

STATE OF KANSAS



COMMISSION ON JUDICIAL QUALIFICATIONS

1993 ANNUAL REPORT

FROM THE CHAIR

From its inception, this Commission has viewed its role as educational as well as disciplinary. In dealing with the public, the Commission attempts to educate the public as to the rules of judicial conduct and to act as a sounding board for anyone who believes a judge has acted improperly. Frequently, a better understanding of the rules and an opportunity to air the grievance resolves the complaint.

Judges often ask about the operation of the Commission and the nature of complaints which come before it. The annual report has been expanded to include more information about the operation of the Commission and a particular focus has been added on the types of complaints which have come before the Commission in the past year. We hope that you find this increased detail helpful in understanding your obligations under the Code of Judicial Conduct.

It has been our experience as a Commission that the judges of the State of Kansas seek to comply with the Code and are cooperative when called upon by the Commission to respond to a complaint. We can all take pride in our judicial system and the high ethical standards which have become its tradition.



J. Patrick Brazil, Chair
Kansas Commission on
Judicial Qualifications

May 1994

1993 ANNUAL REPORT
OF THE
KANSAS COMMISSION ON JUDICIAL QUALIFICATIONS

COMMISSION MEMBERS:	Term Expires
Judge J. Patrick Brazil - Chair	1995
Mikel L. Stout - Vice-Chair	1996
Charles S. Arthur	1994
* Kenneth C. Bronson	1994
Judge Kathryn Carter	1997
Dr. Nancy Bramley Hiebert	1996
Judge James J. Noone	1994
Judge James W. Paddock	1996
David J. Waxse	1997

Supreme Court Liaison

Justice Fred N. Six

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* Succeeded by Ray Call effective September 15, 1993. Mr. Call's term expires in 1998.

TABLE OF CONTENTS

	Page
MEMBERS OF THE COMMISSION	7
BIOGRAPHIES	8
A BRIEF HISTORY OF THE COMMISSION	11
HOW THE COMMISSION OPERATES	13
Jurisdiction/Governing Rules	13
Staff	13
Initiating a Complaint	13
Commission Review and Investigation	14
Disposition of Docketed Complaints	15
Confidentiality	16
Formal Proceedings	16
SUMMARY OF COMMISSION ACTIVITY IN 1993	19
Statistical Information 1993	20
Substance of Complaints	21
Examples of Conduct	22
APPENDICES	
Appendix A Reported Judicial Disciplinary Cases	27
Appendix B Five-year Summary of Complaints Received and Docketed	31
Appendix C Five-year Statistical Summaries	32
Appendix D Sample Complaint Form	33
Appendix E Flow Chart - Commission Procedures	35
Appendix F Flow Chart - Proceedings Before the Supreme Court	36

COMMISSION MEMBERS



(Seated l. to r.) Judge J. Patrick Brazil, Dr. Nancy Bramley Hiebert, Judge Kathryn Carter, Judge James J. Noone

(Standing l. to r.) Kenneth C. Bronson, Mikel L. Stout, David J. Waxse, Charles S. Arthur, Judge James W. Paddock (Ray Call not pictured)

BIOGRAPHIES

MEMBERS WHO SERVED DURING ALL OR PART OF 1993

Charles S. Arthur, lawyer member of the Commission, practices in Manhattan, Kansas, with the firm of Arthur, Green, Arthur, Conderman & Stutzman. He received from the University of Kansas a B.S. degree, an LL.B. (Dean's List), and a Juris Doctorate. Arthur, in his career, has served as Riley County Attorney, mayor of Manhattan, state representative (Majority Leader, 1961 - 62; Speaker, 1963 - 64), state senator, and general counsel to the Kansas Farm Bureau & Affiliated Companies. He also had a distinguished career in the United States Navy, where he was awarded the *Purple Heart*. He was designated Manhattan Citizen of the Year (1983) and has participated in many civic and business organizations. A charter member of the Commission (1974), Mr. Arthur chaired the Commission from January 1983 - February 1985.

The Honorable J. Patrick Brazil was appointed to the Kansas Court of Appeals in December 1985. He was a state district judge from 1972 until the appellate court appointment and a municipal judge at Eureka, Kansas, from 1970 to 1972. Judge Brazil maintained a general law practice, in Pratt and later Eureka, until his appointment to the judiciary in 1972. He attended Chanute Junior College (now Neosho County Community College) and received a B.S.B.A. from Rockhurst College. He received a J.D. from Washburn University School of Law in 1962. Judge Brazil is a former member of the Kansas Continuing Legal Education Commission and a past president of the Kansas District Judges' Association. He currently serves on the Kansas Judicial Council and the Advisory Committee of the Kansas Judicial Council for Civil and Criminal Pattern Instructions for Kansas. He has been a member of the Commission on Judicial Qualifications since 1985, chairing the Commission from February 1991 to February 1994.

Kenneth C. Bronson, the only lay member to serve as chair, became a member of the Commission in 1974 at its inception and served until he relocated to Indiana in October 1993 to become Executive Vice-President and Chief Operating Officer of Nixon Newspapers, Peru, Indiana. Prior to that Bronson was Vice-President of Stauffer Communications, Inc., a multi-media company with corporate offices in Topeka, Kansas. Bronson attended the University of Kansas and received a B.A. in English at Washburn University. He is a noted speaker and has been active in community affairs, twice serving as a Chamber of Commerce president and twice as Rotary Club president. While in Kansas, he served as president of the Kansas Press Association (1975), as director of the Mid-America Press Institute, and as a trustee of the William Allen White Foundation at the University of Kansas. He has been elected to numerous boards of colleges, hospitals, libraries, and his church. He was the first recipient of the Kansas Supreme Court's Justice Award for distinguished contribution to the improvement of justice (1989).

