

State of Michigan  
Judicial Tenure Commission

Annual Report 2012



Judicial Tenure Commission  
Cadillac Place  
3034 W. Grand Blvd.  
Suite 8-450  
Detroit, Michigan 48202  
(313) 875-5110  
[jtc.courts.mi.gov](http://jtc.courts.mi.gov)

**COMMISSIONERS**

HON. NANJI J. GRANT  
**CHAIRPERSON**  
HON. DAVID H. SAWYER  
**VICE CHAIRPERSON**  
HON. PABLO CORTES  
**SECRETARY**  
HON. MONTE J. BURMEISTER  
NANCY J. DIEHL, ESQ.  
DAVID T. FISCHER  
HON. MICHAEL M. HATHAWAY  
BRENDA L. LAWRENCE  
THOMAS J. RYAN, ESQ.



PAUL J. FISCHER, ESQ.  
**EXECUTIVE DIRECTOR**  
& GENERAL COUNSEL

3034 W. GRAND BLVD., STE 8-450  
CADILLAC PLACE BUILDING  
DETROIT, MICHIGAN 48202  
TELEPHONE (313) 875-5110  
FAX (313) 875-5154

State of Michigan

**Judicial Tenure Commission**

April 8, 2013

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 2012. 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 that reads "Nanci J. Grant".

Nanci J. Grant  
Chairperson  
For the Commission

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## COMPOSITION OF THE COMMISSION – 2012

**Thomas J. Ryan, Esq., Chairperson**

2055 Orchard Lake Road  
Sylvan Lake, MI 48320  
(248) 334-9938  
Term Exp 12/31/13  
Elected by State Bar Membership

**Hon. Nanci J. Grant – Vice Chairperson**

Judge, 6<sup>th</sup> Circuit Court  
1200 N. Telegraph Road, Dept. 404  
Pontiac, MI 48341  
(248) 858-0358  
Term Exp 12/31/12  
Elected by Circuit Court Judges

**Hon. David H. Sawyer, Secretary**

Judge, Michigan Court of Appeals  
350 Ottawa Ave. NW  
Grand Rapids, MI 49503  
(616) 456-1811  
Term Exp 12/31/12  
Elected by Court of Appeals Judges

**Hon. Pablo Cortes**

62A District Court  
2650 DeHoop Ave. SW  
Grand Rapids, MI 49509  
(616) 257-9814  
Term Exp 12/31/13  
Elected by Judges of Limited Jurisdiction

**Nancy J. Diehl, Esq.**

3034 W. Grand Blvd., Suite 8-450  
Detroit, MI 48202  
(313) 875-5110  
Term Exp 12/31/11  
Elected by State Bar Membership

**David T. Fischer**

3034 W. Grand Blvd., Suite 8-450  
Detroit, MI 48202  
(313) 875-5110  
Term Exp 12/31/11  
Appointed by Governor

**Hon. John D. Hamilton**

Chief Judge, Iosco County Probate Court  
422 Lake, POB 421  
Tawas City, MI 48764  
(989) 984-1031  
Term Exp 12/31/14  
Elected by Probate Judges

**Mayor Brenda L. Lawrence**

3034 W. Grand Blvd., Suite 8-450  
Detroit, MI 48202  
(313) 875-5110  
Term Exp 12/31/13  
Appointed by Governor

**Hon. Jeanne Stempien**

Judge, 3<sup>rd</sup> Circuit Court  
2 Woodward, #1719, CAYMC  
Detroit, MI 48226  
(313) 224-5207  
Term Exp. 12/31/12  
Elected by State Bar Membership

## BIOGRAPHIES

**Hon. Pablo Cortes** Hon. Pablo Cortes is a District Court Judge in the city of Wyoming, Kent County. He was appointed to his seat in 2005 and subsequently elected in 2006 and 2008. From 1995 until taking the bench, Judge Cortes served as an Assistant Prosecuting Attorney for Kent County. Judge Cortes graduated from the University of Michigan in Ann Arbor with honors in 1989 and from Wayne State University Law School in Detroit in 1995. He was elected to the Judicial Tenure Commission in 2010. Aside from his service on the commission and various community groups, Judge Cortes serves on the board of the Michigan District Court Judges Association and its Legislative Committee. He is also an Adjunct Professor at both the Thomas M. Cooley Law School in Grand Rapids and the Grand Rapids Community College Police Academy.

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**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. She is currently serving her third term, which began on January 1, 2012. Ms. Diehl has a B.A. from Western Michigan University and a J.D. from Wayne State University.

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**David T. Fischer** is Chairman and Chief Executive Officer of The Suburban Collection, the 13<sup>th</sup> largest automotive group in the U.S. and one of the largest privately-held automotive groups in Michigan. It encompasses 29 brands across 45 locations throughout Michigan, southeast Florida, and recently southern California. The Suburban Collection also operates state-of-the-art collision centers throughout Michigan. Mr. Fischer has been honored with the Time Magazine Quality Dealer Award, the General Motors Dealer of the Year Award, and Ford Motor Company's "Salute to Dealers" award for automotive excellence and community service.

Mr. Fischer serves as Chairman Emeritus of the North American International Auto Show. He also serves on the Board of Trustees for the College for Creative Studies and has chaired the Campaign Committee supporting the renovation of the historic Argonaut building as part of the CCS campus. Mr. Fischer received an Honorary Doctorate in Fine Art from CCS as well.

David Fischer was recently elected Emeritus Director of the Detroit Institute of Arts, and also supports the Detroit Symphony and the Museum of Contemporary Art Detroit. Mr. Fischer and his wife Jennifer actively support more than 20 charitable organizations including the American Cancer Society, the Juvenile Diabetes Research Foundation, Make-A-Wish and Forgotten Harvest. The Suburban Collection, under David Fischer's leadership, has been a flagship sponsor of "Making Strides against Breast Cancer" and for the past ten years has been a sponsor of the "Teacher of the Year" program. In 2010 The Suburban Collection joined Ford in the launch of Ford Mobile Food Pantries, an initiative to bring food to those in need throughout metro Detroit. The initiative also serves as a pilot for a national dealer program to feed the hungry.

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**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 served as the Commission's Secretary, and currently serves as the Commission's Vice-Chairperson.

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**Hon. John D. Hamilton** is serving his third term as Chief Judge of Probate for the County of Iosco and Presiding Judge of Iosco Family Court in the 23rd Judicial Circuit. He was elected to the Judicial Tenure Commission by his fellow Probate Court Judges for a term that began on January 1, 2011. Judge Hamilton graduated from Michigan State University in 1974 and from the Detroit College of Law in 1977. Prior to being elected to the bench, he had a private law practice in East Tawas specializing in banking, corporate, probate, and family law. He is Past President of the National MSU Alumni Association, organizer and Past President of the Iosco County MSU Alumni Association, past board member and officer of the Tawas Area Chamber of Commerce, Past President and Officer of the Tawas Area Lion's Club, and a member of numerous civic/service organizations and clubs. He has been married for 33 years to his wife Jeanne (a retired teacher) and has two married daughters and two grandchildren.

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**Brenda Lawrence** Mayor Brenda L. Lawrence is a long-time resident of the City of Southfield. A product of Michigan's public school system, Mayor Lawrence is an alumna of Pershing High School and received her BA in Public Administration from Central Michigan University. Ms. Lawrence was elected Mayor of the City of Southfield in November of 2001. She is the first African American and first woman mayor of Southfield, a city with a population of over 78,000 residents, a city budget of \$143 million, and 833 city employees. Mayor Lawrence is committed to diversity, fiscal responsibility, education, and keeping a clean and safe city.

Mayor Lawrence has received many honors for her leadership skills and commitment to diversity. She was recognized in October 2007 as one of Crain's "2007 Most Influential Women." Through a survey of area leadership organizations, Ms. Lawrence was identified by Crain's Detroit Business as a regional leader with the "skills and determination to bridge the historic parochialism of the metropolitan area."

