

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: CPF-16-515308

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PETITION FOR WRIT OF MANDATE/ PROHIBITION/
CERTIFICATION

COMMISSION ON JUDICIAL PERFORMANCE VS. ELAINE M. HOWLE ET AL

001C05600476

Instructions:

Please place this sheet on top of the document to be scanned.

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

ELAINE M. HOWLE, in her official capacity as CALIFORNIA STATE AUDITOR, and the CALIFORNIA STATE AUDITOR'S OFFICE,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

COMMISSION ON JUDICIAL PERFORMANCE

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): San Francisco Superior Court
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER
(Número del caso)

CPF-16-515308

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

James Wagstaffe, Kerr & Wagstaffe LLP, 101 Mission St., 18th Fl., San Francisco, CA 94105 415-371-8500

DATE:
(Fecha)

OCT 20 2016

CLERK OF THE COURT

Clerk, by
(Secretario)

Arlene Ramos
ARLENE RAMOS

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)

☐ other (specify):

4. ☐ by personal delivery on (date):



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) James Wagstaffe (95535); Michael von Loewenfeldt (178665); Melissa Perry (305600) Kerr & Wagstaffe LLP 101 Mission Street, 18th Floor San Francisco, CA 94105-1727 TELEPHONE NO.: (415) 371-8500 FAX NO.: (415) 371-0500 ATTORNEY FOR (Name): Petitioner/Plaintiff, Commission on Judicial Performance		FOR COURT USE ONLY <div style="font-size: 2em; font-weight: bold; letter-spacing: 0.5em;">FILED</div> Superior Court of California County of San Francisco <div style="font-size: 1.2em;">OCT 20 2016</div> CLERK OF THE COURT BY: <u><i>Adeline Ramos</i></u> Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, CA 94102 BRANCH NAME:		<div style="font-size: 1.5em; font-weight: bold;">CPF-16-515308</div> JUDGE DEPT.	
CASE NAME: CJP v. Elaine M. Howle and the California State Auditor's Office			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2)

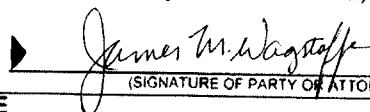
**SIGNATURE VIA
FACSIMILE**

1. Check **one** box below for the case type that best describes this case:
- | | | |
|--|---|---|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input checked="" type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input checked="" type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|--|---|---|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☐ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): **5**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: October 20, 2016

James Wagstaffe

(TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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6 Fax: (415) 371-0500

7 Attorneys for Petitioner/Plaintiff,
COMMISSION ON JUDICIAL PERFORMANCE
8
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO**
12 **UNLIMITED JURISDICTION**

13 COMMISSION ON JUDICIAL
14 PERFORMANCE,

15 Petitioner/Plaintiff,

16 v.
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18 ELAINE M. HOWLE, in her official capacity as
CALIFORNIA STATE AUDITOR, and the
19 CALIFORNIA STATE AUDITOR'S OFFICE,

20 Respondents/Defendants.
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F I L E D

Superior Court of California
County of San Francisco

OCT 20 2016

CLERK OF THE COURT

BY: Adeline Ramon
Deputy Clerk

Case No. **CPF-16-515308**

**PETITION FOR WRIT OF
PROHIBITORY MANDATE, OR IN
THE ALTERNATIVE, COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

**SIGNATURE VIA
FACSIMILE**

Petitioner/Plaintiff Commission on Judicial Performance (“CJP”) petitions this Court, pursuant to section 10 of article VI of the California Constitution and Code of Civil Procedure sections 1085 and 1060, for a writ of prohibitory mandate or other order directed to Respondents Elaine M. Howle, the California State Auditor, and the California State Auditor’s Office (collectively “State Auditor”), or, in the alternative, declaratory judgment and injunctive relief, commanding the State Auditor (1) to refrain from seeking the CJP’s records and information designated as confidential under Article VI section 18, subdivision (i)(1) of the California Constitution and CJP Rule 102, (2) to refrain from auditing the discretionary exercise of the CJP’s core constitutional functions as required by the separation of powers doctrine, and (3) to refrain from seeking to impose the cost of its audit on the CJP without legal authority to do so and in violation of the separation of powers doctrine.

