

STATE COMMISSION ON JUDICIAL CONDUCT



FISCAL YEAR 2009
ANNUAL REPORT

STATE COMMISSION ON JUDICIAL CONDUCT

FY 2009 ANNUAL REPORT

COMMISSION MEMBERS

Sid Harle, Chair

Jorge C. Rangel, Vice-Chair

Ann Applying Bradford, Secretary

Michael R. Fields

Monica A. Gonzalez

Tom Lawrence

Tom Cunningham

Janelle Shepard

William “Bill” Lawrence

Jan P. Patterson

Karry K. Matson

Patti H. Johnson

Joel P. Baker

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COMMISSIONER INFORMATION

OFFICERS

CHAIR

Hon. Sid Harle

Judge, 226th District Court
San Antonio
Appointed by Texas Supreme Court
Term Expires: 11/19/2011

VICE-CHAIR

Mr. Jorge C. Rangel

Attorney
Corpus Christi
Appointed by State Bar of Texas
Term Expires: 11/19/2011

SECRETARY

Ms. Ann Appling Bradford

Public Member
Midland
Appointed by Governor
Term Expires: 11/19/2009

MEMBERS

Hon. Michael R. Fields

Judge, County Criminal Court-at-Law No. 14
Houston
Appointed by Texas Supreme Court
Term Expires: 11/19/2009

Mr. William "Bill" Lawrence

Public Member
Highland Village
Appointed by Governor
Term Expires: 11/19/2009

Hon. Monica A. Gonzalez¹

Municipal Court Judge
San Antonio
Appointed by Texas Supreme Court
Term Expires: 11/19/2009

Hon. Jan P. Patterson

Justice, 3rd Court of Appeals
Austin
Appointed by Texas Supreme Court
Term Expires: 11/19/2013

Hon. Tom Lawrence

Justice of the Peace, Precinct 4, Place 2
Humble
Appointed by Texas Supreme Court
Term Expires: 11/19/2009

Ms. Karry K. Matson

Public Member
Georgetown
Appointed by Governor
Term Expires: 11/19/2013

Mr. Tom Cunningham

Attorney
Houston
Appointed by State Bar of Texas
Term Expires: 11/19/2013

Ms. Patti H. Johnson

Public Member
Canyon Lake
Appointed by Governor
Term Expires: 11/19/2011

Ms. Janelle Shepard

Public Member
Weatherford
Appointed by Governor
Term Expires: 11/19/2011

Hon. Joel P. Baker²

Constitutional County Court Judge
Tyler
Appointed by Texas Supreme Court
Term Expires: 11/19/2011

¹ Judge Gonzalez resigned on September 1, 2009 after being appointed Judge of Bexar County Court at Law No. 13.

² Judge Baker was appointed in August 2009, following the resignation of Randall County Judge Ernie Houdashell.

STATE COMMISSION ON JUDICIAL CONDUCT

COMMISSION STAFF

Seana Willing, Executive Director

Bob Warneke, General Counsel

Tom Broussard, Senior Commission Counsel

Jacqueline Habersham, Senior Commission Counsel

Cathy Bradford, Commission Counsel

Ron Bennett, Chief Investigator

Victor Hidalgo, Senior Investigator

Katherine Mitchell, Senior Investigator

Elaine Thompson, Legal Assistant/*Amicus* Program Manager

Judy Morgan, Legal Assistant/Intake

Terri Counts, Budget Analyst

Connie Paredes, Administrative Assistant

Juanita Villarreal, Administrative Assistant

Felisa Wilson, Administrative Assistant

STATEMENT FROM THE CHAIR

Canon 1 of the Texas Code of Judicial Conduct states that “an independent and honorable judiciary is indispensable to justice in our society.” As I conclude my second term as Chair of the Commission I am ever mindful of the language of this Canon in relation to the necessity of protecting the public’s right to free and open access to our judiciary, and to a fair-minded review with decisions based upon the laws and facts. The United States Constitution mandates the three co-equal branches of government and carefully incorporates checks and balances to insure this relationship remains as a democratic partnership. The need for a strong and independent Judiciary is essential and individual Judges need to be able to rule without fear of being censored or penalized for making difficult decisions that may be unpopular. The Commission strives to keep those overriding principles in mind while balancing the needs of the public with those of the Judiciary. Most Court cases represent a decision made by a Judge where someone will be dissatisfied, disappointed, or even angry. The Commission enforces the Canons and serves as a resource for the Judiciary. It further requires Judges to be accountable but protected from biased or false allegations of misconduct.

It has been my honor and privilege to serve as Chair and work with the all-volunteer members of the Commission who are dedicated to these aspirations and goals. Their respective backgrounds, wisdom, and inherent common sense are brought to the decision-making process; all is valued and enriches the collegial decision-making process. I am extremely proud of their hard work and the fairness they demonstrate to all members of the Judiciary, whatever level, and the public.

I would like to acknowledge and thank the Executive Director, staff attorneys, investigators, legal assistants, and administrative staff for their hard work, professionalism, and commitment to confidentiality. They respond to thousands of inquiries throughout the year in addition to preparing the cases for the Commission’s review. They are indeed an asset to the Judiciary and the citizens of the State of Texas. Their goal is expeditious and fair resolution of cases, fully understanding it is stressful to all involved.

