

SUBCOMMITTEE ON SEXUAL HARASSMENT PREVENTION & RESPONSE

Remarks Outline – Justice Carlos R. Moreno (Ret.) – March 6, 2018

- A. Severity of the Conduct on a spectrum – words, gestures, inappropriate conduct, actions; touching over clothes, under clothes; age difference; violation of trust, superior/subordinate relationship; quid pro quo; retaliation. Factors in mitigation or aggravation.
- B. Sanctions – judicial and State Bar schemes; confidential or public censures; stayed suspensions with probation conditions; actual suspensions; disbarment, removal from bench; conditions: ethics, anger management, sexual harassment training, sensitivity training. Prevention: federal and state courts training for staff and judges, ombudsman; reporting protocols. Input from probation office, prior violations, performance on probation.
- C. Due Process – notice and opportunity to be heard; notice means specifics of the allegations; access to witness statements and documents; opportunity to be heard includes making statements to independent fact-finding investigators and adjudicative body (separate from fact-finder); some form of cross examination or submission of questions to complainant; open or closed hearing before committee making recommendation to ultimate adjudicator, California Supreme Court for attorneys and judges. Findings should be detailed and supported by the evidence; Burden of Proof generally preponderance of the evidence; consider higher burdens of clear and convincing proof and proof beyond a reasonable doubt (criminal cases) for removal or disbarment. Consider unanimity or super majority of panel or sub-committee recommendation for disbarment or removal from office. Comparative analysis of sanctions imposed in similar cases
- D. Elected Officials – consider rights of constituency to be represented; balanced with prerogative of legislative body to establish rules for conduct of members and committee assignments. Courts likely to defer to separate branch absent constitutional impairment; political question abstention.