

ANNUAL
REPORT
2018

HON. WANDA G. BRYANT
CHAIR

CAROLYN A. DUBAY
EXECUTIVE DIRECTOR

NORTH CAROLINA JUDICIAL STANDARDS COMMISSION



IMPARTIALITY



INDEPENDENCE



INTEGRITY

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This report provides statistical data of the activities of the Commission in 2018. 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 2018 Annual Report. As in 2017, the number of new complaints filed in 2018 remained higher than in years past due to the introduction of online complaint filing. For the past two years, the Commission has received approximately 100 more complaints per year than in each of the prior three years. The Commission's work in reviewing complaints, initiating investigations, and where appropriate, initiating disciplinary proceedings, remains challenging but is rewarding and necessary to ensure public confidence in our courts. The Commission staff also continued to diligently address citizen questions, provide education and training for judges and court staff, and advise judges across the state on their obligations under the Code of Judicial Conduct.

This past year, the Commission also welcomed a new attorney member appointed by the State Bar – Ms. Allison Mullins. With her appointment, Ms. Mullins became the first female appointed by the State Bar to serve on the Commission. We look forward to Ms. Mullins' contributions to the work of the Commission in years to come, and we acknowledge with appreciation the dedication and hard work of all our Commission members. It remains an honor and a privilege to serve as Chair of the Judicial Standards Commission.

Sincerely,

A handwritten signature in black ink that reads "Wanda G. Bryant". The signature is fluid and cursive, with the first name "Wanda" being the most prominent.

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.

2018 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. In 2018, 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 Jeffrey B. Foster

Judge of the North Carolina Superior Court
Commission Vice-Chair

The Honorable Sherri W. Elliott

Judge of the North Carolina District Court

The Honorable James H. Faison III

Judge of the North Carolina District Court

William H. Jones, Jr., Esq.

Member of the North Carolina State Bar

Forrest Ferrell 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. Cresswell Elmore

North Carolina Citizen

Mr. Dean Jordan

North Carolina Citizen

Mr. Grady Hawkins

North Carolina Citizen

Ms. Talece Y. Hunter

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 provides formal advisory opinions in response to written requests, and any formal advisory opinions are published on the Commission's website. In 2018, 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 Chair, Executive Director and Commission Counsel. Each year, Commission staff responds to between 200 and 300 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.

2018 WORKLOAD STATISTICS

Review and Investigation of Complaints

As set forth in Table 1, there were 413 matters pending before the Commission in 2018. This number includes 355 new complaints received between January 1, 2018 and December 31, 2018, as well as 56 matters that were pending and carried over from 2017 awaiting disposition. There were also 2 complaints from previous years that were reconsidered and reopened in 2018 upon the request of the complainant based on new information. A summary of the complaints filed, pending, or reopened in 2018 is provided in Table 1.

TABLE 1: 2018 WORKLOAD SUMMARY

2018 Total Workload	413
New complaints in 2018	355
Matters carried over from 2017	56
Complaints reopened	2

As of December 31, 2018, the Commission took action on 362 of the 413 pending matters as set forth in Table 2.

