

State of Michigan

Judicial Tenure Commission

Annual Report 2010



Judicial Tenure Commission
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jtc.courts.mi.gov

COMMISSIONERS

THOMAS J. RYAN, ESQ.
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JUDGE Nanci J. Grant
VICE CHAIRPERSON
JUDGE DAVID H. SAWYER
SECRETARY
JUDGE PABLO CORTES
NANCY J. DIEHL, ESQ.
JUDGE JOHN D. HAMILTON
BRENDA L. LAWRENCE
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JUDGE JEANNE STEMPIEN



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May 10, 2011

Honorable Justices of the Michigan Supreme Court
Honorable Rick Snyder, 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 2010. 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 black ink, appearing to be "TJ" followed by a stylized flourish.

Thomas J. Ryan
Chairperson
For the Commission

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COMPOSITION OF THE COMMISSION – 2010

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 expired December 31, 2010

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
32765 5 Mile
Livonia, Michigan 48154
Elected by Judges of Limited Jurisdiction
Member Since February 7, 2003
Current Term expired 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, 2013

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. David H. Sawyer
Judge, Michigan Court of Appeals
3020 W. Grand Boulevard
Grand Rapids, MI 49503
Elected by Court of Appeals Judges
Member Since January 1, 2010
Current Term expires December 31, 2012

Marja M. Winters
65 Cadillac Square, Ste. 2300
Detroit, Michigan 48226
Appointed by Governor
Member Since January 1, 2008
Current Term expired 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. 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. Judge Grant is the Chief Judge of the Sixth Circuit Court of Michigan and currently serves as the Commission's Vice-Chairperson.

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.

Hon. 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.

Hon. 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 from May 2001 to April 2011, 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 Chairperson.

Hon. David H. Sawyer was elected to the Court of Appeals in 1986. He was elected to the Judicial Tenure Commission by his fellow Court of Appeals judges for a term that began on January 1, 2010, and currently serves as the Commission's Secretary. Judge Sawyer currently is Chief Judge Pro Tem of the Michigan Court of Appeals. Before being elected to the bench, he was the Kent County Prosecuting Attorney from 1977 to 1987. Judge Sawyer is a Past President of the Michigan Prosecuting Attorneys Association. He received his Bachelor of Science degree from the University of Arizona in 1970 and received his law degree from Valparaiso University School of Law in 1973.

Hon. Jeanne Stempien is the Presiding Judge of the Civil Division of the Wayne County 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

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



First Row

(Seated) Thomas J. Ryan, Esq. Hon. Kathleen J. McCann, Hon. Nanci J. Grant
(Vice Chairperson) (Chairperson) (Secretary)

Standing Middle Row (Left to Right)

Marja M. Winters, Nancy J. Diehl, Hon. Jeanne Stempien, Hon. Eugene A. Moore

Standing Back Row (Left to Right)

Paul J. Fischer, Executive Director, Richard Long, Hon. David H. Sawyer

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 16th District Court Judge Kathleen J. McCann, who also served as the Commission's Chairperson, and welcomes her successor, Judge Pablo Cortes, elected by judges of limited jurisdiction. The Commission bids farewell to Oakland County Probate Judge Eugene Arthur Moore and welcomes his successor Iosco County Probate Judge John D. Hamilton, elected by the probate judges. The Commission bids farewell to Ms. Marja M. Winters, and welcomes her successor Mayor of Southfield, Brenda L. Lawrence, appointed by Governor Jennifer Granholm.

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

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

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.

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 2010 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).