Ray Call, a lay member of the Commission, was appointed in 1993 to fill the unexpired term of Kenneth C. Bronson. Call is Executive Editor and editorial writer for the *Emporia Gazette* in Emporia, Kansas. He attended Coffeyville Junior College and Emporia State University and taught elementary school briefly before embarking on a career in journalism. Community activities include St. Andrew's Episcopal Church, Emporia Chamber of Commerce, Rotary Club, Lions Club, Junior Chamber of Commerce, and United Way. He is a member of the American Society of Newspaper Editors, A.S.N.E. Ethics Committee, and the Kansas Press Association. He is former chair of the Kansas-Missouri editors and publishers of the Associated Press.

The Honorable Kathryn Carter, a district magistrate judge from Concordia, Kansas, received her B.A. from the University of Kansas in 1973 and her Juris Doctorate in 1986. She was a solo law practitioner in the Jamestown-Concordia area in 1986-87 before she became a district magistrate judge in 1987. Judge Carter is noted for her work assisting children and was a founding member of Cloud County Planning Council, a multi-agency coalition formed to address needs of at-risk children. She is also a founding member of the Association for Academic Enrichment, a parent association supplementing primary school education, and an advisory board member of Kansas Action for Children. Judge Carter became a member of the Commission in January 1993.

Nancy Bramley Hiebert, a lay member of the Commission, is a private health care consultant. She was chief operating officer of Preventive Cardiology P.A., a Lawrence medical practice, until its recent acquisition. Dr. Hiebert earned three academic degrees from the University of Kansas: a bachelor's degree in nursing in 1963 and a masters and doctorate in educational psychology and research in 1977 and 1982, respectively. She received an M.B.A. from the Executive Fellows Program at Rockhurst College in 1989. She served on the Douglas County Commission from 1983 to 1991, and chaired that commission from 1985 to 1987. Currently, she is a member of the Board of Directors at the Douglas County Bank in Lawrence, and was recently appointed to the Seventh Judicial District Nominating Commission. She also serves on the Board of Directors of the Research Institute at the University of Kansas Medical Center and the Advisory Board of the School of Nursing at the University of Kansas. Dr. Hiebert has served on the Commission on Judicial Qualifications since March 1992.

The Honorable James J. Noone, a retired district judge, received his undergraduate degree from Wichita State University and a Juris Doctorate from Washburn University School of Law in 1947. Judge Noone practiced law in Wichita prior to his election to the bench. During his years in private practice, he served part-time as United States Commissioner in federal court and later as deputy county attorney for Sedgwick County. Judge Noone was elected to the district bench in 1958 and served until his retirement in 1986. He was administrative judge in the Eighteenth Judicial District from 1981-1986. Judge Noone was a member of the Judicial Council from 1975-1986 and a charter member of the Commission on Judicial Qualifications, serving from January 1974 to July 1975 and from March 1986 to present.

The Honorable James W. Paddock graduated from the University of Kansas in 1951 and from the University of Kansas School of Law in 1956, opening a private law practice in Lawrence. During his years in private practice, he served as an assistant Douglas County attorney, municipal judge, and city prosecutor. He was appointed district judge in Douglas County in 1972 and served as administrative judge for the Seventh Judicial District from 1978 to 1990. He taught trial practice at KU School of Law and also taught at KU business school. Judge Paddock has served on the Lawrence Unified School District No. 497 School Board, the Kansas State High School Athletic Association, and the Kansas District Judges' Association. He is a trustee of the charitable Raymond F. and Ethel Rice Foundation and has been a member of this Commission since 1989.

Mikel L. Stout, lawyer member of the Commission, is in private practice with Foulston & Siefkin in Wichita. He received his B.S. from Kansas State University in 1958 and his LL.B., with distinction, from the University of Kansas in 1961. Stout was a member of the Order of the Coif and associate editor of the *University of Kansas Law Review*. His professional activities include the American College of Trial Lawyers; Kansas Association of Defense Counsel (president 1983-84); Wichita Bar Association (president 1987-88); Kansas Bar Foundation (president 1991-93); Civil Justice Reform Act of 1990, Advisor Group for the United States District Court for the District of Kansas (co-chair 1991-present); and member of the American Bar Association. In community activities, Stout was president of the Wichita Festival, Inc. 1978-79, and captain of the Wichita Wagonmasters 1982-83.

David J. Waxse, lawyer member of the Commission, practices in Overland Park, Kansas, with the firm of Shook, Hardy & Bacon, P.C. He received a B.A. from the University of Kansas in 1967 and a Juris Doctorate from Columbia University in 1971. He served as Municipal Judge of the City of Shawnee from 1973 - 1980. Waxse, in his career, has lectured on employment law and other topics at the University of Kansas, the University of Missouri at Kansas City, Washburn Law School, the Kansas Bar Association, the Kansas City Metropolitan Bar Association, National Association of College and University Attorneys, and Council on Education in Management. He is a co-author of *Kansas Employment Law* (1985), *Litigating Employment Law Cases* (1987), and *Kansas Employment Law Handbook* (1991). Waxse is an elected member of the Board of Governors of the Kansas Bar Association and a member of the American Bar Association, Defense Research Institute, Johnson County Bar Association, Kansas City Metropolitan Bar Association, and American Employment Law Council. He is also a member of the Civil Justice Reform Act Advisory Committee for the United States District Court for the District of Kansas. Waxse became a member of the Commission in October 1992.

