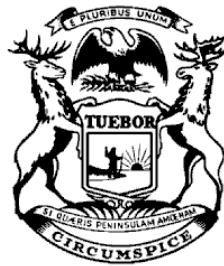


State of Michigan
Judicial Tenure Commission

Annual Report 2020



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Detroit, Michigan 48202
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jtc.courts.mi.gov

COMMISSIONERS

HON. JON H. HULSING
CHAIRPERSON
JAMES W. BURDICK, ESQ.
VICE CHAIR
HON. BRIAN R. SULLIVAN
SECRETARY

HON. MONTE J. BURMEISTER
DANIELLE CHANEY
HON. PABLO CORTES
SIHAM AWADA JAAFAR
THOMAS J. RYAN, ESQ.



State of Michigan

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Judicial Tenure Commission

September 14, 2021

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 2020 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 is 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, reading "Jon Hulsing".

Jon H. Hulsing
Chairperson
For the Commission

TABLE OF CONTENTS

COMPOSITION OF THE COMMISSION DURING 2020.....	III
COMMISSIONER BIOGRAPHIES.....	IV
COMMISSION PHOTO	VII
I. COMMISSION COMPOSITION & SCOPE OF AUTHORITY.....	1
A. COMPOSITION OF THE COMMISSION	1
B. LEGAL AUTHORITY	1
1. Michigan Constitution.....	1
2. Michigan Court Rules	1
3. Code of Judicial Conduct.....	2
C. PERSONS WITHIN COMMISSION JURISDICTION	2
D. WHAT THE COMMISSION CANNOT DO	2
E. WHAT THE COMMISSION CAN DO	2
II. OVERVIEW OF THE COMPLAINT PROCESS	3
A. HOW MATTERS COME BEFORE THE COMMISSION	3
B. COMMISSION REVIEW OF REQUESTS FOR INVESTIGATION.....	3
C. ACTION THE COMMISSION CAN TAKE	4
1. Confidential Dispositions	4
2. Public Dispositions	4
a. The Complaint	4
b. Hearing.....	5
c. Proceedings Following Hearing by Master	5
d. Disposition by Commission.....	5
e. Supreme Court Review	5
D. CONFIDENTIALITY OF COMMISSION PROCEEDINGS.....	6
III. 2020 FACTS & FIGURES.....	7
A. COMPLAINTS RECEIVED AND INVESTIGATED.....	7
B. GRIEVANCE DISPOSITIONS.....	8
1. Closed without Action.....	8
2. Closed with Private Action.....	8
3. Public Action	8
C. ANALYSIS OF GRIEVANCES CONSIDERED IN 2020.....	10
1. Sources of Requests for Investigation	10
2. Subject Matter of Grievances	11
3. Nature of Underlying Litigation	12
4. Positions of Respondents	13
5. Summary of Resolutions.....	14
IV. CASE SUMMARIES.....	15
A. PUBLIC PROCEEDINGS.....	15
FC No. 100, Hon. Byron Kenschuh – 40 th Circuit Court (Lapeer County).....	15
FC No. 101, Hon. Kahlilia Y. Davis - 36th District Court (Wayne County).....	16

FC No. 102, Hon. Bruce U. Morrow - 3rd Circuit Court (Wayne County).....	16
FC No. 103, Hon. Tracy E. Green - 3rd Circuit Court (Wayne County)	16
B. NON-PUBLIC PROCEEDINGS.....	17
1. Conduct on the Bench.....	17
a. Appearance of Impartiality and Impropriety	17
b. Failure to Maintain Professional Competence in the Law	17
c. Disclosure/Disqualification	18
2. Conduct off the Bench	18
a. Charitable Activities.....	18
b. Public Comments on Pending Cases	19
c. Campaign Conduct.....	19
V. COMMISSION ORGANIZATION, STAFF AND BUDGET	20
A. COMMISSION ORGANIZATION AND STAFF	20
B. BUDGET.....	21

COMPOSITION OF THE COMMISSION DURING 2020

Hon. Monte J. Burmeister, Chair

46th Circuit Trial Court
200 W. Michigan Avenue
Grayling, MI 49738
Term expires 12/31/23
Elected by Probate judges

Thomas J. Ryan, Esq., Vice-Chair

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

Hon. Karen Fort Hood, Secretary

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

Ari Adler

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

James W. Burdick, Esq.

Burdick Law, P.C.
1760 South Telegraph Road, Suite 300
Bloomfield Hills, MI 48302-0183
Term expires 12/31/23
Elected by State Bar membership

Hon. Pablo Cortes

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

Hon. Jon H. Hulsing

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

Siham Awada Jaafar

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

Hon. Brian R. Sullivan

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

2020 COMMISSIONER BIOGRAPHIES

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

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

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

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

Cortes served as the Commission’s Secretary in 2013 and 2014. He served as the Commission’s Vice-Chairperson in 2015 and 2016, and the Commission’s Chairperson in 2017 and 2018.

[We note with great sadness that Judge Fort Hood passed away on August 15, 2021] **Hon. Karen Fort Hood** was 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 was also very active in the community. She was past president of the Association of Black Judges of Michigan and a member of the Wolverine Bar Association, the State Bar of Michigan and the Michigan Judges Association. She was a lifetime member of the Detroit NAACP.

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

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

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

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

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

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

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

COMMISSION PHOTO

Due to the 2020 pandemic, there is no 2020 Commission photo. Below is a photo of the 2019 Commission, with the photo of new 2020 member, Siham Awada Jaafar, further below.



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

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

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



I. COMMISSION COMPOSITION & SCOPE OF AUTHORITY

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

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

A. Composition of the Commission

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

Commissioner Siham Awada Jaafar was appointed by Governor Gretchen Whitmer for a three-year term beginning in 2020.

B. Legal Authority

1. Michigan Constitution

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

2. Michigan Court Rules

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

¹ In this report, a "judge" is any judicial officer within the Commission's jurisdiction. It includes active justices of the Supreme Court, and all active judges, magistrates, and referees who work in the Michigan state court system. 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 2020, there were 1,165 active judges in Michigan. The Commission also has jurisdiction over a) former judges, if a request for investigation is filed while that judge is still in office or relates to the former judge’s tenure; and b) retired judges who sit by assignment as visiting judges.²

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

D. What the Commission Cannot Do

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

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

E. What the Commission Can Do

The Commission’s authority is limited to investigating alleged judicial misconduct or disability, and, if warranted, recommending that the Michigan Supreme Court impose discipline. Judicial misconduct usually involves conduct in conflict with the standards set forth in the Code of Judicial Conduct. Examples of judicial misconduct include inappropriate demeanor (such as bullying or disrespect); improper communication with only one of the parties in a case; failure to disqualify in cases in which the judge has or appears to have a financial or personal interest in the outcome; delay or dereliction in performing judicial duties; and damaging public comment about a pending case. Judicial misconduct may also involve improper off-the-bench activities, including committing a crime (examples include driving under the influence or misappropriating public money) or making false statements. The discipline the Commission can recommend includes public censure, suspension with or without pay, and removal.

