

Judicial Demeanor

Justice Melissa Goodwin
3rd Court of Appeals, Austin

Judicial Demeanor

“Important as it is that people should get justice, it is even more important that they be made to feel and see that they are getting it.”

A Good Judge

- ▶ Appears to be fair and impartial
- ▶ Appears to listen to the parties
- ▶ Appears professional (looks like he knows what he is doing)
- ▶ Is polite
- ▶ Controls his or her courtroom
- ▶ Is patient
- ▶ Is dignified
- ▶ Has respect for parties and witnesses' feelings

Judicial Ethics

▶ Thou Shalt Not (Lowest Standard)

- ▶ Take gifts, unless*
- ▶ Raise funds
- ▶ Endorse political candidates
- ▶ Consider ex parte communication
- ▶ Hear a case if biases
- ▶ Appear to behave improperly

▶ Thou Shalt Not (Higher Standard)

- ▶ Respect and follow law
- ▶ Maintain order
- ▶ Be fair and impartial
- ▶ Treat every case as important
- ▶ Be patient, dignified, and courteous

▶

Commission Structure

The Commission has **13** members:

- ▶ **6 judges** appointed by the Supreme Court
- ▶ **5 citizens** appointed by the Governor
- ▶ **2 lawyers** appointed by the State Bar

▶ 5

Commission Structure

- ▶ Six-year staggered terms
- ▶ Voluntary, unpaid service
- ▶ Appointments are confirmed by the Texas Senate

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6

Commission Staff

- ▶ Executive Director
- ▶ General Counsel
- ▶ 4 Staff Attorneys
- ▶ 3 Investigators
- ▶ 1 Legal Assistant
- ▶ 2 Support Staff

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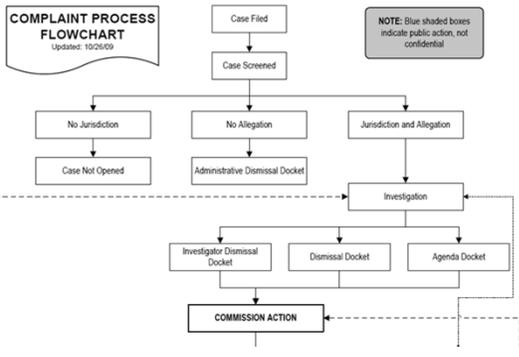
Mission Statement

- ▶ **Protect** the public
- ▶ Promote public confidence in the **integrity, independence, competence, and impartiality** of the judiciary
- ▶ Encourage judges to maintain **high standards of conduct** both on and off the bench.

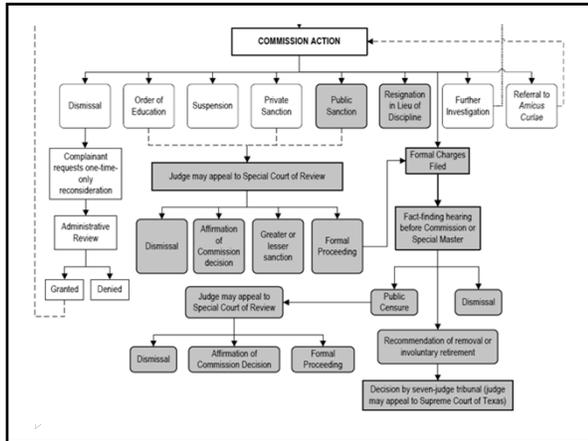
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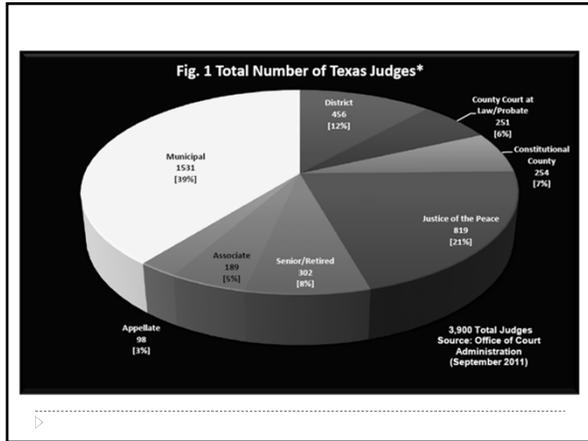
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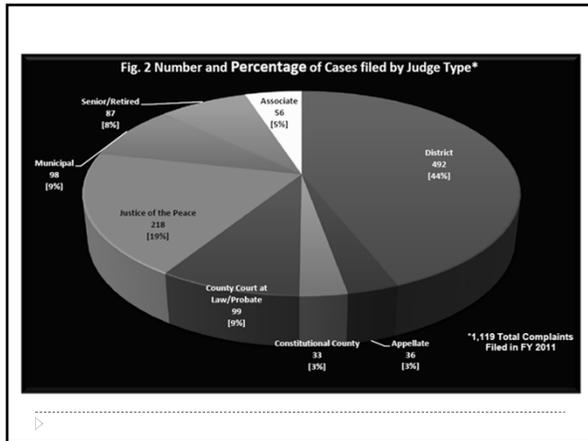
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Hypothetical One, continued

