

# State of Michigan

## Judicial Tenure Commission

Annual Report 2013



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. Nanci 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

Thomas J. Ryan, Esq.



State of Michigan

**Judicial Tenure Commission**

Paul J. Fischer, Esq.

**EXECUTIVE DIRECTOR**

**& GENERAL COUNSEL**

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Cadillac Place Building

Detroit, Michigan 48202

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April 14, 2014

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 2013. 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

## TABLE OF CONTENTS

COMPOSITION OF THE COMMISSION – 2013.....	iii
I. COMMISSION JURISDICTION AND LEGAL AUTHORITY .....	1
A. The Authority of the Judicial Tenure Commission .....	1
B. What the Commission Cannot Do .....	1
C. Judicial Misconduct .....	1
D. Legal Authority.....	2
1. Michigan Constitution .....	2
2. Michigan Court Rules .....	2
3. Code of Judicial Conduct.....	2
E. Recent and Anticipated Changes at the Commission .....	2
II. OVERVIEW OF THE COMPLAINT PROCESS .....	2
A. HOW MATTERS ARE BROUGHT BEFORE THE COMMISSION .....	2
B. COMMISSION REVIEW OF REQUESTS FOR INVESTIGATION .....	3
1. Investigation at the Commission’s Direction.....	3
2. Disposition of Cases Without Formal Proceedings .....	3
C. ACTION THE COMMISSION CAN TAKE .....	3
1. Confidential Dispositions.....	3
2. Public Dispositions .....	4
a. The Formal Complaint.....	4
b. Hearing .....	4
c. Standard of Proof.....	5
d. Commission Consideration Following Hearing by Master .....	5
e. Disposition after Hearing by Commission .....	5
f. The Supreme Court Hearing .....	5
D. CONFIDENTIALITY OF COMMISSION PROCEEDINGS .....	5
III. 2013 STATISTICS .....	6
A. COMPLAINTS RECEIVED AND INVESTIGATED .....	6
B. COMPLAINT DISPOSITIONS .....	8
C. CLOSED WITHOUT ACTION .....	8
D. CLOSED WITH ACTION .....	8
E. FORMAL COMPLAINTS.....	9
F. SUMMARY OF GRIEVANCES CONSIDERED IN 2013 .....	9
G. SOURCES OF GRIEVANCES .....	9
H. SUBJECT MATTER OF GRIEVANCES.....	10
I. NATURE OF UNDERLYING LITIGATION .....	11
J. CATEGORIES OF RESPONDENT JUDGES .....	12
K. DISPOSITIONAL BREAKDOWN .....	13
IV. CASE SUMMARIES .....	14
A. PUBLIC PROCEEDINGS.....	14
Formal Complaint No. 89, Hon. Deborah Ross Adams .....	14
Formal Complaint No. 90, Hon. Kenneth D. Post .....	15
Formal Complaint No. 91, Justice Diane M. Hathaway .....	16
Formal Complaint No. 92, Hon. Bruce U. Morrow .....	18
Formal Complaint No. 93, Hon. Wade H. McCree .....	18

B. NON-PUBLIC PROCEEDINGS.....	20
<i>Delay</i> .....	20
<i>Demeanor</i> .....	20
<i>Ex Parte Communications</i> .....	20
<i>Failure to be Faithful to the Law</i> .....	21
<i>Impartiality/Bias</i> .....	21
<i>Administrative Failures</i> .....	21
<i>Timeliness</i> .....	22
<i>Disparaging Treatment of Court Personnel</i> .....	22
<i>Financial Disclosure</i> .....	22
<i>Miscellaneous Personal</i> .....	23
<i>Prestige of Office</i> .....	23
<i>Failure to Cooperate with Commission</i> .....	23
V. COMMISSION ORGANIZATION, STAFF AND BUDGET .....	24
A. COMMISSION ORGANIZATION AND STAFF.....	24
B. BUDGET .....	25

## **COMPOSITION OF THE COMMISSION – 2013**

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

Judge, 6<sup>th</sup> Circuit Court  
1200 N. Telegraph Road, Dept. 404  
Pontiac, MI 48341  
(248) 858-0358  
Term Exp. 12/31/15  
Elected by Circuit Court Judges

### **David T. Fischer**

3034 W. Grand Blvd., Suite 8-450  
Detroit, MI 48202  
(313) 875-5110  
Term Exp. 12/31/14  
Appointed by Governor

### **Hon. David H. Sawyer, Vice-Chairperson**

Judge, Michigan Court of Appeals  
350 Ottawa Ave. NW  
Grand Rapids, MI 49503  
(616) 456-1811  
Term Exp. 12/31/15  
Elected by Court of Appeals Judges

### **Hon. Michael M. Hathaway**

8120 E. Jefferson, Apt 6E  
Detroit, Michigan 48214  
(313) 224-2417  
Term Exp. 12/31/15  
Elected by State Bar Membership

### **Hon. Pablo Cortes, Secretary**

62A District Court  
2650 DeHoop Ave. SW  
Grand Rapids, MI 49509  
(616) 257-9814  
Term Exp. 12/31/16  
Elected by Judges of Limited Jurisdiction

### **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. Monte J. Burmeister**

Judge, Probate/District Court  
46<sup>th</sup> Circuit Trial Court  
(989) 344-3260 Ofc  
Term Exp. 12/31/14  
Elected by Probate Judges

### **Thomas J. Ryan, Esq.,**

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

### **Nancy J. Diehl, Esq.**

3034 W. Grand Blvd., Suite 8-450  
Detroit, MI 48202  
(313) 875-5110  
Term Exp. 12/31/14  
Elected by State Bar Membership

## BIOGRAPHIES

**Hon. Monte J. Burmeister** is the Probate Judge for Crawford County, Michigan. He was elected to the Probate Bench in 2006 and was re-elected in 2012. Judge Burmeister was in private practice prior to taking the bench and operated his own law firm from 1999 through 2006. He graduated with a Bachelor of Arts from James Madison College at Michigan State University, with honors, in 1990, and received his Juris Doctor from Wayne State University Law School in 1993. Judge Burmeister sits on the Executive Board for the Michigan Probate Judges Association. He began his tenure on the Commission in 2013.

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**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. Judge Cortes currently serves as the Commission's Secretary.

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**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 is on the Wayne County Kids TALK Child Advocacy Advisory Board and 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 Chairperson.

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**Hon. Michael M. Hathaway** a member of the State Bar of Michigan for over 40 years, is currently a Wayne County Circuit judge assigned to the court's Criminal Division. He is a graduate of Wayne State University (1967) and the Detroit College of Law (1971). During law school Judge Hathaway taught in Detroit public schools and upon admission to the bar was hired by Vandever Garzia PC. He remained there for 30 years, and eventually served as a managing partner before his appointment to the bench in 2001. While in practice he handled a variety of tort litigation, representing both plaintiffs and defendants. Judge Hathaway currently serves on the Third Circuit's Executive Committee, the Assigned Counsel Qualifications Committee and the court's Docket Review Committee. He was elected to the Judicial Tenure Commission in 2012.

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**Brenda L. Lawrence** is a long-time resident of the City of Southfield and is its Mayor. 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 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. 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. Judge Sawyer currently serves as the Commission's Vice-Chairperson

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## 2013 JTC Commissioners



FRONT ROW (L-R): Judge David H. Sawyer, Judge Nanci J. Grant, Judge Pablo Cortes

BACK ROW (L-R): Judge Monte J. Burmeister, Thomas J. Ryan, Nancy J. Diehl, Paul J. Fischer (executive director), Brenda L. Lawrence, David T. Fischer, Judge Michael M. Hathaway

## **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 Mayor Brenda Lawrence, whose term expired on December 31, 2013. Governor Snyder had not announced an appointment to fill the vacancy as of December 31, 2013.

