

**STATE OF KANSAS**



**COMMISSION ON JUDICIAL QUALIFICATIONS**

---

**1995 ANNUAL REPORT**

---

## FROM THE CHAIR

The Kansas Supreme Court adopted a new Code of Judicial Conduct effective June 1, 1995. New Supreme Court Rule 601A may need some modification with regard to its application to less than full time judicial officers, but it certainly appears to be providing the additional clarity and guidance anticipated for the bench as a whole. The judiciary and the public will both be well served by this effort of the Court to make it easier for all to determine proper ethical conduct in our changing world.

The number and complexity of the issues confronting the judiciary continue to increase. This activity is reflected to some degree by the variety and nature of the complaints handled by this Commission. Frequently, our task is to explain the judicial process to citizens who simply don't understand or appreciate the court's required actions. In some instances, we have suggested that a judge consider changes which might aid the litigant's understanding or appreciation of the required process. In doing so, it is not our purpose to direct the court's discretionary management of its own affairs, but rather to identify concerns or confusion which we have seen presented in complaints on more than one occasion.

In fact, the judges of the State of Kansas do a most impressive job of complying with the Code and are very cooperative when called upon by the Commission to respond to a complaint. The State of Kansas has an outstanding judicial system and our judiciary routinely meets the high ethical standards required. The members of the Judicial Qualifications Commission are proud to have a part in the maintenance of this exceptional judicial system.



Mikel L. Stout, Chair  
Kansas Commission on  
Judicial Qualifications

April 1996

**1995 ANNUAL REPORT**  
**OF THE**  
**KANSAS COMMISSION ON JUDICIAL QUALIFICATIONS**

**COMMISSION MEMBERS:**

**Term Expires**

|                             |      |
|-----------------------------|------|
| Mikel L. Stout - Chair      | 1996 |
| David J. Waxse - Vice-Chair | 1997 |
| Judge J. Patrick Brazil     | 1999 |
| Ray Call                    | 1998 |
| Judge Kathryn Carter        | 1997 |
| Robert A. Creighton         | 1998 |
| Judge Theodore B. Ice       | 1998 |
| Judge James W. Paddock      | 1996 |
| Carol Sader                 | 1996 |

**Supreme Court Liaison**

Justice Fred N. Six

**Commission Staff**

Carol Gilliam Green, Secretary  
Carol J. Deghand, Office Manager

**Commission Office**

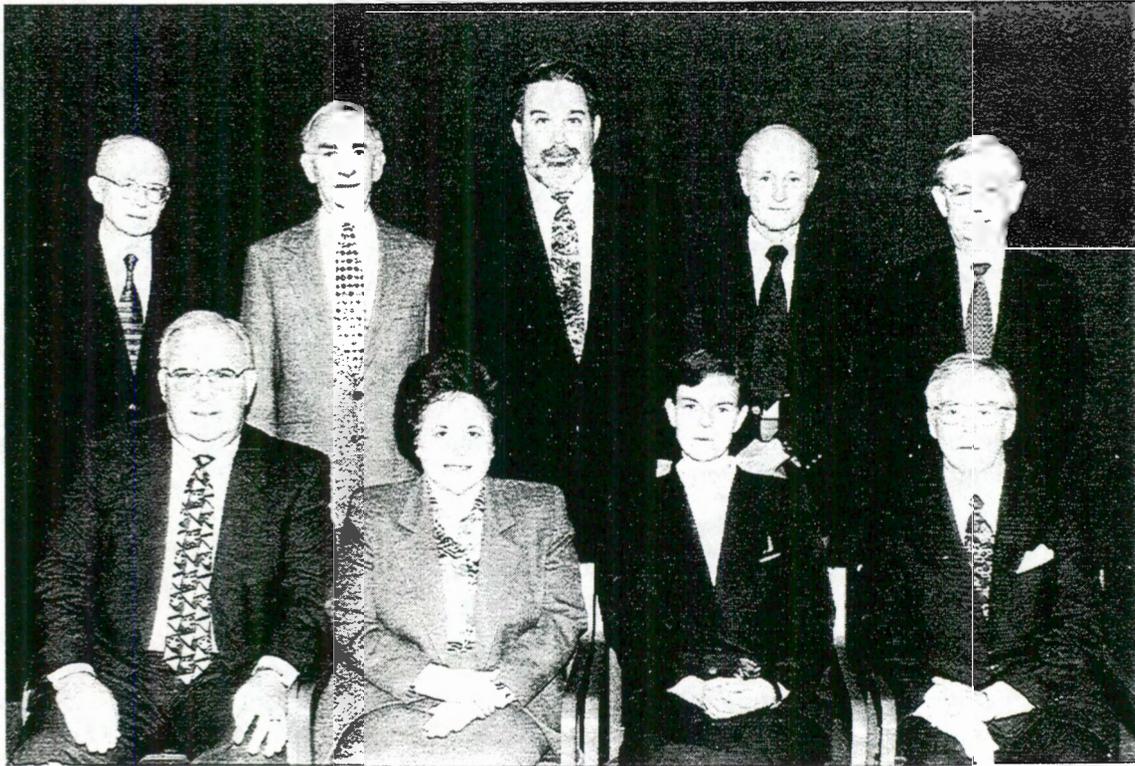
Kansas Judicial Center, Room 374  
301 SW Tenth Avenue  
Topeka, Kansas 66612-1507

