

# State Commission on Judicial Conduct



2002 Annual Report

**STATE COMMISSION  
ON  
JUDICIAL CONDUCT  
2002 ANNUAL REPORT**

**COMMISSION MEMBERS**

Kathleen H. Olivares, Chair

Michael L. O'Neal, Immediate Past Chair

Joseph B. Morris, Vice-Chair

Elizabeth G. (Dee) Coats, Secretary

Martin J. Chiuminatto, Jr.

Gilbert M. Martinez

Keith Baker

James A. Hall

Ronald D. Krist

R. C. Allen, III

Monica A. Gonzalez

L. Scott Mann

Service: 1995-2002

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Margaret J. Reaves, Executive Director

# § 1. EXECUTIVE DIRECTOR'S YEAR IN REVIEW

The Commission on Judicial Conduct has completed another year of demonstrated commitment to the judiciary and people of Texas.

Established trends of filings and sanctions comparable to New York, a state with a similar number of judges and more than twice the budget of Texas, have provided validation for the Commission's hard work. You are invited to review the statistical information provided in the following pages. In addition to the statistical achievements of the agency, the agency's staff attorneys are featured speakers on judicial ethics at numerous judicial training schools throughout the state. They also provide verbal, non-binding ethics advice to judges. Over 1000 calls were received and responded to by the Commission's attorneys. This small staff of six attorneys has over 100 years of combined legal experience. Their professionalism, knowledge of the law, courtroom experience and commitment to the integrity of our judiciary provide the appropriate balance of fairness and advocacy for the agency and the judges of Texas.

*Amicus Curiae*, the disciplinary diversion program of the Commission, has made great strides this year in the development of policies and procedures. The resources and recovery support provided by the *Amicus* program has proven to be invaluable for some impaired judges seeking to continue their service on the bench.

The Commission issued 79 sanctions during FY 2002. Orders of education dropped significantly, while we noted an increase in the number of cases voted into formal proceedings. The Commission conducted one appeal, a trial *de novo* procedure before three appellate justices. The opinion from that case can be found at §11. Two formal proceedings were tried; one before the Commission and another before a special master. Two other formal proceedings were resolved prior to trial with resignation agreements. Three additional formal proceedings are scheduled for trial in FY 2003.

This past year, the Texas Supreme Court granted 4 requests from the Commission to suspend without pay judges who did not comply with the requirements for judicial education. This suspension process reflects the Commission's belief that the judiciary must be and remain professionally competent. Some of these judges were reinstated to the bench after completing their education requirements.

The Commission is grateful to those attorneys who have served as special counsel to the Commission this year, including Rusty Hardin and Andy Drumheller at Rusty Hardin & Associates in Houston; Kirk Mills and David Horton of South Padre Island; Mark Greenwald of Tinsman, Scott & Sciano, Inc. in San Antonio; John J. "Mike" McKetta, III and Jennifer Piskun Johnson of Graves, Dougherty, Hearon & Moody, P.C., in Austin;

and Robert E. Valdez of Ray, Valdez, McChristian & Jeans, P.C., in San Antonio. Special Counsel work without compensation to provide trial expertise in formal proceedings, as well as legal expertise on cases requiring specialized knowledge.

The Commission was chaired by Honorable Michael O'Neal this past year. Judge O'Neal served the Commission with dignity and compassion. Judge O'Neal retired on October 9, 2002 after serving the judiciary for over twenty-five years. His leadership and vision will be greatly missed.

The Commission continues to reach out to the judiciary of Texas to insure that the principles, values and standards of the Code of Judicial Conduct are preserved. We are proud of the efforts of this small agency as the gatekeeper for an independent judiciary committed to justice and integrity in our courts.

Margaret J. Reaves  
Executive Director

## §2. State Commission on Judicial Conduct Commission Members

### CHAIR

#### Hon. Kathleen H. Olivares\*

District Court Judge  
El Paso

Appointed by Texas Supreme Court  
Term Expires 11/19/2005

#### Hon. Keith Baker\*

Justice of the Peace  
San Antonio

Appointed by Texas Supreme Court  
Term Expires 11/19/2003

### IMMEDIATE PAST CHAIR

#### Hon. Michael L. O'Neal

Municipal Court Judge  
Dallas

Appointed by Texas Supreme Court  
Service: 1996 to 10/09/2002

#### Mr. James A. Hall\*

Attorney  
San Antonio

Appointed by State Bar of Texas  
Term Expires 11/19/2005

### VICE-CHAIR

#### Hon. Joseph B. Morris\*

Justice, Court of Appeals  
Dallas

Appointed by Texas Supreme Court  
Term Expires 11/19/2007

#### Mr. Ronald D. Krist\*

Attorney  
Houston

Appointed by State Bar of Texas  
Term Expires 11/19/2007

### SECRETARY

#### Ms. Elizabeth (Dee) Coats\*

Houston  
Appointed by Governor  
Term Expires 11/19/2003

#### Hon. Monica A. Gonzalez\*

Municipal Court Judge  
San Antonio

Appointed by Texas Supreme Court  
Appointed 10/10/02  
Term Expires 11/19/2003

### SECRETARY

#### Ms. Elizabeth (Dee) Coats\*

Houston  
Appointed by Governor  
Term Expires 11/19/2003

#### Mr. R. C. Allen, III\*

Corpus Christi  
Appointed by Governor  
Term Expires 11/19/2005

#### Hon. Martin J. Chiuminatto, Jr.\*

County Court-at-Law Judge  
Kingsville

Appointed by Texas Supreme Court  
Term Expires 11/19/2003

#### Mr. L. Scott Mann

Lubbock  
Appointed by Governor  
Service: 1995 to 2002

#### Mr. Gilbert M. Martinez\*

Austin  
Appointed by Governor  
Term Expires 11/19/2003

\* Members serving at time  
of publication

## §3. PHILOSOPHY

The members and staff of the Commission on Judicial Conduct take their duties to the citizens and judiciary of the State very seriously. Political affiliation, gender, ethnic background, geographical location, and the position or status of the complainant or judge are not considerations in reviewing cases. The Commission's duties to the public and judiciary require the honesty, intelligence, professionalism and diligence of every Commissioner and staff member.

The Commission investigates every allegation made against a Texas judge. Each complaint that is filed with the Commission is thoroughly reviewed and analyzed by the staff as well as the eleven Commissioners. This procedure is an essential safeguard to the integrity of and public confidence in the judicial process. Judges are held to a high standard of ethical conduct as prescribed by the laws of Texas, including the Canons of Judicial Conduct, and the Commission and its employees strive to conduct themselves in a similar manner.

# §4. OVERVIEW OF THE COMMISSION

## **Authority of the Commission**

The State Commission on Judicial Conduct (formerly the Judicial Qualifications Commission) was created by an amendment to the Texas Constitution in 1965. It is the independent state agency responsible for investigating allegations of judicial misconduct or disability or impairment, and for disciplining judges.

The Commission's jurisdiction includes all sitting Texas judges: municipal judges, magistrates, justices of the peace, county judges, county courts-at-law judges, statutory probate judges, district judges, appellate judges, retired and former judges, and associate judges and masters, including Title IV-D masters. The Commission has no jurisdiction over federal judges and magistrates, administrative hearing officers for state agencies or the State Office of Administrative Hearings, or private mediators or arbitrators.

## **Members of the Commission**

There are eleven members of the Commission, serving staggered six-year terms, as follows:

- Five judges appointed by the Supreme Court of Texas, one from each of the following court levels: appellate, district, county court-at-law, justice of the peace and municipal;
- Four citizen members who are neither attorneys nor judges, appointed by the Governor, and
- Two attorneys who are not judges, appointed by the State Bar of Texas.

By law, the appellate and district judges appointed to the Commission are from two different appellate districts in Texas; and the justice of the peace and judges from the municipal court or a county court-at-law are selected at-large. The Texas Senate confirms all appointees. Commissioners are required to meet at least six times each year, and receive no pay for their service.

## **Laws Governing the Commission**

The Commission is governed by Article 5, Sec. 1-a, of the Texas Constitution (Appendix A herein), Chapter 33 of the Texas Government Code (Appendix B herein), and the Procedural Rules for the Removal or Retirement of Judges (Appendix C herein). As part of the judiciary and as an entity having its own constitutional and statutory provisions regarding confidentiality of papers, records and proceedings, the Commission is not governed by the Texas Public Information Act, the Open Meetings Act or the Texas Administrative Procedures Act.

## **Defining Judicial Misconduct**

Article 5, Section 1-a(6)A of the Texas Constitution defines judicial misconduct as the “willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.” The Code of Judicial Conduct appears herein at Appendix D, and includes revisions made by the Supreme Court in August, 2002.

Judicial misconduct could arise from a violation of the Texas Constitution, the Texas Penal Code, the Texas Code of Judicial Conduct, or rules promulgated by the Supreme Court of Texas. It could occur through the judge’s failure to cooperate with the Commission. Other examples of judicial misconduct include inappropriate or demeaning courtroom conduct, such as yelling, profanity, gender bias or racial slurs. It could be improper *ex parte* communication with only one of the parties or attorneys in a case, a public comment regarding a pending case, or a failure to recuse or disqualify oneself in a case where the judge has an interest in the outcome. It could involve ruling in a case in which the parties, attorneys or appointees are related within a prohibited degree of kinship to the judge. Judicial misconduct could occur through a judge’s failure to cooperate with respect to his or her obligations arising from a Commission inquiry, or failure to abide by any provision of a voluntary agreement to resign in lieu of disciplinary action.

Judicial misconduct could also arise from out-of-court activities, including theft, driving while intoxicated, improper financial or business dealings, sexual harassment or official oppression, and is subject to the same review by the Commission.

## **Sources of Complaints and Allegations**

The Commission has the duty to consider allegations from any source, including an individual, a news article or information received in the course of an investigation. Complaints may be made anonymously, or the complainant may request confidentiality; however, in those instances, the Commission may be restricted in its ability to fully investigate the allegations.

## **Commission Limitations**

The Commission cannot exercise appellate review of a case or change the decision or ruling of any court, nor can the Commission intervene in a pending case or proceeding. For example, if the Commission finds a judge’s actions to be misconduct, the Commission can only issue sanctions against the judge or seek the judge’s removal from the bench. However, even removal would not change the judge’s ruling in the underlying case. Only the appellate process is empowered to change the decision of a court.

Likewise, the Commission cannot provide individual legal assistance or advice to a Complainant. The Commission cannot remove a judge from a case. The Commission cannot award damages or provide monetary relief to complainants.

## **Commission Investigations and Actions**



Cases are reviewed, analyzed and investigated by the Commission staff. An investigation may include a letter of inquiry to the judge, and interviews with the complainant, attorneys and other witnesses. The Commission then considers the results of the investigation in their decision. The Commission has several options available when deciding whether to take action on a case. The types of actions include dismissal, sanction, suspension, acceptance of a voluntary agreement to resign from judicial office in lieu of disciplinary action, and formal proceedings. A detailed discussion of the Commission's procedures for analyzing complaints and allegations appears at §5. The Complaint Process in this annual report. The number and types of action taken by the Commission in fiscal year 2002 are presented in §8. Statistical Analysis. In addition, summaries of all sanctions issued in fiscal year 2002 are presented herein at §9. Summary of Sanctions for Improper Judicial Conduct.

## **Commission Organization and Staff**

The Commission has seventeen authorized staff positions, including the Executive Director, six attorneys, and ten support staff. All Commission staff members are full-time State employees.

The Commission's legal staff, which consists of attorneys, legal assistants and investigators, is responsible for the evaluation and investigation of complaints. The investigators are primarily responsible for reviewing and evaluating new complaints and conducting in-house and on-site investigations. The legal assistants are responsible for making preliminary investigations and performing legal research. The attorneys are responsible for responding to telephone ethics calls, speaking on judicial ethics at educational/training seminars and investigating allegations of judicial misconduct or incapacity.

The six attorneys serve as trial counsel or examiners during formal proceedings. The examiner is responsible for preparing cases for hearing and presenting the evidence that supports the charges before the Commission or a special master. The examiner handles briefing regarding special masters' reports, and presents cases orally and in writing in hearings before the Commission and the Texas Supreme Court. In certain complex and time-consuming cases, the Commission employs special counsel, chosen from distinguished members of the bar, to assist staff in preparing and presenting cases.

The Executive Director heads the agency and reports directly to the Commission. The Executive Director is also the primary liaison between the Commission and the judiciary, the public and the media.

### ***Amicus Curiae***

*Amicus Curiae* ("Amicus") is a judicial disciplinary and education program that was funded by the Texas Legislature in 2001. Before the Commission started this program, complaints of judicial misconduct relating to impairment, such as drug or alcohol abuse or mental illness, were sanctioned or dismissed if unfounded. The underlying impairment was never addressed. *Amicus* now affords a third option under the Commission's authority to order additional training and education to a judge found to have violated a canon of judicial conduct. *Amicus* offers assistance to the judge to address the underlying personal impairment causally connected to the misconduct. The confidential referral to *Amicus* by the Commission does not shield the judge from any sanction that the Commission deems appropriate.

For a detailed description of this unique service, please see §6. *Amicus Curiae Program*.

## **Outreach and Education**

In 2002, the Executive Director, staff attorneys and Commission members made at least twenty-five (25) presentations at judicial training courses, bar conferences and court staff workshops, describing the Commission and discussing various forms of judicial misconduct. During some presentations, the speaker encourages the audience to participate interactively in discussions about the Code of Judicial Conduct.

## **Ethics Hotline**

In 2002, the Executive Director and staff attorneys answered more than 1,000 telephone calls from judges, judicial candidates, attorneys, the media and private citizens regarding judicial ethics. Nearly half of the calls from judges are from justices of the peace and municipal court judges. Callers are cautioned that the staff member cannot issue an opinion on behalf of the Commission, and that the Commission is not bound by any comments made during the conversation. Whenever possible, the caller's question is researched before the attorney returns the call, and the specific canon, statute, rule or ethics opinion is identified. If appropriate, the Commission will send the caller a Complaint Form (in English or Spanish) and other relevant material.

## **Commission Website**

In August, 2002, the Commission's website, [www.scjc.state.tx.us](http://www.scjc.state.tx.us), was launched. The website provides downloadable complaint forms in English and Spanish. The website also offers bilingual answers to frequently-asked questions regarding the Commission, such as its composition, structure and jurisdiction; the judicial complaint process; a description of the range of decisions the Commission can make, from dismissal to sanction; and explanations of the procedures for a judge to appeal the Commission's decision, and for a complainant to seek the Commission's reconsideration. Further, the website provides statistical information about the Commission.

Also included are the Commission's governing provisions: Code of Judicial Conduct; Texas Constitution Article 5, Section 1-a; Chapter 33, Texas Government Code; and the Procedural Rules for the Removal or Retirement of Judges.

