

# State of Michigan

## Judicial Tenure Commission

Annual Report 2023



Judicial Tenure Commission  
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**VICE CHAIRPERSON**  
HON. BRIAN R. SULLIVAN  
**SECRETARY**

HON. MONTE J. BURMEISTER  
MAXINE HANKINS CAIN, Ed. D.  
HON. THOMAS C. CAMERON  
HON. PABLO CORTES  
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## Judicial Tenure Commission

June 25, 2024

Honorable Justices of the Michigan Supreme Court  
Honorable Gretchen Whitmer, Governor  
Honorable Members of the Michigan Legislature  
Honorable Judges

The Commission thanks the Legislature, Governor Whitmer and the Supreme Court for continuing to provide the Commission with resources it needs to ensure the judiciary is working for the people of the state. The Commission used those resources to begin to reduce the backlog of investigations that had accumulated during years when the Commission's workload exceeded the capacity of staff.

The Commission also began an external review of its case dispositions to ensure that the Commission's processes are fair. That review was begun in early 2024 after the groundwork for it was laid in 2023.

With this backdrop I am pleased to present the 2023 Annual Report of the Michigan Judicial Tenure Commission. This report informs the public and all branches of state government about the Commission's duties, operations, and actions.

The Commission is committed to fulfilling its responsibilities to the people of the State of Michigan. It thanks its devoted and professional staff for their hard work. We hope the vigilant and dedicated work of the Commission will promote the public's confidence in the integrity, independence, and fairness of the Michigan judiciary.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jon Hulsing".

Hon. Jon H. Hulsing  
Chairperson  
For the Commission

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## **COMPOSITION OF THE COMMISSION DURING 2023**

**Hon. Jon H. Hulsing, Chair**

20<sup>th</sup> Circuit Court  
414 Washington Avenue, Room 303  
Grand Haven, MI 49417  
Term expires 12/31/24  
Elected by Circuit Court judges

**James W. Burdick, Esq., Vice-Chair**

Burdick Law, P.C.  
1760 South Telegraph Road, Suite 300  
Bloomfield Hills, MI 48302-0183  
Term expired 12/31/23  
Elected by State Bar membership

**Hon. Brian R. Sullivan, Secretary**

Third Circuit Court  
2 Woodward Avenue, Room 1101  
Detroit, MI 48226  
Term expires 12/31/24  
Elected by State Bar membership

**Hon. Monte J. Burmeister**

Crawford County Probate Court  
200 W. Michigan Avenue  
Grayling, MI 49738  
Term expired 12/31/23  
Elected by Probate judges

**Hon. Thomas C. Cameron**

Court of Appeals  
3020 W Grand Blvd Ste 14-300  
Term expires 12/31/2024  
Representing Court of Appeals judges

**Danielle Chaney**

W. Bloomfield, MI  
Term expired 12/31/23  
Appointed by Governor Gretchen Whitmer

**Hon. Pablo Cortes**

62A District Court  
2650 DeHoop Avenue S.W.  
Grand Rapids, MI 49509  
Term expires 12/31/25  
Elected by District Court judges

**Siham Awada Jaafar**

3034 W Grand Blvd Suite 8-450  
Detroit, MI 48202  
Term expires 12/31/25  
Appointed by Governor Gretchen Whitmer

**Thomas J. Ryan, Esq.**

2055 Orchard Lake Road  
Sylvan Lake, MI 48320  
Term expires 12/31/25  
Elected by State Bar membership

## 2023 COMMISSIONER BIOGRAPHIES

**James W. Burdick, Esq.**, specializes in complex criminal litigation and health care licensing, discipline and reinstatement. In addition to his practice, he has been appointed by the federal court to chair, and to be a member of, federal panels evaluating applicants for the position of United States Magistrate Judge, and for sitting Magistrate Judges applying for renewal of their tenure. He has chaired an Attorney Grievance panel since the 1980s, hearing and deciding a multitude of complaints. He has represented clients throughout state and federal courts. Upon earning his Juris Doctorate at University of Michigan Law School, he was recruited by the Wayne County Prosecutor's Office, where he tried dozens of felony cases of all types. During his career in private practice, he has represented hundreds of individuals in criminal investigations, prosecutions and health care licensing discipline matters. For seven years he was an active member of the Michigan Board of Medicine. Mr. Burdick serves as the Vice-Chairperson of the Commission.

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**Hon. Monte J. Burmeister** is the probate judge for Crawford County, Michigan. He was elected to the probate bench in 2006 and was reelected in 2012 and 2018. 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 is the past President of the Michigan Probate Judges Association. He began his tenure with the Commission in 2013. In 2108 Judge Burmeister served as the Commission's Vice-Chairperson and in 2019 and 2020 he served as the Commission's Chairperson.

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**Hon. Thomas C. Cameron** was appointed to the Michigan Court of Appeals in 2017, and previously served as a judge on the Wayne County Circuit Court bench from 2014 until his appointment to the Court of Appeals.

Previously, Judge Cameron worked for the Michigan Department of Attorney General where he managed several large civil and criminal divisions for the Attorney General, including the Civil Rights Division, Corrections Division, Criminal Division, Alcohol and Gambling Division, and several other divisions. Before serving as a senior manager, he litigated high-profile public corruption and cold case homicides for the Attorney General's Office.

Judge Cameron serves on several commissions, boards, and associations, including the Michigan Judicial Tenure Commission, the Michigan Judges Association, the Michigan Chapter of the Federalist Society, and the Detroit Metropolitan Bar Association. He is a former board member of the Michigan Domestic and Sexual Violence Prevention and Treatment Board and the former Chairman of the Michigan Commission on Law Enforcement Standards.

Judge Cameron also serves as an adjunct professor at Madonna University, where he teaches constitutional law and criminal law and procedure.

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**Danielle Chaney** is currently a human resource administrator for the City of Dearborn. Prior to her role in Dearborn Ms. Chaney was a human resource professional and served as Vice President of Human Resources at Optalis Healthcare. She also worked in various other leadership roles for organizations such as the City of Detroit-Water and Sewerage Department

(DWSD) where she played a vital role in the development of policy and procedure as well as assisted with the negotiation of multiple collective bargaining agreements.

Ms. Chaney graduated from Michigan State University in 2002 with a BA in Psychology and furthered pursued her passion of championing diversity, equity and inclusion in the workplace by recently completing her Master of Studies in Law-Human Resources at Wayne State University Law School. Ms. Chaney also lends her expertise by providing human resources consulting services to start-up organizations in various industries throughout the country.

In an effort to provide service to all mankind, Ms. Chaney is an active member of Alpha Kappa Alpha Sorority, Inc. (Lambda Pi Omega chapter), a Board member for Teen HYPE, and when time allows, Ms. Chaney provides guidance as a certified Life and Career Coach.

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**Hon. Pablo Cortes** is chief district court judge in the city of Wyoming, Kent County. He was appointed to his seat in 2005 and subsequently elected in 2006, 2008, 2014, and 2020. 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 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 has served as an adjunct professor at the Grand Rapids Community College Police Academy and as an adjunct professor at the Thomas M. Cooley Law School in Grand Rapids. Judge Cortes served as the Commission's Secretary in 2013 and 2014. He served as the Commission's Vice-Chairperson in 2015 and 2016, and the Commission's Chairperson in 2017 and 2018.

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**Hon. Jon H. Hulsing** is the Chief Judge pro tem for the 20th Circuit Court in Ottawa County where he has served as a judge since 2006. His docket consists of criminal and civil cases. In 2018 he was elected by Michigan's circuit court judges to be their representative on the Commission. In addition to six years of private law practice, Judge Hulsing served as an Assistant and Senior Assistant Prosecutor in Ottawa County from 1995 to 2006. He began his public service in 1983 as a deputy with the Ottawa County Sheriff's Office and then as a patrolman with the City of Wyoming Police Department. He graduated summa cum laude with a Juris Doctorate from Thomas M. Cooley Law School. In 2020 he became one of 22 national commissioners for the Commission for the Accreditation of Law Enforcement Agencies (CALEA), which establishes best practices for law enforcement agencies. He served as the Judicial Tenure Commission's Vice-Chairperson in 2021. In August 2021 Judge Hulsing became the Chairperson of the Commission, after the untimely passing of former Chairperson Hon. Karen Fort Hood, and continued to serve in that capacity in 2022 and 2023.

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**Siham Awada Jaafar** was appointed by Governor Gretchen Whitmer to a term that began on January 17, 2020, and was reappointed for a second term starting in 2023. She has also been appointed by the Michigan Supreme Court to serve on the DEI Commission for the Judiciary with a term ending in December 2025. As President and CEO of 3D Consulting and Communications, Ms. Jaafar conducts cultural competency and diversity training customized for corporations, law enforcement, government & health care agencies, educational institutions and various organizations. She is the founder and producer of the award winning nationally

acclaimed “Images and Perceptions Diversity Conference” which has been in production in metro-Detroit since 2002 and was introduced in Chicago in 2013.

Ms. Jaafar lives her passion through creating a conversation around diversity and dispelling stereotypes. Her trainings, workshops and conferences have proven exceptionally effective in building bridges of communication across racial, religious, ethnic and gender divides. She has been instrumental in creating and producing several projects and initiatives geared towards community and public affairs programs, women in leadership, and scholarship programs, and has also worked extensively with underserved communities to provide mentorship and educational opportunities.

A multi award-winning public relations, diversity & inclusion specialist, Ms. Jaafar is a certified mediator and is currently the President of the Wayne County Dispute Resolution Center (WCDRC) and chairwoman of its Advisory Board. She served on the board of directors for NAWBO (National Association of Women Business Owners) and was its Public Policy Chairwoman for two years. She is the former Chairwoman of the ACCESS Coalition against Domestic Violence, and producer of the “Voices over Violence” program. She is also a founding member of BRIDGES (Building Respect in Diverse Groups to Enhance Sensitivity) where government and community come together to discuss vital issues. Ms. Jaafar feels honored and privileged to have been reappointed to the Judicial Tenure Commission and is grateful for the opportunity to serve the state in such a vital role.

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**Thomas J. Ryan, Esq.,** is a member of the State Bar of Michigan, Oakland County Bar Association, and the American Bar Association. 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, and the City of the Village of Clarkston. Mr. Ryan has previously served as the Commission’s Vice Chairperson and Chairperson.

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**Hon. Brian R. Sullivan** was elected to the Wayne County Circuit Court in 1998. He served as presiding judge of the criminal division in 2004 and as the presiding judge of the Wayne County Business Court for about 7 years. Judge Sullivan was a member of the Criminal Jury Instruction Committee for about 12 years and the Model Civil Jury Instruction committee for eleven years (each at the appointment of the Michigan Supreme Court).

Judge Sullivan was an adjunct law school instructor for 10 years. He is a member of the Michigan Board of Law Examiners. Before taking the bench, Judge Sullivan was an assistant prosecuting attorney and in private practice for about 15 years. He also ran a free legal clinic in downtown Detroit at Most Holy Trinity Church for 20 years. Judge Sullivan was elected to the Judicial Tenure Commission to serve a term beginning January 1, 2019. Judge Sullivan serves as the Secretary of the Commission.

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## JUDICIAL TENURE COMMISSION 2023



**HON. JON H. HULSING,**  
*Chairperson*



**JAMES W. BURDICK, ESQ.,**  
*Vice Chairperson*



**HON. BRIAN R. SULLIVAN,**  
*Secretary*



**HON. MONTE J.  
BURMEISTER**



**DANIELLE CHANEY**



**HON. THOMAS C.  
CAMERON**



**HON. PABLO CORTES**



**SIHAM AWADA JAAFAR**



**THOMAS J. RYAN, ESQ.**



**LYNN HELLAND,**  
*Executive Director*

## **I. COMMISSION COMPOSITION & SCOPE OF AUTHORITY**

The Judicial Tenure Commission is an independent state agency. Its purpose is to enforce high standards of ethical conduct for judges. The Commission recognizes that judges must be free to act independently and in good faith to fairly resolve the merits of each case over which they preside. At the same time, an effective disciplinary system must hold judges accountable for misconduct.<sup>1</sup>

That means the judicial discipline system must simultaneously protect the public from unethical judicial conduct, preserve the institutional integrity of the judiciary, and attempt to ensure that unsubstantiated complaints do not interfere with the important work judges do. To those ends, the Commission investigates allegations of judicial misconduct and disability, conducts hearings as appropriate, recommends sanctions to the Michigan Supreme Court, and otherwise works to enhance the integrity of the judiciary.

