



*STATE COMMISSION
ON JUDICIAL CONDUCT*



*FISCAL YEAR 2005
ANNUAL REPORT*

STATE COMMISSION ON JUDICIAL CONDUCT

2005 ANNUAL REPORT

COMMISSION MEMBERS*

James A. Hall, Chair

Monica A. Gonzalez, Vice-Chair

Rex G. Baker, III, Secretary

Joseph B. Morris

Kathleen H. Olivares

Ronald D. Krist

R. C. Allen, III

Faye Barksdale

Michael R. Fields

W.A. "Buck" Prewitt

* Note: One (1) public member position remained vacant at the end of FY 2005.

P.O. Box 12265 ★ Austin, Texas ★ 78711
Telephone (512) 463-5533 ★ Fax (512) 463-0511
Toll Free (877) 228-5750 ★ TDD (800) RELAY-TX
Website: www.scjc.state.tx.us

COMMISSIONER INFORMATION

OFFICERS

CHAIR

Mr. James A. Hall

Attorney

San Antonio

Appointed by State Bar of Texas

Term Expires: 11/19/2005

VICE-CHAIR

Hon. Monica A. Gonzalez

Municipal Court Judge

San Antonio

Appointed by Texas Supreme Court

Term Expires: 11/19/2009

SECRETARY

Hon. Rex G. Baker, III

Justice of the Peace, Precinct 4

Dripping Springs

Appointed by Texas Supreme Court

Term Expires: 11/19/2009

MEMBERS*

Hon. Joseph B. Morris

Justice, 5th Court of Appeals

Dallas

Appointed by Texas Supreme Court

Term Expires: 11/19/2007

Ms. Faye Barksdale

Public Member

Arlington

Appointed by Governor

Term Expires: 11/19/2007

Hon. Kathleen H. Olivares

Judge, 205th District Court

El Paso

Appointed by Texas Supreme Court

Term Expires: 11/19/2005

Hon. Michael R. Fields

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

Houston

Appointed by Texas Supreme Court

Term Expires: 11/19/2009

Mr. Ronald D. Krist

Attorney

Houston

Appointed by State Bar of Texas

Term Expires: 11/19/2007

Mr. W.A. "Buck" Prewitt

Public Member

Horseshoe Bay

Appointed by Governor

Term Expires: 11/19/2009

Mr. R. C. Allen, III

Public Member

Corpus Christi

Appointed by Governor

Term Expires: 11/19/2005

* Note: One (1) public member position remained vacant at the end of FY 2005.

STATE COMMISSION ON JUDICIAL CONDUCT

COMMISSION STAFF

Seana Willing, Executive Director

Bob Warneke, General Counsel

Tom Broussard, Senior Commission Counsel

Jacqueline Habersham, Senior Commission Counsel

Judy M. Spalding, Commission Counsel

Cathy Bradford, Commission Counsel

Ron Bennett, Chief Investigator

Victor Hidalgo, Commission Investigator

Katherine Mitchell, Commission Investigator

Elaine Thompson, *Amicus Curiae* Program Manager/Legal Assistant

Jesse B. Ayala, Budget Analyst

Linda Stewart, Accountant

Terri Counts, Purchaser

Connie Paredes, Administrative Assistant

JoAnn O'Daniel, Administrative Assistant

EXECUTIVE DIRECTOR'S STATEMENT

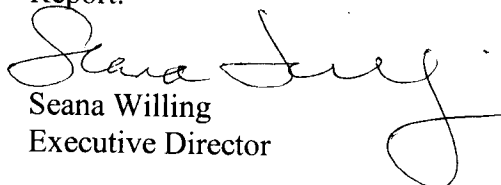
The following represents the State Commission on Judicial Conduct's 2005 Annual Report reflecting the agency's work during the past fiscal year. During Fiscal Year 2005, the Commission's caseload remained relatively stable with 1,101 new cases being filed. For the third year in a row, the agency has met its performance goal by disposing of 1,107 (100.5%) cases. The average age of disposed cases remained steady at 4.5 months. There were 418 cases that remained pending at the end of Fiscal Year 2005.

The Commission met 6 times in Fiscal Year 2005, held 32 informal hearings, and issued 65 disciplinary actions. Those disciplinary actions ranged from 16 public sanctions, 23 private sanctions, and 8 orders of additional education. Additionally, 4 cases were resolved with the removal of one judge through formal proceedings and 6 cases were resolved at considerable cost savings to the State when judges under investigation signed Voluntary Agreements to Resign in Lieu of Disciplinary Action. The Commission made 3 suspension recommendations to the Texas Supreme Court against judges who failed to obtain the required judicial education. Finally, 4 judges were suspended from office by the Commission after being indicted for felony offenses or charged with misdemeanor offenses involving official misconduct. Those suspensions are with pay and will remain in effect until the underlying criminal matters are resolved. A fuller explanation of the Commission's statistics and activities can be found in the Annual Report.

As we have done in the past, Commission staff and I participated in approximately 40 judicial ethics presentations and handled more than 1,290 ethics calls from judges, judicial candidates, court staff, attorneys, legislators, government officials, law enforcement groups, the media, and others regarding issues relating to the application and enforcement of the Code of Judicial Conduct.

Throughout the fiscal year, we assisted the Texas Supreme Court Task Force on the Code of Judicial Conduct as revisions to the Code were recommended to the Court for approval. Though some of the proposed changes have proven to be controversial, those who participated in this difficult and time-consuming process deserve praise for their work. Clearly, everyone involved had the best interests of the judiciary at heart and the Final Report included in this Annual Report reflects that commitment. Ultimately, it will fall on the Commission to enforce whatever changes the Court deems appropriate and, for that reason, we appreciate that we were invited to participate in this process.