Summaries of the Commission's public and private sanctions ordered, as well as any Public Statements issued, from fiscal years 1999 to the present are available on the website. The Commission will soon add a new section containing its recent public sanctions and other current information.

The website also contains employment opportunities at the Commission.

## Public Information

The availability of information and records maintained by the Commission is governed by Rule 12 of the Texas Rules of Judicial Administration, the Texas Constitution and the Texas Government Code.

Generally, Commission records are confidential, with the following exceptions:

- Constitution: Article 5, Section 1-A(10) of the Texas Constitution provides that “All papers filed with and proceedings before the Commission or a Master shall be confidential, unless otherwise provided by the law...”
- Government Code:
  - In the event the Commission issues a public sanction against a judge, Section 33.032 of the Texas Government Code provides for the release of information previously confidential.
  - Also under this Section, suspension orders and related proceedings as well as voluntary agreements to resign in lieu of disciplinary proceedings are available to the public.
  - Section 33.032 also authorizes the release to the public of papers filed in a formal proceeding upon the filing of formal charges.
- Judicial Administration: Rule 12 of the Texas Rules of Judicial Administration provides for public access to certain records made or maintained by a judicial agency in its regular course of business but not pertaining to its adjudicative function.

When the Commission takes action on a complaint, whether dismissing it, issuing a private or public sanction, accepting a voluntary agreement to resign in lieu of disciplinary action, or voting formal proceedings, the complainant is notified in writing. However, the Texas Government Code requires that the Commission omit the judge’s name from the notice to the complainant, unless a public sanction has been issued. The complainant has some privacy rights as well: at the complainant’s request, his or her name may be withheld from the judge and kept confidential.

Additionally, the Constitution provides that in instances where issues concerning either a judge or the Commission have been made public by sources other than the Commission, the Commission may make a public statement. In such a situation, the Commission determines whether the best interests of a judge or the public will be served by issuing the statement. In fiscal year 2002, the Commission issued one public statement, PS-2002-01, dated November 5, 2001, which was published in the 2001 Annual Report. One public statement during fiscal year 2003 has been issued prior to publication of this annual report, and is included in §12, Public Statement PS-2003-01.

# §5. THE COMPLAINT PROCESS

## Introduction

Each complaint or allegation of judicial misconduct is thoroughly reviewed, investigated and analyzed by the Commission staff. A diagram depicting the actions taken in processing a complaint appears at the end of this section as Figure 5-1. Complaints or allegations must be filed with the Commission in writing. Due to the Commission's confidentiality requirements, complaints or allegations sent by fax or through e-mail are not accepted.

Although it is not mandatory that a complainant submit his or her allegation on the Commission's complaint form, the specific information sought is essential to the efficient handling of a complaint. Complaint forms are available in English and Spanish from the following sources:

- Download from the Commission's website at [www.scjc.state.tx.us](http://www.scjc.state.tx.us);
- Telephone requests to the Commission at (512) 463-5533, or toll-free at (877) 228-5750; and
- Attached hereto as Appendix E.

The Commission may also initiate the complaint process itself upon a review of information from the media, court documents, the Internet or other sources. The complainant may request that the Commission keep his or her identity confidential, and anonymous complaints are also accepted.

When a complaint is filed, the Commission sends the complainant an acknowledgment letter and staff begins its investigation and analysis of the allegations. The complainant may be asked to provide additional information or documents. The attorney, legal assistant or investigator then reviews each allegation or complaint thoroughly. In some cases, legal research may be conducted, and witnesses or the judge may be contacted. For complex matters, an attorney or investigator may travel to the judge's county for further investigation and interviews.

When the investigation is completed, the case is presented to the Commission for its consideration. In some cases, the Commission will invite the judge to appear and discuss the complainant's allegations; under certain circumstances, the Commission may invite the complainant to appear. Based on the specific constitutional provisions, statutes and canons under which the Commission operates, it considers and votes on each matter on a case-by-case basis.

If the Commission votes to issue a public sanction, the appropriate order is prepared and distributed to the subject judge and the complainant; the order is then publicly disseminated as required by law to ensure public awareness. If, however, the Commission votes to issue a private sanction, the appropriate order is prepared and tendered to the subject

judge, and the complainant is notified by letter of the Commission's action. Because the Commission is controlled by constitutional and statutory provisions that prohibit the release of information regarding investigation and resolution of a case, no other details will be released to the public. However, in cases where a judge has voluntarily agreed to resign in lieu of disciplinary action, that agreement becomes public upon the Commission's acceptance of it, and the complainant is so notified.

Likewise, whenever the Commission suspends a judge after he or she has been indicted for a criminal offense, or charged with a misdemeanor involving official misconduct, the Commission releases to the public the order of suspension and all related records and proceedings.

## **Commission Decisions**

Commission members review, deliberate and vote on each complaint. This may result in a dismissal, public or private order of additional education in combination with a public or private sanction, public or private admonition, warning or reprimand, the acceptance of a voluntary agreement to resign from judicial office in lieu of disciplinary action, or formal proceeding for removal or retirement of the judge from the bench. If appropriate, the Commission may defer its action and refer the judge to the *Amicus Curiae* Program, as described at §6 herein. If the judge appeals a decision of the Commission, the Texas Supreme Court appoints three appellate judges to a Special Court of Review. That tribunal's final decision-making authority includes dismissal, affirmation of the Commission decision, greater or lesser sanction, or formal proceeding.

The Commission's decisions and actions in responding to allegations or complaints of judicial misconduct fall into one of the following categories:

### **1. Administrative Dismissal Report**

A case is dismissed administratively when a complainant's allegation fails to state a claim of judicial misconduct, or the Commission has no jurisdiction over the judge. In letters of dismissal sent to these complainants, the Commission provides a specific explanation for the administrative dismissal, and describes the steps the complainant can take for the case to be reconsidered.

### **2. Dismissal**

The Commission may dismiss a case after conducting an investigation and review of the allegations. Reasons for these dismissals include insufficient or no evidence of misconduct, the judge was acting within his or her discretion, or the allegation is an issue for appellate review. In letters of dismissal sent to these complainants, the Commission provides a specific explanation for the dismissal, and describes the steps the complainant can take for the Commission to reconsider its decision.

### **3. Order of Additional Education**

Legal and procedural issues are often complex, so it is not surprising that some judges take judicial action that may exceed their authority or that is contrary to procedural rules. In these situations, the Commission may find that the judge, although misguided, has not acted in bad faith, and his or her case is appropriate for an order of education. The Commission then contacts the appropriate judicial training center, and a mentor judge is appointed for one-on-

one instruction with the subject judge, to be completed within a specified time on particular subjects. The mentor judge then reports to the Commission on the subject judge's progress. The Commission may also order the judge to obtain education on other issues, such as anger management, gender sensitivity or sexual harassment. The Commission may issue its order of education as part of a private or public sanction.

#### 4. Private or Public Sanction

Sanctions are issued by the Commission when sufficient evidence is provided that supports a finding of judicial misconduct. The most severe sanction is *public censure*, issued only after a case has been voted for formal proceedings by the Commission. If the Commission determines that the underlying allegations of the complaint are true, this sanction is issued as a public denunciation of the judge's conduct.

The next most severe sanction is a public reprimand, followed by a public warning then a public admonition. A less severe sanction is a private reprimand, followed by a private warning. The least severe sanction is a private admonition.

In a *public sanction*, all information considered by the Commission, including the judge's name, is made public. Public sanctions are issued not only to identify the specific conduct, but to educate judges that such conduct is inappropriate. This also insures that the public is made aware of actions that violate the Code of Judicial Conduct. When a *private sanction* is voted, the judge's name is kept confidential.

A *reprimand* is the most severe public or private sanction available to the Commission (unless formal proceedings are voted as described herein). A *warning* puts the judge on notice that the actions identified in the sanction are improper. An *admonition* is the lowest level sanction. As noted above, sanctions may be combined with orders of education.

The judge may appeal any sanction to a Special Court of Review.

#### 5. Suspension

The Commission has the power to suspend a judge from sitting on the bench, with or without pay, after the judge has been either indicted by a grand jury for a felony, or charged with a misdemeanor involving official misconduct. The suspended judge has the right to a post-suspension hearing before one or more of the Commission members or the Executive Director, as designated by the Commission Chair. See Appendix C, Procedural Rules for the Removal or Retirement of Judges, Rule 15(a).

In cases other than for alleged criminal behavior, the Commission, after giving the judge notice and an opportunity to appear before the Commission, may recommend to the Supreme Court of Texas that the judge be suspended from office, for persistent violation of rules promulgated by the Supreme Court, incompetence in performing the duties of office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that is clearly inconsistent with the proper performance of his or her duties, or that casts public discredit on the judiciary or the administration of justice. See Appendix C, Procedural Rules for the Removal or Retirement of Judges, Rule 15(b).

## 6. Voluntary Agreement to Resign

In some cases, a judge against whom a complaint has been made may decide to resign in lieu of disciplinary action. In that event, the judge may tender to the Commission a voluntary agreement to resign from judicial office. Upon the Commission's acceptance, the agreement is made public and the judge vacates the bench. The agreement and any agreed statement of facts relating to it are admissible in subsequent proceedings before the Commission. While the agreement is public, the agreed statement of facts may be released to the public only if a judge violates a term of the agreement.

## 7. Formal Proceeding

In certain circumstances, the Commission may decide that a complaint against a judge is so severe that it should be handled as a formal proceeding. The Commission itself may conduct such a fact-finding hearing under the Texas Rules of Civil Procedure, or it may ask the Supreme Court of Texas appoint a Special Master (who must be a sitting or retired district or appellate judge) to hear the matter.

Although there is no right to a trial by jury in a formal proceeding, the judge is afforded certain other rights under the Procedural Rules for the Removal or Retirement of Judges (Appendix C), including the following:

- To be confronted by the judge's accusers;
- To introduce evidence;
- To be represented by counsel;
- To examine and cross-examine witnesses;
- To subpoena witnesses; and
- To obtain a copy of the reporter's record of testimony.

If the formal proceeding has been conducted by a Special Master, he or she reports the findings of fact to the Commission. Then, the Commission holds a public hearing to consider the report of the Special Master, if objections were filed. The Commission may adopt the Special Master's findings in whole or in part, modify the findings, totally reject them and enter its own findings, or order a hearing for the taking of additional evidence.

After adopting findings of fact, the Commission issues its conclusions of law. The Commission may dismiss the case, issue a public censure, or recommend removal or involuntary retirement to a seven-member Review Tribunal appointed by the Supreme Court of Texas. The Commission itself cannot remove a judge; only the Review Tribunal can order a judge removed from the bench. The Commission can recommend to the Review Tribunal that an order be entered prohibiting the judge from ever holding a judicial office again.

The judge can make a final appeal to the Texas Supreme Court on the outcome of the formal proceeding, including the decision of the Review Tribunal.

## **Appellate Review of Commission Action**

The judge may appeal the Commission's issuance of a public or private sanction or order of education sanction, within thirty (30) days of the date the Commission issues it, by

filing a written notice with the Chief Justice of the Supreme Court of Texas and requesting the appointment of three appellate justices to act as a Special Court of Review.

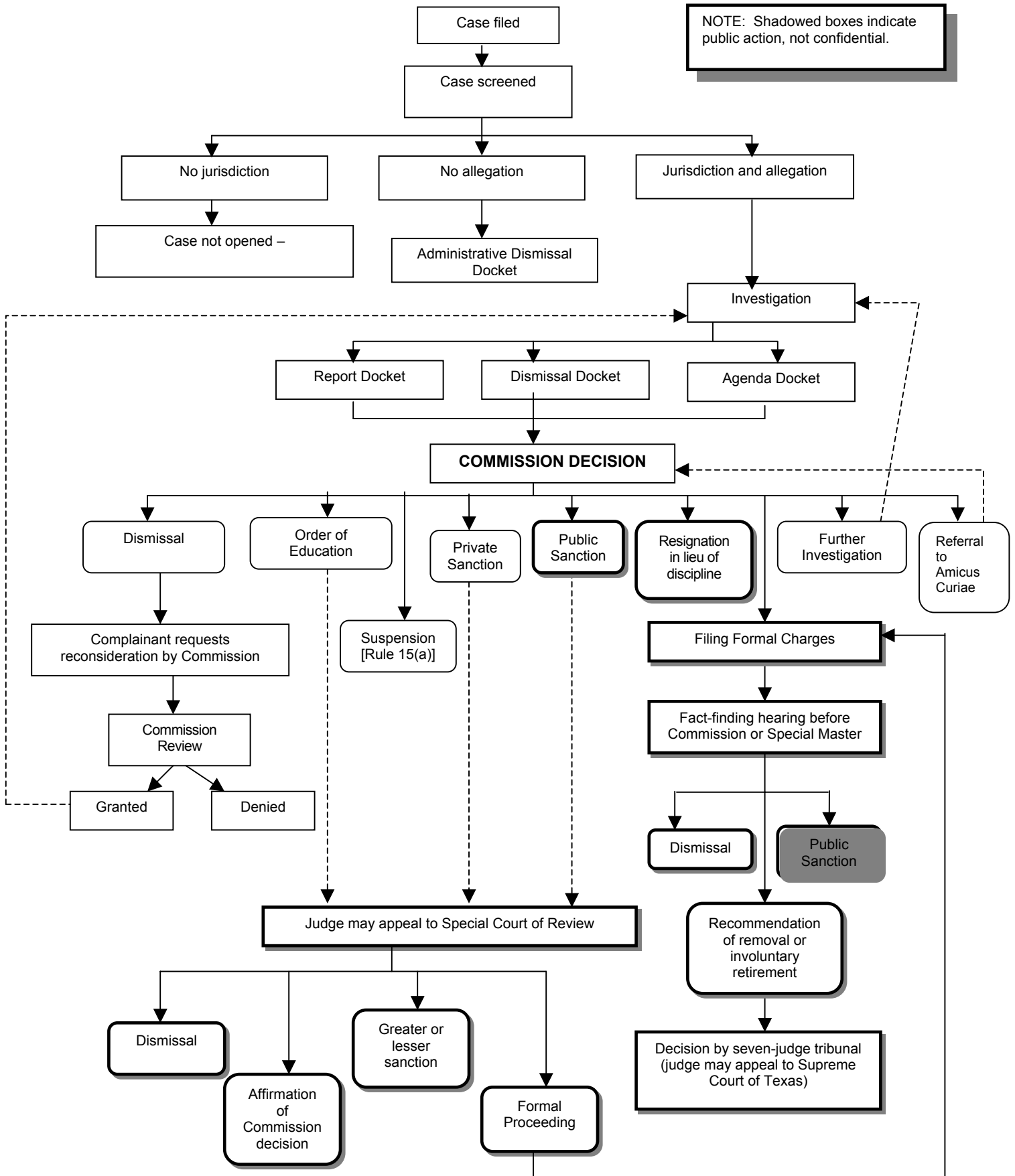
Within fifteen (15) days after the Special Court of Review is appointed, the Commission must furnish the subject judge and each justice on the Special Court of Review with a “charging document,” which includes a copy of the sanction issued, as well as any additional charges to be considered in the *de novo* proceeding. All other papers, documents and evidence that were considered by the Commission are included. Once the judge has filed his or her appeal, these materials become public.

