



Michigan Judicial Tenure Commission Equity Report

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EXECUTIVE SUMMARY

This report responds to concerns raised by the Association of Black Judges of Michigan that the Michigan Judicial Tenure Commission (JTC) grievance process results in disproportionately severe sanctions for Black judges, particularly regarding public complaints. In response, the JTC and the Michigan State Court Administrative Office (SCAO) contracted with the National Center for State Courts (NCSC) to perform an assessment of JTC grievances between 2008 and 2022. The assessment consists of a statistical review of key decision points and outcomes in the grievance process to determine if, and where in the process, disparities and/or disproportionalities exist. The contract also anticipated additional study of key decision points if statistically significant racial disparities were found. This report describes the methods, findings, and discussion from the initial assessment and recommendations for further study.

Grievances

NCSC was provided data for 8,278 grievances¹ opened between January 1, 2008 and December 31, 2022 and with a disposition as of March 1, 2024. To preserve the goals of the assessment, the following grievances could not be included in the assessment:

- Grievances in which the respondent was not a judicial officer and therefore not under the jurisdiction of the JTC.
- Cases that were disposed because the respondents were deceased or had left their position (except in one analysis where individuals who would have likely received a public outcome if they had not left their position were purposefully identified and included).
- Consolidated grievances. The NCSC followed the JTC's practice of consolidating grievances (i.e., combining several grievances related to the same issue for the same judge together). The analysis is focused on outcomes, and consolidated grievances result in a single outcome for statistical purposes.
- Racial groups other than Black and White were not included in the analyses due to small numbers.
- Non-attorney magistrates were also excluded from the analysis due to a high rate of missing racial information for this sub-group, and discussion with the SCAO indicating that this subset of individuals was not a focus of the questions this assessment was designed to investigate.

More details about exclusions and consolidations can be found in the body of the report. After consolidation and exclusions, we retained 6,900 grievances for our analyses. These analyses consisted of 2-proportion Z tests and Chi-square analyses.

¹ The JTC uses several terms for allegations of improper conduct of judicial officers including complaints, grievances, and investigations. For simplicity, this report uses "grievance" for all allegations of improper conduct by a judicial officer.

Findings

These analyses resulted in the following findings prior to full investigation:

- When examining only the numbers of Black and White judicial officers who were the subject of a grievance and not the number of grievances per individual judicial officer, race was not associated with an increased likelihood of ever being a respondent to a grievance. In other words, neither White nor Black judicial officers were overrepresented among individuals who had any grievance filed against them compared to the population of judges in Michigan.
- When considering the number of grievances per judicial officer, Black judicial officers had a significantly higher average number of grievances per respondent than White judicial officers.
- Race was significantly associated with having a filed grievance proceed to full investigation, with grievances filed against Black judicial officers more likely to proceed to full investigation.

For dispositions after a full investigation:

- There was no significant association between race and disposition by dismissal.
- There was no significant association between race and disposition by dismissal with confidential discussion (admonition, caution, explanation).
- Race was significantly associated with disposition by public censure, with Black judicial officers more likely to be publicly censured. However, when including judicial officers who would likely have had a public outcome imposed if they had not left their position before the Supreme Court could do so, there is no significant association between race and public censure.

The NCSC recommends the following next steps to investigate the factors contributing to the detected disparities and disproportionalities and to help identify potential strategies to address the issues,

Next Steps

The analyses identified three points in the process where racial disparity occur and therefore need more in-depth analyses: number of grievances filed, grievances proceeding to full investigation, and factors influencing a judicial officer's likelihood of remaining in or leaving their position when facing a likely public outcome. Recommendations for additional investigation into these decision points include:

- Using advanced statistical techniques to examine factors such as grievant type, grievance severity, reason for grievance, jurisdiction location type (e.g., rural or urban), judicial tenure, gender, and number of past grievances for the number of grievances filed and the number of grievances advancing to full investigation. Conduct a document review of cases that proceeded to full investigation as necessary to identify additional factors and patterns.

- Conducting a document review of the public outcome cases looking for these same factors to determine if patterns in the outcomes emerge, because the number of public outcome cases is too small for advanced statistical analysis by type of public outcome (public censure only, suspension, or removal).
- Interviewing attorneys involved in the grievance process and JTC staff to better understand content of discussions, the decision-making process, and negotiations between JTC and counsel for respondents, with a focus on the full investigation decision point and public outcomes.
- Interviewing judges who either received a public outcome or left their position with a likely public outcome pending to better understand factors that may influence the decision to stay or leave, including structural and institutional factors.

PROJECT BACKGROUND

In March of 2023, the Association of Black Judges of Michigan (ABJM) wrote to Michigan Supreme Court Chief Justice Elizabeth Clement with concerns about racial disparity in public complaints filed by the Michigan Judicial Tenure Commission (hereafter, JTC or Commission).² In the letter, the ABJM states that since 2000, the proportion of Michigan judges that are Black has hovered around 16% of the judiciary. According to the ABJM, of the public complaints filed by the JTC since 2020, approximately 80% of those prosecuted were against Black judges; and since 2008, 52% of judges charged by the commission were Black.³ Further, given this perceived disproportionality, ABJM asked if there was also a disparity in the way the JTC resolves non-public disciplinary matters. To remove the appearance of racial prejudice by the JTC, the ABJM asked the Chief Justice for an “independent audit of all files handled by the Commission [JTC] from 2017-Present.” This letter was accompanied by a list of 23 judges, including 12 Black judges, who have public complaints filed against them by the JTC since 2008.

In response, the JTC sent a letter to Chief Justice Clement. The JTC did not dispute the data the ABJM shared but did state that it was presented without context and without a consideration of the “relevant population.”⁴ According to the JTC, the relevant population must include “all judges against whom the Commission brought some kind of public action...or likely would have brought public action.” The letter discussed an attached 5-year analysis of public and confidential actions that the JTC shared with the ABJM in 2021. In this analysis, the JTC said that the “data show that the racial makeup...matches very closely the racial makeup of the judiciary.” This analysis referred to several judges who chose to resign or retire before matters proceeded to a public hearing. Seventeen judges took this option during this period. Fifteen were White and two were Black. The Commission stated that “the great majority of those cases would likely have resulted in public complaints” had the judge not resigned or retired. In the same period, three judges consented to sanction prior to public complaint, in situations that would “likely have resulted in public complaints.” And, out of the seven public complaints since 2016, four of the judges were Black. The JTC maintains that when the judges who likely retired, resigned, or consented to sanction are included in the calculations, the racial disparity in public complaints nearly disappears.

In June 2023, the JTC put out a press release announcing that it will seek “an independent review of the racial composition of the judges about whom the Commission receives complaints, and the Commission’s dispositions of those complaints, for the period 2008 through 2022.” This independent review was supported by Michigan Supreme Court Administrative Order No. 2023-2 at the end of 2023. In early 2024, the National Center for State Courts contracted with the Michigan State Court Administrative Office (SCAO) and the Michigan Judicial Tenure Commission to perform a racial equity analysis of the Michigan Judicial Tenure Commission’s complaint review process. This report presents the results of this analysis. It begins with

² The letter from the ABJM discussed a disparity in “formal” complaints filed. According to the JTC, “formal” complaints and “public” complaints refer to the same complaints. The term public will be used in this report as it is more precise to describe the nature of the complaint. Public complaints are those with public resolutions; likewise other complaints have private, or confidential resolutions. There are no “informal” complaints to the JTC.

³ March 27, 2023 letter to Chief Justice Clement.

⁴ April 13, 2023 letter from JTC to Chief Justice Clement.

descriptions of the JTC review process, followed by the study's methods, analyses, and findings, and concludes with recommendations for next steps based on the findings.

Judicial Tenure Commission Background and Process

The Michigan JTC has nine members, including five judges, two attorneys, and two members of the public. Each Commissioner serves a three-year term, and the terms are staggered to include three new members each year. The attorneys are selected by the State Bar of Michigan, four of the judges are elected from the type of court that they serve (one each from the Probate, District, Circuit, and Appeals courts), and one judge is elected by the State Bar. The two members of the public are appointed by the governor.⁵

The JTC's authority is found in the Michigan Constitution, Michigan Court Rules,⁶ and by the Code of Judicial Conduct.⁷ The Commission has jurisdiction over all active judges, magistrates, and referees in Michigan, as well as visiting and former judges. The JTC does not have jurisdiction over judicial candidates, federal judges, or administrative hearing officers.