PARTIES

1. The Commission on Judicial Performance is an independent body within the judicial branch created by article VI section 8 of the California Constitution. The CJP is vested with the authority to retire, remove, censure or to admonish a judge, and to disqualify a judge during the pendency of formal proceedings, subject to the review of the Supreme Court. (Cal. Const., art. VI, §§ 8, 18, subd. (d).) According to the Supreme Court, the purpose of commission disciplinary proceedings is to protect the public, to enforce rigorous standards of judicial conduct, and to maintain public confidence in the integrity and independence of the judicial system. (*Broadman v. Commission on Judicial Performance* (1998) 18 Cal.4th 1079, 1111-1112; *Adams v. Commission on Judicial Performance* (1995) 10 Cal.4th 866, 912; *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 864-865.) To accomplish these objectives, the CJP is constitutionally empowered to make rules for the investigation of judges and for formal proceedings against judges. The CJP is expressly authorized to “provide for the confidentiality of complaints to and investigations by the commission,” provided only that, when the CJP commences formal proceedings, the notice of charges, the answer, and all subsequent papers and proceedings are open to the public for all formal proceedings. (Cal. Const., art VI, §§

1 18, subd. (i)(1), (j).) The CJP is beneficially interested in the enforcement of its constitutional
2 power to protect the confidentiality of its investigations and records, in the protection of its core
3 constitutional functions from improper encroachment by the State Auditor, and in protection of
4 its separate budget and ability to perform its core constitutional functions.

5 2. Elaine M. Howle is the California State Auditor. The California State Auditor's
6 Office is a legislatively created body. (Gov't Code, § 8543, subd. (a); Gov't Code, § 8543.2.)
7 The duties of the State Auditor include annual examination and reports of the financial
8 statements prepared by the state executive branch and statutorily mandated performance audits.
9 (Gov't Code, § 8543.1.) At the request of Members of the Legislature approved by the Joint
10 Legislative Audit Committee, the State Auditor is statutorily authorized to conduct financial and
11 performance audits of state and local governmental agencies and any other publicly created
12 entities. (Gov't Code, § 8546.1, subd. (b).)

13 **JURISDICTION**

14 3. The Court has jurisdiction of this matter under article VI, section 10 of the
15 California Constitution and Code of Civil Procedure sections 1085 and 1060.

16 **VENUE**

17 4. Venue is proper in this Court under Code of Civil Procedure section 393,
18 subdivision (b) because this cause of action arose in San Francisco County. Venue is also proper
19 in this Court under Code of Civil Procedure section 401, subdivision (1) because the Attorney
20 General has an office in this city and county.

21 **THE COMMISSION ON JUDICIAL PERFORMANCE**

22 5. In 1960, California established the CJP within the state's judicial branch, the
23 nation's first permanent state judicial disciplinary commission. (*Adams, supra* 8 Cal.4th at p.
24 637; Cal. Const., art. VI, § 8.) The CJP was created as a means of attempting to meet the public's
25 expectations of a fair and impartial judiciary, and in order to enforce rigorous standards of
26 judicial conduct. (*Adams, supra*, 8 Cal.4th at p. 637.) The CJP is an independent state agency and
27 is vested with the authority to retire, remove, censure or to admonish a judge, and to disqualify a
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1 judge during the pendency of formal proceedings, subject to the review of the Supreme Court.
2 (Cal. Const., art. VI, §§ 8, 18, subd. (d).)

