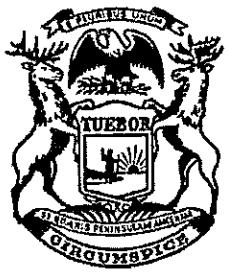
State of Michigan

Judicial Tenure Commission

Annual Report 2007



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State of Michigan

Judicial Tenure Commission

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JUDGE KATHLEEN J. MCCANN
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THOMAS J. RYAN, ESQ.
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NANCY J. DIEHL, ESQ.
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April 30, 2008

Honorable Justices of the Michigan Supreme Court
Honorable Jennifer Granholm, Governor
Honorable Members of the Michigan Legislature

Ladies and Gentlemen:

I am pleased to present the Annual Report of the Michigan Judicial Tenure Commission for the year 2007. This Annual Report is presented to inform the public and all branches of state government about the Commission's duties, operations, and actions. It is hoped that this report will reflect the importance of the Commission's work.

The Commission remains committed to fulfilling its responsibilities to the People of the State of Michigan. It also takes this opportunity to thank its devoted and thoroughly professional staff members for their work and assistance to the Commission this past year. It is hoped that through the vigilant and dedicated work of the Commission, the public's confidence in the integrity, independence, and fairness of the judiciary will be preserved.

Very truly yours,

Barry M. Grant
Chairperson

TABLE OF CONTENTS

COMPOSITION OF THE COMMISSION – 2007 v
I. COMMISSION JURISDICTION AND LEGAL AUTHORITY 1
A. The Authority of the Judicial Tenure Commission 1
B. What the Commission Cannot Do 1
C. Judicial Misconduct 1
D. Legal Authority 2
1. Michigan Constitution 2
2. Michigan Court Rules 2
3. Code of Judicial Conduct 2
E. Recent and Anticipated Changes at the Commission 2
II. OVERVIEW OF THE COMPLAINT PROCESS 2
A. HOW MATTERS ARE BROUGHT BEFORE THE COMMISSION 2
B. COMMISSION REVIEW OF REQUESTS FOR INVESTIGATION 3
1. Investigation at the Commission's Direction 3
2. Disposition of Cases Without Formal Proceedings 3
C. ACTION THE COMMISSION CAN TAKE 3
1. Confidential Dispositions 3
2. Public Dispositions 5
a. The Formal Complaint 5
b. Hearing 5
c. Standard of Proof 5
d. Commission Consideration Following Hearing by Master 5
e. Disposition after Hearing by Commission 6
f. The Supreme Court Hearing 6
D. CONFIDENTIALITY OF COMMISSION PROCEEDINGS 6
III. 2007 STATISTICS 7
A. COMPLAINTS RECEIVED AND INVESTIGATED 7
B. COMPLAINT DISPOSITIONS 8
C. Closed Without Action 9
D. Closed With Action 9
E. Formal Complaints 9
F. Summary of Grievances Considered in 2007 9
G. Sources of Grievances 9
H. Subject Matter of Grievances 10
I. Nature of Underlying Litigation 11
J. Categories of Respondent Judges 12
K. Dispositional Breakdown 13
IV. CASE SUMMARIES 14
A. PUBLIC PROCEEDINGS 14
1. FORMAL COMPLAINT NO. 80, Hon. Jeannette O'Banner-Owens 14
2. FORMAL COMPLAINT NO. 81, Hon. Beverley Nettles-Nickerson 14
3. FORMAL COMPLAINT NO. 82, Hon. William Hultgren 15
B. Non-Formal Public Proceedings 15
1. Hon. Norene Redmond 15

C. Non-Public Proceedings 16
1. Contempt of Court 16
2. Delay 16
3. Treatment of Others When Acting in Judicial Capacity 17
4. Misuse of Judicial Authority 18
5. Irresponsible or Improper Conduct 18
6. Disqualification 18
7. Testimony without subpoena 18
8. Timely appearance on Bench 19
V. COMMISSION ORGANIZATION, STAFF AND BUDGET 20
A. COMMISSION ORGANIZATION AND STAFF 20
B. BUDGET 21

The Michigan Court Rules, Code of Judicial Conduct and Commission IOP's (Internal Operating Procedures) can be found on the Commission's Website (jtc.courts.mi.gov)

COMPOSITION OF THE COMMISSION – 2007

Nancy J. Diehl, Esq.
1441 St. Antoine, Ste. 1157
Detroit, Michigan 48226
Elected by State Bar Membership
Member Since January 1, 2006
Current Term expires December 31, 2008

Diane M. Garrison
c/o 3034 W. Grand Blvd., Suite 8-450
Detroit, Michigan 48202
Appointed by Governor
Member Since February 10, 2005
Current Term expires December 31, 2007

Hon. Barry M. Grant
Oakland County Probate Judge
1200 North Telegraph Road
Pontiac, Michigan 48053
Elected by Probate Judges
Member Since January 1, 1986
Current Term expires December 31, 2008

Hon. Nanci J. Grant
Judge, 6th Circuit Court
1200 N. Telegraph Road, Dept 404
Pontiac, MI 48341
Elected by Circuit Court Judges
Member Since January 1, 2007
Current Term expires December 31, 2009

Hon. Kathleen J. McCann, Vice-Chairperson
Judge, 16th District Court
15140 Farmington Road
Livonia, Michigan 48154
Elected by Judges of Limited Jurisdiction
Member Since February 7, 2003
Current Term expires December 31, 2010

Ronald F. Rose
c/o 3034 W. Grand Blvd., Suite 8-450
Detroit, Michigan 48202
Appointed by Governor
Member Since March 3, 2006
Current Term expires December 31, 2008

Thomas J. Ryan, Secretary
2055 Orchard Lake Road
Sylvan Lake, Michigan 48320
Elected by State Bar of Michigan
Member Since January 1, 2005
Current Term expires December 31, 2010

Hon. Jeanne Stempien, Chairperson
Judge, 3rd Judicial Circuit of Michigan
1441 St. Antoine, Room 403 FMHJ
Detroit, Michigan 48226
Elected By State Bar Membership
Member Since January 1, 2004
Current Term expires December 31, 2009

Hon. Michael J. Talbot
Judge, Court of Appeals
3020 W. Grand Boulevard
Elected by Court of Appeals Judges
Member Since January 1, 2004
Current Term expires December 31, 2009

Nancy J. Diehl has worked as a prosecutor for 25 years and currently heads the Felony Trial Division in the Wayne County Prosecutor's Office overseeing general trials, child and family abuse, homicide, auto theft, and major drugs. Ms. Diehl serves on the executive committee of the Governor's Task Force on Children's Justice, chairs the Wayne County Council Against Family Violence, and is past president of the State Bar of Michigan. Fellow members of the State Bar of Michigan elected her to the Judicial Tenure Commission for a term beginning January 1, 2006. Ms. Diehl has a B.A. from Western Michigan University and a J.D. from Wayne State University Law School.

Diane M. Garrison is from Holt, a suburb of Lansing, Michigan, and served as a gubernatorial appointee. Ms. Garrison is a graduate of Eastern Michigan University with a Bachelor's Degree in Criminal Justice and from Western Michigan University with a Master's Degree in Public Administration. On December 31, 2004 she retired from the Michigan State Police after having served 25 years as Trooper, Sergeant, and Post Commander. She is a long standing member of the Michigan State Police Command Officer's Association. In her tenure with the Association she has held executive officer positions first as Secretary and then for six years as President since 1998. Upon her retirement she was hired as the Executive Director of the Michigan State Police Command Officer's Association.

Honorable Barry M. Grant's hometown is Bloomfield Township, Michigan. He currently presides as Chief Judge Pro Tem for Oakland County Probate Court. Judge Grant was elected to the Judicial Tenure Commission by his fellow probate judges in 1987. He served as a past Chairperson, Vice-Chairperson and Secretary and was elected to serve as the Commission's Chairperson in 2008. He has a B.A. degree from Michigan State University, a J.D. degree from Wayne State Law School, with post-graduate work at Harvard & Northwestern law schools. His previous public offices include Assistant Prosecuting Attorney in Oakland County, Secretary of the Southfield Board of Education, President of the Michigan Probate Judges Association, and President of the National College of Probate Judges.

