

State of Michigan

Judicial Tenure Commission

Annual Report 2008



Judicial Tenure Commission
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jtc.courts.mi.gov

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THOMAS J. RYAN, ESQ.
VICE CHAIRPERSON
JUDGE Nanci J. Grant
SECRETARY
NANCY J. DIEHL, ESQ.
JUDGE EUGENE A. MOORE
JUDGE JEANNE STEMPIEN
JUDGE MICHAEL J. TALBOT
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April 13, 2009

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 2008. 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,

A handwritten signature in black ink, which appears to read "Kathleen J. McCann", is written over a horizontal line.

Kathleen J. McCann
Chairperson

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COMPOSITION OF THE COMMISSION – 2008

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, 2011

Hon. Barry M. Grant, Chairperson
Oakland County Probate Judge
1200 North Telegraph Road
Pontiac, Michigan 48053
Elected by Probate Judges
Member Since January 1, 1986
Current Term expired 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 expired 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
Judge, 3rd Circuit Court
2 Woodward, Room 1719 CAYMC
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

Marja M. Winters
65 Cadillac Square, Ste. 2300
Detroit, Michigan 48226
Appointed by Governor
Member Since January 1, 2008
Current Term expires December 31, 2010

BIOGRAPHIES *

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.

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. By assignment of the Supreme Court, he serves as Chair of the Court Reporter and Recording Board of Review. He is a Trustee of Madonna University and Sacred Heart Major Seminary. Judge Talbot is also Chair of the Review Board for the Archdiocese of Detroit. He received his bachelor's degree from Georgetown University and his law degree from the University of Detroit.

Marja M. Winters a proud Detroit native, grew up on Detroit's west side in a family that instilled the values of civic engagement, social responsibility, love of God, and determination to achieve any goal. Though young in age, her personal and professional career exemplifies the benefits of hard work, perseverance, selfless volunteerism and the favor of God. She firmly believes and lives by the creed: "to whom much is given, much is required." This is the basis for her professional and volunteer service. A career public servant, Winters displays her commitment to the City of Detroit through her profession and her strong community involvement. Respected among her peers in the young professional community, Winters is a visible and vocal advocate for civil rights, community empowerment and civic engagement. Ms. Winters currently serves as Deputy Director of the Planning & Development Department for the City of Detroit.

* As provided by Commissioners



Back Row: Hon. Nanci J. Grant, Paul J. Fischer, Esq. Ronald Rose
Middle Row: Marja M. Winters, Hon. Jeanne Stempien, Hon. Michael J. Talbot, Nancy J. Diehl, Esq.
Front Row: Hon. Kathleen J. McCann, Hon. Barry M. Grant, Thomas J. Ryan, Esq.

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 attack by 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 bids farewell to Oakland County Probate Judge Barry M. Grant, who was also serving as the Commission's chair. Judge Grant has the distinction of being the longest-serving Commissioner, having served since January 1, 1986. Over the course of his 23-year tenure, Judge Grant twice served as the Commission chairperson, twice served as its vice-chairperson, and as secretary. His affability and institutional memory will be sorely missed.

Also leaving the Commission this year was Commissioner Rose, an appointee of the Governor. His wit and insight were invaluable. The Governor had not yet appointed a successor as this annual report went to press.

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[C][2], rather than as a necessary precursor to a formal complaint pursuant to MCR 9.207[C][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

Action the Commission Can Take

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

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 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 2008 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(B).

III. 2008 STATISTICS

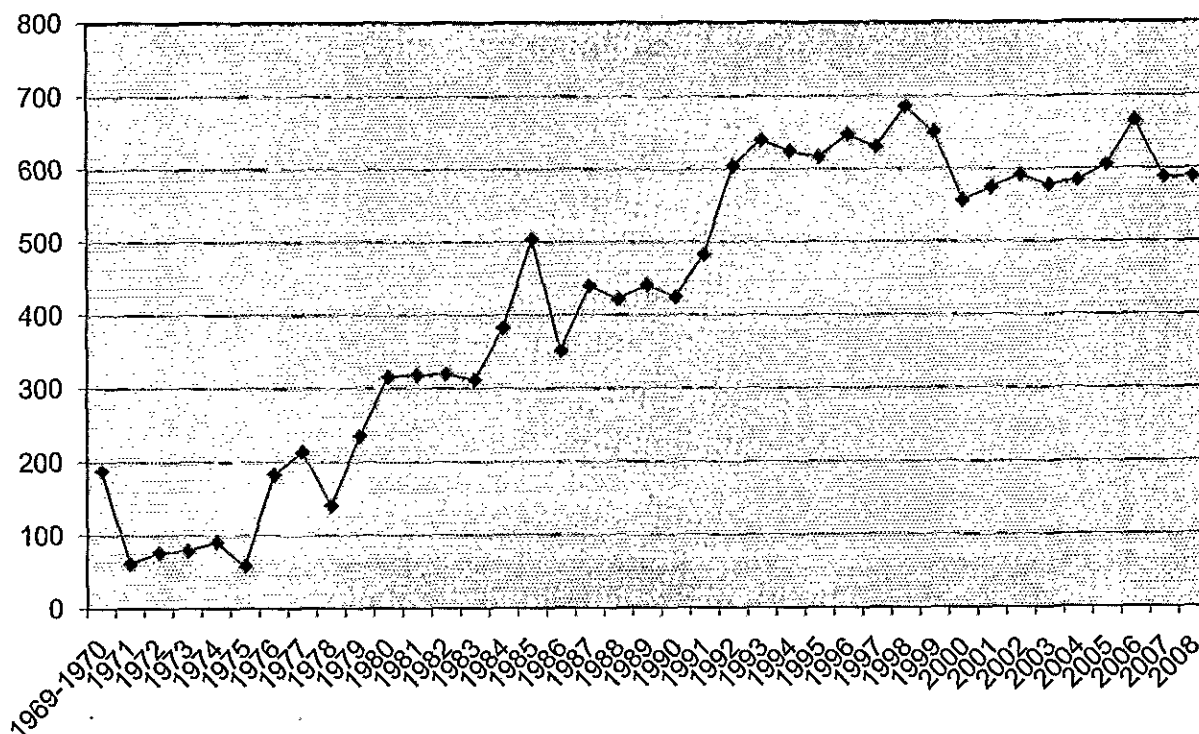
A. COMPLAINTS RECEIVED AND INVESTIGATED

In 2008, the Commission received 988 requests for Requests for Investigation forms. There were 588 Requests for Investigation filed in 2008.

