

# NORTH CAROLINA JUDICIAL STANDARDS COMMISSION



IMPARTIALITY INDEPENDENCE INTEGRITY

## ANNUAL REPORT 2019

HON. WANDA G. BRYANT  
CHAIR

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This report provides statistical data of the activities of the Commission in 2019. For further information, please visit the Judicial Standards Commission’s website at:

<http://ncjisc.gov>

## A MESSAGE FROM THE COMMISSION CHAIR

Ladies and Gentlemen:

As Chair of the North Carolina Judicial Standards Commission, I am pleased to present the Commission's 2019 Annual Report. As the workload of the Commission continues to increase, we remain steadfast in our commitment to providing a fair and thorough process for reviewing complaints, conducting investigations, and where appropriate, initiating disciplinary proceedings. The Commission staff also continues its important work in providing confidential ethics advice to judges across the State of North Carolina and offering numerous educational programs to judges, court employees and others regarding the demanding obligations of the Code of Judicial Conduct.

As the coming year brings my retirement, it will be my last year as Chairperson of the Commission. I wish to extend my deepest gratitude to all the Commission members and staff with whom I have had the pleasure of working since becoming Chairperson in 2014. It has been an honor and a privilege to contribute to the essential work of the Commission in promoting the highest standards of conduct in the judiciary. We will continue to make strides to improve the Commission's procedures to ensure a fair and professional process for reviewing and investigating complaints and will continue to develop resources for judges as they navigate their professional and ethical duties under the Code of Judicial Conduct.

Sincerely,



Wanda G. Bryant  
Judge, North Carolina Court of Appeals  
Chair, North Carolina Judicial Standards  
Commission

## INTRODUCTION

The North Carolina Judicial Standards Commission reviews and investigates allegations of misconduct or disability made against judges and justices of the North Carolina General Court of Justice and commissioners and deputy commissioners of the North Carolina Industrial Commission. When there is clear and convincing evidence of judicial misconduct, the Commission makes recommendations to the North Carolina Supreme Court for disciplinary action. The Commission also provides formal and informal advisory opinions to justices, judges, commissioners, and deputy commissioners regarding their ethical obligations under the North Carolina Code of Judicial Conduct. By increasing awareness on the part of both the judiciary, the Industrial Commission, and the public as to the ethical obligations under the Code of Judicial Conduct, the Commission works to protect the integrity of the judicial process and to preserve public confidence in state judicial proceedings.

## 2019 COMMISSION MEMBERS

There are thirteen members of the Commission, including judges, attorneys and citizens. The Chief Justice of North Carolina appoints a judge of the North Carolina Court of Appeals to serve as Chair of the Commission, who serves at the pleasure of the Chief Justice. The twelve regular members of the Commission each serve one, six year term, and are appointed as follows: two superior court judges and two district court judges appointed by the Chief Justice; four members of the North Carolina State Bar elected by the State Bar Council; and four North Carolina citizens - two appointed by the Governor and two appointed by the General Assembly (one on recommendation of the Speaker of the North Carolina House of Representatives and one on recommendation of the President Pro Tempore of the North Carolina Senate). The citizen members of the Commission must not be attorneys or active or retired judges.

In 2019, the members of the Commission were as follows:

**The Honorable Wanda G. Bryant**  
Judge of the North Carolina Court of Appeals  
Chair of the Judicial Standards Commission

**The Honorable R. Stuart Albright**  
Judge of the North Carolina Superior Court  
Commission Vice-Chair

**The Honorable Jeffery B. Foster**  
Judge of the North Carolina Superior Court  
Commission Vice-Chair

**The Honorable James H. Faison III**  
Judge of the North Carolina District Court

**The Honorable Sherri W. Elliott**  
Judge of the North Carolina District Court

**Forrest Ferrell, Esq.**  
Member of the North Carolina State Bar

**William H. Jones, Jr., Esq.**  
Member of the North Carolina State Bar

**Lonnie M. Player, Jr., Esq.**  
Member of the North Carolina State Bar

**Allison Mullins, Esq.**  
Member of the North Carolina State Bar

**Mr. Dean Jordan**  
North Carolina Citizen

**Mr. Cresswell D. Elmore**  
North Carolina Citizen

**Ms. Talece Y. Hunter**  
North Carolina Citizen

**Mr. Grady Hawkins**  
North Carolina Citizen

## ORGANIZATIONAL OVERVIEW

### **Jurisdiction**

The Judicial Standards Commission was created in 1973 to implement an amendment to Article IV, Section 17 of the North Carolina Constitution authorizing the General Assembly to provide a mechanism for the discipline of judges apart from the impeachment process. The Commission is not involved in the process for the impeachment of judges by the state legislature under the North Carolina Constitution.