### **A. Composition of the Commission**

The Commission consists of five judges, two attorneys, and two lay persons. All commissioners serve three-year terms, staggered such that three positions are filled 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.

### **B. Legal Authority**

#### **1. Michigan Constitution**

The Judicial Tenure Commission was established by a 1968 amendment to the Michigan Constitution. The Commission's authority is set forth in Article 6, section 30 of the Constitution, which is on the Commission's website ([jtc.courts.mi.gov](http://jtc.courts.mi.gov)).

#### **2. Michigan Court Rules**

The Constitution instructs the Michigan Supreme Court to make rules to govern judicial discipline. The Court created Chapter 9.200 of the Michigan Court Rules pursuant to that directive. The Court revised and renumbered Chapter 9.200 effective September 1, 2019, with several individual rule revisions since then. The current rules are on the Commission's website ([jtc.courts.mi.gov](http://jtc.courts.mi.gov)).

#### **3. Code of Judicial Conduct**

In 1974 the Michigan Supreme Court adopted the Michigan Code of Judicial Conduct to establish ethical standards for judges. The Commission enforces the Code, often referred to as the "canons." The current canons are on the Commission's website ([jtc.courts.mi.gov](http://jtc.courts.mi.gov)).

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<sup>1</sup> In this report, a "judge" is any judicial officer within the Commission's jurisdiction, including judges, magistrates, and referees.

### **C. Persons within Commission Jurisdiction**

The Commission has jurisdiction over all active state “judges,” as defined in footnote 1. In 2023 there were 1,237 active judges in Michigan. The Commission also has jurisdiction over a) former judges, if a request for investigation is filed while that judge is still in office or relates to the former judge’s tenure; and b) retired judges who sit by assignment as visiting judges.<sup>2</sup>

The Commission does not have jurisdiction over judicial candidates before they are elected; federal judges; or administrative law hearing officers such as workers compensation magistrates, department of corrections hearing officials, and the like. The Commission does obtain jurisdiction over the conduct of judicial candidates if and when those candidates become judges.

### **D. What the Commission Cannot Do**

The Commission is not an appellate court. The Commission cannot change a judge’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 or have a matter transferred to another judge. Nor can the Commission 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 disability or ethical misconduct, and, if warranted, recommending that the Michigan Supreme Court impose discipline. Judicial misconduct usually involves conduct in conflict with the Code of Judicial Conduct. Examples of judicial misconduct include inappropriate demeanor (such as bullying or disrespect); improper communication with fewer than all 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 or dereliction in performing judicial duties; flagrant failure to follow the law; and damaging public comment about a pending case. Judicial misconduct may also involve improper off-the-bench activities, including committing a crime (examples include driving under the influence or misappropriating public money) or making false statements. The public discipline the Commission can recommend includes public censure, suspension with or without pay, and removal. When appropriate, the Commission can also take private action, through a letter of caution or admonition, to address judicial misconduct.

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<sup>2</sup> Although the Commission technically has jurisdiction over retired judges, the Michigan Constitution does not authorize any sanction, other than public censure, that is applicable to a judge who is no longer active. For that reason, the Commission generally will not investigate retired judges who are not sitting as visiting judges.

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

### **A. How Matters Come Before the Commission**

The Commission usually begins an investigation based on a “request for investigation” (or “grievance”). Anyone may use the Commission’s complaint form to file a grievance against a judge. The form is on the Commission’s website ([jtc.courts.mi.gov](http://jtc.courts.mi.gov)) or may be obtained in hard copy by contacting the Commission office. The court rules require that the person filing the grievance (“the grievant”) have his or her signature notarized to establish that he or she has sworn that the statements made in the grievance are true.

The Commission may also begin an investigation on its own. For example, though the Commission rarely considers complaints made anonymously, it may do so in its discretion. It may also open a file into matters it learns of in other ways, such as news articles or information received in the course of another Commission investigation. The Commission may also begin an investigation at the request of the State Court Administrator or the chief justice of the Michigan Supreme Court.

### **B. Commission Review of Requests for Investigation**

Each properly executed grievance about a Michigan judge is carefully reviewed by the staff. To do its initial review the staff may review the court file to the extent it is available online. The staff requests from the grievant or grievant’s attorney any additional information needed to do a preliminary evaluation of the grievance. The staff may not investigate beyond that unless the Commission so authorizes.

After assessing the initial information, the staff prepares a report for the Commission that recommends a course of action. For every grievance the Commission determines either a) the information provided by the grievant and obtained by the staff does not suggest the judge committed misconduct, and therefore the grievance should not be pursued, or b) there is sufficient evidence of misconduct to warrant further investigation.

If the initial investigation shows the judge did not commit misconduct, the Commission closes the grievance without contacting the judge. The judge is given a copy of the grievance when the Commission closes the case, unless the Commission determines otherwise for good cause.

When the Commission determines a grievance warrants further investigation, it directs the staff to investigate and approves the scope of the investigation. Commission investigations may include interviewing witnesses; obtaining court records and other documents; obtaining transcripts, audio, and video of court proceedings; obtaining a physical or mental examination of a judge; and such other investigation as needed. The staff reports to the Commission at the conclusion of the investigation.

If the investigation will be aided by obtaining the judge’s comments, the Commission gives the grievance to the judge and asks for comment on some or all of the allegations and the evidence developed. The judge’s response is considered together with all other information developed during the investigation.

## C. Action the Commission Can Take

### 1. Confidential Dispositions

The Commission has several options after an investigation. If the allegations are found to be untrue or unprovable the Commission will usually close the case without action, though if the Commission determines that certain actions of the judge were problematic, the Commission may dismiss with a letter explaining that to the judge.

#### Action the Commission Can Take

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

If the Commission determines improper conduct occurred but was relatively minor, the Commission may dismiss with a letter of caution. A letter of caution advises the judge of the ethical concerns raised by the conduct and warns that the judge should not repeat the conduct.

When the investigation reveals misconduct that is more clearly established or more serious but does not rise to the level that public sanction is appropriate, the Commission may dismiss with a private admonition. An admonition summarizes the Commission's findings about the improper conduct and admonishes the judge not to repeat it.

Explanations, cautions, and admonitions are letters of guidance or reproach that the Commission only sends after the judge has been asked to explain his or her position. They inform the judge so the conduct will not escalate or be repeated. Summaries of conduct that resulted in such letters issued in 2023 are contained in Section IV.

Letters of explanation, caution, and admonition are confidential. The Commission informs grievants when a grievance has been dismissed, and in cases in which the dismissal includes some private action the Commission informs the grievant that action was taken, in a letter that does not provide details. The strict confidentiality rules that govern judicial misconduct investigations ordinarily preclude the Commission and its staff from advising anyone, even the person who lodged the grievance, of the precise way the Commission resolved a grievance.

### 2. Public Dispositions

#### a. The Complaint

When misconduct is clear enough and serious enough to warrant a public resolution, the Commission first sends the judge what is known as a "28-day" letter pursuant to MCR 9.222. The 28-day letter informs the judge of the charges the Commission anticipates bringing and gives the judge an opportunity to answer those charges. Unless the judge's answer persuades the Commission that public resolution is unwarranted, the Commission then issues a public complaint, which becomes the first public document in the investigation.

The complaint, the judge's answer to it, and all subsequent pleadings are public documents. To the extent practicable, they are placed on the Commission's website ([jtc.courts.mi.gov](http://jtc.courts.mi.gov)).

After the Commission files the complaint, the 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 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 resolution of a complaint when necessary for the proper administration of justice. In extraordinary circumstances the Commission may make this request before a complaint is issued.

#### **b. Hearing by Master**

After the Commission files a complaint, it petitions the Supreme Court to appoint a master to conduct a hearing to take evidence concerning the complaint. Masters are typically, though not necessarily, retired Michigan judges.

The judge against whom the Commission filed may be represented by counsel at the hearing and all related proceedings. The evidence in support of the charges is presented by "disciplinary counsel." "Disciplinary counsel" is typically one or more Commission staff attorneys. The Michigan Rules of Evidence apply to the hearing, which is conducted like a civil trial. The standard of proof in Commission proceedings is by a preponderance of the evidence.

#### **c. Proceedings Following Hearing by Master**

After the hearing concludes, 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 charges in the complaint and the judge's answer.

Both the judge and disciplinary counsel may ask the Commission to accept or reject the master's report in part or in whole and may have oral argument before the Commission.

#### **d. Disposition by Commission**

If the Commission determines there is insufficient evidence of misconduct to sustain the charges, it dismisses them. If, after receiving the master's report and any written or oral argument, the Commission determines that one or more charges in the complaint have been proven, it typically issues a decision and recommendation to the Supreme Court. That decision and recommendation may recommend that the Supreme Court discipline the judge. The discipline the Commission may recommend is public censure, a suspension of any duration, involuntary retirement, or removal from office. The Commission has no authority to discipline a judge itself; the Michigan Constitution reserves that role for the Supreme Court.



### **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 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. Even if the judge does not file a petition, the Supreme Court independently reviews the Commission's decision and recommendation.

The judge and Commission both have an opportunity to present oral arguments to the Court. The Court reviews the evidence, then issues an opinion accepting, rejecting, or modifying the Commission's decision and recommendation. If the Court finds the judge committed misconduct it sanctions the judge through censure, suspension, involuntary retirement, removal, or in the case of a consent sanction, such other disciplinary action to which the parties have agreed. The judge may file a motion for rehearing before the Court unless the Court directs otherwise in its opinion.

### **D. Confidentiality of Commission Proceedings**

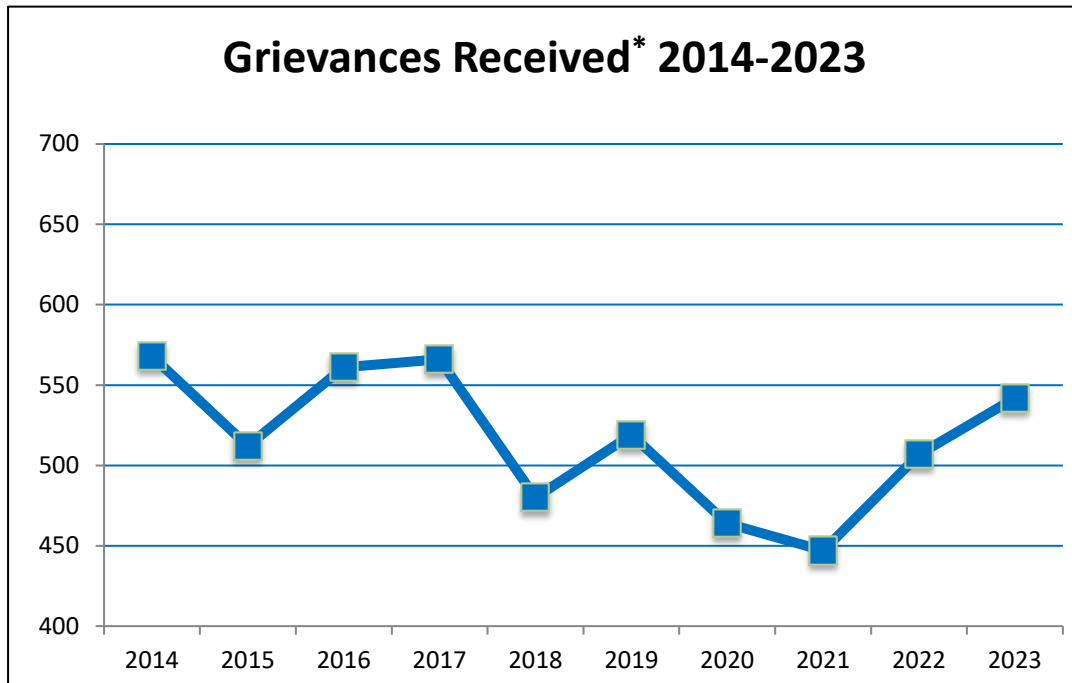
The Michigan Constitution directs the Supreme Court to provide for the confidentiality of complaints to, and investigations by, the Commission. Pursuant to this directive, Michigan Court Rule 9.261 provides that grievances and investigations are strictly confidential, subject to certain limited exceptions, unless and until the Commission issues a complaint against the judge. Although confidential for most purposes, the grievance is typically provided to the judge during the course of the investigation. Further, as a practical matter, once the Commission begins to obtain documents or interview witnesses the fact of the investigation may become known even though the Commission treats it as confidential.

