

State of Michigan

Judicial Tenure Commission

Annual Report 2018



Judicial Tenure Commission
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VICE CHAIRPERSON
HON. KAREN FORT HOOD
SECRETARY

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JAMES W. BURDICK, ESQ.
HON. PABLO CORTES
HON. JON. H. HULSING
MELISSA B. SPICKLER
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Judicial Tenure Commission

June 20, 2019

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

I am pleased to present the 2018 Annual Report of the Michigan Judicial Tenure Commission. This report informs the public and all branches of state government about the Commission's duties, operations, and actions.

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

Very truly yours,

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

Monte Burmeister
Chairperson
For the Commission

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COMPOSITION OF THE COMMISSION DURING 2018

Hon. Pablo Cortes, Chair

62A District Court
2650 DeHoop Ave. SW
Grand Rapids, MI 49509
Term expires 12/31/19
Elected by judges of limited jurisdiction

Hon. Monte J. Burmeister, Vice-chair

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

Hon. Lawrence S. Talon, Secretary

1441 Saint Antoine Street
Detroit, MI 48226
Term expired 12/31/18
Elected by State Bar membership

Ari Adler

3034 W. Grand Blvd., Suite 8-450
Detroit, MI 48202
Term expires 12/31/20
Appointed by governor (effective 12/17/18)

James W. Burdick, Esq.

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

Hon. Karen Fort Hood

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

Hon. Nanci J. Grant

6th Circuit Court
1200 N. Telegraph Road, Dept. 404
Pontiac, MI 48341
Term expired 12/31/18
Elected by circuit court judges

Thomas J. Ryan, Esq.

2055 Orchard Lake Road
Sylvan Lake, MI 48320
Term expires 12/31/19
Elected by State Bar membership

Melissa B. Spickler

3034 W. Grand Blvd., Suite 8-450
Detroit, MI 48202
Term expires 12/31/19
Appointed by governor

COMMISSIONER BIOGRAPHIES

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

James W. Burdick, Esq., specializes in complex criminal litigation and health care licensing, discipline and reinstatement. In addition to his practice, he has been appointed by chief federal judges to chair, and to be a member of, federal panels evaluating applicants for the position of United States Magistrate Judge, and for sitting Magistrate Judges applying for renewal of their tenure. He has chaired an Attorney Grievance panel since the 1980's, hearing and deciding a multitude of complaints. He has represented clients throughout state and federal courts. Upon earning his Juris Doctorate at University of Michigan Law School, he was recruited by the Wayne County Prosecutor's Office, where he tried dozens of felony cases of all types. During his career in private practice, he has represented hundreds of individuals in criminal investigations and prosecutions; in probate courts (including as an Assistant Public Administrator); in circuit courts as a Special Assistant Attorney General for Accident Fund cases; and in other civil and administrative matters, mostly representing including health care practitioners in discipline and reinstatement matters. For many years he was a regional field counsel for the Federal National Mortgage Association, appointed by the President. For seven years he was an active member of the Michigan Board of Medicine.

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

Hon. Pablo Cortes is a district court judge in the city of Wyoming, Kent County. He was appointed to his seat in 2005 and subsequently elected in 2006, 2008, and 2014. From 1995 until taking the bench, Judge Cortes served as an assistant prosecuting attorney for Kent County. Judge Cortes graduated from the University of Michigan in Ann Arbor with honors in 1989 and from Wayne State University Law School in Detroit in 1995. He was elected to the Commission in 2010. Aside from his service on the Commission and various community groups, Judge Cortes serves on the board of the Michigan District Court Judges Association and its legislative committee. He is also an adjunct professor at the Grand Rapids Community College Police Academy and has served as an adjunct professor at the Thomas M. Cooley Law School in Grand Rapids. Judge Cortes served as the Commission's Secretary in 2013 and 2014. He served as the Commission's Vice-Chairperson in 2015 and 2016 and was elected Chairperson on January 9, 2017.

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

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

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

Hon. Nanci J. Grant is an Oakland County Circuit Court judge. She was elected by the state's circuit judges to the Judicial Tenure Commission 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 has served as president of the Michigan Judges Association. She was the chief judge of the Sixth Circuit Court from November 2007 through 2017. She has served as the Commission's Secretary, and served as the Commission's Chairperson in 2013 and 2014. Judge Grant is the founder and presiding judge of Michigan's only Combat Veterans' Court, and was the recipient of the State Bar's Champion of Justice Award in 2016.

Thomas J. Ryan, Esq., is a member of the State Bar of Michigan, 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, and City of the Village of Clarkston. He was attorney for the City of Orchard Lake Village from May 2001 to April 2011, as well as the prosecuting attorney for the Township of Bloomfield from July, 1978 to October, 2006. Mr. Ryan has served as the Commission's Vice-Chairperson and Chairperson.

Melissa B. Spickler is a veteran of the financial services industry, with more than three decades of accomplishments as a Merrill Lynch Financial Advisor. She founded The Spickler Wealth Management Group in 1980 and has since turned it into a 10 person team serving individual as well as institutional clients. Missy is a Managing Director - Wealth Management, is on the Executive Committee of Merrill's National Women's Exchange, serves as President of the Detroit Area Chapter of the Women's Exchange, and has recently served 3 years on the National Advisory Council to Management. Missy is on the executive committee for the National Advisor Growth Network. She received the 2015 Outstanding Business Leader Award from Northwood University. She has a Bachelor's degree in Criminal Law from Michigan State University and also holds a Chartered Retirement Planning CounselorSM designation.

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

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

Hon. Lawrence S. Talon is a Wayne County Circuit Court judge. He was appointed to the bench in 2010, and elected in 2012 and 2014. Judge Talon serves in the court's Criminal Division where he presides over a felony trial docket. Before becoming a judge, he was an Assistant Wayne County Prosecuting Attorney for 25 years. He also served as a panel member and then as a panel chair for the Michigan Attorney Discipline Board. Judge Talon was elected to the Commission in 2015, and was elected Secretary on February 12, 2018.

I. COMMISSION COMPOSITION & SCOPE OF AUTHORITY

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

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

A. Composition of the Commission

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

The composition of the 2018 Commission changed in December, when Commissioner Ari Adler was appointed by the governor to fill a lay position that had been vacant since January. The terms of Commissioners Grant and Talon expired at the end of 2018.

B. Legal Authority

1. Michigan Constitution

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

2. Michigan Court Rules

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

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

3. Code of Judicial Conduct

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

C. Persons within Commission Jurisdiction

The Commission has jurisdiction over all active state judges. In 2018 there were more than 1200 active judges in Michigan. The Commission also has jurisdiction over former judges if a request for investigation is filed while that judge is still in office or relates to the former judge’s tenure.

