

STATE COMMISSION ON JUDICIAL CONDUCT



FISCAL YEAR 2007
ANNUAL REPORT

STATE COMMISSION ON JUDICIAL CONDUCT

FY 2007 ANNUAL REPORT

COMMISSION MEMBERS*

Joseph B. Morris, Chair

Michael R. Fields, Vice-Chair

Ann Appling Bradford, Secretary

Monica A. Gonzalez

Ronald D. Krist

R. C. Allen, III

Faye Barksdale

Sid Harle

Jorge C. Rangel

Ernie Houdashell

Tom Lawrence

* Note: As of the end of FY 2007, two (2) public member positions remained vacant; another public member continued to serve beyond his original term of office as a hold-over.

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

COMMISSIONER INFORMATION

OFFICERS

CHAIR

Hon. Joseph B. Morris

Justice, 5th Court of Appeals
Dallas

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

VICE-CHAIR

Hon. Michael R. Fields

Judge, County Criminal Court-at-Law No. 14
Houston

Appointed by Texas Supreme Court
Term Expires: 11/19/2009

SECRETARY

Ms. Ann Appling Bradford

Public Member
Midland

Appointed by Governor
Term Expires: 11/19/2009

MEMBERS*

Hon. Monica A. Gonzalez

Municipal Court Judge
San Antonio

Appointed by Texas Supreme Court
Term Expires: 11/19/2009

Justice, 226th District Court
San Antonio

Appointed by Texas Supreme Court
Term Expires: 11/19/2011

Mr. Ronald D. Krist

Attorney
Houston

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

Mr. Jorge C. Rangel

Attorney

Corpus Christi

Appointed by State Bar of Texas
Term Expires: 11/19/2011

Mr. R. C. Allen, III

Public Member
Corpus Christi

Appointed by Governor
Term Expires: 11/19/2005

Hon. Ernie Houdashell

Constitutional County Court Judge
Canyon

Appointed by Texas Supreme Court
Term Expires: 11/19/2011

Ms. Faye Barksdale

Public Member
Arlington

Appointed by Governor
Term Expires: 11/19/2007

Hon. Tom Lawrence

Justice of the Peace, Precinct 4, Place 2
Humble

Appointed by Texas Supreme Court
Term Expires: 11/19/2009

Hon. Sid Harle

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STATE COMMISSION ON JUDICIAL CONDUCT

COMMISSION STAFF

Seana Willing, Executive Director

Bob Warneke, General Counsel

Tom Broussard, Senior Commission Counsel

Jacqueline Habersham, Senior Commission Counsel

Judy M. Spalding, Commission Counsel

Cathy Bradford, Commission Counsel

Ron Bennett, Chief Investigator

Victor Hidalgo, Commission Investigator

Katherine Mitchell, Commission Investigator

Elaine Thompson, Legal Assistant/*Amicus* Program Manager

Terri Counts, Budget Analyst

Connie Paredes, Administrative Assistant

Juanita Villarreal, Administrative Assistant

Felisa Wilson, Administrative Assistant

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 Article V of the Texas Constitution. The Commission is the independent judicial 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 of the alleged misconduct 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 thirteen members of the Commission, serving staggered six-year terms, as follows:

- Six judges appointed by the Supreme Court of Texas, one from each of the following court levels: appellate, district, county court-at-law, constitutional county, justice of the peace and municipal,
- Five 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, district, constitutional and statutory county judges who serve on the Commission must be appointed from different appellate districts in Texas; the justice of the peace, municipal court judge and public members 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 Texas 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* communications 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 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 that a judge has committed 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

In fiscal year 2007, the Commission had fifteen (15) authorized staff positions (FTEs). Commission staff includes the Executive Director, the General Counsel, four staff attorneys, three investigators, a legal assistant, a budget analyst, and three administrative support people. All Commission staff members are full-time State employees.

The Commission's legal staff, which consists of attorneys, investigators, and a legal assistant, 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 assistant is responsible for performing legal research, preparing legal documents, 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 many cases, the Commission employs Special Counsel, chosen from distinguished members of the bar, to assist staff in preparing and presenting these cases. Attorneys from the Office of the Attorney General have also represented the Commission as Special Counsel in formal proceedings.

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

Started in 2001, *Amicus Curiae* ("Amicus") is a judicial disciplinary and education program intended to address a growing concern, often generated by scandals reported by the media, of judicial misconduct caused by impairment. 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* 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. One advantage *Amicus* offers over other similar programs such as the Texas Lawyers Assistance Program operated by the State Bar of Texas is its ability to assist all judges, attorney and non-attorney alike.

Although the confidential referral to *Amicus* by the Commission through the disciplinary process does not shield the judge from any sanction that the Commission deems appropriate, the Commission recognizes that not all impairment issues result in misconduct. In order to reach out to those judges who may be suffering in silence and who may not be the subject of a complaint as a result of their impairment, *Amicus* offers a self-referral component to its program, which affords judges an opportunity to seek assistance, in confidence, outside the disciplinary process.