The JTC is limited to investigating complaints and misconduct and cannot impose sanctions or discipline. The JTC may take confidential action by issuing a letter of admonition or caution, or recommend public censure, including sanctions such as suspension or dismissal to the Supreme Court. Further, the JTC is limited to investigating allegations of inappropriate or unethical conduct; it does not review or overturn legal rulings or judicial decisions or remove a judge from a specific case.

The investigations are conducted by the staff of the JTC. At the time of writing, the Commission has 15 staff members, including 12 attorneys. The Executive Director oversees the intake and investigation of complaints and is the primary liaison between the JTC and the judiciary, public, and the media. The staff attorneys are responsible for the investigation of grievances and the reporting of the results to the JTC. The Executive Director serves as disciplinary counsel in public proceedings and the attorneys are associate disciplinary counsel.

Complaint and Review Process⁸

Figure A depicts the complete JTC grievance⁹ and investigation process. The review process starts with a request for investigation or grievance. The grievance may be submitted by any member of the public, or the request may originate internally from any judicial or court colleague, the Supreme Court, the State Court Administrator's Office, the Attorney Grievance Commission, or the JTC itself. Members of the public submit complaints by downloading the form on the JTC website (jtc.courts.mi.gov) or by contacting the JTC for a hard copy. The complaint signature must be notarized, to indicate that the grievant swears the information in the statements is true. The JTC may instigate a grievance on its own, prompted by reasons such as

⁵ Michigan Constitution. Art. 6 §30 (1).

⁶ Chapter 9.200

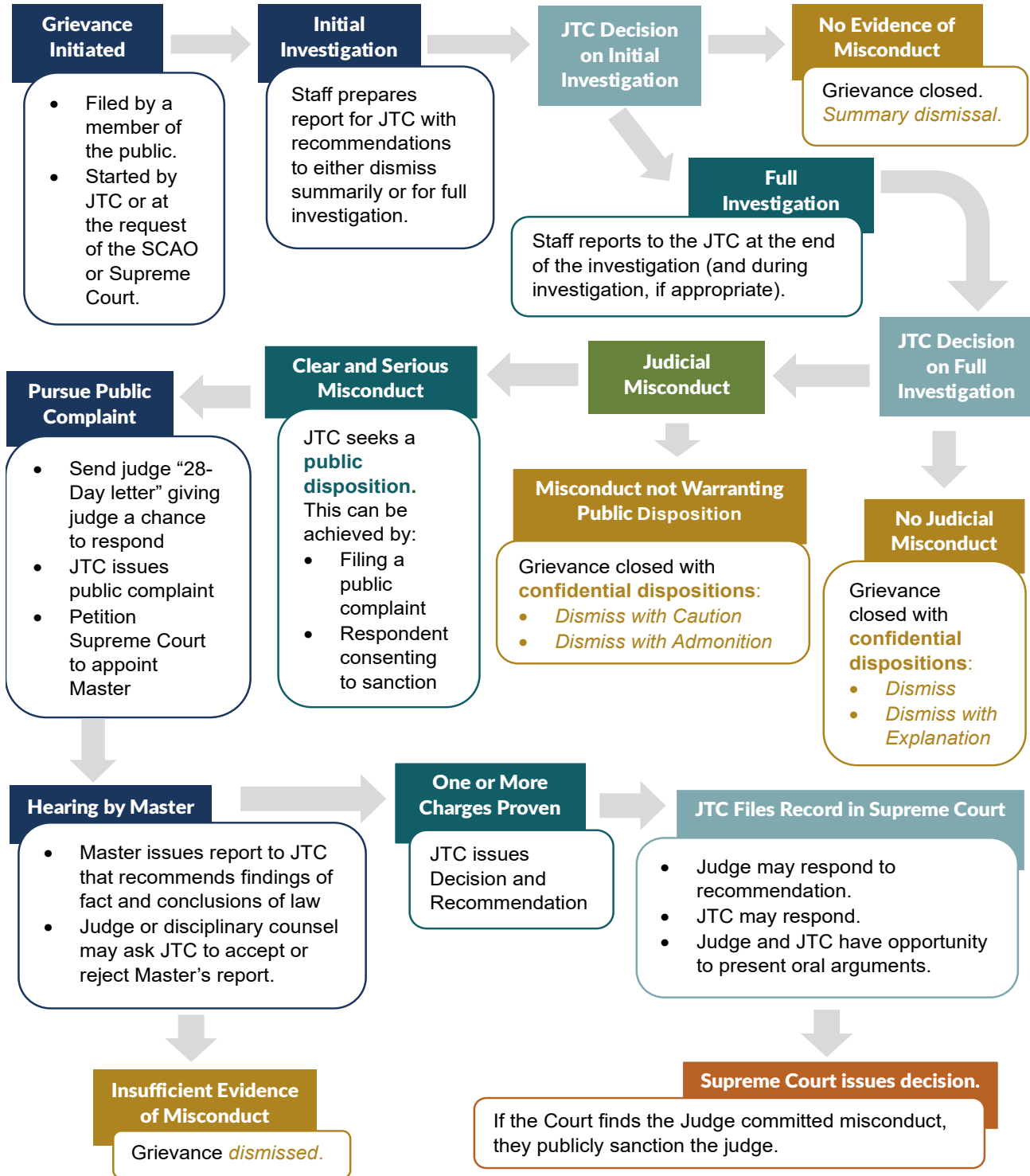
⁷ <https://www.courts.michigan.gov/4a3fd4/siteassets/rules-instructions-administrative-orders/code-of-judicial-conduct/code-of-judicial-conduct.pdf>

⁸ All information about internal JTC processes is adapted from the State of Michigan Judicial Tenure Commission Annual Report. http://jtc.courts.mi.gov/annual_report/index.php

⁹ The JTC uses several terms for allegations of improper conduct of judicial officers including: complaints, grievances, and investigations. For simplicity, this report uses "grievance" for all allegations of improper conduct by a judicial officer.

a report from an anonymous source or a news report, or upon the request of the State Court Administrator or the Chief Justice of the Michigan Supreme Court.

Figure A. Michigan Judicial Tenure Commission Grievance Process.



For each “properly executed grievance,” the complaint is reviewed by the JTC staff. Staff attorneys may obtain additional information for the preliminary review only from the grievant, the grievant’s attorney, the State Court Administrative Office, and from publicly available resources from which information can be obtained without revealing who is requesting the information. Based on this initial investigation, the staff prepares a report for the JTC that recommends either immediate dismissal or a full investigation along with a recommended course of action. When a grievance, with the report of the initial investigation, comes before the JTC, members determine whether there is sufficient evidence of misconduct to warrant a full investigation. If they decide that the information provided does not plausibly suggest misconduct, further investigation is not pursued, and the grievance is closed. In such cases, the judge who is the subject of the grievance is given a copy of the complaint when the JTC case is closed.¹⁰ These outcomes are called *summary dismissals*.

If, after initial staff investigation and recommendation, the JTC determines that there is sufficient evidence of misconduct to warrant further investigation, the Commission directs staff to proceed to a full investigation. The scope of the investigation is approved by the JTC and may include gathering court records, interviewing witnesses and obtaining physical or mental exams of the judge who is the subject of the complaint. In addition, if it is determined the full investigation would be aided by information from the judge, the grievance is sent to the judge along with a request for comments. The request for comments may or may not be based on information in the grievance. It is misconduct for the judge not to answer the request for comments. The judge’s answer is included with other information gathered during the full investigation.

At the conclusion of the full investigation, staff present the findings to the JTC. At this time, the JTC can either “dispose” of, or close, the complaint confidentially or publicly. For a summary of disposition types, findings, and JTC decisions, see Table 1. If a grievance is disposed confidentially, a range of actions may be taken by the JTC. In cases where the full investigation finds no evidence of misconduct, the case is closed without action (officially labeled by the JTC as “dismissed”). Pursuant to Michigan Court Rule (“MCR”) 9.223(A), if there were no findings that warranted a public complaint, but there was problematic behavior, the JTC may write a letter to the judge explaining the problems with the behavior and dismiss the case (officially labeled “dismissed with explanation”). In situations where conduct was found to be misconduct but the misconduct was not serious enough to warrant a public disposition,¹¹ the grievance may be dismissed with a letter of caution or admonition that explains the ethical concerns raised by the misconduct and warns the judge not to repeat the behavior (officially labeled “dismissed with caution” or “dismissed with admonition”).