Article 30 of Chapter 7A of the General Statutes governs the Commission's authority and prescribes the general procedures for the discipline of any judge or justice of the General Court of Justice. 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 committed by commissioners and deputy commissioners of the North Carolina Industrial Commission. Presently, the jurisdiction of the Commission extends to over 500 judges, including justices of the North Carolina Supreme Court, judges of the North Carolina Court of Appeals, judges of the North Carolina Superior Courts, judges of the North Carolina District Courts, emergency and recalled judges, as well as the commissioners and deputy commissioners of the North Carolina Industrial Commission.

The Commission has no jurisdiction or authority 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 agency, the Commission also has no jurisdiction or authority over federal judges at any level.

### **Limits on Commission Action and Authority**

The Commission's disciplinary authority extends only to the review and investigation of complaints of judicial misconduct that would violate the North Carolina Code of Judicial Conduct or would otherwise constitute grounds for discipline under North Carolina General Statutes Section 7A-376(b) (willful misconduct in office, willful and persistent failure to perform the judge's duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute). The Commission may also investigate allegations that a judge is suffering from a physical or mental incapacity that interferes with the performance of the judge's duties. In appropriate circumstances, and after a full investigation and a hearing, the Commission may recommend disciplinary action to be taken by the North Carolina Supreme Court. Such recommended discipline may include public reprimand, censure, suspension or removal from office. The North Carolina Supreme Court may adopt, modify or reject the Commission's recommendations in whole or in part. In cases where the misconduct does not rise to the level where disciplinary action is to be recommended, the Commission may

issue private letters of caution to individuals under inquiry. These private letters of caution are recorded in a judge's permanent disciplinary file, but are confidential and are not public records.

Although the Commission interprets the Code of Judicial Conduct and makes recommendations concerning discipline for violation of its Canons, the Commission itself does not promulgate the Code. That authority rests with the Supreme Court of North Carolina, which adopted the current Code of Judicial Conduct on January 31, 2006, as amended on November 5, 2015. All orders and amendments with respect to the Code of Judicial Conduct are published in the advance sheets of the North Carolina Reports. The Commission also maintains a copy of the current version of the Code of Judicial Conduct on its website.

### **Procedures**

The Commission's procedures are prescribed generally in Article 30 of Chapter 7A of the North Carolina General Statutes. In addition, as provided in Section 7A-375(g) of the North Carolina General Statutes, the Commission has promulgated additional rules of procedure that govern the initiation and review of complaints before the Commission, as well as the conduct of the Commission's proceedings. The current rules became effective on September 1, 2014, and are available on the Commission's website.

Complaint forms are available on the Commission's website, and they may either be mailed to the Commission or filed electronically through the online form. The Commission does not accept complaints by telephone and citizens may not present complaints in person before the Commission or attend Commission meetings.

The Commission staff reviews each complaint to determine whether the allegations, if true, would be sufficient to establish a violation of the North Carolina Code of Judicial Conduct or would otherwise constitute grounds for discipline or removal by the Supreme Court under Section 7A-376 of the North Carolina General Statutes. If after initial review the allegations are determined to be obviously unfounded or frivolous, the Chair may dismiss the complaint after the appropriate investigative panel of the Commission has had the opportunity to review the complaint and no objection by any member is made to such dismissal after initial review.

Complaints that are unlikely to proceed past initial review typically involve allegations that fall into one of these categories: (1) complaints seeking only reversal or other change to a judge's ruling; (2) complaints seeking only removal of the judge from a particular case; (3) complaints based on the complainant's erroneous understanding of the judicial process or some other error as to jurisdiction or the law; and (4) complaints that are based solely on the claim that the complainant is not subject to the authority of the state's courts or government. Other times, complaints may raise legitimate grievances over an incident, but are dismissed as outside the Commission's authority, such as when: (1) the complaint is

against individuals not subject to the Commission's jurisdiction; (2) the alleged conduct took place outside the statute of limitations provided in the Code of Judicial Conduct (three years in most cases); (3) the judge made a clear legal error, but there is insufficient evidence that the error was made in bad faith or as the result of misconduct, or (4) the alleged conduct, though concerning or improper, was not a violation of the Code of Judicial Conduct.

