

# State of Michigan

## Judicial Tenure Commission

Annual Report 2017



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

## COMMISSIONERS

HON. PABLO CORTES  
**CHAIRPERSON**  
HON. MONTE BURMEISTER  
**VICE CHAIRPERSON**  
HON. LAWRENCE S. TALON  
**SECRETARY**

JAMES W. BURDICK, ESQ.  
HON. Nanci J. GRANT  
HON. KAREN FORT-HOOD  
THOMAS J. RYAN, ESQ.  
MELISSA B. SPICKLER



State of Michigan

LYNN A. HELLAND, ESQ.  
**EXECUTIVE DIRECTOR**  
**& GENERAL COUNSEL**  
GLENN J. PAGE, ESQ.  
**DEPUTY EXECUTIVE DIRECTOR**

3034 WEST GRAND BLVD., SUITE 8-450  
CADILLAC PLACE BUILDING  
DETROIT, MICHIGAN 48202  
TELEPHONE: (313) 875-5110  
FAX: (313) 875-5154  
WEBSITE: [jtc.courts.mi.gov](http://jtc.courts.mi.gov)

## Judicial Tenure Commission

May 17, 2018

Honorable Justices of the Michigan Supreme Court  
Honorable Rick Snyder, Governor  
Honorable Members of the Michigan Legislature  
Honorable Judges

I am pleased to present the 2017 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 dark ink, appearing to read "Pablo Cortes".

Pablo Cortes  
Chairperson  
For the Commission

# **TABLE OF CONTENTS**

COMPOSITION OF THE COMMISSION – 2017.....	III
I. COMMISSION JURISDICTION AND LEGAL 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.....	2
A. HOW MATTERS ARE BROUGHT BEFORE THE COMMISSION .....	2
B. COMMISSION REVIEW OF REQUESTS FOR INVESTIGATION .....	3
1. Investigation at the Commission’s Direction.....	3
2. Disposition of Cases Without Formal Proceedings .....	3
C. ACTION THE COMMISSION CAN TAKE .....	3
1. Confidential Dispositions .....	3
2. Public Dispositions.....	4
a. The Formal 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.....	5
III. 2017 FACTS & FIGURES .....	6
A. COMPLAINTS RECEIVED AND INVESTIGATED .....	6
B. COMPLAINT DISPOSITIONS .....	7
1. Closed without Action .....	7
2. Closed With Action .....	7
C. ANALYSIS OF GRIEVANCES CONSIDERED IN 2016 .....	9
1. Sources of Requests for Investigation.....	9
2. Subject Matter of Grievances.....	10
3. Nature of Underlying Litigation .....	11
4. Positions of Respondent Judges .....	12
5. Summary of Resolutions .....	13
IV. CASE SUMMARIES .....	14
A. PUBLIC PROCEEDINGS.....	14
1. Formal Complaints.....	14
a. Formal Complaint No. 96, J. Cedric Simpson .....	14
b. Formal Complaint No. 98, Lisa Gorcyca.....	14
c. Consent Sanction, Hon. Gregg P. Iddings.....	15

<b>B. NON-PUBLIC PROCEEDINGS.....</b>	<b>15</b>
<b>1. Conduct on the Bench .....</b>	<b>15</b>
a. Delay .....	15
b. Demeanor/improper comments on the bench .....	16
c. Unable to perform duties.....	16
<b>2. Conduct Off the Bench</b>	<b>16</b>
<b>V. LAWSUITS.....</b>	<b>17</b>
<b>VI. COMMISSION ORGANIZATION, STAFF AND BUDGET .....</b>	<b>17</b>
<b>A. COMMISSION ORGANIZATION AND STAFF .....</b>	<b>17</b>
<b>B. BUDGET .....</b>	<b>19</b>

## **COMPOSITION OF THE COMMISSION – 2017**

**Hon. Pablo Cortes, Chair**

62A District Court  
2650 DeHoop Ave. SW  
Grand Rapids, MI 49509  
Term 5/1/17-12/31/19  
Elected by judges of limited jurisdiction

**Nancy J. Diehl, Esq. Vice Chair**

3034 W. Grand Blvd., Suite 8-450  
Detroit, MI 48202  
Term Exp. 12/31/17  
Elected by State Bar membership

**Hon. Monte J. Burmeister, Secretary**

46<sup>th</sup> Circuit Trial Court  
Term Exp. 12/31/20  
Elected by probate judges

**Hon. Nanci J. Grant**

1200 N. Telegraph Road, Dept. 404  
Pontiac, MI 48341  
Term Exp. 12/31/18  
Elected by circuit court judges

**David T. Fischer**

3034 W. Grand Blvd., Suite 8-450  
Detroit, MI 48202  
Term Exp. 12/31/17  
Appointed by governor

**Thomas J. Ryan, Esq.**

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

**Hon. David H. Sawyer**

350 Ottawa Ave. NW  
Grand Rapids, MI 49503  
Resigned 6/1/17  
Elected by Court of Appeals judges

**Melissa B. Spickler**

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

**Hon. Lawrence S. Talon**

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

**Hon. Karen Fort Hood**

3020 W. Grand Blvd., Ste 14-300  
Detroit, MI 48202  
Term 6/5/17 - 12/31/18  
Elected by Court of Appeals judges

## BIOGRAPHIES

**Hon. Monte J. Burmeister** is the probate judge for Crawford County, Michigan. He was elected to the probate bench in 2006 and was re-elected in 2012. 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 sits on the executive board for the Michigan Probate Judges Association, and is currently the president-elect. He began his tenure with the Commission in 2013. On January 9, 2017, Judge Burmeister was elected the Commission's secretary.

---

**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 and 2008. 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 Tenure 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.

---

**Nancy J. Diehl, Esq.**, retired from the Wayne County Prosecutor's Office in 2009. Her prosecution career spanned 28 years and her last position was Chief of the Trial Division, overseeing general trials, child and family abuse, homicide, auto theft, major drugs, and victim services. Ms. Diehl, past president of the State Bar of Michigan, sits on the Michigan Indigent Defense Commission and the Wayne County Kids-TALK Children's Advocacy Advisory Board. Fellow members of the State Bar of Michigan elected her to the Tenure Commission for a term beginning January 1, 2006. In 2017 she completed her fourth term, which began on January 1, 2015. Ms. Diehl has a B.A. from Western Michigan University and a J.D. from Wayne State University. Ms. Diehl served as the Commission's secretary in 2015 and 2016 and the Commission's vice chairperson from January 9, 2017 to December 31, 2017.

---

**David T. Fischer** is Chairman and Chief Executive Officer of The Suburban Collection, the 13<sup>th</sup> largest automotive group in the U.S. and one of the largest privately-held automotive groups in Michigan. It encompasses 29 brands across 45 locations throughout Michigan, southeast Florida, and recently southern California. The Suburban Collection also operates state-of-the-art collision centers throughout Michigan. Mr. Fischer has been honored with the Time Magazine Quality Dealer Award, the General Motors Dealer of the Year Award, and Ford Motor Company's "Salute to Dealers" award for automotive excellence and community service.