A trial *de novo* is held within thirty (30) days after the charging document is filed. The Special Court of Review considers the case from the beginning, as if the Commission had taken no previous action. The Texas Rules of Civil Procedure apply, except that the judge is not entitled to a jury. All documents filed and evidence received in the appeals process are public.

The Special Court of Review may dismiss or affirm the Commission’s decision, impose a greater or lesser sanction, or order the Commission to file formal proceedings against the subject judge for removal or involuntary retirement. The decision of the Special Court of Review is final.



**FIGURE 5-1. COMPLAINT PROCESS**



# §6. *AMICUS CURIAE* PROGRAM

The *Amicus Curiae* program (“*Amicus*” herein), developed in 2001, continues to identify and assist members of the judiciary who have impairments and to provide a confidential resource for those judges to obtain help. The program operates within the disciplinary authority of the State Commission on Judicial Conduct.

*Amicus Curiae*, which translates as “friend of the court,” is the first program of its kind in the United States. The program grew out of the Commission’s awareness and concerns that certain issues of misconduct resulted from underlying problems related to alcohol or drug abuse, addiction, or mental or emotional disorders. Unlike most employee assistance programs, *Amicus* is unique in that it is not designed to provide direct services. Instead, *Amicus* helps locate resources to identify and treat impairments that may be affecting those judges’ personal lives and their performance on the bench.

There were a number of judges in fiscal year 2002 who participated in the program and were referred to counseling or recovery programs suited to their specific needs. *Amicus* continues to monitor and maintain contact with those judges to provide motivation and support.

Three distinguished professionals continue serving as charter members of the *Amicus* Board of Directors, overseeing the development and operation of the program:

- Mr. Lon P. Carpenter, San Antonio, is an Executive Vice President with Frost Bank, and he has served as the Board’s Chair since the inception of *Amicus*;
- Justice Robert Seerden, Corpus Christi, is the retired Chief Justice of the 13th Court of Appeals; he is of counsel at Barger, Hermansen, McKibben & Villarreal, L.L.P. in Corpus Christi; and
- Dr. Lawrence Schoenfeld, Ph.D, San Antonio, is Director of both the Clinical Psychology Residency and Fellow Programs, at the University of Texas at San Antonio Health Sciences Center.

Funding for *Amicus* was initially provided through a grant from the Texas Center for the Judiciary, through the Texas Court of Criminal Appeals. The Texas Legislature funded *Amicus*, beginning September 1, 2001. The funds enabled the Commission to hire a program manager to operate the program with the Board’s oversight. Developing program guidelines, acquiring educational reference materials, instituting a network of mentor judges, and reviewing similar programs for other professions are the continuing goals of the board.

Identification of a judge as impaired as a result of a complaint of misconduct (either by the judge’s admission or by a Commission finding), and referring that judge to *Amicus*, will not remove the judge’s actions from the scrutiny of the Commission’s

investigative responsibility. The Commission's major consideration is whether or not the public can be assured that Texas judges maintain the standards of conduct required of them by the Code of Judicial Conduct and Texas Constitution. A judge's direct contact for *Amicus* assistance, which is not the result of a complaint of misconduct, however, will remain confidential within the *Amicus* Program.

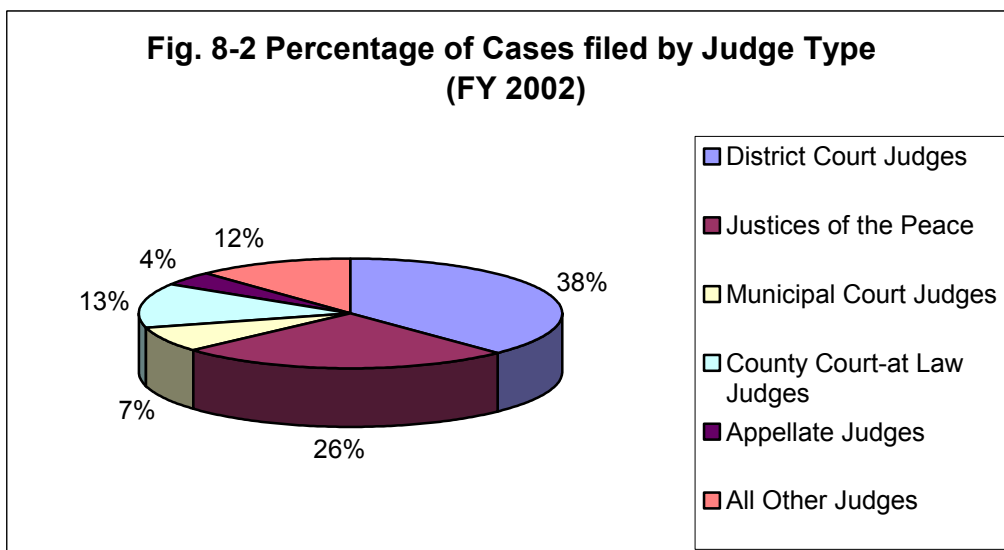
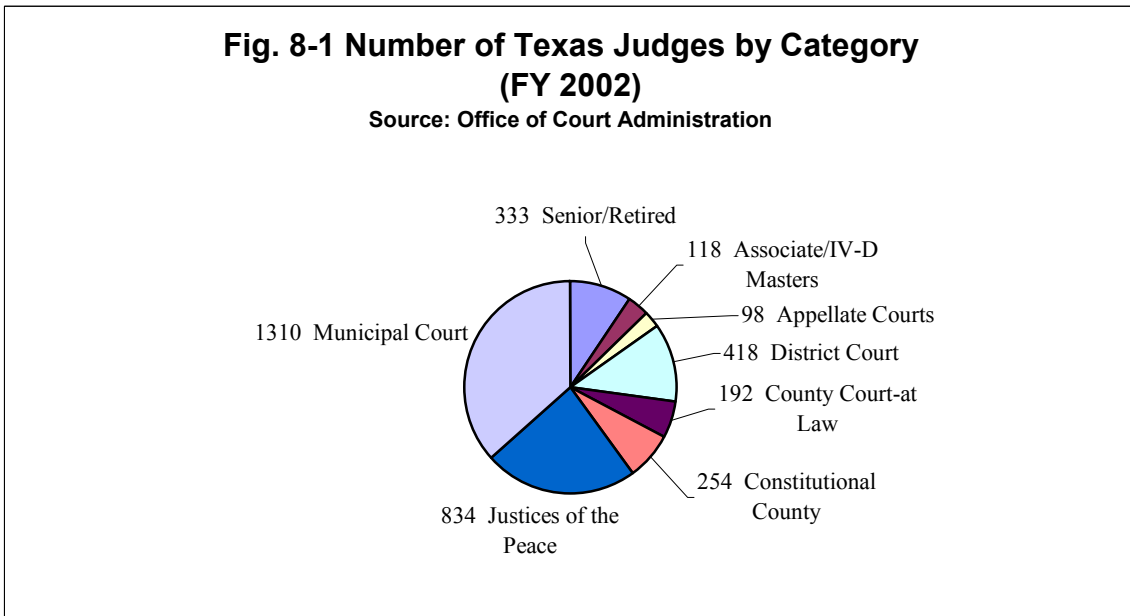
# §7. TEXAS SUPREME COURT AMENDMENTS TO THE TEXAS CODE OF JUDICIAL CONDUCT

The following pages contain the Texas Supreme Court's amendments to the Texas Code of Judicial Conduct, Misc. Docket No. 02-9167, issued August 22, 2002. These were developed in response to the U. S. Supreme Court's decision in *Republican Party of Minnesota v. White*, 122 S.Ct. 2528 (2002). The Texas Supreme Court's amendments contain significant revisions to Canon 3(B)(10), Canon 5, Canon 6(B), and Canon 6(C)(1).

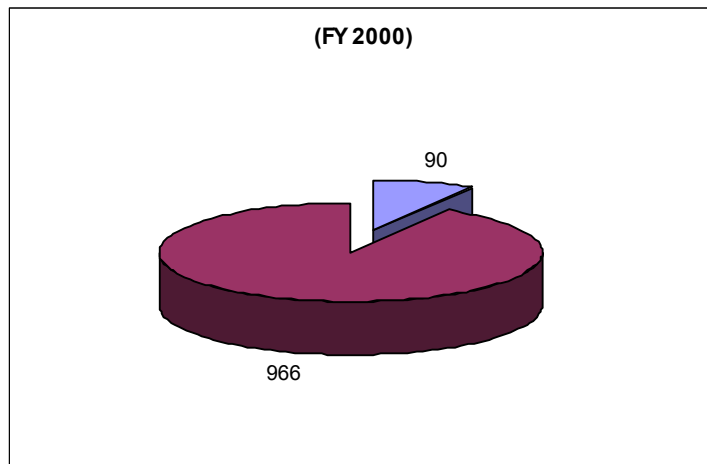
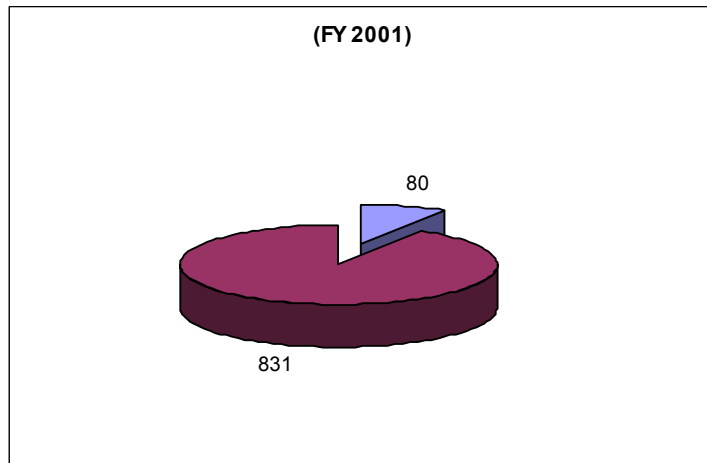
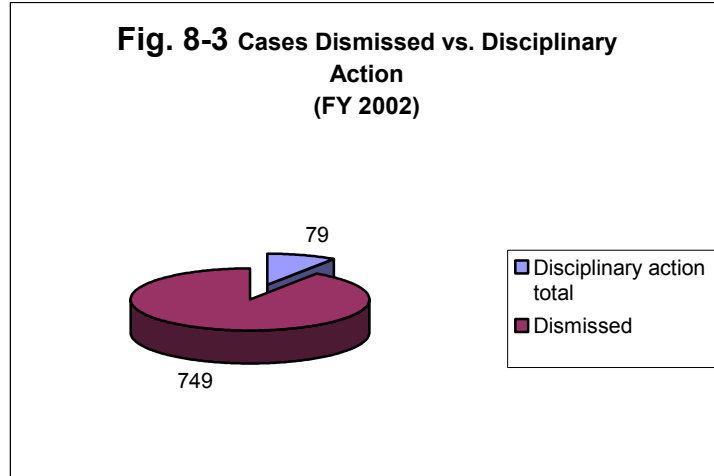
# §8 Statistical Analysis

An outline of the statistical activity of the Commission is shown in Table 1. Graphic representations of the data are presented to further illustrate the historical activities of the Commission.

A total of 3,557 judges are under the jurisdiction of the State Commission on Judicial Conduct. The Commission’s authority includes appellate justices, district judges, county court-at-law judges, constitutional county judges, justices of the peace, and municipal judges. In addition, associate judges, Title IV-D masters, and magistrates, as well as retired and former judges who are available to sit as visiting judges, are subject to judicial discipline from the Commission. Figure 8-1 illustrates the judiciary by the number of judges in each category. Figure 8-2 shows the percentage of cases filed by judge type.

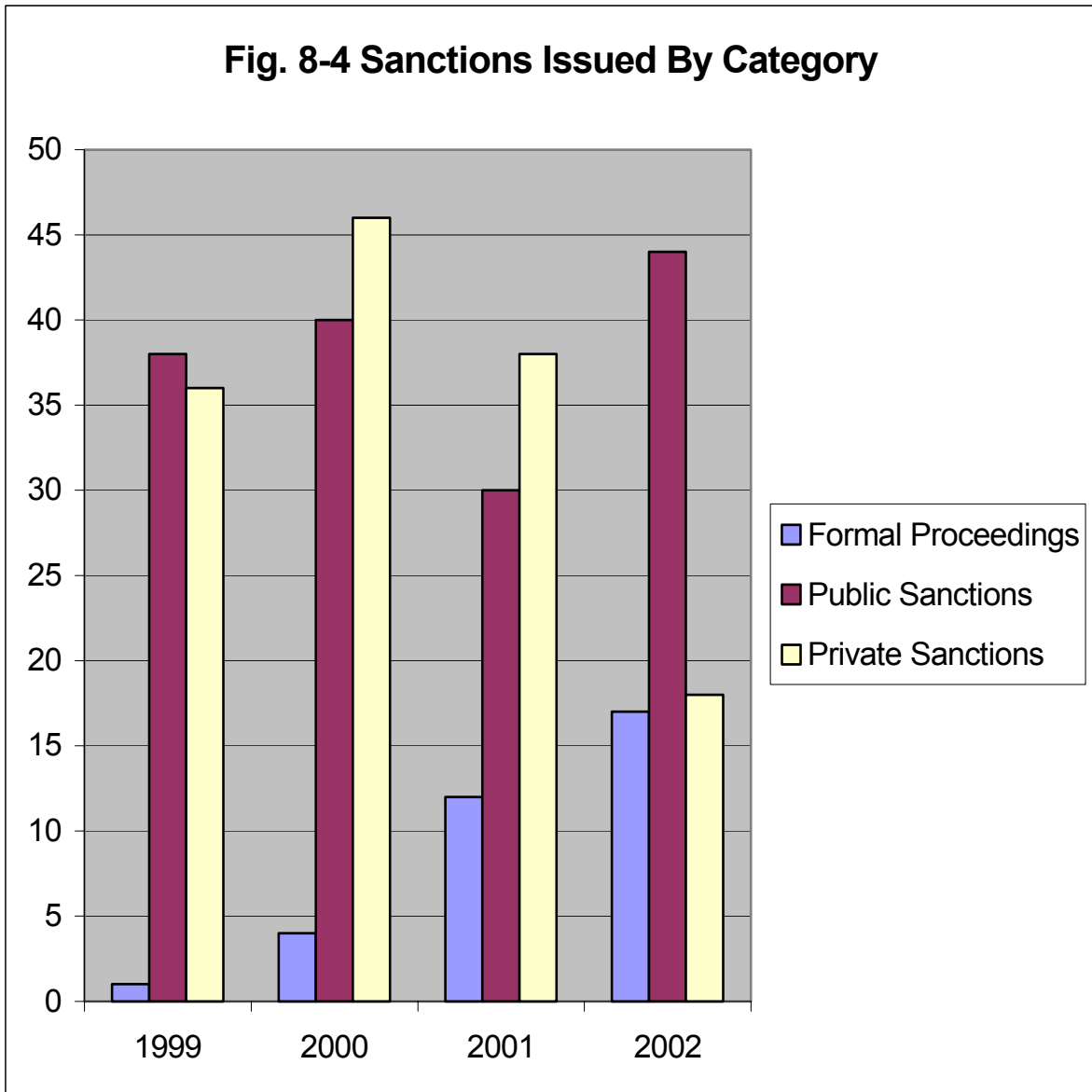


The 1045 cases filed in fiscal year 2002 were not significantly **less** than the 1123 filed in fiscal year 2001. The average time period from filing to disposition was 7.1 months. The number of cases disposed in fiscal year 2002 was 828 with an additional 43 cases reviewed for reconsideration.



