

STATE COMMISSION ON JUDICIAL CONDUCT



**FISCAL YEAR 2014
ANNUAL REPORT**

STATE COMMISSION ON JUDICIAL CONDUCT

FY 2014 ANNUAL REPORT

COMMISSION MEMBERS

Steven L. Seider, Chair

M. Sue Kurita, Vice Chair

Valerie E. Ertz, Secretary

Karry K. Matson

Patti H. Johnson

Joel P. Baker

Edward J. Spillane, III

Martha M. Hernandez

Diane D. Threadgill

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COMMISSIONER INFORMATION

OFFICERS

CHAIR

Hon. Steven L. Seider

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

VICE-CHAIR

Hon. M. Sue Kurita

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

SECRETARY

Ms. Valerie E. Ertz

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

MEMBERS

Ms. Patti H. Johnson

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

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

Mr. Ricky A. Raven

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

Hon. Joel P. Baker

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

Mr. Demetrius K. Bivins

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

Hon. Edward J. Spillane III

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

Hon. Douglas S. Lang

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

Ms. Martha M. Hernandez

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

Hon. Orlanda L. Naranjo

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

STATE COMMISSION ON JUDICIAL CONDUCT

COMMISSION STAFF

Seana Willing, Executive Director

Cathy Bradford, General Counsel

Jacqueline Habersham, Commission Counsel

Royce Lemoine, Commission Counsel

Erik Nielsen, Commission Counsel

Anthony Martinez, Commission Counsel

Victor Hidalgo, Senior Investigator

Katherine Mitchell, Senior Investigator

Ron Bennett, Senior Investigator

Judy Morgan, Legal Assistant/Intake

Terri Counts, Staff Services Officer

Connie Paredes, Administrative Assistant

Juanita Villarreal, Administrative Assistant

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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 [the judge’s] 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 criminal conduct, engaging in improper financial or business dealings, improper fundraising activities, 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. Failure to cooperate with the investigation by a complainant, attorney, or

witness greatly impairs the agency's ability to investigate a complaint and will typically result in dismissal of the case.

Commission Organization and Staff

In fiscal year 2014, the Commission had fourteen (14) authorized staff positions (FTEs). Commission staff includes the Executive Director, the General Counsel, five staff attorneys, three investigators, one legal assistant, a staff services officer, and two administrative assistants. All Commission staff members are full-time State employees.

The Commission's legal staff, which consists of attorneys, 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 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.

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 2014, the Executive Director and staff attorneys participated in approximately 25 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 2014, the Executive Director, staff attorneys and investigators answered approximately 1,000 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 generally 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.

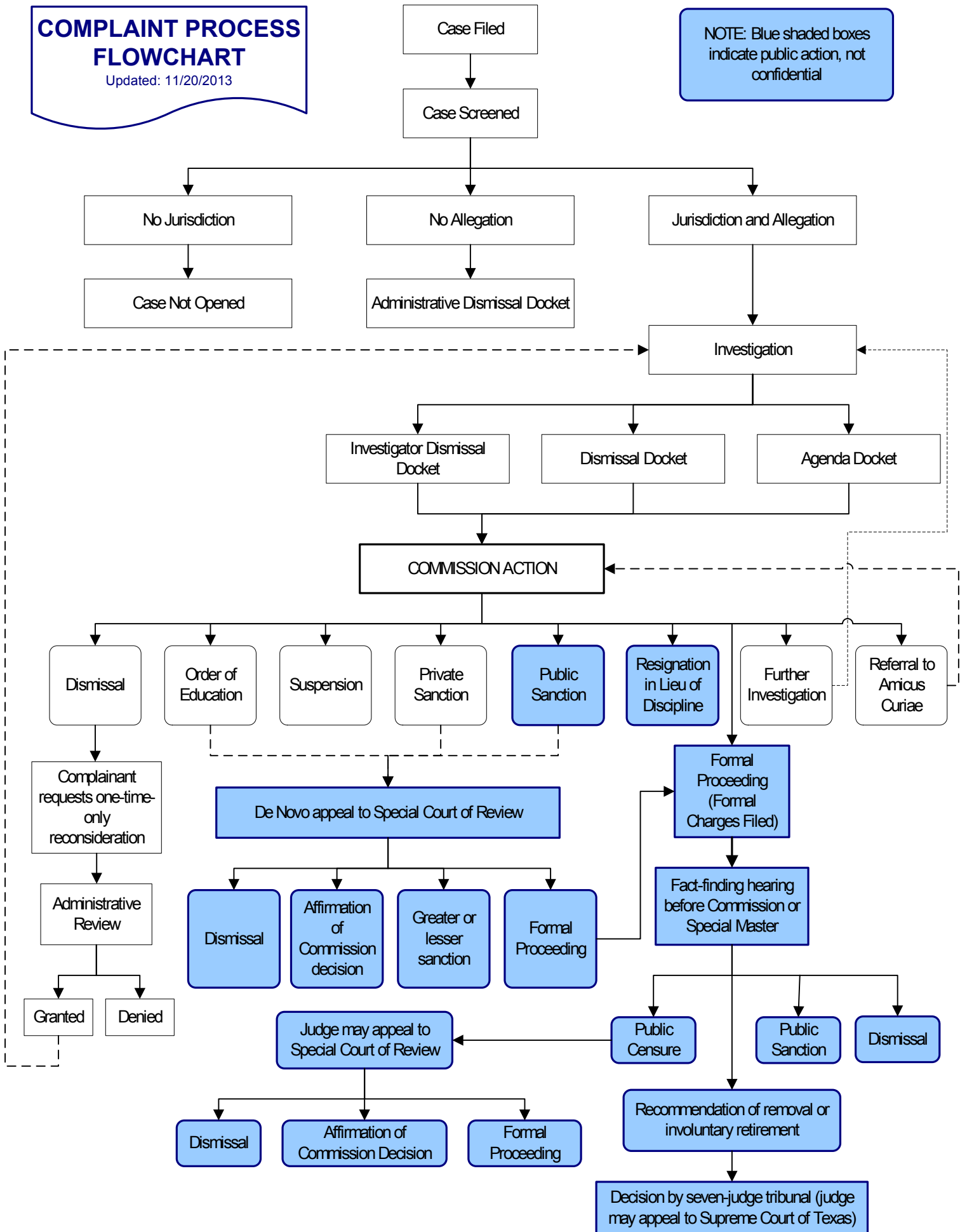
A trial *de novo* is held within thirty (30) days after the charging document is filed. The Special Court of Review considers the case from the beginning, as if the Commission had taken no previous action. The Texas Rules of Civil Procedure apply, except that the judge is not entitled to a jury trial.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



STATISTICAL ANALYSIS

An outline of the statistical activity for the Commission through the end of fiscal year 2014 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 2014, according to Office of Court Administration records, approximately 3,677 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. In fiscal year 2014, the Commission opened 1,136 cases, which is consistent with the number of filings in fiscal year 2013. **Figure 3** shows the number and percentage of disciplinary actions taken by the Commission against each judge type. Of note in fiscal year 2014: justices of the peace received 17% of the complaints filed, and accounted for 31% of all discipline issued by the Commission, which is a significant decrease from fiscal year 2013. Disciplinary actions against district judges rose from 17% to 36% in fiscal year 2014, and actions against County Court at Law and Probate Judges fell from 12% to 5% this past year. Municipal court judges received 7% of the complaints filed in fiscal year 2014 and accounted for 16% of all discipline issued by the Commission for the year, reflecting a 8% decrease from fiscal year 2013. In fiscal year 2014, 48% of all cases filed were against district judges, which is consistent with fiscal years 2012 and 2013.