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

D. What the Commission Cannot Do

The Commission is not an appellate court. The Commission cannot change a judge’s decision. If a court makes an incorrect decision or misapplies the law, that ruling can be changed only through the appellate process. The Commission also cannot get a judge removed from a case or have a matter transferred to another judge. The Commission cannot provide legal assistance to individuals or intervene in litigation on behalf of a party.

E. What the Commission Can Do

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

II. OVERVIEW OF THE COMPLAINT PROCESS

A. How Matters Are Brought Before the Commission

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

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

Commission investigation. The Commission may also begin an investigation at the request of the State Court Administrator or the chief justice of the Michigan Supreme Court.

B. Commission Review of Requests for Investigation

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 publicly available court file if that would be helpful. The staff requests from the grievant or grievant’s attorney any additional information needed to do a preliminary evaluation of the grievance. The staff may only do further investigation at this stage if the Commission so authorizes.

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

1. Investigation at the Commission’s Direction

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

2. Disposition of Cases Without Formal Proceedings

If the investigation shows the judge did not commit misconduct, the grievance may be closed without contacting the judge. Unless the Commission determines otherwise, the judge is given a copy of the grievance when the Commission closes the case.

If the investigation will be aided by obtaining the judge’s comments, the Commission will give the grievance to the judge and ask the judge to comment on some or all of the allegations and the evidence developed. The judge’s response is then considered along with all other information. This initial comment from the judge is either an investigatory aid or a necessary foundation for a confidential disposition (see next section), pursuant to MCR 9.207(C)(2) and/or 9.207(D)(2), not 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 or unprovable, the Commission will usually close the case without action. If the Commission determines there was no judicial misconduct, but certain actions of the judge should preferably not be repeated, the Commission may dismiss the matter with a letter explaining that to the judge.

Action the Commission Can Take

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

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

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

Letters of explanation, caution, and admonishment are not issued until the respondent judge is offered the opportunity to explain his or her position through the Commission's request for comment. These letters are not sanctions or "discipline." The Commission's private cautions and admonishments are designed to bring problems to a judge's attention so the conduct will not escalate or be repeated. Summaries of conduct that resulted in such letters issued in 2018 are contained in Section IV.

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

2. Public Dispositions

a. The Formal Complaint

When misconduct is clear enough and serious enough to warrant a public resolution, the Commission sends the respondent judge what is known as a "28-day" letter pursuant to MCR 9.207(C)(1). The 28-day letter informs the judge of the charges the Commission anticipates bringing and asks the judge to answer those charges. Unless the judge's answer satisfies the Commission, the Commission then issues a formal complaint. The formal complaint is the first publicly filed document in the investigation.

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 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, and make available to the judge for inspection or copying all exculpatory material in its possession.

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

b. Hearing by Master

When the Commission files a complaint it requests the Supreme Court to appoint a master to conduct a hearing. Masters are typically retired Michigan judges.

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

c. Proceedings Following Hearing by Master

The master files a report with the Commission after the hearing on the formal complaint. 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.

The respondent judge and the examiner may file pleadings with the Commission that support or object to the master’s report, and may have oral argument before the Commission.

d. Disposition by Commission

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

e. Supreme Court Review

Within 21 days after issuing its Decision and Recommendation, the Commission files the original record in the Supreme Court and serves a copy on the respondent 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 examiner has 21 days to respond on behalf of the Commission. Even if the judge does not file a petition, the Supreme Court independently reviews the Commission’s Decision and Recommendation.

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

D. Confidentiality of Commission Proceedings

The Michigan Constitution directs the Supreme Court to provide for the confidentiality of complaints to and investigations by the Commission. Pursuant to this directive, the court rules provide that complaints and investigations are strictly confidential, subject to certain limited exceptions, unless

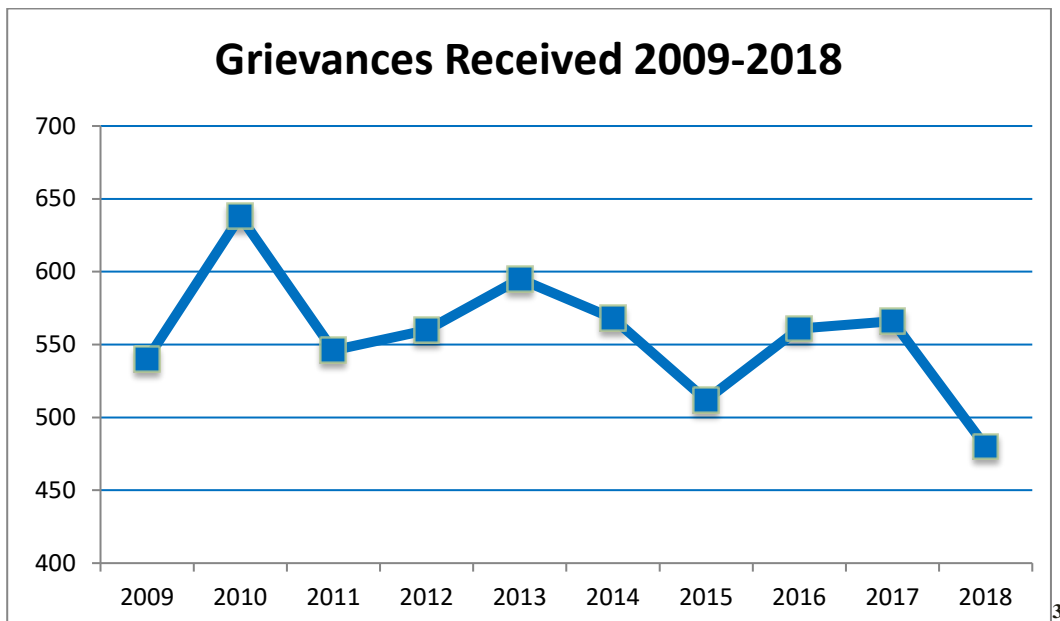
and until a formal complaint is issued. The rules also provide that once formal proceedings are instituted, the formal complaint, answer, and all subsequent pleadings and proceedings are open to the public.

The court rules permit the Commission to publicly acknowledge an investigation before a formal complaint is issued if a majority of Commissioners determine it is in the public interest to do so. Even in such a case, the Commission’s statement is limited to either (1) there is an investigation pending or (2) the investigation is complete and there is insufficient evidence for the Commission to file a complaint. The Commission very rarely determines that it is in the public interest to acknowledge an investigation.

III. 2018 FACTS & FIGURES

A. Complaints Received and Investigated ²

In 2018 the Commission received 723 requests for "Request for Investigation" forms. This number does not include downloads from the Commission’s website. There were 441 Requests for Investigation filed in 2018 that alleged “grievances,” that is, complaints, against a total of 475 judges.



