

# **STATE COMMISSION ON JUDICIAL CONDUCT**



**FISCAL YEAR 2012  
ANNUAL REPORT**

# STATE COMMISSION ON JUDICIAL CONDUCT

## FY 2012 ANNUAL REPORT

### COMMISSION MEMBERS

**Tom Cunningham, Chair**

**Steven L. Seider, Vice Chair**

**Patti H. Johnson, Secretary**

**Sid Harle**

**Karry K. Matson**

**Joel P. Baker**

**Edward J. Spillane, III**

**Martha M. Hernandez**

**Diane D. Threadgill**

**M. Sue Kurita**

**David Gaultney**

**Valerie E. Ertz**

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# COMMISSIONER INFORMATION

## OFFICERS

### CHAIR

#### Mr. Tom Cunningham

Attorney, Houston  
Appointed by State Bar of Texas  
Term Expires: 11/19/2013

### VICE-CHAIR

#### Hon. Steven L. Seider

Justice of the Peace, Dallas  
Appointed by Texas Supreme Court  
Term Expires: 11/19/2015

### SECRETARY

#### Ms. Patti H. Johnson

Public Member, Canyon Lake  
Appointed by Governor  
Term Expires: 11/19/2017

## MEMBERS

#### Hon. Sid Harle

District Judge, San Antonio  
Appointed by Texas Supreme Court  
Term Expires: 11/19/2011

#### Ms. Diane D. Threadgill

Public Member, Midlothian  
Appointed by Governor  
Term Expires: 11/19/2015

#### Ms. Karry K. Matson

Public Member, Georgetown  
Appointed by Governor  
Term Expires: 11/19/2013

#### Hon. M. Sue Kurita

County Court at Law Judge, El Paso  
Appointed by Texas Supreme Court  
Term Expires: 11/19/2015

#### Hon. Joel P. Baker

County Judge, Tyler  
Appointed by Texas Supreme Court  
Term Expires: 11/19/2011

#### Hon. David Gaultney

Appellate Justice, Beaumont  
Appointed by Texas Supreme Court  
Term Expires: 11/19/2013

#### Hon. Edward J. Spillane III

Municipal Court Judge, College Station  
Appointed by Texas Supreme Court  
Term Expires: 11/19/2015

#### Ms. Valerie E. Ertz

Public Member, Dallas  
Appointed by Governor  
Term Expires: 11/19/2017

#### Ms. Martha M. Hernandez

Public Member, Diboll  
Appointed by Governor  
Term Expires: 11/19/2015

#### Mr. Ricky A. Raven

Attorney, Houston  
Appointed by State Bar of Texas  
Term Expires: 11/19/2017

# STATE COMMISSION ON JUDICIAL CONDUCT

## COMMISSION STAFF

**Seana Willing**, Executive Director

**Cathy Bradford**, General Counsel

**Jacqueline Habersham**, Senior Commission Counsel

**Patrick Summers**, Commission Counsel

**Nahdiah Hoang**, Commission Counsel

**Royce Lemoine**, Commission Counsel

**Ron Bennett**, Chief Investigator

**Victor Hidalgo**, Senior Investigator

**Katherine Mitchell**, Senior Investigator

**Judy Morgan**, Legal Assistant/Intake

**John Brown**, Staff Services Officer

**Connie Paredes**, Administrative Assistant

**Juanita Villarreal**, Administrative Assistant

**Felisa Wilson**, Administrative Assistant

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# STATEMENT FROM THE CHAIR

The State Commission on Judicial Conduct fulfills a unique and vital function in the affairs of our State. Created by the Texas Constitution, the Commission is charged to promote public confidence in the integrity, independence, competence, and impartiality of the judiciary, and to encourage judges to maintain high standards of conduct both on and off the bench. The Commission receives and disposes of over a thousand complaints against judges each year. Some complaints must be dismissed because they do not allege judicial misconduct. Others call for counseling or other assistance for a judge who may have made an honest mistake. Still others require disciplinary action and the Commission may publicly or privately admonish, warn or reprimand a judge who is guilty of misconduct. And finally, some cases are serious enough to warrant censure or removal in which case the Commission must move forward with formal proceedings.

Each case presented to the Commission is important. Each case arises because someone feels betrayed by our system of justice, or that a judge's conduct is so onerous as to warrant disciplinary action. Each case is also about a judge who is an elected official and has a legitimate interest in having the case treated fairly and impartially. And each case has a third participant – the public – whose interest in the integrity of our judicial system is an indispensable element in a free society.

