

State of Michigan
Judicial Tenure Commission

Annual Report 2009



Judicial Tenure Commission
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jtc.courts.mi.gov

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CHAIRPERSON
THOMAS J. RYAN, ESQ.
VICE CHAIRPERSON
JUDGE NANJI J. GRANT
SECRETARY
NANCY J. DIEHL, ESQ.
RICHARD W. LONG
JUDGE EUGENE A. MOORE
JUDGE DAVID H. SAWYER
JUDGE JEANNE STEMPIEN
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May 17, 2010

Honorable Justices of the Michigan Supreme Court
Honorable Jennifer Granholm, Governor
Honorable Members of the Michigan Legislature
Honorable Judges

I am pleased to present the Annual Report of the Michigan Judicial Tenure Commission for the year 2009. This Annual Report is presented to inform the public and all branches of state government about the Commission's duties, operations, and actions.

The Commission remains committed to fulfilling its responsibilities to the People of the State of Michigan. It also takes this opportunity to thank its devoted and professional staff members for their work and assistance to the Commission this past year. It is hoped that through the vigilant and dedicated work of the Commission, the public's confidence in the integrity, independence, and fairness of the judiciary will be preserved.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kathleen J. McCann".

Kathleen J. McCann
Chairperson

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COMPOSITION OF THE COMMISSION – 2009

Nancy J. Diehl, Esq.
1300 E. Lafayette, Ste. 1206
Detroit, Michigan 48207
Elected by State Bar Membership
Member Since January 1, 2006
Current Term expires December 31, 2011

Hon. Eugene Arthur Moore
Oakland County Probate Judge
1200 North Telegraph Road
Pontiac, Michigan 48341-0449
Elected by Probate Judges
Member Since January 1, 2009
Current Term expires December 31, 2011

Hon. Nanci J. Grant, Secretary
Judge, 6th Circuit Court
1200 N. Telegraph Road, Dept 404
Pontiac, MI 48341
Elected by Circuit Court Judges
Member Since January 1, 2007
Current Term expires December 31, 2012

Hon. Kathleen J. McCann, Chairperson
Judge, 16th District Court
15140 Farmington Road
Livonia, Michigan 48154
Elected by Judges of Limited Jurisdiction
Member Since February 7, 2003
Current Term expires December 31, 2010

Richard W. Long
c/o 3034 W. Grand Blvd., Suite 8-450
Detroit, Michigan 48202
Appointed by Governor
Member Since November 6, 2009
Current Term expires December 31, 2011

Thomas J. Ryan, Vice Chairperson
2055 Orchard Lake Road
Sylvan Lake, Michigan 48320
Elected by State Bar of Michigan
Member Since January 1, 2005
Current Term expires December 31, 2010

Hon. Jeanne Stempien
Judge, 3rd Circuit Court
2 Woodward, Room 1719 CAYMC
Detroit, Michigan 48226
Elected By State Bar Membership
Member Since January 1, 2004
Current Term expires December 31, 2012

Hon. Michael J. Talbot
Judge, Court of Appeals
3020 W. Grand Boulevard
Elected by Court of Appeals Judges
Member Since January 1, 2004
Current Term expired December 31, 2009

Marja M. Winters
65 Cadillac Square, Ste. 2300
Detroit, Michigan 48226
Appointed by Governor
Member Since January 1, 2008
Current Term expires December 31, 2010

BIOGRAPHIES *

Nancy J. Diehl, Esq. Nancy J. Diehl, Esq. retired from the Wayne County Prosecutor's Office in 2009. Her prosecution career spanned 28 years and her last position was as Chief of the Trial Division, overseeing general trials, child and family abuse, homicide, auto theft, and major drugs. Ms. Diehl serves on the executive committee of the Governor's Task Force on Children's Justice and is past president of the State Bar of Michigan. Fellow members of the State Bar of Michigan elected her to the Judicial Tenure Commission for a term beginning January 1, 2006, and re-elected her to a second term, which began on January 1, 2009. Ms. Diehl has a B.A. from Western Michigan University and a J.D. from Wayne State University.

Hon. Nanci J. Grant is an Oakland County Circuit Court Judge, General Jurisdiction division. She was elected by the state's Circuit Judges to the Judicial Tenure Commission for the term commencing January 1, 2007. Judge Grant received her Bachelor of Arts Degree from The University of Michigan, where she graduated with honors, and her Juris Doctor from Wayne State University. She worked in private practice prior to being elected to the bench in 1996. Judge Grant served as President of the Michigan Judges Association. As of January 2010, and by appointment of the Michigan Supreme Court, Judge Grant is the Chief Judge of the Sixth Circuit Court of Michigan. Finally, Judge Grant currently serves as the Commission's Secretary.

Richard W. Long retired in 2009 as National CAP director of the UAW International Union. Dick's automotive career began in 1963 with Pontiac Motor Division. He became a journeyman electrician in 1971, and soon became involved in union activities. Dick became president of UAW Local 653 in 1988, served as chairman of Sub Council 7 (the largest sub council in the UAW), and chaired the UAW/General Motors contract negotiations in 1993. In 1998, Dick was appointed as the Administrative Assistant to the President of UAW International, preceding his service as National CAP director beginning in 2000.

During his busy union-activist's life, Dick also married, raised a family, and attended school. He and his wife Jackie have three children and are blessed with six grandchildren. Dick attended classes at the General Motors institute in Flint, as well as Oakland Community College and Oakland University, and has a degree in applied science. He served on the Apprentice Advisory Committee at Oakland University and is a member of the International Skilled Trades Advisory Committee. Dick has also been active in the community, serving for a number of years as a basketball coach and referee at area schools, while helping kids learn the fundamentals of teamwork and physical fitness that sports provides.

Honorable Kathleen J. McCann serves as Chief Judge of the 16th District Court in Livonia. She was elected by the District Judges to the Judicial Tenure Commission commencing January 1, 2003. Judge McCann received her Bachelor of Arts Degree from Hillsdale College and her Juris Doctor from Detroit College of Law. She sits on the Board of Directors of the Michigan District Judges Association and was President of the Incorporated Society of Irish/American Lawyers 2002-2003. Judge McCann was elected as Vice-Chairperson of the Commission in 2007 and as Chairperson in January 2009. Judge McCann is President of the Michigan District Judges Association and sits on the Judicial Resources Section of the Crossroads to the Judiciary Committee.

Honorable Eugene Arthur Moore is the Chief Judge of the Oakland County Probate Court, having first been elected to the Court in November 1966. He is a past President of the Michigan Probate

Judges Association and is a member of the Governor's Task Force on Children's Justice and is a Director of the National Center for Juvenile Justice. He is Vice Chair of the Board of Trustees of Starr Commonwealth and a Director Emeritus of the Cranbrook Schools and the Cranbrook Educational Community. He was an Adjunct Professor at Detroit College of Law for over 20 years teaching "Juvenile and Probate Law". He is a former Senior Warden of Christ Church Cranbrook. He has received numerous awards including the Gerald G. Hicks Child Welfare Leadership Award and the National Council of Juvenile and Family Court Judges Meritorious Services to the Juvenile Courts of America.

Thomas J. Ryan, Esq. is a member of the State Bar of Michigan, American Bar Association, Oakland County Bar Association, and the Oakland County Ancient Order of Hibernians. Mr. Ryan is a past president of the State Bar of Michigan serving as its 66th President from September 2000, to September 2001. Mr. Ryan served on the Oakland County Bar Association's Board of Directors and was its President from 1993 to 1994. He received his Undergraduate Degree from the University of Notre Dame and his law degree from the University of Detroit Mercy. Mr. Ryan has been in the private practice of law since January, 1977, and is the attorney for the Village of Beverly Hills, City of Keego Harbor, City of the Village of Clarkston, and the City of Orchard Lake Village, as well as the prosecuting attorney for the Township of Bloomfield, from July, 1978 to October, 2006. Mr. Ryan currently serves as the Commission's Secretary.