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

³ For at least 2016 forward, “grievances received” is the total number of complaints against judges, not the number of requests for investigation. For example, if a request for investigation alleges that two judges committed misconduct, this report counts that as two “grievances received.”

The grievances set forth a wide array of allegations. A substantial percentage alleged legal error or expressed dissatisfaction with a judge’s discretionary handling of judicial duties, neither of which is misconduct within the jurisdiction of the Commission.

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

B. Complaint Dispositions

In 2018 the Commission resolved grievances concerning 411 judges.

2018 CASELOAD	
Grievances pending on 1/1/2018	94
New grievances received in 2018	475
Grievances concluded in 2018	411
Grievances pending on 12/31/2018	158

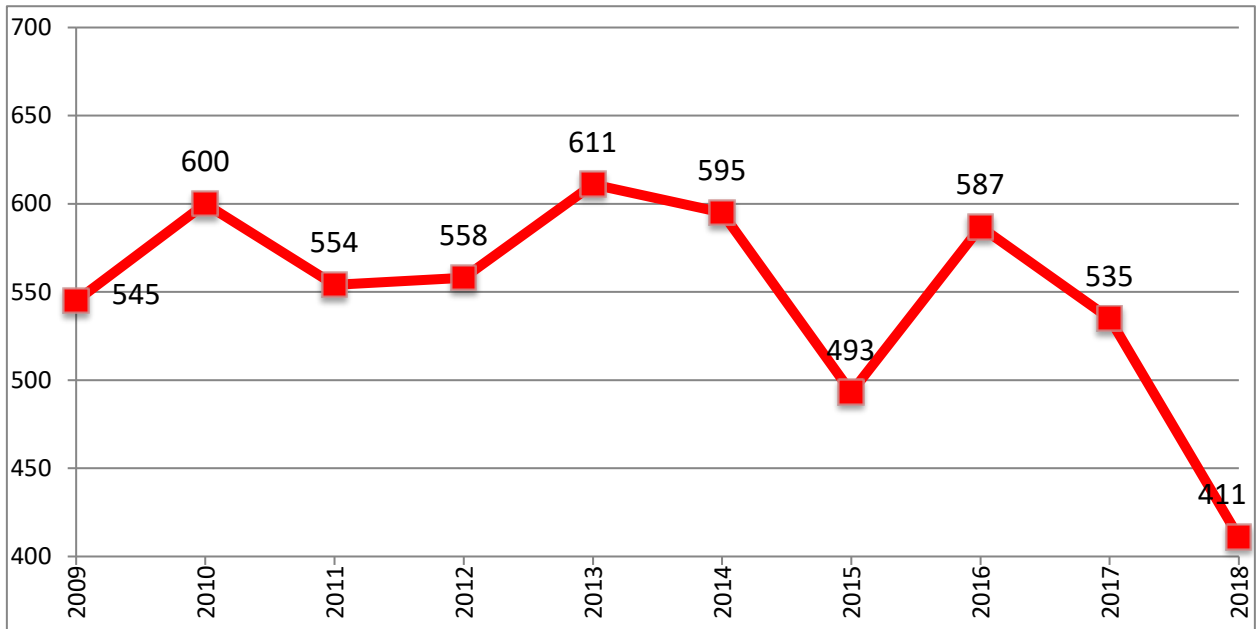
1. Closed without Action

In 401 of the 411 grievances resolved in 2018, the evidence did not demonstrate misconduct after the information necessary to evaluate the complaint was obtained and reviewed. In other words, either these files alleged facts that would not constitute misconduct even if true, or investigation showed the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation, or the Commission lacked jurisdiction.

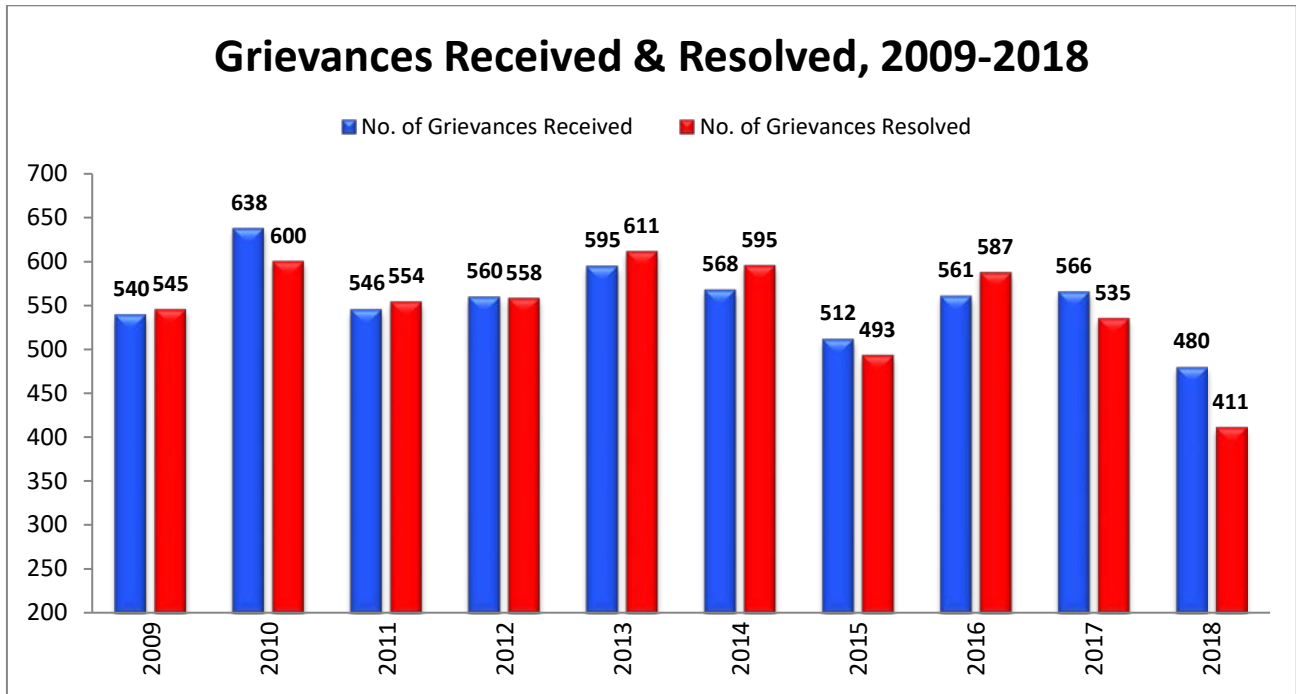
2. Closed with Action

The Commission issued one formal complaint, five letters of admonishment and four cautions in 2018. These dispositions are summarized in Section IV. There was also one voluntary resignation.

