

STATE COMMISSION ON JUDICIAL CONDUCT



ANNUAL REPORT FOR FISCAL YEAR 2017

STATE COMMISSION ON JUDICIAL CONDUCT

COMMISSION MEMBERS

Valerie E. Ertz, Chair

Douglas S. Lang, Vice Chair

Ricky A. Raven, Secretary

Patti H. Johnson

Martha M. Hernandez

Diane D. Threadgill

Demetrius K. Bivins

Orlinda L. Naranjo

David M. Russell

David M. Patronella

David C. Hall

Catherine N. Wylie

Tramer J. Woytek

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COMMISSIONER INFORMATION

OFFICERS

CHAIR

Ms. Valerie E. Ertz

Public Member, Dallas
Appointed by Governor
Term Expires: 11/19/2017

VICE-CHAIR

Hon. Douglas S. Lang

Appellate Justice, Dallas
Appointed by Texas Supreme Court
Term Expires: 11/19/2019

SECRETARY

Mr. Ricky A. Raven

Attorney, Houston
Appointed by State Bar of Texas
Term Expires: 11/19/2017

MEMBERS

Ms. Patti H. Johnson

Public Member, Canyon Lake
Appointed by Governor
Term Expires: 11/19/2017

Mr. David M. Russell

Public Member, Dripping Springs
Appointed by Governor
Term Expires: 11/19/2019

Ms. Martha M. Hernandez

Public Member, Diboll
Appointed by Governor
Term Expires: 11/19/2015

Hon. David M. Patronella

Justice of the Peace, Houston
Appointed by Texas Supreme Court
Term Expires: 11/19/2021

Ms. Diane D. Threadgill

Public Member, Midlothian
Appointed by Governor
Term Expires: 11/19/2015

Hon. David C. Hall

County Court at Law Judge, Sweetwater
Appointed by Texas Supreme Court
Term Expires: 11/19/2021

Mr. Demetrius K. Bivins

Attorney, Houston
Appointed by State Bar of Texas
Term Expires: 11/19/2019

Hon. Catherine N. Wylie

Municipal Court Judge, Houston
Appointed by Texas Supreme Court
Term Expires: 11/19/2021

Hon. Orlanda L. Naranjo

District Judge, Austin
Appointed by Texas Supreme Court
Term Expires: 11/19/2017

Hon. Tramer J. Woytek

County Judge, Hallettsville
Appointed by Texas Supreme Court
Term Expires: 11/19/2017

STATE COMMISSION ON JUDICIAL CONDUCT

COMMISSION STAFF

Eric Vinson, Executive Director

Royce Lemoine, Deputy Director

Jacqueline Habersham, Deputy General Counsel

Lorin Hayes, Commission Counsel

Joseph Unruh, Commission Counsel

Kelly Gier, Commission Counsel

Victor Hidalgo, Senior Investigator

Katherine Mitchell, Senior Investigator

Crystal Lopez, Legal Assistant

Michael Graham, Legal Assistant

Kathryn Crabtree, Staff Services Officer

Connie Paredes, Administrative Assistant

Cherie Thomas, Administrative Assistant

STATEMENT FROM THE CHAIR

On behalf of the State Commission on Judicial Conduct, I am pleased to present the Annual Report for fiscal year 2017.

The mission of the State Commission on Judicial Conduct is to protect the public, promote public confidence in the integrity, independence, competence, and impartiality of the judiciary, and encourage judges to maintain high standards of conduct both on and off the bench.

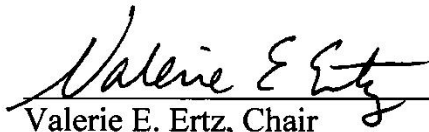
The Commission accomplishes this mission through its investigation of allegations of judicial misconduct or incapacity. In cases where a judge is found to have engaged in misconduct or to be permanently incapacitated, the Texas Constitution authorizes the Commission to take appropriate disciplinary action, including issuing sanctions, censures, suspensions, or recommendations for removal from office.

The Commission consists of 13 members. Five members are appointed by the Governor, six members are appointed by the Texas Supreme Court and two members are appointed by the State Bar of Texas. This unique mix of members with varying professional backgrounds provides an opportunity for diverse opinions and decisions. The Commission members believe every case that is filed deserves to be reviewed and investigated thoroughly and timely.

In 2017, we welcomed our new Executive Director, Eric Vinson. Eric and the dedicated, professional Commission staff members continue to improve our internal systems and reporting. Our goal is to make the filing and reporting process as user-friendly as possible. The Commission received a record number of cases filed during FY 2017. The staff is committed to reviewing and investigating all cases and presenting them to the Commission in a timely manner.

The Commissioners are dedicated and strive to be strong, thorough and confident during our deliberations, always keeping the mission of the Commission in mind – protecting the public and promoting public confidence in the judiciary.

It is an honor to serve on the Commission and I look forward to our continued success and service to the citizens of Texas.



Valerie E. Ertz, 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. The political affiliation, gender, ethnicity, religious background, sexual orientation, socioeconomic status, geographical location, or the position of a complainant or a judge are not considered in the Commission's review of cases. 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 branch agency responsible for investigating and addressing allegations of judicial misconduct or permanent disability.

The Commission's jurisdiction includes all sitting Texas judges, including municipal judges, justices of the peace, criminal magistrates, county judges, county court at law judges, statutory probate judges, district judges, appellate judges, masters, associate judges, referees, retired and former judges who 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 authority to sanction anyone who was not a sitting judge at the time the alleged misconduct occurred. Instead, an alleged violation of the canons by a judicial candidate who is not a judge at the time of the conduct may be subject to review by other authorities including 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, each of whom serves a staggered six-year term, as follows:

- Six judges appointed by the Supreme Court of Texas, one from each of the following courts: 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 and the two attorney members who serve on the Commission must be appointed from different appellate districts in Texas. Meanwhile, the justice of the peace, municipal court judge and public members are at-large appointments. The Texas Senate confirms all appointees. Commissioners meet 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, the Texas Procedural Rules for the Removal or Retirement of Judges, and the Texas Code of Judicial Conduct. As a part of the judicial branch with 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 Texas 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 [the judge’s] duties or casts public discredit upon the judiciary or administration of justice.”

Accordingly, a judge’s violation of the Texas Constitution, the Texas Penal Code, the Texas Code of Judicial Conduct, or rules promulgated by the Supreme Court of Texas may constitute judicial misconduct. Specific examples of judicial misconduct include:

- failure to cooperate with the Commission’s investigation
- inappropriate or demeaning courtroom conduct, including yelling, use of profanity, demonstrated gender bias or the use of racial slurs
- improper *ex parte* communications with only one side in a case
- a public comment regarding a pending case
- presiding over a case in which the judge has an interest in the outcome, or in which any of the parties, attorneys or appointees are related to the judge within a prohibited degree of kinship
- out of court activities, including criminal conduct, engaging in improper financial or business dealings, improper fundraising activities, sexual harassment or official oppression

Sources of Complaints and Allegations

The Commission considers allegations from any source, including an individual, a news article, or information obtained during 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 change the decision or ruling of any court, nor can the Commission intervene in any pending case or proceeding. The Commission is also unable to remove a judge from a case. If the Commission determines that a judge has committed misconduct in an ongoing case, the Commission may only issue a sanction against the judge, or institute proceedings that would authorize the eventual removal of the judge from the bench.

The Commission cannot provide legal assistance or advice to a complainant, nor can it award damages or provide monetary relief to anyone.

Commission Investigations and Actions

Cases are reviewed, analyzed and investigated by the Commission staff. An investigation may include a review of court records and interviews with witnesses. The Commission also endeavors to obtain a respondent judge’s perspective before contemplating issuing any discipline against the judge. Once all the information is obtained through the investigation, the materials are presented to the

Commission for deliberation. Typically, the Commission will either dismiss or sanction a judge at that point. Occasionally, the Commission may seek to suspend a judge, accept a voluntary resignation agreement from a judge in lieu of disciplinary action, or institute formal proceedings, as appropriate.

Commission Organization and Staff

In fiscal year 2017, the Commission had fourteen authorized staff positions (Full Time Equivalents, or “FTEs”). For the year, Commission’s staff included the Executive Director, the Deputy Director, four staff attorneys, three investigators, two legal assistants, a staff services officer, and two administrative assistants. All Commission staff members are full time State employees.

