

STATE COMMISSION ON JUDICIAL CONDUCT



**FISCAL YEAR 2013
ANNUAL REPORT**

STATE COMMISSION ON JUDICIAL CONDUCT

FY 2013 ANNUAL REPORT

COMMISSION MEMBERS

Tom Cunningham, Chair

Steven L. Seider, Vice Chair

Patti H. Johnson, Secretary

Sid Harle

Karry K. Matson

Joel P. Baker

Edward J. Spillane, III

Martha M. Hernandez

Diane D. Threadgill

M. Sue Kurita

David Gaultney

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COMMISSIONER INFORMATION

OFFICERS

CHAIR

Mr. Tom Cunningham

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

VICE-CHAIR

Hon. Steven L. Seider

Justice of the Peace, Dallas
Appointed by Texas Supreme Court
Term Expires: 11/19/2015

SECRETARY

Ms. Patti H. Johnson

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

MEMBERS

Hon. Sid Harle

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

Ms. Diane D. Threadgill

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

Ms. Karry K. Matson

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

Hon. M. Sue Kurita

County Court at Law Judge, El Paso
Appointed by Texas Supreme Court
Term Expires: 11/19/2015

Hon. Joel P. Baker

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

Hon. David Gaultney

Appellate Justice, Beaumont
Appointed by Texas Supreme Court
Term Expires: 11/19/2013

Hon. Edward J. Spillane III

Municipal Court Judge, College Station
Appointed by Texas Supreme Court
Term Expires: 11/19/2015

Ms. Valerie E. Ertz

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

Ms. Martha M. Hernandez

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

Mr. Ricky A. Raven

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

STATE COMMISSION ON JUDICIAL CONDUCT

COMMISSION STAFF

Seana Willing, Executive Director

Cathy Bradford, General Counsel

Jacqueline Habersham, Commission Counsel

Patrick Summers, Commission Counsel

Nahdiah Hoang, Commission Counsel

Royce Lemoine, Commission Counsel

Tommy Coleman, Commission Counsel

Victor Hidalgo, Senior Investigator

Katherine Mitchell, Senior Investigator

Judy Morgan, Legal Assistant/Intake

Terri Counts, Staff Services Officer

Connie Paredes, Administrative Assistant

Juanita Villarreal, Administrative Assistant

Felisa Wilson, Administrative Assistant

STATEMENT FROM THE CHAIR

On behalf of the State Commission on Judicial Conduct, I am pleased to present this Annual Report summarizing the work of the Commission in Fiscal Year 2013. In addition to providing a general overview of the judicial disciplinary system in Texas, the Report highlights the vital role the Commission plays in maintaining public confidence and trust in the Texas judiciary by issuing discipline when necessary, dismissing cases when appropriate, providing informal ethics advice to judges, judicial candidates, and other stake holders, and by educating judges, court clerks, staff attorneys, interns, and others at judicial training programs across the State of Texas.

The past year resulted in some significant changes for the Commission. As a result of recommendations made by the Sunset Advisory Commission, Legislators sponsored bills that would require: (a) a sunset review of the Commission in six (6) years; (b) the Commission to hold a public hearing every other year to allow for public input on the Commission's mission and operations; (c) the Commission to provide Sunset Advisory Commission staff access to closed meetings, Commission deliberations, and confidential and privileged records for purposes of sunset review; and (d) the Commission to provide the individual whose complaint is dismissed with the reason - in plain, understandable language - why the conduct alleged in the complaint did not constitute judicial misconduct. In addition, on November 5, 2013, voters approved a constitutional amendment that adds public sanctions to the list of disciplinary actions the Commission is authorized to issue following a formal proceeding.

What is reflected in this Annual Report could not be accomplished without the hard work performed by our loyal Commission staff and our dedicated Commission members. Although rarely recognized for their efforts, Commission members and Commission staff carry out their duties to the State of Texas with integrity, professionalism, and an unwavering commitment to the highest ethical standards. Despite invariable challenges to our procedures, rules and budget, the Commission remains resolute in our determination to protect the integrity and independence of the judiciary while holding it accountable to the public through a strong and independent Commission.

I would also like to acknowledge the commitment of the judicial training schools and all of the judges who have selflessly volunteered their time and resources to serve as Mentor Judges, providing additional training to their brother and sister judges across the State.

I am also grateful to the members of the State Bar of Texas who have generously donated their time and expertise as Special Counsel to the Commission during formal proceedings and for cases on appeal. In that regard, I would like to thank Mike McKetta, Broadus Spivey, and Dick DeGuerin for their service to the citizens of the State of Texas and for helping the Commission preserve the integrity of the judiciary and protect public confidence in our system of justice.

Finally, I would like to acknowledge judges who have served as Special Masters and on the Special Courts of Review. Appointed by the Texas Supreme Court, these jurists provide an invaluable service to the Texas judiciary and to the citizens of Texas by

ensuring that judges comply with the principles, values and standards set forth in the Texas Code of Judicial Conduct

I am honored and humbled to be a part of the State Commission on Judicial Conduct and to have served as its Chair.

A handwritten signature in black ink that reads "Tom Alan Cunningham". The signature is written in a cursive style with a prominent initial "T" and a long, sweeping underline.

Tom Cunningham, 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 branch 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 and the two attorney members 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, the Texas Procedural Rules for the Removal or Retirement of Judges, and the Texas Code of Judicial Conduct. As part of the judicial branch 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 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 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 2013, the Commission had fourteen (14) authorized staff positions (FTEs). Commission staff includes the Executive Director, the General Counsel, five staff attorneys, two investigators, one legal assistant, a staff services officer, and three administrative assistants. All Commission staff members are full-time State employees.

The Commission's legal staff, which consists of attorneys, investigators, and the legal assistant, is responsible for the evaluation and investigation of complaints. The legal assistant screens all new cases. The investigators handle in-house and on-site investigations. The legal assistant is also 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, Special Courts of Review, Special Masters, and Review Tribunals.

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, a Special Master, a Special Court of Review or a Review Tribunal. 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, resulted in sanctions or were 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 2013, the Executive Director, staff attorneys, investigators, and legal assistant participated in approximately 20 presentations at judicial training courses, bar conferences, and court staff workshops, describing the Commission and its operations and discussing various forms of judicial misconduct.

Ethics Calls

In fiscal year 2013, 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.texas.gov. 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 Opinions issued by Special Courts of Review and Review Tribunals.

Also included are 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.

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.texas.gov; 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 or other material witnesses 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 respondent judge, with a copy provided to 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 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 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 fails to state an allegation that, 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 or an objection, or otherwise deciding a case, does not constitute judicial misconduct unless there is a showing of bad faith, persistent legal error, or the legal error was egregious. In fact, 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 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, 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 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 or racial 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* 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. The Texas Supreme Court has been charged with the responsibility of promulgating the written procedures for the appeal of a public censure or sanction following formal 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 a *private sanction* is voted, the judge's name and all information considered by the Commission are kept confidential.

5. Suspension

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

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

6. Voluntary Agreement to Resign

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

before the Commission. While the agreement is public, any records relating to the underlying case remain confidential and may only be released to the public if a judge violates a term of the agreement.

7. Formal Proceedings

In certain circumstances, the Commission may decide that a complaint against a judge is so 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.

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 censure¹ 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 a “charging document,” which includes a copy of the sanction issued, as

¹ The 81st Legislature amended Section 33.034 of the Texas Government Code to provide judges the right to appeal a public censure issued by the Commission following 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.

well as any additional charges to be considered in the *de novo* proceeding. These records become public upon filing with the Clerk, who is responsible for furnishing a copy to the subject judge and to each justice on the Special Court of Review.