Hon. Jeanne Stempien is serving her third term as a Judge of the Wayne County Third Circuit Court. She was elected to the Judicial Tenure Commission commencing January 1, 2004 and served as the Commission's Chairperson for 2007. Judge Stempien received a Bachelor of Arts with Honors from the University of Michigan, Dearborn and a Juris Doctor, Magna Cum Laude, from the Detroit College of Law. In the past, Judge Stempien was elected the Chairperson of the Schoolcraft College Board of Trustees. Judge Stempien served as a facilitator for the National Judicial College and is currently a member of the Inns of Court, an advocacy program for law students

Hon. Michael J. Talbot was appointed to the Court of Appeals in 1998. He was elected to the Judicial Tenure Commission by his fellow Court of Appeals judges for a term that began on January 1, 2004. Judge Talbot has also served as a judge of the Wayne Circuit, Detroit Recorder's, Detroit Common Pleas courts and worked as an attorney in private practice. By assignment of the Supreme Court, he serves as Chair of the Court Reporter and Recording Board of Review. He is a Trustee of Madonna University and Sacred Heart Major Seminary. Judge Talbot is also Chair of the Review Board for the Archdiocese of Detroit. He received his bachelor's degree from Georgetown University and his law degree from the University of Detroit.

Marja M. Winters, a proud Detroit native, grew up on Detroit's west side in a family that instilled the values of civic engagement, social responsibility, love of God, and determination to achieve any goal. Though young in age, her personal and professional career exemplifies the benefits of hard work, perseverance, selfless volunteerism and the favor of God. She firmly believes and lives by the creed: "to whom much is given, much is required." This is the basis for her professional and volunteer service. A career public servant, Winters displays her commitment to the City of Detroit through her profession and her strong community involvement. Respected among her peers in the young professional community, Winters is a visible and vocal advocate for civil rights, community empowerment and civic engagement. Ms. Winters currently serves as Deputy Director of the Planning & Development Department for the City of Detroit.

* As provided by Commissioners

I. COMMISSION JURISDICTION AND LEGAL AUTHORITY

A. The Authority of the Judicial Tenure Commission

The Judicial Tenure Commission is an independent state commission that came into being in 1968 by amendment to the Michigan Constitution. The Commission investigates allegations of judicial misconduct and disability, conducts hearings as appropriate, and recommends sanctions to the Michigan Supreme Court. The Commission's objective is to enforce high standards of ethical conduct for judges. On the one hand, judges must be free to act independently on the merits of the case and in good faith. However, they must also be held accountable by an independent disciplinary system should they commit misconduct. The judicial discipline system must not only fulfill its primary purpose – to protect the public and preserve the institutional integrity of the judiciary – but also serve to shield judges from attack by unsubstantiated complaints.

The Commission has jurisdiction over all active state judges. The Commission also has jurisdiction over former judges if a request for investigation is filed while that judge was still in office. If the matter complained about relates to the former judge's tenure as a judge, the request for investigation may even be filed after the person is no longer a judge.

The Commission does not have jurisdiction over federal judges or administrative law hearing officers such as workers compensation magistrates, department of corrections hearing officials, and the like. This section describes the Commission's handling and disposition of complaints involving judges.

B. What the Commission Cannot Do

The Commission is not an appellate court. The Commission cannot change a judicial officer's decision. If a court makes an incorrect decision or misapplies the law, that ruling can be changed only through the appellate process. The Commission also cannot get a judge taken off a case or have a matter transferred to another judge. The Commission cannot provide legal assistance to individuals or intervene in litigation on behalf of a party.

C. Judicial Misconduct

The Commission's authority is limited to investigating alleged judicial misconduct and, if warranted, recommending the imposition of discipline by the Michigan Supreme Court. Judicial misconduct and disability usually involves conduct in conflict with the standards set forth in the Code of Judicial Conduct. Examples of judicial misconduct include demeanor problems (such as yelling, rudeness, or profanity), improper communication with only one of the parties in a case, failure to disqualify in cases in which the judge has or appears to have a financial or personal interest in the outcome, delay in performing judicial duties, and public comment about the pending case. Judicial misconduct also may involve improper off-the-bench conduct.

D. Legal Authority

1. Michigan Constitution

The Judicial Tenure Commission was established by an amendment to the Michigan Constitution by the people of Michigan in 1968. The Commission's authority is set forth in article 6, section 30 of the Michigan Constitution. The provisions governing the Commission may be found on the Commission's web site (jtc.courts.mi.gov).

2. Michigan Court Rules

Article 6, section 30 of the Constitution authorizes the Michigan Supreme Court to make rules to implement the constitutional directive. Chapter 9.200 of the Michigan Court Rules sets forth the applicable procedures. A copy of those rules may be found on the Commission's website (jtc.courts.mi.gov).

3. Code of Judicial Conduct

The Michigan Supreme Court has adopted the Code of Judicial Conduct, most recently in 1993. 443 Mich ii (1993). The Court from time-to-time effects changes in the Code. A copy of the most recent Code may be found on the Commission's website (jtc.courts.mi.gov).

E. Recent and Anticipated Changes at the Commission

The Commission bids farewell to Court of Appeals Judge Michael J. Talbot, and welcomes his successor, Judge David H. Sawyer. The Commission also welcomes Oakland County Probate Judge Eugene Arthur Moore, elected by the probate judges, and Dick Long, appointee by the Governor.

II. OVERVIEW OF THE COMPLAINT PROCESS

A. HOW MATTERS ARE BROUGHT BEFORE THE COMMISSION

Anyone may file a request for investigation (or "grievance") against a judge on the Commission's complaint form, a sample of which is on the Commission's website (jtc.courts.mi.gov). The court rules require that the person filing the grievance ("the grievant") have his or her signature verified (*i.e.*, notarized) to establish that he or she has sworn to the truthfulness of the statements made in the grievance. The Commission may institute an investigation on its own, or at the request of the Chief Justice of the Michigan Supreme Court or the State Court Administrator. The Commission may also consider complaints made anonymously, and it may open a file into matters it learns of in other ways, such as news articles or information received in the course of a Commission investigation.

B. COMMISSION REVIEW OF REQUESTS FOR INVESTIGATION

Upon receipt, each properly executed grievance about a Michigan judge is carefully reviewed by the staff, along with any supporting documents or other evidence. The staff may review the court

file if that would be helpful. The staff also requests any additional information from the grievant needed to evaluate the grievance. The staff may not pursue any further investigation without authorization by the Commission.

Based on an assessment of the initial information, the staff prepares a report for the Commission recommending a course of action. Each grievance is voted upon by the Commission. The Commission determines whether the complaint is unfounded and should not be pursued or whether sufficient facts exist to warrant further investigation.

1. Investigation at the Commission's Direction

When the Commission determines that a complaint warrants investigation, the Commission directs the staff to investigate the matter and report back. The Commission will give the staff specific instructions on how to conduct each investigation.

2. Disposition of Cases Without Formal Proceedings

Commission investigations may include contacting witnesses, reviewing court records and other documents, observing courtroom proceedings, and conducting such other investigation as the issues may warrant. If the investigation reveals facts that warrant dismissal of the grievance, it may be closed without the need to contact the judge before doing so. Unless the Commission determines otherwise, the judge is given a copy of the grievance upon closing the case.

At times the judge may be asked to comment on the allegations, in which case the judge is given a copy of the grievance as part of the investigation. The Commission may limit the inquiry to the judge to a particular aspect of the grievance. The judge's response is then considered along with all other information. This initial comment from the judge is generally viewed as an investigatory aid (pursuant to MCR 9.207[C][2], rather than as a necessary precursor to a formal complaint pursuant to MCR 9.207[C][1]).

C. ACTION THE COMMISSION CAN TAKE

1. Confidential Dispositions

After an investigation, the Commission has several options. If the allegations are found to be untrue or unprovable, the Commission may close the case without action against the judge. If after an investigation, the Commission determines that there was no judicial misconduct, but that certain actions of the judge should preferably not be repeated, the Commission may dismiss the matter with a letter of explanation. If after an investigation and opportunity for comment by the judge, the Commission determines that improper or questionable conduct did occur, but it was relatively minor, the Commission may dismiss the matter with a cautionary letter to the judge. In cautionary letters, the Commission will advise caution or express disapproval of the judge's conduct.

Action the Commission Can Take

- Dismissal
- Dismissal with Explanation
- Dismissal with Caution
- Dismissal with Admonition
- Recommend Private/Public Censure, Suspension or Removal to Supreme Court

When more serious misconduct is found, the Commission may dismiss the matter with an admonishment. Private admonishments from the Commission are designed in part to bring problems to a judge's attention at an early stage in the hope that the conduct will not be repeated or escalate. A private admonishment consists of a notice to the judge containing a description of the improper conduct and the conclusions reached by the Commission. A judge has the right to challenge an admonishment in the Supreme Court, which then issues a public decision approving or rejecting the Commission's action. Letters of explanation, caution, and admonishment are not issued until the respondent judge is offered the opportunity to explain what happened.

