

NORTH CAROLINA JUDICIAL STANDARDS COMMISSION



IMPARTIALITY INDEPENDENCE INTEGRITY

ANNUAL REPORT 2020

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CHAIR

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This report provides statistical data of the activities of the Commission in 2020. For further information, please visit the Judicial Standards Commission’s website at:

<http://ncjsc.gov>

A MESSAGE FROM THE COMMISSION CHAIR

Greetings:

As the new Chair of the Judicial Standards Commission, I am honored to present the Commission's 2020 Annual Report. I also wish to extend my gratitude to my predecessor, Judge Wanda Bryant, for her tremendous contributions to the work of the Commission during her tenure as Chair from 2014 to 2020.

This past year was certainly difficult for many people due to the COVID-19 pandemic. Notwithstanding these challenges, I was impressed how the Commission was able to continue its work without interruption. The Commission met regularly as scheduled, though virtually. The Commission offices remained open and staffed so judges and citizens of our State could have their calls answered and questions addressed.

Although COVID-19 reduced court operations throughout the State, the Commission's workload continued to show an overall increase in the last five years, despite a small drop in the number of complaints filed in 2020 from the previous year. Educational programs for judges continued, though these programs were transitioned to virtual platforms. Commission staff continued its important work in providing hundreds of confidential informal ethics opinions to judges across North Carolina and in reviewing and evaluating the concerns brought to the Commission's attention by citizens. Investigations and disciplinary proceedings also went forward without delay.

I am personally grateful for the faith the Chief Justice has placed in me to Chair the Commission, and I look forward to getting to better know the judges who serve across our State. I have enjoyed my first months in this role, as I have gotten to see first-hand how our State is blessed to have a great group of dedicated judges, attorneys and lay citizens serving on the Commission and dedicated staff supporting the Commission's work. Please know that the Commission remains committed to serving our judiciary and our State.

Sincerely,



Chris Dillon
Judge, North Carolina Court of Appeals

INTRODUCTION

The Judicial Standards Commission was established in 1973 to serve as an independent and non-partisan administrative arm of the North Carolina Supreme Court to evaluate and investigate complaints of judicial misconduct and disability, and when necessary, conduct formal disciplinary or disability proceedings to recommend to the Supreme Court an appropriate public disposition of the matter. The Commission also serves as North Carolina’s judicial ethics advisory committee and provides both formal ethics opinions and confidential informal ethics advice to judicial officers who are required to comply with the North Carolina Code of Judicial Conduct (the “Code of Judicial Conduct” or the “Code”). Commission staff also provides training and develops educational materials relating to the Code of Judicial Conduct and the Commission’s work. By advising and educating judges, lawyers and the public about the ethical duties of judges, and by carefully evaluating and investigating complaints of judicial misconduct and disability, the Commission serves a critical function in the Judicial Branch to promote the highest ethical and professional standards among North Carolina’s judges and to ensure continued public trust and confidence in the fair and efficient administration of justice in state judicial proceedings.

COMMISSION MEMBERS AND STRUCTURE

North Carolina law provides that the three branches of North Carolina government and the North Carolina State Bar each have a role in appointing the Commission’s 13 members. The Judicial Branch, through the Chief Justice, appoints the five judicial members of the Commission, who must include one judge of the Court of Appeals to serve as the Chair of the Commission, two superior court judges and two district court judges. By Commission Rule, the two superior court judges serve as the Vice-Chairs of the Commission. The Legislative Branch, through recommendations of the Speaker of the North Carolina House of Representatives and the President Pro Tempore of the North Carolina Senate, appoints two lay persons to serve as public members. The Executive Branch, through the Governor, also appoints two lay persons to serve as public members. Finally, the North Carolina State Bar, through its Bar Council, appoints four lawyers to serve on the Commission. This structure ensures that the perspectives of judges, lawyers, and members of the public are considered by the North Carolina Supreme Court when it undertakes the serious task of disciplining or removing a judge from office for misconduct or suspending or removing a judge based upon a permanent incapacity. A list of all past members of the Commission is provided in Appendix A and a current list of Commission members and staff is available on the Commission’s website.

COMMISSION FUNCTIONS AND PROCEDURES

The Judicial Standards Commission is governed by the authority set forth in Article 30 of Chapter 7A of the North Carolina General Statutes and the Rules of the Judicial Standards Commission, which are approved by the North Carolina Supreme Court. On June 3, 2020, the North Carolina Supreme Court approved amendments to the Commission's Rules, which are available on the Commission's website. The standards for judicial conduct in North Carolina are set forth in the North Carolina Code of Judicial Conduct (the "Code of Judicial Conduct"), which is promulgated by the North Carolina Supreme Court pursuant to its statutory authority set forth in North Carolina General Statutes Section 7A-10.1.

