



CENTER for JUDICIAL EXCELLENCE

To: Asm. Campos & Assembly Budget Subcommittee #5 on Public Safety members
Fr: Kathleen Russell, Executive Director & Barbara Kauffman, Attorney at Law
Dt: March 15, 2016
Re: **Upcoming Hearing on Commission on Judicial Performance**
Budget Request Name 0280-001-BCP-BR-2016-GB for \$257,000 Gen. Fund

California's population of almost 40 million people has virtually no protection when faced with a bad judge who violates the law and/or the Code of Judicial Ethics. It is no accident that **The Center for Public Integrity**—a highly regarded nonpartisan, nonprofit organization and winner of the 2014 Pulitzer prize for Investigative Reporting—gave California an “F” grade in the category of Judicial Accountability in its 2015 State Integrity Investigation. See <http://www.publicintegrity.org/accountability/state-integrity-investigation/>.

Self-represented litigants are rapidly taking over California's court system. Judicial Council fact sheets regarding online self-help centers and the JusticeCorp program (from January 2010) reported that self-represented litigants comprise:

- 80% of parties in family law disputes
- 90% of those in landlord/tenant cases
- Most of the 6 million annual traffic filings
- All of the nearly 400,000 annual small claims filings
- 97% of proceedings processed through local child support agencies.

Commission on Judicial Performance (CJP)

The California CJP was established in 1960 by a legislative constitutional amendment approved by the voters, and it was supposed to protect the public from judicial incompetency and misconduct. But according to a CJP Summary of Discipline Statistics for 1990-2009, only a small fraction of complaints are investigated, and an even smaller fraction of complaints result in discipline. ***Most shocking is that a complaint by a litigant, or a friend or family member of litigant, is least likely to result in a judicial sanction*** (only 1.45 percent of such complaints result in sanctions, according to Table 11 of the report, attached hereto), yet these complaints constitute the vast majority of complaints filed. This remedy is no remedy at all for litigants, since **they have a 98.6% chance of their complaint being tossed out.**

Proposed Judicial Accountability Measures

Before the Legislature grants any request to fund two more staff positions (an Investigating Attorney and a Secretary) at the California Commission on Judicial Performance, the following accountability measures should be implemented:

1. **More CJP Transparency.** The CJP's processes should be made more transparent. In some states, complaints not acted upon are published, with

identifying information redacted, and Commission votes on the complaint are also published, so that the public can see what behavior has passed scrutiny. Look to Arizona for a great example of this transparency.

2. **Pilot Program- Judicial Performance Evaluations (JPEs).** In addition to reporting to the CJP, court users should be able to complete Judicial Performance Evaluations (which are ABA-approved and exist in 17 states & D.C.), so that a true measure of judicial performance is taken. A pilot program should be funded to establish a JPE system in Marin, Sacramento, and San Diego counties. Surveys would be distributed to people who have had contact with judges during an evaluation period, including attorneys, jurors, litigants, witnesses, self-represented litigants, court staff and other judges. The commission would hold public hearings on judges in election years and accept written comments from the public at any time. Judges could also complete a self-evaluation form. The commission would vote in a public meeting on whether each judge "Meets" or "Does Not Meet" judicial performance standards. This determination, along with the evaluation results, would then be included in the Secretary of State's Voter Information Pamphlet. See <http://www.azjudges.info/>.
3. **A CJP Performance Audit** should be authorized by the Joint Legislative Audit Committee to more carefully investigate the judicial complaints being made, the ways they are handled, and the reasons that court users are not being protected from inappropriate judicial behavior they report. Why are sanction rates in California so low compared to other states, especially given that California has more staff and a bigger budget to handle its caseload? Why are investigations taking so much longer than they used to?
4. **170.1 et. seq. Disqualification Requests.** Each and every 170.1 et. seq. disqualification request, and the results, should be recorded by the trial courts, and at the end of the year, that information should be gathered, summarized and forwarded to the legislature. The legislature would learn very quickly about problematic courts and judges and the miserable success rate of this statutory remedy. 2) Judges should be prohibited from denying challenges made against them, or alternatively, prohibited from doing so in all but the most extreme cases. In any case where a judge denies his or her own challenge, the complaint and the judge's response to it should be forwarded to the CJP, which should keep in its files the complaint, and the judicial response, for future reference.
5. **Unopposed Judges Should Appear on Ballots.** California has the lowest rate of contested judicial elections in the country, at 8%. All judges' names should appear on the ballot at the end of their terms, regardless of whether they have an opponent, giving the public a chance to vote "yes" or "no" regarding whether to retain unopposed incumbent judges.
6. **Judicial Council Compliance with the Law.** The Judicial Council should be denied funding unless it complies with the ALL legislative directives set forth in Govt. Code Section 77001.5. It already has the tools to do so.

Table 11. below. shows the number of complaints from sources with 50 or more records from 1990 to 2009 as well as the percentage of those complaints that resulted in discipline. In some cases, discipline may have arisen from complaints from multiple sources.