SECRETARY TO THE COMMISSION

Carol Gilliam Green, by Supreme Court Rule, has served as Secretary to the Commission since her appointment as Clerk of the Kansas Appellate Courts in September 1991. Prior to that appointment she served as research attorney to Chief Justice Alfred G. Schroeder and as Director of the Central Research Staff for the Kansas Court of Appeals. Ms. Green received her J.D. degree from Washburn University School of Law, magna cum laude, in May 1981. She also holds a Master of Arts in English from the University of Missouri at Columbia. She was a member of the Kansas Continuing Legal Education Commission from its inception in 1985 until 1993, serving as chair from 1991-1993. She is past chair of the Kansas Bar Association Public Information Committee and edited the second edition of the *Kansas Appellate Practice Handbook*.

A BRIEF HISTORY OF THE COMMISSION

The Kansas Commission on Judicial Qualifications was established by the Supreme Court of the State of Kansas on January 1, 1974. The Commission, created under the authority granted by Article III, Section 15 of the Kansas Constitution and in the exercise of the inherent powers of the Supreme Court, is charged with assisting the Supreme Court in the exercise of the court's responsibility in judicial disciplinary matters.

The Commission consists of nine members including four active or retired judges, three lawyers, and two non-lawyers. All members are appointed by the Supreme Court and serve four-year terms. Charles S. Arthur of Manhattan, a lawyer member, has served continuously since the Commission began its work on January 1, 1974. Another charter member, Kenneth C. Bronson of Topeka, a non-lawyer member, resigned on October 1, 1993, when he relocated to Indiana.

Georgia Neese Gray of Topeka, a non-lawyer member, served on the Commission from January 1, 1974, until her resignation on January 14, 1992. Justice Fred N. Six, Lawrence, served as a lawyer member from January 1, 1974, until his appointment to the appellate bench in 1987. Others who have served with distinction include L. A. McNalley (Salina) and O. Q. Claflin, III (Kansas City), retired judges; Bert Vance (Garden City), Harold R. Riggs (Olathe), Brooks Hinkle (Paola), M. V. Hoobler (Salina), Lewis C. Smith (Olathe), and Steven P. Flood (Hays), who served while active judges; Robert H. Nelson (Wichita), Edward F. Arn (Wichita), and John J. Gardner (Olathe), lawyer members.

Those who have chaired the Commission include:

Judge L.A. McNalley	1974-1977
Fred N. Six	1977-1981
Kenneth C. Bronson	1981-1983
Charles S. Arthur	1983-1985
Judge Lewis C. Smith	1985-1986
Judge O. Q. Claflin	1986-1988
Judge Steven P. Flood	1988-1991*
Judge J. Patrick Brazil	*1991-1994
Mikel L. Stout	1994-

*corrected

HOW THE COMMISSION OPERATES

Jurisdiction/Governing Rules

The Commission's jurisdiction extends to approximately 500 judicial positions including justices of the Supreme Court, judges of the Court of Appeals, judges of the district courts, district magistrate judges, and municipal judges. This number does not include judges pro tempore and others who, from time to time, may be subject to the Code of Judicial Conduct.

The Supreme Court Rules governing operation of the Commission are found in the Kansas Court Rules Annotated. 1994 Kan. Ct. R. Annot. 430-442.

Staff

The Clerk of the Supreme Court serves as secretary to the Commission pursuant to Supreme Court Rule 603. The secretary acts as custodian of the official files and records of the Commission and directs the daily operation of the office. A deputy clerk, Carol Deghand, manages the operation of the office.

The Commission also retains an examiner, a member of the Kansas Bar who investigates complaints, presents evidence to the Commission, and participates in proceedings before the Supreme Court.

Initiating a Complaint

The Commission is charged with conducting an investigation when it receives a complaint indicating that a judge has failed to comply with the Code of Judicial Conduct or has a disability that seriously interferes with the performance of judicial duties.

Any person may file a complaint with the Commission. Initial inquiries may be made by telephone, by letter, or by visiting the Clerk's Office personally.

All who inquire are given a copy of the Supreme Court Rules Relating to Judicial Conduct, a brochure about the Commission, and a complaint form. The complainant is asked to set out the facts and to state specifically how the complainant believes the judge has violated the Code of Judicial Conduct. Very often, the opportunity to voice the grievance is sufficient, and the Commission never receives a formal complaint. In any given year, one-fourth to one-third of the initial inquiries will result in a complaint being filed.

The remainder of the complaints filed come from individuals already familiar with the Commission's work or who have learned about the

Commission from another source. Use of the standard complaint form is encouraged but not mandatory. If the complaint received is of a general nature, the Commission's secretary will request further specifics.

In addition to citizen complaints, the Commission may investigate matters of judicial misconduct on its own motion. Referrals are also made to the Commission through the Office of Judicial Administration and the Office of the Disciplinary Administrator.

Referrals are made through the Office of Judicial Administration on personnel matters involving sexual harassment. The Kansas Court Personnel Rules provide that, if upon investigation the Judicial Administrator finds probable cause to believe an incident of sexual harassment has occurred involving a judge, the Judicial Administrator will refer the matter to the Commission on Judicial Qualifications. *See* Kansas Court Personnel Rule 9.4(e).

The Disciplinary Administrator refers complaints to the Commission if investigation into attorney misconduct implicates a judge. There is a reciprocal sharing of information between the two offices.

Commission Review and Investigation

When written complaints are received, all are mailed to the Commission for review at its next meeting. The Commission usually meets every other month but monthly meetings are scheduled if the agenda requires. In the interim, if it appears that a response from the judge would be helpful to the Commission, the secretary may request the judge to submit a voluntary response. With that additional information, the Commission may be able to consider a complaint and reach a decision at the same meeting.

All complaints are placed on the Commission's agenda, and the Commission determines whether they will be docketed or remain undocketed. A docketed complaint is given a number and a case file is established.