In addition, I thank the attorneys who serve as Special Counsel for the Commission, the Judges who serve as Special Masters, and the Justices who serve as members of Special Courts of Review in connection with disciplinary proceedings prosecuted by, and on behalf of, the Commission.

We are also grateful to the 81st Legislature, which not only agreed to keep the Commission’s budget intact for the next biennium, but also provided much needed additional funding for the agency’s 2010-2011 operations.

This Annual Report provides important information about what Commission members and Commission staff accomplished in Fiscal Year 2009, with very limited resources. By August 31, 2009, the Commission had reviewed and disposed of 1,110 cases. It issued seventy (70) disciplinary actions, fifty-four (54) letters of caution, and 434 dismissals,

including nine (9) based on the judges' corrective actions. The Commission met with more than twenty-five (25) judges during the six (6) meetings scheduled in Fiscal Year 2009. Another 575 cases were dismissed after it was determined that they did not allege a violation that, even if true, would constitute judicial misconduct under the Code of Judicial Conduct. Beyond those numbers, there are also the thousands of pieces of mail and ethics calls handled by staff, who are also traveling across the State investigating cases and providing ethics training to judges, attorneys, and other officials. With a small staff and a limited budget, the Commission is consistently able to accomplish a tremendous amount of important work for the judiciary and citizens of Texas.

In closing, the Preamble of the Code states it best, "our system of justice depends on an independent, fair, and competent Judiciary," made up of judges who "individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system." In times when Judges and the Judicial System are often assailed and criticized, the Commission must strive to keep the third branch of Government, the Judiciary, strong and independent.



Honorable Sid Harle, Chair
State Commission on Judicial Conduct

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 Article V of the Texas Constitution. The Commission is the independent judicial 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 thirteen members of the Commission, serving staggered six-year terms, as follows:

- Six judges appointed by the Supreme Court of Texas, one from each of the following court levels: appellate, district, county court-at-law, constitutional county, justice of the peace and municipal,
- Five 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, district, constitutional and statutory county judges who serve on the Commission must be appointed from different appellate districts in Texas; the justice of the peace, municipal court judge and public 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 over 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

In fiscal year 2009, the Commission had fifteen (15) authorized staff positions (FTEs). Commission staff includes the Executive Director, the General Counsel, four staff attorneys, three investigators, a legal assistant, a budget analyst, and three administrative support people. All Commission staff members are full-time State employees.

The Commission's legal staff, which consists of attorneys, investigators, and a legal assistant, 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 performing legal research, preparing legal documents, 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 many cases, the Commission employs Special Counsel, chosen from distinguished members of the bar, to assist staff in preparing and presenting these cases. Attorneys from the Office of the Attorney General have also represented the Commission as Special Counsel in formal proceedings.

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, other government officials, the public and the media.

Amicus Curiae

Started in 2001, *Amicus Curiae* ("Amicus") is a judicial disciplinary and education program intended to address a growing concern, often generated by scandals reported by the media, of judicial misconduct caused by impairment. 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* 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. 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 self-referral component to its program, which affords judges an opportunity to seek assistance, in confidence, outside the disciplinary process.

Outreach and Education

In fiscal year 2009, the Executive Director, staff attorneys and investigators participated in over forty (40) presentations at judicial training courses, bar conferences, court staff workshops, and before several groups of foreign dignitaries and delegates, describing the Commission and its operations and discussing various forms of judicial misconduct.

Ethics Calls

In fiscal year 2009, the Executive Director, staff attorneys and investigators answered approximately 1,400 telephone calls from judges, judicial candidates, attorneys, legislators, the media and 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's website, which is maintained by the State Office of Court Administration, 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; and
- 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. In addition, gratuitous claims of misconduct that are unsupported by any facts or evidence may be administratively dismissed. These cases, which are reviewed by the Commission, are dismissed without a full investigation. In letters of dismissal sent to these complainants, the Commission provides a specific explanation for the decision.

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 may take for the Commission to reconsider its decision. The Commission may also include cautionary advice to judges whose complaints have been dismissed after the judge has taken appropriate corrective action or in those cases where disciplinary action was deemed unwarranted given the facts and circumstances surrounding the infraction.

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 Review¹.

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 ensures 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

¹ Following the 81st Legislative Session, a Public Censure issued by the Commission may now be appealed to a Special Court of Review, but the process is different than that of a *de novo* review of a sanction. The Texas Supreme Court is in the process of promulgating the written procedures for such an appeal.

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 appealed², 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.