TABLE 2: 2018 DISPOSITION SUMMARY

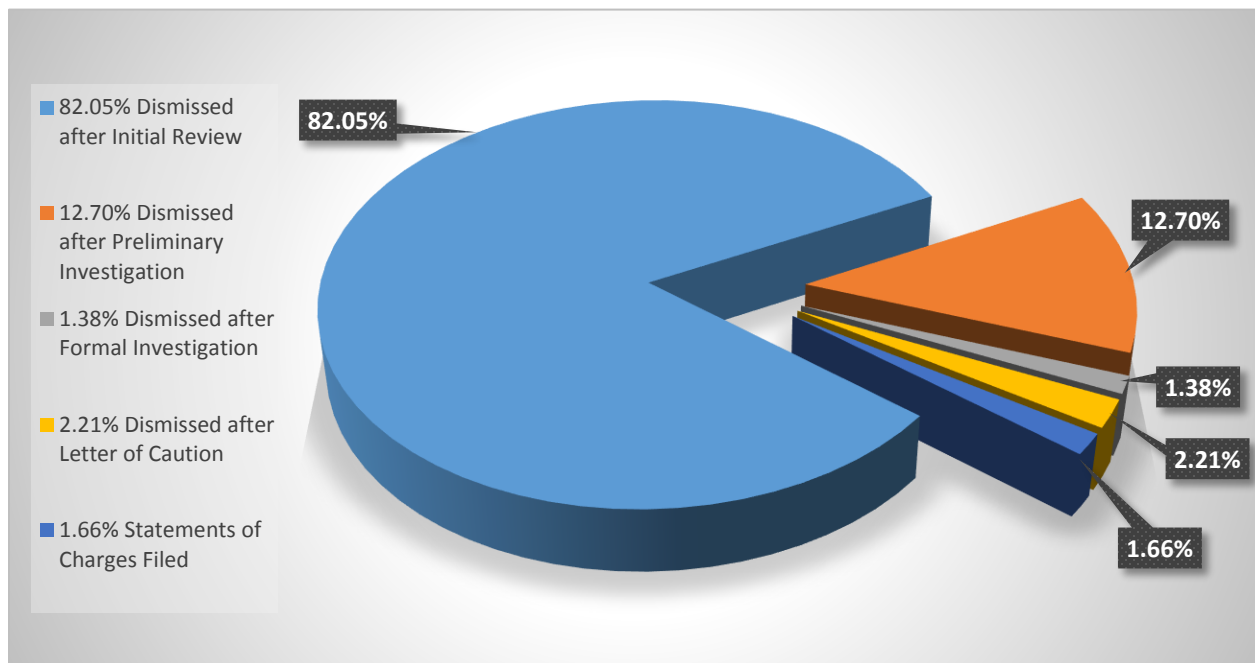
Total Matters Considered in 2018	362
Dismissed After Initial Review	297
Dismissed After Preliminary Investigation	46
Dismissed After Formal Investigation	5
Dismissed with Letter of Caution	8
Statement of Charges Authorized	6

Of the six complaints that resulted in statements of charges in 2018, four of those matters are awaiting hearing in 2019. The other two disciplinary proceedings resulted in recommendations of public discipline to the North Carolina Supreme. One of those recommendations remains pending before the Supreme Court and an opinion is expected in 2019. The other recommendation resulted in a public disciplinary decision by the Supreme Court in *In re Chapman* (October 26, 2018). That opinion is available on the Commission's website. The Supreme Court also issued disciplinary decisions in two other matters in which the Commission's recommendation was filed in 2017. Those decisions are *In re Shipley* (April 6, 2018) and *In re Henderson* (May 11, 2018) and are also available on the Commission's website.

As a result of the disposition of the cases noted in Table 2, there were 55 matters that remained pending before the Commission as of December 31, 2018. Of those 55 matters, they remained pending for the following reasons: 26 complaints were pending initial review; 16 complaints were pending review after preliminary investigation; 7 complaints were pending review after formal investigation; 4 matters were pending hearing after the authorization of charges in 2018; and 2 matters were pending hearing after the authorization of charges in 2017.

By the percentages, and as set forth in Table 3, of the 362 complaints considered in 2018, 82.05% were dismissed after initial review, 12.70% were dismissed after preliminary investigation, 1.38% were dismissed after formal investigation, 2.21% were dismissed with a private letter of caution, and 1.66% of the complaints resulted in the initiation of disciplinary proceedings through the filing of statements of charges.

