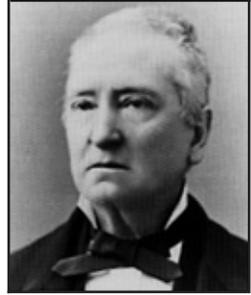


HENRY A. LYONS,
Associate Justice,
Dec. 26, 1849 to Jan. 1, 1852.



S. C. HASTINGS,
Chief Justice,
Dec. 22, 1849 to Dec. 31, 1851.



NATHANIEL BENNETT,
Associate Justice,
Dec. 26, 1849 to Oct. 3, 1851.

The first Supreme Court of California, 1849



The California Supreme Court
Seated, from left to right: Associate Justice Joyce L. Kennard,
Chief Justice Ronald M. George, Associate Justice Marvin R. Baxter.
Standing, from left to right: Associate Justice Kathryn M. Werdegar,
Associate Justice Ming W. Chin, Associate Justice Carlos R. Moreno.
Not shown: Associate Justice Carol Corrigan.

Chapter V

The Judicial Branch

The Courts

The Constitution provides that the judicial power of the State of California is vested in its Supreme, appellate, and superior courts, and that all these courts are courts of record. A court of record is one that maintains a permanent, official record of court proceedings.¹

The functions of the courts of the State of California are to predominantly provide for the orderly settlement of disputes between parties in controversy, whether they are individuals or private or governmental entities; to oversee the determination of the guilt or innocence of those who are accused of violating the laws; to oversee the settlement of the estates of deceased persons; to preserve the distinction between the branches of government, as provided by the Constitution; and to protect the rights of individuals from encroachment by state or local government. California courts are not, however, limited to these specific topics, and may be called upon to render determinations affecting any area of society to which government and law extend.

With 461 court locations, 1,630 authorized judgeships (7 on the Supreme Court; 125 on the courts of appeal; and 1,498 trial court judges), 431 commissioners and referees, and over 8.5 million annual filings, the California judicial system is one of the largest in the world.²

The Supreme Court

The highest court in the state is the Supreme Court. The Supreme Court is the final interpreter of the laws of the State of California (both statutory and common law) and its decisions may only be reversed by the U.S. Supreme Court in instances where it is determined that California law conflicts with the U.S. Constitution. When a majority of the court (or four of the seven justices) agrees on an issue, the resulting decision is binding on all the other courts of California.

The Supreme Court is composed of a Chief Justice and six Associate Justices.³ When a vacancy arises on the court, justices are initially appointed by the Governor. The justices of the Supreme Court thereafter appear on the ballot at statewide elections, and are elected for terms of 12 years.⁴ No person is eligible for appointment or election as a Justice of the Supreme Court unless he or she shall have been a member of the California State Bar or has served as a judge of a court of record of the State of California for 10 years immediately preceding his or her appointment or election.⁵

¹ Constitution, Article VI, Section 1.

² Figures supplied by the Administrative Office of the Courts.

³ Constitution, Article VI, Section 2.

⁴ Constitution, Article VI, Section 16(a).

⁵ Constitution, Article VI, Section 15.

The work of the Supreme Court is primarily confined to hearing and deciding appeals brought from the lower courts. In some special instances, such as habeas corpus petitions, proceedings may be initiated in the Supreme Court. In these instances, the court is said to be exercising original jurisdiction. In all cases where a judgment of death has been pronounced, an appeal is automatically taken directly to the Supreme Court.⁶ Overall, nearly 9,000 matters of all types (including attorney discipline proceedings) were filed in the Supreme Court during the most recent fiscal year.

In addition to court cases, the Supreme Court is charged with reviewing reports of the Commission on Judicial Performance and the State Bar of California regarding investigations of misconduct and recommendations for discipline of judges and attorneys, respectively. The Supreme Court also hears appeals from decisions of the Public Utilities Commission.

Regular sessions of the court are held in San Francisco, Los Angeles and Sacramento, but the court may hold special sessions elsewhere in the state. All the decisions of the court are published in the official case reporting volumes, California Official Reports,⁷ as well as in a privately published series, West's California Reporter.

Courts of Appeal

The justices of the courts of appeal are elected by the voters within their respective districts for terms of 12 years.⁸ The qualifications for appellate court justices are the same as those for Justices of the Supreme Court.⁹

It is interesting to note that neither the Constitution of 1849 nor the Constitution of 1879 made provisions for courts of appeal. At that time, appeals from trial courts were made directly to the Supreme Court. By 1904, however, the volume of appellate litigation had increased to such an extent that a constitutional amendment was adopted authorizing the creation of three district courts of appeal to relieve the workload of the Supreme Court.