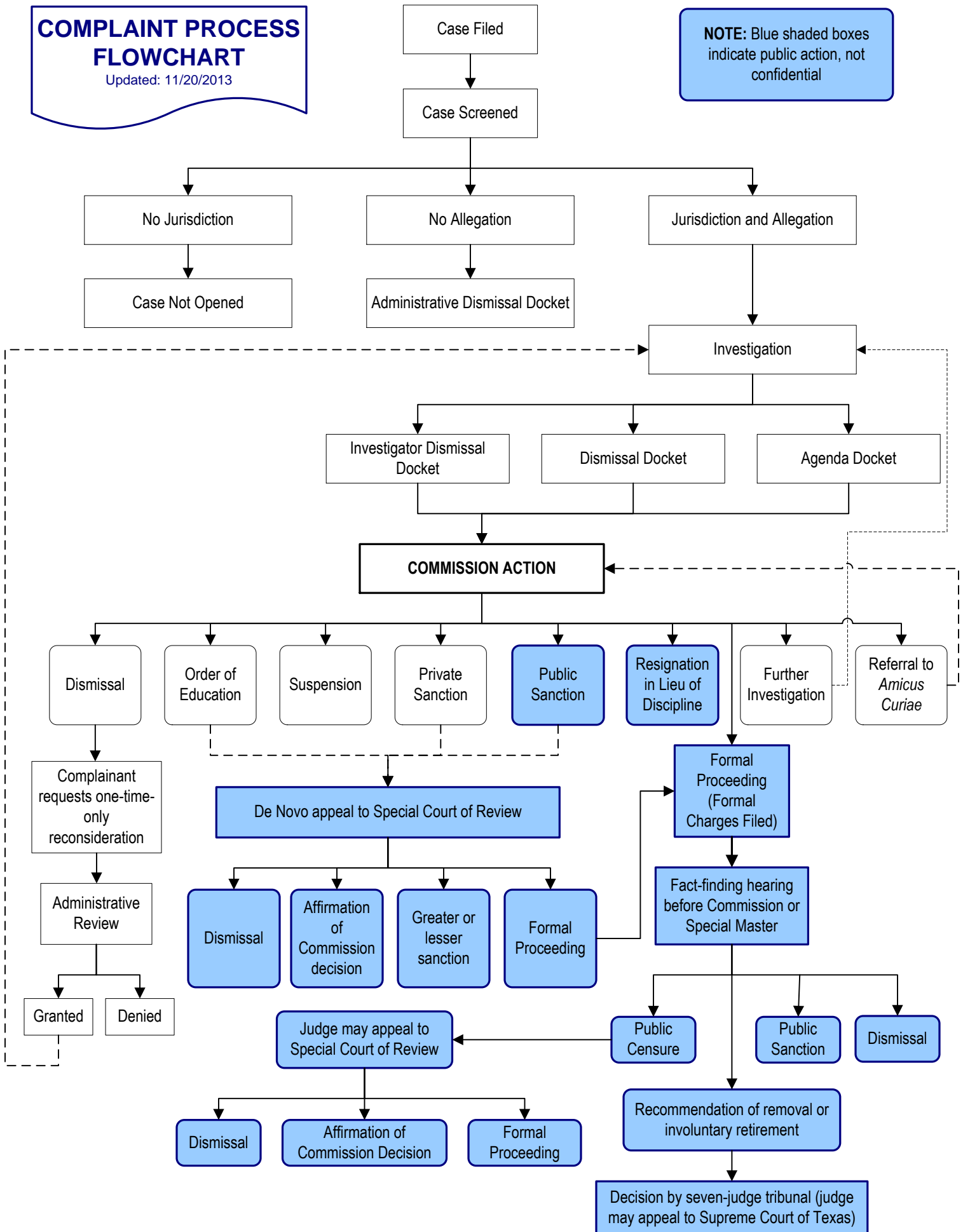
A trial *de novo* is held within thirty (30) days after the charging document is filed. The Special Court of Review considers the case from the beginning, as if the Commission had taken no previous action. The Texas Rules of Civil Procedure apply, except that the judge is not entitled to a jury trial.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

COMPLAINT PROCESS FLOWCHART

Updated: 11/20/2013

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 by providing a confidential resource for those judges to obtain help.

Amicus Curiae, which translates as “friend of the court,” grew out of the Commission’s awareness and concern that certain issues of misconduct resulted from underlying problems related to alcohol or drug abuse, addiction, mental or emotional disorders, and certain physical illnesses or disabilities. 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.

The following distinguished professionals were responsible for overseeing the development and early 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 Texas Court of Criminal Appeals. That contract and funding expired on August 31, 2005. Due to budgetary restraints, no funds have been available for the *Amicus* program since September 1, 2005.

A judge whose conduct has been brought to the attention of the Commission through the filing of a complaint may be offered the opportunity to participate in *Amicus* once the Commission makes a determination that the judge might benefit from such participation. In the event that the Commission should make such a referral, the judge’s participation in *Amicus* remains contingent upon the judge’s voluntary submission to the program and the judge’s acceptance into the program by the *Amicus* Board following an appropriate evaluation. At the discretion of the Commission, discipline of the judge may be temporarily diverted while the judge is an *Amicus* participant. A judge’s progress while in the program is

regularly reported to the Commission. However, any judge may independently contact the *Amicus* Program 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 2013 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 2013, according to Office of Court Administration records, approximately 3,924 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 2013: justices of the peace received 17% of the complaints filed, and accounted for 45% of all discipline issued by the Commission, which is a significant decrease from fiscal year 2012. Disciplinary actions against district judges rose from 12% to 17% in fiscal year 2013, and actions against County Court at Law and Probate Judges rose from 2% to 12% this past year. Municipal court judges received 7% of the complaints filed in fiscal year 2013 and accounted for 24% of all discipline issued by the Commission for the year, reflecting a 4% increase from fiscal year 2012. In fiscal year 2013, 48% of all cases filed were against district judges, which is consistent with fiscal year 2012.

Figure 4 illustrates by number and percentage the various sources of cases closed in fiscal year 2013. By the end of the year 1,103 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* (self-represented) litigants. Criminal defendants, including traffic defendants and inmates, accounted for approximately 33% of the cases. Three percent (3%) of the cases were filed anonymously and only 5 cases (<1%) were Commission-initiated. **Figures 5a** and **5b** compare the number of cases filed with the number of cases disposed for fiscal years 2010 through 2013.

In fiscal year 2013, 42 disciplinary actions were issued against Texas judges. The Commission disposed of 30 cases through public sanction, private sanction, orders of additional education or a combination of a sanction with an order of additional education. In addition, five (5) cases were disposed of through voluntary agreements to resign from office. Interim actions, such as suspensions, *Amicus* referrals, and formal proceedings, accounted for seven (7) of the disciplinary actions taken in fiscal year 2013. A comparison of public discipline, private discipline and interim actions taken by the Commission in fiscal years 2010 through 2013 is shown in **Figures 6a** and **6b**. One Public Reprimand issued against an appellate judge at the end of fiscal year 2012 was appealed to a Special Court of Review in fiscal year 2013, which resulted in an affirmation by the appellate panel of the Commission's original decision to publicly reprimand the judge.

Of the 1,103 cases closed last year, 46 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, 16 cases were dismissed after the judge demonstrated that he or she took appropriate measures to correct the conduct that resulted in a complaint. Approximately 48% of the cases closed in fiscal year 2013 alleged no judicial misconduct, which is consistent with the percentage in fiscal year 2012. The number of cases closed following a preliminary investigation dropped from 31% to 24%, while the number of full investigations requiring a response from the judge rose from 20% to 28% in fiscal year 2013. A comparison of initial, preliminary and full investigations conducted by the Commission in fiscal years 2010 through 2013 is shown in **Figures 7a** and **7b**.