Telephone: (913) 296-3229  
Fax: (913) 296-1028

## 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 1995 .....                              | 19   |
| Statistical Information 1995 .....  | 20   |
| Substance of Complaints .....   | 21   |
| Examples of Conduct .....   | 22   |
| <b>APPENDICES</b>   |      |
| Appendix A Reported Judicial Disciplinary Cases .....                     | 27   |
| Appendix B Five-year Summary of<br>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<br>the Supreme Court .....     | 36   |

## COMMISSION MEMBERS



(Seated l. to r.) Mikel L. Stout, Carol Sader, Judge Kathryn Carter, Ray Call

(Standing l. to r.) Robert A. Creighton, Judge Theodore B. Ice, David J. Waxse,  
Judge James W. Paddock, Chief Judge J. Patrick Brazil

## BIOGRAPHIES

### MEMBERS WHO SERVED DURING ALL OR PART OF 1995

*The Honorable J. Patrick Brazil* was appointed to the Kansas Court of Appeals in December 1985, and became Chief Judge June 1, 1995. 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.

*Ray Call*, a lay member of the Commission, retired December 31, 1995, as 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. Call has been a member of the Commission since October 1993.

*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.

*Robert A. Creighton*, lawyer member of the Commission, practices in Atwood, Kansas, with the firm of Brown, Creighton and Peckham. He is also president of Flagler Bankshares, Inc., owner of The First National Bank of Flagler, Colorado. Creighton received his B.A. from the University of Kansas in 1956 and his law degree in 1960. He served as Rawlins County Attorney from 1961-1967 and as Atwood City Mayor from 1984-1991. Board appointments include the Kansas Board of Regents (Chairman 1990-1991), League of Kansas Municipalities Governing Body, Atwood Second Century Development Fund, Rawlins County Hospital Board (past Chairman), Atwood City Library Board (present Chairman), and the Atwood Jayhawk Theater Board. Civic activities include Greater Northwest Kansas, Inc., (founder and past President), Mid American Masters Association (founder and past President), Atwood Rotary (past President), Atwood Chamber of Commerce (past President), and KU Alumni Association Advisory Board. He was appointed to the Commission on Judicial Qualifications in July 1994.

*Dr. Nancy Bramley Hiebert*, a lay member of the Commission, is a private health care consultant and is manager of community affairs at Mt. Oread Medical Center, Lawrence. 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 serves on 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 served on the Commission on Judicial Qualifications from March 1992 to April 1995.