Texans can have confidence in the individuals who comprise and serve the Commission. The Commissioners take very seriously the commitment they have made to serve the people of our State. Every case is considered and many are debated vigorously. The volume of work is extraordinary. Enough cannot be said about the Commission staff, whose dedication and perseverance consistently exceed any reasonable expectation. That the Commission operates smoothly, efficiently and effectively is a tribute to these incredible individuals.

Public confidence in the judicial branch is the overriding purpose of the Commission. Although it may seem counterintuitive in a free and open society, part of the Commission's job involves confidentiality in the initial stages of Commission proceedings. An important purpose of confidentiality is to protect the right to assert a complaint. Complaints against judges are often asserted by litigants or attorneys who must appear before the judge in court. Other times, complaints are received from employees or colleagues of the judge. These complaints would likely not be made unless there was an initial measure of protection against retaliation or reprisal. Conversely, some complaints against judges are meritless because they do not assert a violation of the Code of Judicial Conduct or for some other reason. Some complaints can be resolved by counseling, mentoring or other informal corrective action. Some complaints carry an apparent political motive. In cases such as this, the Commission properly fulfills its mission by addressing and resolving complaints informally and confidentially without prejudicial effect upon those asserting the complaint or judges who are innocent of wrongdoing. This is a legitimate function the framers of our Constitution wisely incorporated into the Commission's proceedings. It strikes a fair balance that gives the

Commission effective tools to deal with proper complaints of misconduct and to promote public confidence in the integrity of our judges.

This year the Commission addressed many complaints against Texas judges. Some cases were more-or-less routine while others received national and international attention. Some cases were controversial and not every decision was unanimous. But each and every case was considered and decided by dedicated and fair-minded Commissioners whose commitment to our judicial system is unwavering. The people of Texas are very well served by the State Commission on Judicial Conduct.

A handwritten signature in black ink that reads "Tom Alan Cunningham". The signature is written in a cursive, flowing style.

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Tom Alan Cunningham, Chair

# PHILOSOPHY

The members of the State Commission on Judicial Conduct and Commission staff take their duties to the citizens and judges of Texas very seriously. Neither the political affiliation, gender, ethnic or religious background, sexual orientation, socioeconomic status, geographical location, nor the position of a complainant or a judge are considered in the review of cases pending before the Commission. The Commission's ability to fulfill its constitutional mandate requires that each Commissioner and staff member act with honesty, fairness, professionalism and diligence.

The Commission reviews every allegation of misconduct made against a Texas judge. Each complaint alleging misconduct on its face is thoroughly investigated and analyzed by Commission staff before being presented to the Commissioners. This procedure is an essential safeguard to preserve the public's confidence in the integrity of the judicial process. Judges are held to the highest standards of ethical conduct, both on and off the bench, and the Commission and its employees strive to conduct themselves in a similar manner.

# OVERVIEW OF THE COMMISSION

## **Authority of the Commission**

The State Commission on Judicial Conduct was created in 1965 by an amendment to Article V of the Texas Constitution. The Commission is the independent judicial branch agency responsible for investigating allegations of judicial misconduct or permanent disability, and for disciplining judges.

The Commission's jurisdiction includes all sitting Texas judges, including municipal judges, justices of the peace, criminal magistrates, county judges, county courts-at-law judges, statutory probate judges, district judges, appellate judges, masters, associate judges, referees, retired and former judges who consent to sit by assignment, and judges *pro tempore*. The Commission has no jurisdiction over federal judges and magistrates, administrative hearing officers for state agencies or the State Office of Administrative Hearings, or private mediators or arbitrators. Although judicial candidates are required to comply with the Texas Code of Judicial Conduct, the Commission does not have the authority to sanction anyone who was not a sitting judge at the time an offense occurred. Therefore, violations of the canons by candidates for judicial office who were not judges at the time of the alleged misconduct are subject to review and appropriate action by other authorities such as the State Bar, the Attorney General, the Secretary of State, or the local District Attorney.

## **Members of the Commission**

There are thirteen members of the Commission, serving staggered six-year terms, as follows:

- Six judges appointed by the Supreme Court of Texas, one from each of the following court levels: appellate, district, county court-at-law, constitutional county, justice of the peace and municipal,
- Five citizen members who are neither attorneys nor judges, appointed by the Governor, and
- Two attorneys who are not judges, appointed by the State Bar of Texas.