In fiscal year 2013, the Commission issued Public Statement No. PS-2013-1, regarding a controversy surrounding whether the part-time Bexar County Criminal Magistrate Judges could practice law in the criminal courts of Bexar County following the issuance of Ethics Opinion No. 296 by the State Bar of Texas Judicial Ethics Advisory Committee in January 2013. The Commission's Public Statement and the Opinion of the Judicial Ethics Advisory Committee can be found after the statistical charts that follow.

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 2013, at least 315 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 assist in resolving their concerns.

Table 1: Commission Activity

	2010	2011	2012	2013
Cases Pending (Beginning FY/Ending FY)	445/503	503/430	430/564	564/593
Cases Filed	1280	1119	1216	1132
Total Number of Cases Disposed	1290	1192	1049	1103
% of Cases Disposed	100.7%	106.5%	86.27%	97.79%
Average Age of Cases Disposed	5.35 Months	5.66 Months	5.3 Months	6.1 Months
Disciplinary Action (total)	89	42	49	42
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	10	5	3	5
Sanction:				
Public Censure	0	0	0	0
Public Censure and Order of Additional Education	0	0	0	0
Public Reprimand	1	1	1	0
Public Warning	2	2	1	1
Public Admonition	10	3	5	0
Public Sanction and Order of Additional Education	6	1	1	0
Private Reprimand	2	3	12	6
Private Warning	3	3	3	5
Private Admonition	19	8	6	6
Private Sanction and Order of Additional Education	6	12	9	6
Public Order of Additional Education	0	0	0	0
Private Order of Additional Education	7	1	4	6
Interim Disciplinary Action:				
Order of Suspension [15(a)]	6	1	3	7
Recommendation of Suspension to Supreme Court [15(b)]	0	0	1	0
Cases in Formal Proceedings	0	0	0	0
Amicus Referral	1	0	0	0
Dismissals	1208	1154	1004	1068
Request for Reconsideration Received	106	226	107	80
Reconsideration Granted	0	0	2	1
Reconsideration Denied	104	226	118	79
Pending	2	16	3	7
Cases Appealed to Special Court of Review	16	1	3	1
Informal Hearing Set	21	13	9	9
Public Statements Issued	0	0	1	1

