

Judicial Discipline Commission Sues to Restrict State Audit

Cheryl Miller, The Recorder

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Victoria Henley, Commission on Judicial Performance *Jason Doiy / The Recorder*

SACRAMENTO — California's judicial disciplinary agency has filed suit to limit the scope of a [pending state audit](#), arguing that the review violates separation of powers doctrine and threatens the confidentiality of investigations.

The Commission on Judicial Performance is asking a San Francisco Superior Court judge to block state auditor Elaine Howle from reviewing complaints about judges and other internal documents that shed light on how disciplinary decisions are made, according to the [petition](#) filed Oct. 20.

The commission argues in its filing that its confidentiality rules stem from the state constitution and trump the auditor's statutory authority to review private agency information.

"Complete confidentiality of complaints to the CJP and the CJP's investigation of those complaints is critical to allow the CJP to perform its core constitutional functions," the CJP's attorney, James Wagstaffe of Kerr & Wagstaffe, wrote. "That confidentiality is provided to the complainants, witnesses and judges. Confidentiality is also essential to preserve the constitutionally protected rights of judges who have been privately admonished."

Wagstaffe also wrote that if the CJP is forced to absorb the audit's approximately \$500,000 cost, the agency will have to lay off five attorneys and two secretaries.

Auditor Howle was still reviewing the lawsuit Monday, said a department spokeswoman, who declined further comment.

The Legislature [approved](#) the first-ever audit of the CJP in August. Judges say the agency's disciplinary process is opaque and robs them of due process and family law practitioners contend the agency doesn't do enough to discipline bad judges. The investigation, as outlined by the auditor, will focus on 19 broad areas, including assessing how the CJP evaluates the credibility of evidence and evaluating how the agency reviews complaints of judges committing legal errors.

Sen. Hannah-Beth Jackson, D-Santa Barbara, one of the legislators who requested the audit, said in an emailed statement that the lawsuit amounts to "stonewalling" by the CJP.

"This is a public entity, paid for through public dollars, that has never before been audited in its 56-year history," Jackson said. "While I respect the separation of powers, no state agency is above the law, nor above its fundamental responsibility to be accountable and transparent to the public."

The CJP has no objections to providing information requested about staff qualifications, spending and complaint workloads, Wagstaffe said Monday. But the agency is part of the judiciary, and scrutinizing its disciplinary decisions is comparable to the Legislature questioning whether the Supreme Court properly affords due process to litigants, he said.

"I think if we frame it that way we see that it's a separation of powers issue," Wagstaffe said. He declined to say whether the CJP and the auditor attempted to work out a compromise on access to documents before the lawsuit was filed.

Kathleen Russell, executive director of Center for Judicial Excellence, assailed the CJP's suit. "This is classic judicial branch behavior," she said. "Whenever we inch toward accountability for judges, they rehash these tired 'confidentiality arguments.'" No hearing in the case had been noticed as of Monday afternoon. The auditor has not announced a release date for her findings on the CJP.

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