The Commission’s legal staff, which consists of attorneys, legal assistants and investigators, are responsible for the evaluation and investigation of complaints. The investigators and legal assistants handle in-house and on-site investigations, screen all new cases and are also responsible for preparing legal documents and assisting the attorneys in the prosecution of disciplinary proceedings. The attorneys are responsible for investigating allegations of judicial misconduct or incapacity, presenting cases to the Commission, prosecuting disciplinary cases before Special Courts of Review, Special Masters, and Review Tribunals, responding to ethics calls, and speaking about judicial ethics at judicial educational and training seminars.

The Commission staff attorneys serve as Examiners, or trial counsel, during formal proceedings and on appeals from Commission actions. The Examiner is responsible for all aspects of preparing and presenting a case before the Commission, Special Master, Special Court of Review or Review Tribunal. The Commission may also employ 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.

Outreach and Education

In fiscal year 2017, the Executive Director and staff attorneys participated in approximately sixteen presentations at judicial training courses, bar conferences, outreach programs, and court staff workshops, describing the Commission and its operations and discussing various forms of judicial misconduct.

Ethics Calls

In fiscal year 2017, the Executive Director and staff attorneys responded to approximately 750 inquiries from judges, judicial candidates, attorneys, legislators, the media and citizens regarding judicial ethics. Callers are informed 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. As appropriate, a caller’s question may be 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/Online Complaints

The Commission’s website is located at www.scjc.texas.gov. In March of 2016, the Commission added an online portal to its website allowing users to electronically file complaints with the agency. From

April 1, 2016, to August 31, 2016, 28.63% of complainants filed the complaints electronically. However, for fiscal year 2017, 57% of the complaints received were filed through the Commission’s website.

The Commission’s website also provides downloadable complaint forms in English and Spanish. The website 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 Opinions issued by Special Courts of Review and Review Tribunals.

The Commission’s governing provisions (the Texas Code of Judicial Conduct; 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) are all linked on the website as well.

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 law...”
- Government Code:
 - When the Commission issues a public sanction against a judge, Section 33.032 of the Texas Government Code provides that “the record of the informal appearance and the documents presented to the commission during the informal appearance that are not protected by attorney-client or work product privilege shall be public.”
 - This Section also provides that suspension orders and voluntary agreements to resign in lieu of disciplinary proceedings are publicly available.
 - 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 instituting 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 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 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. No public statements were issued in fiscal year 2017.

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 generally not accepted; however, complaints may be filed electronically through the agency's online portal.

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:

- Complete and submit electronically through the Commission's online portal at www.scjc.texas.gov/public-information/complaint-form.aspx
- Download from the Commission's website at www.scjc.texas.gov; and
- Telephone requests to the Commission at (512) 463-5533 or toll free at (877) 228-5750

The Commission may also initiate a complaint upon a media report, court documents, the internet or other sources. A complainant may request that the Commission keep his or her identity confidential. Additionally, the Commission accepts anonymous complaints.

After a complaint is filed, the Commission sends an acknowledgment letter to the complainant and staff begins its investigation and analysis of the allegations. Complainants may be asked to provide additional information or documents. As appropriate, staff conducts legal research and contacts witnesses. If the evidence calls for a response from the judge, an attorney will contact the judge to obtain a response to the allegations before presenting the matter to the Commission for consideration. When necessary, 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, the complainant, or other witnesses to appear and discuss the allegations. Based on the specific constitutional provisions, statutes and canons under which the Commission operates, it considers and votes on every complaint investigated by staff.

If the Commission chooses to issue a public sanction, an order describing the Commission's findings is prepared and distributed to the respondent judge, with a copy provided to the complainant. The order is then publicly disseminated to ensure public awareness. If the Commission votes to issue a private sanction, the appropriate order is prepared and tendered to the respondent 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 the order of suspension and all records related to any post-suspension proceedings to the public.

Commission Decisions

Commission members review, deliberate and vote on each investigated 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 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 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 fails to state an allegation which, if true, would constitute one or more of the following: (a) a willful or persistent violation of rules promulgated by the Supreme Court of Texas, (b) incompetence in performing the duties of the office, (c) willful violation of the Texas Code of Judicial Conduct, or (d) 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. Generally, the fact that a judge made an error while ruling on a motion, an objection, the admission or exclusion of evidence, or in the ultimate outcome of the case, does not constitute judicial misconduct unless there is evidence of bad faith, persistent legal error, or the legal error was egregious. Only an appellate court has the power to review and change a judge's decision in any case. In addition, gratuitous claims of misconduct that are unsupported by any facts or evidence will often be administratively dismissed. These cases are dismissed following an initial review without an investigation. In letters of dismissal sent to these complainants, the Commission provides an explanation for the decision and provides Complainants the opportunity to have the Commission reconsider the decision to dismiss the case before investigation. Staff may grant a complainant's ADR reconsideration request, but only the Commission has the authority to deny an ADR reconsideration request.

2. Dismissal

The Commission may dismiss a case after conducting a preliminary investigation of the allegations. Reasons for these dismissals include insufficient or no evidence of misconduct,¹ 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

¹ In contrast to cases dismissed administratively following an initial review, cases dismissed following a preliminary investigation in which it was determined that there was no evidence of judicial misconduct are classified as "frivolous" pursuant to Section 33.022 of the Texas Government Code.

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, particularly non-lawyer 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 additional education. The Commission then contacts the appropriate judicial training center, where the respondent judge may attend a particular training program or a mentor judge may be appointed for one-on-one instruction with the judge, to be completed within a specified time on particular subjects. The mentor judge then reports to the Commission on the respondent judge's progress. The Commission may also order the judge to obtain education on other issues, such as anger management, gender or racial sensitivity, or sexual harassment. The Commission may issue an order of additional education alone or as part of a private or public sanction.

4. Private or Public Sanction

Sanctions are issued by the Commission when a preponderance of evidence is provided that supports a finding of judicial misconduct. The most severe disciplinary action available to the Commission is a *public censure*, which may be issued only after formal proceedings have been initiated 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* may be issued as a public denunciation of the judge's conduct. Alternatively, the Commission may also issue a public reprimand, warning, or admonition following a formal proceeding.

The next most severe sanction is a *public reprimand*. A *reprimand* is the most severe sanction available to the Commission at the informal stage of disciplinary proceedings. 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, except after a formal proceeding or an appeal, sanctions may be public or private, and may be combined with orders of education.

A judge may appeal any sanction and a public censure to a Special Court of Review. The process for appealing a public censure, reprimand, warning or admonition issued by the Commission after formal proceedings is different than that of a *de novo* review of a sanction issued after informal proceedings.

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 the Commission elects to issue a *private sanction*, the judge's name and all information considered by the Commission remain confidential.

5. Suspension

The Commission has the power to suspend a judge from office, 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 a judge be suspended from office, with or without pay, 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 the 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 egregious that it should be handled and resolved through 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, reprimand, warning or admonition, 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.

Although the Commission's recommendation for removal cannot be appealed, the judge may appeal the decision of the Review Tribunal to the Texas Supreme Court. A judge may also appeal the Commission's decision to issue a public censure or sanction to a Special Court of Review.²

Appellate Review of Commission Action

A judge may appeal the Commission's issuance of any public or private sanction, order of additional education, or public censure 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, through its Examiner, must file with the Clerk of the Texas Supreme Court 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.³ These records become public upon filing with the Clerk, who is responsible for furnishing a copy to the petitioning judge and to each justice on the Special Court of Review.

In an appeal of a sanction issued following the informal proceeding stage, 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 review 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 and cannot be appealed.