▶ When he arrived he went straight to the courtroom, without donning his robe. The Judge was surprised that several members of the civic group were in the courtroom when the prisoners were brought in to see the Judge. A TV photographer was also present. That night the TV station ran a story on the defendants, prominently showing Judge Joe in his "Down With Dope, Up With Hope" t-shirt. A Municipal Judge from an adjacent county saw the news story and on Monday filed a complaint on Judge Joe with the Commission. Result?

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Hypothetical Two

▶ On Tuesday, Judge Joe went to the Smallville jail to perform his magistrate duties on the defendants arrested overnight. The first prisoner was charged with Class C disorderly conduct. When Judge Joe introduced himself the defendant immediately informed Judge Joe that Ace Smith was his attorney and he wanted to contact Ace before proceeding.

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Hypothetical Two, continued

▶ Judge Joe actually despised Ace, but concealed his feelings and informed the defendant that an attorney was not necessary and demanded that the defendant enter a plea. Later that day, Ace, who despised Judge Joe, was informed that the defendant had wanted to contact him before entering a plea. Ace immediately fired off a letter of complaint to the Commission. Result?

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Hypothetical Three

▶ On Monday, Judge Joe's first case involves an assault by threat case. A woman is accused of threatening her former spouse at a local bar. On cross-examination the victim admits that he was too drunk to recall what happened and there were no other witnesses. Judge Joe renders his verdict of acquittal for the woman.

Hypothetical Three, continued

▶ As Judge Joe was leaving the courtroom, the woman approached him to thank him for the acquittal and gives Judge Joe a big hug and a kiss. A startled Judge Joe excuses himself while giving his bailiff an angry look. This time the former husband is not too drunk to recall what happened and immediately filed a complaint with the Commission. Result?

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Hypothetical Four

▶ Each year the Bigtown Bar Association held a Christmas Party and Judge Bob was always invited. Judge Bob enjoyed a substantial quantity of Crown Royal, but was not disorderly and behaved as a gentleman. Judge Bob drove himself home. Shortly thereafter, Judge Bob received a notification from the Commission that he had been accused of getting drunk in public at the Christmas Party and driving while he was drunk. The Complaint was anonymous. Result?

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Hypothetical Five

▶ The Bigtown TV station conducted an annual charity event where prominent citizens were “jailed” and “fined” to raise money for a charitable cause. The TV station approached Judge Bob and requested him to be the “on air” Judge who would set the fines for the “jailed” citizens. Judge Bob had a conflict and declined, but the local JP accepted the opportunity for some free publicity and participated in the event. A formerly unsuccessful candidate for the JP job saw the program and filed a complaint against the JP with the Commission. Result?



Hypothetical Five, continued

▶ The following week Judge Bob did participate as a panelist on a TV program honoring the American system of justice and discussed potential improvements to the judicial system.

▶ What would the result have been if a complaint had been filed?



Hypothetical Six

▶ Due to budget cuts, the Smallville Police Department was severely under funded. The Police Chief called Judge Joe and requested that the Judge appear with him at the press conference at City Hall to inform the public that the city desperately needed additional police officers.



Hypothetical Six, continued

▶ Judge Joe complied and the next day a news story, along with a photo of the Chief and Judge Joe, in his robe, standing in front of City Hall was in many newspapers in the State. A Municipal Judge in another city, over 400 miles away saw the photo and took offense to Judge Joe appearing at the press conference in his robe, so he sent the photo to the Commission.

