

State of Michigan

Judicial Tenure Commission

Annual Report 2016



Judicial Tenure Commission
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jtc.courts.mi.gov

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VICE CHAIRPERSON
HON. MONTE J. BURMEISTER
SECRETARY
DAVID T. FISCHER
HON. Nanci J. GRANT
THOMAS J. RYAN, ESQ.
HON. DAVID H. SAWYER
MELISSA B. SPICKLER
HON. LAWRENCE S. TALON



State of Michigan

Judicial Tenure Commission

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April 4, 2017

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 2016. This Annual Report is presented to inform the public and all branches of state government about the Commission's duties, operations, and actions.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Pablo Cortes".

Pablo Cortes
Chairperson
For the Commission

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COMPOSITION OF THE COMMISSION – 2016

Hon. Pablo Cortes, Vice Chairperson

62A District Court
2650 DeHoop Ave. SW
Grand Rapids, MI 49509
(616) 257-9814
Term Exp. 12/31/19
Elected by Judges of Limited Jurisdiction

Nancy J. Diehl, Esq., Secretary

3034 W. Grand Blvd., Suite 8-450
Detroit, MI 48202
(313) 875-5110
Term Exp. 12/31/17
Elected by State Bar Membership

Hon. Monte J. Burmeister

Judge, Probate/District Court
46th Circuit Trial Court
(989) 344-3260 Ofc
Term Exp. 12/31/17
Elected by Probate Judges

Hon. Nanci J. Grant

Judge, 6th Circuit Court
1200 N. Telegraph Road, Dept. 404
Pontiac, MI 48341
(248) 858-0358
Term Exp. 12/31/18
Elected by Circuit Court Judges

David T. Fischer

3034 W. Grand Blvd., Suite 8-450
Detroit, MI 48202
(313) 875-5110
Term Exp. 12/31/17
Appointed by Governor

Thomas J. Ryan, Esq.

2055 Orchard Lake Road
Sylvan Lake, MI 48320
(248) 334-9938
Term Exp. 12/31/19
Elected by State Bar Membership

Hon. David H. Sawyer, Chairperson

Judge, Michigan Court of Appeals
350 Ottawa Ave. NW
Grand Rapids, MI 49503
(616) 456-1811
Term Exp. 12/31/17
Elected by Court of Appeals Judges

Melissa B. Spickler

3034 W. Grand Blvd., Suite 8-450
Detroit, MI 48202
(313) 875-5110
Term Exp. 12/31/19
Appointed by Governor

Hon. Lawrence S. Talon

Judge, 3rd Circuit Court
1441 Saint Antoine Street
Detroit, MI 48226
(313) 224-2789 Office
Term Exp. 12/31/18
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.

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 served as the Commission's Vice Chairperson in 2015 and 2016.

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, major drugs, and victim services. Ms. Diehl, past president of the State Bar of Michigan, sits on the Michigan Indigent Defense Commission and the Wayne County Kids-TALK Children's Advocacy Advisory Board. 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 fourth term, which began on January 1, 2015. Ms. Diehl has a B.A. from Western Michigan University and a J.D. from Wayne State University. Ms. Diehl served as the Commission's Secretary in 2015 and 2016.

David T. Fischer is Chairman and Chief Executive Officer of The Suburban Collection, the 13th 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 Arts from CCS as well.

Mr. 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 Mr. 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.

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 in 2006. Judge Grant is the Chief Judge of the Sixth Circuit Court of Michigan and served as the Commission’s Chair in 2013 and 2014.

Hon. Lawrence S. Talon is a Wayne County Circuit Court Judge. He was appointed to the bench in 2010, and elected in 2012 and 2014. Judge Talon serves in the Court's Criminal Division where he presides over a felony trial docket and a drug treatment court docket. He is also the chair of the Wayne County Criminal Advocacy Program, which provides continuing legal education for lawyers who represent indigent defendants in Wayne County Circuit Court. Before becoming a judge, he was an Assistant Wayne County Prosecuting Attorney for 25 years. He also served as a Panel Member and then as a Panel Chair for the Michigan Attorney Discipline Board. Judge Talon was elected to the Judicial Tenure Commission in 2015.

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 66th President from September 2000, to September 2001. Mr. Ryan served on the Oakland County Bar Association’s Board of Directors and was its President from 1993 to 1994. He received his undergraduate degree from the University of Notre Dame and his law degree from the University of Detroit Mercy. Mr. Ryan has been in the private practice of law since January, 1977, and is the attorney for the Village of Beverly Hills, City of Keego Harbor, City of the Village of Clarkston, and the City of Orchard Lake Village from May 2001 to April 2011, as well as the prosecuting attorney for the Township of Bloomfield, from July, 1978 to October, 2006. Mr. Ryan has served as the Commission’s Vice Chairperson and Chairperson.

Hon. David H. Sawyer was elected to the Court of Appeals in 1986. He was elected to the Judicial Tenure Commission by his fellow Court of Appeals judges for a term that began on January 1, 2010. 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 served as the Commission’s Vice Chairperson in 2013 and 2014 and served as the Commission’s Chairperson in 2015 and 2016.

Melissa B. Spickler is a veteran of the financial services industry, with more than three decades of accomplishments as a Merrill Lynch Financial Advisor. She founded The Spickler Group in 1980, and has since turned it into a 10 person team serving individual as well as institutional clients. Missy is a Managing Director Wealth Management, is on the Executive Committee of Merrill's National Women's Exchange, serves as President of the Detroit Area Chapter of the Women's Exchange, and has recently served 3 years on the National Advisory Council to Management. She has a bachelor's degree in Criminal Law from Michigan State University and also holds a Chartered Retirement Planning Counselor SM designation.

Most recently, Missy was recognized in Barron's Top 1200 Advisors by State. In 2012 and 2013, she was named to Barron's prestigious Top 100 Women Financial Advisors Nationwide. In 2012 and 2013, she was recognized in Registered Rep Magazine as one of the Top 50 Women Advisors Nationwide. For the past three years, Missy has been voted by Hour Magazine as a 5-Star Wealth Manager. Her commitment to educating consumers on the importance of planning for the impact of health care costs in retirement prompted Barron's Magazine to feature her in the article "How to Protect Your Health & Wealth" as the first financial advisor to be on the cover.

2016 Judicial Tenure Commission



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

BACK ROW (L-R): Judge Nanci J. Grant, Paul J. Fischer (Executive Director through September 12, 2016), Judge Lawrence S. Talon, David T. Fischer, Melissa B. Spickler, Thomas J. Ryan, Judge Monte J. Burmeister

I. COMMISSION COMPOSITION & SCOPE OF AUTHORITY

The Judicial Tenure Commission is an independent state commission that came into being in 1968 by amendment to the Michigan Constitution. The Commission investigates allegations of judicial misconduct and disability, conducts hearings as appropriate, and recommends resolutions (including sanctions when appropriate) to the Michigan Supreme Court. The Commission's objective is to enforce high standards of ethical conduct for judges. The Commission recognizes that judges must be free to act independently on the merits of each case and in good faith, but 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.

A. Composition of the Commission

The Commission consists of five judges, two attorneys, and two lay persons. All commissioners serve three year terms. The terms are staggered, so that three positions open up each year. The lay commissioners are appointed by the governor. The lawyers are elected by the State Bar of Michigan. Four of the judges are elected by the court on which they serve (probate, district court, circuit court, court of appeals), while one judge is elected at large by the State Bar of Michigan. All commissioners whose terms ended in December 2016 were reelected or reappointed.

B. 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 Constitution, which may be found on the Commission's web site (jtc.courts.mi.gov).