Mr. Fischer serves as Chairman Emeritus of the North American International Auto Show. He also serves on the board of trustees for the College for Creative Studies and has chaired the campaign committee supporting the renovation of the historic Argonaut building as part of the CCS campus. Mr. Fischer received an honorary Doctorate in Fine Art from CCS as well.

Mr. Fischer was recently elected Emeritus Director of the Detroit Institute of Arts, and also supports the Detroit Symphony and the Museum of Contemporary Art Detroit. Mr. Fischer and his wife Jennifer

actively support more than 20 charitable organizations including the American Cancer Society, the Juvenile Diabetes Research Foundation, Make-A-Wish and Forgotten Harvest. The Suburban Collection, under Mr. Fischer's leadership, has been a flagship sponsor of "Making Strides against Breast Cancer" and for the past ten years has been a sponsor of the "Teacher of the Year" program. In 2010 The Suburban Collection joined Ford in the launch of Ford Mobile Food Pantries, an initiative to bring food to those in need throughout metro Detroit. The initiative also serves as a pilot for a national dealer program to feed the hungry.

---

**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.

---

**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 chair in 2013 and 2014.

---

**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 66<sup>th</sup> 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.

---

**Hon. David H. Sawyer** was elected to the Court of Appeals in 1986. He was elected to the Tenure Commission by his fellow Court of Appeals judges for a term that began on January 1, 2010. Judge Sawyer was Chief Judge Pro Tem of the Michigan Court of Appeals from 2009 through 2014. Before being elected to the bench, he was the Kent County Prosecuting Attorney from 1977 to 1987. Judge Sawyer is a past president of the Michigan Prosecuting Attorneys Association. He received his Bachelor of Science degree from the University of Arizona in 1970 and received his law degree from Valparaiso University School of Law in 1973. Judge Sawyer served as the Commission's vice chair in 2013 and 2014 and served as the Commission's chairperson in 2015 and 2016.

---

**Melissa B. Spickler** is a veteran of the financial services industry, with more than three decades of accomplishments as a Financial Advisor with Merrill Lynch. 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, serves as president of the Detroit Area Chapter of the Women's Exchange, and has recently served three years on the National Advisory Council to Management. She has a bachelor's degree in Criminal Law from Michigan State University and also holds a Chartered Retirement Planning Counselor SM (CRPC®) designation.

Most recently, Missy was named to Forbes's "Best-in-State Wealth Advisors" list in 2018. She was named to Barron's list of America's Top 100 Women Financial Advisors for six consecutive years, America's Top 1,200 Financial Advisors for five consecutive years, and Registered Rep's Top 50 Wirehouse Women in 2012, 2013, 2014 and 2015. She was named to the Financial Times Top 401 Retirement Plan Advisers in 2015 and 2016. Missy was featured on the cover of the September 2015 issue of "On Wall Street" magazine. She was also featured on the cover of the September 23, 2013, issue of Barron's magazine and in the May 2012 issue of Kiplinger Personal Finance magazine. Missy appeared on Fox 2 Detroit's December 1, 2014, segment of Money Mondays, and was quoted in various news articles and radio appearances. She received the 2015 Outstanding Business Leader Award from Northwood University.

Missy and her husband Eric currently reside in Bloomfield Hills, Michigan. They have three sons, Theodore, Michael and Matthew. Matthew recently joined Missy's team 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 and a drug treatment court 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.



## 2017 Judicial Tenure Commission



Commission members through May 2017

FRONT: Hon. Monte Burmeister, Secretary; Hon. Pablo Cortes, Chairperson;  
Nancy J. Diehl, Esq., Vice Chairperson

REAR: Hon. Nanci J. Grant; Glenn Page, Deputy Director; Hon. Lawrence Talon; David Fischer;  
Lynn Helland, Executive Director; Hon. David Sawyer; Melissa Spickler; Thomas J. Ryan, Esq.



Commission Members June through December 2017

FRONT: Nancy J. Diehl, Esq., Vice Chairperson; Hon. Pablo Cortes, Chairperson;  
Hon. Monte Burmeister, Secretary;

REAR: Melissa Spickler; Lynn Helland, Executive Director; Hon. Karen Fort Hood; David Fischer;  
Hon. Lawrence Talon; Glenn Page, Deputy Director; Hon. Nanci J. Grant; Thomas J. Ryan, Esq.

## **I. COMMISSION COMPOSITION & SCOPE OF AUTHORITY**

**T**he Judicial Tenure Commission is an independent state commission. Its mission is to enforce high standards of ethical conduct for judges.<sup>1</sup>

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.

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. The terms are staggered so three positions open up 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 current Commission changed in mid-2017, when Commissioner David Sawyer resigned before the end of his term and Hon. Karen Fort Hood was elected to replace him. The terms of Commissioners Nancy J. Diehl, Esq., and David Fischer expired at the end of 2017. James Burdick, Esq., will replace Commissioner Diehl beginning in 2018. The Commission awaits the governor's choice of a person to replace Mr. Fischer.

### **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](http://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 the rules the Supreme Court has created. A copy of the current rules is on the Commission's website ([jtc.courts.mi.gov](http://jtc.courts.mi.gov)).

---

<sup>1</sup> 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.

### **3. Code of Judicial Conduct**

The Michigan Supreme Court adopted the Code of Judicial Conduct in 1974. The Code, often referred to as the “canons,” defines appropriate judicial conduct. The most recent Code is on the Commission’s website ([jtc.courts.mi.gov](http://jtc.courts.mi.gov)).

#### **C. Persons within Commission Jurisdiction**

The Commission has jurisdiction over all active state judges. In 2017 there were about 1250 active judges in Michigan. The Commission also has jurisdiction over former judges if a request for investigation is filed while that judge was still in office or relates to the former judge’s tenure as a judge.

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 public comment about a pending case. Judicial misconduct also may involve improper off-the-bench activities.

## **II. OVERVIEW OF THE COMPLAINT PROCESS**

### **A. How Matters Are Brought Before the Commission**

**T**he 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, a sample of which is on the Commission’s website ([jtc.courts.mi.gov](http://jtc.courts.mi.gov)). The court rules require that the person filing the grievance (“the grievant”) have his or her signature verified (*i.e.*, notarized) to establish that he or she has sworn 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 chief justice of the Michigan Supreme Court or the State Court Administrator.



## **B. Commission Review of Requests for Investigation**

Upon receipt, each properly executed grievance about a Michigan judge is carefully reviewed by the staff, along with any supporting documents or other evidence. The staff may review the court file if that would be helpful. The staff 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 generally viewed as either an investigatory aid or as 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. A judge has the right to challenge an admonishment in the Supreme Court, which then issues a public decision approving or rejecting the Commission's action.

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 2017 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](http://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. *In re Ferrara*, 458 Mich 350 (1998).

### **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 the charges. If, after receiving the master’s report and after 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. If the Commission determines that misconduct has been established, it may recommend that the Supreme Court discipline the judge. The Commission may recommend that the Court publicly censure a judge, impose a term of suspension, retire the judge or remove the judge 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, retirement, removal, or such other disciplinary action as it deems appropriate. The respondent judge may file a motion for rehearing in the Supreme Court unless the Court directs otherwise in its opinion.