In fiscal year 2002, the Commission considered 78 cases at informal hearings and issued 79 sanctions. The number of cases that were voted as Formal Proceedings in fiscal year 2002 increased slightly and there were 14 Voluntary Resignations in Lieu of Disciplinary Action. While fewer Public Reprimands were issued in fiscal year 2002, as compared to fiscal year 2001, Public Warning sanctions increased during the same reporting period.

**Fig. 8-4 Sanctions Issued By Category**



- PUBLIC SANCTIONS INCLUDE :** Resignations, suspensions, removals, censures, reprimands, warnings, admonitions, and orders of additional education.
- PRIVATE SANCTIONS INCLUDE :** Reprimands, warnings, admonitions, and orders of additional education.

A comparison is shown between Texas and two other states in an effort to gauge the performance of the Texas Commission. California and New York are two states that resemble Texas in judicial population and procedures. The following chart illustrates each state's annual budget for fiscal year 2002.

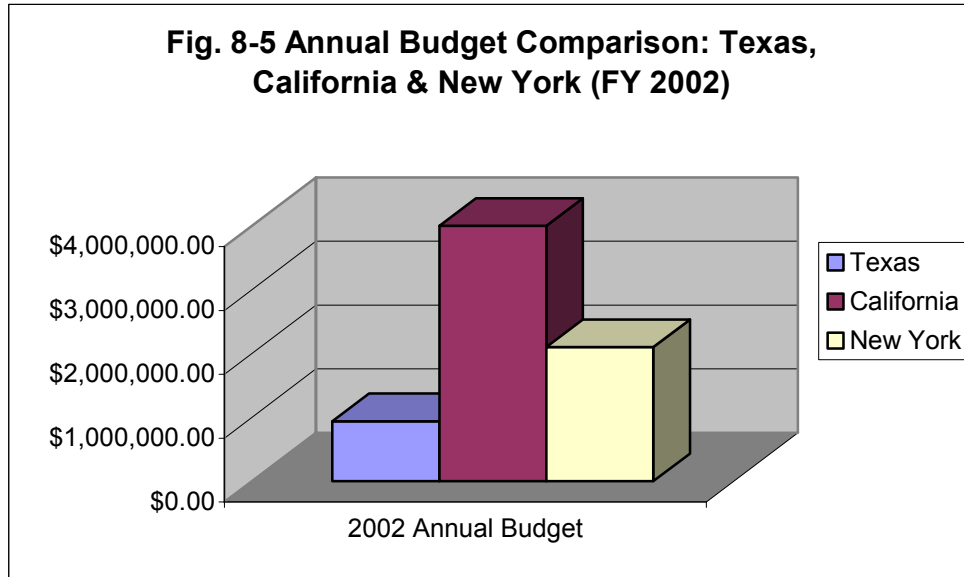


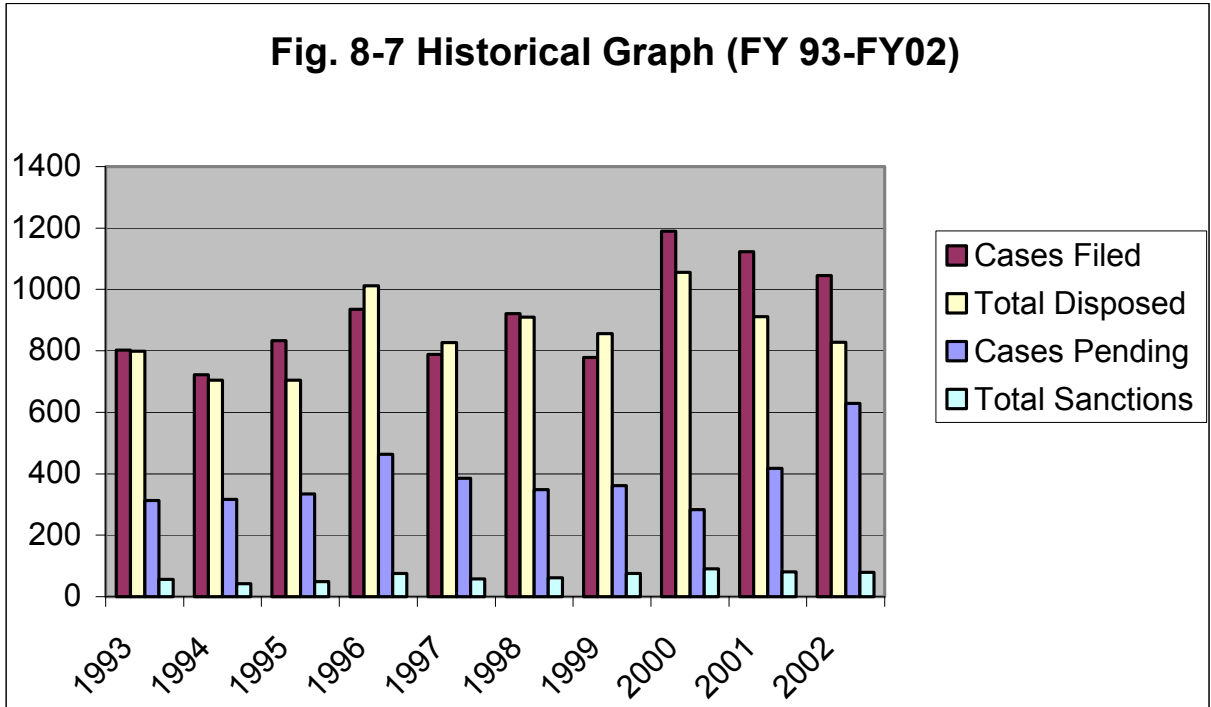
Figure 8-6 is a detailed chart for fiscal year 2002 with further comparisons between Texas, New York and California.

**Fig. 8-6** COMPARING THE TEXAS STATE COMMISSION ON JUDICIAL CONDUCT WITH THE NEW YORK & CALIFORNIA COMMISSIONS (FY 2002)

	NUMBER OF JUDGES	COMPLAINTS (ANNUALLY)	NUMBER OF ATTORNEYS	TOTAL STAFF	TOTAL SANCTIONS
<b>Texas</b>	3,557	1045	6	17	79
<b>New York</b>	3,363	1308	9	27	81
<b>California</b>	2,057	947	16	27	37



Figure 8-7 offers a historical perspective of the volume of case activity before the Commission. The legal staff, including Commission Counsels, Legal Assistants, and Investigators, continues to diligently investigate each case filed with the Commission.



The chart below in Figure 8-8 is a compilation of the data used in constructing the preceding Historical Graph (Fig. 8-7). As can be seen, cases filed jumped from 778 in fiscal year 1999, to 1190 in fiscal year 2000, an increase of 53%. Commission staff has remained constant at 17.

**Fig. 8-8 Historical Chart (FY 93-FY02)**

YEAR	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Cases Filed	803	722	833	935	789	922	778	1190	1123	1045
Total Disposed	799	704	705	1012	827	910	856	1056	911	828
Cases Pending	313	317	335	463	386	348	361	283	417	629
Total Sanctions	56	42	48	75	57	61	75	90	80	79
% Disposal Rate	99.50%	97.51%	84.63%	108.24%	104.82%	98.70%	110.03%	88.74%	81.12%	79.23%

Figure 8-9 illustrates the number of cases filed and those disposed for fiscal years 1997 through 2002.

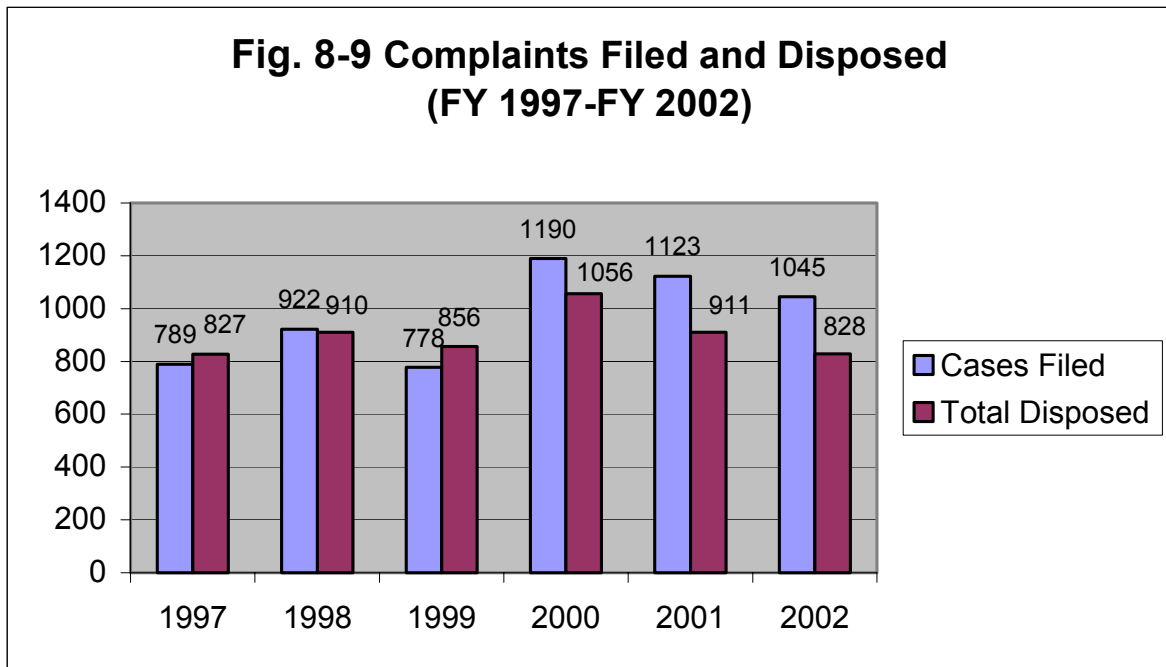


Table 1. Commission Activity

	FISCAL YEAR 1999	FISCAL YEAR 2000	FISCAL YEAR 2001	FISCAL YEAR 2002
<b>Cases Pending</b>	<b>(09/01/98) 361</b>	<b>(09/01/99) 283</b>	<b>(09/01/00) 417</b>	<b>(09/01/01) 629</b>
<b>Cases Filed</b>	<b>778</b>	<b>1190</b>	<b>1123</b>	<b>1045</b>
<b>Total Number Of Cases Disposed</b>	<b>856</b>	<b>1056</b>	<b>911</b>	<b>828</b>
<b>% of Cases Disposed</b>	<b>110%</b>	<b>89%</b>	<b>81%</b>	<b>79%</b>
<b>Average Age of Cases Disposed</b>	<b>5.2 months</b>	<b>4.3 months</b>	<b>4.4 months</b>	<b>7.1 Months</b>
<b>Disciplinary Action (total)</b>	<b>75</b>	<b>90</b>	<b>80</b>	<b>79</b>
Judge removed because of criminal conviction	0	0	0	0
Judge removed by Order of the Review Tribunal	11	0	0	0
Order of Suspension [15(a)]	1	2	4	4
Recommendation of Suspension to Supreme Court [15(b)]	0	0	0	7
Formal Proceedings Voted	1	4	12	17
Judge resigned (with investigation pending)	6	11	3	0
Judge Voluntarily Resigned in Lieu of Disciplinary Action	0	0	0	14
Sanction				
Public Censure	0	3	0	0
Public Censure and Order of Additional Education	0	1	0	0
Public Reprimand	7	11	5	2
Public Warning	2	2	3	6
Public Admonition	11	5	12	8
Public sanction and Order of Additional Education	0	4	3	3
Private Reprimand	6	4	3	2
Private Warning	7	9	7	3
Private Admonition	6	9	6	4
Private sanction and Order of Additional Education	6	10	1	3
Public Order of Additional Education	0	1	0	0
Private Order of Additional Education	11	14	21	6
<b>Dismissed</b>	<b>781</b>	<b>966</b>	<b>831</b>	<b>749</b>
Requests for a Reconsideration of Disposition	28	117	133	43
Reconsideration Granted	0	12	6	0
Reconsideration Denied	28	90	100	39
Pending	0	15	27	4
Appeal of Disciplinary Action	0	2	0	1
Cases Set for Hearing	53	77	86	78
Public Statements Issued	0	3	0	1

# §9. SUMMARY OF SANCTIONS FOR IMPROPER JUDICIAL CONDUCT

The following summaries of sanctions issued by the Commission in fiscal year 2002 for judicial misconduct are listed in relation to specific violations of the Texas Code of Judicial Conduct, Texas Constitution, Procedural Rules for the Removal or Retirement of Judges and the Government Code. These summaries are listed in descending order of severity, and may involve more than one form of judicial misconduct. The full text of any public order can be requested by writing the Commission.

These summaries are provided with the intent to educate and inform the judiciary and the public regarding conduct that the Commission found to be in violation of the Texas Code of Judicial Conduct in fiscal year 2002. The reader must note that the summaries provide only general information and omit mitigating or aggravating facts that the Commission considered when determining the level of sanction to be imposed. Additionally, the reader should not make any inferences from the fact situations provided in these summaries. It is the Commission's sincere desire that providing this information will further assist the judiciary in maintaining the high standards of conduct the people of the State of Texas expect and deserve.

## **PUBLIC REPRIMAND BY SPECIAL COURT OF REVIEW**

On July 2, 2002, a Special Court of Review issued its opinion in *In Re Honorable Rick Davis*, 272nd District Court, Brazos County, Texas, 82 SW 3d 140 (Special Court of Review -- 2002). The Special Court of Review affirmed the Commission's Order of Public Reprimand of Judge Davis for violations of Article 5, §1-a(6)A, Texas Constitution, and Canons 3B(4), 4A(1) and 4A(2), Texas Code of Judicial Conduct. The Special Court further ordered the Judge to complete additional education. For the full text of the opinion, see §11, *Special Court of Review's Public Reprimand and Order for Instruction of Rick Davis, a District Judge*.