3 **THE CJP’S NEED, AND AUTHORITY, TO DESIGNATE COMPLAINTS IT RECEIVES**
4 **AND INVESTIGATIONS CONFIDENTIAL**

5 6. There are significant public policy reasons why the CJP’s files and investigations
6 have always been confidential. “Confidentiality encourages the filing of complaints and the
7 willing participation of citizens and witnesses by providing protection against possible retaliation
8 or recrimination. It protects judges from injury which might result from the publication of
9 unexamined and unwarranted complaints by disgruntled litigants or their attorneys, or by
10 political adversaries, and preserves confidence in the judiciary as an institution by avoiding
11 premature announcement of groundless claims of judicial misconduct or disability.
12 Confidentiality is essential to protecting the judge’s constitutional right to a private
13 admonishment if the circumstances so warrant, and when removal or retirement is justified by
14 the charges, judges are more likely to resign or retire voluntarily without the necessity of a
15 formal proceeding if the publicity that would accompany such a proceeding can thereby be
16 avoided. Leading writers have recognized that confidentiality of investigations and hearings by
17 the Commission is essential to its success.” (*Comm’n on Judicial Performance v. Superior Court*
18 (2007) 156 Cal.App.4th 617, 622 [citing *Mosk v. Superior Court* (1979) 25 Cal.3d 474, 491-492
19 and *Adams, supra*, 8 Cal.4th at pp. 646-648].)

20 7. Prior to November 1994, the California Constitution mandated that CJP
21 investigations and hearings be confidential. (*Adams, supra*, 8 Cal. 4th at pp. 646-47; *Mosk,*
22 *supra*, 25 Cal. 3d at pp. 489-491.) That year, through Proposition 190, the California electorate
23 amended the California Constitution to provide that formal proceedings of the CJP are open to
24 the public, and to authorize the CJP to determine the confidentiality of complaints and
25 investigations prior to formal proceedings and other matters not expressly made public. Article
26 VI, section 18, subdivision (i)(1) of the California Constitution now provides that “[t]he
27 commission shall make rules for the investigation of judges. The commission may provide for
28

1 the confidentiality of complaints to and investigations by the commission.” (Cal. Const., art. VI,
2 § 18, subd. (i)(1).)

3 8. Proposition 190 also reaffirmed the CJP’s authority to “publicly **or privately**
4 admonish a judge or former judge found to have engaged in an improper action or dereliction of
5 duty.” (Cal. Const., art. VI, § 18, subd. (d)(3) [emphasis added].)

6 9. The California Constitution places no limits on the CJP’s ability to “provide for
7 the confidentiality of complaints to and investigations by the commission” other than those set
8 forth in article VI section 18 subdivision (j). The California Constitution does not provide an
9 exception to the CJP’s sole authority over confidentiality of its non-public complaints and
10 investigations requiring access to such records by the State Auditor.

11 **CJP RULE 102**

12 10. The CJP has exercised the sole authority granted to it by article VI section 18
13 subdivision (i)(1) of the California Constitution by adopting CJP Rule 102 which provides, in
14 relevant part, that “[e]xcept as provided in this rule, all papers filed with and proceedings before
15 the commission shall be confidential.”

16 11. Rule 102 provides limited specific exceptions where disclosure of confidential
17 records is permissible. There is, however, no exception allowing representatives of the State
18 Auditor to view these confidential records.

19 12. As discussed in the case law, complete confidentiality of complaints to the CJP
20 and the CJP’s investigation of those complaints is critical to allow the CJP to perform its core
21 constitutional functions. That confidentiality is provided to complainants, witnesses, and judges.
22 Confidentiality is also essential to preserve the constitutionally protected rights of judges who
23 have been privately admonished. As the Supreme Court has held, the entity promulgating
24 confidentiality rules does not have the power to disregard those rules once they are imposed.
25 (*Mosk, supra*, 25 Cal. 3d. at p. 493.)

26 **THE CALIFORNIA STATE AUDITOR AND THE AUDIT REQUEST**

27 13. The California State Auditor’s Office and California State Auditor are not
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1 constitutional entities. They were created by legislation. (Gov't Code, § 8543, subd. (a); Gov't
2 Code, § 8543.2.) The duties of the State Auditor include annual examination and reports of the
3 financial statements prepared by the state executive branch and statutorily mandated
4 performance audits. (Gov't Code, § 8543.1.) In addition, at the request of Members of the
5 Legislature approved by the Joint Legislative Audit Committee, the State Auditor is authorized
6 to conduct audits of state and local governmental agencies and any other publicly created
7 entities. (Gov't Code, § 8546.1, subd. (b).)