If the investigation by the JTC staff shows that there is behavior “clear and serious enough to warrant public resolution,”¹² the JTC sends a letter informing the judge of the charges the JTC anticipates bringing against the judge and giving the judge 28 days to respond. If the judge’s response does not allay the JTC’s concerns about the need for public proceedings, the JTC files a public complaint that constitutes a public, written statement of the charges. The judge has 14

¹⁰ In certain situations, for good cause, the JTC may determine that it is appropriate to share the grievance with the judge prior to closing the grievance.

¹¹ The annual report of the JTC explains that cautions are for improper conduct that was “relatively minor,” and admonitions are for misconduct that is more serious but does not warrant a public sanction. The annual report does not explain further how these categories are determined (p. 4).

¹² State of Michigan Judicial Tenure Commission Annual Report 2022, p. 4

days to file an answer. The complaint, the judge’s answer, and other documents are posted on the JTC website when they are filed. The judge is entitled to inspect and copy all evidence and be given the contact information of any person to be called as a witness. At this time, the JTC may petition for an interim order asking the Supreme Court to suspend a judge pending the resolution of the complaint. In “extraordinary circumstances” this request may be made before the public complaint is filed.¹³

Following the issuance of a public complaint, the JTC petitions the Supreme Court to appoint a master to conduct a hearing on the complaint.¹⁴ Evidence in support of the complaint is presented by disciplinary counsel—one or more of the staff attorneys of the JTC—and the judge may be represented by counsel. Michigan rules of evidence apply to the hearing, and the standard of proof is a preponderance of the evidence.

Table 1. Summary of Disposition Types, Findings, and Outcomes for Complaints against Judges.

Type of Disposition	Findings	Outcome
<i>Prior to Full Investigation</i>	<i>No misconduct suggested or matter for appeal.</i>	<i>Summary dismissal</i>
Confidential Outcomes	No misconduct.	Dismissed
	No misconduct, but problematic behavior.	Dismissed with explanation from JTC
	Minor misconduct.	Dismissed with caution from JTC
	More than minor misconduct but public sanction is not appropriate.	Dismissed with admonition from JTC
Public Outcomes	Behavior is clear and serious enough to warrant public admonition.	Public Censure by Supreme Court
	Behavior is clear and serious enough to warrant public resolution and temporary removal from the bench.	Suspension by Supreme Court
	Behavior is clear and serious enough to warrant public resolution and removal from the bench.	Removal by Supreme Court
Other Outcomes	Respondent voluntarily leaves the bench or ends their term and either does not seek or does not win reelection during the grievance process, without a likely public outcome occurring if they’d stayed.	Left position during grievance process

¹³ Ibid. p. 5

¹⁴ In most, though not all, cases the master is a retired Michigan judge (Ibid., p.5).

Other Outcomes Continued	Respondent voluntarily leaves the bench or ends their term and either does not seek or does not win reelection during the grievance process, with a likely public outcome occurring if they'd stayed.	Left position with likely public outcome
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After the conclusion of the hearing, the master files a report with the JTC that includes a statement of proceedings and the master’s findings of fact and conclusions of law. The judge and disciplinary counsel may ask the JTC to accept or reject the master’s report (in part or whole) and there may be an oral argument before the JTC regarding these requests.

After reviewing the master’s report and any filings and oral arguments, the Commission determines if there is sufficient evidence to support the complaint. If the JTC determines there is insufficient evidence, the complaint is dismissed. However, if the JTC determines that one or more charges have been proven, it may issue a Decision and Recommendation to the Supreme Court. The recommendation may include discipline for the judge. The types of discipline the JTC may recommend include public censure, suspension, involuntary retirement, or removal from office. The JTC has no authority to discipline a judge; the authority to discipline judicial officers is the decision of the Michigan Supreme Court, which may reject, accept, or modify the recommendations of the JTC.¹⁵

The JTC files a record of its Decision and Recommendation with the Supreme Court and serves a copy to the judge within 21 days of issuing. Within 28 days of being served with the Decision and Recommendation, the judge may file a petition with the Supreme Court to modify or reject the JTC’s Decision and Recommendation. The JTC has another 21 days to respond to the judge’s recommendation. Regardless of whether the judge files a petition, the Supreme Court independently reviews the JTC’s Decision and Recommendation. The judge and JTC both have an opportunity to present oral arguments to the Supreme Court. The Court reviews all evidence and issues an opinion either to accept, reject, or modify the Decision and Recommendation of the JTC. If the Supreme Court finds that there has been judicial misconduct, the Court issues a sanction for the judge. At this time, the judge may file for a rehearing with the Supreme Court—unless the Court specifies otherwise.

Confidentiality of Grievance Proceedings

The Michigan Constitution and Court Rules (9.261) provide for the confidentiality of grievances to, and investigations by, the JTC. Therefore, grievances and investigations are confidential—subject to certain limited exceptions—unless and until the Commission issues a public complaint against a judge. One such exception is that the grievance may be provided to the judge by the JTC during the investigation. The investigation or complaint also may become known in the course of the investigation, despite efforts to keep the matter confidential, as a result of the JTC contacting witnesses or obtaining court records.

When the JTC initiates public proceedings, its complaint, the judge’s answer, and all subsequent proceedings and documents are open to the public. In certain limited circumstances, the Court may permit the JTC to publicly acknowledge an investigation before a

¹⁵ MCR 9.252(A).

public complaint is issued. In such cases, only very limited information is made public. According to the JTC annual reports, these situations are rare.

The rules of confidentiality in grievance proceedings are part of what is driving this independent audit of the JTC. Due to the confidential nature of complaints and investigations, the JTC is unable to share detailed grievance-level information with organizations and members of the public who are concerned about racial disparities in the outcomes of complaints. In Michigan Supreme Court Administrative Order No. 2023-2, the Court specified that the JTC may disclose confidential information as deemed necessary to complete an independent audit of the complaints and received by JTC and their outcomes.¹⁶

Trends in Grievances

This section will briefly review trends in the grievances; a detailed overview of the grievances received and summaries of resolved or pending public proceedings can be found in the JTC Annual Reports.¹⁷

An average of 531 grievances a year were filed from 2008 to 2022, ranging from a high of 638 filings in 2010 to a low of 447 filings in 2021. In 2022, there were 507 grievances filed with the JTC.

The increasing number of pending grievance cases at the end of each year since 2017 suggests that, in recent years, cases are taking longer to resolve. In their annual report, the JTC states that “the number of grievances that result in full investigations has been substantially higher in every year since 2017 than it had been in prior years.”¹⁸ In 2021, the Commission resolved 88.4% of the number of grievances filed, down from 97% in 2020. In 2022, the percentage of grievances resolved increased to 90.9% of the number of grievances filed. Given the increase in number of filings in 2022, that means that the Commission resolved 16.7% more cases in 2022 than in 2021. This may be attributed to the ability to hire additional staff attorneys due to an increase in their annual budget appropriation for the 2023 fiscal year. Four of the pending complaints in 2021 were public complaints (roughly 1.8% of pending cases), and five (about 1.9% of pending cases) in 2022 were public.

Most grievances received by the JTC are disposed through a summary dismissal. Over 95% of grievances disposed each year were dismissed without action each year of this review, except for 2008 and 2022. In those years, the rate of grievances disposed through a summary dismissal were 83.1% and 93.5%, respectively. From 2008 to 2022, the percentage of dismissals with confidential outcomes ranged from less than 1% to 4.6% of grievances disposed each year. For the most recent five years, dismissals with confidential outcomes ranged from 1.8% to 2.8% of grievances disposed. The number of public complaints filed by the JTC ranged from zero to 3 in each year of this review, with an average of 1.8 public complaints filed per year.

On average each year between 2008 and 2022, 65% of grievances were filed by non-prisoner litigants. Prisoner litigants, friends and families of litigants, and attorneys were the next largest

¹⁶ Michigan Supreme Court Administrative Order No. 2023-2, Independent Audit of the Judicial Tenure Commission. December 21, 2023.

¹⁷ See, http://jtc.courts.mi.gov/annual_report/index.php for pdf versions of Annual Reports from 2007 through 2022.

¹⁸ 2022 Annual Report, p. 7.

groups of grievants, together making up about 25 to 30% each year. The most common subject matter for a grievance filed each year is a review of a legal ruling, which is outside the scope of the JTC; these grievances are disposed through summary dismissal. While this was still the most common reason for a grievance in 2022, 41.8% of all grievances filed, the proportion of grievances filed for this reason has been trending down since 2017. Prejudice/partiality, demeanor and “other” comprised the next most common subject matter in grievances and have been trending upward as a proportion of grievances filed since 2017. In 2022, those three categories combined represented 48% of all grievances.