² Although the Commission technically has jurisdiction over retired judges, the Michigan Constitution does not authorize any sanction, other than public censure, that is applicable to a judge who no longer active. For that reason, the Commission generally will not investigate retired judges who are not sitting as visiting judges.

II. OVERVIEW OF THE COMPLAINT PROCESS

A. How Matters Come Before the Commission

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

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

B. Commission Review of Requests for Investigation

Each properly executed grievance about a Michigan judge is carefully reviewed by the staff. 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 investigation beyond that if the Commission so authorizes.

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

If the initial investigation shows the judge did not commit misconduct, the Commission closes the grievance without contacting the judge. The judge is given a copy of the grievance when the Commission closes the case, unless the Commission determines otherwise for good cause.

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

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

C. Action the Commission Can Take

1. Confidential Dispositions

After an investigation, the Commission has several options. If the allegations are found to be untrue or unprovable, the Commission will usually close the case without action. If the Commission determines there was no judicial misconduct, but certain actions of the judge were problematic, the Commission may dismiss 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 conduct did (or probably did) occur, but was relatively minor, the Commission may dismiss with a letter of caution. A letter of caution advises the judge of the ethical concerns raised by the conduct, and warns that it should 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 with a private admonition. An admonition summarizes the Commission's findings about the improper conduct and admonishes the judge not to repeat it.

Explanations, cautions, and admonitions are letters of guidance or reproach that are only sent after the judge has been asked to explain his or her position. They inform the judge so the conduct will not escalate or be repeated. Summaries of conduct that resulted in such letters issued in 2020 are contained in Section IV.

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

2. Public Dispositions

a. The Complaint

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

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

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

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

b. Hearing by Master

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

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

c. Proceedings Following Hearing by Master

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

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

d. Disposition by Commission

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

e. Supreme Court Review

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

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

D. Confidentiality of Commission Proceedings

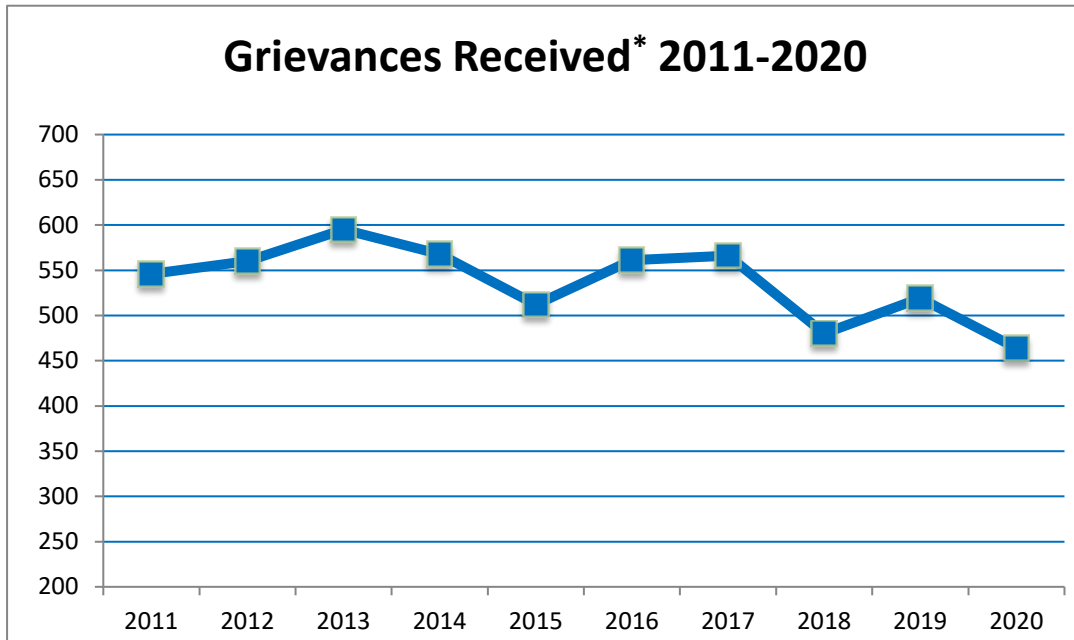
The Michigan Constitution directs the Supreme Court to provide for the confidentiality of complaints to, and investigations by, the Commission. Pursuant to this directive, Michigan Court Rule 9.261 provides that grievances and investigations are strictly confidential, subject to certain limited exceptions, unless and until the Commission issues a complaint against the judge. Although confidential for most purposes, the grievance is typically provided to the judge during the course of the investigation. Further, as a practical matter, once the Commission begins to obtain documents or interview witnesses, the fact of the investigation may become known even though the Commission treats it as confidential.

The confidentiality rule provides that once public proceedings are instituted, the complaint, answer, and all subsequent pleadings and proceedings are open to the public. The court rules also permit the Commission publicly to acknowledge an investigation before a complaint is issued, if a majority of Commissioners determine it is in the public interest to do so. Even in such a case, the Commission's statement is limited to either (1) there is an investigation pending, or (2) the investigation is complete and there is insufficient evidence for the Commission to file a complaint. The Commission very rarely determines that it is in the public interest to acknowledge an investigation.

III. 2020 FACTS & FIGURES

A. Complaints Received and Investigated ³

In 2020 the Commission received 599 requests for its "Request for Investigation" forms. This number does not include downloads from the Commission's website. There were 440 requests for investigation filed in 2020 that complained about actions by a total of 464 judges.



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

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

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

³ The numbers below for filed cases, resolved cases, and other figures, may sometimes appear inconsistent for several reasons: a single request for investigation can name multiple judges or rest on multiple bases; the Commission sometimes opens an investigation on its own, with no request for investigation having been filed; the Commission often addresses multiple requests for investigation regarding a judge in one public 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.

B. Grievance Dispositions

In 2020 the Commission resolved 413 requests for investigation concerning 450 judges.

