

STATE OF CALIFORNIA
 Budget Change Proposal - Cover Sheet
 DF-46 (REV 08/15)

Fiscal Year 2016-17	Business Unit 0280	Department Commission on Judicial Performance	Priority No. 1
Budget Request Name 0280-001-BCP-BR-2016-GB		Program 0180	Subprogram

Budget Request Description
 Commission Staffing

Budget Request Summary

The Commission on Judicial Performance (Commission) is requesting \$257,000 General Fund for one Investigating Attorney position and a Secretary to provide administrative support and to address the Commission's increasing caseload.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed	
Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	Department CIO	Date

For IT requests, specify the date a Special Project Report (SPR) or Feasibility Study Report (FSR) was approved by the Department of Technology, or previously by the Department of Finance.

FSR SPR Project No. Date:

If proposal affects another department, does other department concur with proposal? Yes No
Attach comments of affected department, signed and dated by the department director or designee.

Prepared By Victoria B. Henley	Date 1.4.16	Reviewed By	Date
Department Director <i>Victoria B. Henley</i>	Date 1.4.16	Agency Secretary	Date

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS Dept. of Technology

BCP Type: Policy Workload Budget per Government Code 13308.05

PPBA <i>[Signature]</i>	Date submitted to the Legislature 1/21/16
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A. Budget Request Summary

The Commission on Judicial Performance (Commission) requests one Investigating Attorney position (Senior Attorney III) and associated funding as well as funding for a Secretary to the Staff Counsel II. The Commission's increasing caseload necessitates the Investigating Attorney position, as well as one additional support staff position. The Secretary to Staff Counsel position is authorized; however, it has been kept vacant to compensate for reductions to the Commission's budget and the resultant shortfall in funds for operating costs.

B. Background/History (Provide relevant background/history and provide program resource history. Provide workload metrics, if applicable.)

Over the past 10 years, the Commission's workload has increased steadily. In 2014, the Commission received 1,302 complaints against judges and subordinate judicial officers (SJO's), a 16 percent increase over the 1,120 complaints received in 2005. The Commission conducted 139 investigations of judges and SJO's in 2014, an increase of 78 percent over the 78 investigations conducted in 2005. The number of informal appearances by judges before the Commission to contest discipline more than doubled from four in 2005 to nine in 2014. The number of cases in which discipline was imposed or in which judicial officers retired or resigned during investigation increased by more than 50 percent, from 29 in 2005 to 45 in 2014.

The Commission has not received authorization and funding for an additional staff position since 1999-2000. To stay within budget, the Commission reduced its staff and kept positions vacant. In 2012-13, the Commission's vacant positions were eliminated, reducing the commission's total authorized positions from 27 to 21 (plus a temporary position). In 2015-16 one Trial Counsel position was reestablished, without additional funding. Notwithstanding the rehiring of one Trial Counsel, the Commission has 20 percent fewer staff than it had 15 years ago, while the caseload has grown. The Commission presently has six Investigating Attorneys, down from eight in 1999-2000.

Without an additional position and funding, the increase in the Commission's caseload will result in deleterious consequences. Over the past decade, investigations have taken significantly longer, the average length of a Commission investigation has increased by six months, from 10.41 months to 16.03 months. As investigations have become protracted, spanning multiple calendar years, fewer formal proceedings have been brought each year, resulting in a number of serious cases being backed up for hearings.

Workload History
 (Statistics Range from 1/1 to 12/31, except CY is 1/1 to 12/15)

Workload Measure	PY - 4	PY - 3	PY - 2	PY - 1	PY	CY
New Complaints w/in Purview	1,327	1,321	1,303	1,335	1,302	1,336
Non-jurisdictional	500+	500+	469	427	484	332
Complaint Dispositions	1,131	1,138	1,152	1,181	1,174	828
Preliminary Checking	309	241	442	476	545	371
Investigations	149	148	161	126	139	130
Average Length From Initial Meeting to Disposition	9.22 months	9.29 months	11.60 months	12.31 months	16.03 months	10.78 months
Discipline & Resignation/Retirement	48	43	49	30	43	41