*The Honorable Theodore Branine Ice*, a district judge from Newton, Kansas, received his B.A. from the University of Kansas in 1956 and his Juris Doctorate in 1961, following service in the United States Navy. He practiced law in Newton for twenty-five years in the firm of Branine, Ice, Turner & Ice. During that time, he was president of the Newton Chamber of Commerce and served on several community boards. He was appointed district judge in 1987 and has also served as an assigned panel member of the Kansas Court of Appeals. Judge Ice was the organizing judge for the Harvey County CASA (Court-appointed Special Advocate) and Multi-Disciplinary Team. He served as president of the Harvey County Bar Association and also served four years on the Board of Editors of the Journal of the Kansas Bar Association. Judge Ice is a member of the American Bar Association, Phi Delta Theta Social Fraternity, Omicron Delta Kappa Honorary Society, and Phi Delta Legal Fraternity. He has served on the Commission on Judicial Qualifications since July 1994.

*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 retired from the bench in 1993. 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.

*Carol Sader*, a lay member of the Commission from Prairie Village, received her B.A. from Barnard College in 1957. She also attended Chicago-Kent College of Law and the University of Cincinnati College of Law. Ms. Sader taught school and served as a legal editor before running for elective office. She served as a Kansas State Representative for the 22nd Legislative District from 1987-1994 and ran for Lieutenant Governor of Kansas in 1994. During her legislative tenure, she served as chair and vice-chair of several committees. She currently serves on the Kansas Insurance Commissioner's Advisory Committee on Health Care. Ms. Sader's current community service includes: The Mainstream Coalition of Johnson County (President), Johnson County Foundation on Aging Board, Kansans for the Improvement of Nursing Homes Board, Coalition for Positive Family Relationships Board, Johnson County Arts and Humanities Council Advisory Board, League of Women Voters, Health Partnership of Johnson County Advisory Council, and the Johnson County Community College Foundation Board. Ms. Sader's prior community service includes serving as President of the Johnson County League of Women Voters. Among her many awards are a distinguished public service award from the United Community Services of Johnson County (1993), HALLPAC Kansas Public Service Award (1993), Who's Who in American Women (1991-1996), and Who's Who In America (1994-1996). Ms. Sader was appointed a member of the Commission in June 1995 to fill the vacancy created by the resignation of Dr. Nancy Hiebert.

*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 Advisory Committee 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. He has been a member of the Commission since January 1984.

*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 serves, by Supreme Court Rule, as Secretary to the Client Protection Fund Commission and by Supreme Court appointment as a member of the Board of Examiners of Court Reporters. She is past chair of the Kansas Bar Association Public Information Committee and currently chairs the Handbook Subcommittee of the CLE Committee. Ms. Green edited the second edition of the *Kansas Appellate Practice Handbook* and received a KBA Outstanding Service Award in 1995.

## 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, served continuously since the Commission began its work on January 1, 1974, until his retirement in June 1994. Judge James J. Noone was also a charter member and served until July 1975. He resumed service in 1986 and served until his retirement in June 1994.

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), John J. Gardner (Olathe), and Fred N. Six (Lawrence), lawyer members; and Georgia Neese Gray (Topeka) and Kenneth C. Bronson (Topeka), and Dr. Nancy Bramley Hiebert (Lawrence), non-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-     |

## 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. 1995 Kan. Ct. R. Annot. 423-435.

### 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, the Impaired Judges Assistance Committee, 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 1995

At the close of 1995, there were 480 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  | 156 |
| District Magistrate Judges     | 69  |
| Municipal Judges               | 238 |

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, is a judge within the meaning of this Code. Judge is defined as: 'Any judicial officer who performs the functions of a judge in the courts of this state including Kansas Supreme Court Justices, Court of Appeals Judges, District Judges, District Magistrate Judges, and Municipal Court Judges. Where applicable, the term "judge" also contemplates Masters, Referees, Temporary Judges, *Pro Tempore* Judges, Part-time Judges, and Commissioners if they perform any functions of a judge in any court of this state.'" 1995 Kan. Ct. R. Annot. 421. No attempt has been made in this report to enumerate those individuals.