Figure 4 illustrates by number and percentage the various sources of cases closed in fiscal year 2014. By the end of the year 1,075 cases had been disposed. Fifty-two percent (52%) 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 38% of the cases. Two percent (2%) of the cases were filed anonymously and only 6 cases (<1%) were Commission-initiated. **Figures 5a** and **5b** compare the number of cases filed with the number of cases disposed for fiscal years 2011 through 2014.

In fiscal year 2014, 61 disciplinary actions were issued against Texas judges, a 45% increase over fiscal year 2013. The Commission disposed of 52 cases through public sanction, private sanction, orders of additional education or a combination of a sanction with an order of additional education, a more than 70% increase over fiscal year 2013. 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 three (3) of the disciplinary actions taken in fiscal year 2014. A comparison of public discipline, private discipline and interim actions taken by the Commission in fiscal years 2011 through 2014 is shown in **Figures 6a** and **6b**.

Of the 1,075 cases closed last year, 32 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, 18 cases were dismissed after the judge demonstrated that he or she took appropriate measures to correct the conduct that resulted in a complaint. Approximately 63% of the cases closed in fiscal year 2014 alleged no judicial misconduct. The number of cases closed following a preliminary investigation increased to 26%, while the number of full investigations requiring a response from the judge fell to 26% in fiscal year 2014. A comparison of initial, preliminary and full investigations conducted by the Commission in fiscal years 2011 through 2014 is shown in **Figures 7a** and **7b**.

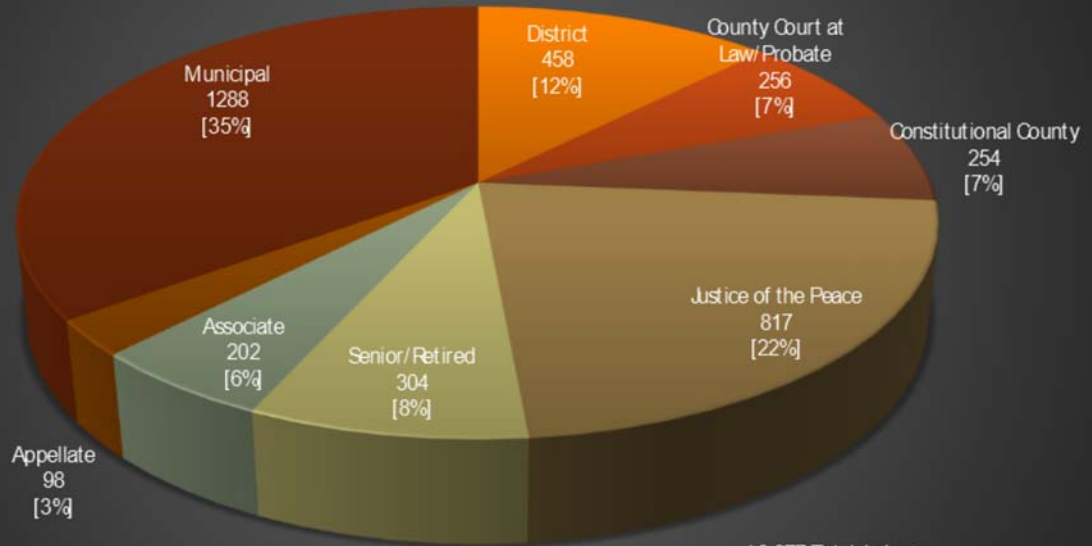
The chart on **Table 2** provides a breakdown of the disposition of the 1,075 cases closed in fiscal year 2014. **Table 3** shows, in order of prevalence, the types of allegations that resulted in disciplinary action during fiscal year 2014.

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 2014, at least 365 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

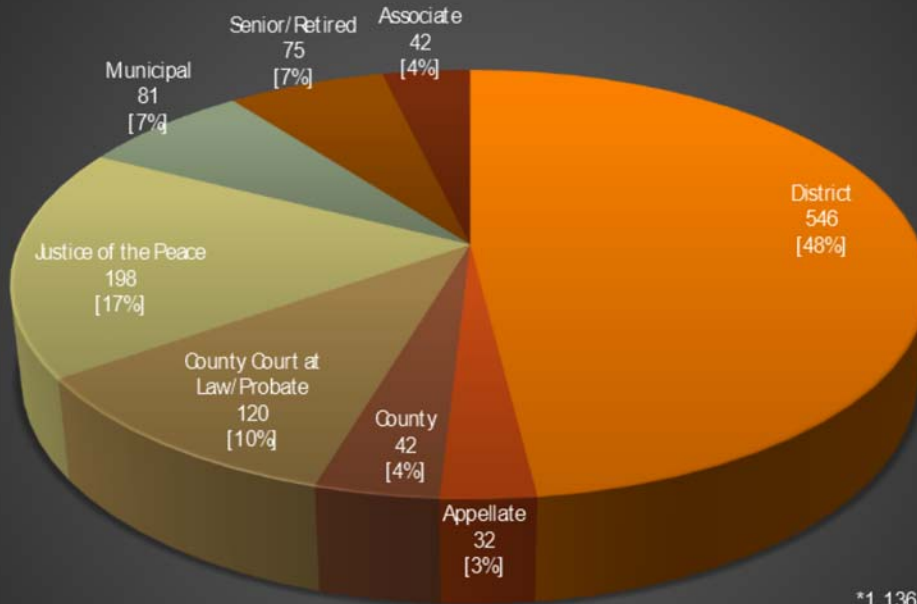
	FISCAL YEAR 2011	FISCAL YEAR 2012	FISCAL YEAR 2013	FISCAL YEAR 2014
Cases Pending (Beginning FY/Ending FY)	503/430	430/564	564/584	584/636
Cases Filed	1119	1216	1132	1136
Total Number Of Cases Disposed	1192	1049	1103	1075
% of Cases Disposed	106.5%	86.27%	97.79%	94.63%
Average Age of Cases Disposed	5.66 Months	5.3 Months	6.1 Months	5.37 Months
Disciplinary Action (total)	42	49	42	61
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	5	3	5	6
Sanction:				
Public Censure	0	0	0	0
Public Censure and Order of Additional Education	0	0	0	0
Public Reprimand	1	1	0	8
Public Warning	2	1	1	2
Public Admonition	3	5	0	1
Public sanction and Order of Additional Education	1	1	0	3
Private Reprimand	3	12	6	2
Private Warning	3	3	5	4
Private Admonition	8	6	6	12
Private sanction and Order of Additional Education	12	9	6	15
Public Order of Additional Education	0	0	0	0
Private Order of Additional Education	1	4	6	5
Interim Disciplinary Action:				
Order of Suspension [15(a)]	1	3	7	3
Recommendation of Suspension to Supreme Court [15(b)]	0	1	0	0
Cases in Formal Proceedings	0	0	0	0
Amicus Referral	0	0	0	0
Dismissals	1154	1004	1068	1016
Requests for Reconsideration Received	226	107	80	67
Reconsideration Granted	0	2	1	2
Reconsideration Denied	226	118	79	60
Pending	16	3	7	5
Cases Appealed to Special Court of Review	1	3	1	0
Informal Hearings Set	13	9	9	14
Public Statements Issued	0	1	1	0

Fig. 1 Total Number of Texas Judges*



*3,677 Total Judges
 Source: Office of Court Administration
 (November 2014)