## **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](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,

#### **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

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 2013 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.



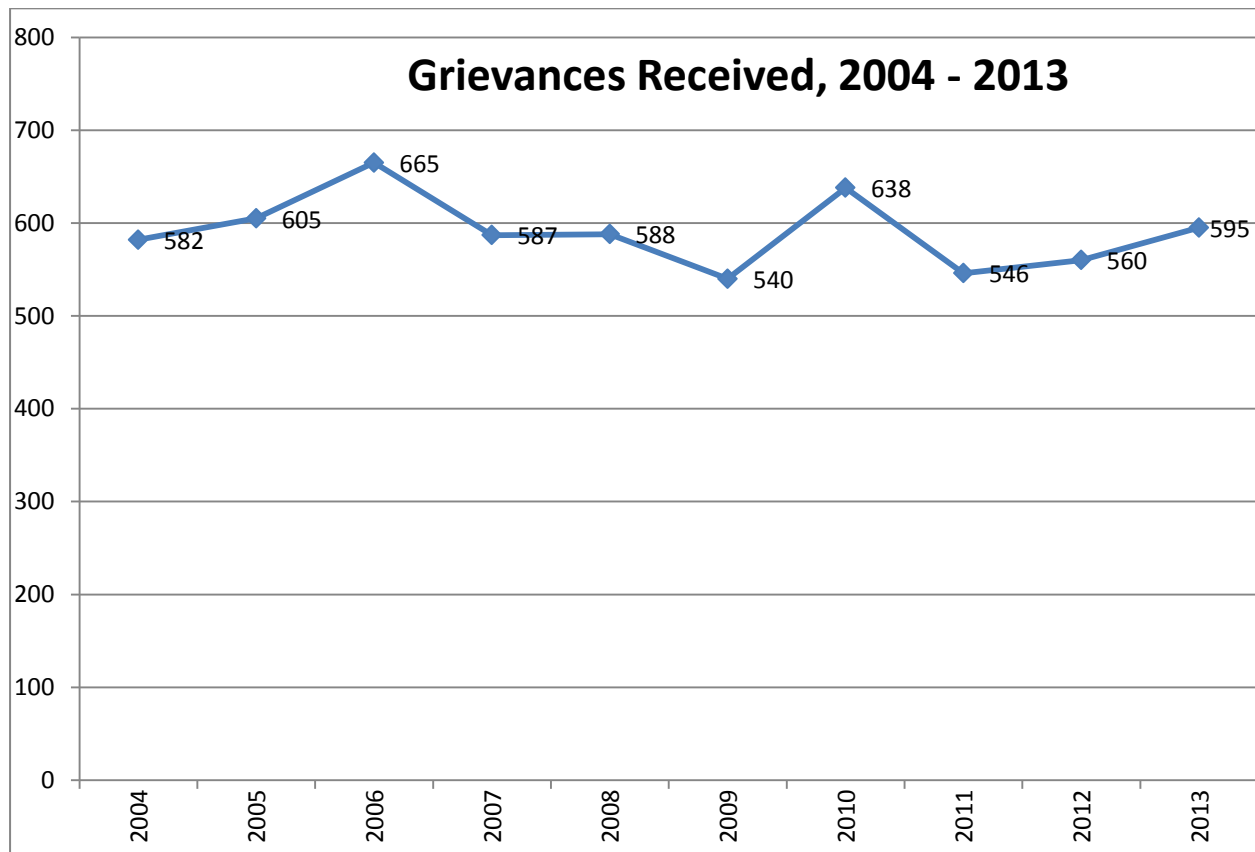
The court rules permit the Commission to make public statements during the investigating stage if, on its sole determination by majority vote, it is in the public interest to do so. MCR 9.221. Nevertheless, the Commission's statement, if any, is limited to the fact that (1) there is an investigation 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. 2013 STATISTICS

#### A. COMPLAINTS RECEIVED AND INVESTIGATED

In 2013, the Commission received 843 requests for "Requests for Investigation" forms. There were 595 Requests for Investigation filed in 2013.

2013 CASELOAD	
Cases Pending on 1/1/13	101
New Grievances Considered	595
Cases Concluded in 2013	611
Cases Pending on 12/31/13	85



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 2013, regardless of when the complaints were received. In 2013, the Commission disposed of 611 cases.



## **C. CLOSED WITHOUT ACTION**

In 584 of the 611 cases closed in 2013, 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 2013, the Commission issued 10 letters of admonishment, eight letters of caution, and one letter of explanation. Each of these dispositions is summarized in Section IV.

## E. FORMAL COMPLAINTS

The Commission issued three formal complaints in 2013. They are summarized in Section IV.

Formal Complaint No. 91 – Hon. Diane M. Hathaway

Formal Complaint No. 92 – Hon. Bruce U. Morrow

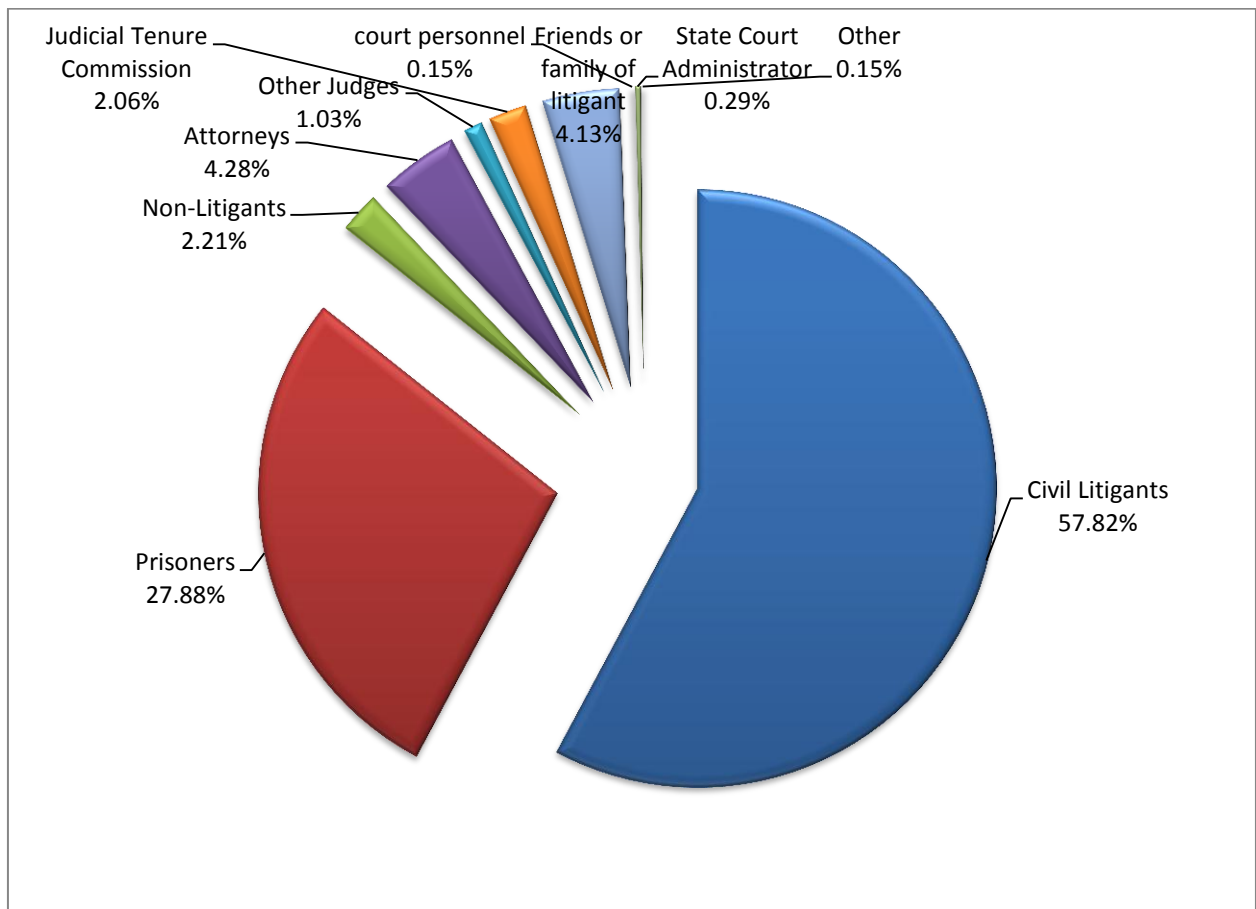
Formal Complaint No. 93 – Hon. Wade H. McCree