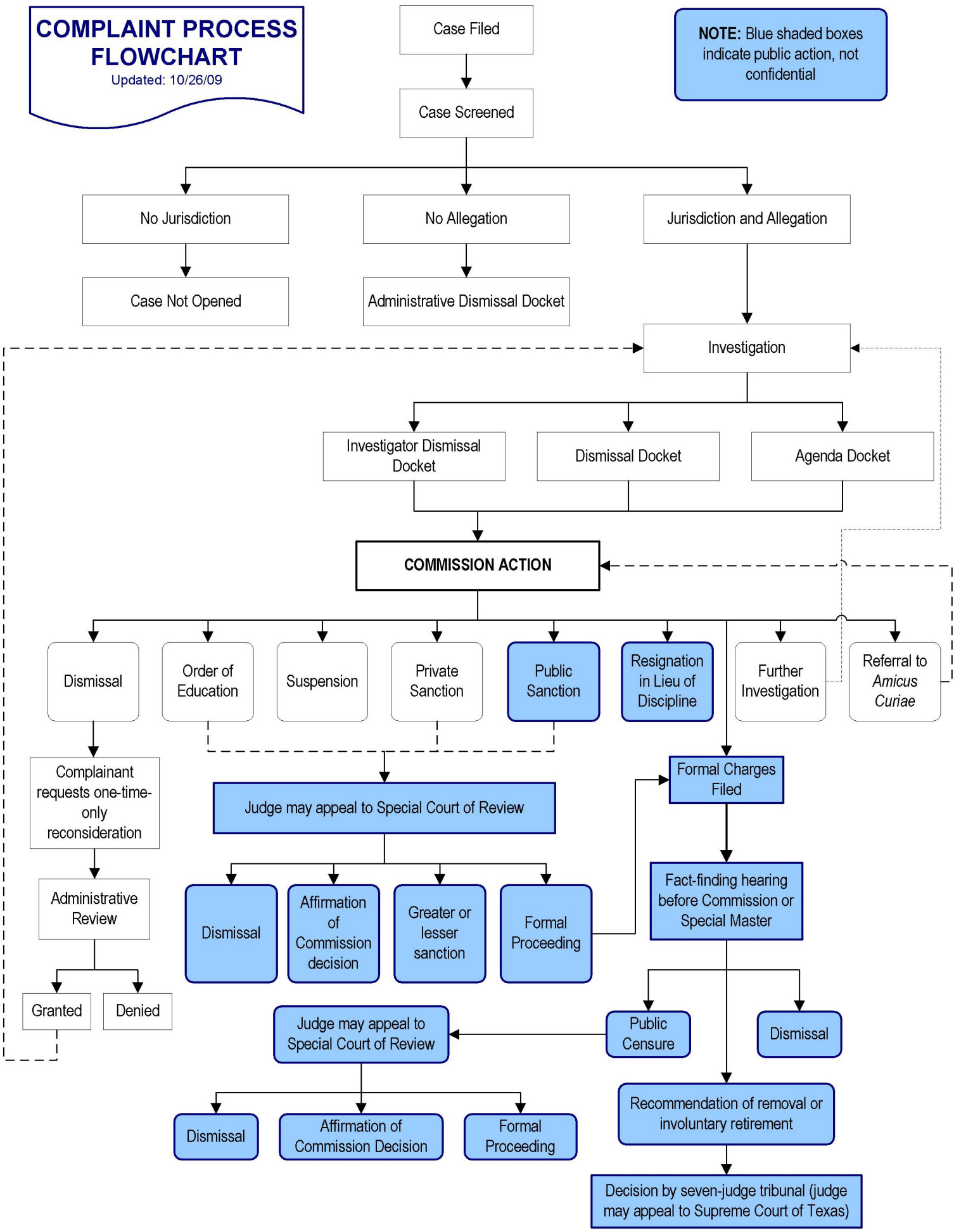
The Special Court of Review may dismiss or affirm the Commission's decision, impose a greater or lesser sanction, or order the Commission to file formal proceedings against the subject judge for removal or involuntary retirement. The decision of the Special Court of Review is final.

² Following the 81st Legislative Session, a Public Censure issued by the Commission may now be appealed to a Special Court of Review, but the process is different than that of a *de novo* review of a sanction. The Texas Supreme Court is in the process of promulgating the written procedures for such an appeal.

COMPLAINT PROCESS FLOWCHART

Updated: 10/26/09

NOTE: Blue shaded 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 have assisted the Commission in overseeing the development and operation of the *Amicus* 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. 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 *Amicus* 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 in fiscal year 2005 came from an interagency contract with the Court of Criminal Appeals, which expired on August 31, 2005. Due to budgetary restraints, no funds were available for the *Amicus* program in fiscal year 2009.

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 2009 is shown in **Table 1** immediately following this section. Graphic representations of the data are also presented in **Figures 1** through **7** to further illustrate the activities of the Commission.

In fiscal year 2009, according to Office of Court Administration records, approximately 3,756 judges were under the jurisdiction of the Commission. **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. Of note in fiscal year 2009: justices of the peace received 19% of the complaints filed and accounted for 41% of all discipline issued by the Commission. Disciplinary actions against district and appellate judges increased to 21% and 24% respectively. Consistent with prior years, 45% of the cases filed in fiscal year 2009 were against district judges.

Figure 4 illustrates by number and percentage the various sources of cases closed in fiscal year 2009. By the end of the year 1,110 cases had been disposed. Fifty-three percent (53%) of those cases were filed by civil litigants, their friends or family members, or by *pro se* litigants. Criminal defendants, including traffic defendants and inmates, accounted for approximately 33% of the cases. Six percent (6%) of the cases were filed anonymously and less than 1% were Commission-initiated. **Figure 5** compares the number of cases filed with the number of cases disposed for fiscal years 2006 through 2009.