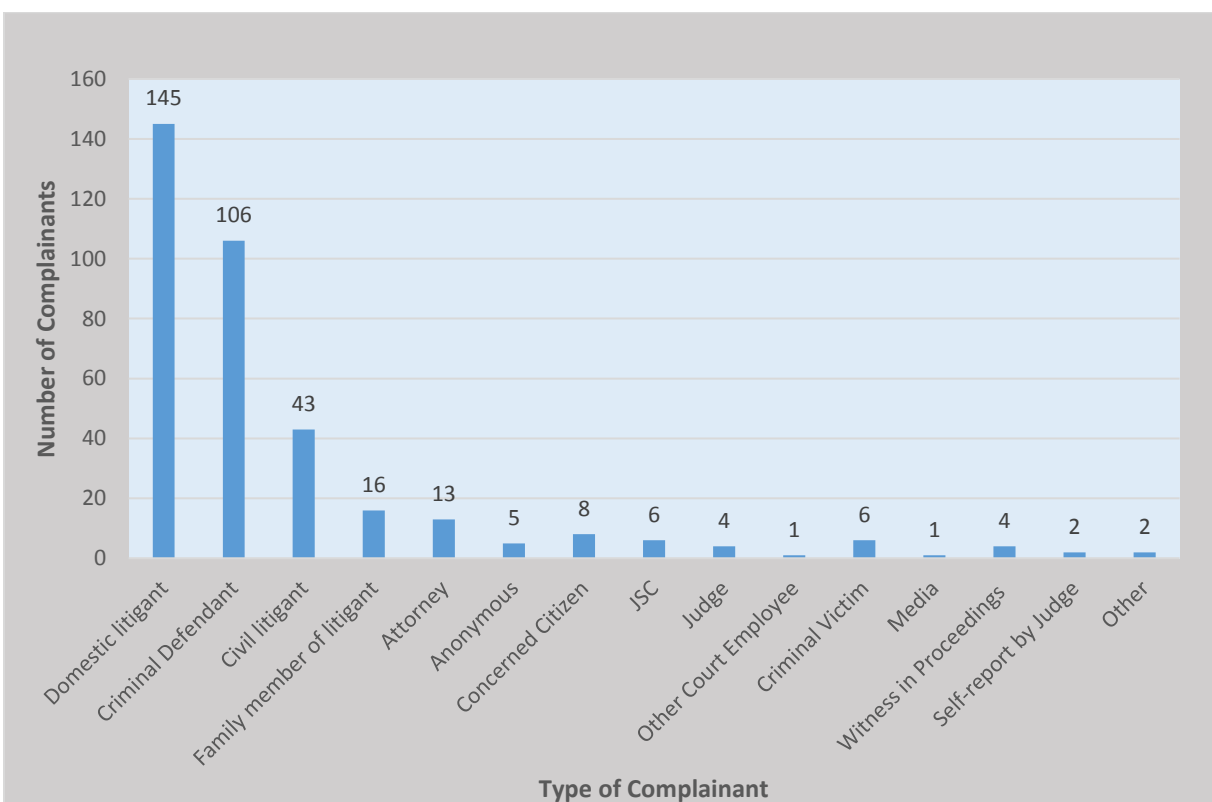
TABLE 3: 2018 DISPOSITION SUMMARY BY PERCENTAGE



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 15 different categories of complainants in the 355 new complaints filed in 2018 (note that some complaints have multiple complainants). Table 4 identifies the categories of complainants who filed complaints with the Commission in 2018.

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. Overall in 2018, and as set forth in Table 5, 283 complaints were directed at district court judges, 96 complaints were directed at superior court judges, 9 complaints were directed at judges of the Court of Appeals, and 2 complaints were directed at deputy commissioners of the Industrial Commission. No complaints were received in 2018 against justices of the Supreme Court or commissioners of the Industrial Commission.