The agency's legislative and budget concerns will be addressed elsewhere in the Annual Report.


Seana Willing
Executive Director

CHAIR'S STATEMENT

The goal of the State Commission on Judicial Conduct is to maintain confidence and integrity in the judicial system. To achieve that goal, the Commission strives to balance the needs of the public with those of the judiciary. While the public interest requires that judges be held accountable for misconduct, we also recognize that judicial careers can be damaged - if not destroyed - by false or inaccurate allegations.

Every time the Commission meets, we must reconcile these oftentimes competing interests - How do we protect the public from judicial misconduct while safeguarding the reputations of judges from unfounded charges? How do we act in the public interest without compromising the independence of the judiciary? Without exception, the decisions of Commission members - whether to dismiss a complaint, issue a sanction or recommend the removal of a judge - are never made lightly or without appropriate reflection.

It has long been said that judicial independence is the cornerstone of the legal system. In order for that system to be most effective, there must be public confidence in the court system; otherwise, court orders and judicial decisions would simply be ignored and chaos would ensue. The public will always have confidence in a court system whose judges are not swayed by partisan interests, public clamor, or fear of criticism. It is not enough that the public view its judges as being independent, those same judges must feel free to rule without fear of being censured or penalized for making decisions that are unpopular or wrong. An effective judicial disciplinary system recognizes the need for an independent judiciary. By regulating activities that are truly harmful to the public and the proper administration of justice, and by declining to regulate judges for decisions that are wrong or out of favor, a strong judicial disciplinary system will actually strengthen judicial independence, which in turn will foster greater public confidence in the legal system.

In an effort to protect the mission of the judicial disciplinary system in Texas, we are calling for support from the judiciary, the legal community, legislators, and the public to make the Commission a funding priority in the 80th Legislative Session. Every time the Legislature cuts this agency's budget, as it has since 2002, the core functions of the Commission suffer and its mission is compromised. For example, in response to budget cuts that went into effect on September 1, 2005, the Commission will be forced to cut back on travel expenses related to on-site investigations and Commission meetings. These cut-backs are likely to impact the agency's ability to thoroughly investigate complaints and may delay decisions in cases involving more serious allegations of misconduct or complex facts. Moreover, any formal proceeding cases will have to be abated unless and until emergency funds are appropriated to cover the high costs associated with prosecuting removal actions.

Canon 1 of the Texas Code of Judicial Conduct states that "an independent and honorable judiciary is indispensable to justice in our society." In order for that vision to be realized, it is critical that the State's funding of the judicial branch of government, including the State Commission on Judicial Conduct, become a priority.



James A. Hall, 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 the Texas Constitution. The Commission is the independent state agency responsible for investigating allegations of judicial misconduct or permanent disability, and for disciplining judges.

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

Members of the Commission

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

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

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

Laws Governing the Commission

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

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

Defining Judicial Misconduct

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

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

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

Sources of Complaints and Allegations

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

Commission Limitations

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

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

Commission Investigations and Actions

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

Commission Organization and Staff

In fiscal year 2005, the Commission had seventeen (17) authorized staff positions (FTEs). Commission staff includes the Executive Director, four attorneys, one legal assistant, three investigators, and five administrative support people. All Commission staff members are full-time State employees.

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

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

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

Amicus Curiae

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

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

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

Outreach and Education

In fiscal year 2005, the Executive Director, staff attorneys and investigators made approximately forty (40) presentations at judicial training courses, bar conferences and court staff workshops, describing the Commission and discussing various forms of judicial misconduct.

Ethics Calls

In fiscal year 2005, the Executive Director, staff attorneys and investigators answered more than 1,290 telephone calls from judges, judicial candidates, attorneys, Legislators, the media and private citizens regarding judicial ethics inquiries. Callers are cautioned that Commission staff cannot issue an opinion on behalf of the Commission, and that the Commission is not bound by any comments made during the conversation. In many cases, the caller's question is researched before the call is returned so that the specific canon, statute, rule or ethics opinion can be identified. When appropriate, staff will send the caller a Complaint Form (in English or Spanish) and other relevant material. In some instances, staff may refer callers to other resources or agencies to better address their concerns.

Commission Website

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

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

Public Information

The availability of information and records maintained by the Commission is governed by Rule 12 of the Texas Rules of Judicial Administration, the Texas Constitution and the Texas Government Code. Commission records are not subject to public disclosure pursuant to the Public Information Act (formerly the Open Records Act) or the Freedom of Information Act.

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

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

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

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

THE COMPLAINT PROCESS

Introduction

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

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

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

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

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

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

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

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

Commission Decisions

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

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

1. Administrative Dismissal Report

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

2. Dismissal

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

3. Order of Additional Education

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

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

4. Private or Public Sanction

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

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

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

If a *public sanction* or *censure* is issued, all information considered by the Commission, including the judge's name, is made public. Public sanctions are issued not only to identify the specific conduct, but to educate judges that such conduct is inappropriate. This also 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 severe that it should be handled as a formal proceeding. The Commission itself may conduct such a fact-finding hearing or it may ask the Supreme Court of Texas to appoint a Special Master (who must be a sitting or retired district or appellate judge) to hear the matter. Such proceedings are governed by the Texas Rules of Civil Procedure and the Texas Rules of Evidence to the extent practicable.