Last year, 70 disciplinary actions were taken against Texas judges. The Commission disposed of 45 cases through public sanction, private sanction, orders of additional education or a combination of a sanction with an order of additional education. In addition, two cases were disposed of through voluntary agreements to resign from office. Interim actions, such as suspensions, *Amicus* referrals, and formal proceedings, accounted for 23 of the disciplinary actions taken in fiscal year 2009. Additionally, 54 cases were resolved with a letter of caution to the judge and 9 cases were resolved after the judge took appropriate measures to correct the conduct that led to the filing of a complaint. A comparison of public discipline, private discipline and interim actions taken by the Commission in fiscal years 2006 through 2009 is shown in **Figures 6a** and **6b**.

Finally, of the 1,110 cases closed last year, approximately 48% alleged no judicial misconduct. Approximately 27% were dismissed after a preliminary investigation and approximately 25% were disposed of following a full investigation requiring a response from the judge. A comparison of initial, preliminary and full investigations conducted by the Commission in fiscal years 2006 through 2009 is shown in **Figures 7a** and **7b**.

Table 1: Commission Activity

	FISCAL YEAR 2006	FISCAL YEAR 2007	FISCAL YEAR 2008	FISCAL YEAR 2009
Cases Pending (Beginning FY/Ending FY)	393/453	453/385	385/406	406/445
Cases Filed	1045	1043	1049	1204
Total Number Of Cases Disposed	985	1049	1006	1110
% of Cases Disposed	94%	100.4%	96%	92.1%
Average Age of Cases Disposed	5.1 Months	5.3 Months	4.7 Months	6.19 Months
Disciplinary Action (total)	42	45	56	70
Cases Disposed through:				
Criminal Conviction	0	0	0	0
Review Tribunal Order	0	0	0	0
Voluntarily Agreement to Resign in Lieu of Disciplinary Action	3	9	1	2
Sanction:				
Public Censure	0	0	0	0
Public Censure and Order of Additional Education	0	0	0	0
Public Reprimand	3	0	0	11
Public Warning	2	0	1	5
Public Admonition	6	1	6	2
Public sanction and Order of Additional Education	0	3	4	2
Private Reprimand	1	2	2	0
Private Warning	4	3	6	4
Private Admonition	3	8	6	6
Private sanction and Order of Additional Education	8	7	6	6
Public Order of Additional Education	0	0	0	0
Private Order of Additional Education	5	8	8	9
Interim Disciplinary Action:				
Order of Suspension [15(a)]	4	2	4	4
Recommendation of Suspension to Supreme Court [15(b)]	0	0	0	0
Cases in Formal Proceedings	3	2	12	19
Amicus Referral	0	0	0	0
Dismissals	950	1008	966	1063
Requests for Reconsideration Received	28	48	43	51
Reconsideration Granted	2	3	8	1
Reconsideration Denied	26	45	35	22
Pending	0	0	0	28
Cases Appealed to Special Court of Review	2	0	5	2
Informal Hearings Set	22	24	31	25
Public Statements Issued	1	0	1	0