2008 CASELOAD	
Cases Pending on 1/1/08	84
New Grievances Considered	572
Cases Concluded in 2008	580
Cases Pending on 12/31/08	72

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

Grievances Received



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.

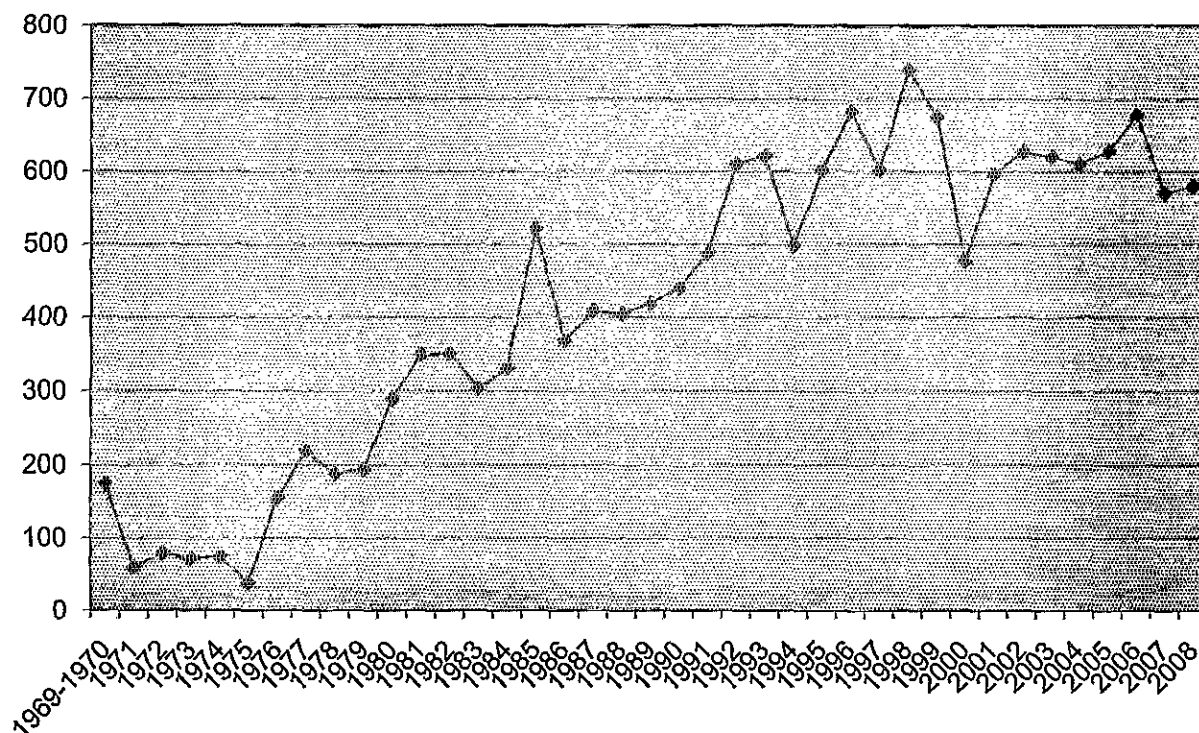
The number of judgeships within the Commission's jurisdiction has remained fairly constant at 1044.

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 2008, regardless of when the complaints were received. In 2008, the Commission disposed of 580 cases.

Grievances Closed



C. CLOSED WITHOUT ACTION

In 482 of the 580 cases closed in 2008, 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 2008, the Commission issued 14 admonitory, 7 cautionary and 1 explanatory letters. Each of these dispositions is summarized in Section IV.

E. FORMAL COMPLAINTS

The Commission issued 2 formal complaints in 2008. Each of these dispositions is summarized in Section IV.

Formal Complaint No. 83 – Hon. Mary Brouillette Barglind

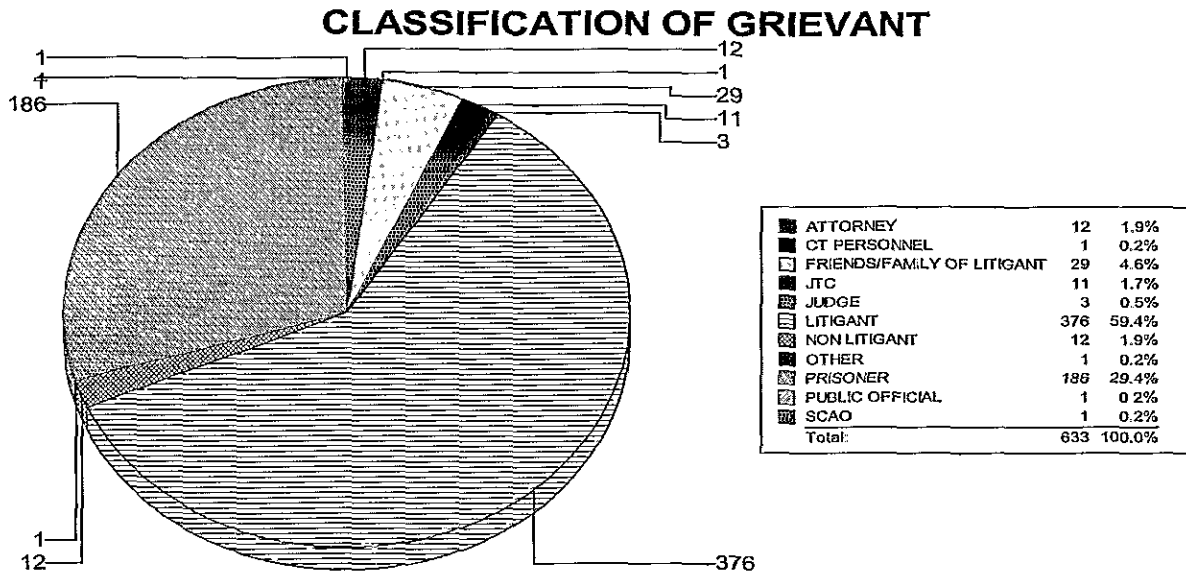
Formal Complaint No. 84 – Hon. Steven Servaas

F. SUMMARY OF GRIEVANCES CONSIDERED IN 2008

The 572 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 572, 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 89% of the total.