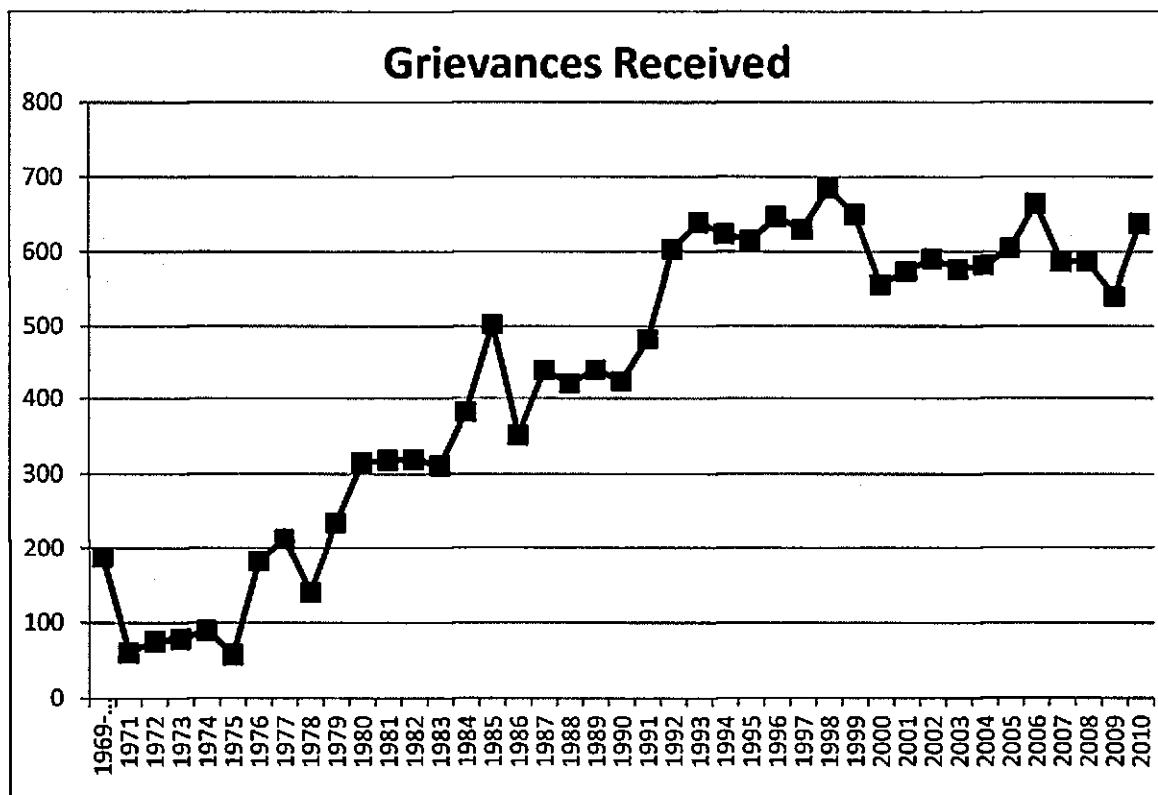
III. 2010 STATISTICS

A. COMPLAINTS RECEIVED AND INVESTIGATED

In 2010, the Commission received 927 requests for "Requests for Investigation" forms. There were 638 Requests for Investigation filed in 2010.

2010 CASELOAD	
Cases Pending on 1/1/10	70
New Grievances Considered	638
Cases Concluded in 2010	600
Cases Pending on 12/31/10	108

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.

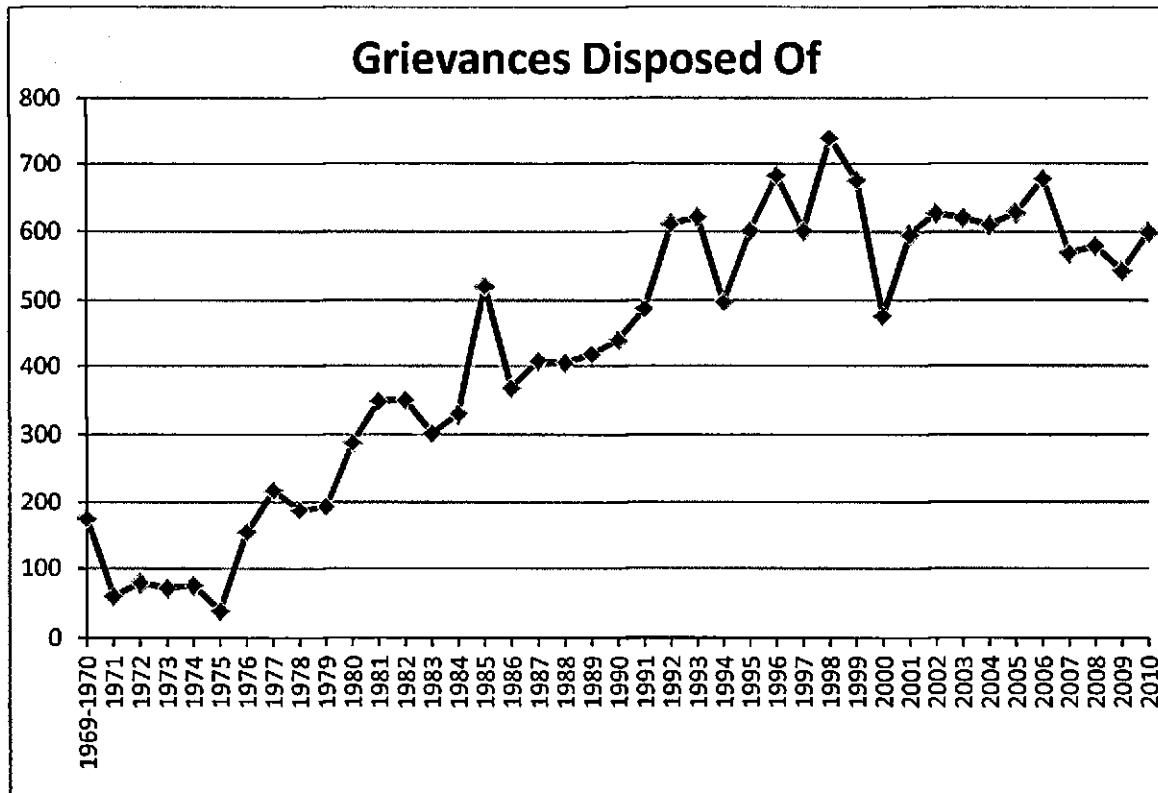
The Commission also received grievances concerning individuals and matters that did not come under the Commission's jurisdiction: federal judges, former judges, workers' compensation judges, other government officials and miscellaneous individuals. Commission staff responded to each of these complaints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