**CANON 2A:** *A judge shall comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.*

A foster father and his foster child appeared before the Judge to face charges that the child had used profanity at school. Without legal authority, the Judge ordered the foster father to paddle his foster child in the courtroom. Because the Judge had no legal

## **Canon 2A, continued:**

authority to order such punishment, he failed to comply with the law. In addition, the Judge required a deputy constable to produce the paddle from the Judge's chambers, and the Judge and others in the courtroom watched as the foster father paddled the child. By these actions, the Judge failed to maintain courtroom order and decorum. [Violation of Article 5, §1-a(6)A, Texas Constitution, and Canons 2A and 3B(3), Texas Code of Judicial Conduct; *Public Reprimand of John Robert Kleimann, Justice of the Peace.*]

While presiding in certain truancy cases, the Judge improperly exercised his contempt authority against two or more parents and committed them to jail without following legal procedure and without advising them of their right to counsel. The Commission found that the Judge failed to provide the parents with full and unambiguous notice of the contempt accusations through a show cause order or equivalent legal process, and that at the contempt hearing the Judge failed to advise the parents of their right to counsel before finding them in contempt and confining them in jail. [Violation of Canons 2A and 3B(2), Texas Code of Judicial Conduct; *Public Admonition and Order of Additional Education of Judge Lonnie Jim Dulin, Justice of the Peace.*]

In one matter, a Texas Parks and Wildlife Department Game Warden had made repeated inquiries with the Judge's staff regarding the status of several alcohol-related citations the warden had issued. The Judge's staff made negative remarks about the warden to the Judge. During one of the warden's visits to the clerk's office, the Judge instructed the prosecutor to escort the warden into the courtroom to discuss the inquiries. In the courtroom, the Judge persisted in using the term "bird and turtle sheriff" when referring to the warden's work, even though the warden had informed the Judge that the term was insulting. A witness to the courtroom discussion stated that the Judge's temper "flared," and the witness confirmed the warden's impression that the warden was not free to leave the courtroom while the Judge was speaking to him. In a second matter, a funeral home director made several efforts to secure a signed death certificate from the Judge, and the Judge's staff became annoyed with the director's persistence. The Judge allowed his staff to improperly influence his conduct towards the funeral home director, which caused the Judge to unreasonably and purposefully delay the signing of the death certificate. The Judge's treatment of the funeral home director was found to be discourteous. [Violations of Article 5, §1-a(6)A, Texas Constitution, and Canons 2A, 2B and 3B(4), Texas Code of Judicial Conduct; *Public Admonition of George Boyett, Justice of the Peace.*]

In one matter, the Judge summoned several young women to appear before her to answer charges of disorderly conduct, when in fact no criminal complaint had been filed and no case was pending in her court. The Judge failed to advise the accused of their constitutional right to be represented by counsel and their right to a jury trial. Further, the Judge improperly acted as a mediator between the parties. In another matter, the Judge lent the prestige of her judicial office to advance the private interests of a friend by writing a "blind" letter of recommendation on official judicial letterhead. At the time, the Judge's friend was also a candidate for sheriff. The letter subsequently appeared in the local newspaper as a public endorsement by the Judge of her friend's candidacy. Further, the Commission found the Judge's testimony on the issue of the letter of recommendation

**Canon 2A, continued:**

to be less than candid. [Violation of Canons 2A, 2B and 5(3), Texas Code of Judicial Conduct; *Public Admonition of Mona D.L. Velasquez, Justice of the Peace.*]

The Judge allowed his court clerk to receive pleas from and assess fines against students and parents accused of truancy violations. The Judge abdicated his official judicial duties. [Violation of Canons 2A and 3B(1), Texas Code of Judicial Conduct; *Private Warning, CJC No. 01-0719-JP.*]

The defendant, who had been served with a summons to appear for trial the Friday evening before the Monday morning hearing, requested a continuance, but the Judge denied the request and commenced the criminal trial. The Judge failed to advise the defendant of his constitutional rights, take the defendant's plea and obtain the defendant's written jury waiver. Throughout the trial, the Judge abdicated his neutral and detached role, instead assuming the role of prosecutor by aiding the alleged victim in the presentation of the case against the defendant. The Judge attempted to force the defendant to testify, but the defendant refused. The Judge found the defendant guilty as charged, then signed a civil, rather than criminal, judgment. The Judge's actions resulted in an egregious denial of the defendant's constitutional rights. The Judge demonstrated a lack of competence in the laws governing criminal trial procedures. [Violation of Canons 2A and 3B(2), Texas Code of Judicial Conduct; *Private Admonition and Order of Additional Education, CJC No. 01-0450-JP.*]

The Judge improperly allowed a criminal complaint to be filed in his court for an offense over which the Judge's court lacked jurisdiction. Further, the Judge failed to make available to the defendant copies of the complaint and arrest warrant in the case against defendant, who was legally entitled to them. The Judge's conduct demonstrated a fundamental failure to comply with the law as well as a lack of professional competence in the law. [Violation of Canons 2A and 3B(2), Texas Code of Judicial Conduct; *Private Admonition and Order of Additional Education, CJC No. 01-0914-JP.*]

The Judge confiscated a defendant's shotgun as surety for payment of a \$300.00 fine the Judge assessed against the defendant. The Commission concluded that since the Texas Code of Criminal Procedure does not authorize a judge to accept personal property from a defendant in lieu of payment of court costs, fines, fees or any other charges imposed by the court, the Judge's action was without legal authority. The Commission rejected the Judge's contention that the shotgun was seized as evidence, since the defendant's guilt had already been adjudicated and the fine assessed at the time the seizure took place. [Violation of Canon 2A, Texas Code of Judicial Conduct; *Private Admonition and Order of Additional Education, CJC No. 01-0938-JP.*]

The Judge held a courtroom spectator in direct contempt for the unauthorized practice of law, and ordered the spectator to be jailed for 72 hours and to pay a fine of \$100.00. Instead of holding a hearing to determine whether the spectator had engaged in the unauthorized practice of law, the Judge drew his own conclusion based on what the Judge had observed, as well as on a conversation that was related to him by a third party. The Judge did not follow proper contempt procedures, thereby denying the alleged

**Canon 2A, continued:**

contemnor the right to be heard, and unlawfully depriving the alleged contemnor of his liberty by sentencing him to jail. [Violation of Canons 2A and 3B(8), Texas Code of Judicial Conduct; *Private Admonition, CJC No. 02-0077-MU.*]

The Judge improperly issued an arrest warrant in a case in which the Judge was the victim of the alleged crime. The Commission concluded that as the victim, the Judge's judgment would necessarily be affected, rendering the Judge incapable of being detached, neutral and unbiased magistrate, as required by the Fourth Amendment of the United States Constitution. [Violation of Canons 2A and 3B(2), Texas Code of Judicial Conduct; *Private Order of Additional Education, CJC No. 01-0957-JP.*]

The Judge magistrated two defendants on a number of charges, including the Aggravated Assault of the Judge's child. The Commission concluded that the Judge was required by law to disqualify himself from matters involving the Judge's family. [Violation of Article 30.01, Texas Code of Criminal Procedure and Canons 2A and 3B(1), Texas Code of Judicial Conduct; *Private Order of Additional Education, CJC No. 01-0661-JP.*]

For nearly a year, the Judge misinterpreted the law by requiring at least fifteen defendants to post bonds by cash only. The Judge's action was contrary to an Attorney General opinion and prior case law that a court does not have discretion to require a cash or surety bond to the exclusion of the other. [Violation of Canons 2A and 3B(2), Texas Code of Judicial Conduct; *Private Order of Additional Education, CJC No. 01-0763-JP.*]

***CANON 2B: A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.***

The Judge awarded a disproportionate number of court appointments, resulting in the payment of an inordinate amount of fees, to one particular attorney during a time when that attorney was running for public office. The Commission concluded that the Judge failed to exercise his power of appointment impartially, and that he showed favoritism toward this attorney (a former prosecutor in the Judge's court) and that attorney's associates. The Judge also failed to follow the established county practice when he removed all new family law and juvenile cases from the jurisdiction of one of the courts, and used his position as local administrative judge to manipulate the system in order to afford certain litigants a more favorable forum for their cases. [Violation of Canons 2B and 3C(4), Texas Code of Judicial Conduct; *Public Warning of Don Emerson, District Court Judge.*]

## **Canon 2B, continued:**

The Judge exceeded and misused his authority by pursuing various grievances and criminal charges against the District Attorney, several Texas Rangers and the Department of Public Safety (DPS), in relation to their involvement in the investigation and prosecution of a high-profile aggravated kidnapping case pending in the Judge's court. In the course of pursuing his complaints against these individuals, the Judge used the prestige of his office and official letterhead to initiate investigations against them, and, through the Judge's contacts with the media and the Legislature, to focus public attention on alleged problems within the District Attorney's office, the Texas Rangers and DPS. The Judge's actions cast public discredit upon the judiciary, cast reasonable doubt on his ability as a judge to act impartially and fairly, and interfered with the performance of his duties as judge. [Violation of Article 5, §1-a(6)A, Texas Constitution, and Canons 2B, 4A(1) and 4A(2), Texas Code of Judicial Conduct; *Public Warning of Jay Gibson, District Court Judge.*]

The Commission found that a bumper sticker supporting the candidacy of a gubernatorial candidate was affixed to a vehicle bearing the Justice's official State Judge license plates. Although additional information was requested from the Justice, she chose not to provide the Commission with any evidence concerning the circumstances surrounding the appearance of the bumper sticker on her car. The Commission concluded that the Justice lent the prestige of her judicial office by allowing a bumper sticker endorsing a candidate for public office to remain affixed to a vehicle bearing her official State Judge license plates for an indefinite period of time. [Violation of Canon 2B, Texas Code of Judicial Conduct; *Public Admonition of Justice Nelda Rodriguez, Appellate Justice.*]

In one matter, a Texas Parks and Wildlife Department Game Warden had made repeated inquiries with the Judge's staff regarding the status of several alcohol-related citations the warden had issued. The Judge's staff made negative remarks about the warden to the Judge. During one of the warden's visits to the clerk's office, the Judge instructed the prosecutor to escort the warden into the courtroom to discuss the inquiries. In the courtroom, the Judge persisted in using the term "bird and turtle sheriff" when referring to the warden's work, even though the warden had informed the Judge that the term was insulting. A witness to the courtroom discussion stated that the Judge's temper "flared," and the witness confirmed the warden's impression that the warden was not free to leave the courtroom while the Judge was speaking to him. In a second matter, a funeral home director made several efforts to secure a signed death certificate from the Judge, and the Judge's staff became annoyed with the director's persistence. The Judge allowed his staff to improperly influence his conduct towards the funeral home director, which caused the Judge to unreasonably and purposefully delay the signing of the death certificate. The Judge's treatment of the funeral home director was found to be discourteous. [Violation of Article 5, §1-a(6)A, Texas Constitution, and Canons 2A, 2B and 3B(4), Texas Code of Judicial Conduct; *Public Admonition of George Boyett, Justice of the Peace.*]



## **Canon 2B, continued:**

In one matter, the Judge summoned several young women to appear before her to answer charges of disorderly conduct, when in fact no criminal complaint had been filed and no case was pending in her court. The Judge failed to advise the accused of their constitutional right to be represented by counsel and their right to a jury trial. Further, the Judge improperly acted as a mediator between the parties. In another matter, the Judge lent the prestige of her judicial office to advance the private interests of a friend by writing a “blind” letter of recommendation on official judicial letterhead. At the time, the Judge’s friend was also a candidate for sheriff. The letter subsequently appeared in the local newspaper as a public endorsement by the Judge of her friend’s candidacy. Further, the Commission found the Judge’s testimony on the issue of the letter of recommendation to be less than candid. [Violation of Canons 2A, 2B and 5(3), Texas Code of Judicial Conduct; *Public Admonition of Mona D.L. Velasquez, Justice of the Peace.*]

The Judge, on behalf of a relative, sent a letter on the Judge’s official letterhead to two persons who were involved in a financial dispute with that relative. The letter improperly asserted that the Judge’s court had jurisdiction over the financial dispute, and further threatened that the Judge’s relative would file criminal and civil charges against the two persons if they did not cease all contact with the relative. The Commission concluded that the Judge lent the prestige of the Judge’s office to advance the private interests of another. [Violation of Canon 2B, Texas Code of Judicial Conduct; *Private Reprimand, 02-0025-JP.*]

The Judge improperly intervened on behalf of defendants to assist them in satisfying a monetary judgment that plaintiffs disputed as inadequate. The Judge, acting upon the request that defendants made outside the presence of plaintiffs, wrote plaintiffs on court letterhead, insisting, among other things, that plaintiffs accept defendants’ personal check in the amount of the judgment. The Commission concluded that the Judge lent the prestige of the Judge’s judicial office to advance the private interests of others, and conveyed the impression that defendants were in a special position to influence the Judge. The Commission further concluded that the Judge’s private meeting with defendants amounted to an improper *ex parte* communication. [Violation of Canons 2B and 6C(2), Texas Code of Judicial Conduct; *Private Reprimand, CJC No. 01-0974-JP.*]

The Judge, while acting in his official capacity, used his position and authority as the judge to advance the private interests of a citizen who wished to have a citation transferred from a neighboring precinct. [Violation of Canons 2B, Texas Code of Judicial Conduct; *Private Warning, CJC No. 01-0794-JP.*]

The Judge, in an attempt to help a family with whom the Judge was acquainted, became involved in a pending criminal case involving one family member as the defendant and another family member as the victim. The Judge discussed the merits of the case with the victim, and chose not to issue a *capias* against the defendant, based on the Judge’s relationship with the family. As a result of the Judge’s involvement in the case, the defendant received more favorable treatment than other defendants faced with similar charges. [Violation of Canons 2B and 6C(2), Texas Code of Judicial Conduct; *Private Admonition, CJC No. 01-0990-JP.*]

**CANON 3B(1)** : *A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or recusal is appropriate.*

The Judge allowed his court clerk to receive pleas from and assess fines against students and parents accused of truancy violations. The Judge abdicated his official judicial duties. [Violation of Canons 2A and 3B(1), Texas Code of Judicial Conduct; *Private Warning, CJC No. 01-0719-JP.*]

The Judge magisterated two defendants on a number of charges, including the Aggravated Assault of the Judge's child. The Commission concluded that the Judge was required by law to disqualify himself from matters involving the Judge's family. [Violation of Article 30.01, Texas Code of Criminal Procedure and Canons 2A and 3B(1), Texas Code of Judicial Conduct; *Private Order of Additional Education, CJC No. 01-0661-JP.*]

**CANON 3B(2)**: *A judge should be faithful to the law and shall maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.*

While presiding in certain truancy cases, the Judge improperly exercised his contempt authority against two or more parents and committed them to jail without following legal procedure and without advising them of their right to counsel. The Commission found that the Judge failed to provide the parents with full and unambiguous notice of the contempt accusations through a show cause order or equivalent legal process, and that at the contempt hearing the Judge failed to advise the parents of their right to counsel before finding them in contempt and confining them in jail. [Violation of Canons 2A and 3B(2), Texas Code of Judicial Conduct; *Public Admonition and Order of Additional Education of Judge Lonnie Jim Dulin, Justice of the Peace.*]

