

ANNUAL
REPORT
2016

HON. WANDA G. BRYANT
CHAIR

CAROLYN A. DUBAY
EXECUTIVE DIRECTOR

NORTH CAROLINA JUDICIAL STANDARDS COMMISSION



IMPARTIALITY



INDEPENDENCE



INTEGRITY

POST OFFICE BOX 1122
RALEIGH, NORTH CAROLINA 27602
TEL.: (919) 831-3630
FAX: (919) 831-3637

CONTENTS

	<u>PAGE</u>
A Message from the Chair	2
Introduction	3
Commission Members	3
Organizational Overview.....	4
Jurisdiction	4
Limits on Commission Actions and Authority.....	4
Procedures	5
Confidentiality	6
Advisory Opinions and Educational Programs.....	6
2016 Workload Statistics	7
Review and Investigation of Complaints	7
Nature of Complaints Considered by the Commission.....	8
Five Year Trends in Workload	10
APPENDIX A: Present and Past Members of the Judicial Standards Commission	12

This report provides statistical data of the activities of the Commission in 2016. For further information, please visit the Judicial Standards Commission's website at:

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

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 2016 Annual Report. Due to the dedication and diligence of fellow Commission members and the hard work and commitment of the Commission staff, we are able to report many accomplishments. This year, the Commission considered over 250 complaints of judicial misconduct against judges and justices of the North Carolina Court of General Justice and Commissioners and Deputy Commissioners of the North Carolina Industrial Commission. In January 2016, we also welcomed our new Executive Director, Carolyn Dubay, to lead the Commission staff and emphasize the mission of the Judicial Standards Commission. Towards that end, we have made significant efforts to improve access to and awareness of the Commission's services. For example, the Commission implemented an online complaint filing system in 2016 and increased its outreach and education efforts for the more than 500 men and women subject to the Code of Judicial Conduct. This work does not occur in a vacuum, and the Commission and its staff are grateful for the assistance of the North Carolina Administrative Office of the Courts and the North Carolina Judicial College.

As we look ahead to the challenges that face the administration of justice in North Carolina in the coming years, the Commission and its staff remain vigilant in their efforts to promote the core values of a respected, fair and efficient judiciary – impartiality, independence and integrity. Commitment to these core values is essential to public confidence in our courts and society's respect for the rule of law. In pursuit of these goals, it was a great honor in 2016 to join Executive Director Dubay in presenting the Commission's work to the Public Trust and Confidence Committee of the Chief Justice's Commission on the Administration of Law and Justice. The Commission and staff remain committed to continue the good work they already do, and to search for innovative ways to improve our services to citizens and judges alike. It remains an honor and a privilege to serve as the Chair of the Judicial Standards Commission.

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 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.

2016 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. 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.

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 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, 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 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 2016, the Commission issued one formal advisory opinion, which is 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.

2016 WORKLOAD STATISTICS

Review and Investigation of Complaints

As set forth in Table 1, there were 290 matters pending or opened in 2016. This number includes 39 matters that remained open as of December 31, 2015 and 251 new complaints received between January 1, 2016 and December 31, 2016. Of the 39 matters that were pending at the start of 2016, 26 complaints were awaiting initial review by the Commission, 10 complaints were under formal investigation, 2 complaints were under preliminary investigation, and 1 matter was awaiting a disciplinary recommendation hearing. During the course of 2016, 256 files were closed, leaving 34 matters pending as of December 31, 2016. A summary of the inquiries pending, opened and closed in 2016 is provided in Table 1.

TABLE 1: 2016 WORKLOAD SUMMARY

2016 Total Workload	290
Pending Files as of January 1, 2016	39
New Files Opened in 2016	251
Files Closed in 2016	256
Open Files as of December 31, 2016	34

