



For Immediate Release: April 25, 2019  
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# Official Report Exposes Crisis at California's Judicial Oversight Agency

## *First External Review of Commission on Judicial Performance in Nearly 60 Years Urges Sweeping Changes to Agency*

The California State Auditor released a detailed, 85-page report today about its legislatively-ordered investigation into the state's only judicial oversight agency, the Commission on Judicial Performance (CJP), capping a three-year effort that was led by the Center for Judicial Excellence and a coalition of advocates for increased judicial accountability from across the state.

"When judges know that they can get away with yelling at litigants, having sex with subordinates, and threatening to assault people who come before them with no real consequences, we've got a crisis in our judicial branch," said Kathleen Russell, the executive director of the Center for Judicial Excellence.

"This report shows just how far the CJP has strayed from its core mission to protect the public, and it proves the vital need for sunshine in all three branches of government," she continued. "We hope that a few brave legislators will step up to help implement the Auditor's recommendations. The public is counting on their courage and leadership to place a Constitutional Amendment on the ballot to reform the CJP and better protect them from rogue judges who should be disciplined or removed from office," she said.

### **A Few Key Findings**

- In about one-third of the cases reviewed, CJP investigators did not take all reasonable steps—interviewing witnesses, obtaining evidence, or observing the judges—to determine the existence or extent of the alleged judicial misconduct.
- Examples of alleged misconduct that were not investigated include; yelling at litigants, relationship with a subordinate, delegating judicial role to clerks, threatening to assault litigants, improperly barring entry to the courtroom, and improperly delaying a case.
- The CJP does not evaluate its complaint data to identify potential patterns of judicial misconduct that could merit investigation. This failure to identify patterns of misconduct allowed a judge who was the subject of 12 complaints of serious on-the-bench misconduct to avoid discipline for 10 years. The CJP's failure to

take proactive steps to identify chronic misconduct increases the risk that it will fall short in its duty to protect the public.

- The CJP has rarely directed its outreach activities toward members of the public—out of more than 120 events held during a five-year period, only three targeted the general public. The CJP also never holds public meetings to discuss its rules or operations, yet it was created to protect the public from judicial misconduct.
- In early 2016, the former CJP director claimed to be implementing an online complaint system, but more than three years later, the CJP has not done this.
- The case management system used by the CJP is more than 25 years old, and the IT specialist who created it left in 2014, with no written instructions on how to use it. Efforts to hire a replacement for him ceased, so a costly outside consultant helps the CJP deal with an antiquated system that hinders public accessibility.
- The CJP's structure and disciplinary proceedings are not aligned with judicial discipline best practices because the commission currently serves as a unitary—or single—body. The American Bar Association recommends a bi-cameral body, which 17 states also use.
- The CJP continues to use judges called special masters to preside over evidentiary hearings, which are the public trial portion of disciplinary proceedings. This seems to thwart the intent of Proposition 190, which California voters passed in 1994 to increase the public's role in judicial discipline. The Auditor recommends eliminating them from the process.

### **A Few Key Recommendations**

- The Legislature should propose and submit to voters an amendment to the California Constitution to reform the CJP's structure and disciplinary proceedings so they are aligned with best practices and ensure that the public has a significant role in deciding judicial discipline.
- To ensure that it identifies patterns that may indicate chronic judicial misconduct, the CJP should create and implement procedures that require investigators to review all prior complaints when investigating a judge and determine if the prior complaints are similar to the current allegations.
- To improve its transparency and accessibility, the CJP should take steps to improve its public outreach, accept online complaints, and hold meetings that are open to the public.

For more information, visit here: <https://www.auditor.ca.gov/reports/2016-137/index.html>

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