TABLE 5: TARGETS OF COMPLAINTS: JUDGES AND COMMISSIONERS

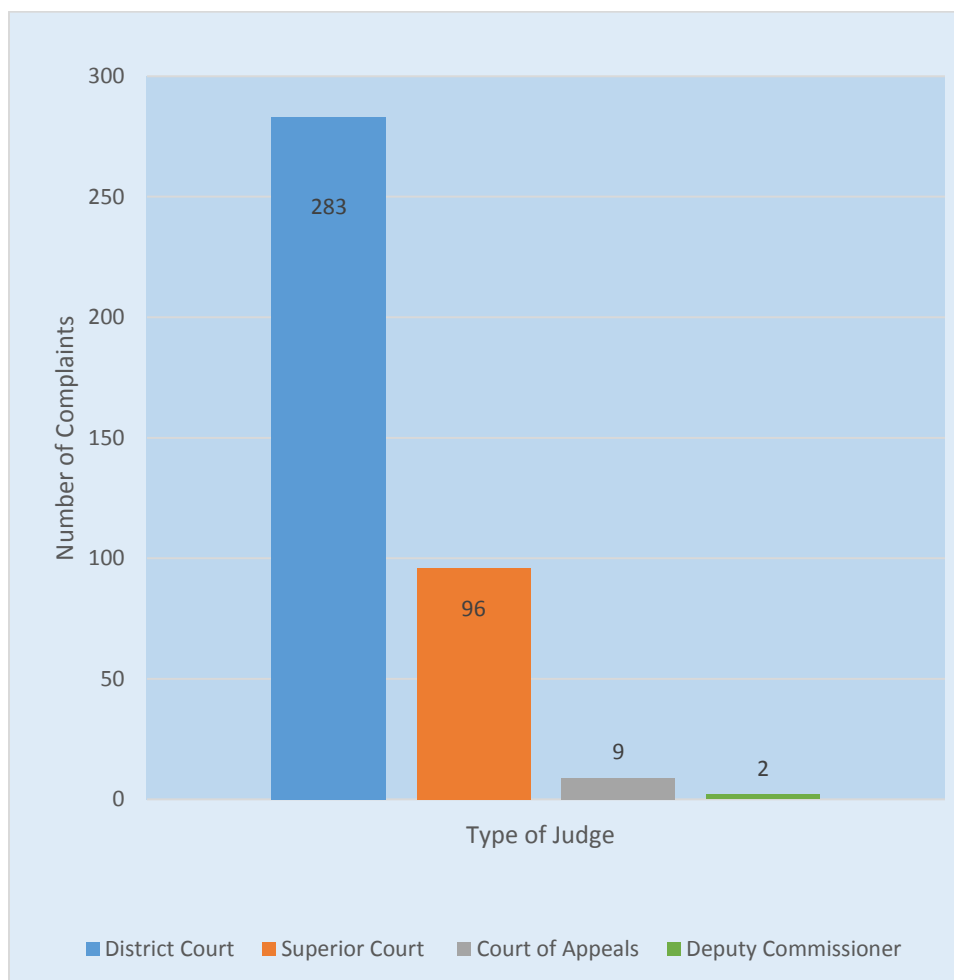
