

State of Michigan

Judicial Tenure Commission

Annual Report 2019



Judicial Tenure Commission
Cadillac Place
3034 W. Grand Blvd.
Suite 8-450
Detroit, Michigan 48202
(313) 875-5110
jtc.courts.mi.gov

COMMISSIONERS

HON. MONTE J. BURMEISTER
CHAIRPERSON
THOMAS J. RYAN, ESQ.
VICE CHAIRPERSON
HON. KAREN FORT HOOD
SECRETARY

ARI ADLER
JAMES W. BURDICK, ESQ.
HON. PABLO CORTES
HON. JON H. HULSING
SIHAM AWADA JAAFAR
HON. BRIAN R. SULLIVAN



State of Michigan

LYNN A. HELLAND, ESQ.
EXECUTIVE DIRECTOR
GLENN J. PAGE, ESQ.
DEPUTY EXECUTIVE DIRECTOR

3034 W. GRAND BLVD., STE 8-450
CADILLAC PLACE BUILDING
DETROIT, MICHIGAN 48202
TELEPHONE (313) 875-5110
FAX (313) 875-5154
WEBSITE: jtc.courts.mi.gov

Judicial Tenure Commission

July 1, 2020

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

I am pleased to present the 2019 Annual Report of the Michigan Judicial Tenure Commission. This report informs the public and all branches of state government about the Commission's duties, operations, and actions.

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

Very truly yours,

A handwritten signature in blue ink, appearing to read "M. Burmeister".

Monte Burmeister
Chairperson
For the Commission

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COMPOSITION OF THE COMMISSION DURING 2020

Hon. Monte J. Burmeister, Chair

46th Circuit Trial Court
200 W. Michigan Avenue
Grayling, MI 49738
Term expires 12/31/20
Elected by Probate judges

Thomas J. Ryan, Esq., Vice-Chair

2055 Orchard Lake Road
Sylvan Lake, MI 48320
Term expires 12/31/22
Elected by State Bar membership

Hon. Karen Fort Hood, Secretary

Court of Appeals
3020 W. Grand Blvd., Suite 14-300
Detroit, MI 48202
Term expires 12/31/21
Elected by Court of Appeals judges

Ari Adler

3034 W Grand Blvd Suite 8-450
Detroit, MI 48202
Term expires 12/31/20
Appointed by Governor Rick Snyder

James W. Burdick, Esq.

Burdick Law, P.C.
1760 South Telegraph Road, Suite 300
Bloomfield Hills, MI 48302-0183
Term expires 12/31/20
Elected by State Bar membership

Hon. Pablo Cortes

62A District Court
2650 DeHoop Avenue S.W.
Grand Rapids, MI 49509
Term expires 12/31/22
Elected by District Court judges

Hon. Jon H. Hulsing

20th Circuit Court
414 Washington Avenue, Room 303
Grand Haven, MI 49417
Term expires 12/31/21
Elected by Circuit Court judges

Siham Awada Jaafar

3034 W Grand Blvd Suite 8-450
Detroit, MI 48202
Term expires 12/31/22
Appointed by Governor Gretchen Whitmer

Hon. Brian R. Sullivan

Third Circuit Court
2 Woodward Avenue, Room 1101
Detroit, MI 48226
Term expires 12/31/21
Elected by State Bar membership

2019 & 2020 COMMISSIONER BIOGRAPHIES

Ari Adler is a freelance communications strategist. Prior to forming his own consultancy, Ari served as Gov. Rick Snyder's Director of Communications, overseeing media and public relations for the Governor's Office from 2016 to 2018 on local, state and national issues. Prior to joining the Governor's Office, Ari served as press secretary and director of communications for Michigan Speaker of the House Jase Bolger. Earlier in his career, he managed media relations and social media for Delta Dental of Michigan, Ohio and Indiana as well as the Delta Dental Foundation. An award-winning public and media relations professional, Ari also has served as communications director for the Michigan Department of Transportation, having been appointed to that position by Gov. John Engler. In addition, he was the press secretary and deputy chief of staff for Michigan Senate Majority Leader Ken Sikkema and was the director of public affairs for John Bailey & Associates, Public Relations. Ari began his career as a journalist, working as a reporter and editor for several newspapers across Michigan. He earned his Bachelor's degree in Journalism from Michigan State University, where he served as an adjunct instructor for 12 years, teaching courses on news reporting, public relations and social media.

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

Hon. Monte J. Burmeister is the probate judge for Crawford County, Michigan. He was elected to the probate bench in 2006 and was reelected in 2012 and 2018. Judge Burmeister was in private practice prior to taking the bench and operated his own law firm from 1999 through 2006. He graduated with a Bachelor of Arts from James Madison College at Michigan State University, with honors, in 1990, and received his Juris Doctor from Wayne State University Law School in 1993. Judge Burmeister is the past President of the Michigan Probate Judges Association. He began his tenure with the Commission in 2013. On February 12, 2108, Judge Burmeister was elected the Commission's Vice-Chairperson, and on January 7, 2019, was elected the Commission's Chairperson.

Hon. Pablo Cortes is a district court judge in the city of Wyoming, Kent County. He was appointed to his seat in 2005 and subsequently elected in 2006, 2008, and 2014, and he is unopposed in the 2020 election. From 1995 until taking the bench, Judge Cortes served as an assistant prosecuting attorney for Kent County. Judge Cortes graduated from the University of Michigan in Ann Arbor with honors in 1989 and from Wayne State University Law School in Detroit in 1995. He was elected to the Commission in 2010. Aside from his service on the Commission and various community groups, Judge Cortes serves on the board of the Michigan District Court Judges Association and its legislative committee. He has served as an adjunct professor at the Grand Rapids Community College Police Academy and as an adjunct professor at the Thomas M. Cooley Law School in Grand Rapids. Judge Cortes served as the Commission's Secretary in 2013 and 2014. He served as the Commission's Vice-Chairperson in 2015 and 2016, and the Commission's Chairperson in 2017 and 2018.

Hon. Karen Fort Hood is a Court of Appeals judge. In November 2002 she made history as the first African American woman ever to be elected to the Michigan Court of Appeals. A former Detroit Public Schools teacher and probation officer, Judge Fort Hood was elected to the Recorder's Court bench in 1992. In January 1999 she became presiding judge of the Wayne County Circuit Court, Criminal Division. As presiding judge, she handled administrative duties relative to the court, including the adjournment of cases, disqualification of judges, discipline of attorneys, and resolution of conflicts between the thirty-one judges of the Criminal Division. In addition, Judge Fort Hood presided over the entire domestic violence docket for the Wayne County Circuit Court. Judge Fort Hood also carried a docket of other criminal cases.

Before being elected to the bench, Judge Fort Hood was a special assistant prosecutor in Wayne County Juvenile Court. She served from 1984 through 1988, and prosecuted juvenile offender and abuse and neglect cases. From 1989 through 1992 she transferred to the appellate division of the prosecutor's office where she researched, wrote and argued hundreds of briefs and other appellate matters. She was appointed as an assistant prosecuting attorney in 1988, and served until she took the bench in 1992.

Judge Fort Hood is also very active in the community. She is past president of the Association of Black Judges of Michigan and is a member of the Wolverine Bar Association, the State Bar of Michigan and the Michigan Judges Association. She is a lifetime member of the Detroit NAACP. Effective January 7, 2019, she also serves as Secretary of the Judicial Tenure Commission.

The **Honorable Jon Hulsing** has served as judge for the 20th Circuit Court in Ottawa County, MI since 2006. His docket consists of both criminal and civil cases. He has been the Chief Judge pro tem since 2016. In 2018 he was elected by all of Michigan's circuit court judges to be a representative on the Judicial Tenure Commission. In addition to six years of private law practice, Judge Hulsing served as an Assistant and Senior Assistant Prosecutor in Ottawa County from 1995 to 2006. In 1983 he began his public service career as a deputy with the Ottawa County Sheriff's Office and then as a patrolman with the Wyoming Police Department. He previously served as a member and committee co-chair of the Michigan Judges Association. He graduated summa cum laude with a Juris Doctorate from Thomas M. Cooley Law School and has a Bachelor of Science degree from Grand Valley State University. In 2020, he became one of only 22 national commissioners with CALEA, the Commission for the Accreditation of Law Enforcement Agencies. CALEA establishes best practices for law enforcement agencies.

Siham Awada Jaafar was appointed by Governor Gretchen Whitmer to a term that began on January 17, 2020. As President & CEO of 3D Consulting and Communications, Ms. Jaafar conducts cultural competency and diversity training customized for corporations, law enforcement, government & healthcare agencies, educational institutions and various organizations. She is the Founder and Producer of the award winning nationally acclaimed “Images and Perceptions Diversity Conference” which has been in production in metro-Detroit since 2002 and was introduced in Chicago in 2013.