Criminal and domestic relations cases were the underlying case types in more than half of the filed grievances from 2008 to 2022. Unsurprisingly, circuit court judges were the subject of about 50% of grievances. These judges handle most of the felony criminal and domestic relations dockets.

Purpose and Structure of Current Review

The purpose of this review is to perform a racial equity analysis on the JTC grievance process from 2008 to 2022. The review will evaluate the grievance data to determine if there are racial disparities and disproportionalities¹⁹ of judges at each stage of the grievance process. It is important to emphasize that the current stage of this review is an equity analysis of the current process and will not review the processes of the JTC.

DATA AND METHODS

This review uses the logic developed for NCSC’s Racial Equity Process Analysis to analyze data of grievances filed against judicial officers between 2008 and 2022 with a disposition as of March 1, 2024 (when NCSC received the data from the JTC). This section provides a detailed description of the data sources and the development of the methodological approach.

Data Sources

Data on grievances filed were provided by the JTC, shared via a Microsoft Access database maintained by the JTC. The information was supplemented and validated with the physical grievance case files, scanned into PDF documents for electronic accessibility. To assess if there were any racial disparities in the grievance process, it was necessary to combine the JTC data on grievances with a file containing demographic and position information for judicial officers active in Michigan from 2008 to 2022. The data sources are described in detail below, including a discussion of excluded information.

¹⁹ Disparity refers to a difference between the experiences or treatment of two different groups while disproportionality is that one group is either more or less represented in a certain situation compared with the broader population. For example, imagine a group of 100 tenants, 88 are White and 12 tenants are Black. If 30 White tenants (34% of the White tenants) and 8 Black tenants (66.7% of the Black tenants) received an order for eviction, there is a racial *disparity* in eviction orders because one group (here, Black tenants) has a higher chance of getting an eviction order than the other group. Looking at the distribution of eviction orders by race, this shows that 79% (30 of 38) of eviction orders are received by White tenants and 21% are received by Black tenants. This is also a racial *disproportionality* in eviction orders, because we would expect Black tenants to receive only about 12% of eviction orders since they are 12% of tenants.

Grievances Filed with the JTC

The JTC provided reviewers with the complete database they use to record data related to grievances, as well as the scanned PDF versions of the paper case files for the grievances. The database included the dispositions, grievant information, respondent information, the nature of the litigation, dates the grievance was opened and closed, and the nature of the grievance, among other information. The case file PDFs were used to check the reliability of the information. This review of the data revealed some data entry errors, such as all dismissed cases coded as summary dismissals even if they had been dismissed after a full investigation. Identified data entry errors were corrected using information from the case files.

The database list of dispositions was used to identify the grievances to be included in the analysis. All grievances opened between January 1, 2008 and December 31, 2022 and with a disposition as of March 1, 2024 were initially included. However, as the review progressed it was determined that a number of these grievances should be excluded from all or part of the analysis, as described below.

It is important to note that the way a grievance is counted in the grievance process is not the same as the way a grievance is counted for the purposes of this study. In the grievance process, a single grievance filing can apply to multiple respondents. However, when the term “grievance” is used in this review, it is referring to the grievance *by respondent*. For example, if a single grievance is filed against three individual judicial officers, it is counted as three grievances in the data presented here, so that the outcomes of the grievance may be disaggregated by the race of the respondents.

Active Judicial Officers from 2008 to 2022

To provide an analysis on the existence of racial disparities among grievance dispositions, it is necessary to determine the demographic composition of the judicial officer pool. To this end, the SCAO provided data identifying the racial identity of active judicial officers from January 1, 2008 to April 1, 2024. To match the study period, judicial officers who were only active after 2022 were excluded from the analysis of the judicial officer pool.

The SCAO was able to provide race information for most judges. However, in Michigan, magistrates are hired by locally funded district courts to preside over certain cases. Therefore, their demographic data is not systematically collected and retained by the SCAO. To address the missing race and ethnicity data of magistrates, the SCAO received permission from the Michigan State Bar to use their data to supplement the SCAO information.

A subset of magistrates are not attorneys, and therefore included in neither the SCAO nor State Bar data. After discussion with the SCAO about the goals of this review, the decision was made to exclude these non-attorney magistrates from the judicial officer pool and from the JTC grievances. A total of 297 individuals were excluded due to this decision. 207 (69.70%) of these individuals were of unknown race, 88 were White (29.63%), one was Black, and one was Hispanic (.34% each). Removing these individuals resulted in a pool of 1,336 judicial officers active from 2008 to 2022, with only 28 individuals (2.10%) of unknown race. All 28 of these individuals were magistrates. The same logic was applied to the grievances, with 56 grievances removed because the respondents were not attorneys.

Grievances Excluded from Analysis

Not all grievances included in the JTC database were included in this analysis. Cases excluded from analysis generally fit into three categories, all of which are described in detail below. The three categories are: 1) grievances were decided based on something other than the merits of the complaint; 2) individual grievances consolidated into a single outcome; and 3) the judicial officer responding to the grievance identified as a race other than white or black. Ultimately, the JTC provided records of 8,278 grievances. After removing these cases, there were 6,900 that were included in the analysis.

Decisions not made on the merits of the grievance

Grievances were excluded from the analysis if they were not decided on the merits of the complaint. This occurred in a few different ways: grievances filed against individuals who were not judicial officers, organizations rather than individuals named as respondents, and the dismissal of grievances because the respondents left their position.

The database provided by the JTC included grievances filed against individuals who were not judicial officers as defined by the Michigan Court Rules (MCR) 9.201(2), which states:

“Judge” means:

- (1) a person who is serving as a judge or justice of any court of the judicial branch of state or local government by virtue of election, appointment, or assignment;
- (2) a magistrate or a referee of any such court; or
- (3) a person who formerly held such office if a request for investigation was filed during the person’s term of office. If the person is no longer a judge and the alleged misconduct relates to the person’s actions as a judge, it is not necessary that the request for investigation be filed during the former judge’s term of office; nothing in this paragraph deprives the Attorney Grievance Commission of its authority to proceed against a former judge.

Two hundred forty-four grievances were excluded from the analysis because they were filed against individuals who were not judges as defined by MCR 9.201(2).

Two cases were excluded because they named organizations, rather than an individual as a respondent (one named the Judicial Commission, and the other the Appeals Court). Each of these cases were summarily dismissed due to a lack of merit. A third case was excluded because it was filed against the wrong judge.

Cases where individuals left their position added some complexity in determining *when* a case should be excluded from the analysis, or if it should remain in a discreet group within the analysis.

Special Consideration: Respondent leaving office

It was necessary to give special consideration to cases in which the letter to the grievant or respondent in the PDF file indicated that the grievance was dismissed because the respondent was deceased or had retired or resigned or otherwise left their position (e.g., by their term expiring and not seeking reelection, or by losing reelection). In situations where the judicial officer left their position without a likely public outcome occurring if they had stayed, the

grievances were excluded from the analyses. However, instances where the judicial officer left with a likely public outcome if they'd stayed were necessary to include to investigate the JTC's claim that racial disparities would not be found in the public outcome analysis if individuals who left their positions (retired/resigned/lost election) when they had a likely public outcome pending were included in the analysis.

These possible cases were identified by first determining if individuals left their position during the JTC investigation (N = 99). Sixty-one of these grievances were summarily dismissed due to a lack of merit, addressing issues that were matters for appeal, or both. One additional grievance was resolved through a letter of admonition. These grievances were not considered likely to result in a public outcome due to their resolution types, and a review of the case files. This left 36 grievances to assess for likely public outcomes if the respondents had not left their position. In 3 of these grievances, the associated case files stated explicitly that the retirement or resignation was due to a negotiated agreement to avoid a public outcome. These cases were included in the "likely public outcome" disposition. The 33 remaining consolidated grievances (38 separate grievances before consolidation) that were not clear regarding a possible public outcome were reviewed by NCSC's Director of the Center for Judicial Ethics, who determined whether a public outcome was likely if the individual had not left their position based on the severity of the charges against the individual and the evidence of misconduct contained in the case files. Of these 33 consolidated grievances, 31 were deemed to have likely public outcomes if the respondent had not left their position. This review resulted in 34 "likely public outcome" grievances.

In some cases, an individual left their position after the grievance went to full investigation but before it received a final disposition. These cases were excluded from analyses at the final disposition decision point but were included at the grievance filed and full investigation decision points.