By law, the appellate, district, constitutional and statutory county judges and the two attorney members who serve on the Commission must be appointed from different appellate districts in Texas; the justice of the peace, municipal court judge and public members are selected at-large. The Texas Senate confirms all appointees. Commissioners meet approximately six times each year and receive no pay for their service.

## **Laws Governing the Commission**

The Commission is governed by Article V, Section 1-a, of the Texas Constitution, Chapter 33 of the Texas Government Code, the Texas Procedural Rules for the Removal or Retirement of Judges, and the Texas Code of Judicial Conduct. As part of the judicial branch and as an entity having its own constitutional and statutory provisions regarding



confidentiality of papers, records and proceedings, the Commission is not governed by the Texas Public Information Act, the Texas Open Meetings Act, or the Texas Administrative Procedures Act.

## **Defining Judicial Misconduct**

Article V, Section 1-a(6)A of the Texas Constitution defines judicial misconduct as the “willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, willful violation of the Code of Judicial Conduct, or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.”

Judicial misconduct could arise from a violation of the Texas Constitution, the Texas Penal Code, the Texas Code of Judicial Conduct, or rules promulgated by the Supreme Court of Texas. It could occur through the judge’s failure to cooperate with the Commission. Other examples of judicial misconduct include inappropriate or demeaning courtroom conduct, such as yelling, profanity, gender bias or racial slurs. It could be improper *ex parte* communications with only one of the parties or attorneys in a case, a public comment regarding a pending case, or a refusal by a judge to recuse or disqualify in a case where the judge has an interest in the outcome. It could involve ruling in a case in which the parties, attorneys or appointees are related within a prohibited degree of kinship to the judge. Judicial misconduct could occur through a judge’s failure to cooperate with respect to his or her obligations arising from a Commission inquiry, or failure to abide by any provision of a voluntary agreement to resign in lieu of disciplinary action.

Judicial misconduct could also arise from out-of-court activities, including theft, driving while intoxicated, improper financial or business dealings, sexual harassment or official oppression, and is subject to the same review by the Commission.

## **Sources of Complaints and Allegations**

The Commission has the duty to consider allegations from any source, including an individual, a news article or information received in the course of an investigation. Complaints may be made anonymously, or the complainant may request confidentiality; however, in those instances, the Commission may be restricted in its ability to fully investigate the allegations.

## **Commission Limitations**

The Commission cannot exercise appellate review over a case or change the decision or ruling of any court, nor can the Commission intervene in a pending case or proceeding. For example, if the Commission finds that a judge has committed misconduct, the Commission can only issue sanctions against the judge or seek the judge’s removal from the bench. However, even removal would not change the judge’s ruling in the underlying case. Only the appellate process is empowered to change the decision of a court.

Likewise, the Commission cannot provide individual legal assistance or advice to a complainant. The Commission cannot remove a judge from a case. The Commission cannot award damages or provide monetary relief to complainants.

## **Commission Investigations and Actions**

Cases are reviewed, analyzed and investigated by the Commission staff. An investigation may include a letter of inquiry to the judge, a review of court records, or interviews with the complainant, attorneys and other witnesses. The Commission then considers the results of the investigation in its decision. The Commission has several options available when deciding whether to take action on a case. The types of actions include dismissal, sanction, suspension, acceptance of a voluntary agreement to resign from judicial office in lieu of disciplinary action, and formal proceedings.

## **Commission Organization and Staff**

In fiscal year 2012, the Commission had fourteen (14) authorized staff positions (FTEs). Commission staff includes the Executive Director, the General Counsel, four staff attorneys, three investigators, one legal assistant, a staff services officer, and three administrative assistants. All Commission staff members are full-time State employees.

The Commission's legal staff, which consists of attorneys, investigators, and the legal assistant, is responsible for the evaluation and investigation of complaints. The legal assistant screens all new cases. The investigators handle in-house and on-site investigations. The legal assistant is also responsible for performing legal research, preparing legal documents, and assisting the attorneys in the prosecution of disciplinary proceedings. The attorneys are responsible for responding to ethics calls, speaking on judicial ethics at educational/training seminars, investigating allegations of judicial misconduct or incapacity, and prosecuting disciplinary cases before the Commission, the Texas Supreme Court and its appointees.