For complaints that are not dismissed after initial review, the investigative panel may request a preliminary investigation to gather more facts relating to the complaint. In the alternative, or after a preliminary investigation is concluded, if the investigative panel considering a complaint finds sufficient credible allegations of serious misconduct, it may order a formal investigation into a complaint. The accused judge is then notified of the Commission's formal investigation and the nature of the allegations of misconduct, and is given an opportunity to respond. Allegations that are most likely to lead to a formal investigation by the Commission include allegations of improper *ex parte* communications between a judge and one of the parties or lawyers in a case, a judge's refusal to disqualify himself or herself in cases where a clear conflict of interest exists, a judge's use of abusive language towards litigants or counsel, neglect of cases resulting in unjustified delays in entering written orders, the abuse of the judicial office for the personal gain of the judge or other private interests, financial improprieties, and serious personal misconduct by the judge of a criminal nature.

If, after a formal investigation is completed, the Commission finds probable cause to believe that judicial misconduct has occurred, it will initiate disciplinary proceedings by serving a Statement of Charges upon the judge, who will be summoned to appear at a disciplinary hearing before the Commission. In cases where an inquiry is opened or disciplinary proceedings are commenced, the Commission has the authority under Section 7A-377(d) of the North Carolina General Statutes to punish those appearing before the Commission for contempt or for the refusal to obey lawful orders or process issued by the Commission.

At the conclusion of a disciplinary hearing, if the Commission finds that the evidence warrants public discipline of the judge, the Commission will make a recommendation to the Supreme Court as to a specific sanction. If the judge contests that recommendation before the Supreme Court, Commission Counsel may appear before the Supreme Court to represent the Commission as to its recommendation. The Supreme Court may adopt, amend or reject the Commission's recommendation, in whole or in part. Any disciplinary action taken by the Supreme Court against the judge is a matter of public record and such decisions are published not only in official and unofficial case reports, but are also published on the Commission's website.

## **Confidentiality**

While decisions of the Supreme Court to impose discipline 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 confidentiality requirement extends to any investigation that the Commission may make, disciplinary hearings before the Commission, recommendations of the Commission to the Supreme Court and the record filed in support of recommendations to the Supreme Court. The judge, justice, commissioner or deputy commissioner who is the subject of the complaint or proceedings before the Commission may waive the confidentiality requirement. Confidentiality also ceases if the Supreme Court orders disciplinary action against the respondent in question. At that point, 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. In accordance with 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.

## **Advisory Opinions and Educational Programs**

In addition to investigating complaints of judicial misconduct and recommending discipline to the Supreme Court, the Commission also provides an important service to judges, justices and commissioners and deputy commissioners by issuing both formal and informal advisory opinions as to whether certain conduct, if undertaken, would rise to the level of misconduct. The Commission may issue a formal advisory opinion in response to a written request, and any formal advisory opinions are published on the Commission's website.

Judges, justices, commissioners and deputy commissioners may also seek private, confidential informal advisory opinions from the Commission's Chair, Executive Director and Commission Counsel. Each year, Commission staff provides over 300 written responses to requests for informal confidential ethics advice.

The Commission Chair and staff also take part in educational programs for judges, attorneys and other interested parties relating to the North Carolina Code of Judicial Conduct and the work of the Commission. In 2019, Commission staff participated in approximately 10 training programs for North Carolina judges, public servants and attorneys.

## 2019 WORKLOAD STATISTICS

### Review and Investigation of Complaints

As set forth in Table 1, there were 475 matters pending before the Commission in 2019. This number included 424 new complaints received between January 1, 2019 and December 31, 2019, as well as 51 matters that were pending and carried over from 2018. The 51 matters carried over from 2018 included one matter that was a consolidated action involving two complaints and another matter that was a consolidated action of four complaints. A summary of the Commission's workload in 2019 is provided in Table 1.

**TABLE 1: 2019 WORKLOAD SUMMARY**

<b>2019 Total Workload</b>	<b>475</b>
<b>New complaints in 2019</b>	424
<b>Matters carried over from 2018</b>	51

As set forth in Table 2 below, as of December 31, 2019, the Commission took action on 419 of the 475 pending matters in 2019.