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

A multi-award winning public relations, diversity & inclusion specialist, Ms. Jaafar is a certified mediator and is currently the President of the Wayne County Dispute Resolution Center (WCDRC) and chairwoman of its a\Advisory Board. She is a Dearborn Heights Planning Commissioner and served on the board of directors for NAWBO (National Association of Women Business Owners) and was its Public Policy Chairwoman for two years. She is host and producer of “Off the Cuff with Siham Awada Jaafar,” a WDHT TV cable production discussing pertinent issues affecting us locally, nationally as well as internationally. She is the former Chairwoman of the ACCESS Coalition against Domestic Violence, and producer of the “Voices over Violence” program. She is also a founding member of BRIDGES (Building Respect in Diverse Groups to Enhance Sensitivity). Ms. Jaafar feels honored and privileged to have been appointed to the Judicial Tenure Commission and is grateful for the opportunity to serve the state in such a vital role.

Thomas J. Ryan, Esq., is a member of the State Bar of Michigan, Oakland County Bar Association, and the American Bar Association. Mr. Ryan is a past president of the State Bar of Michigan, serving as its 66th president from September 2000 to September 2001. Mr. Ryan served on the Oakland County Bar Association’s board of directors and was its president from 1993 to 1994. He received his undergraduate degree from the University of Notre Dame and his law degree from the University of Detroit Mercy. Mr. Ryan has been in the private practice of law since January 1977, and is the attorney for the Village of Beverly Hills, City of Keego Harbor, and the City of the Village of Clarkston. He was attorney for the City of Orchard Lake Village from May 2001 to April 2011, as well as the prosecuting attorney for the Township of Bloomfield from July 1978 to October 2006. Mr. Ryan has previously served as the Commission’s Vice Chairperson and Chairperson, and is its current Vice-Chairperson.

Melissa B. Spickler was appointed to the Commission by Governor Snyder effective May 1, 2014. Her term expired on December 31, 2019.

Missy is a veteran of the financial services industry, with more than three decades of accomplishments as a Merrill Lynch Financial Advisor. She founded The Spickler Wealth Management Group in 1980 and has since turned it into a 10 person team serving both individual as well as institutional clients. Missy is a Managing Director - Wealth Management, is on the Executive Committee of Merrill’s National Women’s Exchange, serves as President of the Detroit Area Chapter of the Women’s

Exchange, and has recently served 3 years on the National Advisory Council to Management. Missy is on the executive committee for the National Advisor Growth Network. She received the 2015 Outstanding Business Leader Award from Northwood University. She has a Bachelor's degree in Criminal Law from Michigan State University and also holds a Chartered Retirement Planning CounselorSM designation.

Missy was named to *Barron's* list of America's Top 100 Women Financial Advisors for 8 consecutive years and *Registered Rep's* Top 50 Wirehouse Women for 4 consecutive years. She was named to *Barron's* listed her among America's 1200 Financial Advisors by State for the 6th consecutive year. Missy was listed in Forbes 2018 and 2019 Best-In-State Wealth Advisor and the Top 100 Women Financial Advisors 2018 and 2019 rankings. She was named to *Financial Times* Top 401 Retirement Advisers for 2015 and 2016. Missy was featured on the cover of the September 2015 issue of *On Wall Street* magazine. Her commitment to educating consumers on the importance of planning for the impact of health care costs in retirement prompted Barron's Magazine to feature her as the first financial advisor to be on the cover of the September 23, 2013 issue, and in the article "How to Protect Your Health & Wealth."

Missy and her husband Eric have three sons, Teddy, Michael, and Matthew, who works with Missy at The Spickler Wealth Management Group at Merrill Lynch.

Hon. Brian R. Sullivan was elected to the Wayne County Circuit Court in 1998. He served as presiding judge of the criminal division in 2004 and as the presiding judge of the Wayne County Business Court for about 3 years. Judge Sullivan was a member of the Criminal Jury Instruction Committee for about 10 years and the Model Civil Jury Instruction committee for nine years (each at the appointment of the Michigan Supreme Court).

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

2019 Judicial Tenure Commission



FRONT: Melissa Spickler; Ari Adler; Hon. Karen Fort Hood, Secretary; Hon. Monte J. Burmeister, Chairperson;
Hon. Brian R. Sullivan; Hon. Pablo Cortes

REAR: Lynn Helland, Executive Director; Glenn Page, Deputy Director; James W. Burdick, Esq.; Hon. Jon Hulsing;
Thomas J. Ryan, Esq.

Siham Awada Jaafar was appointed in 2020 to fill the layperson Commissioner seat vacated by Melissa Spickler in December 2019.



I. COMMISSION COMPOSITION & SCOPE OF AUTHORITY

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

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

A. Composition of the Commission

The Commission consists of five judges, two attorneys, and two lay persons. All commissioners serve three-year terms, staggered such that three positions are filled each year. The lay commissioners are appointed by the governor. The lawyers are elected by the State Bar of Michigan. Four of the judges are elected by the court on which they serve (probate, district court, circuit court, Court of Appeals), while one judge is elected at large by the State Bar of Michigan.

The term of Commissioner Melissa Spickler expired at the end of 2019. Commissioner Siham Awada Jaafar was appointed by Governor Gretchen Whitmer to take her place for a three-year term beginning in 2020.

B. Legal Authority

1. Michigan Constitution

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

2. Michigan Court Rules

The Constitution instructs the Michigan Supreme Court to make rules to govern judicial discipline. Chapter 9.200 of the Michigan Court Rules sets forth those rules. The Supreme Court revised and renumbered Chapter 9.200 effective September 1, 2019. A copy of the current rules is on the Commission's website (jtc.courts.mi.gov).

¹ In this report a "judge" is any judicial officer within the Commission's jurisdiction. It includes justices of the Supreme Court, and all judges, magistrates, and referees, so long as they are part of, or retired from, the Michigan judiciary. It does not include any officials, such as administrative law judges and federal judges, who are not within the judicial branch of Michigan's government.

The more substantive rule changes include the following:

- Disciplinary Counsel (formerly “the Examiner”) no longer defends the Commission’s decisions before the Supreme Court. The Commission now engages outside counsel for that purpose;
- In deciding how to resolve an investigation, the Commission is required to consider whether the judge has corrected the problem or problems disclosed by the investigation;
- The Commission’s authority to require the judge to undergo a relevant medical examination is expanded;
- The time for a judge to respond to the Commission’s questions is set at 21 days;
- The rules are now explicit that it is misconduct for a judge not to cooperate with a Commission investigation;
- Judges are required to sign their answers to the Commission’s questions, and their responses to the Commission’s “28-Day” letters;
- A judge’s failure to respond to the allegations in a complaint permits the allegations to be treated as established fact;
- The new rules clarify that a “28-Day” letter is not required to amend a complaint;
- When recommending a sanction to the Supreme Court, the Commission must consider the judge’s disciplinary history, both public and confidential.

3. Code of Judicial Conduct

The Michigan Supreme Court adopted the Michigan Code of Judicial Conduct to establish ethical standards for judges. The Commission enforces the Code, often referred to as the “canons.” The current canons are on the Commission’s website (jtc.courts.mi.gov).

C. Persons within Commission Jurisdiction

The Commission has jurisdiction over all active state judges. In 2019, there were 1243 active judges in Michigan. The Commission also has jurisdiction over a) former judges, if a request for investigation is filed while that judge is still in office or relates to the former judge’s tenure; and b) retired judges who sit by assignment as visiting judges.

The Commission does not have jurisdiction over federal judges, or over administrative law hearing officers such as workers compensation magistrates, department of corrections hearing officials, and the like.

D. What the Commission Cannot Do

The Commission is not an appellate court. The Commission cannot change a judge's decision. If a court makes an incorrect decision or misapplies the law, that ruling can be changed only through the appellate process.

The Commission also cannot get a judge removed from a case or have a matter transferred to another judge. The Commission cannot provide legal assistance to individuals or intervene in litigation on behalf of a party.

E. What the Commission Can Do

The Commission's authority is limited to investigating alleged judicial misconduct or disability, and, if warranted, recommending that the Michigan Supreme Court impose discipline. Judicial misconduct usually involves conduct in conflict with the standards set forth in the Code of Judicial Conduct. Examples of judicial misconduct include inappropriate demeanor (such as bullying or disrespect); improper communication with only one of the parties in a case; failure to disqualify in cases in which the judge has or appears to have a financial or personal interest in the outcome; delay or dereliction in performing judicial duties; and damaging public comment about a pending case. Judicial misconduct also may involve improper off-the-bench activities, including committing a crime (examples include driving under the influence or misappropriating public money) or making false statements.

II. OVERVIEW OF THE COMPLAINT PROCESS

A. How Matters Are Brought Before the Commission

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

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

B. Commission Review of Requests for Investigation

Each properly executed grievance about a Michigan judge is carefully reviewed by the staff, along with any supporting documents or other evidence. The staff may review the publicly available court file if that would be helpful. The staff requests from the grievant or grievant's attorney any additional information needed to do a preliminary evaluation of the grievance. The staff may only do further investigation if the Commission so authorizes.

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

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

If the investigation shows the judge did not commit misconduct, the Commission closes the grievance without contacting the judge. The judge is given a copy of the grievance when the Commission closes the case, unless the Commission determines otherwise due to the particular facts of a case.

If the investigation will be aided by obtaining the judge's comments, the Commission will give the grievance to the judge and ask for comment on some or all of the allegations and the evidence developed. The judge's response is considered along with all other information developed during the investigation. This comment from the judge may be an investigatory aid, or may be a necessary foundation for a confidential disposition (see next section), pursuant to MCR 9.223(A) and/or (B).