Letters of explanation, caution, and admonishment are confidential, and they are not "discipline." Due to the rules of confidentiality, the Commission and its staff ordinarily cannot advise anyone, even the person who lodged the complaint, of the nature of the action taken. Summaries of conduct that resulted in such letters issued in 2009 are contained in Section IV.

2. Public Dispositions

a. The Formal Complaint

When formal proceedings are instituted, the Commission issues a formal complaint, which constitutes a formal statement of the charges. The judge's answer to the notice of charges is filed with the Commission and served within 14 days after service of the notice. The formal complaint, the judge's answer, and all subsequent pleadings are public documents, available for inspection at the Commission's office. To the extent practicable, they are also placed on the Commission's web site (jtc.courts.mi.gov).

The rules provide for some discovery between the parties after formal proceedings are instituted. A judge is entitled to inspect and copy all documentary evidence in the Commission's possession that is to be introduced at the hearing on the formal complaint. The commission must also give the judge the name and address of any person to be called as a witness.

The Commission may petition the Supreme Court for an interim order suspending a judge pending final adjudication of a formal complaint when necessary for the proper administration of justice. MCR 9.219.

b. Hearing

After the judge has filed an answer to the charges, the Commission sets the matter for a hearing. As an alternative to hearing the case itself, the Commission may request the Supreme Court to appoint a master to hear and take evidence in the matter and to report to the Commission. Masters are active judges or judges retired from courts of record.

The judge may be represented by counsel at the hearing. The evidence in support of the charges is presented by an examiner appointed by the Commission. The Michigan Rules of Evidence apply to the hearings, which are conducted like civil trials. MCR 9.211(A).

c. Standard of Proof

The standard of proof in Commission proceedings is by a preponderance of the evidence. *In re Ferrara*, 458 Mich 350 (1998).

d. Commission Consideration Following Hearing by Master

Following the hearing on the formal complaint, the master files a report with the Commission. The report includes a statement of the proceedings and the master's findings of fact and conclusions of law with respect to the issues presented by the formal complaint and the judge's answer.

Upon receipt of the master's report, the judge and the examiner are given the opportunity to file objections to the report and to brief the issues in the case to the Commission. Prior to a decision by the Commission, the parties are given the opportunity to present oral arguments before the Commission.

e. Disposition after Hearing by Commission

The Commission may dismiss the matter if it determines that there has been insufficient evidence of misconduct after conducting the evidentiary hearing itself or after reviewing the master's findings. However, if the Commission determines that misconduct has been established by a preponderance of the evidence, it may recommend that the Michigan Supreme Court impose discipline against the judge. The Commission itself has no authority to discipline a judge; the Michigan Constitution reserves that role for the Supreme Court. The Commission may recommend that the Court publicly censure a judge, impose a term of suspension, or retire or remove the judge from office. The Commission issues a Decision and Recommendation, which triggers the next series of steps.

f. The Supreme Court Hearing

Within 21 days after issuing its Decision and Recommendation, the Commission files the original record in the Supreme Court and serves a copy on the judge. Within 28 days after that, the judge may file a petition in the Supreme Court to modify or reject the Commission's Decision and Recommendation. The Commission has 21 days to respond with a brief of its own supporting its finding. Even if the judge does not file a petition, the Supreme Court reviews the Commission's Decision and Recommendation.

The Court clerk places the matter on the Court calendar. The judge and the Commission have an opportunity to present oral arguments to the Court, which reviews the record on a *de novo* basis. *In re Ferrara*, 458 Mich 350 (1998). After reviewing the record, the Court issues an opinion and judgment directing censure, removal, retirement, suspension, or other disciplinary action, or rejecting or modifying the Commission's Decision and Recommendation. The court rules allow a judge to file a motion for rehearing in the Supreme Court unless the Court directs otherwise in its opinion.

D. CONFIDENTIALITY OF COMMISSION PROCEEDINGS

The Michigan Constitution authorizes the Supreme Court to provide for the confidentiality of complaints to and investigations by the Commission, Michigan Constitution; article 6, section 30. The court rules provide that complaints and investigations are confidential, subject to certain exceptions, unless and until a formal complaint is issued. MCR 9.221.

The court rules permit the Commission to make public statements during the investigating stage if, on its sole determination by majority vote, it is in the public interest to do so. MCR 9.221. Nevertheless, the Commission's statement, if any, is limited to the fact that (1) there is an investigation pending or (2) the investigation is complete and there appears to be insufficient evidence for the Commission to file a complaint. The court rules provide that when formal proceedings are instituted, the formal complaint, answer, and all subsequent pleadings and proceedings are open to the public. MCR 9.221(B).

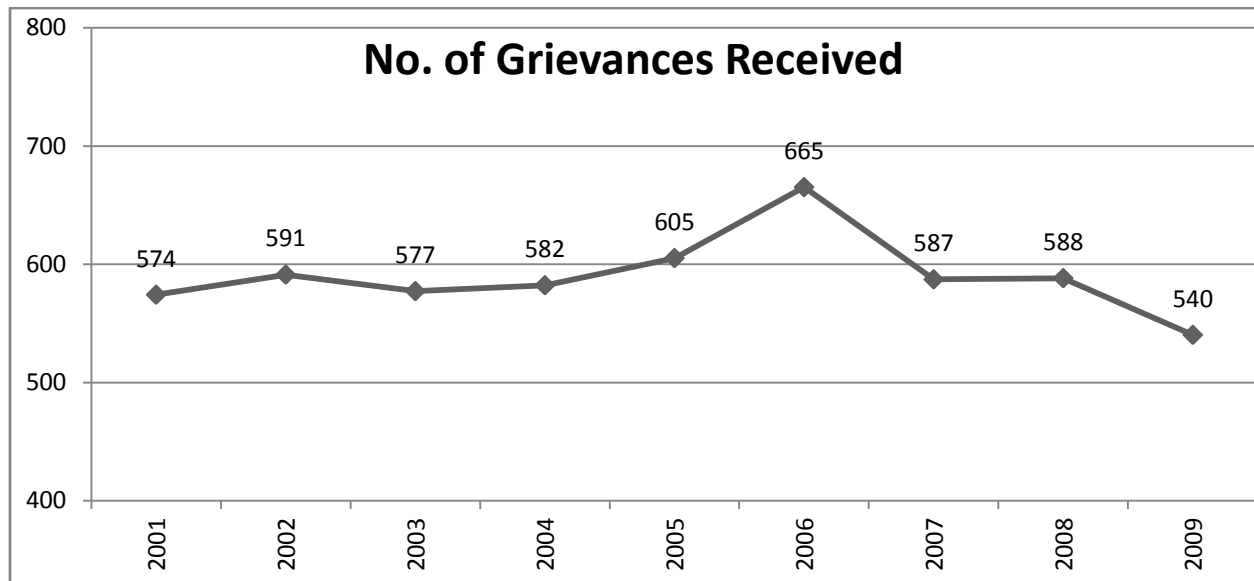
III. 2009 STATISTICS

A. COMPLAINTS RECEIVED AND INVESTIGATED

In 2009, the Commission received 964 requests for "Requests for Investigation" forms. There were 540 Requests for Investigation filed in 2009.

2009 CASELOAD	
Cases Pending on 1/1/09	72
New Grievances Considered	540
Cases Concluded in 2009	545
Cases Pending on 12/31/09	67

This number is generally consistent with the overall growth in the number of Requests for Investigation filed over the years.



The grievances set forth a wide array of allegations. A substantial percentage alleged legal error not involving misconduct or expressed dissatisfaction with a judge's discretionary handling of judicial duties.