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**Thomas J. Ryan, Esq.** is a member of the State Bar of Michigan, 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 66<sup>th</sup> 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 served as the Commission's Vice Chairperson, and currently serves as the Commission's Chairperson.

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**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.

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**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

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## 2012 JTC Commissioners



FRONT ROW (L-R): Judge Nanci Grant, Thomas Ryan, Judge David Sawyer

BACK ROW (L-R): Nancy Diehl, Paul Fischer, Judge Jeanne Stempien, David Fischer, Brenda Lawrence, Judge John Hamilton, Judge Pablo Cortes

## **I. COMMISSION JURISDICTION AND LEGAL AUTHORITY**

### **A. The Authority of the Judicial Tenure Commission**

**T**he 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](http://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](http://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](http://jtc.courts.mi.gov)).

## **E. Recent and Anticipated Changes at the Commission**

The Commission bid farewell to Judge John D. Hamilton, who retired from his position as an Iosco County Probate Judge, and thereby no longer could serve as the probate judge member of the Commission. He was succeeded for the remaining two years of that term by Judge Monte Burmeister, a Probate Court judge from Crawford County. The Commission also bid farewell to the Hon. Jeanne Stempien, who chose not to run for another term on the Commission, after having served three terms already. She will be succeeded by the Hon. Michael Hathaway, who, like Judge Stempien, is a Wayne County Circuit Court Judge. The Commission welcomes Judge Burmeister and Judge Hathaway.

## **II. OVERVIEW OF THE COMPLAINT PROCESS**

### **A. HOW MATTERS ARE BROUGHT BEFORE THE COMMISSION**

**A**nyone 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](http://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

#### 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

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 2011 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](http://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.

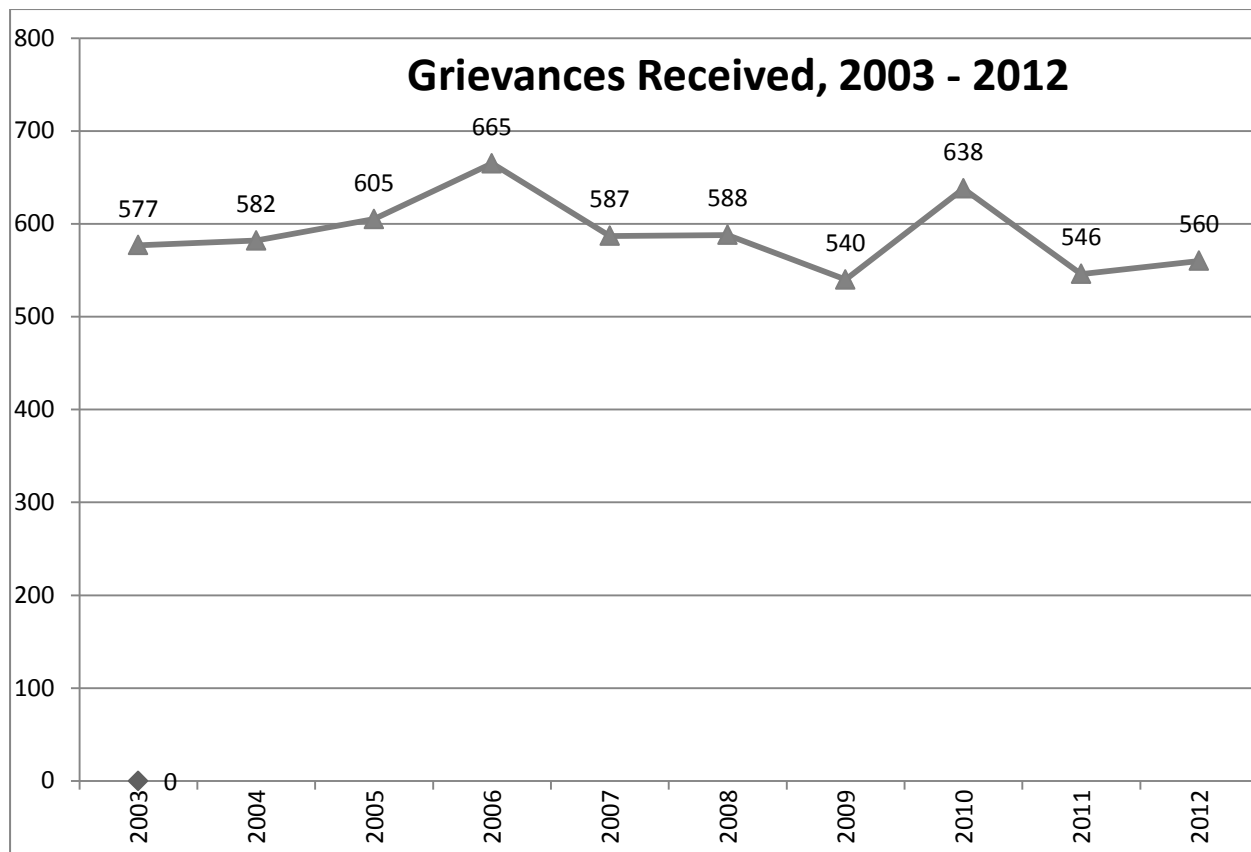
The court rules permit the Commission to make public statements during the investigating stage if, on its sole determination by majority vote, it is in the public interest to do so. MCR 9.221. Nevertheless, the Commission’s statement, if any, is limited to the fact that (1) there is an investigation 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. 2012 STATISTICS

#### A. COMPLAINTS RECEIVED AND INVESTIGATED

In 2012, the Commission received 796 requests for "Requests for Investigation" forms. There were 560 Requests for Investigation filed in 2012.

2012 CASELOAD	
Cases Pending on 1/1/12	98
New Grievances Considered	560
Cases Concluded in 2012	558
Cases Pending on 12/31/12	100



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.

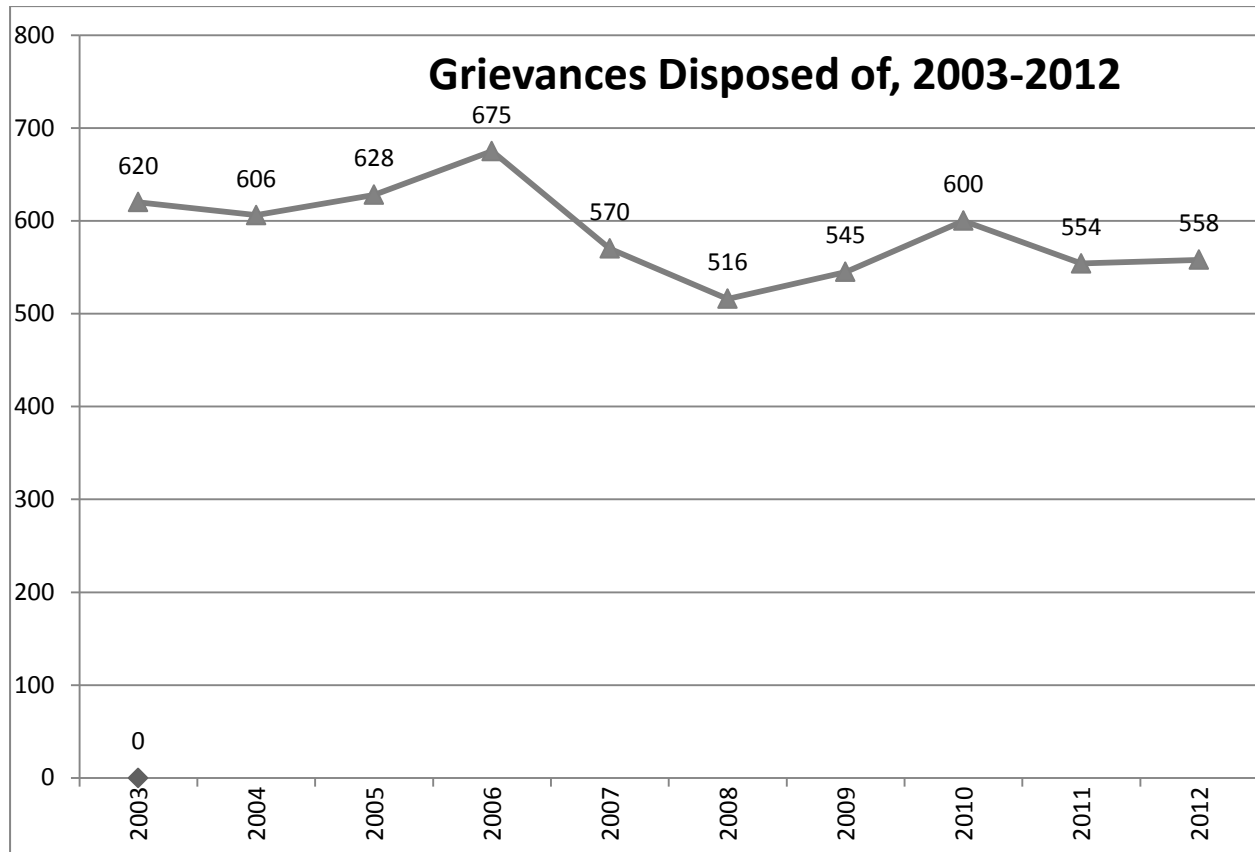
The Commission also received grievances concerning individuals and matters that did not come under the Commission's jurisdiction: federal judges, former judges, workers' compensation judges, other government officials and miscellaneous individuals. Commission staff responded to each of these complaints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

