

CHIEF JUSTICE
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JUDICIAL COUNCIL OF CALIFORNIA

ADMINISTRATIVE OFFICE OF THE COURTS

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February 4, 1970

Hector P. Garcia, M.D.
Chairman
American GI Forum of the U.S.
1315 Bright Street
Corpus Christi, Texas 78405

Dear Dr. Garcia:

Your letter of January 30 has been received. I am enclosing a copy of the pertinent section of the California Constitution (Article VI, Section 18) and a copy of the rules under which the California Commission on Judicial Qualifications operates (Rules of Court, Rules 901 to 921).

I am informed that the Commission's procedure in a controverted matter, considering the time required for notices, hearings and a report to the Supreme Court, involves some eight or nine months at the minimum. During that period the proceedings are confidential, as you know, and we have no knowledge concerning the matter.

During the pendency of the confidential proceedings the Constitution does not contemplate any suspension or disqualification of a judge, and it is my understanding that Judge Chargin is performing judicial duties for the Santa Clara Superior Court as directed by the Presiding Judge of that court.

Very truly yours,

A handwritten signature in cursive script, reading "Ralph N. Kleps".

Ralph N. Kleps
Director

RNK:jp
Enclosures

cc: Commission on Judicial Qualifications

DIVISION I

RULES FOR CENSURE, REMOVAL OR RETIREMENT OF JUDGES

*Adopted by the Judicial Council of the State of California,
Effective August 1, 1961**

Rule 901. Interested party

A judge who is a member of the Commission or of the Supreme Court may not participate as such in any proceedings involving his own censure, removal or retirement. [Repealed and adopted effective Nov. 11, 1966.]

Rule 902. Confidentiality of proceedings

All papers filed with and proceedings before the Commission, or before the masters appointed by the Supreme Court pursuant to rule 907, shall be confidential until a record is filed by the Commission in the Supreme Court. [Repealed and adopted effective Nov. 11, 1966.]

Rule 903. Defamatory material

The filing of papers with or the giving of testimony before the Commission, or before the masters appointed by the Supreme Court pursuant to rule 907, shall be privileged in any action for defamation. No other publication of such papers or proceedings shall be so privileged, except that the record filed by the Commission in the Supreme Court continues to be privileged. [Repealed and adopted effective Nov. 11, 1966.]

Rule 904. Preliminary investigation

(a) *The Commission, upon receiving a verified statement, not obviously unfounded or frivolous, alleging facts indicating that a judge is guilty of wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or that he has a disability that seriously interferes with the performance of his duties and is or is likely to become permanent, shall make a preliminary investigation to determine whether formal proceedings should be instituted and a hearing held. The Commission without receiving a verified statement may make such a preliminary investigation on its own motion. [Renumbered and amended effective Nov. 11, 1966.]*

(b) *The judge shall be notified of the investigation, the nature of the charge, and the name of the person making the verified statement, if any, or that the investigation is on the Commission's own motion, and shall be afforded reasonable opportunity in the course of the preliminary investigation to present such matters as he may choose. Such*

* Adopted pursuant to the authority contained in Section 18(e), Article VI, California Constitution.

notice shall be given by prepaid registered mail addressed to the judge at his chambers and at his last known residence. [*Renumbered effective Nov. 11, 1966.*]

(c) If the preliminary investigation does not disclose sufficient cause to warrant further proceedings, the judge shall be so notified. [*Renumbered effective Nov. 11, 1966.*]

Rule 905. Notice of formal proceedings

(a) After the preliminary investigation has been completed, if the Commission concludes that formal proceedings should be instituted, the Commission shall without delay issue a written notice to the judge advising him of the institution of formal proceedings to inquire into the charges against him. Such proceedings shall be entitled:

“BEFORE THE COMMISSION ON JUDICIAL QUALIFICATIONS
Inquiry Concerning a Judge, No. _____.” [*Renumbered effective Nov. 11, 1966.*]

(b) The notice shall specify in ordinary and concise language the charges against the judge and the alleged facts upon which such charges are based, and shall advise the judge of his right to file a written answer to the charges against him within 15 days after service of the notice upon him. [*Renumbered effective Nov. 11, 1966.*]

(c) The notice shall be served by the personal service of a copy thereof upon the judge, but if it appears to the chairman of the Commission upon affidavit that, after reasonable effort for a period of 10 days, personal service could not be had, service may be made upon the judge by mailing, by prepaid registered mail, copies of the notice addressed to the judge at his chambers and at his last known residence. [*Renumbered effective Nov. 11, 1966.*]

