
STATE OF CALIFORNIA
COMMISSION
ON JUDICIAL
PERFORMANCE
1994 ANNUAL REPORT

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Commission on Judicial Performance 101 Howard Street, Suite 300 San Francisco, CA 94105 Telephone:(415) 904-3650 Fax: (415) 904-3666
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COMMISSION MEMBERS



**HONORABLE
EUGENE M. PREMO**
Chairperson
Judge Member
Court of Appeal
Appointed February 1989



**HONORABLE
INA LEVIN GYEMANT**
Vice-Chairperson
Judge Member
Superior Court
Appointed September 1988



**HONORABLE
RUTH ESSEGIAN**
Judge Member
Municipal Court
Appointed May 1990



CHRISTOPHER J. FELIX
Public Member
Appointed June 1992

COMMISSION MEMBERS continued



EDWARD P. GEORGE, JR.
Attorney Member
Appointed January 1991



ANDY GUY
Public Member
Appointed November 1985



**HONORABLE
WILLIAM A. MASTERSON**
Judge Member
Court Of Appeal
Appointed February 1989



JAMES W. OBRIEN
Attorney Member
Appointed March 1992



**HONORABLE FUMIKO
HACHIYA WASSERMAN**
Judge Member
Superior Court
Appointed July 1993

COMMISSION STAFF

VICTORIA B. HENLEY
Director-Chief Counsel

COLETTE BROOKS
Staff Counsel

KHOI NGOC BUI
Data Processing Analyst

TINA J. CARROLL
Secretary to Staff Counsel

KAREN L. CLAY
Staff Counsel

KATHRYN DOI
Staff Counsel

CYNTHIA DORFMAN
Associate Counsel

NANCY GILMORE
Administrative Assistant

PETER GUBBINS
Staff Counsel

MARIA M. GUZMAN
Secretary to Staff Counsel

RICHARD S. HORN
Staff Counsel

MARK JACOBSON
Staff Counsel

JENNIFER L. MACHLIN
Staff Counsel

RONNIE MOISES
Office Services Assistant

SEI SHIMOGUCHI
Staff Counsel

ELAINE D. SWEET
Secretary to Staff Counsel

BERNADETTE M. TORIVIO
Supervising Secretary

NANCY TORPEY
Receptionist

DONNA M. VARGAS
Staff Counsel

KATHLEEN VOTA
Secretary to Staff Counsel

BARBARA JO WHITEOAK
Hearings/Publications Coordinator

**I.
THE COMMISSION IN
1994: AN OVERVIEW**

with its canons. (*Cannon v. Commission on Judicial Qualifications* (1975) 14 Cal.3d 678, 707, fn. 22 [122 Cal.Rptr. 778, 537 P.2d 898]; *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 838, fn. 6 [264 Cal.Rptr. 100, 782 P.2d 239]). These statutes, court rules, policy declarations and the California Code of Judicial Conduct are reprinted in the appendix.

The commission's primary duty is to investigate charges of wilful misconduct in office, persistent failure or inability to perform the duties of a judge, habitual intemperance in the use of intoxicants or drugs, conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or other improper actions or derelictions of duty. Many forms of misconduct have claimed the commission's attention - for instance, rudeness to litigants, lawyers and court staff, gender and ethnic bias, abuse of contempt power, delay of decision, ex parte communications, ticket fixing, drunkenness, systematic denial of litigants' rights, and improper off-bench activities. The commission is also charged with evaluating disabilities that seriously interfere with a judge's performance.

In 1994, the Legislature established eleven new staff positions and provided a substantial augmentation to the commission's budget for the costs of the increased staff. As of the end of 1994, eight of the new positions had been filled and the selection process for the remaining three positions was underway.

The expansion of the commission's staff reflects recognition of the dramatic increase in the commission's workload. Over the past ten years, the number of complaints received by the commission more than tripled, from 388 in 1984 to 1,320 in 1994. In 1984, the commission conducted an inquiry or investigation in 62 matters. Formal proceedings were instituted in 6 matters. In contrast, in 1994, the commission conducted 171 inquiries or investigations and instituted 14 formal proceedings.

The increase in its staff will permit the commission to expedite its handling of cases at all levels—eliminating complaint backlogs and reducing delay in investigations and formal proceedings.

► B. The Complaint Process

A commission case usually commences with a written complaint from a member of the public, most often a litigant or an attorney, but sometimes a concerned citizen, another judge or a court employee. The commission occasionally becomes aware of a problem through a news article or a report to the commission staff or a commission member.

Due to the increasing number of complaints received by the commission, three staff members are assigned primarily to review the incoming complaints. Many individuals who complain to the commission, although angry and frustrated by the court system, do not have a clear idea about what constitutes judicial misconduct. Because the commission provides the only forum for redressing misconduct, the commission is committed to a careful review of each matter submitted to it. All complaints are presented to the commission.

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♦ **► C. Investigation at the Commission's Direction**

♦ Commission staff devotes considerable time to reviewing and obtaining the
♦ information necessary to evaluate a complaint. The majority of complaints do not
♦ state on their face a case of judicial misconduct. These complaints are closed by the
♦ commission after review of staff evaluation. When a complaint states particular facts
♦ which, if true, could constitute misconduct, the commission orders staff to make an
♦ inquiry into the matter and report at the next meeting.

♦ A staff inquiry may include contacting witnesses, reviewing court records and
♦ other documents, courtroom observation, or conducting such other investigation
♦ as the issues may warrant. Usually, the judge is asked to comment on the allegations.
♦ These letters of inquiry are not accusations, but rather are requests for information.
♦ Occasionally, the inquiry reveals facts that dispose of the complaint and make the
♦ judge's comment unnecessary.

♦ After inquiry, the commission has a range of options. Sometimes the allegations
♦ are found to be untrue, exaggerated, or unprovable, in which case the commission
♦ closes the case without any action against the judge. If questionable conduct did
♦ occur, but it was relatively minor or the judge has recognized the problem, the
♦ commission may close the case with an advisory letter under Rule of Court 904.1.
♦ An advisory letter informs the judge that facts discovered during the commission's
♦ inquiry do not warrant further proceedings; however, the commission's concerns
♦ or disapproval regarding the judge's conduct are noted.