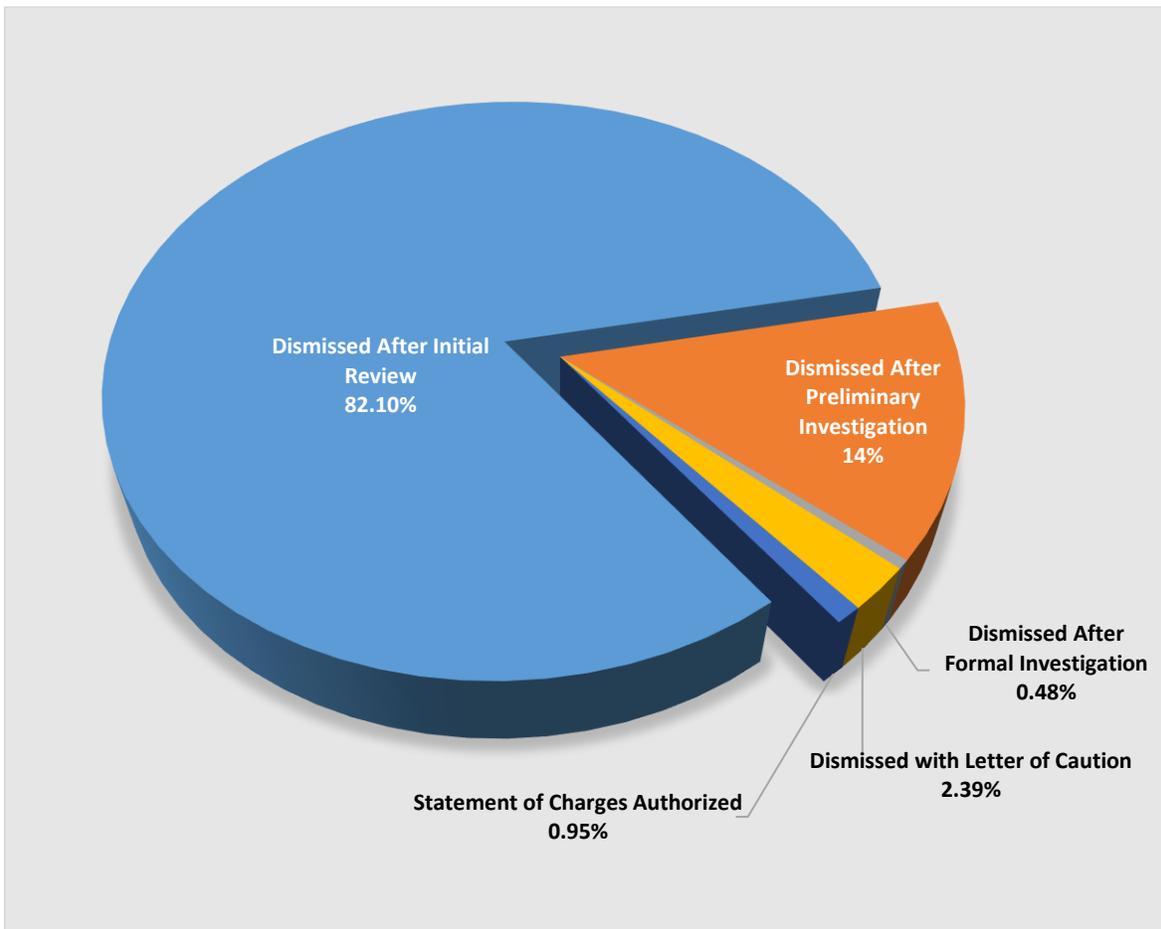
**TABLE 2: 2019 DISPOSITION SUMMARY**

<b>Summary of Commission Action in 2019</b>	<b>475</b>
<b>Dismissed After Initial Review</b>	344
<b>Dismissed After Preliminary Investigation</b>	59
<b>Dismissed After Formal Investigation</b>	2
<b>Dismissed with Letter of Caution</b>	10
<b>Statement of Charges Authorized</b>	4
<b>Awaiting Initial Review in 2020</b>	56

Based upon charges authorized between 2017 and 2019, there were 8 pending disciplinary proceedings before the Commission in 2019 (two of them involved consolidated cases with multiple complaints). Six of those 8 proceedings had disciplinary hearings in 2019 and two remain pending for hearing before the Commission in 2020. Of the six cases heard by the Commission in 2019, four matters resulted in recommendations of public discipline filed with the North Carolina Supreme Court in 2019, one matter was dismissed based upon a consent order, and one matter was pending after hearing and carried over to 2020. Of the four recommendations filed with the Supreme Court in 2019, two resulted in public disciplinary decisions available on the Commission's website, one is awaiting hearing before the North Carolina Supreme Court, and one was dismissed.

By the percentages, and as set forth in Table 3, of the 419 matters considered by the Commission in 2019, 82.10% were dismissed after initial review and without investigation, 14% were dismissed after preliminary investigation and .48% were dismissed after formal investigation. For the remaining complaints, 2.39% were dismissed with a private letter of caution, and .95% of the complaints resulted in the initiation of disciplinary proceedings through the filing of statements of charges.