Rule 906. Answer

Within 15 days after service of the notice of formal proceedings the judge may file with the Commission an original and 11 legible copies of an answer, which shall be verified and shall conform in style to subdivision (c) of rule 15 of the Rules on Appeal. [*Renumbered effective Nov. 11, 1966.*]

Rule 907. Setting for hearing before Commission or masters

Upon the filing of an answer or upon expiration of the time for its filing, the Commission shall order a hearing to be held before it concerning the censure, removal or retirement of the judge, or the Commission may request the Supreme Court to appoint three special masters, who shall be judges of courts of record, to hear and take evidence in such matter, and to report thereon to the Commission. The Commission shall set a time and place for hearing before itself or before the masters and shall give notice of such hearing by mail to the judge at least 20 days prior to the date set. [*Renumbered and amended effective Nov. 11, 1966.*]

Rule 908. Hearing

(a) At the time and place set for hearing, the Commission, or the masters when the hearing is before masters, shall proceed with the hearing whether or not the judge has filed an answer or appears at the hearing. The examiner shall present the case in support of the charges in the notice of formal proceedings. [*Renumbered and amended effective Nov. 11, 1966.*]

(b) The failure of the judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for *censure*, removal or retirement. The failure of the judge to testify in his own behalf or to submit to a medical examination requested by the Commission or the masters may be considered, unless it appears that such failure was due to circumstances beyond his control. [*Renumbered and amended effective Nov. 11, 1966.*]

(c) The proceedings at the hearing shall be reported by a phonographic reporter. [*Renumbered effective Nov. 11, 1966.*]

(d) When the hearing is before the Commission, not less than five members shall be present when the evidence is produced. [*Renumbered effective Nov. 11, 1966.*]

Rule 909. Evidence

At a hearing before the Commission or masters, legal evidence only shall be received, and oral evidence shall be taken only on oath or affirmation. [*Renumbered effective Nov. 11, 1966.*]

Rule 910. Procedural rights of judge

(a) In proceedings involving his *censure*, removal or retirement, a judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. He shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers, and other evidentiary matter. [*Renumbered and amended effective Nov. 11, 1966.*]

(b) When a transcript of the testimony has been prepared at the expense of the Commission, a copy thereof shall, upon request, be available for use by the judge and his counsel in connection with the proceedings, or the judge may arrange to procure a copy at his expense. The judge shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at his expense. [*Renumbered effective Nov. 11, 1966.*]

(c) Except as herein otherwise provided, whenever these rules provide for giving notice or sending any matter to the judge, such notice or matter shall be sent to the judge at his residence unless he requests otherwise, and a copy thereof shall be mailed to his counsel of record. [*Renumbered effective Nov. 11, 1966.*]

(d) If the judge is adjudged insane or incompetent, or if it appears to the Commission at any time during the proceedings that he is not competent to act for himself, the Commission shall appoint a guardian ad litem unless the judge has a guardian who will represent him. In the appointment of such guardian ad litem, preference shall be given, whenever possible, to members of the judge's immediate family. The guardian or guardian ad litem may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent, and whenever these rules provide for serving or giving notice or sending any matter to the judge, such notice or matter shall be served, given, or sent to the guardian or guardian ad litem. [*Renumbered effective Nov. 11, 1966.*]

Rule 911. Amendments to notice or answer

The masters, at any time prior to the conclusion of the hearing, or the Commission, at any time prior to its determination, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby. [*Renumbered effective Nov. 11, 1966.*]

Rule 912. Report of masters

(a) After the conclusion of the hearing before masters, they shall promptly prepare and transmit to the Commission a report which shall contain a brief statement of the proceedings had and their findings of fact with respect to the issues presented by the notice of formal proceedings and the answer thereto, or if there be no answer, their findings of fact with respect to the allegations in the notice of formal proceedings. When the findings support the grounds alleged for *censure*, removal or retirement, the report shall be accompanied by an original and four copies of a transcript of the proceedings before the masters. [*Renumbered and amended effective Nov. 11, 1966.*]

(b) Upon receiving the report of the masters, the Commission shall promptly mail a copy to the judge. [*Renumbered effective Nov. 11, 1966.*]

Rule 913. Objections to report of masters

Within 15 days after mailing of the copy of the masters' report to the judge, the examiner or the judge may file with the Commission an original and 11 legible copies of a statement of objections to the report of the masters, setting forth all objections to the report and all reasons in opposition to the findings as sufficient grounds for *censure*,

removal or retirement. Such statement shall conform in style to subdivision (c) of rule 15 of the Rules on Appeal, and when filed by the examiner, a copy thereof shall be sent by mail to the judge. [*Renumbered and amended effective Nov. 11, 1966.*]