## F. SUMMARY OF GRIEVANCES CONSIDERED IN 2013

The 595 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 595, as some grievances cover more than one judge or contain more than one type of alleged misconduct.

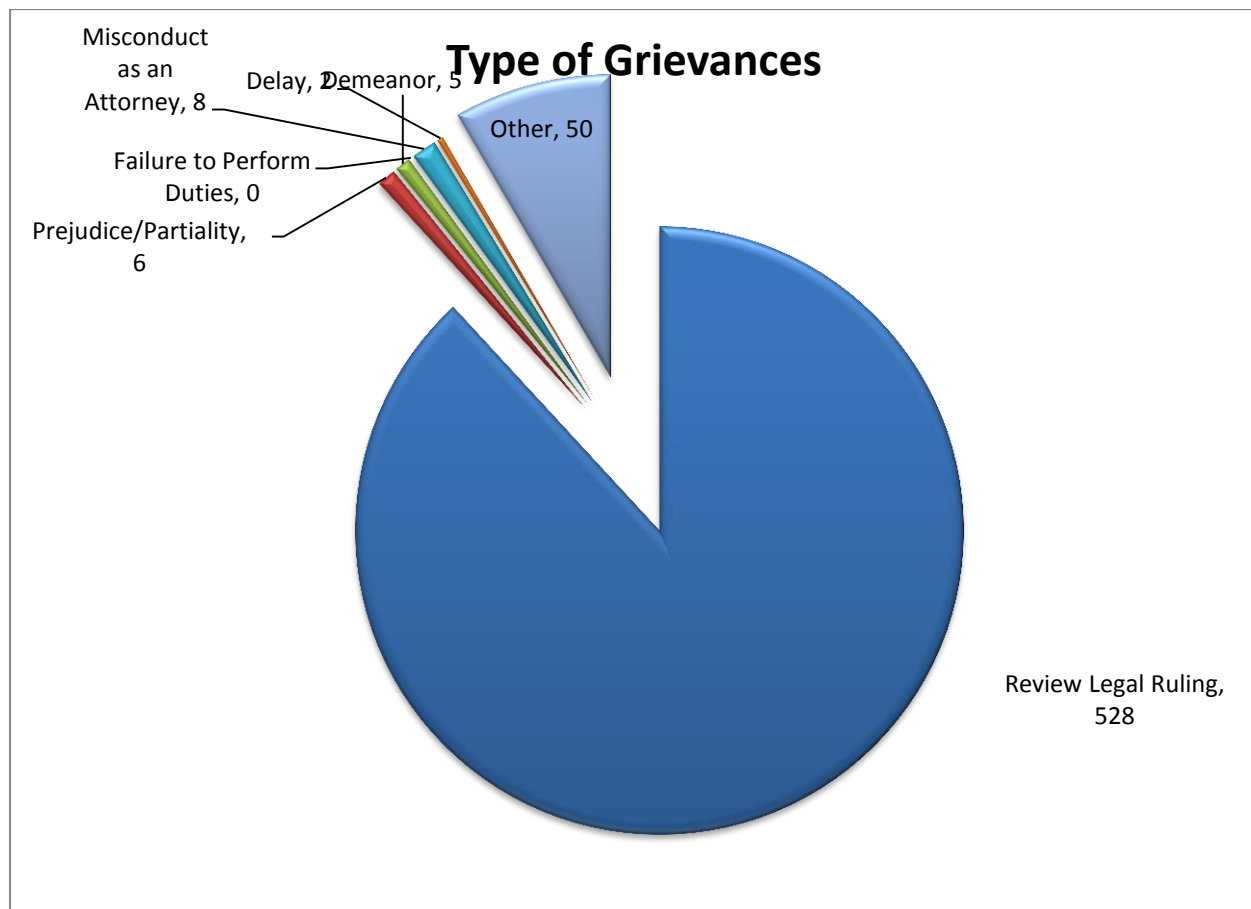
## G. SOURCES OF GRIEVANCES

Litigants (including prisoners) filed the majority of requests for investigation, 98% of the total.