The Commission staff attorneys serve as examiners, or trial counsel, during formal proceedings and on appeals from Commission actions. The Examiner is responsible for preparing cases for hearing and presenting the evidence that supports the charges before the Commission, a special master, a special court of review or a review tribunal. The Examiner handles briefing regarding special masters' reports, and presents cases orally and in writing in hearings before the Commission and appointees of the Texas Supreme Court. In many cases, the Commission employs Special Counsel, chosen from distinguished members of the bar, to assist staff in preparing and presenting these cases. Attorneys from the Office of the Attorney General have also represented the Commission as Special Counsel in formal proceedings.

The Executive Director heads the agency and reports directly to the Commission. The Executive Director is also the primary liaison between the Commission and the judiciary, legislators, other government officials, the public and the media.

## ***Amicus Curiae***

Started in 2001, *Amicus Curiae* ("Amicus") is a judicial disciplinary and education program intended to address a growing concern, often generated by scandals reported by the media, of judicial misconduct caused by impairment. Before the Commission started this program, complaints of judicial misconduct relating to impairment, such as drug or alcohol abuse or mental illness, resulted in sanctions or were dismissed if unfounded. The underlying impairment was never addressed. *Amicus* affords a third option under the Commission's authority to order additional training and education to a judge found to have violated a canon of judicial conduct. *Amicus* offers assistance to the judge to address the underlying personal impairment causally connected to the misconduct. One advantage *Amicus* offers over other

similar programs such as the Texas Lawyers Assistance Program operated by the State Bar of Texas is its ability to assist all judges, attorney and non-attorney alike.

Although the confidential referral to *Amicus* by the Commission through the disciplinary process does not shield the judge from any sanction that the Commission deems appropriate, the Commission recognizes that not all impairment issues result in misconduct. In order to reach out to those judges who may be suffering in silence and who may not be the subject of a complaint as a result of their impairment, *Amicus* offers a self-referral component to its program, which affords judges an opportunity to seek assistance, in confidence, outside the disciplinary process.

## **Outreach and Education**

In fiscal year 2012, the Executive Director, staff attorneys, investigators, and legal assistant participated in approximately 20 presentations at judicial training courses, bar conferences, and court staff workshops, describing the Commission and its operations and discussing various forms of judicial misconduct.

## **Ethics Calls**

In fiscal year 2012, the Executive Director, staff attorneys and investigators answered approximately 1,400 telephone calls from judges, judicial candidates, attorneys, legislators, the media and citizens regarding judicial ethics inquiries. Callers are cautioned that Commission staff cannot issue an opinion on behalf of the Commission, and that the Commission is not bound by any comments made during the conversation. In many cases, the caller's question is researched before the call is returned so that the specific canon, statute, rule or ethics opinion can be identified. When appropriate, staff will send the caller a Complaint Form (in English or Spanish) and other relevant material. In some instances, staff may refer callers to other resources or agencies to better address their concerns.

## **Commission Website**

The Commission's website, which is maintained by the State Office of Court Administration, is located at [www.scjc.texas.gov](http://www.scjc.texas.gov). The website provides downloadable complaint forms in English and Spanish. The website also offers bilingual answers to frequently-asked questions regarding the Commission, such as its composition, structure and jurisdiction; the judicial complaint process; a description of the range of decisions the Commission can make, from dismissal to sanction; and explanations of the procedures for a judge to appeal the Commission's decision, and for a complainant to seek the Commission's reconsideration. Further, the website provides statistical information about the Commission and updated sanctions, resignations, suspensions, and Review Tribunal Opinions.

Also included are the Commission's governing provisions: The Texas Code of Judicial Conduct; Article V, Section 1-a of the Texas Constitution; Chapter 33 of the Texas Government Code; and the Texas Procedural Rules for the Removal or Retirement of Judges.

## **Public Information**

The availability of information and records maintained by the Commission is governed by Rule 12 of the Texas Rules of Judicial Administration, the Texas Constitution and the Texas Government Code. Commission records are not subject to public disclosure pursuant to the Public Information Act (formerly the Open Records Act) or the Freedom of Information Act.