## **D. Confidentiality of Commission Proceedings**

The Michigan Constitution 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 exceptions, unless and until

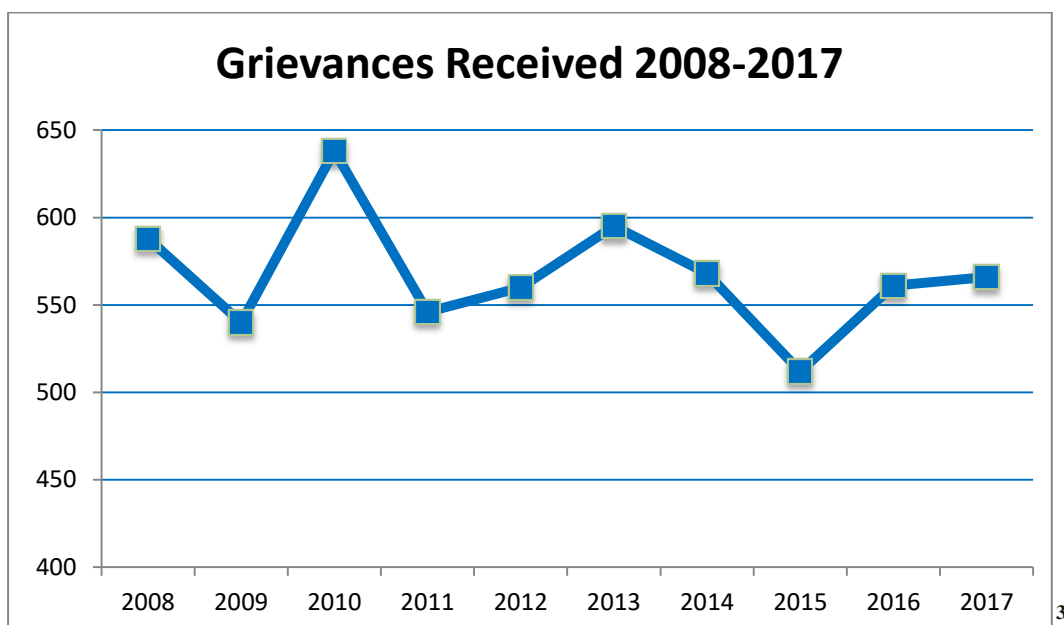
a formal complaint is issued. The court rules provide that when formal proceedings are instituted, the formal complaint, answer, and all subsequent pleadings and proceedings are open to the public.

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. 2017 FACTS & FIGURES

#### A. Complaints Received and Investigated <sup>2</sup>

In 2017 the Commission received 661 requests for "Request for Investigation" forms. This number does not include downloads from the Commission's website. There were 502 Requests for Investigation filed in 2017 that alleged a total of 566 "grievances," that is, complaints, against a total of 566 judges.



<sup>2</sup> 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.

<sup>3</sup> 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 2017 the Commission resolved grievances concerning 535 judges.

2017 CASELOAD	
Grievances pending on 1/1/2017	61
New grievances received in 2017	566
Grievances concluded in 2017	535
Grievances pending on 12/31/2017	94

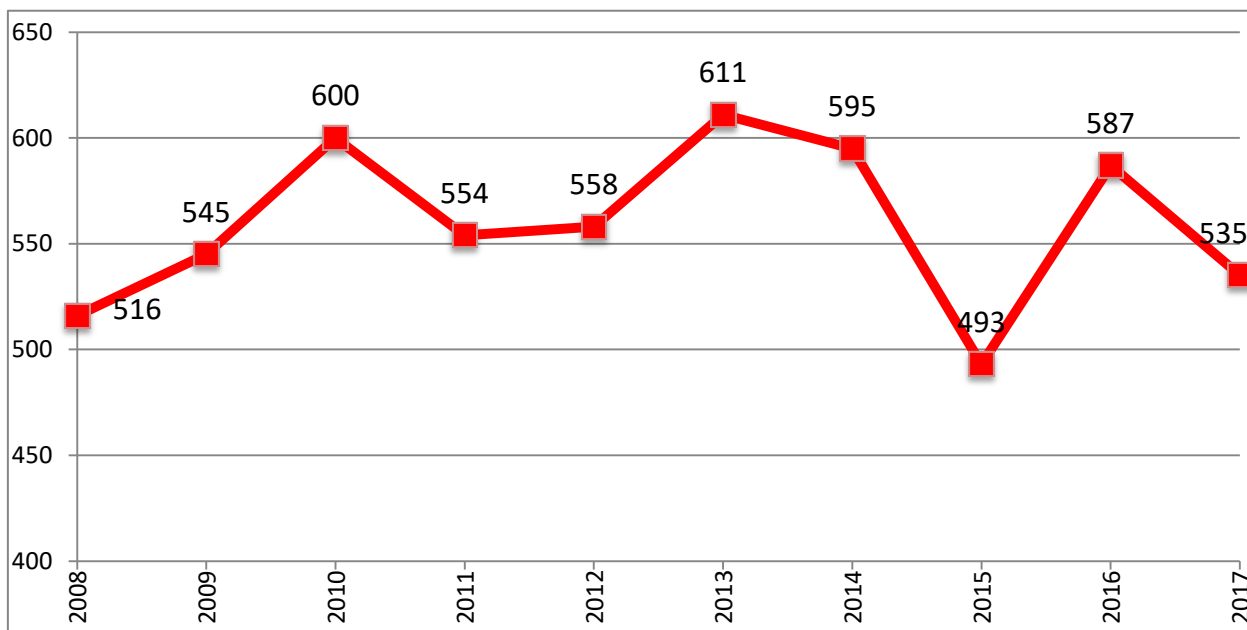
### 1. Closed without Action

In 526 of the 535 grievances resolved in 2017, the evidence did not demonstrate misconduct after the information necessary to evaluate the complaint was obtained and reviewed. In other words, these files alleged facts that, even if true, would not constitute judicial misconduct, or investigation showed the allegations were unfounded or unprovable, or the judge gave an adequate explanation of the situation, or the Commission lacked jurisdiction.