The Commission's budget was separated from the Judicial Branch in 1995-1996, and has been prudent in managing resources. The Commission has also prioritized expenditures to ensure fiscal responsibility. The Commission has also consolidated various staff positions in order to operate with fewer staff and has sublet office space to reduce overhead. Nevertheless, operating funds have been consumed by increasing costs and caseload. While the Commission was able to shift funds used for outside counsel to pay for in-house Trial Counsel, the Commission does not have sufficient funds to pay for either a Secretary or an Investigating Attorney, both of which are needed to address the Commission's increased caseload.

Resource History
(Dollars in thousands)

Program Budget	PY - 4	PY - 3	PY - 2	PY - 1	PY
Authorized Expenditures	\$4,106	\$4,134	\$4,198	\$4,252	\$4,334
Actual Expenditures	\$3,717	\$3,890	\$4,014	\$4,085	\$4,303
Revenues	N/A	N/A	N/A	N/A	N/A
Authorized Positions	27	27	22	22	22
Filled Positions	19.3	19.6	19.2	20.1	18.4
Vacancies	7.7	7.4	2.8	1.9	3.6

C. State Level Considerations

The Commission is the independent state agency responsible for investigating complaints of judicial misconduct and judicial incapacity, and for disciplining judges pursuant to Article VI, Section 18 of the California Constitution. It is the only body with such authority in the state. Its jurisdiction includes all active judges and justices of California's superior courts, Courts of Appeal and Supreme Court, and former judges for conduct prior to retirement or resignation. The Commission also shares authority with the local courts for the oversight of court commissioners and referees. In addition to its disciplinary functions, the Commission is responsible for handling judges' applications for disability retirement.

The Commission's authority is limited to investigating alleged judicial misconduct and, if warranted, imposing discipline. Judicial misconduct usually involves conduct in conflict with the standards set forth in the Code of Judicial Ethics. After investigation and, in some cases a public hearing, the Commission may impose sanctions ranging from confidential discipline to removal from office.

D. Justification

The Commission is requesting funding for one Secretary to support the work of the Commission's attorneys. This support staff position is needed to absorb the increased workload for the Commission's support staff. Presently, two of the commission's secretaries are each assigned to the work of four attorneys, and the Administrative Assistant is assigned to the assistant Trial Counsel and Trial Counsel, as well as the most senior investigating attorney. The additional secretary would allow one secretary to assist three attorneys. The need for additional support staff is heightened by two new responsibilities to be undertaken by the Commission. AB 1028 amended the process by which the Commission certifies a former judge or justice to administer oaths and affirmations. Rather than issuing lifetime certification, all former judges and justices are required to submit a medical certification in conjunction with their application for certification to administer oaths and affirmations. The Commission is required to issue certifications for either two or five years, depending upon the former judge or justice's medical condition. With the passage of AB 1028, the Commission must recertify all former judges and justices previously certified, approximately 700, before January 1, 2017, in order for judges and justices to continue administering oaths and affirmations. The Commission Secretary will need to review all the paperwork that is submitted pursuant to AB 1028 and prepare all the necessary documents for the Director-Chief Counsel's review and approval. Given the requirement of

recertification of all previously certified judges and justices and the need for renewals every three to five years, this enhanced process will consume additional support staff time.

Additionally, the Commission is working toward permitting online submission of complaints, consistent with California's goal of reducing paper consumption. The Commission receives approximately 100 complaints per month, not including further correspondence received after an initial complaint is filed. Currently, the Commission accepts complaints by mail or by fax. The Commission is working with the Office of Technology to develop the capacity to receive complaints online. After implementation, the Commission will be scanning all complaints and entering them into the case record, which will require additional staff time. The Secretary will also provide varied, complex and confidential legal secretarial assistance to staff counsel and the Commission office. The Secretary is needed to: type, edit and proofread a variety of business and legal documents, establish and maintain legal files and records, draft and prepare correspondence and enter data into the Commission's case tracking database.