Once public proceedings are instituted, the complaint, answer, and all subsequent pleadings and proceedings are open to the public. The court rules also permit the Commission publicly to acknowledge an investigation before a complaint is issued if a majority of Commissioners determine it is in the public interest to do so. Even in such a case, the Commission's statement is limited to either (1) there is an investigation pending, or (2) the investigation is complete and there is insufficient evidence for the Commission to file a complaint. The Commission very rarely determines that it is in the public interest to acknowledge an investigation.

### III. 2023 FACTS & FIGURES

#### A. Complaints Received and Investigated<sup>3</sup>

In 2023 the Commission received 637 requests for its "Request for Investigation" forms. This number does not include downloads from the Commission's website. There were 542 requests for investigation filed in 2023 that complained about actions by a total of 312 judges.<sup>4</sup>



\* For at least 2016 forward, "grievances received" is the total number of complaints against judges, not the number of requests for investigation. For example, if a request for investigation alleges that two judges committed misconduct, this report counts that as two complaints against judges, since each complaint must be investigated separately.

The Commission received fewer grievances in 2020 and 2021 than it had in previous years. The reasons are unclear, but the drop may have been due in part to the pandemic. That explanation is made more likely by the return to "normal" in 2022 and 2023. Though the total grievances declined in 2020 and 2021, the number of grievances with merit did not decline. In fact, beginning in 2017 the number of grievances that result in full investigations has been substantially higher than it had been in 2016 and before.

<sup>3</sup> The numbers below for filed cases, resolved cases, and other figures, may sometimes appear inconsistent for several reasons: a single request for investigation can name multiple judges or rest on multiple types of alleged misconduct; the Commission sometimes opens an investigation on its own, with no request for investigation having been filed; the Commission often addresses multiple requests for investigation regarding a judge in one public complaint, admonition, or other resolution; and based on the confidentiality restrictions relating to the Commission's investigations, some information relating to cases may not be disclosed.

<sup>4</sup> Some judges were named in multiple requests for investigation.



The grievances alleged a wide array of claims. A substantial percentage alleged legal error or expressed dissatisfaction with a judge’s discretionary handling of judicial duties, neither of which is misconduct within the authority of the Commission.

The Commission also received grievances concerning individuals who did not come under the Commission’s jurisdiction, such as federal judges, former judges, workers’ compensation judges, other government officials and miscellaneous individuals. Commission staff responded to each of these complaints and, when appropriate, made referrals to the proper authority.

**B. Grievance Dispositions**

In 2023 the Commission resolved 479 requests for investigation concerning 282 judges.

**1. Closed without Action**

2023 CASELOAD	
Grievances pending on 1/1/2023	267
New grievances received in 2023	542
Grievances concluded in 2023	479
Grievances pending on 12/31/2023	329

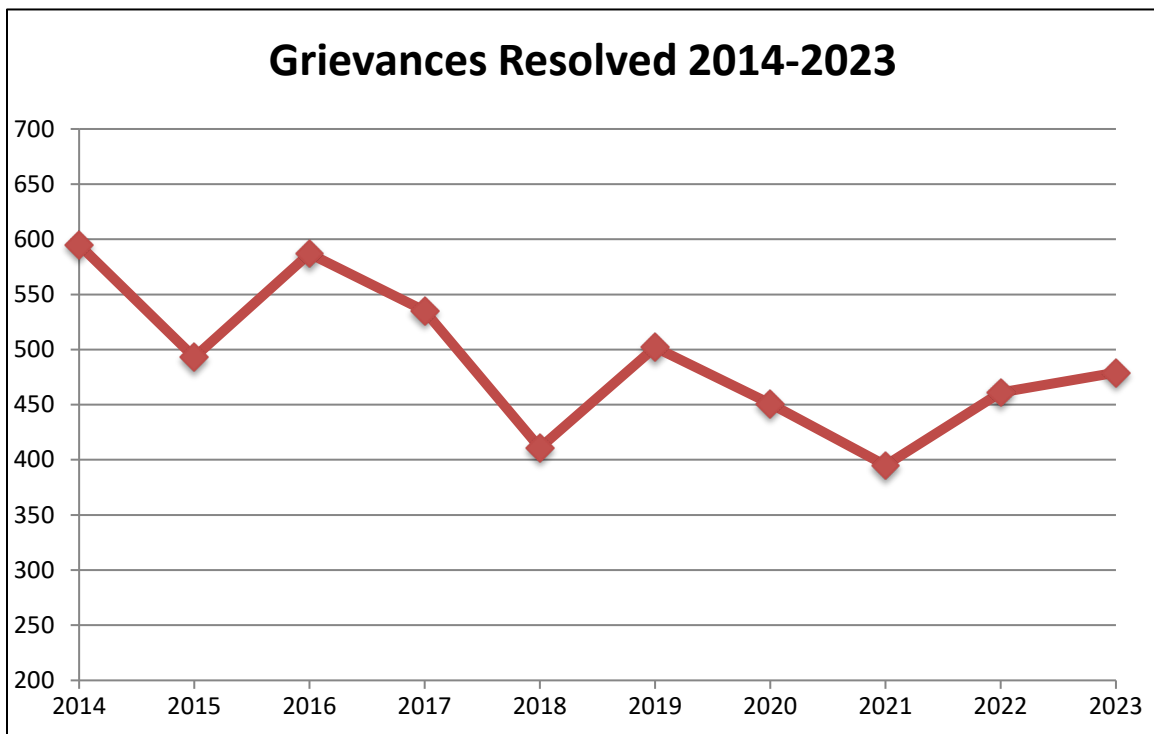
In 458 of the 479 grievances resolved in 2023, the evidence did not demonstrate misconduct after the information necessary to evaluate the grievance was obtained and reviewed. In other words, either these files alleged facts that would not constitute misconduct even if true, or investigation showed the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation, or the Commission lacked jurisdiction.

**2. Closed with Private Action**

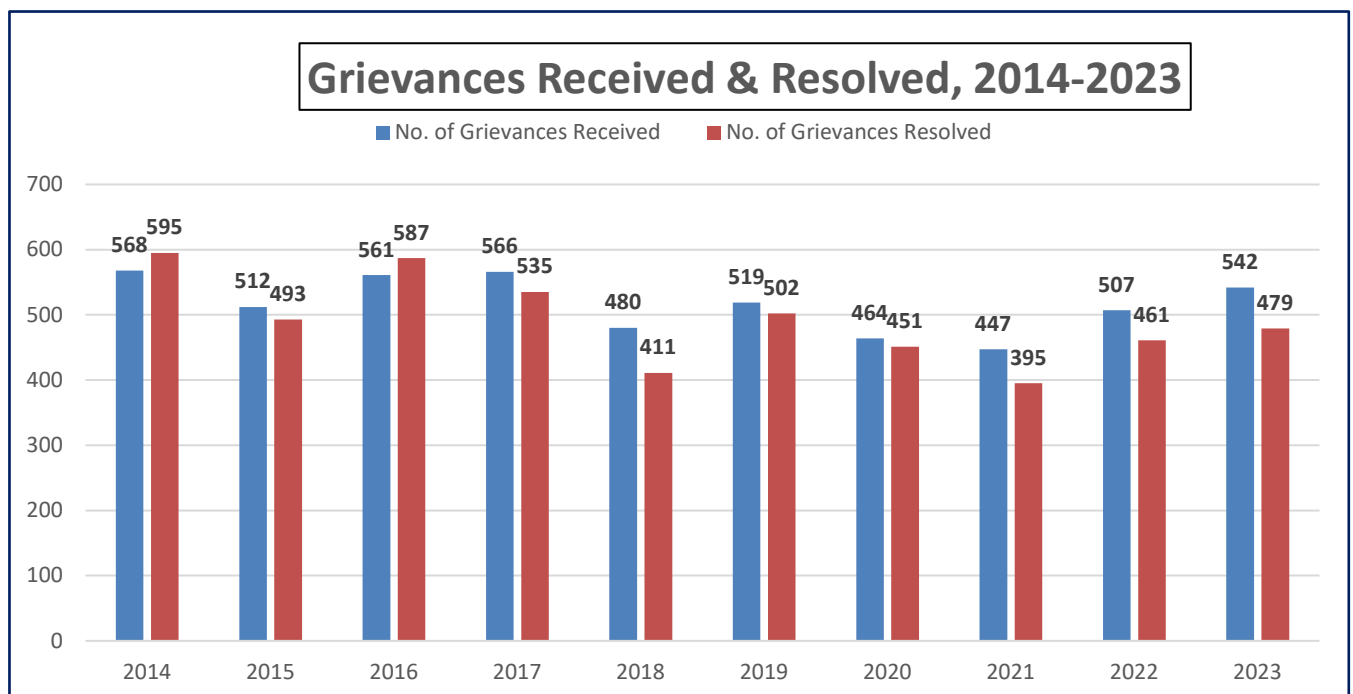
The Commission issued four admonitions, seven cautions, and two explanatory letters in 2023 that resolved a total of 15 requests for investigation. These cases are summarized in Section IV.

**3. Public Action**

The Commission filed no public complaints in 2023. There were three pending public complaints at the close of 2023 that were filed before 2023. They are summarized in Section IV.



The number of grievances received by the Commission has been fairly constant for more than the last decade. The number of grievances resolved was also fairly constant for many years, until an unexplained increase in the number of complex investigations that began in 2017 and has continued, coupled with limited staff resources, appreciably slowed the resolution of investigations and has resulted in an excessive backlog. In the last two budget sessions the legislature provided the Commission with funding to hire staff to reduce that backlog.