Hon. Nanci J. Grant is an Oakland County Circuit Court Judge, General Jurisdiction division. She was elected by the state's Circuit Judges to the Judicial Tenure Commission for the term commencing January 1, 2007. Judge Grant received her Bachelor of Arts Degree from The University of Michigan, where she graduated with honors, and her Juris Doctor from Wayne State University. She worked in private practice prior to being elected to the bench in 1996. Judge Grant is a Past President of the Michigan Judges Association and is the Chair-Elect of the State Bar's Judicial Conference for 2008.

Honorable Kathleen J. McCann serves as Chief Judge of the 16th District Court in Livonia. She was elected by the District Judges to the Judicial Tenure Commission commencing January 1, 2003. Judge McCann received her Bachelor of Arts Degree from Hillsdale College and her Juris Doctor from Detroit College of Law. She sits on the Board of Directors of the Michigan District Judges Association and was President of the Incorporated Society of Irish/American Lawyers 2002-2003. Judge McCann was elected as Vice-Chairperson of the Commission in 2007.

Ronald F. Rose is a former attorney, having practiced law for over 31 years, including 29½ years with the Michigan Department of Attorney General. He retired from the Attorney General's Office on October 31, 2002 as the First Assistant Attorney General of the Occupational and Professional Regulation Division. In January 2003, he was appointed Special Assistant Attorney General to handle several appellate matters before the Michigan Court of Appeals. Mr. Rose resigned from the State Bar of Michigan in November 2003, after over 32 years as a member in good standing.

Governor Jennifer Granholm appointed him to the Judicial Tenure Commission in March 2006. She also appointed him to serve on the Utility Consumer Participation Board, where he is currently the vice-chairman. Mr. Rose graduated from Eastern Michigan University in 1965 with a B.S. degree, and he received his law degree in 1971 from the Detroit College of Law. The father of a grown son and grown daughter, he resides with his wife just west of Lansing in Delta Charter Township in Eaton County.

Thomas J. Ryan, Esq. is a member of the State Bar of Michigan, American Bar Association, Oakland County Bar Association, and the Oakland County Ancient Order of Hibernians. 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, City of the Village of Clarkston, and the City of Orchard Lake Village, as well as the prosecuting attorney for the Township of Bloomfield, from July, 1978 to October, 2006. Mr. Ryan currently serves as the Commission's Secretary.

Hon. Jeanne Stempien is serving her third term as a Judge of the Wayne County Third Circuit Court. She was elected to the Judicial Tenure Commission commencing January 1, 2004 and served as the Commission's Chairperson for 2007. Judge Stempien received a Bachelor of Arts with Honors from the University of Michigan, Dearborn and a Juris Doctor, Magna Cum Laude, from the Detroit College of Law. In the past, Judge Stempien was elected the Chairperson of the Schoolcraft College Board of Trustees. Judge Stempien served as a facilitator for the National Judicial College and is currently a member of the Inns of Court, an advocacy program for law students

Hon. Michael J. Talbot was appointed to the Court of Appeals in 1998. He was elected to the Judicial Tenure Commission by his fellow Court of Appeals judges for a term that began on January 1, 2004. Judge Talbot has also served as a judge of the Wayne Circuit, Detroit Recorder's, Detroit Common Pleas courts and worked as an attorney in private practice. He also served as a City of Detroit housing commissioner, and he was a candidate for the Michigan Supreme Court in 1992. He received his bachelor's degree from Georgetown University and his law degree from the University of Detroit.

I. COMMISSION JURISDICTION AND LEGAL AUTHORITY

A. The Authority of the Judicial Tenure Commission

The Judicial Tenure Commission is an independent state commission that came into being in 1968 by amendment to the Michigan Constitution. The Commission investigates allegations of judicial misconduct and disability, conducts hearings as appropriate, and recommends sanctions to the Michigan Supreme Court. The Commission's objective is to enforce high standards of ethical conduct for judges. On the one hand, judges must be free to act independently on the merits of the case and in good faith. However, they must also be held accountable by an independent disciplinary system should they commit misconduct. The judicial discipline system must not only fulfill its primary purpose – to protect the public and preserve the institutional integrity of the judiciary – but also serve to shield judges from the ravages of unsubstantiated complaints.

The Commission has jurisdiction over all active state judges. The Commission also has jurisdiction over former judges if a request for investigation is filed while that judge was still in office. If the matter complained about relates to the former judge's tenure as a judge, the request for investigation may even be filed after the person is no longer a judge.

The Commission does not have jurisdiction over federal judges or administrative law hearing officers such as workers compensation magistrates, department of corrections hearing officials, and the like. This section describes the Commission's handling and disposition of complaints involving judges.

B. What the Commission Cannot Do

The Commission is not an appellate court. The Commission cannot change a judicial officer'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 taken off 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.

C. Judicial Misconduct

The Commission's authority is limited to investigating alleged judicial misconduct and, if warranted, recommending the imposition of discipline by the Michigan Supreme Court. Judicial misconduct and disability usually involves conduct in conflict with the standards set forth in the Code of Judicial Conduct. Examples of judicial misconduct include demeanor problems (such as yelling, rudeness, or profanity), 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 in performing judicial duties, and public comment about the pending case. Judicial misconduct also may involve improper off-the-bench conduct.

D. Legal Authority

1. Michigan Constitution

The Judicial Tenure Commission was established by an amendment to the Michigan Constitution by the people of Michigan in 1968. The Commission's authority is set forth in article 6, section 30 of the Michigan Constitution. The provisions governing the Commission may be found on the Commission's web site (jtc.courts.mi.gov).

2. Michigan Court Rules

Article 6, section 30 of the Constitution authorizes the Michigan Supreme Court to make rules to implement the constitutional directive. Chapter 9.200 of the Michigan Court Rules sets forth the applicable procedures. A copy of those rules may be found on the Commission's website (jtc.courts.mi.gov).

3. Code of Judicial Conduct

The Michigan Supreme Court has adopted the Code of Judicial Conduct, most recently in 1993. 443 Mich ii (1993). The Court from time-to-time effects changes in the Code. A copy of the most recent Code may be found on the Commission's website (jtc.courts.mi.gov).

E. Recent and Anticipated Changes at the Commission

The Commission bid farewell to Diane Garrison, a gubernatorial appointee whose term expired on December 31, 2007. Governor Granholm has since appointed Marja Winters to the Commission, she is warmly welcomed to this institution. Her term runs through December 31, 2010.

II. OVERVIEW OF THE COMPLAINT PROCESS

A. HOW MATTERS ARE BROUGHT BEFORE THE COMMISSION

Anyone may file a request for investigation (or "grievance") against a judge on the Commission's complaint form, a sample of which is on the Commission's website (jtc.courts.mi.gov). The court rules require that the person filing the grievance ("the grievant") have his or her signature verified (*i.e.*, notarized) to establish that he or she has sworn to the truthfulness of the statements made in the grievance. The Commission may institute an investigation on its own, or at the request of the Chief Justice of the Michigan Supreme Court or the State Court Administrator. The Commission may also consider complaints made anonymously, and it may open a file into matters it learns of in other ways, such as news articles or information received in the course of a Commission investigation.

B. COMMISSION REVIEW OF REQUESTS FOR INVESTIGATION

Upon receipt, 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 court file if that would be helpful. The staff also requests any additional information from the grievant needed to evaluate the grievance. The staff may not pursue any further investigation without authorization by the Commission.

Based on an assessment of the initial information, the staff prepares a report for the Commission recommending a course of action. Each grievance is voted upon by the Commission. The Commission determines whether the complaint is unfounded and should not be pursued or whether sufficient facts exist to warrant further investigation.

1. Investigation at the Commission's Direction

When the Commission determines that a complaint warrants investigation, the Commission directs the staff to investigate the matter and report back. The Commission will give the staff specific instructions on how to conduct each investigation.