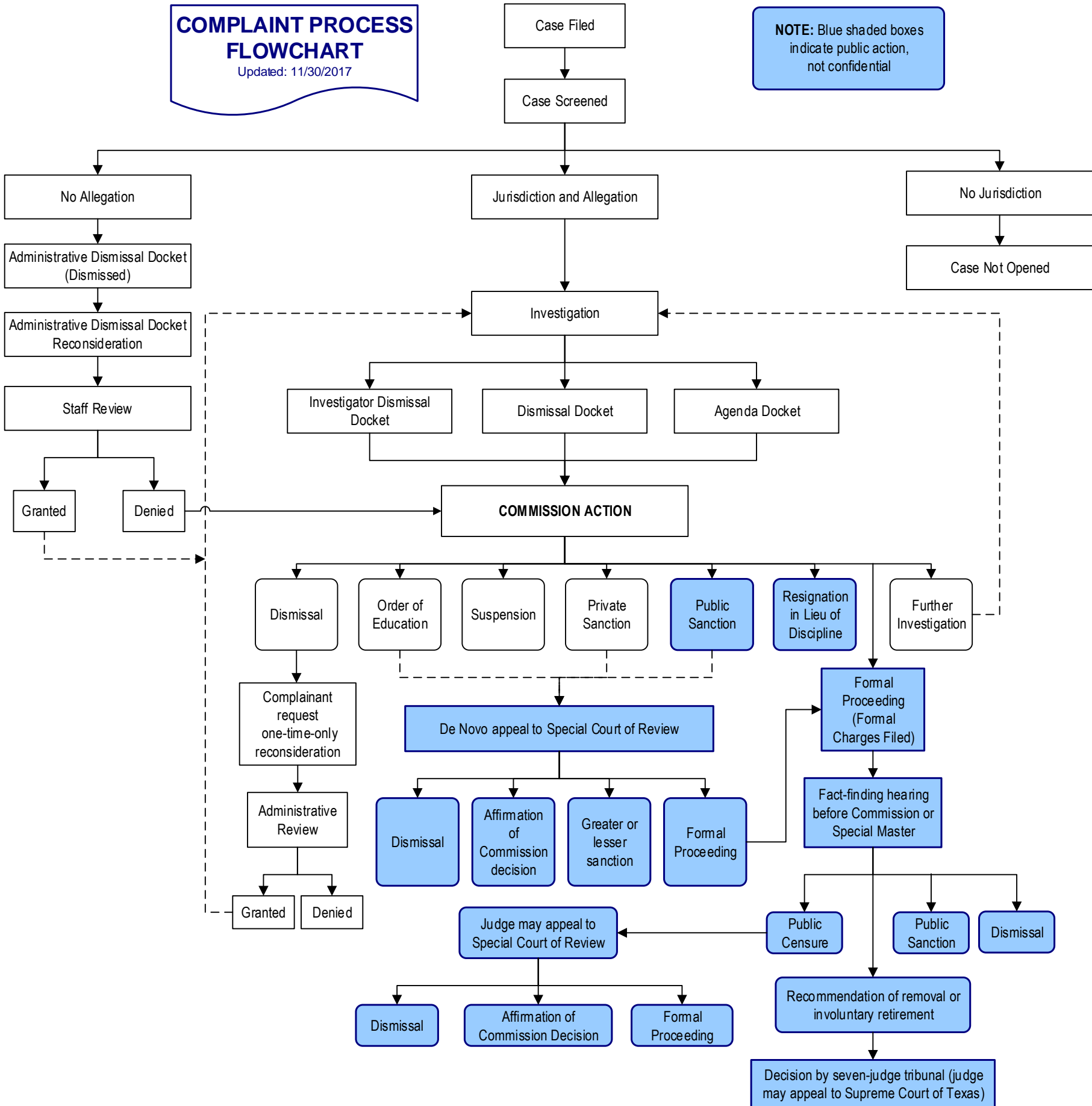
² In 2009, Section 33.034 of the Texas Government Code was amended to provide judges the right to appeal a public censure issued by the Commission following a formal proceeding. In 2013, Section 33.034 was amended further to provide the right to appeal a public reprimand, warning, or admonition issued after a formal proceeding. The Texas Supreme Court has been charged with the responsibility of drafting the procedural rules that will govern this process. As of the date of this publication, however, no written procedures are in place for such an appeal.

³ Sanctions issued in the informal proceeding stage may be reviewed in a trial *de novo*, in the same way that a case tried in a justice court may be appealed to a county court. By contrast, the appeal of a sanction or censure issued following a formal proceeding is a "review of the record of the proceedings that resulted in the sanction or censure and is based on the law and facts that were presented in the proceedings and any additional evidence that the Special Court of Review in its discretion may, for good cause shown, permit." See Section 33.034(e)(1), Texas Government Code.

COMPLAINT PROCESS FLOWCHART

Updated: 11/30/2017

NOTE: Blue shaded boxes indicate public action, not confidential



STATISTICAL ANALYSIS

An outline of the statistical activity for the Commission through the end of fiscal year 2017 is shown in **Table 1** immediately following this section. Tables 2 and 3 illustrate the types of dispositions made by the Commission including the type of discipline issued. Graphic representations of the data are also presented in **Figures 1** through **7** to further illustrate the activities of the Commission.

According to Office of Court Administration records, approximately 3,811 judges were under the jurisdiction of the Commission in fiscal year 2017.

Figure 1 illustrates the Texas judiciary by the number of judges in each category. **Figure 2** shows the number and percentage of cases filed with the Commission by judge type. **Figure 3** shows the number of complaints resulting in disciplinary action by the Commission against each judge type. **Figure 4** shows the total number of the Commission's disciplinary actions by judge type from fiscal year 2015 through fiscal year 2017. Of note in fiscal year 2017: municipal judges, who make up 35% of the judiciary, received only 5% of the complaints and less than 4% of the discipline issued by the Commission. The number of disciplinary actions against district judges continued its downward trend from 29 in 2015 to 13 in 2017.

In fiscal year 2017, the Commission took action in 62 cases against Texas judges. The Commission disposed of 51 cases through public sanction, private sanction, orders of additional education or a combination of a sanction with an order of additional education. Eight cases were resolved by voluntary agreements to resign from judicial office. Two judges were suspended from office in fiscal year 2017; the Commission instituted formal proceedings against one of the two suspended judges.

Figures 5a and 5b show the total number of cases filed with and disposed by the Commission between fiscal years 2014 and 2017, along with a breakdown of disciplinary actions. In fiscal year 2017, the Commission opened 1,535 cases – a 29% increase over the number of filings in fiscal year 2016. The Commission disposed of 1,333 cases in fiscal year 2017, representing a 27% increase in the number of dispositions over the number of dispositions in fiscal year 2016.

A comparison of public discipline, private discipline and interim actions taken by the Commission in fiscal years 2014 through 2017 is shown in **Figures 6a** and **6b**.

In fiscal year 2017, the Commission had a total disposition rate of just under 87%, due in large part to the increase in the number of cases received that year. The Commission disposed of nearly three hundred more cases in fiscal year 2017 relative to 2016, but the extraordinary growth in the number of complaints received in 2017 caused its disposition rate to remain under 90%. Of the 1,333 cases closed last year, 139 were dismissed with language advising the judge about technical or *de minimus* violations, or violations of aspirational canons, and cautioning the judge to avoid similar conduct in the future. Additionally, eleven cases were dismissed after the judge demonstrated that he or she took appropriate measures to correct conduct that resulted in an investigation. Approximately 53% of the cases closed in fiscal year 2017 alleged no judicial misconduct. The number (299) and percentage (22.4%) of cases closed following a preliminary investigation rose in 2017 relative to 2016. The same is true for the number (328) and percentage (24.5%) of the number of full investigations requiring a response from the judge closed in 2017 relative to 2016. A comparison of initial, preliminary and full investigations conducted by the Commission in fiscal years 2014 through 2017 is shown in **Figures 7a** and **7b**.

In compliance with Section 33.005 of the Texas Government Code, the chart on **Table 2** provides a breakdown of the dispositions of the 1,333 cases closed in fiscal year 2017, including the number of cases dismissed following preliminary investigation with a determination that the allegation was frivolous or unfounded, or because the facts alleged did not constitute judicial misconduct or the evidence did not support the allegation of judicial misconduct. **Table 3** shows, in order of prevalence, the types of allegations or canon violations that resulted in disciplinary action during fiscal year 2017.