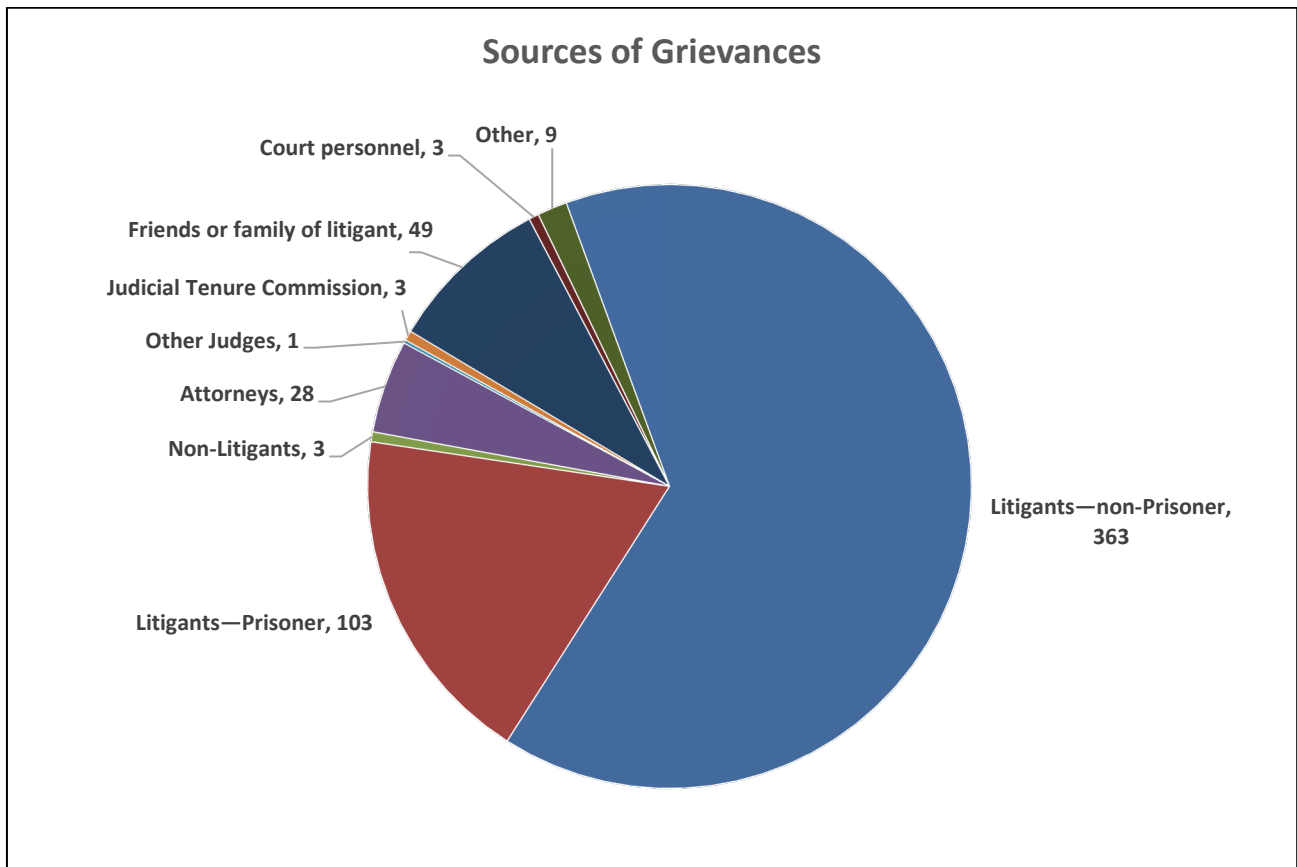


### C. Analysis of Grievances Considered in 2023

The grievances 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 542 grievances received (section IIIA) or 479 closed (section IIIB), because some grievances allege more than one type of misconduct and some resolutions concern more than one grievance.

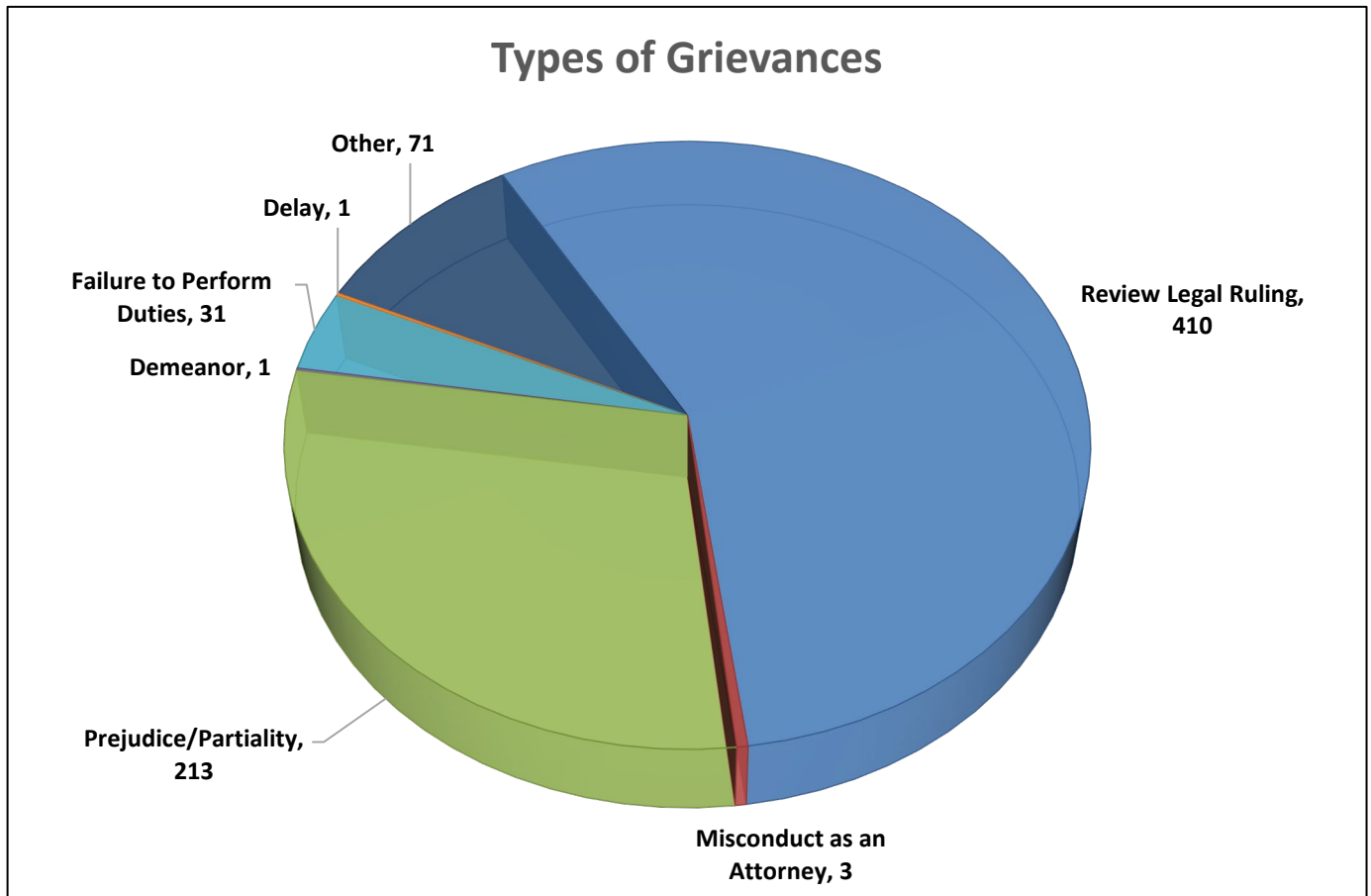
#### 1. Sources of Requests for Investigation

Litigants, acquaintances of litigants, and prisoners filed 92% of the total requests for investigation.



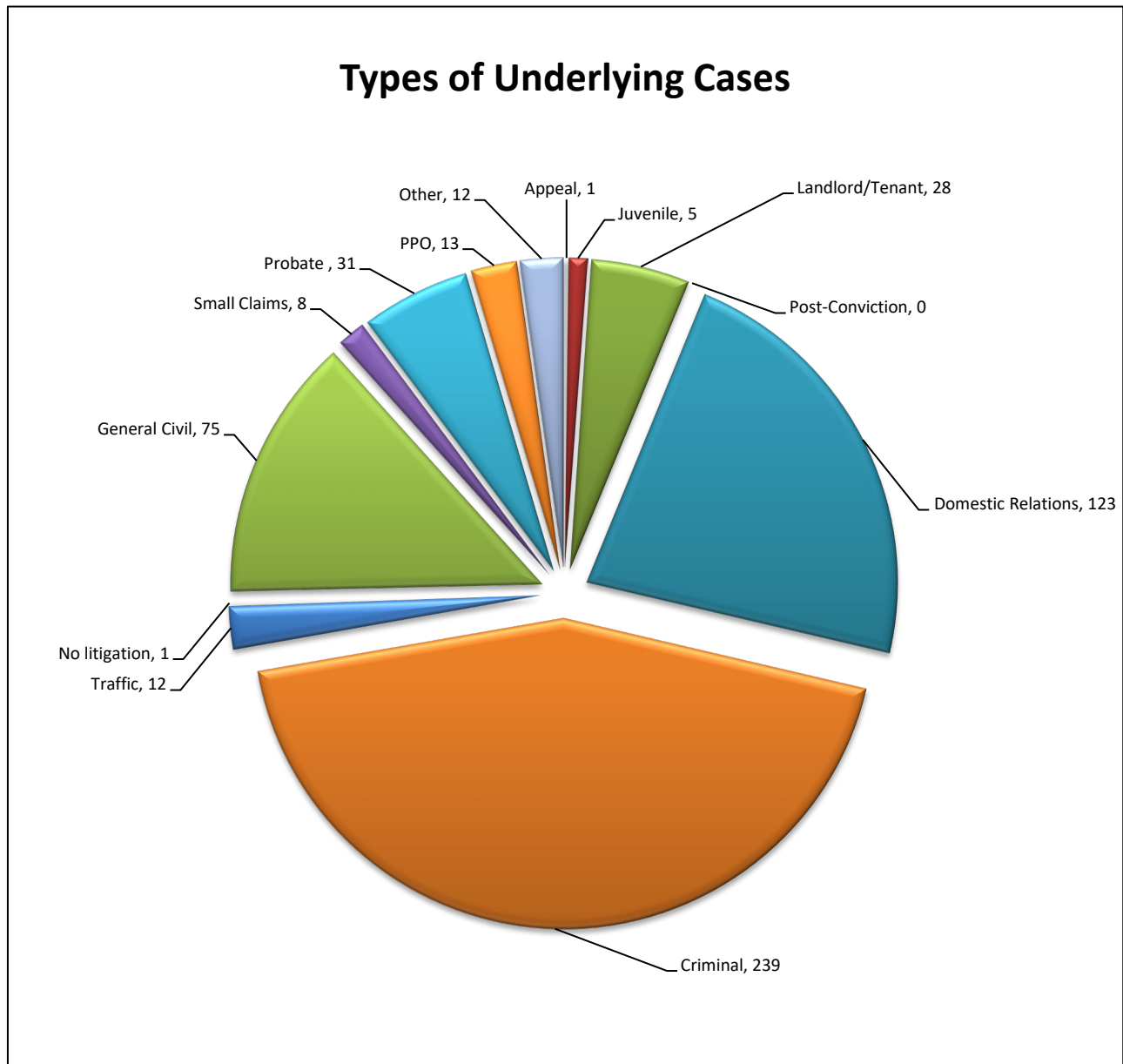
## 2. Subject Matter of Grievances

About 56% of the 2023 requests for investigation sought to have the Commission review the merits of the underlying case. Since the Commission has no authority to act as an appellate court, those matters were dismissed unless they also included evidence of judicial misconduct. Another 30% alleged that the judge was biased.