The number of judgeships within the Commission's jurisdiction has remained fairly constant at 1259.

JUDICIAL POSITIONS	
Supreme Court Justices	7
Court of Appeals Judges	28
Circuit Court Judges	219
Probate Court Judges	103
District Court Judges	258
Municipal Court Judges	4
Magistrates	258
Referees	382
TOTAL	1,259

B. COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the Commission in 2010, regardless of when the complaints were received. In 2010, the Commission disposed of 600 cases.



C. CLOSED WITHOUT ACTION

In 569 of the 600 cases closed in 2010, 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 2010, the Commission issued three letters of admonishment, six letters of caution, and two letters of explanation. Each of these dispositions are summarized in Section IV.

E. FORMAL COMPLAINTS

The Commission issued two formal complaints in 2010. They are summarized in Section IV.

Formal Complaint No. 86 – Referee David G. Meyers

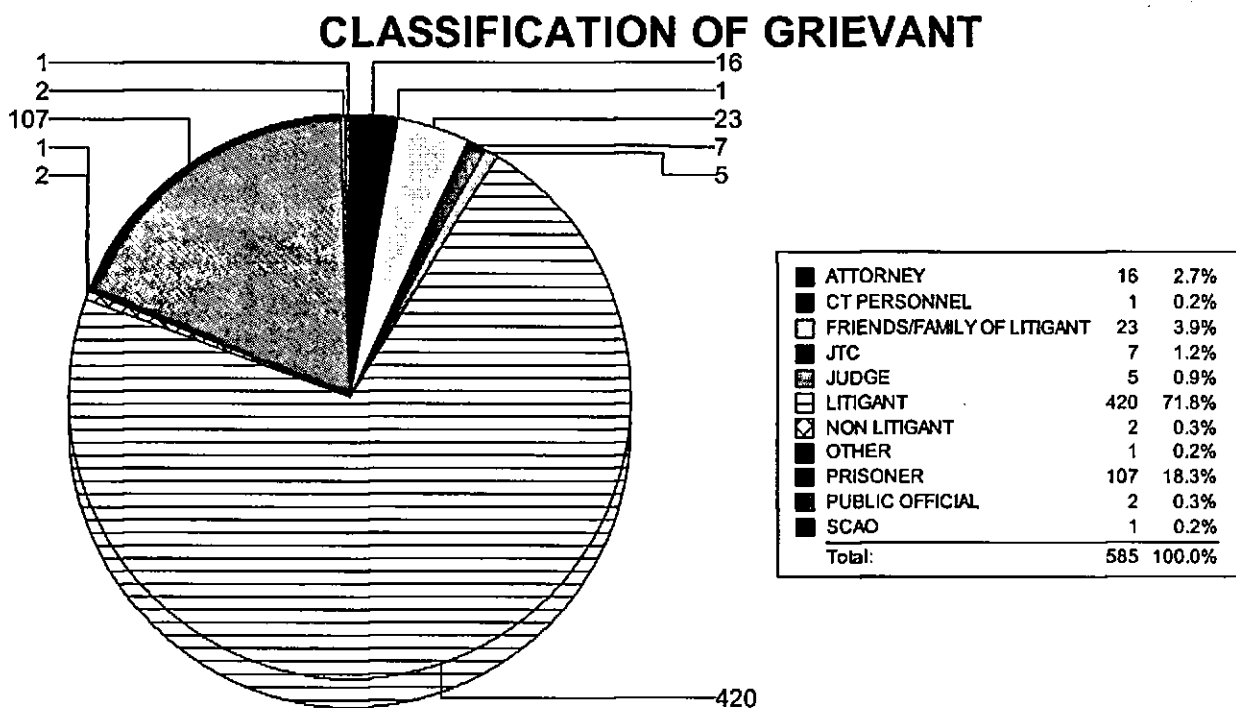
Formal Complaint No. 87 – Hon. James M. Justin

F. SUMMARY OF GRIEVANCES CONSIDERED IN 2010

The 638 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 638, 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, 90% of the total.