Outreach and Education

In fiscal year 2007, the Executive Director, staff attorneys and investigators made over forty (40) presentations at judicial training courses, bar conferences, court staff workshops, and before several groups of foreign dignitaries and delegates, describing the Commission and its operations and discussing various forms of judicial misconduct.

Ethics Calls

In fiscal year 2007, the Executive Director, staff attorneys and investigators answered more than 1,200 telephone calls from judges, judicial candidates, attorneys, legislators, the media and 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 fiscal year 2007, the Commission updated and redesigned its website with the technical assistance and expertise of the Office of Court Administration. The new website, which is now ADA compliant, is located at www.scjc.state.tx.us. 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 and updated sanctions, resignations, suspensions, and Review Tribunal Opinions.

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 Texas 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; and
- 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 serve as 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, addresses a dispute over a judge's discretionary rulings that may only be resolved on appeal, or identifies the wrong judge. In addition, gratuitous claims of misconduct that are unsupported by any facts or evidence may be administratively dismissed. In letters of dismissal sent to these complainants, the Commission provides a specific explanation for the decision.

2. Dismissal

The Commission may dismiss a case after conducting a review and investigation of the allegations. Reasons for these dismissals include insufficient or no evidence of misconduct, the judge demonstrated that he or she took appropriate actions to correct the conduct at issue, or the conduct, though problematic, did not rise to the level of sanctionable misconduct. In letters of dismissal sent to these complainants, the Commission provides a specific explanation for the dismissal, and describes the steps the complainant may take for the Commission to reconsider its decision. The Commission may also include cautionary advice to judges whose complaints have been dismissed after the judge has taken appropriate corrective action or in those cases where disciplinary action was deemed unwarranted given the facts and circumstances surrounding the infraction.

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, where the subject judge may attend a particular training

program or a mentor judge may be 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 ensures 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, any records relating to the underlying case remain confidential and may only be released to the public 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 Texas 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.