C. Action the Commission Can Take

1. Confidential Dispositions

After an investigation, the Commission has several options. If the allegations are found to be untrue or unprovable, the Commission will usually close the case without action. If the Commission determines there was no judicial misconduct, but certain actions of the judge should preferably not be repeated, the Commission may dismiss the matter with a letter explaining that to the judge.

- | Action the Commission Can Take |
|--|
| <ul style="list-style-type: none">• Dismissal• Dismissal with Explanation• Dismissal with Caution• Dismissal with Admonition• Recommend Private/Public Censure, Suspension or Removal to Supreme Court |

If the Commission determines improper or questionable conduct did (or probably did) occur, but it was relatively minor, the Commission may dismiss the matter with a letter of caution to the judge. A letter of caution advises the judge of the ethical concerns raised by the conduct and encourages that it not be repeated.

When the investigation reveals misconduct that is more clearly established or more serious, but does not rise to the level that public sanction is appropriate, the Commission may dismiss the matter with an admonition. A private admonition consists of a notice to the judge containing a description of the improper conduct and the conclusions reached by the Commission, together with an admonition not to repeat the conduct.

Letters of explanation, caution, and admonition are letters of guidance or reproach that are only sent after the judge has been asked to explain his or her position. They bring issues to the judge's attention so the conduct will not escalate or be repeated. Summaries of conduct that resulted in such letters issued in 2019 are contained in Section IV.

Letters of explanation, caution, and admonition are confidential. Under the strict confidentiality rules that govern judicial misconduct investigations, the Commission and its staff ordinarily cannot advise anyone, even the person who lodged the grievance, of the precise way a grievance was resolved. However, the Commission does inform grievants that a grievance has been dismissed, and in cases in which the dismissal includes some private action, the Commission informs the grievant of that fact, without providing details.

2. Public Dispositions

a. The Complaint

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

The complaint, the judge's answer to it, and all subsequent pleadings are public documents, available for inspection at the Commission's office. To the extent practicable, they are also placed on the Commission's web site (jtc.courts.mi.gov).

After the complaint is filed, the judge is entitled to inspect and copy all documentary evidence in the Commission's possession that is to be introduced at the hearing on the complaint. The Commission must also give the judge the name and address of any person to be called as a witness, and make available to the judge for inspection or copying all exculpatory material in its possession.

The Commission may petition the Supreme Court for an interim order suspending a judge pending resolution of a complaint, when necessary for the proper administration of justice. In extraordinary circumstances, the Commission may make this request before a complaint is issued.

b. Hearing by Master

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

The judge may be represented by counsel at the hearing and all related proceedings. The evidence in support of the charges is presented by "disciplinary counsel." Disciplinary counsel is appointed by the Commission, and is typically the executive director assisted by Commission staff. The Michigan Rules of Evidence apply to the hearings, which are conducted like civil trials. The standard of proof in Commission proceedings is by a preponderance of the evidence.

c. Proceedings Following Hearing by Master

The master holds a hearing to take evidence concerning the complaint, then files a report with the Commission. The report includes a statement of the proceedings, and the master's findings of fact and conclusions of law with respect to the issues presented by the complaint and the judge's answer.

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

d. Disposition by Commission

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

e. Supreme Court Review

Within 21 days after issuing its Decision and Recommendation, the Commission files the original record in the Supreme Court and serves a copy on the judge. Within 28 days after that the judge may file a petition in the Supreme Court to modify or reject the Commission's Decision and Recommendation. The Commission has 21 days to respond. Even if the judge does not file a petition, the Supreme Court independently reviews the Commission's Decision and Recommendation.

The judge and Commission both have an opportunity to present oral arguments to the Court. The Court reviews the evidence, then issues an opinion accepting, rejecting, or modifying the Commission's Decision and Recommendation. If the Court finds the judge committed misconduct, it sanctions the judge through censure, suspension, involuntary retirement, removal, or such other disciplinary action as it deems appropriate. The judge may file a motion for rehearing before the Court, unless the Court directs otherwise in its opinion.

D. Confidentiality of Commission Proceedings

The Michigan Constitution directs the Supreme Court to provide for the confidentiality of complaints to, and investigations by, the Commission. Pursuant to this directive, Michigan Court Rule 9.261 provides that grievances and investigations are strictly confidential, subject to certain limited exceptions, unless and until the Commission issues a complaint against the judge. The rule also provides that once public proceedings are instituted, the complaint, answer, and all subsequent pleadings and proceedings are open to the public.

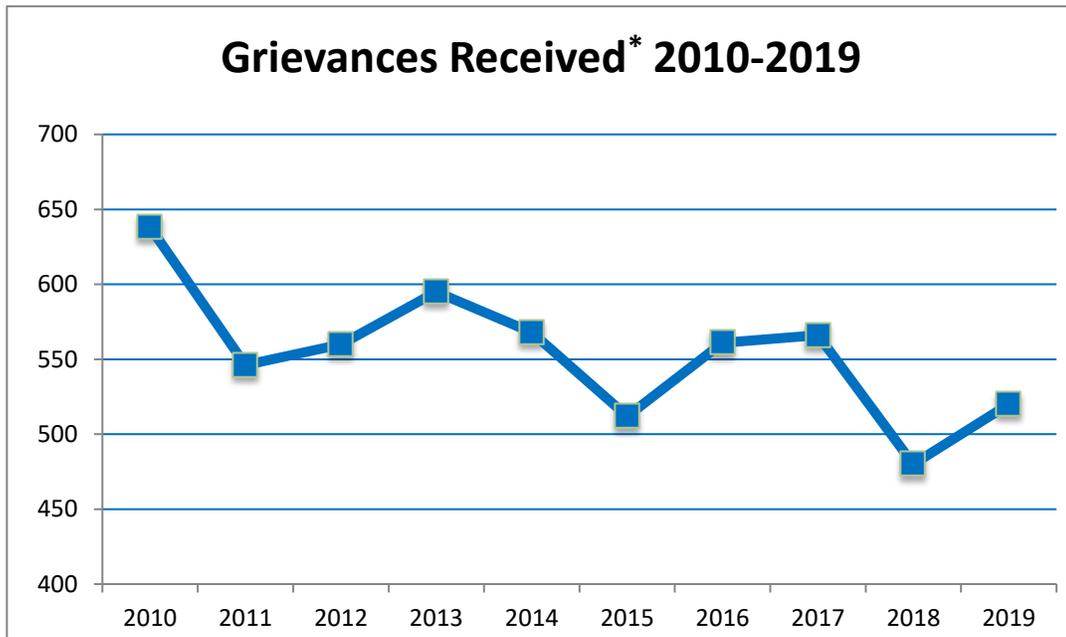
The court rules permit the Commission to publicly acknowledge an investigation before a complaint is issued if a majority of Commissioners determine it is in the public interest to do so. Even in such a case, the Commission's statement is limited to either (1) there is an investigation pending or

(2) the investigation is complete and there is insufficient evidence for the Commission to file a complaint. The Commission very rarely determines that it is in the public interest to acknowledge an investigation.

III. 2019 FACTS & FIGURES

A. Complaints Received and Investigated ²

In 2019 the Commission received 776 requests for its "Request for Investigation" forms. This number does not include downloads from the Commission's website. There were 519 requests for investigation filed in 2019, that complained about actions by a total of 491 judges.



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

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

² The numbers below, for filed cases, resolved cases, and other figures, may sometimes appear inconsistent for several reasons: a single request for investigation can name multiple judges or rest on multiple bases; the Commission sometimes opens an investigation on its own, with no request for investigation having been filed; the Commission often addresses multiple requests for investigation regarding a judge in one formal complaint, admonishment, or other resolution; and based on the confidentiality restrictions relating to the Commission's investigations, some information relating to cases may not be disclosed.

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

B. Complaint Dispositions

In 2019 the Commission resolved 502 grievances concerning 491 judges.