Investigatory and Disciplinary Jurisdiction

The Judicial Standards Commission serves the North Carolina Supreme Court by performing four essential functions related to evaluating allegations of judicial misconduct or disability: (1) receiving and reviewing complaints or information concerning alleged judicial misconduct or disability; (2) conducting investigations in appropriate cases; (3) if a minor violation of the Code of Judicial Conduct is found to have occurred, taking confidential remedial action to prevent a recurrence of the issue; (4) if necessary based on the nature of the misconduct or disability, conducting disciplinary or disability proceedings to hear evidence and make recommendations to the North Carolina Supreme Court for disposition of the matter. The Commission's recommendation is advisory and not binding on the North Carolina Supreme Court, which exercises its own independent review of the evidence and determines whether public discipline or removal from office is warranted based on clear and convincing evidence of misconduct, or whether suspension or removal based on permanent incapacity is necessary.

Under North Carolina General Statutes Section 7A-376(b), the North Carolina Supreme Court may sanction or remove a judge on the following grounds: (1) willful misconduct in office; (2) willful and persistent failure to perform the judge's duties; (3) habitual intemperance; (4) conviction of a crime involving moral turpitude; or (5) conduct prejudicial to the administration of justice that brings the judicial office into disrepute. Pursuant to the Preamble to the Code of Judicial Conduct, a violation of the Code may be considered grounds for discipline under Chapter 7A Article 30. As to disability proceedings, North Carolina General Statutes Section 7A-376(c) provides that the North Carolina Supreme Court can suspend or remove a judge based upon a physical or mental incapacity interfering with the performance of the judge's duties which is or is likely to become permanent.

The Commission's investigatory and disciplinary jurisdiction extends to judges of the General Court of Justice, including justices of the North Carolina Supreme Court, judges of the North Carolina Court of Appeals, and judges of the North Carolina Superior Courts and District Courts. Judges who have retired from the General Court of Justice yet who continue to preside in cases as emergency judges or retired recalled judges are also subject to the Code of Judicial Conduct and the Commission's jurisdiction. In 2011, the General Assembly

amended the Workers' Compensation Act, as provided in Section 97-78.1 of the North Carolina General Statutes, and expanded the Commission's jurisdiction to include allegations of misconduct or disability of Commissioners and Deputy Commissioners of the North Carolina Industrial Commission.

The Commission has no disciplinary jurisdiction over the following officials often associated with the judiciary or the judicial process: district attorneys, assistant district attorneys, public defenders, clerks of court, magistrates, administrative law judges, private attorneys, law enforcement officers, or any other court personnel. As a state administrative agency of the North Carolina Supreme Court, the Commission also has no disciplinary jurisdiction or authority over federal judges at any level. By statute, the Commission also lacks authority to investigate complaints based substantially on a legal ruling of a trial court when that ruling has not been reviewed or ruled upon by the North Carolina Court of Appeals or the North Carolina Supreme Court. Pursuant to the terms of the Code of Judicial Conduct, there is also a three-year statute of limitations on the Commission's authority to initiate disciplinary proceedings based on most cases of judicial misconduct. There is no statute of limitations if the judge is convicted of a felony while serving in office.

While decisions of the Supreme Court to impose public discipline on a judge are matters of public record, North Carolina General Statutes Section 7A-377 provides that all papers filed with the Commission, and all proceedings before the Commission, are confidential. The judge, justice, commissioner or deputy commissioner who is the subject of an investigation or proceedings before the Commission may waive in writing the confidentiality of documents that otherwise would be public records. Confidentiality as to certain records also ceases if the Supreme Court orders public discipline of the judge. In those circumstances, the statement of charges, pleadings and recommendations of the Commission to the Supreme Court, as well as the record filed in support of the Commission's recommendations, are no longer considered confidential. The Commission's investigative files, however, remain confidential. In accordance with the Commission Rules, the Commission may also disclose certain limited information when there is a need to notify another person or agency in order to protect the public or the administration of justice.

To ensure fairness to any judge who is the subject of a Commission investigation or disciplinary proceeding, the Commission is divided into two panels that meet in alternating months. Under this structure, an investigation and charges ordered by one panel must be referred to the other panel for an independent hearing to accept evidence into the record, allow for the testimony and cross-examination of witnesses, and make a recommendation to the Supreme Court for disposition based on the hearing panel's findings of fact and conclusions of law.

Advisory Jurisdiction

In addition to its investigatory and disciplinary functions, the Commission also serves as North Carolina's judicial ethics advisory commission. Article 30 of Chapter 7A of the General Statutes provides the Commission with authority to provide advisory opinions to judges in accordance with the Commission's rules.

Under Commission Rule 8(a), the Commission may consider requests from any person for issuance of a published formal advisory opinion to address application of the North Carolina Code of Judicial Conduct to a specific situation where it is not specifically addressed in the express language of the Code itself. Such Formal Advisory Opinions are published by the Supreme Court's Office of the Appellate Reporter. The Commission currently has 16 published Formal Advisory Opinions, which are all available on the Commission's website.