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Hypothetical Seven

▶ The City provided Judge Joe with letterhead which clearly identified Joe as a "Judge". Judge Joe used the letterhead to write to his favorite fishing guide in Del Rio to confirm a date to go fishing. A city staff member was incensed that Judge Joe would use his "Judge" letterhead for personal business and secretly filed a complaint with the Commission. Result?

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Hypothetical Eight

▶ Judge Joe's friend, Jeff, decides to run for District Judge. Judge Joe is smart enough to know that he cannot endorse Jeff, but Judge Joe's wife, Melissa, wants to help out so she arranges to hold a fund raiser for Jeff at her residence. Jeff's opponent feels that Judge Joe is endorsing Jeff and files a complaint with the Commission. Result?

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Hypothetical Nine

- ▶ Judge Joe is really busy this year and he just does not get around to attending the mandatory judicial education. The Education Center notifies the Commission.
- ▶ Result?

Hypothetical Ten

- ▶ In Bigtown the Municipal Court staff is under the control of an administrator, rather than Judge Bob. Ace, a local defense lawyer, had made several requests for court documents related to a case in Municipal Court. The Court Administrator found the requests to be frivolous and simply did not respond to the requests. Ace filed a complaint on Judge Bob with the Commission. Result?

Hypothetical Eleven

- ▶ Judge Joe is really a stickler for defendants charged with theft. His lawnmower and fishing tackle were stolen from his garage last year and he just does not like thieves.
- ▶ A defendant is arrested at WalMart for Class B misdemeanor theft in Smallville. Judge Joe decides to teach the guy a lesson and sets his bond at \$100,000. The defendant's sister is a lawyer and decides to teach Judge Joe a lesson so she files a complaint with the Commission. Result?

Hypothetical Twelve

▶ The owner of Blacky's Bail Bond Company went to Judge Bob's office at the Court to present an affidavit of surrender to Judge Bob for signature. The Judge signed the affidavit, which released Blacky from any further liability on a \$10,000 bail bond which had been set by Judge Bob. Neither Judge Bob nor Blacky notified the District Attorney of the meeting at Judge Bob's office.



Hypothetical Twelve, continued

▶ When the Assistant District Attorney on the case learned that Judge Bob had met with Blacky and approved the affidavit of surrender, the prosecutor filed a complaint with the Commission accusing Judge Bob of having *ex parte* contacts on a case. Result?



Hypothetical Thirteen

▶ Fine collections were slow in Bigtown, so the Court Administrator prepared a form letter with a facsimile of Judge Bob's signature. The letter advised that the defendant had failed to pay the fine and faced immediate jail time if the fine was not paid. The letter was sent to a large number of defendants who did in fact owe fines. Judge Bob was not aware of the letter. A recipient of the letter filed a complaint with the Commission. Result?



Hypothetical Fourteen

▶ From time to time couples would show up at Judge Bob's court and request that Judge Bob perform their marriage. Judge Bob would accommodate them during breaks in court proceedings and routinely collected \$50.00 in cash, which he placed in his wallet. When the Court Administrator learned of this practice, she was incensed and immediately filed a complaint with the Commission and sent an anonymous letter to the Internal Revenue Service. Result?



Hypothetical Fifteen

▶ Judge Joe is the Municipal Judge of Smallville, a suburb of Bigtown, where the county jail is located. Defendants arrested in Smallville are magistrates by Judge Joe before being transferred to the county jail in Bigtown. Judge Bob is the Municipal Judge in Bigtown and magistrates all defendants arrested in Bigtown.



Hypothetical Fifteen, continued

▶ A defendant is arrested in Smallville for DWI and Judge Joe sets his bond at \$1,000. The defendant is transferred to the county jail in Bigtown where Judge Bob unilaterally reduces the defendant's bond to \$500. A police officer in Smallville files a complaint with the Commission. Result?



Hypothetical Sixteen

▶ Each year, several law firms in Bigtown engaged in a practice of giving Christmas gifts to local judges. Normally the gifts would be a bottle of wine or other beverage or a smoked turkey, a book or a gift of similar value. One year a new judge, of a different political party was appointed to the bench. This judge declined the gifts and reported the acceptance of gifts by the other judges (from the other political party) to the Commission. Result?



