

2016-137 AUDIT SCOPE AND OBJECTIVES

Commission on Judicial Performance—Complaint Policies and Procedures

The audit by the California State Auditor will provide independently developed and verified information related to the policies and practices for handling and resolving complaints against judges by the Commission on Judicial Performance (commission), and will include, but not be limited to, the following:

1. Review and evaluate the laws, rules, and regulations significant to the audit objectives.
2. Describe the standards the commission uses and the process it follows in determining the disposition of its cases and how it ensures the standards are consistently followed. Determine who within the commission makes the decision as to whether an alleged violation of the Code of Judicial Ethics meets the “clear and convincing” criteria. Assess the commission’s complaint review process to ensure it is meeting its mission and complying with all applicable statutes, policies, and regulations. Determine whether the commission uses the same criteria at all stages of the complaint process and is taking an appropriate and reasonable course of action for the complaints it reviews and for determining the disposition of each complaint.
3. Describe the standards the commission uses to determine whether or when to contact complainants, witnesses, and judges. For the last five years, determine the percentage of cases when the commission contacted any of these parties as part of an investigation of a complaint.
4. Determine when judges are notified about a complaint, and whether they are informed of the nature and basis of the complaint and when they will be provided an opportunity to respond. Determine what information from the commission’s investigation is provided to the judge and why certain facts may be withheld by the commission. In addition, review the commission’s process to determine whether judges receive due process from complaint to resolution.
5. Assess the commission’s process for evaluating the credibility of evidence, witnesses, and statements made. Furthermore:
 - (a) Determine whether the commission considers evidence that would be inadmissible under State law and how it treats hearsay evidence in its consideration of a case.
 - (b) Determine whether the commission meets or observes witnesses
 - (c) Determine the circumstances in which the commission would have the authority to alter the findings of fact and conclusions of law made by the special masters who do observe witnesses.
6. Determine what complaint information is provided to the commission and when it is provided. Assess whether the level of detail is sufficient for the commission to make its disciplinary decisions.

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7. Describe the stages in the complaint process at which staff attorneys provide recommendations to the commission and what form they take. For the last five years, determine the number of staff recommendations that were adopted or rejected by the commission, and what types of decisions are made by staff as opposed to the commission.
8. Assess whether staff, attorneys, and commissioners have the proper training, qualifications, and experience to review complaints. In addition, determine the size and composition of the commission's staff and analyze whether the staffing level, training, and qualifications are appropriate for its mission.
9. For formal proceedings, determine whether the commission employs in-house trial attorneys or outside prosecutors such as attorneys from the Office of the Attorney General. Identify the qualifications, responsibilities, and pay for these trial attorney positions. In addition, compare the costs of employing both types of attorneys and assess whether the commission has a process for determining which type of attorney to use.
10. Review and evaluate the commission's confidentiality rules and the rationale for keeping any type of inquiry or investigation confidential.
11. Review and evaluate the commission's process for investigating legal error and determine the following:
 - (a) How often the commission investigates legal error.
 - (b) The standards the commission uses for determining whether a complaint is one of legal error.
 - (c) Whether the process protects against discipline being imposed for legal error.
 - (d) The commission's process for investigating complaints where there is not clear legal precedent as to whether or not a judge's conduct violates the code of judicial ethics.
12. During the most recent five year period, determine the number of cases, case-processing times, and case outcome within each stage of the commission's discipline process. Further, evaluate the outcomes of a selection of cases and the discipline imposed by the commission, including cases that resulted in private discipline.
13. For the most recent five year period, assess the commission's budget, expenditures, and fund balances. Further, determine whether the commission's budget for administration and staffing, as well as the average cost of an inquiry or investigation, are consistent with best practices of other comparable organizations.

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14. For a selection of cases, determine whether the commission provided all parties, including the judge who was the subject of the complaint, an opportunity to respond with relevant information and to challenge a disciplinary decision if warranted. Further, determine whether and why judges have to sacrifice confidentiality to challenge the commission's disciplinary decisions.
15. Review and evaluate the commission's process for reviewing past complaints concerning a judge and how this information is used when investigating a judge should subsequent complaints be filed. Further, determine the commission's record retention policies for past complaints and outcomes against a judge and whether the commission consolidates multiple complaints.
16. Over the past five years, determine the number of cases in which a judge was publically admonished, censured, or removed after having prior admonishments, advisory letters, or complaints closed either with or without investigation. In addition, determine the number of complaints that did not receive a full investigation during the same time period.
17. Determine whether the commission has a process for expediting and deferring complaints. If so, for the past five years determine the number of complaints expedited or deferred and the reasons for each.
18. To the extent possible, determine if there are disparities in investigation rates, discipline rates, and budget efficiencies between the commission and similar judicial commissions in other states.
19. Review and assess any other issues that are significant to the audit.