2. Disposition of Cases Without Formal Proceedings

Commission investigations may include contacting witnesses, reviewing court records and other documents, observing courtroom proceedings, and conducting such other investigation as the issues may warrant. If the investigation reveals facts that warrant dismissal of the grievance, it may be closed without the need to contact the judge before doing so. Unless the Commission determines otherwise, the judge is given a copy of the grievance upon closing the case.

At times the judge may be asked to comment on the allegations, in which case the judge is given a copy of the grievance as part of the investigation. The Commission may limit the inquiry to the judge to a particular aspect of the grievance. The judge's response is then considered along with all other information. This initial comment from the judge is generally viewed as an investigatory aid (pursuant to MCR 9.207[D][2], rather than as a necessary precursor to a formal complaint pursuant to MCR 9.207[D][1]).

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 may close the case without action against the judge. If after an investigation, the Commission determines that there was no judicial misconduct, but that certain actions of the judge should preferably not be repeated, the Commission

Action the Commission Can Take

- Dismissal
- Dismissal with Explanation
- Dismissal with Caution
- Recommend Private/Public Censure, Suspension or Removal to Supreme Court

may dismiss the matter with a letter of explanation. If after an investigation and opportunity for comment by the judge, the Commission determines that improper or questionable conduct did occur, but it was relatively minor, the Commission may dismiss the matter with a cautionary letter to the judge. In cautionary letters, the Commission will advise caution or express disapproval of the judge's conduct. Neither a cautionary letter nor a letter of explanation is a form of discipline.

When more serious misconduct is found, the Commission may dismiss the matter with an admonishment. Private admonishments from the Commission are designed in part to bring problems to a judge's attention at an early stage in the hope that the conduct will not be repeated or escalate. A private admonishment consists of a notice to the judge containing a description of the improper conduct and the conclusions reached by the Commission. A judge has the right to challenge an admonishment in the Supreme Court, which then issues a public decision approving or rejecting the Commission's action. Explanatory letters, cautionary letters, and admonishment letters are not issued until the respondent judge is offered the opportunity to explain what happened.

Explanatory letters, cautionary letters, and private admonishments are confidential. Due to the rules of confidentiality, the Commission and its staff ordinarily cannot advise anyone, even the person who lodged the complaint, of the nature of the action taken. Summaries of conduct that resulted in such letters issued in 2007 are contained in Section IV.

In more serious circumstances, the Commission may recommend that the Supreme Court privately censure the judge. The Grievant is notified of the fact of the private censure. However, unlike with a private admonishment by the Commission, a judge may reject the Commission's recommendation for private censure. In that case, the Court remands the matter back to the Commission for a formal hearing.

2. Public Dispositions

a. The Formal Complaint

When formal proceedings are instituted, the Commission issues a formal complaint, which constitutes a formal statement of the charges. The judge's answer to the notice of charges is filed with the Commission and served within 14 days after service of the notice. The formal complaint, the judge's answer, 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).

The rules provide for some discovery between the parties after formal proceedings are instituted. A 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 formal complaint. The commission must also give the judge the name and address of any person to be called as a witness.

The Commission may petition the Supreme Court for an interim order suspending a judge pending final adjudication of a formal complaint when necessary for the proper administration of justice. MCR 9.219.

b. Hearing

After the judge has filed an answer to the charges, the Commission sets the matter for a hearing. As an alternative to hearing the case itself, the Commission may request the Supreme Court to appoint a master to hear and take evidence in the matter and to report to the Commission. Masters are active judges or judges retired from courts of record.

The judge may be represented by counsel at the hearing. The evidence in support of the charges is presented by an examiner appointed by the Commission. The Michigan Rules of Evidence apply to the hearings, which are conducted like civil trials. MCR 9.211(A).

c. Standard of Proof

The standard of proof in Commission proceedings is by a preponderance of the evidence. *In re Ferrara*, 458 Mich 350 (1998).

d. Commission Consideration Following Hearing by Master

Following the hearing on the formal complaint, the master 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 formal complaint and the judge's answer.

Upon receipt of the master's report, the judge and the examiner are given the opportunity to file objections to the report and to brief the issues in the case to the Commission. Prior to a decision by the Commission, the parties are given the opportunity to present oral arguments before the Commission.

e. Disposition after Hearing by Commission

After hearing the testimony, or after reviewing the master's findings, the Commission may dismiss the matter if it determines that there has been insufficient evidence of misconduct. However, if the Commission determines that misconduct has been established by a preponderance of the evidence, it may recommend that the Michigan Supreme Court impose discipline against the judge. The Commission itself has no authority to discipline a judge; the Michigan Constitution reserves that role for the Supreme Court. The Commission may recommend that the Court publicly censure a judge, impose a term of suspension, or retire or remove the judge from office. The Commission issues a Decision and Recommendation, which triggers the next series of steps.

f. The Supreme Court Hearing

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 with a brief of its own supporting its finding. Even if the judge does not file a petition, the Supreme Court reviews the Commission's Decision and Recommendation. The Supreme Court may remand the matter to the Commission for taking further evidence.

The Court clerk places the matter on the Court calendar. The judge and the Commission have an opportunity to present oral arguments to the Court, which reviews the record on a *de novo* basis. *In re Ferrara*, 458 Mich 350 (1998). After reviewing the record, the Court issues an opinion and judgment directing censure, removal, retirement, suspension, or other disciplinary action, or rejecting or modifying the Commission's Decision and Recommendation. The court rules allow a judge to file a motion for rehearing in the Supreme Court unless the Court directs otherwise in its opinion.

D. CONFIDENTIALITY OF COMMISSION PROCEEDINGS

The Michigan Constitution authorizes the Supreme Court to provide for the confidentiality of complaints to and investigations by the Commission, Michigan Constitution; article 6, section 30. The court rules provide that complaints and investigations are confidential, subject to certain exceptions, unless and until a formal complaint is issued. MCR 9.221.

The court rules permit the Commission to make public statements during the investigating stage if, on its sole determination by majority vote, it is in the public interest to do so. MCR 9.221. Nevertheless, the Commission's statement, if any, is limited to the fact that (1) there is an investigation pending or (2) the investigation is complete and there appears to be insufficient evidence for the Commission to file a complaint. The court rules provide that when formal proceedings are instituted, the formal complaint, answer, and all subsequent pleadings and proceedings are open to the public. MCR 9.221(D).