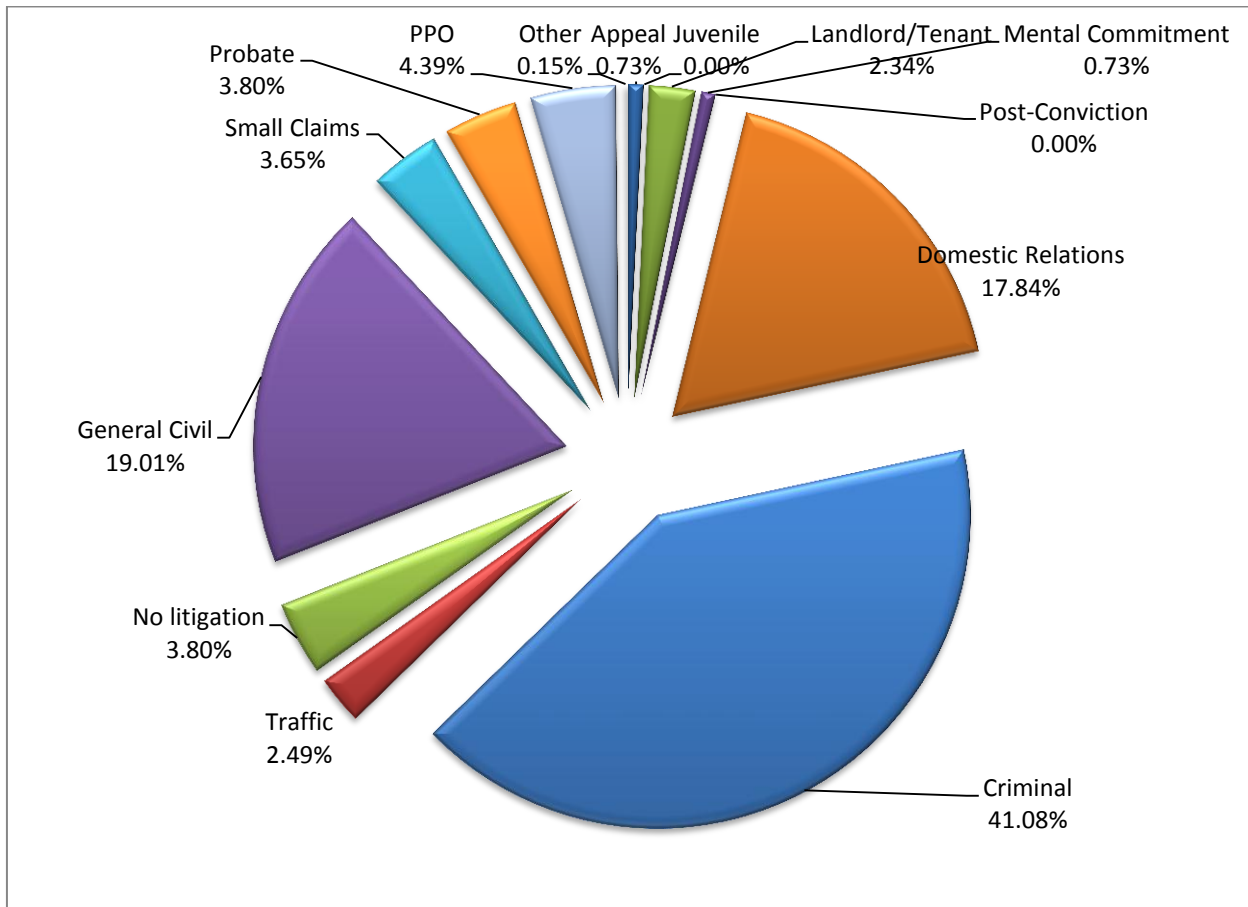
## H. SUBJECT MATTER OF GRIEVANCES

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.



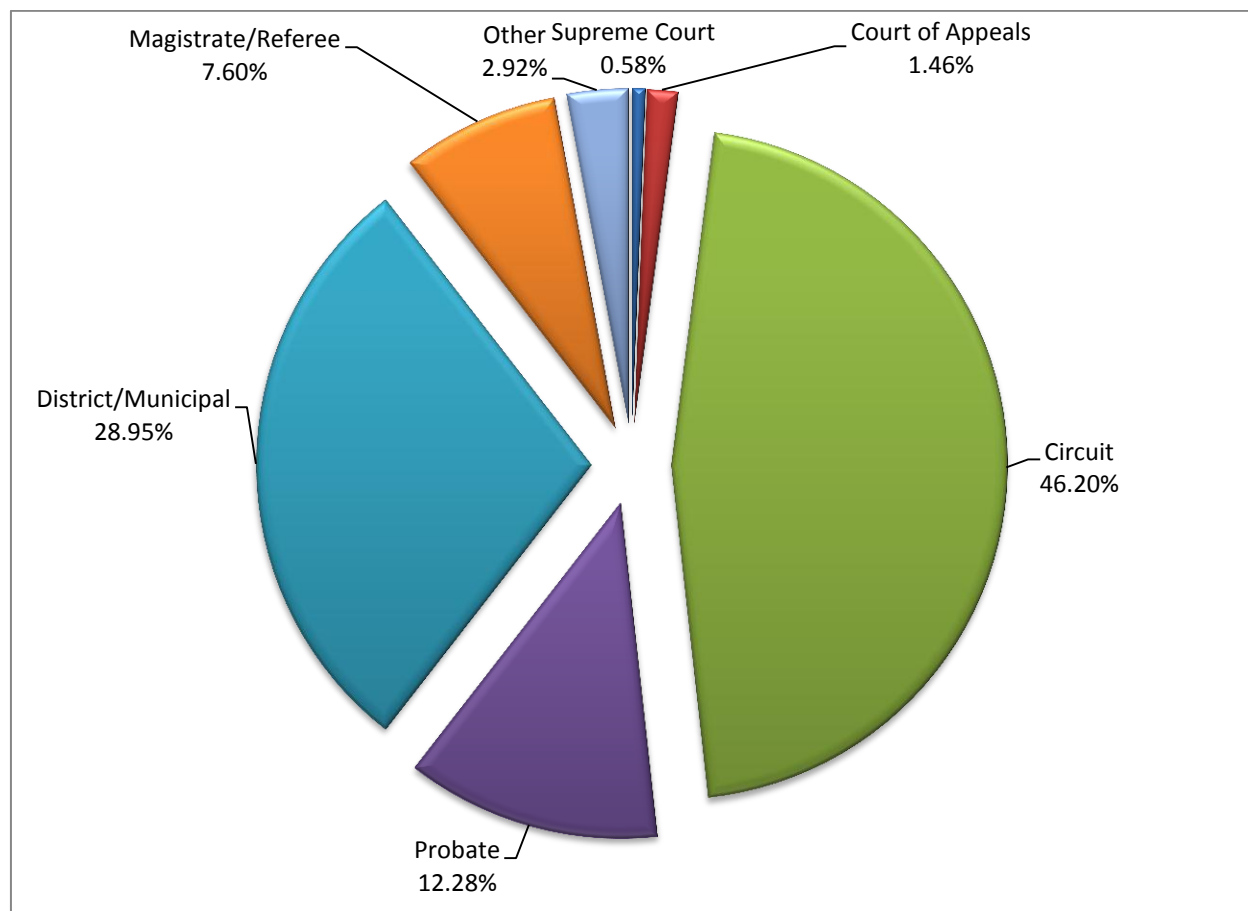
## I. NATURE OF UNDERLYING LITIGATION

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



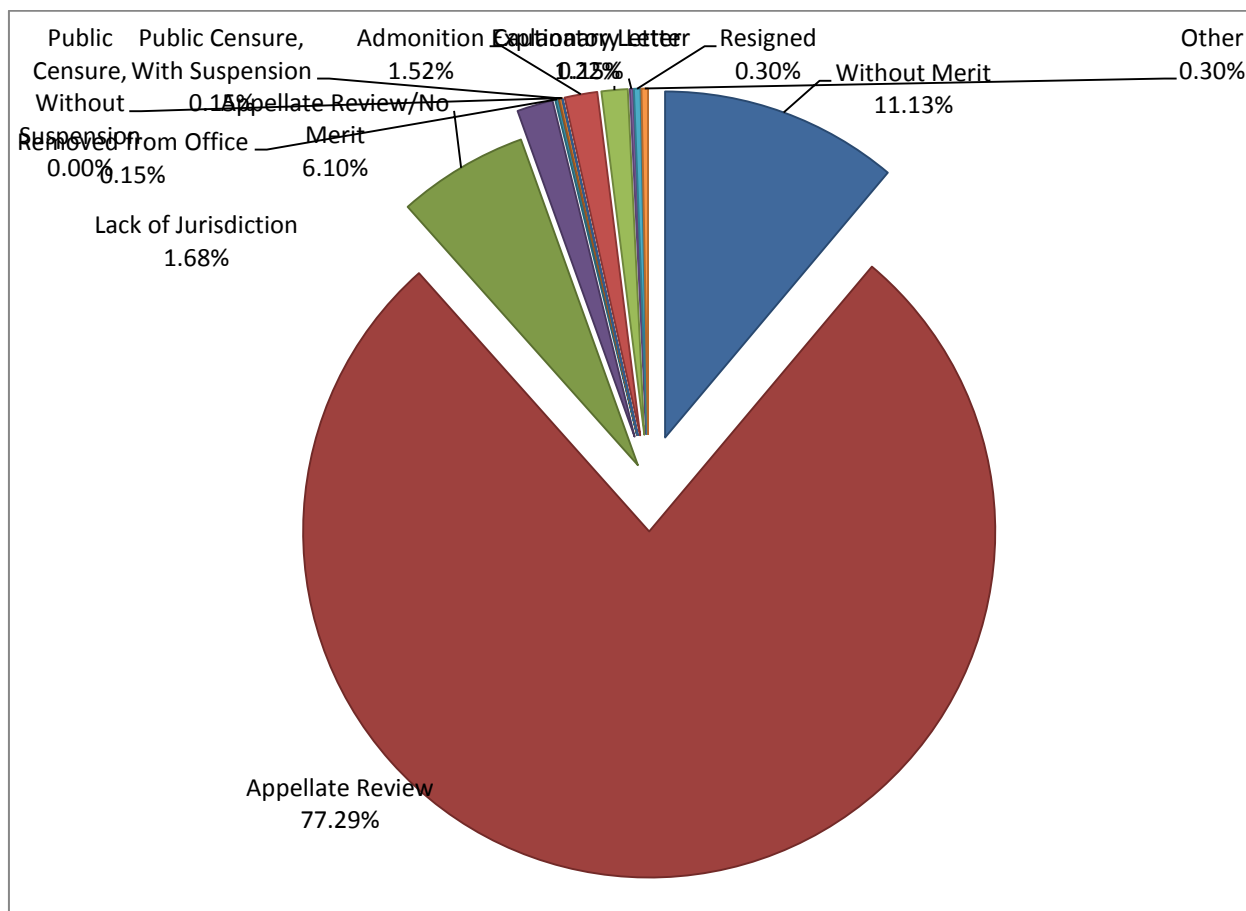
## J. CATEGORIES OF RESPONDENT JUDGES

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 relatively proportionate 33% of the grievances filed.