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



*1,136 Total Complaints
 Filed in FY 2014

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

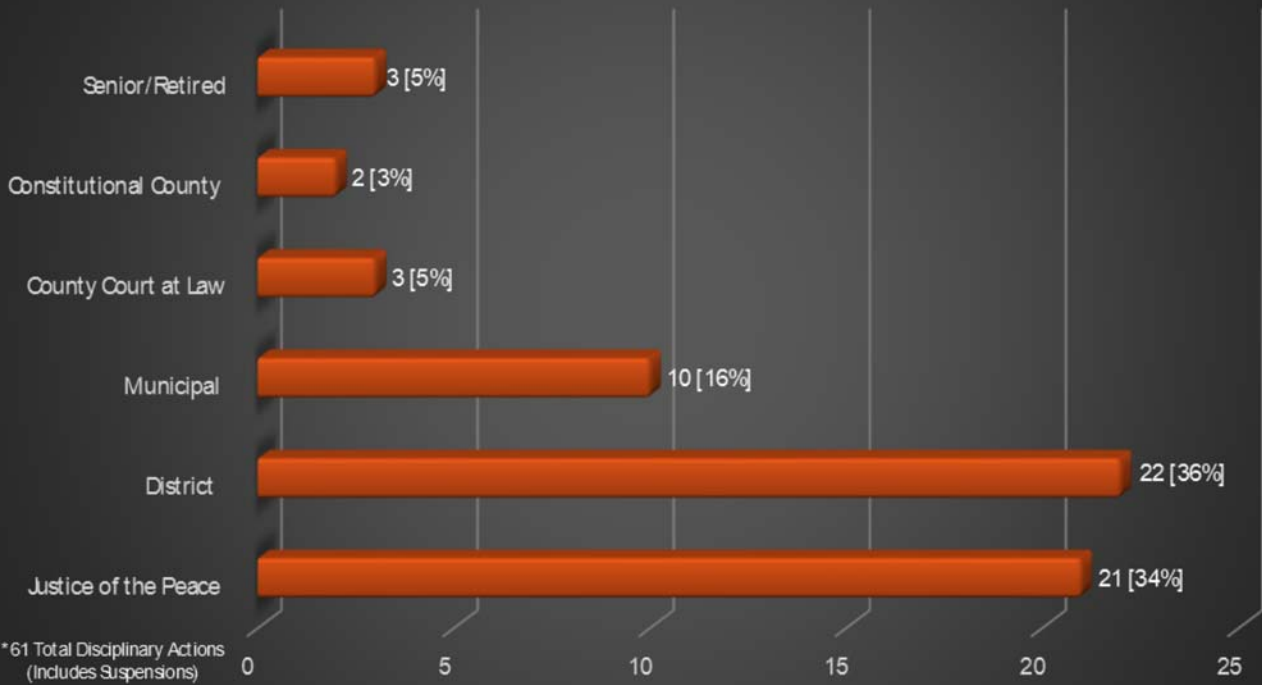


Fig. 4 Number of Cases Disposed by Complainant Type*

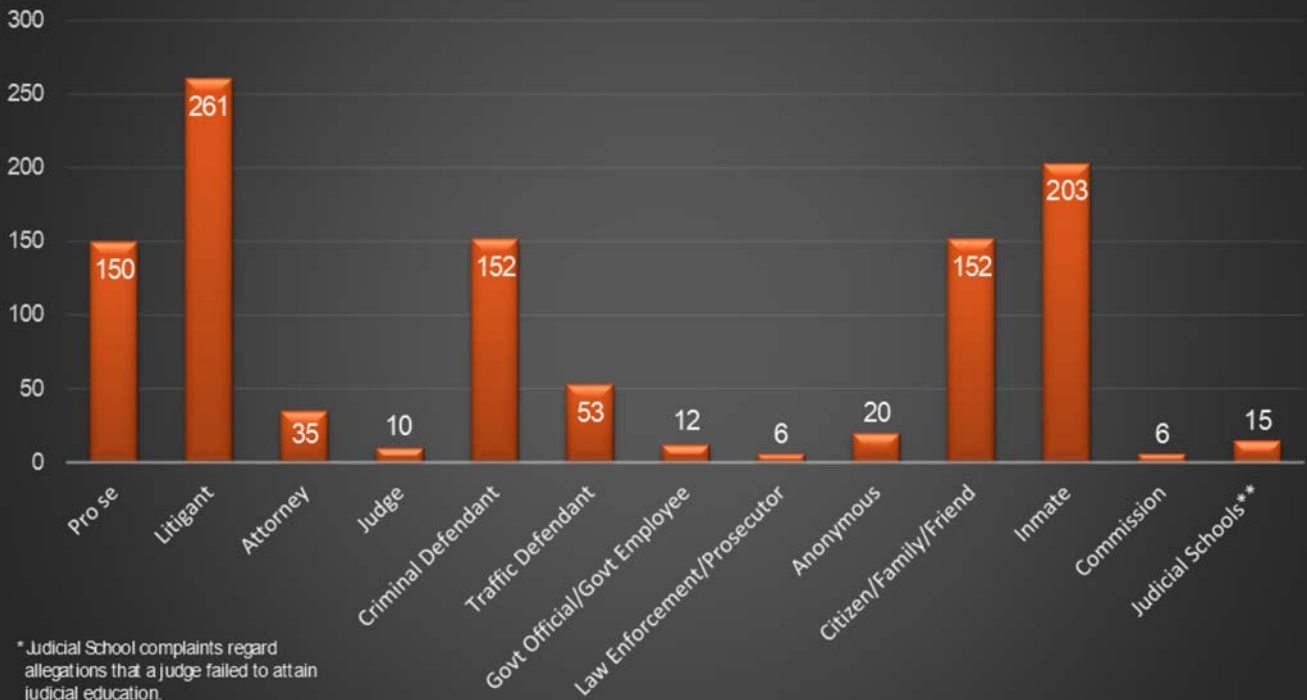


Fig. 5a Cases Filed and Disposed (FY 2011 - FY 2014)



Fig. 5b Case Filing Trend (FY2011 - FY2014)

