

STATE COMMISSION ON JUDICIAL CONDUCT



2004 Annual Report

ON THE COVER: CORYELL COUNTY COURTHOUSE, **A CENTRAL TEXAS TREASURE***

The Coryell County courthouse in Gatesville, Texas, was built in 1898, and is still operating more than 100 years later. In 1849, the U.S. Infantry established Fort Gates on the Leon River in central Texas, at the site of an old buffalo grazing and Indian trail. As the frontier expanded west, Fort Gates was abandoned but nearby Gatesville grew. Coryell County was established in 1854, and Gatesville was named the county seat. The county was named for James Coryell, a frontiersman and member of the James and Rezin Bowie expedition in 1831 to the old San Saba Silver Mines.

The first courthouse was built in 1865, just before millions of cattle began passing through Gatesville on the Chisholm Trail; parts of the Trail are still visible to this day. A new courthouse was built in 1872, and the county continued to flourish. In 1897, county officials instructed an architect and builder to erect an oval-shaped building for \$75,000. On the roof was to be placed a Seth Thomas clock, an 800-pound bell, an eagle and statues symbolizing Liberty and Justice.

The result is one of the most interesting and charming nineteenth-century courthouses in the Southwest, and it is listed in the U.S. Park Service's National Register of Historic Places. The courthouse exterior is made of native white limestone and red sandstone from a nearby quarry. Its architectural details reflect Romanesque and Classical influences. A time capsule is buried in a cornerstone; its contents include a bottle of whiskey, a list of the Women's Christian Temperance Union officers, a Bible, two boxes of medicine, an issue of the *Dallas Morning News*, a Columbian half-dollar and an 1897 five-cent piece.

Courthouse historians recount tales of rowdy cowboys, thrown out of saloons on the courthouse square, shooting holes through the eagle, Liberty and Justice on the roof of the new courthouse. In 1988, the courthouse's centennial renovation project included replacing these rooftop symbols. Also restored was the third story balcony over the courtroom; although no longer open to the public, the balcony had been a popular vantage point for courtroom observers.

(Continued on back cover.)

* The Commission extends its appreciation to Judge Phillip Zeigler, 52nd District Court, Coryell County, Ms. Bobbie Ross, Coryell County Coordinator of the Texas Biographies Project, and photographer Brett Cameron, for the historical perspectives and cover photo of the Coryell County Courthouse.

STATE COMMISSION ON JUDICIAL CONDUCT

2004 ANNUAL REPORT

COMMISSION MEMBERS

Joseph B. Morris, Chair

James A. Hall, Vice-Chair

Monica A. Gonzalez, Secretary

Elizabeth G. (Dee) Coats

Kathleen H. Olivares

Ronald D. Krist

R. C. Allen, III

Faye Barksdale

Rex G. Baker, III

Michael R. Fields

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COMMISSIONER INFORMATION

OFFICERS

CHAIR

Hon. Joseph B. Morris

Justice, 5th Court of Appeals
Dallas

Appointed by Texas Supreme Court

Term Expires: 11/19/2007

VICE-CHAIR

Mr. James A. Hall

Attorney
San Antonio

Appointed by State Bar of Texas

Term Expires: 11/19/2005

SECRETARY

Hon. Monica A. Gonzalez

Municipal Court Judge
San Antonio

Appointed by Texas Supreme Court

Term Expires: 11/19/2009

MEMBERS*

Hon. Kathleen H. Olivares

Judge, 205th District Court
El Paso

Appointed by Texas Supreme Court

Term Expires: 11/19/2005

Faye Barksdale

Arlington

Appointed by Governor

Term Expires: 11/19/2007

Ms. Elizabeth (Dee) Coats

Houston

Appointed by Governor

Term Expires: 11/19/2003

Hon. Rex G. Baker, III

Justice of the Peace, Precinct 4
Dripping Springs

Appointed by Texas Supreme Court

Term Expires: 11/19/2009

Mr. Ronald D. Krist

Attorney
Houston

Appointed by State Bar of Texas

Term Expires: 11/19/2007

Hon. Michael R. Fields

Judge, County Criminal Court-at-Law No. 14
Houston

Appointed by Texas Supreme Court

Term Expires: 11/19/2009

Mr. R. C. Allen, III

Corpus Christi

Appointed by Governor

Term Expires: 11/19/2005

Note: 1 Public Member position remained vacant at press time.

LETTER FROM THE EXECUTIVE DIRECTOR

November 29, 2004

The Honorable Rick Perry, Governor
The Honorable David Dewhurst, Lieutenant Governor
The Honorable Tom Craddick, Speaker of the House

Gentlemen:

It is with great pleasure that I submit the State Commission on Judicial Conduct's 2004 Annual Report, which outlines the agency's work during the past fiscal year. Although the agency saw an unprecedented number of cases filed in Fiscal Year 2004, receiving 1,227 new cases, I am proud to report that the agency once again exceeded its performance goal for the fiscal year with a 108% overall disposition rate. Of particular significance is the fact that the agency's backlog of cases was reduced from an all time high of 840 as of June 2003 to just over 380 cases at the end of Fiscal Year 2004. The average age of disposed cases also dropped to just over 4 months.

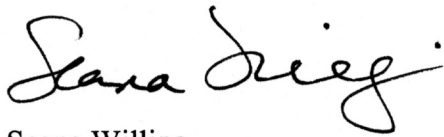
The Commission met 6 times in Fiscal Year 2004, considered 62 cases at informal hearings, and issued 60 disciplinary actions, ranging from 7 public sanctions, 21 private sanctions, and 7 orders of additional education. Additionally, 19 cases were resolved with the removal or resignation of 6 judges involved in formal proceedings and another 15 cases were resolved when judges under investigation signed Voluntary Agreements to Resign in Lieu of Disciplinary Action. The Commission made 1 suspension recommendation to the Texas Supreme Court, and voted 1 case into formal proceedings during the fiscal year. Finally, 5 judges were suspended from office by the Commission after being indicted for felony offenses or charged with misdemeanor offenses involving official misconduct.

Even with the increased number of filings, Commission staff was able to participate in approximately 40 judicial ethics presentations at the request of such entities as the Texas Center for the Judiciary, the Texas Association of Counties, the Texas Justice Court Training Center, the Texas Municipal Courts Education Center, the State Bar of Texas, and other local bar associations, legal groups, and law school programs. In addition, Commission staff handled more than 1,200 ethics calls from judges, judicial candidates, court staff, attorneys, legislators, government officials, law enforcement groups, the media, and others regarding issues relating to the application and enforcement of the Code of Judicial Conduct.

It is worth noting that in Fiscal Year 2004, staff turnover at the Commission reached an all time low, with the loss of only one employee. This consistency in the workforce, particularly in terms of the agency's investigative and legal staff, greatly contributed to the agency's ability to reduce its backlog by more than 50% and exceed its performance measure two years in a row.

On a final note, the Commission welcomed 3 new members in Fiscal Year 2004, with the appointment of the Honorable Michael Fields (Criminal County Court at Law Judge from Houston), the Honorable Rex Baker (Justice of the Peace from Dripping Springs), and the Honorable Monica Gonzalez (Municipal Court Judge from San Antonio) by the Texas Supreme Court. Although subject to Senate confirmation in 2005, the new members' terms will expire on November 19, 2009.

Sincerely,

A handwritten signature in cursive script that reads "Seana Willing". The signature is written in black ink and is positioned above the typed name and title.

Seana Willing
Executive Director
State Commission on Judicial Conduct

CHAIRMAN'S STATEMENT

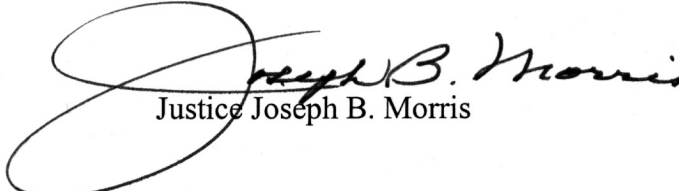
The State Commission on Judicial Conduct has continued its efforts for the last year to help Texas judges insure and preserve the integrity and independence of the judiciary. The Commission pursued its mission by offering guidance and education to Texas judges; by counseling judges who voluntarily participated in the Amicus Curiae Program; by reviewing and evaluating over 1200 allegations of improper judicial conduct; and by disciplining judges who the Commission found violated the Code of Judicial Conduct. During this period of time, it has been my privilege to participate in the Commission's work as its Chairman.

The Commission is composed of eleven Commissioners selected from the judiciary, the bar, and the public. The Commissioners are volunteers and serve without compensation. They are dedicated, hard working, and deserve everyone's praise. Three Commissioners who recently retired from the Commission warrant special recognition. They are Judge Martin Chiuminatto of Kingsville, Mr. Gilbert M. Martinez of Austin, and Judge Keith Baker of San Antonio. They have been models for those of us who continue to serve and for those who will serve in the future.

During the last year, the Commission engaged a new Executive Director, Ms. Seana Willing. Having previously served the Commission as its General Counsel, Ms. Willing now has responsibility for the day-to-day administration of the Commission's work. We all are well served by her commitment and dedication. She is ably assisted by an experienced legal staff, tireless investigators, and capable administrative personnel – fifteen in all – whose work is critical to the Commission.