## K. DISPOSITIONAL BREAKDOWN

There was one resignation, one removal, one public censure, and one retirement in 2013. The Commission issued one letter of explanation, eight letters of caution and 10 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. 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 and it issued its Decision and Recommendation for Discipline on December 28, 2012. The Commission adopted the Master's findings of fact that Respondent lied under oath in Judge Brennan's court, that she made misrepresentations to the JTC during the course of the investigation, and that she 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.

On June 19, 2013, the Michigan Supreme Court issued an Opinion and Order removing Judge Adams from judicial office, ordering her to pay costs of \$8,498.40.

In an opinion by Justice Markman, joined by Chief Justice Young and Justices Kelly, Zahra, and Viviano, the Supreme Court affirmed the Commission's factual findings and conclusions of law, but rejected the recommended sanction as the "cumulative effect" of Judge Adams' misconduct warranted her removal from office, based on the following:

- Respondent's false statements under oath in Judge Brennan's courtroom when she repeatedly denied that she had called Judge Brennan's chambers while represented by counsel.
- Respondent signed her former attorney's name on legal documents without her permission and filed those documents with the court, also without her permission. Respondent's assertion that she thought she had her former attorney's permission to sign the documents and file them with the court was not credible.
- Respondent misrepresented to the JTC that she had contacted Judge Brennan's chambers on only four occasions; that Judge Brennan's staff had never told her that it was improper for her to make calls to them while she was represented by counsel; and that her former attorney had given

respondent permission to sign her former attorney's name on legal documents and file them with the court and that she had given her former attorney copies of those documents.

- In applying the judicial disciplinary recommendations set forth in *In re Brown*, 461 Mich 1291 (2000), it concluded that at least five out of the seven *Brown* factors weighed in favor of a more severe sanction than that recommended by the Commission.
- It noted that Respondent testified falsely under oath, which it described as conduct that is entirely antithetical to the role of a judge who is sworn to uphold the law and to seek the truth, and that Respondent continued to deny any responsibility for her wrongdoing or show any indication of remorse for such wrongdoing.

The Supreme Court, pursuant to MCR 9.205(B), further ordered Respondent to pay costs of \$8,498.40.

Justice McCormack, joined by Justice Cavanagh, concurred in part and dissented in part with the majority. The concurrence agreed with the adoption of the Commission's factual findings and conclusions of law. However, in consideration of the entire factual context of the case, including the fact that none of Respondent's misconduct concerned the performance of her duties as a judicial officer, and giving considerable deference to the Commission's recommendation, Justice McCormack would have adopted the recommended sanction of a 180-day suspension.

## **2. 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. It was 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 in response to his assertion of his client's rights, while the attorney continually treated the judge with respect.

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 "You won't get better tickets anywhere," 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 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. The Commission issued a Scheduling Order including briefing deadlines, and setting a hearing before the Commission, as to conclusions of law and sanctions, on February 4, 2013.

After the hearing, the Commission issued a Decision and Recommendation on March 12, 2013. The Commission found, among other breaches of the standards of judicial conduct, that Respondent failed to be patient, dignified, and courteous to those with whom he dealt with in an official capacity, to be aware that the judicial system is for the benefit of the litigant and public and not the judiciary, to be faithful to



the law, to avoid a controversial tone or manner when addressing counsel, and to avoid unnecessary interruption of counsel during arguments. The Commission further determined that Respondent engaged in conduct that was contrary to justice, ethics, honesty or good morals, and violated MCLA 600.1701 addressing contempt. The Commission concluded that Respondent engaged in judicial misconduct and recommended to the Michigan Supreme Court that Respondent be publically censured and be suspended from judicial office without pay for a period of 30 days.

After the Commission issued its recommendation, Respondent submitted an acceptance of the recommendation to the Michigan Supreme Court. The Examiner moved to strike the acceptance on the basis that the Michigan Court Rules only permitted Respondent file a petition to reject or modify the Commission's decision, but not to file an "acceptance" which included reasons to support the Supreme Court's adoption of the Commission's recommendation. The Examiner argued that under the court rules, Respondent's only other option in response to the recommendation was to do nothing.

On May 1, 2013, the Supreme Court issued its Opinion and Order regarding Formal Complaint No. 90. It denied the Examiner's motion to strike Respondent's acceptance. It further ruled that as Respondent had not filed a petition to reject or modify the Commission's Decision and Recommendation, it accepted the recommendation, publically censured Respondent, and suspended him for 30 days without pay. In its opinion and order, the Michigan Supreme Court adopted the findings of the Commission as its own.

### **3. Formal Complaint No. 91, Justice Diane M. Hathaway - Michigan Supreme Court**

The Judicial Tenure Commission issued Formal Complaint No. 91 against Justice Diane M. Hathaway, of the Michigan Supreme Court, on January 7, 2013. The complaint was accompanied by a motion for interim suspension. The unprecedented action against a sitting Supreme Court justice was warranted because Respondent's actions, as alleged in the formal complaint, reflected a blatant and brazen disregard for the Michigan Code of Judicial Conduct.

Respondent's conduct related to the sale of her primary residence in Grosse Pointe Park, Michigan, which she owned with her husband. She intended to create a false impression that she was suffering from a financial hardship, so that ING, the mortgage holder, would approve a short sale and write off approximately \$600,000 of mortgage debt owed by Respondent and her husband. To create that impression of economic adversity, before the sale of her primary residence Respondent and her husband transferred a vacation property in Florida (that had no mortgage) to the husband's daughter to eliminate that asset from their names (the daughter never lived there), and Respondent transferred another property she owned in Grosse Pointe Park (that she had purchased only months earlier for cash) to her step-son for nominal consideration.

While the short sale was pending, Respondent, in reply to inquiries from ING, denied that she and her husband had any interest in the Florida property, or in the Grosse Pointe Park property that she had purchased and transferred to her stepson. Respondent also made representations in September 2011 to ING that she intended on retiring in the "foreseeable future" and later that she intended to retire shortly after the first part of January 2012 (which would significantly reduce her income and impact the financial hardship), but she did neither.

While the sale of the primary residence was pending, Respondent fully funded the cash purchase of a third property in Grosse Pointe Park in another step-daughter's name. The step-daughter never lived there. In response to an inquiry by ING, Respondent's counsel in the short sale (based on information provided by the judge) represented that Respondent and her husband planned to live in *that* home, which

their daughter “owned,” and pay rent to her. After the short sale was completed resulting in the forgiveness of over \$600,000 in debt by ING for Respondent and her husband, the Florida vacation home and the house purchased in the step-daughter’s name in Grosse Pointe Park were deeded to Respondent and her husband for nominal consideration. Respondent and her husband *never* paid rent to their daughter for the house that Respondent had paid for.