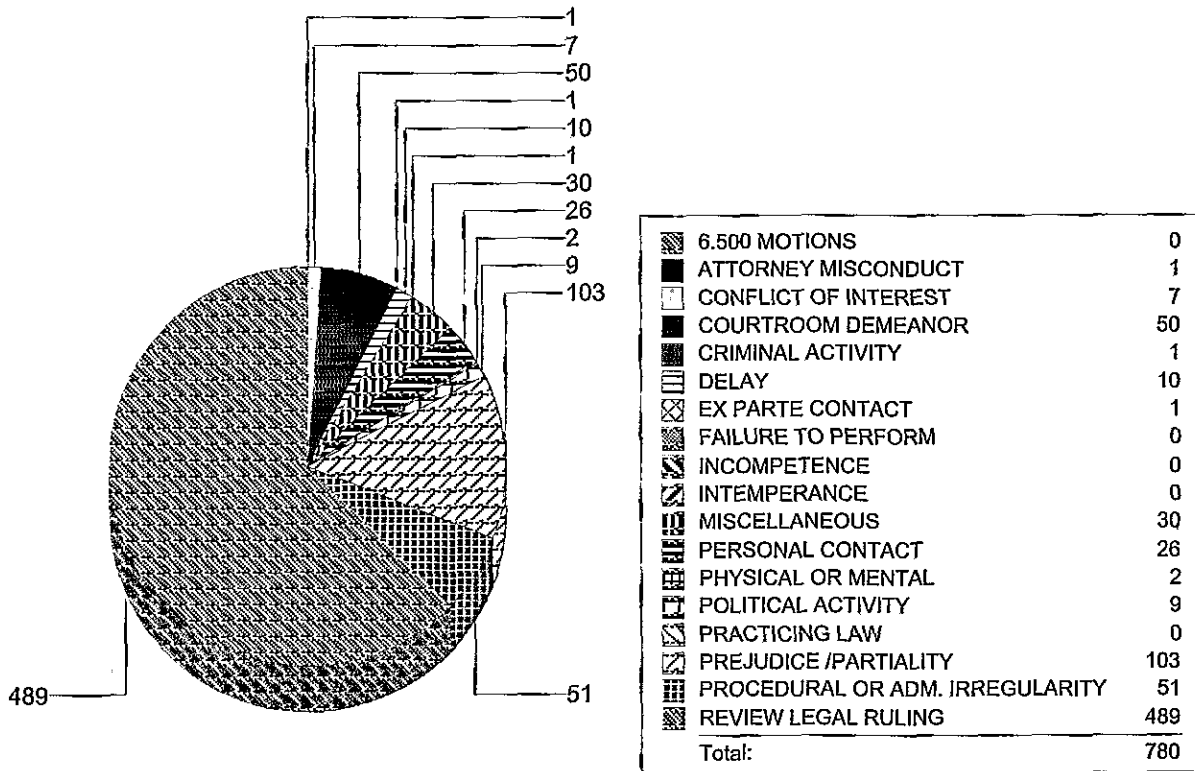


H. SUBJECT MATTER OF GRIEVANCES

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

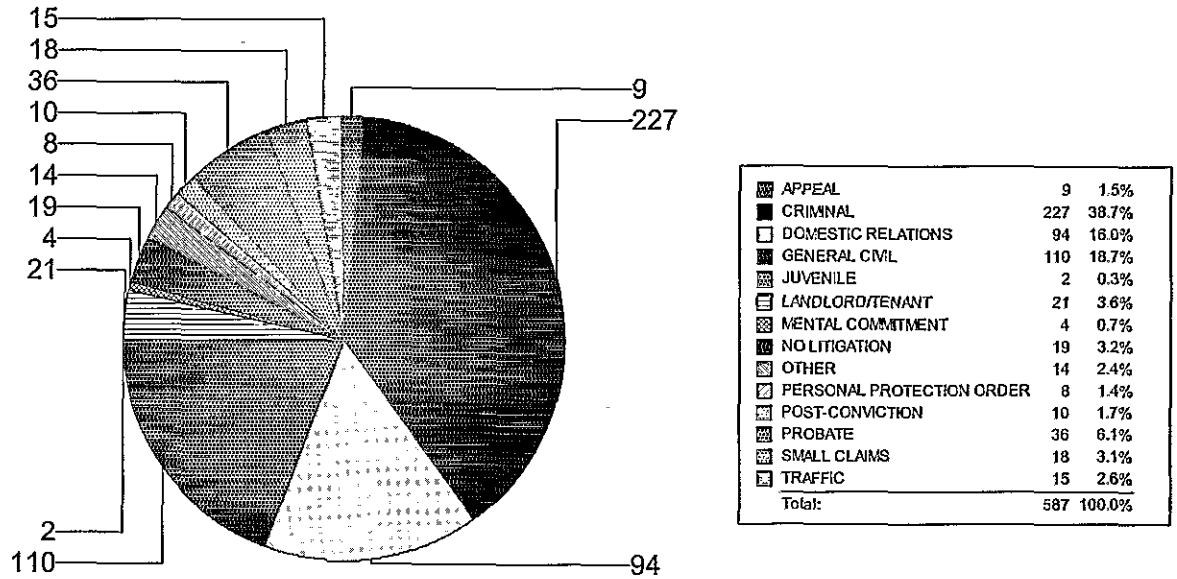
Breakdown by Category



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.

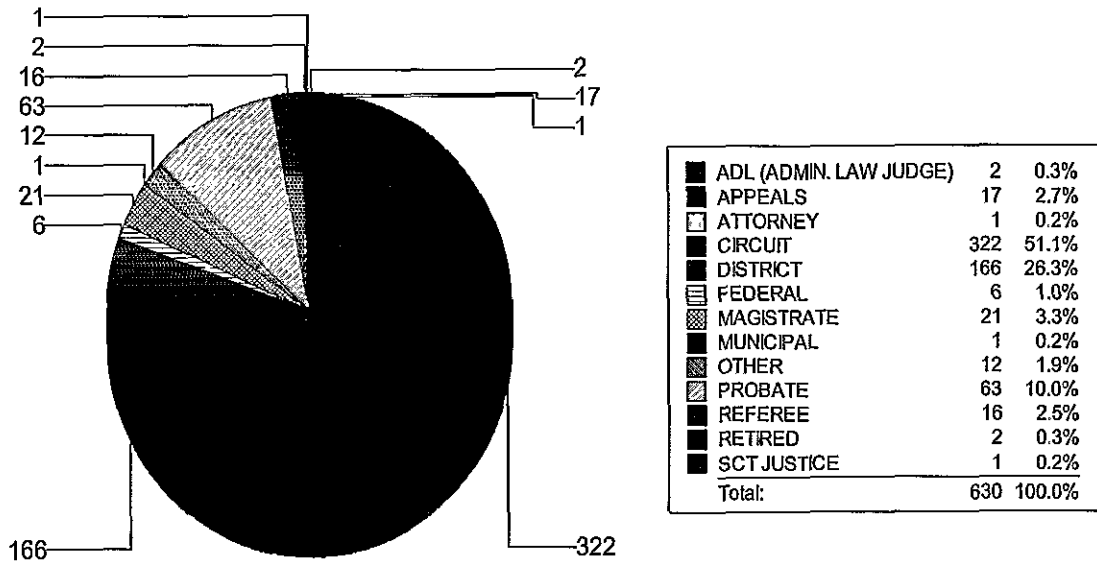
Nature of Litigation



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.