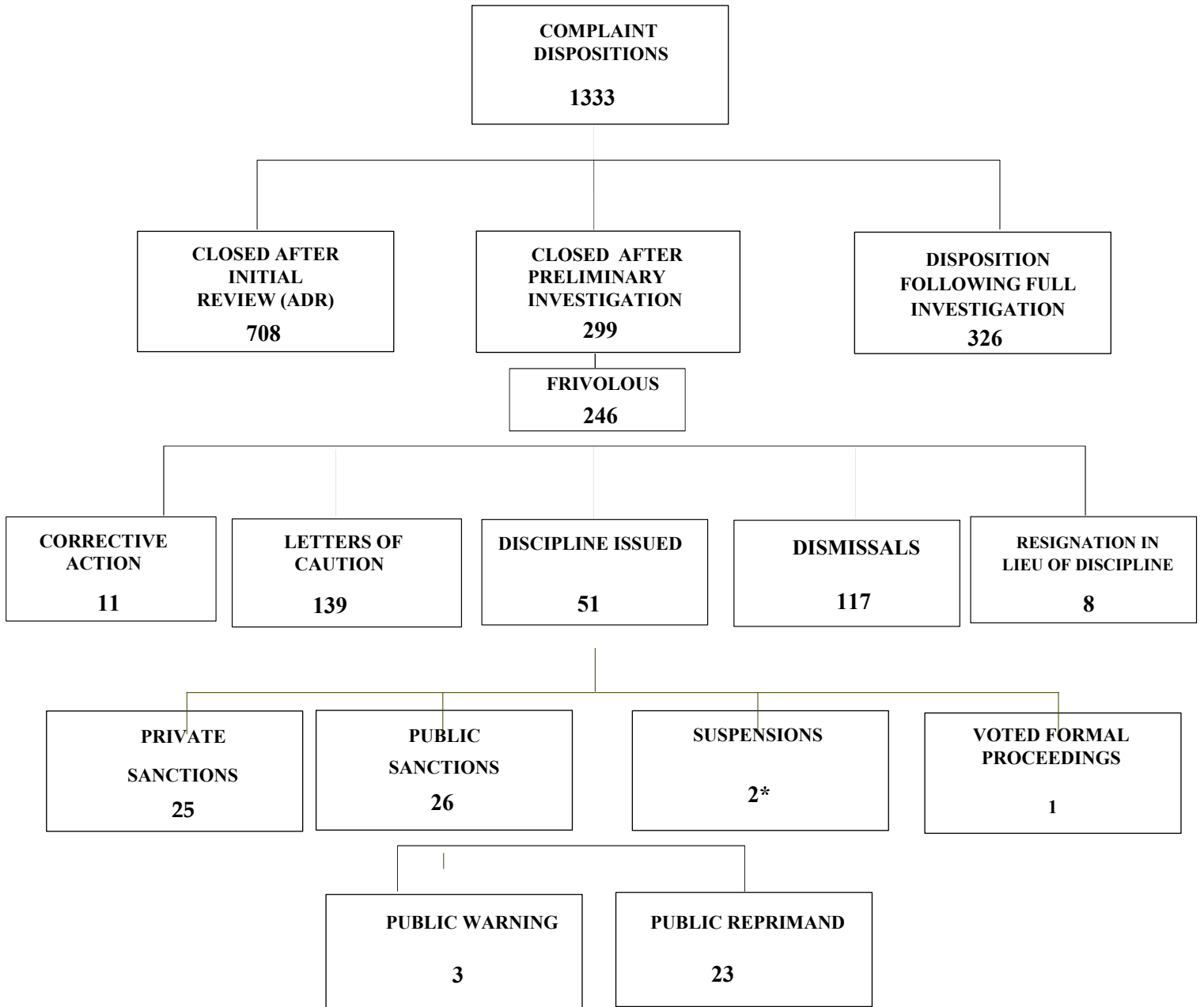
Finally, it should be noted that the Commission receives hundreds of pieces of mail every year that do not pertain to the conduct of Texas judges. In fiscal year 2017, an estimated 300 people wrote to the Commission complaining of individuals or entities that were outside of the Commission’s jurisdiction. Each of those complainants was provided additional written information and referred to other resources to help them resolve their concerns.

**TABLE 3 – TYPES OF CONDUCT RESULTING IN DISCIPLINE
IN FISCAL YEAR 2017**

The types of conduct are listed in order of prevalence. The numbers indicate the number of times each type of conduct resulted in discipline. A single act of misconduct was counted once and assigned to the category most descriptive of the misconduct. If multiple types of misconduct were involved in a single case, each different type of conduct was counted and assigned to the appropriate category. However, if the same type of conduct occurred on multiple occasions in a single case, it was counted only once.

<i>Failed to Comply with Law</i> [13]	<i>Incompetence</i> [8]	<i>Willful or Persistent Conduct Casting Public Discredit</i> [6]
<i>Improper Demeanor</i> [7]	<i>Using Prestige of Judicial Office</i> [5]	<i>General Bias/Prejudice</i> [1]
<i>Racial Bias/Prejudice</i> [1]	<i>Influential Relationship</i> [4]	<i>Improper Ex Parte Communications</i> [1]
<i>Right to be Heard</i> [1]	<i>Extra-Judicial Conduct Raised Doubts about Judge's Impartiality/Interferes with Judicial Activities</i> [0]	<i>Failure to Maintain Order or Decorum</i> [1]
<i>Misrepresentation of Judge's Present Position</i> [1]		<i>Failure to Cooperate with the Commission</i> [1]
	<i>Pledge Regarding an Impending Case Suggesting the Judge's Probable Decision</i> [1]	