The Commission is requesting one Investigating Attorney position to address the Commission's increasing workload and to reduce delay in investigations and the start of formal proceedings. The increase in investigations and limited staffing resources have resulted in delays in formal proceedings, which involve the most serious cases of judicial misconduct. Delays in investigations and formal charges in serious cases is inconsistent with the Commission's mandate to protect the public and can undermine the public's confidence in the judicial system as a whole. Delay can also be prejudicial to Commission proceedings as witnesses' memories may fade and evidence can become stale or unavailable. Delay in proceedings can create a hardship for judges who are the subject of the proceedings and can adversely affect their courts. It can also impair judges' ability to marshal evidence to defend themselves and may be raised as a defense to the proceedings.

The Investigating Attorney is responsible for investigating allegations of judicial misconduct and prepares substantive reports to the Commission. The Investigating Attorney must identify and obtain all pertinent evidence, conduct careful and complete interviews of potential witnesses, review court files and documents, thoroughly research existing law and analyze the evidence, and draft correspondence, stipulations, and documents for use in investigations and formal proceedings.

The contrast between the funding for California's commission and the New York Commission on Judicial Conduct – two states with comparable workloads – is telling. The New York commission's budget is \$1.3 million greater than the California commission's. It employs a staff of 46, more than twice that of California's commission. In addition to a staff of attorneys more than twice the size of California's, the New York commission also has seven non-attorney investigators on staff and at least eight secretaries/administrative assistants to support that commission's legal staff. (NY – California Workload, Staffing Funding Comparison attached.)

E. Outcomes and Accountability

Providing funding for one Investigating Attorney position and a Secretary will provide needed administrative support and reduce delay in the completion of investigations and speed up the institution of formal proceedings in the Commission's most serious cases.

F. Analysis of All Feasible Alternatives

The Commission is the only body with the authority to investigate allegations of judicial misconduct involving California's 2,157 judicial officers and to impose discipline when appropriate. There is no other agency or department to handle this work. The Commission is experienced in triaging and prioritizing cases and may, in the appropriate circumstances, dismiss cases where misconduct is de minimis. The Commission's mandate to protect the public, however, precludes it from dismissing or unduly delaying meritorious cases because of its burgeoning caseload.

The salary range for an Investigating Attorney is \$97,476 to \$130,068. If the Commission were to hire outside counsel on a full-time basis using the Investigating Attorney's compensation, it would have to

secure counsel at less than \$47 to \$63 per hour to obtain a more advantageous arrangement than hiring an Investigating Attorney on staff. It is highly unlikely that the Commission could obtain experienced outside counsel at anywhere near a competitive rate.

G. Implementation Plan

Since the request involves only hiring an additional Investigating Attorney, recruitment could begin immediately after budget enactment and the position would be filled as soon as a suitable candidate is identified, ideally within two months.