8 14. The statutes creating the State Auditor grant it statutory right to access and to
9 examine and reproduce any and all records of any state agency. (Gov't Code, § 8545.2, subd.
10 (a).) This right of access purports to exist “[n]otwithstanding any other provision of law.”
11 (*Ibid.*) Those statutes claim to place employees and agents of the State Auditor in the shoes of
12 the employees or officers of the public agency whose records the State Auditor seeks. (Gov't
13 Code, § 8545.2, subd. (b).) This statutory grant of power to review documents purports to apply
14 even to records made confidential by other laws. (Gov't Code, § 8545.2, subd. (b).) Documents
15 created or collected by the State Auditor during an audit which are used in support of the State
16 Auditor's report are public records subject to the California Public Records Act and must be
17 retained by the State Auditor for at least three years. (Gov't Code, § 8545, subd. (a).)

18 15. On August 10, 2016, the Joint Legislative Audit Committee authorized an audit of
19 the CJP by the California State Auditor. A copy of the State Auditor's Analysis of Audit Request
20 is attached hereto as Exhibit A. The purpose of the audit is to “examine the policies and practices
21 for handling and resolving complaints against judges by the Commission on Judicial
22 Performance (commission).” (Ex. A.) The analysis lists 18 specific and one catch-all area of
23 inquiry, and estimates that the audit will take 4,104 hours and cost approximately \$492,480 plus
24 travel and administrative expenses and any potential costs related to an outside consultant.

25 16. Many of the topics in the audit are clearly appropriate areas of inquiry for the
26 State Auditor. For example, the State Auditor wants to examine the CJP's financial records,
27 workload statistics, and qualifications of staff. All of these topics are clearly within the scope of
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1 the Legislature's legitimate interest as the entity authorizing the CJP's budget.

2 17. The audit is not, however, so limited. Instead, many of the topics either wholly or
3 partially seek to audit the discretionary exercise of CJP's core functions. For example, Topic 2
4 asks the State Auditor to assess whether the CJP "is taking an appropriate and reasonable course
5 of action for the complaints it reviews and for determining the disposition of each complaint."
6 (Ex. A.) Topic 5 purports to evaluate how the CJP decides which witnesses and evidence to
7 believe. (*Ibid.*) Topic 12 purports to "evaluate the outcomes of a selection of cases and the
8 discipline imposed by the commission including cases that resulted in private discipline." (*Ibid.*)
9 These topics, and portions of other topics, directly seek to review and reach conclusions about
10 the CJP's discretionary exercise of its core functions. Then, if the auditors disagree, they will
11 make recommendations for changes to the CJP's exercise of its core power and purport to
12 require the CJP periodically to report to the Legislature about its "progress in implementing" the
13 State Auditor's recommendations. (Gov't Code, § 8546.2.)

14 18. The CJP is informed and believes that during the audit, staff of the State Auditor
15 will seek access to documents designated confidential by CJP Rule 102, and that the State
16 Auditor contends it has the legal right to review, copy and retain confidential records pursuant to
17 Government Code section 8545.2. This conflict between Government Code section 8545.2, the
18 violation of which is a misdemeanor, and article VI section 18, subdivision (i)(1) of the
19 California Constitution, as implemented by CJP Rule 102, requires judicial resolution.

20 19. The CJP is also informed and believes that the State Auditor intends to bill the
21 CJP for the nearly \$500,000 cost of the audit, and that the CJP has no control over what time is
22 spent or billed by the State Auditor. The CJP's 2016-2017 fiscal year budget is only \$4,640,000,
23 and does not contain a surplus that could be used to pay this cost. Such a bill from the State
24 Auditor, if legally collectable, would require the CJP, as of December 31, 2016, to lay off five
25 attorneys (one-third of its legal staff) and two secretaries (one-half of its secretarial staff),
26 severely hampering the CJP's ability to perform its core constitutional functions. The CJP is not
27 aware of any legal authority for the State Auditor to charge CJP for the audit, and a review of the
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1 applicable statutes reveals no such authority. Indeed, the audit analysis itself states that the cost
2 of the audit should be paid from the State Auditor's "existing budget authority." (Ex. A.)