Table 2 identifies the number of cases that were fully excluded from the review because they had no decisions made on the merits at any decision point. These cases were also excluded from the grievance filed point of initial contact because of the high percentage of unknown race information for these cases, and because the inclusion of the cases with known race information did not change the findings for the grievance filed point.

Table 2. Grievances Excluded from Analysis for Decision Not Made on Merit, by Race.

Race Of Judicial Officer					
	Black	Multi-Racial	White	Unknown	TOTAL
Deceased	4	1	15	15	35
Left position after filing but before full investigation decision point	2	-	4	-	6
Left position before grievance filed	6	-	18	2	26

An additional nine grievances had respondents who left their position after the full investigation decision point but before the final disposition decision point. These were included in the grievance filed point and full investigation point analyses but excluded from the final disposition analysis. Eight of these cases involved a White respondent, and one involved a Black respondent.

One case required a more nuanced approach than other cases. In this case, the judicial officer was deemed likely to receive a public outcome due to the severity and initial evidence of the alleged misconduct. This judicial officer left their position before the decision to conduct a full investigation was made, meaning that they are included in both the summary dismissal group *and* the Likely Public Outcome disposition group for purposes of the analyses.

Consolidated cases

In some cases, the JTC consolidates multiple grievances (that are filed in the same general timeframe and address situations that are not dramatically different) against a single individual and assigns to them a single outcome. This practice was particularly important in the analysis of public outcome cases. In one instance, there were 15 grievances for an individual that were all resolved by a single public outcome disposition. If, in the analysis, reviewers had included each of these grievances as a separate disposition, it would have appeared that 15 individuals of that person's race had a public outcome. Instead, that single public outcome is included in the data as a single outcome by consolidating all related cases. Cases against one individual were consolidated for this review if they met three criteria:

- 1) They had the same closure date
- 2) They had the same disposition
- 3) The PDF case files indicated that the JTC viewed them as consolidated cases

1,243 grievances were consolidated into 528 grievances based on these criteria, meaning that 715 grievances were removed from the dataset. The average number of cases consolidated into a single entry was 2.77. The maximum number of cases consolidated into a single entry was 15, and the minimum was 2.

Table 3 shows the number and percentage of consolidated grievances by race. Chi-square tests indicated that these percentages of consolidated cases for Black and White judicial officers were not significantly different than their representation among all grievances.²⁰ This indicates that the consolidation of cases does not impact the findings for Black or White judicial officers presented in this report.

²⁰ For Black judicial officers: at an α level of .05 $X^2(1, N= 7575) = .157, p = .692$. For White judicial officers: at an α level of .05 $X^2(1, N= 7575) = 1.316, p = .251$.

Table 3. Consolidated Grievances by Race.

Race	Number	Percent
Asian or Pacific Islander	2	0.3%
Black	100	14.0%
Hispanic or Latine	4	0.6%
Middle Eastern	10	1.4%
Multi-Racial	0	0.0%
Native American	0	0.0%
Other Races	2	0.3%
Unknown	4	0.6%
White	593	82.9%
Grand Total	715	100.0%

Races other than White and Black

Only White and Black respondents are included in this review. The number of individuals identifying as other races was too small to provide group results, and it is not appropriate to lump these groups in with either the White or Black group, because their experiences will be different than either group. It would also not produce useful information to combine these individuals in a single “other/unknown” group, which would obscure any differences in their experiences by race or ethnicity.

Hispanic/Latine was recorded as a race, rather than a race *and/or* ethnicity. Some of these individuals may identify as ethnically Hispanic/Latine, but racially with another group. Thus, some of these individuals may identify as White or Black, but this is impossible to determine from the data provided.

Judicial officers who did not identify as White or Black in the original database identified as: Asian or Pacific Islander, Hispanic/Latine, Middle Eastern, Multi-Racial (undefined), Native American, Other Ethnicity, and Unknown. The number of judicial officers and grievances against each of these racial groups is not presented here, to maintain the confidentiality of these records—as the small numbers could enable specific judicial officers to be identified. In these seven groups combined, there were 83 judicial officers and 294 grievances filed. As mentioned above, including an aggregate “other races” category in an equity analysis is not useful because this type of aggregation obscures any differences in experiences across aggregated groups. Table 4 shows the numbers of Michigan judicial officers and grievances filed by race of judicial officer: White, Black, or the aggregate “Other Races” group. Some of the data for the magistrates may be incomplete, which explains why “Other Races” has more judicial officers with a grievance filed than judicial officers in the pool. In this situation, it is likely that some individuals were not listed in the pool (see above for data entry inconsistencies with magistrates) but received a grievance against them. White and Black judicial officers comprise nearly 94 percent of all 1,337 judicial officers and nearly 96 percent of the 7,193 grievances decided on the merits remaining after consolidation.

Table 4. Racial Groups Excluded from Review.

	White		Black		Other Races	
	Number	Percent of Total	Number	Percent of Total	Number	Percent of Total
All Judicial Officers	1,087	81.3%	167	12.5%	83	6.2%
Judicial Officers with a Grievance Filed	987	79.7%	150	12.1%	102	8.2%
Grievances Filed by Race	5,827	81.0%	1,073	14.9%	293	4.1%

Table 5 provides an overall view of all excluded respondents and the reason they were excluded. Table 6 shows the number of respondents remaining in the analysis, after all exclusions.

Table 5. Grievance Exclusions, by Reason.

	Number of Grievance Respondents
Respondent not a judicial officer	246
Incorrect respondent	1
Deceased	35
Left position before grievance filed	26
Left position before full investigation decision point and not likely to have public outcome	6
Judicial officer not an attorney	56
Respondent not Black or White	293
Consolidated grievance	715
Total number of respondents excluded	1,378

Table 6. Number of Grievant Respondents Included in Analysis.

	Number of Grievance Respondents
Original JTC Database (2008-2022)	8,278
Excluded Respondents	1,378
Total number of respondents in analysis	6,900

Equity Process Analysis

The methodological approach for this review follows the logic developed for NCSC’s Racial Equity Process Analysis, as included in *Racial Justice Organizational Assessment Tool for Courts*²¹ and exemplified by the *Equity and Inclusion Assessment Tool*.²² This assessment is a first step in addressing racial disparities and disproportionalities. The analysis determines if racial disparities or disproportionalities exist in the process, and if so, where in the process they are found. This data-first approach allows for the targeted investigation of racial disparities or disproportionalities at specific points in the process and helps to determine what questions should be addressed in subsequent in-depth investigations.

This approach includes the following steps:

1. Identify an outcome of interest

For this review, the ultimate outcome of interest relates to the public censuring of judicial officers as a result of a JTC investigation.

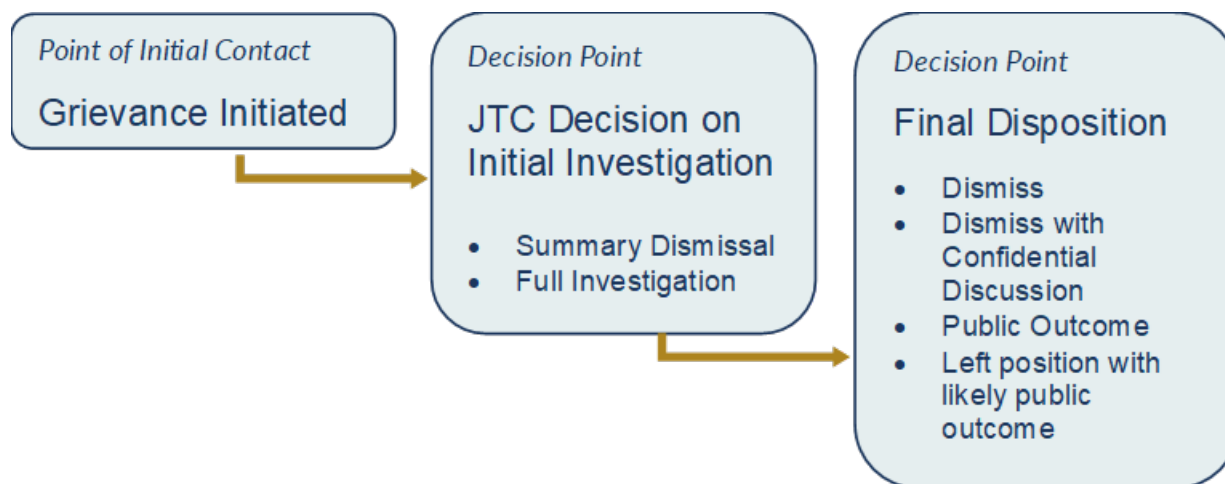
2. Map the process

Page 3 contains a detailed process map of the JTC grievance process. This map informed the *point of initial contact* for the process, and the subsequent *decision points* chosen for analysis in this review, as identified and explained below.