2. Michigan Court Rules

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

3. Code of Judicial Conduct

The Michigan Supreme Court adopted the Code of Judicial Conduct in 1974. The Court from time-to-time effects changes in the Code. The most recent Code may be found on the Commission's website (jtc.courts.mi.gov).

C. Persons Within Commission Jurisdiction

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 be filed after the person is no longer a judge. The number of judicial officers (that is, judges, magistrates and referees) within the Commission's jurisdiction is about 1227.

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.

D. 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 removed from a case nor have a matter transferred to another judge. The Commission cannot provide legal assistance to individuals or intervene in litigation on behalf of a party.

E. What the Commission Can Do

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 inappropriate demeanor (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.

II. OVERVIEW OF THE COMPLAINT PROCESS

A. How Matters Are Brought Before the Commission

Anyone may file a request for investigation (or "grievance") against a judge on the Commission's complaint form, a sample of which is on the Commission's website (jtc.courts.mi.gov). The court rules require that the person filing the grievance ("the grievant") have his or her signature verified (*i.e.*, notarized) to establish that he or she has sworn to the truthfulness of the statements made in the grievance. The Commission may institute an investigation on its own, or at the request of the Chief Justice of the Michigan Supreme Court or the State Court Administrator. The Commission rarely considers complaints made anonymously. It may open a file when it learns of matters 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 grievance is unfounded and therefore 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 grievance 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, the Commission determines that improper or questionable conduct may have occurred, but it was relatively minor, the Commission may dismiss the matter with a cautionary letter to the judge, in which the Commission will alert the judge to concerns about the conduct.

Action the Commission Can Take

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

When the Commission determines that a judge may have engaged in more serious questionable or improper conduct, but the circumstances do not justify a sanction, 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, with the goal that the conduct will not be repeated, or escalate to the level that formal action is required. A private admonishment describes the improper conduct to the judge. 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 only issued after the respondent judge is offered the opportunity to explain. The letters are not sanctions or "discipline." Due to the rules of confidentiality, the Commission and its staff ordinarily cannot advise anyone, even the person who lodged the grievance, of the nature of the action taken. Summaries of conduct that resulted in such letters issued in 2016 are contained in Section IV.

2. Public Dispositions - Formal Complaint & Consent Sanctions

a. The Formal Complaint

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

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

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 by Master

When the Commission files a formal complaint, it typically requests 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, who is typically the Executive Director. The Michigan Rules of Evidence apply to the hearings, which are conducted like civil trials. MCR 9.211(A) Misconduct must be proven by a preponderance of the evidence. *In re Ferrara*, 458 Mich 350 (1998).

c. Proceedings 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.

d. Disposition by Commission

After reviewing the master's findings the Commission may dismiss the matter if it determines that there is insufficient evidence of misconduct. If the Commission determines that misconduct has been established by a preponderance of the evidence, it may recommend that the Michigan Supreme Court sanction 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.

e. Supreme Court Review

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 of being served, the judge may file a petition in the Supreme Court to modify or reject the Commission's Decision and Recommendation. The examiner has 21 days to file a responsive brief. 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 examiner have an opportunity to present oral arguments to the Court, which reviews the record *de novo*. *In re Ferrara*, 458 Mich 350 (1998). After reviewing the record the Court issues an opinion and order accepting, rejecting, or modifying the Commission's Decision and Recommendation. The Court may censure, suspend, remove, or retire the judge. 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. 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).

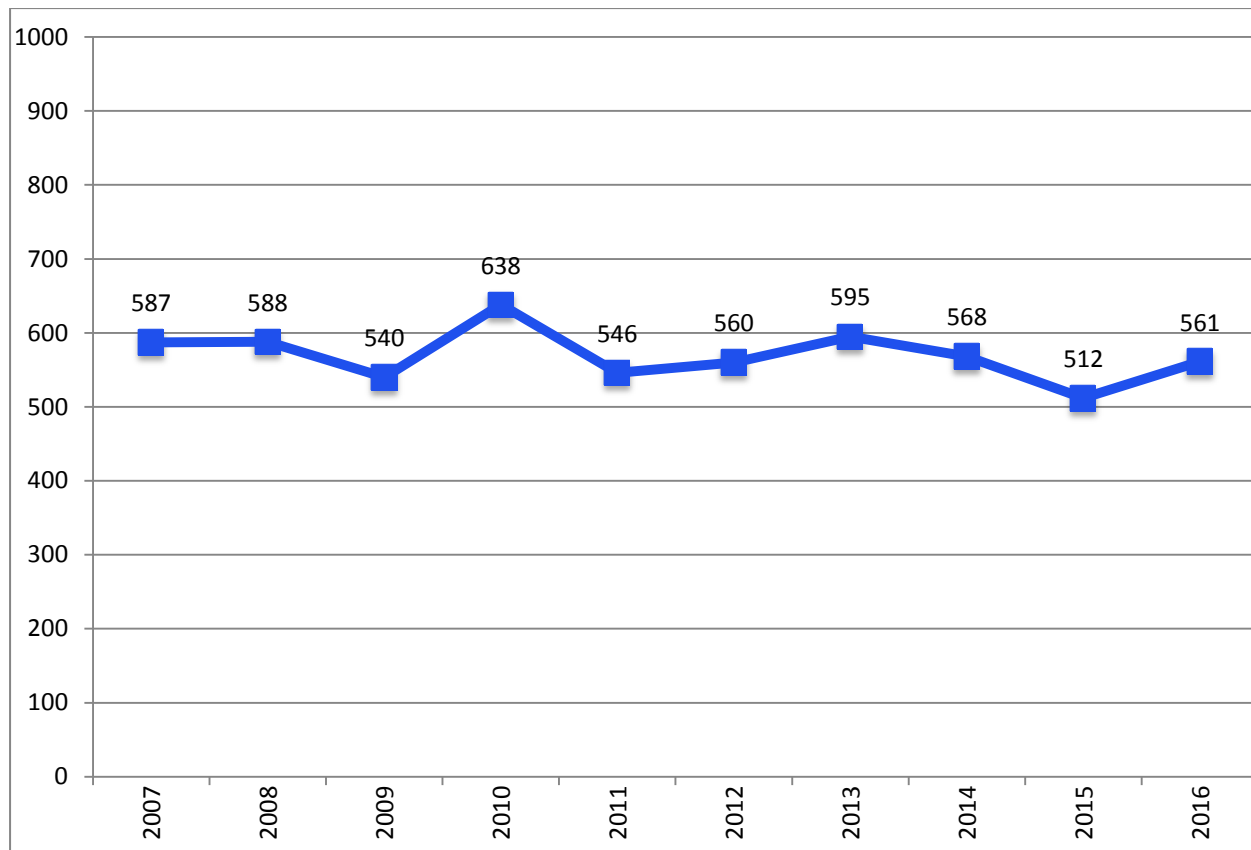
III. 2016 STATISTICS

A. Complaints Received and Investigated¹

In 2016, the Commission received 751 requests that "Request for Investigation" forms be mailed to individuals. This number does not include downloads from the Commission website. There were 561 Requests for Investigation filed in 2016.

2016 CASELOAD	
Cases Pending on 1/1/2016	81
New Grievances Considered	561
Cases Concluded in 2016	587
Cases Pending on 12/31/2016	55

Grievances Received, 2007-2016



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.

¹ The statistics as to filed cases, resolved cases, and other figures may not match as the Commission often addresses multiple submissions regarding a judge in one formal complaint, admonishment, or caution, or may address several disciplinary issues in one filing. In addition, based on the confidentiality restrictions relating to the Commission's investigations, some information relating to cases may not be disclosed.