♦ If serious issues remain after an inquiry, the commission orders a "preliminary
♦ investigation" under Rule 904.2. (In certain cases the commission may order a
♦ preliminary investigation without a staff inquiry.) After a preliminary investigation,
♦ the commission has various options. The commission may close the case without
♦ action. The commission may also issue an advisory letter or a notice of intended
♦ private admonishment. This notice contains a description of the improper conduct
♦ and any findings made by the commission. If the judge does not contest the private
♦ admonishment, it takes effect within fifteen days after mailing of the notice. A judge
♦ may object and obtain review of a private admonishment. After a preliminary
♦ investigation, the commission may also institute formal proceedings, discussed
♦ below.

♦ In the course of a preliminary investigation, the commission may "monitor"
♦ the judge under Rule 904.2(d) and defer any action for a period up to two years in
♦ order to permit observation and review of the judge's conduct. The judge is given
♦ notice that a period of monitoring has been ordered. The alternative of monitoring
♦ is used when the preliminary investigation reveals a persistent but correctable
♦ problem, for example demeanor that could be improved.

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♦ **► D. Formal Proceedings**

♦ In the most serious cases, the commission issues a notice of formal proceedings
♦ under Rule 905. The notice is a formal statement of charges. Once the commission

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• institutes formal proceedings, the commission has the option of issuing a public reproof, with the judge's consent.

• In most cases, the notice of charges leads to a hearing, usually before a panel of special masters appointed by the Supreme Court. The commission may open hearings to the public if the charges involve moral turpitude, corruption or dishonesty, or if the judge requests an open hearing. (See discussion of *Adams v. Commission on Judicial Performance* (1994) 8 Cal.4th 630, *infra*, Section V.)
• Following the hearing, the special masters report their findings to the commission.

• After reviewing the report of the special masters, the commission may recommend to the Supreme Court that the judge be removed, publicly censured, or involuntarily retired because of a disability. The commission may also issue a public reproof (with the judge's consent) or issue a private admonishment or advisory letter. The commission may also close the case.

• Two flow charts are appended at pages 69 and 70 to illustrate typical patterns of commission proceedings.

• **► E. Statistical Summary**

• In 1994, the commission recommended to the Supreme Court that 2 judges be removed from office and 1 judge be publicly censured. These recommendations were still pending at year's end. Since the commission's inception, the Supreme Court has followed the commission's recommendation for removal or involuntary retirement in 13 of 15 cases.

• In 1994, 3 judges resigned or retired with commission proceedings pending. In addition, the commission also issued 3 public reprovals, 6 private admonishments and 41 advisory letters.

• The number of complaints received by the commission has increased significantly over the past several years. In 1994, the commission received a total of 1,320 complaints; 997 had been considered by the commission by the end of 1994. The number of complaints has more than tripled since 1984. The commission ordered 120 staff inquiries and 51 preliminary investigations in 1994, and instituted formal proceedings in 14 matters.

• These statistics do not reflect all of the commission's work. The commission's unique function results in innumerable inquiries from members of the public, including litigants, attorneys and citizens. The commission's staff spends considerable time responding to these inquiries, explaining the commission's function and the types of judicial actions that might amount to misconduct. As a result of these discussions, many of the telephone inquiries do not develop into written complaints and thus fail to become part of the statistical analysis. The importance of providing a forum for complaints about judicial misconduct cannot be overestimated in terms of public confidence in the judiciary.

• In addition, in 1994 the commission received 423 complaints concerning individuals and matters which did not come under the commission's jurisdiction:

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- federal judges, retired judges, court commissioners, referees, judges pro tem,
- workers' compensation judges, other government officials and miscellaneous
- individuals. Commission staff responded to each of these complaints and, when
- appropriate, made referrals.

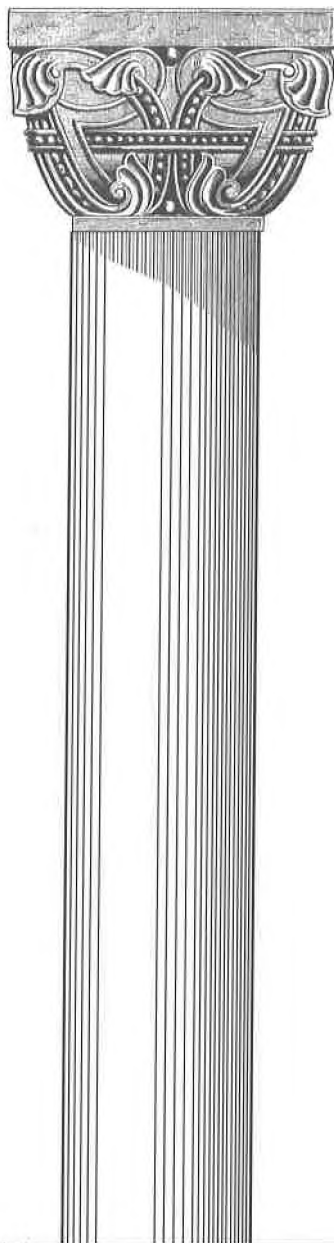
• **►F. Resignation and Retirement With Proceedings Pending**

• Another aspect of the commission's workload that is not reflected in the
• statistical analysis is the amount of time spent investigating complaints that led to
• a judge's resignation or retirement with commission proceedings pending. Since the
• commission's establishment in 1960, the commission has recommended that a
• judge be removed or retired from office in 17 cases. In all but 2 cases, the California
• Supreme Court has followed that recommendation. (Two recommendations are
• presently pending before the Supreme Court.) During the same period, 74 other
• judges have voluntarily resigned during commission proceedings rather than
• risk removal from office. As one commentator noted, "The cases the [Supreme]
• Court hears are merely the pinnacle of a pyramid of cleansing activity by the
• Commission." (Lewis, *Judicial Misconduct in California* (1984) 11 San Fernando
• Val.L.Rev. 43, 68.)