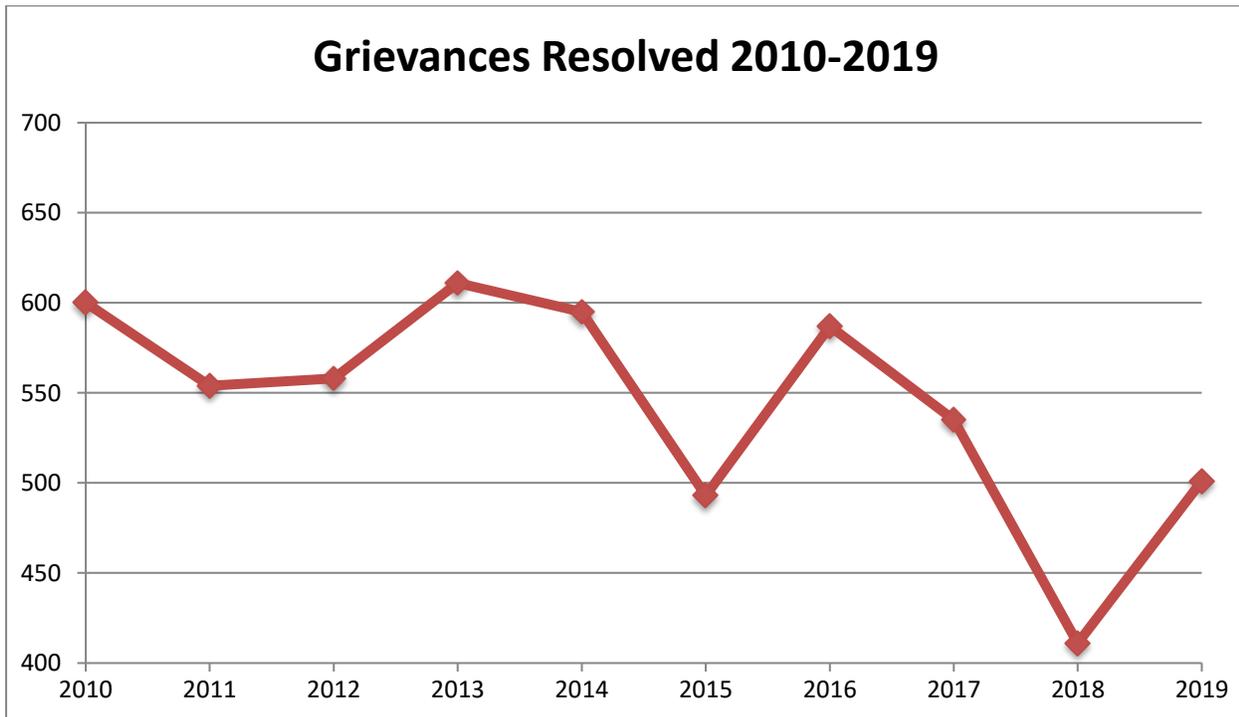
2019 CASELOAD	
Grievances pending on 1/1/2019	152
New grievances received in 2019	519
Grievances concluded in 2019	502
Grievances pending on 12/31/2019	168

1. Closed without Action

In 481 of the 502 grievances resolved in 2019, the evidence did not demonstrate misconduct after the information necessary to evaluate the complaint was obtained and reviewed. In other words, either these files alleged facts that would not constitute misconduct even if true, or investigation showed the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation, or the Commission lacked jurisdiction.

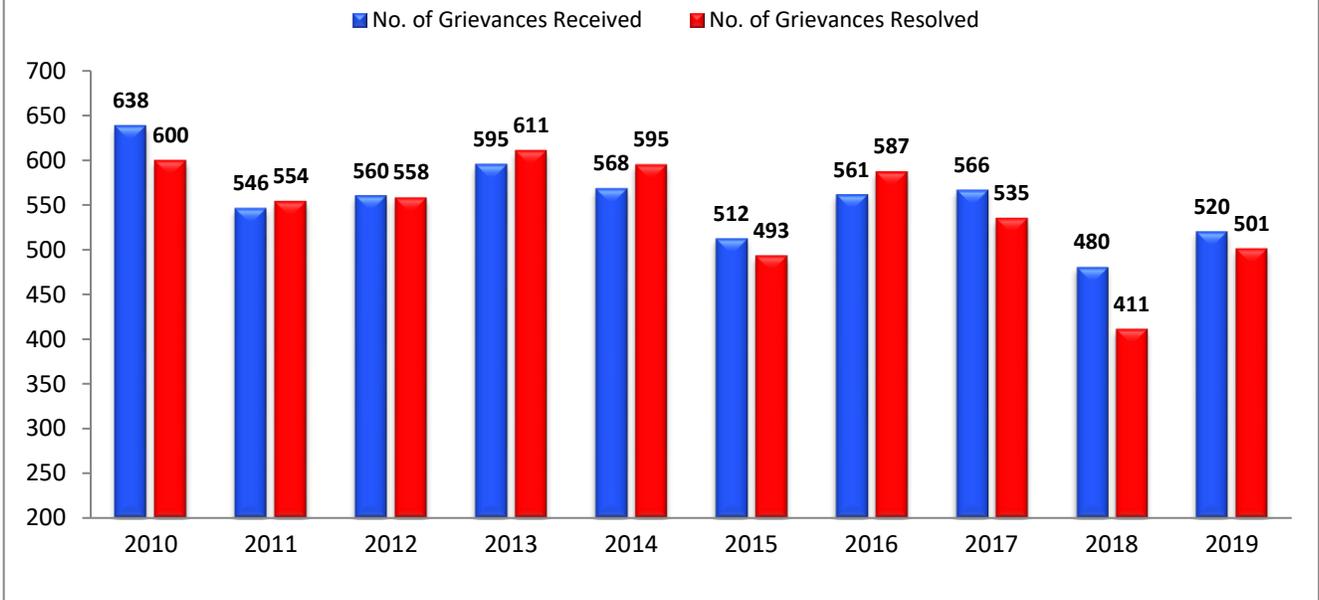
2. Closed with Action

The Commission issued one formal complaint, one consent suspension, one consent censure, two admonitions, five cautions, and four special dismissals in 2019. These dispositions are summarized in Section IV.



With the exception of an unexplained drop in 2018, the number of grievances received and resolved by the Commission has been fairly constant for more than the last decade.

Grievances Received & Resolved, 2010-2019

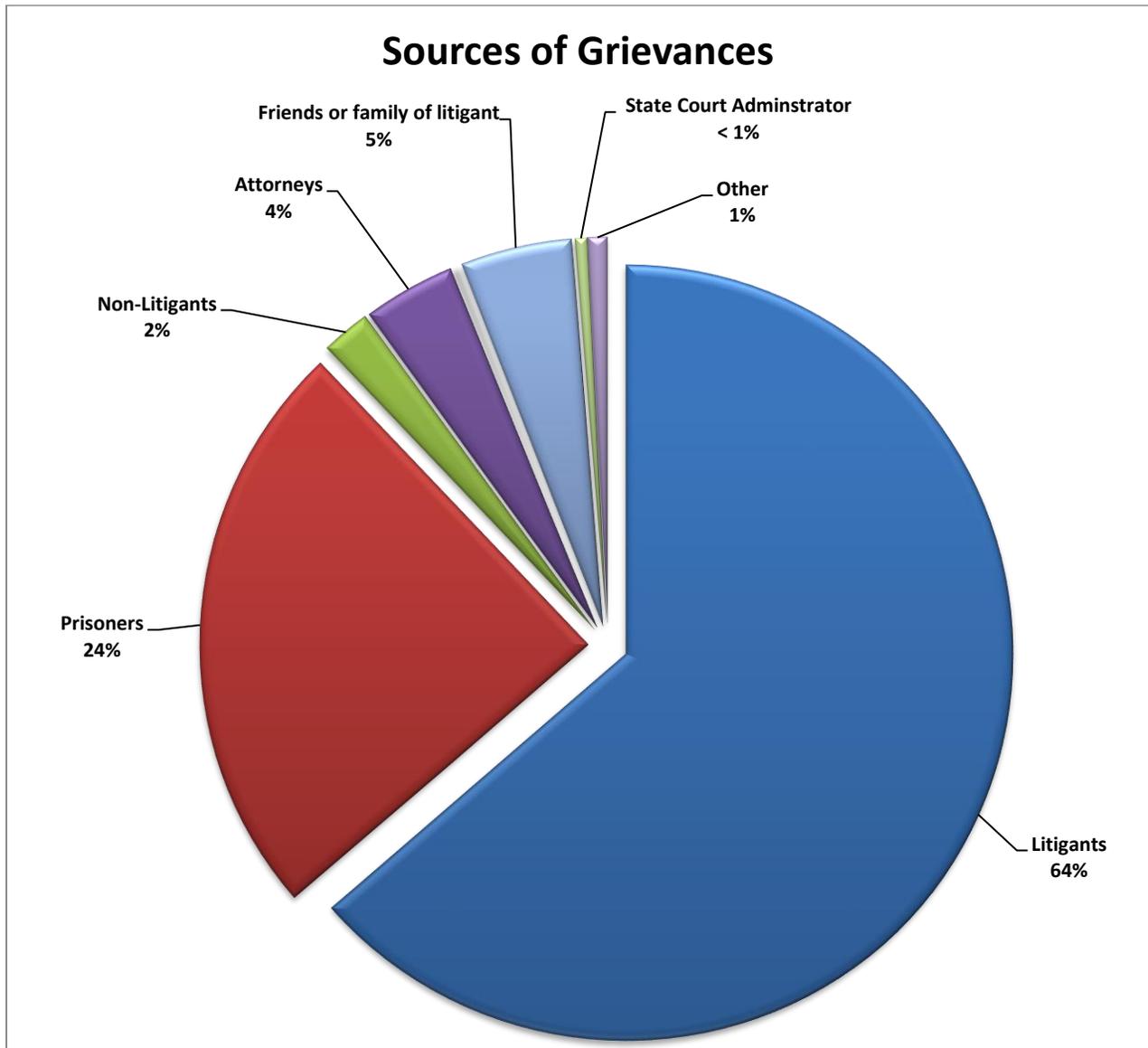


C. Analysis of Grievances Considered in 2019

The grievances received and resolved by the Commission derived from the following sources, covered the following subject matters, were lodged against the following types of judges, and were resolved as follows. The totals may not equal 519 received (section IIIA) or 502 closed (section IIIB), because some grievances allege more than one type of misconduct and some resolutions concern more than one grievance.