Hypothetical Seventeen

▶ Judge Bob is a Methodist. Each year in Bigtown the Methodist Church has a Men's Prayer Breakfast. One year Judge Bob participated in a TV commercial inviting local men to attend the breakfast event. Judge Bob was in his robe in the commercial. No solicitation of funds was involved in any way.



Hypothetical Seventeen, continued

▶ The entire event was open to those of all religions and without charge. A Justice on the Court of Appeals saw the commercial and filed a complaint with the Commission on Judge Bob. The Justice was a member of the Commission and incidentally was a Methodist. Result?



▶ Any Questions?



TEXAS CODE OF JUDICIAL CONDUCT

(As amended by the Supreme Court of Texas through August 22, 2002)

Preamble

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code of Judicial Conduct are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

Canon 1: Upholding the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved. The provisions of this Code are to be construed and applied to further that objective.

Canon 2: Avoiding Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A. 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.

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

C. A judge shall not knowingly hold membership in any organization that practices discrimination prohibited by law.

Canon 3: Performing the Duties of Judicial Office Impartially and Diligently

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. Judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

B. Adjudicative Responsibilities.

- (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.
- (2) A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.
- (3) A judge shall require order and decorum in proceedings before the judge.
- (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.
- (5) A judge shall perform judicial duties without bias or prejudice.
- (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.
- (7) A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status against parties, witnesses, counsel or others. This requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding.
- (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. This subsection does not prohibit:
 - (a) communications concerning uncontested administrative or uncontested procedural matters;
 - (b) conferring separately with the parties and/or their lawyers in an effort to mediate or settle matters, provided, however, that the judge shall first give notice to all parties and not thereafter hear any contested matters between the parties except with the consent of all parties;

- (c) obtaining the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond;
 - (d) consulting with other judges or with court personnel;
 - (e) considering an *ex parte* communication expressly authorized by law.
- (9) A judge should dispose of all judicial matters promptly, efficiently and fairly.
- (10) A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge's court in a manner which suggests to a reasonable person the judge's probable decision on any particular case. This prohibition applies to any candidate for judicial office, with respect to judicial proceedings pending or impending in the court on which the candidate would serve if elected. A judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge or judicial candidate is a litigant in a personal capacity.
- (11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity. The discussions, votes, positions taken, and writings of appellate judges and court personnel about causes are confidences of the court and shall be revealed only through a court's judgment, a written opinion or in accordance with Supreme Court guidelines for a court approved history project.

C. Administrative Responsibilities.

- (1) A judge should diligently and promptly discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.
- (2) A judge should require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.
- (3) A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.
- (4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.
- (5) A judge shall not fail to comply with Rule 12 of the Rules of Judicial Administration, knowing that the failure to comply is in violation of the rule.

D. Disciplinary Responsibilities.

(1) A judge who receives information clearly establishing that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the State Commission on Judicial Conduct or take other appropriate action.

(2) A judge who receives information clearly establishing that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Texas Disciplinary Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Office of the General Counsel of the State Bar of Texas or take other appropriate action.

Canon 4: Conducting the Judge's Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Obligations

A. Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or
- (2) interfere with the proper performance of judicial duties.

B. Activities to Improve the Law. A judge may:

- (1) speak, write, lecture, teach and participate in extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code; and,
- (2) serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He or she may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system and the administration of justice.

C. Civic or Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the profit of its members, subject to the following limitations:

- (1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly or frequently engaged in adversary proceedings in any court.
- (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.

(3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

D. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of the judicial duties, exploit his or her judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves. This limitation does not prohibit either a judge or candidate from soliciting funds for appropriate campaign or officeholder expenses as permitted by state law.

(2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a business. A judge shall not be an officer, director or manager of a publicly owned business. For purposes of this Canon, a "publicly owned business" is a business having more than ten owners who are not related to the judge by consanguinity or affinity within the third degree of relationship.

(3) A judge should manage any investments and other economic interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself or herself of investments and other economic interests that might require frequent disqualification. A judge shall be informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to be informed about the personal economic interests of any family member residing in the judge's household.

(4) Neither a judge nor a family member residing in the judge's household shall accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to the judge; books and other resource materials supplied by publishers on a complimentary basis for official use; or an invitation to the judge and spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a family member residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a gift from a friend for a special occasion such as a wedding, engagement, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a family member residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or person whose interests have come or are likely to come before the judge;

(d) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.

