

# **STATE COMMISSION ON JUDICIAL CONDUCT**



**ANNUAL REPORT FOR FISCAL YEAR 2015**

## **COMMISSION MEMBERS**

**Steven L. Seider, Chair**

**M. Sue Kurita, Vice Chair**

**Valerie E. Ertz, Secretary**

**Patti H. Johnson**

**Joel P. Baker**

**Edward J. Spillane, III**

**Martha M. Hernandez**

**Diane D. Threadgill**

**Ricky A. Raven**

**Demetrius K. Bivins**

**Douglas S. Lang**

**Orlinda L. Naranjo**

**David M. Russell**



# 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

#### **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

#### **Ms. Diane D. Threadgill**

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

#### **Mr. David M. Russell**

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

## **COMMISSION STAFF**

**Seana Willing**, Executive Director

**Eric Vinson**, Deputy Director

**Jacqueline Habersham**, Senior Commission Counsel

**Royce Lemoine**, Senior Commission Counsel

**Erik Nielsen**, Commission Counsel

**Anthony Martinez**, Commission Counsel

**Ron Bennett**, Chief Investigator

**Victor Hidalgo**, Senior Investigator

**Katherine Mitchell**, Senior Investigator

**Terri Counts**, Staff Services Officer

**Judy Morgan**, Legal Assistant/Intake

**Connie Paredes**, Administrative Assistant

**Crystal Gonzales**, Administrative Assistant

# STATEMENT FROM THE CHAIR

On behalf of the State Commission on Judicial Conduct, I present the Annual Report for the 2015 fiscal year.

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

The hardworking professionals on the Commission staff have fully embraced increased accountability and performance measures. Over the past two years the Commission has continued to implement internal controls that have resulted in one of the most productive years for the Commission in terms of the quantity, as well as the timeliness of complaint dispositions. Their work ethic and ability to adapt have been a privilege to witness and a comfort to rely upon.

The members of the Commission are servant-hearted leaders with a commitment to discern the appropriate response to each and every complaint. Widely varied backgrounds among Commission members uniquely qualify the Texas Commission to credibly address the issues that are as diverse as the Texas judiciary. The Commissioners have my continued admiration and respect; they will be in my prayers as they wrestle with the tests ahead.

A unique set of challenges face Commissioners and staff as technology, in general, and social media, specifically, shape the balance between the free speech rights of individual judges and the application of Judicial Canons, as well expectations of the public. Clarity and guidance in the decisions that interpret the rights and responsibilities of the judiciary will be of significant value to individual judges, as well as the Commission. In the wake of fast changing social mores and evolving Constitutional litigation, the Commission truly seeks to follow and apply the correct legal and ethical standard to a myriad of fact patterns.

I would like to thank and give credit to the Texas Supreme Court for appointing such excellent members of the judiciary to the State Commission on Judicial Conduct— their thoughtful and timely appointments reflect their priority and confidence in the Commission and its role. I am also grateful for appointing me to the “toughest job I’ll ever love.”

Similarly, thanks and appreciation to the Governor of Texas and the State Bar of Texas for their stellar appointments to the Commission— the efforts expended in finding

outstanding members to serve with such character and commitment pay dividends routinely.

There are members of the Texas judiciary that serve very important roles and without them the Commission could not accomplish its mission. Members of the Special Courts of Review that are appointed by the Texas Supreme Court, as well as Mentor Judges that help educate and inform judges, are invaluable resources—thank you for your service.

Finally, a heartfelt thanks to my fellow Commissioners—I have never served with a more dedicated group of people—thank you for the privilege and honor of allowing me to serve as Chair.

The State Commission on Judicial Conduct will continue to accomplish its vital mission—while technology and the law collide and as important constitutional issues are ultimately decided.

A handwritten signature in black ink that reads "Steven L. Seider". The signature is written in a cursive style with a large, prominent "S" at the beginning.

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Honorable Steven L. Seider, Chair  
State Commission on Judicial Conduct

# PHILOSOPHY

The members of the State Commission on Judicial Conduct and Commission staff take their duties to the citizens and judges of Texas very seriously. Neither the political affiliation, gender, ethnic or religious background, sexual orientation, socioeconomic status, geographical location, nor the position of a complainant or a judge are considered in the review of cases pending before the Commission. The Commission's ability to fulfill its constitutional mandate requires that each Commissioner and staff member act with honesty, fairness, professionalism and diligence.

The Commission reviews every allegation of misconduct made against a Texas judge. Each complaint alleging misconduct on its face is thoroughly investigated and analyzed by Commission staff before being presented to the Commissioners. This procedure is an essential safeguard to preserve the public's confidence in the integrity of the judicial process. Judges are held to the highest standards of ethical conduct, both on and off the bench, and the Commission and its employees strive to conduct themselves in a similar manner.

# OVERVIEW OF THE COMMISSION

## **Authority of the Commission**

The State Commission on Judicial Conduct was created in 1965 by an amendment to Article V of the Texas Constitution. The Commission is the independent judicial branch agency responsible for investigating allegations of judicial misconduct or permanent disability, and for disciplining judges.

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

## **Members of the Commission**

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

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

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

## **Laws Governing the Commission**

The Commission is governed by Article V, Section 1-a, of the Texas Constitution, Chapter 33 of the Texas Government Code, the Texas Procedural Rules for the Removal or Retirement of Judges, and the Texas Code of Judicial Conduct. As part of the judicial branch and as an entity having its own constitutional and statutory provisions regarding confidentiality of papers, records and proceedings, the Commission is not governed by the Texas Public Information Act, the Texas Open Meetings Act, or the Texas Administrative Procedures Act.



## **Defining Judicial Misconduct**

Article V, Section 1-a(6)A of the Texas Constitution defines judicial misconduct as the “willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of [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 a sanction 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 can 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 2015, the Commission had fourteen (14) authorized staff positions (FTEs). For the year, Commission staff included the Executive Director, the Deputy Director, four staff attorneys, three investigators, one legal assistant, a staff services officer, two administrative assistants, and one vacancy. 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 2015, the Executive Director and staff attorneys participated in approximately 30 presentations at judicial training courses, bar conferences, outreach programs for foreign judges and prosecutors, and court staff workshops, describing the Commission and its operations and discussing various forms of judicial misconduct.

## **Ethics Calls**

In fiscal year 2015, the Executive Director and staff attorneys responded to approximately 1,000 inquiries from judges, judicial candidates, attorneys, legislators, the media and citizens regarding judicial ethics. 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](http://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. No public statements were issued in fiscal year 2015.

# 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](http://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, an objection, the admission or exclusion of evidence, or in the ultimate outcome of the case, does not constitute judicial misconduct unless there is evidence of bad faith, persistent legal error, or the legal error was egregious. 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 will often be administratively dismissed. These cases, which are reviewed by the Commission, are dismissed without an 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 additional education. The Commission then contacts the appropriate judicial training center, where the respondent judge may attend a particular training program or a mentor judge may be appointed for one-on-one instruction with the judge, to be completed within a specified time on particular

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

#### 4. Private or Public Sanction

Sanctions are issued by the Commission when a preponderance of evidence is provided that supports a finding of judicial misconduct. The most severe disciplinary action available to the Commission is a *public censure*, which may be issued only after formal proceedings have been initiated by the Commission. If, after a public fact-finding trial, the Commission determines that the underlying allegations of the complaint are true but do not support a recommendation for removal from office, a *censure* may be issued as a public denunciation of the judge's conduct. Alternatively, the Commission may also issue a public reprimand, warning, or admonition following a formal proceeding.

The next most severe sanction is a *public reprimand*. A *reprimand* is the most severe sanction available to the Commission at the informal stage of disciplinary proceedings. A less severe sanction is a *public warning*, followed by a *public admonition*. A *warning* puts the judge on notice that the actions identified in the sanction are improper. An *admonition* is the lowest level sanction. As noted above, except after a formal proceeding or an appeal, sanctions may be public or private, and may be combined with orders of education.

A judge may appeal any sanction and a public censure to a Special Court of Review. The process for appealing a public censure, reprimand, warning or admonition issued by the Commission after formal proceedings is different than that of a *de novo* review of a sanction issued after informal proceedings. 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 office, with or without pay, after the judge has been either indicted by a grand jury for a felony, or charged with a misdemeanor involving official misconduct. The suspended judge has the right to a post-suspension hearing before one or more of the Commission members or the Executive Director, as designated by the Commission Chair.

In cases other than for alleged criminal behavior, the Commission, upon the filing of a sworn complaint and after giving the judge notice and an opportunity to appear before the Commission, may recommend to the Supreme Court of Texas that 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 the judge violates a term of the agreement.