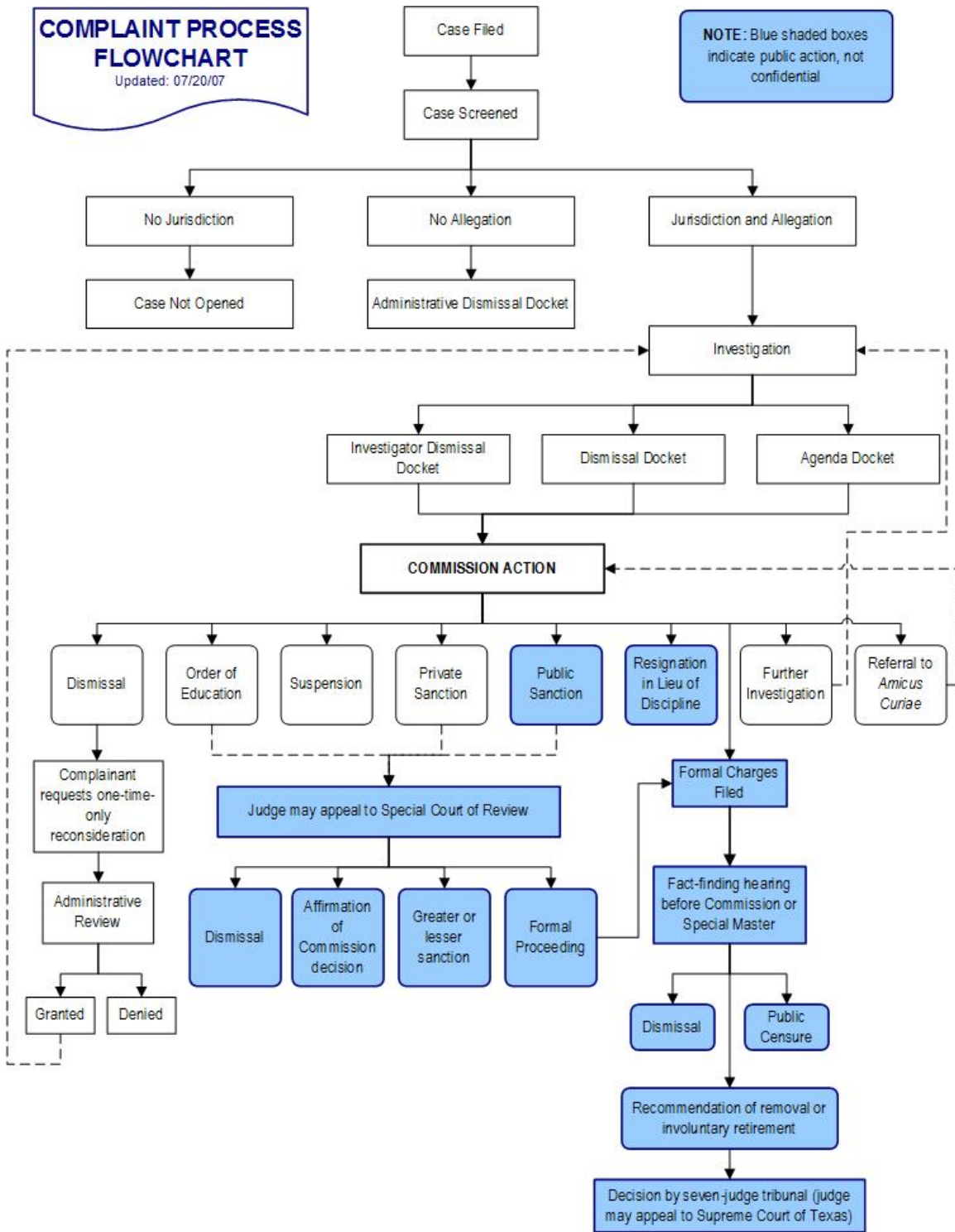
Appellate Review of Commission Action

Although a public censure cannot be appealed, a judge may appeal the Commission's issuance of any other 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.



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.

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.

Three distinguished professionals have assisted the Commission in overseeing the development and operation of the *Amicus* program:

- Justice Robert Seerden, Corpus Christi, is the retired Chief Justice of the 13th Court of Appeals; he is of counsel at Hermansen, McKibben, Woolsey & Villarreal, L.L.P. in Corpus Christi;
- 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, and
- Judge Bonnie Crane Hellums, Houston, is Judge of the 247th District Court. 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.

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 initially appropriated funds to *Amicus* on September 1, 2001. Those funds enabled the Commission to hire a program manager to operate *Amicus* 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. The funding for the program in fiscal year 2005 came from an interagency contract with the Court of Criminal Appeals, which expired on August 31, 2005. Due to budget cuts, no funds were available for the *Amicus* program in fiscal years 2006-2007.

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 upon 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. However, 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 whether a judge should be referred to *Amicus* for evaluation is whether the public can be assured that all judges maintain the high standards of conduct required of them by the Texas Code of Judicial Conduct and Texas Constitution.

STATISTICAL ANALYSIS

An outline of the statistical activity for the Commission through the end of fiscal year 2007 is shown in **Table 1** immediately following this section.* Graphic representations of the data are also presented in **Figures 1** through **7** to further illustrate the activities of the Commission.

In fiscal year 2007, according to Office of Court Administration records, approximately 3,716 judges were under the jurisdiction of the Commission. **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. Of note in fiscal year 2007: although justices of the peace received 25% of the complaints filed in fiscal year 2007, they accounted for 62% of all discipline issued by the Commission. Consistent with prior years, nearly half the complaints filed in fiscal year 2007 were filed against district judges.

Figure 4 illustrates by number and percentage the various sources of cases closed in fiscal year 2007. By the end of the year approximately 1,049 cases had been disposed. Nearly half of those cases were filed by civil litigants, their friends or family members, or by *pro ses*. Criminal defendants, including traffic defendants and inmates, accounted for a little more than one-third of the cases. Only 3% of the cases were filed anonymously and 1% were Commission-initiated. **Figure 5** compares the number of cases filed with the number of cases disposed for fiscal years 2004 through 2007.

Last year, 45 disciplinary actions were taken against Texas judges. The Commission disposed of 32 cases through public sanction, private sanction, orders of additional education or a combination of sanction with an order of additional education. In addition, 9 cases were disposed of through voluntary agreements to resign from office. Interim actions, such as suspensions, *Amicus* referrals, and formal proceedings, accounted for 4 of the disciplinary actions taken in fiscal year 2007. Additionally, 15 cases were resolved with a letter of caution to the judge and 10 cases were resolved after the judge took appropriate measures to correct the conduct that led to the filing of a complaint. A comparison of public discipline, private discipline and interim actions taken by the Commission in fiscal years 2004 through 2007 is shown in **Figures 6a** and **6b**.

Finally, of the 1,049 cases closed last year, approximately 50% alleged no judicial misconduct. Approximately 18% were dismissed after a preliminary investigation and approximately 32% were disposed of following a full investigation requiring a response from the judge. A comparison of initial, preliminary and full investigations conducted by the Commission in fiscal years 2004 through 2007 is shown in **Figures 7a** and **7b**.

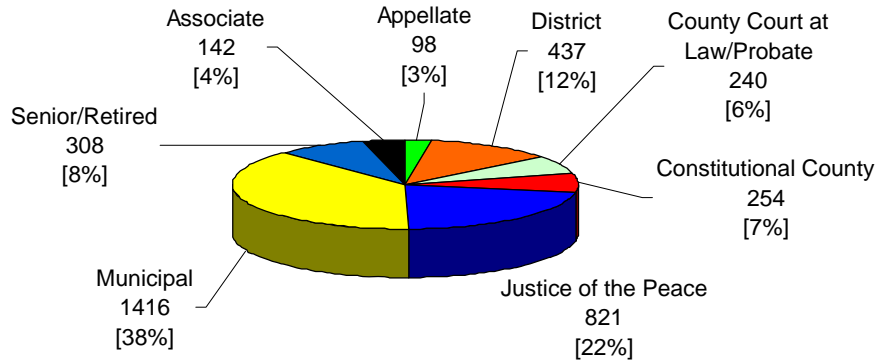
* Recent internal audits of statistical reporting methods exposed minor errors in data stated in prior reports. Every attempt has been made to insure that the data reflected in this report is as accurate as possible.