Under Commission Rule 8(b), judges, justices, Commissioners and Deputy Commissioners may also seek written private, confidential informal ethics advice from the Commission's Chair, Executive Director and Commission Counsel. Written informal advisory opinions are reviewed regularly at the Commission's monthly panel meetings to ensure consistency and approval of the Commission members. If a reviewing panel wishes to amend or revise any informal advice provided by Commission staff, the judge is immediately notified of any changes. Until such notice is provided, a judge is presumed to act in good faith and in compliance with the Code of Judicial Conduct if he or she acts in conformity with the written informal advisory opinion.

Education and Training

The Commission Chair and staff also take part in multiple educational and training programs for judges, attorneys and other interested parties each year relating to the North Carolina Code of Judicial Conduct, the work of the Commission, and judicial ethics more generally. The Commission staff also continues to develop and regularly update written educational and training materials that are made available at training programs or posted on the Commission's website.

2020 WORKLOAD STATISTICS

Advisory Opinions and Educational Programs

On average, Commission staff issues 250-300 written informal advisory opinions to judges each year. Despite the COVID-19 pandemic, judges continued to seek out this essential service of the Commission. In 2020, the Commission staff issued 238 confidential written informal advisory opinions that were reviewed and approved by the Commission. The most common areas of inquiry included questions relating to disqualification, civic and charitable activities, recommendation letters and political conduct. There were no new published formal advisory opinions in 2020.

Each year, Commission staff also participates in 8-10 training programs for judges, judicial officers and others. In 2020, and despite the COVID-19 pandemic, Commission staff provided training at 8 conferences for judges, judicial officers and Judicial Branch personnel. All training programs after March 2020 were offered virtually to ensure the health and safety of the participants.

Review and Investigation of Complaints

As set forth in Table 1, there were 431 active matters pending before the Commission in 2020. This number included 374 new complaints received between January 1, 2020 and December 31, 2020, as well as 57 pending matters that were carried over from 2019. The 57 matters carried over from 2019 to 2020 included the following: 3 disciplinary recommendations pending in the North Carolina Supreme Court; 2 disciplinary proceedings pending in the Commission; 6 pending formal investigations; 11 pending preliminary investigations; and 35 complaints awaiting initial consideration by the Commission. A summary of the Commission’s workload in 2020 is provided in Table 1.

TABLE 1: 2020 COMPLAINT AND WORKLOAD SUMMARY

2020 Total Workload	432
New complaints filed in 2020	375
Matters carried over from 2019	57
<ul style="list-style-type: none">• 35 complaints awaiting initial review• 6 pending formal investigations• 11 pending preliminary investigations• 2 pending disciplinary proceedings• 3 recommendations pending in the Supreme Court	

Table 2 sets forth the Commission’s disposition of the 432 pending matters in 2020.

TABLE 2: 2020 DISPOSITION SUMMARY

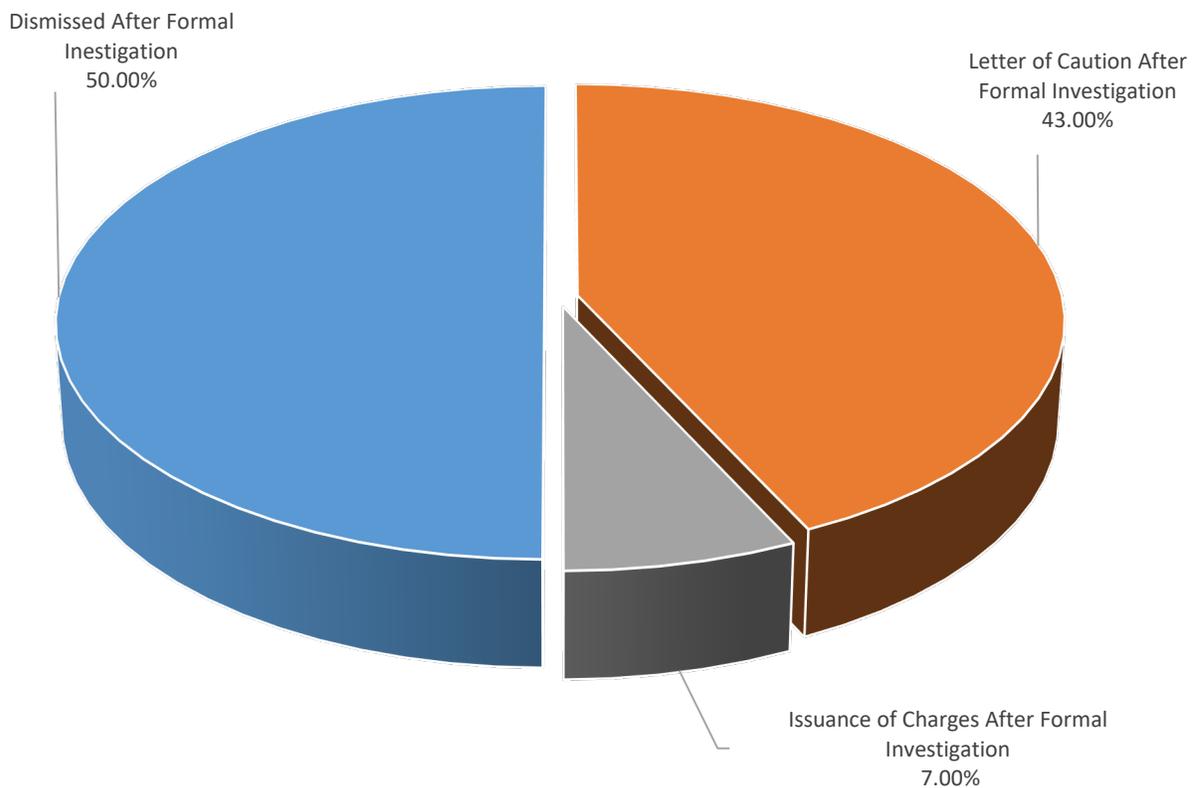
Summary of Commission Action in 2020	432
Dismissed After Initial Review	283
Dismissed After Preliminary Investigation	54
Dismissed After Formal Investigation	14
Dismissed with Letter of Caution	12
Statements of Charges Issued/Hearing Pending	2
Pending Preliminary Investigation Carried to 2021	12
Pending Formal Investigation Carried to 2021	1
Recommendations Pending in the Supreme Court	2
Supreme Court Opinions Issued	3
Complaints Awaiting Initial Review in 2021	49

