

STATE COMMISSION ON JUDICIAL CONDUCT



2003 Annual Report

The Hill County Courthouse*



Standing gracious, beautiful and unquestionably the tallest building in the county, the Hill County Courthouse dominates the landscape and inspires awe at close range with its ornate architectural details. Designed by famed architect W. C. Dodson, this beautiful structure, which is a conglomerate of Second Empire, Classical Revival and Italianate features, was erected in 1890, at a cost of \$83,000. A writer for *The Saturday Evening Post* labeled it a “monstrosity.” A writer at *Harper’s* described it as “an outstanding cathedral.” Hill Countians are just simply very proud of it.

The Courthouse burned down on January 1, 1993; the fire was allegedly caused by an electrical short. It was rebuilt and completely restored in 1999 at a cost of \$9 million. Approximately 2,500 people contributed to its restoration. Willie Nelson, originally from the town of Abbott in Hill County, played at a fundraiser and at the Hill County Courthouse dedication; \$250,000. was raised by Mr. Nelson’s efforts.

Most visitors’ favorite areas in the restored courthouse are the basement in which the limestone walls are the main décor and the 66th Judicial District Courtroom on the second floor. The second floor also boasts an outdoor balcony facing east from which such notables as William Jennings Bryan, Lyndon B. Johnson, before he became President of the United States, and Sam Rayburn, longtime Speaker of the Texas House of Representatives, made political speeches. Hill County has a rich political history with such significant persons as Lieutenant Governor Bob Bullock and Chief Justice Bob Calvert, to name but a few.

* The Commission extends its appreciation to Hill County Judge Kenneth Davis, who provided the courthouse story contained on this page, and photographer Brett Cameron who gave us permission to use the cover photo of the Hill County Courthouse. We are also grateful to the Texas Department of Transportation for permitting us to use the photo of the Hill County Courthouse (circa 1939) contained on this page.

**STATE COMMISSION
ON
JUDICIAL CONDUCT**

2003 ANNUAL REPORT

COMMISSION MEMBERS

Kathleen H. Olivares, Chair

Joseph B. Morris, Vice-Chair

Elizabeth G. (Dee) Coats, Secretary

Martin J. Chiuminatto, Jr.

Gilbert M. Martinez

Keith Baker

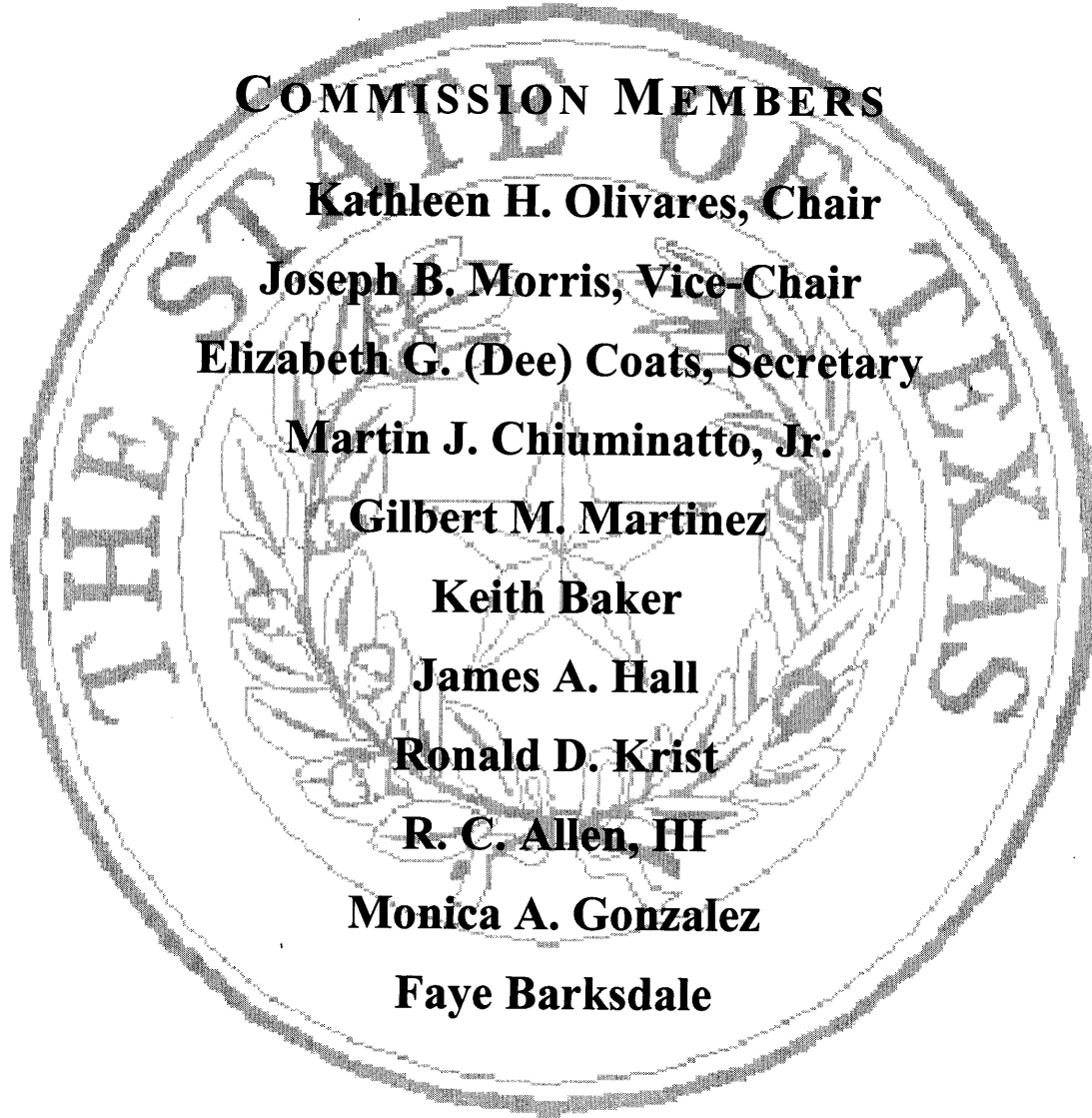
James A. Hall

Ronald D. Krist

R. C. Allen, III

Monica A. Gonzalez

Faye Barksdale



P. O. Box 12265 ★ Austin, Texas ★ 78711
Telephone (512) 463-5533 ★ Fax (512) 463-0511
Toll Free (877) 228-5750 ★ TDD (800) RELAY-TX
Website: www.scjc.state.tx.us

STATE COMMISSION ON JUDICIAL CONDUCT

COMMISSION STAFF

(Effective November 17, 2003)

Seana Willing, Executive Director

Bob Warneke, General Counsel

Tom Broussard, Senior Commission Counsel

Jacqueline Habersham, Senior Commission Counsel

Judy M. Spalding, Commission Counsel

Bill Torrey, Commission Counsel

Ron Bennett, Chief Investigator

Victor Hidalgo, Investigator

Katherine Mitchell, Investigator

Elaine Thompson, *Amicus* Program Manager/Legal Assistant

JoAnn Scott, Office Manager

Bridget Waldrep, Budget Analyst

Linda Stewart, Accountant

Terri Counts, Purchaser

Connie Paredes, Administrative Assistant

Valarie Ximenez, Administrative Assistant

LETTER FROM THE EXECUTIVE DIRECTOR

November 17, 2003

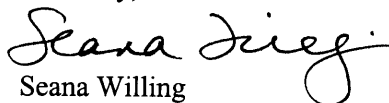
The Honorable Rick Perry, Governor
The Honorable David Dewhurst, Lieutenant Governor
The Honorable Tom Craddick, Speaker of the House