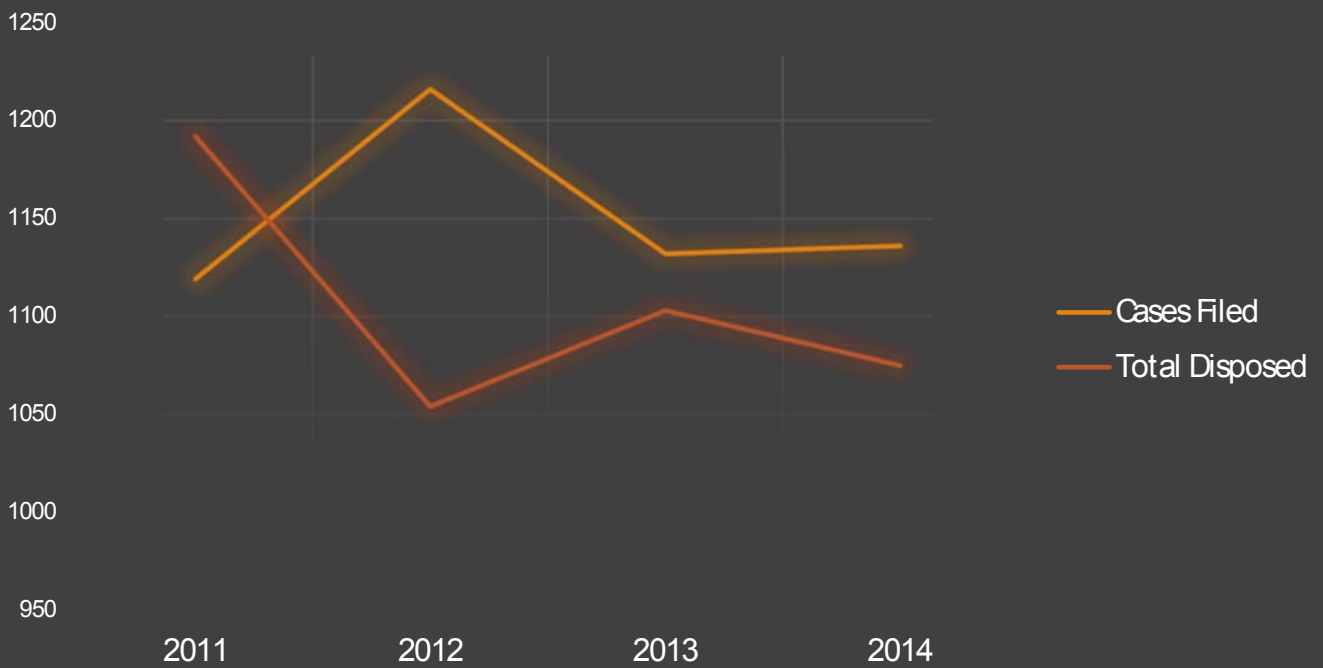
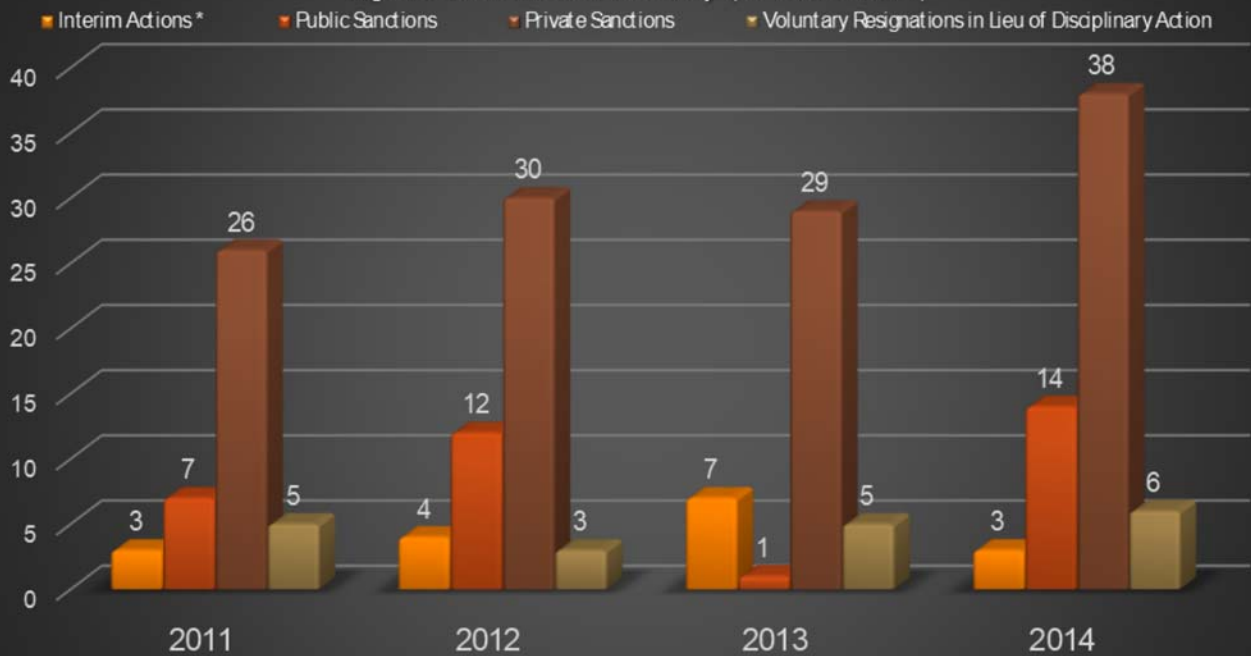
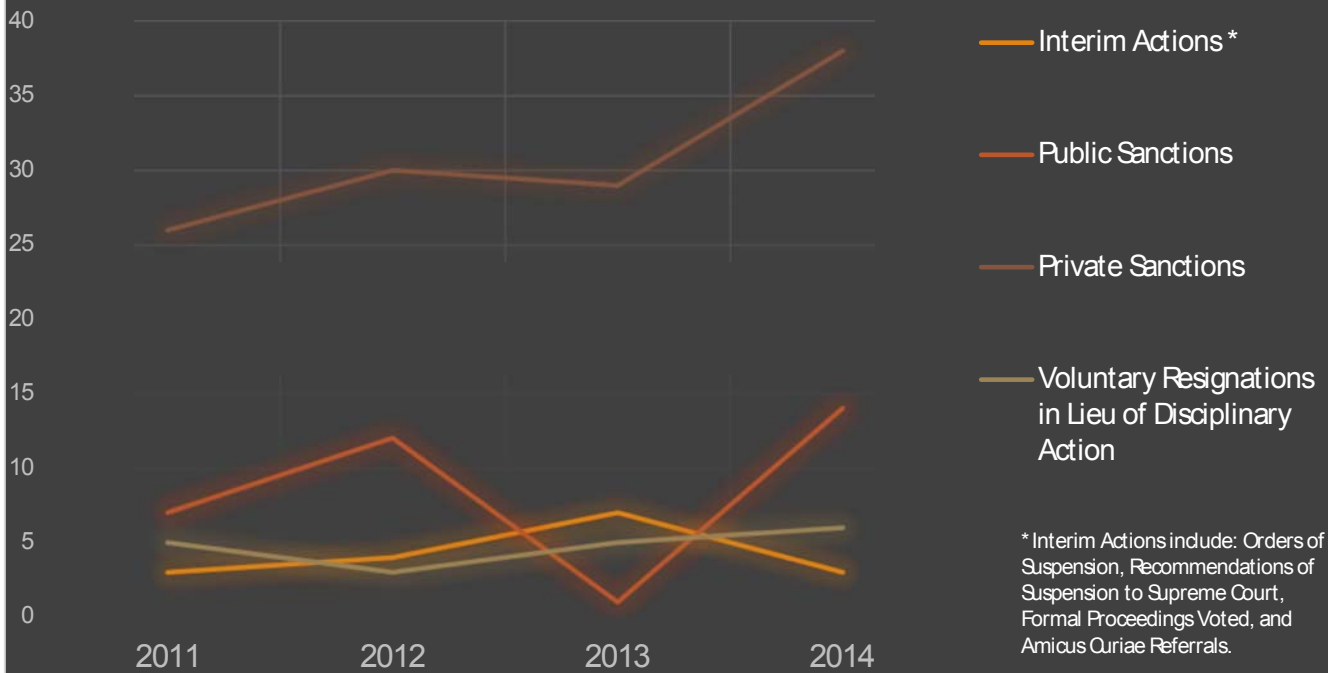


Fig. 6a Commission Activity (FY 2011-2014)



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

Fig. 6b Commission Activity Trend (FY 2011-2014)



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

Fig. 7a Comparison of Investigations by Type (2011-2014)