Fig. 1 Total Number of Texas Judges*

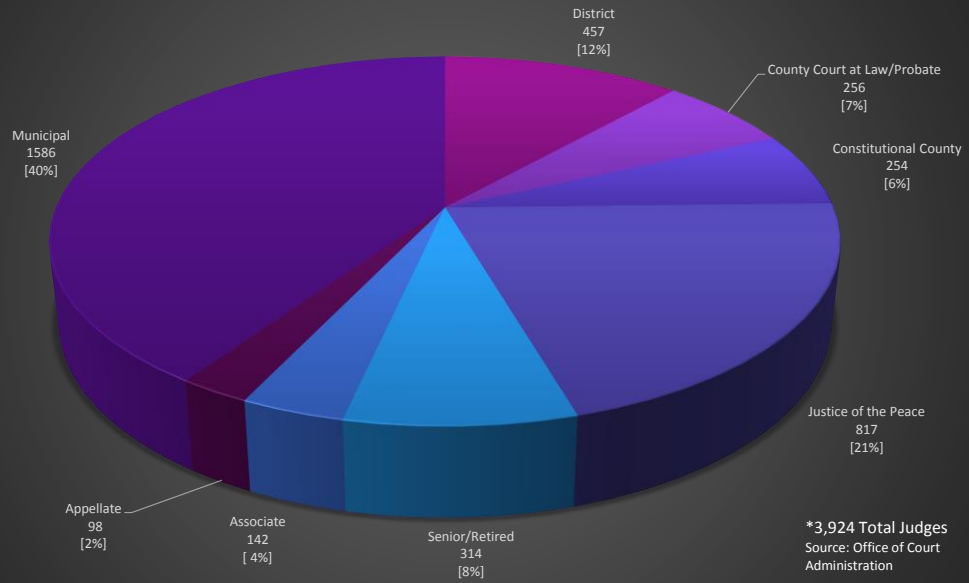


Fig 2. Number and Percentage of Cases filed by Judge Type*

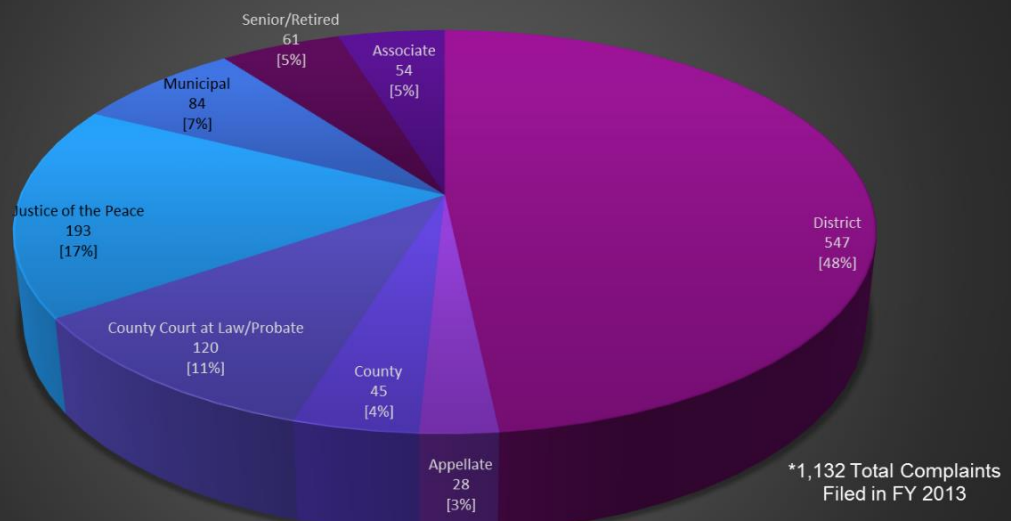


Fig. 3 Number and Percentage of Disciplinary Actions by Judge Type*

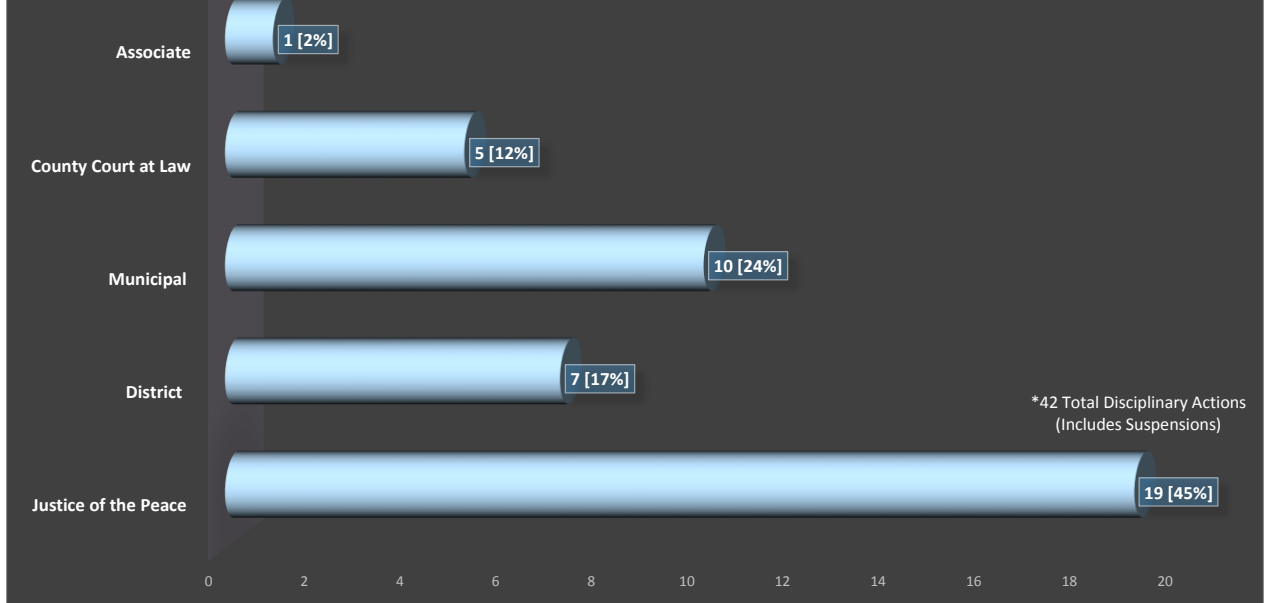
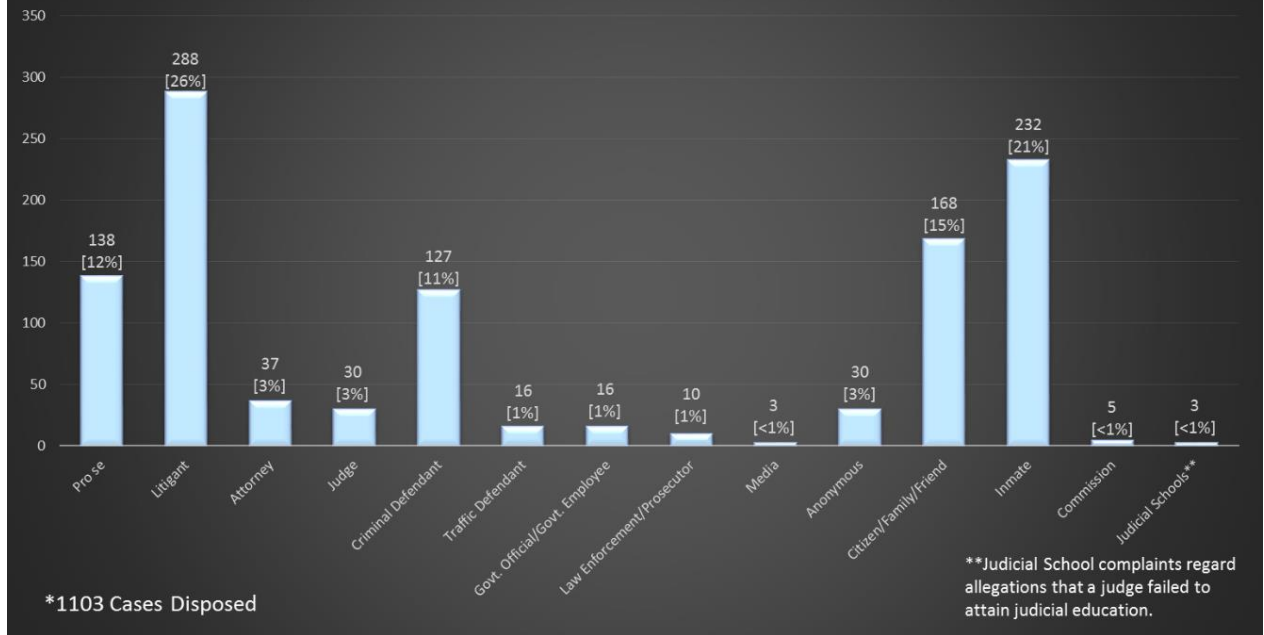


Fig. 4 Number of Cases Disposed By Complainant Type*



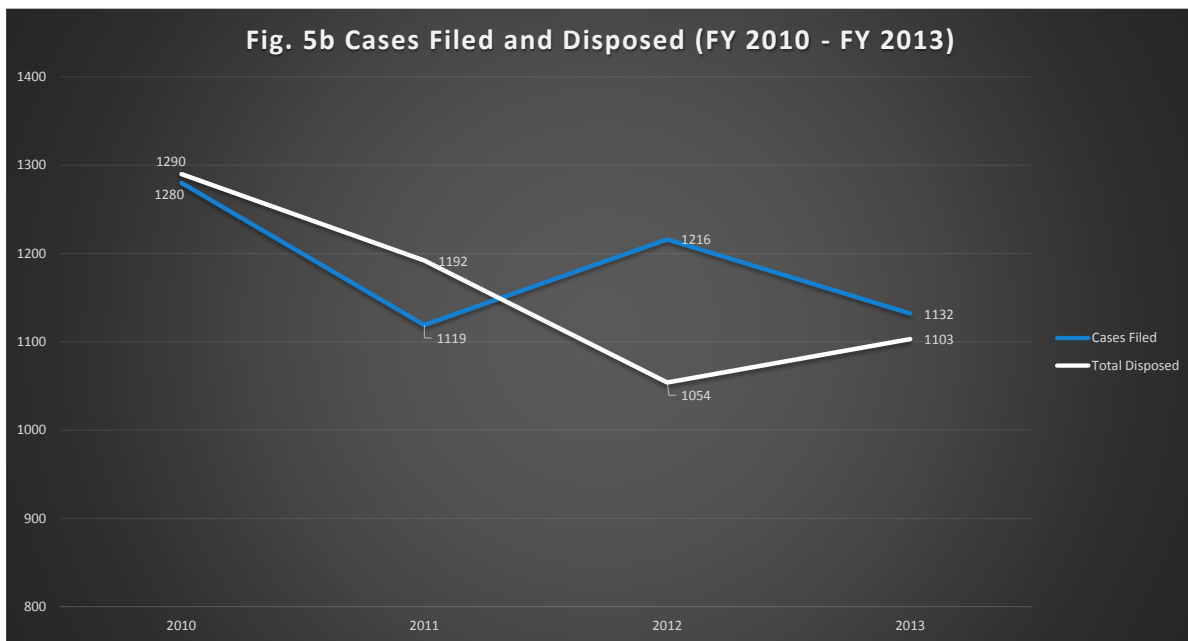
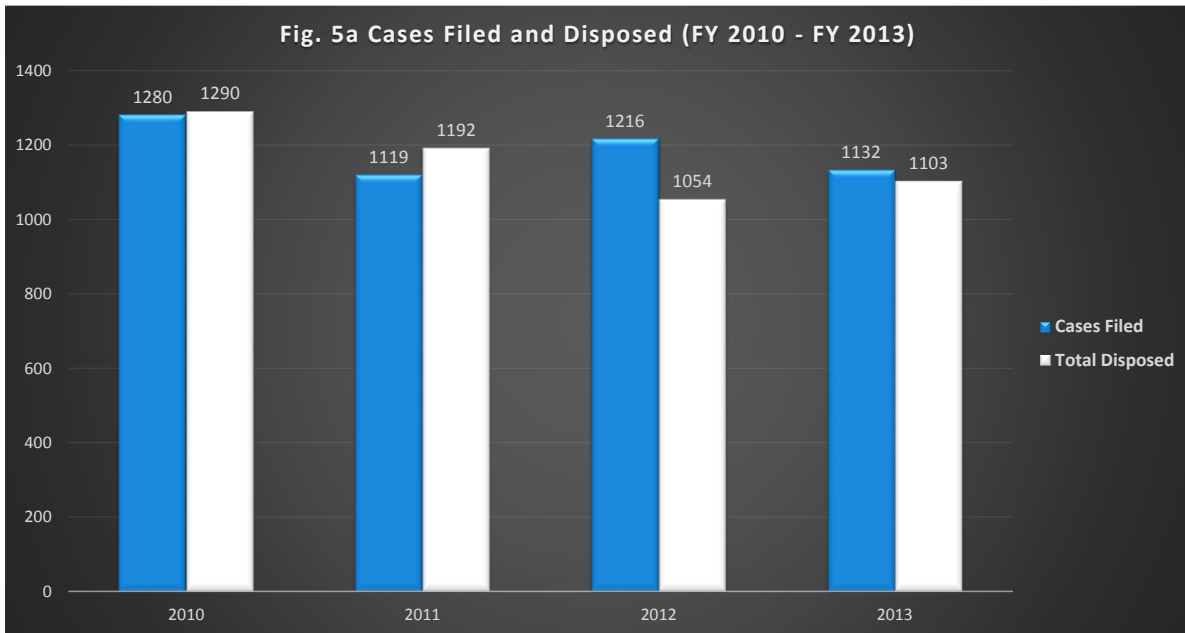