Greetings from the State Commission on Judicial Conduct. The Commission's 2003 Annual Report outlines the agency's work during the past fiscal year. Although this has been a year of significant change and challenges at the Commission, I am pleased to report that the agency has exceeded its performance goals for the fiscal year with a 132% overall disposition rate, and with the average age of disposed cases dropping to 5.4 months. During a year that saw 5 formal proceedings and 1 appeal go to trial, and oral arguments heard by Review Tribunals in 2 formal proceedings, the Commission met 6 times, considered 71 cases at informal hearings, and issued 59 disciplinary actions, ranging from 3 Public Censures, 17 public sanctions, 13 private sanctions, and 4 orders of additional education. Additionally, 19 cases were resolved when judges under investigation signed Voluntary Agreements to Resign in Lieu of Disciplinary Action. The Commission also made 2 suspension recommendations to the Texas Supreme Court, and voted 1 case into formal proceedings during fiscal year 2003. This drastic improvement in the Commission's performance measures over previous years can be directly attributed to the steps taken by the agency in fiscal year 2003 to further comply with the recommendations made by the Sunset Advisory Commission during the 2001 legislative session, particularly in terms of implementing more streamlined and efficient processes for handling and presenting cases to the Commission.

Assisting Commission staff in prosecuting the cases in formal proceedings and on appeal have been some remarkable attorneys and their staffs who acted as Special Counsel for the Commission on a *pro bono* basis. Although the true value of the work these attorneys have done for the Commission and the State of Texas cannot be readily measured, we have included in this report as a small token of our appreciation and esteem a copy of *House Resolution No. 191*, which was presented during the 78th Legislative Session (3rd) by Representative Pete Gallego [D - Alpine] honoring these fine individuals for their outstanding public service to the state.

On a final note, the staff of the Commission extends its best wishes to Margaret J. Reaves, former Executive Director, on her retirement from state service, and bids a fond farewell to the following outgoing Commission members: Judge Martin Chiuminatto, Judge Keith Baker, Gilbert M. Martinez, and Elizabeth "Dee" Coats. They have served the Commission and the people of the State of Texas well and will be greatly missed.

Sincerely,



Seana Willing
Executive Director
State Commission on Judicial Conduct

CHAIR'S STATEMENT

As Chair of the State Commission on Judicial Conduct, I found this last year both challenging and rewarding. The Commission had to deal with the uncertainty of legislative funding and the potential of having to reduce an already limited resource, the Commission's loyal staff. With the assistance of the legislature, the Supreme Court and the Court of Criminal Appeals, the Commission can now look forward and continue its commitment to thoroughly investigate and expeditiously process every complaint.

The Commission has made every effort to meet the concerns of the Sunset Advisory Commission (Sunset) that conducted its review of the agency during fiscal years 2000 and 2001. The judges and the public have become more aware of the Commission's activities through public proceedings, published sanctions, the Commission's hotline and website, its annual reports, implementation of the Amicus Curiae Program and through staff attorney presentations at various judicial training schools and judicial conferences.

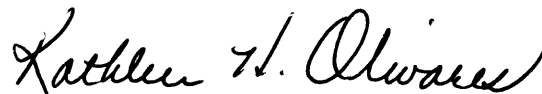
As I review the statistics contained in this annual report, I am always mindful that each number represents a judge's career. I am also mindful of the commitment each commissioner makes to uphold the integrity of the judiciary and when need be, to make the "tough calls." I have been fortunate to serve for the last three years with fellow commissioners that understand this tremendous responsibility. I am convinced that it is important to have public members, attorneys and judges involved in the grievance process. Each member enriches the process and contributes to the highly intense proceedings with their knowledge and life experiences.

I would like to take this opportunity to recognize the dedication of the Commission staff. The six staff attorneys and ten support staff of legal assistants, investigators, and administrative assistants are committed to handling each case with the utmost professionalism and confidentiality. I know they view their work as more than just a job, but rather, as a service to the judiciary and the citizens of the state of Texas.

During this last year, the Commission had members of the Texas Bar who donated their time and expertise as Special Counsel during four formal proceedings and an appeal of a Commission sanction. I would like to thank Mark Greenwald, Robert E. Valdez, Frank Rivas, and Ed Guzman of San Antonio, Eric J. Davis of Houston, David Horton and Kirk Mills of South Padre Island, and Mike McKetta and Jennifer Johnson of Austin for their continued service to the Commission.

Finally, I would like to acknowledge the Special Masters and Justices of the Special Courts of Review, appointed by the Supreme Court, to preside over highly publicized Commission cases. These jurists helped maintain and preserve the integrity of the Texas Judiciary and the standards of the Code of Judicial Conduct.

I am honored and humbled to be a part of the State Commission on Judicial Conduct and to have served as its Chair.


Judge Kathleen H. Olivares



The State of Texas House of Representatives

H.R. No. 191

RESOLUTION

WHEREAS, Texans have a long and honored tradition of serving the state and each other, and certain notable Texas attorneys in private practice have continued that tradition by serving as special counsel to the State Commission on Judicial Conduct; and

WHEREAS, Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern the people of Texas; further, the role of the judiciary is central to our concept of justice and the rule of law; and

WHEREAS, In addition to representing their clients, lawyers are officers of the legal system and public citizens with special responsibility for upholding the quality of justice; lawyers, as guardians of the law, play a vital role in the preservation of society, and, as public citizens, lawyers seek to improve the law and the administration of justice; and

WHEREAS, The State Commission on Judicial Conduct is constitutionally mandated to ensure that everyone appearing before the judges in this state can be confident that these decision-makers themselves comply with state and federal laws, as well as with the Texas Code of Judicial Conduct; to that end, the State Commission on Judicial Conduct is authorized to investigate allegations of judicial misconduct, issue appropriate sanctions in connection with its findings that a judicial officer has engaged in misconduct, and, if warranted, institute formal proceedings seeking the public censure, removal, or retirement of judges who willfully or persistently violate the laws and rules of this state; and

WHEREAS, Since 2001, the following attorneys have made significant contributions to the State Commission on Judicial Conduct, the judiciary, and the people of Texas by serving as special counsel in connection with disciplinary proceedings before the State Commission on Judicial Conduct: Rusty Hardin, Anthony Drumheller, and Eric J. Davis of Houston; Edgar M. Duncan, Mark Greenwald, Robert E. Valdez, Frank R. Rivas, and Eduardo Guzman of San Antonio; Kirk Mills and David Horton of South Padre Island; and John J. "Mike" McKetta and Jennifer P. Johnson of Austin; further, these attorneys were assisted behind the scenes by talented support staff employed by their firms, making their extraordinary contributions to the state possible; now, therefore, be it

RESOLVED, That the House of Representatives of the 78th Texas Legislature, 3rd Called Session, hereby publicly thank these attorneys and their staffs for their dedication and commitment to preserving the integrity of the judiciary and for their exemplary performance in protecting the public by providing thousands of hours of pro bono legal assistance to the State Commission on Judicial Conduct; and, be it further

RESOLVED, That an official copy of this resolution be prepared for these attorneys as an expression of high regard by the Texas House of Representatives.

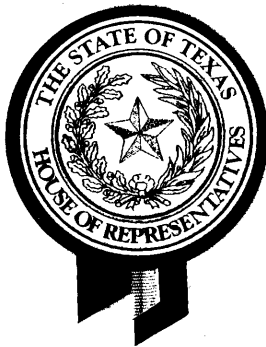
Gallego

H.R. No. 191



Speaker of the House

I certify that H.R. No. 191 was adopted by the House on October 10, 2003, by a non-record vote.