The three disciplinary decisions issued by the North Carolina Supreme Court in 2020 are available on the Commission’s website and are published as follows: (1) *In re Clontz*, 376 N.C. 128, 852 S.E.2d 614 (2020); (2) *In re Murphy*, 376 N.C. 219, 852 S.E.2d 599 (2020); and (3) *In re Stone*, 373 N.C. 368, 838 S.E.2d 165 (2020).

Based upon Table 2, there were 365 complaints disposed of in 2020. Of this number, approximately 77.5% were dismissed without investigation, and approximately 14.8% were dismissed after a preliminary investigation to evaluate the credibility of the allegations. These dismissals occur most often because the complaint alleged legal error that the Commission has no jurisdiction to investigate, the allegations were too vague to evaluate, or a preliminary investigation revealed that the allegations in the complaint lacked credibility or could not be substantiated after a review of the records of the subject court proceedings. Other grounds for dismissal include expiration of the statute of limitations, the retirement of the judge in question, or allegations of bias supported only by an adverse ruling as evidence of such bias. If a citizen’s complaint is dismissed, Commission rules allow the complainant to request reconsideration upon the submission of additional information to clarify or substantiate the concerns and allegations.

Complaints that are not dismissed after an initial review or after a preliminary investigation proceed to a formal investigation in which the judge is notified of the Commission’s investigation and the nature of the complaint. The identity of the complainant remains confidential unless a statement of charges is issued at the conclusion of the formal investigation. In 2020, the Commission considered and disposed of 28 formal investigations: 22 new formal investigations ordered in 2020 and 6 pending formal investigations carried over from 2019. At the conclusion of these 28 formal investigations: 14 were dismissed without further action by the Commission; 12 were dismissed with a private letter of caution; 2 resulted in the initiation of disciplinary proceedings through the issuance of statements of charges. Table 3 sets forth this data in statistical form.