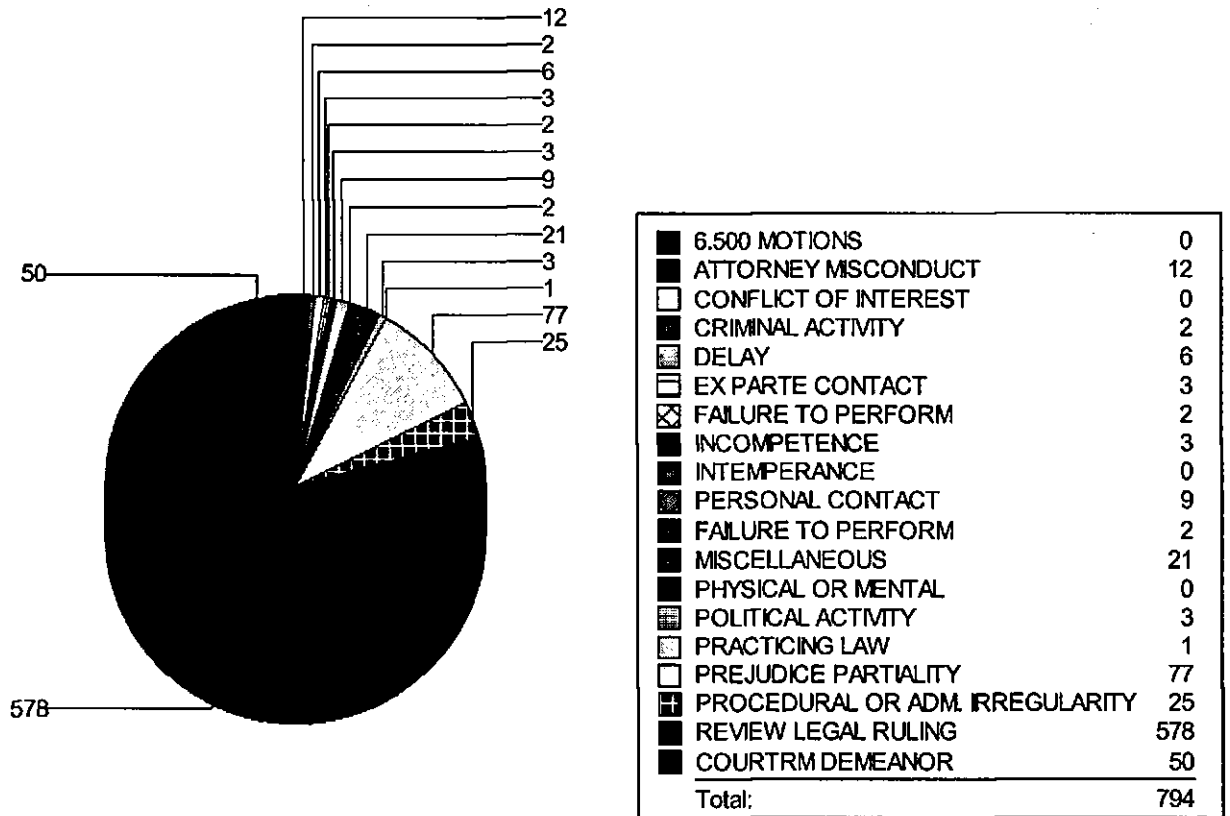


H. SUBJECT MATTER OF GRIEVANCES

Nearly 73% 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

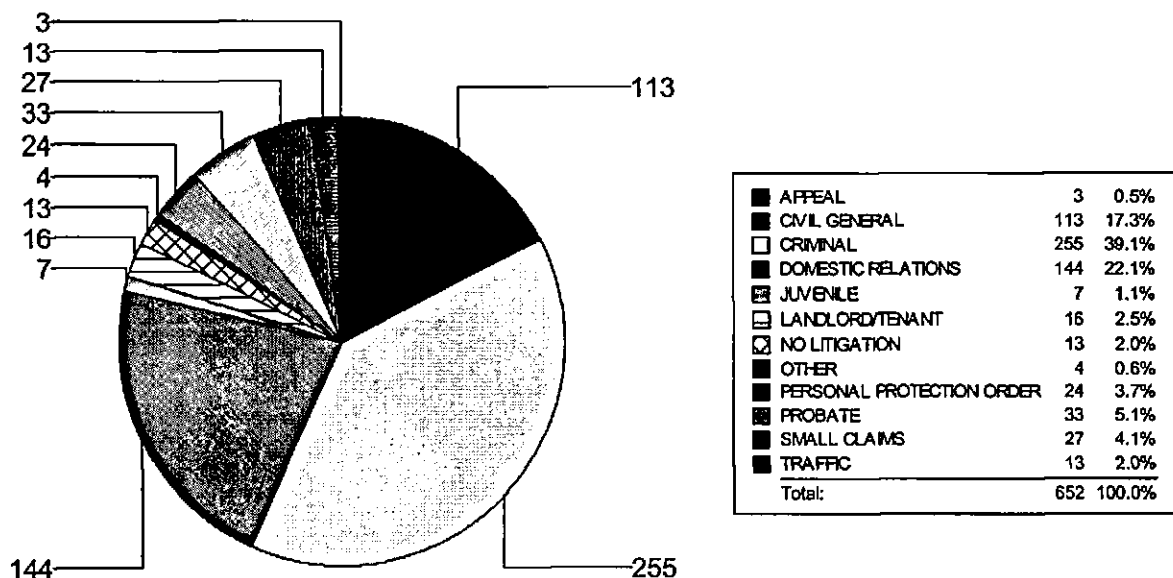