TABLE 2
2017 COMPLAINTS
DISPOSITIONS

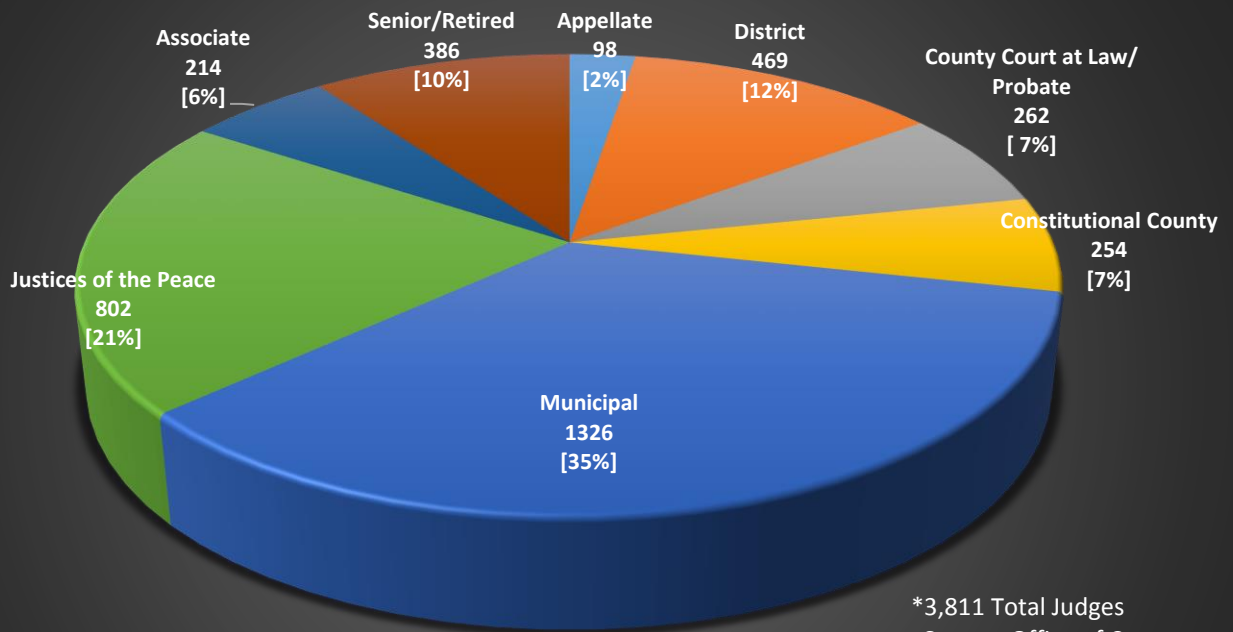


* Not a final disposition

Table 1: Commission Activity

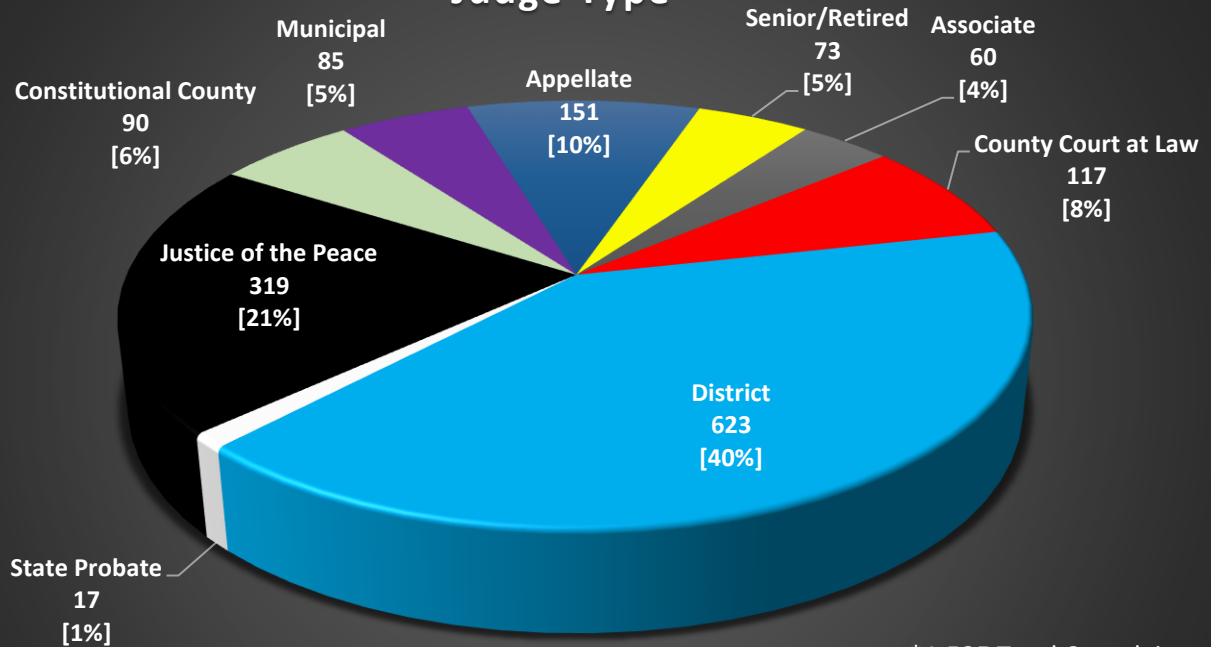
Item	FY 2014	FY 2015	FY 2016	FY 2017
Cases Pending (Beginning FY/Ending FY)	593/650	650/477	477/625	625/827
Cases Filed	1138	1066	1193	1535
Total Number of Cases Disposed	1079	1245	1050	1333
% of Cases Disposed	94.82%	116.79%	88.24%	86.84%
Average Age of Case Disposed (in months)	6.3	6.9	5.9	6.02
Disciplinary Action (total)	63	96	69	62
Cases Disposed through:				
Criminal Conviction	0	0	0	0
Review Tribunal Order	0	0	0	0
Voluntary Agreement to Resign in Lieu of Disciplinary Action	6	14	11	8
Sanction				
Public Censure	0	0	0	0
Public Censure and Order of Add'l Education	0	0	0	0
Public Reprimand	9	25	10	2
Public Warning	2	1	0	1
Public Admonition	1	7	0	0
Public Sanction and Order of Add'l Education	3	16	14	23
Private Reprimand	3	9	2	1
Private Warning	4	1	5	3
Private Admonition	12	5	4	4
Private Sanction and Order of Add'l Education	15	13	18	14
Public Order of Add'l Education	0	0	0	0
Private Order of Add'l Education	5	0	2	3
Interim Disciplinary Action (total)				
Order of Suspension [15(a)]	3	5	2	1
Recommendation of Suspension to Supreme Court [15(b)]	0	0	1	1
Cases in Formal Proceedings	0	0	0	1
Amicus Referral	0	0	0	0
Dismissals	1018	1154	981	1282
Requests for Reconsideration Received (Dismissal)	74	52	28	23
Reconsideration Granted/Denied	2/71	0/53	2/24	1/25
Pending	1	0	2	1
Requests for Reconsideration Received (ADR)	n/a	n/a	n/a	29
Reconsideration Granted/Denied	n/a	n/a	n/a	1/28
Pending	n/a	n/a	n/a	0
Cases Appealed to Special Court of Review	1	6	0	1
Informal Hearing Set	14	15	19	1
Public Statements Issued	0	0	0	0

Fig. 1: Number of Texas Judges by Type*



*3,811 Total Judges
 Source: Office of Court Administration
 (November 2017)

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



*1,535 Total Complaints Filed in FY 2017

Fig. 3: Number of Complaints Resulting in Disciplinary Actions by Judge Type -- Fiscal Year 2017*

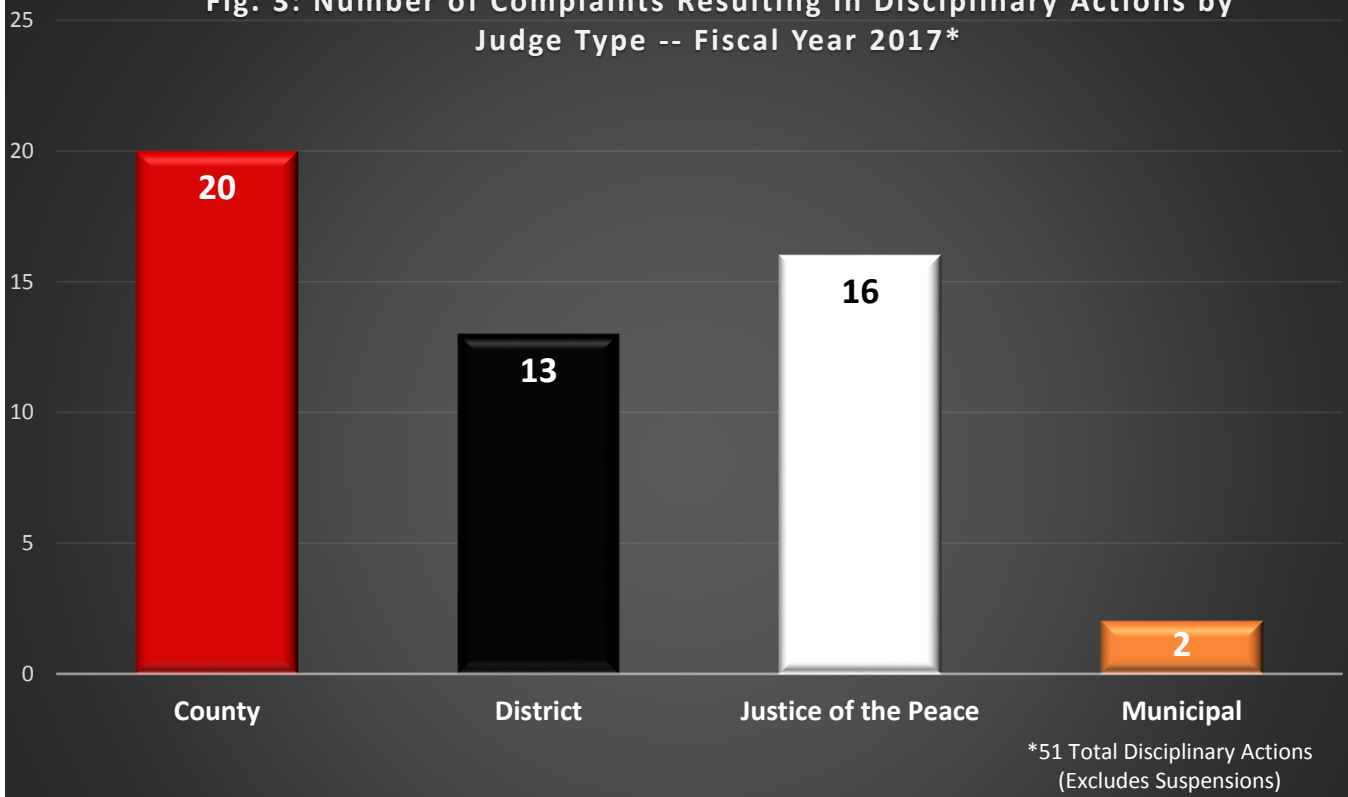


Fig. 4 Number of Disciplinary Actions by Judge Type (FY 2015 - 2017)