The Commission's accompanying annual report reveals much of its work, but not all. What the statistics in the report do not show is the number of Texas judges who, on their own initiative, sought guidance and information about how to comply with the Code of Judicial Conduct in the performance of their judicial roles. Through contact with the Commission's Executive Director and attorneys, Texas judges made hundreds of informal inquiries about the application and interpretation of the Code. They each should be commended for their conscientiousness. And I encourage all Texas judges to use the Commission as a resource when they are presented with questions about the application of the Code of Judicial Conduct.

Next year will commemorate the Commission's fortieth anniversary. It has been an honor to serve as Chairman during one year of the Commission's long history.


Justice Joseph B. Morris

PHILOSOPHY

The members of the State Commission on Judicial Conduct and Commission staff take their duties to the citizens and judges of Texas very seriously. Neither the political affiliation, gender, ethnic or religious background, sexual orientation, socioeconomic status, geographical location, nor the position of a complainant or a judge are considered in the review of cases pending before the Commission. The Commission's ability to fulfill its constitutional mandate requires that each Commissioner and staff member act with honesty, fairness, professionalism and diligence.

The Commission reviews every allegation of misconduct made against a Texas judge. Each complaint alleging misconduct on its face is thoroughly investigated and analyzed by Commission staff before being presented to the Commissioners. This procedure is an essential safeguard to preserve the public's confidence in the integrity of the judicial process. Judges are held to the highest standards of ethical conduct, both on and off the bench, and the Commission and its employees strive to conduct themselves in a similar manner.

OVERVIEW OF THE COMMISSION

Authority of the Commission

The State Commission on Judicial Conduct was created in 1965 by an amendment to the Texas Constitution. The Commission is the independent state agency responsible for investigating allegations of judicial misconduct or permanent disability, and for disciplining judges.

The Commission's jurisdiction includes all sitting Texas judges, including municipal judges, justices of the peace, criminal magistrates, county judges, county courts-at-law judges, statutory probate judges, district judges, appellate judges, masters, associate judges, referees, retired and former judges who consent to sit by assignment, and judges pro tempore. The Commission has no jurisdiction over federal judges and magistrates, administrative hearing officers for state agencies or the State Office of Administrative Hearings, or private mediators or arbitrators. Although judicial candidates are required to comply with the Texas Code of Judicial Conduct, the Commission does not have the authority to sanction anyone who was not a sitting judge at the time an offense occurred. Therefore, violations of the canons by candidates for judicial office who were not judges at the time of the alleged misconduct are subject to review and appropriate action by other authorities such as the State Bar, the Attorney General, the Secretary of State, or the local District Attorney.

Members of the Commission

There are eleven members of the Commission, serving staggered six-year terms, as follows:

- Five judges appointed by the Supreme Court of Texas, one from each of the following court levels: appellate, district, county court-at-law, justice of the peace and municipal;
- Four citizen members who are neither attorneys nor judges, appointed by the Governor, and
- Two attorneys who are not judges, appointed by the State Bar of Texas.

By law, the appellate and district judges appointed to the Commission are from two different appellate districts in Texas; the justice of the peace, municipal court and county court-at-law judge members are selected at-large. The Texas Senate confirms all appointees. Commissioners meet approximately six times each year, and receive no pay for their service.

Laws Governing the Commission

The Commission is governed by Article V, Section 1-a, of the Texas Constitution, Chapter 33 of the Texas Government Code, and the Texas Procedural Rules for the Removal or Retirement of Judges. As part of the judiciary and as an entity having its own constitutional

and statutory provisions regarding confidentiality of papers, records and proceedings, the Commission is not governed by the Texas Public Information Act, the Open Meetings Act or the Texas Administrative Procedures Act.

Defining Judicial Misconduct

Article V, Section 1-a(6)A of the Texas Constitution defines judicial misconduct as the “willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.”

Judicial misconduct could arise from a violation of the Texas Constitution, the Texas Penal Code, the Texas Code of Judicial Conduct, or rules promulgated by the Supreme Court of Texas. It could occur through the judge’s failure to cooperate with the Commission. Other examples of judicial misconduct include inappropriate or demeaning courtroom conduct, such as yelling, profanity, gender bias or racial slurs. It could be improper *ex parte* communications with only one of the parties or attorneys in a case, a public comment regarding a pending case, or a refusal by a judge to recuse or disqualify in a case where the judge has an interest in the outcome. It could involve ruling in a case in which the parties, attorneys or appointees are related within a prohibited degree of kinship to the judge. Judicial misconduct could occur through a judge’s failure to cooperate with respect to his or her obligations arising from a Commission inquiry, or failure to abide by any provision of a voluntary agreement to resign in lieu of disciplinary action.

Judicial misconduct could also arise from out-of-court activities, including theft, driving while intoxicated, improper financial or business dealings, sexual harassment or official oppression, and is subject to the same review by the Commission.

Sources of Complaints and Allegations

The Commission has the duty to consider allegations from any source, including an individual, a news article or information received in the course of an investigation. Complaints may be made anonymously, or the complainant may request confidentiality; however, in those instances, the Commission may be restricted in its ability to fully investigate the allegations.

Commission Limitations

The Commission cannot exercise appellate review of a case or change the decision or ruling of any court, nor can the Commission intervene in a pending case or proceeding. For example, if the Commission finds that a judge has committed misconduct, the Commission can only issue sanctions against the judge or seek the judge’s removal from the bench. However, even removal would not change the judge’s ruling in the underlying case. Only the appellate process is empowered to change the decision of a court.

Likewise, the Commission cannot provide individual legal assistance or advice to a complainant. The Commission cannot remove a judge from a case. The Commission cannot award damages or provide monetary relief to complainants.

Commission Investigations and Actions

Cases are reviewed, analyzed and investigated by the Commission staff. An investigation may include a letter of inquiry to the judge, a review of court records, or interviews with the complainant, attorneys and other witnesses. The Commission then considers the results of the investigation in its decision. The Commission has several options available when deciding whether to take action on a case. The types of actions include dismissal, sanction, suspension, acceptance of a voluntary agreement to resign from judicial office in lieu of disciplinary action, and formal proceedings.

Commission Organization and Staff

The Commission has seventeen authorized staff positions (FTEs). Commission staff currently includes the Executive Director, four attorneys, one legal assistant, three investigators, and five administrative support people. All Commission staff members are full-time State employees.

The Commission's legal staff, which consists of attorneys, a legal assistant and investigators, is responsible for the evaluation and investigation of complaints. The investigators are primarily responsible for reviewing and evaluating new complaints and conducting in-house and on-site investigations. The legal assistant is responsible for making preliminary investigations, performing legal research, and assisting the attorneys in the prosecution of disciplinary proceedings. The attorneys are responsible for responding to ethics calls, speaking on judicial ethics at educational/training seminars, investigating allegations of judicial misconduct or incapacity, and prosecuting disciplinary cases before the Commission, the Texas Supreme Court and its appointees.

The Commission staff attorneys serve as examiners, or trial counsel, during formal proceedings and on appeals from Commission actions. The examiner is responsible for preparing cases for hearing and presenting the evidence that supports the charges before the Commission or a special master. The examiner handles briefing regarding special masters' reports, and presents cases orally and in writing in hearings before the Commission and appointees of the Texas Supreme Court. In certain cases, the Commission may employ special counsel, chosen from distinguished members of the bar, to assist staff in preparing and presenting these cases.

The Executive Director heads the agency and reports directly to the Commission. The Executive Director is also the primary liaison between the Commission and the judiciary, legislators, the public and the media.

Amicus Curiae

Amicus Curiae ("Amicus") is a judicial disciplinary and education program that was initially funded by the Texas Legislature in 2001. Before the Commission started this program, complaints of judicial misconduct relating to impairment, such as drug or alcohol abuse or mental illness, were sanctioned or dismissed if unfounded. The underlying impairment was never addressed. *Amicus* now affords a third option under the Commission's

authority to order additional training and education to a judge found to have violated a canon of judicial conduct. *Amicus* offers assistance to the judge to address the underlying personal impairment causally connected to the misconduct. The one advantage *Amicus* offers over other similar programs such as the Texas Lawyers Assistance Program operated by the State Bar of Texas is its ability to assist all judges, attorney and non-attorney alike.

Although the confidential referral to *Amicus* by the Commission through the disciplinary process does not shield the judge from any sanction that the Commission deems appropriate, the Commission recognizes that not all impairment issues result in misconduct. In order to reach out to those judges who may be suffering in silence and who may not be the subject of a complaint as a result of their impairment, *Amicus* offers a new self-referral component to its program, which affords judges an opportunity to seek assistance, in confidence, outside the disciplinary process.

Outreach and Education

In 2004, the Executive Director and Commission attorneys made close to forty (40) presentations at judicial training courses, bar conferences and court staff workshops, describing the Commission and discussing various forms of judicial misconduct.

Ethics Calls

In 2004, the Executive Director, staff attorneys and investigators answered more than 1,200 telephone calls from judges, judicial candidates, attorneys, Legislators, the media and private citizens regarding judicial ethics inquiries. Callers are cautioned that Commission staff cannot issue an opinion on behalf of the Commission, and that the Commission is not bound by any comments made during the conversation. In many cases, the caller's question is researched before the call is returned so that the specific canon, statute, rule or ethics opinion can be identified. When appropriate, staff will send the caller a Complaint Form (in English or Spanish) and other relevant material. In some instances, staff may refer callers to other resources or agencies to better address their concerns.