E. Fiduciary Activities.

(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.

(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

F. Service as Arbitrator or Mediator. An active full-time judge shall not act as an arbitrator or mediator for compensation outside the judicial system, but a judge may encourage settlement in the performance of official duties.

G. Practice of Law. A judge shall not practice law except as permitted by statute or this Code. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

H. Extra-Judicial Appointments. Except as otherwise provided by constitution and statute, a judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

COMMENT TO 2000 CHANGE

This change is to clarify that a judge may serve on the Texas Board of Criminal Justice.

I. Compensation, Reimbursement and Reporting.

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's family. Any payment in excess of such an amount is compensation.

(2) Public Reports. A judge shall file financial and other reports as required by law.

Canon 5: Refraining from Inappropriate Political Activity

- (1) A judge or judicial candidate shall not:
 - (i) make pledges or promises of conduct in office regarding pending or impending cases, specific classes of cases, specific classes of litigants, or specific propositions of law that would suggest to a reasonable person that the judge is predisposed to a probable decision in cases within the scope of the pledge;
 - (ii) knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent; or
 - (iii) make a statement that would violate Canon 3B(10).
- (2) A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this Canon and Canon 3B(10).
- (3) A judge shall resign from judicial office upon becoming a candidate in a contested election for a non-judicial office either in a primary or in a general or in a special election. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or while being a candidate for election to any judicial office.
- (4) A judge or judicial candidate subject to the Judicial Campaign Fairness Act, Tex. Elec. Code §253.151, *et seq.* (the “Act”), shall not knowingly commit an act for which he or she knows the Act imposes a penalty. Contributions returned in accordance with Sections 253.155(e), 253.157(b) or 253.160(b) of the Act are not a violation of this paragraph.

COMMENT

A statement made during a campaign for judicial office, whether or not prohibited by this Canon, may cause a judge’s impartiality to be reasonably questioned in the context of a particular case and may result in recusal.

Canon 6: Compliance with the Code of Judicial Conduct

A. The following persons shall comply with all provisions of this Code:

- (1) An active, full-time justice or judge of one of the following courts:
 - (a) the Supreme Court,
 - (b) the Court of Criminal Appeals,
 - (c) courts of appeals,
 - (d) district courts,
 - (e) criminal district courts, and
 - (f) statutory county courts.
- (2) A full-time commissioner, master, magistrate, or referee of a court listed in (1) above.

B. A County Judge who performs judicial functions shall comply with all provisions of this Code except the judge is not required to comply:

- (1) when engaged in duties which relate to the judge's role in the administration of the county;
- (2) with Canons 4D(2), 4D(3), or 4H;
- (3) with Canon 4G, except practicing law in the court on which he or she serves or in any court subject to the appellate jurisdiction of the county court, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.
- (4) with Canon 5(3).

C. Justices of the Peace and Municipal Court Judges.

- (1) A justice of the peace or municipal court judge shall comply with all provisions of this Code, except the judge is not required to comply:
 - (a) with Canon 3B(8) pertaining to *ex parte* communications; in lieu thereof a justice of the peace or municipal court judge shall comply with 6C(2) below;
 - (b) with Canons 4D(2), 4D(3), 4E, or 4H;
 - (c) with Canon 4F, unless the court on which the judge serves may have jurisdiction of the matter or parties involved in the arbitration or mediation; or
 - (d) if an attorney, with Canon 4G, except practicing law in the court on which he or she serves, or acting as a lawyer in a proceeding in which he or she has served as a judge or in any proceeding related thereto.
 - (e) with Canons 5(3).
- (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. This subsection does not prohibit communications concerning:
 - (a) uncontested administrative matters,
 - (b) uncontested procedural matters,
 - (c) magistrate duties and functions,
 - (d) determining where jurisdiction of an impending claim or dispute may lie,
 - (e) determining whether a claim or dispute might more appropriately be resolved in some other judicial or non-judicial forum,
 - (f) mitigating circumstances following a plea of *nolo contendere* or guilty for a fine-only offense, or
 - (g) any other matters where *ex parte* communications are contemplated or authorized by law.