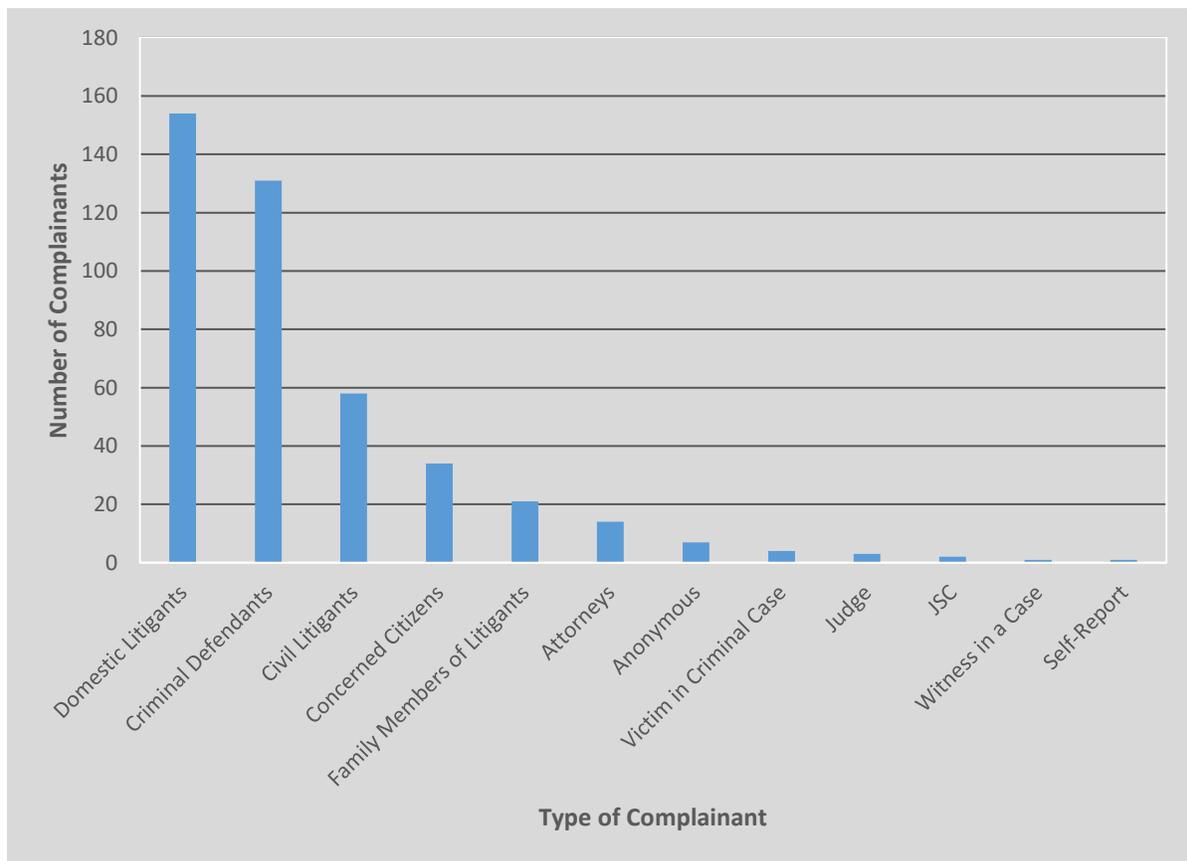
**TABLE 3: 2019 DISPOSITION SUMMARY BY PERCENTAGE**



## **Nature of Complaints Considered by the Commission**

Written complaints are received from citizens (most of whom are involved in criminal or civil proceedings before the judge in question), attorneys, judges (either as self-reports or reports from other judges and court staff), and occasionally anonymous complainants. The Commission will also at times initiate a complaint on its own motion on the discovery of credible information of potential misconduct (such as through reports in the media). There were 12 different categories of complainants in the 424 new complaints filed in 2019 (note that some complaints have multiple complainants). Table 4 identifies the categories of complainants who filed complaints with the Commission in 2019.