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.

B. Complaint Dispositions

In 2016, the Commission disposed of 587 cases.

1. Closed without Action

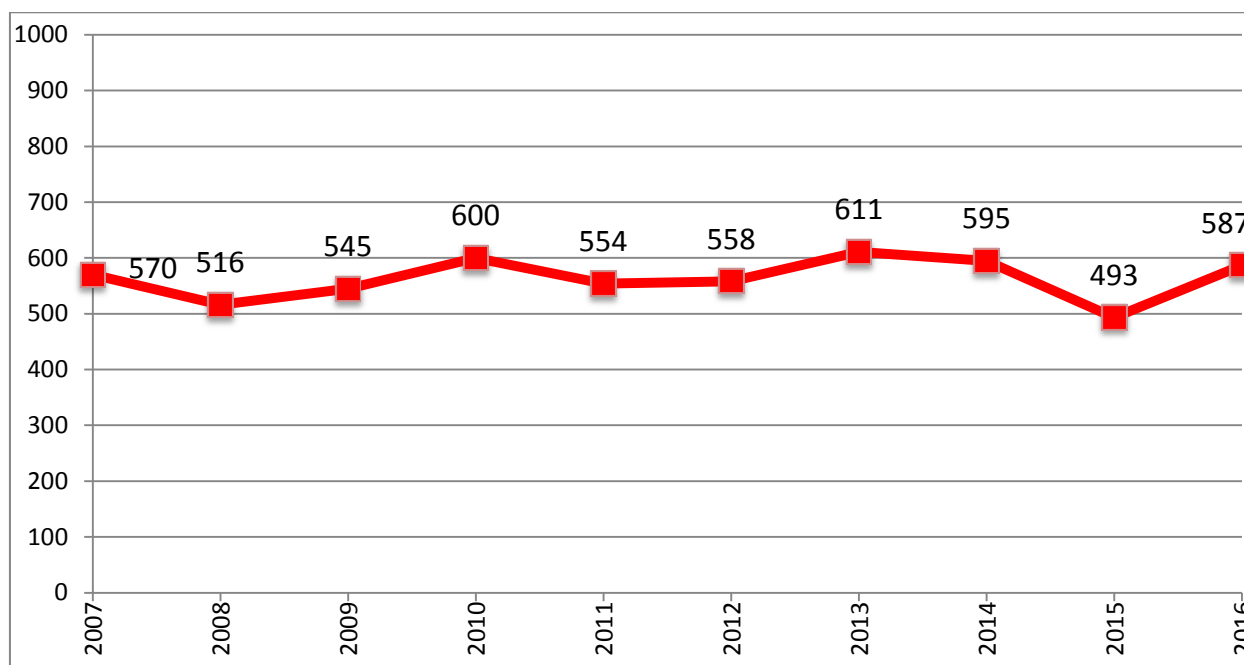
In 570 of the 587 cases closed in 2016, there was not sufficient evidence of misconduct after the information necessary to evaluate the complaint was obtained and reviewed. In other words, the allegations in these cases were unfounded, or unprovable, or the judge gave an adequate explanation of the situation, or the Commission lacked jurisdiction.

2. Closed with Action²

In 2016, the Commission issued seven letters of admonishment and one caution. There was one consent suspension, one voluntary resignation, two voluntary retirements, and the Commission dismissed one pending formal complaint. These dispositions are summarized in Section IV.

The Commission did not issue any formal complaints in 2016.

Grievances Disposed of, 2007-2016³

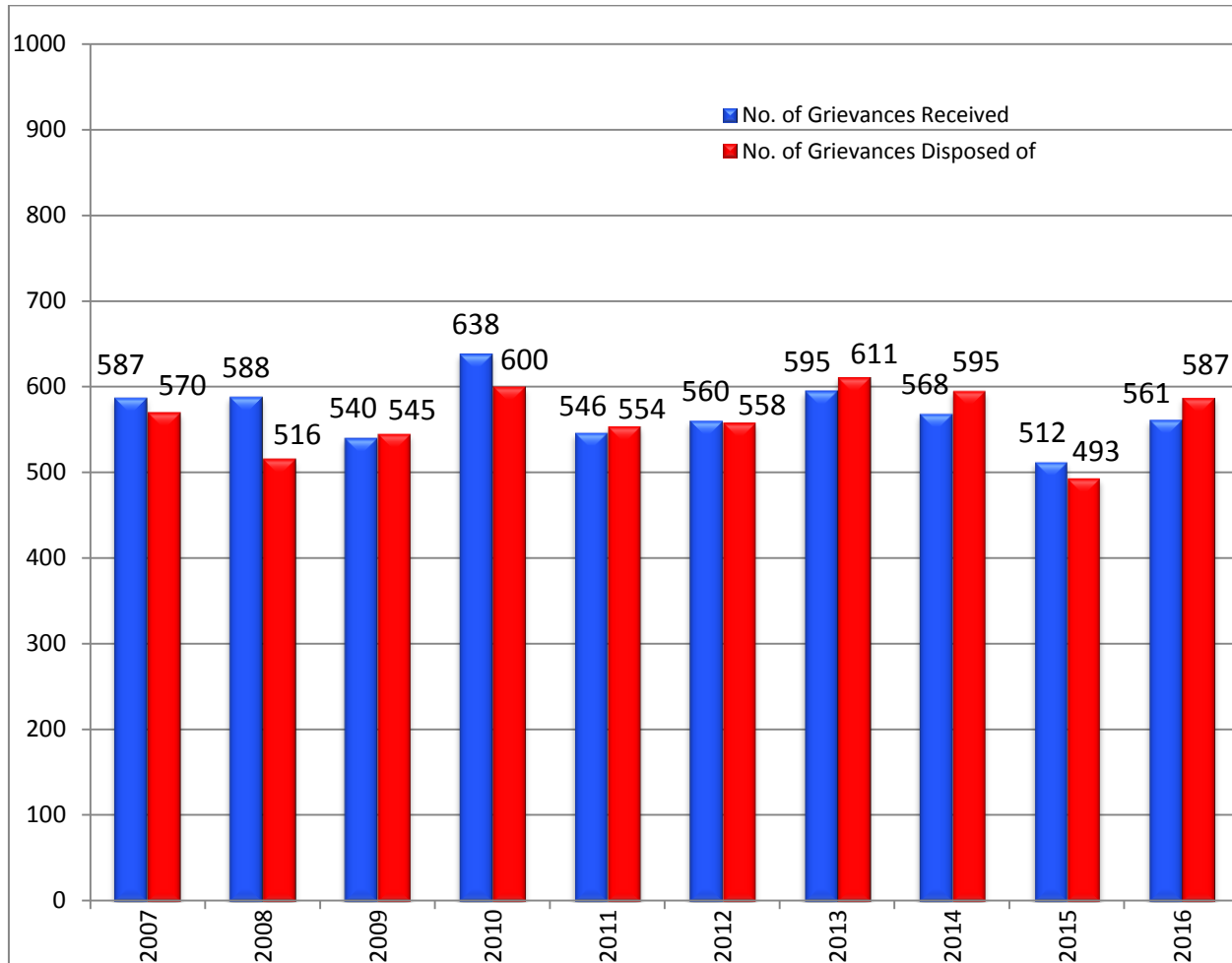


² The number of cases closed without action plus the number of actions does not equal 587, because some actions involved more than one grievance, and two matters ended when judges passed away.

³ The disposition statistics are based on cases completed each year, regardless of when the complaints were received.