• It is rare that a judge resigns before considerable time and effort have been
• expended in investigation, and resignations usually occur only after formal proceedings
• have begun. In some instances, judges have resigned only after a hearing has been
• held and the commission has reviewed the masters' findings. Consequently, the
• statistics do not accurately reflect the time, effort and funds expended prior to a
• resignation.

• In the absence of commission proceedings, only judges convicted of certain
• crimes are removed from office by operation of law. (Cal. Const., article VI, section
• 18(b).) Of the 34 judges who resigned with proceedings pending in the last 10 years,
• only 3 were also the subject of criminal charges and faced the possibility of removal
• from office because of a criminal conviction.

II. RECENT CHANGES IN THE LAW: PROPOSITION 190



In the November 1994 general election, California voters approved Proposition 190 which mandates several major changes to the structure and authority of California's judicial disciplinary system. This law becomes operative on March 1, 1995. The most significant changes are summarized below. (The text of Proposition 190 is included as Appendix 1(B) to this report.)

- ▶ **Membership** - The membership of the commission increases from 9 to 11 members. The composition of the commission changes from 5 judges, 2 lawyers and 2 public members to 6 public members, 3 judges and 2 lawyers. The Supreme Court continues to appoint the judge members. The Speaker of the Assembly appoints 2 of the public members; the Senate Rules Committee appoints 2 public members; and the Governor appoints the remaining 2 public members as well as the 2 lawyers. The State Bar Board of Governors no longer appoints lawyer members.
- ▶ **Open proceedings** - When formal proceedings are instituted, the notice of charges and all subsequent papers and proceedings will be public, including hearings and appearances. Previously, formal proceedings were confidential except the commission had discretion to open hearings in cases involving charges of moral turpitude, corruption or dishonesty when an open hearing was in the interests of justice and in the pursuit of public confidence.
- ▶ **Rulemaking** - The commission will have the authority to promulgate its own rules regarding procedures and confidentiality. Previously, rules regulating the commission were made by the Judicial Council.
- ▶ **Disciplinary determinations** - The commission will have the authority to make censure, removal and involuntary disability retirement determinations. Previously, the commission made recommendations for such action to the Supreme Court which was responsible for determinations regarding censure and removal.
- ▶ **Review of commission decisions** - The Supreme Court will have discretionary review of commission disciplinary determinations; the Court may make an independent review of the record. If the Court has not reviewed the commission's determination within 120 days after granting a petition for review,

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the commission's decision shall be final. Previously, censure and removal determinations were made by the Supreme Court upon recommendation by the commission, after an independent review of the record.

▶ **Public admonishment** - The commission may publicly or privately admonish a judge found to have engaged in an improper action or dereliction of duty. Unlike the public reproof, which the "public admonishment" replaces, the judge's consent is no longer required.

▶ **Interim suspension** - The commission will have the authority to suspend a judge, with pay, upon notice of formal proceedings charging the judge with misconduct or disability. The commission shall also suspend a judge when the judge pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law.

▶ **Jurisdiction over former judges** - The commission will have the authority to censure and admonish former judges for actions occurring not more than six years prior to the commencement of the former judge's last term. A judge's retirement or resignation will not prevent the commission from completing an investigation or disciplinary proceeding.

▶ **Censured former judges barred from assignments** - The commission may "bar" a former judge who has been censured from acting as a judge by assignment, appointment or reference from any California state court.

▶ **Supreme Court jurisdiction in proceedings involving the commission** - The Supreme Court will have exclusive jurisdiction over proceedings brought by a judge who is a respondent in a commission proceeding. Requests for injunctive relief or other provisional remedies in these proceedings must be decided by the Supreme Court within 90 days.

▶ **Immunity** - Commission members and staff shall have absolute immunity from liability for their conduct in the course of their official duties. No civil action or adverse employment action can be taken against any individual based on the individual's statements to the commission.

▶ **Disclosure to appointing authorities** - The commission shall provide to any Governor or to the President private admonishments, advisory letters or other disciplinary action with respect to any individual under consideration for a judicial appointment.

▶ **Budget independence** - The commission's budget shall be separate from the budget of any other state agency or court.

**III.
SUMMARY OF
COMMISSION
DISCIPLINARY ACTION
IN 1994**

• The complaints received by the commission in 1994 set forth a wide array of
• grievances. More than half of the complaints alleged legal error not involving
• misconduct. Another common category was poor demeanor and rudeness.

