

# THE NORTH CAROLINA JUDICIAL STANDARDS COMMISSION



## 2015 ANNUAL REPORT

Post Office Box 1122  
Raleigh, North Carolina 27602  
(919) 831-3630



## State of North Carolina Judicial Standards Commission

JUDGE WANDA G. BRYANT, CHAIR  
JUDGE R. STUART ALBRIGHT  
JUDGE SHERRI W. ELLIOTT  
CRESSWELL D. ELMORE  
FORREST A. FERRELL  
GREGORY H. GREENE  
EDWARD T. HINSON, JR.  
WILLIAM H. JONES, JR.  
DEAN JORDAN  
JUDGE WAYNE L. MICHAEL  
FRED H. MOODY, JR.  
JUDGE W. DOUGLAS PARSONS  
LORRAINE G. STEPHENS

P. O. Box 1122  
Raleigh, NC 27602  
(919) 831-3630

CAROLYN A. DUBAY  
EXECUTIVE DIRECTOR

JAMESON M. MARKS  
COMMISSION COUNSEL

April 29, 2016

Ladies and Gentlemen:

As Chair of the North Carolina Judicial Standards Commission, I am pleased to present the Commission's 2015 Annual Report, which details the exemplary work of the Commission and its staff in reviewing and investigating allegations of judicial misconduct or disability against judges and justices of the North Carolina Court of General Justice and commissioners and deputy commissioners of the North Carolina Industrial Commission. This year, the Commission considered over 200 complaints, and each was carefully reviewed and considered with an eye toward maintaining the highest ethical standards of our state's judicial officers and to ensure fairness to both the complainant and the judge. In addition to these duties, the Commission staff has worked tirelessly to raise awareness of the ethical duties contained in the North Carolina Code of Judicial Conduct and to answer questions from those subject to the Code on its application in a variety of situations.

In addition to the dedication and hard work that these statistics bear out, the Commission and its staff remain ever mindful of the importance of the faithful execution of the Commission's mission. The work of the Commission is critical to maintaining public trust and confidence in the judiciary. The existence and authority of an independent commission to investigate and recommend discipline in cases of judicial misconduct is also a central component of any civil society committed to the rule of law. The Commission and staff are fully aware of the tremendous responsibility that is entrusted to the Commission. We are proud to discharge these duties and to continue to serve as a resource for education and outreach on the importance of judicial ethics. It remains an honor and a privilege to serve as the Chair of the Judicial Standards Commission.

Sincerely,

A handwritten signature in black ink that reads "Wanda G. Bryant".

Wanda G. Bryant  
Chair

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This report provides statistical data of the activities of the Commission in 2015. For further information, please visit the Judicial Standards Commission’s website at:

<http://www.nccourts.org/Courts/CRS/Councils/JudicialStandards/Default.asp>

## 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 compelling 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 judges, justices, 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.

### 2015 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, one appointed by the Speaker of the North Carolina House of Representatives and one appointed by the President Pro Tempore of the North Carolina Senate. The citizen members of the Commission must not be attorneys or active or retired judges. A list of past and present members of the Commission is attached as APPENDIX A. The current membership of the Commission is as follows:

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

**The Honorable W. Douglas Parsons**  
Judge of the North Carolina Superior Court  
Commission Vice-Chair

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

**The Honorable Wayne L. Michael**  
Judge of the North Carolina District Court

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

**Edward T. Hinson, Jr., Esq.**  
Member of the North Carolina State Bar

**Fred H. Moody Jr., Esq.**  
Member of the North Carolina State Bar

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

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

**Mr. Gregory H. Greene**  
North Carolina Citizen

**Mr. Cresswell Elmore**  
North Carolina Citizen

**Ms. Lorraine Stephens**  
North Carolina Citizen

**Mr. Dean Jordan**  
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 ethical 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, along with the January 31, 2006 and November 5, 2015 orders, 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.

No complaint form is currently required in order to make a complaint to the Commission, although all complaints must be submitted in written form. The Commission does not accept complaints by telephone or email, 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 found 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, 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 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 recommendation hearing. 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.

Upon the conclusion of a disciplinary recommendation hearing, the Commission will make a recommendation to the Supreme Court, and if that recommendation is contested by the judge, counsel for the Commission 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 recommendations, 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, remain confidential unless confidentiality is waived by the judge who is the subject of the inquiry. 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.

Prior to the initiation of any disciplinary recommendation hearing, and in accordance with Commission rules, the Commission may disclose certain 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 Industrial Commission 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 provides formal advisory opinions in response to written requests, and any formal advisory opinions are published on the Commission's website. In 2015, the Commission issued three formal advisory opinions, which are posted on the Commission's website.

Judges, justices, commissioners and deputy commissioners may also seek private, confidential informal advisory opinions from the Commission's Executive Director and Commission Counsel, although such opinions are not binding on the Commission. Each year, Commission staff responds to between 200 and 300 requests for informal 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.