Undocketed complaints are those which facially do not state a violation of the Code; no further investigation is required.

Appealable matters constitute the majority of the undocketed complaints and arise from a public misconception of the Commission's function. The Commission does not function as an appellate court. Examples of appealable matters which are outside the Commission's jurisdiction include: matters involving the exercise of judicial discretion, particularly in domestic cases; disagreements with the judge's application of the law; evidentiary or procedural matters, particularly in criminal cases; and allegations of abuse of discretion in sentencing.

Many complaints address the judge's demeanor, attitude, degree of attention, or alleged bias or prejudice. These are matters in which the secretary is likely to request a voluntary response from the judge and, based on that response, the Commission in some instances determines there has clearly been no violation of the Code.

These undocketed complaints are dismissed with an appropriate letter to the complainant and to the judge, if the judge has been asked to respond to the complaint.

Docketed complaints are those in which the Commission as a whole feels that further investigation is warranted. The secretary will likely have already requested a voluntary response from the judge in these matters.

The Commission has a number of investigative options once it docketed a complaint. Docketed complaints may be assigned to a three person subcommittee of the Commission for review and report at the next Commission meeting. These complaints may be referred to the Commission Examiner for investigation and report. Finally, the Commission may ask for further information or records from the judge.

Disposition of Docketed Complaints

After investigation of docketed complaints, the Commission may choose a course of action short of filing formal proceedings.

A complaint may be dismissed after investigation. On docketing, there appeared to be some merit to the complaint, but after further investigation the complaint is found to be without merit.

A complaint may be dismissed after investigation with caution. The Commission finds no violation in the instant complaint, but the judge is cautioned to avoid such situations in the future. Cautionary letters have been issued when alcohol consumption appears problematic or when there is a strong suggestion of inappropriate personal comment.

Letters of admonition are issued when some infraction of the Code has occurred, but the infraction does not involve a continuing course of conduct. Such letters may, for example, address isolated instances of delay, ex parte communication, or discourtesy to litigants or counsel.

A cease and desist order may be issued when the Commission finds factually undisputed violations of the Code which represent a continuing course of conduct. The judge must agree to comply by accepting the order, or

formal proceedings will be instituted. Examples of conduct resulting in cease and desist orders include: activity on behalf of a political candidate or intervention with a fellow judge on behalf of family or friends.

Upon disposition of any docketed complaint, the judge and the complainant are notified of the Commission's action. Other interested persons may be notified within the Commission's discretion.

Confidentiality

Up to this point, all Commission action is confidential and remains so until a notice of formal proceedings is filed. One exception exists if the Commission gives written notice to the judge, prior to the judge's acceptance of a cease and desist order, that the order will be made public. Rule 611(a).

Other narrowly delineated exceptions to the rule of confidentiality exist. Rule 607(c) provides a specific exception to the rule of confidentiality with regard to any information which the Commission considers relevant to current or future criminal prosecutions or ouster proceedings against a judge. Rule 607 further permits a waiver of confidentiality, in the Commission's discretion, to the Disciplinary Administrator, and to the Supreme Court Nominating Commission, the District Judicial Nominating Commissions, and the Governor with regard to nominees for judicial appointments. The Commission may also, in its discretion, make public all or any part of its files involving a candidate for election or retention in judicial office.

Formal Proceedings

During the investigation stage prior to the filing of the notice of formal proceedings, the judge is advised by letter that an investigation is underway. The judge then has the opportunity to present information to the examiner. Rule 609.

If the Commission institutes formal proceedings, specific charges stated in ordinary and concise language are submitted to the judge. The judge has an opportunity to answer and a hearing date is set. Rule 611(b); Rule 613.

The hearing on a notice of formal proceedings is a public hearing. The judge is entitled to be represented by counsel at all stages of the proceedings, including the investigative phase prior to the filing of the notice of formal proceedings if the judge so chooses. The rules of evidence applicable to civil cases apply at formal hearings before the Commission. Procedural rulings are made by the chair, consented to by other members unless one or more calls for a vote. Any difference of opinion with the chair is controlled by a majority vote

of those Commission members present.

The Commission Examiner presents the case in support of the charges in the notice of formal proceedings. At least five members of the Commission must be present when evidence is introduced. A vote of five members of the Commission is required before a finding may be entered that any charges have been proven.

If the Commission finds the charges proven, it can admonish the judge, issue an order of cease and desist, or recommend to the Supreme Court the discipline or compulsory retirement of the judge. Discipline means public censure, suspension, or removal from office. Rule 620.

The Commission is required in all proceedings resulting in a recommendation to the Supreme Court for discipline or compulsory retirement to make written findings of fact, conclusions of law, and recommendations which shall be filed and docketed by the Clerk of the Supreme Court as a case. Rule 622. The respondent judge then has the opportunity to file written exceptions to the Commission's report. A judge who does not wish to file exceptions may reserve the right to address the Supreme Court with respect to disposition of the case. Rule 623.

If exceptions are taken, a briefing schedule is set; thereafter, argument is scheduled before the Supreme Court at which time respondent may appear in person and by counsel. If exceptions are not taken, the Commission's findings of fact and conclusions of law are conclusive and may not later be challenged by respondent. The matter is set for hearing before the Supreme Court at which time the respondent may appear in person and by counsel but only for the limited purpose of making a statement with respect to the discipline to be imposed. In either case, the Supreme Court may adopt, amend, or reject the recommendations of the Commission. Rule 623.

Two flow charts appended to this report trace the progress of a complaint before the Commission and through Supreme Court proceedings.

COMMISSION ACTIVITY IN 1993

At the close of 1993, there were 495 judicial positions subject to the Commission's jurisdiction.