Generally, Commission records are confidential, with the following exceptions:

- Constitution: Article V, Section 1-a(10) of the Texas Constitution provides that “All papers filed with and proceedings before the Commission or a Master shall be confidential, unless otherwise provided by the law...”
- Government Code:
  - In the event the Commission issues a public sanction against a judge, Section 33.032 of the Texas Government Code provides for the release of information previously withheld as confidential.
  - Also under this Section, suspension orders and related proceedings as well as voluntary agreements to resign in lieu of disciplinary proceedings are available to the public.
  - Section 33.032 also authorizes the release to the public of papers filed in a formal proceeding upon the filing of formal charges.
- Judicial Administration: Rule 12 of the Texas Rules of Judicial Administration provides for public access to certain records made or maintained by a judicial agency in its regular course of business *but not pertaining to its adjudicative function*. Commission records relating to complaints, investigations, and its proceedings are not judicial records and are not subject to public disclosure pursuant to Rule 12.

When the Commission takes action on a complaint, whether dismissing it, issuing a private or public sanction, accepting a voluntary agreement to resign in lieu of disciplinary action, or voting formal proceedings, the complainant is notified in writing. However, the Texas Government Code requires that the Commission omit the judge’s name from the notice to the complainant, unless a public sanction has been issued. The complainant has some privacy rights as well: at the complainant’s request, his or her name may be withheld from the judge and kept confidential.

Additionally, the Constitution provides that in instances where issues concerning either a judge or the Commission have been made public by sources other than the Commission, the Commission may make a public statement. In such a situation, the Commission determines whether the best interests of a judge or the public will be served by issuing the statement.

# THE COMPLAINT PROCESS

## Introduction

Each complaint stating an allegation of judicial misconduct is thoroughly reviewed, investigated and analyzed by the Commission staff. Complaints must be filed with the Commission in writing. Complaints sent by fax or through e-mail are not accepted.

Although it is not mandatory that a complainant submit his or her allegation on the Commission's complaint form, the specific information sought is essential to the efficient handling of a complaint. Complaint forms are available in English and Spanish from the following sources:

- Download from the Commission's website at [www.scjc.texas.gov](http://www.scjc.texas.gov); and
- Telephone requests to the Commission at (512) 463-5533.

The Commission may also initiate the complaint process itself upon a review of information from the media, court documents, the Internet or other sources. The complainant may request that the Commission keep his or her identity confidential, and anonymous complaints are also accepted.

When a complaint is filed, the Commission sends the complainant an acknowledgment letter and staff begins its investigation and analysis of the allegations. The complainant may be asked to provide additional information or documents. Staff then reviews each allegation or complaint thoroughly. In some cases, legal research may be conducted, and witnesses or the judge may be contacted. For complex matters, an attorney or investigator may travel to the judge's county for further investigation and interviews.

When the investigation is completed, the case is presented to the Commission for its consideration. In some cases, the Commission may invite the judge to appear and discuss the complainant's allegations; under certain circumstances, the Commission may invite the complainant to appear. Based on the specific constitutional provisions, statutes and canons under which the Commission operates, it considers and votes on each matter on a case-by-case basis.

If the Commission votes to issue a public sanction, the appropriate order is prepared and distributed to the subject judge and the complainant; the order is then publicly disseminated as required by law to ensure public awareness. If, however, the Commission votes to issue a private sanction, the appropriate order is prepared and tendered to the subject judge, and the complainant is notified by letter of the Commission's action. Because the Commission is controlled by constitutional and statutory provisions that prohibit the release of information regarding investigation and resolution of a case, no other details will be released to the public. However, in cases where a judge has voluntarily agreed to resign in lieu of disciplinary action, that agreement becomes public upon the Commission's acceptance of it, and the complainant is so notified.

Likewise, whenever the Commission suspends a judge after he or she has been indicted for a criminal offense, or charged with a misdemeanor involving official misconduct,

the Commission releases to the public the order of suspension and all records related to the proceedings.

## **Commission Decisions**

Commission members review, deliberate and vote on each complaint. This may result in a dismissal, a public or private order of additional education either alone or in combination with a public or private sanction, a public or private admonition, warning or reprimand, the acceptance of a voluntary agreement to resign from judicial office in lieu of disciplinary action, or formal proceedings for removal or retirement of the judge from the bench. If appropriate, the Commission may defer its action and refer the judge to the *Amicus Curiae* Program. If the judge appeals a decision of the Commission, the Texas Supreme Court appoints three appellate judges to serve as a Special Court of Review. That Court's final decision-making authority includes dismissal, affirmation of the Commission decision, imposition of a greater or lesser sanction, or the initiation of formal proceedings. The decision of the Special Court of Review is final and may not be appealed.