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

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

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

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

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

Appellate Review of Commission Action

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

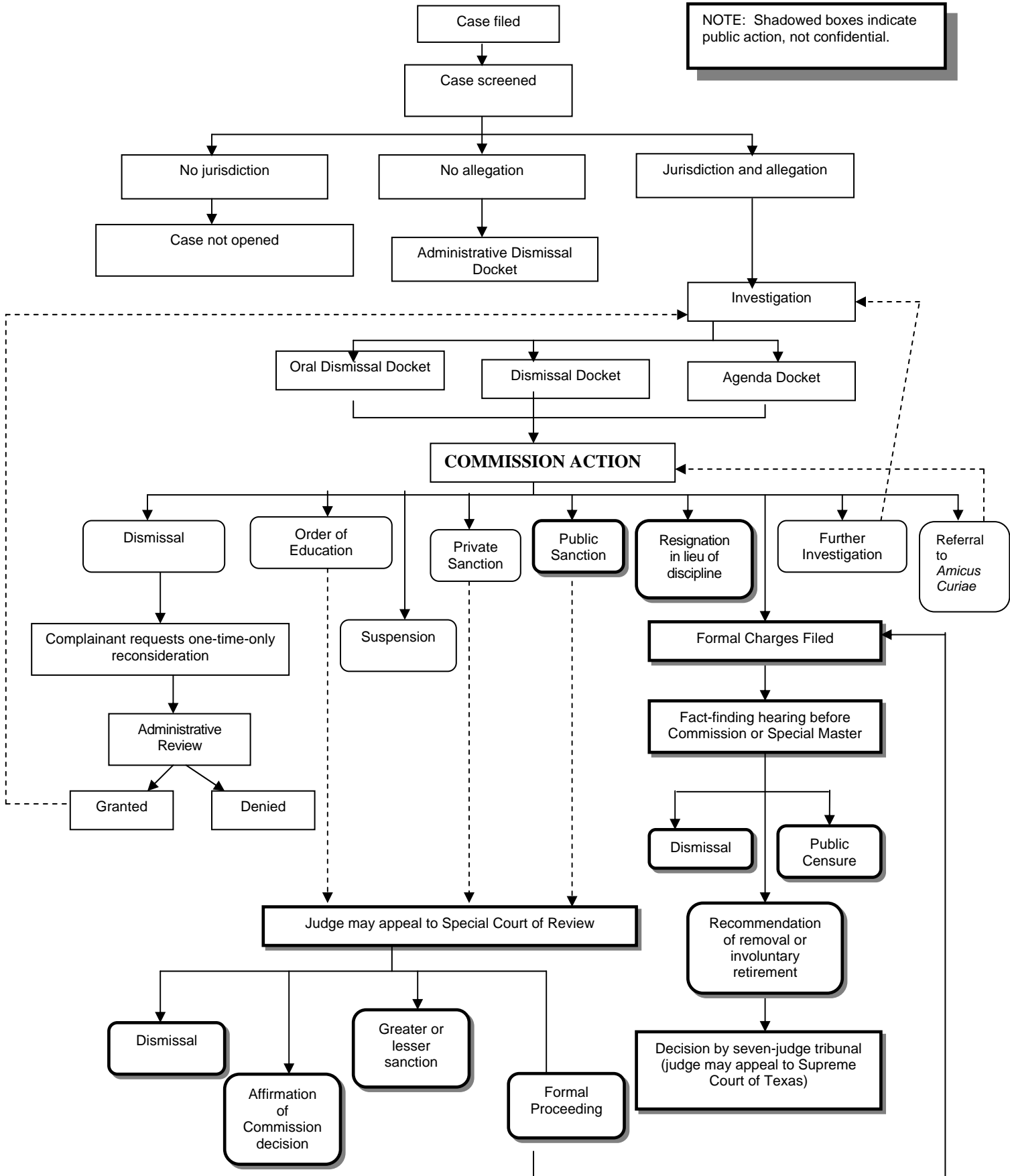
Within fifteen (15) days after the Special Court of Review is appointed, the Commission must furnish the subject judge and each justice on the Special Court of Review with a "charging document," which includes a copy of the sanction issued, as well as any additional charges to be considered in the *de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

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

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

COMPLAINT PROCESS

NOTE: Shadowed boxes indicate public action, not confidential.



AMICUS CURIAE

PROGRAM

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

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

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

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

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

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

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

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

Legislative Concerns, Observations, and Recommendations

There are a variety of topics of special note or interest that come to the attention of the Commission as it investigates complaints, conducts hearings, issues discipline, and prosecutes formal proceedings and appeals of Commission decisions. These items are provided below for the purpose of educating the public, advising the judiciary so that potential misconduct may be avoided, and pursuant to Section 33.005 of the Government Code, which authorizes the Commission to recommend changes it considers necessary in its rules or the applicable statutes or constitutional provisions.