## 7. Formal Proceedings

In certain circumstances, the Commission may decide that a complaint against a judge is so egregious that it should be handled and resolved through a formal proceeding. The Commission itself may conduct such a fact-finding hearing or it may ask the Supreme Court of Texas to appoint a Special Master (who must be a sitting or retired district or appellate judge) to hear the matter. Such proceedings are governed by the Texas Rules of Civil Procedure and the Texas Rules of Evidence to the extent practicable.

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

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

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

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

Although the Commission's recommendation for removal cannot be appealed, the judge may appeal the decision of the Review Tribunal to the Texas Supreme Court. A judge may also appeal the Commission's decision to issue a public censure or sanction to a Special Court of Review.<sup>1</sup>

### **Appellate Review of Commission Action**

A judge may appeal the Commission's issuance of any public or private sanction, order of additional education, or public censure within thirty (30) days of the date the Commission issues the sanction by filing a written notice with the Chief Justice of the Supreme Court of Texas and requesting the appointment of three appellate justices to act as a Special Court of Review.

<sup>1</sup> In 2009, Section 33.034 of the Texas Government Code was amended to provide judges the right to appeal a public censure issued by the Commission following a formal proceeding. In 2013, Section 33.034 was amended further to provide the right to appeal a public reprimand, warning, or admonition issued after a formal proceeding. The Texas Supreme Court has been charged with the responsibility of drafting the procedural rules that will govern this process. As of the date of this publication, however, no written procedures are in place for such an appeal.



Within fifteen (15) days after the Special Court of Review is appointed, the Commission, through its Examiner, must file with the Clerk of the Texas Supreme Court a “charging document,” which includes a copy of the sanction issued, as well as any additional charges to be considered in the *de novo* proceeding.<sup>2</sup> These records become public upon filing with the Clerk, who is responsible for furnishing a copy to the petitioning judge and to each justice on the Special Court of Review.

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

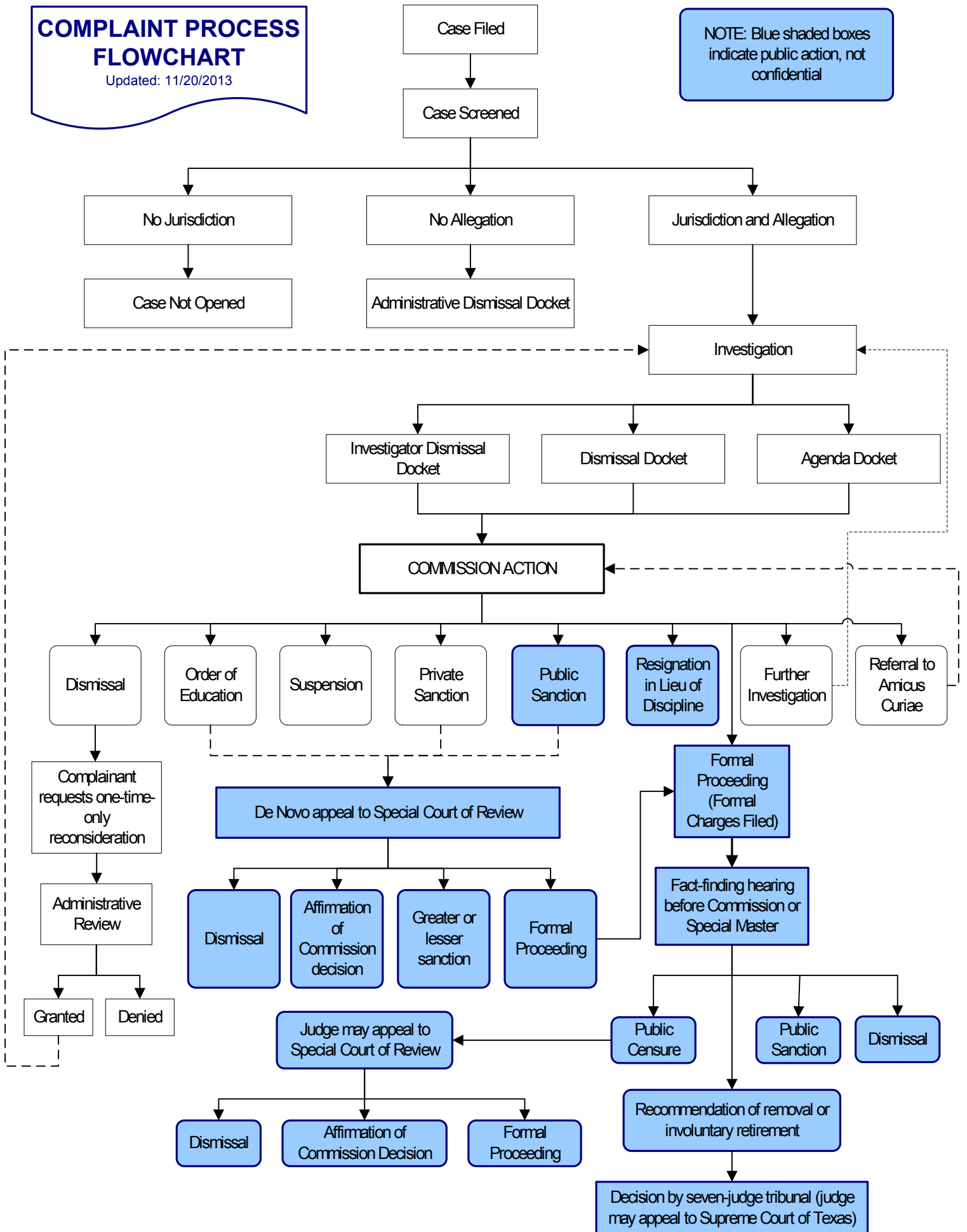
The Special Court of Review may dismiss or affirm the Commission’s decision, impose a greater or lesser sanction, or order the Commission to file formal proceedings against the subject judge for removal or involuntary retirement. The decision of the Special Court of Review is final and cannot be appealed.

<sup>2</sup> Sanctions issued in the informal proceeding stage may be reviewed in a trial *de novo*, in the same way that a case tried in a justice court may be appealed to a county court. By contrast, the appeal of a sanction or censure issued following a formal proceeding is a “review of the record of the proceedings that resulted in the sanction or censure and is based on the law and facts that were presented in the proceedings and any additional evidence that the Special Court of Review in its discretion may, for good cause shown, permit.” *See* Section 33.034(e)(1), Texas Government Code.

# COMPLAINT PROCESS FLOWCHART

Updated: 11/20/2013

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 2015 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 2015, 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 2015, the Commission opened 1,068 cases, which was slightly lower than the number of filings in fiscal year 2014. **Figure 3** shows the number and percentage of disciplinary actions taken by the Commission against each judge type. Of note in fiscal year 2015: justices of the peace received 19% of the complaints filed, and accounted for 32% of all discipline issued by the Commission, which is slightly higher than the percentages from fiscal year 2014. Disciplinary actions against district judges fell slightly from 36% to 32% in fiscal year 2015, and actions against County Court at Law Judges saw a significant increase from 5% to 22% this past year. Municipal court judges received 6% of the complaints filed in fiscal year 2015 and accounted for 8% of all discipline issued by the Commission for the year, reflecting a drop of 50% from fiscal year 2014. In fiscal year 2015, 45% of all cases filed were against district judges, which is fairly consistent with fiscal years 2013 and 2014.

**Figure 4** illustrates by number and percentage the various sources of complaints and reports to the Commission. In fiscal year 2015, of the 1,242 cases disposed by the Commission, 51% had been 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 34% of the cases. Just 3% of the cases were filed anonymously and only 10 cases (1%) were Commission-initiated. **Figures 5a** and **5b** compare the number of cases filed with the number of cases disposed for fiscal years 2012 through 2015.

In fiscal year 2015, the Commission issued 96 disciplinary actions against Texas judges, a more than 36% increase over fiscal year 2014. The Commission disposed of 77 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 32% increase over fiscal year 2014. In addition, 14 cases were disposed of through voluntary agreements to resign from office. Interim actions, such as suspensions, *Amicus* referrals, and formal proceedings, accounted for 5 of the disciplinary actions taken in fiscal year 2015. A comparison of public discipline, private discipline and interim actions taken by the Commission in fiscal years 2012 through 2015 is shown in **Figures 6a** and **6b**.