Breakdown by Category



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.

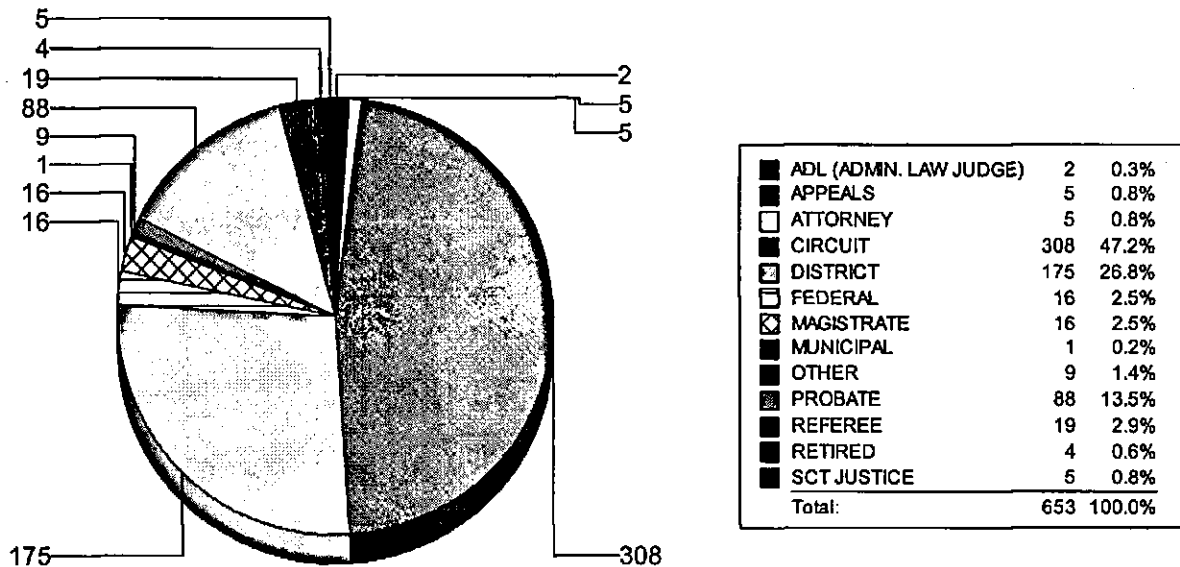
Nature of Litigation



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.