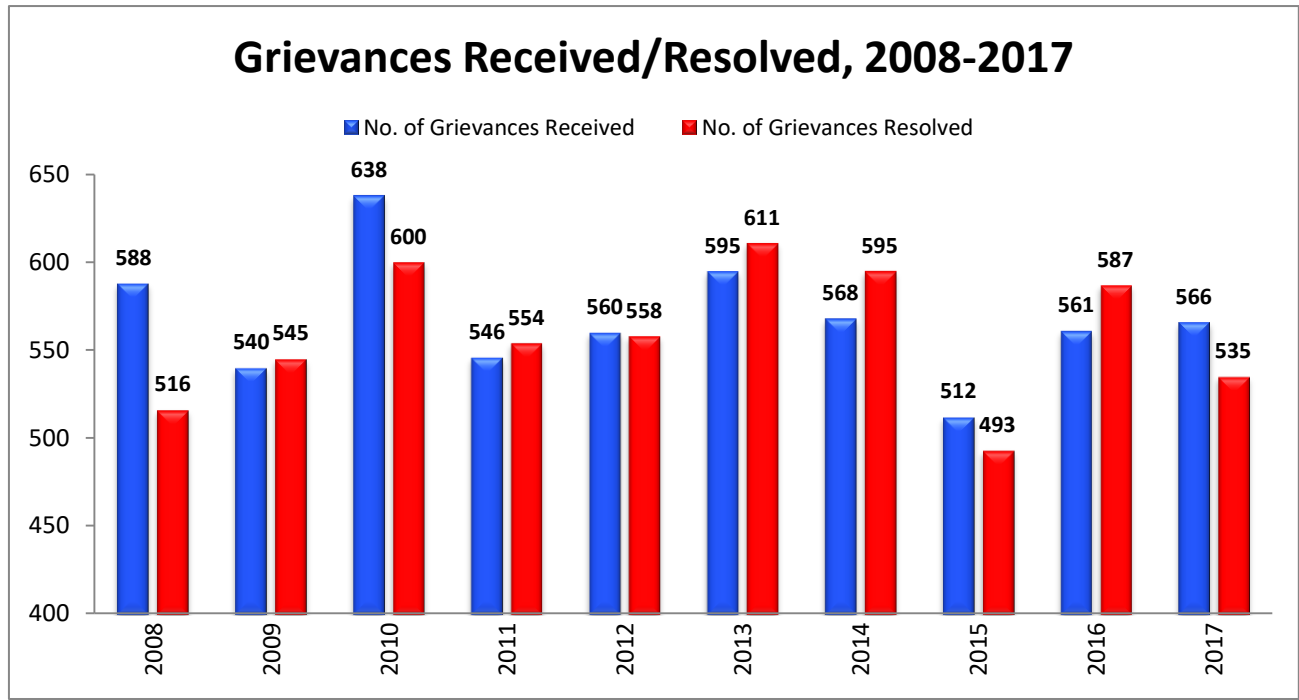
### 2. Closed with Action

The Commission did not issue any formal complaints in 2017. It issued three letters of admonishment and two cautions. There was one consent suspension and one voluntary resignation. These dispositions are summarized in Section IV.

## Grievances Resolved 2008-2017



Over the last decade, the number of grievances received and resolved by the Commission has been fairly constant.

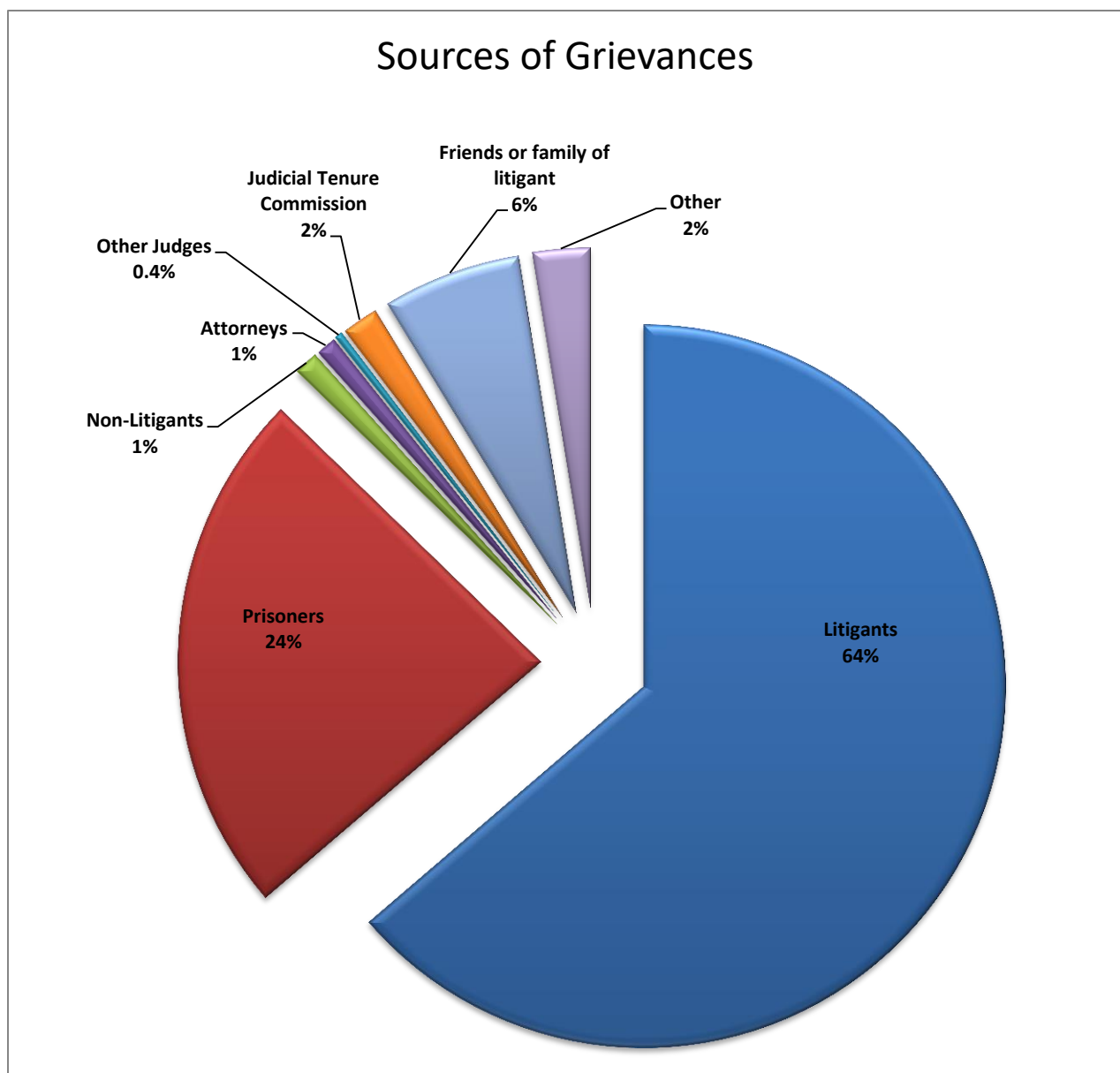


### C. Analysis of Grievances Considered in 2017

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 566 received (section IIIA) or 535 closed (section IIIB) because some grievances allege more than one type of misconduct and some resolutions concern more than one grievance.