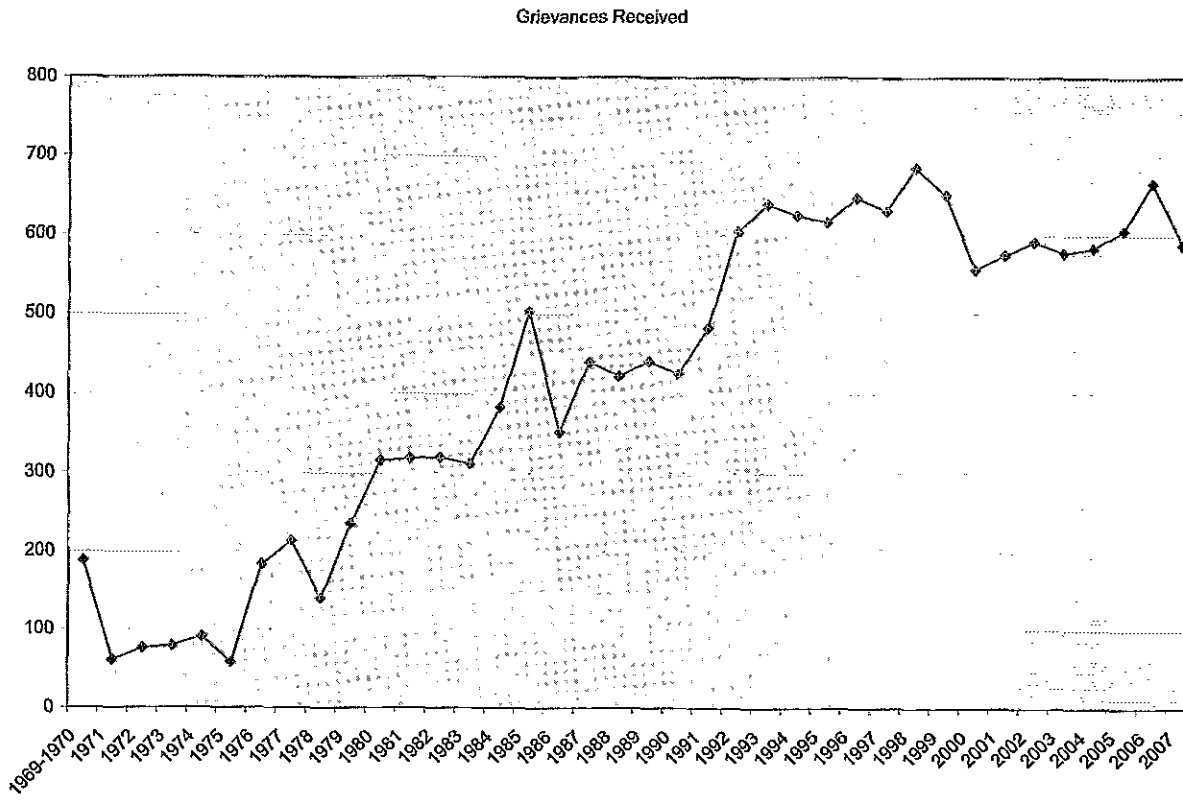
III. 2007 STATISTICS

A. COMPLAINTS RECEIVED AND INVESTIGATED

In 2007, the Commission received 1,220 requests for Requests for Investigation forms. There were 587 Requests for Investigation filed in 2007.

2007 CASELOAD	
Cases Pending on 1/1/07	77
New Grievances Considered	587
Cases Concluded in 2007	570
Cases Pending on 12/31/07	84

This number is generally consistent with the overall growth in the number of Requests for Investigation filed over the years.



The grievances set forth a wide array of allegations. A substantial percentage alleged legal error not involving misconduct or expressed dissatisfaction with a judge's discretionary handling of judicial duties.

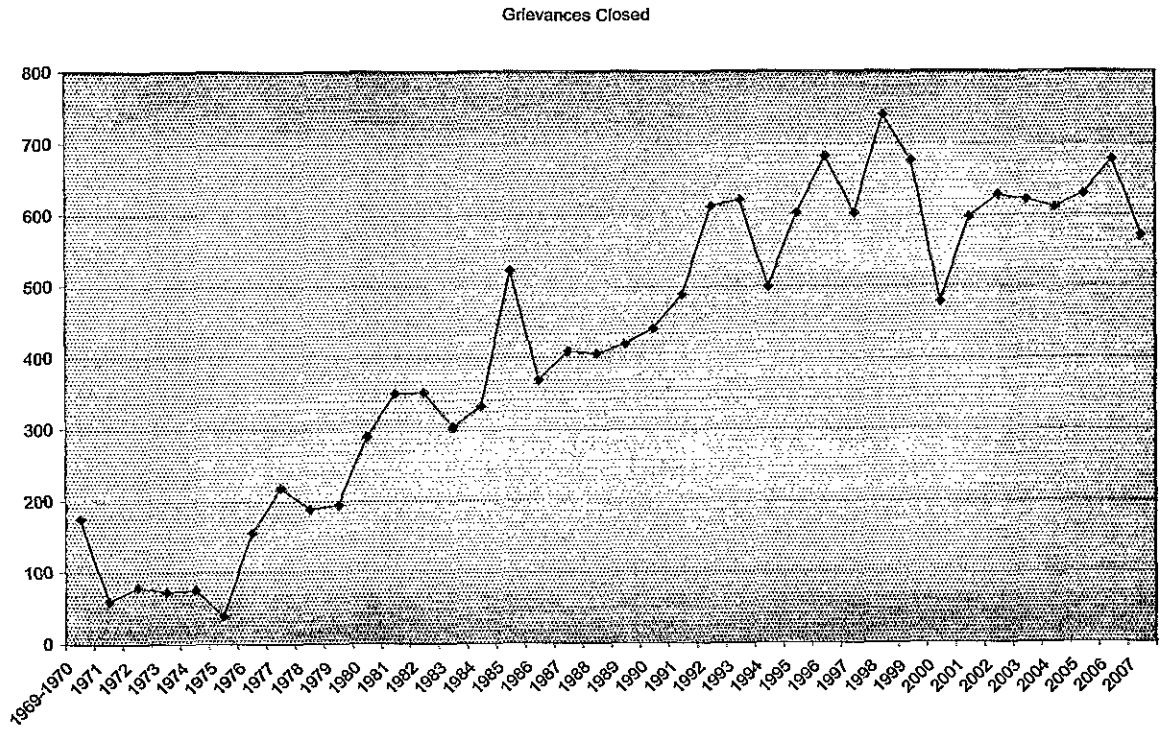
The Commission also received grievances concerning individuals and matters that did not come under the Commission's jurisdiction: federal judges, former judges, workers' compensation judges, other government officials and miscellaneous individuals. Commission staff responded to each of these complaints and, when appropriate, the Commission made referrals.

The number of judgeships within the Commission's jurisdiction has remained fairly constant at 1,044.

JUDICIAL POSITIONS	
Supreme Court Justices	7
Court of Appeals Judges	28
Circuit Court Judges	217
Probate Court Judges	103
District Court Judges	258
Municipal Court Judges	4
Magistrates	278
Referees	149
TOTAL	1,044

B. COMPLAINT DISPOSITIONS

The following case disposition statistics are based on cases completed by the Commission in 2007, regardless of when the complaints were received. In 2007, the Commission disposed of 570 cases.



C. Closed Without Action

In 554 of the 570 cases closed in 2007, a sufficient showing of misconduct did not appear after the information necessary to evaluate the complaint was obtained and reviewed. In other words, these files alleged facts that, even if true, would not constitute judicial misconduct. Investigation showed that the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation.

D. Closed With Action

In 2007, the Commission issued 13 cautionary and explanatory letters. Each of these dispositions is summarized in Section IV.

E. *Formal Complaints*

The Commission issued 3 formal complaints in 2007. Each of these dispositions is summarized in Section IV.

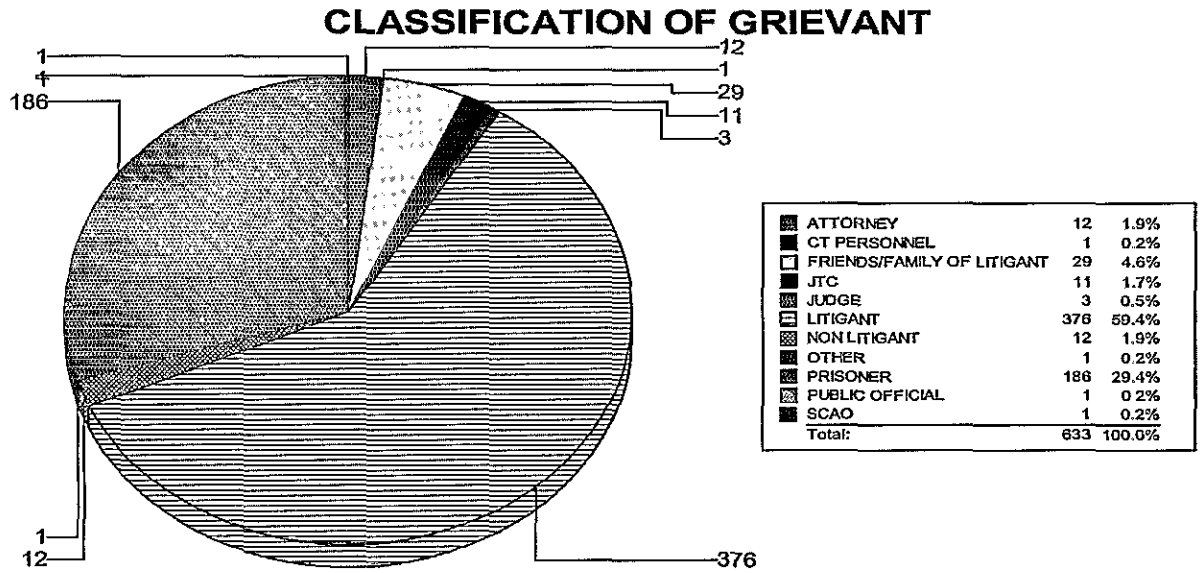
Formal Complaint No. 80 – Hon. Jeanette O'Banner-Owens
Formal Complaint No. 81 – Hon. Beverley Nettles-Nickerson
Formal Complaint No. 82 – Hon. William C. Hultgren

F. Summary of Grievances Considered in 2007

The 587 requests for investigation received by the Commission derived from the following sources, covered the following subject matter, and were lodged against the following types of judges. The totals may not equal 587, as some grievances cover more than one judge or contain more than one type of alleged misconduct.