Grievances Resolved 2009-2018



With the exception of 2018, the number of grievances received and resolved by the Commission has been fairly constant for the last decade. In 2018 there was a significant drop in both. The Commission does not know why fewer grievances were submitted in 2018. Fewer grievances were resolved because the work required for several complex investigations forced the Commission to delay resolution of other cases.

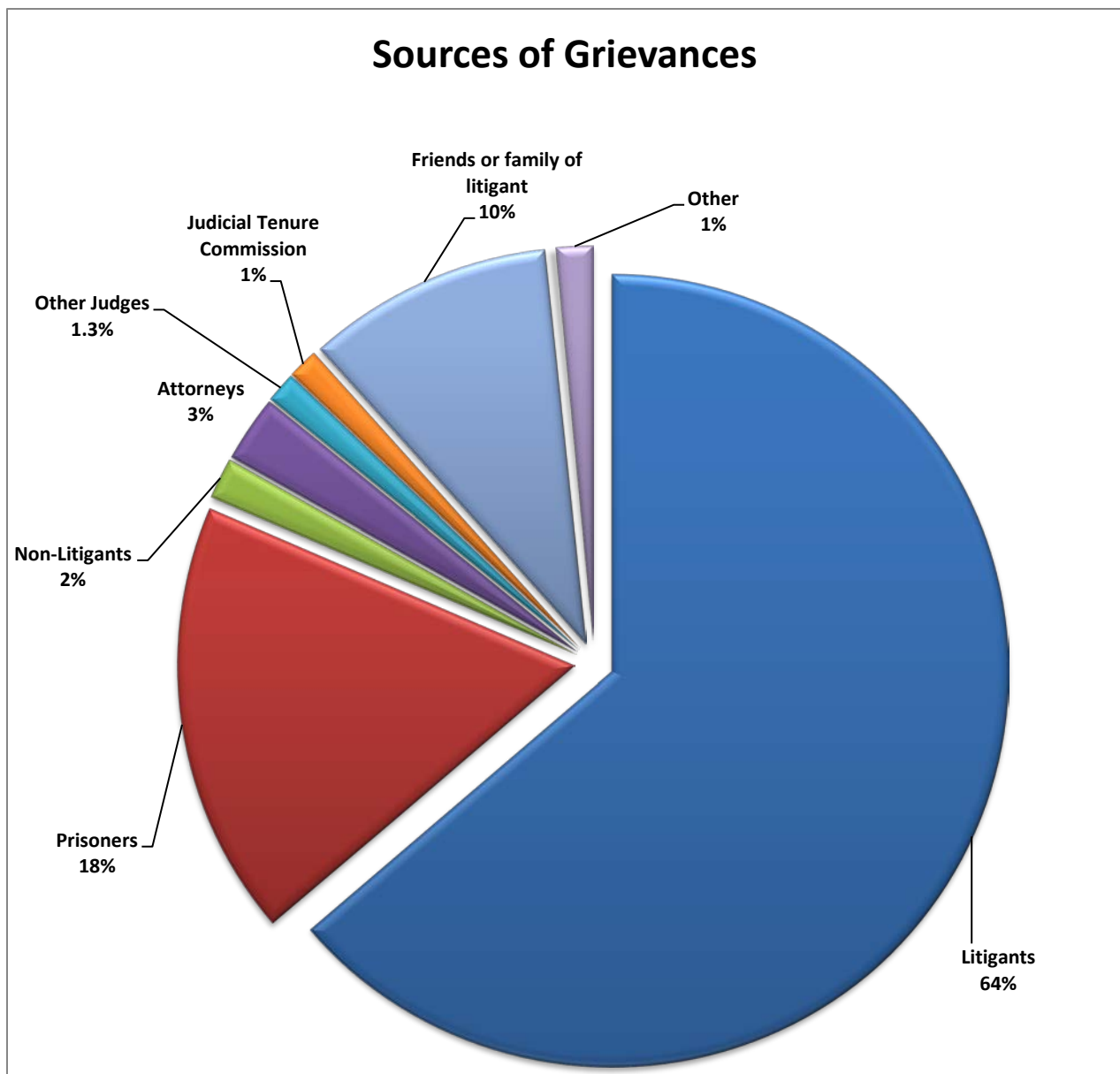


C. Analysis of Grievances Considered in 2018

The grievances received and resolved by the Commission derived from the following sources, covered the following subject matters, were lodged against the following types of judges, and were resolved as follows. The totals may not equal 475 received (section IIIA) or 411 closed (section IIIB) because some grievances allege more than one type of misconduct and some resolutions concern more than one grievance.

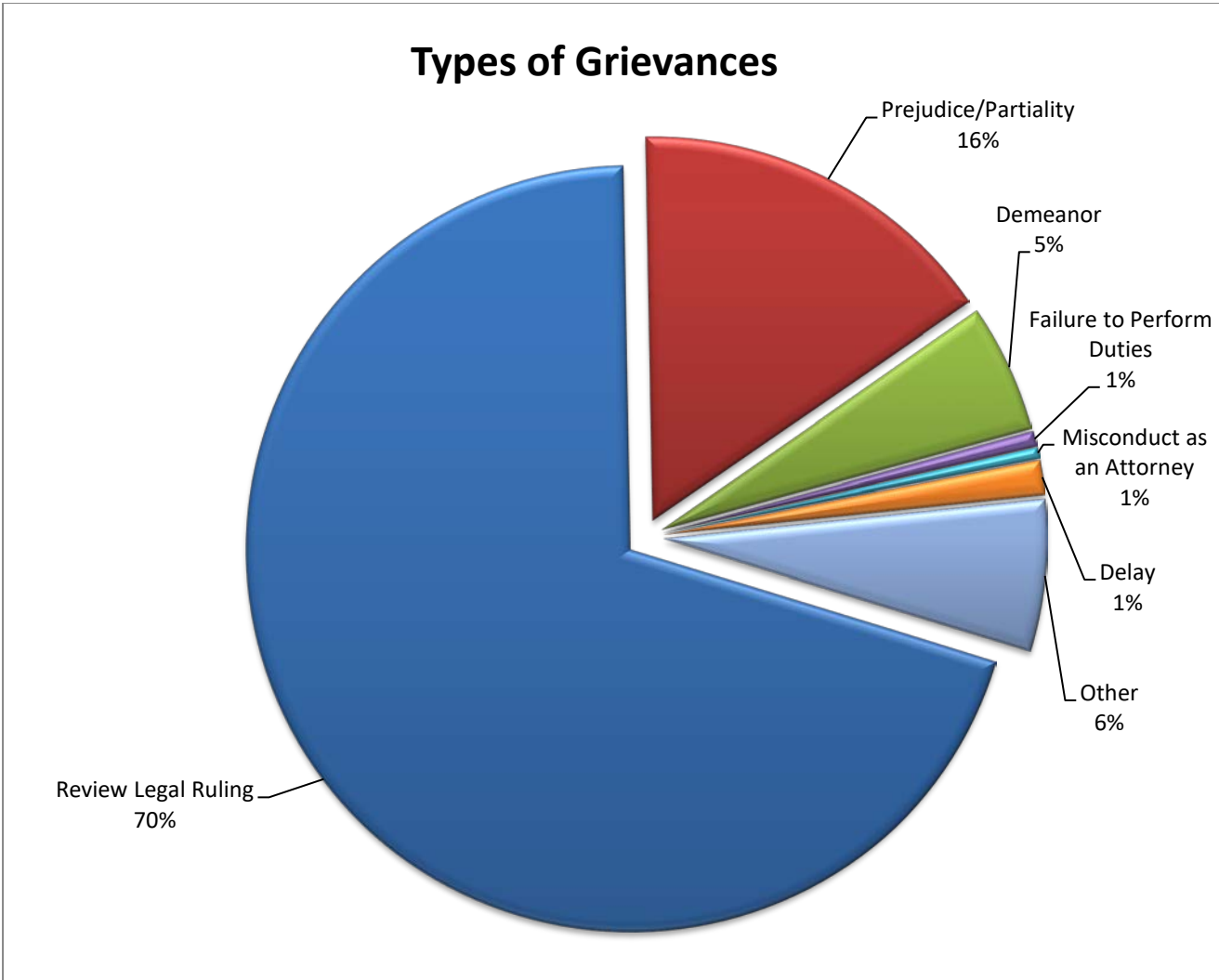
1. Sources of Requests for Investigation