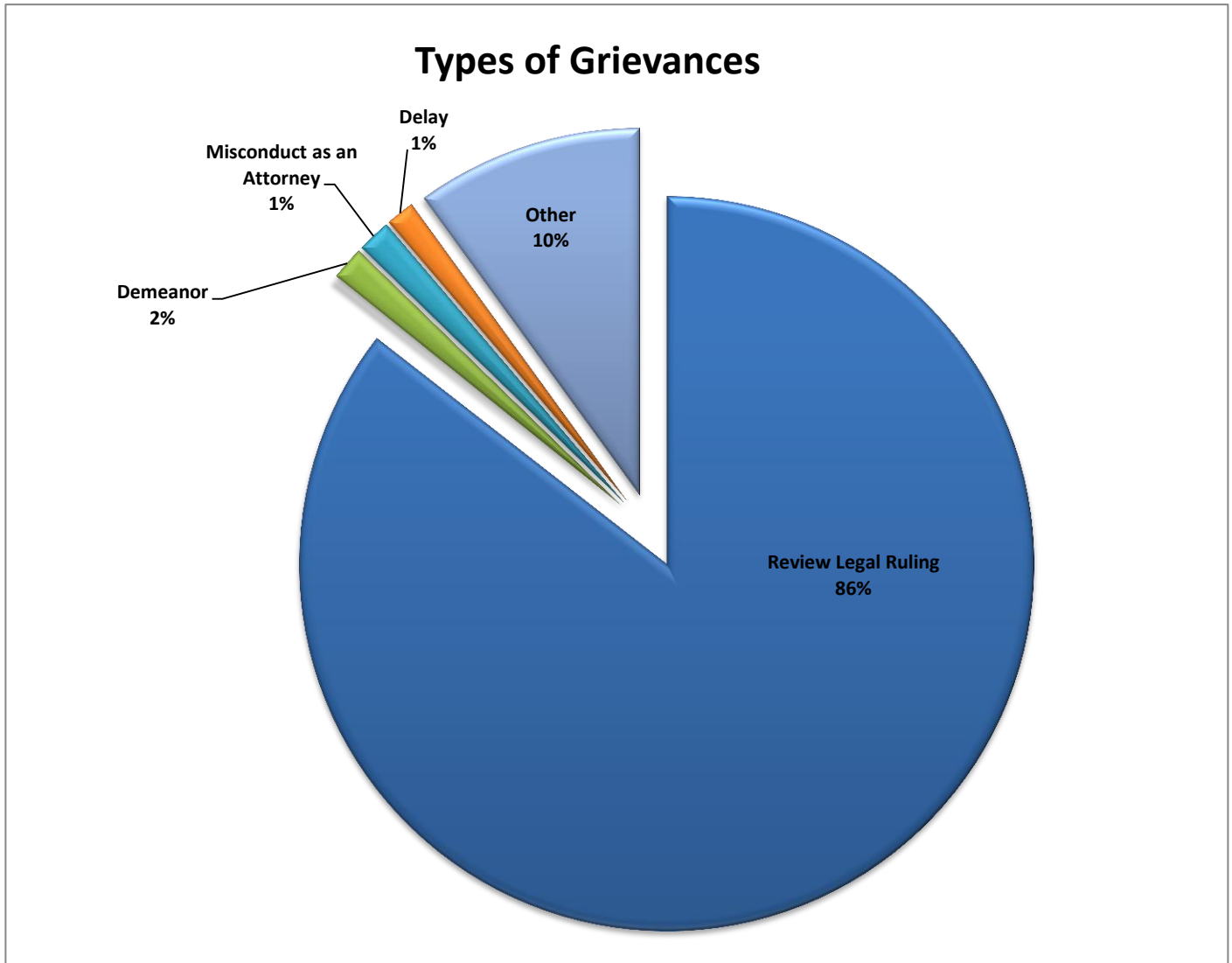
#### 1. Sources of Requests for Investigation

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



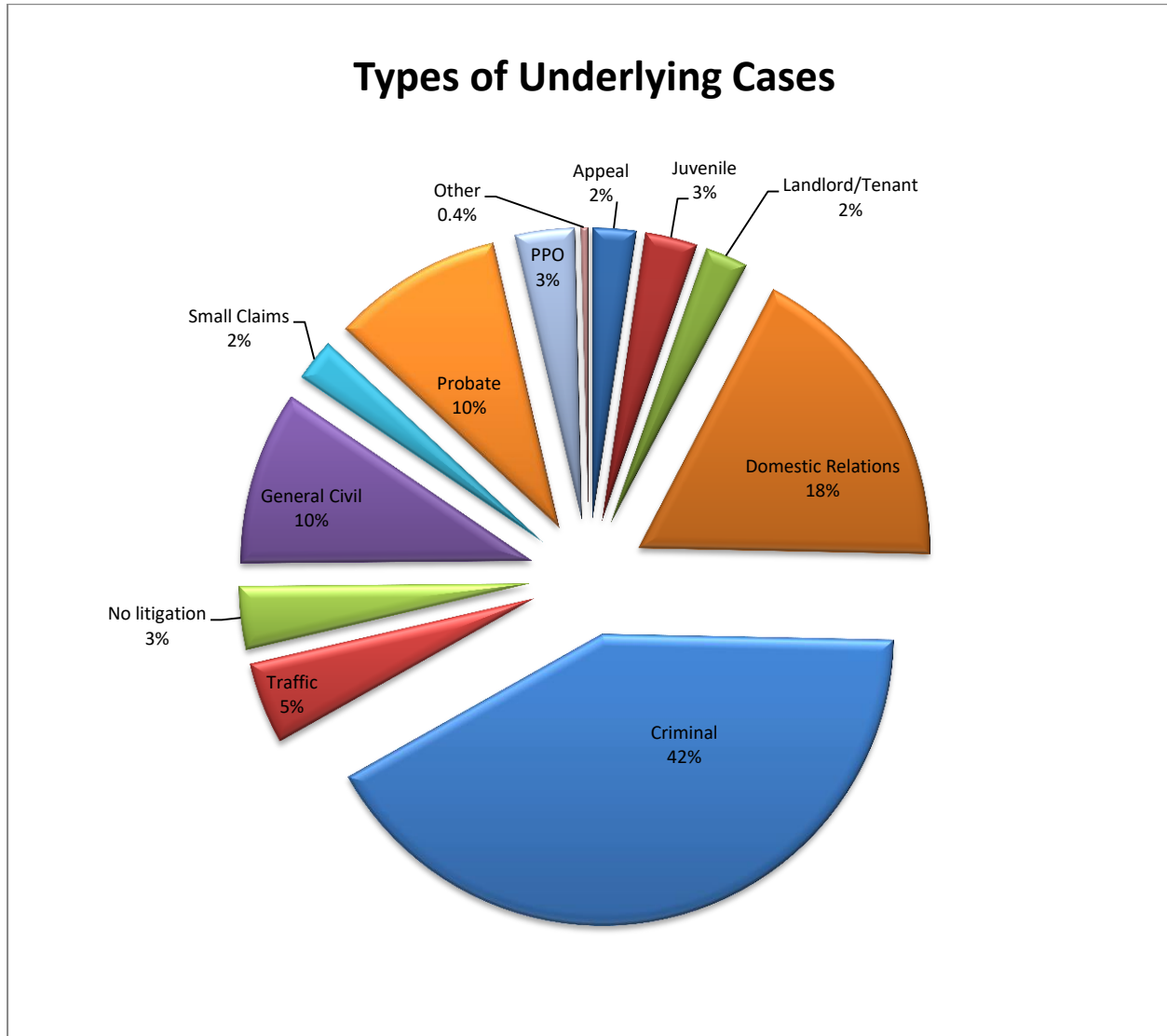
## 2. Subject Matter of Grievances

Eighty-six per cent of 2017 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.