H. Supplemental Information

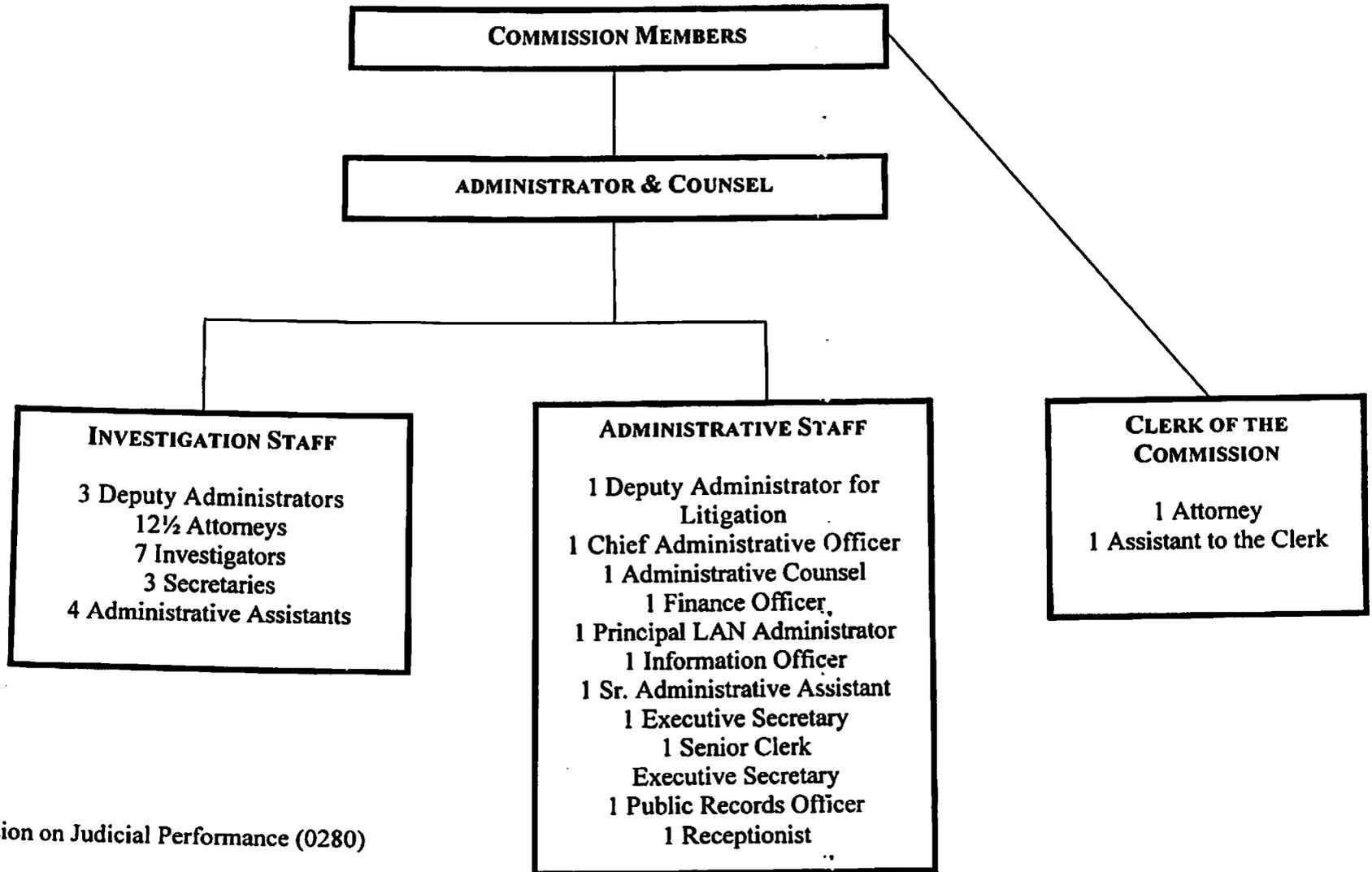
No special resources are needed to support the proposal. The Commission has space and equipment to support the position if established.

I. Recommendation

Approve one Investigating Attorney position and funding for a Secretary to provide administrative support and reduce delays in the completion of investigations and in the institution of formal proceedings.

ORGANIZATIONAL CHART

(New York Commission on Judicial Conduct)



Commission on Judicial Performance (0280)

COMPARISON: NEW YORK COMMISSION ON JUDICIAL CONDUCT AND CALIFORNIA COMMISSION ON JUDICIAL PERFORMANCE

Prior to 2007, the budget of the CJP exceeded the New York CJC's budget for many years. In 2007, New York's budget increased from \$2.8 million to \$4.8 million and it has continued to steadily increase, with a proposed budget of \$5.7 million for 2015. The staff has increased from 28.5 in 2006 to 46 today.

The following compares New York and California's workload, staffing and budget for 2014.

	<u>NEW YORK</u>	<u>CALIFORNIA</u>
New complaints w/in purview	1,467	1,302*
Non-jurisdictional	300	484
Preliminary checking	409	514
Investigations	145	135
Total staff	46 ¹	22
Annual budget	\$5.5m	\$4.2m

*Includes Subordinate Judicial Officers

¹ See attached New York's Organizational Chart