The number of judgeships within the Commission's jurisdiction has remained fairly constant at 1,259.



## B. COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the Commission in 2012, regardless of when the complaints were received. In 2012, the Commission disposed of 558 cases.



## C. CLOSED WITHOUT ACTION

In 543 of the 558 cases closed in 2012, 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, or the Commission lacked jurisdiction.

## D. CLOSED WITH ACTION

In 2012, the Commission issued four letters of admonishment, seven letters of caution, and one letter of explanation. Each of these dispositions is summarized in Section IV.

### E. FORMAL COMPLAINTS

The Commission issued two formal complaints in 2012. They are summarized in Section IV.

Formal Complaint No. 89 – Hon. Deborah R. Adams

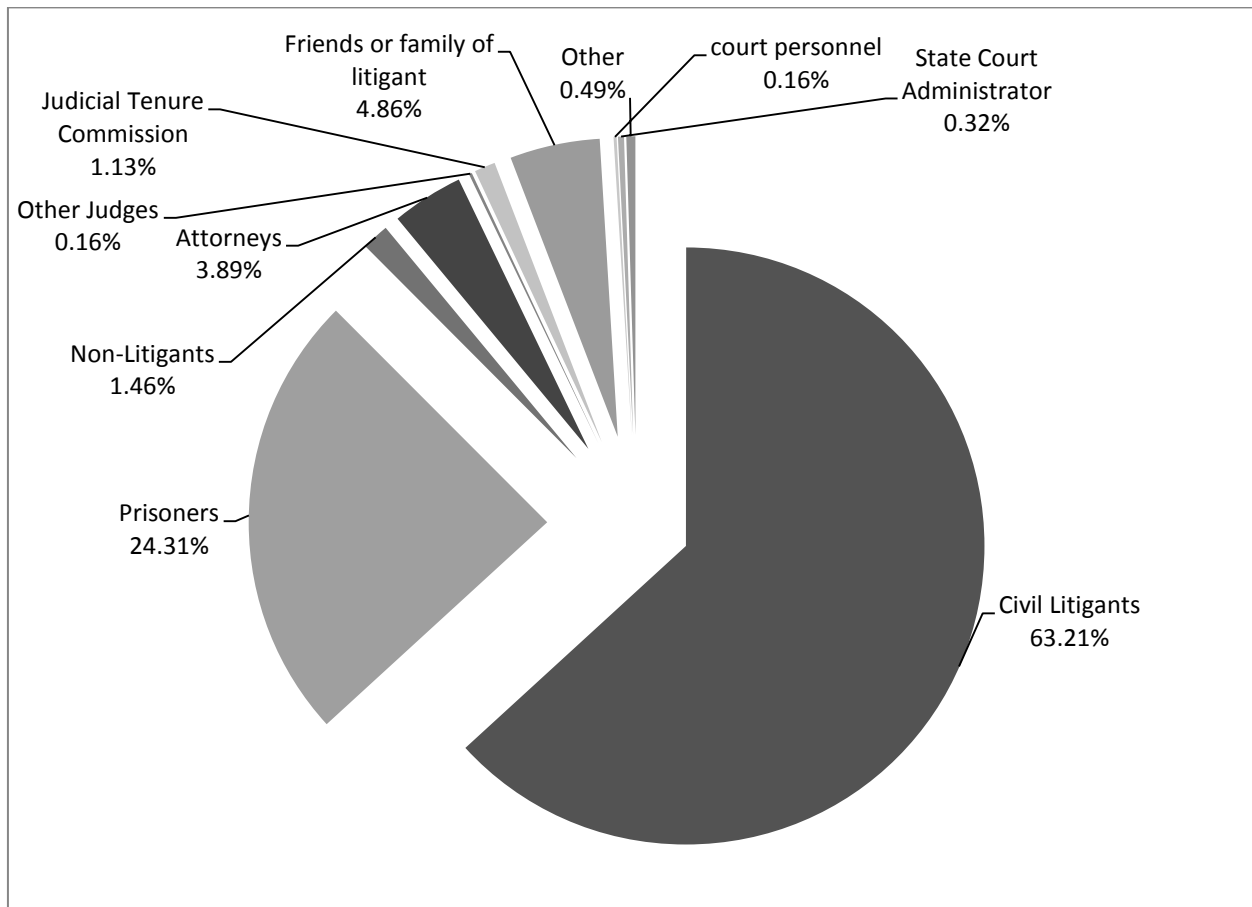
Formal Complaint No. 90 – Hon. Kenneth Post

### F. SUMMARY OF GRIEVANCES CONSIDERED IN 2012

The 560 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 560, as some grievances cover more than one judge or contain more than one type of alleged misconduct.