The defendant, who had been served with a summons to appear for trial the Friday evening before the Monday morning hearing, requested a continuance, but the Judge denied the request and commenced the criminal trial. The Judge failed to advise the defendant of his constitutional rights, take the defendant's plea and obtain the defendant's written jury waiver. Throughout the trial, the Judge abdicated his neutral and detached role, instead assuming the role of prosecutor by aiding the alleged victim in the presentation of the case against the defendant. The Judge attempted to force the defendant to testify, but the defendant refused. The Judge found the defendant guilty as charged, then signed a civil, rather than criminal, judgment. The Judge's actions resulted in an egregious denial of the defendant's constitutional rights. The Judge demonstrated a lack of competence in the laws governing criminal trial procedures. [Violation of Canons 2A and 3B(2), Texas Code of Judicial Conduct; *Private Admonition and Order of Additional Education, CJC No. 01-0450-JP.*]

**Canon 3B(2), continued:**

The Judge's court unreasonably delayed defendant's traffic case for eighteen (18) months after the Judge recused herself. A trial was finally held before another Judge. Thereafter, the defendant requested to see the court's file, but the original Judge improperly refused to honor the defendant's request, instructing him instead to seek it through the Public Information Act, a copy of which was posted in the judge's office. Even after the Judge was informed by various sources, including staff of the State Commission on Judicial Conduct, that the Public Information Act did not apply to the records of the judiciary, the Judge only partially complied with the defendant's request, permitting him to view certain documents contained in the court's file. The Judge further admitted that it was the court's policy to refer anyone seeking to see any files on his or her case to make the request under the Public Information Act. The Commission concluded that the Judge lacked competence in the laws governing public access to court files and judicial records, and that eighteen (18) months was an unreasonable delay constituting an unjustifiable failure to timely execute the business of the court. [Violation of Article 5, Section 1-a(6)A, Texas Constitution; Section 33.001(b), Texas Government Code; and Canon 3B(2), Texas Code of Judicial Conduct; *Private Admonition and Order of Additional Education, CJC No. 00-1155-JP.*]

The Judge improperly allowed a criminal complaint to be filed in his court for an offense over which the Judge's court lacked jurisdiction. Further, the Judge failed to make available to the defendant copies of the complaint and arrest warrant in the case against defendant, who was legally entitled to them. The Judge's conduct demonstrated a fundamental failure to comply with the law as well as a lack of professional competence in the law. [Violation of Canons 2A and 3B(2), Texas Code of Judicial Conduct; *Private Admonition and Order of Additional Education, CJC No. 01-0914-JP.*]

After voluntarily recusing herself from a civil suit due to a conflict of interest, the Judge granted a party's request for a continuance. The Commission concluded that the Judge lacked the authority to grant the requested Motion for Continuance since she had voluntarily recused herself from the case. The Judge's written and verbal responses to the Commission's inquiries further demonstrated a lack of knowledge relating to the proper handling of recusals and the transfer of cases. [Violation of Canon 3B(2), Texas Code of Judicial Conduct; *Private Order of Additional Education, CJC No. 01-0369-JP.*]

The Judge improperly issued an arrest warrant in a case in which the Judge was the victim of the alleged crime. The Commission concluded that as the victim, the Judge's judgment would necessarily be affected, rendering the Judge incapable of being detached, neutral and unbiased magistrate, as required by the Fourth Amendment of the United States Constitution. [Violation of Canons 2A and 3B(2), Texas Code of Judicial Conduct; *Private Order of Additional Education, CJC No. 01-0957-JP.*]

For nearly a year, the Judge misinterpreted the law by requiring at least fifteen defendants to post bonds by cash only. The Judge's action was contrary to an Attorney General opinion and prior case law that a court does not have discretion to require a cash or surety bond to the exclusion of the other. [Violation of Canons 2A and 3B(2), Texas Code of Judicial Conduct; *Private Order of Additional Education, CJC No. 01-0763-JP.*]

**CANON 3B(3):** *A judge shall require order and decorum in proceedings before the judge.*

A foster father and his foster child appeared before the Judge to face charges that the child had used profanity at school. Without legal authority, the Judge ordered the foster father to paddle his foster child in the courtroom. Because the Judge had no legal authority to order such punishment, he failed to comply with the law. In addition, the Judge required a deputy constable to produce the paddle from the Judge's chambers, and the Judge and others in the courtroom watched as the foster father paddled the child. By these actions, the Judge failed to maintain courtroom order and decorum. [Violation of Article 5, §1-a(6)A, Texas Constitution, and Canons 2A and 3B(3), Texas Code of Judicial Conduct; *Public Reprimand of John Robert Kleimann, Justice of the Peace.*]

According to witnesses at a high-profile criminal trial, the Judge acted in an impatient, undignified and discourteous manner. These witnesses said they saw the Judge express disgust, disbelief and disapproval towards the defendant, as well as bias in favor of the prosecution, through the Judge's nonverbal facial expressions and body movements. Witnesses observed the Judge rolling his eyes, smirking, frowning in disapproval, shaking his head in the negative, yawning in boredom, or sighing in an exaggerated manner throughout the trial, especially when the defense was presenting its case. One witness testified that the Judge shook his head and then mouthed the word "unbelievable" during defense counsel's cross-examination. Another witness testified that the Judge's "theatrical performance" caused a "carnival atmosphere" in the courtroom. At one point, the jury was asked to leave the courtroom while the Judge and defense counsel had a heated exchange, whereupon the Judge lost his temper and screamed at defense counsel. The Commission concluded from the evidence presented that the Judge lacked the patience, dignity or courtesy required of the judiciary, as evidenced by the Judge's verbal altercation with defense counsel. The Commission further concluded that throughout the trial, the Judge failed to maintain proper order and decorum in the courtroom, which contributed to the undignified, "carnival"-like atmosphere described by witnesses. The Judge's conduct gave the public the perception that the Judge lacked impartiality and was biased in favor of the prosecution. [Violation of Canons 3B(3), 3B(4) and 3B(5), Texas Code of Judicial Conduct; *Public Warning of Raymond Angelini, District Court Judge.*]

The Judge frequently slept while presiding over official court proceedings, including while a witness testified during a jury trial. The Commission concluded that the Judge failed to maintain order and decorum in the courtroom, and that sleeping on the bench erodes public confidence in the judiciary. [Violation of Canon 3B(3), Texas Code of Judicial Conduct; *Public Admonition of John Robert Kleimann, Justice of the Peace.*]

**CANON 3B(4):** *A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.*

**Canon 3B(4), continued:**

For the full text of the Special Court of Review’s public reprimand of a district judge for violations of Article 5, §1-a(6)A, Texas Constitution, and Canons 3B(4), 4A(1) and 4A(2), Texas Code of Judicial Conduct, please see §11, *Special Court of Review’s Public Reprimand and Order for Instruction of Rick Davis, a District Judge*.

According to witnesses at a high-profile criminal trial, the Judge acted in an impatient, undignified and discourteous manner. These witnesses said they saw the Judge express disgust, disbelief and disapproval towards the defendant, as well as bias in favor of the prosecution, through the Judge’s nonverbal facial expressions and body movements. Witnesses observed the Judge rolling his eyes, smirking, frowning in disapproval, shaking his head in the negative, yawning in boredom, or sighing in an exaggerated manner throughout the trial, especially when the defense was presenting its case. One witness testified that the Judge shook his head and then mouthed the word “unbelievable” during defense counsel’s cross-examination. Another witness testified that the Judge’s “theatrical performance” caused a “carnival atmosphere” in the courtroom. At one point, the jury was asked to leave the courtroom while the Judge and defense counsel had a heated exchange, whereupon the Judge lost his temper and screamed at defense counsel. The Commission concluded from the evidence presented that the Judge lacked the patience, dignity or courtesy required of the judiciary, as evidenced by the Judge’s verbal altercation with defense counsel. The Commission further concluded that throughout the trial, the Judge failed to maintain proper order and decorum in the courtroom, which contributed to the undignified, “carnival”-like atmosphere described by witnesses. The Judge’s conduct gave the public the perception that the Judge lacked impartiality and was biased in favor of the prosecution. [Violation of Canons 3B(3), 3B(4) and 3B(5), Texas Code of Judicial Conduct; *Public Warning of Raymond Angelini, District Court Judge*.]

In one matter, a Texas Parks and Wildlife Department Game Warden had made repeated inquiries with the Judge’s staff regarding the status of several alcohol-related citations the warden had issued. The Judge’s staff made negative remarks about the warden to the Judge. During one of the warden’s visits to the clerk’s office, the Judge instructed the prosecutor to escort the warden into the courtroom to discuss the inquiries. In the courtroom, the Judge persisted in using the term “bird and turtle sheriff” when referring to the warden’s work, even though the warden had informed the Judge that the term was insulting. A witness to the courtroom discussion stated that the Judge’s temper “flared,” and the witness confirmed the warden’s impression that the warden was not free to leave the courtroom while the Judge was speaking to him. In a second matter, a funeral home director made several efforts to secure a signed death certificate from the Judge, and the Judge’s staff became annoyed with the director’s persistence. The Judge allowed his staff to improperly influence his conduct towards the funeral home director, which caused the Judge to unreasonably and purposefully delay the signing of the death certificate. The Judge’s treatment of the funeral home director was found to be discourteous. [Violation of Article 5, §1-a(6)A, Texas Constitution, and Canons 2A, 2B and 3B(4), Texas Code of Judicial Conduct; *Public Admonition of George Boyett, Justice of the Peace*.]

**Canon 3B(4), continued:**

A prospective juror brought her 4-year-old child to court during jury selection. The Judge ordered the bailiff to remove the child from the courtroom and forced the tearful mother to remain in the courtroom until the judge had completed qualifying the jurors. The Commission found that the judge's dealings with a prospective juror and that juror's young child lacked the patience, dignity and courtesy required of a judicial official. [Violation of Canon 3B(4), Texas Code of Judicial Conduct; *Public Admonition of Patricia Ott, Justice of the Peace.*]

During a hearing involving a juvenile defendant charged with a traffic offense, the Judge made inappropriate, sarcastic comments to the defendant. The Judge then followed the juvenile defendant and his parents outside as they left the courthouse, where the Judge and the parents had a verbal confrontation and the Judge lost his temper. [Violation of Canon 3B(4), Texas Code of Judicial Conduct; *Private Admonition, CJC No. 01-1019-JP.*]

**CANON 3B(5): *A judge shall perform judicial duties without bias or prejudice.***

According to witnesses at a high-profile criminal trial, the Judge acted in an impatient, undignified and discourteous manner. These witnesses said they saw the Judge express disgust, disbelief and disapproval towards the defendant, as well as bias in favor of the prosecution, through the Judge's nonverbal facial expressions and body movements. Witnesses observed the Judge rolling his eyes, smirking, frowning in disapproval, shaking his head in the negative, yawning in boredom, or sighing in an exaggerated manner throughout the trial, especially when the defense was presenting its case. One witness testified that the Judge shook his head and then mouthed the word "unbelievable" during defense counsel's cross-examination. Another witness testified that the Judge's "theatrical performance" caused a "carnival atmosphere" in the courtroom. At one point, the jury was asked to leave the courtroom while the Judge and defense counsel had a heated exchange, whereupon the Judge lost his temper and screamed at defense counsel. The Commission concluded from the evidence presented that the Judge lacked the patience, dignity or courtesy required of the judiciary, as evidenced by the Judge's verbal altercation with defense counsel. The Commission further concluded that throughout the trial, the Judge failed to maintain proper order and decorum in the courtroom, which contributed to the undignified, "carnival"-like atmosphere described by witnesses. The Judge's conduct gave the public the perception that the Judge lacked impartiality and was biased in favor of the prosecution. [Violation of Canons 3B(3), 3B(4) and 3B(5), Texas Code of Judicial Conduct; *Public Warning of Raymond Angelini, District Court Judge.*]

**CANON 3B(8)**: *A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications or other communications made to the judge outside the presence of the parties between the judge and a party, an attorney, a guardian or attorney ad litem, an alternative dispute resolution neutral, or any other court appointee concerning the merits of a pending or impending judicial proceeding. A judge shall require compliance with this subsection by court personnel subject to the judge's direction and control.*

In a custody case, an insufficient attempt was made to contact mother's counsel prior to the Judge's improper *ex parte* communication with father's counsel and the *ad litem* concerning the merits of father's Motion to Abate. At the end of the *ex parte* meeting, the Judge signed an Abatement Order and set the matter for hearing. A few days later, while presiding over an unrelated hearing, the Judge informed mother's counsel about the entry of the Abatement Order. Because of the Judge's *ex parte* communication, the Judge was recused from the case. [Violation of Canon 3B(8) of the Texas Code of Judicial Conduct; *Private Admonition, CJC No. 01-0003-DI.*]

The Judge held a courtroom spectator in direct contempt for the unauthorized practice of law, and ordered the spectator to be jailed for 72 hours and to pay a fine of \$100.00. Instead of holding a hearing to determine whether the spectator had engaged in the unauthorized practice of law, the Judge drew his own conclusion based on what the Judge had observed, as well as on a conversation that was related to him by a third party. The Judge did not follow proper contempt procedures, thereby denying the alleged contemnor the right to be heard, and unlawfully depriving the alleged contemnor of his liberty by sentencing him to jail. [Violation of Canons 2A and 3B(8), Texas Code of Judicial Conduct; *Private Admonition, CJC No. 02-0077-MU.*]

**CANON 3C(4)**: *A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.*

The Judge awarded a disproportionate number of court appointments, resulting in the payment of an inordinate amount of fees, to one particular attorney during a time when that attorney was running for public office. The Commission concluded that the Judge failed to exercise his power of appointment impartially, and that he showed favoritism toward this attorney (a former prosecutor in the Judge's court) and that

**Canon 3C(4), continued:**

attorney's associates. The Judge also failed to follow the established county practice when he removed all new family law and juvenile cases from the jurisdiction of one of the courts, and used his position as local administrative judge to manipulate the system in order to afford certain litigants a more favorable forum for their cases. [Violation of Canons 2B and 3C(4), Texas Code of Judicial Conduct; *Public Warning of Don Emerson, District Court Judge.*]

**CANON 4A(1):** *A judge shall conduct all of the judge's extra-judicial activities so that they do not cast reasonable doubt on the judge's capacity to act impartially as a judge.*

For the full text of the Special Court of Review's public reprimand of a district judge for violations of Article 5, §1-a(6)A, Texas Constitution, and Canons 3B(4), 4A(1) and 4A(2), Texas Code of Judicial Conduct, please see §11, *Special Court of Review's Public Reprimand and Order for Instruction of Rick Davis, a District Judge.*