Fig. 1 Total Number of Texas Judges*

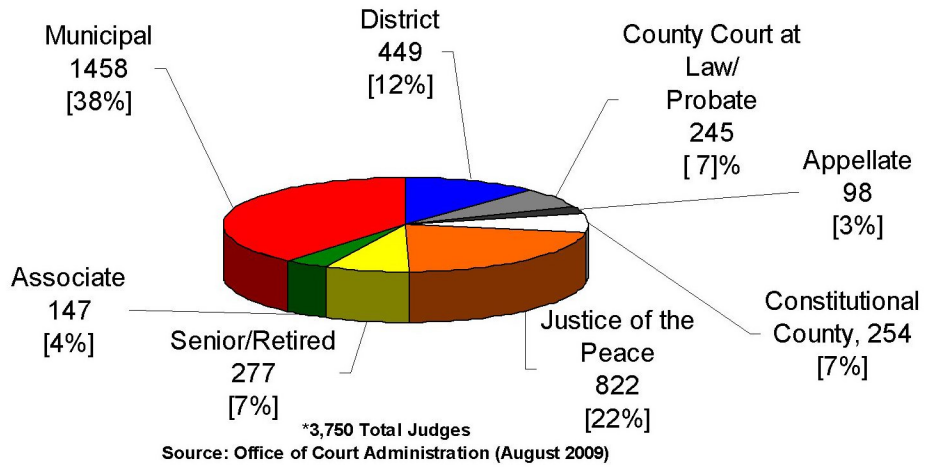


Fig. 2 Number and Percentage of Cases filed by Judge Type*

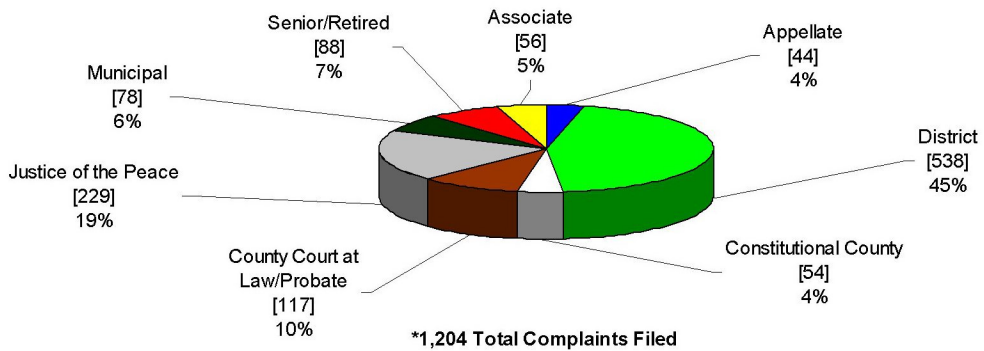


Fig. 3 Number and Percentage of Disciplinary Actions by Judge Type*

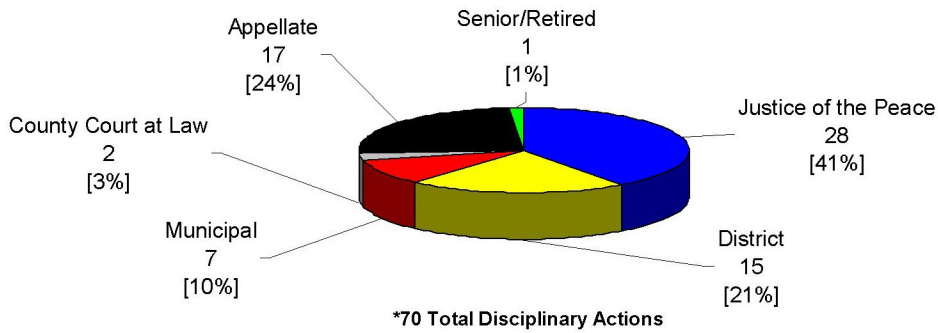


Fig. 4 Number of Cases Disposed By Complainant Type*

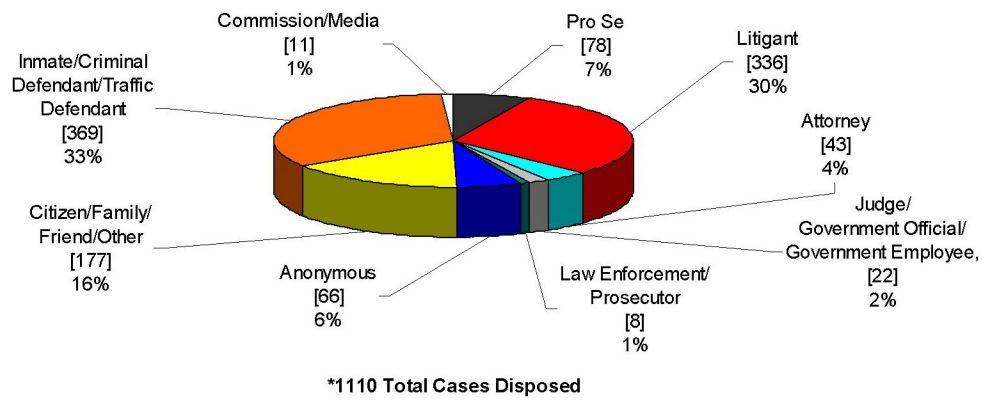


Fig. 5 Cases Filed and Disposed (FY 2006 - FY 2009)

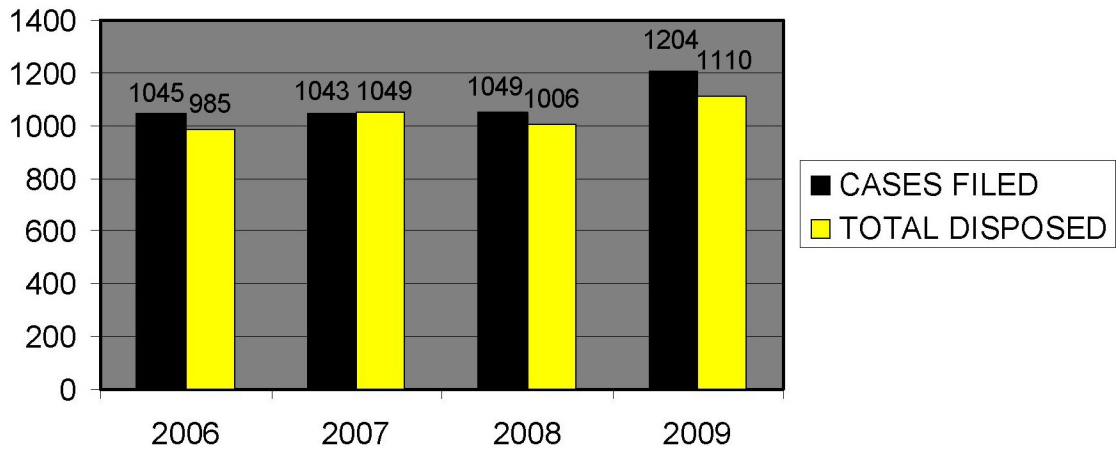


Fig. 6a Commission Activity (FY 2006-2009)