Commission Website

The Commission website is located at www.scjc.state.tx.us. The website provides downloadable complaint forms in English and Spanish. The website also offers bilingual answers to frequently-asked questions regarding the Commission, such as its composition, structure and jurisdiction; the judicial complaint process; a description of the range of decisions the Commission can make, from dismissal to sanction; and explanations of the procedures for a judge to appeal the Commission's decision, and for a complainant to seek the Commission's reconsideration. Further, the website provides statistical information about the Commission and updated sanctions, resignations, suspensions, and Review Tribunal Opinions.

Also included are the Commission's governing provisions: Code of Judicial Conduct; Texas Constitution Article V, Section 1-a; Chapter 33, Texas Government Code; and the Texas Procedural Rules for the Removal or Retirement of Judges.

Public Information

The availability of information and records maintained by the Commission is governed by Rule 12 of the Texas Rules of Judicial Administration, the Texas

Constitution and the Texas Government Code. Commission records are not subject to public disclosure pursuant to the Public Information Act (formerly the Open Records Act) or the Freedom of Information Act.

Generally, Commission records are confidential, with the following exceptions:

- Constitution: Article V, Section 1-A(10) of the Texas Constitution provides that “All papers filed with and proceedings before the Commission or a Master shall be confidential, unless otherwise provided by the law...”
- Government Code:
 - In the event the Commission issues a public sanction against a judge, Section 33.032 of the Texas Government Code provides for the release of information previously withheld as confidential.
 - Also under this Section, suspension orders and related proceedings as well as voluntary agreements to resign in lieu of disciplinary proceedings are available to the public.
 - Section 33.032 also authorizes the release to the public of papers filed in a formal proceeding upon the filing of formal charges.
- Judicial Administration: Rule 12 of the Texas Rules of Judicial Administration provides for public access to certain records made or maintained by a judicial agency in its regular course of business *but not pertaining to its adjudicative function*. Commission records relating to complaints, investigations, and its proceedings are not judicial records and are not subject to public disclosure pursuant to Rule 12.

When the Commission takes action on a complaint, whether dismissing it, issuing a private or public sanction, accepting a voluntary agreement to resign in lieu of disciplinary action, or voting formal proceedings, the complainant is notified in writing. However, the Texas Government Code requires that the Commission omit the judge’s name from the notice to the complainant, unless a public sanction has been issued. The complainant has some privacy rights as well: at the complainant’s request, his or her name may be withheld from the judge and kept confidential.

Additionally, the Constitution provides that in instances where issues concerning either a judge or the Commission have been made public by sources other than the Commission, the Commission may make a public statement. In such a situation, the Commission determines whether the best interests of a judge or the public will be served by issuing the statement.

THE COMPLAINT PROCESS

Introduction

Each complaint stating an allegation of judicial misconduct is thoroughly reviewed, investigated and analyzed by the Commission staff. Complaints must be filed with the Commission in writing. Complaints sent by fax or through e-mail are not accepted.

Although it is not mandatory that a complainant submit his or her allegation on the Commission's complaint form, the specific information sought is essential to the efficient handling of a complaint. Complaint forms are available in English and Spanish from the following sources:

- Download from the Commission's website at www.scjc.state.tx.us;
- Telephone requests to the Commission at (512) 463-5533.

The Commission may also initiate the complaint process itself upon a review of information from the media, court documents, the Internet or other sources. The complainant may request that the Commission keep his or her identity confidential, and anonymous complaints are also accepted.

When a complaint is filed, the Commission sends the complainant an acknowledgment letter and staff begins its investigation and analysis of the allegations. The complainant may be asked to provide additional information or documents. Staff then reviews each allegation or complaint thoroughly. In some cases, legal research may be conducted, and witnesses or the judge may be contacted. For complex matters, an attorney or investigator may travel to the judge's county for further investigation and interviews.

When the investigation is completed, the case is presented to the Commission for its consideration. In some cases, the Commission may invite the judge to appear and discuss the complainant's allegations; under certain circumstances, the Commission may invite the complainant to appear. Based on the specific constitutional provisions, statutes and canons under which the Commission operates, it considers and votes on each matter on a case-by-case basis.

If the Commission votes to issue a public sanction, the appropriate order is prepared and distributed to the subject judge and the complainant; the order is then publicly disseminated as required by law to ensure public awareness. If, however, the Commission votes to issue a private sanction, the appropriate order is prepared and tendered to the subject judge, and the complainant is notified by letter of the Commission's action. Because the Commission is controlled by constitutional and statutory provisions that prohibit the release of information regarding investigation and resolution of a case, no other details will be released to the public. However, in cases where a judge has voluntarily agreed to resign in lieu of disciplinary action, that agreement becomes public upon the Commission's acceptance of it, and the complainant is so notified.

Likewise, whenever the Commission suspends a judge after he or she has been indicted for a criminal offense, or charged with a misdemeanor involving official misconduct, the Commission releases to the public the order of suspension and all records related to the proceedings.

Commission Decisions

Commission members review, deliberate and vote on each complaint. This may result in a dismissal, a public or private order of additional education either alone or in combination with a public or private sanction, a public or private admonition, warning or reprimand, the acceptance of a voluntary agreement to resign from judicial office in lieu of disciplinary action, or formal proceedings for removal or retirement of the judge from the bench. If appropriate, the Commission may defer its action and refer the judge to the *Amicus Curiae* Program. If the judge appeals a decision of the Commission, the Texas Supreme Court appoints three appellate judges to serve as a Special Court of Review. That Court's final decision-making authority includes dismissal, affirmation of the Commission decision, imposition of a greater or lesser sanction, or the initiation of formal proceedings. The decision of the Special Court of Review is final and may not be appealed.

The Commission's decisions and actions in responding to allegations or complaints of judicial misconduct fall into one of the following categories:

1. Administrative Dismissal Report

A case is dismissed administratively when a complainant's writing or claim fails to state an allegation of judicial misconduct, addresses a dispute over a judge's discretionary rulings that may only be resolved on appeal, or identifies the wrong judge or a person over whom the Commission has no jurisdiction. In addition, gratuitous claims of misconduct that are unsupported by any facts or evidence may be administratively dismissed. In letters of dismissal sent to these complainants, the Commission provides a specific explanation for the administrative dismissal.

2. Dismissal

The Commission may dismiss a case after conducting a review and investigation of the allegations. Reasons for these dismissals include insufficient or no evidence of misconduct, the judge demonstrated that he or she took appropriate actions to correct the conduct at issue, or the conduct, though problematic, did not rise to the level of sanctionable misconduct. In letters of dismissal sent to these complainants, the Commission provides a specific explanation for the dismissal, and describes the steps the complainant can take for the Commission to reconsider its decision.

3. Order of Additional Education

Legal and procedural issues are often complex, so it is not surprising that some judges take judicial action that may exceed their authority or that is contrary to procedural rules. In these situations, the Commission may find that the judge has demonstrated a deficiency in a particular area of the law warranting an order of education. The Commission then contacts the appropriate judicial training center, where the subject judge may attend a particular training program or a mentor judge may be appointed for one-on-one instruction with the subject judge, to be completed within a specified time on particular subjects. The mentor judge then

reports to the Commission on the subject judge's progress. The Commission may also order the judge to obtain education on other issues, such as anger management, gender sensitivity or sexual harassment. The Commission may issue an order of education alone or as part of a private or public sanction.

4. Private or Public Sanction

Sanctions are issued by the Commission when sufficient evidence is provided that supports a finding of judicial misconduct. The most severe disciplinary action available to the Commission is a *public censure*, issued only after a case has been voted into formal proceedings by the Commission. If, after a public fact-finding trial, the Commission determines that the underlying allegations of the complaint are true but do not support a recommendation for removal from office, a *censure* is issued as a public denunciation of the judge's conduct.

The next most severe sanction is a *public reprimand*. A *reprimand* is the most severe sanction available to the Commission (unless formal proceedings are voted as described herein). A less severe sanction is a *public warning*, followed by a *public admonition*. A *warning* puts the judge on notice that the actions identified in the sanction are improper. An *admonition* is the lowest level sanction. As noted above, sanctions may be public or private, and may be combined with orders of education.

A judge may appeal any sanction other than a *public censure* to a Special Court of Review.

If a *public sanction* or *censure* is issued, all information considered by the Commission, including the judge's name, is made public. Public sanctions are issued not only to identify the specific conduct, but to educate judges that such conduct is inappropriate. This also insures that the public is made aware of actions that violate the Code of Judicial Conduct. When a *private sanction* is voted, the judge's name and all information considered by the Commission are kept confidential.

5. Suspension

The Commission has the power to suspend a judge from sitting on the bench, with or without pay, after the judge has been either indicted by a grand jury for a felony, or charged with a misdemeanor involving official misconduct. The suspended judge has the right to a post-suspension hearing before one or more of the Commission members or the Executive Director, as designated by the Commission Chair.

In cases other than for alleged criminal behavior, the Commission, upon the filing of a sworn complaint and after giving the judge notice and an opportunity to appear before the Commission, may recommend to the Supreme Court of Texas that the judge be suspended from office, for persistent violation of rules promulgated by the Supreme Court, incompetence in performing the duties of office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that is clearly inconsistent with the proper performance of his or her duties, or that casts public discredit on the judiciary or the administration of justice.