The Judge exceeded and misused his authority by pursuing various grievances and criminal charges against the District Attorney, several Texas Rangers and the Department of Public Safety (DPS), in relation to their involvement in the investigation and prosecution of a high-profile aggravated kidnapping case pending in the Judge's court. In the course of pursuing his complaints against these individuals, the Judge used the prestige of his office and official letterhead to initiate investigations against them, and, through the Judge's contacts with the media and the Legislature, to focus public attention on alleged problems within the District Attorney's office, the Texas Rangers and DPS. The Judge's actions cast public discredit upon the judiciary, cast reasonable doubt on his ability as a judge to act impartially and fairly, and interfered with the performance of his duties as judge. [Violation of Article 5, §1-a(6)A, Texas Constitution, and Canons 2B, 4A(1) and 4A(2), Texas Code of Judicial Conduct; *Public Warning of Jay Gibson, District Court Judge.*]

**CANON 4A(2):** *"A judge shall conduct all of the judge's extra-judicial activities so that they do not interfere with the proper performance of judicial duties."*

For the full text of the Special Court of Review's public reprimand of a district judge for violations of Article 5, §1-a(6)A, Texas Constitution, and Canons 3B(4), 4A(1) and 4A(2), Texas Code of Judicial Conduct, please see §11, *Special Court of Review's Public Reprimand and Order for Instruction of Rick Davis, a District Judge.*

The Judge exceeded and misused his authority by pursuing various grievances and criminal charges against the District Attorney, several Texas Rangers and the Department of Public Safety (DPS), in relation to their involvement in the investigation and prosecution of a high-profile aggravated kidnapping case pending in the Judge's



**Canon 4A(2), continued:**

court. In the course of pursuing his complaints against these individuals, the Judge used the prestige of his office and official letterhead to initiate investigations against them, and, through the Judge's contacts with the media and the Legislature, to focus public attention on alleged problems within the District Attorney's office, the Texas Rangers and DPS. The Judge's actions cast public discredit upon the judiciary, cast reasonable doubt on his ability as a judge to act impartially and fairly, and interfered with the performance of his duties as judge. [Violation of Article 5, §1-a(6)A, Texas Constitution, and Canons 2B, 4A(1) and 4A(2), Texas Code of Judicial Conduct; *Public Warning of Jay Gibson, District Court Judge.*]

**CANON 5(3) (renumbered to Canon 5(2) by the Texas Supreme Court in August, 2002):** *A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party. A judge or judicial candidate may attend political events and express his or her views on political matters in accord with this Canon and Canon 3B(10).*

In one matter, the Judge summoned several young women to appear before her to answer charges of disorderly conduct, when in fact no criminal complaint had been filed and no case was pending in her court. The Judge failed to advise the accused of their constitutional right to be represented by counsel and their right to a jury trial. Further, the Judge improperly acted as a mediator between the parties. In another matter, the Judge lent the prestige of her judicial office to advance the private interests of a friend by writing a "blind" letter of recommendation on official judicial letterhead. At the time, the Judge's friend was also a candidate for sheriff. The letter subsequently appeared in the local newspaper as a public endorsement by the Judge of her friend's candidacy. Further, the Commission found the Judge's testimony on the issue of the letter of recommendation to be less than candid. [Violation of Canons 2A, 2B and 5(3), Texas Code of Judicial Conduct; *Public Admonition of Mona D.L. Velasquez, Justice of the Peace.*]

**CANON 6C(2):** *A justice of the peace or a municipal court judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider ex parte or other communications concerning the merits of a pending judicial proceeding.*

The Judge improperly intervened on behalf of defendants to assist them in satisfying a monetary judgment that plaintiffs disputed as inadequate. The Judge, acting upon the request that defendants made outside the presence of plaintiffs, wrote plaintiffs

**Canon 6C(2), continued:**

on court letterhead, insisting, among other things, that plaintiffs accept defendants' personal check in the amount of the judgment. The Commission concluded that the Judge lent the prestige of the Judge's judicial office to advance the private interests of others, and conveyed the impression that defendants were in a special position to influence the Judge. The Commission further concluded that the Judge's private meeting with defendants amounted to an improper *ex parte* communication. [Violation of Canons 2B and 6C(2), Texas Code of Judicial Conduct; *Private Reprimand, CJC No. 01-0974-JP.*]

The Judge, in an attempt to help a family with whom the Judge was acquainted, became involved in a pending criminal case involving one family member as the defendant and another family member as the victim. The Judge discussed the merits of the case with the victim, and chose not to issue a *capias* against the defendant, based on the Judge's relationship with the family. As a result of the Judge's involvement in the case, the defendant received more favorable treatment than other defendants faced with similar charges. [Violation of Canons 2B and 6C(2), Texas Code of Judicial Conduct; *Private Admonition, CJC No. 01-0990-JP.*]

**Article 5, Section 1-a(6)A, Texas Constitution:** *Any Justice or Judge of the courts established by this Constitution or created by the Legislature as provided in Section 1, Article V, of this Constitution, may, subject to the other provisions hereof, be removed from office for willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice. Any person holding such office may be disciplined or censured, in lieu of removal from office, as provided by this section. . . .*

The Judge was charged with Public Lewdness, a Class A misdemeanor involving official misconduct under Section 33.001(d), Texas Government Code, which the Commission concluded was an act of moral turpitude. The Commission suspended the Judge from office with pay, pursuant to the authority contained in Article 5, §1-a(6)A, Texas Constitution, and Rule 15(a), Procedural Rules for the Removal or Retirement of Judges. *Order of Suspension of Donald Gene Douget, County Judge.*

The Judge was indicted for Driving While Intoxicated and for Intoxication Assault, relating to a wreck he was in that caused serious bodily injury to another person. The Commission suspended the Judge from office with pay, pursuant to the authority contained in Article 5, §1-a(6)A, Texas Constitution, and Rule 15(a), Procedural Rules for the Removal or Retirement of Judges. A few days after the Judge was suspended, he

**Art. 5, Sec. 1-a(6)A, Texas Constitution, continued:**

tendered to the city his resignation from the municipal bench. *Order of Suspension of Javier Rafael Rodriguez, Municipal Court Judge.*

The Judge was indicted in federal court on four counts of knowingly and intentionally possessing controlled substances with intent to distribute, in violation of Title 21, United States Code, Section 841 (a)(1), and Section 844(a). The Commission suspended the Judge from office with pay, pursuant to the authority contained in Article 5, §1-a(6)A, Texas Constitution, and Rule 15(a), Procedural Rules for the Removal or Retirement of Judges. *Order of Suspension of Sadie Floyd Clay, Justice of the Peace.*

The Judge was indicted on eight counts of intentionally and knowingly falsifying his timecards to reflect hours worked that he had not actually worked, intending by his action to defraud and harm another. The Commission suspended the Judge from office with pay, pursuant to the authority contained in Article 5, §1-a(6)A, Texas Constitution, and Rule 15(a), Procedural Rules for the Removal or Retirement of Judges. *Order of Suspension of Mark Thomas Fury, Justice of the Peace.*

The Commission received a number of sworn complaints regarding the conduct of the judge. Based on these sworn complaints, and after an informal appearance before the Commission at which the judge gave testimony, the Commission recommended to the Supreme Court of Texas that the judge be suspended from office without pay pending final disposition of the charges before the Commission, pursuant to the authority contained in Article 5, §1-a(6)A, Texas Constitution, and Rule 15(b), Procedural Rules for the Removal or Retirement of Judges. The Supreme Court ordered the Judge's suspension. *Order of Suspension of Thurman B. Bartie, Justice of the Peace (08/21/02)*

The Judge failed to obtain the mandatory judicial education hours during fiscal year 2001. Upon the Commission's recommendation, the Supreme Court of Texas suspended the judge from office without pay, pursuant to the authority contained in Article 5, §1-a(6)A, Texas Constitution, and Rule 15(b), Procedural Rules for the Removal or Retirement of Judges. *Order of Suspension of Elihu Dodier, Municipal Court Judge.*

The Judge failed to obtain the mandatory judicial education hours during fiscal year 2001. Upon the Commission's recommendation, the Supreme Court of Texas suspended the judge from office without pay, pursuant to the authority contained in Article 5, §1-a(6)A, Texas Constitution, and Rule 15(b), Procedural Rules for the Removal or Retirement of Judges. *Order of Suspension of Mary Hart, Municipal Court Judge.*

The Judge failed to obtain the mandatory judicial education hours during fiscal year 2001. Upon the Commission's recommendation, the Supreme Court of Texas suspended the judge from office without pay, pursuant to the authority contained in Article 5, §1-a(6)A, Texas Constitution, and Rule 15(b), Procedural Rules for the Removal or Retirement of Judges. *Order of Suspension of Lillian Fariss, Justice of the Peace.*

The Judge failed to obtain the mandatory judicial education hours during fiscal year 2001. Upon the Commission's recommendation, the Supreme Court of Texas

**Art. 5, Sec. 1-a(6)A, Texas Constitution, continued:**

suspended the judge from office without pay, pursuant to the authority contained in Article 5, §1-a(6)A, Texas Constitution, and Rule 15(b), Procedural Rules for the Removal or Retirement of Judges. *Order of Suspension of Diana Rodriguez, Justice of the Peace.*

For the full text of the Special Court of Review's public reprimand of a district judge for violations of Article 5, §1-a(6)A, Texas Constitution, and Canons 3B(4), 4A(1) and 4A(2), Texas Code of Judicial Conduct, please see §11, *Special Court of Review's Public Reprimand and Order for Instruction of Rick Davis, a District Judge.*

A foster father and his foster child appeared before the Judge to face charges that the child had used profanity at school. Without legal authority, the Judge ordered the foster father to paddle his foster child in the courtroom. Because the Judge had no legal authority to order such punishment, he failed to comply with the law. In addition, the Judge required a deputy constable to produce the paddle from the Judge's chambers, and the Judge and others in the courtroom watched as the foster father paddled the child. By these actions, the Judge failed to maintain courtroom order and decorum. [Violation of Article 5, §1-a(6)A, Texas Constitution, and Canons 2A and 3B(3), Texas Code of Judicial Conduct; *Public Reprimand of John Robert Kleimann, Justice of the Peace.*]

The Judge exceeded and misused his authority by pursuing various grievances and criminal charges against the District Attorney, several Texas Rangers and the Department of Public Safety (DPS), in relation to their involvement in the investigation and prosecution of a high-profile aggravated kidnapping case pending in the Judge's court. In the course of pursuing his complaints against these individuals, the Judge used the prestige of his office and official letterhead to initiate investigations against them, and, through the Judge's contacts with the media and the Legislature, to focus public attention on alleged problems within the District Attorney's office, the Texas Rangers and DPS. The Judge's actions cast public discredit upon the judiciary, cast reasonable doubt on his ability as a judge to act impartially and fairly, and interfered with the performance of his duties as judge. [Violation of Article 5, §1-a(6)A, Texas Constitution, and Canons 2B, 4A(1) and 4A(2), Texas Code of Judicial Conduct; *Public Warning of Jay Gibson, District Court Judge.*]

The Judge, while a patron at a local bar, initiated a physical confrontation with another customer, resulting in a criminal charge against the Judge for disorderly conduct, to which he pled no contest. The Judge had consumed between four and six beers in the hours preceding the incident, and he left the scene immediately after being told that the police had been called. The Judge's conduct at the bar and the resulting criminal charge received media coverage in the area. By these actions, the Judge willfully engaged in conduct that cast public discredit upon the judiciary. [Violation of Article 5, §1-a(6)A, Texas Constitution; *Public Admonition of James H. Keeshan, District Court.*]

The Judge was participating in a parade with a little league baseball team that he coached when an 11 year-old player from another team squirted him with water. According to several witnesses, the Judge chased the child, grabbed him, took his water pistol, placed him in a headlock, pulled his head back by the hair, and squirted the child

**Art. 5, Sec. 1-a(6)A, Texas Constitution, continued:**

in the face with the water gun. A short time later, the child was taken to a local hospital where he was treated for a slight abrasion on his neck, a small laceration on his tongue and a small bruise on his thumb. Although local law enforcement officials conducted an investigation, the matter was closed after the child's parents expressed a desire that it be ended. The Commission concluded that the Judge's physical confrontation, which generated local media attention and resulted in a criminal investigation into the Judge's conduct, cast public discredit on the judiciary. [Violation of Article 5, §1-a(6)A, Texas Constitution; *Public Admonition of Delwin McGee, County Court-At-Law Judge.*]

In one matter, a Texas Parks and Wildlife Department Game Warden had made repeated inquiries with the Judge's staff regarding the status of several alcohol-related citations the warden had issued. The Judge's staff made negative remarks about the warden to the Judge. During one of the warden's visits to the clerk's office, the Judge instructed the prosecutor to escort the warden into the courtroom to discuss the inquiries. In the courtroom, the Judge persisted in using the term "bird and turtle sheriff" when referring to the warden's work, even though the warden had informed the Judge that the term was insulting. A witness to the courtroom discussion stated that the Judge's temper "flared," and the witness confirmed the warden's impression that the warden was not free to leave the courtroom while the Judge was speaking to him. In a second matter, a funeral home director made several efforts to secure a signed death certificate from the Judge, and the Judge's staff became annoyed with the director's persistence. The Judge allowed his staff to improperly influence his conduct towards the funeral home director, which caused the Judge to unreasonably and purposefully delay the signing of the death certificate. The Judge's treatment of the funeral home director was found to be discourteous. [Violation of Article 5, §1-a(6)A, Texas Constitution, and Canons 2A, 2B and 3B(4), Texas Code of Judicial Conduct; *Public Admonition of George Boyett, Justice of the Peace.*]

The Commission found that the Judge engaged in willful or persistent conduct that cast public discredit upon the judiciary when he used initials instead of proper names in the style of his divorce petition, in an effort to prevent the public from learning of his pending divorce. The local rules in the Judge's county required the pleadings to identify parties by their full names, rather than initials. When the media learned of the subterfuge, the Judge's conduct received negative publicity. [Violation of Article V, Section 1-a(6)A, Texas Constitution, *Private Warning, CJC No. 01-0631-DI.*]

The Judge's court unreasonably delayed defendant's traffic case for eighteen (18) months after the Judge recused herself. A trial was finally held before another Judge. Thereafter, the defendant requested to see the court's file, but the original Judge improperly refused to honor the defendant's request, instructing him instead to seek it through the Public Information Act, a copy of which was posted in the judge's office. Even after the Judge was informed by various sources, including staff of the State Commission on Judicial Conduct, that the Public Information Act did not apply to the records of the judiciary, the Judge only partially complied with the defendant's request, permitting him to view certain documents contained in the court's file. The Judge further admitted that it was the court's policy to refer anyone seeking to see any files on his or

**Art. 5, Sec. 1-a(6)A, Texas Constitution, continued:**

her case to make the request under the Public Information Act. The Commission concluded that the Judge lacked competence in the laws governing public access to court files and judicial records, and that eighteen (18) months was an unreasonable delay constituting an unjustifiable failure to timely execute the business of the court. [Violation of Article 5, Section 1-a(6)A, Texas Constitution; Section 33.001(b), Texas Government Code; and Canon 3B(2), Texas Code of Judicial Conduct; *Private Admonition and Order of Additional Education, CJC No. 00-1155-JP.*]

**Procedural Rules for the Removal or Retirement of Judges, Rule 15(a), Suspension of a Judge:** Any judge may be suspended from office with or without pay by the Commission immediately upon being indicted by a state or federal grand jury for a felony offense or charged with a misdemeanor involving official misconduct. . . .