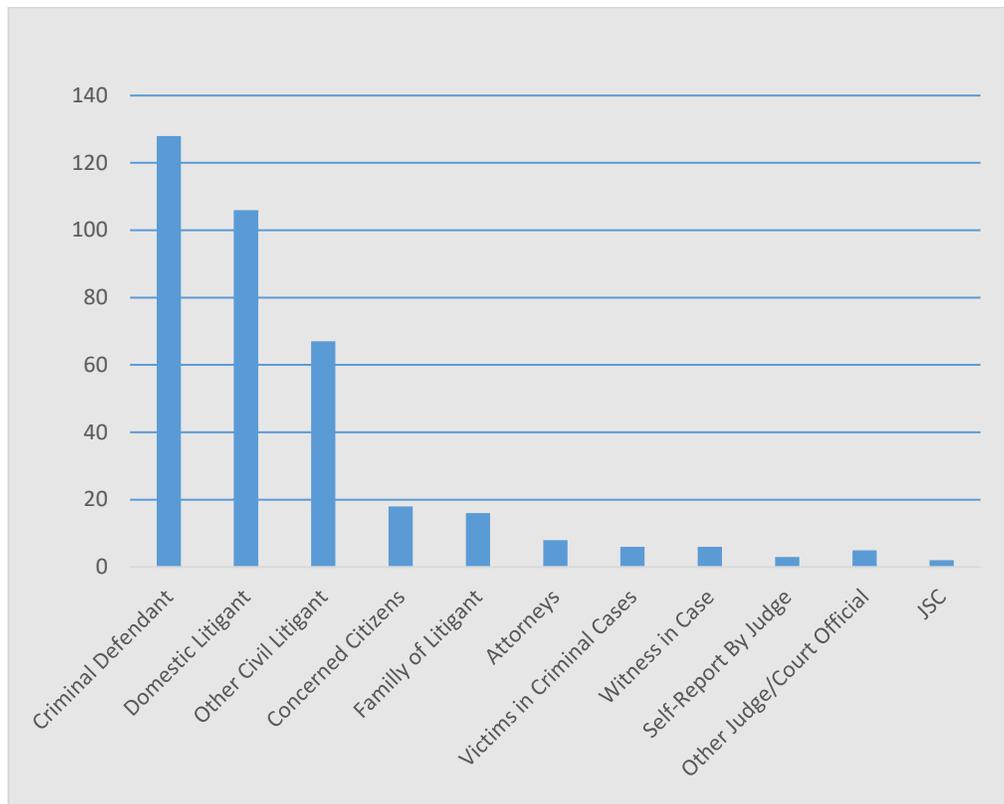
TABLE 3: 2020 DISPOSITION OF FORMAL INVESTIGATIONS



Nature of Complaints Considered by the Commission

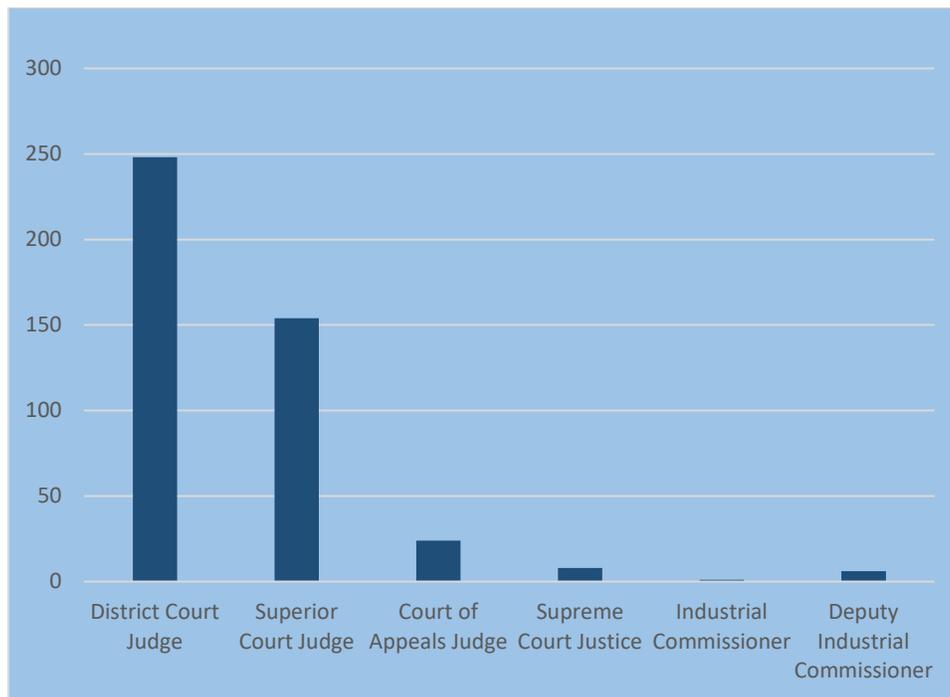
The vast majority of written complaints filed with the Commission are received from individuals involved in criminal or civil proceedings before the judge in question. Other complainants include attorneys, family members of parties, concerned citizens, other judges and court staff, and occasionally anonymous complainants. The Commission also has the authority to initiate a complaint on its own motion on the discovery of credible information of potential misconduct (such as through referrals from other government agencies or officials). Of the 375 complaints filed in 2020, there were 12 primary categories of complainants (note that some complaints have multiple complainants who fall into different categories). The most common type of complaint was criminal defendants (129), followed by domestic litigants (106), civil litigants (67), concerned citizens (18), family members of litigants (16), attorneys (8), victims in criminal cases (6), and witnesses in cases (6). Other complaints included self-reported incidents by the judge, matters reported by other judges or court officials. Table 4 identifies the categories of complainants who filed complaints with the Commission in 2020.