• **► B. Complaint Dispositions**

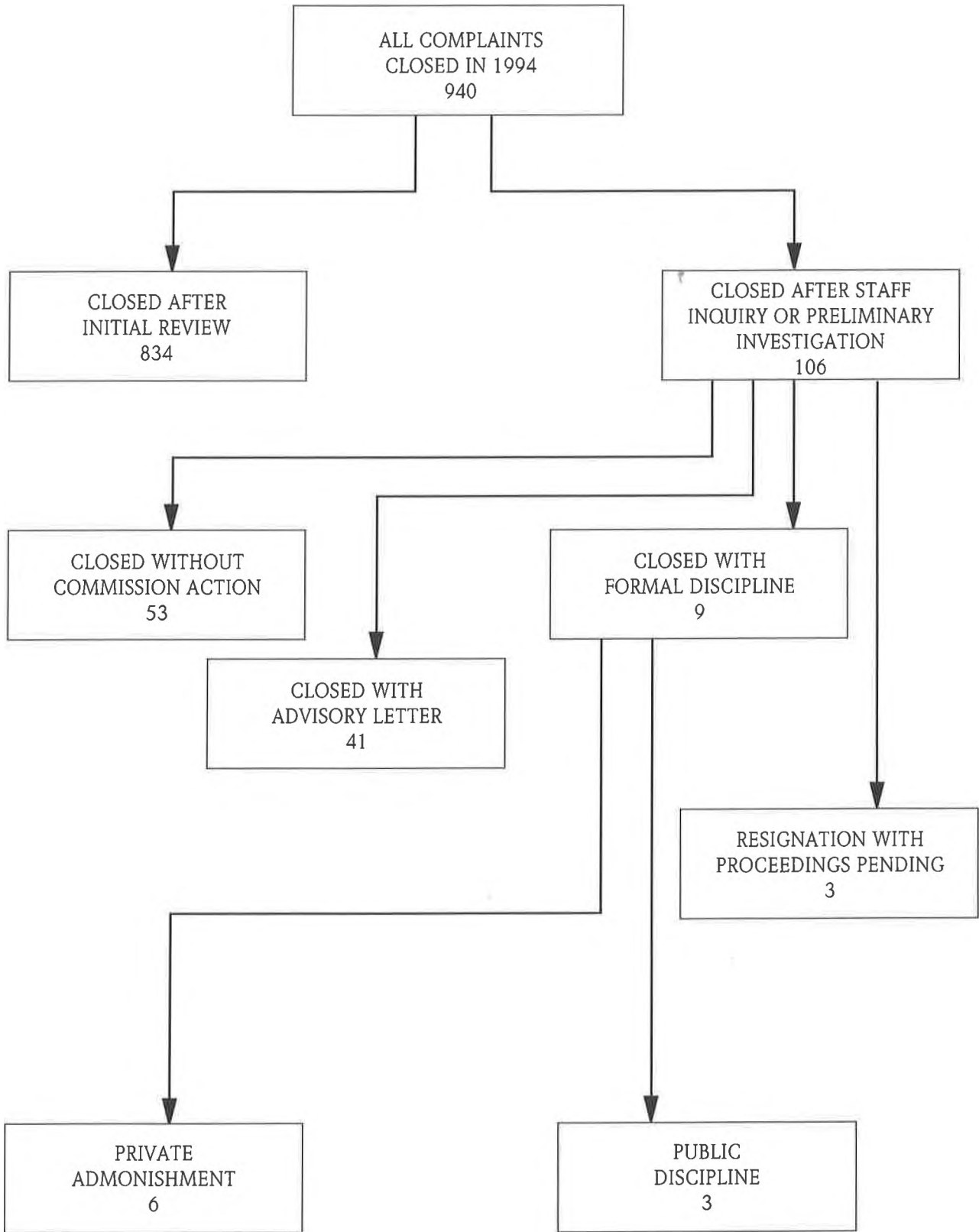
• Some of the actions taken by the commission in 1994 involved cases started
• before 1994, and some cases begun in 1994 were still pending at the end of the year.
• Therefore, the following case disposition statistics are based on cases completed in
• 1994, regardless of when the case began. Cases still pending at the end of 1994 are
• not included in this Annual Report.*

• In 1994, 940 cases were concluded by the commission. After formal
• investigation, including comment from the judge, action was taken by the commission
• in 50 cases. The action taken by the commission in these cases included 3 public
• reprovals, 6 private admonishments and 41 advisory letters. See Section IV of this
• report for a discussion of commission case dispositions. In addition, the commission
• closed 3 matters when the judge resigned or retired with proceedings pending.

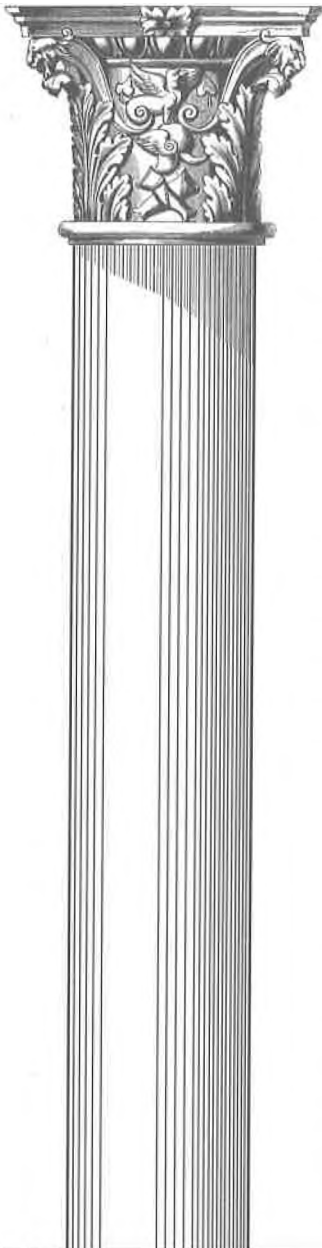
• Of the 106 formally investigated cases that were completed in 1994, 53 cases
• were closed without any action. In those cases, investigation showed that the
• allegations were unfounded or unprovable, or the judge gave an adequate explanation
• of the situation.

• The chart at page 11 provides an overview of the cases completed in 1994.

• * In 1994, the commission's actions included 2 recommendations to the Supreme
• Court for removal of the judge from office and 1 recommendation to the Supreme Court for
• public censure. Because the cases are still pending before the Supreme Court, they are not
• included in 1994 statistics.



IV. DISPOSITION OF COMMISSION CASES



► A. Recommendations to the Supreme Court

In 1994, the commission recommended to the Supreme Court that Judges G. Dennis Adams (San Diego County Superior Court) and Glenda K. Doan (Kings County Municipal Court District, Corcoran Division) be removed from office. The commission also recommended the censure of Judge John E. Fitch (Fresno County Superior Court).

► B. Retirements and Resignations

In 1994, 3 judges resigned while under investigation by the commission for alleged acts of serious misconduct. In only one of these cases was there a criminal prosecution pending at the time of the judge's resignation which upon conviction would have resulted in the judge's removal by operation of law.

► C. Public Reprovals

When the commission was established in 1960, the commission's authority was limited to recommending to the Supreme Court that a judge be removed or retired from office. Since 1960, various constitutional amendments have addressed the types of discipline available in less serious matters. In 1966, the sanction of censure by the Supreme Court was authorized for cases in which removal was not warranted. In 1976, the commission was given the power to impose "private admonishments" (Article VI, section 18(c)). In 1988 the commission was given the power to impose "public reprovals":

The Commission on Judicial Performance may, without further review in the Supreme Court, impose a public reproof with the consent of the judge for conduct warranting discipline. . . (Article VI, section 18(f)(2).)

The purpose of the public reproof was to permit resolution of discipline cases without the enormous expense of full formal proceedings. Usually, after the commission issues a notice of formal proceedings, the process of mutual discovery begins. Then there is a hearing of the charges by special masters appointed by the

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Supreme Court. Full argument before the masters is permitted, followed by argument to the commission itself. Then, if the charges have been sustained and warrant serious discipline, the case moves to the Supreme Court, where there is further argument. In cases where the misconduct is serious enough to deserve public rebuke, but removal is not warranted, "public reproof" provides a prompt and fair disposition.