In 1995, the Commission received 302 inquiries by telephone, by letter, or by personal visit to the Clerk's Office. Of those individuals, 194 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 194, 48 responded by filing a complaint. An additional 85 complaints were received for a total of 133 complaints received in 1995. 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 1995 and 45 docketed complaints.

**COMMISSION ON JUDICIAL QUALIFICATIONS**  
**January 1, 1995 - December 31, 1995**

|  |     |
|--|-----|
| TOTAL NUMBER OF INQUIRIES                      | 302 |
| RULES AND COMPLAINT FORMS MAILED               | 194 |
| NUMBER OF COMPLAINTS RECEIVED                  | 133 |
| NUMBER OF COMPLAINTS DOCKETED                  | 40  |
| DOCKETED COMPLAINTS PENDING ON JANUARY 1, 1995 | 17  |

DISPOSITION OF DOCKETED COMPLAINTS

|  |           |
|--|-----------|
| Dismissed. Complainant did not provide corroborating evidence. | 5         |
| Dismissed after investigation                                  | 27        |
| Dismissed in part, cautioned in part                           | 3         |
| Letter of admonishment   | 5         |
| Cease and Desist Order issued                                  | 1         |
| Public Cease and Desist Order issued                           | 3         |
| Complaint dismissed in view of judge's resignation             | 1         |
| Formal Proceedings commenced                                   | 1         |
| Pending on December 31, 1995                                   | <u>11</u> |
|  | 57        |

POSITION OF JUDGE AGAINST WHOM COMPLAINT WAS FILED

|                         |                        |
|-------------------------|------------------------|
| District Judge          | 32                     |
| District Judge, Retired | 3                      |
| District Magistrate     | 3 (non-law trained)    |
| Municipal Judge         | 6 (3 are law trained)  |
| Judge Pro Tem           | 2 (law trained)        |
| Hearing Officer         | <u>1</u> (law trained) |
|                         | 47*                    |

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

## Substance of Complaints

1995

|  |    |
|--|----|
| Abuse of Power   | 5  |
| Administrative Inefficiency  | 4  |
| Conduct Inappropriate to Judicial Office   | 6  |
| Conflict of Interest   | 7  |
| Delay in Making Decision   | 11 |
| Denied Hearing/Denied Fair Hearing   | 25 |
| Disagreement With Ruling   | 24 |
| Ex Parte Communication   | 6  |
| Failure to Enforce Order   | 2  |
| Failure to State a Complaint,<br>Appealable Matter, or Legal Issue                         | 57 |
| Improper Election Campaign Conduct /Political<br>Activity Inappropriate to Judicial Office | 2  |
| Improper Influence   | 1  |
| Inappropriate Personal Comment   | 15 |
| Injudicious Temperament  | 23 |
| Prejudice/Bias   | 18 |
| Failure to Control Courtroom   | 2  |
| Intemperance   | 4  |

Individual complaints may contain more than one allegation of misconduct.

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

No violation was found in a complaint that, prior to the proceedings, the judge announced he had a previously scheduled two-week medical malpractice suit which would necessitate finishing the current case in two days.

A conflict of interest was alleged against an administrative law judge who was also serving as a part-time municipal judge. The Commission on Judicial Qualifications does not have jurisdiction over administrative law judges, who are part of the executive branch of government.

A lack of dignity and courtesy was alleged when a small claims judge questioned the plaintiff regarding a note scribbled on an envelope in the file which did not pertain to the case. The Commission found no violation.

No violation was found when a judge proceeded with the hearing in the absence of the litigant, who asked to be excused briefly.