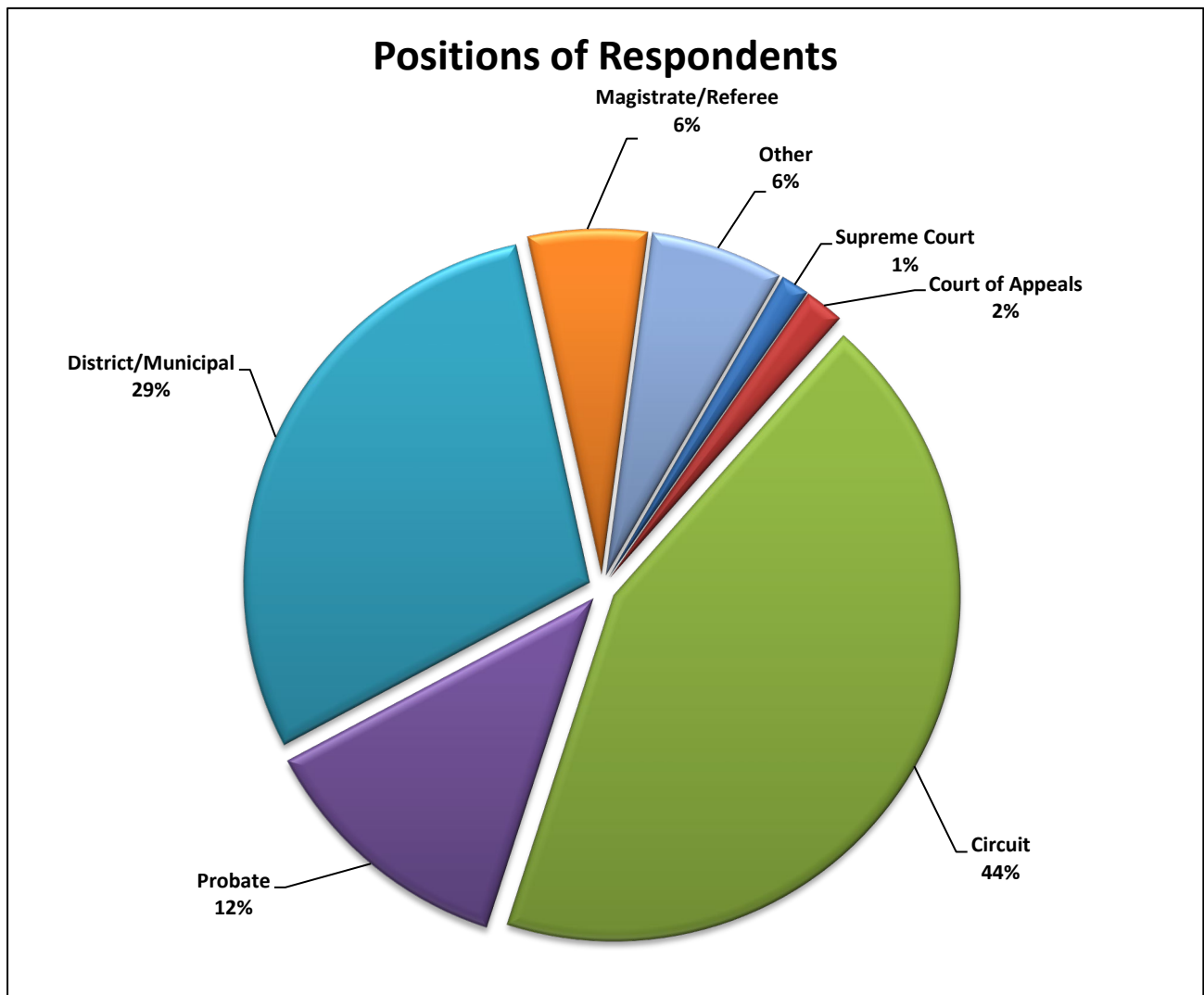
### 3. Nature of Underlying Litigation

Criminal cases, domestic relations matters, and general civil cases most commonly resulted in grievances in 2023. Those cases combined made up 80% of the 2023 requests for investigation. Probate cases resulted in another 6% of requests for investigation.



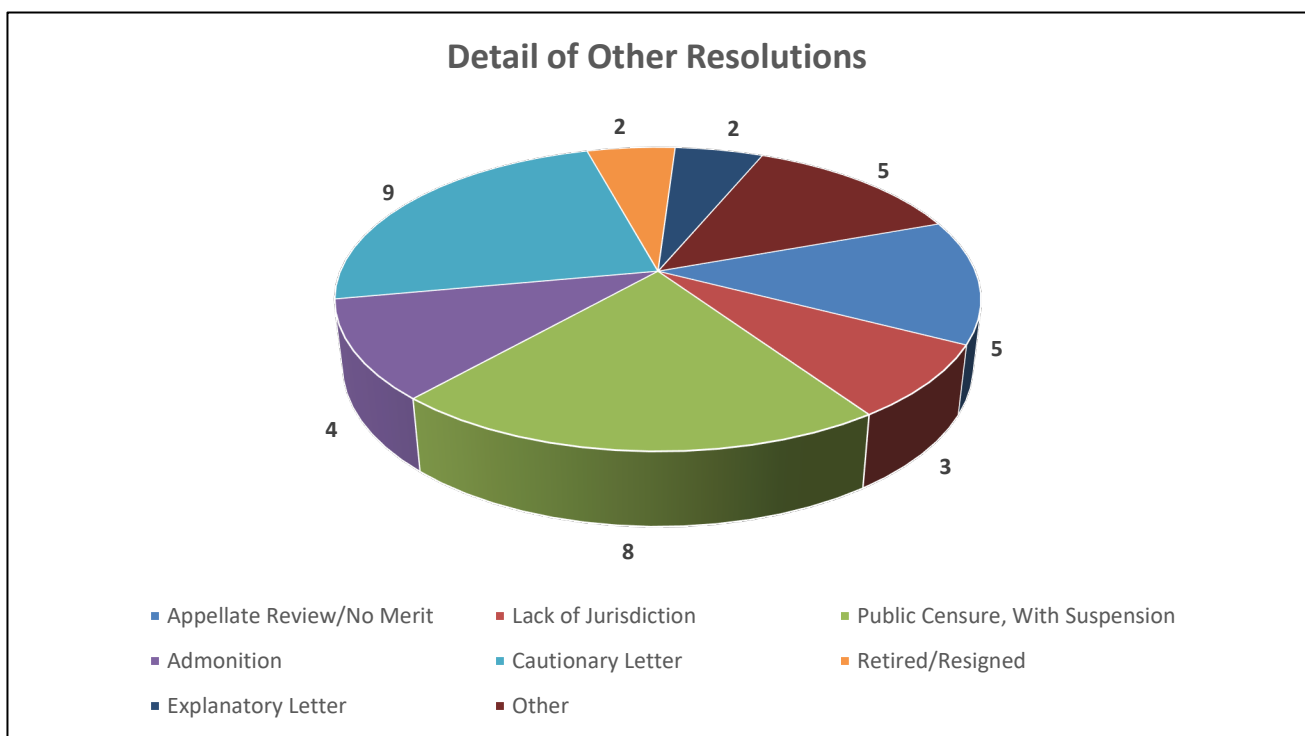
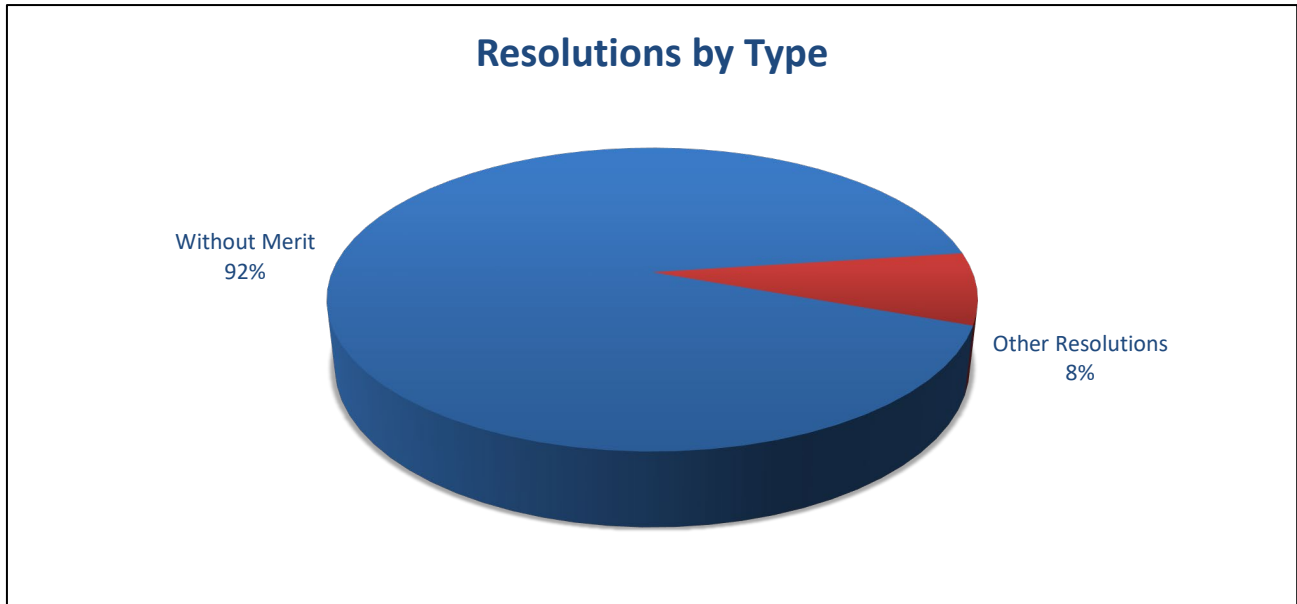
#### 4. Positions of Respondents

Circuit court judges, who comprise less than 20% of the judiciary, were the subject of almost half of the grievances filed in 2023. This is most likely due to circuit judges handling so much of the criminal and domestic relations dockets, which together generated about 66% of the grievances. District court judges, who comprise about 20% of the judiciary, were the subject of about 31% of the grievances filed. The category “Other” includes retired judges and persons who are outside the Commission’s jurisdiction, such as federal judges, administrative law judges, and lawyers.



## 5. Summary of Resolutions

The Commission had filed three public complaints in 2022, all of which remained pending at the end of 2023. Two public complaints the Commission filed in 2020 were resolved in 2023. The Commission resolved another fifteen investigations through letters of explanation, caution or admonition in 2023. The remaining grievances were resolved by dismissal, including those against judges who resigned or retired while under investigation.



## **IV. CASE SUMMARIES**

### **A. Public Proceedings and Resolutions**

#### **FC No. 101, Hon. Kahlilia Y. Davis – 36th District Court (Detroit)**

In March 2020 the Commission filed a public complaint against Hon. Khalilia Y. Davis that charged Judge Davis with knowingly and deliberately conducting court proceedings without a record, making false statements to the Commission in the course of its investigation, and making and publishing unauthorized recordings of court proceedings. Judge Davis filed her answer and affirmative defenses in May 2020 and the Michigan Supreme Court suspended her with pay in June 2020.

In March 2022 the Commission amended the complaint. The amended complaint charged Judge Davis with failing to follow the law with respect to finding persons in contempt of court, failing to conduct required evidentiary hearings and making premature judgments, obstruction of court administration, intentionally disconnecting video recording equipment and conducting proceedings without an official record, making and publishing unauthorized recordings of court proceedings, violating handicapped parking space laws through the use of an unauthorized police placard, and engaging in disrespectful conduct during proceedings regarding the resulting ticket, and making misrepresentations while under oath during judicial disciplinary proceedings.

The Commission filed a second petition for interim suspension asking the Supreme Court to suspend Judge Davis without pay in March 2022. In April the Supreme Court denied that petition and appointed retired Court of Appeals Judge Cynthia Diane Stephens as master. In June 2022 disciplinary counsel filed a second amended complaint, which Judge Davis answered the same month.

The public hearing took place over five days in July 2022. The master issued her report in August 2022. The master concluded that Judge Davis engaged in misconduct as to one of the two cases that charged Judge Davis with abusing her contempt power; failed to conduct required evidentiary hearings; violated her court's attendance policy and failed to comply with a performance improvement plan; failed to make an official record (though the master concluded that Judge Davis did not intentionally disable the recording equipment as was charged); made unauthorized recordings of court proceedings; and parked illegally (but did not abuse her authority or make false statements when she did so, as charged). The master did not find that Judge Davis made false statements during the Commission's investigation, as had been charged.

The Commission held oral arguments on September 12, 2022, and issued its decision and recommendation on September 23, 2022. The Commission agreed with the master to the extent that she determined Judge Davis engaged in misconduct. In addition to those findings, the Commission determined that Judge Davis abused her contempt power in the second case charged in the complaint; was discourteous, threatening and unprofessional in her communications with court administration; intentionally disabled court video equipment as charged; published court proceedings on Facebook Live, contrary to law; used



an unauthorized police placard while illegally parking and while not on government business; and made several false statements during judicial disciplinary proceedings. The Commission noted that in addition to the misconduct described above, Judge Davis filed a false affidavit of identity for her 2022 judicial campaign and was not repentant.<sup>5</sup> The Commission recommended to the Michigan Supreme Court that Judge Davis be removed from office and thereafter suspended for six years.