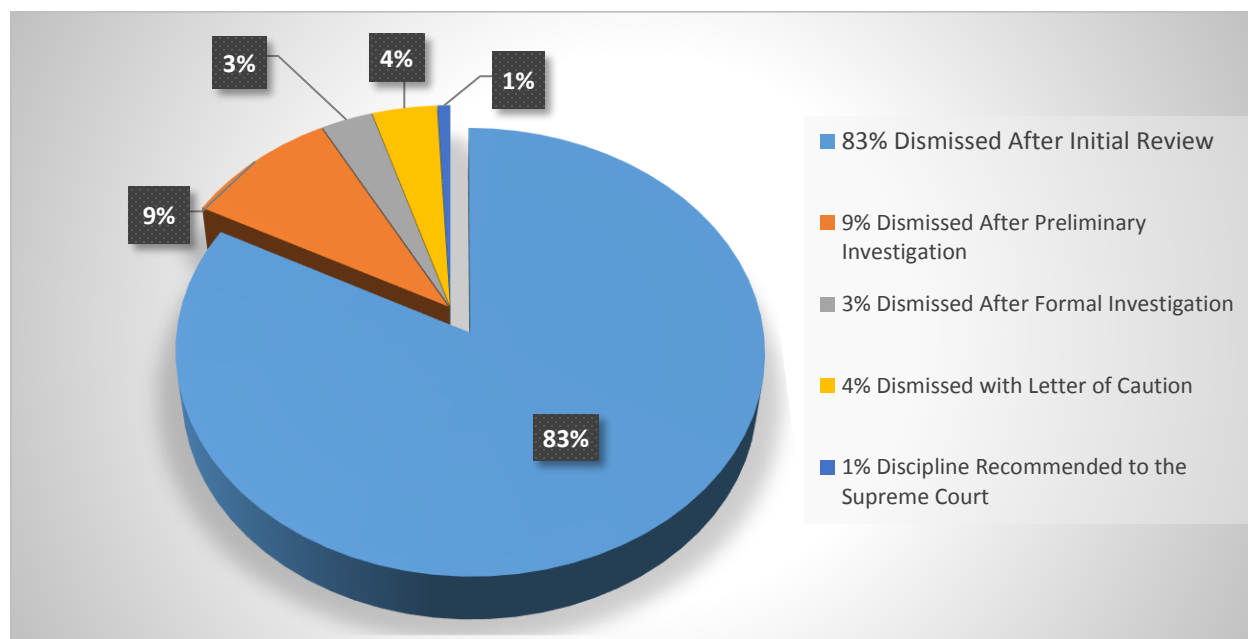
The 256 files that were closed in 2016 were disposed of in various ways, as set forth in Table 2. There were two cases that resulted in disciplinary hearings and recommendations of discipline to the North Carolina Supreme Court. The North Carolina Supreme Court adopted the Commission's recommendation and issued a public reprimand in *In re Mack*, __ N.C. __, __ S.E.2d __ (2016) (the opinion is available on the Commission's website). The second recommendation to the North Carolina Supreme Court remained pending as of December 31, 2016. An opinion in that case is expected in 2017.

TABLE 2: 2016 DISPOSITION SUMMARY

Total Complaints Considered in 2016	256
Dismissed After Initial Review	212
Dismissed After Preliminary Investigation	24
Dismissed After Formal Investigation	8
Dismissed with Letter of Caution	10
Discipline Recommended to the Supreme Court	2

As discussed previously, the Commission will dismiss complaints after initial review if the complaint fails to raise issues that may be appropriately addressed by the Commission. In 2016, the Commission dismissed 212 out of 256 complaints it considered after initial review and without investigation. Of the remaining cases, the Commission ordered 31 preliminary investigations and 15 formal investigations. By the percentages, and as set forth in Table 3, 83% of the complaints considered in 2016 were dismissed after initial review, 9% were dismissed after preliminary investigation, 3% were dismissed after formal investigation, 4% were dismissed with a private letter of caution, and 1% of the complaints proceeded to a disciplinary hearing and recommendation to the Supreme Court.