Rule 914. Appearance before Commission

If no statement of objections to the report of the masters is filed within the time provided, the Commission may adopt the findings of the masters without a hearing. If such statement is filed, or if the Commission in the absence of such statement proposes to modify or reject the findings of the masters, the Commission shall give the judge and the examiner an opportunity to be heard orally before the Commission, and written notice of the time and place of such hearing shall be mailed to the judge at least 10 days prior thereto. [*Renumbered effective Nov. 11, 1966.*]

Rule 915. Extension of time

The chairman of the Commission may extend for periods not to exceed 30 days in the aggregate the time for filing an answer, for the commencement of a hearing before the Commission, and for filing a statement of objections to the report of the masters, and the presiding master may similarly extend the time for the commencement of a hearing before masters. [*Renumbered effective Nov. 11, 1966.*]

Rule 916. Hearing additional evidence

(a) The Commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent by mail to the judge at least 10 days prior to the date of hearing. [*Renumbered effective Nov. 11, 1966.*]

(b) In any case in which masters have been appointed, the hearing of additional evidence shall be before such masters, and the proceedings therein shall be in conformance with the provisions of rules 908 to 914, inclusive. [*Renumbered and amended effective Nov. 11, 1966.*]

Rule 917. Commission vote

If the Commission finds good cause, it shall recommend to the Supreme Court the censure, removal or retirement of the judge. The affirmative vote of five members of the Commission who have considered the record and report of the masters and who were present at any oral hearing as provided in rule 914, or, when the hearing was before the Commission without masters, of five members of the Commission who have considered the record, and at least three of whom were present when the evidence was produced, is required for a recommendation of censure, removal or retirement of a judge or for dismissal of the proceedings. [*Renumbered and amended effective Nov. 11, 1966.*]

Rule 918. Record of Commission proceedings

The Commission shall keep a record of all proceedings concerning a judge. The Commission's determination shall be entered in the record and notice thereof shall be mailed to the judge. In all proceedings resulting in a recommendation to the Supreme Court for *censure*, removal or retirement, the Commission shall prepare a transcript of the evidence and of all proceedings therein and shall make written findings of fact and conclusions of law with respect to the issues of fact and law in the proceedings. [*Renumbered and amended effective Nov. 11, 1966.*]

Rule 919. Certification of Commission recommendation to Supreme Court

Upon making a determination recommending the *censure*, removal or retirement of a judge, the Commission shall promptly file a copy of the recommendation certified by the chairman or secretary of the Commission, together with the transcript and the findings and conclusions, with the clerk of the Supreme Court and shall immediately mail the judge notice of such filing, together with a copy of such recommendation, findings, and conclusions. [*Renumbered and amended effective Nov. 11, 1966.*]

Rule 920. Review of Commission proceedings

(a) A petition to the Supreme Court to modify or reject the recommendation of the Commission for *censure*, removal or retirement of a judge may be filed within 30 days after the filing with the clerk of the Supreme Court of a certified copy of the recommendation complained of. The petition shall be verified, shall be based on the record, shall specify the grounds relied on and shall be accompanied by petitioner's brief and proof of service of three copies of the petition and of the brief on the Commission. At least 20 days before the return day the Commission shall serve and file a respondent's brief. Within 15 days after service of such brief the petitioner may file a reply brief, of which three copies shall be served on the Commission. [*Renumbered and amended effective Nov. 11, 1966.*]

(b) Failure to file a petition within the time provided may be deemed a consent to a determination on the merits based upon the record filed by the Commission. [*Renumbered effective Nov. 11, 1966.*]

(c) The rules adopted by the Judicial Council governing appeals from the superior court in civil cases, other than rule 26 thereof relating to costs, shall apply to proceedings in the Supreme Court for review of a recommendation of the Commission except where express provision is made to the contrary or where the application of a particular rule would be clearly impracticable, inappropriate, or inconsistent. [*Renumbered effective Nov. 11, 1966.*]

Rule 921. Definitions

In these rules, unless the context or subject matter otherwise requires:

- (a) "Commission" means the Commission on Judicial Qualifications.
- (b) "Judge" means a judge of any court of this State.
- (c) "Chairman" includes the acting chairman.
- (d) "Masters" means special masters appointed by the Supreme Court upon request of the Commission.
- (e) "Presiding master" means the master so designated by the Supreme Court or, in the absence of such designation, the judge first named in the order appointing masters.
- (f) "Examiner" means the counsel designated by the Commission to gather and present evidence before the masters or Commission with respect to the charges against a judge.
- (g) "Shall" is mandatory and "may" is permissive.
- (h) "Mail" and "mailed" include ordinary mail and personal delivery.
- (i) The masculine gender includes the feminine gender. [*Renumbered and amended effective Nov. 11, 1966.*]

file a declaration of candidacy to succeed himself. If he does not, the Governor before September 16 shall nominate a candidate. At the next general election, only the candidate so declared or nominated may appear on the ballot, which shall present the question whether he shall be elected. If he receives a majority of the votes on the question he is elected. A candidate not elected may not be appointed to that court but later may be nominated and elected.