Justices of the Supreme Court	7
Judges of the Court of Appeals	10
Judges of the District Courts	149
District Magistrate Judges	69
Municipal Judges	260

Others are subject to the Code of Judicial Conduct on an ad hoc basis. The compliance statement appended to the Code provides: "Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee, special master, court commissioner, or magistrate, is a judge for the purpose of this Code." 1993 Kan. Ct. R. Annot. 395. No attempt has been made in this report to enumerate those individuals.

In 1993, the Commission received 301 inquiries by telephone, by letter, or by personal visit to the Clerk's Office. Of those individuals, 171 were mailed copies of the Supreme Court Rules Relating to Judicial Conduct, a complaint form, and a brochure describing the work of the Commission. Of those 171, 40 responded by filing a complaint. An additional 71 complaints were received for a total of 111 complaints received in 1993. Of those complaints, 40 were eventually docketed. For a discussion of the distinction between undocketed and docketed complaints, see this report at pages 14 and 15.

The Commission disposed of 81 undocketed complaints in 1993 and 34 docketed complaints.

COMMISSION ON JUDICIAL QUALIFICATIONS
January 1, 1993 - December 31, 1993

TOTAL NUMBER OF INQUIRIES	301
RULES AND COMPLAINT FORMS MAILED	171
NUMBER OF COMPLAINTS RECEIVED	111
NUMBER OF COMPLAINTS DOCKETED	40
DOCKETED COMPLAINTS PENDING ON JANUARY 1, 1993	4

DISPOSITION OF DOCKETED COMPLAINTS

Dismissed. Complainant did not provide the requested information.	3
Referred to the Office of Judicial Administration	1
Dismissed. No violation found.	1
Dismissed After Investigation	16
Dismissed After Investigation with Caution	1
Letter of Admonishment	6
Cease and Desist Order issued	4
Public Cease and Desist Order issued	1
Notice of Formal Proceedings	1
Pending on December 31, 1993	<u>10</u>
	44

POSITION OF JUDGE AGAINST WHOM COMPLAINT WAS FILED

District Judge	23
District Judge, Retired	2
District Magistrate	4 (non-law trained)
Municipal Judge	3 (law trained)
Judge Pro Tem	<u>3 (law trained)</u>
	35 *

* In several instances, more than one complaint was filed against the same judge.

**Substance of Complaints
1993**

Abuse of Power	11
Administrative Inefficiency	5
Conduct Inappropriate to Judicial Office	5
Conflict of Interest	10
Delay in Making Decision	8
Denied Hearing/Denied Fair Hearing	7
Disagreement With Ruling	16
Ex Parte Communication	3
Failure to Enforce Order	2
Failure to State a Complaint, Appealable Matter, or Legal Issue	43
Improper Election Campaign Conduct /Political Activity Inappropriate to Judicial Office	2
Improper Influence	8
Inappropriate Personal Comment	4
Injudicious Temperament	12
Intemperance	1
Prejudice/Bias	6
Sexual Harassment or Gender Bias	3

Individual complaints may contain more than one allegation of misconduct.

EXAMPLES OF CONDUCT FOUND TO BE PROPER OR OUTSIDE THE COMMISSION'S JURISDICTION

A complaint was lodged that, at the time the judge was elected, the judge had been representing the complainant in a divorce matter and did not give notice of intent to withdraw as attorney until the swearing-in date. The judge explained the timing of the hearing and his election. No violation was found.

A complaint was received that a letter was entered into evidence ex parte by the judge. Investigation revealed the letter was a response to a court order.

After unsuccessful attempts to collect a judgment received in small claims court, complainant filed several motions with the court and a letter requesting a Writ of Execution and an Order of Attachment. When the complainant received no reply, she contacted the Commission, which subsequently referred the matter to the Office of Judicial Administration for inquiry regarding small claims procedures in that judicial district.

In response to a complaint from a woman that she was required to remove her hat in the courtroom, she was informed this practice is a tradition to which most judges adhere.

Complaint that the judge indicated he would grant probation but did not. Complainant felt the presence of the victim in the courtroom applied pressure to the judge not to grant probation. Upon thorough review, the complaint was dismissed.

Complaint that complainant's constitutional rights had been denied because an application for a Writ of Habeas Corpus was dismissed. Inquiry revealed the application was dismissed for failure to meet statutory requirements.

The Commission found no wrong doing by the judge when the judge avoided ex parte communication by refusing to discuss a case over the telephone with the caller.

A judge was absolved of wrong doing for refusing to appoint an attorney in a battery case in which the judge felt the defendant was capable of hiring an attorney.

No ethical violation was found when a judge ordered counseling which the complainant did not feel he could afford.

EXAMPLES OF CONDUCT FOUND TO BE IMPROPER

While the Commission shared a judge's concern about the presence of a child in the courtroom during explicit testimony, the judge was admonished for the rude manner in which he ordered the child removed from the courtroom. The judge was also admonished for a comment made regarding placement of the child with a state agency if she were not removed.

While the Commission recognizes that a vast number of litigants appear daily in municipal court, a judge was admonished to be patient, dignified, and courteous to litigants and to accord litigants a full right to be heard.

A letter of solicitation was mailed by a politically affiliated club bearing the judge's name as co-chair of the event. The judge was ordered to cease and desist from political activity inappropriate to judicial office.

A (retired) judge was admonished for making a sexist remark to a female attorney in a settlement conference. The remark was, "Now you're starting to sound like a woman."

A judge was cautioned for telling a pro se litigant that, upon return to court in two weeks, the issues better be legitimate or the judge would make the litigant "pay through the nose." The Commission recognized the court's obligation to explain to pro se litigants the pitfalls, problems and consequences of representing themselves, but the Commission found the language and approach in this instance inappropriate.