## **2015 WORKLOAD STATISTICS**

### **Review and Investigation of Complaints**

Inquiries concerning judicial misconduct of any justice or judge of the General Court of Justice or a commissioner or deputy commissioner of the Industrial Commission are initiated by written complaints or are opened by the Commission acting on its own motion.

From January 1, 2015 to December 31, 2015, 227 new inquiries were opened. In addition, 50 inquiries remained pending as of December 31, 2014 and are also included in the Commission's 2015 workload. As such, there were 277 matters pending before the Commission in 2015. During the course of 2015, 238 inquiries were closed and 39 inquiries remained pending on December 31, 2015. A summary of the inquiries pending, opened and closed in 2015 is provided in Table 1.

**TABLE 1: 2015 WORKLOAD SUMMARY**

Inquiries Opened in 2015:	227
Pending Inquiries as of January 1, 2015:	50
<b>2015 Total Workload:</b>	<b>277</b>
Inquiries Closed in 2015:	238
Pending Inquiries as of Dec. 31, 2015:	39

With respect to the disposition of the 238 inquiries that were closed in 2015: 219 inquiries were dismissed after initial review by the Commission; 16 inquiries were dismissed after formal investigation; 1 inquiry was dismissed at the conclusion of a disciplinary proceeding; and the remaining 2 inquiries were consolidated for a disciplinary proceeding as they pertained to the same judge and resulted in a recommendation for disciplinary action by the North Carolina Supreme Court. The North Carolina Supreme Court adopted the Commission's recommendation and issued a public reprimand in *In re Hill*, \_\_ N.C. \_\_, \_\_ S.E.2d \_\_ (2015). A summary of the disposition of inquiries in 2015 is set forth in Table 2.

**TABLE 2: 2015 DISPOSITION SUMMARY**

<b>Total Inquiries Considered in 2015:</b>	<b>238</b>
Dismissed after Initial Review:	219
Dismissed After Formal Investigation:	16
Dismissed After Disciplinary Proceedings:	1
Discipline Recommended:	1 (consolidation of 2 inquiries)

As to disciplinary action taken by the Commission in 2015, the Commission issued 7 private letters of caution and one recommendation for disciplinary action. With respect to the private letters of caution: 2 private letters of caution were issued after initial review; 4 private letters of caution were issued after formal investigation; and 1 letter of caution was issued in an inquiry that remains pending for a disciplinary proceeding on a separate allegation of misconduct raised in the same complaint.

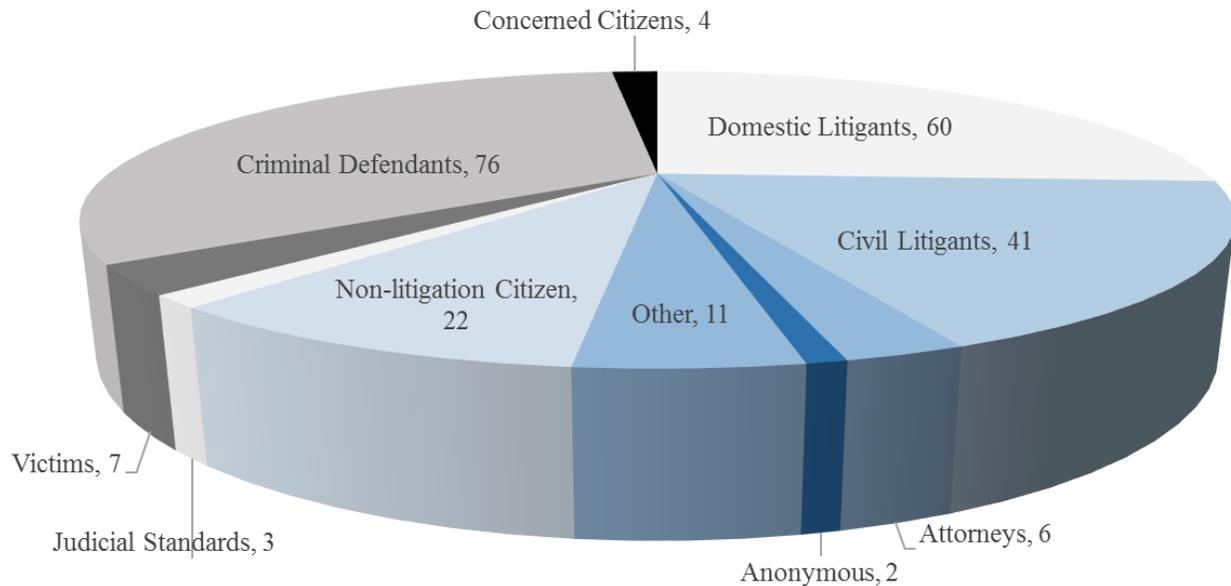
The Commission also reports that in 2015, the North Carolina Supreme Court issued a public reprimand in *In re Branch*, \_\_ N.C. \_\_, \_\_ S.E.2d \_\_ (2015), adopting a recommendation of the Commission based on a disciplinary proceeding that was conducted in 2014.