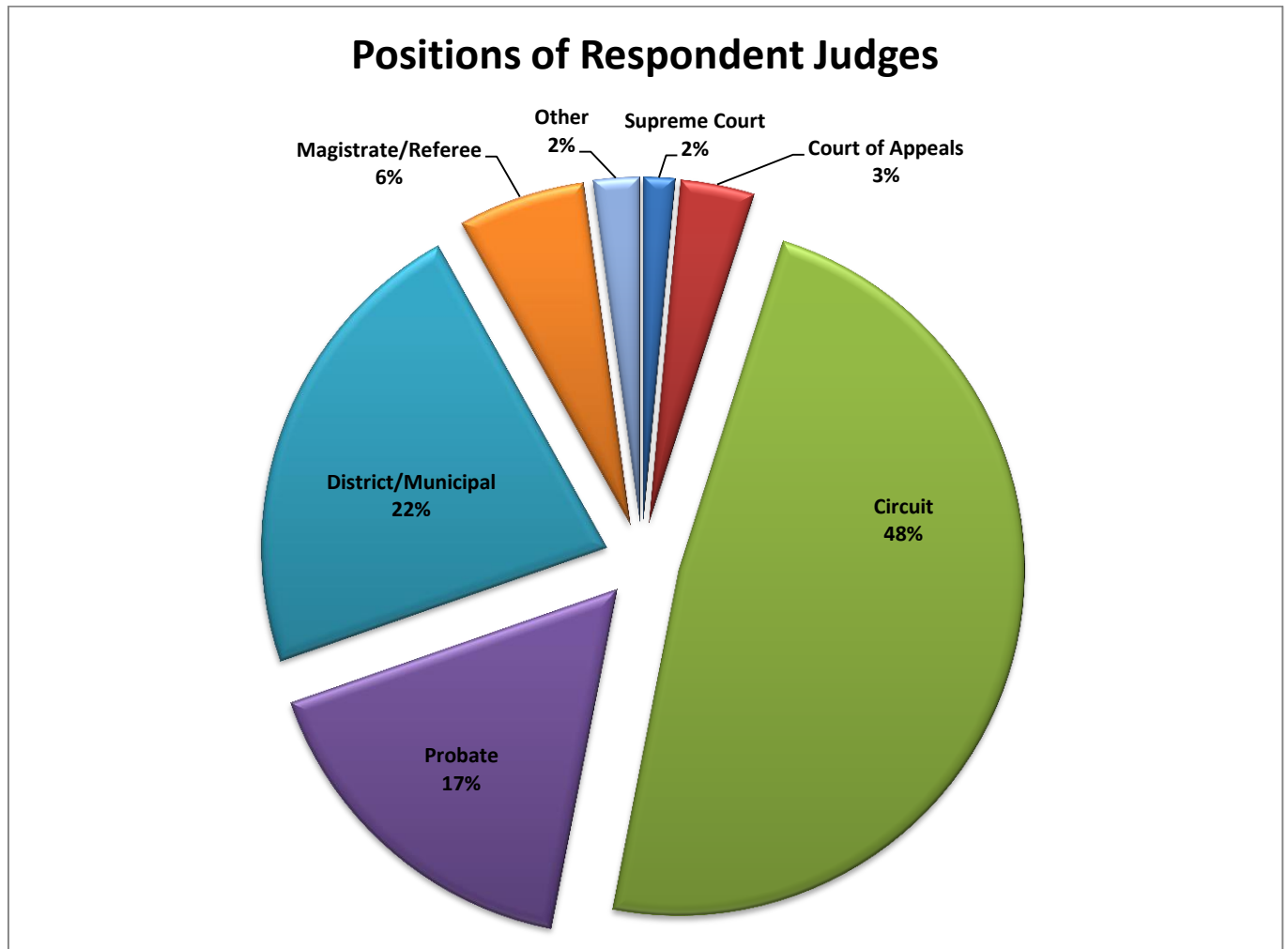
### 3. Nature of Underlying Litigation

Criminal cases, domestic relations matters, and general civil cases were the types of cases that most commonly resulted in grievances against the judge in 2017. Those cases combined make up close to 70% of the filings with the Commission. Probate cases resulted in another 9% of requests for investigation.



#### 4. Positions of Respondent Judges

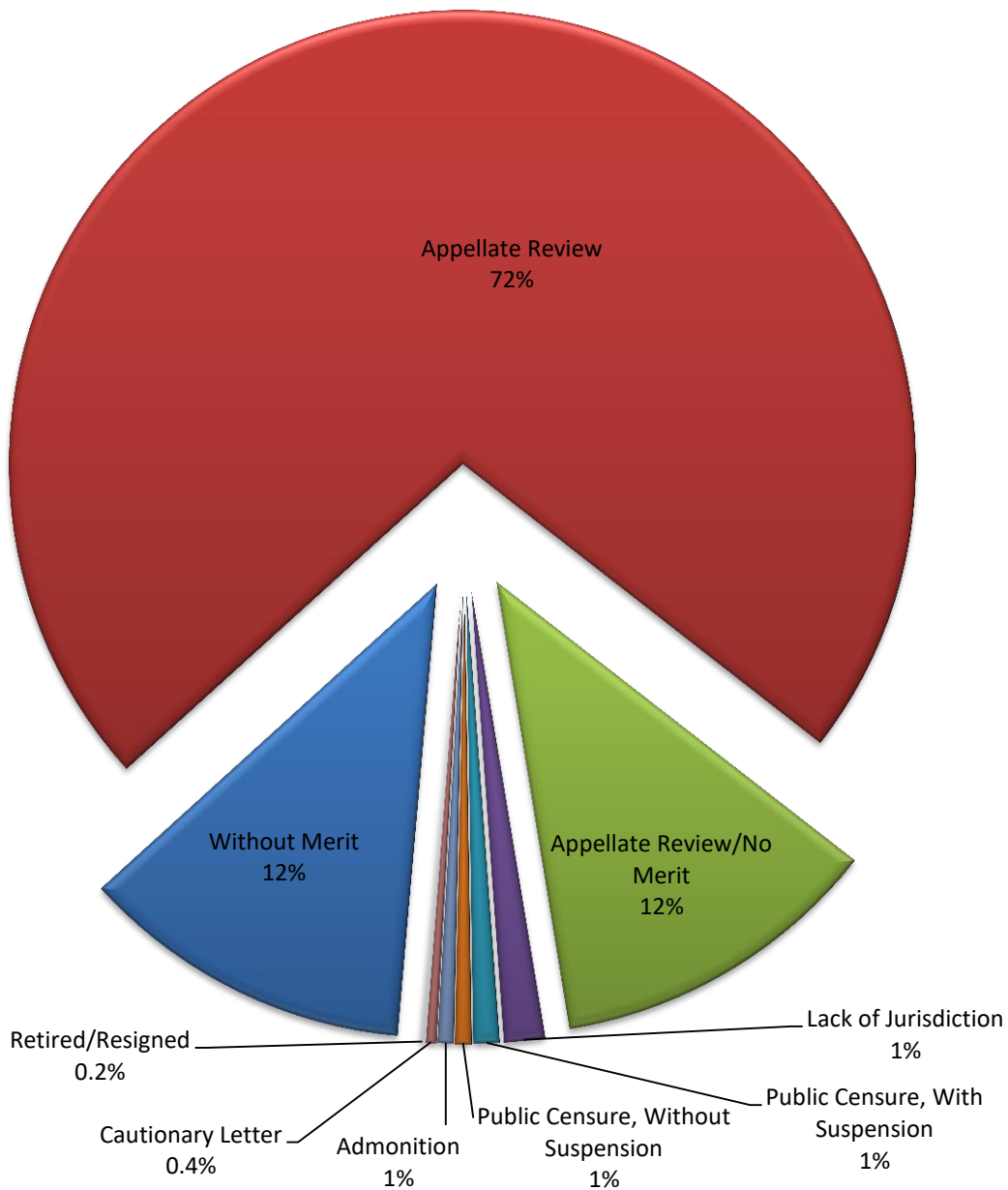
Circuit court judges, who comprise less than 20% of the judiciary, were the subject of almost 50% of the grievances. This is most likely due to circuit judges handling so much of the criminal and domestic relations dockets, which together generate about 60% of the grievances. District court judges, who comprise about 20% of the judiciary, were the subject of a relatively proportionate 22% of the grievances filed.