6. Voluntary Agreement to Resign

In some cases, a judge against whom a complaint has been made may decide to resign in lieu of disciplinary action. In that event, the judge may tender to the Commission a voluntary agreement to resign from judicial office. Upon the Commission's acceptance, the agreement is made public and the judge vacates the bench. The agreement and any agreed statement of facts relating to it are admissible in subsequent proceedings before the Commission. While the agreement is public, any records relating to the underlying case remain confidential and may only be released to the public if a judge violates a term of the agreement.

7. Formal Proceedings

In certain circumstances, the Commission may decide that a complaint against a judge is so severe that it should be handled as a formal proceeding. The Commission itself may conduct such a fact-finding hearing or it may ask the Supreme Court of Texas to appoint a Special Master (who must be a sitting or retired district or appellate judge) to hear the matter. Such proceedings are governed by the Texas Rules of Civil Procedure and the Texas Rules of Evidence to the extent practicable.

Although there is no right to a trial by jury in a formal proceeding, the judge is afforded certain other rights under the Texas Procedural Rules for the Removal or Retirement of Judges, including the following:

- To be confronted by the judge's accusers;
- To introduce evidence;
- To be represented by counsel;
- To examine and cross-examine witnesses;
- To subpoena witnesses; and
- To obtain a copy of the reporter's record of testimony.

If the formal proceeding has been conducted before a Special Master, he or she reports the findings of fact to the Commission. If either party files objections to the Master's Report, the Commission will hold a public hearing to consider the report of the Special Master and any objections. The Commission may adopt the Special Master's findings in whole or in part, modify the findings, totally reject them and enter its own findings, or order a hearing for the taking of additional evidence.

After adopting findings of fact, the Commission issues its conclusions of law. The Commission may dismiss the case, issue a public censure, or recommend removal or involuntary retirement to a seven-member Review Tribunal appointed by the Supreme Court of Texas. The Commission itself cannot remove a judge; only the Review Tribunal can order a judge removed from the bench. The Review Tribunal may also enter an order prohibiting the judge from ever holding a judicial office again.

The judge may appeal the decision of the Review Tribunal to the Texas Supreme Court.

Appellate Review of Commission Action

Although a public censure cannot be appealed, a judge may appeal the Commission's issuance of any other public or private sanction or order of additional education within thirty (30) days of the date the Commission issues the sanction by filing a written notice with the Chief Justice of the Supreme Court of Texas and requesting the appointment of three appellate justices to act as a Special Court of Review.

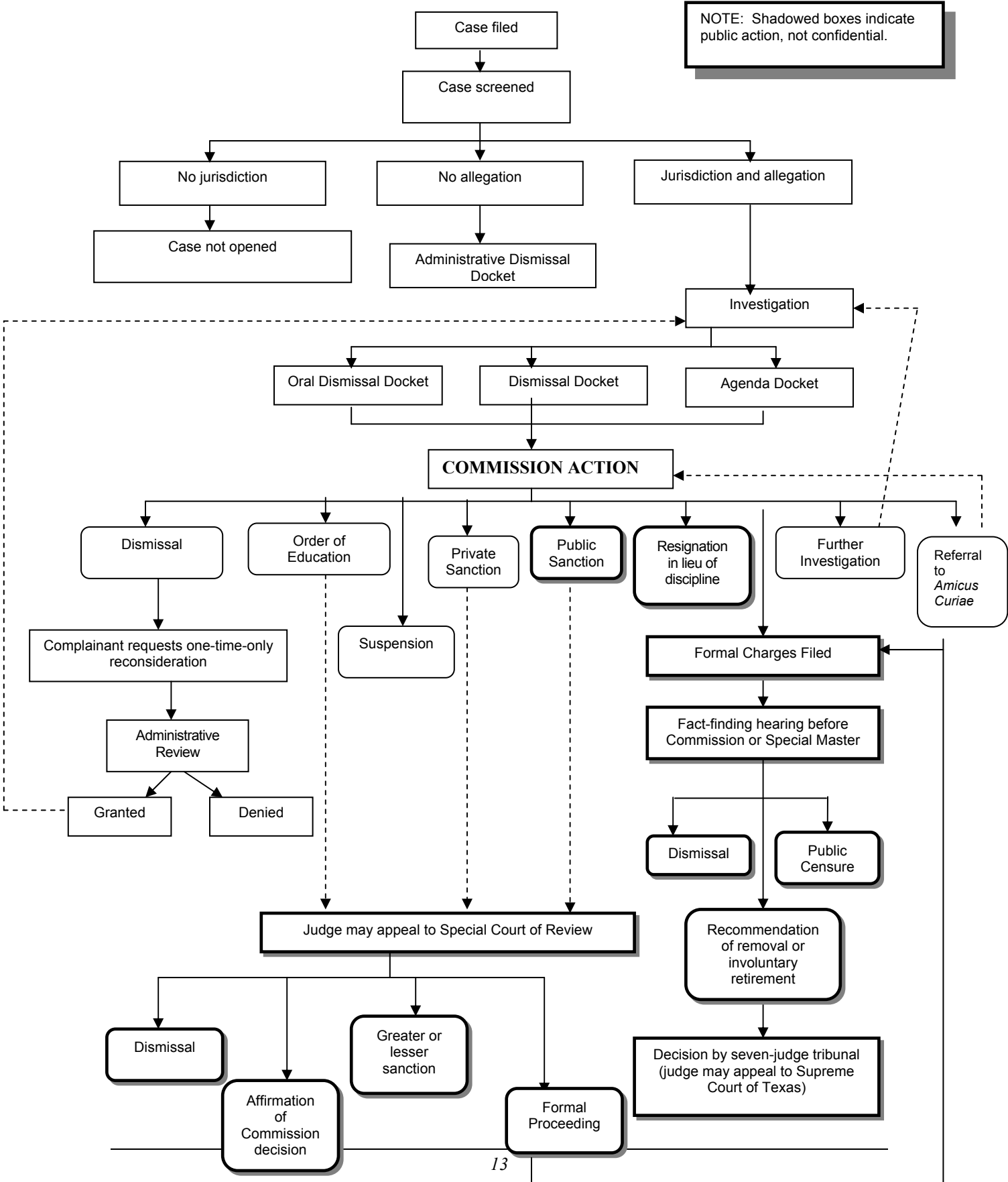
Within fifteen (15) days after the Special Court of Review is appointed, the Commission must furnish the subject judge and each justice on the Special Court of Review with a "charging document," which includes a copy of the sanction issued, as well as any additional charges to be considered in the *de novo* proceeding. All other papers, documents and evidence that were considered by the Commission are included. Once the judge has filed his or her appeal, these materials become public.

A trial *de novo* is held within thirty (30) days after the charging document is filed. The Special Court of Review considers the case from the beginning, as if the Commission had taken no previous action. The Texas Rules of Civil Procedure apply, except that the judge is not entitled to a jury trial. All documents filed and evidence received in the appeals process are public.

The Special Court of Review may dismiss or affirm the Commission's decision, impose a greater or lesser sanction, or order the Commission to file formal proceedings against the subject judge for removal or involuntary retirement. The decision of the Special Court of Review is final.

COMPLAINT PROCESS

NOTE: Shadowed boxes indicate public action, not confidential.



AMICUS CURIAE

PROGRAM

The *Amicus Curiae* program (“*Amicus*” herein), developed in 2001, continues to identify and assist members of the judiciary who have impairments and to provide a confidential resource for those judges to obtain help.

Amicus Curiae, which translates as “friend of the court,” is the first program of its kind in the United States. The program grew out of the Commission’s awareness and concerns that certain issues of misconduct resulted from underlying problems related to alcohol or drug abuse, addiction, or mental or emotional disorders. Unlike most employee assistance programs, *Amicus* is unique in that it is not designed to provide direct services. Instead, *Amicus* helps locate resources to identify and treat impairments that may be affecting those judges’ personal lives and their performance on the bench.

Three distinguished professionals serve as members of the *Amicus* Board of Directors, overseeing the development and operation of the program:

- Justice Robert Seerden, Corpus Christi, is the retired Chief Justice of the 13th Court of Appeals; he is of counsel at Hermansen, McKibben, Woolsey & Villarreal, L.L.P. in Corpus Christi;
- Dr. Lawrence Schoenfeld, Ph.D, San Antonio, is Director of both the Clinical Psychology Residency and Fellow Programs at the University of Texas at San Antonio Health Sciences Center, and
- Judge Bonnie Crane Hellums, Houston, is Judge of the 247th District Court in Houston. Judge Hellums hears family law cases and has initiated one of Houston’s first Drug Courts to deal with some of the impairment issues she routinely sees in her court.

Funding for *Amicus* was initially provided through a grant from the Texas Center for the Judiciary, through the Texas Court of Criminal Appeals. The Texas Legislature initially appropriated funds to *Amicus* on September 1, 2001. Those funds enabled the Commission to hire a program manager to operate the program with the Board’s oversight. Developing program guidelines, acquiring educational reference materials, instituting a network of mentor judges, and reviewing similar programs for other professions are the continuing goals of the board. The funding for the program currently comes from an interagency contract with the Court of Criminal Appeals and expires on August 31, 2005.