Fig. 6a Commission Activity Trends (FY 2010-2013)

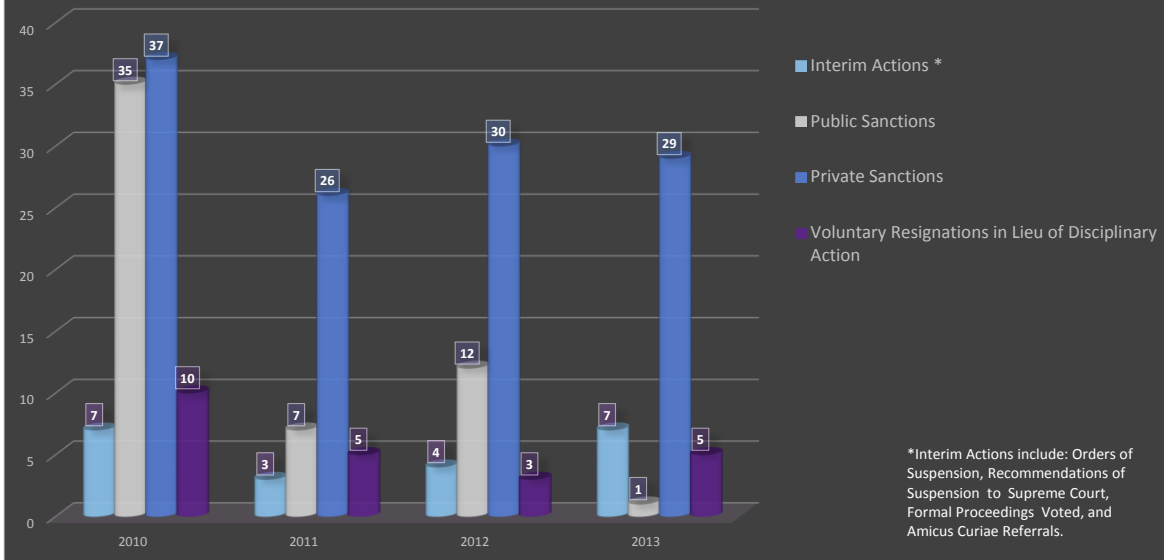


Fig. 6b Commission Activity (FY 2010-2013)

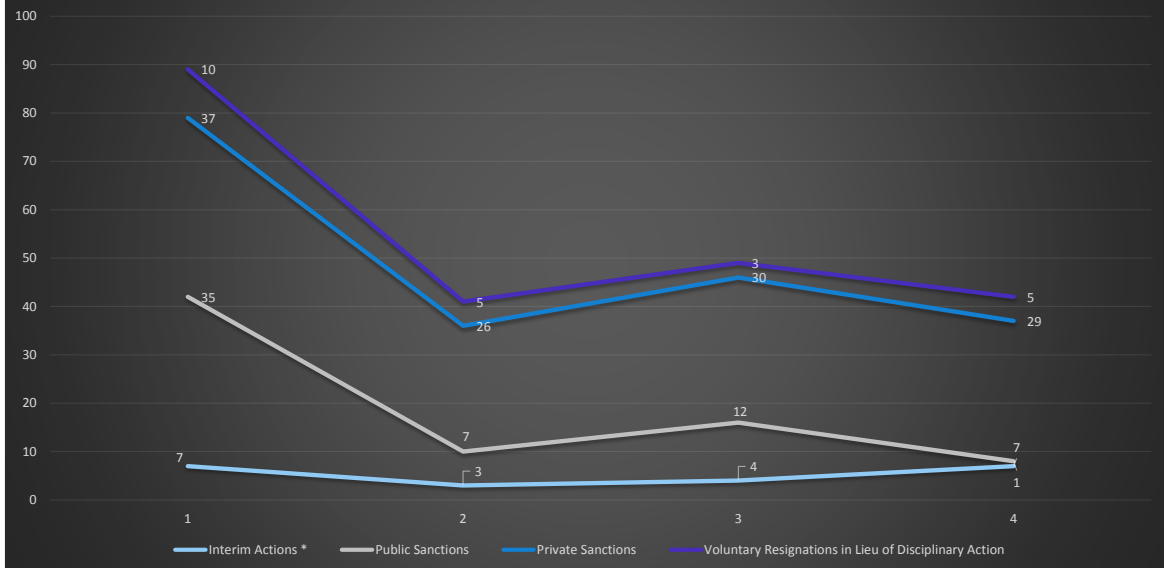


Fig. 7a Comparison of Investigations by Type (2010-2013)

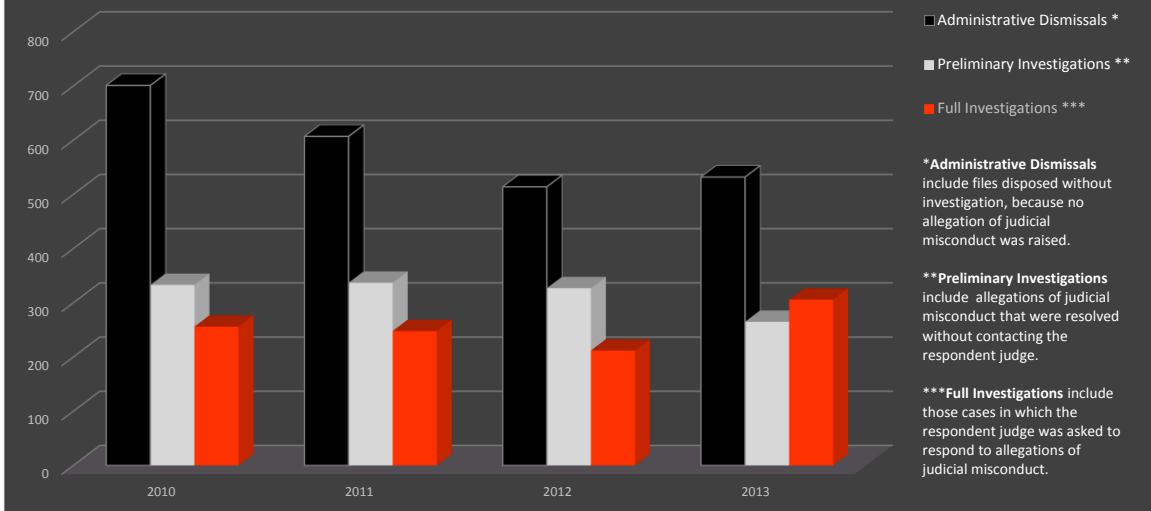
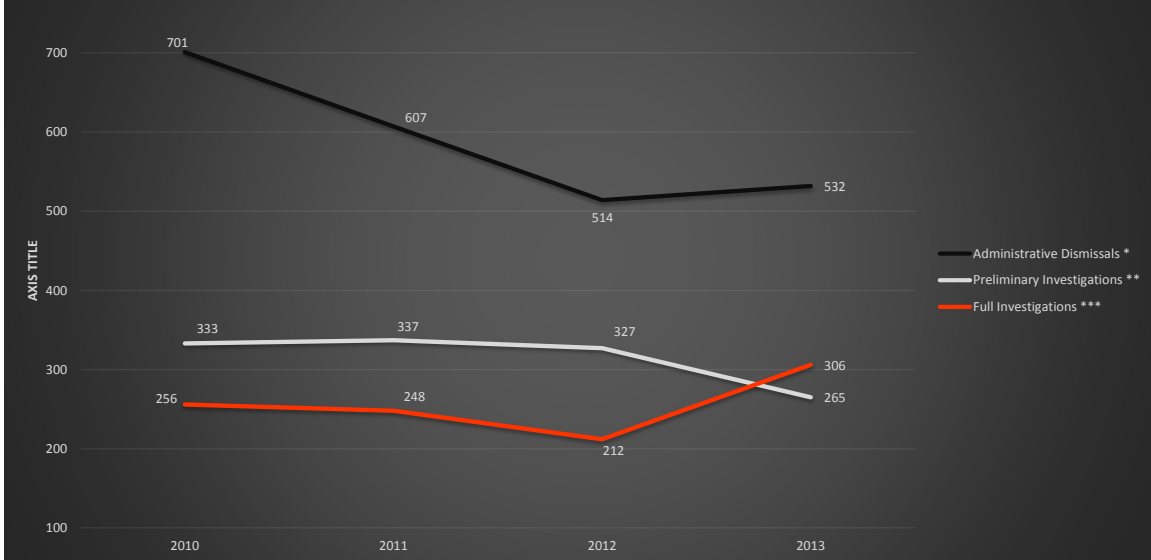