TABLE 4: CATEGORIES OF COMPLAINANTS



Complaints filed with the Commission most often arise out of courtroom proceedings in front of trial judges of the General Court of Justice (superior court and district court judges). A single complaint may also allege misconduct by multiple judges, particularly in complaints against the appellate courts, where a single complaint may name every judge of the Court of Appeals or every justice of the Supreme Court. Overall in 2020, and as set forth in Table 5, district court judges were named in 248 complaints, superior court judges in 155 complaints, judges of the Court of Appeals in 24 complaints, and justices of the Supreme Court in 8 complaints. Only one complaint was received in 2020 against a Commissioner of the Industrial Commission, while Deputy Commissioners were named in 6 complaints.

TABLE 5: TARGETS OF COMPLAINTS: JUDGES AND COMMISSIONERS



As indicated in Table 4, most complainants are criminal defendants or litigants who appeared before a trial judge in either civil, criminal or domestic matters. For example, of the individuals who filed complaints against district court judges, approximately 78% were parties who appeared before the judge, either as domestic litigants (45% of complainants), criminal defendants (19% of complainants), or other civil litigants (14% of complainants). As in the district courts, most complaints against superior court judges were filed by parties. Approximately 77% of complaints against superior court judges were filed by parties who appeared before them – comprised of criminal defendants (55.8% of complaints) and civil litigants (21.4% of complaints). This data is set forth in Tables 6 and 7.