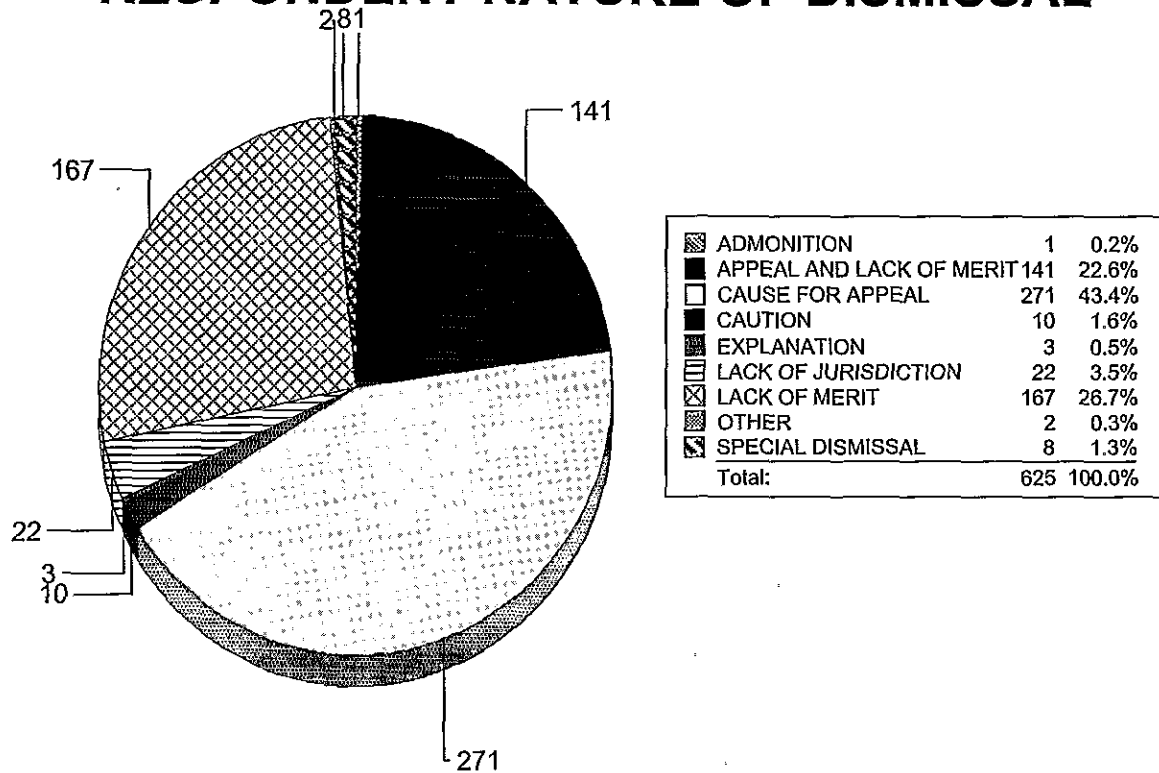
CLASSIFICATION OF RESPONDENT



K. DISPOSITIONAL BREAKDOWN

There were no public censures, voluntary resignations or retirements as a result of formal proceedings in 2008. One judge died during formal proceedings. The Commission had to issue 1 letter of explanation, 7 letters of caution and 14 letters of admonition in matters that did not rise to the level warranting formal complaints.

RESPONDENT NATURE OF DISMISSAL



IV. CASE SUMMARIES

A. PUBLIC PROCEEDINGS

1. FORMAL COMPLAINTS

a. 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 a divorce complaint 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. In his report to the Commission dated February 12, 2008, Master sustained seven of the ten counts in the Formal Complaint.

On March 10, 2008, oral argument on the Master's Report took place before the Commission. On April 21, 2008, the Commission issued its Decision and Recommendation for Order of Discipline. The Commission adopted the Master's Findings of Fact with two exceptions. The Commission concluded, as did the Master, that Respondent twice made false statements under oath in connection with her divorce proceeding (Count I), that Respondent made and solicited other false statements while not under oath including the submission of fabricated evidence to the Commission (Count II), that Respondent improperly listed cases on the No Progress Docket (Count III), that Respondent engaged in excessive absences, belated commencement of proceedings, untimely adjournments and improper docket management (Count IV), that Respondent allowed a social relationship to influence the release of a criminal defendant from probation (Count VI), and that Respondent recklessly flaunted her judicial office (Count IX). The Commission recommended Respondent be removed from office, conditionally suspended for a period of six years without pay if re-elected, and ordered to pay costs, fees and expenses of the Commission in the amount of \$128,861.26. Two of the Commissioners dissented concerning the recommendation of a conditional suspension. One Commissioner dissented concerning the recommendation of a conditional suspension and also found the Examiner had proven only Counts I, II and III.

Oral argument was held before the Supreme Court on June 11, 2008. On June 13, 2008, the Supreme Court issued an opinion adopting in part recommendations made by the Commission and ordering that the Respondent be removed from office effective immediately. The Court accepted Commission findings with respect to Counts I, II, III, IV, VI and IX. The Court rejected that part of the Commission's recommendation that Respondent be conditionally suspended. Justice Weaver concurred in the removal but dissented from the Court's decision to assess \$12,000 in costs against Respondent.

b. 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 in the formal complaint that, at the request of an acquaintance, the judge 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, before Judge Dotson-Sales. In her report to the Commission, dated March 31, 2008, the master concluded that Respondent's actions did not constitute misconduct, as the judge was acting to prevent a miscarriage of justice.