Litigants, acquaintances of litigants, and prisoners filed the majority of requests for investigation, constituting 92% of the total.



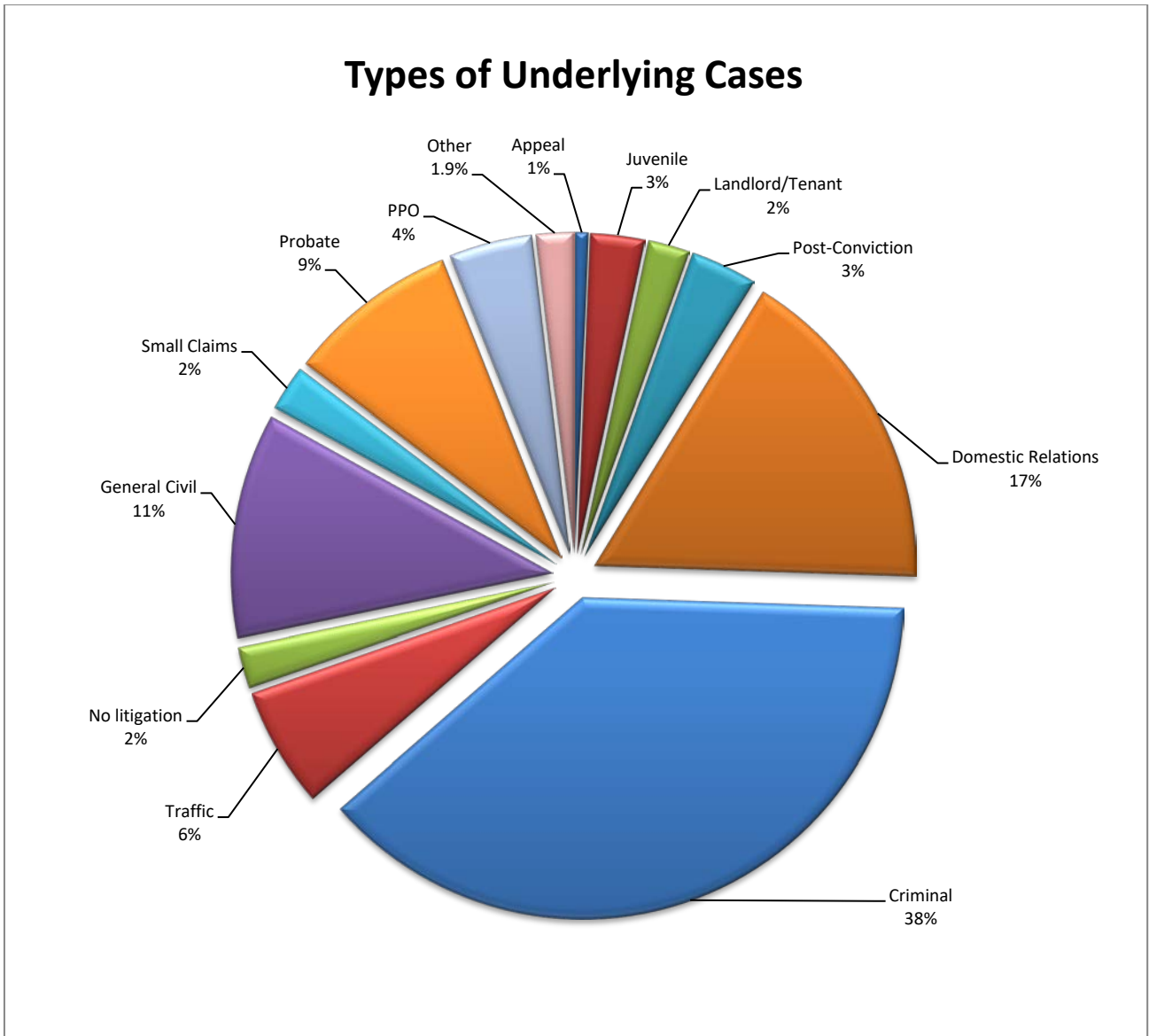
2. Subject Matter of Grievances

Seventy per cent of 2018 Requests for Investigation sought to have the Commission review the merits of the underlying case. Since the Commission has no jurisdiction to act as an appeal court, those matters were dismissed unless they also included evidence of judicial misconduct.