After briefing and oral arguments, in June 2023 the Supreme Court adopted the Commission's recommendation (in part) and issued a conditional six-year suspension without pay. The Supreme Court concluded that Judge Davis engaged in repeated, deliberate misconduct that besmirched the judiciary's reputation and prejudiced the administration of justice. As Judge Davis was no longer on the bench, it issued a six-year conditional suspension without pay to be triggered if Judge Davis again gained judicial office. Judge Davis filed a motion for reconsideration that the Court denied in September 2023.

### **FC No. 103, Hon. Tracy E. Green – 3<sup>rd</sup> Circuit Court (Wayne County)**

The Commission issued a public complaint against Hon. Tracy Green in November 2020. The complaint charged Judge Green with concealing evidence that her son had physically abused her grandsons and making false statements about her acts and her knowledge of the abuse. Judge Green filed an answer to the complaint and affirmative defenses in December 2020, denying the allegations.

In March 2021 the Michigan Supreme Court appointed Hon. Betty Widgeon as master. Judge Widgeon presided over hearings on eleven days from the end of May through the end of November 2021. In November 2021 disciplinary counsel filed an amended complaint that added an allegation that several of Judge Green's answers to the original complaint were false.

Judge Widgeon issued her report in February 2022. She determined that Judge Green had concealed evidence that her son abused her grandsons and that Judge Green made several false statements about her knowledge of the abuse. After the parties filed briefs objecting to and supporting Judge Widgeon's report, the Commission held oral arguments in June 2022 and issued its decision and recommendation in July 2022.

The Commission adopted Judge Widgeon's findings. Based on its de novo review of the record the Commission also found that Judge Green made additional false statements. The Commission recommended that the Supreme Court remove Judge Green from office based her multiple knowingly false statements under oath, both before and after she became a judge.

After the parties filed briefs and the Supreme Court held oral arguments, in July 2023 the Court determined that Judge Green committed misconduct and suspended her without pay for six months.

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<sup>5</sup> The filing caused the Michigan Secretary of State to remove Judge Davis from the ballot.

### **FC No. 104, Hon. Paul J. Cusick – 3<sup>rd</sup> Circuit Court (Wayne County)**

The Commission issued a public complaint against Hon. Paul Cusick on November 23, 2022. The complaint alleged that while Judge Cusick was an assistant attorney general with the Michigan Department of Attorney General, before he became a judge, he suborned perjury, failed to disclose exculpatory information he had a duty to disclose, and obstructed defense counsel's efforts to learn about the exculpatory information in marijuana prosecutions. The complaint also charged that Judge Cusick made misrepresentations to the Commission during its investigation.

In December 2022 the Michigan Supreme Court appointed retired Ingham County Circuit Court Judge Peter Houk as master. Judge Cusick answered the complaint and the master conducted a hearing on 21 days between May 2 and June 23, 2023. The master submitted a report to the Commission on August 30, 2023, in which the master concluded that there was no misconduct. Counsel filed briefs and the Commission scheduled oral arguments for January 2024.<sup>6</sup>

### **FC No. 105, Hon. Demetria Brue – 36<sup>th</sup> District Court (Detroit)**

The Commission issued a public complaint against Hon. Demetria Brue on November 23, 2022. The complaint alleges that while interacting with the proprietor of a bicycle rental business on Mackinac Island, Judge Brue abused her judicial position, falsely told the police that the proprietor assaulted her, then made false statements to the Commission about the incident and her actions. Judge Brue answered the complaint on December 21, 2022. FC 106, addressed below, arises out of the same incident that led to the Commission issuing this complaint.

On March 10, 2023, the Supreme Court appointed Hon. Alexander Lipsey to serve as master. On May 3, 2023, Judge Lipsey signed a scheduling order after holding a status conference.

On June 13, 2023, the Commission announced that it was seeking an independent review of the racial composition of the judges about whom the Commission receives complaints, and the Commission's disposition of those complaints, for the period 2008-2022.

On June 26, 2023, Judge Lipsey granted disciplinary counsel's motion to modify the complaint.

Disciplinary counsel also filed a motion to consolidate FC 105 and FC 106, which Judge Lipsey denied on November 1, 2023. That same day Judge Lipsey granted Judge Brue's motion to stay the proceedings "until such time as the Michigan Judicial Tenure Commission (JTC) completes an independent audit to assess the racial disparity that the Association of Black Judges of Michigan (ABJM) and the [Black Women Lawyers

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<sup>6</sup> In 2024, after the period covered by this annual report and after oral argument, the majority of the Commission adopted the master's report except as to the first paragraph in the "Conclusion," and dismissed the complaint. Two Commissioners dissented and would have found that Judge Cusick committed misconduct as charged in Count III.

Association of Michigan] have identified in their correspondence to the Michigan Supreme Court.” Judge Lipsey further ordered that a status report be filed every 60 days regarding the statistical review, the first report to be filed February 1, 2024.

On December 29, 2023, disciplinary counsel filed a motion to reconsider Judge Lipsey’s decisions regarding consolidation and the stay, which remained pending at the end of 2023.

#### **FC No. 106, Hon. Debra Nance – 46<sup>th</sup> District Court (Southfield)**

The Commission issued a public complaint against Hon. Debra Nance on December 14, 2022. The complaint alleges that Judge Nance accompanied Hon. Demetria Brue at the Mackinac Island bicycle rental business described in the summary of FC 105, and when questioned about the events by the Commission Judge Nance knowingly made several false statements while under oath.

Judge Nance filed an answer to the complaint on January 9, 2023. On March 10, 2023, the Supreme Court appointed Hon. Alexander Lipsey to be the master. On May 3, 2023, Judge Lipsey signed a scheduling order after holding a status conference.

On June 13, 2023, the Commission announced that it was seeking an independent review of the racial composition of the judges about whom the Commission receives complaints, and the Commission’s disposition of those complaints, for the period 2008-2022.

On June 14, 2023, Judge Lipsey granted disciplinary counsel’s motion to amend the complaint.

On November 1, 2023, Judge Lipsey granted Judge Nance’s emergency motion for adjournment to seek and retain substitute counsel, giving her until April 1, 2024, to find new counsel. Judge Lipsey also adjourned Judge Nance’s proceedings “until such time as the Michigan Judicial Tenure Commission (JTC) completes an independent audit to assess the racial disparity that the Association of Black Judges of Michigan (ABJM) and the [Black Women Lawyers Association of Michigan] have identified in their correspondence to the Michigan Supreme Court.” Finally, Judge Lipsey granted Judge Nance’s motion to bar consolidation and denied disciplinary’s counsel motion to grant consolidation.

On December 29, 2023, disciplinary counsel filed a motion to reconsider the master’s decisions regarding consolidation and the stay, which remained pending at the end of 2023.

#### **Public Admonition of Hon. Charles LaSata (Berrien County)**

Judge LaSata is a criminal court judge who handles district court and circuit court cases. The Commission found that he was excessively impatient and discourteous toward criminal defendants and defense attorneys, repeatedly disregarded the law applicable to cases, and inappropriately supported his wife’s political campaign.

The Commission found a “tale of two judges.” Judge LaSata’s actions were problematic for several years until he received the Commission’s questions about his actions

in September 2020. Upon receiving those questions he promptly became a very different judge.

Prior to September 2020 Judge LaSata disparaged criminal defendants and defense attorneys in violation of Canons 3(A)(3) and 3(A)(14), to the extent that his comments called his impartiality into question in violation of Canon 2(B). Two of the incidents occurred when two defendants appeared without their lawyer present and attempted to alert Judge LaSata that their lawyers were absent, but he ignored them. On another occasion Judge LaSata was inattentive to a defense attorney's attempt to make a record.

At other times Judge LaSata opined openly but without good reason that motions filed by defense counsel were frivolous and only filed to delay proceedings. His definition of "frivolous" seemed almost broad enough to encompass any motion he thought would be unsuccessful. Under this standard he threatened some attorneys with sanctions or complaints to the Attorney Grievance Commission for their pleadings. In another case, Judge LaSata inappropriately imposed a fine as a punitive sanction for filing a motion he considered frivolous, which was forbidden by MCR 1.109(E)(7).

On yet another occasion Judge LaSata openly discussed fining public defenders who were not present in his courtroom when their cases were called, even though public defenders in his courthouse were often required to proceed in multiple courts at the same time. The Commission noted that Judge LaSata's pressure on the defenders demonstrated a lack of concern for the difficult position of the defenders, and for how his demands for their continued presence in his courtroom would affect the other judges in the court.

The Commission found that Judge LaSata was unfaithful to the law in violation of Canon 3(A)(1) by continuing to require cash bonds for criminal defendants despite a 2016 amendment to MCR 6.106 creating a presumption in favor of pretrial release, even though the judges in his court had received instruction regarding the changes through meetings and memos.

The Commission found that Judge LaSata sometimes took actions against defendants that appeared to have been motivated by anger, including once increasing a defendant's bond after they moved to withdraw a guilty plea. That action suggested the judge was punishing the defendant for choosing to go to trial, which violated Canon 2(B) and Canon 3(A)(1).

The Commission also found that Judge LaSata did not follow the requirements of MCR 6.425 in the case of defendants who did not pay fines or costs. That is, he did not make a record of any findings that the defendants had an ability to pay a fine or that they had not made a good faith effort to pay. Judge LaSata also required some defendants to pay costs and fines at sentencing, with a threat of immediate incarceration if they did not have sufficient funds on their person to pay the fines and costs at once.

Judge LaSata attributed his demeanor issues, which caused the most frequent complaints, to trauma he experienced due to a 2016 shooting right outside his courtroom. The Commission acknowledged that the incident contributed to Judge LaSata's problems with demeanor, but also found that some of his demeanor issues predated that incident. But the Commission recognized that its duty was to ensure future compliance with the canons

and in that regard found it very significant that by the time it resolved the investigation, Judge LaSata had a three-year record of excellent judicial conduct.

The Commission also determined that Judge LaSata violated canon 7(A)(1)(b), which prohibits a judge from “publicly endorsing a candidate for non-judicial office.” He posted a picture of himself on his public Facebook page with his wife and others under a campaign banner supporting her candidacy; drove a car with a bumper sticker supporting her candidacy; and publicly displayed a campaign sign for his wife on election day. The Commission acknowledged that Judge LaSata was supporting his wife’s campaign, and also noted that he did not intend to violate the canons. The Commission also noted that the canons do not contain an exception for spouses’ campaigns.

The Commission publicly admonished Judge LaSata, with his consent that the admonition be public, for his violations of the canons while on the bench, and admonished him to ensure that his future behavior continued as it has been since September 2020. The Commission also cautioned him to be careful to comply with the canons that pertain to campaigning.

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

### **1. Conduct on the Bench**

#### **a. Failure to be Faithful to the Law & Demeanor**

This is a 2022 resolution that was omitted from the Commission’s 2022 annual report.

After a jury convicted a defendant of second-degree murder, a judge sentenced the defendant well outside the sentencing guidelines range. The Court of Appeals affirmed the conviction but remanded for resentencing, ruling that the sentence could not be based on premeditation because the jury had rejected a first-degree murder charge.

The Supreme Court denied the prosecution’s application for leave to appeal. That same day the Court held in another case that it is a violation of due process to sentence a defendant as if they committed a crime for which they were acquitted.