A judge whose conduct has been brought to the attention of the Commission through the filing of a complaint may be offered the opportunity to participate in *Amicus* once the Commission makes a determination that the judge might benefit from such

participation. In the event that the Commission should make such a referral, the judge's participation in *Amicus* remains contingent upon the judge's voluntary submission to the program and the judge's acceptance into the program by the *Amicus* Board following an appropriate evaluation. At the discretion of the Commission, discipline of the judge may be temporarily diverted while the judge is an *Amicus* participant. A judge's progress while in the program is regularly reported to the Commission. However, any judge may independently contact the *Amicus* Program Manager directly and request confidential assistance outside the Commission's disciplinary process.

The Commission's major consideration in whether a judge should be referred to *Amicus* for evaluation is whether the public can be assured that all judges maintain the high standards of conduct required of them by the Texas Code of Judicial Conduct and Texas Constitution.

STATISTICAL ANALYSIS

An outline of the statistical activity for the Commission through the end of fiscal year 2004 is shown in **Table 1** immediately following this section. Graphic representations of the data are also presented in **Figures 1** through **6** to further illustrate the activities of the Commission.

As of April 2004, according to records made available through the Office of Court Administration, approximately 3,579 judges were under the jurisdiction of the State Commission on Judicial Conduct. **Figure 1** illustrates the Texas judiciary by the total number of judges and by the number of judges in each category. **Figure 2** shows the number and percentage of cases filed with the Commission against each judge type. **Figure 3** shows the number and percentage of disciplinary actions taken by the Commission against each judge type. Although district court judges accounted for close to half of the cases filed in fiscal year 2004, this category of judge received twelve (12%) percent of the discipline issued by the Commission this past year (Note: district court judges accounted for only 3% of disciplinary actions issued in fiscal year 2003). Disciplinary actions against justices of the peace remained high, with this category of judge receiving over sixty (61%) percent of sanctions and other disciplinary actions issued during the year.

Figure 4 illustrates by number and percentage the various sources of cases closed in fiscal year 2004. By the end of the fiscal year approximately 1,328 cases were closed. A majority of these cases were filed by litigants, their family and friends, with those filed by criminal defendants, including traffic defendants and inmates, accounting for thirty-two (32%) percent of closed cases this past fiscal year. **Figure 5** compares the number of cases filed with the Commission to the total number of cases disposed of by the Commission for fiscal years 2001 through 2004. It is worth noting that in fiscal year 2004, the Commission had an overall disposition rate of 108 percent.

In fiscal year 2004, seventy-seven (77) disciplinary actions were taken against Texas judges. The Commission disposed of thirty-five (35) cases through public sanction, private sanction, orders of additional education or a combination of sanction with an order of additional education. In addition, seventeen (17) cases were disposed of through voluntary agreements to resign from office. Interim actions, such as suspensions, *Amicus* referrals, and formal proceedings, accounted for eight (8) of the disciplinary actions taken in fiscal year 2004. A comparison of public discipline, private discipline and interim actions taken by the Commission in fiscal years 2001 through 2004 is shown in **Figure 6**.

Table 1: Commission Activity

	FISCAL YEAR 2001	FISCAL YEAR 2002	FISCAL YEAR 2003	FISCAL YEAR 2004
Cases Pending (Beginning FY/Ending FY)	417/629	629/828	828/500	500/382
Cases Filed	1123	1045	1055	1227
Total Number Of Cases Disposed	911	828	1395	1328
% of Cases Disposed	81%	79%	132%	108%
Average Age of Cases Disposed	4.4 months	7.1 Months	5.4 Months	4.04 Months
Disciplinary Action (total)	80	79	59	77
Cases Disposed through:				
Criminal Conviction	0	0	0	0
Review Tribunal Order	0	0	0	17
Informal Resignation Agreement	3	0	0	0
Voluntarily Agreement to Resign in Lieu of Disciplinary Action	0	14	19	17
Sanction:				
Public Censure	0	0	1	0
Public Censure and Order of Additional Education	0	0	2	0
Public Reprimand	5	2	7	2
Public Warning	3	6	2	1
Public Admonition	12	8	4	4
Public sanction and Order of Additional Education	3	3	4	0
Private Reprimand	3	2	0	3
Private Warning	7	3	5	1
Private Admonition	6	4	5	11
Private sanction and Order of Additional Education	1	3	3	6
Public Order of Additional Education	0	0	0	0
Private Order of Additional Education	21	6	4	7
Interim Disciplinary Action:				
Order of Suspension [15(a)]	4	4	0	6
Recommendation of Suspension to Supreme Court [15(b)]	0	7	2	1
Formal Proceedings Voted	12	17	1	1
Amicus Referral		2	0	0
Dismissals	831	749	1328	1259
Requests for Reconsideration Received	133	43	173	212
Reconsideration Granted	6	0	10	12
Reconsideration Denied	100	39	163	200
Pending	27	4	0	0
Cases Appealed to Special Court of Review	0	1	1	0
Cases Set for Informal Hearing	86	78	71	62
Public Statements Issued	0	1	1	0

Fig. 1 Total Number of Texas Judges

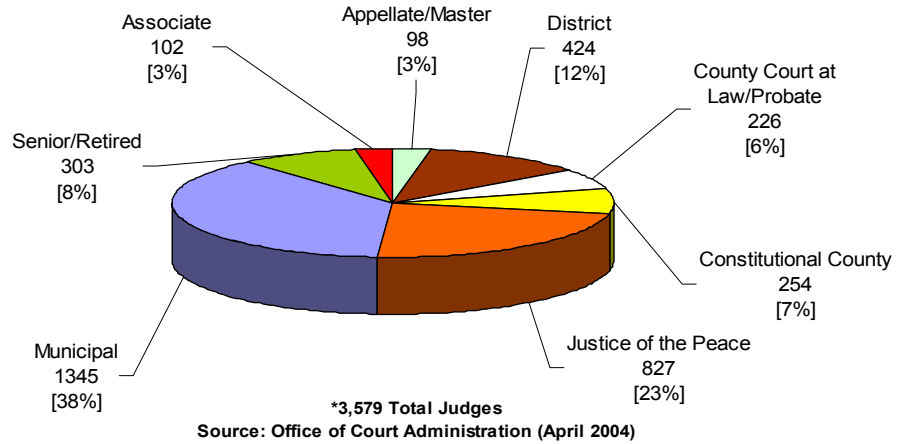


Fig. 2 Number and Percentage of Cases filed by Judge Type

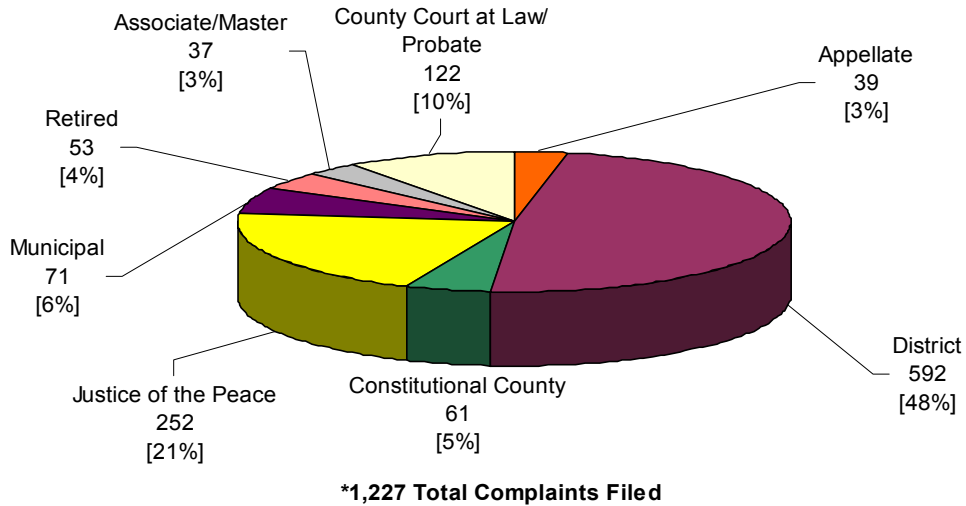
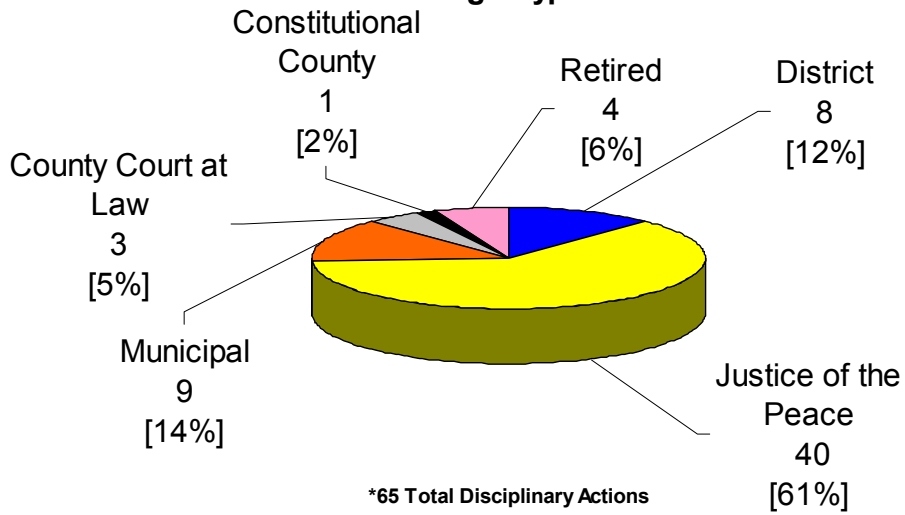