3. Identify Decision Points and Outcomes

A decision point is a point in the process where an individual either stays on the path toward a specific outcome or is diverted away from that path. The decision points for the JTC grievance process are:

Figure B. Decision Points for Analyses.



²¹ Elek, J., K. Genthon, A. Miller, and P. Houston. (February 2023). “The Racial Justice Organizational Assessment Tool for Courts.” *National Center for State Courts, Blueprint for Racial Justice*. <https://www.ncsc.org/consulting-and-research/areas-of-expertise/racial-justice/racialjusticeassessment>.

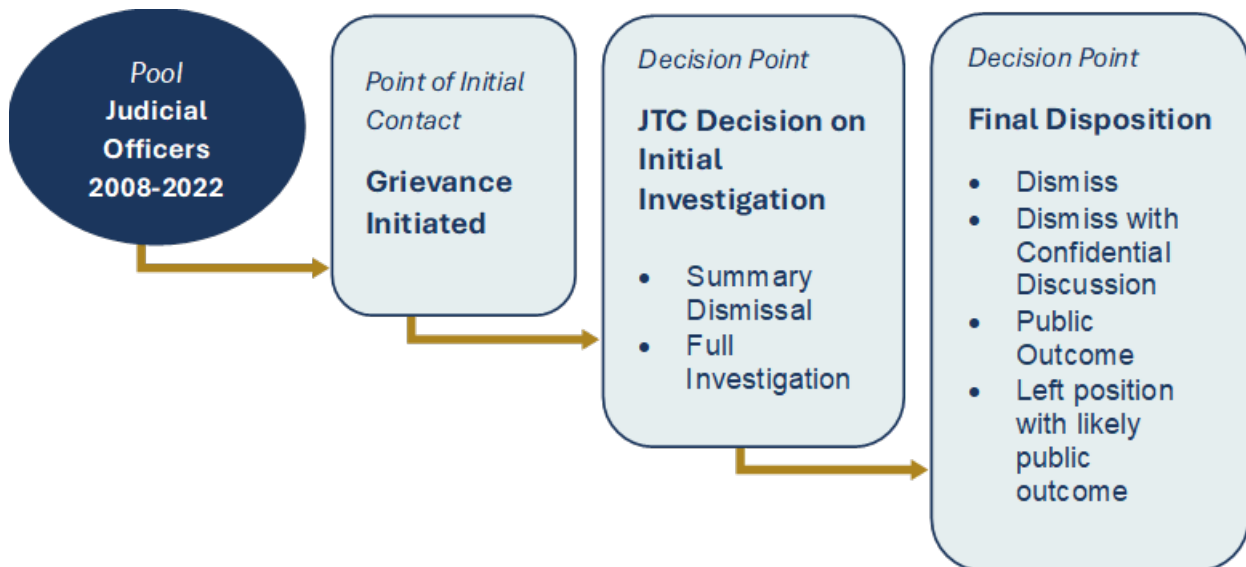
²² National Drug Court Institute and National Center for State Courts. *Equity and Inclusion Assessment Tool user guide*. <https://allrise.org/wp-content/uploads/2023/05/Equity-and-Inclusion-Assessment-Guide.pdf>.

Several points in the more detailed process (see Figure B) were combined for the final disposition decision point. An evaluation of the data showed that only two cases were dismissed after the hearing by a master, meaning that that decision point would not provide statistically significant information due to a small *N* for that disposition. These cases were coded as dismissals for the final disposition decision point. In cases where the Supreme Court issued a decision, the sanction contained in that order was recorded as the final disposition. Descriptive information about the dispositions and outcomes can be found in Table 10 on page 25. In a slight departure from the information presented in Table 10, cases that were dismissed with an admonition, explanation, or caution were grouped together in category entitled “Dismiss with Confidential Discussion” to allow for an analysis of that outcome separate from dismissals without any discussion. This distinction was made to differentiate between levels of severity in dismissals. Dismissals with confidential discussion indicate that the JTC found some problematic behavior or misconduct but did not believe that it rose to a level that required a public outcome. A racial disparity in the type of dismissal should be assessed as a point for further investigation.

4. Identify the population and/or pool

For this review, the pool of possible respondents to a grievance are judicial officers active in Michigan in and between 2008 and 2022. The racial composition of the pool of judicial officers will be compared to the racial composition of filed grievances to determine if there are racial disparities in who has a grievance filed naming them as a respondent.

Figure C. Pool and Decision Points for Analysis.



5. Analyze the data at each decision point compared to the previous one

The Equity Process Analysis methodology uses transition probabilities and significance testing to identify racial disparities. Transition probabilities are the likelihood of transitioning from one decision point to the next and are calculated by dividing the number of individuals in one step by the number of individuals in the preceding step and multiplying that decimal by 100 to calculate a percentage. This calculation provides a clear indicator of differences in the likelihood of transition from one decision point to the next by racial group. Transition probabilities do not apply when moving from the pool to grievance filed, since the pool is not a step in the process. However, transition probabilities were calculated for each of the subsequent decision points.

A two proportion Z-test was performed to assess differences in the racial composition of judicial officers active during the study period and those who were respondents to grievances. Chi-square tests were also performed at each decision point and for each outcome at the Final Disposition decision point to determine if the observed differences were significant.

The next section of this review will discuss the findings from these analyses.

RESULTS

From the Judicial Officer Pool to Grievance Filed

The judicial pool included 167 (13.33%) Black judicial officers and 1087 (86.67%) White judicial officers. Two statistical tests were performed at the grievance filed decision point. The first analysis compared the racial proportions of individuals in the judicial officer pool to the proportions of judicial officers who had any grievance filed against them during the study period. The second analysis compared the racial proportions of all grievances filed during the study period. The key difference between the two analyses is that the first is by judge (each judicial officer with a grievance filed against them is counted only once, no matter how many grievances were filed against them) and in the second, the judicial officer was counted once for each grievance filed against them.

Race was not associated with an increased likelihood of a judicial officer being a respondent to at least one grievance at an α level of .05, $z = .089$, $p = .928$. However, race was significantly associated with the number of grievances filed at an α level of .05, $z = 2.025$, $p = .043$, with Black judicial officers being a respondent in 15.55% of grievances despite accounting for 13.33% of judicial officers.

Table 7 provides descriptive statistics and the results of 2 proportion Z-tests for judges with any grievances, and the racial composition of respondents to all grievances.

Table 7. Judicial Pool Compared to Respondents by Judge (N = 2,391) and by Grievance (N = 8,154).

	Judicial Pool		Grievance Filed		z	p
	N	%	N	%		
By Judge	1,254	100.00	1,137	100.00		
Black	167	13.33	150	13.19		
White	1,087	86.67	987	86.81	.089	.928
By Grievance	1,254	100.00	6,900	100.00		
Black	167	13.33	1,073	15.55		
White	1,087	86.67	5,827	84.45	2.025	.043

Grievance Filed to Full Investigation

Of the 6,900 grievances filed against individual Black or White judicial officer respondents during the study period, 334 (4.84%) grievances were subject to a full investigation. Race of the respondent was significantly associated with a grievance proceeding to full investigation at an α level of .05, $\chi^2(1, N= 6900) = 13.87, p < .001$. Although Black respondents accounted for 15.55% of filed grievances, they accounted for 22.75% of respondents who proceeded to full investigation. The transition probabilities for proceeding from the grievance filed decision point to the full investigation decision point are 4.43% for White respondents and 7.08% for Black respondents.

Table 8 provides descriptive statistics and the results of Chi-square test for respondents with a grievance filed and respondents who proceeded to full investigation.

Table 8. Chi-square Results for Grievance Filed to Full Investigation (N=6,900).

	Summary Dismissal		Full Investigation		χ^2	p
	N	%	N	%		
	6566	100.00	334	100.00		
Black	997	15.18	76	22.75	13.87	.000
White	5569	84.82	258	77.25		

The summary dismissal group was comprised of several different reasons for dismissal. Table 9 provides the breakdown of these reasons.

Table 9. Reasons for Summary Dismissal.

Reason for Summary Dismissal	Number of Respondents
Lack of Merit	1,661
Cause for Appeal	844
Cause for Appeal and Lack of Merit	4,060
Left Position Before Likely Public Outcome	1
Total	6,566

The single individual who had a summary dismissal but would have had a likely public outcome if they had remained, is included in the Public Outcome or Left Position with Likely Public Outcome disposition decision point analysis, as described in the “Data and Methods” section.