G. Sources of Grievances

Litigants (including prisoners) filed the majority of requests for investigation, nearly 88% of the total.

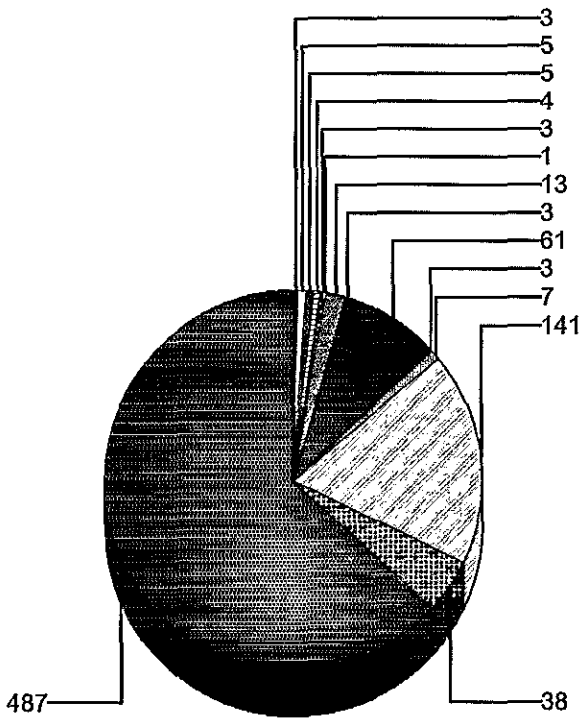


H. Subject Matter of Grievances

Nearly 60% of matters complained of in the Requests for Investigation sought to have the Commission review the merits of the underlying case. However, the Commission has no jurisdiction to act as an appellate body, so unless there was evidence of judicial misconduct, those matters were ultimately dismissed.

NATURE OF GRIEVANCE

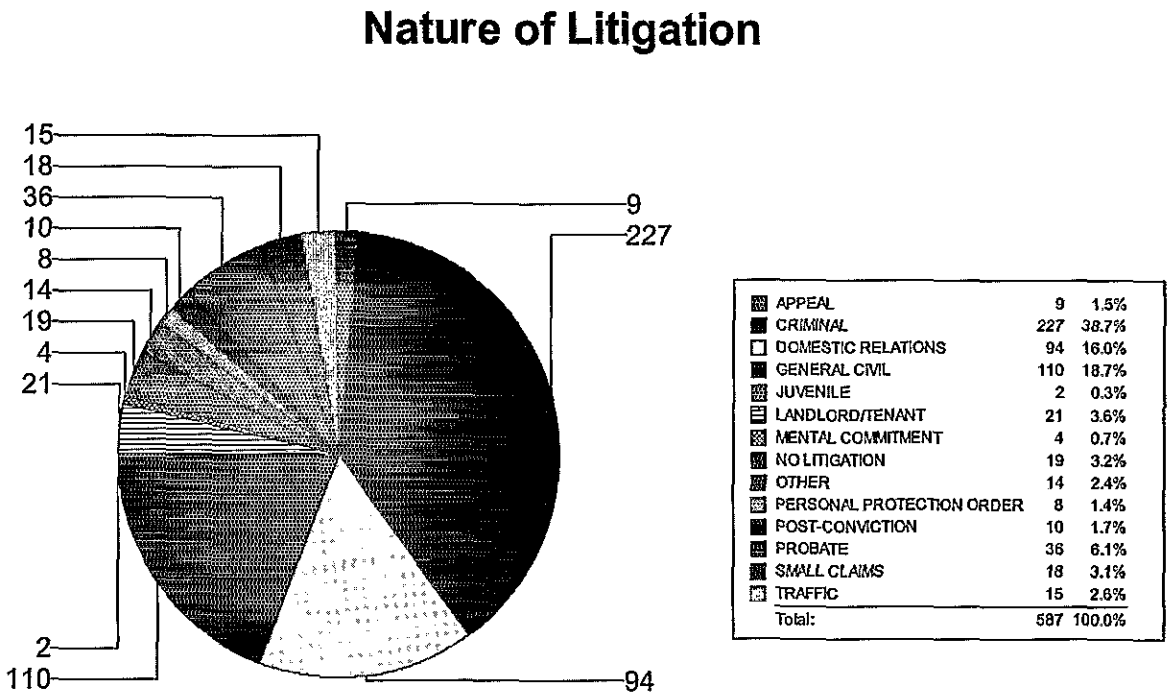
Breakdown by Category



6.500 MOTIONS	0
ATTORNEY MISCONDUCT	3
CONFLICT OF INTEREST	5
CRIMINAL ACTIVITY	0
DELAY	5
EX PARTE CONTACT	4
FAILURE TO PERFORM	3
INCOMPETENCE	1
INTEMPERANCE	0
PERSONAL CONTACT	13
FAILURE TO PERFORM	3
MISCELLANEOUS	61
PHYSICAL OR MENTAL	3
POLITICAL ACTIVITY	7
PRACTICING LAW	0
PREJUDICE PARTIALITY	141
PROCEDURAL OR ADM. IRREGULARITY	38
REVIEW LEGAL RULING	487
Total:	774

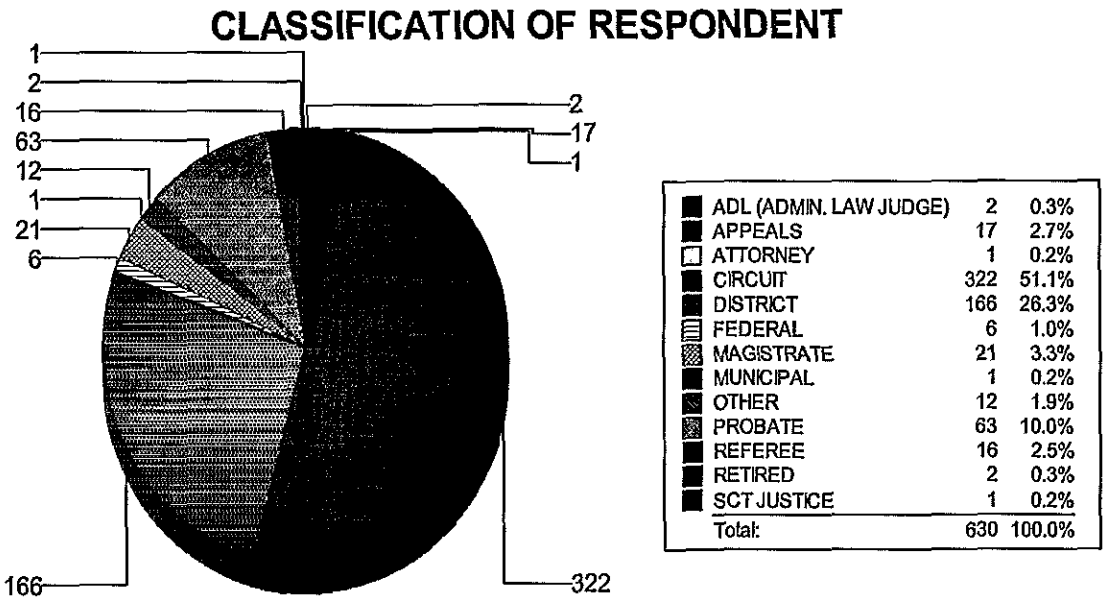
I. Nature of Underlying Litigation

Criminal cases, domestic relations matters, and general civil cases continue to be the most common types of cases to produce grievances against the judge.