A letter of admonition was issued with citation to Canon 3C(1) which provides that a judge should disqualify in a proceeding in which the judge's impartiality might reasonably be questioned. In handling an aggravated battery charge arising out of an incident in which a police officer's arm had been bitten, the judge failed to disclose to the parties that he had seen the officer's arm after the incident.

A judge was issued a cease and desist order for placing a memo in the public file subsequent to recusal. The memo contained the personal opinion of the judge.

In a complaint alleging ex parte communication, the judge was admonished for forwarding a confidential medical report to another judge in a neighboring county who was hearing a Petition for Protection from Abuse. The judge was informed the report should not have been provided unless and until it was requested, in which event counsel for both parties should have been advised.

A judge was issued a cease and desist order for involvement in the purchase of an automobile by the judge's daughter in an estate over which the judge presided. The sale was approved by the parties involved.

A judge was issued a cease and desist order for participation in a fund-raising event for the American Heart Association.

APPENDICES

Appendix A

REPORTED JUDICIAL DISCIPLINARY CASES

In re Rome, 218 Kan. 198, 542 P.2d 676 (1975).

In a criminal proceeding, a magistrate judge issued a memorandum decision which held the defendant out to public ridicule or scorn. The decision was, incidentally, issued in poetic form.

The Supreme Court found the conduct violated Canon 3 A. (3) which requires a judge to be "patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity." The court ordered public censure.

In re Baker, 218 Kan. 209, 542 P.2d 701 (1975).

The Commission on Judicial Qualifications found six violations of Canon 7 arising out of advertising materials used in a campaign for judicial office.

The Supreme Court found no violation as to five charges, holding the activities to come within the pledge of faithful performance of the duties of judicial office. The court found the health, work habits, experience, and ability of the candidates to be matters of legitimate concern to the electorate. As to the sixth charge, the court found that a campaign statement by a candidate for judicial office that an incumbent judge is entitled to a substantial pension if defeated, when the judge is not in fact eligible for any pension, violates the prohibition of Canon 7 B. (1) (c) against misrepresentation of facts. The court imposed the discipline of public censure.

In re Sortor, 220 Kan. 177, 551 P.2d 1255 (1976).

A magistrate judge was found by the Commission to have been rude and discourteous to lawyers and litigants and, on occasion, to have terminated proceedings without granting interested parties the right to be heard.

The Supreme Court found violations of Canons 3 A. (3) and (4) and imposed public censure.

In re Dwyer, 223 Kan. 72, 572 P.2d 898 (1977).

A judge of the Court of Common Pleas of Sedgwick County was found to lack patience, courtesy, dignity, and the appearance of fairness and objectivity. A course of conduct was established which demonstrated an intemperate, undignified, and discourteous attitude toward and treatment of litigants and members of the public who came before the judge.

The Supreme Court found the judge had violated Canons 3 A. (2), (3), and (4). The court imposed public censure.

In re Miller, 223 Kan. 130, 572 P.2d 896 (1977).

A judge of the district court asked a judge of the county court to dismiss a ticket of an acquaintance of the judge. When the judge of the county court declined, the judge of the district court inquired whether the fine could be reduced. The judge of the county court again declined; whereupon, the judge of the district court remarked, "Well, I guess that is one favor I don't owe you."

The Supreme Court found violations of Canons 2 A. and 2 B. which exhort a judge to avoid impropriety and the appearance of impropriety. The court ordered public censure.

In re Hammond, 224 Kan. 745, 585 P.2d 1066 (1978).

A judge of the district court was found to have demanded sexual favors of female employees as a condition of employment.

The Supreme Court found violations of Canons 1, 2 A. and 3 B. (4). Noting that the judge's retirement due to disability made suspension from duty or removal from office unnecessary, the court ordered public censure.

In re Rome, 229 Kan. 195, 623 P.2d 1307 (1981).

An associate district judge was found to lack judicial temperament as evidenced by his actions in the following regard. The judge acted in a manner that did not promote public confidence in the integrity and impartiality of the

judiciary and allowed his personal views or appeared to allow his personal views on the political issue of selection of judges to influence his judicial conduct or judgment. The judge, in writing a memorandum decision, purposefully attempted to be critical of actions of the county attorney and of a fellow judge. The judge purposefully made allegations of fact and stated as conclusions factual matters that were at the time he made his statements being contested in separate criminal cases. Subsequent to making such statements, the judge purposefully and intentionally attempted to get them publicized by sending copies to the news media.

The Supreme Court found violations of Canons 1, 2, 3 A. (1), 3 A. (3), and 3 A. (6). The judge was ordered removed from office.

In re Woodworth, 237 Kan. 884, 703 P.2d 844 (1985).

A judge of the district court was convicted of violating a statute which makes it unlawful to have in one's possession any package of alcoholic liquor without having thereon the Kansas tax stamps required by law.

The Supreme Court found violations of Canons 1 and 2 A. relating to the integrity and independence of the judiciary and the avoidance of impropriety and the appearance of impropriety. The court ordered public censure.

In re Levans, 242 Kan. 148, 744 P.2d 800 (1987).

A district magistrate judge removed eight railroad ties belonging to a railway company without written permission or verification of purported oral authority. The judge did not fully cooperate during investigation of the incident.

The Supreme Court found violations of Canons 1 and 2. The court ordered public censure.

In re Yandell, 244 Kan. 709, 772 P.2d 807 (1989).

A judge of the district court violated the law by leaving the scene of a non-injury accident and in so doing also violated the terms of a previous cease and desist order issued by the Commission on Judicial Qualifications. Numerous other violations arose out of the judge's conduct in various financial transactions and his failure to recuse himself in contested cases involving his creditors.