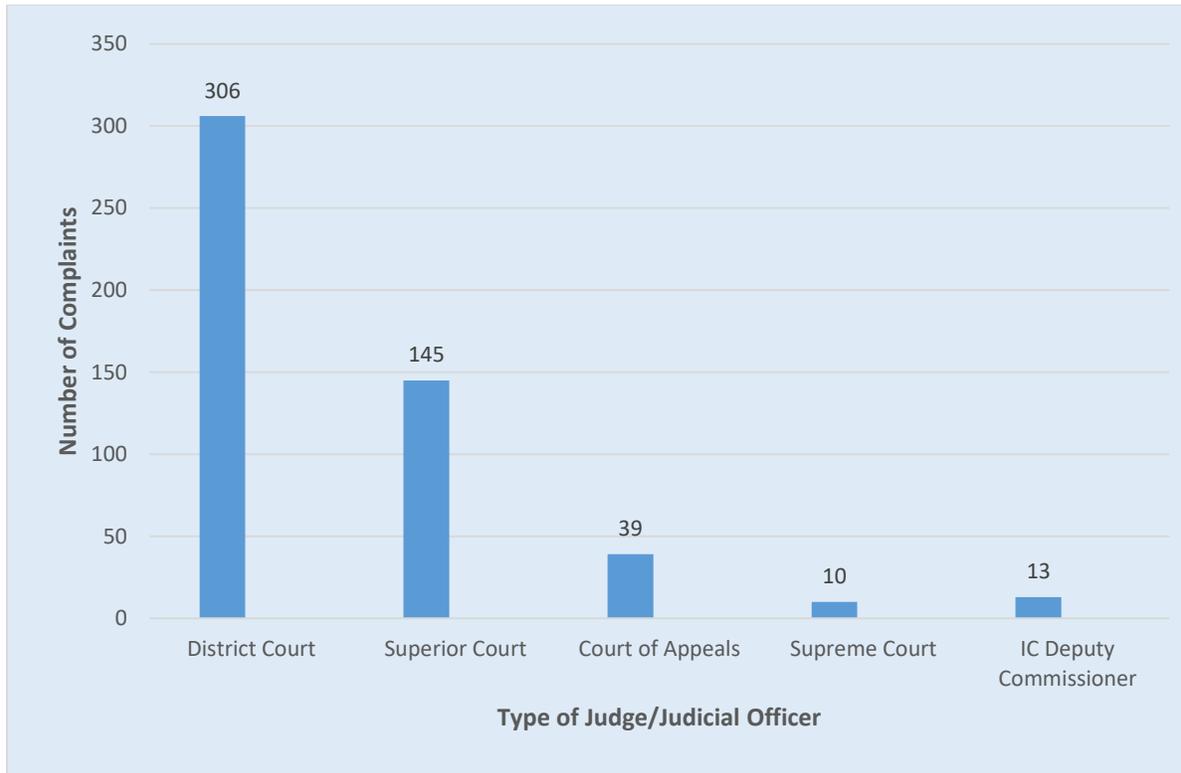
**TABLE 4: CATEGORIES OF COMPLAINANTS**



Most complaints arose 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 2019, and as set forth in Table 5, complaints named district court judges 306 times, superior court judges 145 times, judges of the Court of Appeals 39

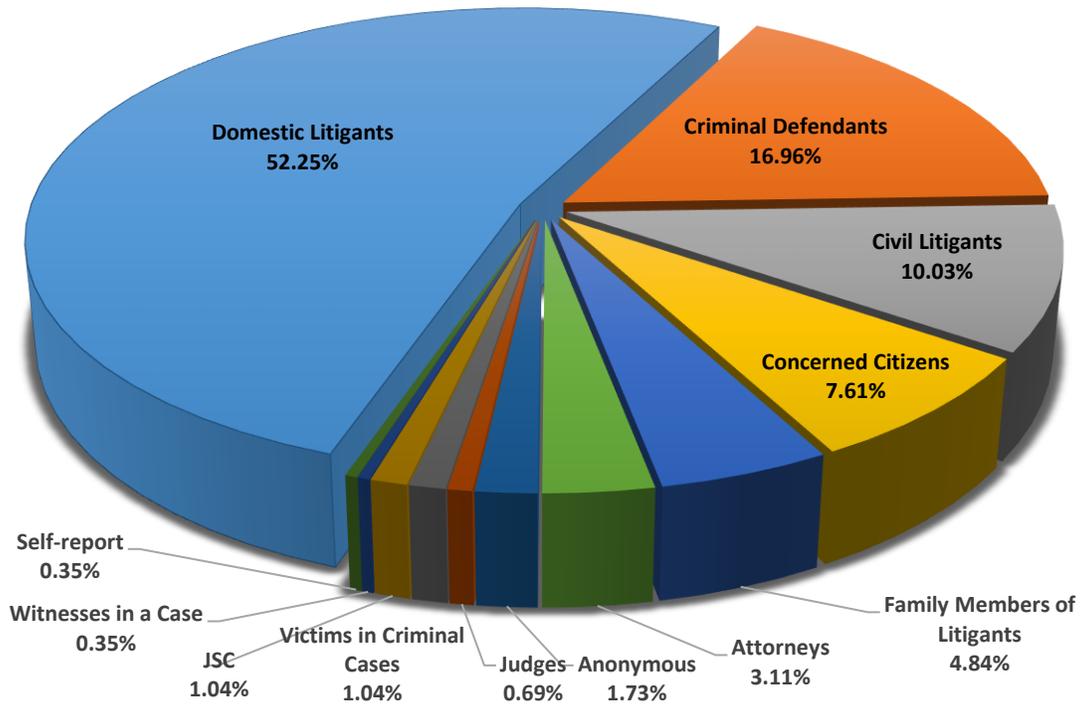
times, and justices of the Supreme Court 10 times. No complaints were received in 2019 against commissioners of the Industrial Commission, while deputy commissioners were named in complaints 13 times.