In fiscal year 2015, the Commission had a total disposition rate of 116%. Of the 1,242 cases closed last year, 45 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, 11 cases were dismissed after the judge demonstrated that he or she took appropriate measures to correct the conduct that resulted in a complaint. Approximately 52% of the cases closed in fiscal year 2015 alleged no judicial misconduct. The number of cases closed following a preliminary investigation fell to 21%, while the number of full investigations requiring a response from the judge rose slightly to 27% in fiscal year 2015. A comparison of initial, preliminary and full investigations conducted by the Commission in fiscal years 2012 through 2015 is shown in **Figures 7a** and **7b**.

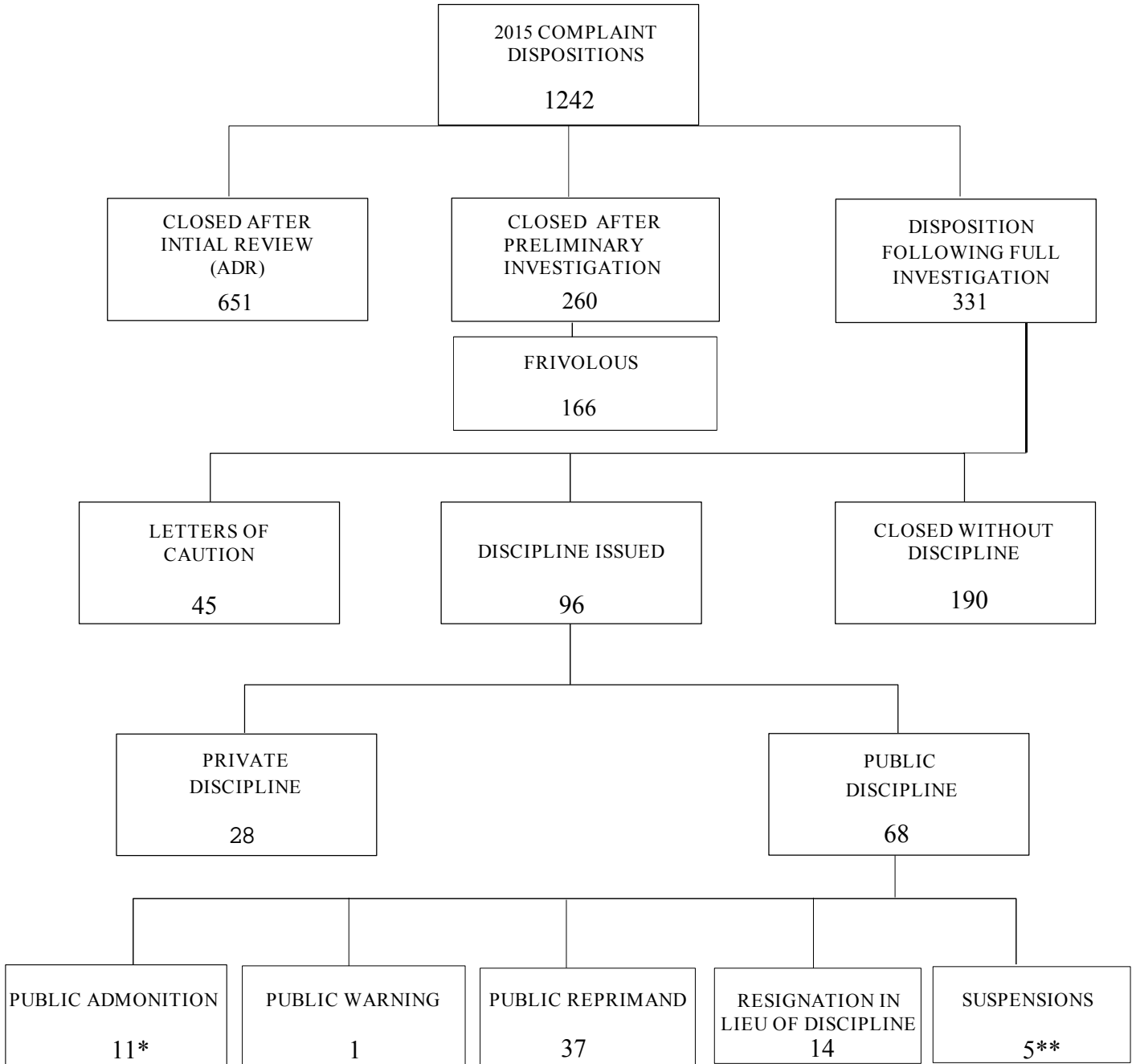
In compliance with a recent amendment to Section 33.005 of the Texas Government Code, the chart on **Table 2** provides a breakdown of the disposition of the 1,242 cases closed in fiscal year 2015, including the number of cases that were dismissed following investigation with a determination that the allegation was frivolous or unfounded, or because the facts alleged did not constitute judicial misconduct or the evidence did not support the allegation of judicial misconduct. **Table 3** shows, in order of prevalence, the types of allegations that resulted in disciplinary action during fiscal year 2015.

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 2015, at least 409 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**

	2012	2013	2014	2015
<b>Cases Pending (Beginning FY/Ending FY)</b>	413/564	564/584	584/644	644/465
<b>Cases Filed</b>	1207	1130	1139	1068
<b>Total Number of Cases Disposed</b>	1053	1109	1080	1242
<b>% of Cases Disposed</b>	87.24%	98.14%	94.82%	116.29%
<b>Average Age of Cases Disposed</b>	5.9 Months	6.5 Months	6.3 Months	6.9 Months
<b>Disciplinary Action (total)</b>	48	42	63	96
<b>Cases Disposed through:</b>				
Criminal conviction	0	0	0	0
Review Tribunal Order	0	0	0	0
Voluntarily Agreement to Resign in Lieu of Disciplinary Action	3	5	6	14
<b>Sanction:</b>				
Public Censure	0	0	0	0
Public Censure and Order of Additional Education	0	0	0	0
Public Reprimand	1	0	9	25
Public Warning	1	1	2	1
Public Admonition	5	0	1	7
Public Sanction and Order of Additional Education	1	0	3	16
Private Reprimand	12	6	3	9
Private Warning	3	5	4	1
Private Admonition	6	6	12	5
Private Sanction and Order of Additional Education	9	6	15	13
Public Order of Additional Education	0	0	0	0
Private Order of Additional Education	3	6	5	0
<b>Interim Disciplinary Action:</b>				
Order of Suspension [15(a)]	3	7	3	5
Recommendation of Suspension to Supreme Court [15(b)]	1	0	0	0
Cases in Formal Proceedings	0	0	0	0
Amicus Referral	0	0	0	0
<b>Dismissals</b>	1009	1072	1018	1151
<b>Request for Reconsideration Received</b>	107	76	70	54
Reconsideration Granted	2	1	2	0
Reconsideration Denied	118	71	56	51
Pending	3	8	22	3
<b>Cases Appealed to Special Court of Review</b>	0	6	1	0
<b>Informal Hearing Set</b>	0	0	0	0
<b>Public Statements Issued</b>	0	0	0	0

**TABLE 2**  
**2015 COMPLAINT DISPOSITIONS**



\*Total dispositions and disciplinary action totals include a Public Admonition issued by the Commission in 2 cases during fiscal year 2015. On September 30, 2015, on appeal to a Special Court of Review appointed by the Texas Supreme Court, the Public Admonition in those 2 cases was dismissed.

\*\* Not a final disposition

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TABLE 3 – TYPES OF CONDUCT RESULTING IN DISCIPLINE  
IN FISCAL YEAR 2015

The types of conduct are listed in order of prevalence. The numbers indicate the number of times each type of conduct resulted in sanctions. 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 [24]	Incompetence [15]	Willful or Persistent Conduct Casting Public Discredit [12]
Improper Demeanor [8]	Using Prestige of Judicial Office [6]	General Bias/Prejudice [5]
Denied Right to be Heard [4]	Influential Relationship [4]	Improper Ex Parte Communications [3]
Swayed by Partisan Interests; Fear of Public Clamor/Criticism [2]	Extra-Judicial Conduct Raised Doubts about Judge's Impartiality [2]	Failure to Maintain Order or Decorum [1]
Mishandled Recusal/ Disqualification [1]	Extra-Judicial Conduct Interfered with Judicial Duties [1]	Public Comment on Pending/Impending Case [1]
Failure to Timely Execute Business of Court [1]	Fiduciary Activities [1]  Practice of Law [1]	Religious Prejudice [1]

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Fig. 1 Total Number of Texas Judges\*