From Full Investigation to Disposition, by Type of Disposition

Table 10 displays the disposition types of the 334 respondents who had a full investigation, plus the one individual included in the “Left Position Before Likely Public Outcome” group although they had a summary dismissal. The table notes whether these cases were excluded from all or some of the disposition decision point analyses.

Table 10. Dispositions of Cases Included in and Excluded from Disposition Decision Point Analyses.

Disposition Type	Count	(Percent)
Dismissal without confidential discussion	72	(22.69%)
Dismissal with confidential discussion (admonition, caution, explanation)	189	(56.42%)
Public outcome	30	(8.96%)
Left position after full investigation decision point but before disposition with likely public outcome	30	(8.96%)
Left position before full investigation decision point with likely public outcome <i>(Only included in Public Outcome or Left Position with Likely Public Outcome analysis)</i>	1	(0.30%)
Left position after full investigation but before disposition with no likely public outcome <i>(Cases excluded from all disposition decision point analysis)</i>	9	(2.69%)
Total	335	(100.00%)

Dismissals

Dismissals after a full investigation were divided into two categories: those with and those without a confidential discussion. These groups were analyzed separately, and as one larger “Dismissal with or without discussion” group.

Transition probabilities for dismissals without confidential discussion after a full investigation were 22.40% for White respondents and 25.33% for Black respondents. Transition probabilities for dismissals with confidential discussion after a full investigation were 59.60% for White respondents and 53.33% for Black respondents. For the combined group of all dismissals, the transition probabilities were 81.67% for White respondents and 78.67% for Black respondents.

There was no significant association between race and dismissal at $\alpha=.05$ in any of the three chi-square analyses for these dismissal dispositions.

The results of these analyses are provided in Table 11.

Table 11. Chi-square Results for Dismissals after Full Investigation (N=325).

	<u>Dismissed</u>		<u>Not Dismissed</u>		X^2	<i>p</i>
	<i>N</i>	%	<i>N</i>	%		
Dismissals without confidential discussion	75	100.00	250	100.00		
Black	19	25.33	56	22.40	.280	.597
White	56	74.67	194	77.60		
Dismissals with confidential discussion	189	100.00	136	100.00		
Black	40	21.16	35	25.74	.931	.335
White	149	78.84	101	74.26		
All dismissals	264	100.00	61	100.00		
Black	59	22.35	16	26.23	.420	.517
White	205	77.65	45	753.77		

To ensure that racial disparities within the different types of confidential discussions are not being overlooked by grouping them together, table 12 lists the disaggregated numbers and percentages of individuals who received each type of confidential discussion, by race. Chi-square analyses determined that there was no significant association between race and type of confidential discussion.²³

Table 12. Confidential Discussion, by Type.

	<i>Black</i>	<i>White</i>
Admonition	15 (37.5%)	57 (38.3%)
Caution	17 (42.5%)	70 (47.0%)
Explanation	8 (20.0%)	22 (14.8%)
Total	40	149

Public Outcomes

Public outcomes after a full investigation (and in one case, a likely public outcome despite a summary dismissal) were also separated into two categories. The first included individuals who received a public outcome (public censure only, suspension, or removal from their position). The second included individuals who would likely have received a public outcome if they had not left their position before disposition. The types of public outcome are disaggregated and displayed by race in Table 13. It was not possible to perform chi-square analyses for the disaggregated outcomes in this table due to the small numbers in several of the cells.

Table 13. Public Outcomes and Likely Public Outcomes, by Type.

	<i>Black</i>	<i>White</i>
Public Censure Only	2	4
Suspension	7	8
Removal from Position	4	3
Total Public Outcomes	13	15
<i>Likely Public Outcomes</i>	3	31
Total Public Outcomes or Likely Public Outcomes	16	46

²³ For admonitions: at an α level of .05 $X^2(1, N= 189) = .008, p = .930$. For cautions: at an α level of .05 $X^2(1, N= 189) = .255, p = .614$. For explanations: at an α level of .05 $X^2(1, N= 189) = .647, p = .421$.

The transition probabilities for receiving a public outcome were 6.00% for White respondents and 17.33% for Black respondents. The chi square analysis of this disposition determined that there is an association between race and public outcome at an α level of .05 $X^2(1, N= 325) = 9.412, p = .002$.

However, the transition probabilities for receiving a public outcome *or* leaving one's position with a likely public outcome pending were 18.33% for White respondents and 21.33% for Black respondents. The chi square analysis of this disposition determined that there is not an association between race and public outcome or likely public outcome at an α level of .05, $X^2(1, N= 325) = .339, p = .560$.

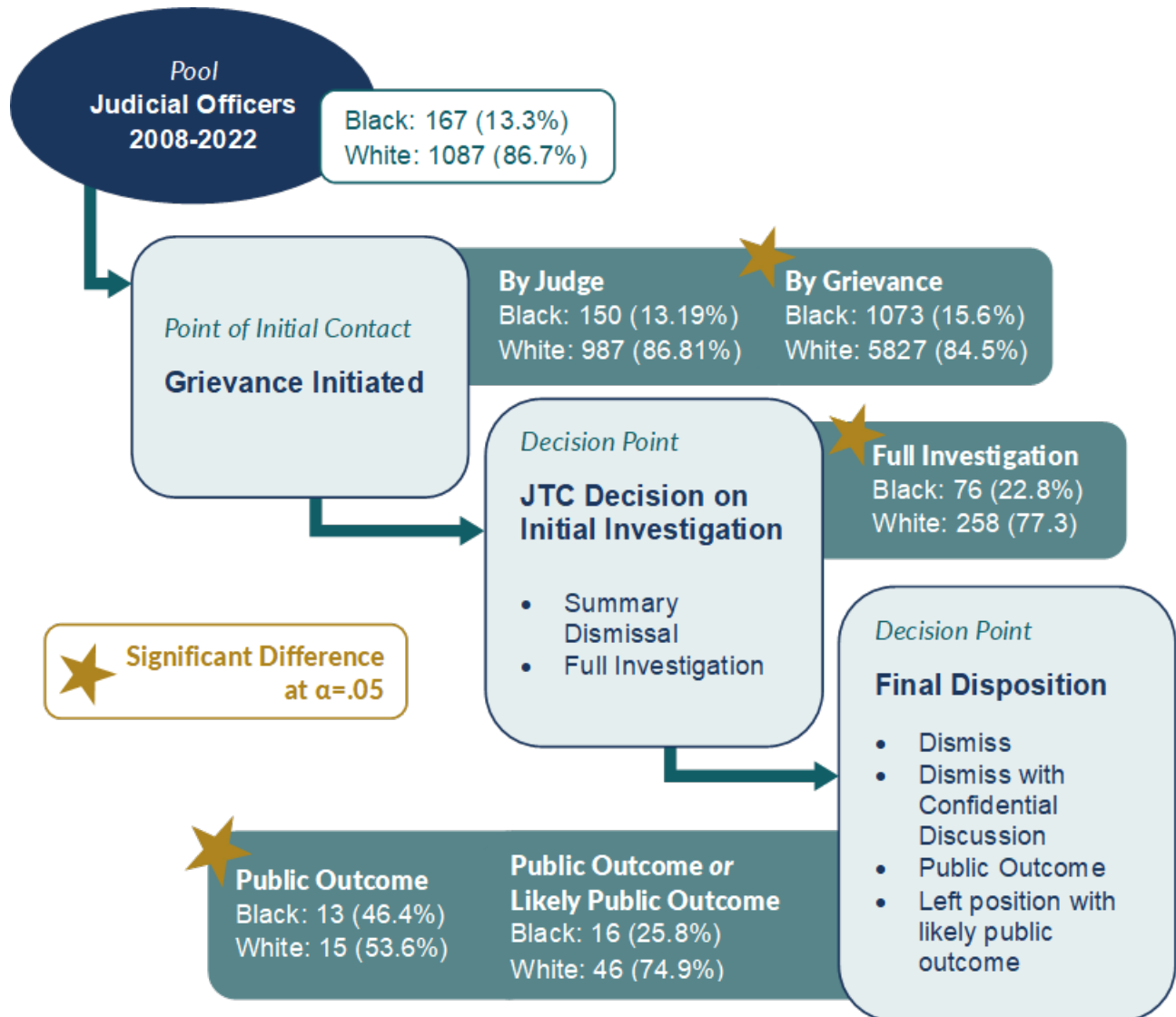
Table 14 displays the chi square results for these analyses.