The Supreme Court found violations of Canons 1, 2 A., 3 C., 5 C. (1), 5 C. (3), and 5 C. (4) (b). The court ordered removal from office.

In re Long, 244 Kan. 719, 772 P.2d 814 (1989).

A judge of the district court was found to have failed to respect and comply with the law, carry out her adjudicative responsibility of promptly disposing of the business of the court, and diligently discharge her administrative responsibilities and maintain professional competence in judicial administration.

The Supreme Court found violations of Canons 2 A., 3 A. (5), and 3 B. (1). The court ordered public censure.

In re Alvord, 252 Kan. 705, 847 P.2d 1310 (1993).

A magistrate judge was found to have treated a female employee in a manner which was not dignified and courteous. Unsolicited inquiries on behalf of the employee regarding a traffic ticket were also found to be inappropriate.

The Supreme Court found violations of Canons 2 and 3 and ordered public censure.

In re Handy, 254 Kan. 581, 867 P.2d 341 (1994).

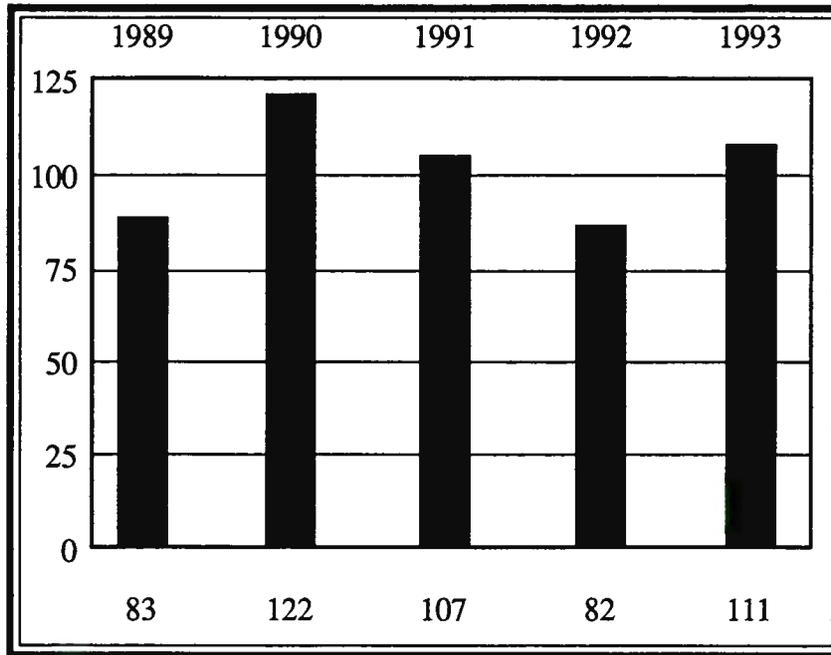
A judge of the district court was found to have violated Canons of the Code of Judicial Conduct in the following particulars: ignoring a conflict of interest by handling cases that involved the city which employed him as a municipal judge; creating an appearance of impropriety in purchasing property involved in pending litigation; and lacking sensitivity to conflict of interest, creating an appearance of impropriety, and being less than candid in a real estate transaction.

The Supreme Court found violations of Canons 1, 2 A., 3 C. (1), 3 C. (1)(c), and 5 C. (1). The court ordered public censure.

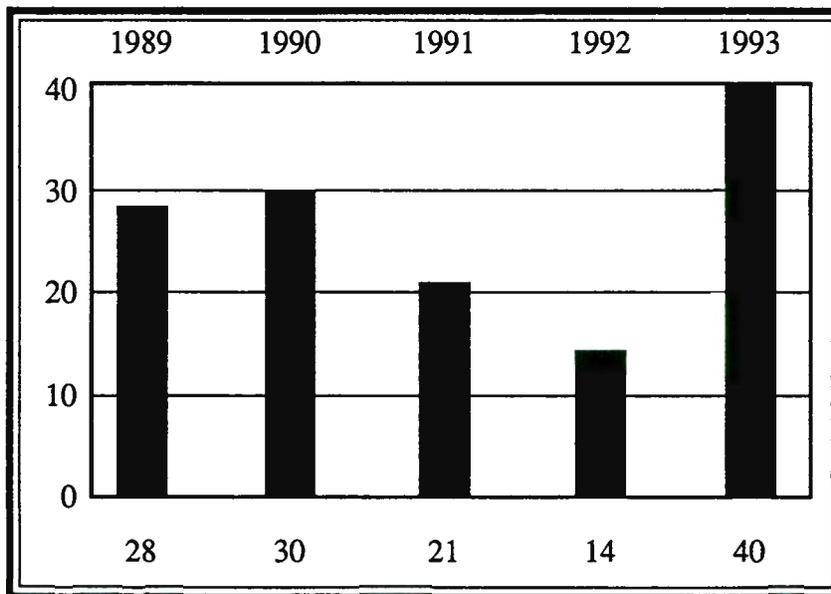
Appendix B

Five-Year Summary of Complaints Received and Docketed

COMPLAINTS RECEIVED



COMPLAINTS DOCKETED



Appendix C

Commission on Judicial Qualifications Statistical Summaries 1989-1993

	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>
Total Number of Inquiries	163	180	186	279	301
Rules and Complaint Forms					
Mailed	112	86	122	181	171
Number of Complaints Received	83	122	107	82	111
Number of Complaints Docketed	28	30	21	14	40
Docketed Complaints Pending at beginning of year	5	8	5	4	4
 Disposition of Docketed Complaints					
Dismissed, no violation found	2	0	0	0	1
Dismissed after investigation	13	26	11	4	16
Dismissed after investigation with caution	6	2	3	1	1
Letter of admonishment issued	1	5	6	4	6
Cease and Desist issued	1	2	2	2	4
Public Cease and Desist issued	0	0	0	0	1
Notice of Formal Proceedings filed	0	0	0	2	1
Dismissed for lack of information	0	0	0	1	3
Referred to Office of Judicial Administration	0	0	0	0	1
Complaints Pending year end	8	5	4	4	10
 Type of Judge Complained Against					
District Judge	24	25	21	10	25
District Magistrate Judge	11	1	0	3	4
Municipal Judge	1	7	3	3	3
Judge Pro Tempore	1	4	2	1	3