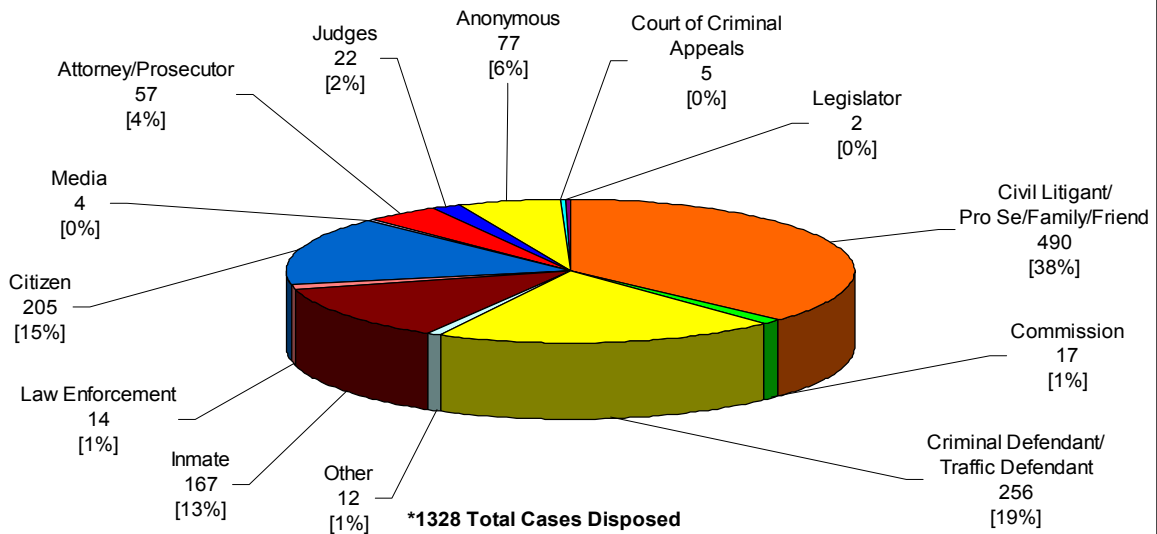
Fig. 3 Number and Percentage of Disciplinary Actions by Judge Type



Note 1: No Probate or Associate Judges received discipline in FY 2004.

Note 2: Some judges received a sanction involving more than one case.

Fig. 4 Number of Cases Disposed By Complainant Type



**Fig. 5 Cases Filed and Disposed
(FY 2001 - FY 2004)**

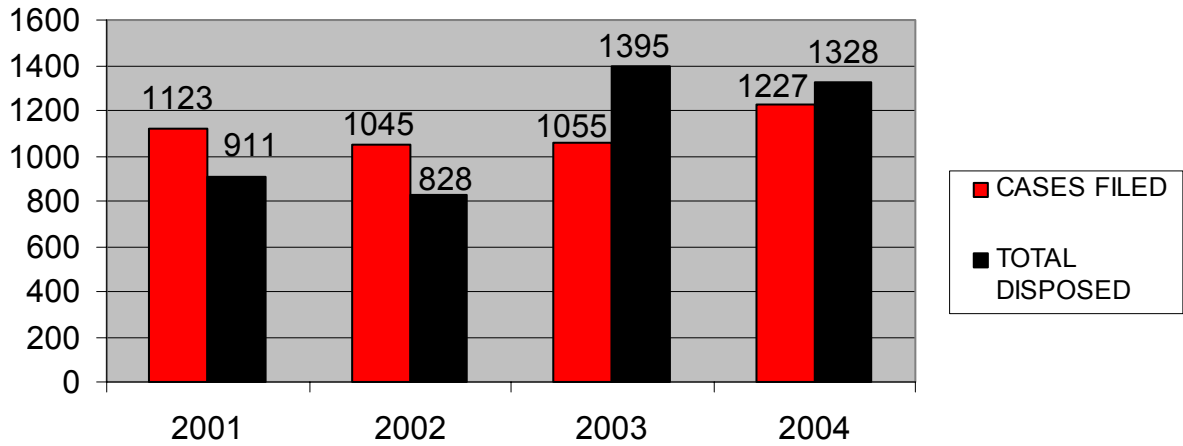
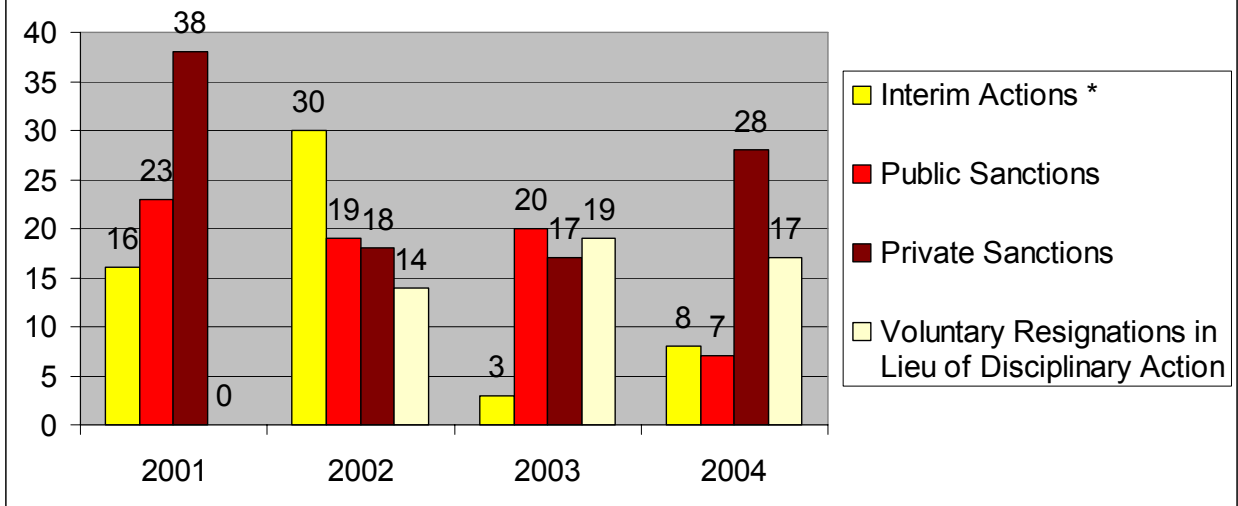


Fig. 6 Commission Activity (FY 2001-2004)



*Interim Actions include: Orders of Suspension, Recommendations of Suspension to Supreme Court, Formal Proceedings Voted, and *Amicus Curiae* Referrals.

EXAMPLES OF IMPROPER JUDICIAL CONDUCT

The following are examples of judicial misconduct that resulted in disciplinary action by the Commission in fiscal year 2004. These are illustrative examples of misconduct and do not represent every disciplinary action taken by the Commission last year fiscal year 2004. The summaries below are listed in relation to specific violations of the Texas Code of Judicial Conduct, the Texas Constitution, and other statutes or rules. They are also listed in descending order of the severity of the disciplinary action imposed, and may involve more than one violation. The full text of any public discipline are published on the Commission website and may be requested by contacting the Commission.

These sanction summaries are provided with the intent to educate and inform the judiciary and the public regarding misconduct that the Commission found to warrant disciplinary action in fiscal year 2004. The reader should note that the summaries provide only general information and omit mitigating or aggravating facts that the Commission considered when determining the level of sanction to be imposed. Additionally, the reader should not make any inferences from the fact situations provided in these summaries. It is the Commission's sincere desire that providing this information will protect and preserve the public's confidence in the integrity, impartiality and independence of the judiciary and further assist the judiciary in establishing, maintaining and enforcing the highest standards of judicial and personal conduct.

CANON 2A: A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

- The judge unilaterally authorized the release of a criminal defendant on personal bond, after the defendant had been magisterated and had his surety bond set at \$15,000 by another justice of the peace. The judge took such action, after being notified of the defendant's incarceration by the defendant's coach, with whom the judge was acquainted. [Violations of Article 17.09, Section 3 of the Texas Code of Criminal Procedure and Canons 2A, and 2B, Texas Code of Judicial Conduct] *Private Order of Additional Education of a Justice of the Peace (04/08 /04).*
- A landlord filed an eviction suit in the judge's court against a tenant, although the rental property that was the subject of the suit was not located in the judge's precinct. The judge conducted an "informal hearing" at which only the tenant appeared, and the judge found in favor of the landlord and ordered the tenant to vacate the property. The next month, the judge granted to the landlord a default judgment for back rent. [Violation of Canon 2A, Texas Code of Judicial

Conduct.] *Private Order of Additional Education of a Justice of the Peace* (06/25/04).

- The judge failed to obtain the required hours of mandatory judicial education for fiscal year 2003, and failed to obtain a waiver of the requirement. [Violation of Canons 2A and 3B(2), Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace* (06/25/04).