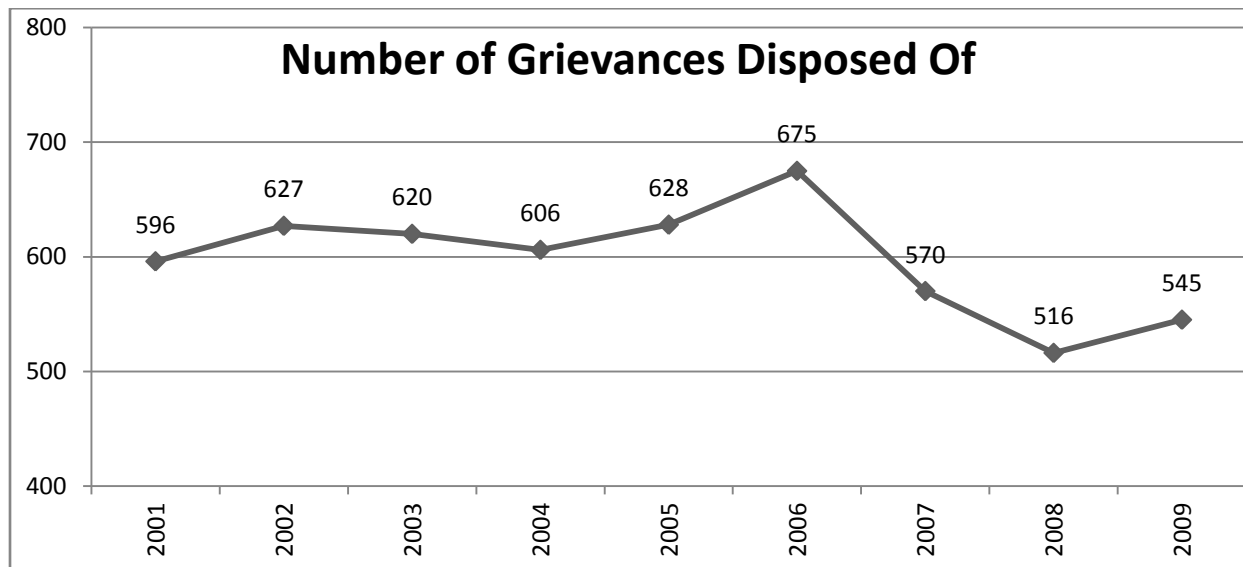
The Commission also received grievances concerning individuals and matters that did not come under the Commission's jurisdiction: federal judges, former judges, workers' compensation judges, other government officials and miscellaneous individuals. Commission staff responded to each of these complaints and, when appropriate, the Commission made referrals.

The number of judgeships within the Commission's jurisdiction has remained fairly constant at 1218.

JUDICIAL POSITIONS	
Supreme Court Justices	7
Court of Appeals Judges	28
Circuit Court Judges	221
Probate Court Judges	103
District Court Judges	258
Municipal Court Judges	4
Magistrates	265
Referees	332
TOTAL	1,218

B. COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the Commission in 2009, regardless of when the complaints were received. In 2009, the Commission disposed of 545 cases.



C. CLOSED WITHOUT ACTION

In 519 of the 545 cases closed in 2009, a sufficient showing of misconduct did not appear after the information necessary to evaluate the complaint was obtained and reviewed. In other words, these files alleged facts that, even if true, would not constitute judicial misconduct. Investigation showed that the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation.

D. CLOSED WITH ACTION

In 2009, the Commission issued 15 letters of admonishment, eight letters of caution, and two letters of explanation. Each of these dispositions is summarized in Section IV.

E. FORMAL COMPLAINTS

The Commission issued one formal complaint in 2009. The disposition is summarized in Section IV.

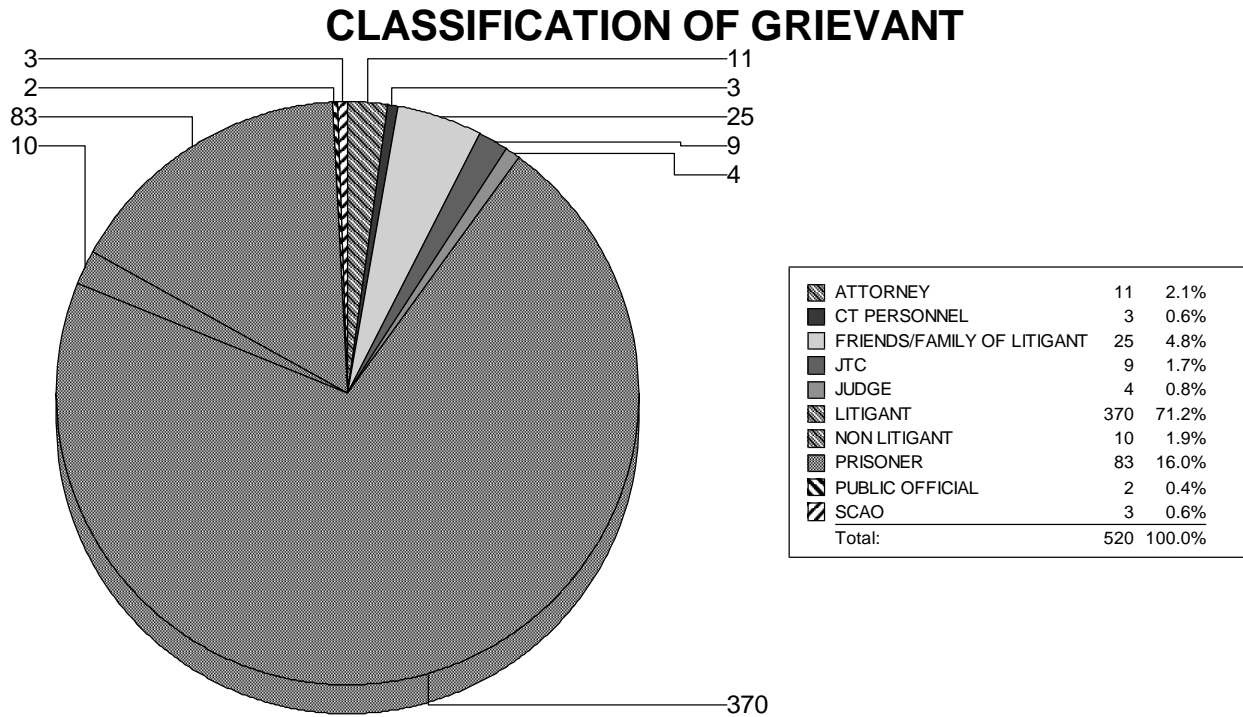
Formal Complaint No. 85 – Hon. Ben H. Logan

F. SUMMARY OF GRIEVANCES CONSIDERED IN 2009

The 540 requests for investigation received by the Commission derived from the following sources, covered the following subject matter, and were lodged against the following types of judges. The totals may not equal 540, as some grievances cover more than one judge or contain more than one type of alleged misconduct.

G. SOURCES OF GRIEVANCES

Litigants (including prisoners) filed the majority of requests for investigation, 87% of the total.

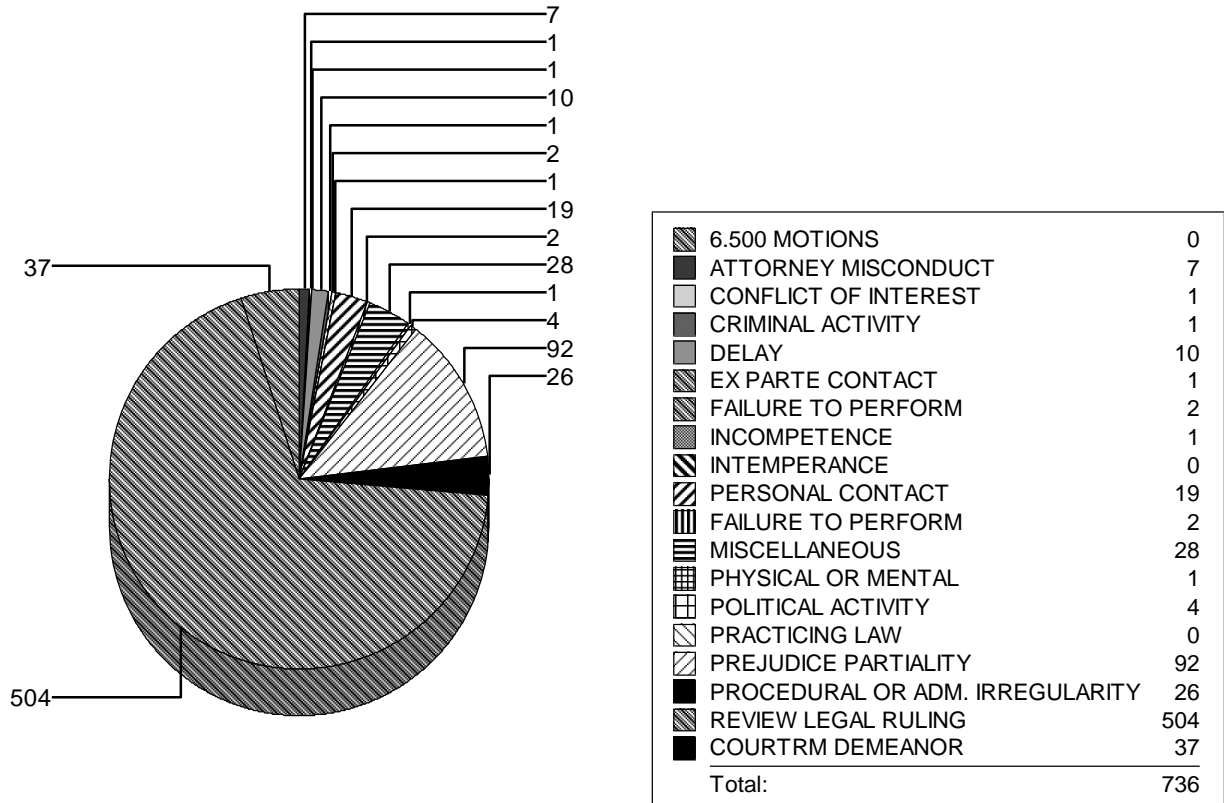


H. SUBJECT MATTER OF GRIEVANCES

Nearly 60% of matters complained of in the Requests for Investigation sought to have the Commission review the merits of the underlying case. However, the Commission has no jurisdiction to act as an appellate body, so unless there was evidence of judicial misconduct, those matters were ultimately dismissed.