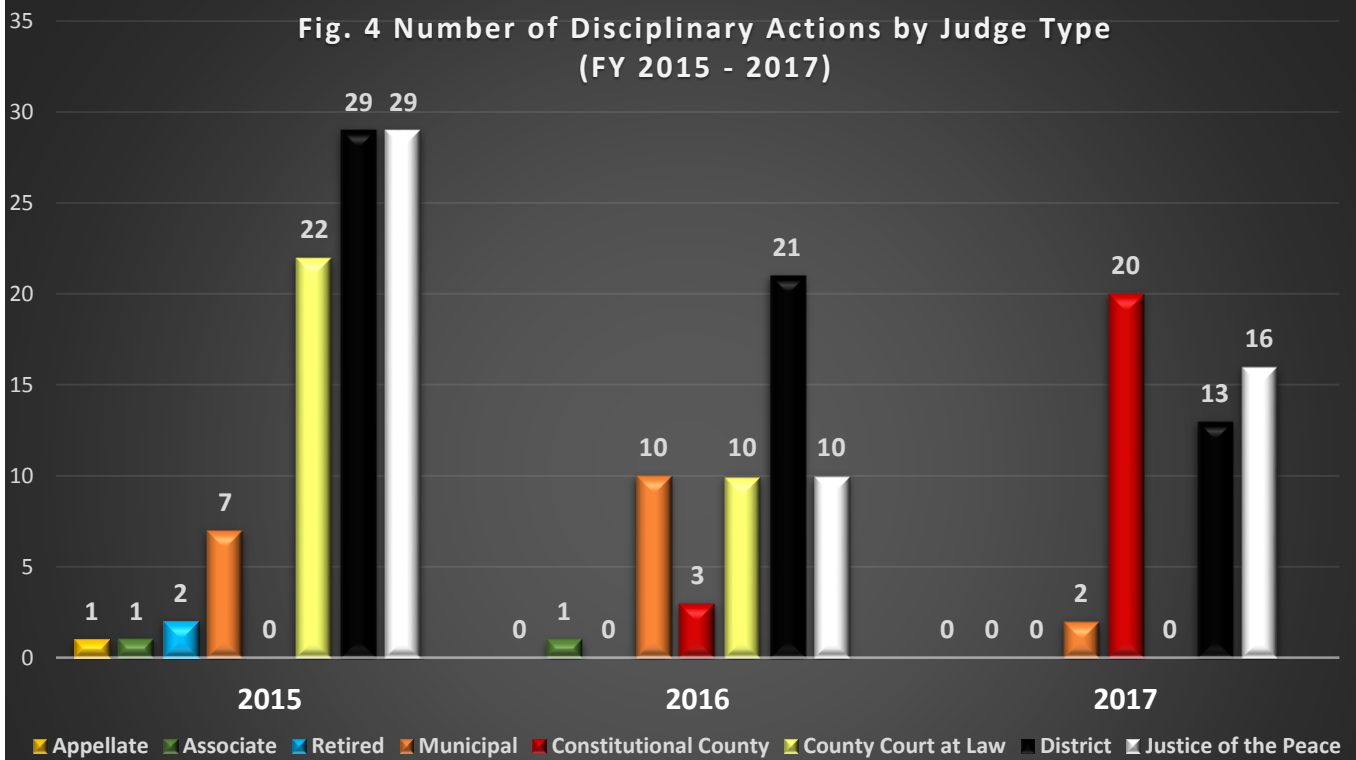


Fig. 5a Cases Filed and Disposed (FY 2014 - FY 2017)

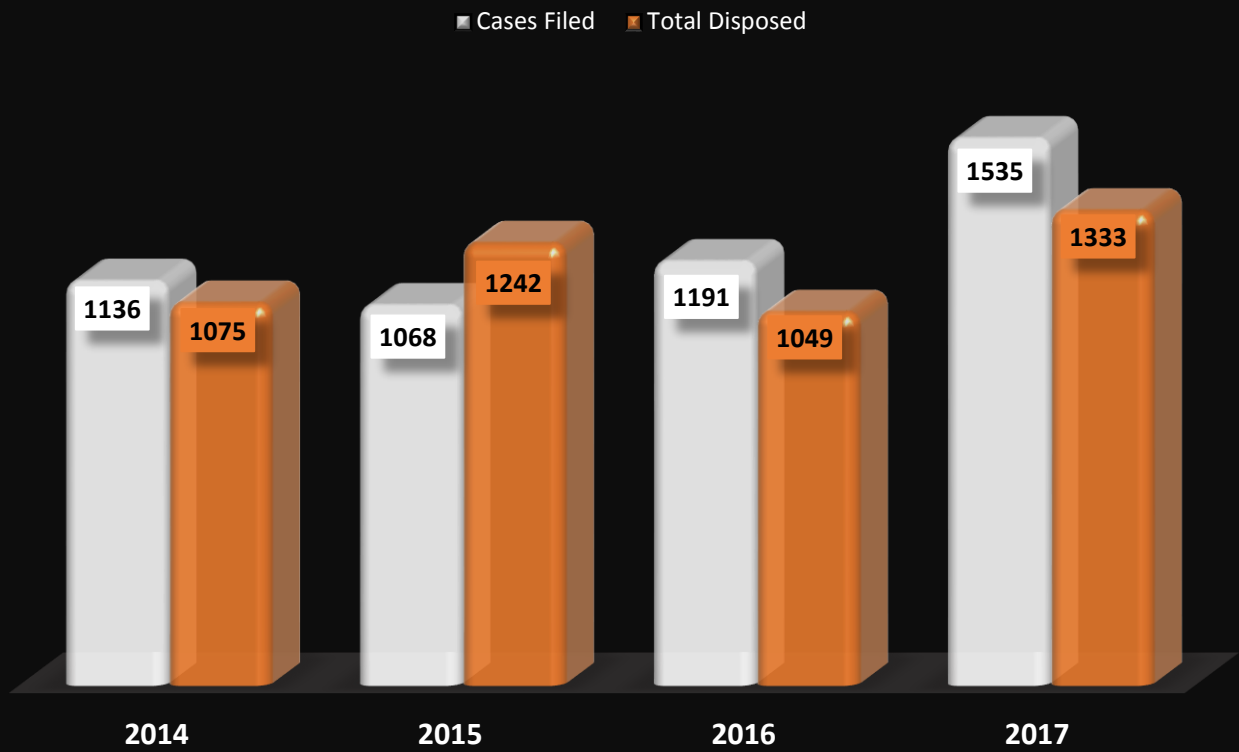


Fig. 5b Case Filing and Dispositions (FY 2014 - FY 2017)

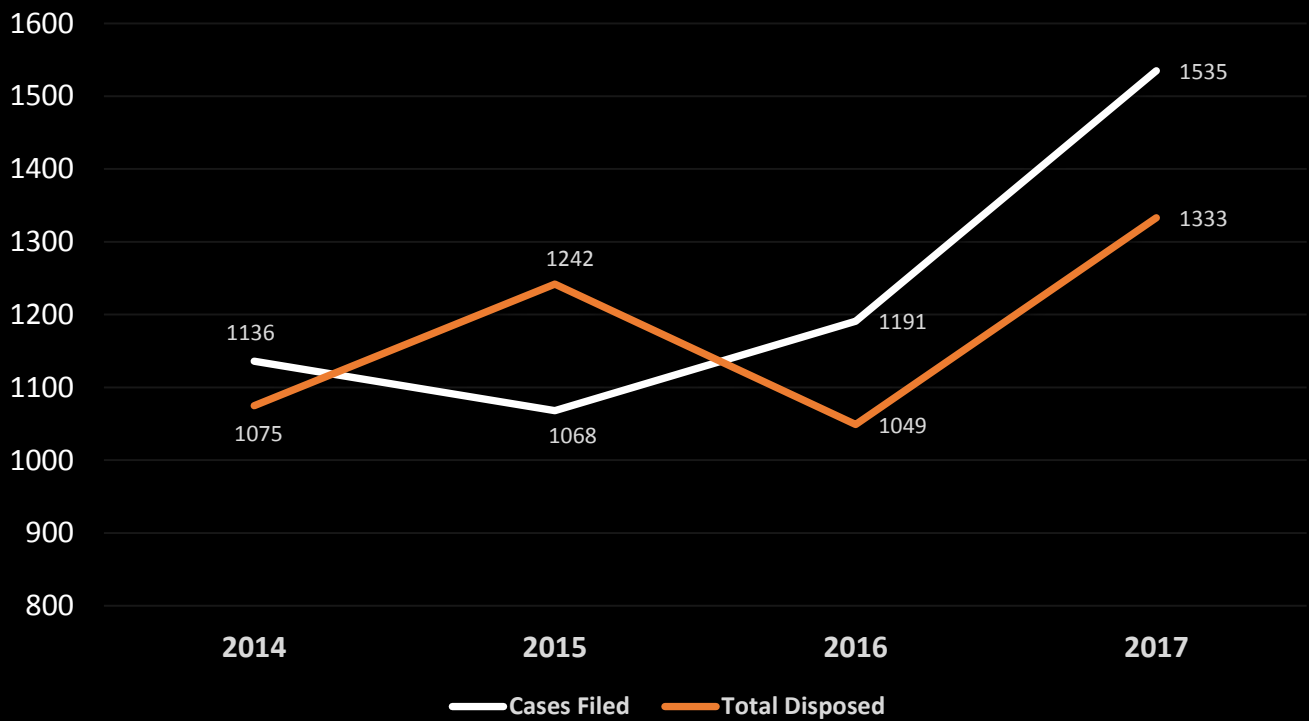


Fig. 6a Commission Activity (FY 2014-2017)