At the resentencing, counsel for both sides informed the judge that the sentence could not be based on a finding that the defendant premeditated the murder. The judge also had the benefit of the higher courts’ opinions. Nevertheless, the judge again exceeded the guidelines range, stressing the judge’s belief that the defendant committed the murder with premeditation. The judge expressed their disagreement with the Court of Appeals ruling and endorsed a dissent to the Supreme Court’s denial of the application for leave.

On a second appeal, the Court of Appeals found that the judge’s upward sentence departure was a willful violation of controlling Supreme Court precedent. The Commission agreed, inasmuch as the judge made clear that they were aware of the Supreme Court’s decision but chose to base the sentence on premeditation anyhow. The Commission found dubious the judge’s explanation that they did not ignore the Supreme Court’s decision but found it to be

distinguishable, and admonished the judge for being unfaithful to the law in violation of Canon 3(A)(1).

In addition, during the resentencing hearing, the judge repeatedly interrupted the defendant's attorney – not to clarify any position, but to argue the judge's position. When the defendant attempted to allocute, the judge again repeatedly interrupted to express the judge's belief that the defendant committed the murder with premeditation, even though a jury rejected a first degree murder charge. The judge acknowledged to the Commission that the judge had violated the defendant's right to allocution.

The Commission found that the judge's treatment of the defendant and counsel violated Canon 3(A)(12), which states that a judge should avoid interrupting counsel during argument except to clarify positions and that undue interference, impatience, or participation in the examination of witnesses may prevent the proper presentation of the cause. The Commission admonished the judge for this, as well.

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After a criminal bench trial for domestic violence, a judge found the complaining witness to not be credible. One of the reasons the judge gave was that the complaining witness thought she was smarter than the judge. The audio of the testimony provided no basis for the judge's accusation. The accusation suggested that the judge let personal feelings affect the judge's judgment in the case.

The judge directed a verdict for the defendant. As the complaining witness was leaving the courtroom she called out "thank you your honor," following similar thanks from the prosecutor and defense counsel. The audio of the proceeding showed that the complaining witness's tone was the same tone she used when testifying and was not disrespectful or sarcastic. Nonetheless, the judge then angrily called the witness back to the podium, and without giving her a chance to explain herself, the judge had her detained. The only reason the judge stated for detaining the witness was that the witness thought she was smarter than the judge.

The Commission found that the comments that the complaining witness thought she was smarter than the judge created the impression that the judge was acting out of personal grievance, in violation of the requirement of Canon 2(B) that judges preserve the public's faith in the impartiality of the judiciary. The comment was also undignified, in violation of Canon 3(A)(3). The Commission found that detaining the complaining witness for the reason and in the manner that the judge did disregarded the limits of the judge's power to hold people in contempt of court, in violation of Canon 3(A)(1).

The Commission recognized that the events had taken place four years earlier, and noted the judge's otherwise excellent disciplinary record. After considering all these factors, the Commission cautioned the judge.

#### **b. Delay**

A judge had 22 cases in which decisions were delayed for at least six months and as much as 41 months. These cases mostly involved summary disposition motions and post-

conviction criminal motions. The judge candidly acknowledged that the delays were due to indecision and that the judge had put steps in place to become timely. The judge also had already achieved a significant reduction in the backlog by the time of the Commission's investigation.

The Commission cautioned the judge that the delays violated Canon 3(A)(5), which requires a judge to promptly dispose of matters before the court. The caution was conditioned on the judge continuing to use steps that the judge had already put into place to assist with preventing future delays. The Commission acknowledged the judge's otherwise excellent disciplinary record and the judge's candid acknowledgement of the delays.

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A party filed a motion to modify child support in February 2019. The judge did not schedule a de novo hearing on the matter until March 2022. When the judge still did not rule, the parties ultimately settled the matter in July 2022. In response to the Commission's inquiry, the judge noted that the parties had agreed to adjourn various hearings during the three years the motion was pending, which adjournments were intended to address child support. The Commission determined that since both the party who brought the motion and his attorney repeatedly asked that the issue be resolved, it was unlikely that any adjournment suggested that the judge need not resolve the issue. The Commission stated that had the judge been more attentive to the status of the case, the judge should have realized that the issue was ripe for a decision.

The investigation also revealed that the judge allowed 15 different matters to be excessively delayed between 2019 and 2022. The judge did not report all the matters to SCAO, as required by MCR 8.107(B). To the judge's credit, upon receipt of the Commission's questions the judge candidly acknowledged their problem with delayed decisions and implemented several procedures to keep current in the future.

The Commission found that the judge violated Canon 3(A)(5), which requires a judge to dispose promptly of the business of the court. The judge had been cautioned for excessive delay once before, in 2018. On this occasion the Commission admonished the judge, conditioned on the judge complying with several measures to keep current, and providing quarterly reports to the Commission for a year to enable the Commission to monitor the timeliness of the judge's decisions.

**c. Appearance of impropriety; ex parte communications; failure to disclose possible bias against party**

A judge presided over a case involving a business dispute. A friend of the judge was acquainted with a party to the case. Unbeknownst to the judge, the friend solicited cash and some gifts from the party under a guise that the friend would give the gifts to the judge in order to induce the judge to make a decision that was favorable to the party. Without the judge's knowledge, the friend sent photos and videos of themselves with the judge to the party from whom the friend was soliciting cash and gifts, to confirm the friend's relationship with the judge and to encourage the party to continue to make the gifts.

Although the judge's friend gave the judge at least one gift that the friend solicited from the party, the friend did not disclose to the judge that it was the party who had purchased the gift. The investigation did not uncover any evidence that the judge received any gift from any source knowing that the gift was on behalf of the party. Rather, it appeared that the judge's friend used their relationship with the judge to defraud the party under the false pretense that the friend was bribing the judge, while the friend retained almost all of the gifts.

The Commission also found, though, that the reason the friend was able to create the impression of a very close relationship with the judge was because the judge repeatedly accepted meals and small gifts from the friend in a one-way exchange. In addition, while the case was pending, the friend introduced the judge to a store owner who was a relative of the party. The friend did not disclose the familial relationship to the judge. The judge accepted at least one, and maybe more, gifts from the store owner, without reciprocating.

The Commission determined that the gifts from the friend and the store owner to the judge were largely one-sided and formed an impression that the judge's relationships with the givers were not reciprocal, as gifts considered acceptable as "ordinary social hospitality" under the canons would be. Accordingly, the gifts created an appearance of impropriety in violation of Canon 2(A) and undermined public confidence in the integrity of the judiciary, in violation of Canon 2(B). In addition, the Commission found that the judge's position was the clear motive for the gifts, and the judge's use of the prestige of their office to receive the gifts violated Canon 2(C).

The Commission concluded that the judge did not intentionally violate any canon, but rather was drawn into the relationships without adequately thinking of the consequences.

In addition, the Commission determined that separate conversations the judge had with two individuals were improper ex parte communications under Canon 3(A)(4). At the request of the friend described above, the judge personally delivered a copy of their opinion in a business dispute to an individual to whom the party from whom the friend was soliciting cash owed money. At that time an attorney fee issue was pending in the case and the judge was aware that the party owed money to the person.

The judge acknowledged concluding, on the basis of information obtained in conversations with his friend and with the person to whom the judge delivered his opinion, that the party had lied to the person to whom the judge delivered the decision, about the financial consequences of the judge's decision. The judge's conclusion about the party's honesty had the potential to affect the judge's decision regarding attorney fees.

The Commission found that pursuant to Canon 3(C), the judge should have disclosed that the judge had received ex parte information that caused the judge to conclude the party had lied, as the judge's conclusion raised a colorable question whether the judge had a bias against the party.<sup>7</sup> Further, since the decision the judge delivered was a decision to award a substantial amount of money to the party who owed the money to the person to whom the judge personally delivered the judge's decision, the judge's personal delivery of the decision

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<sup>7</sup> The judge disqualified themselves from the case for other reasons before resolving the attorney fee issue.



created the impression that the judge acted as an agent for his friend, creating an appearance of impropriety in violation of Canon 2(A) and calling into question the impartiality of the judiciary in violation of Canon 2(B).

The Commission noted the judge's excellent disciplinary record. After considering all the circumstances, the Commission cautioned the judge to be mindful of relationships, gifts, and appearances.

#### **d. Undignified conduct**

A judge was handling a child custody case in which the mother was not facilitating visitation with the father as the judge had ordered. The judge stated in an email to the attorneys of record that the judge would be "happy" to put the mother in jail and suggested that the father's attorney file a motion to show cause so the judge could "put mom in jail for a bit to get her attention."

The Commission cautioned the judge that these comments violated Canon 2(B), which requires a judge to promote public confidence in the impartiality of the judiciary. The Commission acknowledged the judge's excellent disciplinary record and the judge's candor and self-reflection in light of the investigation, as well as the judge's proactive adoption of practices to prevent a recurrence of the overly casual comments that violated the canons in this case.

#### **e. Courtesy**

An African American attorney asked to appear by Zoom on the basis that she was "in treatment," without elaborating. Neither respondent nor court staff inquired further into what "in treatment" meant, because they felt that asking would be a violation of the attorney's privacy. The judge denied the request to appear by Zoom.

The attorney appeared in person, and saw a white attorney appear by Zoom. The attorney alleged that the judge must have denied her request to appear by Zoom because of her race.

The judge explained to the Commission that the white attorney had provided medical documentation establishing that he was medically prohibited from appearing in court that day, and also informed the judge that his client did not object to him appearing by Zoom. The African American attorney had not done either of those things.

The Commission concluded that the judge and court staff had a good faith, though mistaken, belief that the attorney's privacy rights prevented further questioning about the reason the attorney wanted to appear by Zoom. Accordingly, the Commission found that the judge had not treated similarly situated attorneys differently due to their race.

The Commission sent the judge a letter explaining that had the judge or court staff inquired further of the attorney, as the law permitted, doing so could have prevented the appearance that the judge's court treated attorneys differently due to their race.

## **f. Public comment on pending case; impartiality**

After a judge sentenced a criminal defendant, and while the case was still pending post-conviction and then on appeal, the judge responded to online social media comments about the case, made comments about it that were quoted in a newspaper article, and released a memoir in which the judge referred to themselves as an advocate for the victims in the case.

The Commission found that the judge violated then Canon 3(A)(6) by posting a public comment about the case while it was still pending before the judge.<sup>8</sup>

The Commission also determined that the judge violated Canon 2(B) by making a statement to a reporter that the judge ceased to be “fair and impartial” once a defendant was convicted of a crime. The Commission stated that such a statement can only diminish the public’s faith in the impartiality of the judiciary.

The Commission further found that other social media postings by the judge that highlighted the judge’s advocacy for victims violated Canon 2(B), because the postings created the perception of the judiciary as biased rather than fair and impartial.

The Commission noted that the judge had been cautioned in 2012 and admonished in 2018 for unrelated conduct. After considering all the circumstances, the Commission admonished the judge for their partisan public statement that undercut the appearance of impartiality.

## **2. Conduct off the Bench**

### **a. Honor and integrity of the judiciary**

While at a conference, a judge went to several bars and drank to excess. While under the influence of alcohol the judge sent text messages to a court probation officer of the opposite gender who was also at the conference, pressuring the probation officer to join the judge. The judge also sent the probation officer unsolicited videos that showed the judge and others using inappropriate language.

The judge self-reported to the Commission and acknowledged their misconduct. The Commission found that the judge violated Canons 1 (requiring a judge to observe high standards of conduct), 2(A) (requiring a judge to avoid impropriety), and 2(B) (requiring a judge to promote public confidence in the integrity of the judiciary). The Commission noted extenuating personal circumstances the judge was then experiencing and noted as well that the judge sought professional help following this incident.

The Commission cautioned the judge to be mindful of the way their personal behavior can impact the public’s perception of the judiciary.

### **b. Misuse of prestige of office; ex parte communications**

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<sup>8</sup> Then-Canon 3(A)(6) has since been replaced.