2020 CASELOAD	
Grievances pending on 1/1/2020	167
New grievances received in 2020	464
Grievances concluded in 2020	450
Grievances pending on 12/31/2020	181

1. Closed without Action

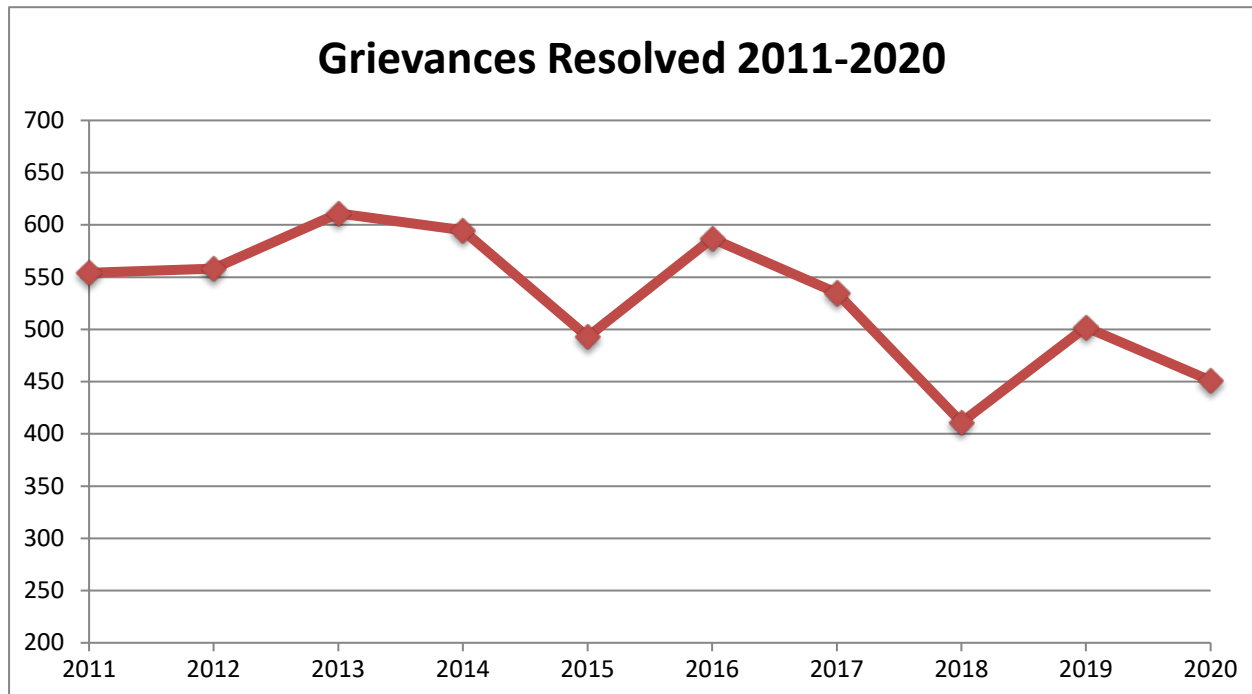
In 429 of the 450 grievances resolved in 2020, the evidence did not demonstrate misconduct after the information necessary to evaluate the grievance was obtained and reviewed. In other words, either these files alleged facts that would not constitute misconduct even if true, or investigation showed the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation, or the Commission lacked jurisdiction.

2. Closed with Private Action

The Commission issued eight cautions in 2020. These cases are summarized in Section IV.

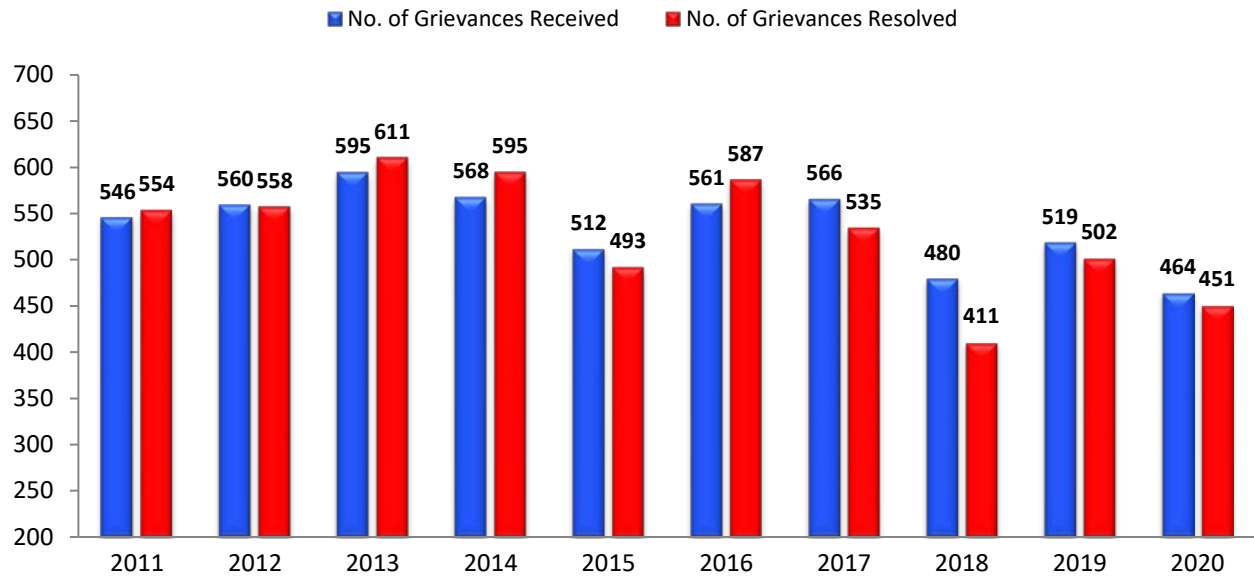
3. Public Action

The Commission filed three public complaints in 2020. They are summarized in Section IV.



With the exception of an unexplained drop in 2018 and a drop in 2020 that may be due to the COVID-19 pandemic, the number of grievances received and resolved by the Commission has been fairly constant for more than the last decade.