Public reproofs are particularly useful when the acts of misconduct were serious, but were not repeated. A review of Supreme Court cases shows that judges are removed, typically, for persistent misconduct. An isolated act of misconduct, unless criminal, can often be addressed by discipline short of removal. Under the terms of Proposition 190, public reproof was replaced by "public admonishment." In most public reproof cases, the judges have given consent before the hearing, and substantial time and expense were thereby avoided. In the last six years the commission has issued 14 public reproofs. In 1994, there were 3:

1. Judge James L. Stevens, Jr., of the Yolo County Superior Court was publicly reproofed for the following conduct:

a. Judge Stevens, while presiding over cases, had made improper and offensive remarks:

For example, in a well-publicized civil case decided in 1991, a parental rights suit which involved a sperm donor, Judge Stevens made denigrating remarks about parties to the case, as follows:

(1) In inquiring about the obligation for child support, Judge Stevens trivialized the relationships involved by mischaracterizing them when he set forth a hypothetical scenario wherein one of the litigants called the other party to the case "sweetheart." Judge Stevens stated, "She said to him, sweetheart make me a baby...", despite the absence of a romantic relationship between the parties.

(2) In the same case, Judge Stevens also stated, "As I look at it, I frankly get the very distinct impression that this child is conceived as a sort of a toy for the mother and her friend, something to fill their lives up and to hell with the needs of the child and to hell with the rights of the father."

In another example, following a hearing and court appearance by a male defendant in a criminal case in May of 1993, Judge Stevens commented about the defendant to the female clerks in the courtroom, "Ladies, how would you like to wake up with that naked in your bed?" or words to that effect.

b. Judge Stevens used language and engaged in behavior toward members of the court staff which were abusive and demeaning.

This behavior included his discontinuing the services of his court reporter of some seven years as his official court reporter after presenting her with a partially rotten zucchini which to some observers conveyed a sexual connotation. The judge later joked about the incident and appeared to trivialize the employee's concern.

The commission found that Judge Stevens' conduct was in disregard of the California Code of Judicial Conduct. Canon 1 of the Code of Judicial Conduct

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provides that a judge “should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary will be preserved.” Canon 2 of the Code of Judicial Conduct provides that a judge “should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Canon 3 of the Code of Judicial Conduct provides that “a judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity and should require similar conduct of lawyers, and of staff, court officials and others subject to the judge’s direction and control.”

Extensive publicity over these matters diminished public confidence in the judiciary and brought the judiciary into disrepute. In mitigation, the judge has acknowledged that he has offended people and has apologized and he has agreed to refrain from further conduct as exemplified herein and to attend appropriate communication and sensitivity classes.

2. Alameda County Superior Court Judge Richard A. Haugner was publicly reprovved for the following conduct:

On May 27, 1993, Deputy Public Defender Jeffrey Adachi appeared before Judge Haugner at a hearing in *People v. Spencer*. As Mr. Adachi commenced his argument, Judge Haugner stated:

COURT: No, no. Listen, you filed your papers.... Do you have something to add to those papers which isn't in there, some brilliant case you found somewhere in the Upper Tokyo Reports or somewhere that nobody knows about, tell me about it. Otherwise there is no need to argue over what you already have.

The commission found that Judge Haugner’s reference to “Upper Tokyo Reports” reflected insensitivity toward persons of Japanese-American ancestry and was offensive to Mr. Adachi. The commission further found that, regardless of Judge Haugner’s intent in making the remark, it was suggestive of racial or ethnic bias.

The commission also determined that Judge Haugner’s conduct was contrary to the California Code of Judicial Conduct, *i.e.*, Canon 3 (avoiding appearance of bias or prejudice), Canon 2 (preserving public confidence in the judiciary), and Canon 1 (maintaining high standards of conduct).

The commission noted that Judge Haugner’s conduct had led to negative publicity tending to diminish public confidence in the judiciary and bring the judiciary into disrepute.

3. Judge Michael A. Kanner of the Alhambra Municipal Court District, Los Angeles County, was publicly reprovved for the following conduct:

For a period of approximately two years, and ending in 1994, Judge Kanner maintained a policy of issuing no-bail bench warrants for all defendants who failed

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to appear on misdemeanors, despite the fact that the California Constitution and Penal Code Section 1270 et seq. provide that individuals have a right to bail before conviction with limited exceptions. No-bail warrants were issued by Judge Kanner for approximately one hundred to two hundred individuals. One of these individuals, Robert C. Lewis, was a man who had failed to appear in court on an infraction case in which he was charged with failing to have his dog licensed and vaccinated (Case No. 93M03821). The man was arrested on the warrant and spent four days in jail in March, 1994.

Judge Kanner had stated that he instituted the no-bail policy because the Sheriff's Department routinely cited and released defendants arrested on warrants of less than \$2,500 or for whom bail of less than \$12,500 was set. In an article which appeared in the *Los Angeles Times* on March 8, 1994, Judge Kanner was quoted as follows:

But this is just the tip of the iceberg. This situation has created an uneasy pact: Judges understand that the Sheriff's Department has a definite problem, but a judge represents the people who elect him or her. And the people who keep me in office expect that people who violate the law will be punished. And I can't punish anybody who isn't brought before me.

In his statement to the press, Judge Kanner appeared to suggest that his policy of issuing no-bail warrants on misdemeanor matters was justified by the need to bring people before the court so that they could be punished, despite the fact that the policy constituted a denial of the fundamental right to bail and a failure to exercise judicial discretion in handling the cases before him.

After being asked about his policy by the commission by letter dated May 27, 1994, Judge Kanner stated that he now realized that the no-bail policy was wrong, and recognized that it had resulted in failure to exercise judicial discretion in individual cases. Judge Kanner also stated that the policy was not intended to apply to "license type" offenses, whether misdemeanors or infractions.