CANON 2B: A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

- A traffic defendant approached Judge A, a justice of the peace, in his chambers and asked him to discuss the ticket with Judge B, a municipal judge from another city in whose court the defendant's traffic citation was pending. Judge A telephoned Judge B and attempted to discuss the ticket. At the defendant's request, Judge A asked Judge B to grant the defendant deferred adjudication. Judge B refused to discuss the matter with Judge A, and told him the call was inappropriate. During this telephone conversation, Judge A told Judge B that "we judges help each other," or words to that effect. In his written responses to and appearance before the Commission, Judge A identified the defendant as a "constituent," and stated that it is "common practice" for area judges to call each other "for information, options and/or explanations, when requested by citizens." The judge used the influence of his office to advance the private interests of himself or others. [Violation of Canon 2B, Code of Judicial Conduct.] *Public Admonition of Alonzo Villarreal, Justice of the Peace* (06/25/04).
- For the purpose of lending the prestige of his office, the judge sent a letter on judicial letterhead to attorneys who were involved with a matter to which the judge had a personal interest threatening them and their firm with a lawsuit. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Reprimand of a District Judge* (04/27/04)
- The judge used the prestige of his judicial office to instigate a groundless, bad-faith criminal investigation of a constable. The judge's son had been sued in small claims court, and the constable made several attempts to serve the judge's son. The judge then filed a criminal complaint against the constable, and alleged that the constable committed perjury by making an affidavit in connection with his efforts to serve the judge's son. [Violation of Canon 2B, Texas Code of Judicial Conduct.] *Private Reprimand of a Justice of the Peace* (07/14/04).
- The judge misused the powers of his judicial office by causing a fictitious notice to a County Commissioner, a critic of how the judge ran his court administratively, leading the Commissioner to believe that he had been charged

with a criminal offense and was facing possible arrest. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Warning of a Justice of the Peace* (10/21/03)

- The judge allowed an attorney with whom he had a close relationship to continue to appear before him, even after another judge had recused the judge from a case because of the relationship. Further, the judge placed undue pressure on his court staff when he requested that they pledge to use their personal time to assist him with his re-election campaign. [Violation of Canon 2B, Texas Code of Judicial Conduct.] *Private Admonition of a District Judge* (04/27/04).
- The judge sent an e-mail to various individuals, including other judges and attorneys, soliciting donations for the Multiple Sclerosis Society. The judge's name and title appeared in the heading of the e-mail. [Violation of Canon 2B, Texas Code of Judicial Conduct.] *Private Admonition of a District Judge* (08/13/04).

CANON 3B(1): A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.

- The judge improperly adjudicated a matter in which her husband was the defendant, and subsequently adjudicated a matter in which a defendant was an employee of business in which the judge has an ownership interest. [Violation of Canons 2B and 3B(1) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace* (11/28/03)
- The judge inappropriately adjudicated a matter in which his grandson was the defendant. Additionally, the judge, on an infrequent basis, set bonds over the telephone. [Violation of Canons 2B, 3B(1) and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace* (11/28/03)
- The judge failed to accord an attorney and her client a hearing in a small claims suit for more than a year, despite repeated requests in writing and by telephone to the judge. The judge conducted court proceedings in an undignified manner when he eventually heard the case while barefooted, and wearing a T-shirt and shorts. [Violation of Canons 3B(1), 3B(4) and 3B(8), Texas Code of Judicial Conduct.] *Private Admonition of a Justice of the Peace* (10/08/03).

CANON 3B(2): A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

- The judge displayed a failure to maintain competence in the law in handling certain traffic cases; specifically, the "administrative fee" the judge charged was an inappropriate "special expense" and the judge ordered a litigant to pay both fine and a deferred fee. Additionally, the judge failed to be patient, dignified, and

courteous to litigant who appeared before her. [Violation of Canons 3B(2) and 3B (4) of the Texas Code of Judicial Conduct and Art. 45.051c of the Texas Code of Criminal Procedure]. *Public Admonition of Hazel Lewis, Former Justice of the Peace* (10/28/03).

- The judge was unaware that she failed to follow established procedures in handling post-trial matters in a civil lawsuit. [Violation of Canon 3B(2) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace*. (03/19/04)
- The judge improperly handled several aspects of a civil suit filed in the judge's court. She failed to timely issue citations, failed to document the sending of hearing notices, and improperly dismissed the lawsuit at a pretrial conference. [Violation of Canon 3B(2), Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace* (02/02/04).
- The judge failed to obtain the required hours of mandatory judicial education for fiscal year 2003, as required by Rule 2a(2) of the Texas Rules of Judicial Education. [Violation of Canon 3B(2), Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Retired District Judge* (08/31/04).

CANON 3B(4): A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

- In one case, although the judge explained to a *pro se* litigant that he could not engage in an *ex parte* discussion with her, he asked her "Are you calling me a liar?" and continued to respond to her questions and criticisms. In another case, the judge admonished a divorce litigant in open court for berating the litigant's own attorney at the courthouse; the judge later testified that he felt the litigant, who was employed as a deputy sheriff in another county, did not exhibit proper behavior as a peace officer. Two years later, the judge's bailiff told the judge that the same litigant and his mother were in court for the divorce, and had called the judge's court "crooked." The judge chastised the litigant and his mother for criticizing the court. He also complained to the litigant's supervisor at the sheriff's department about the litigant's past and present behavior; the litigant was officially reprimanded. The judge conducted court proceedings in an undignified manner, and by reporting the divorce litigant to his superiors, the judge was retaliating against him for firing his attorney two years earlier. [Violation of Canon 3B(4), Code of Judicial Conduct.] *Private Admonition of a District Judge* (4/08/04).
- During a summary judgment hearing in a suit on a note, the judge failed to accord plaintiffs respect and dignity when he disparaged them in court by comparing them and their legal claims to "Scrooge and Marley." [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a District Judge* (01/15/04)

- The judge lost his temper and used intemperate language while attending a public meeting in his official capacity. [Violation of Article V, Section 1-a(6)A, Texas Constitution and Canon 3B(4), Texas Code of Judicial Conduct.] *Private Admonition of a District Judge* (04/08/04).
- The judge failed to accord an attorney and her client a hearing in a small claims suit for more than a year, despite repeated requests in writing and by telephone for him to provide a hearing in the case. Further, the judge conducted court proceedings in an undignified manner when he heard the case while barefooted and wearing a T-shirt and shorts. [Violation of Canons 3B(1), 3B(4), and 3B(8) of the Texas Code of Judicial Conduct.] *Private Admonition of a Justice of the Peace* (10/21/03)
- The judge made inappropriate comments toward a county employee who worked under his direct supervision causing that employee to file a sexual harassment claim against the judge. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a County Judge* (10/21/03)

CANON 3B(5): A judge shall perform judicial duties without bias or prejudice.

- The judge filed a grievance against defense counsel which was motivated, in part, by his expressed desire to get “aggressive” with counsel. Additionally, the judge ordered an additional, more onerous bond condition for one of defense counsel’s clients over two weeks after a mistrial in the case without stating any reason for doing so. [Violation of Canons 2B and 3B(5) of the Texas Code of Judicial Conduct.] *Private Reprimand of a County Criminal Court at Law Judge* (02/12/04)

CANON 3D(2): A judge who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action.

- The judge failed to report lawyers who he knew were engaged in unethical, and in some cases, illegal activities, and participated himself in some of these same unethical and illegal activities while serving as a member of the judiciary. [Violation of Article V, Section 1-a(6)A of the Texas Constitution and Canons 2A and 3D(2) of the Texas Code of Judicial Conduct]. *Public Reprimand of Roy W. Richard, Jr., Municipal Court Judge* (01/28/04)

CANON 6C(2): A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* or other communications concerning the merits of a pending judicial proceeding. . . .

- The judge engaged in an improper *ex parte* communication when he placed phone calls and considered testimony from witnesses who were not before the court. [Violation of Canon 6C(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace.* (01/15/04)

Texas Constitution, Article V, Section 1-a(6)A. Any Justice or Judge of the courts established by this Constitution or created by the Legislature as provided in Section 1, Article V, of this Constitution, may, subject to the other provisions hereof, be removed from office for willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice. Any person holding such office may be disciplined or censured, in lieu of removal from office, as provided by this section.