## 5. Summary of Resolutions

In 2017 the Commission's recommendations resulted in the Michigan Supreme Court suspending two judges and censuring one judge. The Commission issued three letters of admonition and two cautionary letters. One judge resigned. The remaining grievances were resolved by dismissal.

### Resolutions by Type



## IV. CASE SUMMARIES

### A. Public Proceedings

#### 1. Formal Complaints

##### **a. Formal Complaint No. 96, Hon. J. Cedric Simpson** 14A District Court (Washtenaw County)

**T**he Judicial Tenure Commission issued Formal Complaint No. 96 against Hon. J. Cedric Simpson, of the 14A District Court, on November 12, 2014. Respondent was charged with interfering in a police investigation involving his then-intern/friend, as well as with making false representations to the Commission during the course of the investigation.

On December 17, 2014, the Michigan Supreme Court appointed Hon. Peter D. Houk, a retired Ingham County Circuit Court judge and a former prosecutor, as master. A public hearing was conducted on March 30, March 31, and April 1, 2015. The master issued his findings of fact and conclusions of law on April 28, 2015, concluding that respondent had committed judicial misconduct by interfering in the investigation and prosecution of a criminal case against the intern and by lying both to the Commission and at the hearing.

The Commission heard objections to the master's report at a hearing held on June 8, 2015. The Commission overall affirmed the master's findings of facts and conclusions of law and recommended that the Court remove respondent from office. Respondent filed a motion to remand the matter to the Commission based on an allegation that certain after-the-fact emails had not been provided to him. On December 23, 2015, the Court granted that motion and remanded the matter to the Commission.

On January 11, 2016, the Commission remanded the case to the master to consider the email issue and determine whether it would alter his findings. The master held hearings on motions filed by respondent to 1) disqualify the examiner and all attorneys in the examiner's office, and 2) concerning the email issue. The master denied the motion to disqualify and on March 7, 2016, issued post-remand findings of fact and conclusions of law in which he stated that the emails in question were non-exculpatory and did not alter his prior findings. On March 14, 2016, the Commission filed its Decision After Remand and Recommendation for Discipline that reaffirmed the August 31, 2015, recommendation. Oral arguments were held before the Supreme Court on October 6, 2016.

On July 24, 2017, the Supreme Court ruled that respondent had committed misconduct by interfering with the police investigation and the prosecution of his intern. The Court also ruled that respondent made a false statement to the Tenure Commission, not under oath, during the course of the investigation. The Court concluded there was insufficient evidence to support the finding that respondent lied under oath, so dismissed that charge and rejected the Commission's recommendation that respondent be removed from the bench. The Court instead suspended respondent for nine months without pay and ordered him to pay costs of \$7565.54.

##### **b. Formal Complaint No. 98, Hon. Lisa Gorcycyca** - Sixth Circuit Court (Oakland County)

On December 14, 2015, the Commission issued a formal complaint against the respondent, alleging she had used inappropriate demeanor and inappropriately exercised her contempt power against three children (aged 9, 11, and 13) for not satisfying respondent's desire that they interact with their father, and made a false statement during the Commission's investigation. The Supreme Court appointed Hon. Daniel Ryan, a retired Wayne County Circuit Court judge, as master.



The hearing was held on May 31 and June 1, 2016. On July 1, 2016, the master issued a report finding that respondent had violated the Michigan Code of Judicial Conduct and Michigan Court Rules. Respondent filed objections to the master's report and the examiner filed a reply. The Commission conducted a hearing on the objections on October 10, 2016. It issued a Decision and Recommendation on November 14, 2016, determining that respondent had committed misconduct through inappropriate demeanor and inappropriate use of the judicial power of contempt, and had engaged in misleading conduct to the Commission that warranted the imposition of costs pursuant to MCR 9.205(B).

Respondent filed a petition to reject the Commission's recommendation in late December 2016. On July 28, 2017, the Supreme Court accepted in part and rejected in part the Commission's recommendation. The Court agreed with the Commission that respondent exhibited improper demeanor toward the children during the hearing. The Court agreed that respondent misapplied the law of contempt with respect to the children, but concluded that there was insufficient evidence that respondent did so willfully. Therefore, the Court concluded, respondent's contempt rulings were not misconduct. Finally, the Court rejected the Commission's finding that respondent deliberately misled the Commission.

The Supreme Court determined that suspension was too severe a sanction for respondent's single instance of poor demeanor and publicly censured her instead. Having rejected the recommendation that respondent misled the Commission, the Court also rejected the Commission's recommendation that respondent pay costs as a consequence of making a misleading statement.

#### **c. Consent Sanction, Hon. Gregg P. Iddings – 39<sup>th</sup> Circuit Court (Lenawee County)**

On March 18, 2016, respondent's judicial secretary filed an Equal Employment Opportunity Commission complaint against respondent for multiple instances of sexual harassment and creating a hostile work environment. Respondent self-reported the complaint to the Commission. The Commission investigation verified the charges in the complaint. Respondent and the Commission agreed the Commission would recommend a sixty day suspension without pay.

The Supreme Court observed that over a period of three years respondent engaged in multiple acts of inappropriate and unwanted sexually suggestive comments; laid across his secretary's desk; looked down his secretary's blouse; and gave his secretary excessively nice and personal gifts, all despite the secretary's requests that respondent cease this conduct. The Court found that respondent's actions were deliberate and that his treatment of his secretary created an appearance of impropriety and interfered with the function of the court. Under the circumstances the Court concluded that a six month suspension without pay was appropriate, and imposed that suspension effective July 5, 2017.