Appendix D

Sample Complaint Form

Kansas Commission on Judicial Qualifications

Room 374, Kansas Judicial Center 301 West Tenth Street Topeka, KS 66612 913-296-3229

Complaint against a judge

Person making the complaint

Address

City, State, Zip Code

Phone number

I would like to file a complaint against:

Name of Judge:

Type of Judge (if known)

County or City

Details and specifics of complaint: Please state all specific facts and circumstances which you believe constitute judicial misconduct or disability. Include any details, names, dates, places, addresses, and telephone numbers which will assist the commission in its evaluation and investigation of this complaint. Also include any documents, letters or other materials related to the complaint. Identify the names and addresses of any witnesses. Keep a copy of everything you submit for your records.

Continue on reverse

(If additional space is required, use additional pages as needed and attach them to this page.)

I certify that the allegations and statements of fact set forth above are true and correct to the best of my knowledge, information and belief.

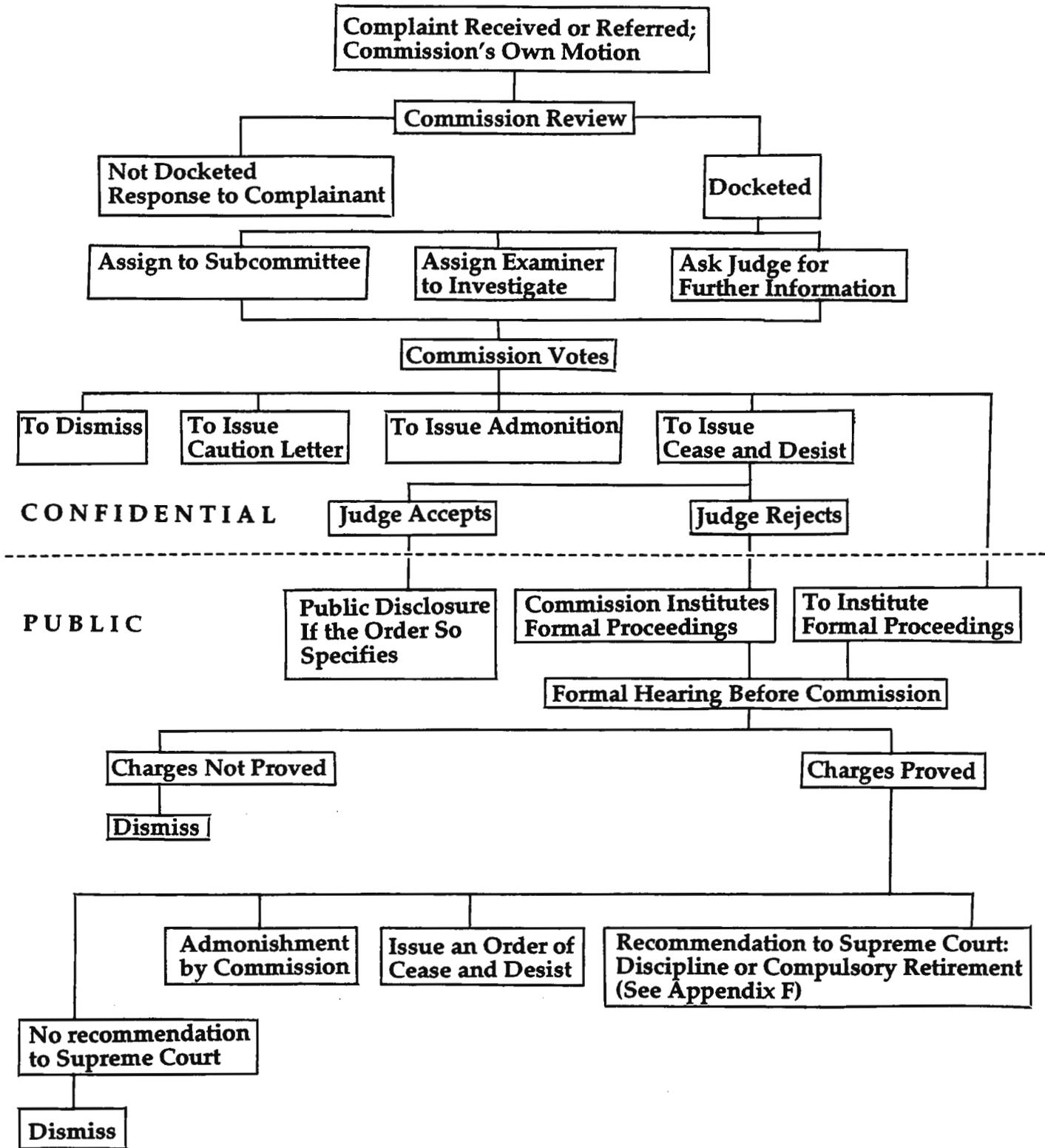
_____ Date

_____ Complainant's Signature

Appendix E

COMMISSION PROCEDURES

RECEIPT OF COMPLAINT THROUGH FORMAL PROCEEDINGS



Appendix F

PROCEEDINGS BEFORE THE SUPREME COURT

REVIEW OF COMMISSION FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