No violation was found when a judge closed an estate without directing an accounting of the assets to the heirs. This is an appealable issue.

## EXAMPLES OF CONDUCT FOUND TO BE IMPROPER

A public cease and desist was issued under Rule 601 to a district judge for his remarks and actions during a trial. The Supreme Court had reversed the defendant's convictions, concluding that the judge's remarks during the trial did prejudice defendant's right to a fair trial.

Public cease and desist orders were issued in two separate instances to judges charged with driving while under the influence.

A judge was admonished for considering ex parte communication and for making a decision without notice to all interested parties.

A judge was admonished for being rude during a court proceeding, for example by making gestures of disbelief with his head and eyes and commenting, "You just settle down, Mister," and "Go play lawyer some place else."

A cease and desist was issued when a judge failed to comply with the laws of Kansas in procedures for handling traffic violations. The judge also held hearings without all interested parties present.

A judge was admonished for publicly endorsing a candidate for political office.

A judge was admonished regarding the judge's participation in fund raising activities sponsored by the Drug Abuse Resistance Education (DARE) program.

A judge was cautioned about making public statements that could be construed as having political connotation. While it is appropriate for a judge to discuss law reform, individuals should not be targeted.

A judge was cautioned that all interested parties should be given notice and an opportunity to be heard prior to the entry of orders.

A judge's attention was drawn to Canon 3E(1) of Rule 601A and commentary, suggesting disclosure is appropriate when the judge previously practiced with opposing counsel.

## 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).**

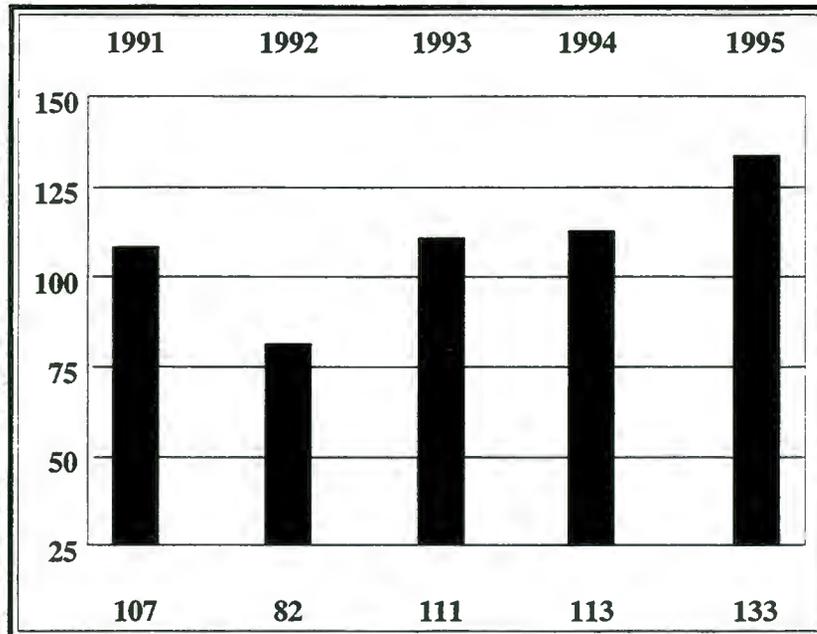
A judge of the district court was found to have violated Canons of the Code of Judicial Conduct in the following particulars: ignoring a conflict of interest by handling cases that involved the city which employed him as a municipal judge; creating an appearance of impropriety in purchasing property 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.