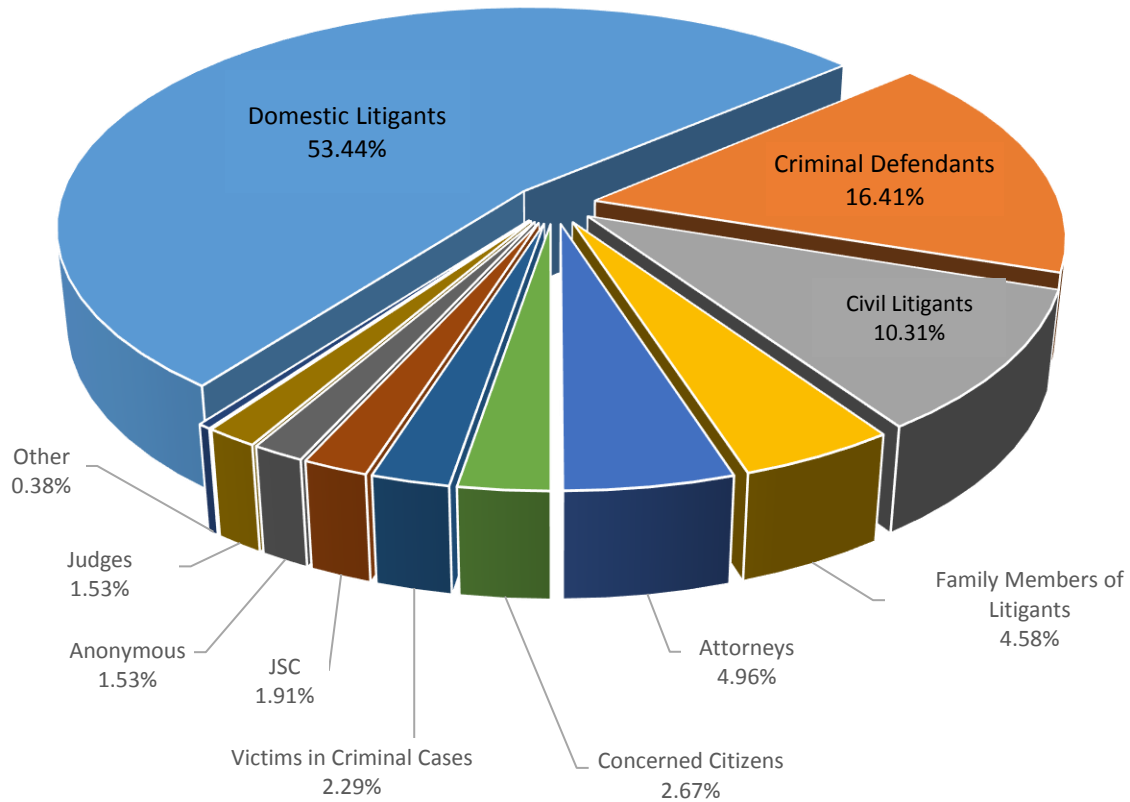
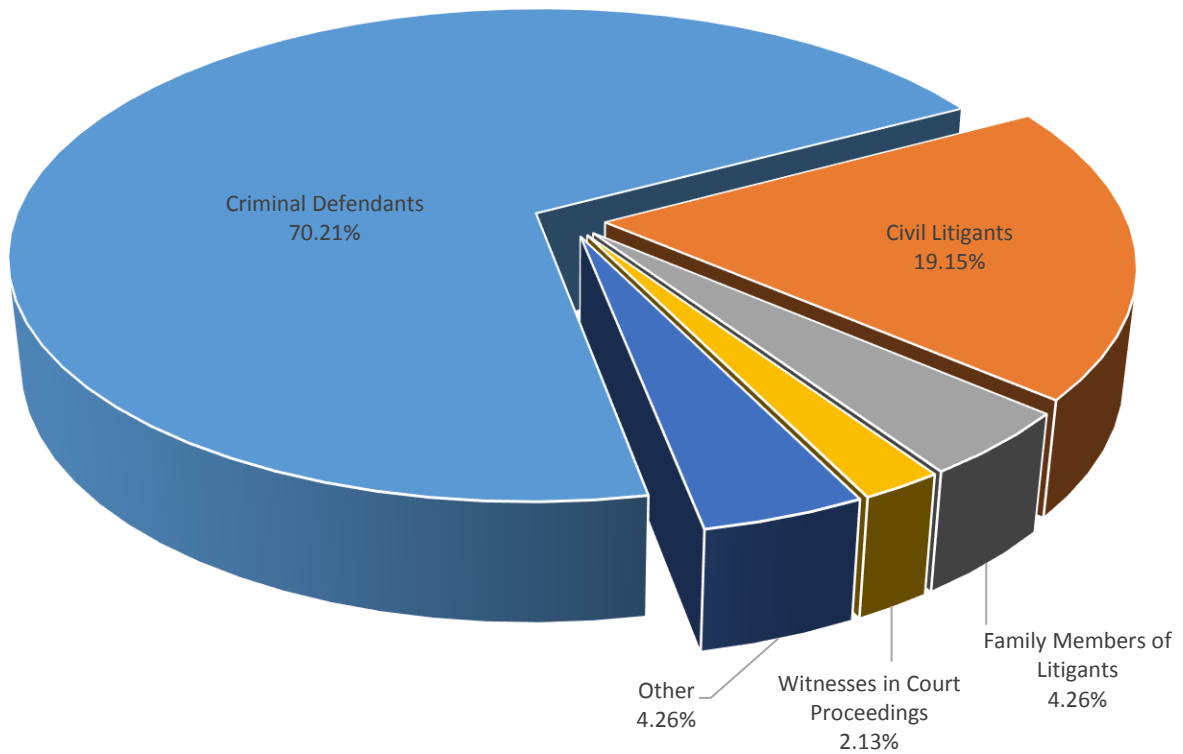