### G. SOURCES OF GRIEVANCES

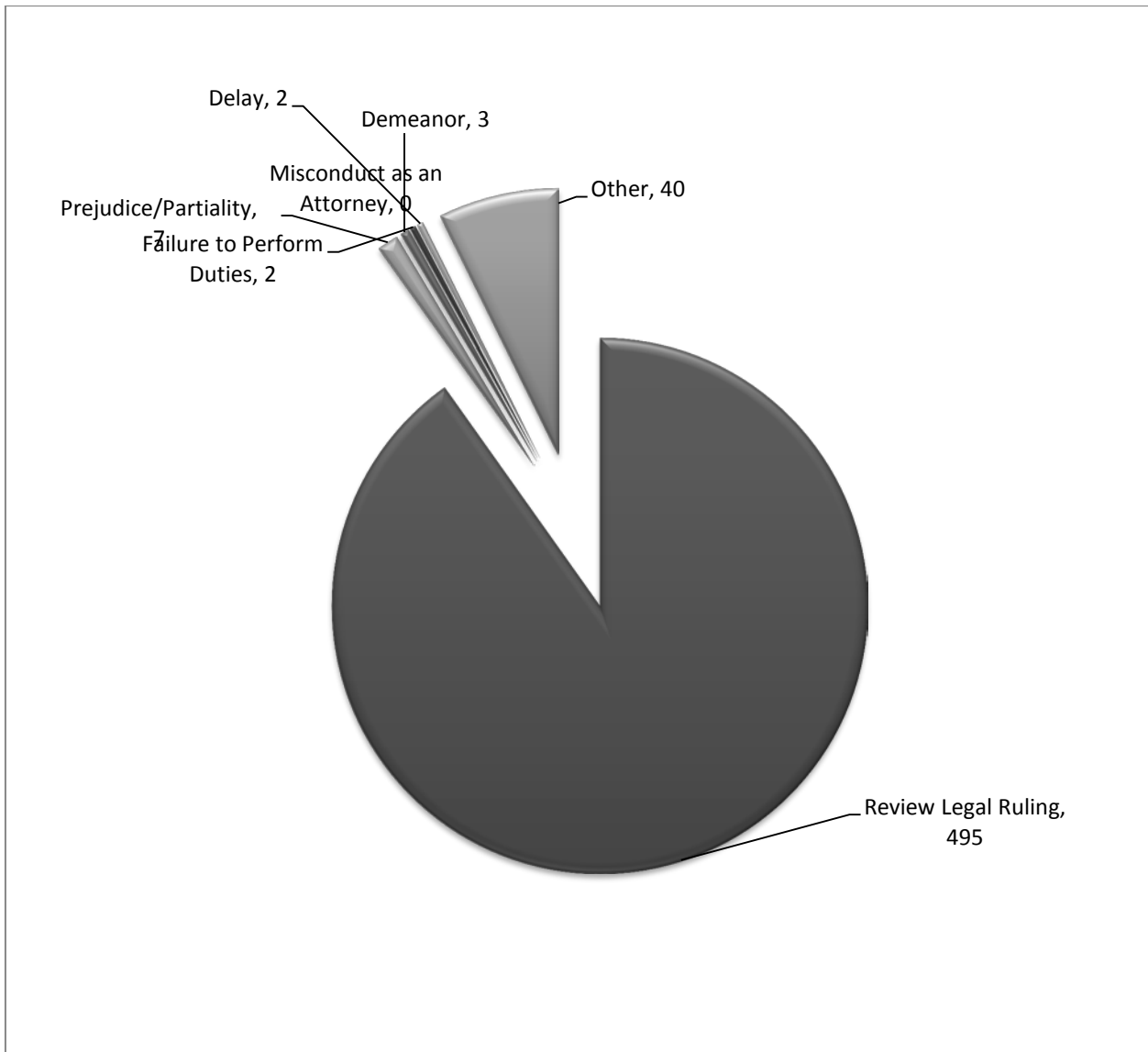
Litigants (including prisoners) filed the majority of requests for investigation, 96% of the total.



### H. SUBJECT MATTER OF GRIEVANCES

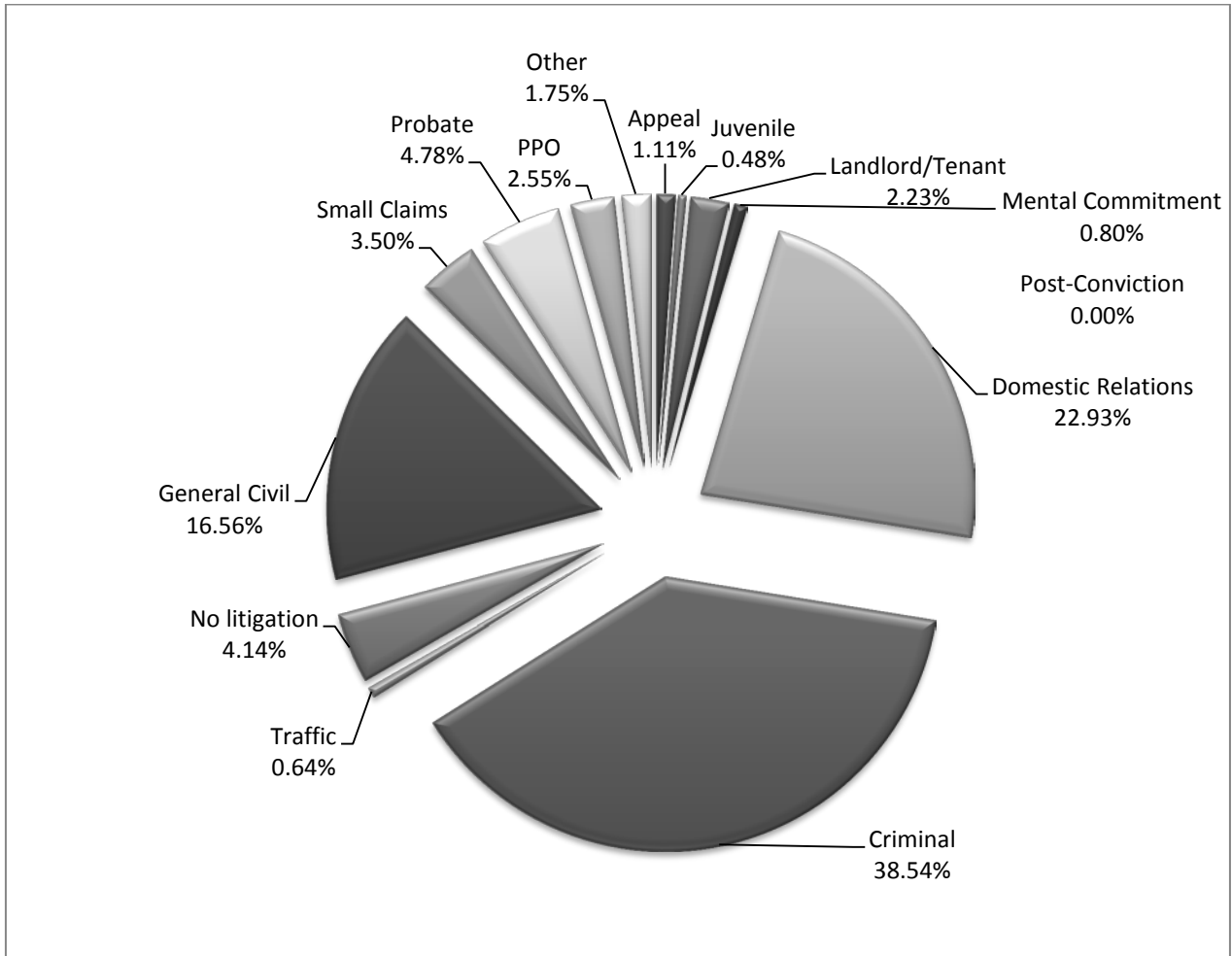
Eighty-eight per cent of matters complained of in the Requests for Investigation sought to have the Commission review the merits of the underlying case. However, the Commission has no jurisdiction

to act as an appellate body, so unless there was evidence of judicial misconduct, those matters were ultimately dismissed.