NATURE OF GRIEVANCE

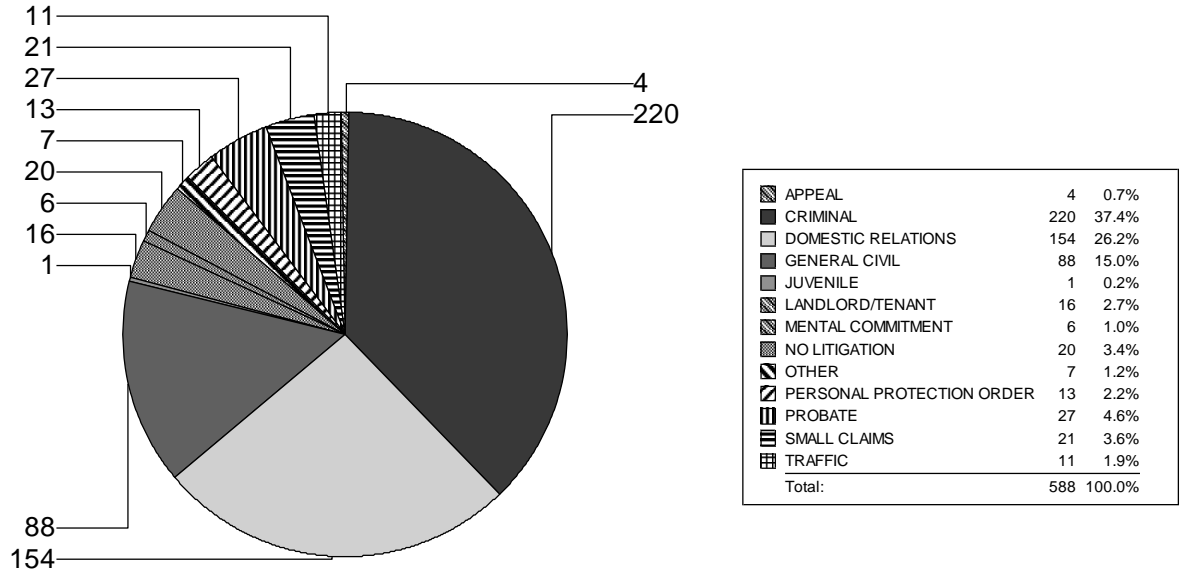
Breakdown by Category



I. NATURE OF UNDERLYING LITIGATION

Criminal cases, domestic relations matters, and general civil cases continue to be the most common types of cases to produce grievances against the judge.

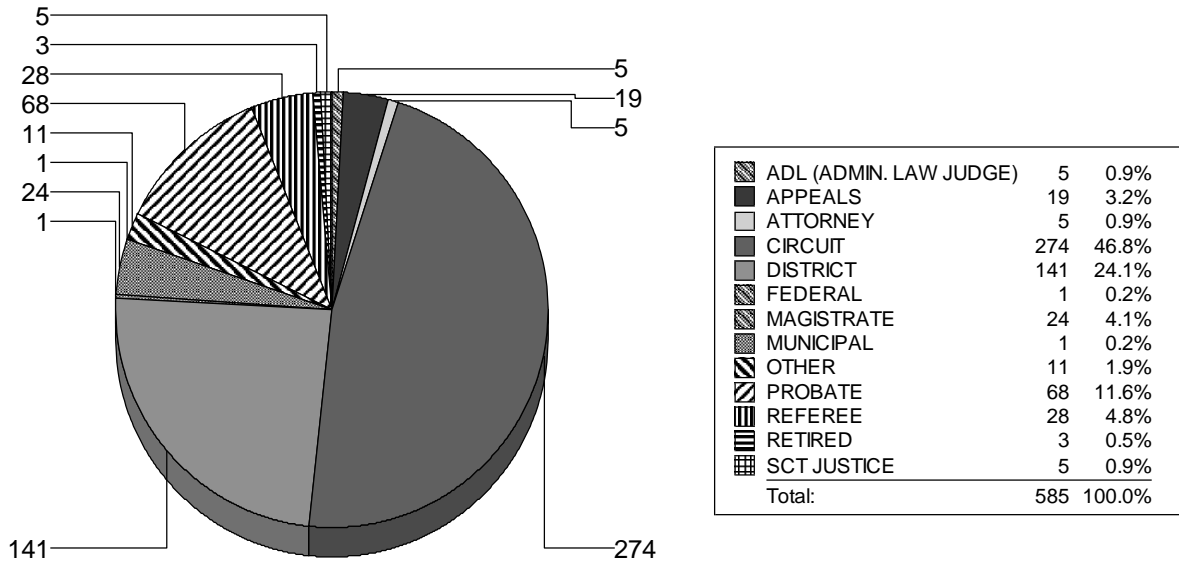
Nature of Litigation



J. CATEGORIES OF RESPONDENT JUDGES

The circuit judges, who comprise about one-fifth of the judiciary, received about half of the grievances. This is most likely due to the circuit judges handling so much of the criminal and domestic relations dockets, which together generate more than half of the grievances. District court judges, who comprise nearly 25% of the judiciary, received a proportionate 25% of the grievances filed.

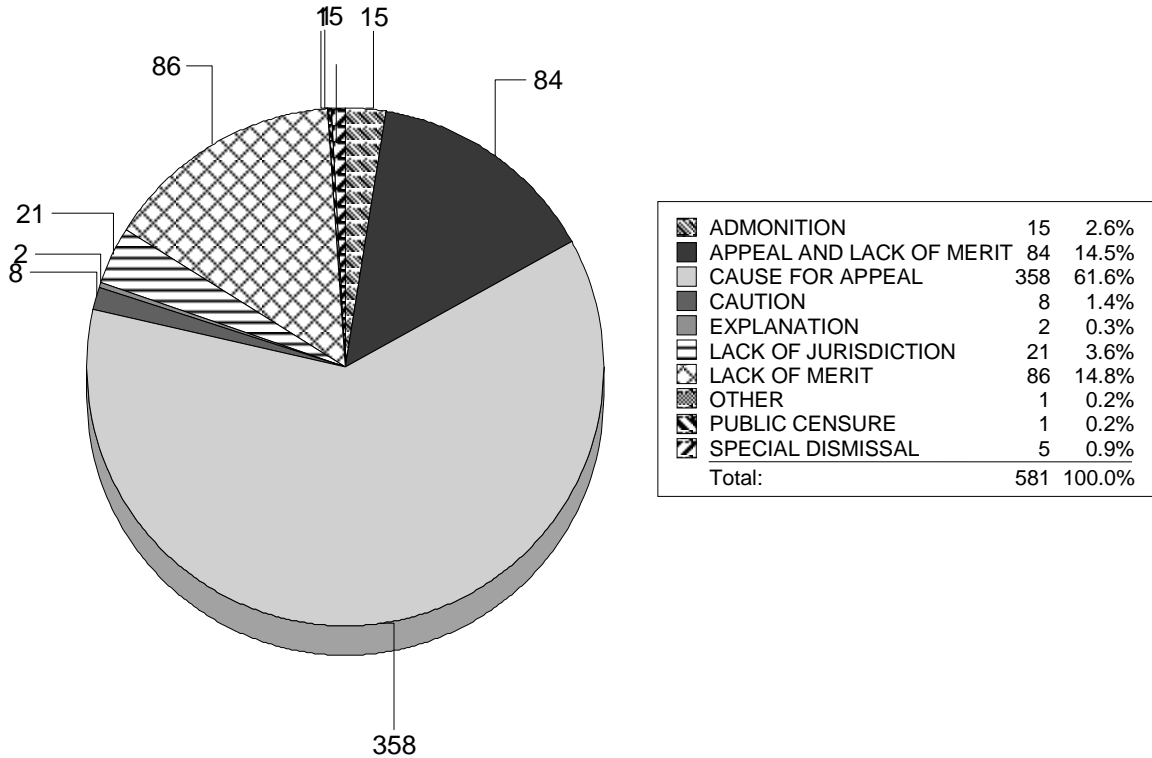
CLASSIFICATION OF RESPONDENT



K. DISPOSITIONAL BREAKDOWN

There was one public censure, and there were no voluntary resignations or retirements as a result of formal proceedings in 2009. The Commission issued two letters of explanation, eight letters of caution and 15 letters of admonition in matters that did not rise to the level warranting formal complaints.