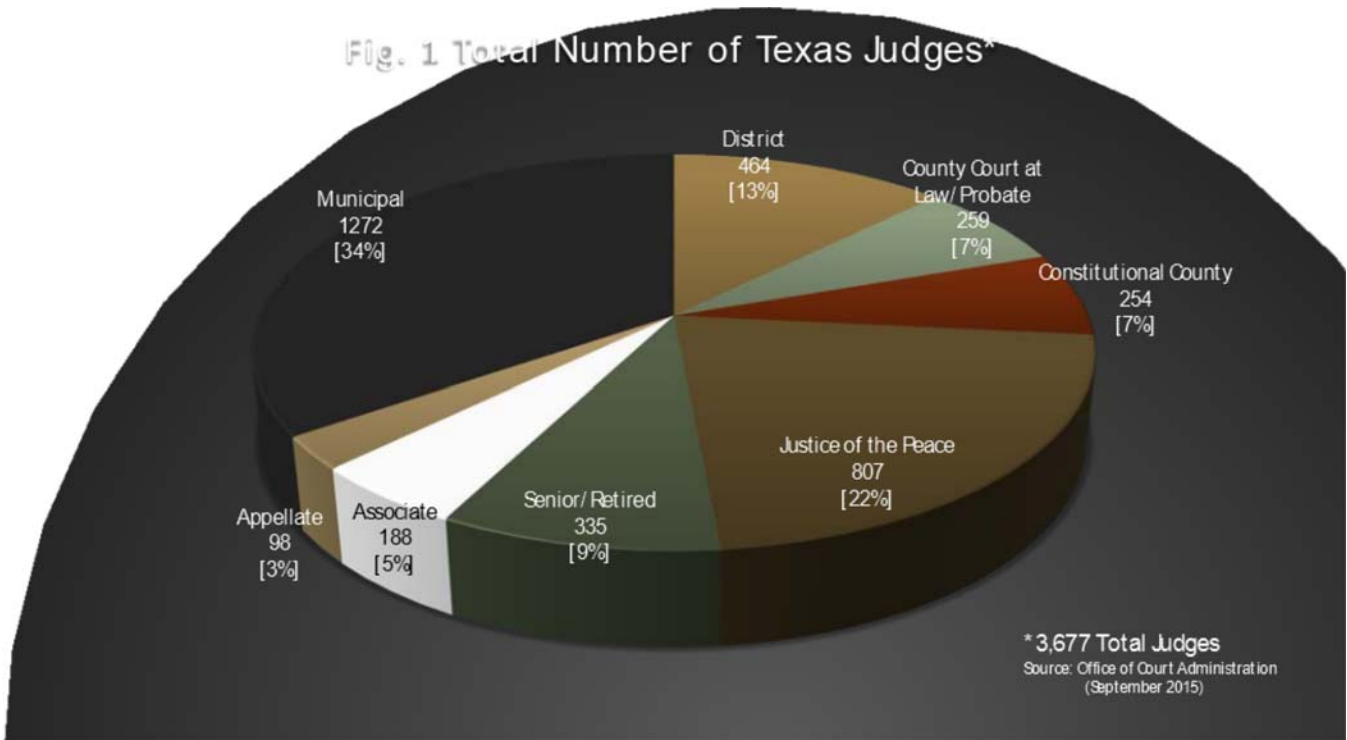


Fig 2. Number and Percentage of Cases filed by Judge Type\*

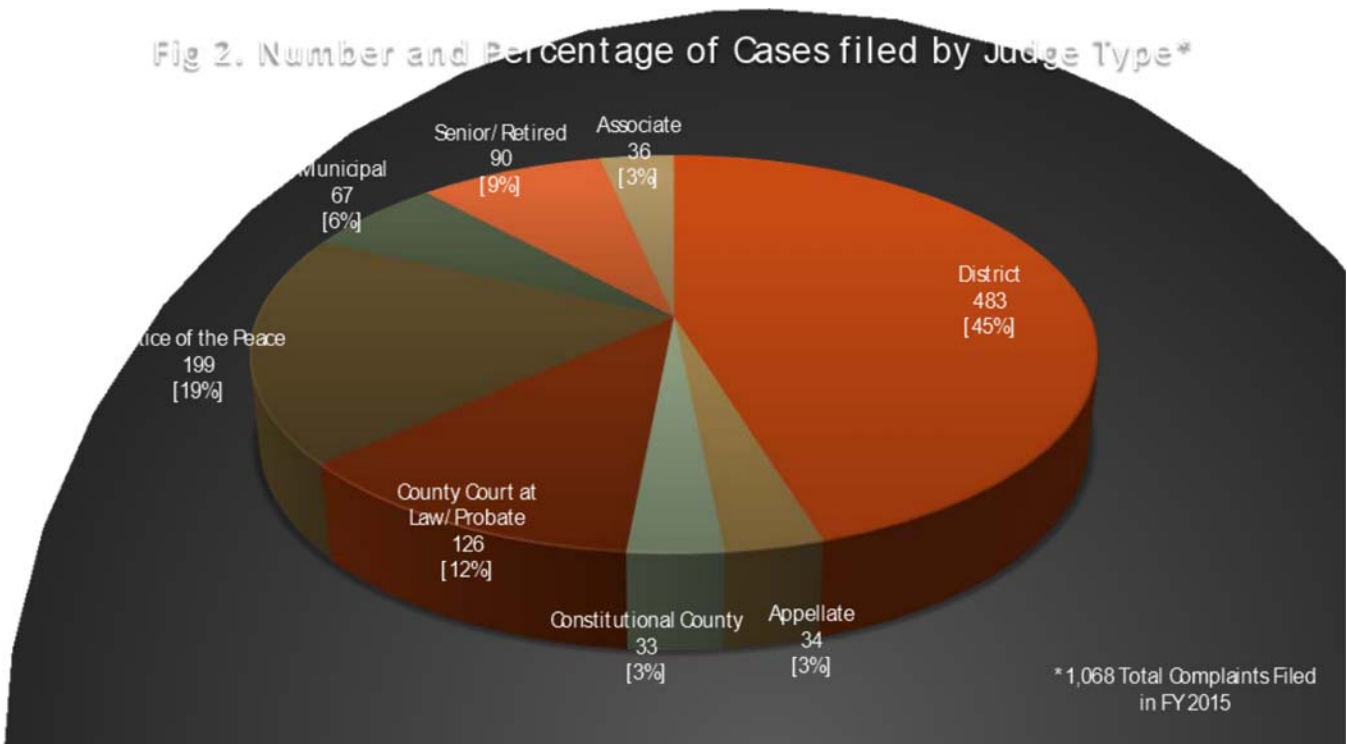




Fig. 3 Number and Percentage of Disciplinary Actions by Judge Type\*

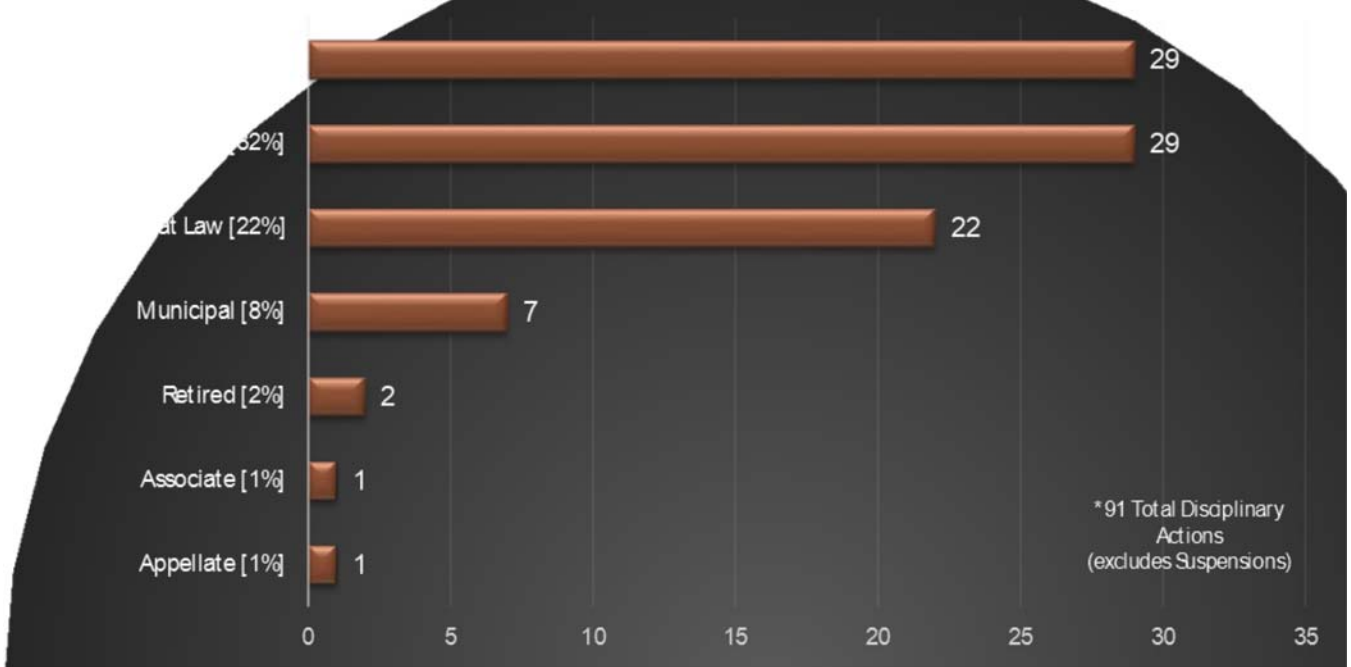