Chief Clerk of the House

COMMISSIONER INFORMATION

(Effective November 17, 2003)

OFFICERS

CHAIR

Hon. Kathleen H. Olivares

Judge, 205th District Court

El Paso

Appointed by Texas Supreme Court

Term Expires: 11/19/2005

VICE-CHAIR

Hon. Joseph B. Morris

Justice, 5th Court of Appeals

Dallas

Appointed by Texas Supreme Court

Term Expires: 11/19/2007

SECRETARY

Ms. Elizabeth (Dee) Coats

Houston

Appointed by Governor

Term Expires: 11/19/2003

MEMBERS

Hon. Martin J. Chiuminatto, Jr.

Judge, County Court-at-Law

Kingsville

Appointed by Texas Supreme Court

Term Expires: 11/19/2003

Mr. Ronald D. Krist

Attorney

Houston

Appointed by State Bar of Texas

Term Expires: 11/19/2007

Mr. Gilbert M. Martinez

Austin

Appointed by Governor

Term Expires: 11/19/2003

Hon. Monica A. Gonzalez

Municipal Court Judge

San Antonio

Appointed by Texas Supreme Court

Term Expires: 11/19/2003

Hon. Keith Baker

Justice of the Peace, Pct. 3, Pl. 1

San Antonio

Appointed by Texas Supreme Court

Term Expires: 11/19/2003

Mr. R. C. Allen, III

Corpus Christi

Appointed by Governor

Term Expires: 11/19/2005

Mr. James A. Hall

Attorney

San Antonio

Appointed by State Bar of Texas

Term Expires: 11/19/2005

Ms. Faye Barksdale

Arlington

Appointed by Governor

Term Expires: 11/19/2007

PHILOSOPHY

The members of the State Commission on Judicial Conduct and Commission staff take their duties to the citizens and judges of Texas very seriously. Neither the political affiliation, gender, ethnic or religious background, sexual orientation, socioeconomic status, geographical location, nor the position of a complainant or a judge are considered in the review of cases pending before the Commission. The Commission's ability to fulfill its constitutional mandate requires that each Commissioner and staff member act with honesty, fairness, professionalism and diligence.

The Commission reviews every allegation of misconduct made against a Texas judge. Each complaint alleging misconduct on its face is thoroughly investigated and analyzed by Commission staff before being presented to the Commissioners. This procedure is an essential safeguard to preserve the public's confidence in the integrity of the judicial process. Judges are held to the highest standards of ethical conduct, both on and off the bench, and the Commission and its employees strive to conduct themselves in a similar manner.

OVERVIEW OF THE COMMISSION

Authority of the Commission

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

The Commission's jurisdiction includes all sitting Texas judges, including municipal judges, justices of the peace, criminal magistrates, county judges, county courts-at-law judges, statutory probate judges, district judges, appellate judges, masters, associate judges, referees, retired and former judges who consent to sit by assignment, and judges pro tempore. 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. Although judicial candidates are required to comply with the Texas Code of Judicial Conduct, the Commission does not have the authority to sanction anyone who was not a sitting judge at the time an offense occurred. Therefore, violations of the canons by candidates for judicial office who were not judges at the time are subject to review and appropriate action by other authorities such as the State Bar, the Attorney General, the Secretary of State, or the local District Attorney.

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 meet approximately six times each year, and receive no pay for their service.

Laws Governing the Commission

The Commission is governed by Article V, Section 1-a, of the Texas Constitution, Chapter 33 of the Texas Government Code, and the Procedural Rules for the Removal or

Retirement of Judges. 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 V, 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.”

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 refusal by a judge to recuse or disqualify him or herself 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, a review of court records, or interviews with the complainant, attorneys and other witnesses. The Commission then considers the results of the investigation in its 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.

Commission Organization and Staff

The Commission has seventeen authorized staff positions (FTEs). As of August 31, 2003, Commission staff included the interim Executive Director, five attorneys, two legal assistants, three investigators, and five administrative support people. 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, performing legal research, and assisting the attorneys in the prosecution of disciplinary proceedings. The attorneys are responsible for responding to ethics calls, speaking on judicial ethics at educational/training seminars, investigating allegations of judicial misconduct or incapacity, and prosecuting disciplinary cases before the Commission, the Texas Supreme Court and its appointees.

The Commission staff attorneys serve as examiners, or trial counsel, during formal proceedings and on appeals from Commission actions. 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 appointees of the Texas Supreme Court. In certain cases, the Commission may employ special counsel, chosen from distinguished members of the bar, to assist staff in preparing and presenting these 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, legislators, 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.

Outreach and Education

In 2003, the Executive Director and Commission attorneys made close to twenty (20) presentations at judicial training courses, bar conferences and court staff workshops, describing the Commission and discussing various forms of judicial misconduct.

Ethics Calls

In 2003, the Executive Director, staff attorneys and investigators answered more than 900 telephone calls from judges, judicial candidates, attorneys, and private citizens regarding judicial ethics inquiries. Callers are cautioned that Commission staff cannot issue an opinion on behalf of the Commission, and that the Commission is not bound by any comments made during the conversation. In many cases, the caller's question is researched before the call is returned so that the specific canon, statute, rule or ethics opinion can be identified. When appropriate, staff will send the caller a Complaint Form (in English or Spanish) and other relevant material. In some instances, staff may refer callers to other resources or agencies to better address their concerns.

Commission Website

In August 2002, the Commission's website, 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 V, Section 1-a; Chapter 33, Texas Government Code; and the Procedural Rules for the Removal or Retirement of Judges.

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. Commission records are not subject to public disclosure pursuant to the Public Information Act (formerly the Open Records Act) or the Freedom of Information Act.

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

- Constitution: Article V, 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 withheld as 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*. Commission records relating to complaints, investigations, and its proceedings are not judicial records and are not subject to public disclosure pursuant to Rule 12.

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.

THE COMPLAINT PROCESS

Introduction

Each complaint stating an allegation of judicial misconduct is thoroughly reviewed, investigated and analyzed by the Commission staff. Complaints must be filed with the Commission in writing. Complaints 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;
- Telephone requests to the Commission at (512) 463-5533.

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. Staff 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 may 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 records related to the proceedings.

Commission Decisions

Commission members review, deliberate and vote on each complaint. This may result in a dismissal, a public or private order of additional education either alone or in combination with a public or private sanction, a 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 proceedings 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. If the judge appeals a decision of the Commission, the Texas Supreme Court appoints three appellate judges to a Special Court of Review. That Court's final decision-making authority includes dismissal, affirmation of the Commission decision, imposition of a greater or lesser sanction, or the initiation of formal proceedings. The decision of the Special Court of Review is final and may not be appealed.

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 writing or claim fails to state an allegation 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 has demonstrated a deficiency in a particular area of the law warranting 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 an order of education alone or 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 disciplinary action available to the Commission is a *public censure*, issued only after a case has been voted into formal proceedings by the Commission. If, after a public fact-finding trial, the Commission determines that the underlying allegations of the complaint are true but do not support a recommendation for removal from office, a *censure* is issued as a public denunciation of the judge's conduct.

The next most severe sanction is a *public reprimand*. A *reprimand* is the most severe sanction available to the Commission (unless formal proceedings are voted as described herein). A less severe sanction is a *public warning*, followed by a *public admonition*. 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 public or private, and may be combined with orders of education.

A judge may appeal any sanction other than a *public censure* to a Special Court of Review.

If a *public sanction* or *censure* is issued, 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 and all information considered by the Commission are kept confidential.

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.

In cases other than for alleged criminal behavior, the Commission, upon the filing of a sworn complaint and 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.