Over the last decade, the number of grievances received, and disposed of, by the Commission, has remained fairly constant.

Grievances Received/Disposed of, 2007-2016

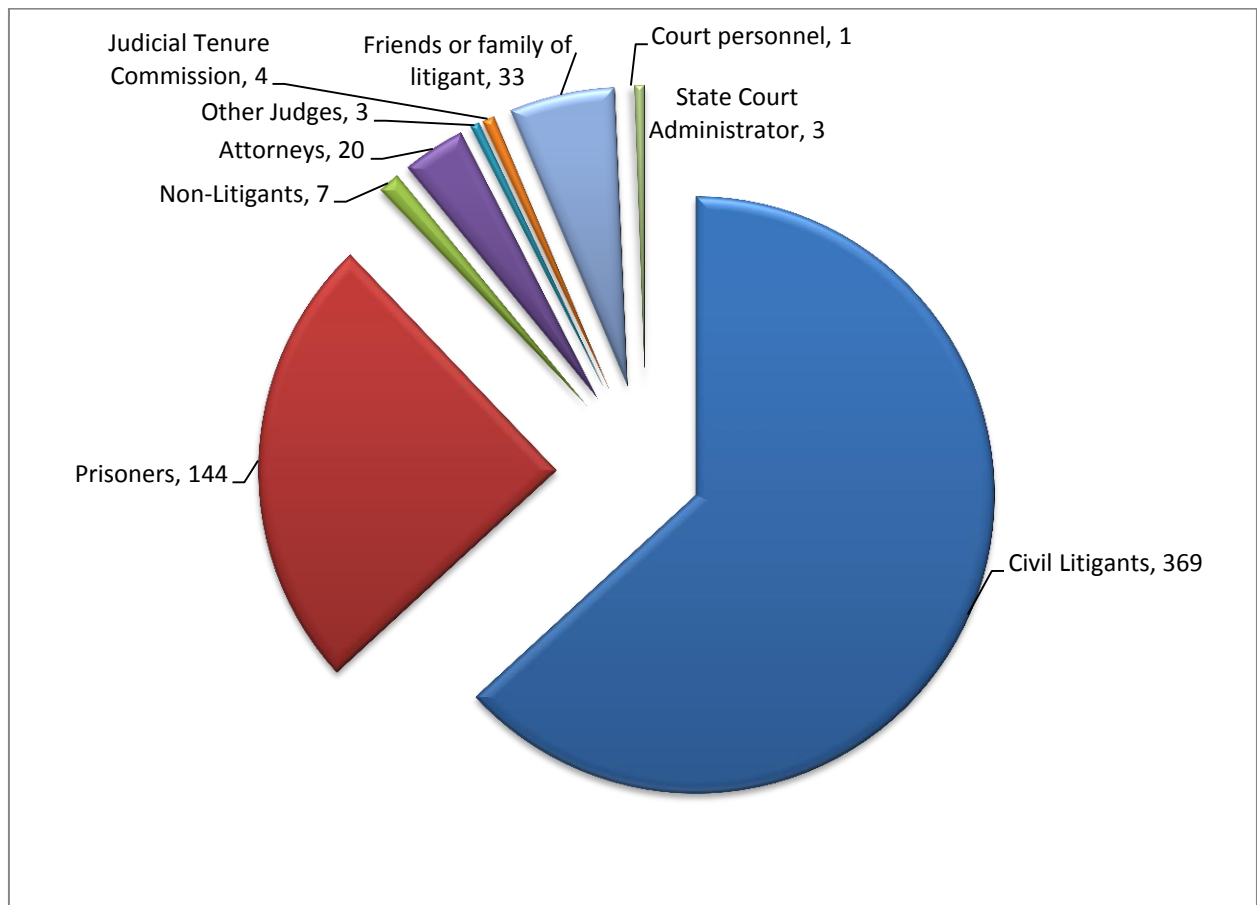


C. Analysis of Grievances Considered in 2016

The requests for investigation received and resolved by the Commission derived from the following sources, covered the following subject matters, were lodged against the following types of judges, and were resolved as follows. The totals may not equal 561 received or 587 closed, as listed above, because some grievances cover more than one judge and many contain more than one type of alleged misconduct.

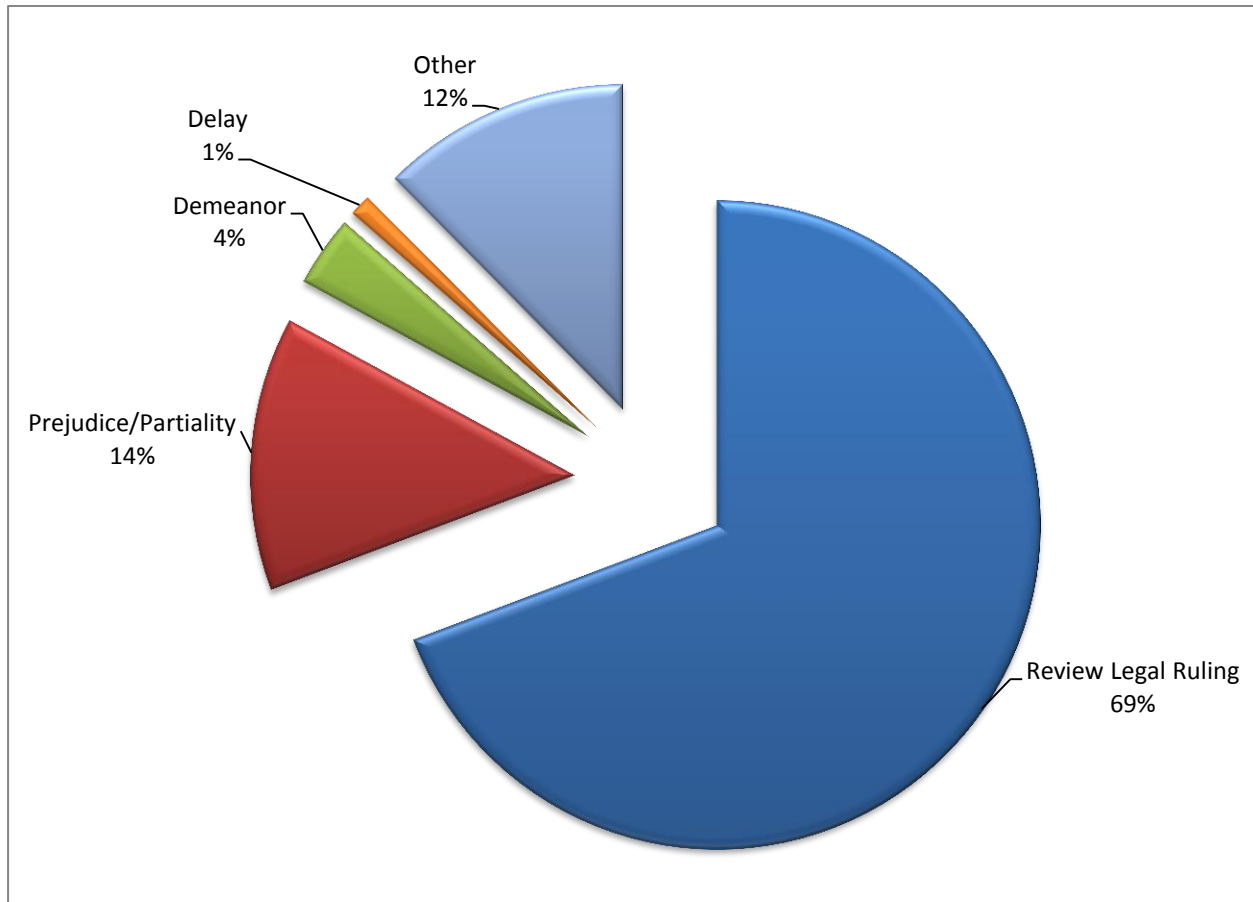
1. Sources of Grievances

Litigants (including prisoners) filed the majority of requests for investigation, constituting nearly 90% of the total filings.