Fig. 4 Number of Cases Disposed By Complainant Type\*

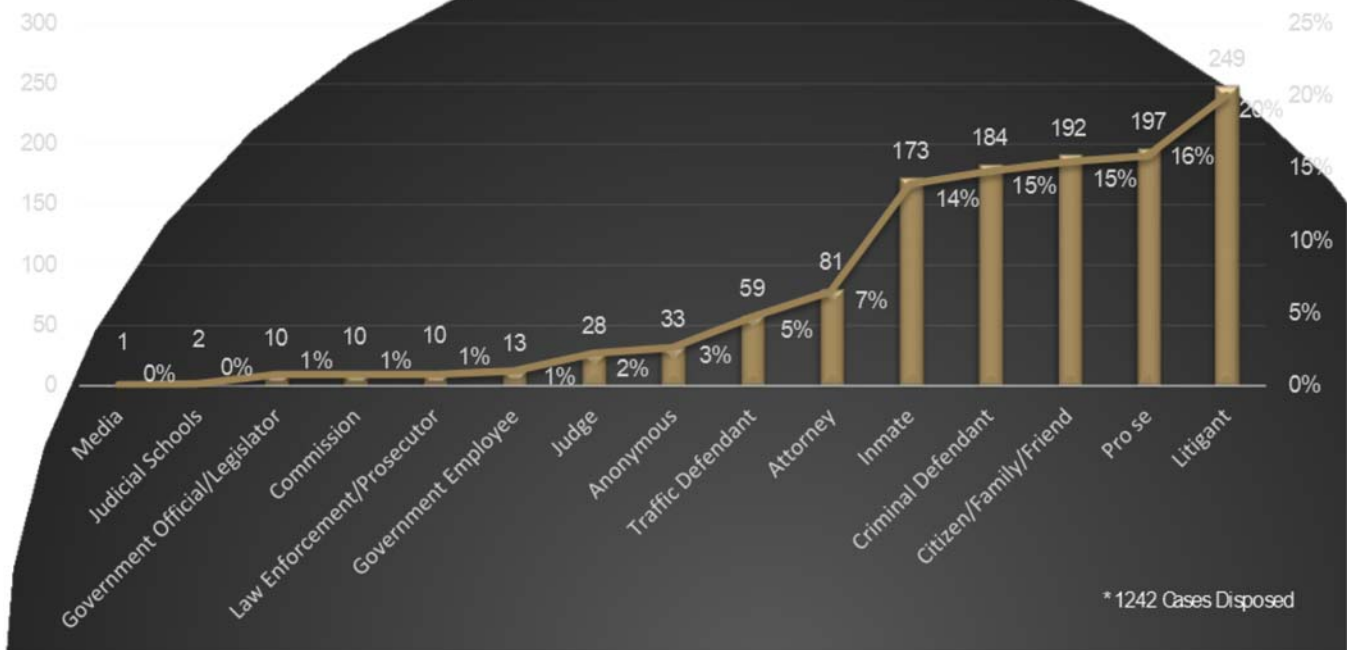


Fig. 5a Cases Filed and Disposed (FY 2012 - FY 2015)

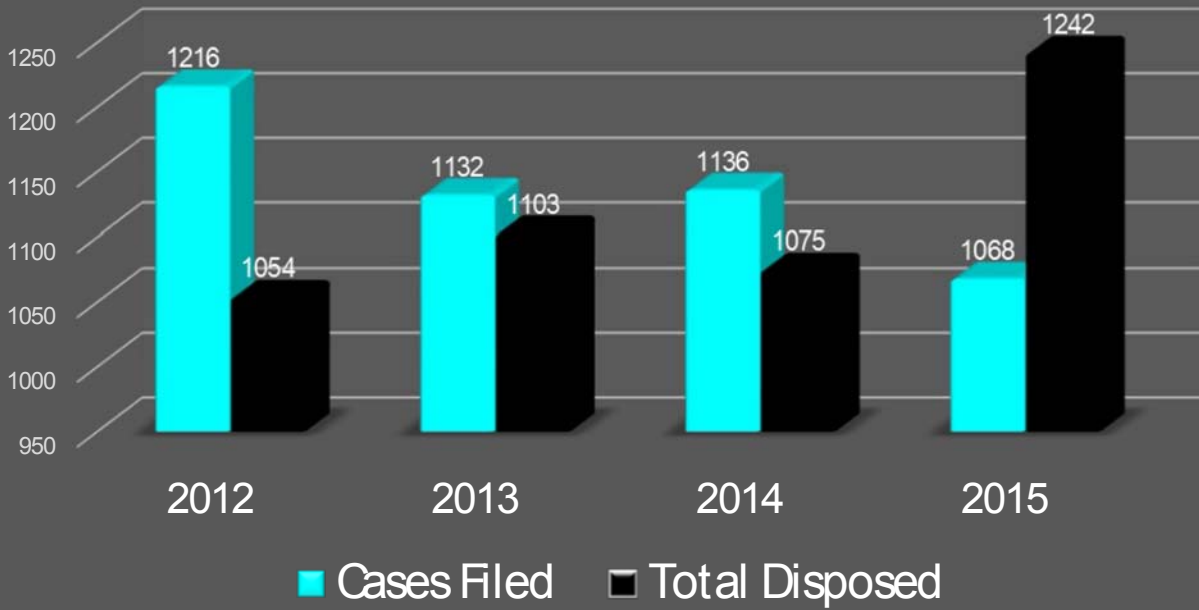


Fig. 5b Case Filing and Disposition Trend (FY 2012 - FY 2015)