Table 11: Discipline Rate by Complaint Source, 1990-2009

Source of Complaint	Complaints	Sanctions	Sanction Rate
District Attorney	87	44	50.57
News report	124	54	43.55
Commission investigation of another judge	93	39	41.94
Public Defender	92	34	36.96
Anonymous letter	154	54	35.06
Judicial officer	319	100	31.35
Other types of source/witness	108	23	21.30
Juror	52	11	21.15
Court employee	71	15	21.13
Attorney - private	1131	182	16.09
Witness (in proceeding)	63	6	9.52
Victim/family/friend (criminal case)	108	9	8.33
Citizen	540	44	8.15
Unknown	191	7	3.66
Litigant/family/friend	19814	288	1.45

Source: A-9, Appendix

Notably, Table 11 also indicates that complaints filed by litigants or their family and friends comprise the overwhelming majority of total complaints, but result in discipline only 1.45 percent of the time.



A Primer on California's Judicial Accountability Crisis

Average court users (including millions of self-represented litigants) across our state are essentially unable to avail themselves of any of the current remedies that exist to report and/or remove a bad or corrupt judge. There is no effective judicial accountability here.

1. **Commission on Judicial Performance.** Myriad problems exist with the current California Commission on Judicial Performance, or CJP, including a severe lack of transparency, a refusal to act on complaints by court users, and inordinate delays for complaint resolution, all of which create ongoing hardships for the public the CJP is supposed to be protecting. See the comparisons to Texas, New York and Arizona. The CJP is no remedy at all.
2. **Impeachment.** Pursuant to Article IV, Section 18 of the California Constitution, a judge may be impeached by the Assembly and convicted by a two-thirds vote in the Senate after a hearing on the merits. It appears that only two judges have been impeached in California history, with the last impeachment in 1929. Impeachment is no remedy at all.
3. **Recall Elections.** Article II, Section 19 of the California Constitution provides for the recall of state and local officers. It is a long, complicated and expensive process described in Article 2, section 14. What litigant has the knowledge or financial/political ability to navigate and undertake this almost impossible process? Recall elections are no remedy at all.
4. **Recusal Statutes.** In theory, litigants can disqualify a bad trial judge for cause pursuant to Code of Civil Procedure Section 170.1 et. seq. However, CCP section 170.4 (b) allows a trial judge to deny and strike a disqualification challenge made against him or her if "it is untimely filed or if on its face it discloses no legal grounds for disqualification." If a trial judge denies his or her own disqualification, the **only** remedy available to the litigant is to file a writ with the court of appeal within 10 days (CCP 170.3 (d)). 90% or more of appellate writs are summarily denied without explanation or discussion. Judges can and do routinely deny their own challenges, knowing that litigants have no realistic chance at all of doing anything about it. How many litigants could possibly figure out how to file an appellate writ within 10 days, and how many would, even if they could, knowing the minute chance of success? Failure leaves them stuck in the court of an angry judge. Recusal statutes are no remedy at all.

5. **Retention Elections.** In theory, voters have a right to vote out a bad trial judge at least every six years. In practice, by statute (Election Code section 8203), an unopposed incumbent is “re-elected” without his or her name ever appearing on the ballot, and without voters ever having a chance to vote to remove a bad judge. In practice, **California has the lowest rate of contested judicial elections in the country, at 8%.*** The judicial branch frowns upon local lawyers who run against incumbent judges instead of waiting for a vacancy via retirement or other non-election removal of a judge, and voters are given little to no information about judges who do appear on the ballot. Retention elections are no remedy at all. *See *Stanford Law Review* article, Judicial Conduct Commissions, April 2012, Vol. 64, pages 1061-1062.
6. **Government Code Section 77001.5.** This sections states as follows:
77001.5. On or before November 1, 2007, the Judicial Council shall adopt, and shall report to the Legislature annually thereafter upon, judicial administration standards and measures that promote the fair and efficient administration of justice, including, but not limited to, the following subjects:
- (1) Providing equal access to courts and respectful treatment for all court participants.*
 - (2) Case processing, including the efficient use of judicial resources.*
 - (3) General court administration.*

The Judicial Council has simply ignored this legislative mandate except with respect to “efficiency,” which it reports on with enthusiasm in support of its endless quest for more money and judges. Despite its formation of an Advisory Committee on Providing Access & Fairness, it does not appear that the Judicial Council has adopted meaningful administration standards or measures regarding fairness, equal access to courts, respectful treatment for all court participants; or important general court administration information such as reliability and integrity of court files, court employee satisfaction, and the like.

This is so although the Judicial Council’s 2013 and 2014 “*Judicial Administration Standards and Measures That Promote the Fair and Efficient Administration of Justice Report to the Legislature Under Government Code Section 77001.5*” reveal that the National Center for State Court’s CourTools program that is available to the Judicial Council provides, among other things, an “Access & Fairness Survey” to measure court performance, as well as information-gathering tools to measure “Reliability and Integrity of Case Files” and “Court Employee Satisfaction.” None of these tools appear to be being used, so this too is no remedy at all for those seeking judicial accountability in our state.