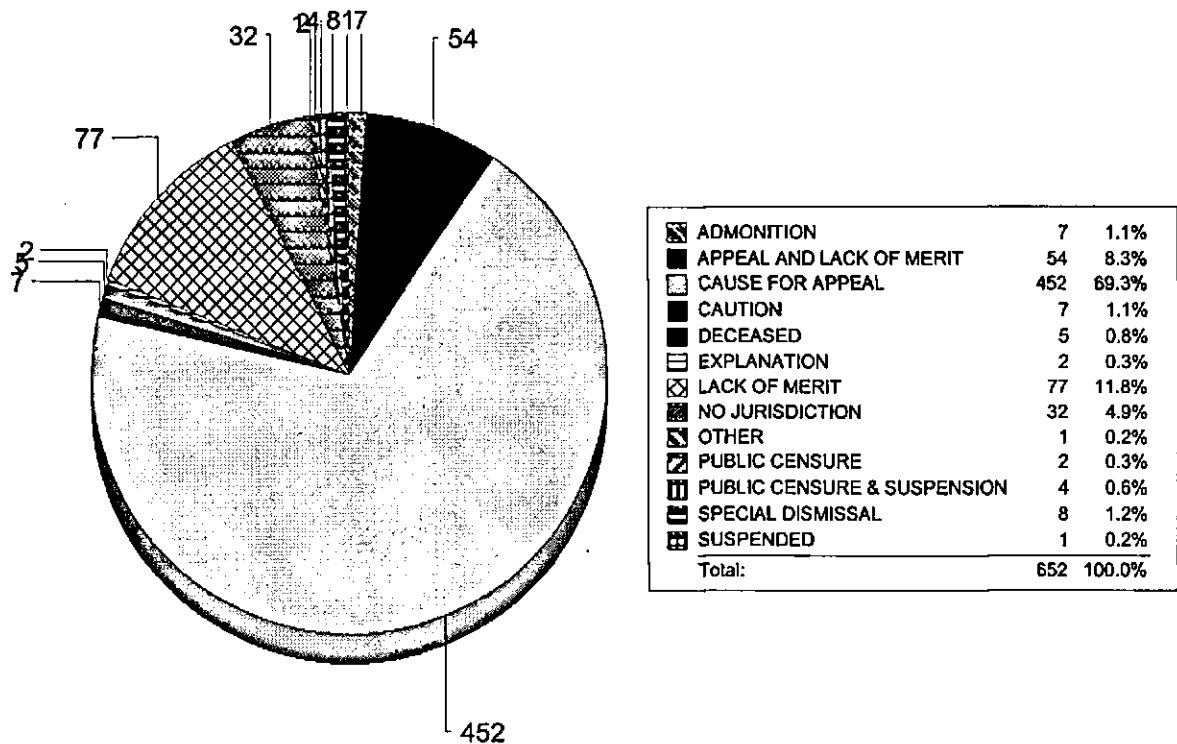
CLASSIFICATION OF RESPONDENT



K. DISPOSITIONAL BREAKDOWN

There were four public censures by the Michigan Supreme Court, and there were no voluntary resignations or retirements as a result of formal proceedings in 2010. The Commission issued two letters of explanation, six letters of caution and three 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. 85, Hon. Benjamin Logan

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 consent agreement concluded that the judge's actions violated standards of judicial conduct and created an appearance of impropriety which erodes public confidence in the judiciary.

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.

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. On March 12, 2010, the Supreme Court remanded the matter to the Commission for further explanation, which the Commission provided on May 3, 2010.

On July 2, 2010, the Supreme Court accepted the recommendation and ordered that Judge Logan be publically censured. Justice Markman concurred in part and dissented in part (with Justices Corrigan and Young joining), agreeing that at a minimum, the discipline was appropriate, but noting that he would remand the matter to the Commission for further explanation to determine if significantly greater discipline was appropriate. Justice Weaver did not take part in the decision.

**2. Formal Complaint No. 86, Ref. David G. Myers
Sanilac County Friend of the Court**

On June 15, 2010, the Judicial Tenure Commission issued Formal Complaint No. 86 against Sanilac County Friend of the Court Referee David G. Myers, alleging that on September 23, 2009, he operated a vehicle while intoxicated in Caro, Michigan. The complaint further alleged that on January 29, 2010, Referee Myers pled guilty to a charge of operating a motor vehicle while intoxicated, pursuant to MCL 257.625(1), in *People v David G. Myers*, 71-B District Court Case No. 2009-1198-SD. On that same date, Respondent was sentenced to pay costs and fines, attend Alcoholics Anonymous, and serve probation for three months.

Referee Myers admitted the underlying facts alleged in the complaint, but asserted that his actions did not constitute misconduct, or in the alternative that a nominal sanction should be entered based on his actions directed toward admitting his responsibility for his conduct. He consented to waiving a formal hearing before a master, and to conduct a hearing before the Commission to address sanctions. After briefing by both Referee Myers and the Examiner, oral argument was held before the Commission on September 13, 2010.

On October 11, 2010, the Commission issued a Decision and Recommendation that Referee Myers be publically censured, and suspended without pay for 90 days. Referee Myers passed away on October 24, 2010, prior to the date for submitting a petition to reject or modify the Decision and Recommendation. The Commission petitioned the Court to remand the matter, and the Commission dismissed the case.

**3. Formal Complaint No. 87, Hon. James M. Justin
12th District Court**

On November 10, 2010, the Commission filed Formal Complaint No. 87 against Judge James M. Justin of the 12th District Court. The complaint alleged that Judge Justin improperly dismissed traffic tickets, engaged in ex parte communications, violated the law regarding sending abstracts of convictions to the Secretary of State, improperly disregarded plea agreements, excessively delayed cases, violated the law in issuing peace bonds, interfered in a case assigned to another judge, and made misrepresentations to the Commission.

On June 15, 2010, prior to the filing of the formal complaint, the Commission filed a Petition for Interim Suspension with the Michigan Supreme Court, based on information from the preliminary investigation. On July 19, 2010, the Supreme Court suspended Judge Justin with pay until further order of the Court.