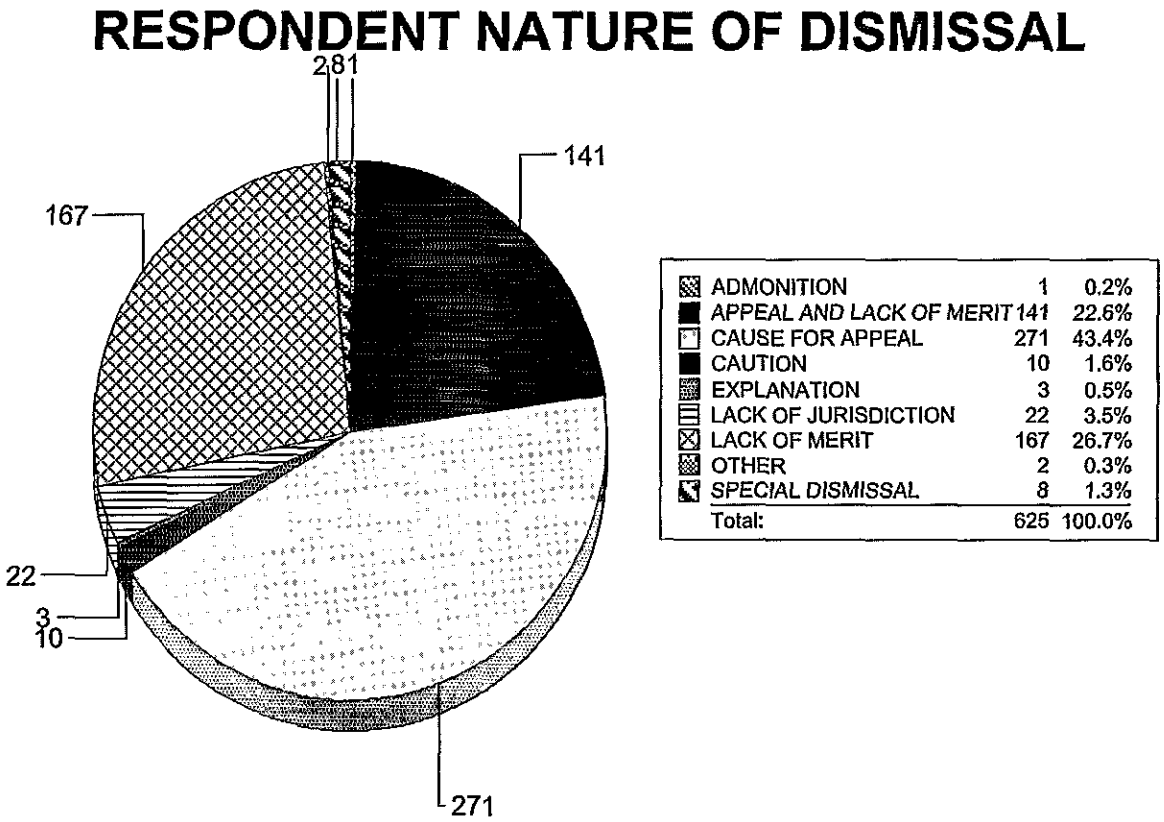
J. Categories of Respondent Judges

The circuit judges, who comprise about one-fifth of the judiciary, received about half of the grievances. This is most likely due to the circuit judges handling so much of the criminal and domestic relations dockets, which together generate more than half of the grievances. District court judges, who comprise nearly 25% of the judiciary, received a proportionate 25% of the grievances filed.



K. Dispositional Breakdown

There were no public censures, voluntary resignations or retirements as a result of formal proceedings in 2007. One judge died during formal proceedings. The Commission had to issue 10 letters of caution, and three letters of explanation in matters that did not rise to the level warranting formal complaints.



IV. CASE SUMMARIES

A. PUBLIC PROCEEDINGS

1. FORMAL COMPLAINT NO. 80, Hon. Jeannette O'Banner-Owens (36th District Court)

On March 29, 2007, the Judicial Tenure Commission initiated formal proceedings against Judge O'Banner-Owens. The complaint included allegations of demonstrating an unnecessarily harsh demeanor, interrupting witnesses excessively, making inappropriate and sarcastic remarks, and issuing unjustified threats of contempt, incompetence as reflected by voicing erroneous legal opinions and issuing erroneous rulings, making ethnocentric remarks and other comments reflecting bias or creating the appearance of bias in favor of parties from Detroit or who were African-American, and a noticeable deterioration of the judge's on- and off-the-bench conduct over the previous 18 to 30 months.

The Commission dismissed the matter after the judge's death on July 27, 2007.

2. FORMAL COMPLAINT NO. 81, Hon. Beverley Nettles-Nickerson (30th Circuit Court)

On May 16, 2007, the Judicial Tenure Commission initiated formal proceedings against Judge Nettles-Nickerson. The formal complaint alleged that Judge Nettles-Nickerson had filed for a divorce in Kent County Circuit Court fraudulently claiming that her husband was a resident of that county for at least ten days immediately preceding filing the divorce complaint when the judge knew her husband continued to reside in the former marital home in Ingham County. The complaint further alleged that Judge Nettles-Nickerson committed perjury when affirming under oath the facts of her husband's alleged residence in the county during taking of the proofs for the divorce. In another allegation, the Commission alleged that the judge had submitted a false, fabricated email to the Commission purporting to show Judge Nettles-Nickerson had been on vacation a particular day when the judge was supposed to have been at the court.

The complaint also alleged that Judge Nettles-Nickerson had directed her court reporter to falsely inform the Chief Judge that the court reporter was getting breaks mandated by the union contract for court reporters. In another allegation, the Commission charged that Judge Nettles-Nickerson falsely accused Chief Judge William Collette of trying to develop an improper social relationship with her in statements to the judge's husband and another judge at the court. The complaint also alleged that Judge Nettles-Nickerson had called a press conference and falsely accused Chief Judge William Collette and James Hughes, Region II Administrator for SCAO, of advocating termination of Judge Nettles-Nickerson's court reporter and also falsely accusing them of filing complaints against the judge with the Tenure Commission. In another allegation, Judge Nettles-Nickerson was accused of pressuring court employees into listing cases on the No Progress Docket which did not meet the standards of MCR 2.502. The Commission further charged Judge Nettles-Nickerson was guilty of excessive absences, belated commencement of proceedings, untimely adjournments and improper docket management. The complaint also charged Judge Nettles-Nickerson with engaging in improper ex parte communications.

The complaint also alleged Judge Nettles-Nickerson had improperly discharged a criminal defendant from probation early because of the judge's personal relationship with a court employee who was residing with the criminal defendant. The complaint further averred that Judge Nettles-Nickerson had discharged her Judicial Assistant in violation of the Whistleblower's Protection Act and sought to cover-up the reasons

for that dismissal. The complaint also charged Judge Nettles-Nickerson with making a series of racially-charged accusations against Judge William Collette, Region II Administrator for SCAO James Hughes and filing a spurious complaint against Judge Collette with the Michigan Civil Rights Commission alleging racial discrimination by Judge Collette.

The Michigan Supreme Court appointed the Honorable Leopold P. Borrello, retired Saginaw County Circuit Judge, as Master for the proceedings. Judge Borrello conducted more than eight weeks of hearings, which concluded on November 9, 2007. The parties were to file written closing arguments and proposed findings of fact and conclusions of law in January, 2008.