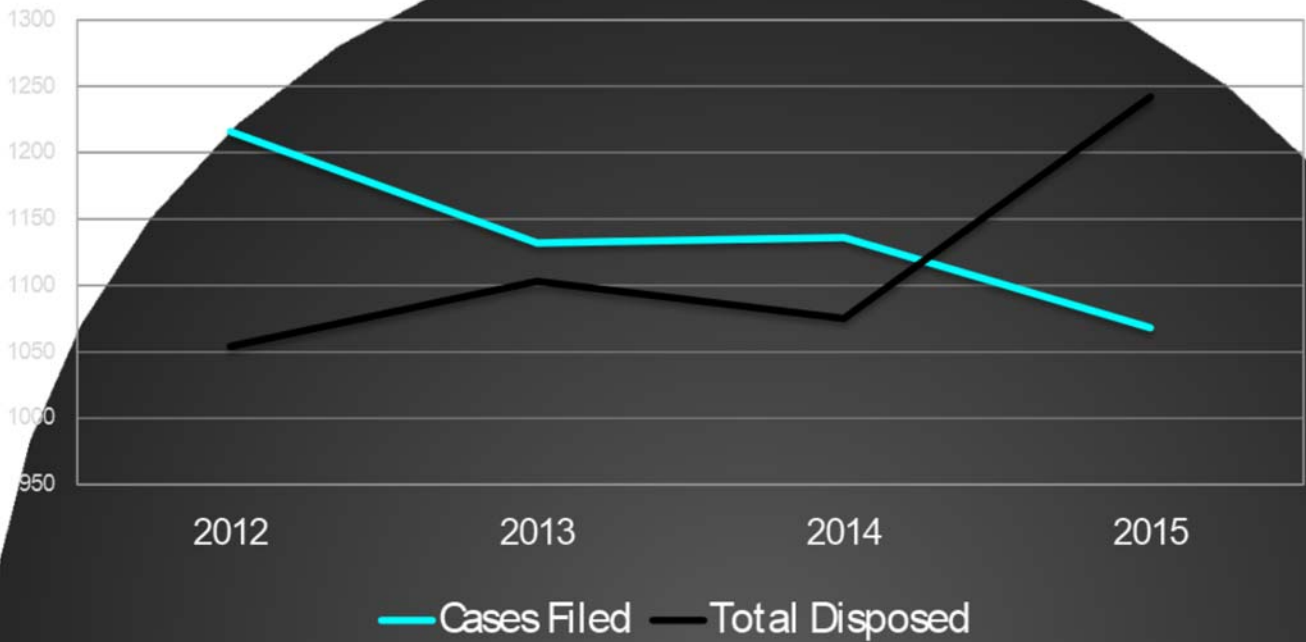
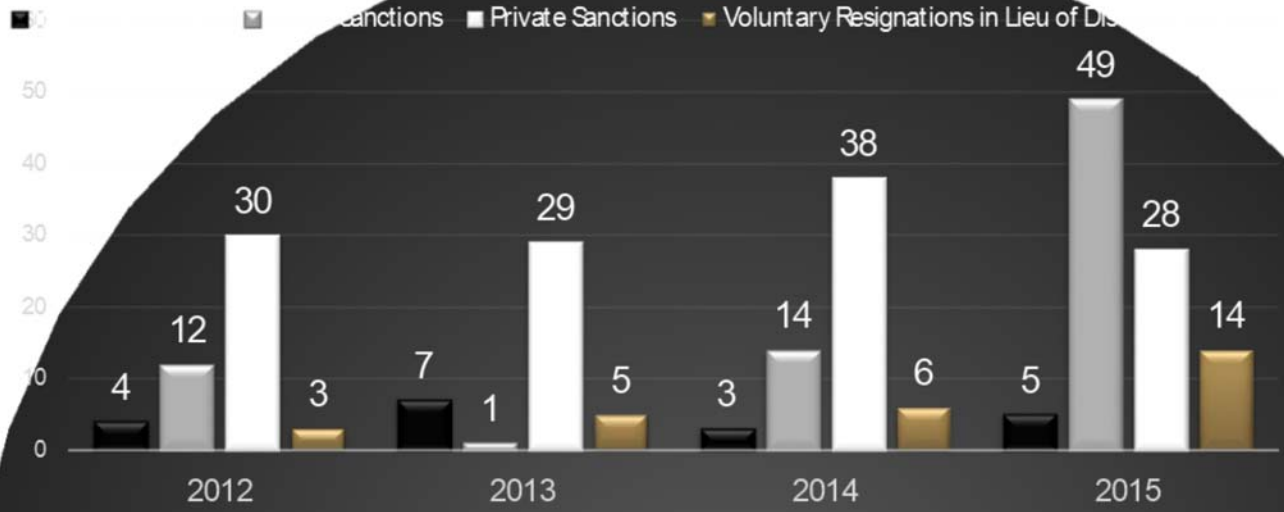


Fig. 6a Commission Activity (FY 2012-2015)



\* 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 2012-2015)

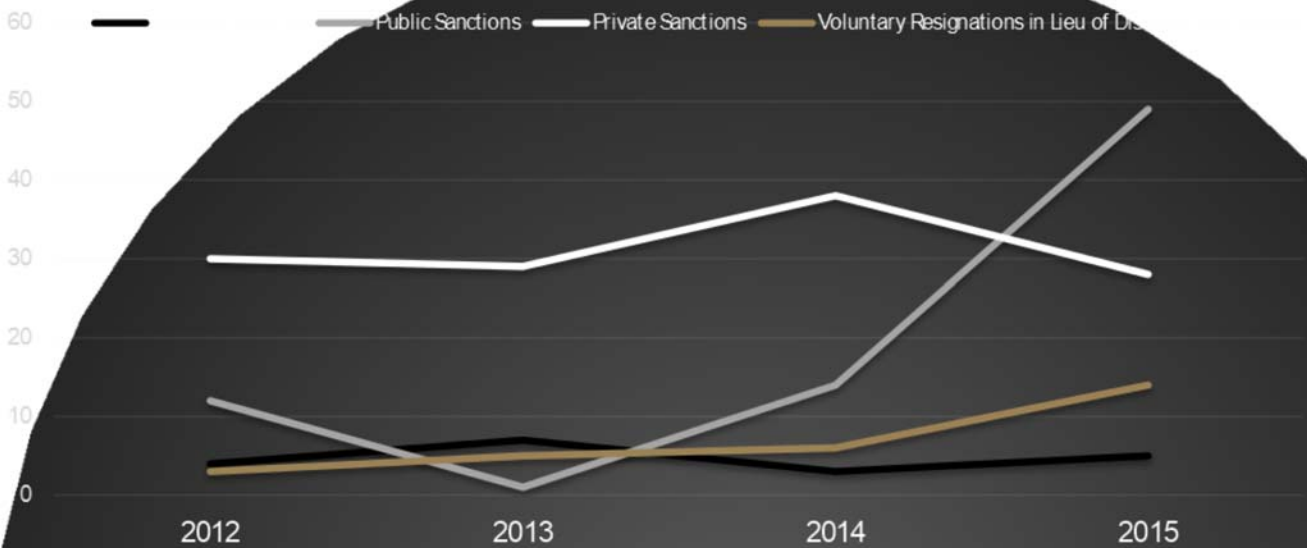
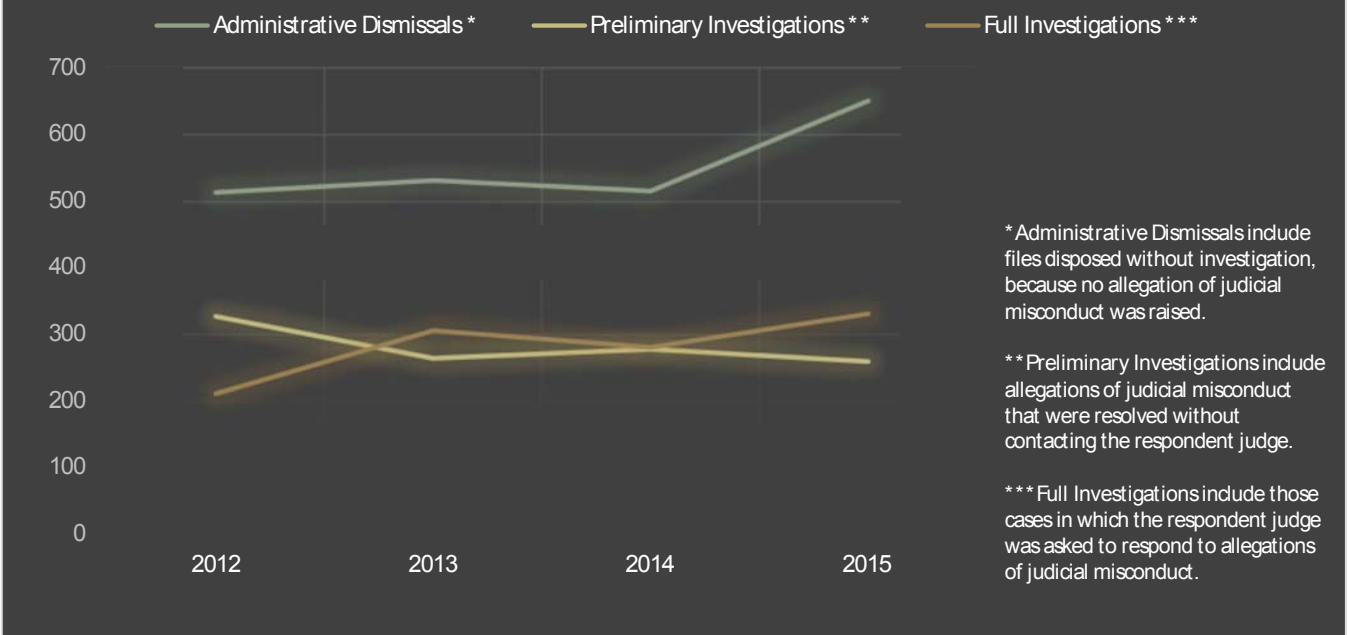


Fig. 7a Comparison of Investigations by Type (2012-2015)



Fig. 7b Comparison of Investigations by Type - Trend (2012-2015)



# EXAMPLES OF IMPROPER JUDICIAL CONDUCT

The following are examples of judicial misconduct that resulted in disciplinary action by the Commission in fiscal year 2015. These are illustrative examples of misconduct and do not represent every disciplinary action taken by the Commission in fiscal year 2015. 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 2015. 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 by intervening in a private dispute between a contractor and an electrician when no case was pending in his court, and by exceeding his authority through an independent investigation into the merits of the electrician's claims. In addition, the judge lent the prestige of his judicial office to advance the private interest of the electrician and gave the impression the electrician was in a special position to influence the judge. [Violation of Canons 2A, 2B and 3B(2) of the Texas Code of Judicial Conduct.] *Public Reprimand and Order of Additional Education of a Justice of the Peace.* (12/19/14).