RESPONDENT NATURE OF DISMISSAL



IV. CASE SUMMARIES

A. PUBLIC PROCEEDINGS

FORMAL COMPLAINTS

1. Formal Complaint No. 84, Hon. Steven R. Servaas 63rd District Court

On February 14, 2008, the Judicial Tenure Commission initiated formal proceedings against Judge Steven R. Servaas. Count I of the Formal Complaint alleged that Judge Servaas vacated his office by failing to reside within the election division of his district. The 63rd District Court is divided into two election divisions, the 1st and 2nd. Michigan statutes define the precise geographical boundaries of each division. Judge Servaas was elected to the 63rd District Court, 1st Division. The complaint alleged that Judge Servaas changed his primary residence from Cannon Township, which is located in the 1st division of the 63rd District Court, to Ada Township, which is located in the 2nd division of the same judicial district. The complaint further alleged that on January 13, 2006 Judge Servaas executed an affidavit declaring the Ada Township house to be his principal residence as of December 31, 2005, and rescinded the principal residence exemption he had previously claimed for his Cannon Township house. The complaint alleged that Judge Servaas, by moving outside his election district, violated the Michigan Constitution Article VI Sec. 20, which states:

“Whenever a justice or judge removes his domicile beyond the limits of the territory from which he was elected or appointed, he shall have vacated his office.”

The complaint also alleged in Count II that Judge Servaas failed to comply with statutory notice requirement regarding his change of address. The complaint alleged that Judge Servaas failed to change his driver’s license information and voter registration to reflect his move to Ada Township.

The Complaint further alleged in Count III that Judge Servaas made sexually inappropriate comments and engaged in sexually inappropriate conduct in the presence of female court staff. The complaint alleged that Judge Servaas drew female breasts on a note that was attached to a court file. The drawing was made after a female clerk commented on the revealing dress of a woman who appeared in court. The complaint further alleged that Judge Servaas drew a penis that appeared on a note attached to a court file. The complaint also alleged that Judge Servaas, going to a retirement party for an employee at the 2nd division courthouse, commented on a Michigan sweatshirt worn by a female clerk employed in the 2nd division. Judge Servaas stated that the woman’s chest was too small for the word “Michigan,” and that a smaller school like Alma would have fit her small chest better.

On March 5, 2008, the Michigan Supreme Court appointed the Honorable Casper O. Grathwohl as Master to hear the case. The hearing commenced March 28, 2008 and continued over four days. On May 12, 2008, the Master issued a report in which he found that the misconducts in Count I and Count III were established by a preponderance of the evidence. The Master found that Judge Servaas vacated his office by moving out of his election district, and found that his sexual doodles and sexual communication constituted judicial misconduct and compromised the integrity of the court. The Master found that the Judge committed no misconduct in Count II.

On July 14, 2008, the Commission heard oral argument on the Master’s report. The Commission issued its decision and recommendation for an order of discipline on October 17, 2008.

The Commission adopted that Master's findings of fact and conclusions of law, except that the Commission found that Judge Servaas vacated his office as early as 2000 as opposed to 2005 as the Master found. Further, in addition to the Master's findings, the Commission found that Judge Servaas lied under oath on multiple occasions before and during the proceedings in an effort to conceal his misconduct and the circumstances regarding the location of his residence beyond the geographical limits of the territory from which he was elected. The Commission recommended to the Supreme Court that Judge Servaas be formally removed from the office of judge of the 63rd District Court, 1st Division, and order the judge to pay costs, fees, and expenses in the amount of \$8,364.38.

On March 4, 2009, the Supreme Court heard Oral arguments. On July 31, 2009, the Supreme Court issued its opinion. On September 11, 2009, Chief Justice Kelly amended her opinion. A four-member majority of the Court voted for public censure of Judge Servaas.

Justices Weaver, Hathaway, and Cavanagh found that the Judicial Tenure Commission lacked the authority to bring an action against the Judge for vacating his office, ruling that only a *quo warranto* action filed by the Attorney General was the proper procedure to determine if a judge vacated his office. These Justices therefore did not reach the question of whether Judge Servaas vacated his office. Justices Markman, Corrigan, and Chief Justice Kelly ruled that the Commission had proper jurisdiction, as the existence of *quo warranto* procedures did not deprive the Commission of the ability to bring action for misconduct based on the same facts. These Justices ruled that Judge Servaas had vacated his office and violated the Michigan constitution Article VI, Sec. 20. Justice Young declined to address whether the Commission has the authority to determine if the judge vacated his office because Judge Servaas *admitted* that he changed his primary residence from the first to the second election division from August 2005 to February 2008. Given the judge's admission that he moved outside his election division 2, the Justice believed that a formal determination of the Commission's power to decide such a question was unnecessary.

Justices Young, Markman, and Corrigan also ruled that Judge Servaas lied under oath. Justice Young voted to remove Judge Servaas from office for this reason alone. Justices Markman and Corrigan found that Judge Servaas should be removed from office for both lying and vacating his office. Justices Markman and Corrigan ruled that public censure was the appropriate sanction for the sexual misconduct in Count III of the Formal Complaint.

Justices Weaver, Hathaway and Cavanagh ruled that the finding by the Commission that Judge Servaas vacated his office was null and void because the Commission lacked legal authority to bypass submission of the *quo warranto* action to the Attorney General. With respect to the claim against Judge Servaas for judicial misconduct involving the comment and two drawings of a sexual manner, the Justices found that the Judge's conduct was unquestionably inappropriate, and voted that under the unique circumstances of this case only public censure was required.

Chief Justice Kelly, in her amended opinion of September 11, 2009, ruled that Judge Servaas did vacate his office, and voted that public censure was the appropriate sanction for both vacating his office and for inappropriate sexual conduct.

1. Formal Complaint No. 85, Hon. Ben H. Logan

61st District Court

On August 24, 2009, the Judicial Tenure Commission issued Formal Complaint No. 85 against 61st District Court Judge Benjamin H. Logan, II, alleging, in major part, that the judge had allowed social or other relationships to influence release of a prisoner on bond. On September 8, 2009, Judge Logan filed his answer to the formal complaint.

In lieu of proceeding with the formal hearing, the Examiner and the judge entered into a Settlement Agreement on October 23, 2009 in which the judge consented to the Commission's findings of fact, findings of misconduct, and recommended discipline. The findings established that on June 17, 2008, the judge entered into a series of telephone calls with Paul Mayhue, then an elected member of the Kent County Board of Commissioners, concerning the arrest of James Vaughn, also a member of the Kent County Board of Commissioners, on a probable cause charge of aggravated domestic assault. Judge Logan was not handling arraignments on that date. While Mr. Vaughn was incarcerated Judge Logan directed his staff to obtain a copy of the initial police report, which was obtained by accessing the Grand Rapids Police Department's computer system from the court. He then directed that a fax be sent to the Kent County Correctional Facility reporting that he had set a personal recognizance bond for Mr. Vaughn with various conditions. Judge Logan did not contact the Grand Rapids Police for additional information, but relied on the initial investigation report in determining to authorize bond. The judge's actions violated standards of judicial conduct and created an appearance of impropriety which erodes public confidence in the judiciary.

On December 14, 2009, based on the consent agreement, the Commission issued a Decision and Recommendation to the Michigan Supreme Court that Judge Benjamin Logan be publicly censured, which was filed with the Supreme Court on December 16, 2009. As of December 31, 2009, the matter was pending before the Michigan Supreme Court.