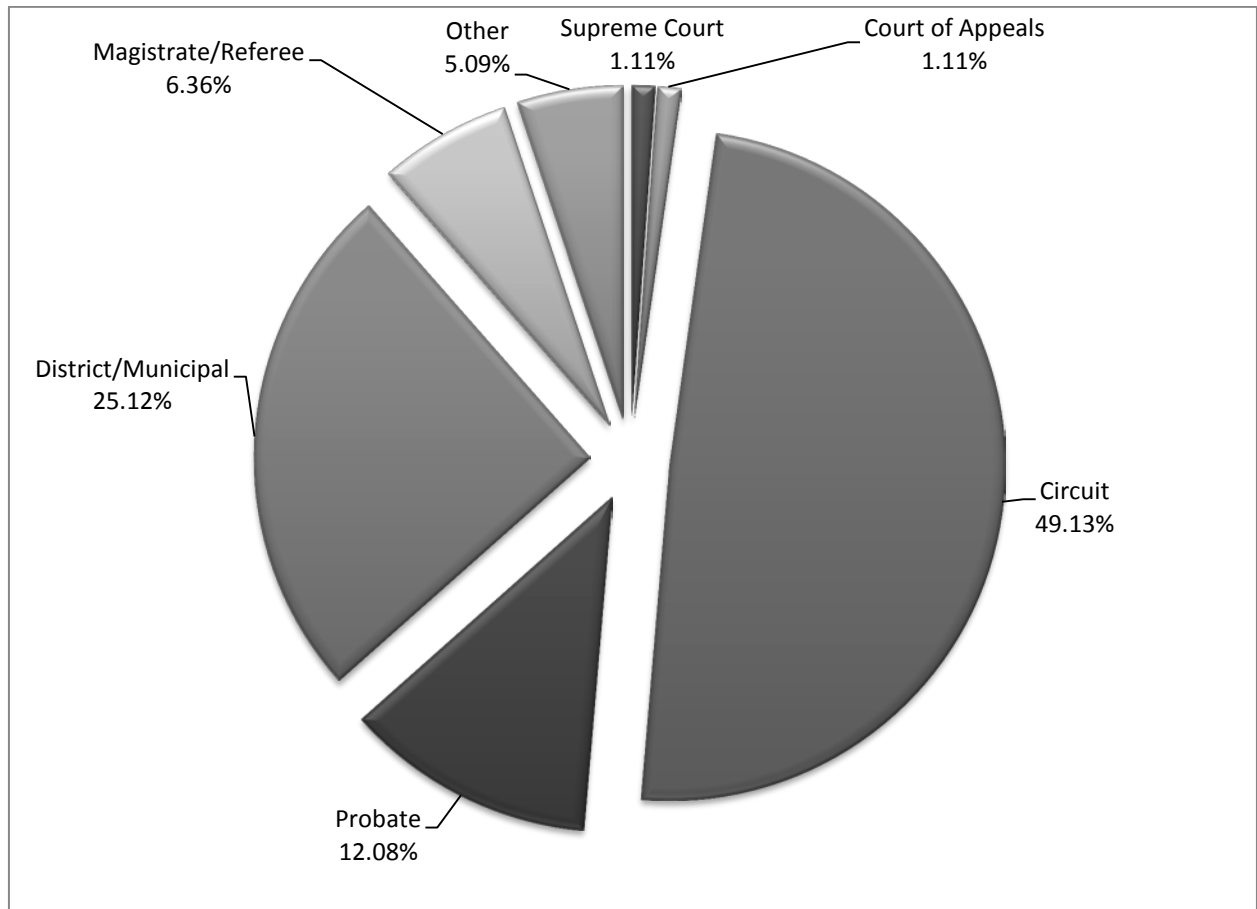
## I. NATURE OF UNDERLYING LITIGATION

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



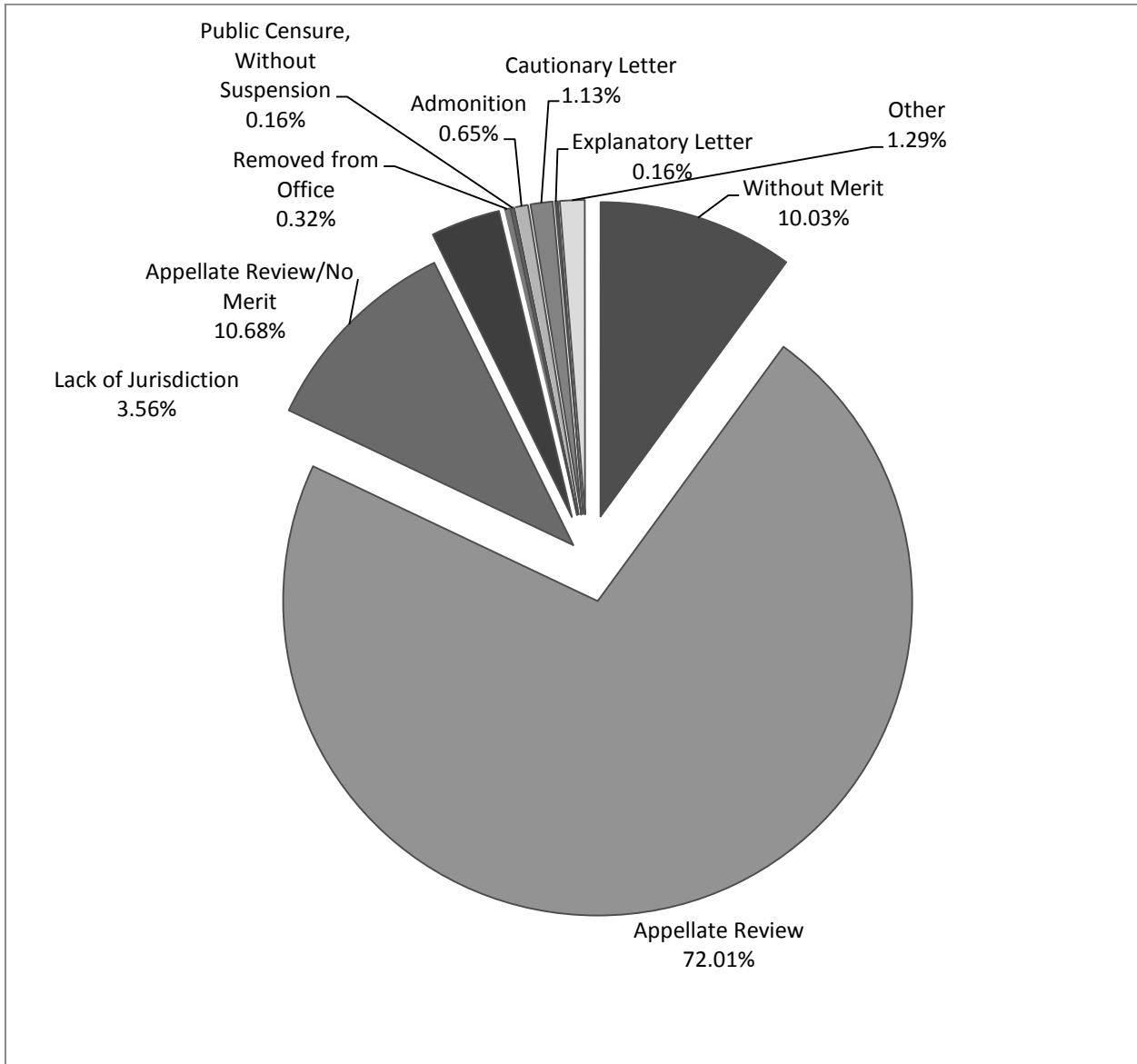
## J. CATEGORIES OF RESPONDENT JUDGES

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 about half of the grievances. District court judges, who comprise nearly 25% of the judiciary, received a proportionate 25% of the grievances filed.



### K. DISPOSITIONAL BREAKDOWN

There was one public censure by the Michigan Supreme Court in 2012. The Commission issued one letter of explanation, seven letters of caution and four letters of admonition in matters that did not rise to the level warranting formal complaints.



## IV. CASE SUMMARIES

### A. PUBLIC PROCEEDINGS

#### FORMAL COMPLAINTS

##### 1. Formal Complaint No. 87, Hon. James M. Justin - 12<sup>th</sup> District Court

On November 10, 2010, the Commission filed Formal Complaint No. 87 against Judge Justin. 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 July 19, 2010, the Michigan Supreme Court, upon petition of the Commission, 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. The hearing commenced on January 24, 2011 and was completed on February 1. On March 24, 2011 the Master issued her report, finding that Judge Justin committed judicial misconduct in seven of the eight counts in the formal complaint. The Master found that Judge Justin improperly dismissed cases, including tickets issued to his wife, his court staff, and himself. The Master also found that Judge Justin violated the law by stopping abstracts of convictions from being sent to the Secretary of State and deleting abstracts from valid convictions that had been properly sent. The Master found that Judge Justin improperly disregarded plea agreements, engaged in ex parte communications, excessively delayed cases, interfered in a case assigned to another judge, and made material misrepresentations to the Commission and in his testimony during the hearing. The Master found that Judge Justin did not commit misconduct regarding his practice of issuing peace bonds.