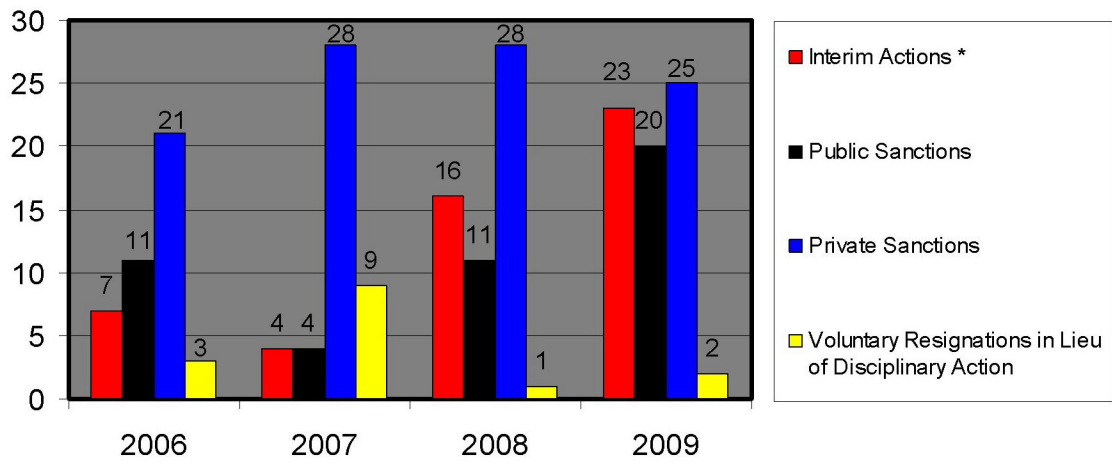
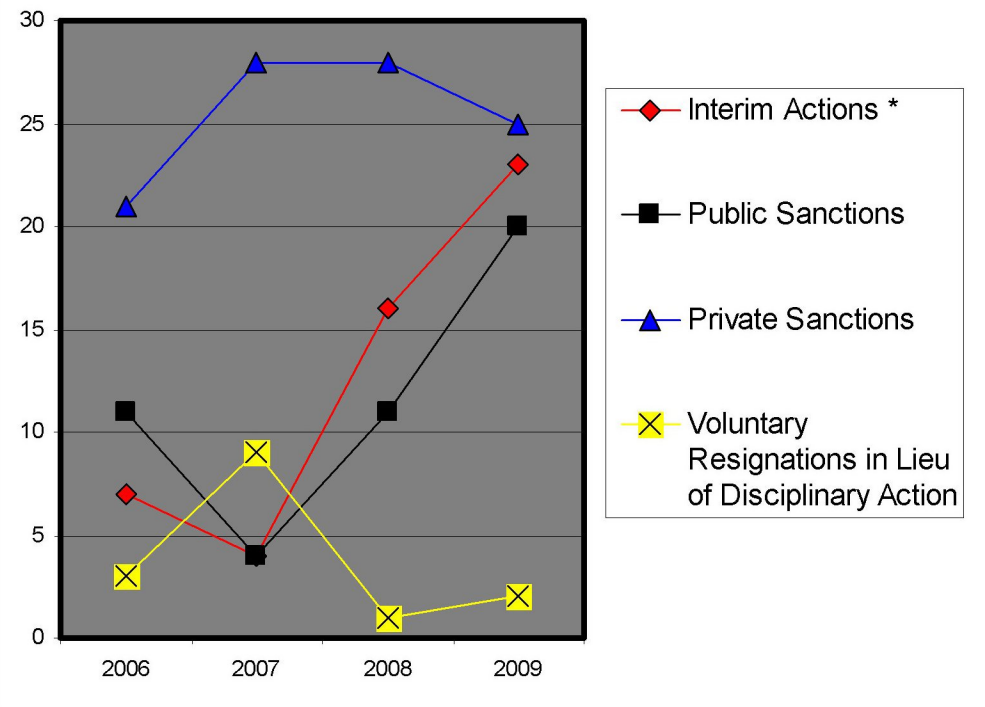


Fig. 6b. Commission Activity Trends (FY 2006 - 2009)



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

Fig. 7a Comparison of Investigations by Type (2006-2009)