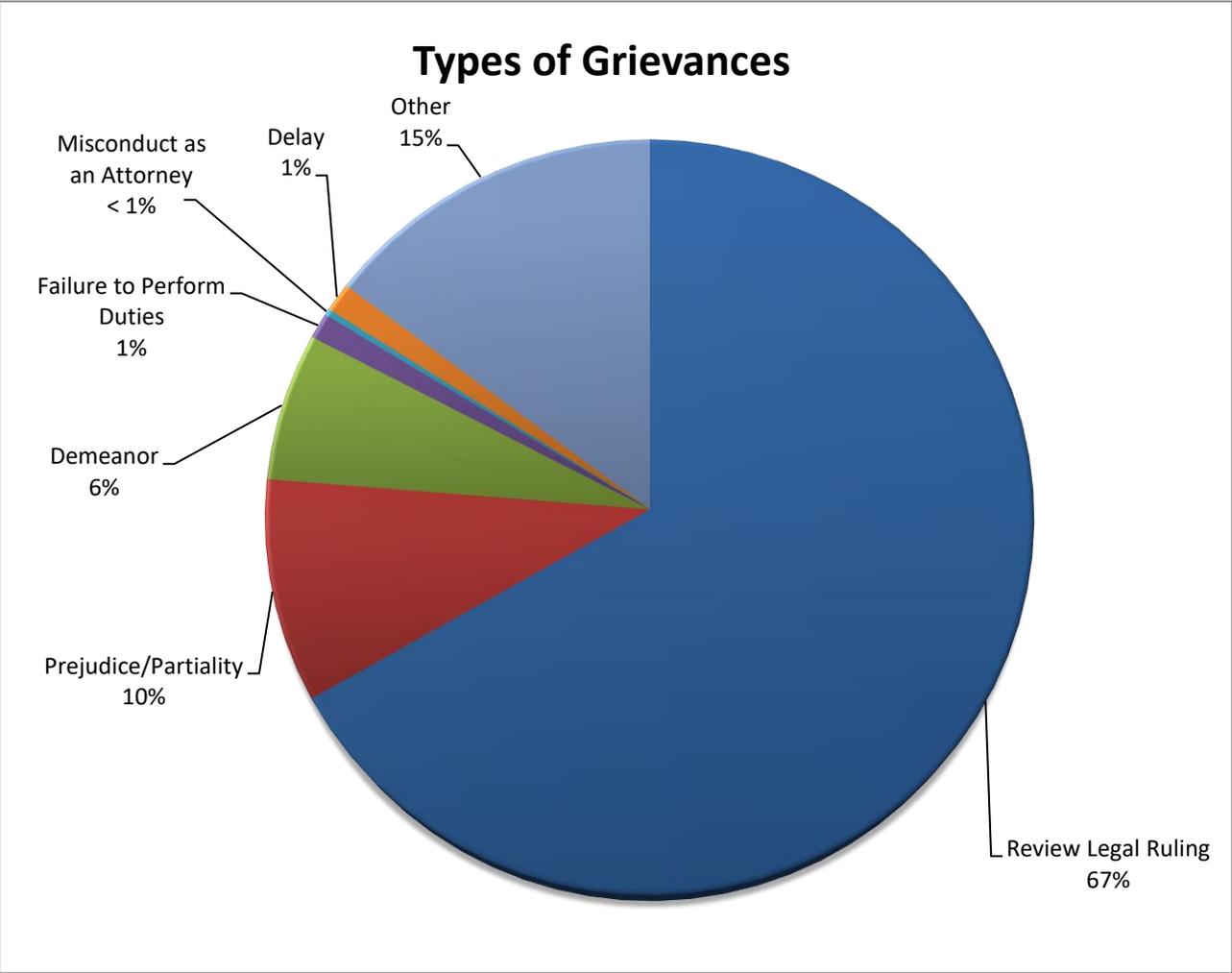
1. Sources of Requests for Investigation

Litigants, acquaintances of litigants, and prisoners filed the majority of requests for investigation, constituting 93% of the total.



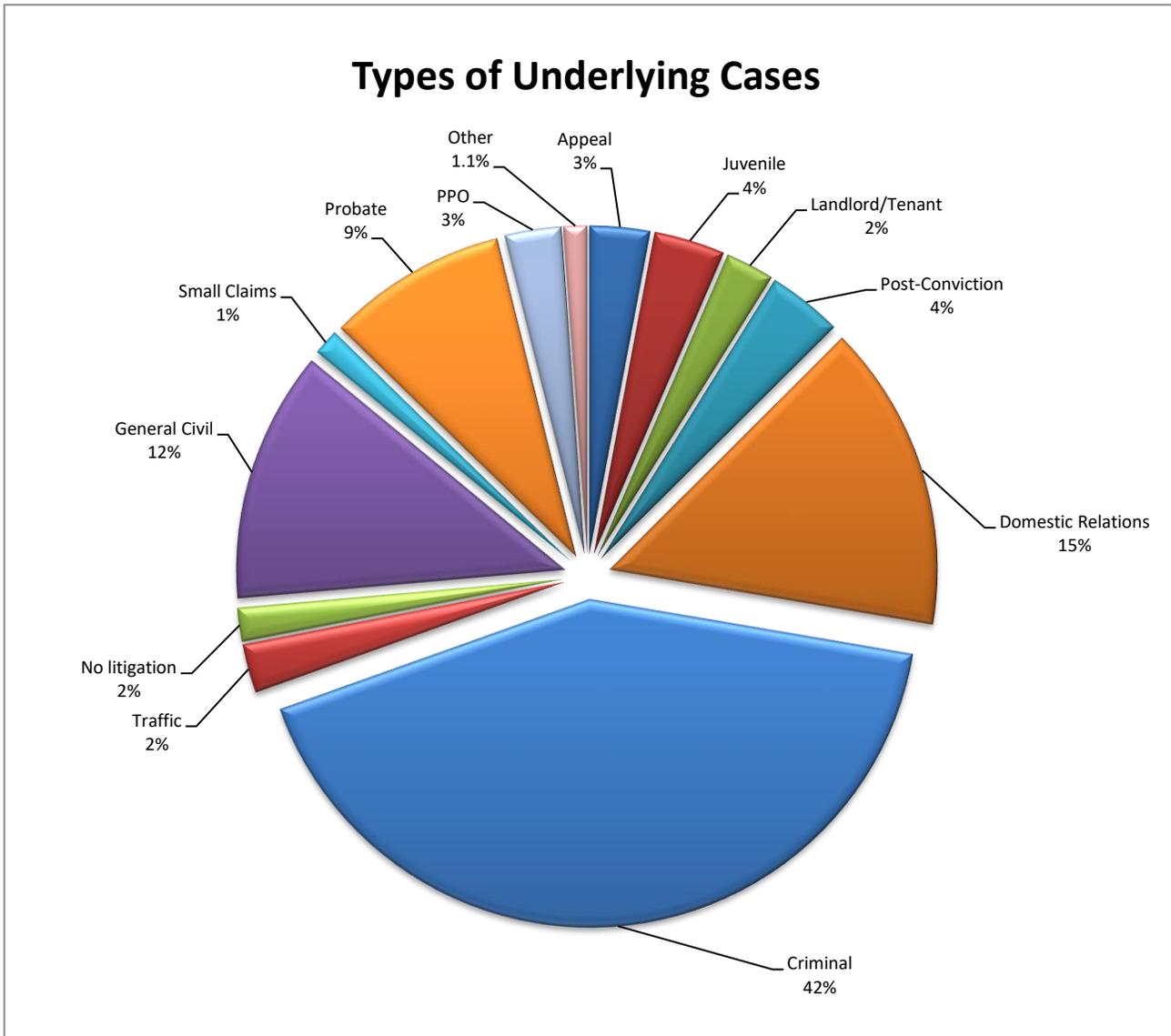
2. Subject Matter of Grievances

Two thirds of 2019 requests for investigation sought to have the Commission review the merits of the underlying case. Since the Commission has no authority to act as an appeal court, those matters were dismissed unless they also included evidence of judicial misconduct.