On June 13, 2011, the Commission issued its Decision and Recommendation for Discipline. The Commission adopted in toto the Master's Findings of Facts and Conclusions of Law, and unanimously recommended that Judge Justin be removed from office and be ordered to pay costs.

On January 27, 2012, Michigan Supreme Court issued its Opinion and Order in which the Court agreed with the Commission and ordered that Justin be removed from office. The Court stated that Justin's multitudinous acts of proved misconduct showed that he "failed to follow the law, apparently believing that it simply did not apply to him." The Court found that Justin's judicial misconduct included "fixing" (personally and surreptitiously dismissing) traffic citations issued to himself, his spouse, and his staff; preventing the transmission of or altering court information that was legally required to have been transmitted to the Secretary of State; dismissing cases without conducting hearings or involving the prosecutor; failing to follow plea agreements; and making false statements under oath during the JTC hearing. The Court stated:

The duration, scope, and sheer number of [Justin's] substantiated acts of misconduct are without precedent in Michigan judicial disciplinary cases. . . . [Justin's] actions are completely antithetical to the privilege of being a judge and more than adequately justify his removal from office.

The Supreme Court subsequently issued an award of costs in favor of the Commission in an amount of \$7,657.83, pursuant to MCR 9.205(B).

## **2. Formal Complaint No. 88, Hon. Sylvia James - 22<sup>nd</sup> District Court**

On October 26, 2011, the Commission filed Formal Complaint No. 88 against Judge Sylvia A. James of the 22<sup>nd</sup> District Court, together with a Petition for Interim Suspension and a Request for Appointment of Master. The complaint alleged that Judge James engaged in financial, employment and administrative improprieties while serving in her judicial capacity. More specifically, the complaint alleged that Judge James misappropriated funds from the court's Community Service Program and withheld other funds from the funding authority, the City of Inkster. The complaint alleged that Judge James hired and promoted her niece in violation of the administrative orders of the Michigan Supreme Court, and appointed a magistrate who did not meet the statutory requirements for the position. The complaint also alleged that Judge James failed to timely dispose of the cases of the 22<sup>nd</sup> District Court, took excessive time away from her judicial position, and implemented an improper "business attire" policy at the courthouse. Finally, the complaint alleged that Judge James had made serious misrepresentations to the Commission during the course of the investigation into the matter.

On November 9, 2011, Judge James filed her answer and affirmative defenses together with a response to the Petition for Interim Suspension and the Request for Appointment of Master. On December 15, 2011, the Michigan Supreme Court issued an order appointing the Honorable Ann Mattson as a Master to hear Formal Complaint and an order granting the Petition for Interim Suspension.

The formal hearing started on January 23, 2012, and was completed on March 5, 2012. On April 23, 2012, the Master issued a report finding that Respondent had engaged in numerous acts of misconduct. The Master concluded that Judge James failed to diligently discharge her administrative responsibilities and that she demonstrated a lack of respect for the law. More specifically, the Master found that Respondent misappropriated funds of the Community Service Program of the 22<sup>nd</sup> District Program, engaged in improper conduct with respect to the banking and revenue practices she employed at the Court, and committed employment and administrative improprieties. The Master also found that Judge James made numerous false statements and misrepresentations during the course of the Commission's investigation into the matter as well as during the formal hearing itself.

After the Examiner and Judge James briefed the issues concerning the findings of fact and conclusions of law addressed by the Master, and sanctions, the Commission issued its Decision and Recommendation to the Supreme Court on June 11, 2012. The Commission adopted the master's findings, concluding that Judge James' prolonged and repeated pattern of misconduct in purposefully violating statutes, misappropriating public funds, and making intentional misrepresentations both before and after the commencement of the proceedings rendered her unfit to sit as a judge. The Commission recommended to the Supreme Court that Judge James be removed from office, and that she be ordered to pay costs incurred in the prosecution of the disciplinary matter.

Oral argument was held before the Michigan Supreme Court on July 18, 2012. The Court issued an Opinion and Order on July 31, 2012, finding that Judge Sylvia A. James of the 22<sup>nd</sup> District Court



had committed judicial misconduct and ordering her removed from office. In its Opinion, the Supreme Court found that Judge James misappropriated public funds, some of which were intended for victims of crime in the City of Inkster, and expended them for uses not permitted by law, including advertisements, personal travel and donations to charities of her own choosing. The Michigan Supreme Court further found that Judge James instituted a dress policy at the 22<sup>nd</sup> District Court that prejudiced litigants and inappropriately denied some litigants and visitors access to the courthouse. The Court also found that Judge James rehired an unqualified magistrate and misrepresented that he was qualified, violated the Supreme Court's anti-nepotism policy, and made misrepresentations during the investigation and the hearing, and lied under oath. The Michigan Supreme Court determined that the cumulative effect of Judge James' misconduct, coupled with its duration, nature, and pervasiveness, warranted her removal from office. It subsequently issued an award of costs in favor of the Commission in an amount of \$16,500, pursuant to MCR 9.205(B).

### **3. Formal Complaint No. 89, Hon. Deborah Ross Adams - 3<sup>rd</sup> Circuit Court**

On April 17, 2012, the Judicial Tenure Commission filed Formal Complaint No. 89 against Judge Deborah Ross Adams of the 3<sup>rd</sup> Circuit Court, Family Division, together with a Request for Appointment of Master. The complaint alleged that Judge Adams committed perjury during a court proceeding in her own divorce matter before the Hon. Mary Ellen Brennan and that she had forged the names of two of her attorneys on various court documents and filed said documents with the Sixth Circuit Court. The complaint also alleged that Judge Adams made misrepresentations to the Judicial Tenure Commission during the course of the investigation into the matter. On May 30, 2012, Judge Adams filed her Answer to the Formal Complaint together with several motions. The Michigan Supreme Court appointed the Hon. Donald G. Miller as Master to hear the formal complaint, and on August 9, 2012, he conducted a pre-trial and heard arguments on the motions. In an August 15, 2012 opinion, the Master denied Judge Adams' motions.

The public hearing on Formal Complaint 89 began on September 11, 2012. Closing arguments were heard on September 17, 2012. After proposed findings of fact and conclusions of law were filed by both parties, the Master's issued his Findings of Fact and Conclusions of Law on October 9, 2012. A public hearing was held before the Commission on December 3, 2012 and the Commission issued its Decision and Recommendation for Discipline on December 28, 2012. The Commission adopted the Master's findings of fact that Respondent had lied under oath in Judge Brennan's court, that she had made misrepresentations to the JTC during the course of the investigation, and that she had forged the name of her attorney to court documents. Contrary to the master's findings, the Commission also found that Respondent filed said forged pleadings with the Sixth Circuit Court without permission of her counsel. The Commission recommended that the Michigan Supreme Court suspend Respondent without pay for 180 days and that she pay costs incurred by the Commission in prosecuting this matter. As of December 31, 2012, the matter remained pending before the Michigan Supreme Court.

#### **4. Formal Complaint No. 90, Hon. Kenneth D. Post - 58<sup>th</sup> District Court**

On July 23, 2012, the Commission filed Formal Complaint No. 90 against Hon. Kenneth D. Post of the 58<sup>th</sup> District Court. The allegations were based on Judge Post's conduct during an arraignment in *People of the State of Michigan vs. Ethan Forrester Whale*, 58th District Court (Ottawa County) Case No. HU-11-47997-SM, held on Friday, December 2, 2011. During the arraignment, Judge Post made inquiries to the defendant to which Scott Millard, defense counsel, asserted his client's 5<sup>th</sup> Amendment right against self-incrimination. Judge Post refused to accept the assertion and attempted to force the defendant to respond to the inquiries. He repeatedly treated Mr. Millard in a demeaning manner, while the attorney treated the judge with respect throughout the proceeding.