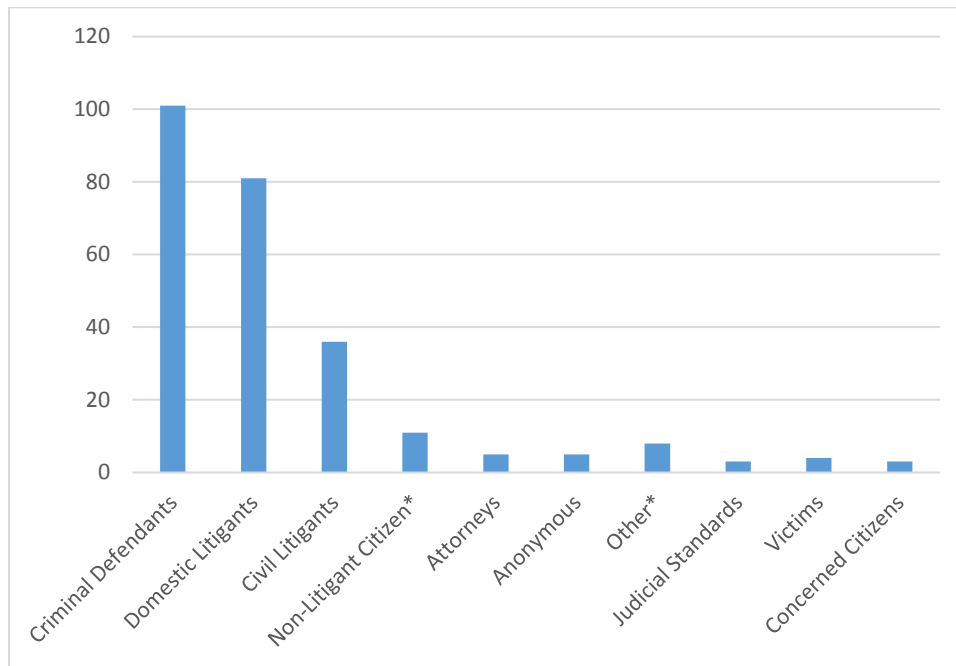
TABLE 3: 2016 DISPOSITION SUMMARY BY PERCENTAGE



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 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 4 identifies the various sources of complaints considered by the Commission in 2016.

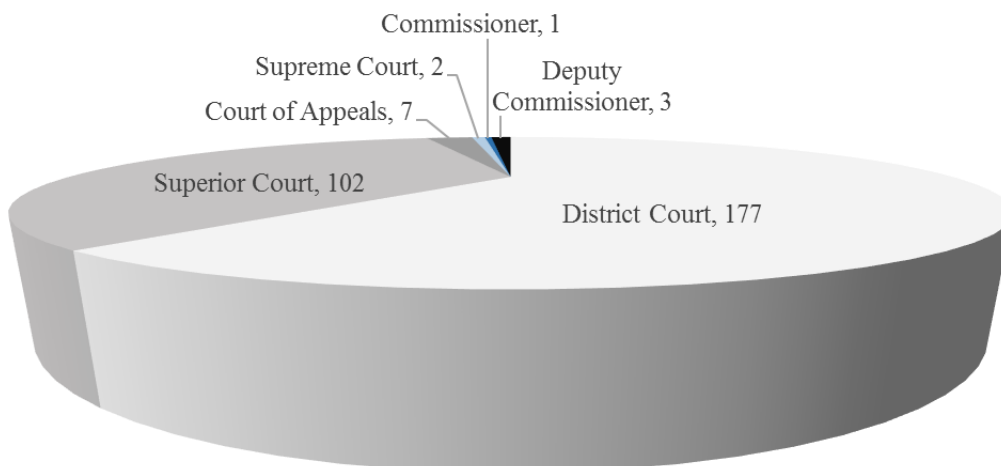
TABLE 4: SOURCE OF COMPLAINTS



* “Non-Litigant Citizen” includes family and friends of litigants and other participants in the proceeding, such as witnesses. “Other” includes judges, court personnel, self-reporting by judges and other miscellaneous sources.