The commission found that Judge Kanner's no-bail policy was in disregard of the California Constitution and Penal Code Section 1270 et seq., and that the judge failed to exercise judicial discretion regarding bail in the cases in which these warrants were issued during the approximately two years his policy was in effect. The commission found that Judge Kanner's policy resulted in the denial of a fundamental right to a considerable number of individuals. With respect to the *Lewis* case, the commission noted that, at a minimum, Judge Kanner had necessarily failed to review the nature of the charges before issuing the no-bail warrant, since the judge would otherwise have discovered that the warrant was for a failure to appear on a license infraction, to which his "no bail" policy was not to be applied.

The commission found that Judge Kanner's conduct was contrary to Canon 2A of the Code of Judicial Conduct, which provides that a judge "should respect and

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• **► E. Advisory Letters**

• The commission will advise caution or express disapproval of a judge's
• conduct in letters of advice or disapproval called "advisory letters." (See Rule
• 904.1.) The commission has issued these letters in a variety of situations:

• • The commission may issue an advisory letter when the impropriety is
• isolated or relatively minor. For instance, a judge who made an improper comment
• to a jury on a single occasion might receive an advisory letter.

• • An advisory letter is also used 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 where there is actionable misconduct
• offset by substantial mitigation.

• In 1994, the commission issued 41 advisory letters. They are summarized
• below.

• **1.** A judge directed angry, sarcastic remarks to counsel at oral argument,
• believing that counsel had acted unethically. The commission found that the degree
• and manner of the judge's display were inappropriate.

• **2.** A judge sought charitable contributions from the public in violation of
• Canon 4C(3)(d)(i).

• **3.** A judge refused to disqualify himself despite the fact that one party was
• represented by an attorney who had represented the judge six months earlier. (The
• commission noted an ethics opinion published by the California Judges Association
• on the subject.)

• **4.** A judge heard and decided a motion for change of custody from the
• petitioner to the respondent without petitioner's counsel of record being present,
• in apparent disregard of Canon 3B(7).

• **5.** A judge's order of direct contempt failed to specify the facts on which the
• contempt was based, as required by law. (See *Hawk v. Superior Court* (1974) 42
• Cal.App. 3d 108, 125, n. 16.)

• **6.** A judge delayed 108 days in ruling on a motion.

• **7.** A judge made denigrating remarks and used profane language in a
• chambers discussion with counsel.

• **8.** A judge delayed approximately four months in ruling on a petition for writ
• of habeas corpus in violation of Rule 260 which requires the court to rule on such
• petitions within 30 days.

• **9.** A judge communicated ex parte with a law firm about the basis for the
• judge's recusal under circumstances which created the appearance that the judge
• was attempting to influence the law firm.

• **10.** A judge personally retrieved a mistakenly-released inmate from the
• inmate's home.

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- **11.** A judge went forward with a trial despite having been furnished with an endorsed-filed copy of a bankruptcy petition which automatically stayed the proceedings before the judge.
- **12.** A judge made belittling comments to a party during a court trial in response to perceived evasiveness.
- **13.** With dubious justification and in the presence of the attorney's client, other parties and counsel, a judge criticized an attorney's behavior during a settlement conference as "unethical" and "fraudulent."
- **14.** During a custody hearing, without notice to the parties, a judge met privately with the custody evaluator who had just testified at the trial.
- **15.** While court was in session, a judge administered a test of a defendant whom the judge suspected to be under the influence of a controlled substance, thereby departing from his judicial role. The judge remanded the defendant into the marshall's custody; the defendant was found not to be under the influence.
- **16.** A judge made comments to a newspaper regarding issues in a proceeding which was still pending before his court, contrary to the Canon 3B(9) prohibition against public comment by a judge on matters pending or impending before a court.
- **17.** A judge failed to rule on several matters which had been submitted to the court for approximately four months. There were mitigating circumstances and the judge readily acknowledged the problem.
- **18.** A judge threatened a prospective juror with contempt unless the juror apologized to the court clerk. The clerk had told the judge that the juror had been rude over the telephone.
- **19.** A presiding judge failed to respond to a complaint about a commissioner.
- **20.** A judge lost his temper with court staff and litigants on a number of occasions. The judge was also warned, in responding to peremptory challenges, to avoid any conduct that could create an appearance of retaliation, particularly when the judge is serving as master calendar judge.
- **21.** A presiding judge failed to respond to a complaint about a court commissioner and also failed to respond to the commission's inquiries concerning the matter.
- **22.** A judge made disparaging and sarcastic comments about an attorney and litigants in a case.
- **23.** After a hearing and the judge's ruling from the bench, the judge received ex parte communications about the matter. The judge vacated his earlier ruling and reopened the matter.
- **24.** A judge recused himself because of a possible relationship with defendants in a civil proceeding. After recusal, the judge took actions in the case which were not permitted under Code of Civil Procedure section 170.4 and which appeared to benefit the defendants.
- **25.** A judge failed to respond to a complaint regarding a court commissioner. The court did not have a policy of providing responses to complaints concerning commissioners.