The formal complaint charged Respondent with counts of state common law and silent fraud, fraudulent conveyance of assets to avoid a creditor (regarding a protracted legal action against Respondent’s husband relating to an apartment complex he had sold to a third party some years earlier), and false pretenses (a/k/a criminal fraud). It included counts of financial institution fraud (a/k/a bank fraud), money laundering, and violations of five tax provisions under federal law. In addition, the complaint charged Respondent with numerous misrepresentations to the Commission when she provided her comment, at the Commission’s request, in a letter dated September 28, 2012.

A motion for interim suspension, filed with the formal complaint, reviewed the procedural history of the Commission’s investigation, as well as the fact that the United States of America filed a complaint for civil forfeiture as to the Florida property owned by Respondent and her husband, based on allegations that the Florida property constitutes proceeds of or property traceable to financial institution fraud and money laundering relating to the short sale transaction on the primary residence in Grosse Pointe Park. It further noted that Respondent’s conduct was well-publicized in the media, and that as a Supreme Court justice, in 2012 alone she considered several other disciplinary matters, including two decisions where she agreed that removal from office was a fitting sanction. In the petition, the Examiner asserted that Respondent’s actions constituted blatant and brazen violations of the MCJC, that when considered with the fact that she held the highest judicial office in Michigan, mandated her suspension from judicial office during the pendency of the formal proceeding.

Within an hour of the filing and service of the formal complaint and the petition for interim suspension, Respondent announced her retirement, which became official shortly afterward on January 21, 2013. The Commission then dismissed the formal complaint.

Federal prosecutors filed a criminal information against Respondent on January 18, 2013, charging her with felony bank fraud. Respondent was alleged to have “executed a scheme to defraud ING and to obtain money and funds owned by and under the control of ING by means of materially false and fraudulent pretenses and representations.” On January 29, Respondent entered a guilty plea on one federal count of felony bank fraud before U.S. District Judge John Corbett O’Meara. She was sentenced on May 28 to 366 days in prison, to pay \$90,000 in restitution, and to spend two years on probation. On August 13, 2013, Hathaway began serving her sentence at the Federal Correctional Facility at Alderson, West Virginia.

#### **4. Formal Complaint No. 92, Hon. Bruce U. Morrow - 3<sup>rd</sup> Circuit Court**

On March 6, 2013, based on a Request for Investigation submitted by Wayne County Prosecutor Kym Worthy and after a preliminary investigation, the Judicial Tenure Commission filed Formal Complaint No. 92 against Hon. Bruce U. Morrow, a judge of the Third Circuit Court in Wayne County. The complaint set out factual allegations for ten cases and alleged that Judge Morrow ignored the law, based decisions on discussions and proceedings for which he failed to make proper records, failed to remain impartial, advocated for the defendant, refused to give written orders, either acted improperly or created the appearance of impropriety, and ignored the safety of others. On March 15, the Supreme Court appointed Hon. Edward Sosnick as Master to preside over the formal hearing.

Respondent filed his Response and Affirmative Defenses on March 20, 2013. The formal hearing began on June 10 and concluded on June 17. The Master heard closing arguments on June 19, and issued his report on August 8, 2013, finding that Respondent committed judicial misconduct in two of the ten cases in the Formal Complaint.

Both Respondent and the Examiner filed Objections to the Report of the Master on September 13. The Commission conducted a public hearing and heard oral arguments from the parties on October 14. The Commission issued its Decision and Recommendation on December 9, 2013. A majority found Respondent committed judicial misconduct in eight of the ten cases in the formal complaint, holding that Respondent repeatedly failed to follow the law and proper legal procedures, failed to maintain impartiality and avoid the appearance of impropriety, and failed to maintain appropriate security in the courtroom. The majority recommended a suspension without pay for 90 days. One Commissioner filed a separate opinion disagreeing with the finding of misconduct in three cases but concurring in the recommended sanction. As of December 31, 2013, the matter was pending with the Michigan Supreme Court.

#### **5. Formal Complaint No. 93, Hon. Wade H. McCree - 3<sup>rd</sup> Circuit Court**

The local media reported that Judge Wade McCree was involved in a sexual relationship with a litigant whose case was pending before him. Based on the results of a preliminary investigation, and amid grave concerns about Respondent's lack of fitness as a judicial officer, the Commission petitioned the Supreme Court on January 7, 2013 to suspend him, without pay, from his position as a 3<sup>rd</sup> Circuit Court judge. He filed an answer to that petition, as well as to the Commission's motion for immediate consideration. On February 8, 2013, the Court suspended McCree, without pay, and ordered the file sealed in the meantime.

On March 12, 2013, the Commission issued a five-count formal complaint against McCree, and petitioned the Court to appoint a master to preside over the trial. On March 15, 2013, the Court appointed the Hon. Charles A. Nelson, a retired Jackson County circuit court judge, as a master to hear Formal Complaint No. 93 (FC 93). Respondent filed his answer to the formal complaint on March 26, 2013. On March 29, 2013, the master conducted a pre-trial conference setting forth deadline dates for the exchange of witness lists, exhibit lists, proposed exhibits and witness statements. The master's order also provided deadline dates for the filing of motions and responses to motions. On April 1, 2013 the Examiner filed a motion with the Commission to amend the formal complaint and served a copy on Respondent that same day. The Commission granted the Examiner's motion to amend on April 8, 2013, and McCree filed several pre-trial motions with the master, including a motion to strike Count IV of the

Formal Complaint (the text messages), and a motion *in limine* to preclude their admission. The Examiner filed responses to Respondent's motions on April 15, 2013.

On April 25, 2013, at the Washtenaw County Circuit Court, the master conducted a hearing on all motions, including Respondent's oral motion to seal the text messages and e-mails which were the subject of Count IV of the Amended Complaint. On May 2, 2013, the master denied the motion to strike Count IV, as well as the motion *in limine*. Although the master granted Respondent's Motion to Seal the text messages, he limited his order to the messages and e-mails which had not already been made public in the formal complaint or the answer to it.

On May 20, 2013, the public hearing on FC 93 began at the Washtenaw County Circuit Court in Ann Arbor, Michigan, and it continued through May 28, 2013. The master entertained oral arguments at the close of the proofs on May 28, 2013. Transcripts of the hearing were filed on June 5, 2013. On June 23, 2013, the master filed his findings of fact and conclusions of law, finding that Respondent had lied to the Commission and at the hearing, in addition to finding that McCree had committed other misconduct. The master found that the text messages did not violate the Code of Judicial Conduct. On July 26 2013, the Examiner and Respondent filed their respective objections to the master's findings of fact and conclusions of law. Oral arguments were held before the Commission on August 5, 2013.

The Commission issued its Decision and Recommendation on September 9, 2013. The Commission determined that McCree had committed misconduct by engaging in a sexual affair with a litigant whose case was pending before him and by failing to recuse himself from the case. The Commission also found that during his relationship with Mott, McCree had used his chambers to engage in sexual intercourse with his mistress, permitted her to enter the courthouse through an employee entrance without going through security, allowed her to remain alone in his chambers while he was on the bench, arranged for her to park her vehicle in an area reserved for judges and brought her cell phone into the courthouse for her in violation of the court's security policy, so that she could communicate with him while he was on the bench. The Commission also found that Respondent regularly engaged in numerous ex parte discussions with his mistress regarding her own case as well another case on Respondent's docket in which her relative was a defendant. Finally, the Commission found that since the instant proceedings were initiated, Respondent had made material misrepresentations, under oath, regarding his misconduct, both to the Commission and at the hearing before the master. The Commission recommended that the Supreme Court issue an order removing McCree from office and conditionally suspending him for an additional, six-year period, beginning January 1, 2015. The JTC also recommended, per MCR 9.205(B), that the Court order Respondent to pay the cost, fees, and expenses incurred by the Commission in prosecuting FC 93, in the amount of \$11,945.17.