B. NON-FORMAL COMPLAINT

1. Hon. Charles C. Nebel (Alger Probate Court)

On December 14, 2009, the Judicial Tenure Commission issued a Decision and Recommendation to the Michigan Supreme Court that Hon. Charles C. Nebel, a probate judge in Alger and Schoolcraft Counties, be publicly censured and suspended from exercising his judicial duties for a period of 90 days without pay. On July 24, 2009, Judge Nebel operated a vehicle while intoxicated, and while doing so travelled at speeds greater than 100 m.p.h. He subsequently pled guilty to and was convicted of operating a motor vehicle while impaired. Judge Nebel consented to the Commission's Findings of Fact and sanction recommendation and on January 27, 2010, the Michigan Supreme Court accepted the Commission's recommendation and issued an order publicly censuring Judge Nebel and suspending him from office without pay for 90 days.

2. Hon. Brenda K. Sanders (36th District Court)

On August 14, 2009, the Examiner and Judge Brenda K. Sanders entered into a Settlement Agreement in lieu of the Judicial Tenure Commission filing a formal complaint. The alleged misconduct involved inappropriate political activity while a judge or judicial candidate and inappropriate campaign conduct and soliciting contributions.

The findings established that while she was still a candidate for judge, Judge Sanders also filed to run for Mayor of Detroit in a special nonpartisan Detroit mayoral primary to complete the term of former Mayor Kwame Kilpatrick. After being elected to the position of judge on November 4, 2008, Judge Sanders remained a candidate on the ballot in the February 24, 2009 special primary. According to campaign rules, she was unable to timely remove her name from the ballot for the mayoral primary. Notwithstanding having been elected to the position of judge, Judge Sanders actively participated in certain campaign activities for a special February 24, 2009 primary, including appearing on a televised commercial-free program in which she discussed her platform for mayor, and referred to her "former" career as an attorney and her status as a "new face in our local government."

The findings also established that on the Statement of Organization Form for Candidate Committee, she identified herself, Brenda K. Sanders, as candidate for the position of 36th District Judge, as well as Treasurer and Designated Record Keeper, and similarly listed herself as treasurer on other related campaign forms. On her website, www.brendaksanders.com, Respondent solicited donations to her campaign of which she was manager and treasurer: "Please send donations to The Committee To Elect Brenda K. Sanders," by check, PayPal or "Email Funds to Brendak1233@yahoo.com."

Respondent knew, or should have known, that as a judicial candidate and as a judge, she was and is subject to the rules governing political and campaign conduct as provided in Canon 7 of the Michigan Code of Judicial Conduct and the Michigan Constitution 1963, art 6, and that she was prohibited from acting as her own treasurer or record keeper.

On December 14, 2009, based on the consent agreement, the Commission issued a Decision and Recommendation to the Michigan Supreme Court that Judge Sanders be publicly censured and suspended without pay for a period of twenty-one days. As of December 31, 2009, the matter was pending before the Michigan Supreme Court. The Court accepted the Commission's

recommendation and on January 27, 2010, issued an order publicly censuring Hon. Brenda K. Sanders and suspending her from office without pay for 21 days. *In re Sanders* (January 27, 2010)

C. NON-PUBLIC PROCEEDINGS

1. *Allowing Relationships to Influence Judicial Conduct or Judgment*

- A judge engaged in communications with various government officials which were directed toward having an impact on the prosecution of an individual facing a drunk-driving charge, who was represented by defense counsel, was himself an attorney, and, at the time, was a court employee. The Commission concluded that the judge allowed a social relationship to influence judicial conduct, and used the prestige of office in an attempt to advance the interests of others.
- A judge wrote a letter on official court stationery to another judge, seeking leniency for a friend who was scheduled to be sentenced in a drunk driving case. The Commission expressed its concern with the judge's failure to acknowledge the impropriety of her conduct, and noted that her use of official letterhead for a personal matter created an appearance that she was attempting to use the prestige of her office on behalf of a friend.
- A judge allowed his personal conflict with one court employee and his favoritism for another employee on his staff, to influence his judicial conduct and judgment. The Commission found that the judge compromised his professionalism and judicial integrity, and warned him not to permit his personal feelings to cloud his judgment in the future.
- A judge improperly assigned cases to himself where one party was a close friend whom he considered "family," and made favorable rulings to the party in those matters, without notifying the police or city attorney. The Commission found his actions created the appearance of favoritism, were improper or created an appearance of impropriety, were prejudicial to the administration of justice, and eroded the public's confidence in the dignity, integrity, and impartiality of the judiciary. However, the Commission also acknowledged the judge's acceptance of responsibility for his errors in judgment.
- A referee made comments suggesting prejudgment in a case, based on what had occurred in an unrelated case involving the sister of one of the parties. The Commission found that by so doing, the magistrate created the appearance that his professional relationship with the parties in an unrelated case influenced his judicial conduct or judgment.

2. *Delay*

- The Michigan Court of Appeals issued a remand order to a judge directing him to complete an evidentiary hearing and make a determination within 56 days from the date of the order. The judge did not issue a decision until 16 months after the remand order was issued. The Commission took issue with the judge's attempts to defer responsibility to others (including members of his staff), and his casual treatment of the case, as the remand order contained a deadline, and delay was the focus of two prior Commission investigations regarding the judge. Under those circumstances, he should have personally monitored the case or given specific instructions to his staff regarding the importance of the matter.
- A judge permitted a criminal case to remain pending over six years, with 26 adjournments of the trial date. The Commission noted that although an interlocutory appeal and frequent changes of counsel (as well as other general factors noted below) contributed to the delay, *no* criminal case should *ever* remain pending for over six years without reaching trial. The judge clearly had an obligation to take action and mandate that a trial occur at an earlier date. In addition, State Court Administrative Office filings by the judge reflected that he had an increasing number of criminal cases pending over 301 days during the last half of 2008 and the first half of 2009. Several were pending for years, and 35 were at issue at least six months longer than the 301-day guideline. The Commission acknowledged increased criminal filings, judicial turnover, shrinking budgets and resources, the judge's excused absences from court, and his duties as chief judge, contributed to the delay. However, the significant number of cases involving delay reflected the judge's failure to dispose promptly of the business of the court.
- The judge, in a divorce case involving minor children, held his decision under advisement for approximately 13 months. The judge also had eight other matters under advisement from between 140 and 423 days. The Commission found that the period of time taken to resolve those matters to be clearly excessive. The Commission advised the judge that he violated the Supreme Court Administrative Order regarding the time guidelines for resolving cases, and did not promptly dispose of the business of the court. The Commission recognized the judge's busy docket, and expressed encouragement by progress made by the judge to reduce the delay problems.
- The Commission found that the judge took over a year and a half to conclude a divorce case when the Supreme Court Administrative Order contemplates that such case be adjudicated within 364 days. Further, the Commission found that the judge held his decision under advisement for over 6 months when the Order provides that the decision should be made no later than 35 days. The Commission advised the judge that his failure to act with greater dispatch was inconsistent with Canon 3A(5) of the Code of Judicial Conduct which provides that judges should dispose promptly of the business of the court. The Commission recognized the court's heavy docket, took notice that

the judge had no history of delay, and concluded that this was an isolated incident.

- A judge improperly took matters under advisement in child protective services cases, and engaged in excessive delays to the detriment of minor children. In one case the judge delayed issuing an opinion for over one year, and in another refused to terminate the mother's parental rights regarding her child for 7½ years, even though her rights to her seven other children had been terminated. The Commission noted that taking over seven years to arrive at his decision was detrimental to the child. The Commission noted the judge's acknowledgment of his inappropriate conduct, but warned that the matter could be revisited if there were a similar occurrence in the future.

3. Treatment of Others when Acting in Judicial Capacity

- The Commission expressed concern about remarks by the judge in a show cause hearing. The judge stated that to enforce parenting time, if the parents had to "tie her up and bodily carry her out to the car [and] throw her in the backseat" it was "okay" and "fine" with him and that he did not "care." The judge described himself as being able to "take care" of "problems." The Commission found that the judge had a disturbing tendency to excessively personalize matters in his comments on the record. The Commission informed the judge that matters should be phrased more neutrally as legal issues to be addressed by the court and not personalized as a contest of wills between the judge and the parties in which the judge prevails. The Commission cautioned that greater discretion must be exercised.
- A magistrate directed an attorney to leave the courtroom during a proceeding, on the basis that it was an informal hearing. The Commission clarified the restriction relating to the presence of counsel. It advised the magistrate that the applicable law does not preclude the presence of an attorney. Although counsel cannot file an appearance or serve as an advocate on behalf of the defendant, an attorney may attend an informal hearing, and confer with a defendant. Therefore, counsel's presence, even in a conferring role, did not serve as a basis to remove him from the courtroom.
- The judge demonstrated a harsh, impatient attitude toward a party who was attempting to maintain his full 50/50 shared physical custody parenting time with his son, implying that those arrangements reflect that no one cares about the child. He also became unjustifiably angry with the party's attorney and suggested he was in contempt when he attempted to clarify the record. The Commission noted it had addressed issues of inappropriate conduct with the judge in the past, and sternly advised him to be more aware of, and to modify, his demeanor.
- Bias in favor of members of children's families caused the judge to ignore the best interests of some children in matters of placement and adoption cases, and denied other interested parties a fair hearing. The judge refused to follow

controlling statutory criteria so as to achieve a certain desired result, determined that a Court of Appeals peremptory order was just “procedural,” and refused to follow the law regarding placement of children in termination of parental rights cases. He also made rude and offensive statements to attorneys, both on and off the bench. The Commission reminded the judge of the need for judicial impartiality, to be more prudent and professional in his dealings with attorneys and parties, and to avoid improper, prejudicial, or crude remarks.