D. A Part-time commissioner, master, magistrate, or referee of a court listed in Canon 6A(1) above:

- (1) shall comply with all provisions of this Code, except he or she is not required to comply with Canons 4D(2), 4E, 4F, 4G or 4H, and
- (2) should not practice law in the court which he or she serves or in any court subject to the appellate jurisdiction of the court which he or she serves, or act as a lawyer in a proceeding in which he or she has served as a commissioner, master, magistrate, or referee, or in any other proceeding related thereto.

E. A Judge Pro Tempore, while acting as such:

- (1) shall comply with all provisions of this Code applicable to the court on which he or she is serving, except he or she is not required to comply with Canons 4D(2), 4D(3), 4E, 4F, 4G or 4H, and
- (2) after serving as a judge pro tempore, should not act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto.

F. Any Senior Judge, or a former appellate or district judge, or a retired or former statutory county court judge who has consented to be subject to assignment as a judicial officer:

- (1) shall comply with all the provisions of this Code except he or she is not required to comply with Canon 4D(2), 4E, 4F, 4G, or 4H, but
- (2) should refrain from judicial service during the period of an extra-judicial appointment permitted by Canon 4H.

G. Candidates for Judicial Office.

- (1) Any person seeking elective judicial office listed in Canon 6A(1) shall be subject to the same standards of Canon 5 that are required of members of the judiciary.
- (2) Any judge who violates this Code shall be subject to sanctions by the State Commission on Judicial Conduct.
- (3) Any lawyer who is a candidate seeking judicial office who violates Canon 5 or other relevant provisions of this Code is subject to disciplinary action by the State Bar of Texas.
- (4) The conduct of any other candidate for elective judicial office, not subject to paragraphs (2) and (3) of this section, who violates Canon 5 or other relevant provisions of the Code is subject to review by the Secretary of State, the Attorney General, or the local District Attorney for appropriate action.

H. Attorneys.

Any lawyer who contributes to the violation of Canons 3B(7), 3B(10), 4D(4), 5, or 6C(2), or other relevant provisions of this Code, is subject to disciplinary action by the State Bar of Texas.

Canon 7: Effective Date of Compliance

A person to whom this Code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it.

Canon 8: Construction and Terminology of the Code

A. Construction.

The Code of Judicial Conduct is intended to establish basic standards for ethical conduct of judges. It consists of specific rules set forth in Sections under broad captions called Canons.

The Sections are rules of reason, which should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through the State Commission on Judicial Conduct. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors 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.

B. Terminology.

- (1) "Shall" or "shall not" denotes binding obligations the violation of which can result in disciplinary action.
- (2) "Should" or "should not" relates to aspirational goals and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined.
- (3) "May" denotes permissible discretion or, depending on the context, refers to action that is not covered by specific proscriptions.
- (4) "De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality.
- (5) "Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:
 - (i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

- (ii) service by a judge as an officer, director, advisor or other active participant, in an educational, religious, charitable, fraternal, or civic organization or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;
 - (iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest; and
 - (iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.
- (6) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.
- (7) "Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.
- (8) "Law" denotes court rules as well as statutes, constitutional provisions and decisional law.
- (9) "Member of the judge's (or the candidate's) family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.
- (10) "Family member residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides at the judge's household.
- (11) "Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.
- (12) "Third degree of relationship." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.
- (13) "Retired Judge" means a person who receives from the Texas Judicial Retirement System, Plan One or Plan Two, an annuity based on service that was credited to the system. (Secs. 831.001 and 836.001, V.T.C.A. Government Code [Ch. 179, Sec. 1, 71st Legislature (1989)])
- (14) "Senior Judge" means a retired appellate or district judge who has consented to be subject to assignment pursuant to Section 75.001, Government Code. [Ch. 359, 69th Legislature, Reg. Session (1985)]

(15) "Statutory County Court Judge" means the judge of a county court created by the legislature under Article V, Section 1, of the Texas Constitution, including county courts at law, statutory probate courts, county criminal courts, county criminal courts of appeals, and county civil courts at law. (Sec. 21.009, V.T.C.A. Government Code [Ch. 2, Sec. 16.01(18), 71st Legislature (1989)])

(16) "County Judge" means the judge of the county court created in each county by Article V, Section 15, of the Texas Constitution. (Sec. 21.009, V.T.C.A. Government Code [Ch. 2, Sec. 16.01(18), 71st Legislature (1989)])

(17) "Part-time" means service on a continuing or periodic basis, but with permission by law to devote time to some other profession or occupation and for which the compensation for that reason is less than that for full-time service.