Table 1: Commission Activity

	FISCAL YEAR 2004	FISCAL YEAR 2005	FISCAL YEAR 2006	FISCAL YEAR 2007
Cases Pending (Beginning FY/Ending FY)	499/398	398/393	393/453	453/385
Cases Filed	1227	1101	1045	1043
Total Number Of Cases Disposed	1328	1106	985	1049
% of Cases Disposed	108%	100.5%	94%	100.4%
Average Age of Cases Disposed	4.04 Months	4.5 Months	5.1 Months	5.3 Months
Disciplinary Action (total)	77	65	42	45
Cases Disposed through:				
Criminal Conviction	0	0	0	0
Review Tribunal Order	17	4	0	0
Voluntarily Agreement to Resign in Lieu of Disciplinary Action	17	6	3	9
Sanction:				
Public Censure	0	0	0	0
Public Censure and Order of Additional Education	0	0	0	0
Public Reprimand	2	6	3	0
Public Warning	1	3	2	0
Public Admonition	4	3	6	1
Public sanction and Order of Additional Education	0	4	0	3
Private Reprimand	3	1	1	2
Private Warning	1	8	4	3
Private Admonition	11	8	3	8
Private sanction and Order of Additional Education	6	6	8	7
Public Order of Additional Education	0	0	0	0
Private Order of Additional Education	7	8	5	8
Interim Disciplinary Action:				
Order of Suspension [15(a)]	6	3	4	2
Recommendation of Suspension to Supreme Court [15(b)]	1	4	0	0
Formal Proceedings Voted	1	0	3	2
Amicus Referral	0	1	0	0
Dismissals	1259	1049	950	1008
Requests for Reconsideration Received	212	29	28	48
Reconsideration Granted	12	1	2	3
Reconsideration Denied	200	28	26	45
Pending	0	0	0	0
Cases Appealed to Special Court of Review	0	0	2	0
Informal Hearings Set	62	32*	22*	24*
Public Statements Issued	0	0	1	0

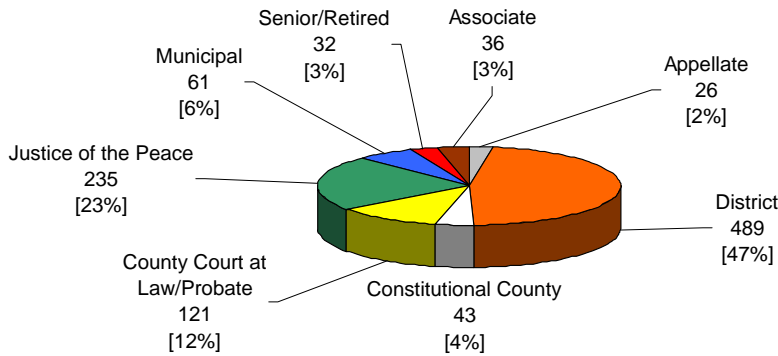
* Starting in FY2005, Informal Hearings were measured by the number of judges appearing rather than the number of cases heard

Fig. 1 Total Number of Texas Judges*



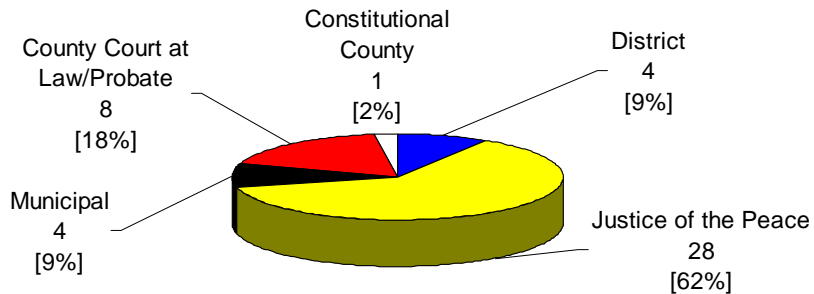
*3,716 Total Judges
Source: Office of Court Administration (September 2007)