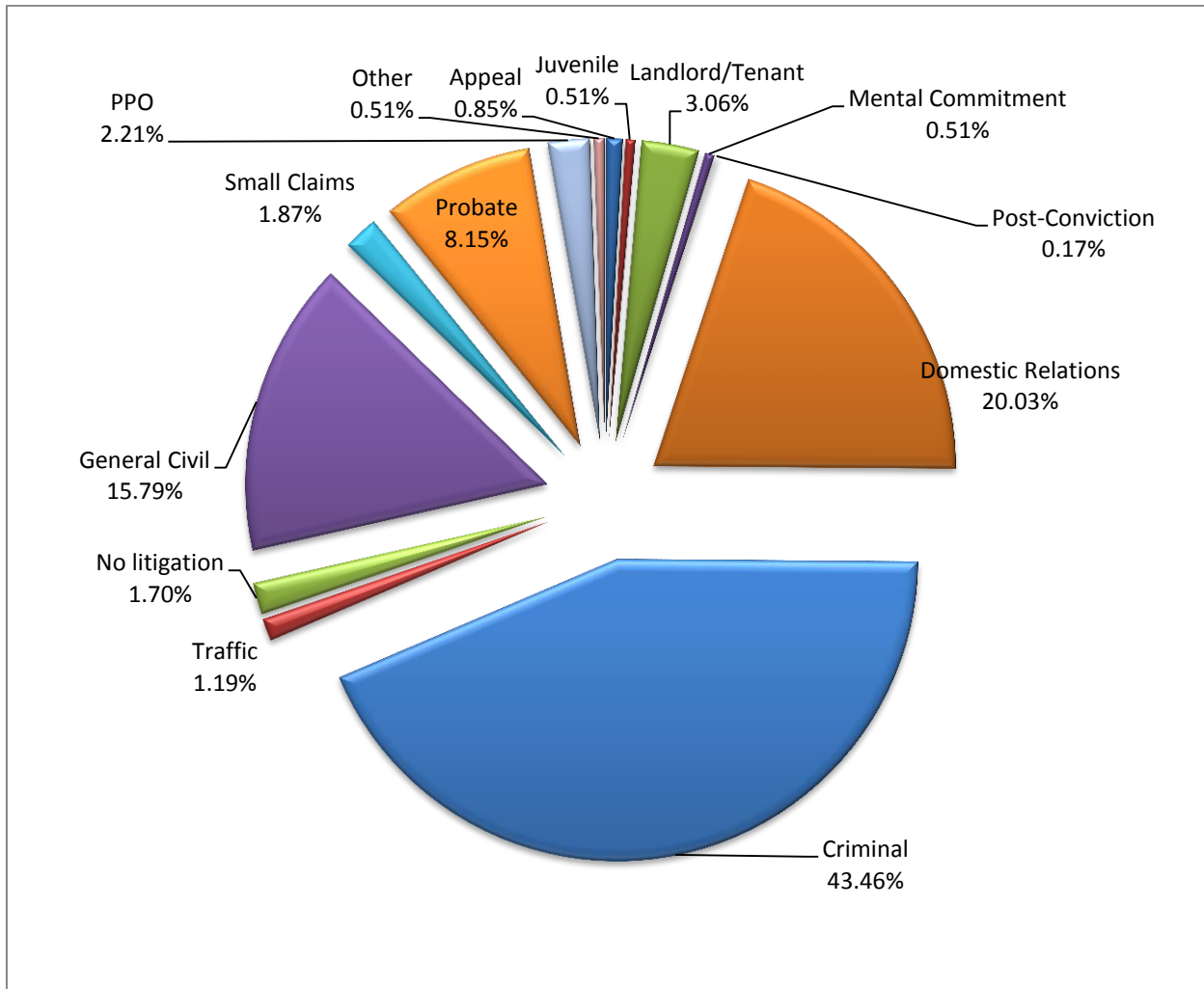
2. Subject Matters of Grievances

Sixty-nine percent 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.



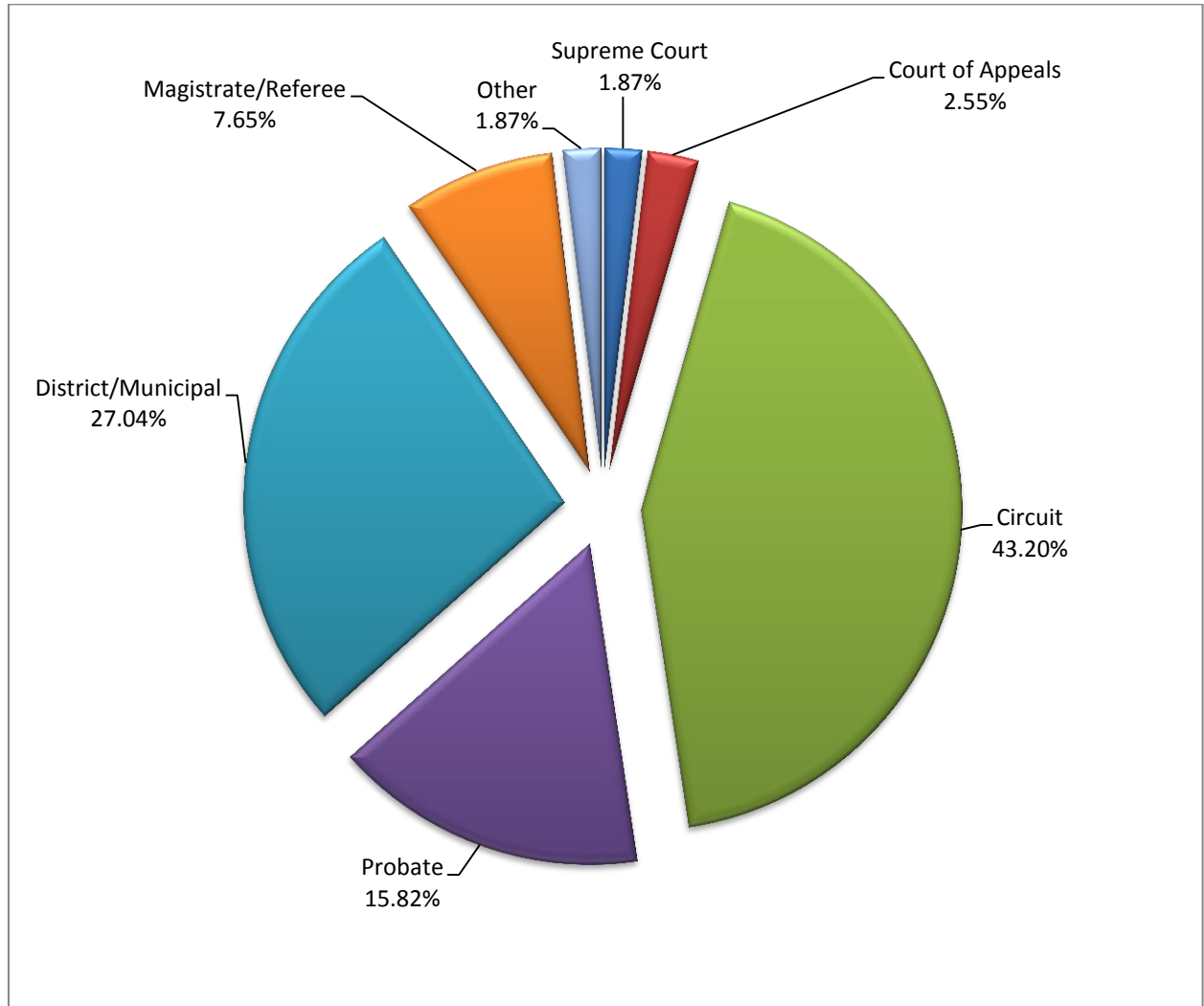
3. Nature of Underlying Litigation

Criminal cases, domestic relations matters, and general civil cases continue to be the most common types of cases to produce grievances against the judge. Those cases combined make up close to 80% of the filings with the Commission. Probate cases make up another 8% of the submissions, and the rest of the filings are spread among the other categories.