Judge Post eventually found Mr. Millard in contempt, and sent him to jail. While Mr. Millard was in custody, he was at times handcuffed behind his back, or handcuffed and placed in leg shackles that were attached to a "belly chain" around his waist. At one point during the morning, Judge Post, while laughing, described the proceedings as "a show," stated to another person that he would not "get better tickets anyplace," and invited the individual to sit "up close" in the "front row."

Judge Post filed an answer to the formal complaint on August 10, 2012. The Supreme Court appointed Judge John Pikkarainen as Master. Judge Post filed a partial motion to dismiss, and after oral argument on November 5, 2012, the Master took the matter under advisement. The Examiner and Judge Post subsequently entered into certain stipulations in lieu of a trial and to eliminate the need for a Master to issue findings of fact. As of December 31, 2012, the Commission had issued a Scheduling Order including briefing deadlines, and setting the Commission hearing on conclusions of law and sanctions for February 4, 2013.

#### **5. Public Censure, Hon. Wade H. McCree - 3<sup>rd</sup> Circuit Court**

##### By consent (no formal complaint)

The matter was submitted to the Michigan Supreme Court by the Commission with a Decision and Recommendation for a public censure, with the consent of Judge McCree. Therefore, no formal complaint was filed.

On Sunday, June 6, 2010, Judge McCree used his cell phone to make a digital image of himself after completing a half-marathon. The image depicts Judge McCree naked from at least his waist up, and is captioned: "2010 Dexter-Ann Arbor race. Fit in my 50's." Judge McCree asserted he showed the digital image to a number of people, including his family, police officers, and deputies who worked in or passed through his courtroom, and acknowledged that he sent the digital image to a female Wayne County Sheriff's Deputy through his cell phone.

The deputy's husband discovered the digital image and provided a copy of it to a Detroit television station. On April 23, 2012, a reporter interviewed Judge McCree in his chambers regarding the incident. During the interview, Judge McCree conducted himself in a flippant manner and did not give the interview the seriousness he should have, and therefore brought shame and obloquy to the judiciary. For example, when discussing the digital image of him he said, "There is no shame in my

game.” The interview, and the digital image, spread rapidly around the internet and became the subject of jokes and ridicule.

In response to the submission of the consent agreement, the Michigan Supreme Court issued a public censure of Hon. Wade H. McCree, Jr., of the Wayne County Circuit Court, on October 24, 2012.

## B. NON-PUBLIC PROCEEDINGS

### 1. *Abuse of Prestige of Office Based on Social or Business Relationship (off the bench)*

- A judge gave criminal assignments to attorneys who were in a financial relationship with the judge's wife, as those individuals owned a commercial property where the attorneys had their offices. The conduct created the appearance of impropriety in violation of Canon 2, and also violated Canon 5 (C) (1) which states that a judge should refrain from financial and business dealing that reflect adversely on the judge's impartiality. The judge pledged to the Commission to cease the practice and promised to always disclose on the record his wife's relationship should any of the attorneys appear before him.

### 2. *Delay*

- A judge took eight months to issue a ruling after the parties filed proposed findings of fact and legal conclusions regarding a one-day trial, in a simple warranty, consumer protection, and fraud case. In addition, although the matter was pending on an amended complaint, the original complaint had been filed over two and a half years before the decision was rendered. The Commission noted that although some of the delay was not within the judge's control, the age of the case should have been considered to make rendering a decision a high priority after the proposed facts and law were submitted.
- A judge permitted two criminal cases against the same defendant to remain pending for 19 and 30 months, in violation of the duty to dispose promptly of the business of the court. The Commission noted that the judge had a high number of proceedings that were not resolved within applicable guidelines (compared with other judges in the court), and advised the judge to act in a manner to prevent defendants, and counsel, from engaging in tactics that delayed trial. The judge had been reproached as a result of an earlier Request for Investigation based on delay, and that the number of cases pending over guidelines did not decrease in the two years between the disciplinary proceedings. The Commission concluded that the similarity in the grievances was striking, and supported a determination that the judge had not taken the Commission's earlier reproach to heart.
- In a matter addressing the scheduling of a hearing on a motion for disqualification, the Commission advised a judge that a three-month delay was avoidable. If the court's computer program used for scheduling did not allow staff to record personal days off, the problem could be easily remedied through the use of a personal calendar to coordinate available trial dates. Further, the judge was advised that a policy of hearing all motions only on the day of trial created a scenario of parties having to prepare for something that

may not take place (including having witnesses and a jury present). The Commission noted that situation could be easily avoided if hearings on disqualification or dispositive motions, which if granted would prevent a trial from occurring, were scheduled for hearing prior to the trial date.

### 3. *Demeanor (on the bench)*

- A judge, while on the bench, was repeatedly impatient, critical, rude, and made otherwise improper remarks, to witnesses from social service agencies. The judge failed to appreciate that instead of being critical of conduct in public, the proper way to address issues was to contact supervisors, in a private setting, to raise constructive criticism. Included were meritless accusations that a social worker hid a health issue of parties until that last minute to adjourn a case (while all involved knew of the issues except the judge), and referring to a social worker as a “bobble doll” for repeatedly nodding at the judge’s comments. The judge questioned social workers’ values, and told them to pray about their actions, to stop interfering with families, and that their attempts to act consistently with agency policies were not his but their “supervisor’s problem.” The judge also accused social workers of not caring, wanting control over matters, and not understanding simple concepts.
- The Commission advised a judge to remember that Canon 3A(3) of the Michigan Code of Judicial Conduct requires judges to be patient, dignified, and courteous to litigants and others who appear before them. During a hearing the judge repeated the defendant’s ungrammatical language in a derisive manner. The Commission cautioned the judge to be aware that a judge’s words and manner could create the perception in others that the judge was not being patient, dignified, and courteous to the defendant.

### 4. *Disqualification/Failure to Disclose Relationship*

- The Commission cautioned a judge that when the attorney for the plaintiff in a case before him became his campaign treasurer, he had an affirmative duty to disclose the relationship to all parties and opposing counsel as soon as practicable. Failure to do so violates the Michigan Code of Judicial Conduct Canon 2 which requires that a judge must avoid all impropriety and appearance of impropriety.

## 5. *Ex-Parte Communication*

- The Commission reproached a judge for engaging in *ex parte* communications on a number of occasions, with witnesses, attorneys, DHS employees, and others, when all parties involved in the case are not represented (or did not waive their attendance). It noted that the judge's assertion that the communications were not "substantive" was erroneous. Further, the judge could not "cure" the impropriety by later discussing the same issues at a hearing, or having a staff member discuss the matter in the judge's place and report back. The communications included telephone and e-mail contact with potential witnesses, discussion with counsel about the actions of parties in cases, and providing information to attorneys, social workers, and others that the judge obtained on the judge's own initiative.