- a. Sections 834.004 and 839.003 of the Texas Government Code, which govern forfeiture of judicial pensions or retirement funds, should be amended to clarify that judges who are removed from office by a Review Tribunal following formal proceedings initiated by the Commission forfeit their retirement pensions upon removal by the Tribunal or the Texas Supreme Court following appropriate review. See *In re Canales*, 113 S.W.3d 56, 73 (Tex.Rev.Trib. 2003, pet. rev. den'd 2004)
- b. When the Commission issues a Public Censure following a formal proceeding, the respondent judge should be afforded the right to appeal the Commission's decision, possibly under a substantial evidence standard, to a Review Tribunal. Currently, by definition, a Public Censure is not considered a "sanction;" therefore, it is not subject to appellate review. The only recourse a judge has under these circumstances is to challenge the censure in federal court.
- c. The travel expenses and costs of a special master, members of a Review Tribunal or Special Court of Review, all of whom are appointed to serve by the Texas Supreme Court during a formal proceeding or appeal, should be paid out of funds appropriated to the Texas Supreme Court, or to the county or court where the judge currently sits, or out of the visiting judge funds if the judge is not an active, sitting judge. In the past, the Commission has been required to pay these expenses out of its appropriated funds. This has been problematic on several levels. First, formal proceedings and appeals are impossible to predict or plan for; therefore, the Commission cannot adequately budget for such expenses. Likewise, the Legislature will not adequately fund the Commission for these expenses because the amounts to be expended each year on formal proceedings or appeals are unknown. Second, during formal proceedings and appeals, the Commission is a party; the Executive Director acts as attorney of record. Processing claims for travel reimbursement from judges still serving as masters, Review Tribunal members or Special Court of Review members places the Commission and its Director in an awkward position and may lead to an appearance of impropriety should the Director be forced to communicate with the judges about reimbursement and payment issues while the cases are still pending.
- d. Judges who are currently eligible to sit by assignment, but who subsequently receive a Public Reprimand, Public Censure or who resign in lieu of discipline should be required to notify the Presiding Judge of their Administrative Region of the Commission action taken against them and request that their name be removed from the list of judges eligible to sit by assignment. Currently, there is no requirement that the judge request that his/her name be removed from the list and there

is consensus among the Presiding Judges that they have no legal authority to remove a judge from the list.

- e. The Procedural Rules for the Removal or Retirement of Judges need to be revised and updated. Consistent with those changes, Chapter 33 of the Texas Government Code should be revised to aid in clarity and consistency.

STATISTICAL ANALYSIS

An outline of the statistical activity for the Commission through the end of fiscal year 2005 is shown in **Table 1** immediately following this section. Graphic representations of the data are also presented in **Figures 1** through **6** to further illustrate the activities of the Commission.

As of the end of fiscal year 2005, according to records made available through the Office of Court Administration, approximately 3,661 judges were under the jurisdiction of the State Commission on Judicial Conduct. **Figure 1** illustrates the Texas judiciary by the total number of judges and by the number of judges in each category. **Figure 2** shows the number and percentage of cases filed with the Commission against each judge type. **Figure 3** shows the number and percentage of disciplinary actions taken by the Commission against each judge type. As was the case in previous years, district court judges accounted for nearly half of the cases filed in fiscal year 2005; however, this category of judge received seventeen percent (17%) of the discipline issued by the Commission this past year, as compared to twelve percent (12%) in fiscal year 2004 and three percent (3%) in fiscal year 2003. Disciplinary actions against justices of the peace decreased, with this category of judge receiving fifty percent (50%) of sanctions and other disciplinary actions issued during the year, compared to sixty-one percent (61%) in fiscal year 2004.

Figure 4 illustrates by number and percentage the various sources of cases closed in fiscal year 2005. By the end of the fiscal year approximately 1,107 cases were closed. Nearly forty percent (40%) of all cases closed in fiscal year 2005 were filed by civil litigants, including *pro se* litigants, and the family and friends of these litigants, with those cases filed by criminal defendants, including traffic defendants and inmates, accounting for thirty-three percent (33%) of closed cases this past fiscal year. **Figure 5** compares the number of cases filed with the Commission to the total number of cases disposed of by the Commission for fiscal years 2002 through 2005. It is worth noting that in fiscal year 2005, the Commission once again met its performance measure with an overall disposition rate of 100.5 percent.

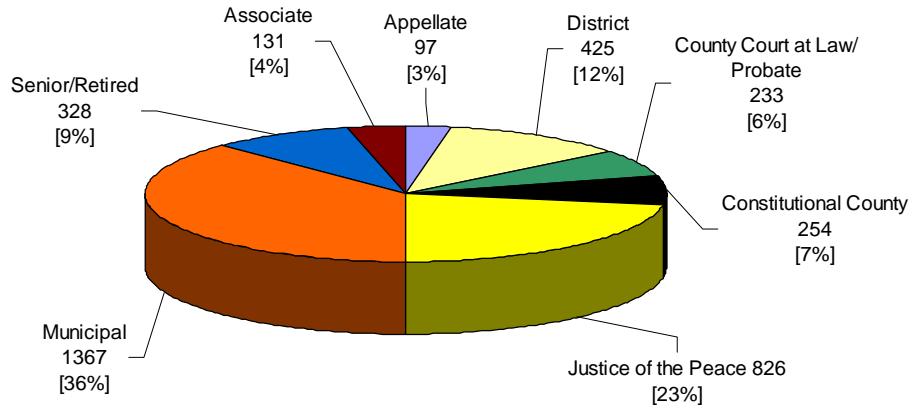
In fiscal year 2005, sixty-five (65) disciplinary actions were taken against Texas judges. The Commission disposed of forty-seven (47) cases through public sanction, private sanction, orders of additional education or a combination of sanction with an order of additional education. In addition, six (6) cases were disposed of through voluntary agreements to resign from office. Interim actions, such as suspensions, *Amicus* referrals, and formal proceedings, accounted for eight (8) of the disciplinary actions taken in fiscal year 2005. A comparison of public discipline, private discipline and interim actions taken by the Commission in fiscal years 2002 through 2005 is shown in **Figure 6**.