**IV.
DISPOSITION OF
COMMISSION CASES**

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- **26.** An attorney sought relief from a judge’s denial of a motion. The judge then issued an amended minute order without furnishing the amended order to the attorney who had sought relief from the original order.
- **27.** A judge failed to disclose his relationship with a member of the legal team working for one party, and the fact that he had been contacted by that individual before the case was assigned to the judge. There was no evidence of discussions about the merits or substance of the case.
- **28.** The judge received an advisory for delays on two cases of approximately ten months each.
- **29.** A judge granted an ex parte request to allow one party to participate in a conference by telephone after denying a similar request made in court by the other party, creating an appearance of favoritism.
- **30.** A judge threatened to have a witness arrested if he testified, thereby preventing a party from calling the witness on his behalf.
- **31.** A judge’s comments about not appointing an attorney in future cases may have given the appearance of retaliation for the attorney’s exercise of the clients’ rights.
- **32.** A judge’s use of personal but official-looking stationery in connection with his private business venture gave the appearance of using the prestige of office for personal gain, in disregard of Canon 2.
- **33.** A judge’s comments could have been interpreted as a threat to rule against a party based upon the judge’s dislike of the party, in disregard of the judge’s obligation to perform judicial duties without bias (Canon 3(B)(5)).
- **34.** A judge provided information to his colleagues in connection with a court appointment without disclosing fully the nature and extent of his relationship with a person under consideration.
- **35.** A judge solicited funds from the public for a civic project in disregard of Canon 2.
- **36.** A judge made remarks regarding sentencing, which suggested that the judge was not impartial and may have prejudged the case.
- **37.** A judge’s relationship with the defendant in a criminal matter was sufficiently close that an objective person might question the judge’s ability to be fair. The judge refused to recuse himself and sentenced the defendant, despite the victim’s objection.
- **38.** A judge’s remarks in open court were intemperate and inappropriate.
- **39.** A judge refused to exercise discretion concerning bail in a certain class of cases.
- **40.** After granting a motion for judgment notwithstanding the jury’s verdict in favor of the plaintiff, the judge made statements suggesting bias against persons making the type of claim which the plaintiff had made.
- **41.** A judge wrote a letter on judicial stationery to another court concerning litigation pending in that court. In a separate instance, the judge kept his dog in his courtroom during court sessions over several days.

V.
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Judge Adams filed a petition for writ of mandate in the California Supreme Court. The Court transferred the matter to the Court of Appeal, Fourth Appellate District, and ordered that the matter remain confidential during the pendency of proceedings in the Court of Appeal.

The Court of Appeal subsequently issued an unpublished, confidential decision in which the court, in a two-to-one decision, granted in part and denied in part the relief sought by petitioner. The majority of the Court of Appeal construed the term “involve” in the phrase “involve moral turpitude, dishonesty or corruption” to mean *necessarily* involve. The appellate court also concluded that if some, but not all, of the charges against a judge necessarily involve moral turpitude, dishonesty, or corruption, equal protection principles require the commission to open the hearing only on the charges that meet those criteria and to keep the hearing on the remaining charges confidential. The appellate court concluded that certain charges alleged in the first and fourth counts of the notice of formal proceedings in the *Adams* case necessarily involved moral turpitude, dishonesty, or corruption, but that the remaining charges did not meet that standard and that the hearing on those charges should be closed.

Judge Adams and the commission both petitioned for review.

Before turning to the issues raised by the parties, the Supreme Court set forth the history and substance of the amendments to constitutional provisions concerning commission proceedings adopted in 1988. The Court noted that the preamble of the measure states that “Because responsible public disclosure and accountability is proper, desirable, and consistent with the goal of public confidence, it is the intent of this measure that appropriate commission proceedings be open to public scrutiny, and that this measure be construed so as to accomplish this purpose which is hereby declared to be the public policy of this state....” The Court also set forth the provisions of Rule 907.2, the rule adopted by the Judicial Council concerning commission determinations to hold open hearings.

The Court then considered and rejected Judge Adams’ argument that the open hearing provisions adopted in 1988 violate the constitutional provisions for separation of powers by improperly authorizing the commission to exercise judicial powers. The Court noted that the commission itself was created by a constitutional amendment, to act as a constitutionally independent body. The Court pointed out that “various administrative agencies are authorized by the Constitution to exercise judicial powers, and that the exercise by these agencies of such powers does not contravene the judicial powers or separation of powers clauses.” (*Adams v. Commission on Judicial Performance, supra*, 8 Cal. 4th at p. 649.) In addition, the Court noted that appropriate judicial review of a commission order for an open hearing is available by way of petition for writ of mandamus.

Next, the Court considered and rejected the judge’s assertion that the open hearing provisions are unconstitutional in light of the holding in *Mosk v. Superior Court* (1979) 25 Cal.3d 474 [159 Cal.Rptr. 494, 601 P.2d 1030] that former

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• subdivision (f) (current subdivision (h)) of article VI, section 18, which specifies that
• the Judicial Council shall make rules “providing for confidentiality of proceedings,”
• mandates confidentiality of all proceedings before the commission. The Court
• stated that petitioner’s assertion is undermined in its entirety by the fact that the
• *Mosk* decision predated the 1988 constitutional amendment. The Court pointed
• out that many of the benefits served by confidentiality, discussed in *Mosk*, diminish
• when a determination is made, after an extensive preliminary investigation, that
• formal proceedings should be instituted. The Court stated, “By its passage of
• Proposition 92, the electorate determined that, at this point in the process, the
• public interest in the operation of the judicial disciplinary system may be of greater
• concern than the risk of unwarranted damage to a judge’s reputation or unwarranted
• loss of public confidence.”

• The Court then turned to the judge’s claim that in determining whether
• charges involve moral turpitude, the commission must consider not only the
• charges set forth in the notice of proceedings, but also the defenses and explanations
• given by the judge in his answer and any supportive evidence. The Court noted that
• the Court of Appeal had concluded that the commission’s determination must be
• based solely upon the written charges set forth in the notice.

• The Court concluded that neither the judge’s claim nor the Court of Appeal’s
• conclusion properly recognized that, prior to determining whether charges involve
• moral turpitude, the commission “already will have reviewed and assessed a
• significant body of information pertinent to the complaint of misconduct, including
• all material provided by the judge that he or she believes to be relevant and material
• to the evaluation of the accusations....” (*Adams v. Commission on Judicial
• Performance, supra*, 8 Cal.4th at p. 653.) The Court concluded that the
• commission’s determination that charges meet the constitutional criteria, as well as
• its determination that an open hearing would promote public confidence and the
• interests of justice, is based “not upon the particular language chosen by the
• Commission in framing the formal written charges, but rather upon the Commission’s
• independent preliminary assessment of the judge’s conduct and the reliability and
• truth of the allegations, including evidence relating to the motivation of the judge
• as well as his or her explanation for the alleged misconduct uncovered by the
• commission in its preliminary investigation.” (*Id.* at pp. 653-654.)