- The judge failed to comply with the law when he reimbursed himself from campaign funds for travel expenses that were not properly reported to the Texas Ethics Commission. The fact that his financial reports were purportedly prepared and filed by his attorney did not mitigate the judge's responsibility as the officeholder/candidate to ensure the accuracy of the reports before signing them. The judge also engaged in questionable personal conduct that resulted in his arrest and in multiple criminal investigations. Though not ultimately prosecuted for any offense, the judge's off-the-bench conduct generated a high level of negative attention and criticism levied against him which cast public discredit upon the judge and the judiciary as a whole. [Violations of Canon 2A of the Texas Code of Judicial Conduct; Article V, §1-a(6)A of the Texas Constitution.] *Public Warning of a Former District Judge.* (03/09/15).
- The judge failed to comply with the law and demonstrated a lack of professional competence in the law by (a) failing to timely execute the business of the court, (b) failing to hold jury or bench trials, (c) failing to reduce her rulings to final, written, appealable judgments, (d) failing to maintain proper records, (e) failing to conduct proper fiscal management, and (f) failing to provide public documents and information to citizens regarding cases that were filed in the judge's court. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Public Admonition of a Former Municipal Court Judge.* (05/14/15).
- The judge failed to comply with the law and demonstrated a lack of professional competence in the law when, in the absence of any written complaints and without a case having been filed with the court, the judge summoned the accused and witnesses to court, questioned them about the merits of oral complaints, performed her own independent investigation into the matter, and accompanied a law enforcement officer to the home of the accused so that a citation could be issued. The judge demonstrated a bias in favor of a public official, lent the prestige of the judicial office to advance the private interest of that individual, and allowed herself to be swayed by public clamor and/or fear of criticism. Additionally, in another matter, the judge failed to comply with the law and demonstrated a lack of professional competence in the law by accepting a defendant's plea over the telephone and signing the defendant's name to the plea form and waiver of a jury trial. [Violation of Canons 2A, 2B, 3B(2) and 3B(5) of the Texas Code of Judicial Conduct]. *Private Reprimand and Order of Judicial Conduct of a Municipal Court Judge.* (03/13/15).
- The judge failed to comply with the law and demonstrated a lack of professional competence in the law by: (1) entering an order of eviction that allowed the violating tenant an additional 90 days to come into compliance with the terms of the lease agreement; (2) failing to set and hear eviction matters within the time periods set forth in the applicable procedural rules; (3) failing to afford the Housing Authority the right to be heard on its motion to change venue; (4) granting a motion for new trial in an eviction proceeding, and (5) exceeding his authority by appointing a temporary judge. [Violation of 2A, 2B, 3B(2), 3B(5) and 3B(8) of the Texas Code of Judicial Conduct]. *Private Reprimand of a Justice of the Peace.* (03/25/15).
- The judge failed to comply with the law when she removed a defense attorney's recusal motion from the court's file in violation of Rule 75 of the Texas Rules of Civil Procedure. [Violation of Canon 2A of the Texas Code of Judicial Conduct]. *Private Reprimand of a Former District Court Judge.* (01/08/15).

- The judge failed to comply with the law and failed to maintain professional competence in the law when she issued waivers of the 72-hour waiting period before performing marriages for certain individuals without any legal authority and for collecting a fee in some cases for issuing the waiver. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution]. *Private Reprimand of a Justice of the Peace*. (03/02/15).
- The judge failed to comply with the law and failed to maintain professional competence in the law by directing a sheriff's deputy to attach a local attorney and bring him to her courtroom in handcuffs for a short hearing on an unopposed motion. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct]. *Private Reprimand of a District Court Judge*. (03/02/15).
- The judge failed to follow the law and demonstrated a lack of professional competence in the law by magistrating defendants and accepting payment of fines without requiring defendants to enter a written plea or waiver of jury trial prior to accepting payment, and in the absence of a written judgment upon which to base any payment plan or the enforcement thereof. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Municipal Court Judge*. (07/29/15).
- The judge failed to comply with the law and failed to maintain professional competence in the law when the judge deprived a litigant of his right to a hearing on the Sworn Statement of Inability to Pay and incorrectly advised him that there was "not time for a hearing." [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*. (08/31/15).
- The judge failed to comply with the law and acted improperly when he failed to provide notice to an attorney or to the litigants involved in a pending CPS case that the judge was meeting and observing the children in the hospital. The Commission determined, based on comments made by the judge to the media, that the hospital visit provided the judge with evidence from an extrajudicial source, depriving the litigants of their right to have a fair, neutral and detached arbiter decide their case. [Violation of Canon 2A]. *Private Admonition of County Court at Law Judge*. (12/12/14).
- The judge failed to follow the law and demonstrated a lack of professional competence in the law by releasing a criminal defendant on a PR bond while an aggravated sexual assault of a child case remained pending. [Violation of 2A and 3B(2) of the Texas Code of Judicial Conduct]. *Private Admonition of a Justice of the Peace*. (12/22/14).
- The judge failed to follow the law and demonstrated a lack of professional competence in the law by denying litigants and members of the public access to the courtroom. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Admonition of a Senior Judge*. (07/29/15).

**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 allowed his name, judicial title, and court facilities to be used to promote the private interests of his local church by allowing his name and judicial title to be printed in flyers for the church's toy drive, using the courthouse to collect toys, and allowing the court's phone number to be a contact point for the toy drive. The judge also failed to comply with the law and displayed a lack of professional competence in the law when he routinely dismissed traffic citations without a motion from the State in exchange for a dismissal fee. [Violation of Canons 2A, 2B and 3B(2) of the Texas Code of Judicial Conduct.] *Public Reprimand and Order of Additional Education of Justice of the Peace.* (11/18/14).
- During a traffic stop, the judge repeatedly identified herself to police officers as being a judge, offered to show the officers her judicial badge, and attempted to use her position as a judge to obtain favorable treatment and escape the consequences of her conduct. The judge's conduct during the traffic stop, her arrest for driving while intoxicated, and her subsequent plea of no contest to a speeding charge received widespread media attention which cast public discredit upon the judiciary and the administration of justice. [Violation of Canon 2B of the Texas Code of Judicial Conduct; Article V, §1-a(6)A of the Texas Constitution.] *Public Admonition of an Appellate Court Justice.* (03/13/15).
- The judge failed to comply with the law and demonstrated a lack of professional competence in the law when she attempted to mediate a private dispute between two individuals neither of whom had filed any criminal and/or civil proceedings in her court. The judge exceeded her authority when she met with both individuals; discussed the allegations; reviewed "evidence" submitted by the individuals; and reached a decision resolving the individuals' dispute. Thereafter, the judge made attempts to enforce her decision in favor of one of the individuals. The Commission concluded the judge's efforts to assist one of the individuals constituted an improper use of the prestige of her judicial office to advance the individual's private interests. [Violation of Canons 2A, 2B and 3B(2) of the Texas Code of Judicial Conduct]. *Private Admonition and Order of Additional Education of a Justice of the Peace.* (11/18/14).

**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 when she took no action to appropriately and timely address what she believed was contemptuous conduct. Based on her interactions with defense attorneys and prosecutors while in chambers, the judge should have known there had been a miscommunication to the bailiff that resulted in an individual's hour-long detention and should have taken immediate action to correct that misapprehension.



[Violation of Canon 3B(3) of the Texas Code of Judicial Conduct and Article V, §1-a(6)A of the Texas Constitution.] *Private Warning of a District Court Judge*. (08/24/15).

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

- The judge failed to treat attorneys from the State Counsel for Offenders office, and one of their expert witnesses, in a patient, dignified and courteous manner when he belittled, degraded and demeaned these persons in open court. Moreover, the comments to the attorneys and the expert witness were sufficiently impatient, discourteous and undignified as to cause a reasonable person to perceive that the judge harbored a bias against these persons, as well as the offenders themselves, and a fair trial would not be possible. Also, comments made by the judge during his speech/presentation before a political action committee could cause a reasonable person to perceive the judge would not be fair and impartial when presiding over civil commitment proceedings. [Violation of Canons 3B(4), 3B(5), 3B(10), 4A(1) and 4A(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 District Court Judge*. (04/24/15).
- The judge failed to treat certain attorneys with the patience, dignity and courtesy expected of a judicial officer, including the refusal to allow an attorney to appear in her courtroom while attired in shorts due to a medically-required knee brace. This conduct became widely known in the legal community, leading to the filing of recusal motions against her and numerous media stories. Moreover, the judge's repeated attempts to intervene and assert her "rights" in pending recusal proceedings constituted a willful and/or persistent failure to follow the law and demonstrated incompetence in performing the duties of her office. [Violation of Canons 2A and 3B(4) of the Texas Code of Judicial Conduct; Article V, §1-a(6)A of the Texas Constitution.] *Public Admonition of a Former County Court at Law Judge*.<sup>3</sup>
- The judge failed to treat the County Clerk and her staff in a patient, dignified, and courteous manner. The judge charged the Clerk with criminal contempt after becoming personally affronted by the conduct of the Clerk and her staff toward him, and confused an offense to his sensibilities with obstruction to the administration of justice. The judge also demonstrated a lack of competence in the manner in which he performed some of his judicial duties. [Violation of Canons 2A, 3B(2) and 3B(4) of the Texas Code of Judicial Conduct]. *Private Reprimand and Order of Additional Education of a County Court at Law Judge*. (12/18/14).
- The judge failed in his duty to be patient, dignified and courteous to the jurors when he chastised them for their verdict and accused them of ignoring the law and violating their oath. The Commission concluded the incident itself was sufficient to cast public discredit upon the Texas judiciary regardless of the media's embellishments. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct]. *Private Reprimand of a Senior Judge*. (12/12/14).