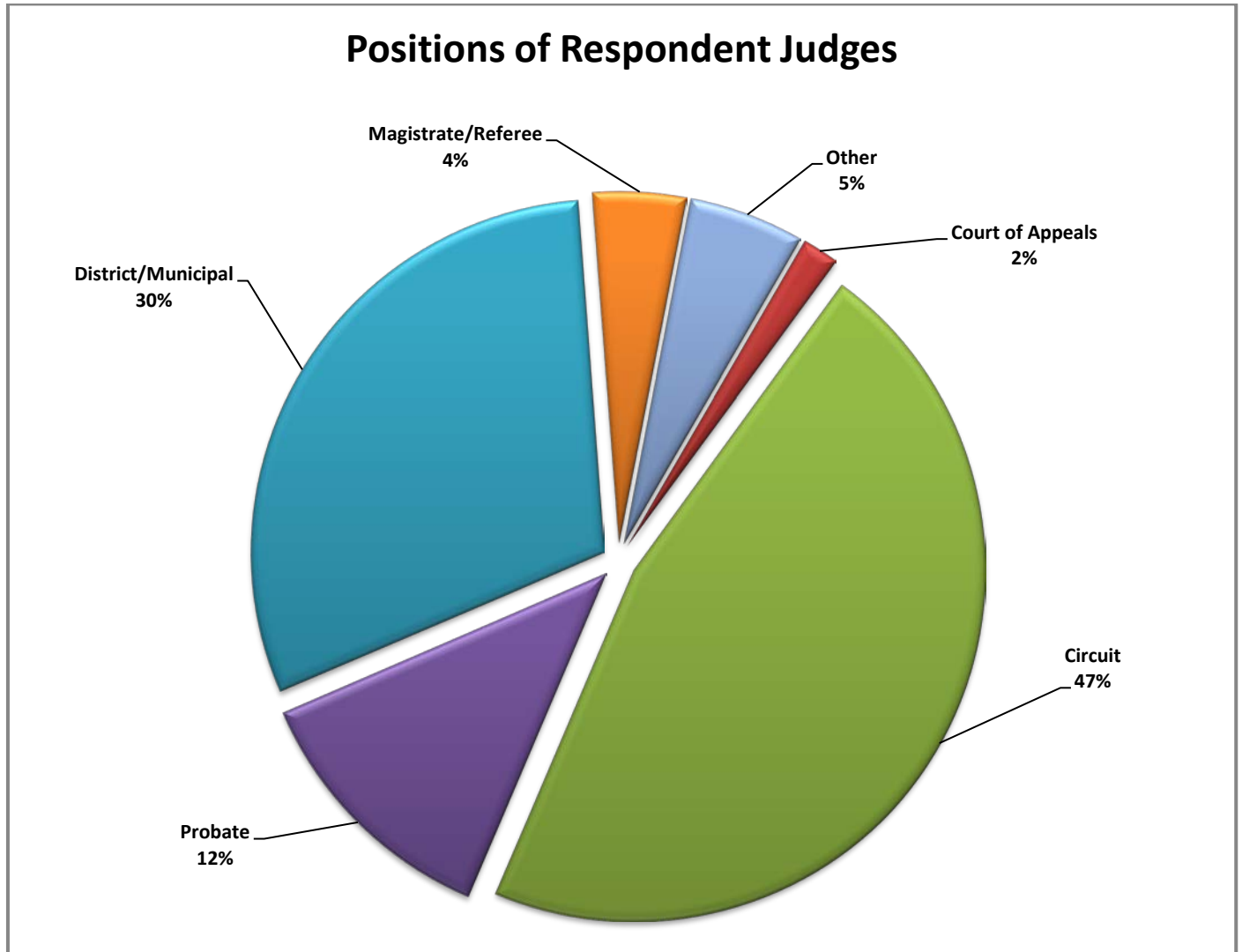
3. Nature of Underlying Litigation

Criminal cases, domestic relations matters, and general civil cases were the types of cases that most commonly resulted in grievances against the judge in 2018. Those cases combined made up two thirds of the 2018 complaints. Probate cases resulted in another 9% of requests for investigation.



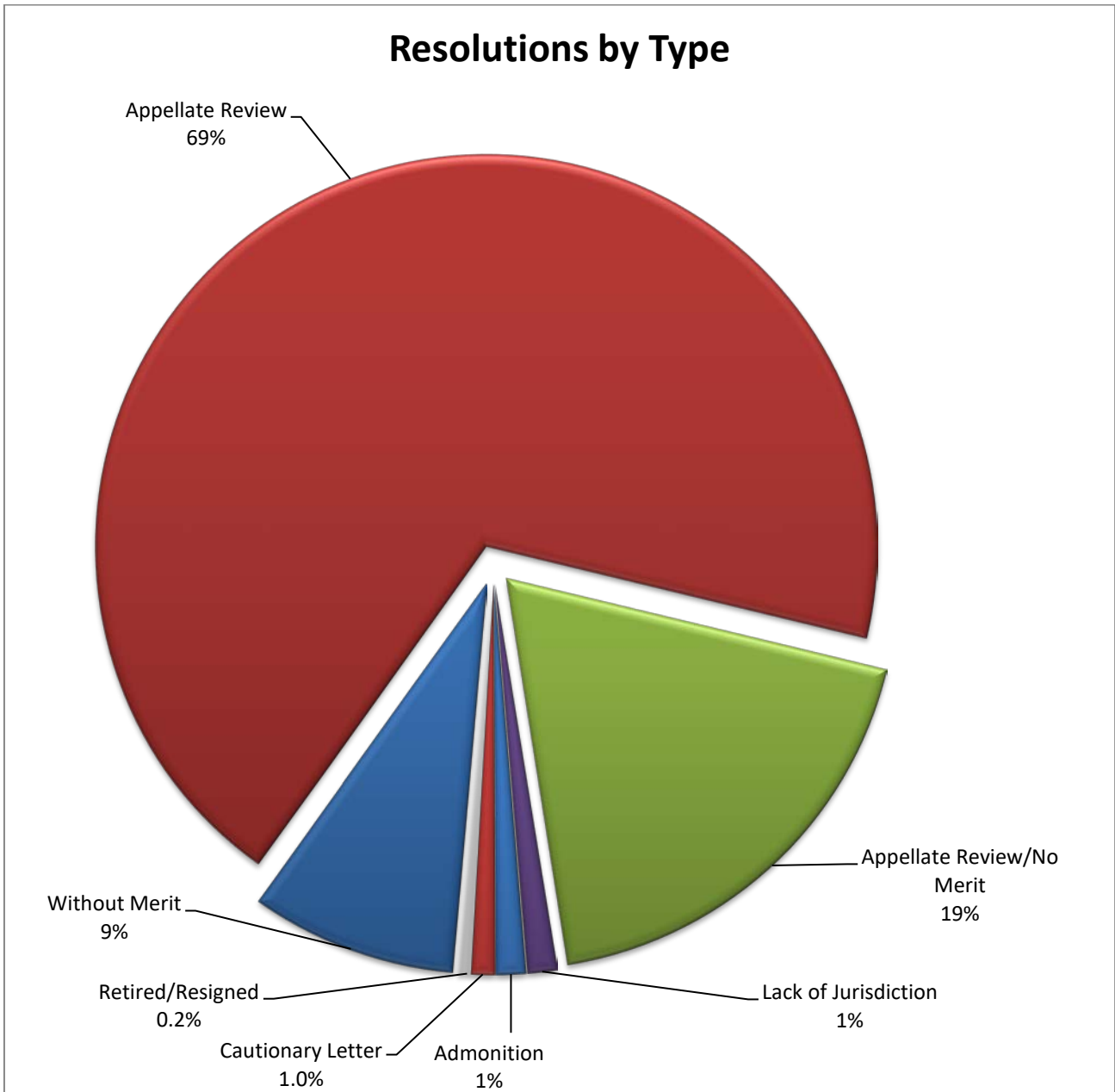
4. Positions of Respondent Judges

Circuit court judges, who comprise less than 20% of the judiciary, were the subject of 46% of the grievances filed in 2018. This is most likely due to circuit judges handling so much of the criminal and domestic relations dockets, which together generate about 55% of the grievances. District court judges, who comprise about 20% of the judiciary, were the subject of about 30% of the grievances filed.