Fig. 7b Comparison of Investigations by Type (2010-2013)





STATE COMMISSION ON JUDICIAL CONDUCT

PUBLIC STATEMENT

No. PS-2013-1

Background

In January 2013, the State Bar of Texas Judicial Ethics Advisory Committee issued Ethics Advisory Opinion No. 296, in response to an inquiry from a Galveston County Court at Law Judge concerning a Galveston County policy that allowed a part-time family law judge to practice law in the other courts in the county. In the Opinion, the committee found that a part-time family law judge should not “represent clients before any court of the county in which he or she is appointed,” and in certain circumstances, should not represent clients “before courts in counties surrounding the county in which he or she is appointed” if those courts are “subject to the appellate jurisdiction of the court which he or she serves.”

On February 20, 2013, relying on the rationale set forth in Ethics Advisory Opinion No. 296, the Bexar County District Attorney sent a letter to the local presiding Bexar County Criminal District Judge, in which she advised the judges of the Bexar County Criminal District Courts that the continued practice of law by the part-time Bexar County Magistrate Judges was in violation of the Texas Code of Judicial Conduct. A similar letter was sent to the Presiding Magistrate Judge in Bexar County, requesting that action be taken to prevent the part-time magistrates from practicing law. In both letters, the District Attorney suggested that her office would be forced to take action if the concerns expressed in the letters were not immediately addressed.

The letters from the District Attorney raised concerns among the part-time Magistrate Judges that their continued representation of clients before the Bexar County courts would be a violation of the Texas Code of Judicial Conduct and could result in disciplinary action by the Commission. It likewise raised concerns among the District Judges that if they did not report a violation of the Code by a part-time Magistrate Judge who appears before them representing a client, they too would be in violation of the Code and could be disciplined by the Commission.

The district judges were also concerned that other counties, such as Hidalgo County, Nueces County, and Harris County, who modeled their magistrate systems after the Bexar County magistrate system,¹ would be facing similar problems based on the District Attorney’s interpretation of Advisory Opinion No. 296.

¹ The part-time magistrate judges in Bexar County do not “serve” the Criminal District Courts; instead, they are appointed by the district judges pursuant to section 54.901 of the Texas Government Code, and are subject to the

Statement

The Commission does not issue written advisory opinions analyzing or interpreting the Texas Code of Judicial Conduct. However, the Commission may instruct the judiciary and the public regarding the provisions of the Code through public or private sanctions or, under certain conditions, through a public statement. Written advisories issued by the State Bar Judicial Ethics Advisory Committee are not binding on the Commission.²

Without commenting on the merits of Advisory Opinion No. 296, it is the Commission's position that the part-time magistrates in Bexar County are permitted under the Code³ to represent criminal defendants, other than those they have magistrated, in the Bexar County courts. None of the matters before the Bexar County magistrate judges are referred to them by the district judges; the part-time magistrate judges are performing functions in matters before the jurisdiction of the district court attaches; the duties and authority of the magistrate judges, which are found in the Texas Code of Criminal Procedure, are wholly independent and distinct from those pertinent to the District Courts or the County Courts; the magistrate judges cannot rule on the merits of any matter before them other than to determine if probable cause exists to arrest and confine an individual; and without the necessity of a referral, magistrate judges can issue search warrants, arrest warrants, and protective orders, none of which constitute a final adjudication of any aspect of the case.

Canon 6D(1) of the Texas Code of Judicial Conduct requires part-time magistrate judges to comply with all Canons except Canons 4D(2), 4E, 4F, 4G or 4H. Canon 4G prohibits judges from practicing law "except as permitted by statute or this Code." Under Canon 6D(1), part-time magistrates are specifically allowed to practice law. Canon 6D(2), which advises part-time judges not to "practice in the court which he or she serves or in any court subject to the appellate jurisdiction of the court which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a [part-time judge], or in any other proceeding related thereto," is aspirational.⁴

Neither the part-time Bexar County Magistrate Judges nor the Bexar County Criminal District Judges are in violation of the Texas Code of Judicial Conduct based solely on the fact that the part-time magistrates are representing criminal defendants, other than the ones they have magistrated, before the district court judges. The part-time magistrates do not "serve" the district

consent and approval of the Bexar County Commissioners Court. As a result, the magistrates serve Bexar County, not the district courts, and do not work for any of the district judges.

² The Office of Court Administration, which publishes and maintains the Committee's advisory opinions on its website, expressly notes that, "Neither the oral advice of the Commission's attorneys nor the written opinions of the Committee are binding on the Commission itself in disciplinary proceedings."

³ Canon 6D(1) of the Texas Code of Judicial Conduct provides that part-time magistrates are not required to comply with Canon 4G, the canon that prohibits judges from practicing law. Canon 6D(2) states that a part-time magistrate "should not practice law in the court which he or she serves or in any court subject to the appellate jurisdiction of the court which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a...magistrate...or in any other proceeding related thereto."

⁴ Pursuant to Canon 8B(2), certain canons (those containing "should" or "should not") are advisory in nature and cannot form the basis for a disciplinary action. Nevertheless, judges subject to the Code have a duty to comply with all canons, including those that contain aspiration goals, in order to maintain and promote public confidence in the integrity, impartiality, competence, and independence of the judiciary.

courts, do not practice law in the magistrate courts, and do not practice in a court subject to the appellate jurisdiction of the district courts.

The Commission issues this public statement pursuant to the authority granted to it by Article 5, Section 1-a(10) of the Texas Constitution, which provides that such action may be taken when sources other than the Commission cause notoriety concerning a judge or the Commission itself and the Commission determines that the best interests of a judge or of the public will be served by issuing the statement.

This public statement is intended to help preserve the integrity of all judges in the State of Texas, to promote public confidence in the judiciary, and to encourage judges to maintain high standards of professional conduct.

Signed this 29th day of April, 2013.

A handwritten signature in black ink that reads "Tom Alan Cunningham". The signature is written in a cursive style and is contained within a thin black rectangular border.