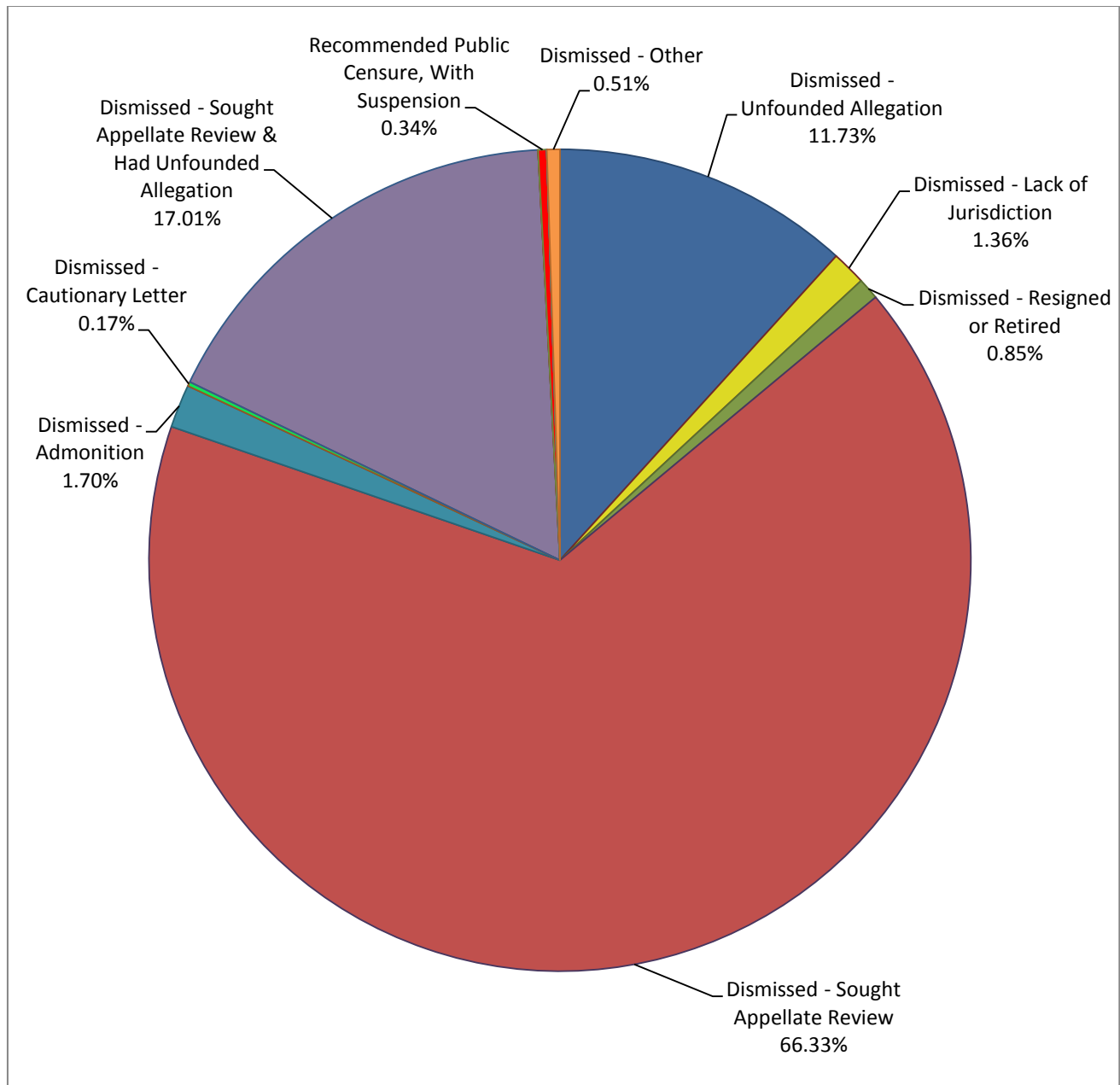
4. Categories of Respondent Judges

Circuit court judges were the subject of about 43% of the grievances. This is most likely due to the circuit judges handling much of the criminal and domestic relations dockets, which together generate over 60% of the grievances. District court judges were the subject of about 27% of the grievances filed, while grievances against probate judges made up almost 16% of the submissions.



5. Dispositional Breakdown of Resolved Grievances

The Michigan Supreme Court suspended one judge based on the Commission's recommendation in 2016. The Commission issued seven letters of admonishment and one caution during the year. Two judges voluntarily retired, and one voluntarily resigned.



IV. CASE SUMMARIES

A. Public Proceedings

1. Formal Complaint No. 96, Hon. J. Cedric Simpson 14A District Court (Washtenaw County)

The Judicial Tenure Commission issued Formal Complaint No. 96 against Hon. J. Cedric Simpson, of the 14A District Court, on November 12, 2014. Respondent was charged with interfering in a police investigation and prosecution involving his then-intern, as well as with making false representations to the Commission during the course of the investigation.

On December 17, 2014, the Michigan Supreme Court appointed Hon. Peter D. Houk, a retired Ingham County Circuit Court Judge, as the Master. A public hearing was conducted on March 30, March 31, and April 1, 2015. The Master issued his Findings of Fact and Conclusions of Law on April 28, 2015, concluding that Respondent had committed judicial misconduct by interfering in the investigation and prosecution of the criminal case against the intern and by lying both to the Commission and to the Master during the formal hearing.

The Commission heard objections to the Master's report at a hearing held on June 8, 2015. The Commission generally affirmed the Master's findings of facts and conclusions of law and issued a Decision and Recommendation to the Michigan Supreme Court on August 31, 2015, that the Court remove Respondent from office. On October 27, 2015, Respondent filed a motion in the Supreme Court to remand the matter to the Commission based on an allegation that certain after-the-fact e-mails had not been provided to him. On December 23, 2015, the Supreme Court granted that motion and remanded the matter to the Commission.

On January 11, 2016, the Commission remanded the case to the Master to consider the evidence at issue and determine whether it would alter his findings. The Master held two hearings on motions filed by Respondent, a motion to disqualify the Examiner and all attorneys in the Examiner's office and a motion on the substantive issue raised in Respondent's remand allegations. The Master denied the motion to disqualify and on March 7, 2016, issued post-remand findings of fact and conclusions of law in which he stated that the e-mails in question were non-exculpatory and did not alter his prior findings. On March 14, 2016, the Commission filed its Decision After Remand and Recommendation for Discipline that reaffirmed the August 31, 2015, recommendation. On April 11, 2016, Respondent filed his supplemental brief in support of his petition to reject or modify the Commission's recommendation. The Examiner filed a brief in opposition on May 2, 2016. Oral arguments were held before the Michigan Supreme Court on October 6, 2016. As of December 31, 2016, the case remained pending before the Michigan Supreme Court.