Respondent filed his petition to reject the JTC's recommendations on October 7, 2013. The Examiner filed his response on October 28, 2013. The Court heard oral argument on December 11, 2013. (Although no decision was issued by December 31, 2013, the Court removed McCree from office on March 26, 2014, and conditionally suspended him for six years if he is elected to any judicial office in November 2014.)

## **B. NON-PUBLIC PROCEEDINGS**

### **On the Bench Conduct (and Relating to Cases)**

#### **1. Delay- MCJC Canon 3A(5) and MCR 9.205(B)(1)(b)**

A judge engaged in a 29-month delay in deciding landlord/tenant proceeding. Although some of the delay was attributable to counsel and removal to the circuit court, once the matter became aged the judge failed to make it a priority.

A judge had a 32-month delay for criminal case to reach trial, although the Commission acknowledged that many of the adjournments were due to the judge's obligation to try other cases that were older. The Commission noted that the judge was making an effort to resolve a backlog of cases that existed on his docket.

A judge engaged in a 10 month delay in conducting a hearing (including a failure to insure it was promptly scheduled by court staff). Although all of the delay was not attributable to the respondent, the Commission reminded the judicial officer of the duty to insure that matters assigned to her were promptly scheduled and disposed of. The judicial officer was not present in the courthouse when the hearing was ultimately set to occur, so that the hearing did not take place.

A judge had a three-year delay in deciding a motion, and granted 35 adjournments of the matter, including many occasions when witnesses were subpoenaed, were in court, and were ready to testify.

#### **2. Demeanor and Comments on the Bench/Treatment of Litigants, Attorneys, Witnesses, other (not court employees) MCJC Canon 3A(3) and MCR 9.205(B)(1)(c)**

A judge made remarks over the course of a pending motion which reflected lack of patience, dignity, and courtesy. Those included advising a party that he did not have a 5<sup>th</sup> Amendment right in the judge's courtroom, threatening to abort a hearing unless a party answered the judge's questions, and the judge stating that she did not have to show any courtesy, did not care about scheduling conflicts, was under no obligation to clarify the record, did not care about the attorneys and parties, and that a party could continue to be represented by counsel "at his own peril."

#### **3. Ex Parte Communications**

A judge conducted in-chambers discussions with only defense counsel while plea negotiations were ongoing with the prosecutor, creating an impression that substantive *ex parte* communications were occurring.

A judge engaged in *ex parte* communications over objections of plaintiff's counsel when the judge was attempting to force the parties into a settlement, which also contributed to the delay in the proceedings.

**4. *Failure to be Faithful to the Law (Except Contempt);  
Legal Error; Improper Procedure; Abuse of Discretion;  
Failure to Follow Directives of Court of Appeals- MCJC Canon 3A(1)***

A judge imposed an eight-month bar on a party from having a hearing on a parenting time motion as sanction for failing to appear at a proceeding, without having a hearing on the issue, thus violating the party's due process rights. The judge failed to investigate the opposing party's claims about insufficient notice, and the sanctioned party's claim about failing to appear based on inclement weather.

A judge refused to accept a higher court's determination that proper jurisdiction to hear a case was in that lower court. In addition, the lower court judge refused to consider that that court had jurisdiction over the matter, despite being told so by the higher court.

A judge ordered the spectators in the courtroom to identify themselves for no justifiable reason, excluded attorneys from the courtroom, and refused to allow an attorney to make a record.

A judge scheduled matters without input from the attorneys and set proceedings on dates knowing that one attorney was not available, in violation of MCR 2.401(B)(2)(d). The judge scheduled a date that caused an attorney to make last-minute travel arrangements to attend, only to find out that the judge had granted the prosecutor's motion to dismiss the case.

**5. *Favoritism/Impartiality/Bias/Predetermination***

A judge accepted a party's claims regarding lack notice regarding hearing, and imposed sanctions on opposing party, without conducting review or hearing to consider response of opposing party.

**6. *Administrative Failures/Supervision of Court  
Employees/Improper Delegation***

A judge failed to review a pretrial sheet that had been submitted to the judge's staff by a prosecutor that reflected a request for a bench warrant, which resulted in the improper dismissal of case contrary to the prosecutor's intent.

A chief judge failed to discipline a referee/magistrate in any way, when the referee/magistrate failed to appear for a scheduled motion hearing after a 10-month delay in scheduling the proceeding.

## ***7. Timeliness in Starting Proceedings (Tardiness)***

A judge engaged in a pattern of tardiness to court and failing to take the bench anywhere near the time the docket was set to begin. The judge's conduct resulted in litigants and attorneys waiting an extended period in the court, and the delayed resolution of her docket throughout the day.

### **Off the Bench Conduct**

## ***8. Disparaging Treatment of Court Employees (Including Judges)***

One judge walked through another's courtroom while court was in session and issued a greeting, thus interrupting the proceedings. After learning the sitting judge was upset, the first judge nevertheless returned through courtroom and interrupted proceedings a second time. During a heated conversation between the judges in a non-public hallway addressing the matter, the first judge made remarks to the other jurist that were disrespectful, including calling that second judge "ignorant." The local chief judge called a meeting with the judges to discuss the incidents, but the first judge failed to attend (providing an excuse of a busy docket). The first judge eventually issued an apology, but only after an investigation by the Commission had been initiated.

A judge made inappropriate remarks regarding the appearance of female employees that carried implicit sexual innuendo. The judge had been previously admonished for similar comments, yet continued to make comments that made others uncomfortable and created a difficult workplace, which showed a lack of sensitivity to the effect the judge's behavior had on those around the judge. The judge also used the portrait of another judge for target practice and showed the result to a court employee, and made a disparaging remark about another judge in front of other court employees that was wholly inappropriate. The judge retired.

A judge, conducting a sentencing, was openly critical of appellate judges the judge did not agree with politically, and suggested that their decisions were wrong because they were motivated by a political philosophy different than his own. The tenor of the remarks displayed a disparaging and mocking attitude toward appellate judges the judge considered "liberal," and he used the word "ditzy" to describe some members of the Supreme Court.

A judge became involved in a heated dispute with another judge who served in the same court. Although the judge engaged in derogatory street talk, the judge was apologetic, acknowledged that the remark was inappropriate, and regretted making it.

## ***9. Financial Disclosure Statements/Gifts***

A judge failed to report the receipt of passes to a golf tournament championship tournament that were worth \$350 apiece. The judge claimed ignorance of the value of the tickets, so there were no grounds to report.

A judge accepted a large cash gift at a surprise birthday party thrown for him by his staff, which sold tickets to persons that included attorneys who appeared before the judge. The fact that the money came from tickets sold by the staff made the gift more than an “ordinary” birthday gift, and the judge’s accepting a large cash gift created the public perception of impropriety.

#### ***10. Miscellaneous Personal Conduct***

A judge failed to rescind a property tax exemption affidavit on a residence after purchasing a second home, leaving two in effect in violation of the law. In addition, when the judge rented out one of the houses, the judge did not obtain a landlord’s license which violated a local ordinance.

A judge allowed his minor children to be driven home by the judge’s intoxicated girlfriend, placing the children in unreasonable risk of harm or injury.