Fig. 2 Number and Percentage of Cases filed by Judge Type



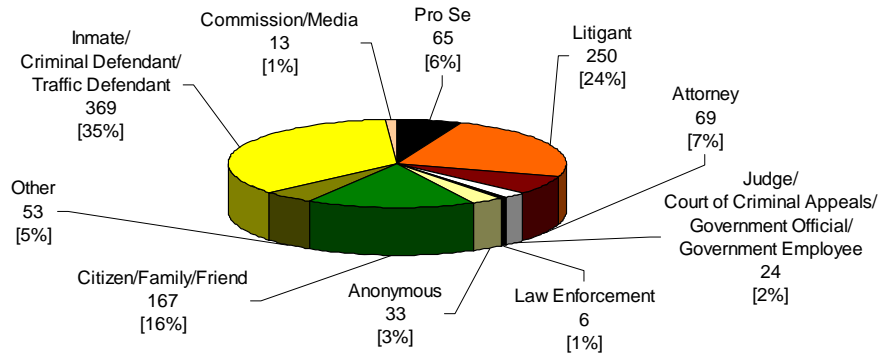
*1,043 Total Complaints Filed

Fig. 3 Number and Percentage of Disciplinary Actions by Judge Type*



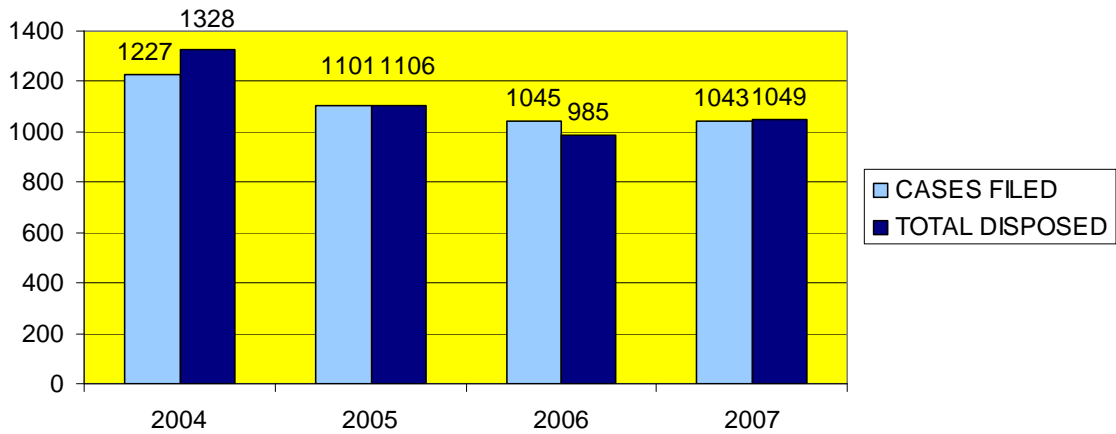
*45 Total Disciplinary Actions

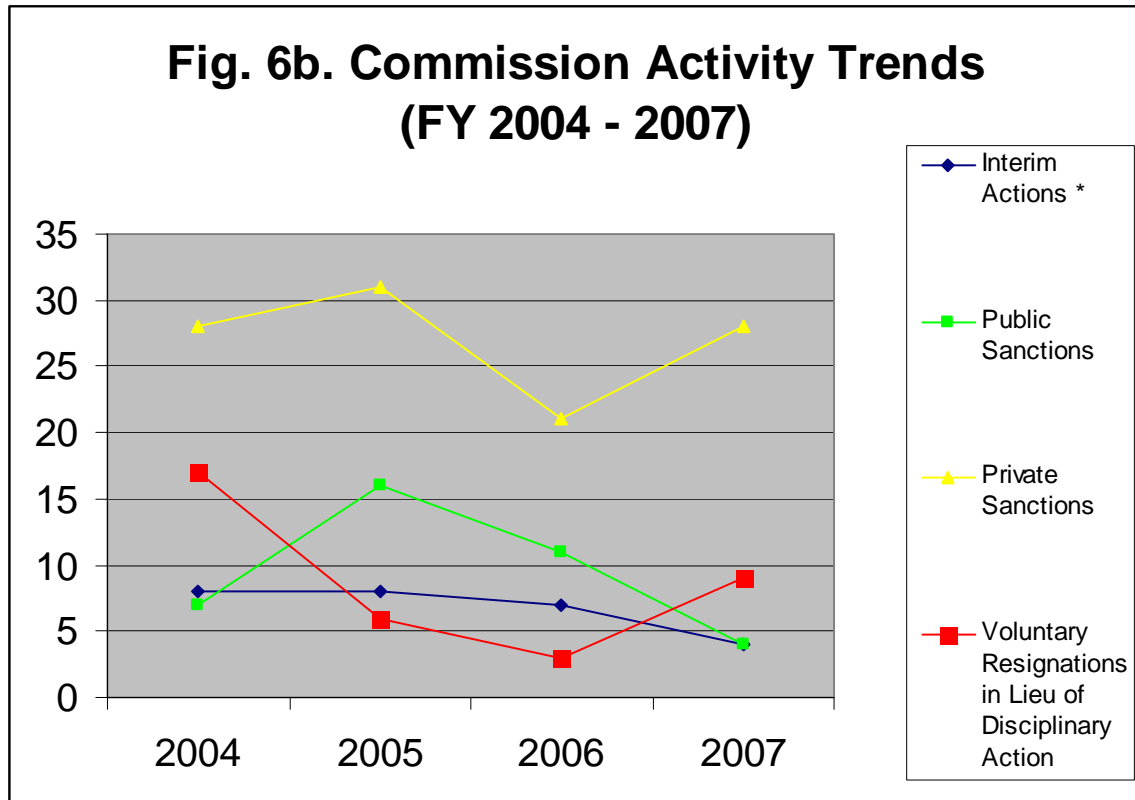
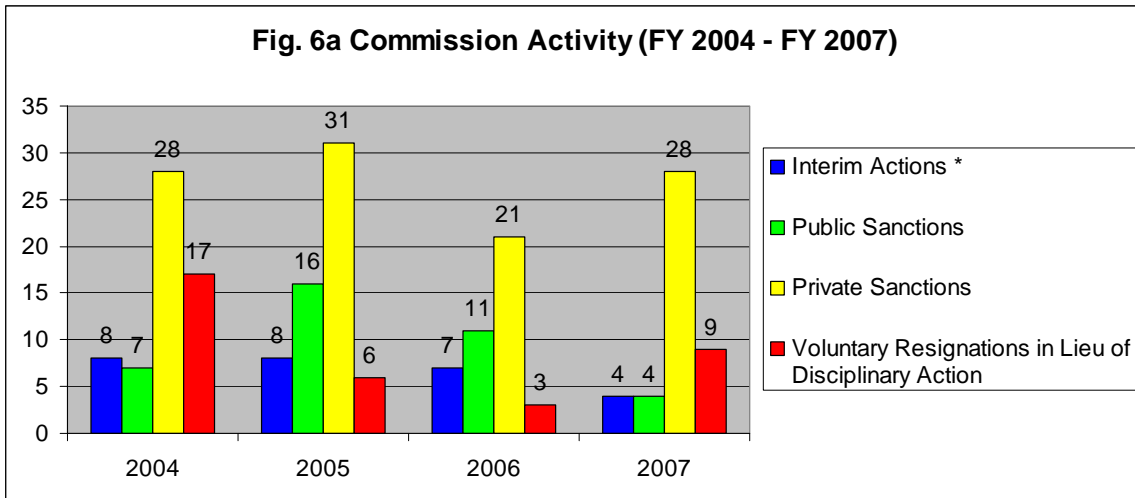
Fig. 4 Number of Cases Disposed by Complainant Type