The Commission held a public hearing on May 12, 2008. It thereafter rejected the master's conclusions, and issued a decision and recommendation to the Supreme Court that Respondent's actions constituted misconduct. The Commission recommended to the Supreme Court that Respondent be sanctioned by public censure and a 60-day suspension, without pay. Two Commissioners dissented as to the sanction only, as they believed Respondent's conduct warranted a public censure and one-year suspension without pay.

Oral argument before the Supreme Court took place on October 2, 2008. On December 17, 2008, the Supreme Court issued an opinion rejecting the Commission's recommendations, and adopting the findings of fact and conclusions of law of the master. The Court concluded that in its judgment, Respondent did not commit misconduct, but in fact, his actions under the circumstances reflected poor judgment. It cautioned the judge to more carefully conform his actions to the rules and provisions that guide judicial conduct. A concurring/dissenting opinion agreed that Respondent's actions did not warrant a 60-day suspension, but noted that they did constitute judicial misconduct, and an admonition was an appropriate sanction in the case.

c. Formal Complaint No. 83, Hon. Mary Brouillette Barglind
41st Circuit Court

The Commission initiated formal proceedings against Judge Barglind on February 12, 2008. It alleged in the formal complaint that the judge engaged in a pattern of misconduct concerning an extended delay in rendering decisions in matters submitted to her, and her failure to cooperate and comply with the State Court Administrative Office ("SCAO"). The matters concerning SCAO relate to her failure to respond to inquiries regarding the status of undecided matters, the failure to report matters as pending as required under the Michigan Court Rules, and her failure to comply with the terms of an Implementation Plan designed to address certain administrative matters in the court.

On March 14, 2008, Respondent filed an answer denying that her actions constituted misconduct and asserting affirmative defenses. The Supreme Court appointed Judge Patricia Micklow, retired from the 96th District Court, as master for the proceedings. Prior to the commencement of a hearing, the Executive Director and Respondent entered into a settlement agreement, where the judge consented to findings of misconduct and to a recommended discipline.

On July 14, 2008, the Commission issued a decision and recommendation to the Supreme Court based on that consent. The bases for the decision included Respondent's acts of delay in rendering decisions or resolving matters in 12 different cases, for various periods up to 32 months, and failure to respond to written and telephone inquiries by SCAO as to the status of outstanding decisions. On 14 occasions, the judge also failed to include pending decisions on reports to SCAO, as required by MCR 8.107. Finally, Respondent did not comply with certain terms of an "Implementation Plan" developed to address delay and other administrative issues in the court.

On September 17, 2008, the Michigan Supreme Court adopted the decision and recommendation of the Commission, and suspended Respondent for 30 days without pay.

2. NON-FORMAL COMPLAINT

a. Hon. Catherine Bove Steenland (39TH District Court)

On October 13, 2008, the Judicial Tenure Commission issued a Decision and Recommendation to the Michigan Supreme Court that the Hon. Catherine Bove Steenland be publicly censured and suspended from exercising her judicial duties for a period of 90 days without pay. It alleged that Judge Steenland had driven a motor vehicle while intoxicated and had subsequently pled guilty to and was convicted of operating a motor vehicle while visibly impaired.

Judge Steenland consented to the Commission's Findings of Fact and Recommendation for Discipline. On December 8, 2008, the Supreme Court issued an order which publicly censured and suspended the Honorable Catherine Bove Steenland without pay for 90 days.

b. Hon. Norene S. Redmond (38th District Court)

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 with police 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. On February 6, 2008, the Supreme Court issued an order a 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. On November 4, 2008, Judge Redmond was defeated in her bid for reelection to the 38th District Court.

B. NON-PUBLIC PROCEEDINGS

The Commission reproached judges for the following types of behavior:

1. Treatment of Others When Acting in a Judicial Capacity

- Disregarding a defendant's legal rights and due process in taking a plea and failing to advise the defendant of his right to appeal. The judge admitted the transcript lacked clarity and coherence, that a better plea should have been taken, that he should have elicited the word "guilty" and that he had failed to advise the defendant of his right to appeal. The Commission stressed the need to be more attentive to a person's rights, and to avoid taking procedural or due process shortcuts, notwithstanding the fairness or leniency of the end result.
- Demonstrating anger and publicly belittling and humiliating police and prosecutors when a complaining witness failed to appear, requiring them to remain in court after the case was dismissed to listen to jurors state what they would have been doing had they not come to court, initiating arguments at the police department and yelling and insulting various officers. The Commission found the judge to have violated Canons 2A, 2B, 3A(3) and 3A(9) of the Code of Judicial Conduct.
- Reacting angrily and excessively toward the defendant's attorney after he brought a motion for disqualification due to the judge having made negative remarks reflecting bias about the defendant's occupation prior to his murder trial; and refusing to modify an improper verdict form. The Commission noted that the judge's reaction to the motion contributed to a greater appearance of bias than would have occurred had she not treated the attorney's concern as a personal affront and remained less emotional. The Commission also expressed concern about the use of a verdict form which did not conform to the standard form, as the only one place it provided for the jury to return a "Not Guilty" verdict was for the Count of Murder in the first degree.

2. Absenteeism

- Excessive absenteeism in 2007 and early 2008. The Commission determined that the judge's absences from court (37% in 2007, and 51% in early 2008) were not justified by the judge's explanations. The judge often missed court at the last minute (causing hardship on her staff and all involved in matters on the docket), and regularly prioritized personal matters over judicial duties and the interests of parties, witnesses, victims, and families. Two additional

absences taken for "professional education" were also improper, as they clearly involved matters for the judge's personal enrichment, and not a role as a judicial officer. In considering this matter, the Commission took into account the fact that the judge's rate of absence from court decreased significantly after the first few months of 2008.