Tom Cunningham, Chair
State Commission on Judicial Conduct

Ethics Opinion Number 296 (2013)
PRACTICE OF LAW BY PART-TIME JUDGE

FACTS: An attorney has been appointed as a part-time family law associate judge by the district judge. The associate judge continues to represent family law clients before other district courts of that county and before courts in other surrounding counties.

QUESTIONS: May a part-time family law associate judge, appointed by a court, represent family law clients before any of the other courts

1. in that county?
2. in surrounding counties?

ANSWER:

The committee answers Question 1 “No.”

The committee answers Question 2 with a qualified “No.”

DISCUSSION: A part-time associate judge appointed by a court is governed by the Code of Judicial Conduct. Canon 6D.

As stated in Canon 6D(1)¹, certain portions of the Code of Judicial Conduct do not apply to part-time judges, including the prohibition set out in Canon 4G that a judge may not practice law.

However, the following provisions of the Code do apply to a part-time judge, and are relevant to the stated inquiry:

Canon 6D(2) states that a part-time judge “should not practice law in the court which he or she serves or in any court subject to the appellate jurisdiction of the court which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a commissioner, master, magistrate, or referee, or in any other proceeding related thereto.”

Canon 2A provides that “a judge . . . should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

Canon 2B provides that “[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge....”

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

Canon 4D(1) provides, “A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge’s impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or person likely to come before the court on which the judge serves....”

¹ A part-time judge “shall comply with all provisions of this Code, except he or she is not required to comply with Canons 4D(2), 4E, 4F, 4G or 4H”.

The committee believes that it is inconsistent with Canons 6D(2), 2A, 2B, 4A and 4D(1) for a part-time family law associate judge, appointed by a court, to represent clients before any court of the county in which he or she is appointed and before courts in the counties surrounding the county in which he or she is appointed, provided that those courts are “subject to the appellate jurisdiction of the court which he or she serves”. If a part-time judge chooses to practice before any other court, the judge must be aware of the obligations under the Code of Judicial Conduct, and practice consistent with these obligations, especially Canons 2A, 2B, 4A and 4D(1).

The roles of advocate and impartial judge are in opposition to each other, and a judge may not use the authority of judicial position to advance one’s private interests as an advocate. As stated in Opinion 288 (2003),

A built-in dilemma exists in our justice system when a part-time judge also maintains a law practice. Under the Texas Disciplinary Rules of Professional Responsibility a lawyer has an obligation to zealously represent his client within the bounds of the law. When that lawyer also serves as a judge, however, his [or her] duty as a judge is to be impartial and to promote public confidence in the integrity and impartiality of the judiciary. The Committee stresses to all part-time judges to keep this conflict in mind when choosing to accept representation.

EXAMPLES OF IMPROPER JUDICIAL CONDUCT

The following are examples of judicial misconduct that resulted in disciplinary action by the Commission in fiscal year 2013. These are illustrative examples of misconduct and do not represent every disciplinary action taken by the Commission in fiscal year 2013. 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 ascending 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 2013. 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, demonstrated a lack of professional competence in the law, and failed to accord a litigant the right to be heard when he (1) failed to provide a litigant with notice and an opportunity for a hearing to resolve a speeding citation once that citation was filed with the court, (2) failed to enter a final written judgment assessing a fine and court costs, and (3) allowed the matter to go into warrant status in the absence of the requisites recited above. The judge also failed to comply with the law and demonstrated a lack of professional competence in the law when he assessed post-judgment interest at a rate that exceeded the maximum allowed by law. [Violation of Canons 2A, 3B(2), and 3B(8) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace. (11/07/12).*

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- The judge failed to maintain professional competence in the law when she repeatedly imposed monetary sanctions against the parties during a hearing, without a finding of contempt, and then ordered the parties to either pay the sanctions to a charity or face incarceration. In addition, the judge repeatedly made threats to impose unauthorized monetary sanctions and/or to incarcerate the parties as an intimidation tactic to ensure order in her courtroom. Moreover, the judge failed to perform judicial duties without bias or prejudice, exhibited an improper judicial demeanor, and engaged in a persistent pattern of questioning only the husbands in these hearings in a manner that gave rise to the impression that the judge was assisting the wives in the prosecution of their cases. [Violation of Canons 2A, 3B(2), 3B(4), and 3B(5) of the Texas Code of Judicial Conduct.] *Private Admonition of a District Judge. (11/12/12).*
 - The judge failed to follow the law and demonstrated a lack of professional competence in the law by not following the correct procedures for selecting and seating a jury in a civil proceeding. In addition, the judge used a jury verdict form in a civil proceeding that was applicable only to a criminal proceeding, and failed to correct this error when it was brought to his attention through an objection from a litigant. [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. (11/26/12).*
 - The judge failed to comply with the law in when she (1) signed written orders and judgments in a criminal case that did not include the date on which the defendant was to begin serving his sentence; (2) orally ordered the defendant to turn himself in at a future time to begin serving his sentence; (3) orally ordered the defendant to report once a week to a probation office until that time, but; (4) failed to suspend the defendant's sentence or place specified conditions in a written order of judgment; and (5) failed to correct the matter after nearly five years had passed without the defendant having served any part of his sentence. Further, in two other matters, the judge failed to treat a law firm and a litigant with the patience, dignity, and courtesy expected of a judicial officer. [Violation of Canons 2A and 3B(4) of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution.] *Private Warning of a District Judge. (03/06/13).*
 - The judge failed to comply with the law and failed to maintain professional competence in the law when he found an attorney in direct contempt of court for allegedly "lying" to the court. The judge failed and/or refused to give the attorney an opportunity to be heard in defense of the judge's accusations, and instead, summarily found the attorney in criminal contempt of court, ordered him handcuffed, and placed him in a holding cell until a \$500 fine was paid. The judge failed to issue a written contempt or commitment order from which the attorney could have challenged his detention through a writ of habeas corpus. [Violation of Canons 2A, 3B(2), and 3B(4) of the Texas Code of Judicial Conduct.] *Private Reprimand of a District Judge. (03/07/13).*
 - The judge failed to comply with the law and demonstrated a lack of professional competence in the law in her initial handling of a traffic defendant's case. The court's "courtesy letter" to defendant contained erroneous information, including the fact that a fine had already been assessed against her; the only option available to the defendant was to enter a guilty or no contest plea and pay the fine; and an arrest warrant would be issued for the offense of "violate promise to appear" if the defendant did not enter the plea or pay the fine. If the defendant had complied with these instructions, she would have been deprived of her right to a trial. [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. (03/21/13).*