**TABLE 5: TARGETS OF COMPLAINTS: JUDGES AND COMMISSIONERS**

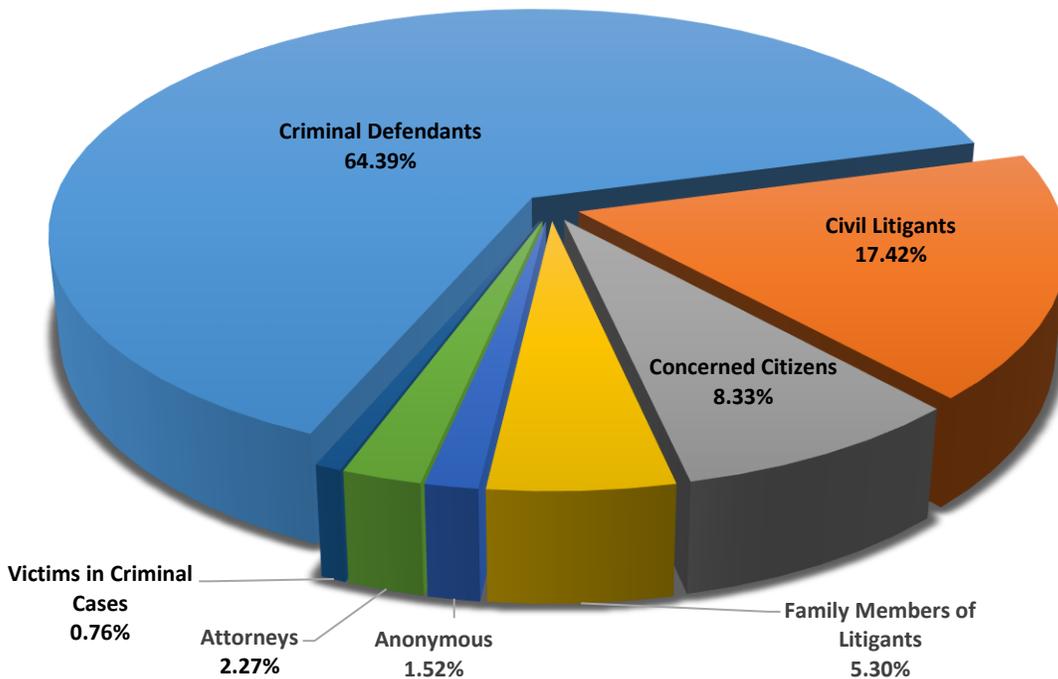


As set forth in Tables 6 and 7, most complainants are litigants who appeared before a trial judge in either civil, criminal or domestic matters. For example, of the complainants who filed complaints against district court judges, almost 80% were litigants who appeared before the judge, either as domestic litigant, criminal defendant or civil litigant. Of those litigants, most were involved in domestic cases (including divorce, child custody and child support). As in the district courts, approximately 80% of complaints against superior court judges were filed by parties who appeared before them. Of those complainants, most were criminal defendants.