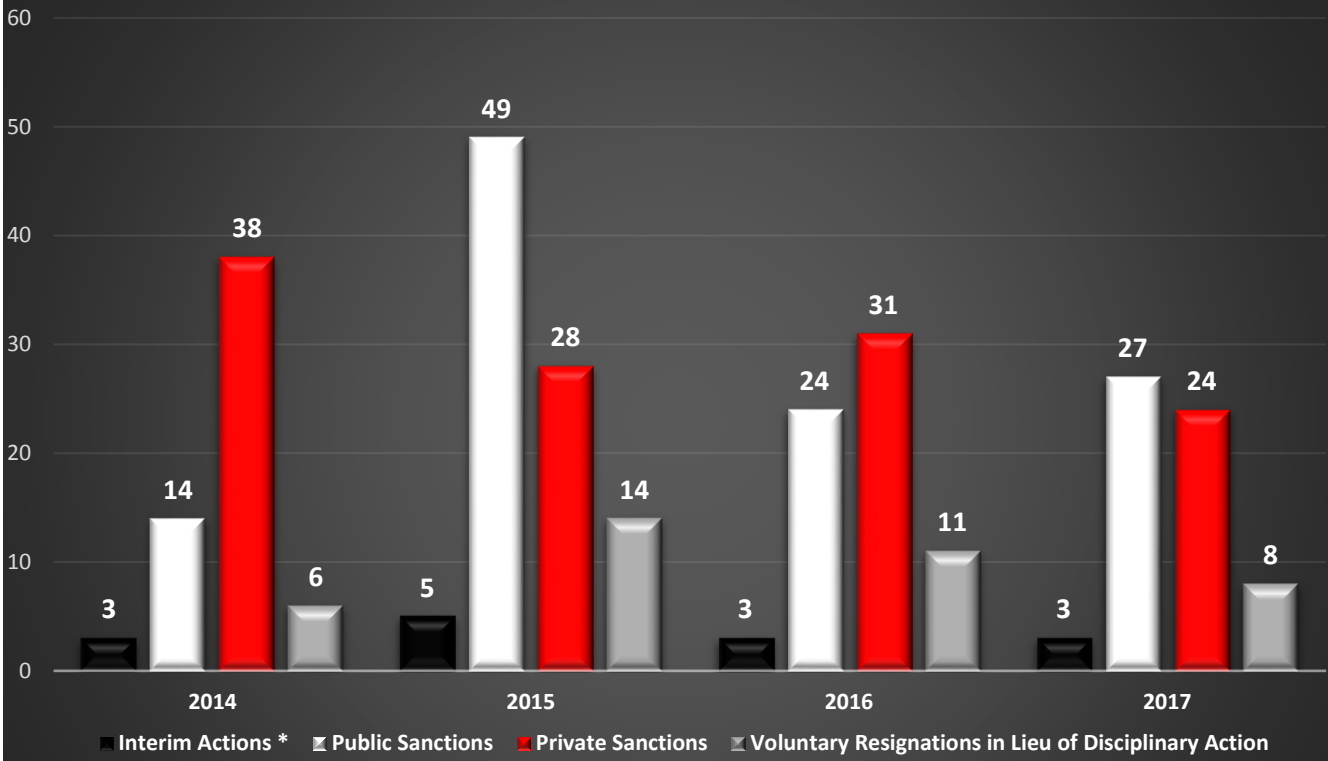


Fig. 6b Commission Activity (FY 2014-2017)

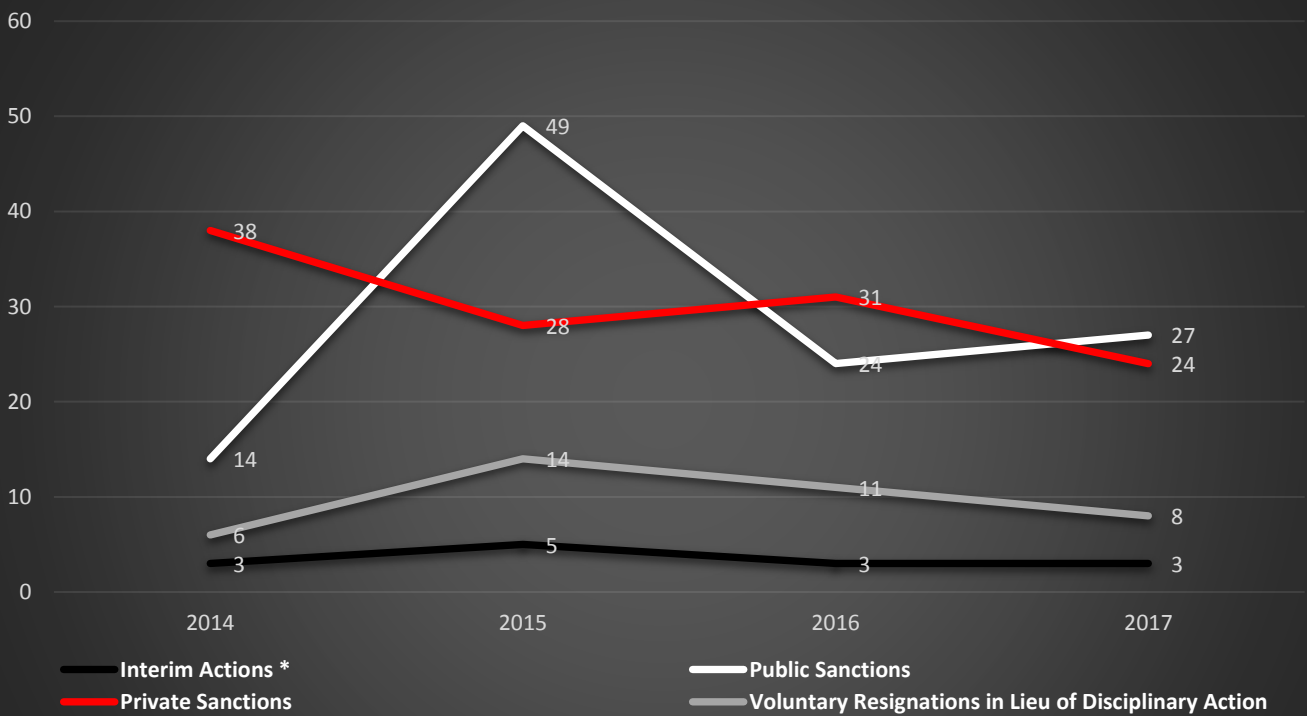


Fig. 7a Comparison of Investigations by Type (2014 - 2017)