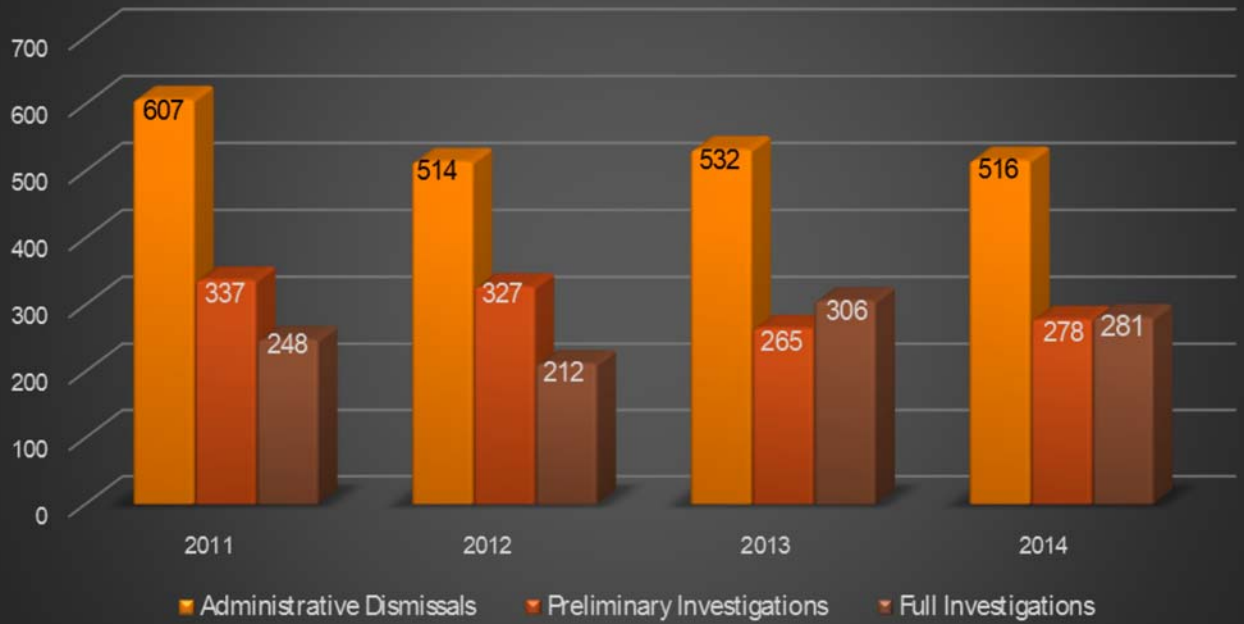


Fig. 7b Comparison of Investigations by Type Trend (2011-2014)

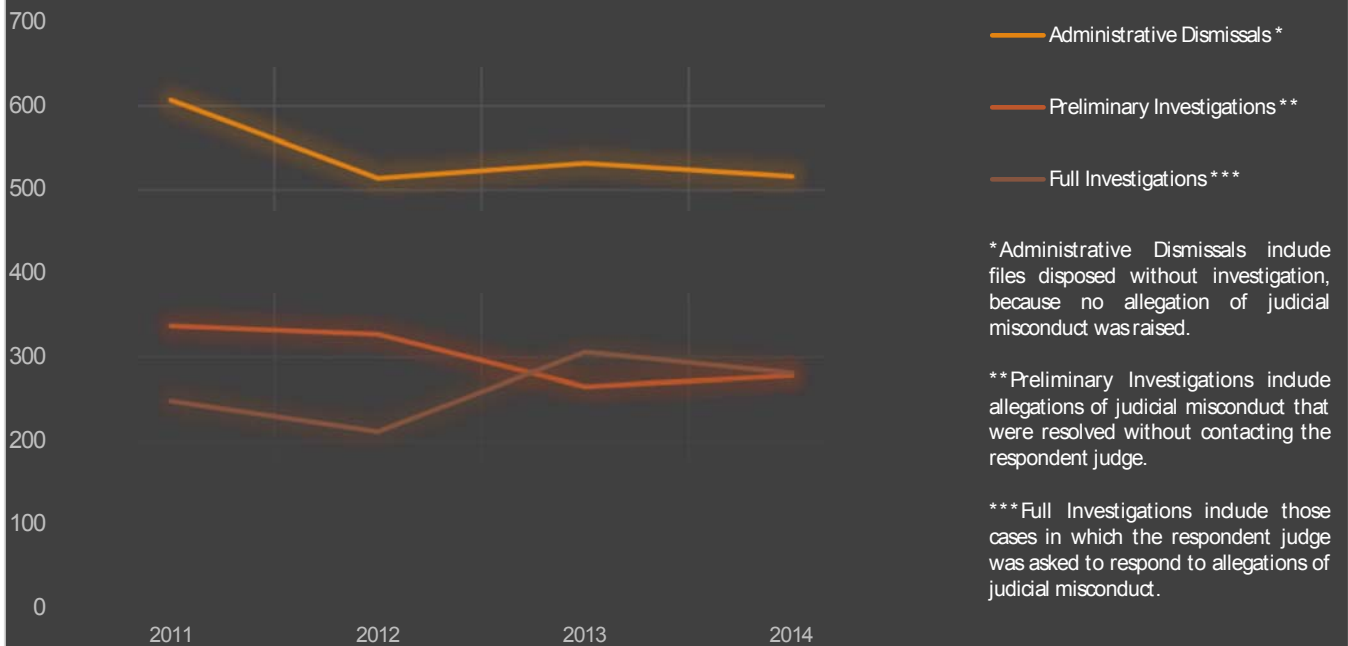
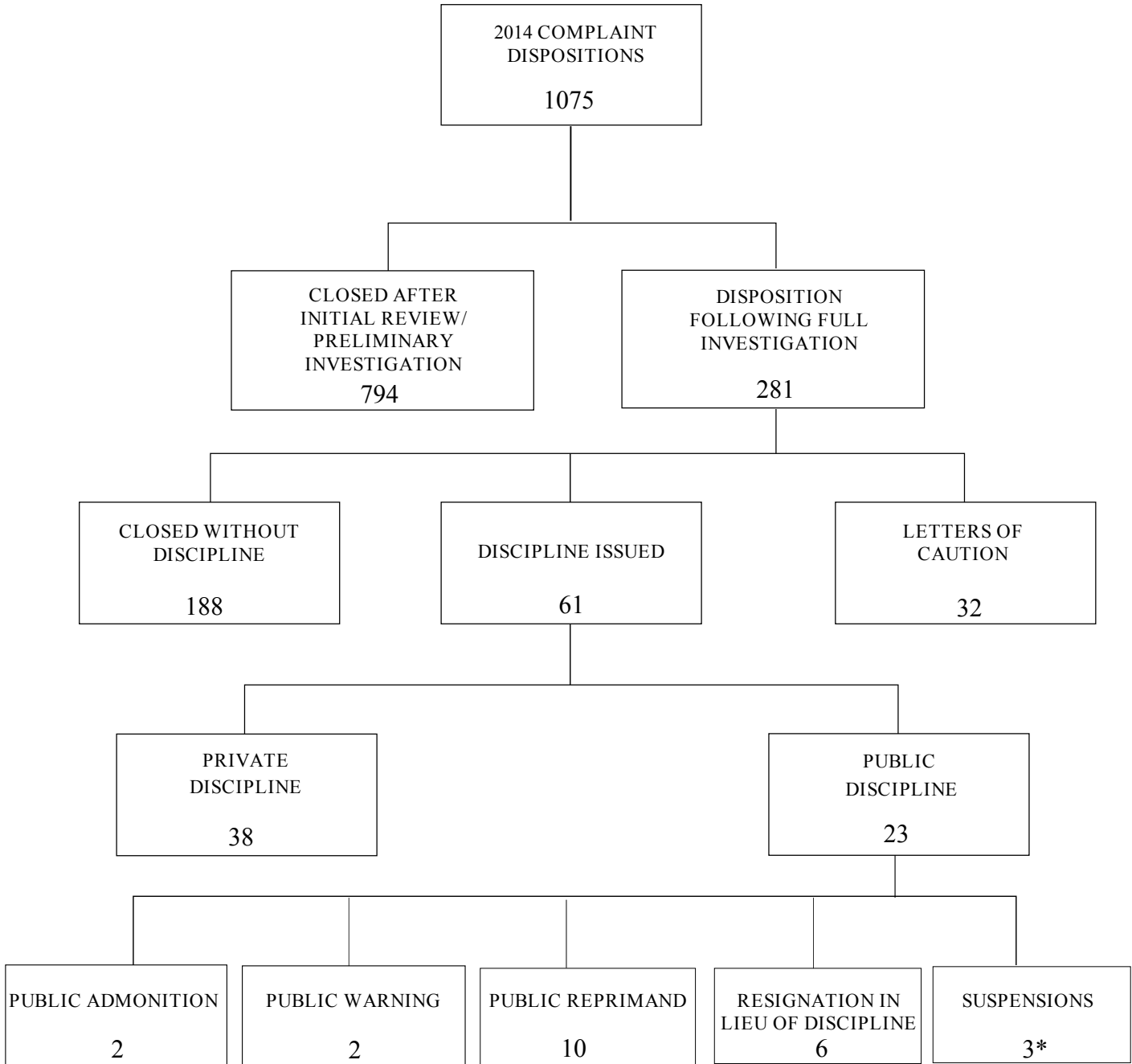