The Commission's decisions and actions in responding to allegations or complaints of judicial misconduct fall into one of the following categories:

### **1. Administrative Dismissal Report**

A case is dismissed administratively when a complainant's writing fails to state an allegation that, if true, would constitute one or more of the following: (a) a willful or persistent violation of rules promulgated by the Supreme Court of Texas, (b) incompetence in performing the duties of the office, (c) willful violation of the Texas Code of Judicial Conduct, or (d) willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice. Generally, the fact that a judge made an error while ruling on a motion or an objection, or otherwise deciding a case, does not constitute judicial misconduct unless there is a showing of bad faith, persistent legal error, or the legal error was egregious. In fact, only an appellate court has the power to review and change a judge's decision in any case. In addition, gratuitous claims of misconduct that are unsupported by any facts or evidence may be administratively dismissed. These cases, which are reviewed by the Commission, are dismissed without a full investigation. In letters of dismissal sent to these complainants, the Commission provides a specific explanation for the decision.

### **2. Dismissal**

The Commission may dismiss a case after conducting a review and investigation of the allegations. Reasons for these dismissals include insufficient or no evidence of misconduct, the judge demonstrated that he or she took appropriate actions to correct the conduct at issue, or the conduct, though problematic, did not rise to the level of sanctionable misconduct. In letters of dismissal sent to these complainants, the Commission provides a specific explanation for the dismissal, and describes the steps the complainant may take for the Commission to reconsider its decision. The Commission may also include cautionary advice to judges whose complaints have been dismissed after the judge has taken appropriate corrective action or in those cases where disciplinary action was deemed unwarranted given the facts and circumstances surrounding the infraction.

### 3. Order of Additional Education

Legal and procedural issues are often complex, so it is not surprising that some judges, particularly non-lawyer judges, take judicial action that may exceed their authority or that is contrary to procedural rules. In these situations, the Commission may find that the judge has demonstrated a deficiency in a particular area of the law warranting an order of education. The Commission then contacts the appropriate judicial training center, where the subject judge may attend a particular training program or a mentor judge may be appointed for one-on-one instruction with the subject judge, to be completed within a specified time on particular subjects. The mentor judge then reports to the Commission on the subject judge's progress. The Commission may also order the judge to obtain education on other issues, such as anger management, gender or racial sensitivity, or sexual harassment. The Commission may issue an order of education alone or as part of a private or public sanction.

### 4. Private or Public Sanction

Sanctions are issued by the Commission when sufficient evidence is provided that supports a finding of judicial misconduct. The most severe disciplinary action available to the Commission is a *public censure*, issued only after a case has been voted into formal proceedings by the Commission. If, after a public fact-finding trial, the Commission determines that the underlying allegations of the complaint are true but do not support a recommendation for removal from office, a *censure* is issued as a public denunciation of the judge's conduct.

The next most severe sanction is a *public reprimand*. A *reprimand* is the most severe sanction available to the Commission (unless formal proceedings are voted as described herein). A less severe sanction is a *public warning*, followed by a *public admonition*. A *warning* puts the judge on notice that the actions identified in the sanction are improper. An *admonition* is the lowest level sanction. As noted above, sanctions may be public or private, and may be combined with orders of education.

A judge may appeal any sanction and a public censure to a Special Court of Review. The process for appealing a public censure issued by the Commission after formal proceedings is different than that of a *de novo* review of a sanction issued after informal proceedings. The Texas Supreme Court has been charged with the responsibility of promulgating the written procedures for the appeal of a public censure.

If a *public sanction* or *censure* is issued, all information considered by the Commission, including the judge's name, is made public. Public sanctions are issued not only to identify the specific conduct, but to educate judges that such conduct is inappropriate. This also ensures that the public is made aware of actions that violate the Code of Judicial Conduct. When a *private sanction* is voted, the judge's name and all information considered by the Commission are kept confidential.

### 5. Suspension

The Commission has the power to suspend a judge from sitting on the bench, with or without pay, after the judge has been either indicted by a grand jury for a felony, or charged with a misdemeanor involving official misconduct. The suspended judge has the right to a post-suspension hearing before one or more of the Commission members or the Executive Director, as designated by the Commission Chair.