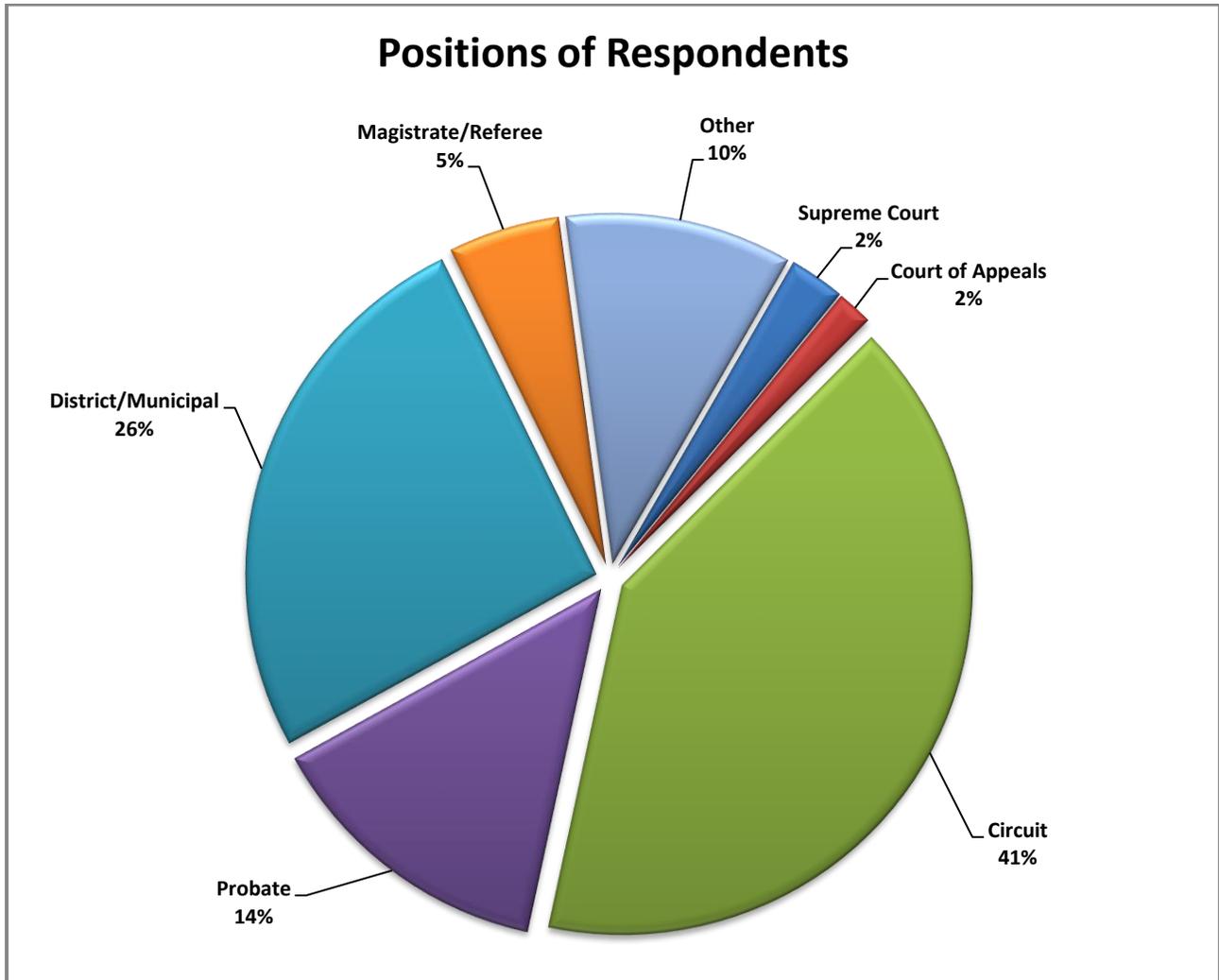
3. Nature of Underlying Litigation

Criminal cases, domestic relations matters, and general civil cases most commonly resulted in grievances against the judge in 2019. Those cases combined made up more than two thirds of the 2019 requests for investigation. Probate cases resulted in another 9% of requests for investigation.



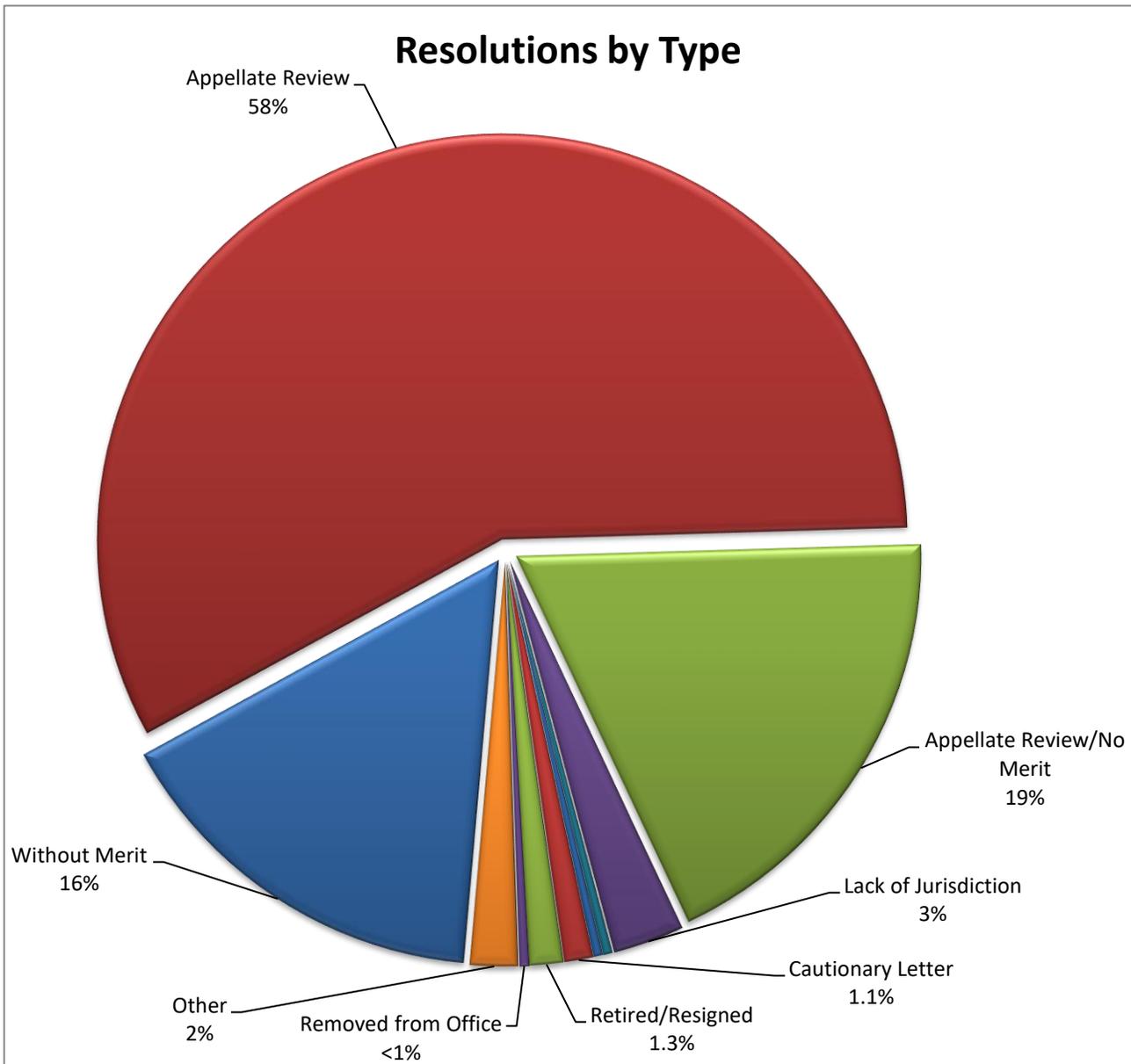
4. Positions of Respondents

Circuit court judges, who comprise less than 20% of the judiciary, were the subject of 41% of the grievances filed in 2019. This is most likely due to circuit judges handling so much of the criminal and domestic relations dockets, which together generate about 55% of the grievances. District court judges, who comprise about 20% of the judiciary, were the subject of about 26% of the grievances filed. The category “Other” includes retired judges and persons who are outside the Commission’s jurisdiction, such as federal judges, administrative law judges, and lawyers.



5. Summary of Resolutions

In 2019, two cases – both involving former judge Theresa Brennan – were resolved through removal. Another case was resolved through a consent suspension, another through a consent public censure, two through letters of admonition, and five through letters of caution. The remaining grievances were resolved by dismissal, including in the case of judges who resigned or retired while under investigation.



IV. CASE SUMMARIES

A. Public Proceedings

Formal Complaint No. 99, Hon. Theresa Brennan – 53rd District Court (Livingston County)

The Commission issued Formal Complaint No. 99 against Hon. Theresa Brennan on June 12, 2018. Respondent was charged with failing to disclose her close relationships with a witness, an attorney, and a party in cases before her, or in the alternative, to disqualify herself from those cases, resulting in an appearance of impropriety; failing promptly to disqualify herself from her own divorce case; a failure to be faithful to the law and improper demeanor when presiding over a paternity dispute; directing staff to perform personal tasks for her during court work hours; improper interference in depositions in her own divorce proceeding; and making misrepresentations while presiding over cases and in her responses to the Commission.

On June 14, 2018, the Michigan Supreme Court appointed retired Wayne County Circuit Judge William J. Giovan as master. The formal complaint was amended on July 31, 2018 to add a count based on Judge Brennan's improper demeanor toward counsel in a divorce proceeding.

Judge Giovan conducted a nine-day public hearing in October and November 2018. The examiners filed a second amended complaint, which added charges that Judge Brennan was persistently discourteous to court staff, attorneys who appeared before her, and others; destroyed evidence relating to her divorce; and made numerous false statements (including under oath), in addition to the charges in the original complaint. The second amended complaint also eliminated a charge that Judge Brennan improperly failed to disclose her relationship with one person.