TABLE 2
FY2014 COMPLAINT DISPOSITIONS



* Not a Final Disposition

TABLE 3 - TYPES OF CONDUCT RESULTING IN DISCIPLINE
IN FISCAL YEAR 2014

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

Failed to Comply with Law [26]		
Incompetence [22]		Improper Demeanor [9]
Denied Right to be Heard [7]		
Improper Ex parte Communications [5]	Bias due to Special Relationship/ Mishandled Recusal/ Disqualification [5]	Misused Position to Promote Private Interest [4]
Lack of Order and Decorum in Court [3]		
Improper Extra-Judicial Activities [3]		Lack of Candor/Failure to Cooperate with the Commission [2]

EXAMPLES OF IMPROPER JUDICIAL CONDUCT

The following are examples of judicial misconduct that resulted in disciplinary action by the Commission in fiscal year 2014. These are illustrative examples of misconduct and do not represent every disciplinary action taken by the Commission in fiscal year 2014. 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 2014. 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 and demonstrated a lack of professional competence in the law when she issued orders for a litigant to turn over his child and issued a Writ of Attachment for the child: (1) without notice to the litigant or his attorney; (2) without conducting a hearing; and (3) in the absence of supporting pleadings and/or affidavits on file with the court. In this case, the facts and evidence demonstrated that the judge's actions were done not in a good faith effort to protect the best interests of the child, but rather to punish the litigant for what the judge perceived to be his efforts to delay the matter until she left office at the end of the year. Because she believed that she was "being played with," the judge forced the litigant to relinquish custody of his child over the Christmas holidays without notice or a hearing, and/or without credible evidence that the child was in any harm or danger. The judge failed to afford the litigant the right to be heard when she went forward with

proceedings in the absence of the litigant and his attorney, entertained *ex parte* arguments from opposing counsel and the mother about the merits of the pending motion for continuance, and acted upon that *ex parte* information by issuing a Turnover Order, a Writ of Attachment, and modified Temporary Orders. Finally, the judge failed to cooperate with the Commission's investigation by initially providing misleading information in her sworn written responses, and thereafter providing oral testimony that contradicted court records previously supplied to the Commission. In addition, the judge's conduct and demeanor during her appearance before the Commission appeared designed to obfuscate the facts and evidence and thwart the Commission's attempts to investigate and resolve the issues presented by the complaint. [Violations of Canons 2A, 2B, 3B(2), and 3B(8); Article V, §1-a(6)A of the Texas Constitution.] *Public Warning of a Former District Court Judge*. (11/12/13).

- The judge failed to comply with the law, failed to maintain professional competence in the law, and engaged in willful and persistent conduct that cast public discredit upon the judiciary and upon the administration of justice by engaging in an extended practice of dismissing citations without a motion from the prosecutor. According to the judge, he dismissed citations due to political pressures and a fear of losing his job, evidencing that the judge was neither independent nor impartial as required by law. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Public Reprimand of a Former Municipal Court Judge*. (07/03/14).
- The judge demonstrated incompetence in performing the duties of office, failed to comply with the law, and failed to maintain professional competence in the law by repeatedly failing to timely and successfully complete his judicial education hours in his first term in office and by failing to cooperate with the Commission's investigation into this matter. In addition, the judge knew, or should have known, that his arrests for public intoxication and for driving while intoxicated would severely compromise the public's confidence in the integrity and impartiality of the judiciary, especially given the judge's testimony that he presides over alcohol-related offenses in his court, magistrates defendants charged with alcohol-related offenses, and would like to be seen as a role model to the youth in his community. Moreover, the judge's plea of guilty to the offense of deadly conduct demonstrated a failure to comply with the law and constituted conduct inconsistent with the proper performance of judicial duties and that cast public discredit upon the judiciary and upon the administration of justice. [Violations of Canons 2A, 3B(2) of the Texas Code of Judicial Conduct; Article V, §1-a(6)A of the Texas Constitution.] *Public Reprimand and Order of Additional Education of a Justice of the Peace*. (08/21/14).
- The judge failed to comply with the law, failed to maintain professional competence in the law, and demonstrated incompetence in performing the duties of office when he entered a broad receivership order in a divorce case that granted the receiver non-delegable judicial powers. These non-delegable powers including the unfettered authority for the receiver to make payments to himself and to his attorneys in excess of \$2 million from settlement proceeds arguably belonging to the litigants' community estate and to bankruptcy creditors without any court oversight, approval, or intervention. In addition, the judge failed to comply with the Texas Fair Defense Act and the Hidalgo County Indigent Defense Plan as evidenced by the disproportionately high percentage of indigent court appointments that a local attorney received out of the 370th District Court from January 1, 2008 through December 31, 2013. [Violation of Canons 2A, 3B(2) of the Texas Code of Judicial Conduct; Article V, §1-a(6)A of the Texas Constitution.] *Public Admonition and Order of Additional Education of a District Court Judge*. (08/26/14).
- The judge failed to follow the law when he *sua sponte* remanded a defendant into custody and doubled her bond after she appeared in court without her attorney. There was no evidence in the record that (a) the defendant had missed a court date or was late for the hearing, (b) her bond was defective or insufficient, or

(c) “other good and sufficient cause” existed for sending her to jail. Absent a record of the judge’s reasons for finding the bond insufficient, one could conclude that the defendant served three days in jail simply because she came to court without her attorney. [Violation of Canon 2A of the Texas Code of Judicial Conduct.] *Private Reprimand of a Senior Judge*. (09/16/13).

- The judge failed to comply with the law and failed to maintain professional competence in the law when he failed to timely forward a recusal motion to the Presiding Judge of the Administrative Judicial Region and delayed entry of the order of recusal in a case involving a former law partner/material witness until a petition for writ of mandamus had been filed against the judge to compel him to comply with Rule 18a of the Texas Rules of Civil Procedure. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct and Article V, section 1-a(6)A of the Texas Constitution.] *Private Warning and Order of Additional Education of a District Court Judge*. (08/27/14).

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 magistrated someone with whom he had a romantic relationship, allowed her to be released on a PR bond, and did so knowing that another judge who did not have a conflict of interest was willing and available to conduct the magistration. The judge’s intervention in a criminal case involving his girlfriend created the appearance and the reality that he was allowing his relationship with her to influence his judicial conduct and judgment, that he was giving her favorable treatment, and that she was in a special position to influence the judge. The fact that the judge has previously been disciplined for engaging in the same or similar conduct in aid of his girlfriend was an aggravating factor in determining the level of discipline in this case and demonstrated that his actions in this instance were both willful and persistent. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Public Reprimand of a Justice of the Peace*. (09/17/13).
- The judge’s letter requesting a continuance on behalf of an employee of the court who had a traffic-related offense pending in another court constituted an improper use of the prestige of judicial office to advance the employee’s private interests, and raised concerns that the judge was using his higher court position in an attempt to influence a lower court judge to grant the employee relief that would not otherwise have been granted had it been filed by the employee herself or by an attorney acting on her behalf. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Admonition of a District Court Judge*. (11/06/13).
- 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).
- The judge allowed a relationship with a family member to influence his conduct and by making a phone call, even as a courtesy, lent the prestige of his office to advance the family member’s private interests. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace*. (03/10/14).
- The judge lent the prestige of his judicial office to advance the private interest of a member of court staff by allowing that individual to conduct free mediations at the courthouse during regular courthouse business

hours. The judge's practice of referring mediations to the staff member while that person simultaneously served the court created the appearance that the judge was allowing his relationship to influence his judicial conduct or judgment and that the staff person/mediator was in a special position to influence the judge. The judge additionally created a conflict of interest and failed to follow the law by knowingly allowing court staff to divert time, attention, and resources away from their duties and responsibilities to the court and towards tasks related to the mediation business, in violation of county policy. [Violation of Canons 2A and 2B of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a District Court Judge.* (03/19/14).