Grievances Received & Resolved, 2011-2020

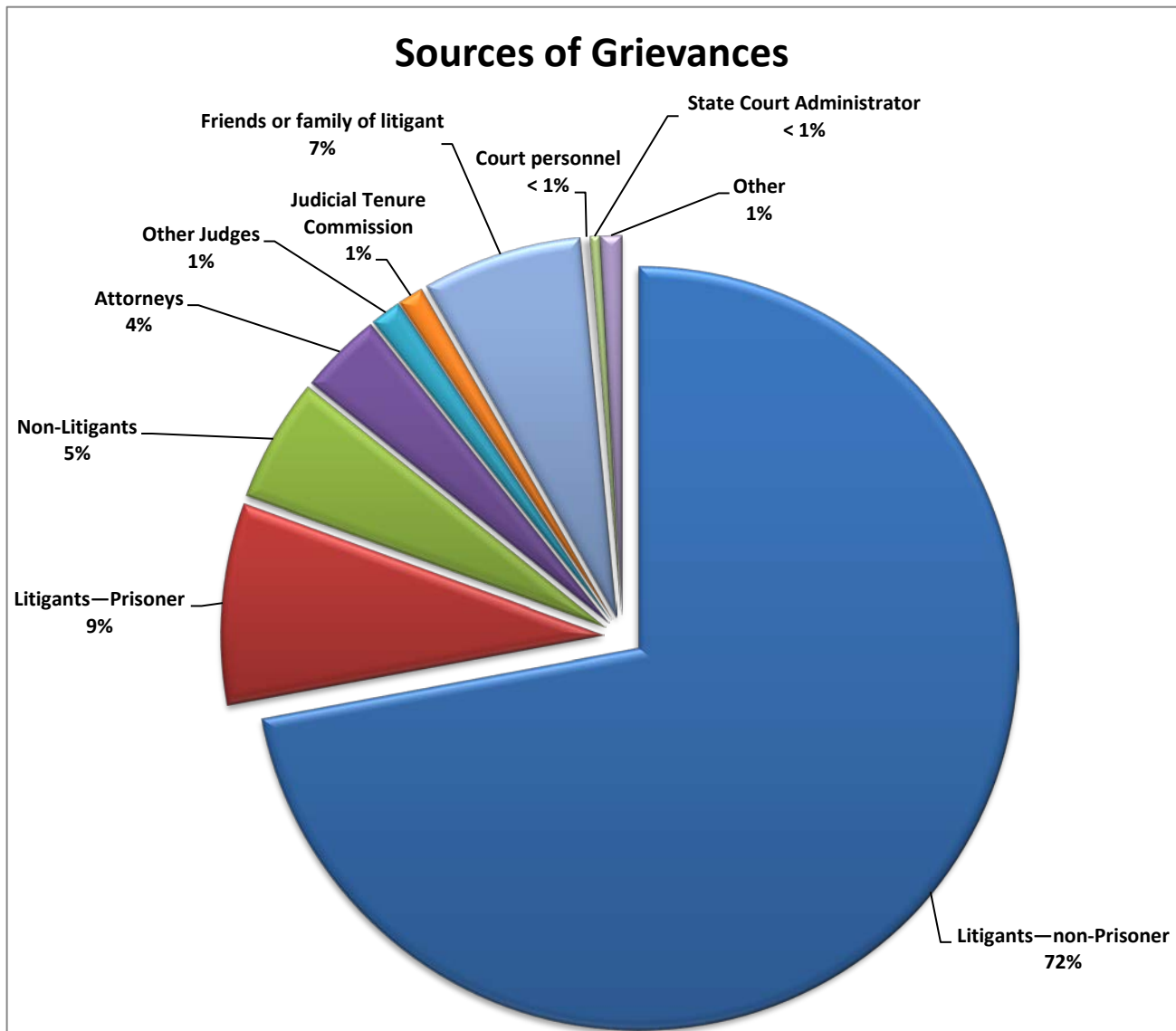


C. Analysis of Grievances Considered in 2020

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 464 grievances received (section IIIA) or 450 closed (section IIIB), because some grievances allege more than one type of misconduct and some resolutions concern more than one grievance.

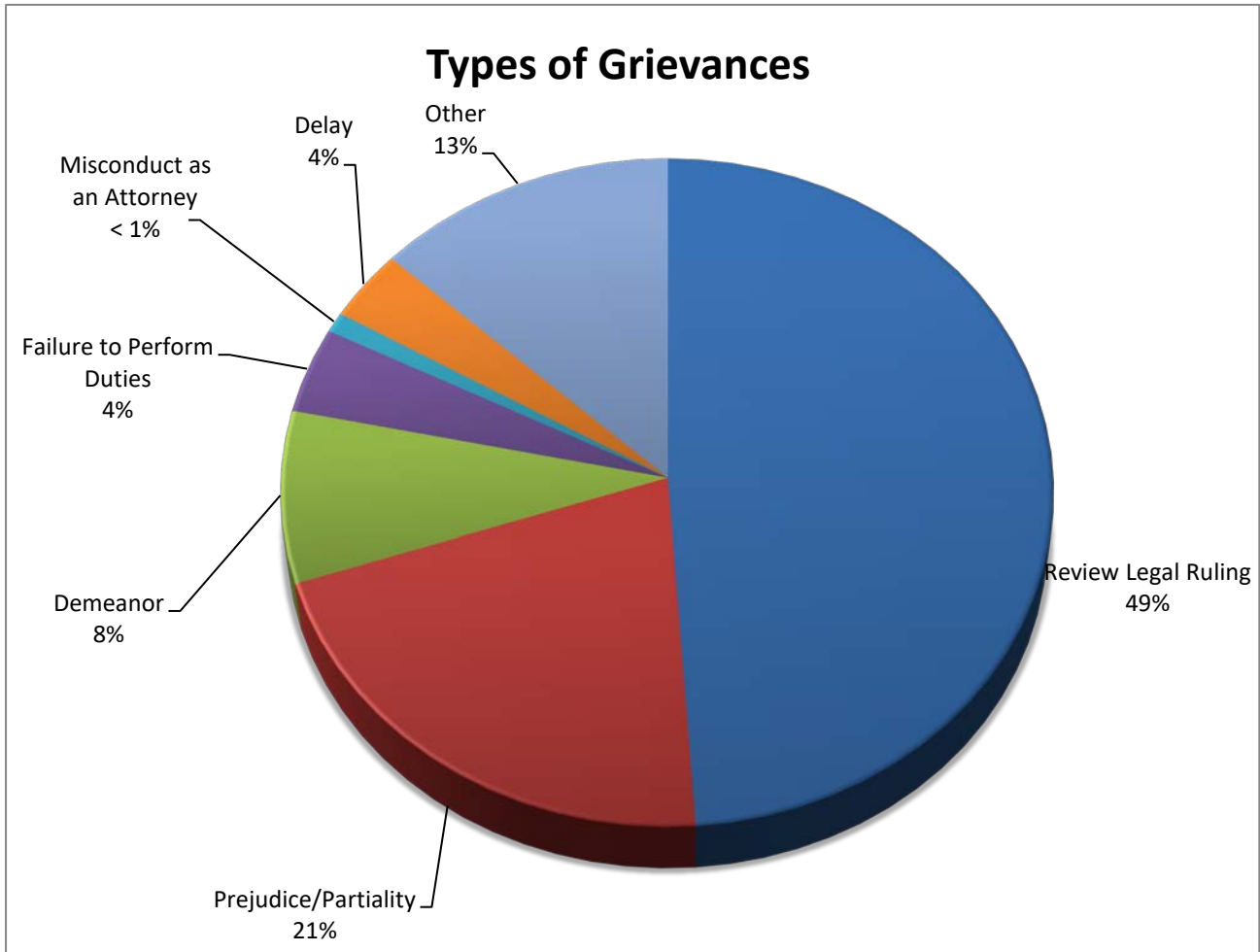
1. Sources of Requests for Investigation