Table 1: Commission Activity

	FISCAL YEAR 2002	FISCAL YEAR 2003	FISCAL YEAR 2004	FISCAL YEAR 2005
Cases Pending (Beginning FY/Ending FY)	629/828	828/500	500/382	382/418
Cases Filed	1045	1055	1227	1101
Total Number Of Cases Disposed	828	1395	1328	1107
% of Cases Disposed	79%	132%	108%	100.5%
Average Age of Cases Disposed	7.1 Months	5.4 Months	4.04 Months	4.5 Months
Disciplinary Action (total)	79	59	77	65
Cases Disposed through:				
Criminal Conviction	0	0	0	0
Review Tribunal Order	0	0	17	4
Voluntarily Agreement to Resign in Lieu of Disciplinary Action	14	19	17	6
Sanction:				
Public Censure	0	1	0	0
Public Censure and Order of Additional Education	0	2	0	0
Public Reprimand	2	7	2	6
Public Warning	6	2	1	3
Public Admonition	8	4	4	3
Public Sanction and Order of Additional Education	3	4	0	4
Private Reprimand	2	0	3	1
Private Warning	3	5	1	8
Private Admonition	4	5	11	8
Private Sanction and Order of Additional Education	3	3	6	6
Public Order of Additional Education	0	0	0	0
Private Order of Additional Education	6	4	7	8
Interim Disciplinary Action:				
Order of Suspension [15(a)]	4	0	6	3
Recommendation of Suspension to Supreme Court [15(b)]	7	2	1	4
Formal Proceedings Voted	17	1	1	0
<i>Amicus</i> Referral	2	0	0	1
Dismissals	749	1328	1259	1049
Requests for Reconsideration Received	43	173	212	29
Reconsideration Granted	0	10	12	1
Reconsideration Denied	39	163	200	28
Pending	4	0	0	0
Cases Appealed to Special Court of Review	1	1	0	0
Informal Hearings Set (includes Aug 2005 meeting)	78	71	62	32*
Public Statements Issued	1	1	0	0

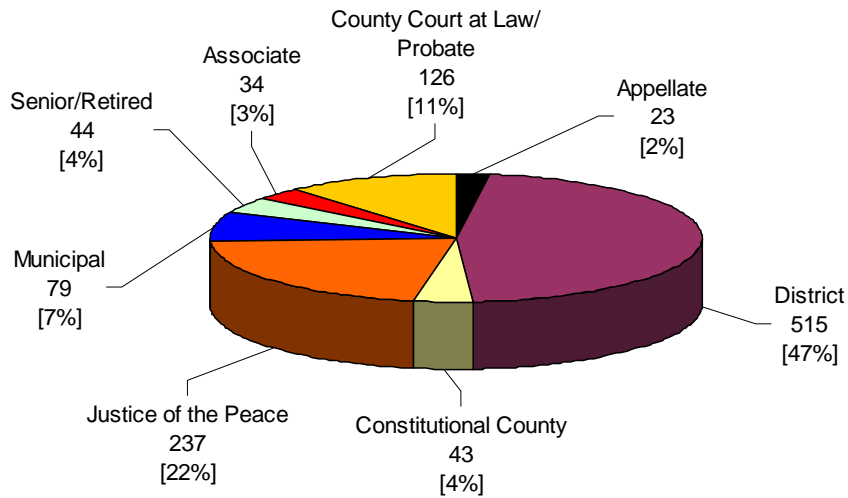
* Prior to FY2005, Informal Hearings were measured by the number of cases heard rather than by the number of judges appearing

Fig. 1 Total Number of Texas Judges*



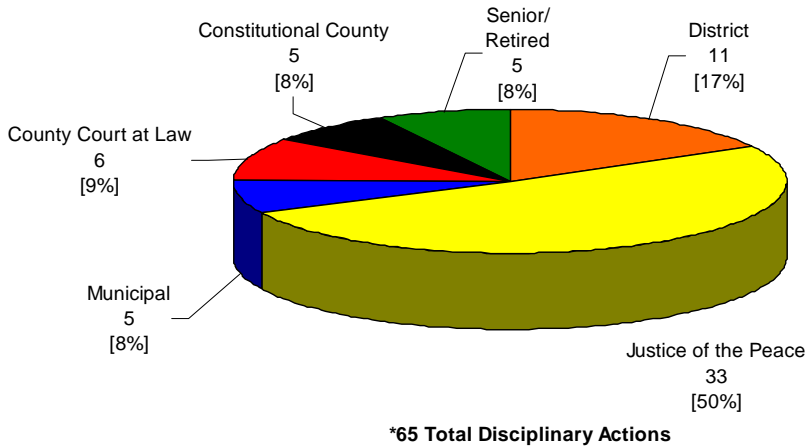
*3,661 Total Judges
Source: Office of Court Administration (September 2005)

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



*1,101 Total Complaints Filed

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



Note: No Probate or Associate Judges received discipline in FY 2005. Some judges received a sanction involving more than one case.