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 Proceedings

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 or it may ask the Supreme Court of Texas to appoint a Special Master (who must be a sitting or retired district or appellate judge) to hear the matter. Such proceedings are governed by the Texas Rules of Civil Procedure and the Texas Rules of Evidence to the extent practicable.

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, 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 before a Special Master, he or she reports the findings of fact to the Commission. If either party files objections to the Master’s Report, the Commission will hold a public hearing to consider the report of the Special Master and any objections. 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 Review Tribunal may also enter an order prohibiting the judge from ever holding a judicial office again.

The judge may appeal the decision of the Review Tribunal to the Texas Supreme Court.

Appellate Review of Commission Action

The judge may appeal the Commission’s issuance of a public or private sanction or order of additional education within thirty (30) days of the date the Commission issues the sanction 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.

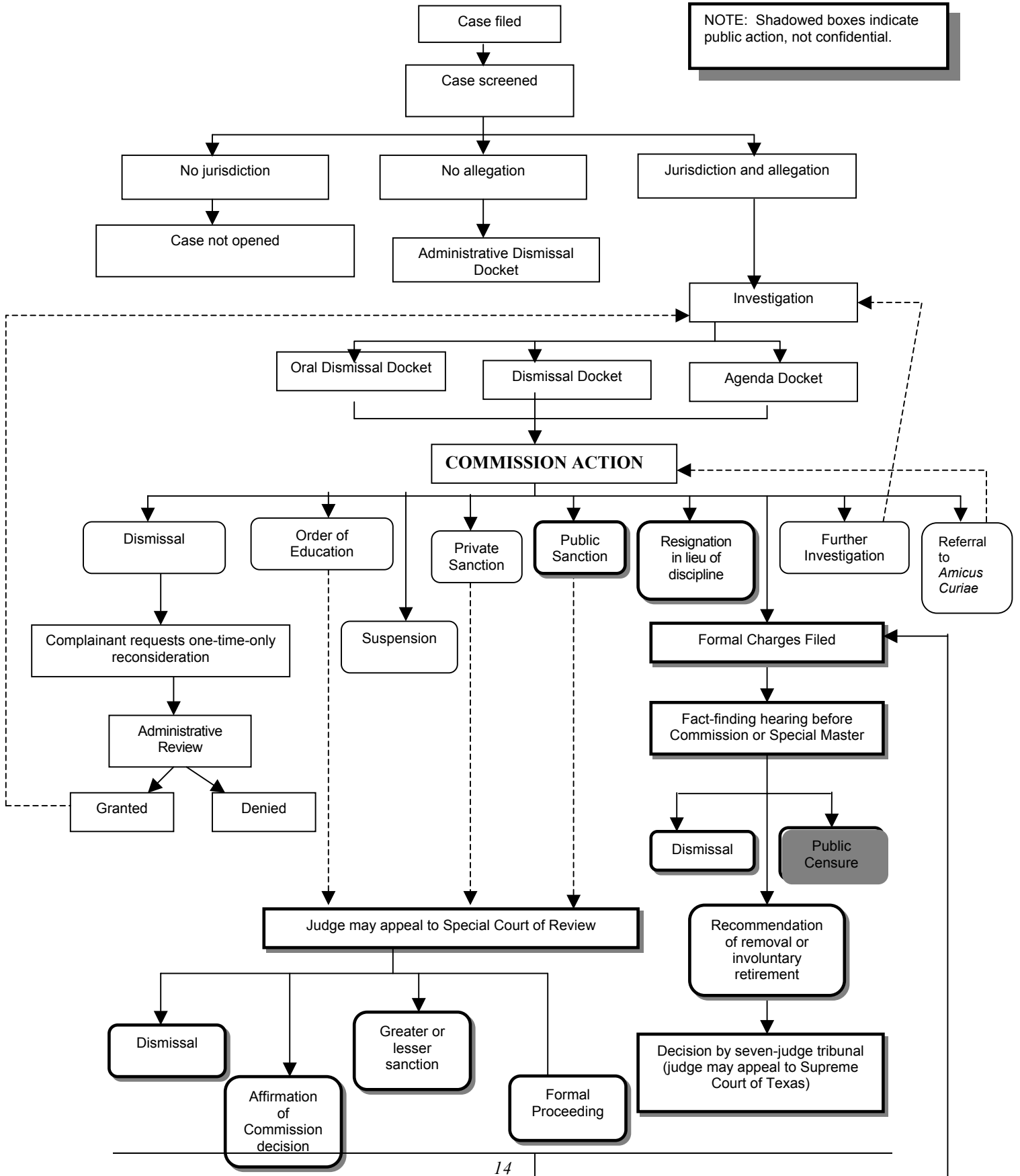
Within fifteen (15) days after the Special Court of Review is appointed, the Commission must furnish the subject judge and each justice on the Special Court of Review with a “charging document,” which includes a copy of the sanction issued, as well as any

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 trial. 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.

COMPLAINT PROCESS



AMICUS CURIAE

PROGRAM

The *Amicus Curiae* program (“*Amicus*” herein), launched in 2001, identifies and assists members of the judiciary who have impairments and provides a confidential resource for those judges to obtain help. The program operates within the disciplinary authority of the Commission.

Amicus Curiae, the Latin phrase for “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.

Although there were no new referrals to *Amicus* in fiscal year 2003, two judges continued with their participation in the program during a portion of the year.

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

- 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;
- Judge Bonnie Crane Hellums, Houston, is Judge of the 247th District Court in Houston, and was recently appointed to the Board in August 2003. Judge Hellums hears family law cases and has initiated one of Houston’s first Drug Courts to deal with some of the impairment issues she routinely sees in her court; 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.

A judge whose conduct has been brought to the attention of the Commission through the filing of a complaint may be offered the opportunity to participate in *Amicus*

once the Commission makes a determination that the judge might benefit from such participation. In the event that the Commission should make such a referral, the judge's participation in *Amicus* remains contingent on the judge's voluntary submission to the program and the judge's acceptance into the program by the *Amicus* Board following an appropriate evaluation. At the discretion of the Commission, discipline of the judge may be temporarily diverted while the judge is an *Amicus* participant. A judge's progress while in the program is regularly reported to the Commission. Any judge may independently contact the *Amicus* Program Manager directly and request confidential assistance outside the Commission's disciplinary process.

The Commission's major consideration in determining whether a judge should be referred to *Amicus* for evaluation is whether or not the public can be assured that all judges maintain the high standards of conduct required of them by the Code of Judicial Conduct and Texas Constitution.

Statistical Analysis

An outline of the statistical activity for the Commission through the end of fiscal year 2003 is shown in **Table 1** immediately following this section. Graphic representations of the data are also presented in **Figures 1** through **7** and **Table 2** to further illustrate the activities of the Commission.

As of August 2003, according to records made available through the Office of Court Administration, approximately 3,614 judges were under the jurisdiction of the State Commission on Judicial Conduct. **Figure 1** illustrates the Texas judiciary by the total number of judges and by the number of judges in each category. **Figure 2** shows the number and percentage of cases filed with the Commission against each judge type. **Figure 3** shows the number and percentage of disciplinary actions taken by the Commission against each judge type. Although district court judges accounted for close to half of the cases filed in fiscal year 2003, this category of court received only 3 percent of the discipline issued by the Commission, with justices of the peace receiving over 60 percent of the sanctions and other disciplinary actions.

