California Gets an "F" Grade in Judicial Accountability, and We Have Questions

The Center for Public Integrity ("CPI") conducts periodic evaluations of all three branches of government in each state.[1] In the CPI's just-published report on California, the state judiciary received an F grade. This is a significant drop from the C-minus California received in 2012, the last time the CPI evaluated the state. But the last three years have seen significant advancements in judicial transparency, as the state judiciary has broadened public access to the branch's records and the state's counties have continued to expand online access to court records.[2]

So how have things gone from "not great" to "failing" in just a few years?

We think something doesn't add up. For now, we take issue with several questionable scoring calls in the CPI's evaluation process. The CPI describes its scoring process as:

For "in law" indicators, scoring criteria are provided for "Yes (100)," "Moderate (50)," and "No (0)" responses. For "in practice" indicators, scoring criteria are provided for 100, 50 and 0—but researchers also have the option to score 75 or 25, whenever the higher or lower defined criteria do not accurately represent the researcher's findings.[3]

Thus, the CPI methodology permits partial credit scores, and indeed some do appear; for example, California gets a score of 50 for its efforts to make court decisions accessible to the public. But California gets a "NO" (that is, zero credit) on "judges are required to give reasons for their decisions." This despite the fact that the CPI acknowledges that the California constitution requires all appellate courts to decide cases "in writing with the reasons stated,"[4] and that judges are required to give reasons for their decisions in certain civil and criminal matters. It seems arbitrary to create a binary scoring rubric for this category, particularly where it

results in the CPI ignoring the fact that, in many instances, California law satisfies the criteria. (To its credit, the CPI gives California a score of 75 for "[i]n practice, state-level judges give reasons for their decisions.")

There are other questionable scoring calls.

"NO" Score on Process to Evaluate the Performance of Judges.

The ultimate expression of public opinion on the performance of a California judge is the opportunity to vote her out of office. Every California judge or justice is answerable to the voters in periodic retention elections, and the electorate has a history of using its power to remove judges. If anything, the electorate's power to remove judges is more significant than a process to merely evaluate their performance. Would it make more sense to give California a higher score for the reverse situation, where judges were evaluated but could not be removed? Hardly.

"NO" Score on Citizen Access to Judicial Performance Evaluations.

Including this criterion effectively doubles the impact of the zero value score for process to evaluate the performance of judges.

"25" Score on Judges' Performance Evaluations Are Complete and Detailed.

Again, an arbitrary call, this one with a score outside the stated criteria. Here again the distinction in California between the trial and appellate courts creates tension in the CPI's analysis. The methodology permits scores of 100, 50, and 0. But California is awarded 25 points, without explanation for the deviation. There are several possible ways to divide the pie here, such as by how many judges out of the total number receive evaluations, or by weighting the relative significance of the trial and appellate courts. The score makes no mention of what criteria were applied, leaving the impression that California was given partial credit without an explanation for how the discount was calculated. Further complicating things, the actual evaluations (by the Commission on Judicial Nominees Evaluation and the Commission on Judicial Appointments) do not truly qualify as "performance" evaluations because those reports are used in the *appointments* process, rather than for evaluating a judge's ongoing on-the-job performance.

"NO" Score on Nepotism.

The general category here is "Are there regulations governing conflicts of interest for the state-level judiciary?" The specific category says: "In law, nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are prohibited when hiring judicial staff."

Zero credit is particularly difficult to justify here. Nepotism is expressly prohibited by California canons of judicial ethics, which are enforced by the Commission on Judicial Performance. Specifically, Canon 3C(4) states: "A judge shall not make unnecessary court appointments. A judge shall exercise the power of appointment impartially, on the basis of merit, without bias or prejudice, free of conflict of interest, and in a manner that promotes public confidence in the integrity of the judiciary. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees above the reasonable value of services rendered." A California judge is unlikely to read that and think, "Yeah, I'll be OK hiring my daughter."

A "50" Score on "In practice, state-level judges recuse themselves from cases in which they may have a conflict of interest."

This is in the general category of "Are the regulations governing conflicts of interest for the state-level judiciary effective?" A partial credit score in this category seems excessively harsh. True, there are occasions when California judges fail to disqualify themselves. But it is quite rare, and when it happens they are subject to discipline by the Commission on Judicial Performance. The CPI's methodology assigns a score of "50" if judges "occasionally" do not recuse themselves. Yet according to the CPI there were only "six such cases in 2013"—six out of the approximately 7.7 *million* new trial court filings in fiscal year 2012–13.[5] Apparently, according to the CPI, 0.00007% of all new cases qualifies as "occasionally." Indeed.

A "0" on "In practice, asset disclosure records of state-level judges are accessible to the public in open data format."

The CPI initially acknowledges that such records (known as a Form 700) are readily

available for free download on the Fair Political Practices Commission's website. But because the FPPC had not yet posted the forms for the two most recent years (2013 and 2014) at the time the report was prepared, California received no credit for all the *other* years that the forms were available. And the missing years have since been posted to the FPPC site.[6]

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What to make of this failing grade for California's judiciary? No one would dispute that every branch of the state government has its problems and could benefit from positive change. And maintaining public confidence is essential to a well-functioning judicial system. But given the problems described above with the CPI's scores and methodology, the failing grade itself has a low confidence rating.

In any event, California's seemingly-dismal scores should be viewed in context. Even with the California judiciary drawing an F, it still ranks 20th among the states. And with the state overall earning only a C-minus, the CPI ranked California second overall in the nation (behind only Alaska), and just one of three states with a score higher than a D-plus.

Go Bears.

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[1] The full California report is available at https://www.publicintegrity.org/2015/11/09/18342/california-gets-c-grade-2015-state-integrity-investigation.

[2] In 2009, the state legislature enacted Government Code section 68106.2(g), which provides: "The Judicial Council shall, on or before January 1, 2010, adopt rules of court that provide public access to nondeliberative or nonadjudicative court records, budget and management information." In response, in 2010 the California

Judicial Council approved Rule 10.500 of the California Rules of Court, which contains comprehensive public access provisions for administrative records created by the Judicial Council and the state trial and appellate courts.

[3] The CPI's methodology is available online at https://www.publicintegrity.org/2015/11/09/18316/how-we-investigated-state-integrity.

[4] Cal. Const., art. 6, § 14.

[5] Preface, 2014 Court Statistics Report.

[6] The Form 700s are available online https://www.fppc.ca.gov/index.php?id=592.