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



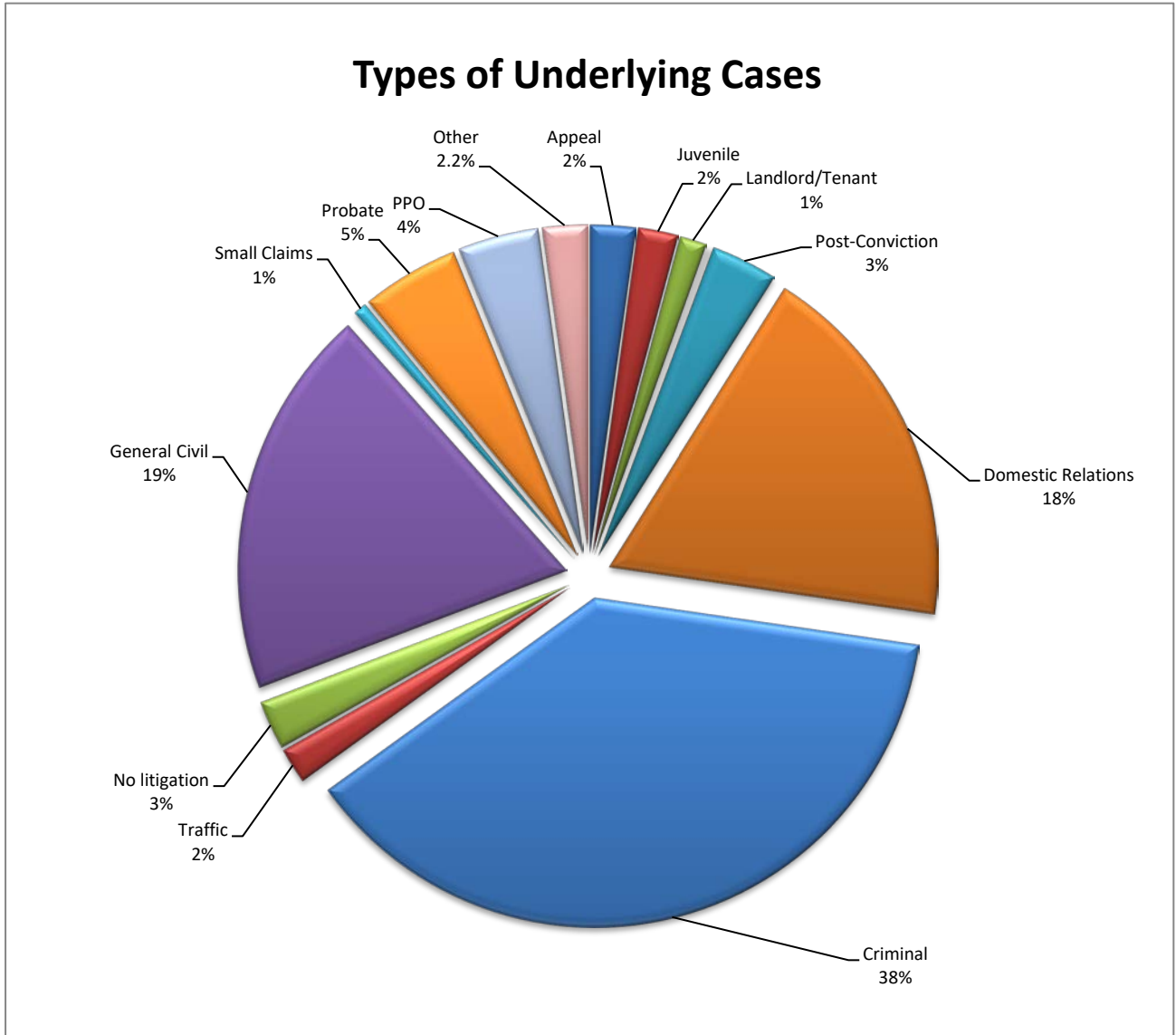
2. Subject Matter of Grievances

Approximately half of the 2020 requests for investigation sought to have the Commission review the merits of the underlying case. Since the Commission has no authority to act as an appellate court, those matters were dismissed unless they also included evidence of judicial misconduct.