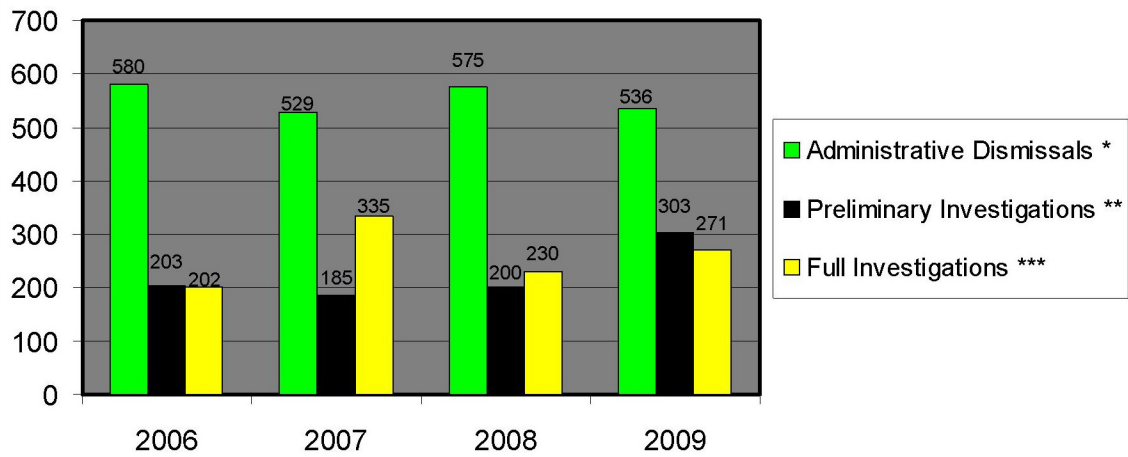
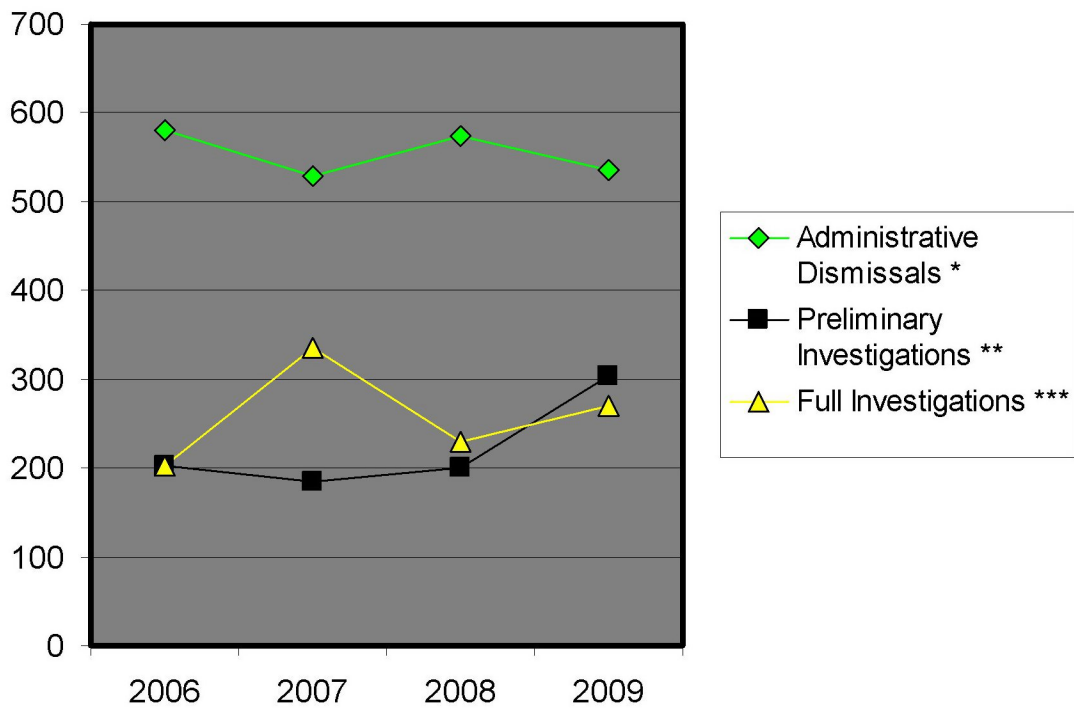


Fig. 7b Comparison of Investigations by Type Trends (2006-2009)



*Administrative Dismissals include files disposed without investigation, because no allegation of judicial misconduct was raised.

**Preliminary Investigations include allegations of judicial misconduct that were resolved without contacting the respondent judge.

***Full Investigations include those cases in which the respondent judge was asked to respond to the allegations of judicial misconduct.

EXAMPLES OF IMPROPER JUDICIAL CONDUCT

The following are examples of judicial misconduct that resulted in disciplinary action by the Commission in fiscal year 2009. These are illustrative examples of misconduct and do not represent every disciplinary action taken by the Commission in fiscal year 2009. 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 sanction is published on the Commission website. A copy may also 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 2009. 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 failed to provide a citizen reasonable access to inquest records as required by law. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace (09/22/08).*
- The judge failed to obtain the mandatory judicial education hours during fiscal year 2008. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Admonition of a Municipal Court Judge. (05/26/09).*
- The judge failed to obtain the mandatory judicial education hours during fiscal year 2008. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace. (06/03/09).*

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.

- In pursuit of an ongoing vendetta against the District Attorney, the judge failed to protect a grand jury from outside influence and made gratuitous and baseless accusations against a lawyer and a judge in a request for a Court of Inquiry. [Violation of Canons 2A, 2B, 3B(5), 4A(1), and 4A(2) of the Texas Code of Judicial Conduct.] *Public Reprimand of a Former District Judge*. (12/18/08).
- A judge allowed his name and judicial title to be used to solicit funds on behalf of a scholarship program. [Violation of Canons 2B and 4C(2) of the Texas Code of Judicial Conduct.] *Private Warning of a Justice of the Peace*. (09/22/08).
- After her mother-in-law received a traffic citation, the judge wrote a letter to and telephoned another court in an attempt to resolve the case and obtain favorable treatment for her relative. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Warning of a Municipal Court Judge*. (12/18/08).