2. Formal Complaint No. 97, Hon. Richard Halloran 3rd Circuit Court (Wayne County)

On September 1, 2015, the Commission issued a formal complaint against Respondent alleging that he was failing to establish the required jurisdictional elements before entering judgments of divorce. The Court appointed retired Wayne County Circuit Court Judge (and former prosecutor) John D. O'Hair as the Master. Respondent filed a motion for summary disposition,

alleging that there were no genuine issues of material fact. The examiner agreed. The parties argued their respective positions before the Master who, on November 16, 2015, issued a report recommending that the Commission dismiss the matter or, in the alternative, withdraw the formal complaint. At its January 11, 2016, meeting the Commission dismissed the formal complaint.

3. Formal Complaint No. 98, Hon. Lisa Gorcyca
Sixth Circuit Court (Oakland County)

On December 14, 2015, the Commission issued a formal complaint against Respondent, alleging that she had inappropriately exercised her contempt power against three children (aged 9, 11, and 13) for not having lunch with their father and not developing a good relationship with him. The children spent 2-1/2 weeks in the county juvenile facility. Respondent's demeanor at the hearing was also at issue. The Michigan Supreme Court appointed Hon. Daniel Ryan, a retired Wayne County Circuit Court Judge, as the Master.

The Formal Hearing was held on May 31 and June 1, 2016. On July 1, 2016, the Master issued a 34-page report finding that Respondent Gorcyca had committed misconduct in office and engaged in conduct prejudicial to the administration of justice based on violations of the Michigan Code of Judicial Conduct, Michigan Court Rules, and the improper application of the law of contempt. Respondent filed objections to the report of the Master and the Examiner filed a reply. The Commission conducted a hearing on the objections on October 10, 2016. It issued a Decision and Recommendation on November 14, 2016. The Commission determined that Respondent had committed misconduct as to the misuse of the judicial power of contempt in the underlying case, that her comments and gestures toward the children during the contempt hearing were insulting, demeaning and humiliating and far exceeded the proper bounds of stern language permitted to a judge, and that she had engaged in misleading conduct to the Commission that warranted the imposition of costs pursuant to MCR 9.205(B). The Commission recommended that Respondent be suspended for 30 days without pay and ordered to pay \$12,553.73 in costs. On December 22, 2016, Respondent filed a petition to reject the Commission's recommendation. As of December 31, 2016 the matter was pending before the Michigan Supreme Court.

4. Consent Sanction, Hon. Elizabeth B. Church
Chippewa County Probate/District Judge

Respondent agreed to a public censure and a 120-day suspension without pay for a number of instances of reducing and/or dismissing traffic matters without the authority of the prosecutor and of engaging in *ex parte* communications with litigants. The Commission issued a Decision and Recommendation to the Michigan Supreme Court on December 14, 2015. The Supreme Court issued an Order on May 25, 2016 which imposed a public censure on Respondent Church and suspended her without pay for 120 days.

B. Non-Public Resolutions

1. Conduct Relating to Cases

a. Delay

i) Respondent was cautioned for not addressing a motion to terminate or modify a Personal Protection Order in a timely manner. MCL 600.2950a and MCR 3.707(A)(2) provide a hearing

should be held within two weeks from filing. Although unique circumstances present in the case did not make it feasible to resolve the motion in two weeks, the matter was pending for over four months and was still not resolved when the moving party chose not to pursue it any further based on cost, time, and other factors. Respondent also attempted to defer responsibility to the clerk who scheduled the proceeding, disregarding the Michigan Code of Judicial Conduct's provisions which impose responsibility for the prompt resolution of proceedings on the judicial officer.

ii) The Commission admonished Respondent for failing to dispose of an Appellant's Application for Leave to Appeal for a 14-month period. MCR 7.105(E)(2) requires a decision on an application within 35 days, absent good cause. Although the clerk's office did not forward the application to Respondent immediately, Respondent was aware of its existence within three months of its filing. It took another two months for Respondent to order the Appellee to file a response and another eight months after the response was filed for Respondent to make a decision.

iii) The Commission admonished Respondent for engaging in delay with regard to a number of cases. The periods to render decisions ranged from four to 18 months. The Commission acknowledged that the delay exhibited by Respondent was not due to a lack of effort, as he regularly worked a full day and did not take excessive hours off. As Respondent did not have a large case load, it appeared that he did not resolve cases efficiently and exercised poor docket management. The Commission advised Respondent that it was his responsibility (and not of other members of the court staff) to insure that cases were scheduled and heard in a timely manner, and that if he resolved cases more promptly, hearings could be scheduled on earlier dates.

b. Demeanor/improper comments on the bench

i) Respondent erred by referring a motion to modify or terminate a Personal Protection Order to a probate judge⁴ for consideration, as that judge had no jurisdiction to consider the matter (the referral itself was a legal error to be challenged on appeal, and not improper conduct). At a later hearing, Respondent denied she has made the referral and inappropriately questioned an attorney's competency on the record when he correctly asserted that Respondent had made the referral to the probate judge. Respondent was cautioned for her conduct.

ii) An out-of-state party was participating in a probate conservancy proceeding by telephone. Respondent had his court staff hang up on the party when the individual failed to follow an instruction to cease discussing the faxing of documents to Respondent's chambers (the party was attempting to explain why he did so). The Commission concluded that the party had not engaged in conduct that was so offensive that it warranted exclusion from the proceeding. The Commission admonished Respondent for failing to be patient and courteous with the litigant and engaging in *ex parte* communication for the remainder of the hearing (which continued for several minutes after the telephone participant was excluded).

⁴ The probate judge was presiding over guardian/conservator proceedings in which the parties to the PPO case were children of the ward.

iii) The Commission admonished Respondent for telling a defendant during a criminal arraignment that Respondent had the power to decide when the defendant would urinate. In addition, Respondent abused his judicial authority by advising officers standing near the defendant that they could lie to her, as the statement was offensive and demonstrated a pre-judgment of the officers' credibility.

c. *Ex parte* communication

Respondent was admonished for engaging in several *ex parte* communications, and was advised to maintain screening procedures in his office to insure that *ex parte* communications were not submitted to, or considered, by him. In one matter a minor in a post-judgment divorce proceeding wrote Respondent a letter, and Respondent (through his secretary) replied without advising counsel or the minor's parents of either communication. Respondent also had two telephone conversations with the minor without advising the parties. In another case, Respondent reviewed a letter, from the natural mother in a stepparent adoption case, which concerned the natural father (who was incarcerated). Respondent replied to the mother and advised her how to petition to terminate parental rights (without copying the natural father). Finally, Respondent presided over a custody proceeding where a teenage child began exhibiting behavioral issues. Respondent exercised jurisdiction over the teen, and when Respondent contemplated holding the teen in contempt, appointed an attorney to appear on the teen's behalf. Respondent failed to ensure that the attorney was served with court documents or given notice of court proceedings, allowing the matter to proceed for two years after the attorney's appearance before counsel could actively participate in matters relating to the teen.

d. Failure to be faithful to the law

i) An attorney had a standing disqualification order as to Respondent in a local court. A garnishment case was pending before Respondent when the plaintiff retained the attorney. When the attorney filed an appearance on behalf of a party, the local clerk's office conducted a blind draw and reassigned the case to another judge. Although Respondent was aware of the appearance and reassignment, he proceeded with the case as if the matter was assigned to him, conducted a scheduled hearing in the attorney's absence, and made a ruling based on the plaintiff's "failure to appear." Respondent ignored the law and made no attempt to determine the validity or timeliness of pending objections in the case, and allowed personal animosity toward the attorney to override the duty to follow the law. The Commission admonished Respondent for his conduct.