The Governor shall fill vacancies in those courts by appointment. An appointee holds office until the Monday after January 1 following the first general election at which he had the right to become a candidate or until an elected judge qualifies. A nomination or appointment by the Governor is effective when confirmed by the Commission on Judicial Appointments.

Electors of a county, by majority of those voting and in a manner the Legislature shall provide, may make this system of selection applicable to judges of superior courts. [*New section adopted November 8, 1966, previous Section 16, as amended November 8, 1904, repealed November 8, 1966.*]

Judges May Not Practice Law—Ineligible for Public Employment or Office

SEC. 17. A judge of a court of record may not practice law and during the term for which he was selected is ineligible for public employment or public office other than judicial employment or judicial office. A judge of the superior or municipal court may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. Acceptance of the public office is a resignation from the office of judge.

A judicial officer may not receive fines or fees for his own use. [*New section adopted November 8, 1966.*]

Judges—Disqualification, Suspension, Retirement

SEC. 18. (a) A judge is disqualified from acting as a judge, without loss of salary, while there is pending (1) an indictment or an information charging him in the United States with a crime punishable as a felony under California or federal law, or (2) a recommendation to the Supreme Court by the Commission on Judicial Qualifications for his removal or retirement.

(b) On recommendation of the Commission on Judicial Qualifications or on its own motion, the Supreme Court may suspend a judge from office without salary when in the United States he pleads guilty or no contest or is found guilty of a crime punishable as a felony under California or federal law or of any other crime that involves moral turpitude under that law. If his conviction is reversed suspension terminates, and he shall be paid his salary for the period of suspension. If he is suspended and his conviction becomes final the Supreme Court shall remove him from office.

(c) On recommendation of the Commission on Judicial Qualifications the Supreme Court may (1) retire a judge for disability that seriously interferes with the performance of his duties and is or is likely to become permanent, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of

his current term that constitutes wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(d) A judge retired by the Supreme Court shall be considered to have retired voluntarily. A judge removed by the Supreme Court is ineligible for judicial office and pending further order of the court he is suspended from practicing law in this State.

(e) The Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings. [*New section adopted November 8, 1966, previous Section 18, as amended November 4, 1930, repealed November 8, 1966.*]

Judges—Compensation

SEC. 19. The Legislature shall prescribe compensation for judges of courts of record.

A judge of a court of record may not receive his salary while any cause before him remains pending and undetermined for 90 days after it has been submitted for decision. [*New section adopted November 8, 1966, previous Section 19, as amended November 6, 1934 (Initiative Measure), repealed November 8, 1966.*]

Judges—Retirement—Disability

SEC. 20. The Legislature shall provide for retirement, with reasonable allowance, of judges of courts of record for age or disability. [*New section adopted November 8, 1966, previous Section 20 repealed November 8, 1966.*]

Temporary Judges

SEC. 21. On stipulation of the parties litigant the court may order a cause to be tried by a temporary judge who is a member of the State Bar, sworn and empowered to act until final determination of the cause. [*New section adopted November 8, 1966, previous Section 21, as amended November 6, 1962, repealed November 8, 1966.*]

Appointment of Officers to Perform Subordinate Judicial Duties

SEC. 22. The Legislature may provide for the appointment by trial courts of record of officers such as commissioners to perform subordinate judicial duties. [*New section adopted November 8, 1966.*]

SEC. 23. [*As amended November 7, 1950, repealed November 8, 1966.*]

SEC. 24. [*As amended November 4, 1924, repealed November 8, 1966.*]

SEC. 25. [*Repealed November 6, 1956.*]

SEC. 26. [*As amended November 6, 1962, repealed November 8, 1966.*]

SEC. 26a. [*Repealed November 6, 1962.*]

ARTICLE VII

PARDONING POWER

[*Repealed November 8, 1966.*]

ARTICLE VIII

MILITIA

[*Repealed November 8, 1966.*]