The 1904 constitutional amendments gave the legislature the power to divide the state into more than the three original appellate districts, each district containing a court of appeal with one or more divisions.¹⁰ Since 1904, the legislature has exercised this power three times: in 1929 to create the Fourth District Court of Appeal;¹¹ in 1961 to create the Fifth District Court of Appeal;¹² and in 1981 to create the Sixth District Court of Appeal.¹³ In the event any new district or division is created, the Governor must appoint not less than three judges to service that district or division.¹⁴

At the present time, the Court of Appeal for the First District consists of five divisions of four judges each and one division of three judges, all in San Francisco. The Second District is comprised of eight divisions of four judges each—one division is permitted to hold regular sessions in Ventura, Santa

⁶ Constitution, Article VI, Section 11.

⁷ Constitution, Article VI, Section 14; Government Code, Section 68902; California Rules of Court, Rule 976.

⁸ Constitution, Article VI, Section 16(a).

⁹ Constitution, Article VI, Section 15.

¹⁰ Constitution, Article VI, Section 3.

¹¹ Statutes of 1929, Chapter 691; Government Code, Section 69104.

¹² Statutes of 1961, Chapter 845; Government Code, Section 69105.

¹³ Statutes of 1981, Chapter 959; Government Code, Section 69106.

¹⁴ Constitution, Article VI, Section 3; Government Code, Section 69107.

Barbara, or San Luis Obispo County, and the remaining divisions meet in Los Angeles. The Third District has one division of eleven judges, all in Sacramento. The Fourth District consists of consists of one division of ten judges in San Diego, one division of seven judges in the San Bernardino/Riverside area, and one division of eight judges in Orange County. The Fifth District has one division of ten judges, and meets in Fresno. And the Sixth District consists of one division with seven judges in San Jose.¹⁵

Counties embraced in the various district courts of appeal are as follows:

First Appellate District: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo, Solano, and Sonoma.

Second Appellate District: Los Angeles, San Luis Obispo, Santa Barbara, and Ventura.

Third Appellate District: Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo, and Yuba.

Fourth Appellate District: Imperial, Inyo, Orange, Riverside, San Bernardino, and San Diego.

Fifth Appellate District: Fresno, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, Tulare, and Tuolumne.

Sixth Appellate District: Monterey, San Benito, Santa Clara, and Santa Cruz.¹⁶

The courts of appeal exercise appellate jurisdiction over the cases in which a superior court exercises original jurisdiction, except when the judgment of death has been pronounced and in types of appeals from the Workers' Compensation Appeals Board, the Agricultural Labor Relations Board, and the Public Employment Relations Board.¹⁷ Additionally, the courts of appeal, like the Supreme Court, exercise original jurisdiction in certain types of proceedings.¹⁸ In the 2002–03 fiscal year, nearly 22,000 appeals and original proceedings were filed in the Courts of Appeal.

Trial Courts (Superior and Municipal Court Unification)

Prior to June 1998, the Constitution provided that each county would have one superior court and at least one municipal court.¹⁹ Municipal courts were provided with jurisdiction on most civil cases in which the amount in controversy was \$25,000 or less and in criminal misdemeanor and infraction cases (such as typical traffic violations).²⁰ Small claims courts were also a part of municipal courts.²¹

¹⁵ *Government Code*, Sections 69101–69106.

¹⁶ *Government Code*, Section 69100.

¹⁷ *Constitution*, Article VI, Section 11.

¹⁸ *Constitution*, Article VI, Section 10.

¹⁹ *Constitution*, Article VI, Section 4; *Government Code*, Sections 69580–69615 (superior courts); *Constitution*, Article VI, Section 5 (municipal courts) (this provision directed the Board of Supervisors of each county to divide the county into municipal court districts of not less than 40,000 in population).

²⁰ *Code of Civil Procedure*, Sections 85.1 and 86; *Penal Code*, Section 1462.

²¹ *Code of Civil Procedure*, Section 116.220.