3 **FIRST CAUSE OF ACTION**
4 **WRIT OF PROHIBITORY MANDATE COMPELLING RESPONDENT TO REFRAIN**
5 **FROM SEEKING TO ACCESS CONFIDENTIAL RECORDS**

6 (By Petitioner against both Respondents)

7 20. The CJP realleges and incorporates by this reference each and every allegation
8 contained in paragraphs 1 through 19 of this Petition as though fully set forth herein.

9 21. This case presents a clear conflict between the CJP's constitutional authority to
10 make its records confidential pursuant to article VI, section 18, subdivision (i)(1), and the
11 statutory grant to the State Auditor of a right of access to confidential records. The State
12 Auditor, like all agents of the State of California, has a mandatory duty not to violate provisions
13 of the California Constitution. Government Code section 8545.2 cannot override article VI,
14 section 18, subdivision (i)(1) of the California Constitution. Government Code section 8545.2 is
15 therefore unconstitutional as applied to the State Auditor's attempts to review records which the
16 CJP has made confidential in CJP Rule 102 pursuant to the express grant of authority in article
17 VI, section 18, subdivision (i)(1).

18 22. The CJP has an immediate, vital, and beneficial interest in prohibiting the State
19 Auditor from accessing the CJP's confidential records. The CJP's ability to keep certain records
20 confidential is critical to its success in performing its key constitutional functions. These records
21 are protected by CJP Rule 102, and that constitutionally authorized rule cannot be superseded by
22 a statutory grant of authority by the California Legislature. Petitioner has no other plain, speedy,
23 and adequate remedy in law. There are also no material issues of fact necessary to the resolution
24 of this matter that are or can be disputed.

25 23. Section 10 of article VI of the California Constitution provides that the Superior
26 Courts and their judges have original jurisdiction in proceedings for extraordinary relief in the
27 nature of mandamus, certiorari, and prohibition. (Cal. Const., art. VI, § 10.) Code of Civil
28 Procedure section 1085 permits the Court to issue a writ of mandate to the State Auditor to

1 refrain from seeking access to the CJP's confidential records.

2 24. Wherefore, the CJP prays for relief as set forth below.

3 **SECOND CAUSE OF ACTION**
4 **DECLARATORY JUDGMENT THAT THE STATE AUDITOR IS PROHIBITED FROM**
5 **SEEKING CONFIDENTIAL CJP RECORDS**

6 (By Petitioner against both Respondents)

7 25. The CJP realleges and incorporates by this reference each and every allegation
8 contained in paragraphs 1 through 24 of this Petition as though fully set forth herein.

9 26. An actual controversy has arisen between the CJP and the State Auditor as to
10 whether the CJP is required by Government Code section 8545.2 to provide the State Auditor
11 with records that are made confidential by CJP Rule 102 pursuant to the CJP's constitutional
12 power under Article VI, section 18, subdivision (i)(1) of the California Constitution.

13 27. Government Code section 8545.2 does not preempt the CJP's constitutional
14 power, via CJP Rule 102, to make complaints and investigations confidential. The State
15 Auditor's power to access documents is not constitutional, but only statutory, and thus cannot
16 preempt this constitutional grant of power to the CJP.

17 28. The State Auditor's attempt to access the CJP's confidential records violates CJP
18 Rule 102 and Article VI, section 18, subdivision (i)(1) of the California Constitution.

19 29. Therefore, pursuant to California Code of Civil Procedure section 1060, the CJP
20 is entitled to a declaration that the State Auditor is prohibited from accessing the CJP's
21 confidential records, as well as injunctive relief corresponding to that declaration.

22 30. Wherefore, the CJP prays for relief as set forth below.