In cases other than for alleged criminal behavior, the Commission, upon the filing of a sworn complaint and after giving the judge notice and an opportunity to appear before the Commission, may recommend to the Supreme Court of Texas that the judge be suspended from office, for persistent violation of rules promulgated by the Supreme Court, incompetence in performing the duties of office, willful violation of the Code of Judicial Conduct, or willful and persistent conduct that is clearly inconsistent with the proper performance of his or her duties, or that casts public discredit on the judiciary or the administration of justice.

#### 6. Voluntary Agreement to Resign

In some cases, a judge against whom a complaint has been made may decide to resign in lieu of disciplinary action. In that event, the judge may tender to the Commission a voluntary agreement to resign from judicial office. Upon the Commission's acceptance, the agreement is made public and the judge vacates the bench. The agreement and any agreed statement of facts relating to it are admissible in subsequent proceedings before the Commission. While the agreement is public, any records relating to the underlying case remain confidential and may only be released to the public if a judge violates a term of the agreement.

#### 7. Formal Proceedings

In certain circumstances, the Commission may decide that a complaint against a judge is so severe that it should be handled as a formal proceeding. The Commission itself may conduct such a fact-finding hearing or it may ask the Supreme Court of Texas to appoint a Special Master (who must be a sitting or retired district or appellate judge) to hear the matter. Such proceedings are governed by the Texas Rules of Civil Procedure and the Texas Rules of Evidence to the extent practicable.

Although there is no right to a trial by jury in a formal proceeding, the judge is afforded certain other rights under the Texas Procedural Rules for the Removal or Retirement of Judges, including the following:

- To be confronted by the judge's accusers;
- To introduce evidence;
- To be represented by counsel;
- To examine and cross-examine witnesses;
- To subpoena witnesses; and
- To obtain a copy of the reporter's record of testimony.

If the formal proceeding has been conducted before a Special Master, he or she reports the findings of fact to the Commission. If either party files objections to the Master's Report, the Commission will hold a public hearing to consider the report of the Special Master and any objections. The Commission may adopt the Special Master's findings in whole or in part, modify the findings, totally reject them and enter its own findings, or order a hearing for the taking of additional evidence.

After adopting findings of fact, the Commission issues its conclusions of law. The Commission may dismiss the case, issue a public censure, or recommend removal or involuntary retirement to a seven-member Review Tribunal appointed by the Supreme Court of Texas. The Commission itself cannot remove a judge; only the Review Tribunal can order a



judge removed from the bench. The Review Tribunal may also enter an order prohibiting the judge from ever holding a judicial office again.

Although the Commission's recommendation for removal cannot be appealed, the judge may appeal the decision of the Review Tribunal to the Texas Supreme Court. A judge may also appeal the Commission's decision to issue a public censure to a Special Court of Review.

### **Appellate Review of Commission Action**

A judge may appeal the Commission's issuance of any public or private sanction, order of additional education, or public censure<sup>1</sup> within thirty (30) days of the date the Commission issues the sanction by filing a written notice with the Chief Justice of the Supreme Court of Texas and requesting the appointment of three appellate justices to act as a Special Court of Review.

Within fifteen (15) days after the Special Court of Review is appointed, the Commission, through its Examiner, must file with the Clerk a "charging document," which includes a copy of the sanction issued, as well as any additional charges to be considered in the *de novo* proceeding. These records become public upon filing with the Clerk, who is responsible for furnishing a copy to the subject judge and to each justice on the Special Court of Review.

A trial *de novo* is held within thirty (30) days after the charging document is filed. The Special Court of Review considers the case from the beginning, as if the Commission had taken no previous action. The Texas Rules of Civil Procedure apply, except that the judge is not entitled to a jury trial. All documents filed and evidence received in the review process are public.

The Special Court of Review may dismiss or affirm the Commission's decision, impose a greater or lesser sanction, or order the Commission to file formal proceedings against the subject judge for removal or involuntary retirement. The decision of the Special Court of Review is final and cannot be appealed.

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<sup>1</sup> The 81<sup>st</sup> Legislature amended Section 33.034 of the Texas Government Code to provide judges the right to appeal a public censure issued by the Commission following a formal proceeding. The Texas Supreme Court has been charged with the responsibility of drafting the procedural rules that will govern this process. As of the date of this publication, however, no written procedures are in place for such an appeal.