<sup>3</sup> On appeal, the Special Court of Review found that the judge's conduct warranted a Public Reprimand.

- The judge engaged in numerous conversations with subordinates in which she used profanity, vulgar language, and made sexual references. Although the judge believed and intended that these conversations were private, all of the conversations took place at the courthouse during regular business hours. The Commission found that the judge was responsible for creating and/or perpetuating a work-place environment where these types of conversations were allowed to take place and made no effort to stop the offending conduct when requested by an employee. [Violations of Canons 3B(4) of the Texas Code of Judicial Conduct]. *Private Reprimand of a Municipal Court Judge.* (02/08/15).
- The judge failed to maintain patience, courtesy and dignity towards an attorney who had cases pending before the judge and made comments in a manner that demonstrated the judge harbored a personal bias or prejudice against him. [Violation of Canons 3B(4) and 3B(5) of the Texas Code of Judicial Conduct]. *Private Admonition of a County Criminal Court at Law Judge.* (09/12/14).

**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 failed to comply with the law and demonstrated a lack of professional competence in the law by expelling the district attorney from her courtroom in violation of the “Open Courts” doctrine. The judge also failed to treat litigants, attorneys and others with patience, dignity and courtesy, through her aforementioned expulsion of the district attorney from her courtroom and when she held a “marathon” court session lasting until 4 a.m. without allowing formal breaks. The judge also manifested a religious and/or cultural bias by describing the district attorney as a “New York Jew” and by criticizing a prosecutor’s beard because it made him look like a “Muslim.” [Violation of Canons 2A, 3B(2), 3B(4) and 3B(6) of the Texas Code of Judicial Conduct.] *Public Admonition and Order of Additional Education of a District Court Judge.* (05/11/15).

**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.**

- The judge failed to provide parties with notice and an opportunity to be heard. The judge issued a clarified judgment making substantive changes to the original judgment after his plenary power had expired and without any legal basis for doing so. [Violation of Canons 2A and 3B(8) of the Texas Code of Judicial Conduct]. *Private Admonition and Order of Additional Education of a Justice of the Peace.* (09/16/14).

**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 judge's close, personal relationship with a defendant/victim and her children and his failure to disclose the nature of the relationship to the defendant, cast a reasonable doubt on his ability to act impartially as a judge during the magistration of the defendant. [Violation of Canon 4A(1) of the Texas Code of Judicial Conduct]. *Private Warning and Order of Additional Education of a Justice of the Peace.* (03/20/15).

**CANON 4E(1):** A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

- The judge failed to follow the law when she served in a fiduciary capacity as an independent executor of the will and estate of her friend. [Violation of Canon 4E(1) of the Texas Code of Judicial Conduct]. *Private Admonition of a District Court Judge.* (11/10/14).

**CANON 6C(2):** A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider *ex parte* or other communications concerning the merits of a pending judicial proceeding.

- The judge failed to comply with the law and demonstrated a lack of professional competence in the law by (a) entering a judgment in the absence of pleadings, without serving a litigant with citation and without providing the litigant adequate notice of the hearing, (b) issuing criminal summonses in civil cases, (c) failing to reduce her rulings to final, written, appealable judgments, (d) failing to afford litigants the right to appeal the court's judgment, (e) presiding over a matter over which the court lacked jurisdiction, (f) maintaining incomplete and/or inaccurate court records, and (g) conducting informal private mediations of disputes without proper notice to the parties, while excluding individuals from entering the courtroom to observe the proceedings in violation of the "Open Courts" doctrine. Moreover, the court exceeded her authority in conducting an independent investigation with information from an *ex parte*, extra-judicial source. [Violation of Canons 2A, 3B(2) and 6C(2) of the Texas Code of Judicial Conduct.] *Public Reprimand and Order of Additional Education of a Justice of the Peace.* (03/19/15).
- The judge routinely engaged in out-of-court communications with individuals regarding cases that were pending or impending in his court. In addition, the judge failed to treat a litigant in a patient, dignified and courteous manner. The Commission further concluded the judge failed to follow the law and improperly used the prestige of his office when he requested, obtained, and disclosed to

the Commission the litigant's criminal history and reports from local law enforcement agencies. There was no indication the judge obtained a waiver from the named individual in order to obtain this information and it appeared the judge was able to obtain this information solely due to his status as a judge in an attempt to discredit the litigant in furtherance of his own private interest in responding to the Commission's inquiry. [Violation of Canons 2A, 2B, 3B(4) and 6C(2) of the Texas Code of Judicial Conduct]. *Private Warning and Order of Additional Education of a Justice of the Peace.* (10/01/14).

- The judge failed to comply with the law and demonstrated a lack of professional competence in the law when the judge visited the property and spoke to its tenants while the misdemeanor cases against the landlord were pending in the court. The Commission concluded the judge's actions amounted to her performing her own independent investigation of the merits of the pending cases outside the presences of the parties and without their knowledge or consent. [Violation of Canons 2A, 3B(2) and 6C(2) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace.* (07/29/15).

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

- The judge failed to be diligent and timely execute the business of the court, including her failure to regularly appear for court and failure to sign orders for months at a time, causing an extreme backlog of cases. Moreover, the judge took no ameliorative action for these failures until the appellate court intervened, and then the judge was suddenly able to produce missing documents alleged to have been signed months earlier. The judge also failed to comply with the law and demonstrated a lack of professional competence in the law when she dismissed over 600 cases on December 30-31, 2013, without notifying the parties and without holding hearings. [Violations of Article V, §1-a(6)A of the Texas Constitution; Canons 2A, 3B(2) and 3B(8) of the Texas Code of Judicial Conduct.] *Public Reprimand of a Former District Court Judge* (09/04/14).
- The judge failed to comply with the law and engaged in willful and persistent conduct that was clearly inconsistent with the proper performance of his judicial duties and cast public discredit upon the judiciary and the administration of justice when he used his position and authority to bully, retaliate against, and punish several attorneys who had filed motions to recuse, grievances, criminal complaints and removal actions against him. The attorneys had previously represented the judge's ex-wife or were otherwise involved in litigation with the judge's then-girlfriend. The judge (a) engaged in the improper practice of law, (b) misused government resources, (c) injected himself into personal litigation regarding children, (d) failed to disclose relationships or to recuse due to close, personal relationships, (e) lied under oath, (f) engaged in witness tampering, (g) harassed, bullied and maligned numerous county officials, (h) subjected attorneys and their clients to biased, unfair, discriminatory, and partial treatment through his judicial rulings and procedures, (i) abused

his discretion, and (k) failed to afford these attorneys or their clients with notice, the right to be heard, and other due process safeguards. Moreover, the judge failed to treat attorneys and their clients with the requisite patience, dignity and courtesy expected of a judicial officer. [Violation of Canons 2A, 2B, 3B(1), 3B(4), 3B(5), 3B(8) and 4G of the Texas Code of Judicial Conduct; Article V, §1-a(6)A of the Texas Constitution.] *Public Reprimand of a Former County Court at Law Judge.* (10/23/14).

- The judge's actions placed the judge, a motorist and other motorists in danger, and created an appearance that the judge was acting as an arm of the police which is inconsistent with his duties as a neutral and detached judicial officer. The judge's conduct and the perception of bias and impropriety that flowed from it occurred on more than one occasion and resulted in negative media attention which cast public discredit upon the judiciary and/or the administration of justice. [Violation of Article V, §1-a(6)A of the Texas Constitution]. *Private Admonition and Order of Additional Education of a Justice of the Peace.* (03/13/15).