Fig. 4 Number of Cases Disposed By Complainant Type*

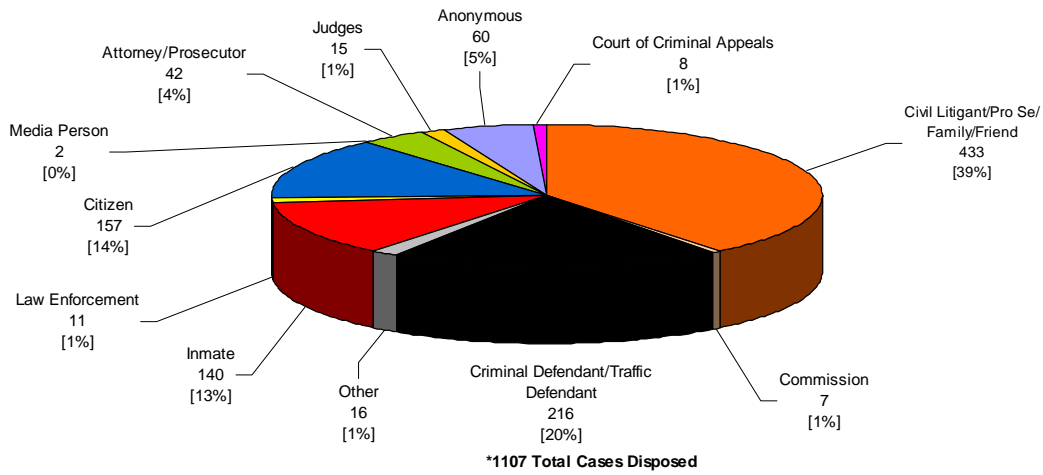


Fig. 5 Cases Filed and Disposed (FY 2002 - FY 2005)

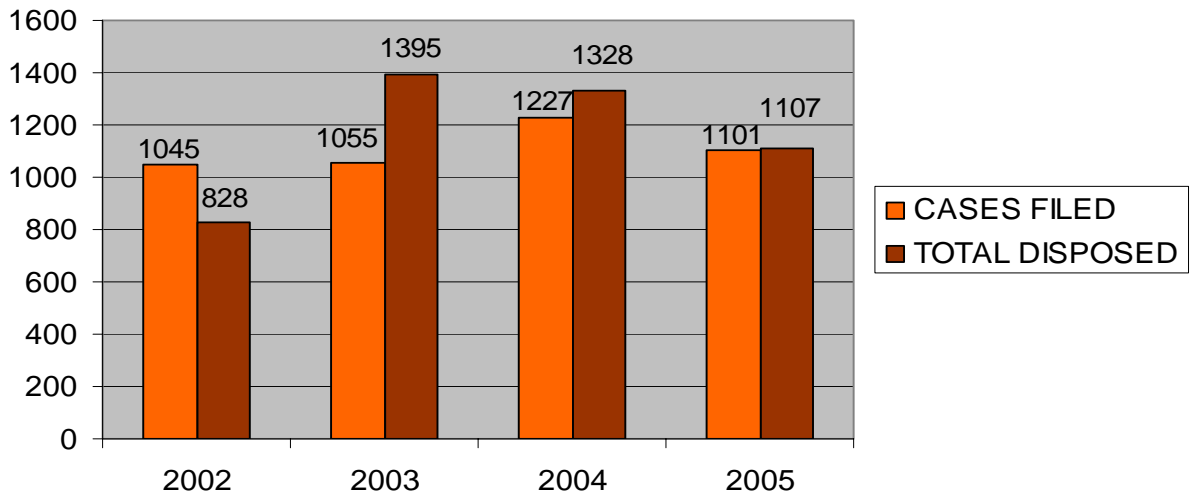
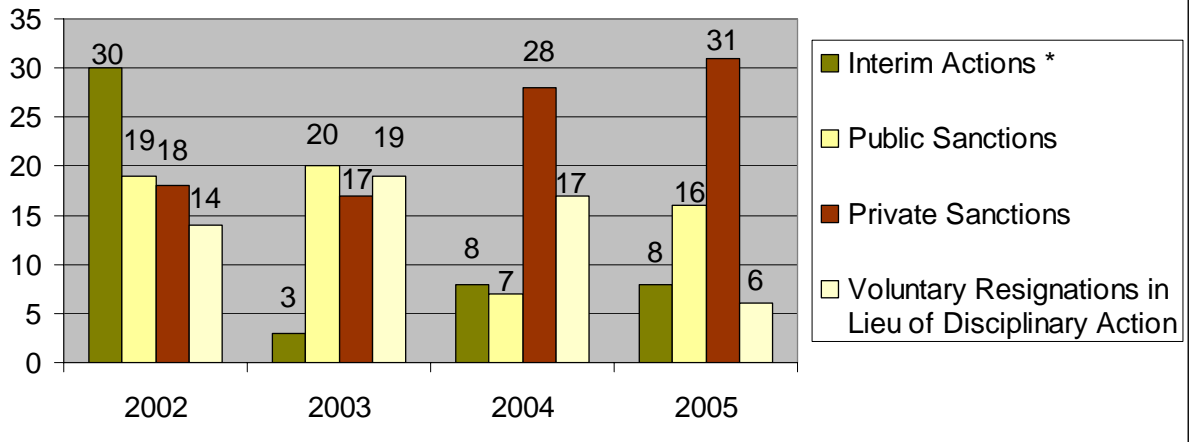


Fig. 6 Commission Activity (FY 2002-2005)



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

EXAMPLES OF IMPROPER JUDICIAL CONDUCT

The following are examples of judicial misconduct that resulted in disciplinary action by the Commission in fiscal year 2005. These are illustrative examples of misconduct and do not represent every disciplinary action taken by the Commission in fiscal year 2005. The summaries below are listed in relation to specific violations of the Texas Code of Judicial Conduct, the Texas Constitution, and other statutes or rules. They are also listed in descending order of the severity of the disciplinary action imposed, and may involve more than one violation. The full text of any public discipline are published on the Commission website and may be requested by contacting the Commission.