*1049 Total Cases Disposed

Fig. 5 Cases Filed and Disposed (FY 2004 - FY 2007)





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

Fig. 7a Comparison of Investigations by Type (2004-2007)

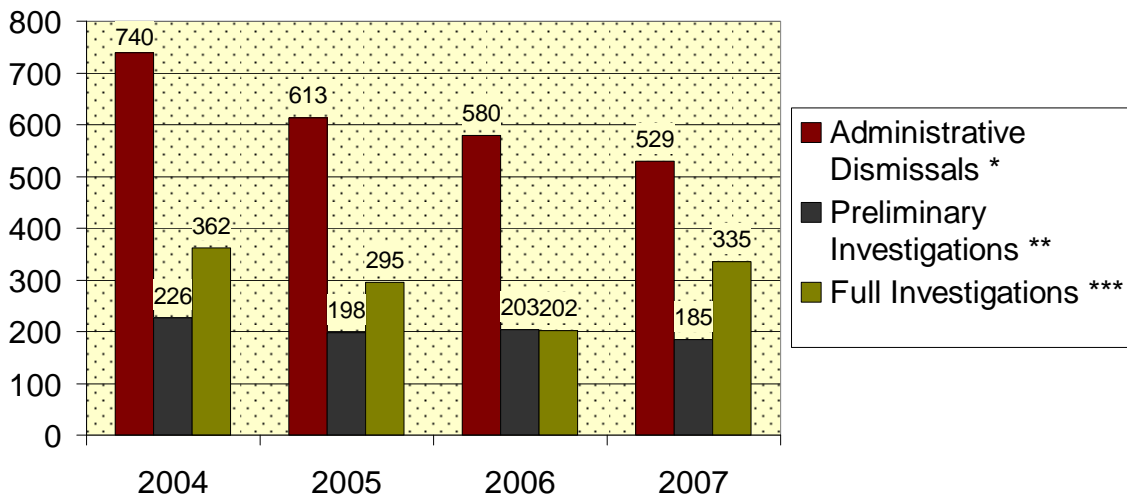
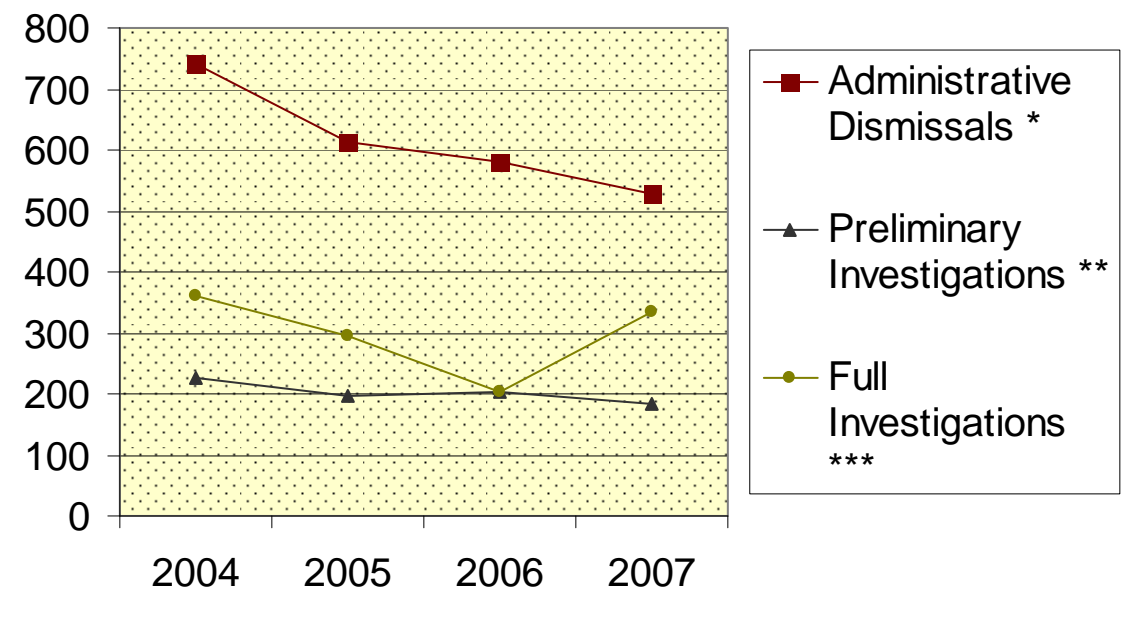