23 **THIRD CAUSE OF ACTION**
24 **WRIT OF PROHIBITORY MANDATE COMPELLING THE STATE AUDITOR TO**
25 **REFRAIN FROM AUDITING THE EXERCISE OF THE CJP'S CORE FUNCTIONS**

26 (By Petitioner against both Respondents)

27 31. The CJP realleges and incorporates by this reference each and every allegation
28 contained in paragraphs 1 through 30 of this Petition as though fully set forth herein.

32. The California Constitution divides power equally among three branches of state

1 government: the Legislature (Cal. Const. art. IV, § 1); the executive branch (Cal. Const. art. V, 2
2 1); and the courts. (Cal. Const., art. VI, § 1.) The separation of powers doctrine prohibits the
3 Legislature “from arrogating to itself core functions of the executive or judicial branch.” (*People*
4 *v. Bunn* (2002) 27 Cal.4th 1, 16.)

5 33. Although the Legislature’s activities can overlap with the functions of other
6 branches to an extent, the Legislature may not use its powers to “defeat or materially impair” the
7 exercise of its fellow branches’ constitutional functions, nor “intrude upon a core zone’ of
8 another branch’s authority. . .” (*Howard Jarvis Taxpayers Assn. v. Padilla* (2016) 62 Cal.4th
9 486, 499.) While the Legislature does have an investigative power, it “may not be used to trench
10 upon matters falling outside the legislative purview.” (*Ibid.*)

11 34. As discussed previously, while some topics in the audit are clearly connected to
12 the Legislature’s control over the CJP’s budget, many other topics (such as how the CJP
13 determines what evidence to believe) have nothing to do with the financial or workload concerns
14 that are the appropriate purview of the State Auditor and, instead, impermissibly intrude on the
15 core constitutional functions of the CJP. Moreover, many of these improper topics cannot be
16 analyzed without review of the CJP’s confidential complaint and investigation files which, as
17 discussed above, the State Auditor has no right to review. Furthermore, the substantial time the
18 audit will require as well as the purported requirement to subsequently respond and report
19 “compliance” with the audit’s findings all demonstrate the intrusive nature of these audit topics
20 on the CJP’s core functions. As a further illustration of the need for independence, the Supreme
21 Court has the authority to review and revise all disciplinary decisions by the CJP.

22 35. The CJP has an immediate, vital, and beneficial interest in prohibiting the State
23 Auditor from interfering with the operation of the core deliberative process utilized by the CJP or
24 its staff in handling complaints and the exercise of the CJP’s sole discretion of whether or not to
25 bring charges or impose discipline as a result of any complaint. Petitioner has no other plain,
26 speedy, and adequate remedy in the ordinary course of law. There are no material issues of fact
27 necessary to the resolution of this matter that are or can be disputed.

36. Section 10 of article VI of the California Constitution provides that the Superior Courts and their judges have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. (Cal. Const. art. VI, § 10.) Code of Civil Procedure section 1085 permits the Court to issue a writ of mandate to the California State Auditor to refrain from auditing the exercise of the CJP's deliberative process and discretion in performing its core functions.

37. Wherefore, the CJP prays for relief as set forth below.

**FOURTH CAUSE OF ACTION
DECLARATORY JUDGMENT THAT THE STATE AUDITOR IS PROHIBITED FROM
AUDITING THE EXERCISE OF THE CJP'S CORE FUNCTIONS**

(By Petitioner against both Respondents)

38. The CJP realleges and incorporates by this reference each and every allegation contained in paragraphs 1 through 37 of this Petition as though fully set forth herein.

39. An actual controversy has arisen between the CJP and the State Auditor as to whether the State Auditor can audit the exercise of the CJP's core functions.

40. Therefore, pursuant to California Code of Civil Procedure section 1060, the CJP is entitled to a declaration that the State Auditor is prohibited from auditing the exercise of the CJP's core functions, including but not limited to its discretionary review of, and deliberative adjudication of, complaints, investigations, and formal proceedings, but may audit the CJP's finances, workload statistics, staffing, and similar issues not tied to the CJP's core functions or requiring review of materials made confidential by CJP Rule 102.