**TABLE 6: COMPLAINTS AGAINST DISTRICT COURT JUDGES**

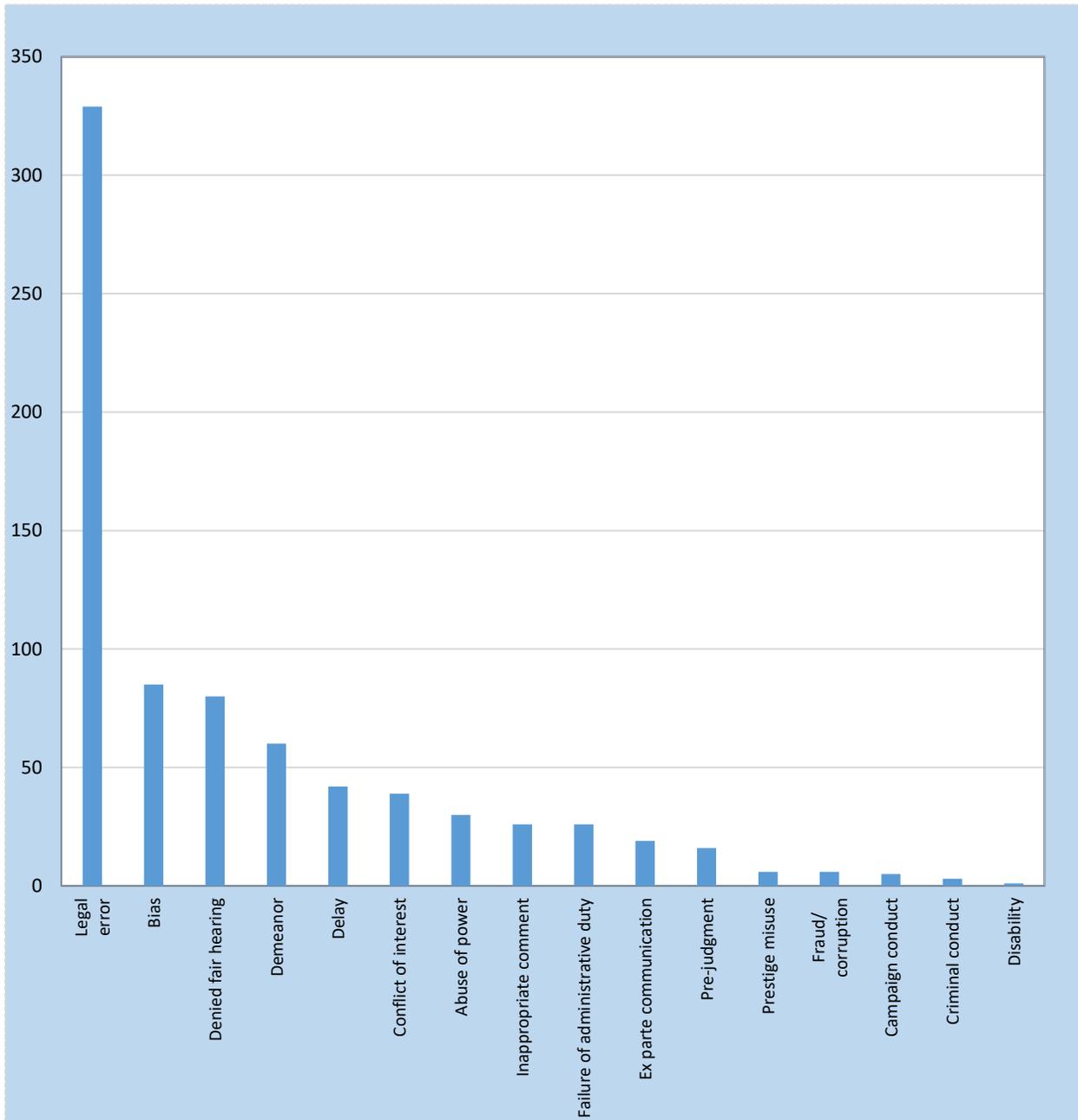


**TABLE 7: COMPLAINTS AGAINST SUPERIOR COURT JUDGES**



**TABLE 8: TYPES OF JUDICIAL MISCONDUCT ALLEGED**

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 2019 (note that a single complaint may raise multiple allegations).



## **Five Year Trends in Workload**

The Commission's workload increased significantly in 2019. As indicated in Table 9, there was a large increase in the number of complaints filed in 2019, as well as the number of disciplinary hearings and recommendations filed with the North Carolina Supreme Court.

**TABLE 9: FIVE YEAR TRENDS**

	<b>2019</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>
<b>Complaints Pending at Year Start</b>	51	56	34	39	50
<b>New Complaints Filed</b>	424	355	357	251	227
<b>Complaints Pending at Year End<sup>1</sup></b>	56	55	56	34	39
<b>Dismissed Without Formal Investigation<sup>2</sup></b>	403	343	309	236	217
<b>Formal Investigations Ordered</b>	18	16	28	15	16
<b>Dismissed After Formal Investigation</b>	2	5	11	8	12
<b>Private Letters of Caution Issued</b>	10	8	15	10	7
<b>Statements of Charges Authorized</b>	4	6	6	2	3
<b>Disciplinary Hearings</b>	6	2	2	2	2
<b>Recommendations for Public Discipline</b>	4	2	2	2	1
<b>Charges Withdrawn or Dismissed</b>	1	0	1	0	1

<sup>1</sup>Includes new complaints awaiting initial review, existing complaints under investigation and disciplinary proceedings awaiting hearings.

<sup>2</sup>Includes all complaints dismissed on 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\*

##### *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\*

##### *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\*

#### **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\*

#### **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\*

#### **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\*

\*Denotes current member