Fig. 7b Investigations by Type Trends (FY 2004 - FY 2007)



*Administrative Dismissals include files disposed without investigation, because no allegation of judicial misconduct was raised.

**Preliminary Investigations include allegations of judicial misconduct that were resolved without contacting the respondent judge.

***Full Investigations include cases which the respondent judge was asked to respond to the allegations of judicial misconduct.

EXAMPLES OF IMPROPER JUDICIAL CONDUCT

The following are examples of judicial misconduct that resulted in disciplinary action by the Commission in fiscal year 2007. These are illustrative examples of misconduct and do not represent every disciplinary action taken by the Commission in fiscal year 2007. 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 sanction is published on the Commission website. A copy may also be requested by contacting 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 2007. 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 (a) found a traffic defendant guilty in absentia; (b) failed to provide adequate notice for a show cause hearing in a constructive contempt case; (c) issued orders and fines that he had no authority to enforce against a defendant pursuant to Section 341.037 of the Health and Safety Code; and (d) issued a subpoena to compel the County Judge to appear before him when no case or proceeding was pending. A history of resentment between the judge and the traffic defendant's attorney, and the judge's belief that the attorney was not treating the judge with proper respect, contributed to the judge's decision to go forward with the criminal trial in the absence of the defendant and her attorney despite being aware that the attorney was in trial in a courtroom just across the hall. [Violation of Canons 2A, 3B(2), 3B(5) and 3B(8) of the Texas Code of Judicial Conduct.] *Public Admonition of a Justice of the Peace.* (07/13/07).
- The judge attempted to mediate a dispute between two parties prior to criminal charges being filed in the case, issued a "cash only" bond that prevented one of the parties from being released from jail for 25 days, and dismissed a traffic ticket

without a motion from the prosecutor and based on an improper *ex parte* communication with a family she knew from church. [Violation of Canons 2A, 2B and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Justice of the Peace.* (06/15/07).

- The judge negligently filed a homestead exemption affidavit representing that his primary residence was outside the judicial precinct to which he was elected, when in fact he did reside in the precinct to which he was elected. When the mistake was brought to the judge's attention, he took appropriate steps to correct the error. [Violation of Canon 2A of the Texas Code of Judicial Conduct.] *Private Admonition of a Justice of the Peace.* (05/07/07).
- The judge found a traffic defendant guilty, assessed a fine against him, and suspended his driver's license based solely on telephone conversations with the defendant. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace.* (06/07/07).
- The judge refused to review or approve a *pro se* defendant's appeal bond. The judge's failure to approve the bond, which had been timely filed and was otherwise in compliance with the code of criminal procedure, appeared to have been the sole reason for the decision by the county court to dismiss the defendant's appeal. [Violation of Canon 2A of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace.* (06/14/07).
- The judge dismissed a Class B misdemeanor charge against a defendant during the magistration process in the absence of a prosecutor or a motion to dismiss filed by the State. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Municipal Judge.* (08/24/07).

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.

- The judge issued a peace bond without conducting a hearing and without otherwise following procedures set forth in the Code of Criminal Procedure based on complaints filed by an individual with whom he had a personal relationship. The judge failed to follow the law, failed to maintain professional competence in the law, allowed his relationship with the complainant to influence his judicial judgment, used his position to advance another's private interest, and permitted the complainant requesting the peace bond to convey the impression that she was in a special position to influence him. [Violation of Canons 2A, 2B and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning of a Justice of the Peace.* (03/23/07).

- The judge interceded in a dispute between two parties in a small claims suit and attempted to assist one of the parties with the collection of a debt. The judge's involvement on the party's behalf lent the prestige of judicial office to advance the party's interest and gave the appearance that the party was in a special position to influence the judge in the small claims action. [Violation of Canons 2A, 2B, and 3B(2) of the Texas Code of Judicial Conduct.] *Private Admonition and Order of Additional Education of a Justice of the Peace.* (03/01/07).
- The judge wrote a letter to the public housing authority, stating that he was a judge and criticizing his neighbor's behavior. Shortly thereafter, the neighbor's rental assistance was terminated by the housing authority for his behavior. [Violation of Canon 2B of the Texas Code of Judicial Conduct.] *Private Admonition of a Municipal Judge.* (12/06/06).