- The judge was arrested on three different occasions for driving while intoxicated, which compromised the public's confidence in the integrity and cast public discredit upon the judiciary. [Violation of Article V, Section 1-a(6) of the Texas Constitution]. *Public Reprimand of Salvador Zarate, Justice of the Peace, Pct 3* (09/09/03).
- The judge acted as an intermediary in an effort to secure votes to benefit a candidate for a Robertson County Commissioner. He approached the candidate and offered to help him secure 100 election votes for and in consideration of \$500.00. The judge stated that absentee voters trusted him, and that the people "who did the absentees" waited until he came by and asked him how to vote. [Violation of Article V, Section 1-a(6)A of the Texas Constitution.] *Public Warning of Fredrick B. Webber, Municipal Court Judge* (06/11/04).
- The judge's actions and suggestions regarding the administration of corporal punishment by parents to their children constituted willful or persistent conduct that cast public discredit upon the judiciary or administration of justice. [Violation of Article V, Section 1-a(6)A of the Texas Constitution.] *Private Warning and Order of Additional Education of a Justice of the Peace* (08/31/04).
- The judge's arrest for suspicion of driving while intoxicated became publicly known in his community. Although no criminal charges were ever filed against him in connection with this incident, the judge admitted that he was in possession

of an open container of beer at the time of his arrest. [Violation of Article V, Section 1-a(6)A of the Texas Constitution.] *Private Admonition of a Justice of the Peace* (01/02/

VOLUNTARY AGREEMENTS TO RESIGN IN LIEU OF DISCIPLINARY ACTION

The Commission opened a complaint based on media reports concerning the judge's alleged use of profanities and a racial epithet while magistrating prisoners in jail. Two other complaints were filed, alleging that in the course of performing his judicial duties the judge exhibited impatience, a lack of dignity and courtesy and used profanity. After the judge appeared informally before the Commission and discussed the allegations, the Commission voted to institute formal proceedings against him, and recommended to the Texas Supreme Court that the judge be suspended from office, without pay, pending the outcome of the formal proceedings. The Texas Supreme Court issued an Order of Suspension against the judge, suspending him from office, without pay, pending the outcome of the formal proceedings. A public fact-finding trial was conducted before a district judge, duly appointed as special master by the Texas Supreme Court. The special master filed his Findings of Fact with the Commission, and the Commission heard objections to said Findings. The Commission entered its rulings on said objections and issued its Findings, Conclusions and Recommendations, requesting that the Texas Supreme Court appoint a Review Tribunal, that the judge be removed from office, and that he be prohibited from holding judicial office in the future. Although the judge denied the allegations of misconduct, he opted to resign from office rather than spending time and money on further disciplinary proceedings. No Findings of Fact or Conclusions of Law were made in connection with the complaints, but the parties agreed that the allegations of judicial misconduct, if found to be true, could result in further disciplinary action. The parties agreed that the judge's resignation was not an admission of guilt, fault or liability. The Commission agreed that it would not pursue further disciplinary proceedings against the judge in connection with said complaints, and the judge agreed to be disqualified from future judicial service; sitting or serving as a judge in the State of Texas in the future; standing for election or appointment to judicial office in the State of Texas; or performing or exercising any judicial duties or functions of a judicial officer in the state, including the performance of wedding ceremonies. *Voluntary Agreement of Matt H. Zepeda, Justice of the Peace, to Resign from Judicial Office in Lieu of Disciplinary Action (02/20/04).*

The Commission received a complaint against the judge alleging that he engaged in sexually inappropriate conduct towards several women with whom he dealt in his official capacity. After the judge appeared informally before the Commission and discussed the allegations, the Commission voted to institute formal proceedings against him, and recommended to the

Texas Supreme Court that the judge be suspended from office, without pay, pending the outcome of the formal proceedings. The Texas Supreme Court issued an Order of Suspension against the judge, suspending him from office, without pay, pending the outcome of the formal proceedings. Although the judge denied the allegations of misconduct, he opted to resign from office rather than spending time and money on further disciplinary proceedings. No Findings of Fact or Conclusions of Law were made in connection with the complaints, but the parties agreed that the allegations of judicial misconduct, if found to be true, could result in further disciplinary action. The parties agreed that the judge's resignation was not an admission of guilt, fault or liability. The Commission agreed that it would not pursue further disciplinary proceedings against the judge in connection with said complaints, and the judge agreed to be disqualified from future judicial service; sitting or serving as a judge in the State of Texas in the future; standing for election or appointment to judicial office in the State of Texas; or performing or exercising any judicial duties or functions of a judicial officer in the state, including the performance of wedding ceremonies. *Voluntary Agreement of Lloyd Locke, Justice of the Peace, to Resign from Judicial Office in Lieu of Disciplinary Action* (06/10/04).

The Commission received several complaints alleging that the judge had shown a lack of patience, dignity and courtesy towards litigants and attorneys in the course of performing her judicial duties. Although the judge denied the allegations of misconduct, she opted to resign from office rather than spending time and money on further disciplinary proceedings. No Findings of Fact or Conclusions of Law were made in connection with the complaints, but the parties agreed that the allegations of judicial misconduct, if found to be true, could result in further disciplinary action. The parties further agreed that the judge's resignation was not an admission of guilt, fault or liability. The Commission agreed that it would not pursue further disciplinary proceedings against the judge in connection with said complaints, and the judge agreed to be disqualified from future judicial service; sitting or serving as a judge in the State of Texas in the future; standing for election or appointment to judicial office in the State of Texas; or performing or exercising any judicial duties or functions of a judicial officer, including the performance of wedding ceremonies. *Voluntary Agreement of Carolyn Day Hobson, Former Judge, to Resign from Judicial Office in Lieu of Disciplinary Action* (10/10/03).

The Commission and a private citizen initiated complaints against the judge, based on several newspaper articles and television news reports containing various allegations, including that the judge exhibited a poor judicial demeanor and failed to follow the law in proceedings in his court. Although the judge denied the allegations of misconduct, he opted to resign from office rather than spending time and money on further disciplinary proceedings. No Findings of Fact or Conclusions of Law were made in connection with the complaints, but the parties agreed that the allegations of judicial misconduct, if found to be true, could result in further disciplinary action. The parties agreed that the judge's resignation was not an admission of guilt, fault or liability. The Commission agreed that it would not pursue further disciplinary proceedings against the judge in connection with said complaints, and the judge agreed to be disqualified from future judicial service; sitting or serving as a judge in the State of Texas in the future; standing for election or

appointment to judicial office in the State of Texas; or performing or exercising any judicial duties or functions of a judicial officer in the state. *Voluntary Agreement of Jack Byno, Former Municipal Judge, to Resign from Judicial Office in Lieu of Disciplinary Action* (12/5/03).

The Commission received a complaint alleging that the judge committed judicial misconduct in her sentencing practices and procedures for handling certain Class C misdemeanor cases filed in her court. Although the judge denied the allegations of misconduct, she opted to resign from office rather than spending time and money on further disciplinary proceedings. No Findings of Fact or Conclusions of Law were made in connection with the complaints, but the parties agreed that the allegations of judicial misconduct, if found to be true, could result in further disciplinary action. The parties further agreed that the judge's resignation was not an admission of guilt, fault or liability. The Commission agreed that it would not pursue further disciplinary proceedings against the judge in connection with said complaints, and the judge agreed to be disqualified from future judicial service; sitting or serving as a judge in the State of Texas in the future; standing for election or appointment to judicial office in the State of Texas; or performing or exercising any judicial duties or functions of a judicial officer. *Voluntary Agreement of Virginia Beason, Former Municipal Judge, to Resign from Judicial Office in Lieu of Disciplinary Action* (06/10/04).

The Commission initiated a complaint against the judge based on several newspaper articles containing allegations that the judge had committed theft and assault. Although the judge denied the allegations of misconduct, she opted to resign from office rather than incurring the expense and expending time on further disciplinary proceedings. No Findings of Fact or Conclusions of Law were made in connection with the complaint, but it was agreed that the allegations of misconduct, if found to be true, could result in judicial disciplinary action. The Commission agreed that the judge's resignation was not an admission of guilt, fault or liability. The Commission agreed that it would not pursue further disciplinary proceedings against the judge in connection with said complaint, and the judge agreed to be disqualified from future judicial service; sitting or serving as a judge in the State of Texas in the future; standing for election or appointment to judicial office in the State of Texas; or performing or exercising any judicial duties or functions of a judicial officer in the state. *Voluntary Agreement of Roxane E. Martinez, Former Municipal Court Judge, to Resign from Judicial Office in Lieu of Disciplinary Action* (06/10/04).

A complaint was filed alleging judicial misconduct for the judge's failure to comply with mandatory judicial educational requirements, and a supporting affidavit was later submitted confirming the allegations. The judge resigned rather than spending time and money on further disciplinary action. *Voluntary Agreement of Krista K. McAnally, Municipal Court Judge, to Resign from Judicial Office in Lieu of Disciplinary Action* (05/14/04).

A complaint was filed alleging judicial misconduct for the judge's failure to comply with mandatory judicial educational requirements, and a supporting affidavit was later submitted confirming the allegations. The judge resigned rather than spending time and money on further disciplinary action. *Voluntary Agreement of Eddie Vuittonet, Justice of the Peace, to Resign from Judicial Office in Lieu of Disciplinary Action (05/14/04).*

One of the best-known Coryell County courthouse events occurred in 1909. A woman alleged that an affluent man in Gatesville injected drugs into her box of chocolates and took advantage of her. She became pregnant, and, after she gave birth in a Fort Worth home for unwed mothers, she returned to Gatesville, where the man was being tried for the crime of seduction, a felony. She stood in the hallway inside the courthouse and looked through the window into the courtroom. Fearing that the man's wealth would persuade the jury to acquit him, she shot and killed him and two others in the courtroom, and injured two observers as well. Her brother grabbed the gun from her but it went off several more times. According to courthouse lore, when the shooting started, a man fell out of a courtroom window and ran away. Cowboys "spittin' and whittlin'" around the courthouse square thought he was the shooter, so they chased him down on their horses, roped him and brought him back. The woman was indicted for murder, and she was tried in the same courtroom a year later. She was acquitted by a jury, because of her mental state.

In one of the first recorded cases at the courthouse, a Coryell County jury found three brothers guilty of "Illegal Marking of Hogs;" they were fined \$8, and jailed for eight hours. Several citizens were found guilty of crimes such as "Cutting Timber Not His Property" and "Unlawful Using of 2 Horses Not Their Property." If an uncooperative witness was found guilty of "Failure To Appear" at trial, the usual punishment for this contempt of court was a fine of \$25.