ii) The Michigan Court of Appeals issued a remand order directing Respondent to conduct a *Ginther* hearing (an evidentiary hearing on a defendant's motion claiming he received ineffective assistance of counsel). Respondent failed to follow the remand order and exceeded his authority by inviting, considering, and granting a defense motion for a new trial. The Commission admonished Respondent and reminded him that as a judicial officer, he is constrained to follow the law and act as it allows him to.

iii) Respondent presided over a case where a garnishment was imposed against the wrong person. Although counsel acknowledged the error and offered to pay costs to the defendant, in the

guise of determining costs Respondent held a hearing that lasted five and a half hours (including several breaks) that was far longer than necessary to assess costs. Much of the hearing involved unrelated issues. Respondent ultimately engaged in an abuse of discretion by imposing costs not allowed by law and for speculative reasons (the plaintiff appealed and costs were reduced). The Commission admonished Respondent as his actions appeared to be motivated by punishment of the plaintiff rather than to properly compensate the defendant.

2. Conduct Unrelated to Cases

a. Criminal conduct

Respondent carried a loaded firearm in a carry-on bag through a security checkpoint into a sterile area at Detroit Metropolitan Airport. Respondent accepted responsibility for the conduct and pled guilty to a violation of MCL 259.80f(2). The Commission admonished Respondent.

b. Disparaging conduct toward others

Respondent was admonished for using inappropriate language, gestures, and tone of voice at a meeting between court, police, and probation officials and representatives of an organization that provides comprehensive services to individuals and families impacted by domestic violence and sexual assault crimes. Respondent was reacting to an organization representative's description of the court as part of a "team" with the organization. In addition, the Commission reproached Respondent for the long-term use of profanity in the presence of other judges, attorneys, court officers and court administration. Respondent was reminded that a judicial officer is expected to be the subject of constant public scrutiny and to accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen, and that the use of profanity was improper and must be avoided.

c. Lack of cooperation with the Commission

Respondent failed to respond, or provided deficient responses, to numerous inquiries raised in a request for comment issued by the Commission. In light of the inadequate response to the request for comment, the Commission directed Respondent to provide a statement under oath. Respondent appeared and provided responses to the inquiries, yet still did not give direct answers to some questions. Respondent failed to recognize the application of court rules to some cases, blamed others for conduct that was clearly undertaken by Respondent, and raised defenses of conspiracy and corruption that were not applicable. The Commission admonished Respondent and advised him to accept accountability for his conduct.

d. Referral fees/conflict of interest

Respondent was a part-time judicial officer and a partner in a law firm. The firm had a relationship with an attorney where the attorney referred cases to Respondent and Respondent's law firm and the firm in turn paid a referral fee to that attorney. Those fees were substantial. In addition, the firm referred cases to the attorney and referral fees were paid by the attorney to the firm (although they were not substantial). The attorney regularly represented parties before Respondent and received a monthly fee as house counsel in the court where Respondent sat. Respondent failed to disclose the financial relationship to parties who appeared in court, failed to regulate extrajudicial activities to minimize the risk of conflict with judicial duties, and expressed a seeming lack of awareness of the ethical conundrum. The Commission admonished Respondent.

V. COMMISSION ORGANIZATION, STAFF AND BUDGET

A. Staff

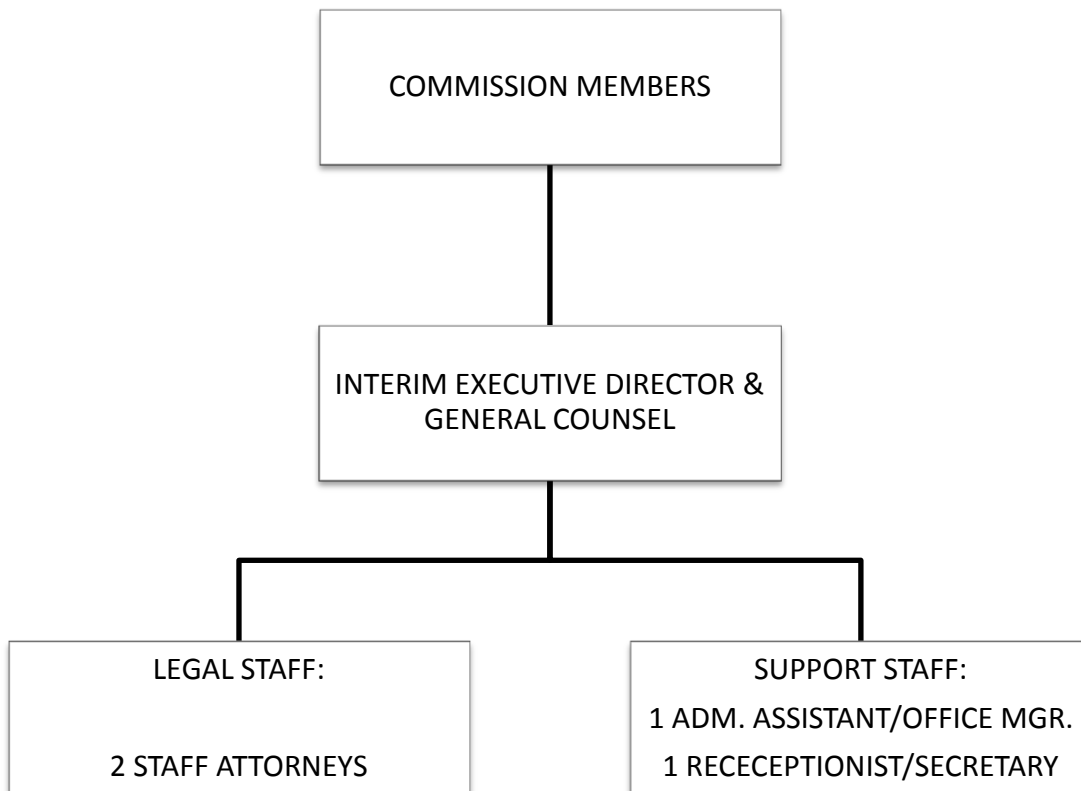
The Commission has 6 staff positions: Executive Director, 3 attorneys and 2 support staff.

The Executive Director and General Counsel is hired by, and reports directly to, the Commission. The Executive Director oversees the intake and investigation of grievances and is the examiner handling the formal proceedings. As examiner, the Executive Director develops and presents the evidence that supports formal charges before the master; argues cases to the Commission after the master makes a recommendation; and defends the Commission's position before the Michigan Supreme Court.

The Executive Director is also the primary liaison between the Commission and the judiciary, the public, and the media. Paul J. Fischer served as Executive Director and General Counsel from January 1, 2001 to September 12, 2016. Glenn J. Page was appointed as Interim Executive Director and General Counsel as of September 12, 2016.

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 Staff Attorney Casimir J. Swastek and Staff Attorney Margaret N.S. Rynier.

The Commission's support staff is comprised of Administrative Assistant-Office Manager Camella Thompson and Receptionist-Secretary Celeste R. Alexander. All Commission staff members are state employees.



B. Budget

The Commission's budget is included in the budget of the Supreme Court. For the 2016 fiscal year (October 1, 2015–September 30, 2016), the Commission spent \$1,122,759, which was \$7560 (less than .7%) over its \$1,115,200 budget. The Commission works to keep its expenditures to a minimum.