On November 29, 2010, pursuant to the Commission's petition filed with the formal complaint, the Supreme Court appointed Hon. Pamela J. McCabe as Master to conduct the public hearing on the formal complaint. On December 13, 2010, the Master held a pretrial conference, and as of December 31, 2010, the formal hearing was scheduled to begin on January 24, 2011.

B. NON-FORMAL COMPLAINT

1. Hon. Charles C. Nebel (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. The recommendation included allegations that 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, conclusions of law, and recommendation as to sanction. On January 27, 2010, the Supreme Court ordered that the judge be publically censured and suspended, without pay, for a period of 90 days, effective 21 days from the date of the order.

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 the 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. 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.

3. Hon. Richard B. Halloran (3rd Circuit Court)

On September 14, 2009, the Examiner and Judge Richard B. Halloran, Jr. of the Third Circuit Court entered into a settlement agreement in lieu of the Judicial Tenure Commission filing a formal complaint. The alleged misconduct involved Judge Halloran failing to timely resolve numerous family law cases within the 364 days contemplated by Supreme Court Administrative Order 2003-7 governing Case Flow Management Guidelines. Judge Halloran was also alleged to have dismissed cases before the cases reached the same threshold.

The facts established by the stipulation showed that Judge Halloran failed to timely adjudicate at least 30 family law cases within the guidelines, and to have arbitrarily dismissed other cases as the guidelines approached in order to avoid detection of those cases as being out of compliance.

On October 12, 2009, based on the consent agreement, the Commission issued a Decision and Recommendation to the Supreme Court. The Commission found that Judge Halloran breached the standards of judicial conduct by failing to dispose promptly of the business of the court, contrary to Canon 3A(5) of the Michigan Code of Judicial Conduct and failing to exercise personal responsibility for his own behavior and for the proper conduct and administration of justice in which he presided, contrary to Michigan Court Rule 9.205(A). The Commission recommended that Judge Halloran be publicly censured, with two dissenting members also recommending a 14 day suspension.

On July 2, 2010, the Supreme Court entered an order adopting the findings and conclusions of the Commission. The Supreme Court publicly censured Judge Halloran and suspended him for 14 days.

C. NON-PUBLIC PROCEEDINGS

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

- The Commission reproached a judge for his conduct regarding several related cases. It noted that it appeared that an attorney involved in the proceedings was making the decisions, instead of the judge. The judge's conduct in the cases contributed to immeasurable harm, excessive costs, and substantial time for the parties and attorneys, which was avoidable if the judge acted the confines of his judicial office. The Commission was deeply concerned that the judge failed to acknowledge impropriety or even an appearance of impropriety, and exhorted the judge to act more circumspectly in the future.

- A judge allowed made numerous questionable appointments of conservators and guardians relating to the fiscal and physical care of wards of the court. In one case, the appointments numbered so many that the judge could not keep track of them. In several matters, those appointed engaged in numerous acts to the detriment of the individual, while the judge shielded from accountability, and failed to take action to investigate claims of impropriety.

2. *Delay*

- A judge failed to render a decision regarding a custody and visitation dispute for well over two years after the matter was remanded from the Court of Appeals. The judge's conduct contributed to an almost six-year period where visitation was suspended and the issue was under legal review (including the time the matter was on appeal), and the Commission noted that the judicial delay likely exacerbated the process of reuniting the parent and child.
- An order submitted to a judge's office for signature was not given to the judge until four weeks after receipt by the judge's staff, and was not mailed to counsel until three weeks after signature and entry. The Commission advised the judge that a review of policies regarding document tracking in the judge's chambers may be in order, to insure that paperwork is processed in an efficient manner.

3. *Treatment of Others when Acting in Judicial Capacity*

- A judge failed to post a dress code for those appearing in her court, but determined a female attorney dressed inappropriately when she appeared in a sleeveless dress. The Commission acknowledged that a judge has a right to establish and maintain certain standards for appropriate dress in a courtroom, but the restriction on sleeveless dresses was not posted on the door of the courtroom, or included in a lengthy list of rules which the court officer read prior to the judge taking the bench. The Commission noted that although the attorney contributed to the altercation, the judge chastised her at length in open court about "disrespecting" court staff and the "authority of the court," and when the attorney attempted to apologize. The judge instead should have addressed the matter at the bench in a more appropriate, professional, and dignified manner.
- A judge failed to allow a litigant to consult with counsel concerning his ability to comply with the terms of a document, in spite of requests made by both the party and his attorney. The judge also badgered the individual with questions before allowing the party an opportunity to read the document, or consult with counsel. The Commission noted that the judge denied that she had engaged in the alleged conduct, yet a transcript confirmed her actions.

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

- A judge demonstrated a lack of civility and professionalism toward other judges and court staff, and was unwilling to follow court procedures. In addition to spreading gossip and expressing hostility to others, the judge placed court staff in the middle of an attempt to compel employees to side with him or others in disputes. The Commission acknowledged the judge's representations to work to develop more mature, professional, and productive relationships, and to avoid acts of pettiness and retaliatory conduct.