5. Summary of Resolutions

In 2018 the Commission issued five letters of admonition and four cautionary letters. One judge resigned while an investigation was pending. The remaining grievances were resolved by dismissal.



IV. CASE SUMMARIES

A. Public Proceeding

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

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

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

Judge Giovan conducted a public hearing on October 1-5, 8-10, and November 19, 2018. He authorized the examiners to file a second amended complaint, which added charges that Judge Brennan was persistently discourteous to court staff, attorneys who appeared before her, and others; destroyed evidence relating to her divorce; and made numerous false statements under oath and other misrepresentations, in addition to those charged in the original complaint. The second amended complaint also eliminated charges that Judge Brennan improperly failed to disclose her relationship with one person.

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

On November 21, 2018, the examiners asked that the Commission petition the Michigan Supreme Court to suspend Judge Brennan without pay. The Commission denied the motion on December 11, 2018.⁴

As of December 31, 2018, FC No. 99 was pending before the Commission, with the Commission hearing scheduled for March 4, 2019.

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

B. Non-Public Proceedings

1. Conduct on the Bench

a. Delay

The Commission cautioned a judge for significant delay in resolving a pending proceeding. The judge took a matter under advisement after a trial. Although court rules require judges to decide cases within 35 days of submission, in this case the judge did not issue an opinion for eight months and had no valid reason for the delay. During the investigation the judge disclosed to the Commission that he had three additional cases, previously unknown to the Commission, that were pending between four and six months after submission. The judge acknowledged that he had not disclosed any of the delayed cases to the State Court Administrative Office as he was required to do.

The Commission found that the unnecessary delay violated Canon 3(A)(5), and the failure to report the delayed cases to the Administrative Office violated Canon 3(B)(1). The Commission acknowledged that the judge was a relative newcomer to the bench. It also applauded the judge's candid acknowledgment of, and acceptance of responsibility for, the delays. It noted that he took the initiative to request assistance from another judicial officer to ensure that matters assigned to him were promptly resolved in the future. The Commission cautioned the judge to avoid future delays and to ensure that any future delayed cases are properly reported.

b. Demeanor

A judge was admonished for reacting very aggressively and engaging in a shouting match with a disrespectful defendant. The judge used profanity and was otherwise intemperate. The Commission found that the judge's conduct was not patient, dignified, and courteous as required by Canon 3(A)(3), and that the judge failed to treat the defendant fairly and with courtesy and respect as required by Canon 2(B). The Commission admonished the judge to demonstrate better demeanor in the future.

A judge was cautioned for an unseemly comment at sentencing. The judge expressed his "wish" that the police officer victim of a home invasion, who had been absent when the invasion took place, had found the defendant in his house. The judge noted that the defendant may have been killed had the officer found him there.

The Commission found the judge violated Canon 1 (by failing to observe high standards of conduct so the integrity of the judiciary may be preserved); Canon 2(A) (by engaging in irresponsible or improper conduct that eroded public confidence in the judiciary, and by committing an impropriety and appearance of an impropriety); and Canon 3(A)(3) (by failing to be patient, dignified, and courteous to litigants

The Commission accepted the judge's explanation that this was the worst home invasion case he had seen in his almost thirty year career as a judge, and that he did not mean to convey that he wished the defendant had been killed but instead to impress upon the defendant the risk he incurred. The Commission also took into account the judge's acknowledgment that he should have framed his comments differently. The Commission further took note that the judge had recognized he needed help with his courtroom demeanor and had taken steps to improve it by receiving counseling and other help.

Based on all of the above the Commission cautioned the judge to be more circumspect with his choice of words, and to not allow his emotions to control his conduct in difficult or serious cases.

c. Ex Parte Contact

A judge twice called the officer in charge of a homicide case to advocate for the return of the defendants' property. The Commission found that taking it upon himself to contact the officer in charge, with no apparent need to do so, demonstrated an unusual personal interest in the case that called his neutrality into question.

The Commission rejected the judge's explanation that the calls were only for a permissible administrative purpose, and instead found they were substantive communications. The Commission found that the judge violated Canon 3(A)(4)'s prohibition against ex parte communication, and created the appearance of impropriety in violation of Canon 2(A). The Commission admonished the judge for not being familiar with, and not adhering to, the boundaries of his adjudicative role, and for not understanding that he may not engage in ex parte communications.

2. Conduct off the Bench

a. Abuse of Position

Upon hearing her friend had been arrested for the felony offense of carrying a concealed weapon, a judge called the arresting officer to make a bond inquiry. The judge then called the magistrate to request that her friend be released from jail and given a personal bond. After the magistrate contacted the chief judge and the chief judge denied her request, she sent the chief judge an email expressing her deep disappointment in his decision. The next morning she appeared at the courthouse and spoke to the prosecutor, who knew she was a judge, on behalf of her friend.

The Commission found that the judge's conduct created the appearance of impropriety in violation of Canon 2(A), and the Canon 2(C) prohibitions against allowing family, social, or other relationships to influence judicial conduct or judgment and using the prestige of office to advance the personal interests of others.

The Commission recognized that the judge self-reported her conduct, and that in her answers to the Commission's follow-up questions she forthrightly acknowledged her actions. The judge explained that she acted only out of panicked concern for the mental health of her friend and not out of any intent to use her position to that friend's advantage, but the judge recognized that her motives did not excuse her actions.

The Commission, taking into consideration that the judge self-reported, accepted responsibility for her conduct, and showed remorse, cautioned her to avoid such conduct in the future.

After learning that his daughter had been arrested after midnight for driving under the influence, a judge called a member of the county sheriff's department and ordered that his daughter be released from custody, to her mother. Releasing the daughter would have violated the sheriff's policy for detained drivers.