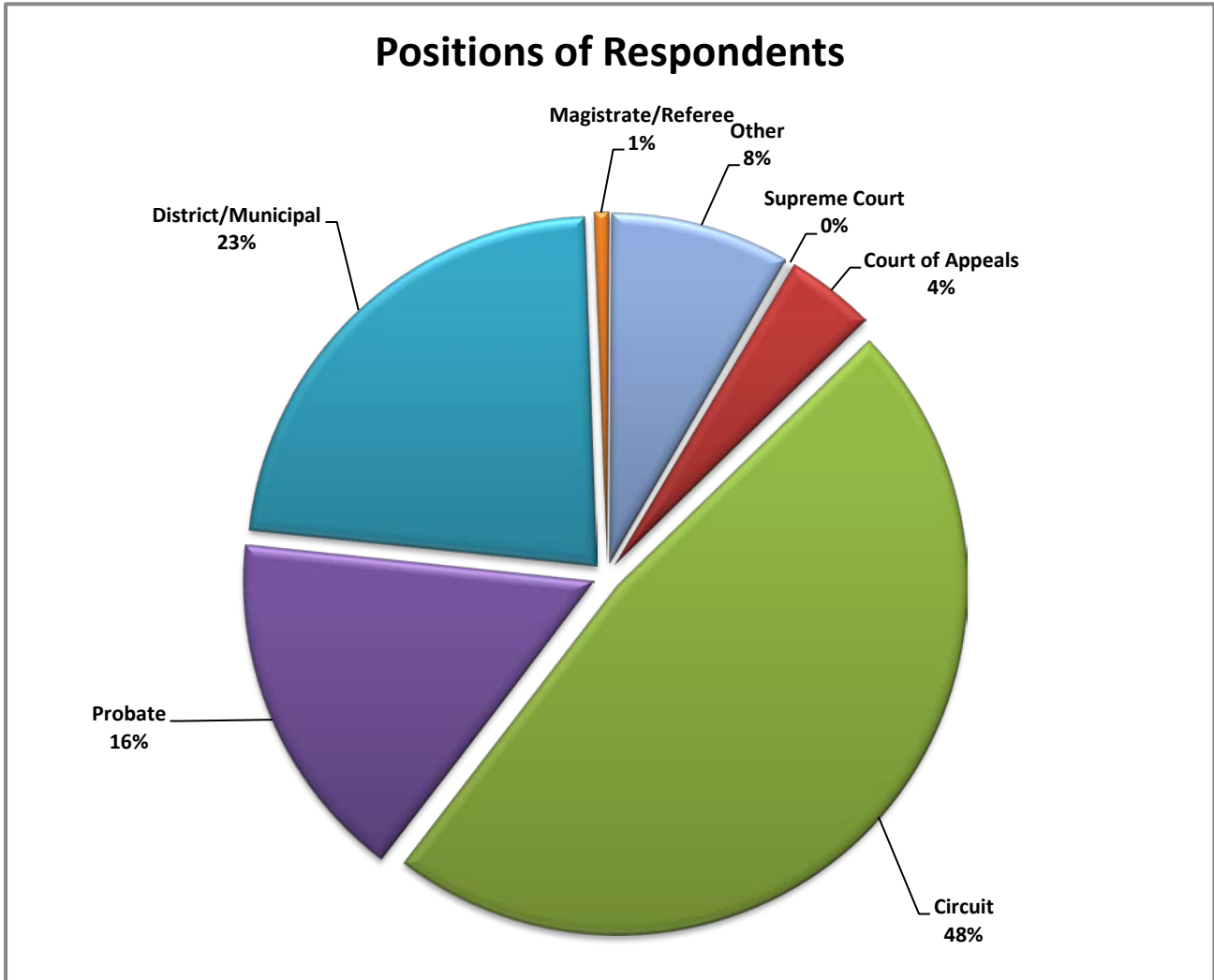
3. Nature of Underlying Litigation

Criminal cases, domestic relations matters, and general civil cases most commonly resulted in grievances against the judge in 2020. Those cases combined made up around two thirds of the 2020 requests for investigation. Probate cases resulted in another 5% of requests for investigation.



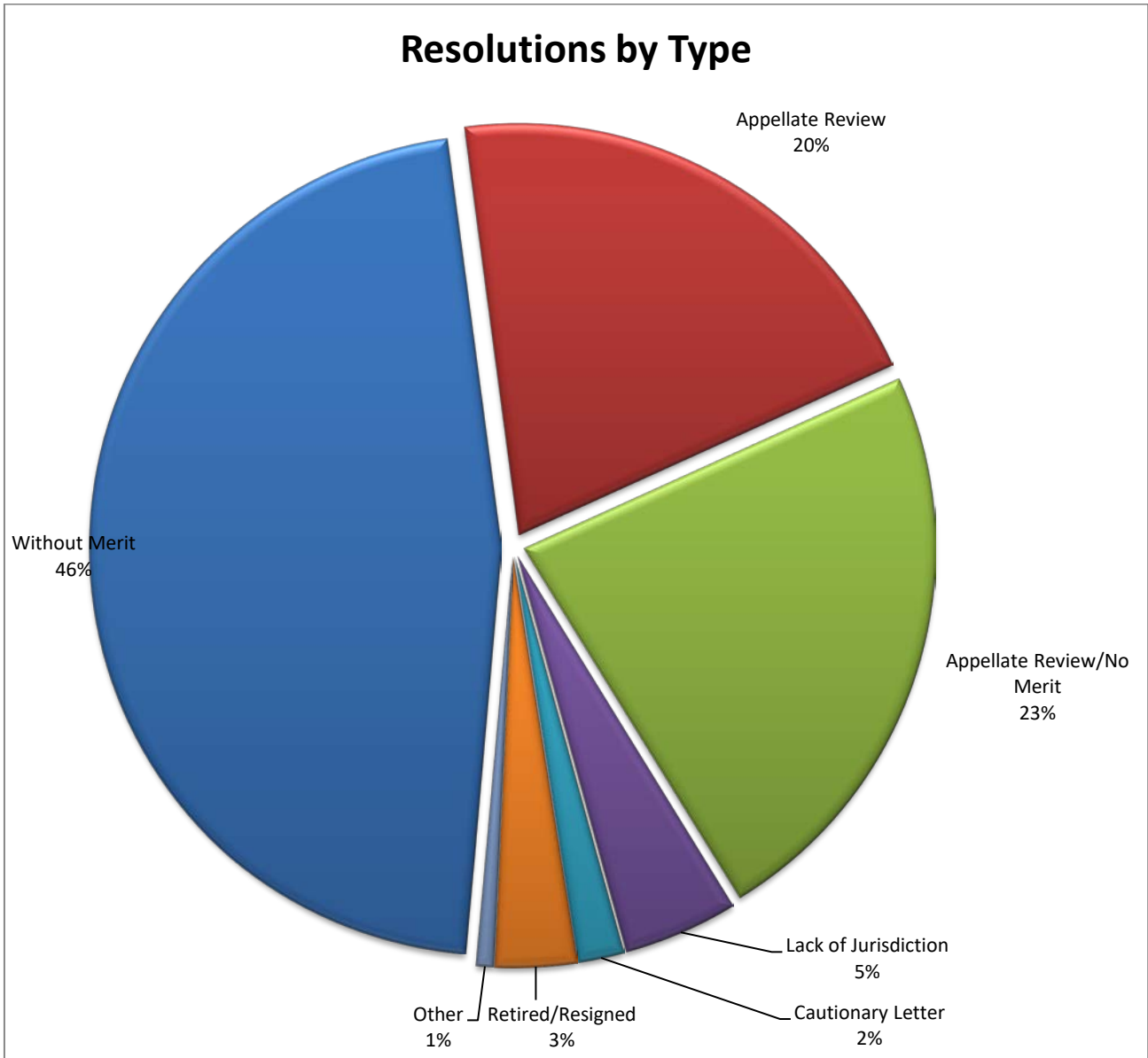
4. Positions of Respondents

Circuit court judges, who comprise less than 20% of the judiciary, were the subject of 41% of the grievances filed in 2020. This is most likely due to circuit judges handling so much of the criminal and domestic relations dockets, which together generate about 48% of the grievances. District court judges, who comprise about 20% of the judiciary, were the subject of about 23% of the grievances filed. The category “Other” includes retired judges and persons who are outside the Commission’s jurisdiction, such as federal judges, administrative law judges, and lawyers.



5. Summary of Resolutions

The Commission filed three public complaints in 2020, and another was pending from 2019. All were unresolved at the end of 2020. Another eight cases were resolved through letters of caution. The remaining grievances were resolved by dismissal, including those against judges who resigned or retired while under investigation.