Figure 4 illustrates by number and percentage the various sources of cases received in fiscal year 2003. In fiscal year 2003, approximately 1,055 cases were filed by various complainants, the majority of which came from litigants, their family and friends. Cases from criminal defendants, including traffic defendants, and inmates accounted for one-third of the complaints received this past fiscal year. **Figure 5** compares the number of cases filed with the Commission to the total number of cases disposed of by the Commission for fiscal years 2000 through 2003. It is worth noting that in fiscal year 2003, the Commission disposed of 1,395 cases, giving the agency an overall disposition rate of 132 percent.

In fiscal year 2003, the Commission took 59 disciplinary actions, disposing of 37 cases through public censure, public sanction, private sanction, order of additional education or a combination of sanction with order of additional education. In addition, 19 cases were disposed of through voluntary agreements to resign from office. Interim actions, such as suspensions, *Amicus* referrals, and formal proceedings, accounted for 3 of the disciplinary actions taken in 2003. A comparison of public discipline, private discipline and interim actions taken by the Commission in fiscal years 2000 through 2003 is shown in **Figure 6**.

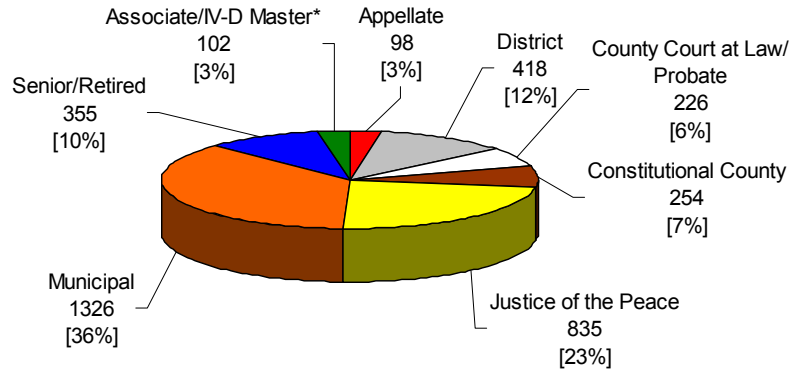
In **Figure 7** and **Table 2**, a comparison is shown between Texas and two other states in an effort to gauge the performance of the Texas Commission. California and New York are two states that resemble Texas in judicial population and procedures. **Figure 7** illustrates how this agency's annual budget for fiscal year 2003 compares to the annual budgets of our counterparts in California and New York for similar reporting periods. **Table 2** further illustrates comparisons in staffing and case activity among the Commissions in Texas, New York and California. Based on the information made available for this comparison, it is evident that the Texas Commission on Judicial Conduct continues to out-perform its counterparts with just over half the staff and with just over one-third of the budget of New York and less than one-fourth of the budget of California.

Table 1 Commission Activity

	FISCAL YEAR 2000	FISCAL YEAR 2001	FISCAL YEAR 2002	FISCAL YEAR 2003
Cases Pending	(09/01/99) 283	(09/01/00) 417	(09/01/01) 629	08/31/03 500
Cases Filed	1190	1123	1045	1055
Total Number Of Cases Disposed	1056	911	828	1395
% of Cases Disposed	89%	81%	79%	132%
Average Age of Cases Disposed	4.3 months	4.4 months	7.1 Months	5.4 Months
Disciplinary Action (total)	90	80	79	59
Cases Disposed through:				
Criminal Conviction	0	0	0	0
Review Tribunal Order	0	0	0	0
Informal Resignation Agreement	11	3	0	0
Voluntarily Agreement to Resign in Lieu of Disciplinary Action	0	0	14	19
Sanction:				
Public Censure	3	0	0	1
Public Censure and Order of Additional Education	1	0	0	2
Public Reprimand	11	5	2	7
Public Warning	2	3	6	2
Public Admonition	5	12	8	4
Public Sanction and Order of Additional Education	4	3	3	4
Private Reprimand	4	3	2	0
Private Warning	9	7	3	5
Private Admonition	9	6	4	5
Private Sanction and Order of Additional Education	10	1	3	3
Public Order of Additional Education	1	0	0	0
Private Order of Additional Education	4	21	6	4
Interim Disciplinary Action:				
Order of Suspension [15(a)]	2	4	4	0
Recommendation of Suspension to Supreme Court [15(b)]	0	0	7	2
Formal Proceedings Voted	4	12	17	1
Amicus Referral			2	0
Dismissals	966	831	749	1328
Requests for Reconsideration Received	117	133	43	173
Reconsideration Granted	12	6	0	10
Reconsideration Denied	90	100	39	163
Pending	15	27	4	0
Cases Appealed to Special Court of Review	2	0	1	1
Cases Set for Informal Hearing	77	86	78	71
Public Statements Issued	3	0	1	0

**Fig. 1 Total Number of Texas Judges
(FY 2003)**

Source: Office of Court Administration (August 31, 2003)



*Note: the source for Associate/IV-D Master data is from the Office of Court Administration March 2003.

**Fig. 2 Number and Percentage of Cases Filed by
Judge Type (FY 2003)**

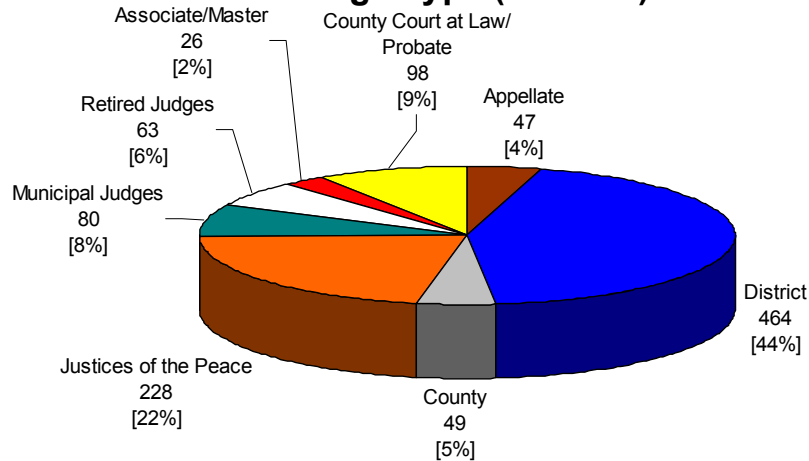


Fig. 3 Number and Percentage of Disciplinary Actions by Judge Type (FY 2003)

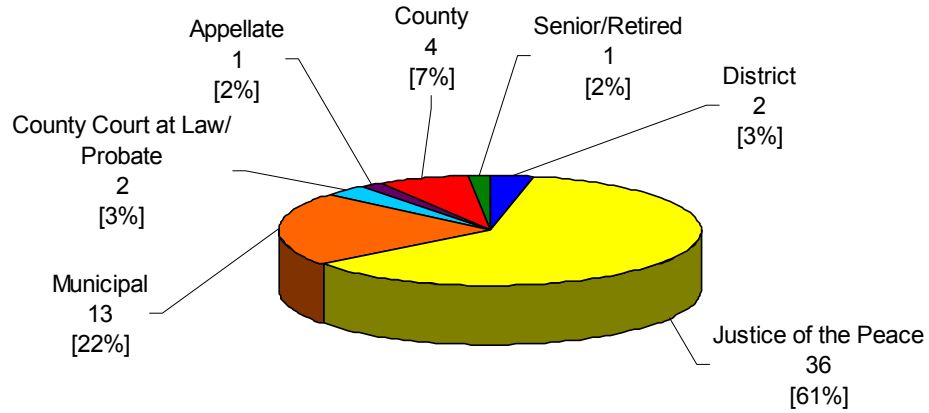
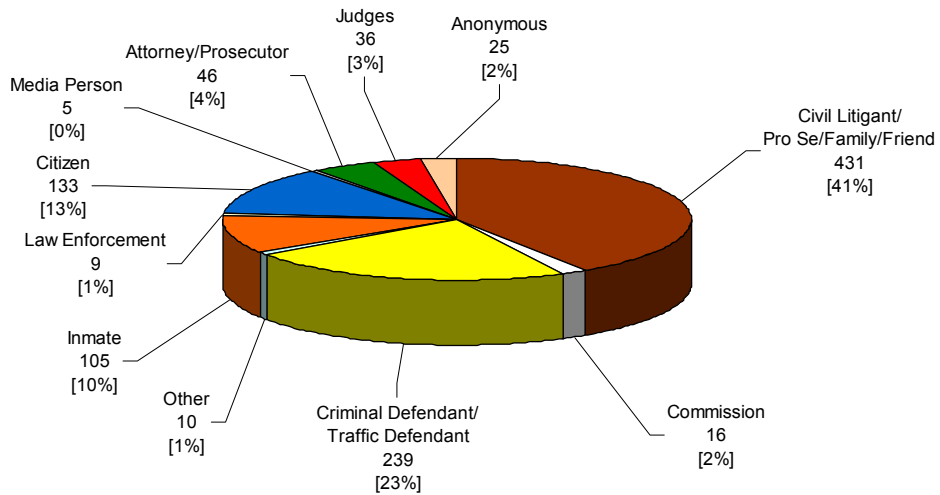