41. Wherefore, the CJP prays for relief as set forth below.

FIFTH CAUSE OF ACTION
DECLARATORY JUDGMENT THAT THE STATE AUDITOR IS PROHIBITED FROM
CHARGING THE CJP FOR THE COST OF THE AUDIT

(By Petitioner against both Respondents)

42. The CJP realleges and incorporates by this reference each and every allegation contained in paragraphs 1 through 41 of this Petition as though fully set forth herein.

43. In its own analysis of the audit request, the State Auditor stated it “will conduct

1 this audit using our existing budget authority to the extent funding is available for audits
2 approved by the Joint Legislative Audit Committee.” (Ex. A.) However, the CJP is now
3 informed and believes that the State Auditor intends to charge the CJP the approximately
4 \$492,480 (plus other expenses) to complete the audit. As discussed above, the CJP has no budget
5 to pay such costs, and doing so would require substantial layoffs and impairment of the CJP’s
6 core functions.

7 44. The State Auditor has no statutory authority to charge the costs of its audit to the
8 CJP. Even if statutory authority existed, exercise of that authority in this instance would
9 materially impair the core constitutional functions of the CJP and would thus be unconstitutional.

10 45. An actual controversy has arisen between the CJP and State Auditor as to whether
11 the State Auditor can charge the CJP for the cost of the audit.

12 46. Therefore, pursuant to California Code of Civil Procedure section 1060, the CJP
13 is entitled to a declaration that the State Auditor is not permitted to charge the CJP for the costs
14 of the audit and that CJP has no legal obligation to pay such costs if charged.

15 47. Wherefore, the CJP prays for relief as set forth below.

16 **PRAYER**

17 THEREFORE, the Commission on Judicial Performance prays for relief as follows:

18 1. That a prohibitory mandate issue under the seal of this Court, without a hearing or
19 further notice, directing the State Auditor and the State Auditor’s Office to immediately and
20 permanently refrain from seeking access to the CJP’s records and information rendered
21 confidential by Commission on Judicial Performance Rule 102, or that an alternative writ of
22 prohibitory mandate or order to show cause issue under the seal of this Court, directing the State
23 Auditor and the State Auditor’s Office to show cause at a time and date to be established by the
24 Court why they should not be prohibited from accessing the CJP’s confidential records, and that
25 thereafter the Court order the State Auditor and the State Auditor’s Office to refrain from
26 seeking such confidential records and information;

27 2. That, in the alternative, the Court treat this Petition as a complaint for declaratory
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1 and injunctive relief, on the grounds that an actual controversy has arisen between the parties as
2 to the application of Article VI, section 18, subdivision (i)(1) of the California Constitution,
3 Commission on Judicial Performance Rule 102, and Government Code section 6545.2, that the
4 Court declares that the State Auditor and the State Auditor's Office are prohibited from seeking
5 the CJP's confidential records and information, and that the Court enjoin the State Auditor and
6 the State Auditor's Office from continuing to seek access to such confidential records and
7 information;

8 3. That a prohibitory mandate issue under the seal of this Court, without a hearing or
9 further notice, directing the State Auditor and the State Auditor's Office to immediately and
10 permanently refrain from auditing the exercise of the CJP's core functions, pursuant to the
11 separation of powers doctrine, or that an alternative writ of prohibitory mandate or order to show
12 cause issue under the seal of this Court, directing the State Auditor and the State Auditor's
13 Office to show cause at a time and date to be established by the Court why it should be able to
14 audit the exercise of the CJP's core functions, and that thereafter the Court order that the State
15 Auditor and the State Auditor's Office are prohibited from auditing the exercise of the CJP's
16 core functions.

17 4. That, in the alternative, the Court treat this Petition as a complaint for declaratory
18 and injunctive relief, on the grounds that an actual controversy has arisen between the parties as
19 to the constitutional scope of the State Auditor's and the State Auditor's Office's audit, that the
20 Court declare that the State Auditor and the State Auditor's Office is prohibited from auditing
21 the exercise of the CJP's core functions, and that the Court enjoin the State Auditor and the State
22 Auditor's Office from auditing the exercise of the CJP's core functions.

