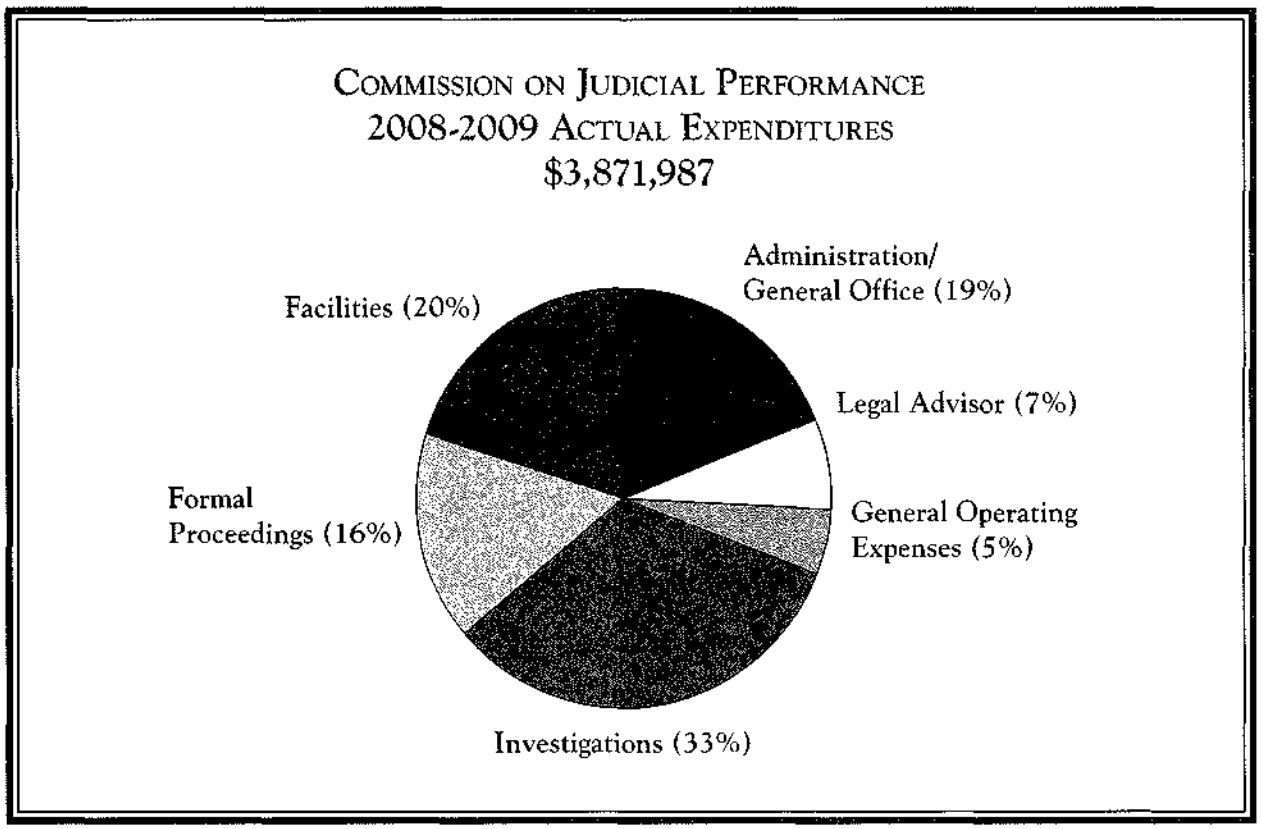
One member of the Commission's legal staff, the Legal Advisor to Commissioners, is solely responsible for assisting the Commission in its deliberations during its adjudication of contested matters and for the coordination of formal hearings. That attorney does not participate in the investigation or prosecution of cases and reports directly to the Commission. Janice M. Brickley was appointed to the position of Legal Advisor in August 2007.



2009–2010 BUDGET

The Commission's budget is separate from the budget of any other state agency or court. For the current 2009-2010 fiscal year, the Commission's budget is $4,101,000. In the 2003-2004 fiscal year, and again in the 2008-2009 fiscal year, the Commission's budget was reduced by 10% – a 20% reduction in the span of five years. None of the funding has been restored.

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. This leaves the Commission with few options for reducing expenditures. Despite reducing spending in nearly every aspect of its operations, since the 2003-2004 fiscal year, the Commission has had to maintain reduced staffing levels in order to achieve the required savings.

2008–2009 BUDGET

The Commission's final budget appropriation for the 2008-2009 fiscal year was $4,067,246. Final expenditures totaled $3,871,987. Approximately 33% of the Commission's budget supported the intake and investigation functions and approximately 23% was used in connection with formal proceedings. The remaining 44% went toward sustaining the general operations of the Commission, including facilities, administrative staff, supplies, and security.