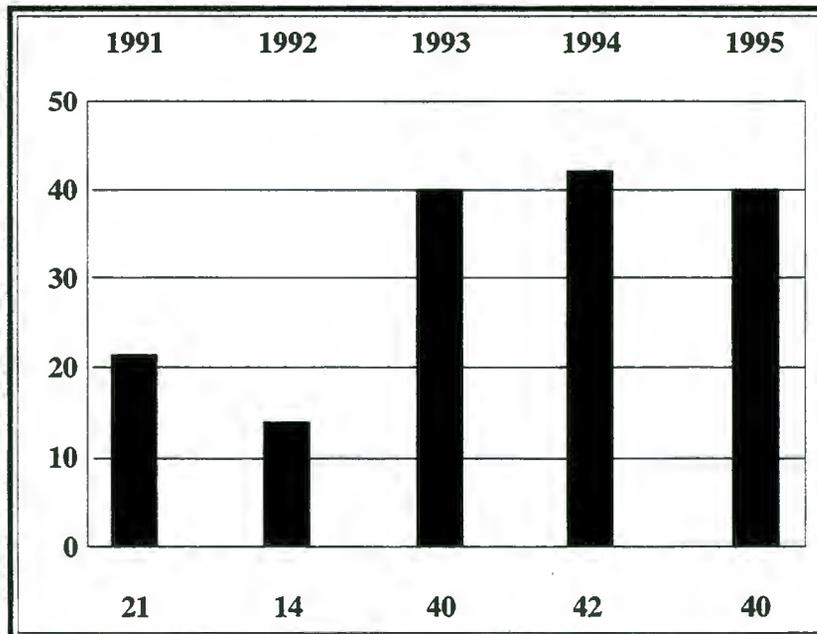
## Appendix B

### Five-Year Summary of Complaints Received and Docketed

#### COMPLAINTS RECEIVED



#### COMPLAINTS DOCKETED



## Appendix C

### Commission on Judicial Qualifications Statistical Summaries 1991-1995

|   | <u>1991</u> | <u>1992</u> | <u>1993</u> | <u>1994</u> | <u>1995</u> |
|---|-------------|-------------|-------------|-------------|-------------|
| Total Number of Inquiries                           | 186         | 279         | 301         | 311         | 302         |
| Rules and Complaint Forms                           |             |             |             |             |             |
| Mailed  | 122         | 181         | 171         | 137         | 194         |
| Number of Complaints Received                       | 107         | 82          | 111         | 113         | 133         |
| Number of Complaints Docketed                       | 21          | 14          | 40          | 42          | 40          |
| Docketed Complaints Pending at<br>beginning of year | 5           | 4           | 4           | 10          | 17          |
| <br><b>Disposition of Docketed Complaints</b>       |             |             |             |             |             |
| Dismissed, no violation found                       | 0           | 0           | 1           | 1           | 0           |
| Dismissed after investigation                       | 11          | 04          | 16          | 23          | 27          |
| Dismissed after investigation<br>with caution       | 3           | 1           | 1           | 3           | 3           |
| Letter of admonishment issued                       | 6           | 4           | 6           | 3           | 5           |
| Cease and Desist issued                             | 2           | 2           | 4           | 1           | 1           |
| Public Cease and Desist issued                      | 0           | 0           | 1           | 0           | 3           |
| Notice of Formal Proceedings<br>filed               | 0           | 2           | 1           | 0           | 1           |
| Judge resigned                                      | 0           | 0           | 0           | 1           | 1           |
| Dismissed for lack of information                   | 0           | 1           | 3           | 1           | 5           |
| Referred to Office of Judicial<br>Administration    | 0           | 0           | 1           | 0           | 0           |
| Complaints Pending year end                         | 4           | 4           | 10          | 17          | 11          |
| <br><b>Type of Judge Complained Against</b>         |             |             |             |             |             |
| District Judge                                      | 21          | 10          | 25          | 29          | 35          |
| District Magistrate Judge                           | 0           | 3           | 4           | 4           | 3           |
| Municipal Judge                                     | 3           | 3           | 3           | 7           | 6           |
| Judge Pro Tempore                                   | 2           | 1           | 3           | 2           | 2           |
| Hearing Officer                                     | 0           | 0           | 0           | 0           | 1           |