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

As noted previously, inquiries concerning judicial misconduct are initiated by written complaints or are opened by the Commission acting on its own motion. 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 occasionally anonymous complainants. The Commission will also at times open an inquiry on its own motion on the discovery of potential misconduct (such as through reports in the media).

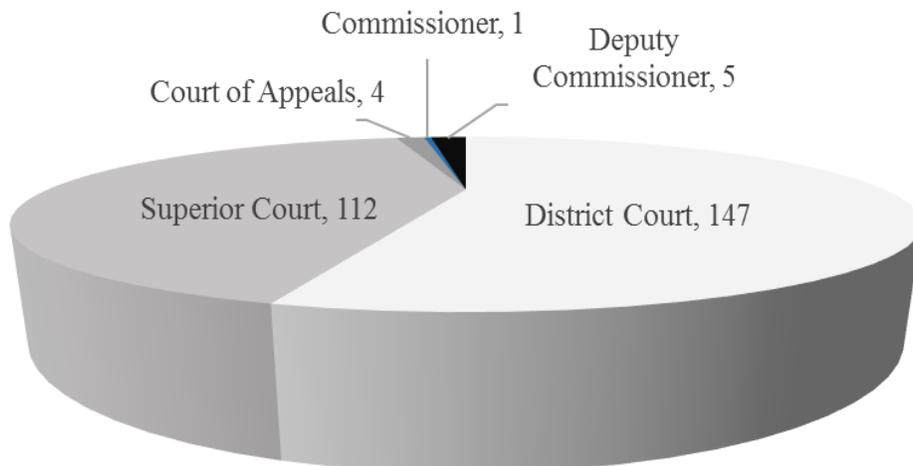
Table 3 identifies the source of complaints considered in 2015:

**TABLE 3: SOURCE OF COMPLAINTS**



With respect to the type of judge who was subject to a complaint in 2015, most complaints were directed at either Superior Court or District Court judges and arose from courtroom proceedings. As set forth in Table 4 below, in 2015, the Commission considered 147 complaints against District Court judges, 112 complaints against Superior Court judges, 4 complaints against Court of Appeals judges, 5 complaints against Deputy Commissioners of the Industrial Commission, and 1 complaint against a Commissioner of the Industrial Commission. Note that there were 227 new complaints received in 2015, but many complaints raised allegations against more than one judge or commissioner.

**TABLE 4: CATEGORIES OF RESPONDENT JUDGES AND COMMISSIONERS**



As set forth in Table 5 below, complainants raised a variety of allegations of judicial misconduct. By far, the most common complaint was that a trial judge or Industrial Commission deputy commissioner 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. The data below indicates the number of times a particular allegation appeared in a complaint before the Commission in 2015 (note that a single complaint may raise multiple allegations):

**TABLE 5: TYPES OF ALLEGATIONS OF JUDICIAL MISCONDUCT**

Legal/Procedural Error	163
Bias	41
Denied Fair Hearing	40
Abuse of Power	36
Demeanor	23
Inappropriate Comments	23
Ex Parte Communications	16
Failed Administrative Duty	18
Delay	12
Fraud/Corruption	11
Prestige Misuse	3
Conflict of Interest	13
Criminal Conduct	3
Campaign conduct	2
Other	10

Over the last five years, the Commission's workload has remained fairly consistent, although 2015 did experience a drop in the number of formal investigations ordered by the Commission. As indicated on Table 6, the number of charges filed, hearings conducted and recommendations for public discipline remained the same in 2015 as it was in 2014.

**TABLE 6: FIVE YEAR COMPARATIVE ANALYSIS**

Year	Pending from Previous Years	New	Pending at Year End	Dismissed After Initial Review	Formal Investigation Ordered	Dismissed After Formal Investigation	Private Letter of Caution	Public Reprimand By JSC*	Statement of Charges Filed	Stipulated Dismissal	Hearing Conducted	Dismissed After Hearing	Recommendation For Discipline Filed
2015	50	227	39	217	16	12	7±	0	3(4)	0	2(3)	1	1(2)
2014	28	250	50	204	29	14	7	0	3 (4)	0	2(4)	1(3)	1
2013	57	235	28	239	25	17	8	1	1+	0	0	0	0
2012	41	312	57	260	30	20	14	2	0	0	0	0	0
2011	22	282	41	241	20	9	9±	3	2	0	2	0	2
Total	198	1306	215	1161	120	72	45	6	9	0	6	2	4
Avg	39.6	261.2	43	232.2	24	14.4	9	1.2	1.8	0	1.2	.4	.8

*Number in ( ) indicates total number of complaints addressed*

*+ withdrawn following the judges' acceptance of a public reprimand*

*± a letter of caution was issued as to one allegation in the complaint while the other allegations remained under investigation*

*± dismissed due to removal of the respondent judge*

*\*2013 was the last year where the Commission had the legal authority to issue public reprimands.*

## 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\*

**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\*

**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. William H. Jones, Jr. \*  
 Mr. Fred H. Moody, Jr.\*  
 Mr. Forrest Ferrell \*

**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\*

**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\*

\* 2015 members