CANON 3B(2): A judge shall maintain professional competence in [the law.]

- The judge failed to follow the law and demonstrated a lack of professional competence in the law when she: 1) became involved in a church dispute over which she had no jurisdiction; 2) granted a writ of re-entry in a case in which the parties were not in a landlord-tenant relationship; 3) denied a litigant's right to be heard at the hearing; and 4) denied the litigant's right to appeal the order granting the writ of re-entry and/or advised the litigant that a writ of re-entry was not an appealable order. [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.* (09/10/13).
- The judge failed to adequately supervise his court staff, failed to follow the law, and/or demonstrate a lack of professional competence in the law when: 1) the defendant's change of plea was accepted by telephone without any written documentation; 2) the defendant was prevented by the court clerk from having the judge determine whether he could be placed on a payment plan, as required by Article 45.041(b)(2) of the Texas Code of Criminal Procedure; 3) the judge signed and issued a *capias pro fine* warrant that improperly directed law enforcement officials to incarcerate the defendant, rather than directing them to take the defendant to court for a hearing to be conducted pursuant to Article 45.046 of the Texas Code of Criminal Procedure; and 4) the judge's court staff engaged in inadequate record-keeping procedures, which contributed to the confusion that occurred in resolving the defendant's case. [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.* (09/23/13).
- The judge failed to follow the law, and/or demonstrated a lack of professional competence in the law when: 1) the judge signed and issued *capias pro fine* warrants that improperly directed law enforcement officers to incarcerate a defendant rather than directing them to bring the defendant before the court; and 2) the judge charged the defendant with numerous Failure to Appear offenses, assessing additional fines and costs against the defendant in cases that had already been adjudicated. [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.* (11/15/13).
- The judge failed to comply with the law and failed to maintain professional competence in the law when, without proper notice or an opportunity to be heard, she held a litigant in contempt of court and had her incarcerated over the weekend for failing to comply with temporary orders. Based on her testimony before the Commission, it appeared the judge failed to appreciate the distinction between criminal versus civil contempt, direct versus constructive contempt, and the proper procedures to follow in each type of case before subjecting a litigant to incarceration. [Violation of Canons 2A, 3B(2) and 3B(8) of the Texas Code of Judicial Conduct.] *Private Reprimand and Order of Additional Education of a District Court Judge.* (12/19/13).

- The judge failed to follow the law, demonstrated a lack of professional competence in the law, and denied the defendant the right to be heard when she (a) went forward with a trial and found the defendant guilty *in absentia* and (b) issued a judgment and arrest warrant that improperly directed law enforcement officials to incarcerate the defendant, rather than directing them to take the defendant to court for a hearing pursuant to Article 45.046 of the TEXAS CODE OF CRIMINAL PROCEDURE. [Violation of Canons 2A, 3B(2) and 3B(3) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace.* (04/04/14).
- The judge failed to comply with the law and demonstrated a lack of professional competence in the law by granting an interested party a remedy to which she was not legally entitled. Based on the records presented to him by the interested party, the judge knew or should have known the party was not a tenant of the property and was merely attempting to circumvent proper procedures by approaching the judge in an *ex parte* manner to obtain the Writ of Re-Entry. The judge failed to comply with the law by contacting the tenant to advise her that a Writ of Re-Entry had been issued. [Violation of Canons 2A, 3B(2) and 6C(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace.* (04/16/14).
- The judge failed to comply with the law and demonstrated a lack of professional competence in the law in his (a) handling of contempt of court and failure to appear situations involving two truancy cases; (b) use of forms that contained inconsistent and misleading information and warnings that were not consistent with the law; (c) failure to take appropriate measures to ensure the proper and safe maintenance and storage of court records; and (d) dismissal of criminal cases without a motion from the prosecutor. [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.* (04/16/14).
- The judge failed to comply with the law and failed to maintain professional competence in the law when he issued a non-monetary judgment in a small claims case which required the defendant to remove a structure from the plaintiff's property and then deprived the defendant of his right to appeal the judgment within the ten-day period provided by the law in effect at the time. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Reprimand of a Former Justice of the Peace.* (08/15/14).
- The judge failed to follow the law and demonstrated a lack of professional competence in the law when he (1) denied a litigant's motion to dismiss the defendant's appeal after the defendant failed to timely correct the deficient appeal bond from the justice court which deprived the judge of jurisdiction; (2) ordered the litigant to immediately comply with the judge's order, under threat of arrest, even though no written judgment had been entered in the case; (3) failed to timely respond to the litigant's request to set a supersedeas bond in the case; (4) failed to timely issue a written judgment from which the litigant could appeal; and (5) set an excessive supersedeas bond based on factors that were not authorized and/or allowable under the law. In addition, the county attorney, who was related to the judge, provided the judge with legal advice and assistance in the civil case while simultaneously handling the prosecution of a criminal case pending before the judge involving the same litigants and dispute. The relationship between the judge and prosecutor and their interactions in the civil and criminal cases created an appearance – if not the reality – that the prosecutor and judge discussed facts or otherwise shared information pertaining to the proceedings and conveyed the impression the prosecutor was in a special position to influence the judge. [Violation of Canons 2A, 2B, and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning of a County Judge.* (08/26/14).

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

- The judge failed to maintain order and decorum in the courtroom and failed to treat litigants with dignity by allowing them to perform pushups in the courtroom for being late to court. [Violation of Canons 3B(3) and 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a District Court Judge.* (01/08/14).
- The judge failed to maintain order and decorum in the proceedings before him and failed to be patient, dignified and courteous by using profanity while presiding over a court proceeding. [Violation of Canons 3B(3) and 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a District Court Judge.* (08/07/14).

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

- The judge allowed an adversarial relationship with the Director of the probation department to improperly influence the judge's conduct and judgment. Based on the record before the Commission, there was sufficient evidence of bad faith in the judge's conduct toward the Director and towards those individuals that the judge perceived were acting on the Director's behalf. Based on the judge's representations as to his expertise in the law, the Commission discounted the notion put forth by the judge that he made mistakes in how he handled certain proceedings and concluded that the judge intentionally misused the judicial office to cause harm to the Director and others connected with him. The evidence demonstrated that the judge's orders involving the Director were done not in a good faith effort to protect the interests or rights of the State or the defendants, but rather were made for the purpose of embarrassing and punishing the Director. The judge abandoned the role of an independent, neutral and detached judge every time he became embroiled with the Director or someone who was, or appeared to be, working on the Director's behalf. The Commission further concluded that the judge willfully and persistently treated a prosecutor in a demeaning manner during and after a criminal trial. The Commission found the judge's threat to use duct tape on the prosecutor to be excessive and unfair, especially given the fact that (a) the prosecutor had already apologized and promised not to engage in the conduct that offended the judge, and (b) the judge's own intransigence and unreasonable failure to rule on the State's motions contributed to the very situation that had so offended the judge. Further, the judge's animosity toward the prosecutor impacted the judge's conduct and judgment in the trial, and by preventing the prosecutor from conducting *voir dire*, the judge also interfered with the State's right to a fair trial. Finally, the judge failed in his duty to rule on the motions presented to him by the State and the defendant's counsel. [Violations of Canons 2A, 2B, 3B(1), 3B(3), 3B(4), 3B(8) of the Texas Code of Judicial Conduct; Article V, §1-a(6)A of the Texas Constitution.] *Public Reprimand of a District Court Judge.* (05/21/14).
- The judge lost his patience, and failed to act in a dignified, courteous manner when he ordered law enforcement officers and members of the victim's family to leave the courthouse following a criminal trial. The judge should have exercised more judicial restraint and decorum in the manner in which he continued to pursue the departure of these individuals while they waited in the safety of the district attorney's office. It appeared that, given the history of conflict between the judge and the district attorney, the judge may have been taking out his anger or frustration with the district attorney by

lashing out at the family members instead, leaving the family members feeling victimized once more. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a District Judge.* (09/16/13).