These sanction summaries are provided with the intent to educate and inform the judiciary and the public regarding misconduct that the Commission found to warrant disciplinary action in fiscal year 2005. The reader should note that the summaries provide only general information and omit mitigating or aggravating facts that the Commission considered when determining the level of sanction to be imposed. Additionally, the reader should not make any inferences from the fact situations provided in these summaries. It is the Commission's sincere desire that providing this information will protect and preserve the public's confidence in the integrity, impartiality and independence of the judiciary and further assist the judiciary in establishing, maintaining and enforcing the highest standards of judicial and personal conduct.

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

- The judge adjudicated a dispute between two individuals and issued a written order granting possession of property to one of the individual's representatives when there was no case pending in his court. In doing so, the judge failed to comply with the law, and failed to maintain professional competence in the law. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace (04/29/05).*
- The judge failed to comply with the law and failed to maintain professional competence in the law when he issued criminal process for defendants in civil cases, and summoned them to court with a show cause order. [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 (01/19/05).*

- Based on a complaint filed by his clerk, the judge issued an arrest warrant without analyzing the complaint to determine if probable cause existed. The Commission concluded from the judge's conduct that he failed to comply with the law and failed to maintain professional competence in the law. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Admonition of a Justice of the Peace (12/21/04).*

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

- The judge exploited his position as a judge to further his private business interests by his gratuitous use of his judicial title in promotional materials concerning his training seminar and public speaking business. Further, the judge failed to follow through with his previous representations to the Commission that he would discontinue the gratuitous use of his judicial title. [Violation of Canons 2B and 4D(1) of the Texas Code of Judicial Conduct and Article V, Section 1-a(6)A of the Texas Constitution.] *Public Reprimand Ken Reilly, Municipal Court Judge (11/02/04).*
- The judge did lend the prestige of his judicial office by going to a friend's property to oversee the removal of another person's automobiles and placement of a new fence on a disputed boundary line. The judge further failed to take appropriate action as a magistrate upon witnessing a physical altercation between the friend and the other person, which demonstrated that the judge allowed his personal relationship to influence his judicial conduct or judgment and allowed the friend, in turn, to convey the impression that the friend was in a special position to influence the judge. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Public Warning of Eddie J. Vogt, Former Justice of the Peace (11/02/04).*
- Using county letterhead, the judge wrote a letter to a U.S. Senator regarding a private dispute. The letterhead included the judge's full name and title, listed the names of the county commissioners, and was signed by the judge with the designation of "County Judge." The bottom of the letter bore the statement, "Not printed or mailed at government expense." In his explanation to the Commission, the judge stated that he thought he would be in compliance with the Code of Judicial Conduct by adding the phrase, "Not printed or mailed at government expense." [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Warning of a County Judge (11/18/04).*
- The judge lent the prestige of his judicial office to advance the private interests of his wife when he publicly supported her campaign for county commissioner, and

when he allowed his judicial title to be used in her campaign literature. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Warning of a District Judge (02/21/05)*.

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 leased office space to an attorney who regularly practiced in his court, conveying or permitting others to convey the impression that the attorney was in a special position to influence the judge. The judge's business relationship with the attorney also involved the judge in frequent transactions with a lawyer who regularly comes before the court. Finally, the judge's failure to disclose the nature of his relationship with the attorney to prosecutors prevented any opportunity for the opposing side to urge the judge's recusal if such actions were appropriate. [Violation of Canons 2B, 3B(1) and 4D(1) of the Texas Code of Judicial Conduct.] *Private Admonition of a District Judge (11/18/04)*.
- The judge allowed an attorney who regularly practices in his court to office in his building and perform legal work for his company, conveying the impression that the attorney was in a special position to influence the judge. The judge's business relationship with the attorney also reflected adversely on the judge's impartiality and involved the judge in frequent transactions with a lawyer who regularly appeared in his court. Finally, the judge's failure to voluntarily recuse himself from a case involving the attorney or, in the alternative, to disclose the nature of his business relationship with the attorney to opposing counsel and the litigants, led to an appearance of impropriety of such nature and degree as to ultimately require that the judge be ordered removed from the case. [Violation of Canons 2B, 3B(1) and 4D(1) of the Texas Code of Judicial Conduct.] *Private Admonition of a County Court at Law Judge (11/18/04)*.

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

- The judge failed to comply with the law and failed to maintain professional competence in the law when he released a defendant on a personal recognizance bond over the telephone. Further, the judge's conduct and judgment were improperly influenced by his relationship with the defendant's father. Additionally, the judge acted out of fear for his own safety. Finally, the judge engaged in willful conduct that cast public discredit upon the judiciary. [Violation of Canons 2A and 3B(2) and Article V, Section 1-a(6)A of the Texas Constitution.] *Public Reprimand and Order of Additional Education of Santos Benavides, Justice of the Peace (11/02/04)*.

- The judge's actions regarding the adjudication of a defendant's case, particularly his telephone call to the defendant requesting her to appear before him and his action in reducing an assault charge to a Class "C" misdemeanor offense in order to place the case within the jurisdiction of his court, did not comply with the Texas Code of Criminal Procedure, indicating a lack of competence in the law. [Violation of Canon 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace (09/09/04)*.
- A school district's police officers were conducting traffic stops within the judge's precinct, during which time the judge was pulled over and issued a verbal warning. Thereafter, the judge wrote a letter to the chief of police for the local independent school district threatening to hold the school district police department in contempt of court although (a) no criminal complaint or case was pending in his court, (b) no court order had been issued to form the basis of contempt charges, and (c) the judge was unaware that the police officers were acting with authority. [Violation of Canon 3B(2) of the Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace (02/21/05)*.