5. *Failure to follow the law*

- A judge improperly limited the actions of guardians and conservators in cases, by freezing assets of developmentally disabled individuals so that even nominal purchases could not be made, demanding supporting documents for accountings approved years earlier, and imposing difficult or impossible requirements on those who had been caring for developmentally disabled individuals for years. The judge's actions caused increased appearances and attorney costs, contributing to the depletion of assets of the wards.
- A judge failed to follow the law regarding jury selection during the trial of a civil case. The judge also made comments that suggested he would continue to follow his version of the law until removed from the bench or ordered to have a new trial, and that if his version of the law did not prevail, he would have to decide whether he can function as a judge. The Commission advised the judge that he cannot disregard the law, and that it is inappropriate for a judge to make comments that suggest that he would not follow the law.

6. *Disqualification*

- A judge failed to timely raise the issue of disqualification from a case involving a party the judge had represented while in private practice, within the preceding two years from the date the case was filed. The judge was notified that the case involving a former client was assigned to him shortly after it was filed, but the disqualification did not occur until four months after filing. During that period, a scheduling order was issued with the judge's name stamped on it (although the judge was not involved in the scheduling conference), which gave the appearance that the judge was presiding over the case.
- A judge delayed hearing on a motion for disqualification for an extended period, while continuing to issue orders in the case.

7. *Improper Political Activity*

- A judge served as "honorary chair" for his son-on-law's judicial campaign. The Commission determined that the judge created a perception that he was acting as a member of a campaign committee for a candidate for judicial office in violation of MCJC Canon 7. The title "honorary" did not adequately

distinguish the judge from other members of the committee, and the prominent display of his name and title on campaign material contributed to the perception that he played a greater role than other supporters, whether he did or not.

8. *Misuse of Judicial Office*

- The Commission reproached a judge for using the prestige of her office in an attempt to assist her son in removing a default judgment regarding a traffic citation from another jurisdiction. The Commission also found that the judge used her court staff, court equipment, official court letterhead stationery and envelopes for her personal business in violation of the code of judicial conduct.

V. COMMISSION ORGANIZATION, STAFF AND BUDGET

A. COMMISSION ORGANIZATION AND STAFF

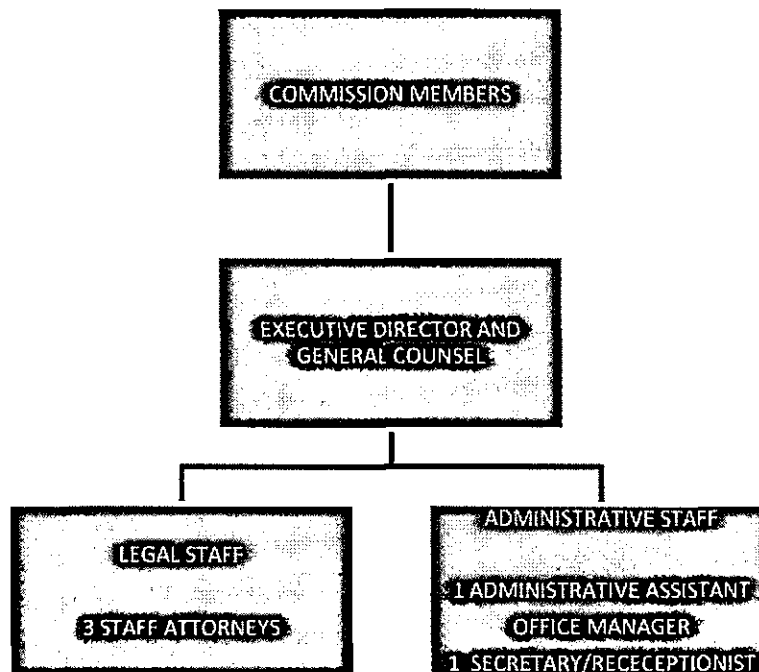
The Commission has 6 staff positions, including the Executive Director, 3 staff attorneys and 2 support staff.

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 Attorney Anna Marie Noeske, who retired in November 2010 after 22 years of devoted service. Anna's perspective, and her wise counsel will be sorely missed.

The Commission's legal staff is comprised of Senior Staff Attorney, Anna Marie Noeske, 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 support staff is comprised of Senior Administrative Assistant/Office Manager, Camella Thompson; and Celeste R. Robinson, Secretary/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 2010 fiscal year (October 1, 2009–September 30, 2010), the Commission spent \$845,326, which was \$124,374 under budget. The unused portion of the budget was returned to the funding unit. The Commission continues to do its part to keep its expenditures to a minimum.