23 5. That the Court issue a declaratory judgment stating that the State Auditor and the
24 State Auditor's Office are prohibited from charging the CJP for the cost of any audit, and that the
25 Court enjoin the State Auditor from so charging the CJP;

26 6. That the Court award such other and further relief as is just and proper.
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Dated: October 20, 2016

KERR & WAGSTAFFE LLP

By: 
JAMES M. WAGSTAFFE

Attorneys for Petitioner/Plaintiff,
COMMISSION ON JUDICIAL PERFORMANCE

EXHIBIT A

**JLAC Hearing
August 10, 2016**

Analysis Fact Sheet

**2016-137
Commission on Judicial Performance—
Complaint Policies and Procedures**

Requester: Senator Jackson and Assemblymembers Baker, C. Garcia, and Stone

Request Date: July 27, 2016

Requested Completion Date: The members did not request a specific completion date for this audit.

Estimated Cost: \$492,480

Estimated Hours: 4,104

Other Work Within the General Area:

2015-030 State Bar of California: It Has Not Consistently Protected the Public Through Its Attorney Discipline Process and Lacks Accountability (June 2015)

2014-107 Judicial Branch of California: Because of Questionable Fiscal and Operational Decisions, the Judicial Council and the Administrative Office of the Courts Have Not Maximized the Funds Available for the Courts (January 2015)

2016-137
Commission on Judicial Performance—
Complaint Policies and Procedures

ANALYSIS OF AUDIT REQUEST
August 10, 2016

I. AUDIT REQUEST

Senator Jackson and Assemblymembers Baker, C. Garcia, and Jones are requesting an audit to examine the policies and practices for handling and resolving complaints against judges by the Commission on Judicial Performance (commission).

II. BACKGROUND

The commission is the independent state agency within the Judicial branch responsible for investigating complaints of judicial misconduct and incapacity and for disciplining judges. Its jurisdiction includes all active California judges. The commission also has authority to impose discipline on former judges, and has shared authority with local courts over court commissioners and referees.

As outlined by the California Constitution, the commission is composed of eleven members each appointed to a four-year term: one justice of a court of appeal and two judges of superior courts appointed by the Supreme Court; two attorneys appointed by the Governor; and six citizens, two appointed by the Governor, two appointed by the Senate Committee on Rules and two appointed by the Speaker of the Assembly. The members of the commission do not receive a salary but are reimbursed for expenses related to commission business. The commission members meet approximately seven times a year.

Anyone may submit a written complaint to the commission and may be anonymous if he or she chooses. The commission also considers complaints and matters it learns of in other ways, such as from news articles or from information received in the course of a commission investigation. Under the commission's rules, as authorized by the California Constitution, complaints to the commission and commission investigations are confidential.

The members are concerned about the commission's discipline process and whether its policies and practices for handling complaints against judges comply with the fundamental concepts of constitutional due process.

III. AUDIT SCOPE AND OBJECTIVES

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.
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.

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.

IV. OTHER WORK IN THE GENERAL AREA

2015-030 State Bar of California: It Has Not Consistently Protected the Public Through Its Attorney Discipline Process and Lacks Accountability (June 2015)

2014-107 Judicial Branch of California: Because of Questionable Fiscal and Operational Decisions, the Judicial Council and the Administrative Office of the Courts Have Not Maximized the Funds Available for the Courts (January 2015)

V. RESOURCE REQUIREMENTS

We estimate that this audit will require approximately 4,104 hours of audit work at a cost of approximately \$492,480 plus travel and administrative expenses and any potential costs related to an outside consultant, if necessary. We will conduct this audit using our existing budget authority to the extent funding is available for audits approved by the Joint Legislative Audit Committee.

VI. REQUIRED DATE OF COMPLETION

The members did not request a specific completion date for this audit.



ELAINE M. HOWLE, CPA
California State Auditor