IV. CASE SUMMARIES

A. Public Proceedings

FC No. 100, Hon. Byron Korschuh – 40th Circuit Court (Lapeer County)

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

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

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

On March 18, 2019 the Supreme Court appointed Hon. Williams J. Caprathe as master. On April 2, Judge Korschuh filed his answer to the complaint, together with affirmative defenses. A pretrial was conducted on April 15 and motions were heard on June 12. The public hearing began on June 28, 2019 at the 47th District Court in Farmington Hills, and concluded on September 23. During the hearing 39 witnesses testified and more than 350 exhibits were admitted. Closing arguments were heard on September 23.

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

In 2020, disciplinary counsel filed objections to the master's findings, to which Judge Korschuh filed a response. On May 29, the Commission heard arguments, and issued a Decision and Recommendation on August 5. The Commission largely disagreed with the master. It determined that Judge Korschuh committed misconduct in office by, among other actions, misrepresenting and falsely

denying his criminal plea, embezzling county funds, failing to disclose or disqualify himself based on his relationships with several attorneys, and making misrepresentations to the court in his criminal and civil legal proceedings, under oath at his deposition, to the MSP in its investigation of his embezzlement, and to the Commission and master in the complaint proceedings. The Commission recommended to the Michigan Supreme Court that Judge Korschuh be removed from office and that the removal extend through the next judicial term, given his patent unfitness to serve in the judiciary.

While the Commission's recommendation was pending before the Supreme Court, Judge Korschuh lost his bid for reelection to the circuit court in the 2020 general election. At the conclusion of 2020, the case was on the Supreme Court's docket, awaiting oral argument.

FC No. 101, Hon. Kahlilia Y. Davis – 36th District Court (Wayne County)

On March 16, 2020 the Commission filed a public complaint against Hon. Khalilia Y. Davis. Judge Davis was charged with knowingly and deliberately conducting court proceedings without a record, making false statements to the Commission in the course of its investigation, and unauthorized recording and publication of court proceedings. Judge Davis filed an answer and affirmative defenses on May 19, 2020, and the Michigan Supreme Court suspended her, with pay, on June 17, 2020. As of December 31, 2020, the case was pending further proceedings.

FC No. 102, Hon. Bruce U. Morrow – 3rd Circuit Court (Wayne County)

The Commission filed a public complaint against Hon. Bruce Morrow on August 10, 2020. Judge Morrow was charged with the inappropriate use of sexually graphic language in conversations with two female assistant prosecuting attorneys on two occasions, in violation of Canons 1, 2(B), 3(A)(3) and 3(A)(14); and questioning the same attorneys inappropriately about their physical appearance, in violation of Canons 2(A), 2(B), 3(A)(3) and 3(A)(14). Judge Morrow filed an answer to the complaint and affirmative defenses on August 25, 2020, admitting many of the factual allegations but denying that they constituted misconduct.

On September 17, 2020 the Michigan Supreme Court appointed retired Ann Arbor District Court Judge Betty R. Widgeon as master. During the course of the proceedings, Judge Morrow filed two complaints for writs of superintending control with the Supreme Court. The first, asserting that the Commission's structure is unconstitutional, was denied by the Court on October 30, 2020. The second, asserting that the public hearing should be held in person instead of via Zoom, as ordered by the master, was denied by the Court on November 12, 2020.

Judge Widgeon conducted a five-day public hearing in November and December 2020. The parties' proposed findings of fact and conclusions of law were due to be filed in January 2021, and the master's report was due in February 2021.

FC No. 103, Hon. Tracy E. Green – 3rd Circuit Court (Wayne County)

The Commission issued a public complaint against Hon. Tracy Green on November 10, 2020. Judge Green was charged with covering up evidence that her son had physically abused her grandsons, and making false statements about her acts and her knowledge of the abuse. Respondent's conduct is alleged to violate MCR 9.104(1), (2) and (3); MCR 9.202(B); MRPC 8.4(b) and (c); MCL 750.483a(5)(a); MCL 750.505; MCR 9.104(5); and Canons 2(A) and (B). Judge Green filed an answer

to the complaint and affirmative defenses on December 31, 2021, denying the allegations. At the end of December 2020, the Commission's request for appointment of a master was pending.

B. Non-Public Proceedings

1. Conduct on the Bench

a. Appearance of Impartiality and Impropriety

A judge reviewed audio recordings of crime-tip phone calls that related to a criminal case while in the presence of an assistant prosecuting attorney, but not defense counsel. The judge was conducting an in camera review to determine whether the calls contained information that should be disclosed to defense counsel.

The evidence showed that the prosecutor was merely playing the recordings for the judge because they were on the prosecutor's computer. There was no evidence of any communication between the judge and the prosecutor regarding the content of the recordings. Therefore, the Commission concluded there were no prohibited ex parte communications.

However, the Commission cautioned that the judge's review of the recordings in the presence of the prosecutor alone gave the impression that the judge may have been influenced by the prosecution. By not taking adequate care concerning appearances, the judge corroded defense counsel's confidence in the integrity and impartiality of the judiciary, in violation of Canons 2(A) and (B). The Commission advised that the judge should have obtained defense counsel's consent to listen to the recordings in the presence of the prosecutor, or should have had the prosecutor wait outside her office while listening.

b. Failure to Maintain Professional Competence in the Law

A judge found a person in contempt for violating the court's parenting time order. That finding caused the person to become vulgar toward the judge and otherwise disruptive. The judge found the person in contempt for this as well, and made the two contempt sentences consecutive.

Although each finding of contempt was lawful on its own, the consecutive sentences violated well-established case law, including *People v. Chambers*, 430 Mich 217 (1988). When asked for authority to support their decision, the judge offered only cases that were not on point and analysis that was clearly mistaken.

The Commission found that the decision to impose consecutive sentences in violation of case law, and in the absence of statutory authority, may have failed comply with the requirement of Canon 3(A)(1) that a judge must be competent in the law. The Commission had no reason to think that the decision was made in anything other than good faith, and did not believe the judge's failure to follow the law was willful. It cautioned the judge to take care, in the future, not to let the heat of the moment in the courtroom overcome careful analysis of the limits of the judge's authority to find a person in contempt. The Commission also noted the judge's unblemished disciplinary history in dismissing the matter with caution pursuant to MCR 9.223(A)(2).

c. Disclosure/Disqualification

A judge's recent former law partner represented a party in a case before the judge. The judge properly raised the issue of disqualification with counsel, and properly obtained counsel's oral, private waiver of the conflict. However, MCR 2.003(E) requires that any agreement to waive disqualification must be in writing or placed on the record. The judge did not obtain a written waiver or place the waiver on the record, so violated the rule. That omission also put the judge in violation of Canon 3(D), which provides that judge's conflict may be waived as provided in MCR 2.003(E).