Judge Giovan issued his report on December 21, 2018. He found that Judge Brennan failed to honestly and completely disclose her relationship with a police witness in a homicide trial; failed to disclose her relationship or disqualify herself in cases in which her close friend or the friend's law firm appeared as counsel; delayed disqualifying herself from her own divorce in order to destroy evidence; persistently abused attorneys, litigants, and court employees; directed her court employees to perform personal tasks, during work hours, on her behalf; had court employees work on behalf of her 2014 campaign during court hours; interfered in depositions taken in relation to her divorce; and made more than 20 false statements regarding the above, both under oath and while presiding.

The Commission petitioned the Michigan Supreme Court to suspend Judge Brennan on February 4, 2019. The Michigan Supreme Court did so, with pay, on February 27, 2019.

Judge Brennan filed objections to the master's report on February 7, 2019. The examiner replied on February 19, 2019. Judge Brennan filed a motion to disqualify the Commission and administratively close the formal proceeding on February 19, 2019, which the Commission denied on February 28, 2019. The Commission held oral argument on Judge Brennan's objections on March 4, 2019.

The Commission issued its Decision and Recommendation on April 8, 2019. It determined that Judge Brennan had engaged in misconduct that included: failing to disclose relevant facts regarding her relationship with a lead detective in a criminal case before her; failing to disclose relevant facts regarding her relationship with an attorney representing a litigant in a case before her;

failing to immediately recuse herself from her own divorce case; tampering with evidence in her own divorce case; and lying under oath. The Commission concluded that Judge Brennan made intentional or misleading statements to the Commission in her written responses and in her testimony at the public hearing. The Commission recommended that the Supreme Court remove her from office, and that the removal be extended through the next judicial term. The Commission further requested that the Court order her to pay \$35,570 in costs, fines and expenses under then MCR 9.205(B), based on her misrepresentations and misleading statements.

On May 9, 2019, Judge Brennan asked the Court to dismiss the Commission's Decision and Recommendation. The Court held oral arguments on June 19, 2019, and issued an Opinion and Order on June 28 ruling that the Commission's findings of fact were supported by the record and its conclusions of law and analysis were correct. The Court ordered that Judge Brennan be removed from office and conditionally suspended for six years, with the suspension becoming effective if she regained judicial officer during the period. The Court awarded the Commission \$16,500 in costs on November 1, 2019.

Formal Complaint No. 100, Hon. Byron Kenschuh – 40th Circuit Court (Lapeer County)

On February 6, 2019, the Commission issued a complaint against Hon. Byron J. Kenschuh. A month later the Commission filed an amended complaint that expanded on some of the details of the complaint but did not change its essence.

The complaint was based on multiple violations of criminal statutes, Michigan Court Rules, Michigan Rules of Professional Conduct, and the Michigan Code of Judicial Conduct, committed before and during Judge Kenschuh's tenure as the Lapeer County Prosecuting Attorney, and after he became a Lapeer County Circuit Court judge. It charged Judge Kenschuh with depositing into his personal accounts money that belonged to the Lapeer County Prosecutor's Office, including money from check collection companies; money paid for training conducted by assistant prosecuting attorneys; and money paid for assistant prosecuting attorneys making court appearances on City of Lapeer criminal cases.

The complaint also charged Judge Kenschuh with submitting reimbursement vouchers that falsely represented that expenditures for office lunches and donuts were incurred in connection with training and/or staff development. It charged him with acting disrespectfully and using profanities during an encounter he had with an elderly woman and her disabled son about a missing campaign sign of a candidate he supported for a judicial seat. It charged him with failing to disclose/disqualify himself from more than one hundred cases in which either his close friend, his former defense attorney, or someone he considered his political enemy, were the attorneys of record. Finally, it charged Judge Kenschuh with making misrepresentations to the Michigan State Police during its criminal investigation into his taking the public money; to a court; during a deposition; and to the Judicial Tenure Commission during its investigation of his misconduct. The alleged misrepresentations included Judge Kenschuh's claim that he had not plead to a criminal misdemeanor in connection with taking the money intended for his office.

On March 18, 2019, the Supreme Court appointed Hon. Williams J. Caprathe as master. On April 2, Judge Kenschuh filed his answer to the complaint, together with affirmative defenses. A pretrial was conducted on April 15 and motions were heard on June 12. The public hearing began on June 28 at the 47th District Court in Farmington Hills, and concluded on September 23. During the

hearing 39 witnesses testified and more than 350 exhibits were admitted. Closing arguments were heard on September 23.

On December 30, 2019, the master issued a report containing his findings of fact and conclusions of law. He determined that the evidence was sufficient to establish that Judge Kenschuh committed the misconduct alleged in Count VII, by failing to disqualify himself from the numerous criminal and civil cases. The master found the evidence insufficient to establish the remaining allegations.

In 2020, Disciplinary Counsel filed objections to the master's findings, to which Judge Kenschuh filed a response. On May 29, the Commission heard arguments. As of the date of this report the matter is pending the Commission's decision and recommendation to the Michigan Supreme Court.

Consent Sanction, Hon. Julie McDonald – 6th Circuit Court (Oakland County)

In 2018, while now-Judge Julie McDonald was a candidate for the judiciary, she was arrested for driving while intoxicated. A breath test administered at the time of her arrest showed a blood alcohol level of .10. A blood test administered an hour later showed a blood alcohol level of .08. Then-candidate McDonald resolved the criminal case through a plea to disorderly conduct.

The Commission found that Judge McDonald's driving under these circumstances was misconduct. It took note that Judge McDonald was cooperative with the arresting officer, had no criminal or professional discipline history, and was candid during the investigation. In addition, Judge McDonald voluntarily began counseling for alcohol abuse shortly after her arrest.

On February 22, 2019, the Commission and Judge McDonald agreed to recommend a suspension of 45 days without pay, with Commissioner Hulsing dissenting on the basis that a 90-day suspension was the appropriate sanction. On April 25, 2019, the Supreme Court adopted the recommendation and suspended Judge McDonald for 45 days without pay, effective June 1, 2019.

Consent Sanction, Hon. Joseph Filip – 12th District Court (Jackson)

In 2017, Judge Joseph Filip presided over *People v Rama Tyson*. Following the preliminary examination, he asked the parties to brief the execution of the search warrant and the sufficiency of the evidence with respect to one of the charges. After requesting briefing, he had ex parte communication with the prosecutor, in which he mentioned a case the prosecutor should review in connection with the matter briefed. Judge Filip did not disclose this communication to the defense.

The prosecutor complied with his ethical duty and disclosed the communication to the defense, prompting the defense to bring a motion to disqualify Judge Filip. Rather than recognize his error, Judge Filip demeaned and excoriated the prosecutor and his supervisor for having done what the Rules of Professional Conduct required them to do.

The Commission took note of Judge Filip's private disciplinary history. The Commission and Judge Filip agreed that public censure was the appropriate sanction. On November 5, 2018, the Commission recommended that sanction to the Supreme Court. On March 8, 2019, the Supreme Court accepted the Commission's recommendation and publicly censured Judge Filip.

B. Non-Public Proceedings

1. Conduct on the Bench

a. Delay

A judge delayed ruling in a bench trial for nearly two years. The judge candidly acknowledged the delay, which he explained (though he did not try to justify) as due to the complexity of the case and his extenuating personal circumstances. The Commission recognized the judge had no prior discipline over a 27-year career, and that the delay in the case was an anomaly. The Commission cautioned the judge to decide cases promptly in the future.

b. Demeanor

When an attorney requested a trial in a criminal case on behalf of her client, a judge challenged defense counsel regarding her trial experience in the presence of the client. The judge also suggested, without foundation, that it was the attorney who sought the trial, not the client, and that the attorney was subordinating the client's interests to the attorney's own in order to get "an easy ... win" and to obtain "some experience at [the defendant's] expense." The Commission found that there was no basis for the judge's comments. The Commission also found that the judge threatened to put the defendant in jail if he was convicted after a jury trial.

The Commission determined that the remarks about the attorney were disrespectful, and that the other remarks, considered collectively, reflected an intent to coerce the defendant to forego a jury trial. The Commission further noted that the judge's remarks demonstrated that he had predetermined the defendant's sentence by stating how he would resolve issues that had not yet been raised. The Commission also expressed concern that the judge may have been not fully candid regarding his intent, in his answers to the Commission's questions.

The Commission admonished the judge for treating the attorney disrespectfully, in violation of Canons 2(B), and 3(A)(3), and 3(A)(14); and, by coercing the defendant to forego a trial, for failing to be faithful to the law in violation of Canon 3(A)(1), and creating an appearance of impropriety in violation of Canon 2(A).

A defendant in another criminal case requested a jury trial. The judge told the defendant that if he was found guilty after insisting on a jury trial, he would "go to jail today" if the judge thought his defense was frivolous or not in good faith.

The Commission found that the judge's comment was an improper effort to dissuade the defendant from going to trial. The Commission admonished the judge for failing to promote public confidence in the impartiality of the judiciary, in violation of Canon 2(B), and failing to follow the law and to respect the defendant's constitutional right to a jury trial, in violation of Canon 3(A)(1).

c. Ex Parte Contact

A judge presided over a felony drug case. The judge refused to accept a plea agreement for HYTA status unless the defendant revealed the source of his narcotics.³ The judge's goal was to determine whether the defendant would be a successful HYTA candidate. When the defendant refused to reveal his source despite several opportunities to do so, the judge gratuitously reminded the defendant of the maximum penalty he faced and took him to a vacant holding cell, where the judge had an ex parte conversation with him.