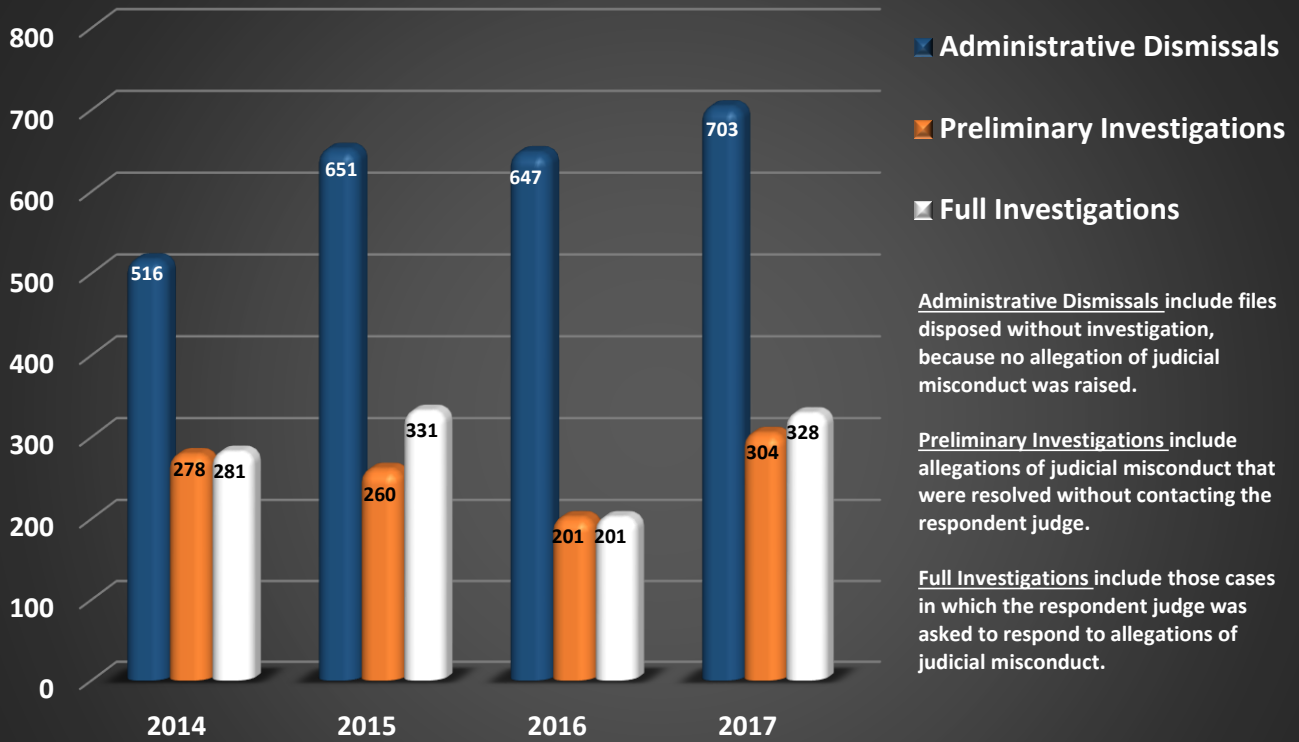
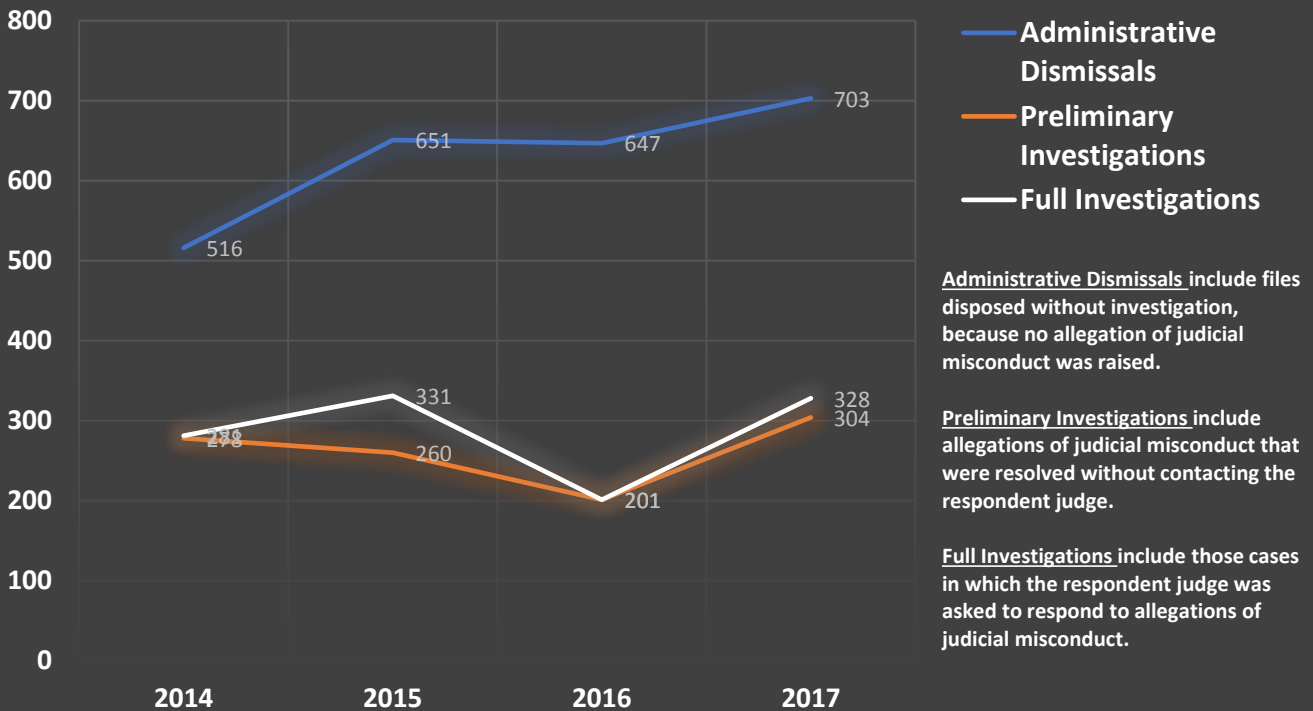


Fig. 7b Comparison of Investigations by Type Trend (2014 - 2017)



EXAMPLES OF IMPROPER JUDICIAL CONDUCT

The following are examples of judicial misconduct that resulted in disciplinary action by the Commission in fiscal year 2017. These are illustrative examples of misconduct, and do not represent every disciplinary action taken by the Commission in fiscal year 2017. 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 of any public disciplinary record 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 2017. The reader should note that the summaries provide only general information and may 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 inference from the fact situations provided in these summaries.

It is important to remember that the purpose of judicial discipline is not to punish the judge for engaging in misconduct, but to protect the public by alerting them that conduct that violates the public trust will not be condoned. However, the reader should note that not every transgression reported to the Commission will, or should, result in disciplinary action. The Commission has broad discretion to determine whether disciplinary action is appropriate, and the degree of discipline to be imposed. Factors such as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system, will inform and impact the Commission's decision in each case. It is the Commission's sincere desire that providing this information will protect and preserve the public's confidence in the competence, integrity, impartiality and independence of the judiciary and further assist the judiciary in establishing, maintaining and enforcing the highest standards of conduct – both on the bench and in their personal lives.

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 comply with the law; failed to maintain professional competence in the law; allowed a relationship with a family member to influence the judge's judgment and conduct; acted with bias toward the family member; and took action in a judicial proceeding in which she was disqualified when she (1) magistrated the family member; (2) released the family member on PR bonds, and (3) later released the family member without any bond. *Private Reprimand and Order of Additional Education of a Justice of the Peace.* 09/08/16.
- The judge failed to comply with the law and demonstrated a lack of professional competence in the law by participating in a ride-along with law enforcement during a "no-refusal" weekend, while

simultaneously serving as the “on-call” magistrate for the issuance of blood search warrants arising from the ride-along. As a result of the judge’s actions, a DWI case was dismissed, which generated a great deal of media attention critical of the judge’s conduct. *Private Warning and Order of Additional Education of a District Court Judge*. 09/09/16.

- The judge failed to comply with the law and failed to maintain profession competence in the law by failing to inform an unrepresented child custody litigant facing incarceration for contempt of court about the litigant’s right to be represented by counsel and by failing to make an inquiry about the litigant’s financial ability to afford an attorney. *Private Admonition of a District Court Judge*. 10/24/16.
- The judge failed to comply with the law when by failing to provide the plaintiff with adequate written notice of the trial setting and proceeding to trial without requiring the defendant to file a written answer to the lawsuit. *Public Reprimand and Order of Additional Education of a Justice of the Peace*. 3/17/17.
- The judge failed to comply with the law by refusing to allow an individual to obtain copies of public court records pursuant to a policy “not to provide documents on ‘open cases.’” *Public Warning and Order of Additional Education of a Justice of the Peace*. 3/28/17.
- The Judge failed to comply with the law by driving while intoxicated. *Public Warning of a County Judge*. 10/20/16.

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.

- The judge gave the impression that the defendant was in a special position to influence the judge and advanced the defendant’s interest by presenting a settlement offer from a defendant to the plaintiff. *Public Reprimand and Order of Additional Education of a Justice of the Peace*. 3/17/17.

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

- The judge failed to maintain proper courtroom decorum and failed to treat individuals with the appropriate dignity and courtesy required of a judicial officer by wearing a Halloween costume during the performance of her judicial duties. *Private Warning and Order of Additional Education of a Justice of the Peace*. 9/08/16.

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 failed to treat counsel with the dignity and courtesy expected of a judicial officer by raising his voice in anger towards one of the attorneys both in the courtroom and in chambers. *Private Admonition of a District Court Judge*. 1/17/17.

- The judge failed to treat a witness with dignity and courtesy expected of a judicial officer by using the power of contempt to pressure the witness into providing specific testimony. *Private Order of Additional Education*. 8/21/17.

CANON 4A(1): A judge shall conduct all of the judge’s extra-judicial activities so that they do not cast reasonable doubt on the judge’s capacity to act impartially as a judge.

- In addition to casting public discredit on the judiciary, the judge’s Facebook comment that it was “Time for a tree and a rope” in reference to an African-American suspect charged with murdering a police officer evoked vigilante justice, represented a call to bypass the due process of law, potentially influenced the jury pool, and demonstrated a lack of racial sensitivity to the country’s history of lynching African-Americans, all of which cast doubt on his capacity to act impartially as a judge. *Public Reprimand and Order of Additional Education of a County Judge*. 04/27/17.

CANON 5(1)(ii): A judge or judicial candidate shall not ... knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent.

- The judge falsely represented that his opponent did not vote between 1996 and 2012, when publicly available voting records showed that his opponent voted seven times during that period. *Private Warning of a Justice of the Peace*. 2/27/17.

ARTICLE V, §1-a(6)A: A judge may be disciplined for willful or persistent violation of the rules promulgated by the Supreme Court of Texas, willful violation of the code of Judicial Conduct, incompetence in performing the duties of office, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or the administration of justice.

- In addition to violations of the canons, the judge’s failure to conduct a requested examining trial was inconsistent with the proper performance of his judicial duties. *Private Order of Additional Education of a Justice of the Peace*. 1/03/17.