A judge moved and did not promptly report the new address to the Secretary of State, as required by statute.

#### ***11. Prestige of Office***

A judge called a magistrate to “take it easy” on a close friend who had a criminal case pending. The judge told the magistrate that the friend was like “family” and like a “god-son.”

### **Relating to Judicial Discipline Cases**

#### ***12. Failure to Cooperate with the Commission***

A judge inappropriately referenced the professional disciplinary history of an attorney grievant (which was unrelated to facts of grievance) in a comment letter to the Commission.

A judge made unbelievable representations to the Commission regarding the reasons for a failure to be present at motion hearing after a 10-month delay in conducting the hearing.

A judge attributed media attention regarding his conduct with no basis for those claims.

A judge attempted to blame scheduling problems on the judge’s staff, instead of accepting responsibility for the judge’s own mismanagement.



## V. COMMISSION ORGANIZATION, STAFF AND BUDGET

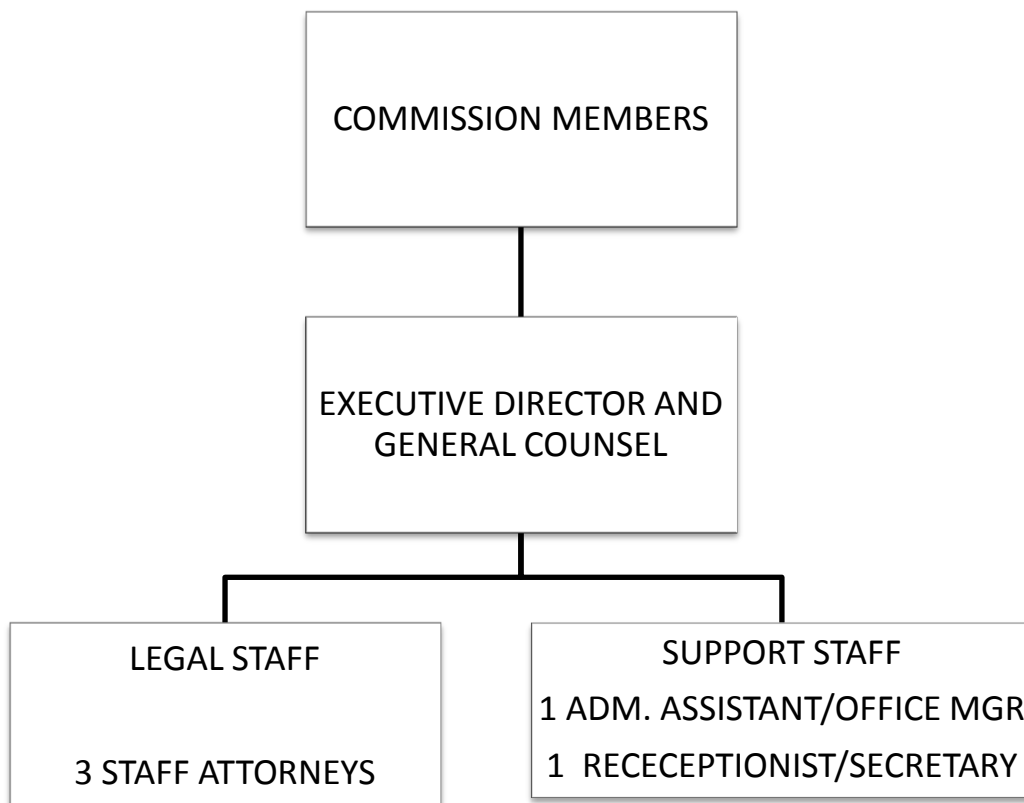
### A. COMMISSION ORGANIZATION AND STAFF

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.

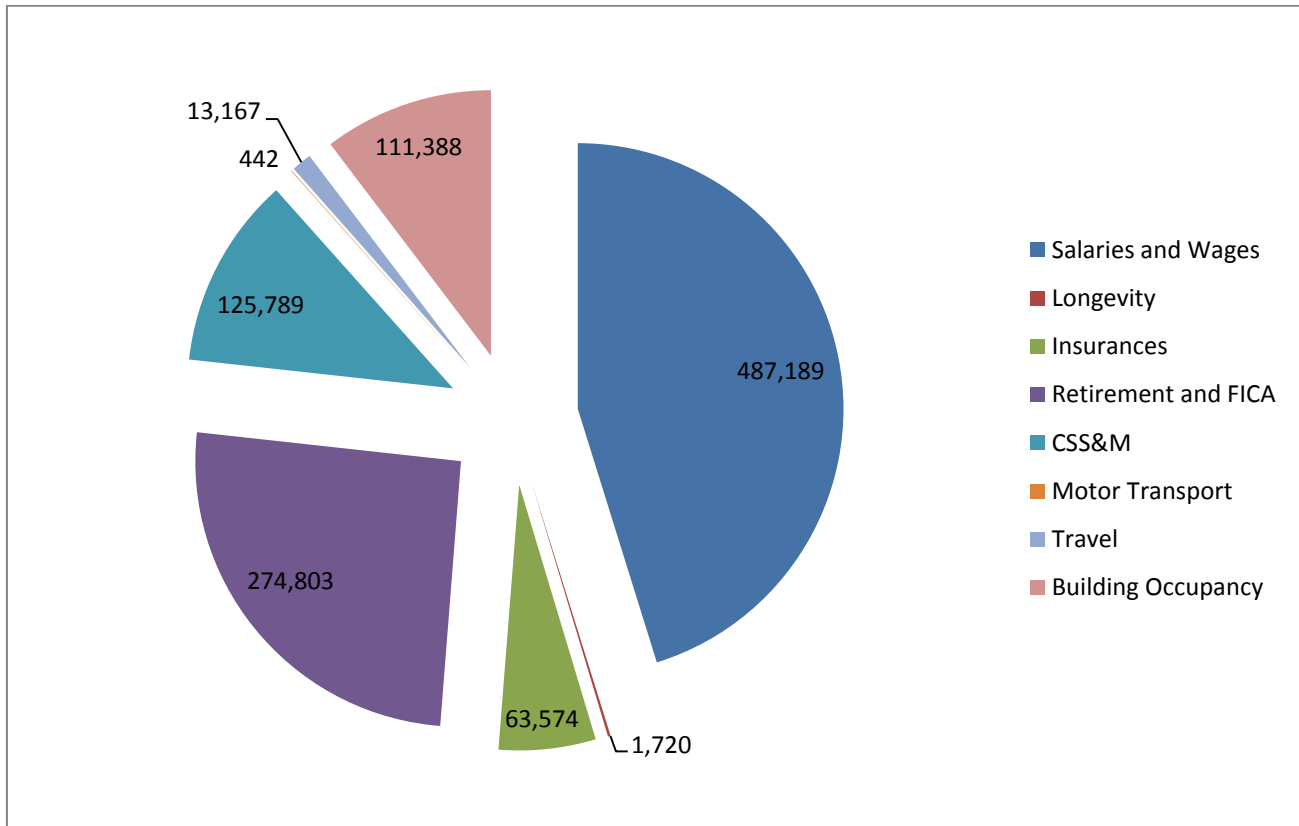
The Commission's legal staff is responsible for the evaluation and investigation of grievances and serves as associate-examiners during formal proceedings. The Commission's legal staff is comprised of Senior Staff Attorney Casimir J. Swastek, Staff Attorney Glenn J. Page, and Staff Attorney Margaret 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 2013 fiscal year (October 1, 2012–September 30, 2013), the Commission spent \$1,078,073, which was \$6,527 under budget. The surplus was returned to the Court's account. The Commission continues to do its part to keep its expenditures to a minimum.



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