3. Treatment of Others When Acting In an Administrative Capacity

- Lack of civility between the judge and other members of his court and failure to improve the relationship between himself, court staff, members of the bar and parties with business in the court. The judge was also advised of the need to be more circumspect in dealing with female court employees and to be careful in making casual remarks which unnecessarily offended and which could readily be avoided.
- Failure to promptly return court files to the clerk's office, as directed by the Chief Judge. The making of too many errors when making entries on the Register of Actions in cases and in filling out Bindover Sheets for preliminary examinations, causing problems in the clerk's office and transmission of files between the judge's courtroom and the clerk's office to be straightened out. The ignoring of directions from the Chief Judge to personally sign orders of dismissal in the case of deceased individuals, rather than affixing a stamped signature. The Commission also expressed its disapproval of the manner in which the judge adopted a dress code for persons appearing in his court, without notifying court administration and posting a "bare bones" sign on the courtroom door about proper attire being required when there was no real notice to the affected public of what specific clothing was required or accepted.
- Unnecessary screaming or yelling in dealing with parties, attorneys or other persons appearing in court. The Commission expressed its encouragement over the judge's recognition of the need to exercise greater restraint.
- Lack of civility and personal and professional conflict between judge and fellow judge; tendency to gossip, express hostility toward fellow judge, and share inappropriate information with court staff; placing court employees in the middle of conflict, causing high levels of stress and tension at the court. The Commission required the judge to meet with the Executive Director, Regional State Court Administrator and fellow judge. The judge voiced a commitment to modify his conduct for the good of the staff and the court.
- Occasional lapses of control and excessive anger causing staff to be fearful and tense; personal and professional conflict with fellow judge; and placing court staff in the middle of conflict, contributing to high levels of stress and

tension at the court. The Commission required the judge to meet with the Executive Director, Regional State Court Administrator and fellow judge. The judge expressed willingness to address issues such as her pettiness and excessive anger directed at court employees, and an intent to improve relations with the staff and her fellow judge.

- *Failure to treat prospective juror in respectful manner.* A prospective juror asserted that she could not meet her obligation to serve on a jury, as she could not obtain child care for her infant son after the initial day of trial (when the prospective juror was chosen, but selection had not been completed). The judge refused to release the individual from jury service. The next day, the prospective juror appeared in court with her child. The Commission noted that the judge had several avenues available to address the situation, including contempt. Instead, the judge appointed an attorney to represent the prospective juror, and held a “back-room” meeting where the judge suggested the possibility of reporting the individual to “child protective services” for bringing her son to court. The Commission viewed that conduct as an improper threat. Although the Commission noted that the judge had the discretion to determine that the individual had an obligation to serve, and it was improper for the individual to appear with her child in court, it determined that the judge’s reaction to the situation was untenable.
- *Negative comments to attorney made on the record.* The judge was disturbed about an attorney’s conduct during a trial, and made negative comments on the record to that attorney both during the trial and at subsequent proceedings. The Commission noted that a judge is required to be dignified and courteous to lawyers when acting in an official capacity. Further, assuming some criticism of the attorney was warranted, the Commission concluded it should have been done in chambers instead of on the record.

4. *Misuse of Judicial Authority*

- Misuse of judicial position for political and personal reasons and denial of due process related to termination of court employee, excessively interfering with employee’s attempts to obtain unemployment benefits, and using the local police department for the court’s private investigation. The Commission expressed concern the judge may have compromised impartiality and integrity in the matter, motivated by the political interests of others.
- Engaging in retaliatory conduct against the police department such as dismissing traffic cases with the excuse “officer unavailable” when the officer was available or could be within minutes in retaliation for police criticism. The Commission noted the judge took every opportunity to abuse her judicial office to grandstand and promote her own political and personal agendas and

that her abusive and retaliatory tactics were prejudicial to the administration of justice and eroded the public's confidence in the dignity, integrity and impartiality of the judiciary.

- *Using prestige of office to interfere in police investigation.* During a police investigation of a domestic altercation and alleged violation of a Personal Protection Order, the judge appeared at the scene, approached the investigating officers, identified herself as a judge, and named the court where she worked. The judge was a friend of the purported victim, and attempted to direct the officers to take certain acts in relation to their investigation and to arrest the accused. The Commission determined that the judge intended to intervene in the investigation when she had no authority to do, and use her status as a judge in an effort to influence the investigating officers.

5. *Ex Parte Communication*

- Contacting the chief judge *ex parte* when the judge knew he would have to hear the appeal of her denial of a disqualification motion, then misrepresenting on the record that the chief judge agreed with her decision to deny the motion.
- While continuing to act as judge in a matter in which the judge was romantically involved with one party, the Commission noted *ex parte* contact undoubtedly occurred, and at the very least the circumstances of the relationship created the appearance that improper *ex parte* contact occurred.

6. *Allowing Certain Relationships to Influence Judicial Conduct or Judgment*

- Signing orders in a matter in which the judge was romantically involved with one of the parties, who was also a court employee. The Commission was appalled by the judge's poor judgment and exhorted him to be more cautious when signing documents placed before him, and his relationships with court employees or others who have a case pending before the court.
- Being influenced by certain persons or relationships the judge wished to placate resulting in the inappropriate handling of an investigation and termination of a court employee.

7. Disqualification

- Failing to disqualify in a matter assigned to the judge, who was romantically involved with the court employee who was a party in the matter.
- Denying a motion for disqualification brought due to the judge's biased, negative comments about the defendant's occupation, then falsely claiming the chief judge agreed with the judge's decision to deny the motion.

8. Lack of Candor

- Providing inconsistent responses to the Commission which were also at odds with judge's prior deposition and trial testimony.
- Misrepresenting aspects of relationship and awareness of legal matters pertaining to romantic partner who was a party before the judge, in responses to the Commission.

9. Delay

- *Failure to render decision for 18 months.* The judge originally scheduled oral argument regarding a motion for relief from judgment in a criminal proceeding, but later determined the matter would be decided on briefs. A decision was drafted when the motion was pending for 13 months. Although some of that delay was not attributable to the judge, there was a failure by the judge to promptly attend to the matter when the motion was ready for a decision. Further, after it was discovered (when the motion was pending for 17 months) that the "final draft decision" had not been entered or issued to the parties, the judge failed to assign a high priority to the resolution of the matter. The judge also failed to report the case as pending on a report submitted to SCAO pursuant to MCR 8.107.
- *Failure to render decision in several cases for periods between two and 12 months.* The judge engaged in delay in rendering a number of decisions. Although some of the cases were at issue during a period when the judge was suffering from health problems, the Commission noted that the judge had been dealing with the physical difficulties for some time. It determined that if the judge chose to continue to serve in a judicial capacity, there was an ongoing duty to meet the obligations of the office. There was evidence that the judge had taken steps to resolve challenges presented by the health issue, and eliminated the extended delays in resolving cases. The judge also failed

to list two of the matters as pending on her report to SCAO, filed pursuant to MCR 8.107.