(18) "Judge Pro Tempore" means a person who is appointed to act temporarily as a judge.

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 Open Meetings Act or the Texas Administrative Procedures Act.

Defining Judicial Misconduct

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

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

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

Sources of Complaints and Allegations

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

Commission Limitations

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

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

Commission Investigations and Actions

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

Commission Organization and Staff

In fiscal year 2011, the Commission had fourteen (14) authorized staff positions (FTEs). Commission staff includes the Executive Director, the General Counsel, four staff attorneys, three investigators, one legal assistant, a staff services officer, and three administrative assistants. All Commission staff members are full-time State employees.

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

The Commission staff attorneys serve as examiners, or trial counsel, during formal proceedings and on appeals from Commission actions. The Examiner is responsible for preparing cases for hearing and presenting the evidence that supports the charges before the Commission, 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, were sanctioned or dismissed if unfounded. The underlying impairment was never addressed. *Amicus* affords a third option under the Commission's authority to order additional training and education to a judge found to have violated a canon of judicial conduct. *Amicus* offers assistance to the judge to address the underlying personal impairment causally connected to the misconduct. One advantage *Amicus* offers over other

similar programs such as the Texas Lawyers Assistance Program operated by the State Bar of Texas is its ability to assist all judges, attorney and non-attorney alike.

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

Outreach and Education

In fiscal year 2011, the Executive Director, staff attorneys, investigators, and legal assistant participated in over forty (40) presentations at judicial training courses, bar conferences, court staff workshops, and before several groups of foreign dignitaries and delegates, describing the Commission and its operations and discussing various forms of judicial misconduct.

Ethics Calls

In fiscal year 2011, the Executive Director, staff attorneys and investigators answered approximately 1,400 telephone calls from judges, judicial candidates, attorneys, legislators, the media and citizens regarding judicial ethics inquiries. Callers are cautioned that Commission staff cannot issue an opinion on behalf of the Commission, and that the Commission is not bound by any comments made during the conversation. In many cases, the caller's question is researched before the call is returned so that the specific canon, statute, rule or ethics opinion can be identified. When appropriate, staff will send the caller a Complaint Form (in English or Spanish) and other relevant material. In some instances, staff may refer callers to other resources or agencies to better address their concerns.

Commission Website

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

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.