TABLE 6: COMPLAINTS AGAINST DISTRICT COURT JUDGES

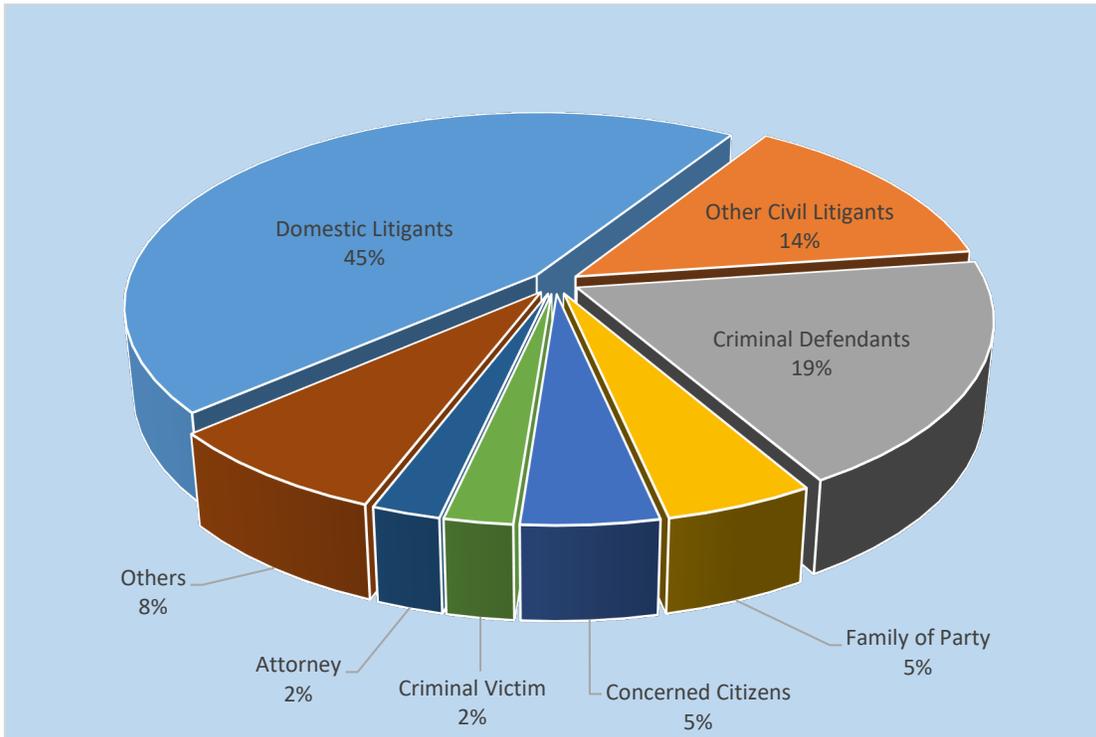
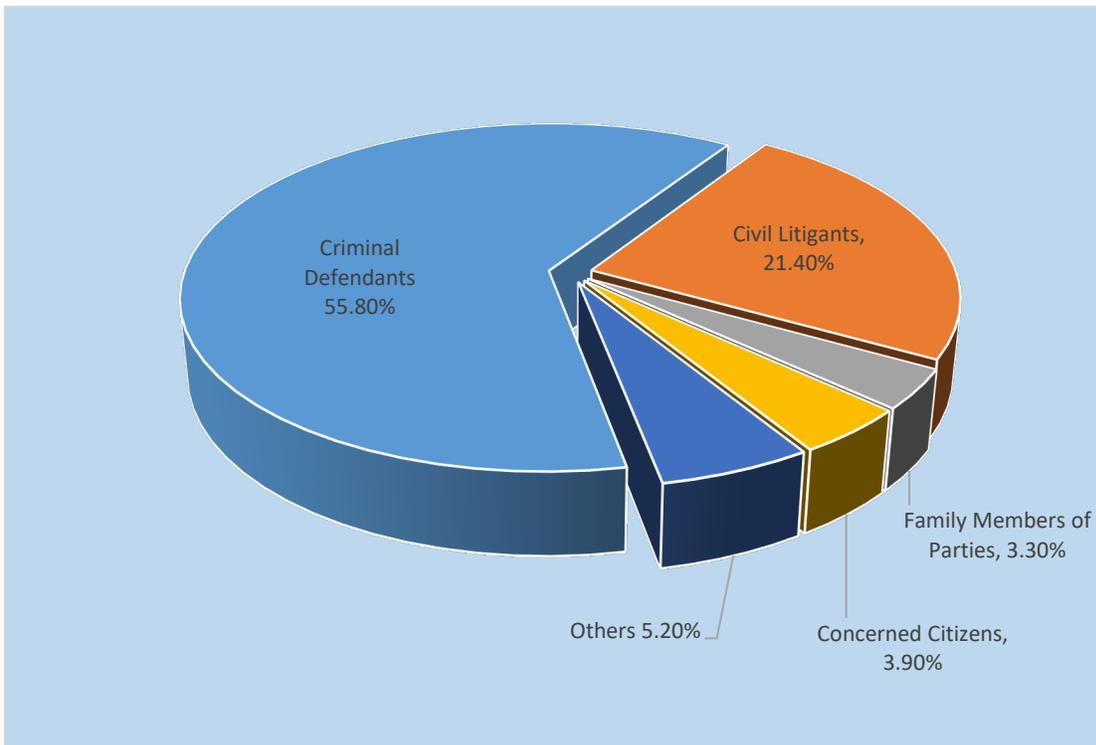
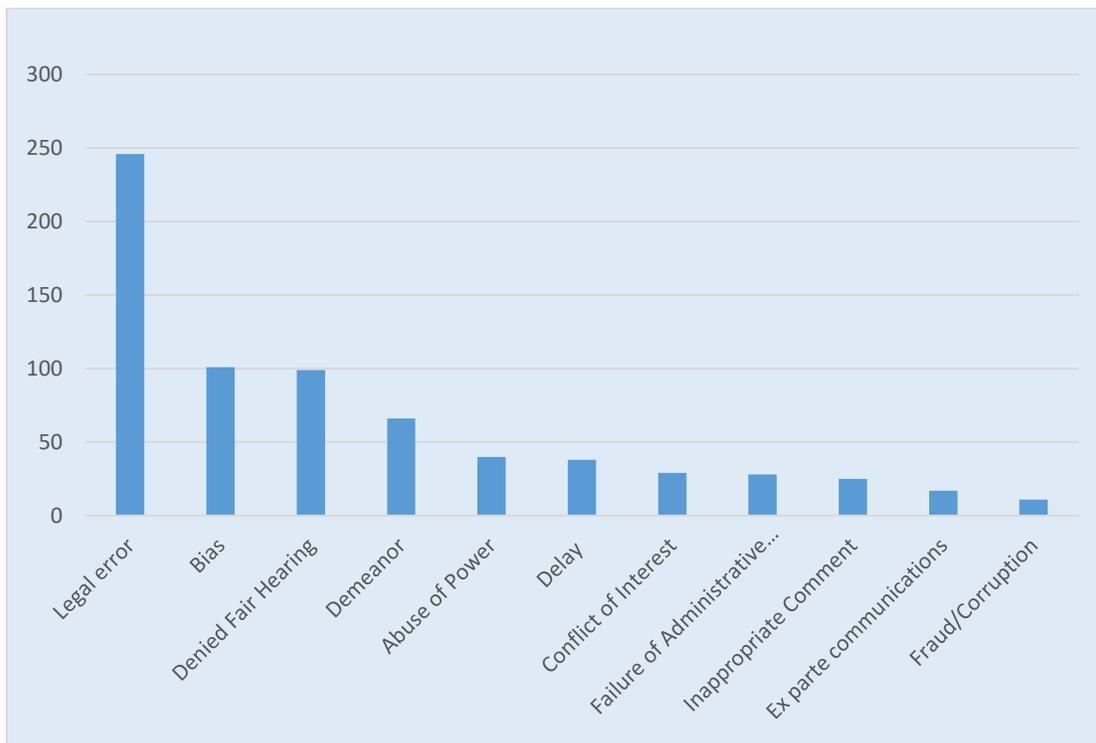


TABLE 7: COMPLAINTS AGAINST SUPERIOR COURT JUDGES



As set forth in Table 8, the most common complaint was that a judge committed some form of legal error in rendering a decision in a case. General allegations of bias or the denial of a fair hearing were also common complaints and were often coupled with claims of legal error. The data below indicates the number of times a particular allegation appeared in a complaint in 2020 (note that a single complaint may raise multiple allegations).