On June 2, 1998, the voters of California approved Proposition 220, a constitutional amendment that permitted judges in each county to vote to unify their superior and municipal courts into a single superior court with jurisdiction over all types of cases.²² The purpose of this measure was to attempt to improve judicial services by consolidating court resources, saving tax dollars, and permitting greater flexibility in case assignments to judges. As a result of the passage of this measure, as of February 2001, the judges in all 58 of California's counties had voted for unification. Municipal courts have now been abolished and superior courts have jurisdiction over all types of cases except those specifically granted by statute to some other court. The prior amount-in-controversy difference between superior courts and municipal courts is now reflected in the jurisdictional distinction between "limited civil cases" (those in which the amount in controversy does not exceed \$25,000), and "unlimited civil cases" (all actions other than limited civil matters).²³ There is now also an appellate division within each unified superior court with original jurisdiction over applications for extraordinary writs,²⁴ and small claims courts are a division of the superior court in each county.²⁵

While unification of the superior court system provided flexibility, it did not decrease the demands upon the busy California court system. To ensure that judgeships exist in those areas with the heaviest demand for judicial resources, the number of superior court judges in a county is usually dependent upon its population. For example, Los Angeles County is entitled to over 400 judges of the superior court, while Lassen County has only two.²⁶

Superior court judges are elected to terms of six years, although the Governor may appoint a judge to fill a vacant but unexpired judicial term. Judges are elected in a countywide vote.²⁷ The qualifications for the office of superior court judge are the same as those for Justices of the Supreme Court (admission to practice in California for 10 years immediately preceding appointment or election to the bench).²⁸

Terms of Office and Salaries of Judges

The following table shows the order in which different courts of this state are set up, and the terms of office and salaries of the judges:²⁹

<i>Court</i>	<i>Term (years)</i>	<i>Annual salary</i>
Supreme Court.....	12	Chief Justice—\$198,568 Associate Justices—\$182,071
Courts of appeal	12	Appellate Ct. Justices—\$170,694
Superior court	6	Superior Ct. Judges—\$149,160

²² Proposition 220 was placed on the ballot by Resolution Chapter 36, Statutes of 1996 (SCA 4). It passed by a 64.5% to 35.5% margin. *Statement of Vote for June 1998 Primary Election, Secretary of State's Office.*

²³ *Code of Civil Procedure*, Sections 85 and 88.

²⁴ *Constitution*, Article VI, Sections 4 and 10. These writs are typically in the nature of requesting the appellate division to direct another superior court to act or not act in a certain manner.

²⁵ *Code of Civil Procedure*, Sections 116.210–116.270.

²⁶ *Government Code*, Sections 69586 and 69585.9.

²⁷ *Constitution*, Article VI, Section 16(b)(1).

²⁸ *Constitution*, Article VI, Section 15.

²⁹ *Constitution*, Article VI, Section 16(a), (c); *Government Code*, Sections 68200–68203 and 71145. Salaries listed are in effect as of January 1, 2005.

Judges—Disqualification and Suspension

The Constitution provides several methods for the removal of justices and judges in California. Procedures for their removal by impeachment and recall election have been discussed previously.

A judge is automatically disqualified from acting as a judge, without loss of salary, if there is pending: (1) an indictment or information charging him or her in the United States with a crime punishable as a felony under either California or federal law; or (2) a petition to the Supreme Court to review a determination by the Commission on Judicial Performance to remove or retire a judge.³⁰ A judge may be disqualified from acting as a judge by the Commission on Judicial Performance if the commission gives notice of formal proceedings charging the judge with judicial misconduct or disability.³¹

A suspension of a judge, without salary, is mandatory when in the United States he or she 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.³² If the conviction is reversed, suspension terminates and the judge is paid the salary for the period of suspension. If, however, the conviction becomes final, the judge is removed from office by the Commission on Judicial Performance. Any judge so removed is thereafter ineligible for judicial office and, unless otherwise ordered by the Supreme Court, is suspended from the practice of law in the state.

Judicial Administration

To assist the courts in their task, the Constitution and statutes provide for certain agencies to deal with judicial administration: the Judicial Council, whose principal function is to improve and expedite the administration of justice; the Commission on Judicial Appointments, which reviews all gubernatorial appointees to the Supreme Court and the courts of appeal; the Commission on Judicial Performance, which handles the censure, removal or retirement of judges for misconduct or disability; the Commission on Judicial Nominees Evaluation, which assists the Governor in judicial selections; and the State Bar, which oversees attorney conduct and licensing.

The Judicial Council

The Constitution provides for a Judicial Council, consisting of 21 voting members: the Chief Justice (Chairperson), one additional Justice of the Supreme Court, three justices of the courts of appeal, 10 superior court judges (each judge member is appointed by the chairperson for a three-year term), four members of the State Bar (appointed by the State Bar Board of Governors), and a Member of each house of the Legislature (the Assembly Member appointed by the Speaker, the Senate member appointed by the Rules Committee of the Senate).³³ In addition to the voting members, the

³⁰ Constitution, Article VI, Section 18(a).

³¹ Constitution, Article VI, Section 18(b).

³² Constitution, Article VI, Section 18(c).

³³ Constitution, Article VI, Section 6; Assembly Rule 26(b)(10); Senate Rule 13.