- *Allowing motion referred to referee to remain pending for 11 months.* The judge took close to two months to refer a matter to a referee for a recommendation, and later failed to monitor the matter so that it remained pending with the referee for nine additional months. The Commission reminded the judge that even though a matter is referred to a referee for consideration, the judge still has an obligation to track cases and insist on their prompt resolution.
- *Failure to schedule and conduct trials in a timely manner, including after remand from appellate courts.* The Commission concluded that in several cases, even though delays were attributable to matters outside of the judge's control (such as appeals), the judge failed to monitor cases and insure that they were resolved without unwarranted delay once they were returned to the judge's docket. On one occasion, a higher court issued a remand order resolving a disputed issue but not the entire case. The next proceeding was not scheduled by the judge until nine months later. The Commission noted that the age of a case is not measured merely by the time it remains on the judge's docket, and the entire period a case has been pending (including when it is on appeal) should be considered when prioritizing cases for scheduling purposes.
- *Failure to timely file 6C Financial Report with State Court Administrative Office.* The judge belatedly filed a financial report almost six months after it was due even though she was aware of the filing of the grievance and her comment had been invited concerning this matter. The judge also had a history of consistently filing her MCR 8.107 Reports late. The Commission had previously urged the judge to timely file her 8.107 Reports without taking any action on a prior occasion. The Commission indicated it was encouraged by the fact that the judge had now adopted a system to keep abreast of filing dates.
- *Failure to timely file MCR 8.107 Reports concerning matters under advisement and the Annual Financial Report required by Canon 6C of the Code of Judicial Conduct.* The judge acknowledged repeatedly failing to timely file such reports beginning with his ascension to the bench and continued to recent dates. The Commission rejected the judge's claim that the State Court Administrative Office's acceptance of untimely filings condoned the belated filings. The Commission further rejected the judge's assertion that the burden of responding to grievances contributed to or made it difficult to timely file reports with the SCAO. The Commission stated it was relying on the judge's assurance of future compliance with MCR 8.107 and Canon 6 of the Code of Judicial Conduct.

- Taking over a year to decide a post-trial motion to modify custody. The Commission recognized that some of the delay might be attributable to it being a highly contentious case. However, the Commission noted that judges had an affirmative duty to “dispose promptly of the business of the court,” pursuant to Canon 3A(5) of the Code of Judicial Conduct. The amount of time before resolution of the case was unacceptably long under the circumstances.
- Holding a motion for summary disposition under advisement over 18 months before rendering a decision. The judge ignored repeated inquiries from the Commission’s Executive Director and only decided the matter after being sent a 28-day letter. The Commission noted the applicability of Administrative Order 2003-7 contemplating that matters submitted to a judge should be decided no later than 35 days after submission and Canon 3A (5) of the Code of Judicial Conduct providing that judges should promptly dispose of the business of the court.

10. Docket Management

- *Failure to commence proceedings at scheduled time, and backlog of cases.* The judge regularly scheduled trials for 9:00 a.m., but when arriving in court, attended to other matters while those involved in the trial waited (on some occasions as long as an hour and a half) to begin the trial proceedings. In addition, the judge repeatedly developed a backlog of cases, resulting in intervention by court administration to address the issue. The Commission acknowledged the judge’s adoption of several recommendations to increase productivity, which appeared to have assisted in the judge reducing the number of unresolved cases.
- *Failure to track cases and resolve pending matters promptly, particularly in post-judgment divorce cases.* The judge maintained a policy of intervention in post-judgment disputes by meetings with the parties (with the consent of all involved). However, that frequently extended the period the dispute remained at issue, and resulted in repeated appearances instead of prompt resolutions. The Commission noted the inefficiency in the system utilized by the judge, and directed that further application must be conducted under specified guidelines to obtain the timely resolution of the pending matter. The Commission also required the judge to attend a case flow management class to assist in the control of his docket, and to submit monthly reports of unresolved matters to monitor the effectiveness of the judge’s efforts.
- *Failure to track matters taken under advisement.* The judge did not maintain a system to track matters taken under advisement, which resulted in a failure to render decisions in a timely manner, and on one occasion the issuance of

two opinions (with differing opinions) on one motion. The Commission acknowledged that the problems were complicated by the assignment of additional cases in a re-organization of case assignments among judges, and some ongoing physical ailments of the judge (which the judge represented were no longer having an impact on the ability to tend to judicial obligations). The Commission directed the judge to take the necessary action to develop a system to track cases and issue decisions in a timely manner as required under the Michigan Court Rules.

- *Backlog of cases, number of preliminary conferences, and notice regarding absences.* The judge frequently had a significant backlog of cases pending over time standards, which resulted in intervention by court administration. The Commission acknowledged that figures over recent months reflected that the backlog had decreased, and encouraged the judge to continue efforts to resolve matters within time standards. In that regard, the Commission suggested that at times it may be better for the judge place additional emphasis on proceeding to trial rather than conducting preliminary conferences, as the number taking place in cases before the judge seemed to have an impact on their resolution.
- In addition, on at least three occasions, the judge only gave two or three weeks notice for vacations. The Commission also directed the judge to give sufficient notice to court staff of absences, so it could avoid scheduling proceedings on those dates, and those involved in scheduled trials were not burdened with rescheduling multiple trials. The judge also failed to provide advance notice to counsel of late arrivals due to doctor appointments, resulting in attorneys and parties waiting long periods for the judge to arrive. The Commission advised the judge that court staff should be instructed to schedule court proceedings to allow for appointments, so those involved were not waiting in court for the judge's arrival.
- Scheduling numerous matters for the court's morning session, which were not heard until the afternoon, contributing to unnecessary delay and frustration for parties. In a similar manner, far too often inmates were brought from the county jail, kept waiting for hours in the court's holding facility and belatedly processed, if at all that day. The Commission also expressed its disapproval of the practice of mass arraignments of misdemeanor defendants, which contributed to confusion or delay.

II. *Misuse of Court Resources*

- *Use of court resources for judicial campaigns.* The Commission determined that the judge's listing of court contact information on a Statement of Organization Form for a judicial election campaign was improper, even though the judge noted there were problems receiving communications from the Michigan Bureau of Elections using other addresses in the past, and was ultimately unopposed in the election. In addition, the judge erred when

permitting the court fax number to be utilized on a temporary basis for another individual's campaign for office, as no other fax number was available. The Commission noted that there was no exception for those scenarios in the Michigan Campaign Finance Act. The Commission acknowledged the judge's representation that, in the future, similar conduct would not occur.

12. *Failure to Cooperate with the Commission*

- The judge ignored repeated attempts by the Executive Director to contact him concerning when a decision would be rendered on a motion. This conduct violated MCR 9.208(B) requiring cooperation with the Commission.