A judge intervened, and advocated on behalf of a tenant, in a landlord-tenant dispute before the landlord filed an eviction case in the judge's courthouse. When the landlord filed the case, it was assigned to the judge's colleague. After the case was filed, the judge continued to intervene on behalf of the tenant.

In particular, the judge used a police officer to contact the landlord; had the police officer set up a meeting between the landlord and the judge; attempted to communicate with the landlord directly on the tenant's behalf, rather than through the landlord's counsel; left a telephone message for the landlord to "call the judge"; advocated for the tenant in communications with the landlord and its counsel; tried to achieve a resolution prior to a scheduled court hearing before the assigned judge, to preempt the hearing; and threatened bad publicity for the landlord if the landlord did not pursue alternatives to eviction.

The judge claimed that they were well-intentioned and merely acting as a community leader in an attempt to avoid homelessness for the tenant. The Commission found that the judge used the prestige of judicial office to advance the tenant's interests in violation of Canon 2(C). The Commission also found that the judge had ex parte communications in violation of Canon 3(A)(4); violated Canon 2(A) by acting improperly and by creating the appearance of impropriety in violation of Canon 2(B); and failed to preserve the public's faith in the impartiality of the judiciary, in violation of Canon 2(B).

The Commission noted that the judge had been previously cautioned for other misconduct, then admonished the judge to observe the limits of the judge's authority.

### **c. Failing to respect and observe judicial campaign law**

A non-incumbent lawyer ran for an open seat in a district court and won the election. During two of the eight months of the campaign, the then-candidate's campaign materials stated the candidate's name, and below the name stated "judge" or "district court judge" without including any qualifier, such as "for" or "elect" before "judge" or "district court." The effect was to potentially create the impression that the candidate was already a judge and already on the district court.

MCL 168.944 states that any person who gives the impression that a candidate for public office is the incumbent when the candidate is not in fact the incumbent is guilty of a misdemeanor. The wording of the judge's campaign materials was an apparent violation of MCL 168.944.

The Commission found that although the then-candidate's violation of Michigan's election law appeared to have been unintentional, the lawyer nonetheless violated the statute. The Commission found that this violated Canon 2(B), which requires a judge to respect and observe the law.

The Commission found it significant that the misleading materials appeared for only two months of an eight-month campaign; that the campaign was the lawyer's first as a judicial candidate; and that when the issue was first brought to the candidate's attention, the candidate contacted the Commission's executive director, after which the candidate promptly removed the misleading campaign materials and changed the wording of their remaining campaign materials.

The Commission cautioned the judge to ensure their compliance with all election laws during future campaigns.

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A judge self-reported to the Commission that in their reelection campaign they utilized some video footage taken in their courtroom during a visit of children to the courtroom. The video was uploaded to social media and the judge's website. Once a State Court Administrative Office regional administrator advised the judge that posting the video was a possible canon violation, the judge immediately removed the footage and reported the incident to the Commission.

The video was a possible violation of MCL 169.257(1)(d), which forbids a judge from using public resources in a campaign unless the resources are equally available to candidates who are members of the public. The Commission noted that the great majority of courts would not allow equal courtroom access for the purpose of creating a video to individuals who were not judges, so the regional administrator's concern was well-founded. The Commission also found, though, that the judge's courthouse *would* have given equal access to the courthouse for a non-judicial candidate, if asked.

On that basis, the Commission concluded that the judge did not violate any canon, but sent a letter to the judge explaining the campaign finance law inasmuch as it appeared that the judge was unaware of it.

#### **d. Use of prestige of office to solicit charitable donations**

A judge self-reported that the judge used their office improperly to solicit participation in a charitable fundraiser.

The fundraiser was to be held at the judge's home. The organization published a flyer for the fundraiser that identified the location as the judge's home, included the judge's judicial title, and included a suggested donation amount. Although the judge did not prepare the flyer, the judge briefly reviewed it before it was sent out.

The judge acknowledged not reviewing the flyer as carefully as they should have. When use of the judge's judicial title in the flyer was brought to the judge's attention, the judge immediately rectified the situation by having the flyer changed and reissued.

The Commission found that by using the judge's name and title, identity of the location as the judge's home, and by suggesting a donation amount, the flyer was an individual solicitation of money by the judge. The flyer therefore violated Canon 4(D), which prohibits a judge from individually soliciting funds or permitting the use of the prestige of office for fundraising purposes.

In light of the judge's taking prompt steps to rectify the situation and self-reporting the matter, as well as the judge's excellent discipline history, the Commission resolved the matter with a caution to the judge to be more mindful of the fundraising limitations the canons impose.

## **V. COMMISSION ORGANIZATION, STAFF AND BUDGET**

### **A. Commission Organization and Staff**

The Commission had eleven full-time and one part-time staff positions at the end of 2023, which included the executive director, administrative counsel, seven full-time and one part-time staff attorneys, an office manager and an administrative assistant. These staff members are state employees.

The executive director is hired by, and reports directly to, the Commission. The executive director oversees the investigation of grievances and is the disciplinary counsel handling public proceedings. The executive director is also the primary liaison between the Commission and the judiciary, the public, and the media. Lynn Helland has been the executive director and general counsel since February 2017.

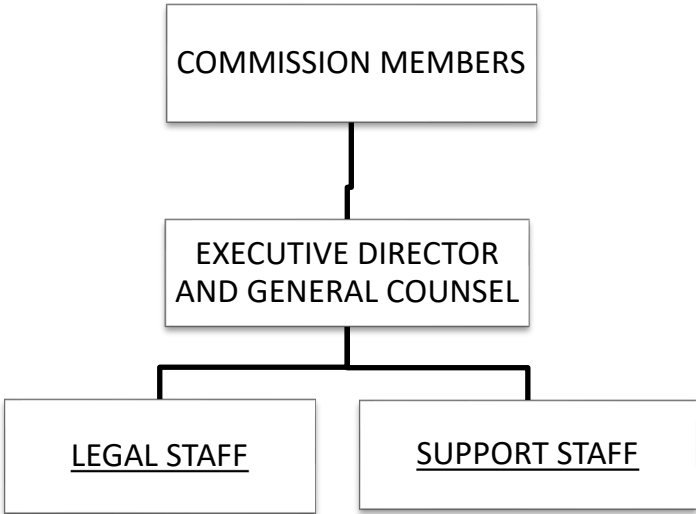
Casimir J. Swastek was named administrative counsel in August 2022. The other staff attorneys are Margaret N.S. Rynier, Dina Dajani, Melissa Johnson, Nichollette Hoard, Lora Weingarden, Rebecca Jurva-Brinn, Kavita Uppal, and Molly Kettler.

In addition to the staff attorneys, since late 2018 the Commission has used the services of contract attorneys to assist with its backlog of cases. As of the end of 2023, funding provided by the Michigan legislature enabled the Commission to have the assistance of contract attorneys Dennis Haffey, Sheldon Light, Patricia Gaedeke, and David McCreedy.

The Commission also benefited greatly in 2023 from the continued volunteer assistance of Robert Kalec, an experienced litigator. Mr. Kalec had retired after a very successful career, but recognizing the importance of the Commission's work and that the work be timely, he has generously volunteered his time and talent to help address the Commission's backlog.

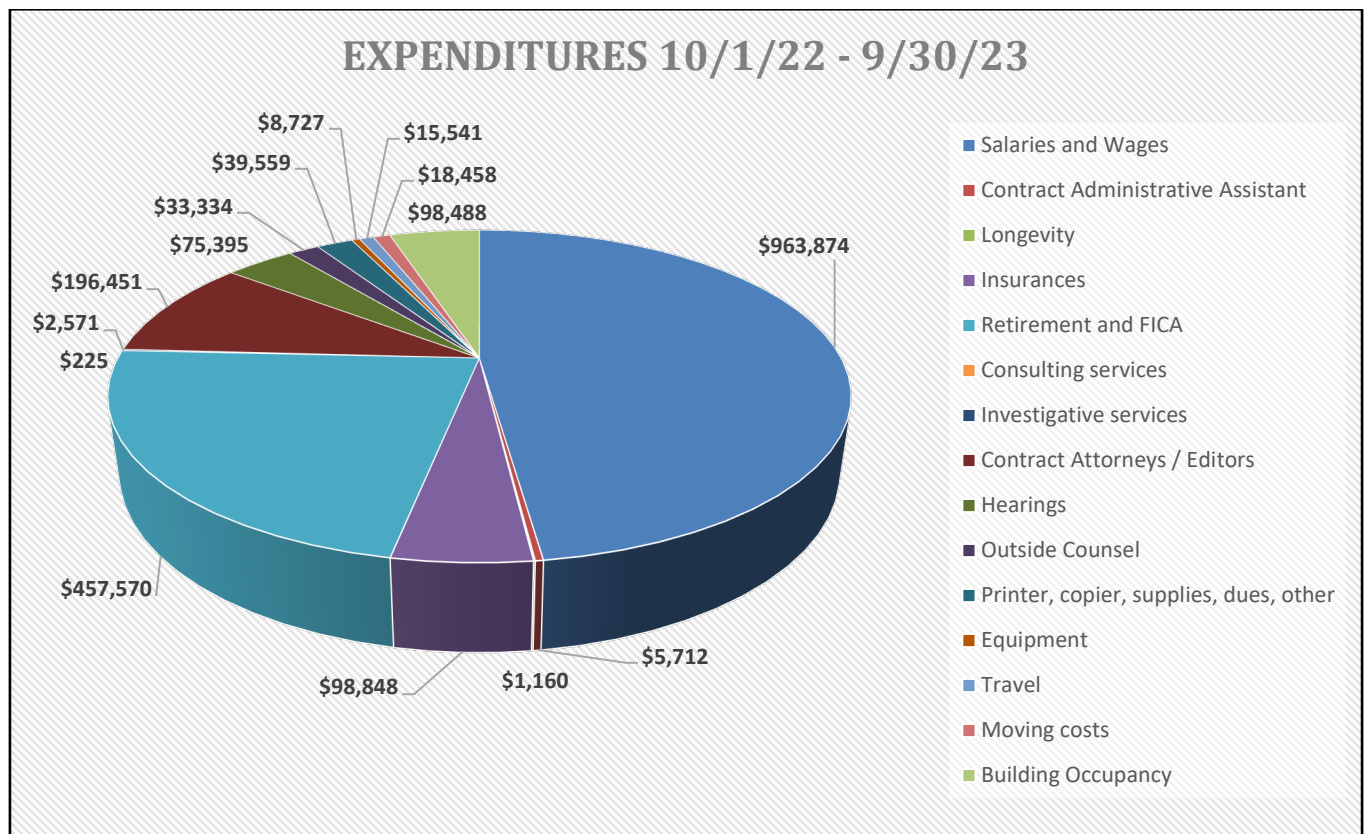
The Commission's legal staff are responsible for analyzing and investigating grievances and providing the Commission the information it needs to act on grievances. In addition, the attorneys serve as disciplinary counsel during public proceedings.

As of the end of 2023 the Commission’s support staff was comprised of Office Manager Camellalynette Corbin and Administrative Assistant Jason Flowers.



## B. Budget

The Commission's budget is established by the Michigan legislature. For the 2023 fiscal year (October 1, 2022 – September 30, 2023) the Commission's appropriation was \$2,672,325, with actual expenditures of \$2,265,213. After several years during which the budget was inadequate to meet the Commission's needs, resulting in the current Commission backlog, the Commission is grateful that the legislature appropriated the Commission enough additional money for the 2023 fiscal year to hire four additional full-time attorneys and one part-time attorney. The Commission is also grateful that in 2023 the legislature made the additional funding permanent for 2024 and beyond, providing the Commission much-needed stability for its staffing.



## VI. CONCLUSION

The Commission's service to the public improved again during 2023, thanks to additional staff made possible by the Michigan legislature. The Commission remains committed to fairly promoting the integrity, independence, and justness of Michigan's judiciary, and the public's confidence that the Michigan judiciary possesses those qualities.