- A referee made unnecessarily harsh and exaggerated comments, behaved in a curt, impatient fashion, cut off a party’s attorney, and as a result misunderstood the nature of the plaintiff’s complaint. The Commission found his demeanor did little to promote confidence in the integrity and impartiality of the judiciary, and conflicted with his adjudicative duties to be patient, dignified, and courteous to litigants and lawyers.
- A magistrate personalized matters resulting in emotional decisions that lacked or appeared to lack impartiality, and created, at the very least, an appearance of biased treatment. He made written statements on judgments that suggested his decision was not based on the merits, but rather on his bias against the plaintiff company. In one case, the magistrate offered a general assertion that in his opinion “any” judgment for the plaintiff “would be unfair to the public.” The Commission noted that although his actions were not proper, they were not made in bad faith. The Commission advised the referee not to rule out of reaction to his perceived sense of propriety or justice, and without regard to the merits of the matters before him.
- The judge made inappropriate remarks concerning the ethnicity of a party and an attorney. The judge represented that her remarks were meant to be humorous, but acknowledged they were inappropriate and failed to promote public confidence in the integrity and impartiality of the judiciary. She provided written apologies to both men. The Commission advised the judge that it appreciated her contrite response, and warned her to be more circumspect with her comments in the future.

4. *Treatment of Others When Acting in an Administrative Capacity*

- The judge failed to show any concern for the actions of his clerk, who took a ticket to the magistrate for dismissal without advising him it was her husband’s ticket, and instead wrongly focused blame on the court administrator, who had tried to correct the situation, and with whom he had a personal conflict. The Commission concluded his conduct was contrary to the standards of judicial conduct and the Code of Judicial Conduct.

5. *Failure to follow the law*

- The Commission concluded that a judge's policy where he imposed added conditions on certain adoptions went beyond a reasonable interpretation of what could be imposed for the best interests of the child. The Commission acknowledged that the judge admitted his policy could have had some consequences which he did not consider, and represented he would not impose it on any future adoptions. The Commission believed that the existence of the policy likely caused potential adoptive parents to refrain from pursuing an adoption, and concluded it was not consistent with, or contemplated under, the law.
- A judge failed to consider the best interests of children as required by statute, particularly with respect to placement when parental rights have been terminated. He further engaged in retaliatory conduct toward a party after a successful appeal of the judge's ruling, and refused to refer matters to the appropriate state agency, as required by law when parental rights were terminated.
- A judge improperly took matters under advisement in child protective services cases, and failed to follow Court of Appeals rulings regarding the best interests of children, in the consideration of the termination of parental rights.

6. *Disqualification*

- A judge failed to disqualify himself in a case involving his court clerk's husband, and engaged in other actions reflecting favoritism toward the court clerk and his personal conflict with the court administrator.

7. *Improper Political Activity*

- The Commission found that the judge violated the Code of Judicial Conduct Canons 7A(2) and 5B(2) by speaking at a partisan fundraising event, and having his name listed as an event supporter on a flyer.

8. *Lack of Candor with the Commission*

- A court clerk brought a ticket to a magistrate for dismissal, without disclosing it involved her husband. The court administrator, on learning of the dismissal, transferred the case to another court on her own initiative. The judge, on learning what occurred, returned the case to the court. The judge's statements to the Commission reflected a lack of candor and an intent to manipulate the truth, in part, presumably, to defend his court clerk's questionable conduct. It further appeared that the judge's comments were

meant to discredit the court administrator, with whom the judge had a personal and professional conflict.

- A judge wrote a letter on official court stationery to a sentencing judge, to evoke sympathy and leniency for the judge's friend. In her reply to the Commission, the judge claimed her purpose was simply to advise the sentencing judge of her friend's health status. The Commission expressed its concern that the judge failed to acknowledge the impropriety of her conduct in any way.
- A judge failed to respond to several issues that the Commission had raised in a letter requesting his comments, and intimated that because the issues could be appealed, the Commission lacked jurisdiction. Ultimately, the Commission requested the judge to provide a sworn statement to resolve conflicting issues. The judge complied, and conceded he should have provided a more extensive reply to the Commission's original request for comment.

V. COMMISSION ORGANIZATION, STAFF AND BUDGET

A. COMMISSION ORGANIZATION AND STAFF

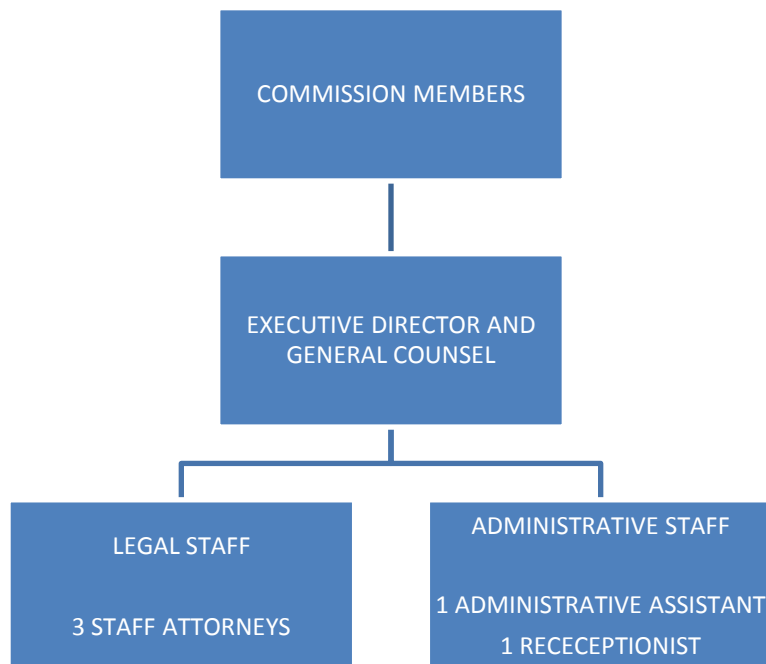
The Commission has 6 staff positions, including 4 attorneys and 2 support staff.

The Executive Director and General Counsel is hired by, and reports directly to the Commission. The Executive Director oversees the intake and investigation of complaints and is the examiner handling the formal proceedings. The Executive Director is also the primary liaison between the Commission and the judiciary, the public, and the media. Paul J. Fischer has served as Executive Director and General Counsel since January 1, 2001.

The Commission bid a fond farewell to long-serving staff attorney Tom Prowse, who retired in September 2009 after 35 years of devoted service. Tom's institutional memory, his perspective, and his wise counsel will be sorely missed. The Commission welcomes Glenn Page to its staff as its newest staff attorney.

The Commission's legal staff is comprised of Anna Marie Noeske, and Casimir J. Swastek, and Glenn J. Page, the staff attorneys who are responsible for the evaluation and investigation of grievances. The staff attorneys serve as associate-examiners during formal proceedings. The examiner is responsible for preparing cases for hearing and presenting the evidence that supports the charges before the master. The examiner handles briefing regarding master's reports, and presents cases orally and in writing in hearings before the Commission and the Michigan Supreme Court.

The Commission's administrative staff is comprised of Camella Thompson, its Administrative Assistant; and Celeste R. Robinson, Receptionist. All Commission staff members are state employees.



B. BUDGET

The Commission's budget is included in the budget of the Supreme Court. For the 2009 fiscal year (October 1, 2008 – September 30, 2009), the Commission spent \$1,001,490.00, which was \$28,890.00 over budget, due to increased expenses for several hearings and for retirement issues, and in light of the \$40,500.00 mid-year budget reduction. Funds to cover the shortfall were transferred in from other general fund lines. The Commission continues to do its part to keep its expenditures to a minimum due to the state's general budget crisis. For example, the Commission implemented six unpaid furlough days for its employees.