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- The judge failed to follow the law and demonstrated a failure to maintain professional competence in the law when he: (1) failed to afford defendants the opportunity to enter a plea of not guilty and to ask for a trial prior to questioning them about the merits of the case and their defense; (2) failed to advise defendants at their first court appearance of their constitutional rights; (3) required defendants to appear for status hearings each month in order to monitor their conduct at school, without having the defendants enter a guilty or no contest plea and/or without placing the defendants on deferred disposition; (4) failed to issue proper deferred disposition orders informing defendants of the terms of their deferral; (5) conducted criminal proceedings, including the questioning of defendants and witnesses about the merits of the case and their defenses to the charges, outside the presence of the prosecutor; (6) dismissed cases without a motion from the prosecutor; and (7) failed to maintain docket sheets containing the requisite information set forth in the Texas Code of Criminal Procedure. [Violation of Canons 2A, 3B(2), and 6C(2) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education to a Municipal Court Judge. (03/25/13).*
 - The judge failed to comply with the law and demonstrated a lack of professional competence in the law by dismissing certain criminal cases without a motion from the State, including cases involving his brother-in-law and sister-in-law, which he was legally disqualified from handling altogether. Further, the judge exhibited an impermissible bias and failed to be patient, dignified, and courteous in his dealings with members of the police department. Finally, the judge's refusal to fully cooperate with the Commission's investigation became an aggravating factor regarding the imposition of this sanction. [Violation of Canons 2A, 3B(1), 3B(2), 3B(4), and 3B(5) of the Texas Code of Judicial Conduct, and Article V, §1-a(6)A of the Texas Constitution.] *Private Warning of a Justice of the Peace. (04/08/13).*
 - The judge failed to follow the law and demonstrated a lack of professional competence in the law when he erroneously issued a *capias pro* fine warrant against a defendant, who subsequently spent 5 days in jail at least in part as a result of the condition laid out in the *capias pro* fine warrant. [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. (04/15/13).*
 - The judge improperly intervened in a defendant's case by ordering the defendant released on a personal bond after another judge had already magistrates and set a surety bond for the defendant and after the defendant's case had already been filed and assigned to a district court. [Violation of Canons 2A, 2B, and 3B(2) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace. (05/23/13).*
 - The judge failed to comply with the law and demonstrated a lack of professional competence in the law when she attempted to mediate a dispute resulting from a physical altercation between two citizens when no case was pending in her court. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Municipal Court Judge. (07/09/13).*

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- The judge failed to follow the law and demonstrated a lack of professional competence in the law when he removed a criminal defendant's court-appointed attorney based solely on the fact that a family member had posted a pretrial bond to obtain the defendant's release from jail. The judge took this action without conducting an indigency hearing and without making any finding on the record that there had been a material change in the defendant's financial circumstances that warranted removal of his court-appointed counsel. [Violation of Canons 2A, 3B(2), 3B(8) of the Texas Code of Judicial Conduct.] *Private Reprimand of a Retired District Judge. (08/19/13).*

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 failed to comply with the law and demonstrated a lack of professional competence in the law when she accepted a criminal complaint, performed her own independent investigation into the merits of the case, and then dismissed the matter in a manner not authorized by law. The judge further demonstrated an impermissible bias in favor of the complaining witness, and lent the prestige of her judicial office to advance the private interests of that person by facilitating a financial settlement of a criminal dispute between the complaining witness and the defendant. [Violation of Canons 2A, 2B, 3B(2), and 3B(5) of the Texas Code of Judicial Conduct.] *Private Warning of a Municipal Court Judge. (11/27/12).*
- The judge made a phone call to the arresting police officer on behalf of a friend, which was perceived by the officer as an improper attempt by the judge to use of the prestige of judicial office to advance the arrestee's private interests. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Admonition of a Municipal Court Judge. (08/19/13).*

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

- The judge failed to follow the law and demonstrated a lack of professional competence in the law when he magistrated his grandson. Although the judge was not similarly disqualified from magistrating a friend of the judge's grandson, a material fact witness in the case involving the grandson, the fact that the grandson's father contacted the judge on behalf of the material fact witness created a perception that the judge was providing special or favorable treatment to family and friends. [Violation of Canons 2A and 3B(1) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace. (04/15/13).*
- The judge failed to make a reasonable inquiry to determine if he had a disqualifying relationship in a matter where his niece, a relative within the third degree of consanguinity, was a manager of a business that was a litigant in the judge's court. [Violation of Canons 2A, 3B(1) and 3B(2) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace. (07/16/13).*

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

- The judge wore a Halloween costume while presiding over a misdemeanor criminal docket, which demonstrated a failure to conduct court proceedings with the proper order and decorum, and a failure to treat the defendants, victims, and their family members with appropriate dignity. [Violation of Canons 3B(3) and 3B(4) of the Texas Code of Judicial Conduct, and Article V, §1-a(6)A of the Texas Constitution.] *Private Reprimand of a County Court at Law Judge. (08/19/13).*

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 erred in his handling of a contempt situation involving a witness by detaining and handcuffing the witness for the purpose of public humiliation and/or to make an example out of the contemnor, rather than for the purpose of quelling a disturbance. The judge failed to treat the witness with the requisite patience, dignity or courtesy expected of a judicial officer. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace. (02/01/13).*
- The judge failed to maintain patience, courtesy, and dignity toward individuals with whom she deals in an official capacity. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution.] *Private Admonition of a Justice of the Peace. (06/26/13).*

CANON 3B(6): A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.

- The judge manifested a bias or prejudice against a litigant based upon gender and socioeconomic status, and failed to remain fair and impartial toward litigants appearing before her, when she admonished a father not to have any children unless he had \$300,000 in the bank. [Violation of Canons 3B(5) and 3B(6) of the Texas Code of Judicial Conduct and Art. V, §1-a(6)A of the Texas Constitution.] *Private Reprimand of an Associate Judge. (02/21/13).*

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's policy that required defendants who entered "not guilty" pleas and requested trials to sign a "Request for Trial" form before a notary public, placed an unreasonable burden on a defendant's fundamental rights to trial and access to the court. [Violation of Canons 2A, 3B(2) and 3B(8) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace. (09/25/12).*

CANON 4A(1) and (2): 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; or interfere with the proper performance of judicial duties.

- The judge's actions depicted in a 2004 videotape that was publicly released in 2011, cast reasonable doubt on his capacity to act impartially as a judge and interfered with the proper performance of his judicial duties. The doubt cast on the judge's capacity to act impartially and the interference caused by the videotaped conduct was evidenced by a letter from the TDFPS Commissioner, as well as by the testimony of several witnesses. The judge was not aware that he had been secretly videotaped and was not the person who released the videotape on the Internet; however, because the judge regularly presides over and decides child custody, child abuse, and family violence cases, his private conduct as depicted in the videotape did cast public discredit upon the judiciary and the administration of justice. The judge's treatment of certain attorneys in his courtroom fell far below the minimum standards of patient, courteous and dignified courtroom demeanor expected of judicial officials. [Violation of Canons 3B(4), 4A(1) and 4A(2), Article V, §1-a(6)A of the Texas Constitution.] *Public Warning of Aransas County Court at Law Judge William Adams. (09/04/12).*

CANON 4C(2): A judge shall not solicit funds for any educational, religious, charitable, fraternal or civic organization, but may be listed as an officer, director, delegate, or trustee of such an organization, and may be a speaker or a guest of honor at an organization's fund raising events.

- The judge solicited funds for a nonprofit corporation and lent the prestige of judicial office to advance her own private interests, and the private interests of the nonprofit corporation, when she (1) allowed the nonprofit corporation to send out a letter that included her name and judicial position and that encouraged past supporters to buy charitable raffle tickets; (2) contacted a State Senator in an effort to secure grant funding for the nonprofit corporation and drew attention to her position by discussing her "judicial reputation;" and (3) solicited public participation in fundraising operations to support the nonprofit corporation through the corporation's website and Facebook postings. [Violation of Canons 2B and 4C(2) of the Texas Code of Judicial Conduct.] *Private Reprimand of a Justice of the Peace. (04/23/13).*

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 failed to comply with the law and engaged in willful conduct that was inconsistent with the proper performance of her duties and cast public discredit upon the judiciary or administration of justice by covering up for an employee's late arrivals to work. [Violation of Article V, §1-a(6)A of the Texas Constitution and Canon 2A of the Texas Code of Judicial Conduct.] *Private Reprimand of a Justice of the Peace. (09/17/12).*
- The judge failed to disclose the nature and extent of his relationship with one of the attorneys involved in a case prior to trial, and refused to make the disclosure when directly asked about the relationship at a post-trial hearing and when the issue was later raised in a recusal motion that he denied. [Violation of Canon 3B(1) of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution.] *Private Warning of a District Judge. (11/26/12).*