TABLE 8: TYPES OF JUDICIAL MISCONDUCT ALLEGED



Five Year Trends in Investigatory and Disciplinary Workload

Despite the COVID-19 pandemic, the workload of the Commission continued to reflect an overall trend of increasing complaints to be reviewed and considered by the Commission and its staff over the last five years.

TABLE 9: COMPLAINTS, INVESTIGATIONS AND PROCEEDINGS - FIVE YEAR TRENDS

	2020	2019	2018	2017	2016
Matters Pending¹	432	475	413	394	290
Preliminary Investigations Ordered	43	75	59	34	30
Formal Investigations Ordered	22	18	16	28	15
Total Investigations Ordered	65	93	75	62	45
Dismissed Without Formal Investigation²	339	403	343	309	236
Dismissed After Formal Investigation	14	2	5	11	8
Private Letters of Caution Issued	12	10	8	15	10
Statements of Charges Authorized	2	4	6	6	2
Disciplinary Hearings Conducted	2	6	2	2	2
Recommendations for Public Discipline Issued	2	4	2	2	2

¹Includes matters carried over from previous year and new complaints filed.

²Includes complaints dismissed after initial review or after preliminary investigation.

APPENDIX A
PAST AND PRESENT MEMBERS OF THE JUDICIAL STANDARDS COMMISSION

Judges Appointed by the Chief Justice:

Court of Appeals

Hon. Walter E. Brock
Hon. Edward B. Clark
Hon. Gerald Arnold
Hon. Clifton E. Johnson
Hon. Sidney S. Eagles, Jr.
Hon. Jack L. Cozort
Hon. John B. Lewis, Jr.
Hon. John C. Martin
Hon. Wanda G. Bryant
Hon. Chris Dillon*

Superior Court

Hon. George M. Fountain
Hon. W. Douglas Albright
Hon. James M. Long
Hon. Robert D. Lewis
Hon. Marvin K. Gray
Hon. James L. Baker, Jr.
Hon. Richard D. Boner
Hon. Paul L. Jones
Hon. Tanya T. Wallace
Hon. Cy A. Grant
Hon. W. Douglas Parsons
Hon. R. Stuart Albright
Hon. Jeffery B. Foster*
Hon. Athena F. Brooks*

District Court

Hon. E. D. Kuykendall, Jr.
Hon. C. Walter Allen
Hon. L. T. Hammond, Jr.
Hon. W. S. Harris, Jr.
Hon. A. Elizabeth Keever
Hon. Joyce A. Hamilton
Hon. Tanya T. Wallace
Hon. Rebecca B. Knight
Hon. Alexander Lyerly
Hon. Rebecca Blackmore
Hon. Wayne L. Michael
Hon. Sherri W. Elliott
Hon. James H. Faison III*
Hon. Teresa H. Vincent*

Attorneys Elected by the State Bar Council:

Mr. Emerson T. Sanders
Mr. Harold K. Bennett
Mr. Robert G. Sanders
Mr. Jerome B. Clark, Jr.
Mr. E. K. Powe
Mr. Rivers D. Johnson, Jr.
Mr. Louis J. Fisher, Jr.
Mr. William K. Davis
Mr. Z. Creighton Brinson
Mr. Charles M. Davis
Mr. Ronald Barbee
Mr. William O. King
Mr. Steven Michael
Mr. Dudley Humphrey
Mr. L.P. Hornthal, Jr.
Mr. Edward T. Hinson, Jr.
Mr. Fred H. Moody, Jr.
Mr. Andy Penry
Mr. William H. Jones, Jr.
Mr. Forrest Ferrell
Mr. Lonnie M. Player, Jr.*
Ms. Allison Mullins*
Mr. Michael A. Grace*
Mr. Michael Crowell*

Citizens Appointed by the Governor:

Mr. Marvin B. Koonce, Jr.
Mrs. George L. Hundley
Ms. N. Susan Whittington
Mrs. Veatrice C. Davis
Ms. Pamela S. Gaither
Mr. Albert E. Partridge, Jr.
Mrs. Margaret H. Almond
Mr. Melvin C. Swann, Jr.
Mr. Roland W. Leary
Mr. James L. Mebane
Hon. T. Ray Warren
Mrs. Linda Brown Douglas
Hon. Arthur B. Schools, Jr.
Ms. Lorraine Stephens
Mr. Cresswell Elmore
Ms. Talece Y. Hunter*
Mr. Donald L. Porter*

Citizens Appointed by the General Assembly:

Hon. Todd W. Tilley
Mr. R. Wayne Troutman
Mr. James P. Testa
Mr. Gregory H. Greene
Mr. Dean Jordan
Mr. Grady Hawkins
Mr. Ronald L. Smith*
Mr. John M. Check*

*Denotes current member