Fig. 4 Number of Cases Filed by Complainant Type (FY 2003)



**Fig. 5 Cases Filed and Disposed
(FY 2000 - FY 2003)**

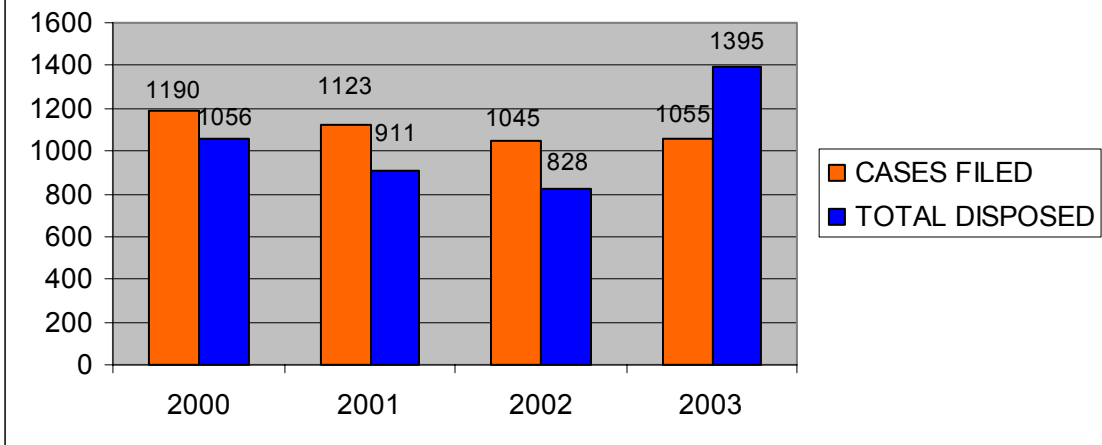
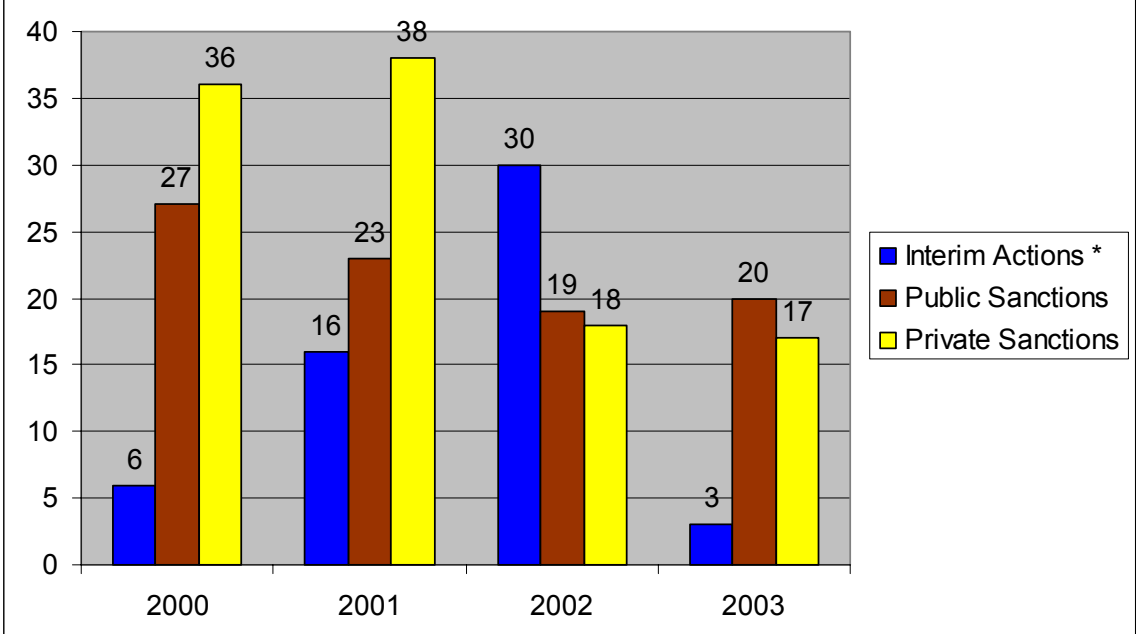
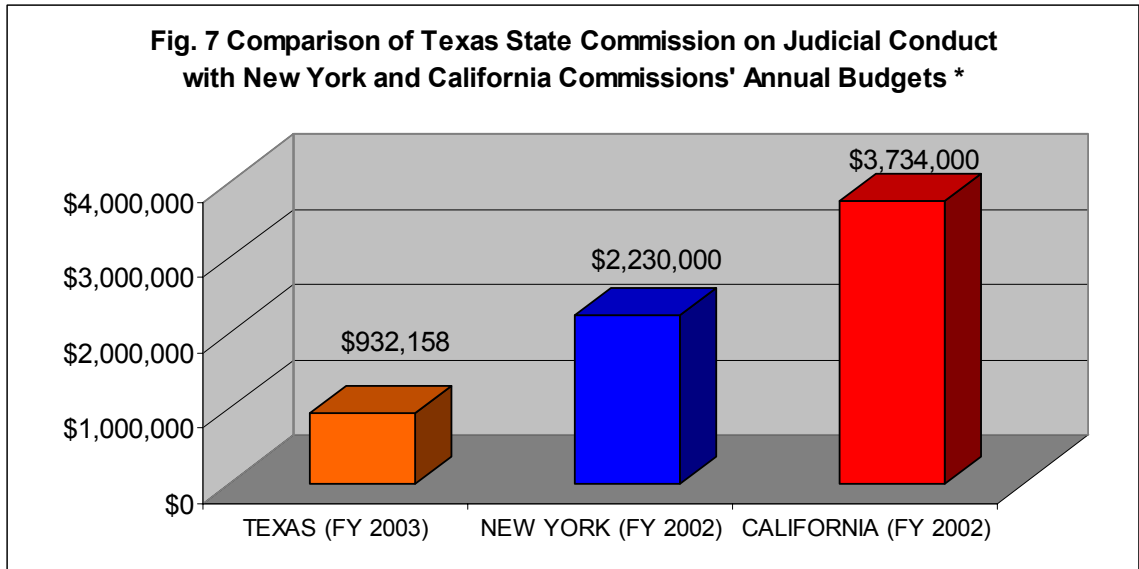


Fig. 6 Commission Activity (FY 2000 - 2003)



*Interim Actions include: Orders of Suspension, Recommendations of Suspension to Supreme Court, Formal Proceedings Voted, and *Amicus Curiae* Referrals.