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 lacked the patience, dignity and courtesy required of a judicial officer with his persistent use of derogatory, demeaning, and sexual remarks toward women, including female judges, prosecutors, probation officers, and others with whom the judge deals in his official capacity, and, in particular, his abusive treatment of a female attorney appearing in his court. The judge's berating of the attorney evidenced his need to exert his power as a judge over the attorney by means of intimidation and fear. The judge's course of conduct has undermined the role that the judiciary has played in mentoring lawyers in order to foster the continually high ethical standards of the legal profession, as well as the public's confidence in the integrity, independence and impartiality of the Texas judiciary. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Public Reprimand of Luis Aguilar, District Judge (12/21/04)*.
- While presiding over a felony jury trial, the judge directed profanity at the defense attorney in a conversation before the bench. The judge's statement to the lawyer during these proceedings was found to lack patience, dignity and courtesy. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Warning of a Senior Judge (01/19/05)*.
- Following a hearing in a hotly contested custody dispute, the judge observed a meeting between the *pro se* litigant and opposing counsel and approached them to foster a settlement discussion between the two. During the discussion, the judge engaged the litigant in a confrontational conversation that escalated to the point that the judge threatened to shoot the man if he ever saw him near the judge's home. The

judge's statements to the litigant were found to lack patience, dignity and courtesy. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a District Judge (01/19/05)*.

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

- The judge made sarcastic and untoward remarks to the defendant and his attorney with others present in the courtroom hallway while the defendant was waiting to appear before a grand jury. The judge's remarks demonstrated a lack of dignity and courtesy and also displayed prejudice against the defendant. The judge's remarks were possibly heard by some of the grand jurors who subsequently returned an indictment against the defendant. [Violation of Canons 3B(4) and 3B(5) of the Texas Code of Judicial Conduct.] *Private Warning of a Former District Judge (06/08/05)*.
- The judge acted in a biased manner by appointing her friend and former colleague as special prosecutor in a high profile criminal case after the attorney had previously represented the judge in a matter relating to the investigation of the criminal case in question. By making such an appointment, the Commission concluded that the judge allowed her relationship with the attorney to influence her conduct and judgment. Although the judge had authority to appoint a special prosecutor in the case, the Commission further concluded that in this particular instance, the judge's appointment of her friend lacked impartiality and involved factors unrelated to merit alone. [Violation of Canons 2B, 3B(5) and 3C(4), Texas Code of Judicial Conduct.] *Private Admonition of a District Judge (12/21/04)*.

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 lacked the patience, dignity and courtesy required of a judicial officer by berating a venireman before a panel of prospective jurors. Further, the judge's words and conduct manifested a bias or prejudice against the venireman on the basis of the man's perceived socioeconomic status as a "street person." [Violation of Canons 3B(4) and 3B(6) of the Texas Code of Judicial Conduct.] *Public Warning of E. Mason Martin, County Court at Law Judge (12/21/04)*.

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 failed to comply with the law and failed to maintain professional competence in the law when she issued letters to two individuals which were *de facto* peace bond orders in which the judge threatened the recipients with confinement in jail if her instructions were violated. The judge failed to give the recipients of her letters the opportunity to be heard in the matter, and failed to conduct a hearing of any sort in the case. [Violation of Canons 2A, 3B(2) and 3B(8) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace* (06/08/05).
- The judge failed to comply with the law and failed to maintain professional competence in the law when he allowed a case that had originally been filed in a municipal court to be “transferred” to his justice court. Further, the judge failed to take the necessary steps to bring the criminal defendant before the court prior to adjudicating his guilt in the case [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* (06/08/05).

CANON 4D(1): 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 persons likely to come before the court on which the judge serves. This limitation does not prohibit either a judge or candidate from soliciting funds for appropriate campaign or officeholder expenses as permitted by state law.

- The judge exploited his position and used the prestige of his judicial office to advance his own private interests when he sent a pre-suit demand to the defendants in his private lawsuit, and then filed pleadings in the case, utilizing his judicial title in both instances. [Violation of Canons 2B and 4D(1) of the Texas Code of Judicial Conduct.] *Private Admonition of a Justice of the Peace* (06/08/05).

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 maintain order and decorum in the courtroom when she celebrated a criminal defendant's apprehension with balloons, streamers, cake and ice cream, and when she promoted the event by inviting the media to capture the defendant's bewildered expression as he entered the courtroom and observed the celebration. The judge's actions in this case were willful and cast public discredit upon the judiciary. [Violation of Canon 3B(3) of the Code of Judicial Conduct and Article V, Section 1-a(6)A of the Texas Constitution.] *Public Admonition of Faith Johnson, District Judge (04/29/05).*
- The judge's failure to render a judgment in a small claims matter until sixteen (16) months after the case was heard, and after the plaintiff made numerous attempts to contact the judge in order to obtain a judgment, constituted a willful, persistent and unjustifiable failure to timely execute the business of the court. [Violation of Article V, Section 1-a(6)A of the Texas Constitution and Section 33.001(b)(1) of the Texas Government Code.] *Private Admonition of a Justice of the Peace (03/17/05).*