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No Coverage for Affirmative Claims Made by Insured
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In a recent unpublished opinion, the California Court of Appeal found that a judge charged with misconduct by the California Commission on Judicial Performance (CJP) was not entitled to insurance coverage under a Judges' Professional Liability Insurance Policy for the legal expenses incurred in a suit she initiated against the CJP. Patricia Gray v. Underwriters at Lloyd's, London, 2002 Cal. App. LEXIS 6621 (Cal. App. Ct., 1st Dist. July 19, 2002).

During a March 2000 judicial election, the policyholder judge distributed campaign literature that was critical of her opponent. After her opponent filed a complaint with the CJP, the CJP commenced an investigation against her. The CJP gave notice to the policyholder of formal CJP proceedings for "willful misconduct in the office, conduct prejudicial to the administration of justice, improper action and dereliction of duty...[under] the California Constitution, providing for removal, censure or admonishment." The policyholder filed suit in federal court to enjoin the CJP proceedings. She tendered a claim for coverage for the fees incurred in the federal action under the Judges' Professional Liability Insurance Policy.

The insurer contended that the policy covered only claims and expenses incurred in defending proceedings brought by or before the CJP. The court agreed with the insurer and found that the insurance policy provided coverage for a defense to an action brought by or before the CJP, but did not obligate the insurer to prosecute a separate federal court action on behalf of the insured to halt CJP proceedings commenced against the insured. The court agreed, noting that "[w]hatever the meaning of 'defend' is consulted, we find no definition that includes 'prosecute.'... One word connotes reaction, while the other connotes initiation." Thus, the fees for the prosecution of an independent action brought against the CJP by the policyholder were not covered under the policy.