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 presided over an eviction case in which his law partner represented the defendant. The judge knew or should have known that, because he and defense counsel were law partners, a conflict of interest existed that should have prevented him from presiding over the case and deciding in favor of his law partner's client. [Violation of Canon 3B(1) of the Texas Code of Judicial Conduct.] *Private Reprimand of a Justice of the Peace.* (12/06/06).

CANON 3B(2): A judge should be faithful to the law and shall maintain professional competence in it.

- The judge proceeded to trial in a criminal case in the absence of a prosecutor, found the defendant guilty when no *prima facie* proof was presented to the court by a prosecutor, failed to advise the defendant of her basic constitutional rights, and failed to reduce the judgment of conviction to writing. The judge also demonstrated a lack of understanding of the differences between civil and criminal proceedings. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Public Warning and Order of Additional Education of a Justice of the Peace.* (09/29/06).
- The judge (a) met privately with witnesses in a criminal case to discuss the merits of the allegations outside the presence of the defendant and a prosecutor, (b) conducted her own independent investigation of the allegations, (c) failed to take a plea from the defendant, (d) failed to advise the defendant of his basic constitutional rights, (e) proceeded to trial in the absence of a prosecutor, (f) found the defendant guilty when no *prima facie* proof had been presented by a prosecutor, (g) ignored the defendant's right to a jury trial, his right to confront and cross-examine his accuser and witnesses, and his right against self-incrimination, (h) failed to render her judgment in open court, and (i) failed to reduce the judgment of conviction to writing. [Violation of Canons 2A, 3B(2) and 6C(2) of the Texas Code of Judicial Conduct.] *Public Admonition and Order of Additional Education of a Justice of the Peace.* (06/15/07).

- The judge dismissed a Class B misdemeanor charge against a defendant during the magistration process in the absence of a prosecutor or a motion to dismiss filed by the State. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Municipal Judge.* (08/24/07).
- The judge failed to obtain the mandatory judicial education hours during fiscal year 2006 and was ordered to come into compliance by a date certain. [Violation of Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Order of Additional Education of a Justice of the Peace.* (08/24/07).

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.

- The judge made impatient and discourteous comments to a defendant, the defendant's attorney, and a prosecutor when they appeared in court regarding the defendant's probation revocation, and did so in a manner that did not reflect the appropriate temperament or demeanor expected of a judicial officer. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a County Court at Law Judge.* (10/31/06).
- In anger, following a contentious child custody hearing, the judge wrote a letter to a litigant's employer informing the employer that the litigant had behaved disrespectfully and unprofessionally in his court resulting in his finding the litigant in contempt. In the letter, the judge requested that the employer advise her staff to show proper respect when coming to court. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a County Court at Law Judge.* (07/13/07).
- Immediately following the trial of a high-profile criminal case, the judge exhibited a lack of patience, dignity and courtesy required of a judicial official when he intemperately addressed a news reporter and seized the camera equipment from a camera operator as they were attempting to report on the case. [Violation of Canon 3B(4) of the Texas Code of Judicial Conduct.] *Private Admonition of a Former Judge.* (08/24/07).

CANON 3B(6): A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not knowingly permit staff, court officials and others subject to the judge's direction and control to do so.

- In a conversation with a jailer following magistration, the judge made a statement regarding an arrestee that was overheard by a number of witnesses. The statement

suggested to some members of the public that the judge was exhibiting a bias or prejudice against the arrestee on the basis of race. [Violation of Canon 3B(6) of the Texas Code of Judicial Conduct.] *Private Reprimand and Order of Additional Education of a Municipal Judge.* (07/13/07).

CANON 5(1)(ii): A judge or judicial candidate shall not knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent.

- During his campaign for re-election, the judge knowingly misrepresented that he was endorsed by a group of local judges, when he knew or should have known the judges had disclaimed such an endorsement. [Violation of Canon 5(1)(ii) of the Texas Code of Judicial Conduct.] *Private Reprimand of a Former District Judge.* (05/07/07).

Texas Constitution, Article V, Section 1-a(6)A. 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 failed to timely execute the business of the court by allowing a defendant's traffic case to remaining pending for over fifteen months without disposition. Further, the judge's court records in the defendant's case demonstrated a lack of diligence in accurately recording what transpired in the case, including entry of court settings, appearances by the defendant and the prosecutor, pleas, waiver of jury trial, and final adjudication, if any. Additionally, in her responses to inquiries about the defendant's traffic case, the judge exhibited a lack of professional competence in the law regarding traffic cases filed in her court. [Violation of Article V, Section 1 –a(6) A of the Texas Constitution and Canons 2A and 3B(2) of the Texas Code of Judicial Conduct.] *Private Warning and Order of Additional Education of a Former Justice of the Peace.* (10/04/06).