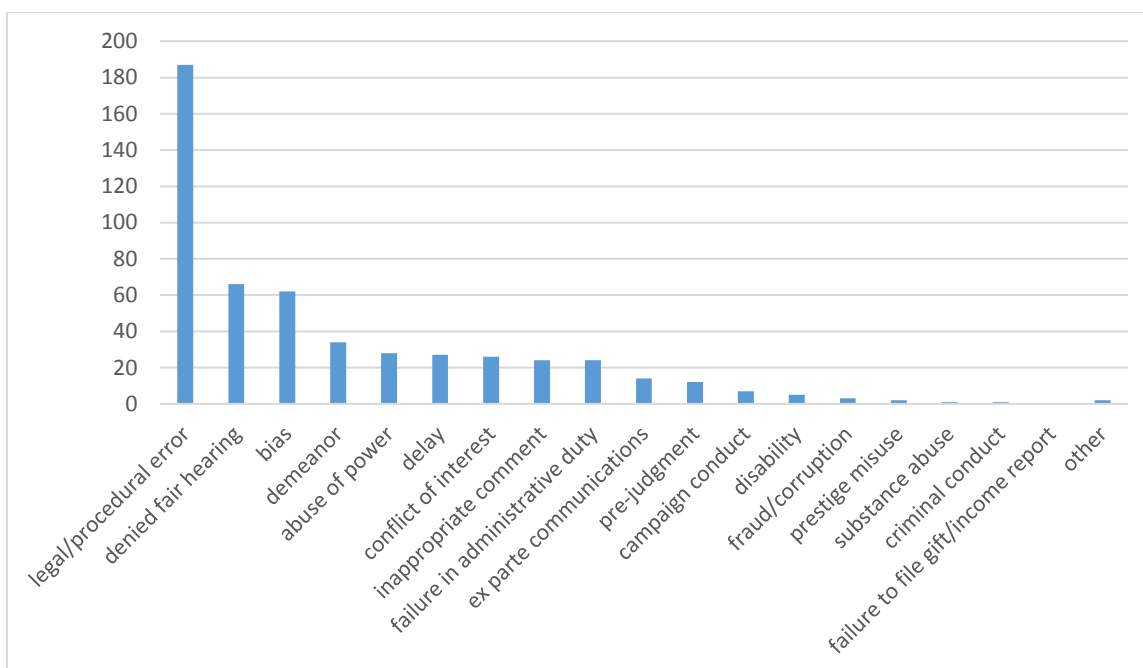
With respect to the type of judge subject to a complaint in 2016, most complaints were directed at either Superior Court or District Court judges and arose from courtroom proceedings. Overall, the 251 new complaints received in 2016 named 292 judges, justices or Industrial Commissioners/Deputy Commissioners. As set forth in Table 5, the Commission considered 177 complaints against District Court judges, 102 complaints against Superior Court judges, 7 complaints against Court of Appeals judges, 2 complaints against Supreme Court justices, 3 complaints against Deputy Commissioners of the Industrial Commission, and 1 complaint against a Commissioner of the Industrial Commission.

TABLE 5: CATEGORIES OF RESPONDENT JUDGES AND COMMISSIONERS



The complaints considered in 2016 alleged various forms 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 in 2016 (note that a single complaint may raise multiple allegations):

TABLE 6: TYPES OF ALLEGATIONS OF JUDICIAL MISCONDUCT



Five Year Trends in Workload

Over the last five years, the Commission's workload has remained fairly consistent, although 2016 did experience an increase in the number of complaints received from the previous year. As indicated on Table 7, the number of charges filed, hearings conducted and recommendations for public discipline has also remained fairly consistent since the Commission's authority to issue a public reprimand was revoked in 2013. Because the Commission no longer has this authority, there has been a relative increase in the number of statements of charges filed since 2013 as this is the only authorized procedure for public discipline of a judicial officer subject to the Code of Judicial Conduct.

TABLE 6: FIVE YEAR TRENDS

	2016	2015	2014	2013	2012	Average
Complaints Pending at Year Start	39	50	28	57	41	43
New Complaints Filed	251	227	250	235	312	255
Complaints Pending at Year End	34	39	50	28	57	41.6
Dismissed Without Formal Investigation	236	217	204	239	260	231.2
Formal Investigations Ordered	15	16	29	25	30	23
Dismissed After Formal Investigation	8	12	14	17	20	14.2
Private Letters of Caution Issued	10	7	7	8	14	9.2
Public Reprimands by Commission*	N/A	N/A	N/A	1	2	N/A
Statements of Charges Issued	2	3	3	1	0	1.8
Charges Withdrawn or Dismissed	0	1	1	1	0	0.6
Disciplinary Hearings	2	2	2	0	0	1.2
Recommendations for Public Discipline	2	1	1	0	0	0.8

*The Commission's statutory authority to issue public reprimands was revoked in 2013.

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*

*Denotes current member