Note: New York and California figures apply to their respective fiscal year 2002, the latest figures available.

	NUMBER OF JUDGES	COMPLAINTS RECEIVED	NUMBER OF ATTORNEYS	TOTAL STAFF	NUMBER OF CASES CLOSED	TOTAL SANCTIONS	2003 ANNUAL BUDGET
TEXAS *	3614	1055	6	16	1395	59	932,158
NEW YORK **	3363	1435	16	27	346	47	2,230,000
CALIFORNIA ***	1610	918	16	27	901	28	3,734,000

* Texas' fiscal year begins September 1 and ends August 31.

** New York's fiscal year begins April 1st and ends March 31.

*** California's fiscal year coincides with the calendar year, January 1 to December 31.

EXAMPLES OF IMPROPER JUDICIAL CONDUCT

The following are examples of judicial misconduct that resulted in disciplinary action by the Commission in fiscal year 2003. These are illustrative examples of misconduct and do not represent every disciplinary action taken by the Commission in fiscal year 2003. The summaries below are listed in relation to specific violations of the Texas Code of Judicial Conduct, the Texas Constitution, and other statutes or rules. They are also listed in descending order of the severity of the disciplinary action imposed, and may involve more than one violation. The full text of any public discipline may be requested by writing the Commission.

These sanction summaries are provided with the intent to educate and inform the judiciary and the public regarding misconduct that the Commission found to warrant disciplinary action in fiscal year 2003. The reader should 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 protect and preserve the public's confidence in the integrity, impartiality and independence of the judiciary and further assist the judiciary in establishing, maintaining and enforcing the highest standards of judicial and personal conduct.

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.

- The judge failed to comply with the law by issuing a court order without authority in a matter over which his court had no jurisdiction. [Violation of Canon 2A, Texas Code of Judicial Conduct and Article V, Section 1-a(6)A, Texas Constitution.] *Public Reprimand of Justice of the Peace Bennie Ochoa, III (12/17/02).*
- The judge used \$40.00 of county funds for his personal use to pay a lawn mowing service when his personal check was not accepted. The judge repaid the funds after the county auditor brought the matter to his attention. Further, the judge frequently discussed pending judicial matters, including his intended rulings, in public. [Violation of Canon 2A and 3B(10), Texas Code of Judicial Conduct and Article V, Section 1-a(6)A, Texas Constitution.] *Public Reprimand of Former Justice of the Peace Steven B. Duke (06/27/03).*
- The judge violated the Texas Code of Criminal Procedure by issuing an arrest warrant and magistrating a defendant in a matter in which the judge was the victim. By these actions, the judge failed to follow proper procedures and demonstrated a lack of professional competence in the law. [Violation of Canons 2A and 3B(2), Texas Code of Judicial Conduct.] *Public Admonition of Municipal Court Judge Alberto Martinez, (06/27/03).*

- In adjudicating a truancy matter, the judge improperly applied certain provisions of the Texas Education Code and the Texas Code of Criminal Procedure, while failing to comply with other applicable or mandatory provisions of those statutes [Violation of Canons 2A and 3B(2), Texas Code of Judicial Conduct] *Private Warning and Order of Additional Education of a Justice of the Peace (10/29/02)*.

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 held a formal press conference in his courtroom while wearing his judicial robe, publicly criticizing an attorney for what the judge perceived as misconduct in a high-profile case pending in a second judge's court. The press conference was held during a period of intense media attention directed at the second judge, who had just recused himself from the case amid allegations of judicial misconduct. Following his press conference, the judge sent an e-mail to numerous friends, family and colleagues, in an attempt to explain his decision to hold the press conference. The Commission conducted formal proceedings and a public trial. The judge was found to have engaged in willful conduct that violated the Code of Judicial Conduct, by allowing a relationship to influence his conduct and judgment and by lending the prestige of judicial office to promote the private interests of the judge and others. [Violation of Article V, §1-a(6)A, Texas Constitution and Canon 2B, Texas Code of Judicial Conduct.] *Public Censure of Former County Court at Law Judge Robert Jenevein (01/17/03)*.
- The judge called another judge on behalf of the daughter of a county commissioner, regarding a traffic citation the woman had received. The Commission determined that the judge abused his judicial position in an effort to influence another judge's decisions and obtain favorable treatment for the daughter of a county commissioner. [Violation of Canon 2B, Texas Code of Judicial Conduct.] *Public Warning of Justice of the Peace Jose Canales (06/27/03)*.
- The judge lent the prestige of his office by displaying on his office door a poster stating, in bold letters, "Re-Elect '98," and containing caricatures and names of several individuals who were either holding or running for elective office in the judge's county. [Violation of Canon 2B, Texas Code of Judicial Conduct.] *Public Admonition of Justice of the Peace Bennie Ochoa, III (12/17/02)*.
- On behalf of his daughter, a District Judge wrote a letter of representation on official court stationery to a municipal court. In this letter, the judge entered a plea of "not guilty" for his daughter, and sought the name of the prosecuting attorney "for possible plea negotiations." [Violation of Canon 2B, Texas Code of Judicial Conduct] *Private Admonition of a District Judge (06/13/03)*.
- The judge voluntarily appeared in his judicial robe in an advertisement for Southwestern Baptist Theological Seminary that was published in a newspaper. The Commission concluded that the judge lent the prestige of his judicial office to advance the private interests of the Seminary. [Violation of Canon 2B, Texas Code of Judicial Conduct] *Private Warning of a County Court at Law Judge (12/28/02)*.
- The judge lent the prestige of his judicial office to advance his own private interest by sending a letter to two assistant district attorneys, urging the imprisonment of a particular criminal defendant with whom he had a personal dispute. In the letter, written on his law firm stationery, the judge made a special point of noting his position as a judge, and used the title "Judge" before his name in the letterhead to identify himself. [Violation of Canon 2B, Texas Code of Judicial Conduct] *Private Admonition of a Municipal Court Judge (02/28/03)*.

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.

- The judge failed to obtain the required hours of mandatory judicial education for fiscal year 2002. [Violation of Rule 3a(2), Texas Rules of Judicial Education, and Canons 2A and 3B(2), Texas Code of Judicial Conduct.] *Public Reprimand of Former Justice of the Peace Kathryne Gabbert (04/10/03).*
- In resolving a matter involving the defendant's failure to show proof of liability insurance, where the defendant subsequently timely provided such proof to the court, the judge charged a \$35 "insurance dismissal fee," although such fee is not allowed by law. [Violation of Canon 3B(2), Texas Code of Judicial Conduct] *Private Admonition of a Municipal Court Judge (08/07/03).*
- The judge improperly exercised his contempt authority by failing to serve the alleged contemnors with proper legal process, and by failing to provide them with full and unambiguous notification of when, how and by what means they had been guilty of contempt. The judge also failed to properly admonish the defendants about proceeding without counsel at the contempt hearings when they faced the possibility of a jail term. He also failed to obtain the defendants' knowing and voluntary waiver of counsel, before finding them in contempt and ordering them to jail. Further, the judge failed to provide proper notice to the parent or guardian of a minor charged with a criminal offense, as required by Texas Code of Criminal Procedure, Art. 45.0215. The judge's actions in exercising his contempt authority, and his procedures involving a minor charged with a criminal offense, demonstrated a lack of professional legal competence. [Violation of Canon 3B(2), Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace (02/14/03).*

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.