The Commission admonished the judge for violating Canon 2(A) by creating the appearance of impropriety, and for violating Canon 2(C) by allowing his family relationship to influence his judicial conduct or judgment, and using the prestige of his office to advance his daughter's personal interests.

The Commission found that the judge's explanation that he simply "requested," and did not "order," that his daughter be released was not credible. The Commission also expressed concern that the judge's answers to the Commission showed he did not appreciate that his motives did not excuse his actions, nor that it was only his position as judge that enabled him to effectuate his daughter's release.

The Commission also required the judge to write a letter to the sheriff acknowledging and apologizing for his overreach.

A judge authored a novel. A local newspaper story about the judge's writing career prominently featured the book on the judge's bench, while the judge presided in the background. In addition, a Twitter post by the judge's agent promoted the book by reference to the judge's official position.

The Commission accepted the judge's statement that she was unaware of, and did not authorize, the post by her agent. The Commission noted that a judge is obligated to be aware of the activities of agents, and to ensure to the extent feasible that those activities comply with the Code of Judicial Conduct.

The Commission rejected the judge's statement that by posing with her book she was merely "not hiding" that she is a judge. Rather, the Commission found that the judge affirmatively used her position as judge to promote her personal interests as an author. The Commission noted, and found troubling, that even after this matter was brought to the judge's attention she did not seem to understand that her promotion of the book was a misuse of her position.

The Commission admonished the judge for violating Canon 2(C).

b. Public Comment

A judge granted interviews in which he sharply and disrespectfully criticized the actions of another judge's sentencing in a high-profile criminal case. He offered the criticisms after the sentence took place, but before the time to file a notice of appeal had expired.

The Commission disagreed with the judge's claim that the criminal case was no longer "pending." It noted that a case remains "pending" until the opportunity for appeal is exhausted. The Commission also disagreed with the judge's claim that his critical and disrespectful comments were protected by the First Amendment. The Commission determined that the Code of Judicial Conduct constrains the First Amendment liberty of judges in some respects. The Commission also disagreed with the judge's claim that his comments were not disrespectful.

The Commission admonished the judge for disrespecting his fellow judge and undermining public confidence in the judiciary, in violation of Canon 2(B), and for commenting on a criminal case while it was pending, in violation of Canon 3(A)(6).

V. LAWSUITS

IN 2018 the Commission was still the defendant in several lawsuits filed in prior years.

In 2012 the Commission was sued by Sylvia James, who had been removed from the bench in 2011 as a result of Formal Complaint 88. After several proceedings over the years, as of the end of 2018 the lawsuit was pending in the United States District Court for the Eastern District of Michigan.

In 2016 the Commission was sued by Brenda Sanders, who had been removed from the bench in 2015 as a result of Formal Complaint 95. As of the end of 2018 the lawsuit was pending in the United States District Court for the Eastern District of Michigan.

In 2017 the Commission was sued by Beverly Nettles-Nickerson, who had been removed from the bench in 2008 as a result of Formal Complaint 81. As of the end of 2018 the lawsuit was pending in the United States District Court for the Western District of Michigan.

In 2017 the Commission was sued by Abelardo Moralez, who had filed several grievances with the Commission. The lawsuit complained about the Commission's decision to dismiss a 2016 grievance Mr. Moralez had filed. The lawsuit was dismissed in 2018.

VI. COMMISSION ORGANIZATION, STAFF AND BUDGET

A. Commission Organization and Staff

The Commission has six staff positions, which include the executive director, deputy executive director, two staff attorneys, one office manager and one administrative assistant. All Commission staff members are state employees.

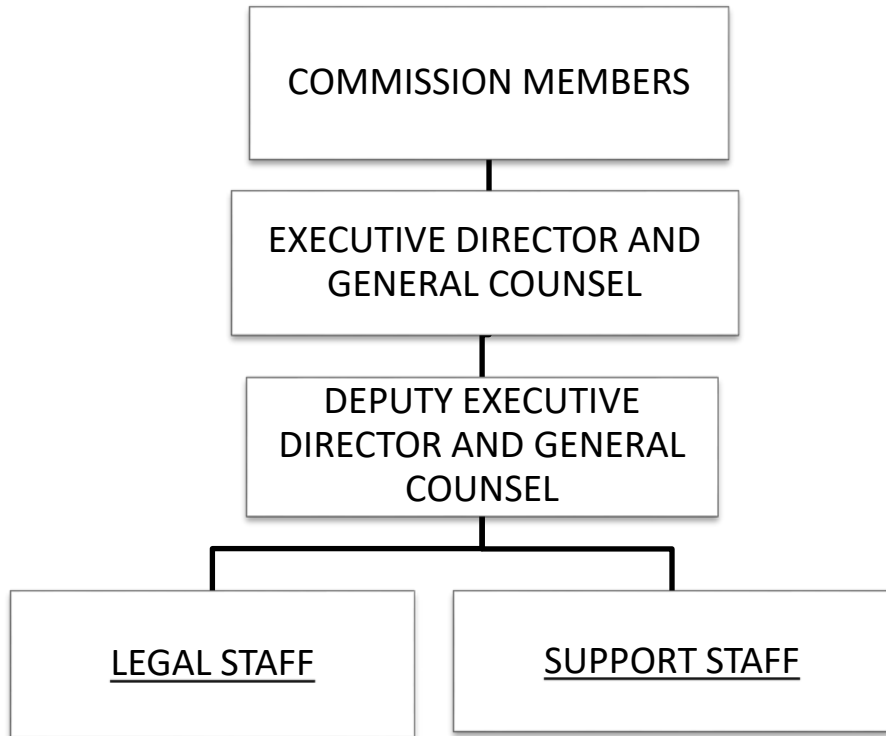
The executive director is hired by, and reports directly to, the Commission. The executive director oversees the investigation of grievances and is the examiner handling formal proceedings. The executive director is also the primary liaison between the Commission and the judiciary, the public, and the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

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

In addition to the staff attorneys, in December 2018 the Supreme Court provided temporary funding to enable the Commission to engage the services of one full time and one part time contract attorney, to help address the Commission's backlog of cases.

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

In 2018 the Commission's support staff was comprised of Office Manager Camella Thompson and Administrative Assistant Joyce Ford-Cooper.



B. Budget

The Commission's budget is established by the Michigan legislature. For the 2018 fiscal year (October 1, 2017–September 30, 2018), the Commission spent its appropriation of \$1,163,700. The Commission received additional support from the Supreme Court in the amount of \$81,143, primarily to cover the expenses of lawsuits (which are not provided for in the Commission's budget). While the Commission strives to keep its expenditures to the minimum consistent with doing quality work in a professional work environment, it has become increasingly clear that the current budget is inadequate to enable the Commission to resolve investigations as timely as would well serve the public and judiciary.