3. FORMAL COMPLAINT NO. 82, Hon. William C. Hultgren (19th District Court)

The Commission initiated formal proceedings against Judge Hultgren on July 10, 2007. It alleged that at the request of an acquaintance, he improperly intervened in a pending collection case not assigned to him, to assist a defendant who purportedly was a victim of mistaken identity. The Commission asserted that Respondent placed a telephone call to the plaintiff's attorney on the defendant's behalf. After a discussion with the attorney's secretary, he sent a letter to the attorney by facsimile regarding the matter. The letter was on 19th District Court letterhead. The Commission alleges Respondent attempted to utilize his judicial office to have an impact on the result of the case, for the benefit of another.

In addition, the Commission asserted in the complaint that the judge assigned to the collection case learned of the intervention and raised the propriety of it in a memorandum to Respondent. In reply, Respondent issued a memorandum defending his conduct and making a demeaning reference to the plaintiff and his attorney by referring to them as a "lawyer in a credit card collection mill."

On or about July 20, 2007, Respondent filed an answer denying that his actions constituted judicial misconduct. The Michigan Supreme Court appointed Hon. Norma Dotson-Sales, retired from the 36th District Court, as master for the proceedings. The formal hearing was held on November 27 and 28, 2007. A post-trial order entered by the master scheduled written closing arguments, proposed findings of fact and conclusions of law, and responses to be filed in early 2008, with the master's report to the Commission scheduled to be filed by April 1, 2008.

B. Non-Formal Complaint Public Proceedings

Hon. Norene S. Redmond (38th District Court) Consented to Public Censure

On July 20, 2007, the Judicial Tenure Commission issued a Decision and Recommendation to the Michigan Supreme Court that Hon. Norene S. Redmond, of the 38th District Court, be publicly censured. The allegations included demonstrating a severe attitude toward witnesses, engaging in a pattern of setting grossly excessive bail amounts and a "persistent failure to treat persons fairly and courteously."

In one case, a teen-ager called 911 after his mother hit him with a belt on the arm. His mother was uncooperative and was arrested for domestic violence and resisting arrest. Judge Redmond set bond for the defendant in the amount of $5000/10%. After the defendant had been removed, and was

awaiting the payment of the $500 bond by her parents, her teen-aged son made a derogatory comment about the judge in the hallway, out of the judge's presence. An officer advised the judge of the remark and she raised the defendant's bond to $25,000 cash or surety.

In two other cases, Judge Redmond set bond at $750,000 and $1,000,000 for two defendants facing charges of embezzlement from a vulnerable adult and larceny for taking approximately $800 from the premises of a 90-year-old woman and charging her $3,000, an excessive amount for a paint job.

In a fourth case, Judge Redmond sentenced an unrepresented 23-year-old veterinary technician, who was ticketed after a party guest talked loudly or yelled into a cell phone on the defendant's front porch at 4:00 a.m., to probation terms which included, but were not limited to, 30 days in jail, 100 hours of community service and daily alcohol tests. The judge permitted neighbors who were in the courtroom to complain, interrupt the defendant and joined in herself. The judge also failed to disclose she knew some of the neighbors, one of whom had been arrested the same night for disorderly conduct.

Judge Redmond consented to the Commission's findings of fact and recommendation for discipline. As of December 31, 2007, the matter was still pending before the Michigan Supreme Court. On February 6, 2008, the Supreme Court issued an order of public censure of Hon. Norene S. Redmond, of the 38th District Court, based on the Commission's Decision and Recommendation, with the consent of Judge Redmond.

C. Non-Public Proceedings

The Commission reproached judges for the following types of behavior:

1. Contempt of Court

- Initiating show cause for an indirect contempt without a supporting affidavit. While a court may properly institute a show cause without a supporting affidavit where judicially noticing its own records, an affidavit is required by MCR 3.606 where the judge purported to take judicial notice of *ex parte* correspondence addressed to the court by a court-appointed counselor.

2. Delay

- Failing to timely act on a remand from circuit court. The matter was remanded for a hearing to be held within sixty days. The judge was not the original judge in the case and did not become aware of the remand until about six months later. Instead of recognizing the time-sensitive nature of the remand, the judge scheduled the matter for hearing some three months later. This resulted in the hearing being held seven months after expiration of the sixty-day period within which the remand had directed a hearing be held. The failure to timely schedule the hearing after the judge became aware of the remand violated Canon 3 A(5) of the Code of Judicial Conduct requiring that judges dispose promptly of the business of the court.

- Failure to render decision for one year after submission and allowing case to remain pending for over four years. The judge concluded a bench trial in a divorce proceeding and took the matter under advisement. It took approximately one year for her to render a decision, which contributed to fact that the case was pending for over four and a half years. The Commission acknowledged that the judge had some health concerns during the period, her caseload was increased, and the litigants played a role in delaying the matter. However, it noted that a judge has an affirmative duty to dispose promptly of the business of the court, and to intervene in cases to promote expedition and prevent the unnecessary waste of time. Further, the judge admitted she was aware of the guideline issued by the Michigan Supreme Court that divorce proceedings involving minor children be resolved within one year from the date of filing. The Commission concluded that even under the circumstances present in the matter, allowing the case to remain undecided for over four years was unwarranted.

3. Treatment of Others When Acting In Judicial Capacity

- Rudeness to court staff, failure to follow court policies and procedures, and failure to comply with directives from the Chief Judge. The judge assured the Commission that he had modified his conduct with the staff and was working toward developing a productive and competent relationship with his fellow judge.

- Rudeness and unwarranted anger toward a female deputy sheriff at the court. The judge had sent a letter of apology to the court employee before the Commission had received the complaint. The Commission expressed concern that a pattern might be developing in which the judge's frustration and impatience would lead to abusive treatment of persons with whom the judge had professional dealings, based on prior incidents. The Commission found the judge's conduct intemperate and unwarranted but appreciated the judge's initiative in apologizing to the employee and the judge's decision to consult with a doctor regarding stress/anger issues, and warned him to curb the tendency toward angry outbursts and to exhibit more patience and courtesy toward those with whom the judge deals in a professional or official capacity.

- Intemperate conduct including prejudgment, failure to permit a party to explain his case or correct the judge's misunderstanding of the facts, unjustified threat of contempt, and vindictive reduction of a consent judgment. The judge did not understand the parties' explanation of the consent judgment they had entered into, leading him to wrongly assume the plaintiff was somehow attempting to collect double the amount of money that had been agreed upon. As a result of his impatience, he briefly detained the plaintiff without justification, and reduced the amount of the consent judgment. The Commission acknowledged the judge had believed the plaintiff was somehow attempting to collect more than the agreed upon amount, but found no basis for such a conclusion based on the record, and concluded it was due to the judge's impatience and frustration in dealing with inexperienced litigants. The Commission exhorted the judge to exhibit more patience in the future.

4. Misuse of Judicial Authority

- Attempting to coerce the public to oppose an upcoming charter vote by publishing letters identifying the judge in a local newspaper and personally appearing at the polls to encourage, feed, or question voters. The Commission acknowledged that judges may express an opinion on a ballot proposal as concluded in Ethics Opinion C-237, and that judges are permitted to participate in civic activities that do not reflect adversely upon their impartiality or interfere with their judicial duties, pursuant to Canons 4 and 5, but found that the judge's public exhortations to oppose the proposed charter vote far exceeded expressing an opinion, and the judge's personal appearance at the polls appeared coercive and an abuse of the power of the judicial office. The judge was reminded that the right to express an opinion concerning community affairs must be done within the constraints of the Code of Judicial Conduct.

5. Irresponsible or Improper Conduct

- Improperly serving as director of a business in violation of Canon 5C(2). The Commission recognized the judge was fairly new to the bench, but had an obligation to be familiar with the Code of Judicial Conduct, and that Canon 5C(2) was unambiguous in its provision that a judge "should not serve as director, officer, manager, or employee of any business . . ." The Commission dismissed the matter contingent upon receiving proof of the judge's resignation as a director.

6. Disqualification

- Failing to disclose stock ownership in litigant as basis for disqualification. The judge did not disclose that he owned stock in an entity that was involved in litigation before him. Although the ownership interest was a small percentage of the outstanding stock, the Commission advised the judge that was not the sole test on which to disclose a financial interest. For example, litigants who appeared before the judge may have believed that the value of the ownership interest (approximately $43,000) was substantial enough to influence the judge's opinion. Regardless of the dollar amount, litigants may conclude that any ownership will sway the judge's decisions, and result in an appearance of impropriety.