### **B. Non-Public Proceedings**

#### **1. Conduct on the Bench**

##### **a. Delay**

i) The Commission admonished respondent for allowing a more than year and a half delay between hearing and resolution of a motion to dismiss. Respondent had been admonished for delay and failure to cooperate in 2002. In 2008, as a result of a settlement agreement in FC 83, the Supreme Court publicly censured respondent and suspended her for 30 days for delays in multiple cases and for failure to report the delayed cases in her required reports to the State Court Administrative Office. The Commission found that with the exception of the current case, respondent had handled her docket

promptly since 2008. The Commission determined that the delay in this case was unrelated to the delays that led to the earlier suspension and admonition, and further that the delay in this case was not due to any chronic problem on respondent's part but was an isolated instance of respondent's neglecting to follow the court's case-tracking protocol.

---

ii) The Commission admonished respondent for a six month period of inactivity with respect to a motion to modify support payments in a divorce case, and for not responding in a forthright manner to the Commission's request for comments. Respondent had been admonished five years earlier for a pattern of delays in other cases. The Commission found that the delay in the current case was an isolated instance.

#### **b. Demeanor/improper comments**

i) In three separate criminal cases respondent alluded to her standard practice of giving a sentence break to criminal defendants who plead guilty vis a vis those who go to trial, while the defendants in those cases were considering whether to plead guilty. Any such practice would be an unconstitutional penalty for exercising the right to go to trial. Even the mention of such a practice could discourage individual defendants from exercising their right, whether or not a judge actually follows such a practice.

The Commission's investigation demonstrated that respondent did not, in fact, have a standard practice of treating defendants who plead guilty more favorably than those who go to trial. The Commission's investigation also revealed that respondent repeatedly and disrespectfully referred to the defendant in one case as a "clown," though the investigation also disclosed that respondent's improper references to the defendant were isolated and were triggered in part by the defendant's own conduct.

The Commission cautioned respondent to carefully follow the Constitution with respect to a defendant's right to a jury trial, and to respect all parties in court.

---

ii) In a criminal case respondent became angry with the defendant for failing to follow directions, and dared the defendant to "say another word" in exchange for a year in prison. After respondent's manner of proceeding caused the defendant to become agitated, respondent left the bench to participate in physically restraining the defendant.

The Commission dismissed with a caution that respondent's demeanor had aggravated rather than eased the situation in court.

#### **c. Unable to perform duties**

Respondent became seriously ill. As a result she was unable to perform the duties of her office. She agreed to retire from the judiciary rather than face proceedings concerning her fitness.

### **2. Conduct Off the Bench**

Respondent wrote an op-ed for a newspaper concerning pending criminal charges stemming from the high profile Flint water issue. The criminal case was not assigned to respondent. The op-ed offered respondent's opinion that something inappropriate had indeed happened within the government agency responsible for addressing the issue (as charged in the case); suggested it would be hard for the defendant, who was the head of the department in question, to receive a fair trial; and implicitly endorsed the investigation that resulted in the charges.

The Code of Judicial Conduct forbids judges to comment on pending cases. The Commission determined that respondent's op-ed violated the canon but respondent's violation was unintentional. The Commission admonished respondent to avoid future comments on pending cases.

## **V. LAWSUITS**

**T**he Commission was the defendant in several lawsuits in 2017.

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, the lawsuit is currently 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. The complaint was served on the Commission in 2017, and as of the end of 2017 the lawsuit was pending in the United States District Court for the Eastern District of Michigan.

In 2016 the Commission was sued by its former executive director, Paul Fischer. The lawsuit was resolved in 2017.

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. The lawsuit is pending in the United States District Court for the Western District of Michigan.

In 2017 the Commission was sued by Abelardo Moralez, who has 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 is pending in the United States District Court for the Eastern District of Michigan.

## **VI. COMMISSION ORGANIZATION, STAFF AND BUDGET**

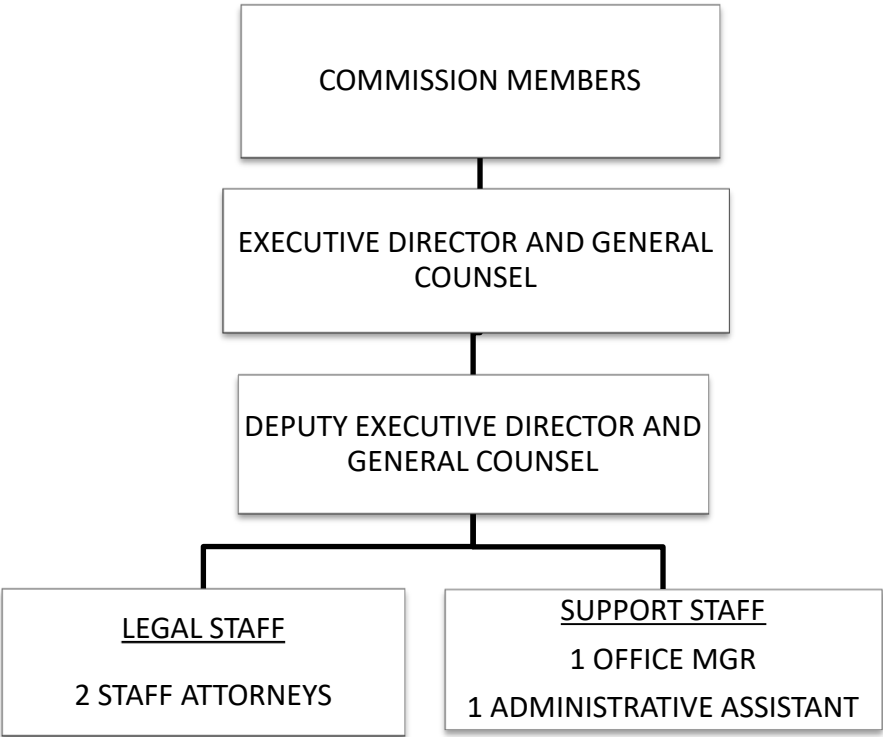
### **A. Commission Organization and Staff**

**T**he 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 was hired as executive director and general counsel on February 1, 2017. Glenn J. Page was appointed as interim executive director on September 12, 2016, and on February 1, 2017, was appointed deputy executive director.

Together with the executive director and deputy executive director, the Commission's legal staff is responsible for the evaluation and investigation of grievances, and serves as associate examiner during formal proceedings. The legal staff is comprised of staff attorneys Casimir J. Swastek and Margaret N.S. Rynier.

In 2017 the Commission’s support staff was comprised of Office Manager Camella Thompson and Administrative Assistant Celeste Alexander. In August, after eleven years of providing excellent assistance, Ms. Alexander left for another opportunity.



## B. Budget

The Commission's budget is part of the budget of the Supreme Court. For the 2017 fiscal year (October 1, 2016–September 30, 2017), the Commission spent its budget of \$1,137,600. In addition, it received a special appropriation of \$14,000 for office maintenance and \$116,746 to cover the unexpected expenses of lawsuits. The Commission strives to keep its expenditures to the minimum consistent with doing quality work in a professional work environment.