COMPLAINT PROCESS FLOWCHART

Updated: 10/26/09

NOTE: Blue shaded boxes indicate public action, not confidential

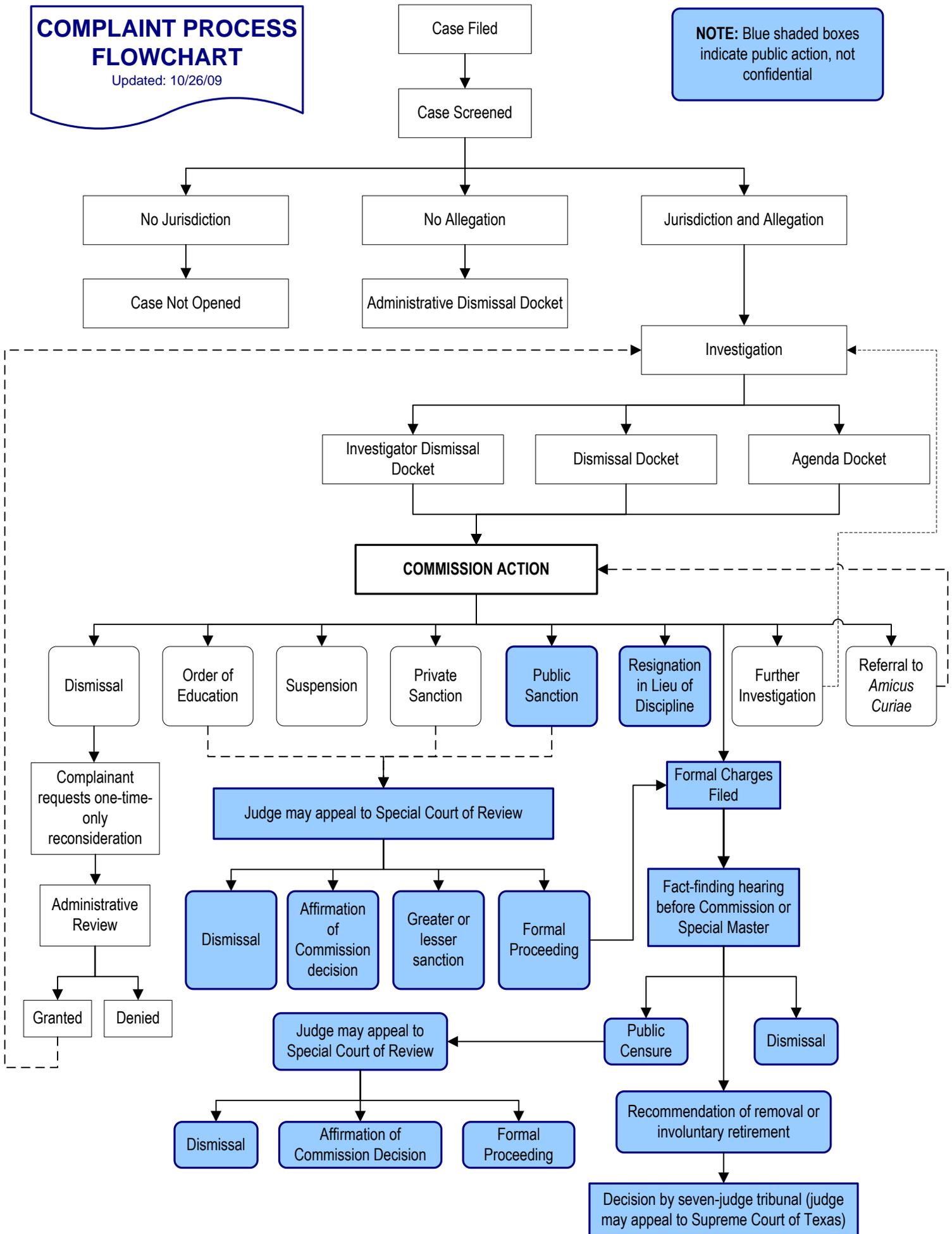


Table 1: Commission Activity

	FISCAL YEAR 2008	FISCAL YEAR 2009	FISCAL YEAR 2010	FISCAL YEAR 2011
Cases Pending (Beginning FY/Ending FY)	385/406	406/445	445/503	503/430
Cases Filed	1049	1204	1280	1119
Total Number Of Cases Disposed	1006	1110	1290	1192
% of Cases Disposed	96%	92.1%	100.7%	106.5%
Average Age of Cases Disposed	4.7 Months	6.19 Months	5.35 Months	5.66 Months
Disciplinary Action (total)	56	70	89	42
Cases Disposed through:				
Criminal Conviction	0	0	0	0
Review Tribunal Order	0	0	0	0
Voluntarily Agreement to Resign in Lieu of Disciplinary Action	1	2	10	5
Sanction:				
Public Censure	0	0	0	0
Public Censure and Order of Additional Education	0	0	0	0
Public Reprimand	0	11	1	1
Public Warning	1	5	18*	2
Public Admonition	6	2	10	3
Public sanction and Order of Additional Education	4	2	6	1
Private Reprimand	2	0	2	3
Private Warning	6	4	3	3
Private Admonition	6	6	19	8
Private sanction and Order of Additional Education	6	6	6	12
Public Order of Additional Education	0	0	0	0
Private Order of Additional Education	8	9	7	1
Interim Disciplinary Action:				
Order of Suspension [15(a)]	4	4	6	3
Recommendation of Suspension to Supreme Court [15(b)]	0	0	0	0
Cases in Formal Proceedings	12	19	0	0
Amicus Referral	0	0	1	0
Dismissals	966	1063	1208	1154
Requests for Reconsideration Received	43	53	106	226
Reconsideration Granted	8	1	0	0
Reconsideration Denied	35	47	104	226
Pending	0	5	2	0
Cases Appealed to Special Court of Review	5	2	16	0
Informal Hearings Set	31	25	21	13 (Includes Aug. 2011 Meeting.)
Public Statements Issued	1	0	0	0

**Total dispositions and disciplinary action totals include a Public Warning issued by the Commission in 16 cases at the conclusion of Formal Proceedings. In October 2010, on appeal to a Special Court of Review appointed by the Texas Supreme Court, the Public Warning in those 16 cases was dismissed.*