CANON 3B(2): A judge should be faithful to the law and shall maintain professional competence in it.

- The judge entertained a tenant's *ex parte* complaint about the landlord's termination of water service to the property; called the landlord by telephone and ordered him to restore water service to the rental property before the eviction hearing took place; and penalized the landlord for terminating water service to the property by refusing to award the landlord past-due rent. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace*. (12/18/08).
- Following an argument with an individual in the judge's office, the judge caused the individual to be detained in county jail on a contempt of court charge, which was later changed to a disorderly conduct charge. Shortly after the detention, the judge magistrated and released the individual from custody. [Violation of Canons 2A, 3B(1) and 3B(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace*. (01/21/09).
- The judge failed to comply with the Code of Criminal Procedure when handling an attorney's timely written requests to appeal his clients' traffic cases. Instead, the judge had the clients served with *capias pro fine* warrants without notice to their attorney and without permitting the defendants the requisite period of time in which to pay their fines or file an appeal bond. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace*. (01/22/09).
- The judge failed to follow the law and maintain competence in the law when she barred an eviction suit party's non-attorney representative from the courtroom during the eviction proceeding. Further, the judge improperly denied the party's fundamental right to be heard according to law by not allowing the party's agent to assist him in the eviction proceeding. [Violation of Canons 2A, 3B(2) and 3B(8) of the Texas Code of Judicial Conduct.] *Private Admonition of a Justice of the Peace*. (04/06/09).

- The judge failed to follow the law and demonstrated a lack of professional competence in the law when he summoned individuals to his court to attempt to mediate a dispute between the individuals when no case was pending in his court. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Municipal Judge.* (04/06/09).
- The judge relinquished his judicial duties to officers in the police department and allowed them to accept pleas and collect fines and court costs from criminal defendants arrested on Class C misdemeanor or “sight” offenses and/or arrested on outstanding warrants and capiases. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Admonition of a Municipal Court Judge.* (04/28/09).

CANON 3B(3): A judge shall require order and decorum in proceedings before the judge.

- The judge exceeded his authority by providing parents and the school district with a “safe haven” for the administration of corporal punishment. The judge routinely facilitated and permitted the paddling of juveniles in his courtroom thereby clothing the practice with an improper judicial blessing. This court-sanctioned paddling subjected the students and their parents to public embarrassment, humiliation, fear and pain. [Violation of Canons 2A and 3B(3) of the Texas Code of Judicial Conduct]. *Public Warning of a Justice of the Peace.* (03/09/09).

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.

- The judge allowed his acrimonious relationship with fellow judges to improperly influence his conduct and judgment, and in the process, failed to treat those with whom he interacted in an official capacity, including court personnel, in a patient, dignified and courteous manner. [Violation of Canons 2B and 3B(4) of the Texas Code of Judicial Conduct.] *Public Admonition of an Appellate Justice.* (12/18/08).
- The judge failed to comply with the law and demonstrated a lack of patience, dignity and courtesy when he followed a student to her apartment complex, identified himself as a judge, requested that she appear in his court, admonished the student from the bench while wearing judicial robes even though no case was pending before him, and directed the bailiff to issue a citation to the student after becoming annoyed with the argumentative behavior of the student’s father. [Violation of Canons 2A, 2B, and 3B(4) of the Texas Code of Judicial Conduct.] *Public Admonition of a Justice of the Peace.* (12/18/08).
- The judge chastised and directed profanity toward a constable on two separate occasions – one relating to service of process on a small claims defendant and one

relating to service of an arrest warrant. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Warning of a Justice of the Peace*. (12/02/08).

- Because of prior dealings with a member of a local defense firm, the judge criticized an attorney from that firm who had asked for a continuance in his client's traffic case, questioning his professionalism, integrity and decency. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a Justice of the Peace*. (12/18/08)

CANON 3B(8): A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider *ex parte* communications or other communications made to the judge outside the presence of the parties between the judge and a party, an attorney, a guardian or attorney ad litem, an alternative dispute resolution neutral, or any other court appointee concerning the merits of a pending or impending judicial proceeding. A judge shall require compliance with this subsection by court personnel subject to the judge's direction and control.

- The judge initiated a communication concerning a contested motion for summary judgment with an attorney who was his former law partner outside the presence of the other parties or their attorneys. [Violation of Canon 3B(8) of the Texas Code of Judicial Conduct.] *Private Admonition of a District Judge*. (04/16/09).

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 ignored the Commission's numerous requests and orders that he respond to its inquiries, and knowingly failed to timely file campaign finance reports as required by law. [Violation of Article V, section 1-a(6)A, Texas Constitution, and Canons 2A, 4I(2) and 5(4) of the Texas Code of Judicial Conduct.] *Public Warning of a District Judge*. (12/18/08).