Table 14. Chi-square Results for Public Outcomes.

	<u>Public Outcome</u>		<u>Not Public Outcome</u>		X^2	p
	<i>N</i>	%	<i>N</i>	%		
Public Outcome (N=25)	28	100.00	295	100.00		
Black	13	46.43	62	20.88	9.412	.002
White	15	53.57	235	79.12		
Public Outcome or Left Position with Likely Public Outcome (N =326)	62	100.00	264	100.00		
Black	16	25.81	59	22.35	.339	.560
White	46	74.91	205	77.65		

The implications of these results and suggestions for further research will be discussed in the following section.

Figure D. Decision Points with Findings.



DISCUSSION

The scope of this review was narrowly tailored, designed to determine if racial disparities were present in outcomes at each decision point in the grievance process at the Michigan Judicial Tenure Commission and, if so, at which points in the process these disparities occurred. The review analyzed grievances received by the JTC between 2008 and 2022. This statistical review was conducted to identify disparities in grievance process decision point outcomes as a first step toward a more comprehensive understanding of whether the Michigan JTC grievance process is fair. Findings from this report can meaningfully inform next steps by helping focus subsequent investigative efforts on addressing remaining knowledge gaps.

The findings presented in this report reveal two points in the grievance process that result in disparities in outcomes between Black and White judicial officers. First, grievances against Black judicial officers are significantly more likely to advance to full investigation compared to

those against White judicial officers. Also, Black judicial officers are significantly more likely to receive a public outcome than White judicial officers following a full investigation. However, this disparity occurred only for judicial officers who remained in their position during the entire investigation process.

White judicial officers under full investigation are more likely to retire, resign, or to lose reelection than Black judicial officers under full investigation. According to the analysis, if White judicial officers who left office to avoid public outcomes had remained in office, there would be no significant disparities in public outcomes between Black and White judges. Understanding the decision to retire or resign when faced with a public outcome is beyond the scope of this phase of the review but will be important to investigate in the next phase.

While not a decision point in the JTC process, it is notable that there is a significant difference in the average number of grievances per judicial officer. For every Black judicial officer in Michigan, there are 6.43 grievances in the review period. For every White judicial officer, there were 5.36 grievances. Additional efforts to more comprehensively evaluate this and other decision points in the judicial grievance process could offer a more holistic understanding of judicial officers' experiences with grievances and provide insights about practical equity interventions within the court's purview to address.

Limitations of Current Phase

The current analysis fulfills the purpose of the first phase of review, finding racial disparities in outcomes at two decision points in the JTC's judicial grievance process. Further research is needed to understand the factors that contribute to disparities in outcomes and, if deemed appropriate based on a comprehensive understanding of contributing factors, inform decisions about practical solutions that specifically target those factors to improve equity in the grievance process.

When racial disparities are identified in any process, racial bias and discrimination on the part of the decision makers are potential explanations for the differences. However, they are not the only possible explanations. A variety of other factors, including differences in personal decisions made by judicial officers under review, differences in their understanding or experience of the grievance process, and more. By using precise, data-driven, research-informed techniques to evaluate the grievance process and gain a detailed understanding of the reasons why disparities arise, the JTC will have the information necessary to make effective decisions about whether and how the grievance process can or should be improved.

Next Steps

The association between race and disparate outcomes at certain phases of the grievance process was established in the current analysis. This phase of the analysis found one mediating factor; the inclusion of judicial officers who left office during the grievance process eliminated racial disparity at that decision point. However, there are several more as-yet unexplored variables in the grievance process that may mediate the effect between race and grievance outcomes. Further, it will be necessary to further explore why White judicial officers are more likely to leave office during the grievance process than Black judicial officers.

The decision to explore these mediating variables in a later phase of the project was purposeful. The intent of this first phase of the project was to diagnose if there were any racial disparities in outcomes at each decision point in the grievance process and, if so, where they occurred. The next phase is to investigate the factors that may contribute to the differences in outcomes.

For example, annual reports from the JTC show that most grievances received have underlying criminal and domestic relations cases. It is possible that, for a variety of reasons, there is a difference in the race of judicial officers that handle these case types. Other variables that may play a role include (but are not limited to) grievant type, reason for grievance, grievance severity, jurisdiction location type (e.g., rural or urban), judicial tenure, gender, and past grievances. Further statistical analysis will evaluate if disparities in racial groups remain when controlling for these additional variables at various points of the grievance.

When the effects of all potentially mediating variables are accounted for, the unexplained differences between White and Black judicial officers may be attributed to the effects of bias or discrimination on the part of the decision-making entity.²⁴ In order to investigate how bias and discrimination operate to affect the grievance process outcomes, additional statistical analyses should be supplemented with interviews and file reviews to explore and comprehensively identify all potential reasons for the disparities. Even if there are no indications of explicit bias among JTC decision-makers, it is possible that implicit biases contribute to observed racial disparities in decision outcomes.²⁵

Implicit biases arise and are expressed contextually; they are influenced by systemic, cultural, institutional, organizational, and interpersonal factors and are more likely to manifest in certain situations or under certain conditions.²⁶ Interventions that target these conditions in the decision-making environment and/or the decision-making process can be productive approaches to addressing concerns about implicit bias. Interviews and in-depth file review can provide the information needed to identify processes or practices that could be targeted for this kind of intervention.

Additional research can also help to understand the disparity in judicial officers' choice to leave office during a full investigation when facing likely public outcomes. Communications with the JTC on the grievance process indicate that at any time following the decision to move to a full investigation—generally the point at which the judicial officer is made aware of the grievance—the judicial officer can offer to retire or resign. The communication exchange between the JTC and the judicial officer about this option to negotiate an agreement to retire or resign merits further study to identify factors contributing to the observed disparity at this decision point.

For example, in other sectors, research has documented that women and people of color are less likely to negotiate and, when they do, often face penalties.²⁷ Moreover, structural and

²⁴ Defining discrimination as differences between racial groups unexplained by other factors is commonly used in social science research when experimental field methods—such as audit studies—are unavailable, as in this case. National Research Council. (2004). *Measuring Racial Discrimination*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/10887>.

²⁵ Carter, P., Skiba, R., Arredondo, M. & Pollock, M. (2016). You Can't Fix What You Don't Look At: Acknowledging Race in Addressing Racial Discipline Disparities. *Urban Education* 52(2):1-29. page 9.

²⁶ Elek, J. K. & Miller, A.L. (2021) The Evolving Science on Implicit Bias: An Updated Resource for the State Court Community. National Center for State Courts.

²⁷ For example, Hernandez, M., Avery, D. R., Volpone, S. D., & Kaiser, C. R. (2018). Bargaining while Black: The role of race in salary negotiations. *Journal of Applied Psychology*, 103(4), 542-558. Toosi, N.

institutional factors, such as labor-market discrimination, may contribute to the decision whether to resign prior to the conclusion of an investigation.²⁸ Interviews with these judicial officers in the proposed next phase of study will provide insight into the options they believed were realistically available to them when they were faced with a likely public outcome stemming from the JTC's investigation. This additional research to understand the factors contributing to the observed disparity at this decision point will help determine whether procedural improvements could be implemented in the grievance process to promote equity.

In summary, these analyses identified three points in the process where racial disparity occur and therefore need more in-depth analyses: number of grievances filed per judicial officer, grievances proceeding to full investigation, and factors influencing a judicial officer's likelihood of remaining in or leaving their position when facing a likely public outcome. This further investigation can be accomplished using a variety of research methods to best understand the sources of disparity. Specifically, advanced statistical techniques can be used to examine factors such as grievant type, reason for grievance, jurisdiction location type (e.g., rural or urban), judicial tenure, gender, and number of past grievances.

Qualitative analysis, through document review and interviews, will give a better understanding of how the grievance process operates. Document review will allow exploration of aspects of the process that may not have been included in the current analysis. Interviews with attorneys and JTC staff about the full grievance process will shed light on the factors that contribute to a move to full investigation and a public outcome. Finally, interviews with judicial officers who either received a public outcome or left their position with a likely public outcome can help to better understand factors that may influence the decision to stay or leave, including structural and institutional factors.

R., Mor, S., Semnani-Azad, Z., Phillips, K. W., & Amanatullah, E. T. (2018). Who can lean in? The intersecting role of race and gender in negotiations. *Psychology of Women Quarterly*, 42(1), 7-24.

²⁸ Small, M.L. and Pager, D. (2020) Sociological Perspectives on Racial Discrimination. *Journal of Economic Perspectives*, 34(2), 49-76.