• The Court noted that the Court of Appeal construed the phrase “involve moral
• turpitude, dishonesty, or corruption” to mean “necessarily” or “unavoidably”
• involve, relying upon certain professional-license-revocation cases decided by the
• Court. The Court found that the Court of Appeal’s reliance on these cases was
• misplaced, noting that the cases establish only that a license may not be revoked on
• the basis of mere proof of conviction, without any consideration of the facts
• underlying the conviction. The Court stated that the cases “do not stand for the
• proposition that when the crime underlying the conviction, considered in the
• abstract, does not necessarily involve moral turpitude, a disciplinary authority...is

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precluded from reviewing the specific facts in the particular case constituting proof of the crime, independent of the fact of the conviction, to determine whether the conduct of the charged individual actually involved moral turpitude.” (*Id.* at pp. 655-656.) The Court stressed that the commission makes its moral turpitude determination “upon the results of its investigation and assessment of the actual conduct of the judge, as determined preliminarily by the Commission.” Finally, the Court noted that in the context of a judicial disciplinary proceeding, the moral turpitude determination is made only for the purpose of determining whether a hearing should be open to the public.

The Court next turned to that portion of Rule 907.2 which allows the commission to open disciplinary hearings when any of the charges to be heard involve moral turpitude, dishonesty or corruption. The Court rejected the judge’s argument that this provision improperly extends the commission’s authority under the constitutional amendment. It noted that the Judicial Council, which promulgated the rule, could reasonably conclude that “the goal of public confidence in the judiciary and the disciplinary procedure might not be furthered if the public were permitted to observe only a portion of the proceedings, leaving to speculation the nature and gravity of the other alleged misconduct and its relationship to the moral turpitude charges.” (*Id.* at p. 658.) The Court stressed, however, that the commission is not required to hold open hearings on all charges whenever any charge involves moral turpitude, and might well determine that charges which do not involve moral turpitude are distinct and severable and may be made the subject of a confidential hearing without threatening public confidence in the proceedings or imperilling the interests of justice.

The Court next rejected the judge’s argument that Rule 907.2 violates equal protection principles, holding that the determination to open a disciplinary proceeding “does not impinge upon any fundamental right of the subject judge.” (*Id.* at p. 659.) In reviewing the judge’s equal protection claim under the rational basis test, the Court concluded that the need to promote public confidence in the judiciary is a rational basis for the provisions of Rule 907.2 allowing open disciplinary hearings for judges who face charges involving moral turpitude, dishonesty, or corruption, even when those judges also face other charges which do not involve moral turpitude, dishonesty or corruption.

Turning to the specific charges against Judge Adams, the Court first set forth the provisions of Canon 4D pertaining to gifts, and noted that not all violations of canons involve moral turpitude, dishonesty, or corruption. The Court continued, “But a judge’s solicitation, or knowing acceptance, of favors or benefits having a substantial monetary value from a litigant or attorney whose case presently is pending before the court is inherently corruptive, suggesting improper use of the prestige of office.” (*Id.* at p. 663.)

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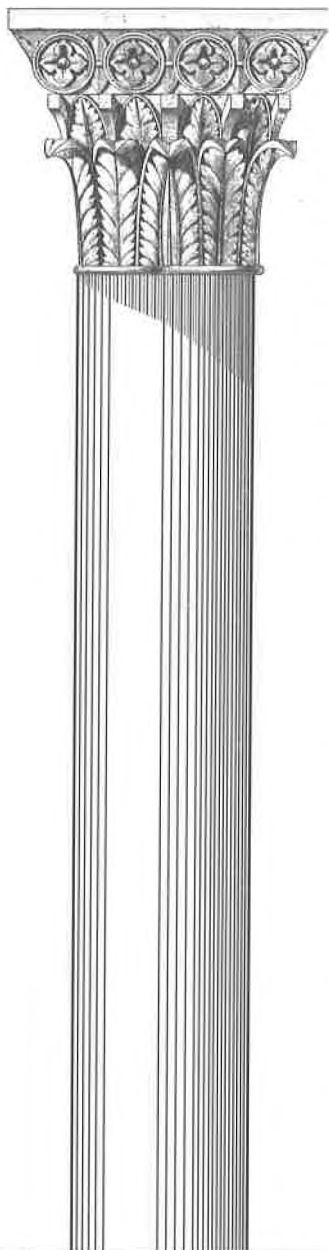
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• With respect to Count One, the Court noted that the litigant’s case was on appeal, with jurisdiction on some matters retained by the judge, when certain transactions took place. The Court stated,

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• Seeking out and accepting a favorable transaction under these
• circumstances clearly would denote a lack of integrity, as well as
• corruption and conduct contrary to the moral standards required of the
• judicial office. Readily inferable from these allegations is that the judge
• was attempting to receive favors for past deeds, purposefully taking
• advantage of the power and prestige of his judicial office, and wrongfully
• using his office to procure a benefit for himself. (*Id.* at p. 664.)

• Regarding Count Two, the Court noted that the allegations involving payments
• on the judge’s behalf by the attorney of the litigant in Count One “also suggests
• petitioner’s improper use of his office and lack of integrity.” The Court stated that
• the remaining allegations of benefits and favors accepted by petitioner, considered
• in context, “suggest conduct going well beyond the inadvertent acceptance of trivial
• favors or gratuities, and depict a pattern of disregard for the high standards of ethical
• conduct required of our judiciary.” The Court continued, “Under these
• circumstances, the allegations relating to these gifts also denote corruption, poor
• moral conduct, and lack of integrity.” (*Id.* at p. 664.)

• Finally, with respect to Count Four, the Court concluded that the commission
• did not abuse its discretion in determining that the charges involved moral
• turpitude, dishonesty, and corruption. The Court stated, “Providing information to
• the Commission—the governmental entity charged with the protection of the
• public from judicial corruption—that is false, inaccurate and misleading in numerous,
• material respects clearly may fall within the scope of such reprehensible behavior
• and culpable mens rea.” (*Id.* at p. 665.)

VI. VOLUNTARY DISABILITY RETIREMENT



In addition to its duties as an investigator of judicial misconduct, the commission reviews judges' applications for disability retirement. A disability retirement takes effect only after approval by the commission and the Chief Justice. See Government Code sections 75060 - 75064 and Policy Declaration 4.4, which are printed in Appendix 1 to this report.

In 1994, four disability retirements took effect, one application was denied, and four were pending at the end of the year.