Constitution authorizes two nonvoting members who are court administrators, and such additional nonvoting members as determined by the voting members of the Council. There are currently six such advisory members.

An executive officer, the Administrative Director of Courts, is appointed by the council and serves at its pleasure. He or she performs such functions as delegated by the council or by its chairperson.³⁴ The salary and qualifications of the director are identical to those of a judge of a court of appeal.³⁵

Members of the Judicial Council receive no compensation for their services, but are allowed their necessary expenses for travel, board and lodging incurred in the performance of their duties as members.³⁶

The primary duty of the council is to improve the administration of justice. It is required to make a survey of judicial business and make recommendations to the courts and report annually to the Governor and the Legislature.

The council also adopts court rules of administration, practice, and procedure, which are not inconsistent with statutes, in the interests of uniformity and for expediting the business of the courts.

The Constitution requires the Chief Justice of the California Supreme Court to expedite the judicial business of the state, and to equalize the work of the various judges. To do this, it is necessary to bring the judges where the work is; that is, to assign judges from an area with a light caseload to those areas that have heavy calendars. To accommodate the Chief Justice in this task, the Constitution authorizes him or her to assign a judge from one court to another. Such assignment by the Chief Justice is mandatory, and the assigned judge may not refuse to accept, except that a judge of a higher court may only be assigned to a lower court with his or her consent. To assist the Chief Justice in making these assignments, judges are required to report to him or her concerning the condition of the business in their courts.³⁷

In addition, the council has performed such other duties as requested by the Legislature. For example, a study of the procedure of administrative agencies and the judicial review of their decisions was provided to the Legislature, and as a result the Administrative Procedure Act, requiring uniform rules in issuing, suspending and revoking professional and business licenses was passed in 1945.³⁸ In response to another legislative request, the council recommended a plan for reorganization of the lower court system in California, which culminated in the reduction in the number and kinds of lower courts. Pursuant to statutory authority, the council also conducts orientation seminars for judges, the primary purpose being to keep them informed of new developments in the law and to promote uniformity in judicial procedure.³⁹

³⁴ *Constitution*, Article VI, Section 6.

³⁵ *Government Code*, Section 68500.5.

³⁶ *Government Code*, Section 68510.

³⁷ *Constitution*, Article VI, Section 6; *Government Code*, Section 68548.

³⁸ *Statutes of 1945*, Chapter 111; see *Government Code*, Section 11370 *et seq.*

³⁹ *Government Code*, Section 68551. For the statutory duties and provisions governing the Judicial Council, see *Government Code*, Sections 68500–68554.

Commission on Judicial Performance

In November 1960, the people approved a constitutional amendment authorizing the establishment of a Commission on Judicial Performance with power to recommend to the Supreme Court the removal, censure, or retirement of any judge. In 1994, Proposition 190 was adopted by the voters. The law expanded the powers of the Commission and made a variety of procedural changes with regard to investigations into conduct of judges.⁴⁰

In its current configuration, the Commission is authorized to conduct proceedings against any state judge if its investigation reveals willful misconduct in office, persistent failure or inability to perform the duties of the office, habitual intemperance, conduct prejudicial to the administration of justice, or a disability of a permanent character that seriously interferes with the performance of the judge's duties.⁴¹ Based on these findings the Commission is then authorized to remove, retire or censure a judge (unlike the Commission prior to Proposition 190, which could only recommend such action to the California Supreme Court).

A further constitutional amendment in 1998 (Proposition 221) expanded the Commission's oversight authority to include all "subordinate judicial officers," such as commissioners and referees.⁴² Disciplinary proceedings against such subordinate judicial officers must follow the same procedures as those applicable to state court judges.

In order to conduct any investigation into the fitness of state court judges or subordinate judicial officers, the Commission may hire such employees as it deems necessary and is authorized to require state and local agencies to cooperate and provide information in connection with its investigation. It may administer oaths and issue subpoenas requiring the attendance of witnesses or the production of records relevant to its proceedings.⁴³

All proceedings of the Commission are required to be public after formal charges are filed and the Commission is empowered to write its own rules.⁴⁴ Any judge removed, retired, or censured by the Commission may appeal that decision to the Supreme Court, which has the discretion to review the case, provided it does so within 120 days.

The Commission on Judicial Performance consists of eleven members: three judges appointed by the Supreme Court; four members appointed by the Governor (two attorneys and two non-attorney public members); and two public members each appointed by the Speaker of the Assembly and the Senate Rules Committee.⁴⁵ All appointees serve for a term of four years.