  The Commission advised the judge that in future cases involving the entity, he should disclose the ownership interest to all parties and they could choose to remit his disqualification. In the alternative, he could divest himself from the interest to avoid repeated disclosure of a personal investment, although the infrequency of appearances by the entity before him did not require he take that action under Canon 5C(3).

7. Testimony without subpoena

- Submission of affidavit in lieu of testimony at hearing. An attorney who appeared before a judge in a probate proceeding was later involved in a fee dispute in another court, where the effectiveness of his services was challenged. The judge, who was not subpoenaed, provided

an affidavit for use in the fee dispute litigation, attesting to the proficiency of the attorney's services in the probate proceeding. The Commission acknowledged that the canon requiring that a judge be subpoenaed merely references the appearance as a witness in a court proceeding. However, it concluded that the rule extends to the submission of an affidavit, as the provision's purpose is to address the aura of authenticity that applies when any information is voluntarily provided by someone holding judicial office. The Commission advised the judge that the conduct was improper, but acknowledged his representation that it was an isolated incident, and he would not repeat the act.

8. Timely appearance on Bench

- Late starting time and failure to take bench at scheduled time. The judge set a regular starting time of 9:30 a.m. for morning cases, which was 30 to 60 minutes later than the starting time consistently utilized by other judges. In addition, the judge often did not appear on the bench at that time, keeping attorneys and litigants waiting (and increasing attorney fees). In its reproach of the judge, the Commission acknowledged that the judge had revised the judge's starting time to 9:00 a.m., and admitted that keeping attorneys and parties waiting in court was inconsiderate. It further advised the judge that if there was some reason for not taking the bench at a scheduled time, those waiting should be advised by the judge or her staff.

V. COMMISSION ORGANIZATION, STAFF AND BUDGET

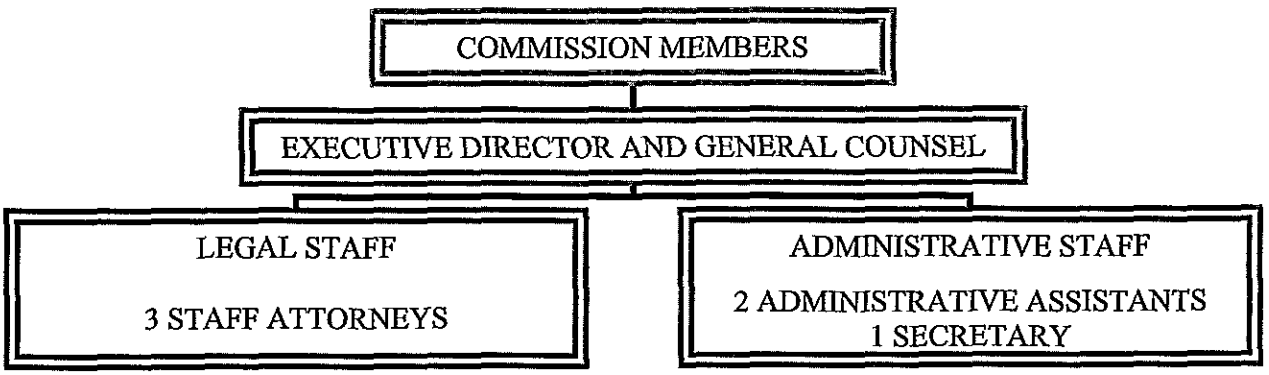
A. COMMISSION ORGANIZATION AND STAFF

The Commission has 7 staff positions, including 4 attorneys and 3 support staff.

The Executive Director and General Counsel is hired by, and reports directly to, the Commission. The Executive Director oversees the intake and investigation of complaints and is the examiner handling the formal proceedings. The Executive Director is also the primary liaison between the Commission and the judiciary, the public, and the media. Paul J. Fischer has served as Executive Director and General Counsel since January 1, 2001.

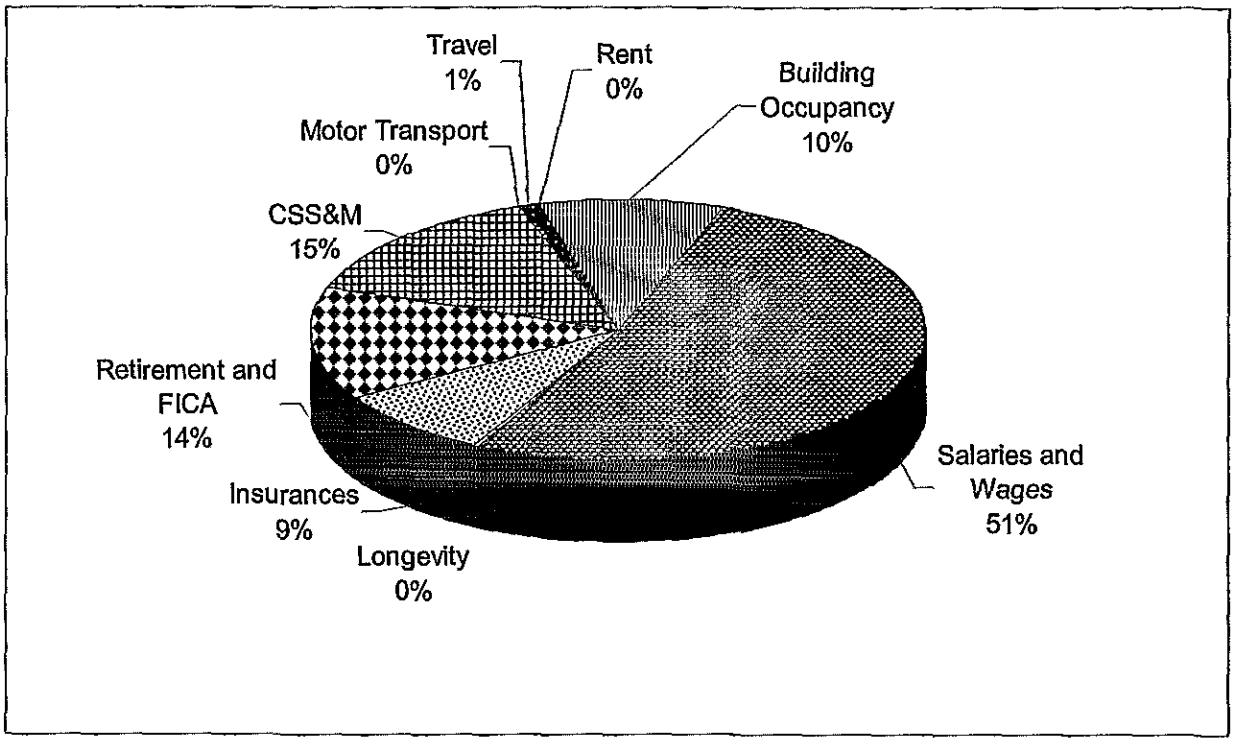
The Commission's legal staff is comprised of Thomas L. Prowse, Senior Staff Attorney; Anna Marie Noeske, Staff Attorney; and Casimir J. Swastek, Staff Attorney who are responsible for the evaluation and investigation of grievances. The staff attorneys serve as associate-examiners during formal proceedings. The examiner is responsible for preparing cases for hearing and presenting the evidence that supports the charges before the master. The examiner handles briefing regarding master's reports, and presents cases orally and in writing in hearings before the Commission and the Michigan Supreme Court.

The Commission's administrative staff is comprised of Camella A. Thompson, Senior Administrative Assistant; Wilmar S. Bennett, Administrative Assistant and Celeste R. Robinson, Secretary. All Commission staff members are state employees.



B. BUDGET

The Commission's budget is included in the budget of the Supreme Court. For the 2007 fiscal year (October 1, 2006 – September 30, 2007), the Commission's budget allocation was $995,480.00. The Commission continues to do its part to keep its expenditures to a minimum due to the state's general budget crisis.



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