- The judge failed to treat an employee in a patient, dignified and courteous manner when he touched her and/or made comments to her that he knew, or should have known, she would find offensive. While the judge may not have had the intent to offend and/or may not have initially realized that his conduct was offensive, his failure to curtail his actions after being notified that his conduct made the employee feel uncomfortable led to negative media attention that centered on the fact that he ultimately entered a plea of *nolo contendere* to criminal charges that were filed against him. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution.] *Private Reprimand of a Former County Judge.* (09/23/13).
- The judge's demeanor while presiding over court cases demonstrated a willful and/or persistent failure to maintain patience, courtesy, and dignity toward litigants, attorney, and others with whom he deals in an official capacity. The Commission determined that the judge's judicial style and his methods for controlling the courtroom and dealing with difficult litigants needed to be re-examined and modified to ensure compliance with the judge's duties under the Code. Additionally, the Commission found that the judge's handling of a contempt of court proceeding failed to comply with the law because the show cause notice did not provide sufficient detail of the alleged contemptuous conduct and because the judge left the contempt charges pending and unresolved indefinitely. [Violation of Canons 2A and 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a Justice of the Peace.* (11/01/13).
- The judge failed to follow the law when he attempted to discipline a lawyer utilizing the threat of contempt of court for the attorney's out-of-court statements posted on Facebook. In his discussion with the attorney about the Facebook comments, the judge failed to act in a patient, dignified and courteous manner as expected of a judicial officer. Additionally, the judge failed to comply with the county's Indigent Defense Plan when he removed the public defender's office from 39 criminal cases without demonstrating "good cause shown on the record." [Violation of Canons 2A and 3B(4) of the Texas Code of Judicial Conduct.] *Private Warning of a County Court at Law Judge.* (08/07/14).
- The judge failed to maintain patience, courtesy and dignity toward a defendant when she raised her voice and argued with the defendant, attempted to extract admissions of guilt from the defendant, and made demeaning comments to the defendant during the magistration process. [Violation of Canons 2A, 3B(2) and 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Former Municipal Court Judge.* (08/15/14).

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 engaged in an improper *ex parte* communication with an attorney concerning a contested issue in a pending case, which resulted in the entry of a judgment in favor of that attorney without affording the opposing side the right to be heard. In reaching its decision, the Commission took into account the fact that the judge had been sanctioned previously for engaging in similar conduct. [Violation of Canon 3B(8) of the Texas Code of Judicial Conduct.] *Public Admonition of a District Court Judge.* (09/17/13).
- The judge routinely and persistently failed to comply with the law and displayed a lack of professional competence in the law when he: (a) entered orders of deferred disposition that did not include an assessment of court costs as required by the Texas Code of Criminal Procedure and failed to maintain court records, receipts, or bank statements to document the payment of court costs that were allegedly collected by court staff; (b) entered orders dismissing cases without notice to or a motion from the city prosecutor, as required by law; and (c) entered orders indicating that he was holding trials and finding defendants not guilty, without notifying the city prosecutor of trial settings and/or without giving the prosecutor an opportunity to appear. The judge's admitted practice of conducting his own independent investigation as to whether a citation lacked probable cause, which included engaging the defendant in a discussion concerning the merits of the case and contacting the officer that issued the citation, demonstrated a failure to understand the proper role of a judge as a neutral, detached magistrate. Because this was done in the absence of the prosecutor, it also violated the prohibition against improper *ex parte* communications and deprived the prosecution of its right to be heard. [Violations of Canons 2A, 3B(2), 3B(8), and 6C(2) of the Texas Code of Judicial Conduct.] *Public Reprimand of a Former Municipal Court Judge.* (05/15/14).
- The judge failed to comply with the law, failed to maintain professional competence in the law, and denied the parties their right to be heard when she failed to hold hearings in open court in contested family law matters in which the litigants had appeared to present evidence. The judge additionally failed to comply with her obligation to treat an attorney in a patient, dignified and courteous manner during an in-chambers meeting. [Violation of Canons 2A, 3B(2), 3B(4), and 3B(8) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a District Court Judge.* (03/19/14).
- The judge failed to follow the law and failed to accord a defendant his right to be heard when she entered a default judgment in a criminal case due to the defendant's failure to appear for trial. [Violation of Canons 2A and 3B(8) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Former Municipal Court Judge.* (08/15/14).
- The judge failed to comply with the law and demonstrated a lack of professional competence in the law when she failed to schedule a trial after the defendant entered a not guilty plea and expressly requested a jury trial. Additionally, the judge failed to respond to the defendant's motion to compel discovery and request for a speedy trial, and further failed to respond to the prosecutor's request to set the defendant's motions for hearing, thereby depriving the defendant of his right to be heard. The judge also engaged in an improper *ex parte* communication with the prosecutor. [Violation of Canons 2A, 3B(2), 3B(8) and 6C(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Municipal Court Judge.* (05/15/14).
- The judge failed to comply with the law, failed to maintain professional competence in the law, and failed to accord a traffic defendant her right to be heard when he denied the defendant her right to a jury trial, summarily found her guilty, and assessed a fine. Further, the judge's communications with the defendant, outside the presences of a prosecutor, regarding the merits of her case, including his

efforts to discourage her from having a trial, constituted an improper *ex parte* communication with the defendant. In addition, the court's file in the defendant's case reflected that the court engaged in poor recordkeeping practices and failed to adequately document events in the defendant's case. The judge lacked professional competence not only regarding proper recordkeeping practices, but also regarding the procedures that must be followed under the Texas Code of Criminal Procedure before a defendant may be jailed for failure to pay a fine. [Violation of Canons 2A, 3B(2), 3B(8) and 6C(2) of the Texas Code of Judicial Conduct.] *Private Warning of a Former Municipal Court Judge*. (07/14/14).

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 part-time judge allowed other employment to interfere with his duties as a judge and failed to take reasonable steps to ensure that his court was open and accessible to the public; that court business was promptly and appropriately handled in his absence; and that monthly activity reports were timely filed with the appropriate entities as required by law. [Violations of Canon 4A(2) of the Texas Code of Judicial Conduct and Article V, section 1-a(6)A of the Texas Constitution.] *Private Order of Additional Education of a Justice of the Peace*. (08/06/14).

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 allowed her name and judicial title to be used to solicit funds and/or otherwise promote a fundraising event held on behalf of a non-profit organization that relied on fundraising to promote their charity work in the local community. The Commission also found that asking individuals to purchase tickets to attend a fundraising event, and using court resources (email and computer) would necessarily fall within the type of "fundraising" generally prohibited by the canons. [Violation of Canons 2B and 4C(2) of the Texas Code of Judicial Conduct.] *Private Admonition of a Municipal Court Judge*. (11/13/13).

CANON 4I(2): A judge shall file financial and other reports as required by law.

- The judge failed to disclose expenditures made by others on behalf of her campaign and failed to file campaign finance reports as required by law. As an aggravating factor in reaching its decision, the Commission notes that the judge provided misleading and incomplete information in her sworn written responses to the Commission's initial inquiry, which needlessly delayed the investigation and impeded the resolution of this case. [Violations of Canon 2A and 4I(2) of the Texas Code of Judicial Conduct; Article V, §1-a(6)A of the Texas Constitution.] *Public Warning of a Former Justice of the Peace*. (05/16/14).