Commission on Judicial Nominees Evaluation

State law provides that in the event of a vacancy in a judicial office, or in the event that there is no candidate for a judicial position, the Governor shall

⁴⁰ *Constitution*, Article VI, Sections 8 and 18. The original name of the commission was the Commission on Judicial Qualifications. The name was changed to its current designation by constitutional amendment in 1976. Although the legislature still retains authority to impeach judges, it has not done so since 1929.

⁴¹ *Constitution*, Article VI, Section 18.

⁴² *Constitution*, Article VI, Section 18.1.

⁴³ *Government Code*, Sections 68702, 68725 and 68750.

⁴⁴ *Constitution*, Article VI, Section 18(j).

⁴⁵ *Constitution*, Article VI, Section 8.

first submit to a designated agency of the State Bar of California the names of all potential appointees or nominees for such judicial office for evaluation of their judicial qualifications.⁴⁶ Pursuant to this provision, in 1979 the State Bar created the Commission on Judicial Nominees Evaluation, its mission being “to assist the Governor in the judicial selection process and thereby to promote a California judiciary of quality and integrity by providing independent, comprehensive, accurate, and fair evaluations of candidates for judicial appointment and nomination.”⁴⁷

The JNE Commission, as it is often referred to, is comprised of volunteer attorneys and public members, appointed by the State Bar’s Board of Governors. After the Governor refers the name of a potential judicial appointment to the JNE Commission, it has 90 days to complete its evaluation.⁴⁸ The process begins with the submission by the candidate of a detailed background questionnaire, and during the evaluation comment forms are sent out to hundreds of lawyers and judges to solicit comments as to the candidate’s background and reputation.

After the background information is compiled, and a candidate interview is conducted, the Commission assesses the candidate’s judicial qualifications—taking into consideration a variety of factors such as professional ability, experience, health, and integrity. At the end of the process, the JNE Commission rates the candidate as either “exceptionally well qualified,” “well qualified,” “qualified,” or “not qualified.”⁴⁹ Upon receipt of the rating by the JNE Commission, the Governor may proceed with a formal appointment or nomination of the individual to the particular judicial vacancy or position.

Commission on Judicial Appointments

The Commission on Judicial Appointments has the obligation of confirming or rejecting nominees of the Governor to vacancies on the courts of appeal or the Supreme Court of the State of California. The commission holds a veto power over the prospective nominees and appointees to these courts since no appointment is effective until the commission confirms the appointment.⁵⁰

The commission consists of the Chief Justice of the Supreme Court, the Attorney General, and the presiding justice of the district court affected (or if there be more than one presiding justice in the district, the one who has presided the longest). In the event the vacancy occurs on the Supreme Court, the senior presiding justice of the courts of appeal shall serve in addition to the Chief Justice and the Attorney General.⁵¹

⁴⁶ *Government Code*, Section 12011.5.

⁴⁷ *State Bar Board of Governors Resolution of July 26, 1997* (Mission Statement of Commission on Judicial Nominees Evaluation).

⁴⁸ *Id.*

⁴⁹ The rating (as well as all information gathered during the investigation) is not public, but if a candidate is found not qualified by the commission, and the Governor then appoints that candidate to a trial court, the State Bar may publicly disclose that fact.

⁵⁰ *Constitution*, Article VI, Section 16(d).

⁵¹ *Constitution*, Article VI, Section 7.

The State Bar of California

All attorneys licensed to practice law in the state are required to be members of the State Bar of California, which is a public corporation.⁵² The process for admission to the practice of law in California is administered by the State Bar, which examines and tests each candidate, and thereafter certifies to the Supreme Court those who meet admission requirements. As of May 2005, there were over 200,000 members of the State Bar, 148,000 of those in active practice.⁵³

Before being admitted to practice law in California, State Bar applicants must complete the requisite undergraduate and law school education, pass a background evaluation regarding moral character, and pass examinations regarding the applicant's knowledge of substantive law and the rules of professional conduct.⁵⁴ The bar exam in California is considered one of the most difficult in the nation.

In addition to overseeing admission to practice law in California, the State Bar also formulates and enforces the rules of professional conduct for attorneys and administers continuing legal education compliance, under which members of the State Bar are required to regularly attend legal education programs. Part of the State Bar's responsibility includes investigation of allegations of attorney misconduct. It may impose private or public reprovls and recommend to the Supreme Court that an attorney be disciplined by either suspension or disbarment.⁵⁵

⁵² *Constitution*, Article VI, Section 9. Judges holding office as a judge of a court of record are not considered members of the bar during the time they hold that position.

⁵³ Source: State Bar of California.

⁵⁴ *Business and Professions Code*, Section 6060.

⁵⁵ *Business and Professions Code*, Sections 6100–6117.