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

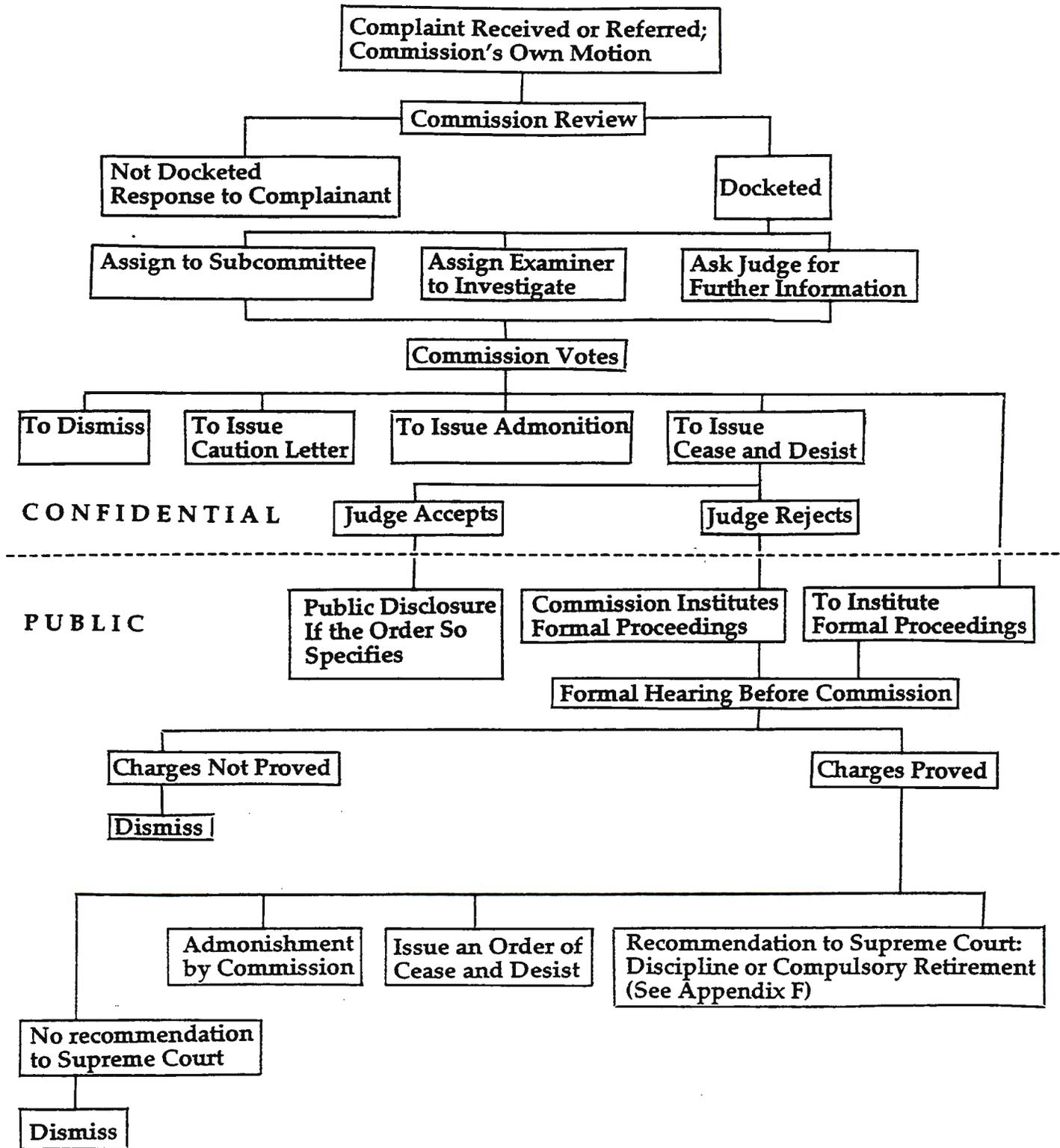
\_\_\_\_\_

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