13. *Contempt of Court*

- Improper threat to find court employee in contempt of court. There was delay in obtaining a jury panel for the judge's courtroom. The judge confronted a court employee who was involved in providing a jury and threatened them with contempt of court if there were further delay. The Commission advised the judge that casual invocation of the court's contempt power was inappropriate. The Commission also noted that timely provision of a jury panel was an administrative issue to be addressed by court administration, not by ordinary court employees.

14. *Interference with Attorney-Client Relationship*

- Initiating inappropriate conversations with defense counsel. The judge approached counsel representing a defendant charged with reckless driving and indicated the client should have been charged with operating while intoxicated under established policy in the county given the client's blood alcohol level. The judge expressed concern about whether the client would plead guilty to the charged offense or would plead down to a still lesser offense. The Commission advised the judge that this was not a general discussion about policy as he perceived it. The attorney had nothing to do with determining the standards for filing criminal charges. As counsel, the attorney had an ethical obligation to zealously represent her client and obtain the best possible result. The Commission informed the judge that his statements, whether intended or not, gave the impression of pressuring counsel to neglect the duty to her client and plead him guilty to the charged offense rather than a lesser offense as part of a plea bargain.

V. COMMISSION ORGANIZATION, STAFF AND BUDGET

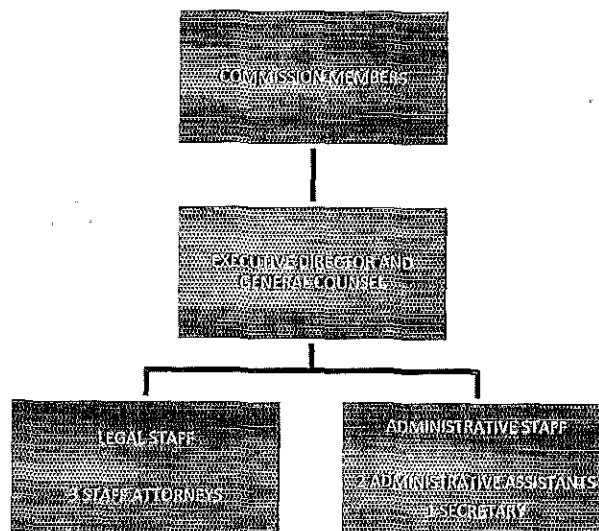
A. COMMISSION ORGANIZATION AND STAFF

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.

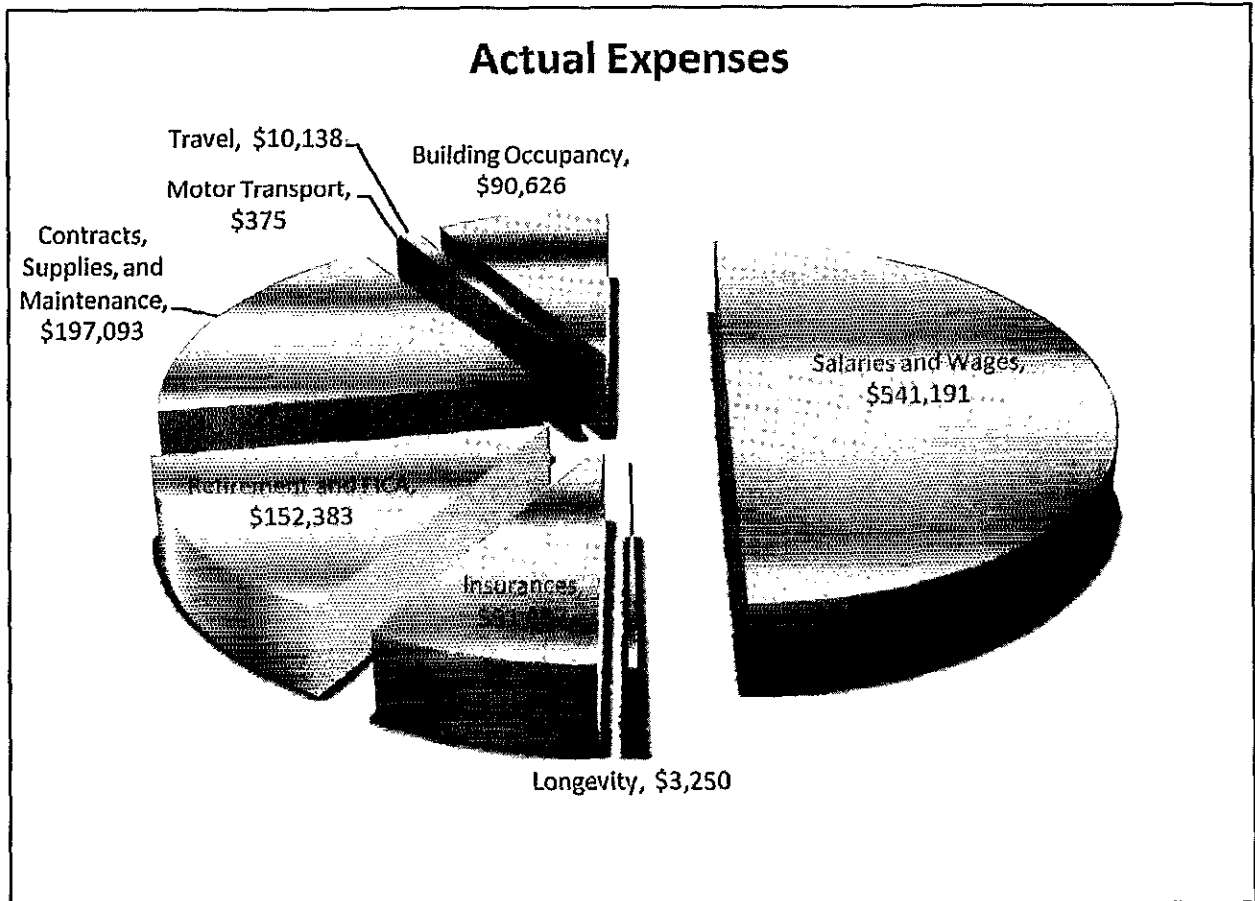
The Commission's legal staff is comprised of Thomas L. Prowse, Senior Staff Attorney; Anna Marie Noeske, Staff Attorney; and Casimir J. Swastek, Staff Attorney who are responsible for the evaluation and investigation of grievances. The staff attorneys serve as associate-examiners during formal proceedings. 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, Receptionist. All Commission staff members are state employees.



B. BUDGET

The Commission's budget is included in the budget of the Supreme Court. For the 2008 fiscal year (October 1, 2007 – September 30, 2008), the Commission spent \$1,086,112. 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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