## 6. *Failure to follow the law or to maintain competence in it*

- A judge made repeated demands on a defendant to attempt to compel him not to exercise his constitutional right to a jury trial, by mentioning on eight occasions that he could receive a jail sentence if he did not accept a plea offer made by the prosecutor, and at one point raising the possibility of amending the charges to include a felony if the case proceeded to trial. When Grievant insisted on having a jury trial, the judge definitively stated that jail time would be imposed if he was convicted, which reflected that the judge made a pre-determined sentence in the matter.
- A judge failed to swear in a deputy as a witness, yet considered his remarks regarding a defendant's alleged violation of a no-contact order to issue a material witness warrant for the purported victim (who did not appear for the proceeding). The judge also failed to provide defense counsel with an opportunity to question the deputy. The Commission noted that the judge's assertion that the proceeding was not a trial or hearing was irrelevant, as MRE 603, which mandates the swearing in of witnesses who provide testimony, does not include an exception based on those grounds. The judge also considered revoking the defendant's bond based on that unsworn testimony.
- A judge failed to revisit a defendant's request for counsel after the judge was unable to complete an allocution and enter a guilty plea. The decision not to include jail time in the sentence could have changed based on the failed allocution. The judge's claim that the defendant should have asked for an attorney, when he had already requested legal representation, is not justified. The Commission noted that the judge clearly should have reconsidered the appointment of counsel, without another request by the defendant.

- The Commission reminded a judge that every defendant should be treated individually rather than on a blanket basis based upon immigration status. Defendants who were illegal aliens were treated more harshly by the judge than defendants who were not, when charged with similar offenses. A review of cases from the judge's docket confirmed that in misdemeanor cases the judge consistently gave illegal-alien defendants high bonds resulting in their incarceration, unreasonably delayed cases while such defendants were incarcerated awaiting disposition of their cases, and gave the defendants maximum jail sentences, often for first-time offenses. The Commission found that such a consistent pattern of the judge's use of discretion creates the appearance that, rather than using immigration status as one consideration, it was the overriding factor in his decisions and the judge discriminated against such defendants.
- The Commission determined that a judge's dismissal of a first-degree murder case on the morning of trial, because the prosecutor was unavailable due to a scheduling conflict with another homicide case, did not promote justice. The judge was aware of the prosecutor's scheduling conflict for at least four days, and perhaps as long as three weeks, before the trial date. The Commission determined that the refusal to continue the matter for 1-2 days was unreasonable, especially since the judge had previously granted an adjournment for the defense attorney because of an undisclosed personal conflict. The judge was well aware of the available options in the case, including the use of contempt of court and/or to contact a supervising prosecuting attorney. The fact that the judge dismissed the case demonstrated a complete disregard of the rights of the defendant and the victim's family, which resulted in injustice. Further, the dismissal led to a reasonable inference that the judge maintained animosity or vindictiveness toward the office of the prosecuting attorney.

## 7. *Miscellaneous*

- The Commission reproached a judge regarding conduct in a criminal proceeding where the complaining witness, while testifying, used obscenities. Although the Commission acknowledged that the judge had the right and obligation to control her courtroom, and that witness should not have used the obscenities, it concluded that prompt judicial intervention during the proceeding was lacking. Defense counsel (who was questioning the witness) questioned or laughed at responses, and pushed the witness to the edge. Respondent did not recess the proceedings when matters began to become heated, to provide an opportunity for all involved to cool off. The Commission noted that earlier intervention by the judge would likely have prevented the escalation of events.

## 8. *Misuse of Judicial Office*

- A judge appeared at a police incident, outside of any judicial capacity, in response to a request for the assistance of “a judge” transmitted by a community leader. The judge would not have jurisdiction over, or responsibility for, any issue related to the incident while exercising the regular duties of the judge’s office, and was purportedly present as a private citizen. However, at the scene, the judge distributed a business card and used the title “judge,” and attempted to resolve the matter in a manner which was in conflict with an existing court order (which the judge had reviewed), instead of honoring the terms of the order. The Commission noted that by “playing the judge card,” the judge (even if unintentional) exerted undue influence and intimidation on persons who were present in an official capacity and were attempting to do their jobs, including following court orders and mandated procedures.

The Commission emphasized that it was *not* issuing a reproach of the judge’s involvement in the incident as a private citizen. However, it noted that if the judge encountered similar situations in the future, as a private citizen, the judge should be respectful of existing court orders, and take steps to insure that others who are trying to do their job are not intimidated.

## 9. *Treatment of Others When Acting in an Administrative Capacity (off the bench)*

- A judge treated others in a demeaning manner while off the bench. The actions included yelling at deputies regarding the exercise of regular court support services, berating attorneys for incidents such as attending another proceeding in the same courthouse (with notice) instead of waiting in the judge’s courtroom for a hearing to begin, and referring to an attorney as “stupid” and “getting what she deserved” when she fell and broke an ankle.



## V. COMMISSION ORGANIZATION, STAFF AND BUDGET

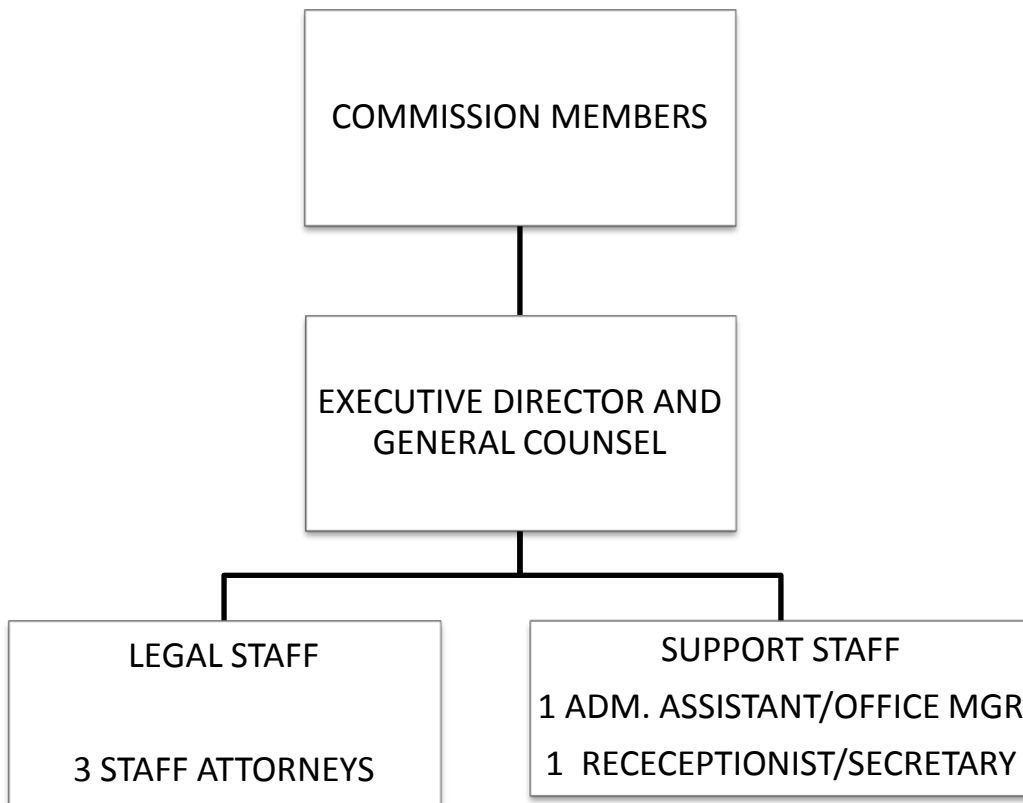
### A. COMMISSION ORGANIZATION AND STAFF

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's legal staff is responsible for the evaluation and investigation of grievances and serves as associate-examiners during formal proceedings. The Commission's legal staff is comprised of Senior Attorney Casimir J. Swastek, Staff Attorney Glenn J. Page, and Staff Attorney Margaret N.S. Rynier. 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 Administrative Assistant-Office Manager, Camella Thompson and Receptionist-Secretary Celeste R. Robinson. All Commission staff members are state employees.



## B. BUDGET

The Commission's budget is included in the budget of the Supreme Court. For the 2012 fiscal year (October 1, 2011–September 30, 2012), the Commission spent \$ 1,039,365, which was \$33,965 over budget. This rare deficit was due to the unusually long trial held in Formal Complaint 88 (Sylvia James). The Commission continues to do its part to keep its expenditures to a minimum.