The Commission found no misconduct. It concluded that the judge's failure to comply with the rule was inadvertent, and that the undisputed evidence showed that the judge had complied with the spirit of their ethical duties and had avoided any appearance of impropriety. Pursuant to MCR 9.223(A)(2), the Commission dismissed the matter with an explanation.

2. Conduct off the Bench

a. Charitable Activities

A judge volunteered as a referee at a sporting event fundraiser for an entity that assisted children who were crime victims. The entity had an ongoing relationship with the judge's court, and would sometimes provide information in cases that came before the judge.

In addition, the judge served as a guest auctioneer at a fundraiser for a local chamber of commerce. In that role, the judge encouraged the audience to provide more funds to support the chamber.

The Commission commended the judge for engaging in charity work, but cautioned the judge to be mindful that these particular efforts were contrary to the canons. The judge's public support of the child services entity could make the judge appear to be an ally of the entity, and as a result, adversely influence the appearance of the judge's impartiality if the entity appeared before them. Canon 4(C) forbids creating such an appearance. The judge's service as an auctioneer put them in the position of individually soliciting funds on behalf of the entity, in violation of Canon 4(D).

A judge self-reported that the judge spoke at a public event that honored another person. While speaking, the judge extemporaneously announced, then solicited contributions to, a new scholarship in the honoree's name. The judge explained that they added the solicitation to their speech at the last minute, and had not thought through the implications of their position as a judge with respect to making such a request for money.

The Commission applauded the judge's effort to further a worthy cause and appreciated that the judge self-reported, but cautioned that Canon 4(D) forbids such a solicitation, even for worthy causes.

b. Public Comments on Pending Cases

A judge made remarks to a reporter regarding a defendant in a pending drunk driving case. The remarks were broadcast on a local newscast and posted on the station's website. Although the case was no longer pending before the judge in the district court when the judge made the remarks, it was still pending in the circuit court.

The Commission cautioned that the remarks violated Canon 3(A)(6), both as that canon existed when the judge made the remarks and as it has since been amended. It noted that the remarks, by their public nature, could have pressured the circuit judge in making decisions in the case, or could have been heard by potential jurors.

In cautioning the judge, the Commission acknowledged that the judge had acknowledged that the remarks were improper and had expressed regret for making them.

A judge posted a Facebook comment on a pending case. The judge posted the comment because there was significant public interest in the case, part of which was based on misinformation. The judge's goal was to reassure and inform the public.

However, the post appeared to be a promise or commitment regarding how the judge would rule in the future with respect to the issues that had generated the public interest. The post also made it appear that the judge had allowed public pressure to affect their impartial future performance of adjudicative duties, although there was no indication that the judge actually was influenced by any public sentiment.

The Commission cautioned the judge to be careful to avoid creating the impression that they were promising a certain future outcome of an issue still being litigated, since that violates Canon 3(A)(7). The Commission also cautioned the judge be mindful that when communicating with the public it is important to preserve the public's faith in the impartiality of the judiciary, as required by Canon 2(B).

c. Campaign Conduct

As a judicial candidate for their first campaign, a judge used printed campaign materials that did not identify the name and address of the person paying for the material, as required by the Michigan Campaign Finance Act, MCLA 169.247(1).

Upon learning of the deficiency, the judge took steps to correct it, including destroying some materials that had already been printed without the required identifier, and hand-stamping other materials to add the identifiers. The judge was cautioned pursuant to MCR 9.223(A)(2) to adhere closely to campaign requirements in future campaigns.

V. COMMISSION ORGANIZATION, STAFF AND BUDGET

A. Commission Organization and Staff

The Commission had five full-time staff positions in 2020, which included the executive director, deputy executive director, two staff attorneys, and one office manager. These staff members are state employees.

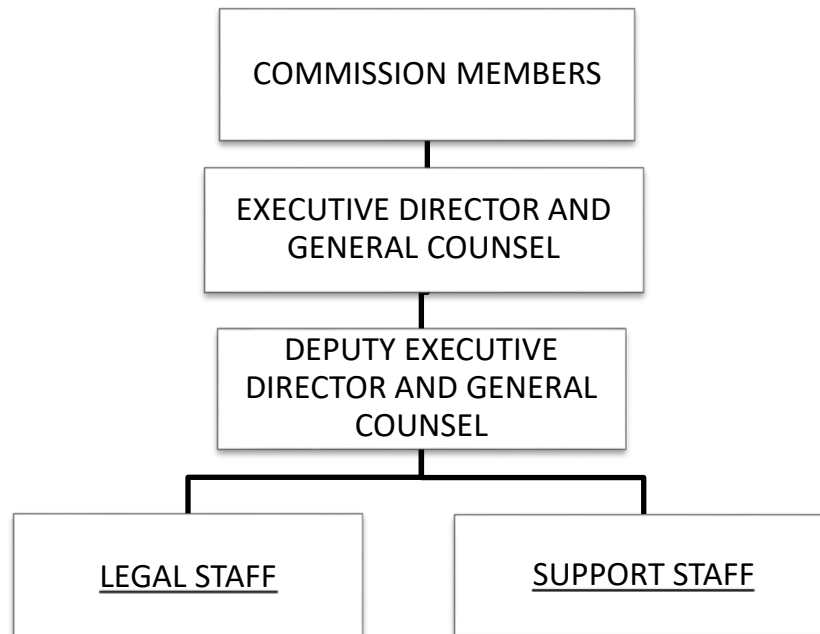
The executive director is hired by, and reports directly to, the Commission. The executive director oversees the investigation of grievances and is the disciplinary counsel handling public proceedings. The executive director is also the primary liaison between the Commission and the judiciary, the public,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

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

In addition to the staff attorneys, since late 2018 the Commission has used the services of contract attorneys to assist with its backlog of cases. In 2020 funding provided by the Michigan legislature enabled the Commission to have the assistance of contract attorneys Sheila Walsh and Lora Weingarden.

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

In 2020, the Commission's support staff was comprised solely of Office Manager Camellalynette Corbin.



B. Budget

The Commission's budget is established by the Michigan legislature. For the 2020 fiscal year (October 1, 2019 – September 30, 2020), limitations imposed by the pandemic caused the Commission to spend almost \$87,000 less than its appropriation of \$1,261,400. While the Commission strives to keep its expenditures to the minimum consistent with doing quality work in a professional work environment, it is clear that the current budget is, and for several years has been, inadequate to enable the Commission to resolve investigations as timely as would well serve the public and judiciary.