The Judge was charged with Public Lewdness, a Class A misdemeanor involving official misconduct under Section 33.001(d), Texas Government Code, which the Commission concluded was an act of moral turpitude. The Commission suspended the Judge from office with pay, pursuant to the authority contained in Article 5, §1-a(6)A, Texas Constitution, and Rule 15(a), Procedural Rules for the Removal or Retirement of Judges. *Order of Suspension of Donald Gene Douget, County Judge.*

The Judge was indicted for Driving While Intoxicated and for Intoxication Assault, relating to a wreck he was in that caused serious bodily injury to another person. The Commission suspended the Judge from office with pay, pursuant to the authority contained in Article 5, §1-a(6)A, Texas Constitution, and Rule 15(a), Procedural Rules for the Removal or Retirement of Judges. A few days after the Judge was suspended, he tendered to the city his resignation from the municipal bench. *Order of Suspension of Javier Rafael Rodriguez, Municipal Court Judge.*

The Judge was indicted in federal court on four counts of knowingly and intentionally possessing controlled substances with intent to distribute, in violation of Title 21, United States Code, Section 841 (a)(1), and Section 844(a). The Commission suspended the Judge from office with pay, pursuant to the authority contained in Article 5, §1-a(6)A, Texas Constitution, and Rule 15(a), Procedural Rules for the Removal or Retirement of Judges. *Order of Suspension of Sadie Floyd Clay, Justice of the Peace.*

The Judge was indicted on eight counts of intentionally and knowingly falsifying his timecards to reflect hours worked that he had not actually worked, intending by his action to defraud and harm another. The Commission suspended the Judge from office with pay, pursuant to the authority contained in Article 5, §1-a(6)A, Texas Constitution, and Rule 15(a), Procedural Rules for the Removal or Retirement of Judges. *Order of Suspension of Mark Thomas Fury, Justice of the Peace.*

**Procedural Rules for the Removal or Retirement of Judges, Rule 15(b), Suspension of a Judge:** Upon the filing with the Commission of a sworn complaint charging a person holding such office with willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or the administration of justice, the Commission, after giving the person notice and an opportunity to appear and be heard before the Commission (under Rule 6), may recommend to the Supreme Court the suspension of such person from office.

The Commission received a number of sworn complaints regarding the conduct of the judge. Based on these sworn complaints, and after an informal appearance before the Commission at which the judge gave testimony, the Commission recommended to the Supreme Court of Texas that the judge be suspended from office without pay pending final disposition of the charges before the Commission, pursuant to the authority contained in Article 5, §1-a(6)A, Texas Constitution, and Rule 15(b), Procedural Rules for the Removal or Retirement of Judges. The Supreme Court ordered the Judge's suspension. *Order of Suspension of Thurman B. Bartie, Justice of the Peace (08/21/02)*

The Judge failed to obtain the mandatory judicial education hours during fiscal year 2001. Upon the Commission's recommendation, the Supreme Court of Texas suspended the judge from office without pay, pursuant to the authority contained in Article 5, §1-a(6)A, Texas Constitution, and Rule 15(b), Procedural Rules for the Removal or Retirement of Judges. *Order of Suspension of Elihu Dodier, Municipal Court Judge.*

The Judge failed to obtain the mandatory judicial education hours during fiscal year 2001. Upon the Commission's recommendation, the Supreme Court of Texas suspended the judge from office without pay, pursuant to the authority contained in Article 5, §1-a(6)A, Texas Constitution, and Rule 15(b), Procedural Rules for the Removal or Retirement of Judges. *Order of Suspension of Mary Hart, Municipal Court Judge.*

The Judge failed to obtain the mandatory judicial education hours during fiscal year 2001. Upon the Commission's recommendation, the Supreme Court of Texas suspended the judge from office without pay, pursuant to the authority contained in Article 5, §1-a(6)A, Texas Constitution, and Rule 15(b), Procedural Rules for the Removal or Retirement of Judges. *Order of Suspension of Lillian Fariss, Justice of the Peace.*

**Procedural Rule 15(b), continued:**

The Judge failed to obtain the mandatory judicial education hours during fiscal year 2001. Upon the Commission's recommendation, the Supreme Court of Texas suspended the judge from office without pay, pursuant to the authority contained in Article 5, §1-a(6)A, Texas Constitution, and Rule 15(b), Procedural Rules for the Removal or Retirement of Judges. *Order of Suspension of Diana Rodriguez, Justice of the Peace.*

**SECTION 33.001(b), TEXAS GOVERNMENT CODE:** *For purposes of Section 1-a, Article V, Texas Constitution, "wilful or persistent conduct that is clearly inconsistent with the proper performance of a judge's duties" includes: (1) wilful, persistent, and unjustifiable failure to timely execute the business of the court, considering the quantity and complexity of the business; (2) wilful violation of a provision of the Texas penal statutes or the Code of Judicial Conduct; (3) persistent or wilful violation of the rules promulgated by the supreme court; (4) incompetence in the performance of the duties of the office; (5) failure to cooperate with the commission; or (6) violation of any provision of a voluntary agreement to resign from judicial office in lieu of disciplinary action by the commission.*

The Judge's court unreasonably delayed defendant's traffic case for eighteen (18) months after the Judge recused herself. A trial was finally held before another Judge. Thereafter, the defendant requested to see the court's file, but the original Judge improperly refused to honor the defendant's request, instructing him instead to seek it through the Public Information Act, a copy of which was posted in the judge's office. Even after the Judge was informed by various sources, including staff of the State Commission on Judicial Conduct, that the Public Information Act did not apply to the records of the judiciary, the Judge only partially complied with the defendant's request, permitting him to view certain documents contained in the court's file. The Judge further admitted that it was the court's policy to refer anyone seeking to see any files on his or her case to make the request under the Public Information Act. The Commission concluded that the Judge lacked competence in the laws governing public access to court files and judicial records, and that eighteen (18) months was an unreasonable delay constituting an unjustifiable failure to timely execute the business of the court. [Violation of Article 5, Section 1-a(6)A, Texas Constitution; Section 33.001(b), Texas Government Code; and Canon 3B(2), Texas Code of Judicial Conduct; *Private Admonition and Order of Additional Education, CJC No. 00-1155-JP.*]



**SECTION 33.001(d), TEXAS GOVERNMENT CODE:** *For purposes of Subdivision (6), Section 1-a, Article V, Texas Constitution, a misdemeanor involving official misconduct includes a misdemeanor involving an act relating to a judicial office or misdemeanor involving an act involving moral turpitude.*

The Judge was charged with Public Lewdness, a Class A misdemeanor involving official misconduct and an act of moral turpitude. The Commission suspended the Judge from office with pay, pursuant to the authority contained in Article 5, §1-a(6)A, Texas Constitution, and Rule 15(a), Procedural Rules for the Removal or Retirement of Judges. *Order of Suspension of Donald Gene Douget, County Judge.*

# §10. SUMMARY OF VOLUNTARY RESIGNATIONS IN LIEU OF DISCIPLINARY ACTION

Two complaints were filed against the Judge, and the Commission instituted formal proceedings against him, pursuant to its authority under Article 5, Section 1-a(8) of the Texas Constitution. In order to resolve the matter without further time and expense, the Judge voluntarily resigned his office in lieu of disciplinary action by the Commission. The Judge is disqualified from sitting or serving as a judge in the State of Texas; standing for election or appointment of judicial office in the State of Texas; or performing or exercising any judicial duties or functions of a judicial office, including the performance of weddings. *Voluntary Agreement to Resign from Judicial Office in Lieu of Disciplinary Action of Judge David Gibson, County Court at Law Judge.*

The Commission instituted formal proceedings against the Judge. Three months later, the Judge voluntarily resigned his judicial office in lieu of disciplinary proceedings by the Commission. The Judge is disqualified from sitting or serving as a judge in the State of Texas; standing for election or appointment of judicial office in the State of Texas; or performing or exercising any judicial duties or functions of a judicial office in the State of Texas. *Voluntary Agreement to Resign from Judicial Office in Lieu of Disciplinary Action of Judge David B. Read, County Court at Law Judge.*

A complaint was filed against the Judge informing the Commission that the Judge had pleaded “guilty/nolo contendere” in a criminal case in Henderson County, Texas. In order to resolve the matter without further time and expense, the Judge voluntarily resigned her judicial office in lieu of disciplinary action by the Commission. The Judge is disqualified from sitting or serving as a judge in the State of Texas; standing for election or appointment of judicial office in the State of Texas; or performing or exercising any judicial duties or functions of a judicial office in the State of Texas. *Voluntary Agreement to Resign from Judicial Office in Lieu of Disciplinary Action of Judge Jan McCully, Former Municipal Court Judge.*

Two complaints were filed against the Judge, and the Commission instituted formal proceedings against him, pursuant to its authority under Article 5, Section 1-a(8) of the Texas Constitution. The Examiner’s Notice of Formal Proceedings was served on the Judge, but he filed no answer even though he disputed all the pending charges against him. In order to resolve

the matter without further time and expense, the Judge voluntarily resigned his office in lieu of further disciplinary action by the Commission. The Judge is disqualified from sitting or serving as a judge in the State of Texas; standing for election or appointment of judicial office in the State of Texas; or performing or exercising any judicial duties or functions of a judicial office, including the performance of weddings. *Voluntary Agreement to Resign from Judicial Office in Lieu of Disciplinary Action of Judge David A. Christian, Justice of the Peace.*

The Judge, after two complaints had been filed with the Commission, voluntarily resigned his judicial office in lieu of disciplinary action by the Commission. *Voluntary Agreement to Resign from Judicial Office in Lieu of Disciplinary Action of Judge Howard J. Lilley, Justice of the Peace.*

Two complaints were filed against the Judge, and the Commission instituted formal proceedings against him, pursuant to its authority under Article 5, Section 1-a(8) of the Texas Constitution. The Examiner's Notice of Formal Proceedings was served on the Judge, who then retired as Justice of the Peace. In order to resolve the matter without further time and expense, the Judge voluntarily resigned his office in lieu of further disciplinary action by the Commission. The Judge is disqualified from sitting or serving as a judge in the State of Texas; standing for election or appointment of judicial office in the State of Texas; or performing or exercising any judicial duties or functions of a judicial office, including the performance of weddings. *Voluntary Agreement to Resign from Judicial Office in Lieu of Disciplinary Action of Judge H.N. McElroy, Retired Justice of the Peace.*

The Commission received two sworn complaints regarding the Judge's failure to complete his required judicial education hours for fiscal year 2001, and the judge's inability to perform judicial duties because of a permanent disability. The Supreme Court of Texas suspended the judge from office without pay pursuant to the authority contained in Article 5, §1-a(6)A of the Texas Constitution, and Rule 15(b) of the Procedural Rules for the Removal or Retirement of Judges. One month later, the Judge voluntarily resigned his judicial office in lieu of disciplinary proceedings by the Commission. *Voluntary Agreement to Resign from Judicial Office in Lieu of Disciplinary Action of Judge Michael Jackson Myers, Justice of the Peace.*

The Judge, after a complaint had been filed with the Commission, voluntarily resigned his judicial office in lieu of disciplinary action by the Commission. *Voluntary Agreement to Resign from Judicial Office in Lieu of Disciplinary Action of Judge Tilman W. Pyle, Former Justice of the Peace.*

# §11. PUBLIC REPRIMAND AND ORDER OF INSTRUCTION BY SPECIAL COURT OF REVIEW

On July 2, 2002, a Special Court of Review issued its opinion in *In Re Honorable Rick Davis*, 272nd District Court, Brazos County, Texas, 82 SW 3d 140 (Special Court of Review -- 2002). The Special Court of Review affirmed the Commission's Order of Public Reprimand of Judge Davis for violations of Article 5, §1-a(6)A, Texas Constitution, and Canons 3B(4), 4A(1) and 4A(2), Texas Code of Judicial Conduct. The Special Court of Review further ordered the Judge to complete additional education. The following is the full text of that opinion.

# § 12. PUBLIC STATEMENT



## STATE COMMISSION ON JUDICIAL CONDUCT

### PUBLIC STATEMENT

No. PS-2003-1

As a result of the media attention surrounding the recent decision by the State Commission on Judicial Conduct to dismiss without prejudice a series of high-profile complaints against a Bexar County criminal court at law judge, the Commission believes that the interests of the judiciary and the public would be best served by issuing this public statement addressing the actions of the respondent judge and clarifying the role certain Commission members may have had in that recent decision.

The decision made by the Commission, after considering all of the facts and evidence before it, was that there was not enough credible evidence to support a sanction in this case. Lack of proof does not equate to exoneration or a finding of no misconduct. Statements that the allegations against the judge were “baseless,” or that judge has been “cleared” of misconduct or “exonerated” of wrongdoing are false and misleading to the public. As would be the case with any complaint dismissed by the Commission for insufficient evidence, this matter may be reopened at any time and the decision revisited if and when additional evidence were to be presented to the Commission.

The judicial disciplinary system is not a political forum. The decision of the Commission in this case was issued in a confidential manner to participants as is provided by the rules governing these proceedings.

Finally, the Commission must address the statements made by the media regarding certain Commission members from Bexar County. Commission members Jim Hall, Monica Gonzalez and Keith Baker, all of San Antonio, did not participate in any way in the proceedings involving the respondent judge. Each of these members was either recused on a voluntarily basis or was specifically asked not to participate by the respondent judge. Therefore, the media’s implication that the presence of these three individuals on the Commission made a difference in the outcome of this case is completely unfounded and impugns the integrity of these dedicated Commission members. Every case considered by the Commission, by necessity, must be decided on the merits of its own particular set of facts and evidence.

The Commission issues this public statement pursuant to the authority granted to it by Article 5, Section 1-a(10) of the Texas Constitution, which provides that such action may be taken when sources other than the Commission cause notoriety concerning a judge or the Commission itself and the

Commission determines that the best interests of a judge or of the public will be served by issuing the statement.

This public statement is intended to help preserve the integrity of all judges in the State of Texas, to promote public confidence in the judiciary, and to encourage judges to maintain high standards of professional conduct.

Signed this 22nd day of October, 2002.

**ORIGINAL SIGNED BY**

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Kathleen H. Olivares, Chair  
State Commission on Judicial Conduct