- In response to a sarcastic remark made by an African-American court reporter, the judge joked "I would give you a black eye" for making that remark "if I could tell" by seeing it swell, or words to that effect. The Commission concluded that the judge's comment was insensitive and lacked the appropriate dignity expected of a judicial officer in his dealings with court staff. [Violation of Canon 3B(4), Texas Code of Judicial Conduct] *Private Admonition of a Retired Senior Judge (12/17/02).*
- The judge berated a law enforcement officer with whom the judge dealt in an official capacity and threatened her with contempt. The Commission concluded that the judge's actions lacked the appropriate patience, dignity and courtesy expected of a judicial official. [Violation of Canon 3B(4), Texas Code of Judicial Conduct] *Private Admonition and Order of Additional Education of a Justice of the Peace (06/13/03).*
- The judge failed to follow proper procedures when he ordered the arrest of a *pro se* defendant following a protective order hearing, without first reading the defendant his statutory warnings, and without affording the defendant the right to counsel, the right to waive counsel, or the right to remain silent. Additionally, the judge's frustration with the applicant's request to withdraw the request for a protective order resulted in a comment from the judge that suggested an unfavorable comparison between the defendant and Charles Manson, demonstrating a lack of patience, dignity, and courtesy. [Violation of Canons 3B(2) and 3B(4), Texas Code of Judicial Conduct] *Private Order of Additional Education of a County Judge (06/27/03).*

CANON 3C(5): A judge shall not fail to comply with Rule 12 of the Rules of Judicial Administration, knowing that the failure to comply is in violation of the rule.

- A citizen requested several administrative judicial records from the judge pursuant to Rule 12 of the Texas Rules of Judicial Administration. When the judge did not respond, the citizen sought the assistance of the Office of Court Administration (OCA). A special OCA committee then sought the records, but the judge failed to respond to two separate requests. Citing the judge's lack of cooperation, the committee published an opinion against the judge, ordering him to tender the records to the citizen. Two months later, the judge complied with the citizen's request. The judge, who had served on the bench for 25 years, then resigned. In his responses to the Commission about the matter, the judge testified that he intentionally ignored the requests because the citizen had a long history of disruptive, bullying and antagonistic behavior towards court staff. [Violation of Canon 3C(5), Texas Code of Judicial Conduct] *Private Warning of a Municipal Court Judge (10/29/02)*.

CANON 4A: A judge shall conduct all of the judge's extra-judicial activities so that they do not (1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or (2) interfere with the proper performance of judicial duties.

- The Commission was apprised of the judge's extra-judicial conduct, including that in 1977 he pled "no contest" to the offense of driving while intoxicated, he was convicted in 1984 of a federal misdemeanor offense of transporting illegal aliens from Mexico, and he was convicted in 1993 for violating federal migratory bird protection laws. Further, the judge, while acting in his judicial capacity, improperly magistrated his brother, improperly reduced a pending criminal charge; and unlawfully released certain criminal defendants on personal bonds although they were charged with aggravated felony offenses. Based on the judge's judicial and extra-judicial conduct, the Commission determined that the judge willfully engaged in conduct that casts public discredit upon the judiciary, the judge failed to comply with the law, allowed a relationship to influence his judicial conduct, failed to maintain professional competence in the law, failed to perform his judicial duties without bias or prejudice, and failed to conduct his extra-judicial activities so that they would not cast reasonable doubt on his capacity to act impartially as a judge or interfere with the proper performance of his judicial duties. [Violation of Article V, §1-a(6)A, Texas Constitution; Canons 2A, 2B, 3B(2), 3B(5), 4A(1) and 4A(2), Texas Code of Judicial Conduct.] *Public Censure and Order of Additional Education of Justice of the Peace Francis John Truchard (10/11/02)*.
- The judge wrote and signed a letter on official court stationery to the superintendent and board members of the school district in his city. The letter contained several criticisms of these persons, including of their behavior and actions on certain controversial school district matters. The judge's letter was discussed publicly at a school board meeting and through the media. Because any dispute between the superintendent and school board could have resulted in a lawsuit being filed in the judge's court, the Commission concluded that the judge's public comments, expressed in his letter, constituted an extra-judicial activity which cast reasonable doubt on the judge's capacity to act impartially as a judge. [Violation of Canon 4A(1), Texas Code of Judicial Conduct] *Private Warning and Order of Additional Education of a District Judge (10/25/02)*.

CANON 4(D)(2): A judge shall file financial and other reports as required by law.

- The Texas Ethics Commission (TEC) notified the Commission that the judge, a candidate for re-election to the appellate bench, had failed to file several requisite campaign finance reports over the past two years, and that TEC had fined the judge \$20,500.00 for his inaction. The judge's failure to timely file the reports, along with the efforts of TEC and the Texas Attorney General's office to collect the fines assessed against the judge, received statewide media attention during the election. In his testimony before the Commission, the judge acknowledged that he failed to timely file the campaign finance reports as required by the Texas Election Code. The Commission concluded that, as a judge and judicial candidate subject to the Judicial Campaign Fairness Act, the judge knowingly failed to timely file campaign finance reports as required by law. [Violation of Canons 2A, 4I(2) and 5(4), Texas Code of Judicial Conduct.] *Public Warning of Appellate Judge Paul Womack, Court of Criminal Appeals (6/27/03).*

Article V, 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. . . .

- During two magistrations recorded on videotape at the jail, the judge cursed and verbally abused two defendants; the judge also directed a derogatory racial slur at one defendant and advised another that he had no rights. The Commission conducted a suspension hearing, and the judge gave testimony. Upon the Commission's recommendation, the Supreme Court of Texas suspended the judge from office without pay, pending final disposition of the complaint before the Commission, pursuant to the authority contained in Article V, §1-a(6)A, Texas Constitution and Rule 15(b), Procedural Rules for the Removal or Retirement of Judges. *Order of Suspension of Justice of the Peace Matt H. Zepeda (12/16/02).*
- In two complaints, plaintiffs' cases remained pending for years with no disposition as a result of a backlog of cases, disorganization, and other administrative problems among the judge's court staff. In a third complaint, the judge was found to have engaged in fiscal mismanagement by failing to fulfill his statutory obligation to deposit monies as required by the Local Government Code and the Code of Criminal Procedure. An auditor reported to the County Commissioner's Court that the judge's court had thousands of dollars worth of unposted receipts, numerous posting errors, and approximately \$6,650.00 in missing funds. These audit findings indicated that similar findings and recommendations had been made to the judge on numerous occasions in the past. Further, it was determined that the judge failed to file monthly activity reports with the Office of Court Administration ("OCA") since 2001, despite receiving notices that the reports were overdue. A follow-up audit reflected that receipts still were not being immediately given when payment was tendered, even after the judge became aware of the Commission's investigation. The Commission concluded that the judge persistently failed to maintain and monitor his civil court docket, and had failed to properly account for and deposit monies collected by his court and to timely file with OCA the required monthly activity reports. The judge's persistent failure to comply with statutory requirements in the Local Government Code, the Code of

Criminal Procedure and the Government Code was clearly inconsistent with the proper performance of his duties. [Violation of Article V, Section 1-a(6)A, Texas Constitution and Canon 2A, Texas Code of Judicial Conduct.] *Public Admonition and Order of Additional Education of Justice of the Peace Juan Jasso (08/25/03).*

- While traveling on a state highway at nighttime with his family, the judge chased, stopped and arrested another motorist, based on the judge's perception that the motorist had committed a traffic offense, thereby presenting a danger to the judge and other motorists. During the incident, the judge displayed a handgun for which he was not licensed to possess. The Commission concluded that the judge engaged in "willful or 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." [Violation of Article V, Section 1-a(6)A, Texas Constitution] *Private Warning of a Justice of the Peace (8/7/03).*