The Commission acknowledged that the judge's goal was to communicate to the defendant that incarceration was not in his best interests. The Commission cautioned the judge that ordering a defendant into a cell without cause was a failure to be faithful to the law in violation of Canon 3(A)(1), and his ex parte communication with the defendant was a violation of Canon 3(A)(4).

d. Relationships

The sibling of a judge was a referee for the same court. The judge made rulings in cases in which the sibling had made a custody or visitation recommendation. The judge did so without disclosing to the parties the sibling relationship. Prior to anyone complaining about this situation, the judge and the court administrator determined that the judge had no obligation to recuse from these cases. However, the judge did not consider whether there was an obligation to disclose the relationship, which obligation was broader than the obligation to recuse. The Commission cautioned the judge that not disclosing the sibling relationship created an appearance of impropriety and tended to undermine public confidence in the judiciary, contrary to Canons 2(A) and (B).

In another case involving judicial siblings, a judge's sibling signed a search warrant in a criminal case that was assigned to the judge for trial. The defendant moved to suppress the fruits of the search. The judge upheld the validity of the warrant signed by the sibling. The defendant filed a motion to recuse the judge, alleging that ruling on a search warrant signed by the judge's sibling created the appearance of impropriety. The judge vacated the opinion upholding the search warrant, and recused from that issue, but remained on the case. The court's chief judge recused the judge entirely. The Commission found that ruling on a matter in which a sibling was involved created the appearance of impropriety, though it gave the judge credit for recognizing this after the fact. The Commission also noted that the decision not to recuse promptly delayed the resolution of this case. The Commission issued a special dismissal letter to alert the judge to the requirements of MCR 2.003 and Canons 2(A) and (B).

A judge's spouse worked at a law firm that represented a party in a case that was pending before the judge. The judge discussed the issue of the spouse's employment with the parties, but did so off the record. Neither the judge nor the judge's spouse stood to gain financially from the firm's representation of the party. The Commission cautioned the judge that Canon 3(C) required that the judge disclose the relationship at the earliest possible time, and that such a discussion should be on the record.

³ Holmes Youthful Trainee Act

2. Conduct off the Bench

a. Misuse of Judicial Office

A judge appeared in a video that endorsed a media marketing company the judge had used during a campaign. Although the judge initially participated in the video with the good intention of supporting a student intern's video project, the judge was advised that the video would also be used for the company's marketing purposes, and failed to make any effort to prevent that. The company did, in fact, use the video in its marketing efforts.

The Commission noted the judge's candid acknowledgment of having violated Canon 2(C), and noted also that the judge was new to the bench. The Commission cautioned the judge to be careful, in the future, about inadvertently lending the prestige of office to further the interests of others.

b. Political Activity

A judge self-reported that the judge's picture had been used, without the judge's permission, in the campaign materials of a nonpartisan, but non-judicial, candidate for office. The Commission dismissed with no finding of misconduct, because the judge had not authorized, and in fact had attempted to prevent, the improper use of the photo. The Commission observed that the problem may have been the result of less-than-clear communication by the judge with the candidate about the limitations on the use of the judge's picture.

The Commission noted that improper campaign use of photos of judicial officials, without the approval of those officials, is a recurring issue, and suggested that in the future the judge carefully limit the circumstances under which her picture is taken. The Commission suggested that if there is any doubt about the intended use of a future picture, the judge should ensure, when it is taken, that the person taking it knows it may not be used to suggest endorsement of non-judicial candidates for office.

In another case involving use of a judge's photo, a judge self-reported that the judge's picture had been used, without the judge's permission, in the campaign materials of a nonpartisan, but non-judicial, candidate for office. The Commission dismissed with no finding of misconduct, because the judge had not authorized, and eventually attempted to prevent, the improper use of the photo. The Commission observed that the judge had initially informed the candidate that the photo *could* be used, which initial authorization probably contributed to the improper use of the photo. The Commission recognized, though, that several years previously it had sent a letter to the judge that suggested, incorrectly, that it is permissible for a judge to endorse nonpartisan candidates running for non-judicial office. The Commission acknowledged its potential role in the judge's initial mistaken authorization, and clarified for future purposes that judges may only endorse candidates for judicial office.

A part-time juvenile attorney referee accepted a position as referee while still sitting as a city commissioner. The referee then ran for reelection to the city commission while still acting as a referee. The Commission advised the referee that the Michigan Code of Judicial Conduct applied to him and

that he had violated Canon 7(A)(3), which forbade him from holding elective and judicial office at the same time. The Commission cautioned the referee to be careful to observe the limits on his ability to hold, or campaign for, non-judicial political office while holding judicial office.

V. LAWSUITS

IN 2019 the lawsuits that had been pending against the Commission in previous years were all resolved in the Commission's favor. The lawsuits dismissed in 2019 included:

- A lawsuit begun in 2012 by former judge Sylvia James, who had been removed from the bench in 2011 as a result of Formal Complaint 88.
- A lawsuit begun in 2016 by former judge Brenda Sanders, who had been removed from the bench in 2015 as a result of Formal Complaint 95.
- A lawsuit begun in 2017 by former judge Beverly Nettles-Nickerson, who had been removed from the bench in 2008 as a result of Formal Complaint 81.

VI. COMMISSION ORGANIZATION, STAFF AND BUDGET

A. Commission Organization and Staff

The Commission had six full-time staff positions in 2019, which included the executive director, deputy executive director, two staff attorneys, one office manager and one administrative assistant. All Commission staff members are state employees.

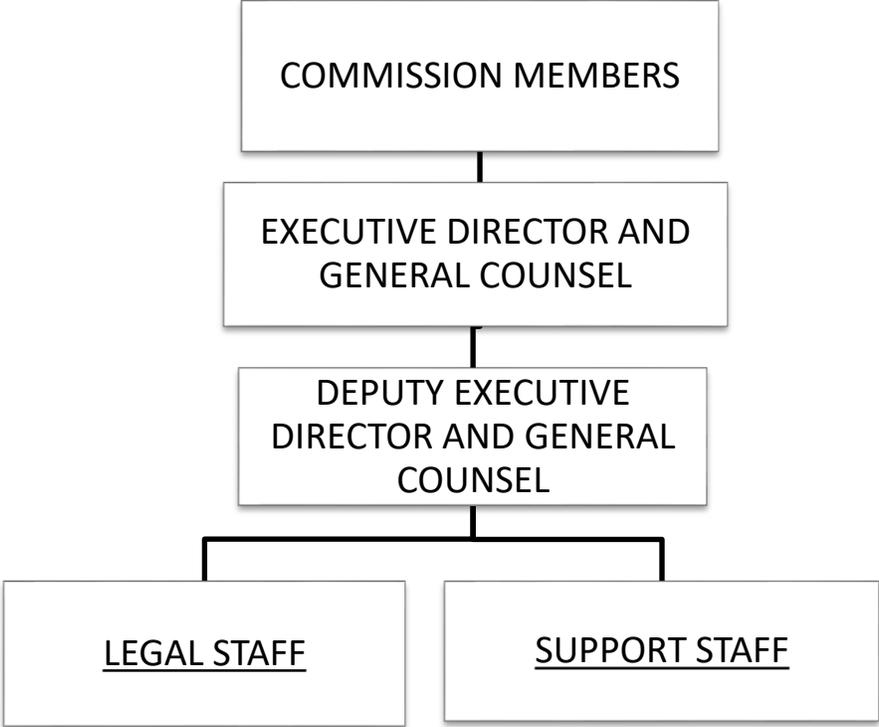
The executive director is hired by, and reports directly to, the Commission. The executive director oversees the investigation of grievances and is the disciplinary counsel handling public proceedings. The executive director is also the primary liaison between the Commission and the judiciary, the public,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

Glenn J. Page has been the deputy executive director since February 2017. The staff attorneys are Casimir J. Swastek and Margaret N.S. Rynier.

In addition to the staff attorneys, in December 2018 the Supreme Court provided temporary funding to enable the Commission to engage the services of two part-time contract attorneys to help address the Commission's backlog of cases. The Commission was ably assisted by contract attorneys Sheila Walsh and Lora Weingarden. In FY 2019 the legislature continued the funding for contract attorneys through FY 2020.

Together with the executive director and deputy executive director, the Commission's legal staff is responsible for analyzing and investigating grievances, and providing the Commission the information it needs to act on grievances. In addition, the attorneys serve as disciplinary co-counsel during public proceedings.

In 2019, the Commission’s support staff was comprised of Office Manager Camella Thompson and Administrative Assistant Joyce Ford-Cooper. Ms. Thompson retired in November 2019 after 34 years of loyal service to the Commission.



B. Budget

The Commission's budget is established by the Michigan legislature. For the 2019 fiscal year (October 1, 2018–September 30, 2019), the Commission spent its appropriation of \$1,162,900. The Commission received \$292,813 of additional funding from the Supreme Court, to resolve several expenses that became apparent after the budget was developed. While the Commission strives to keep its expenditures to the minimum consistent with doing quality work in a professional work environment, it is clear that the current budget is, and has been, inadequate to enable the Commission to resolve investigations as timely as would well serve the public and judiciary.