TABLE 6: COMPLAINTS AGAINST DISTRICT COURT JUDGES



As set forth in Table 6, most complaints filed against district court judges were filed by litigants involved in domestic cases (including divorce, child custody and child support). Of the 267 different complainants against district court judges: 140 were domestic litigants, 43 were criminal defendants, 27 were other civil litigants, 12 were family members of litigants, 13 were attorneys, 7 were concerned citizens, 6 were filed by victims in criminal cases, 5 were filed on motion of the Judicial Standards Commission, 4 were anonymously submitted, 4 were filed by other judges and the remaining 6 complaints were filed by a variety of other individuals (such as witnesses, self-reports by judges and other court personnel).

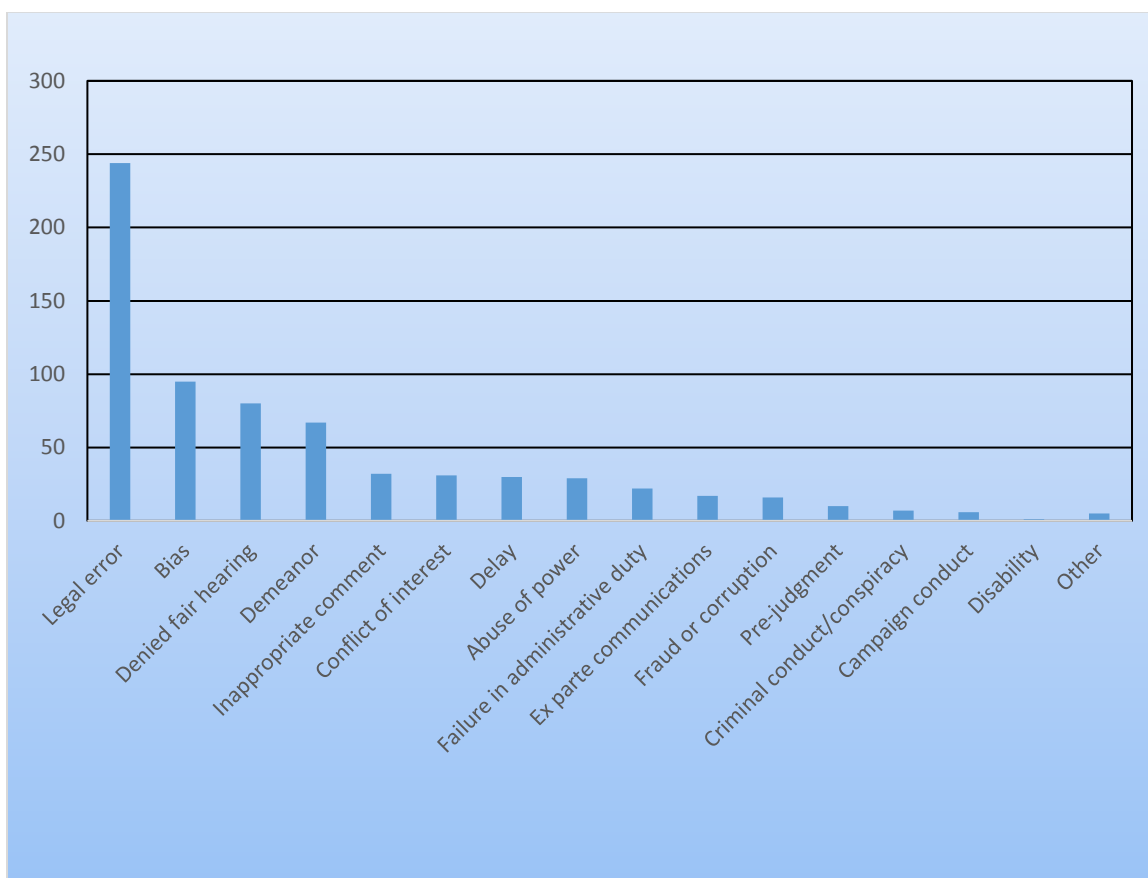
TABLE 7: COMPLAINTS AGAINST SUPERIOR COURT JUDGES



As set forth in Table 7, most complaints filed against superior court judges were filed by defendants in criminal cases. Of the 94 different complainants against superior court judges: 66 were criminal defendants or litigants, 18 were civil litigants, 4 were family members of litigants, 2 were witnesses in court proceedings, and the remaining 4 complaints were filed by a mix of other individuals.

The complaints considered in 2018 alleged various forms of judicial misconduct. By far, the most common complaint was that a judge or 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, 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 2018 (note that a single complaint may raise multiple allegations).

TABLE 8: TYPES OF ALLEGATIONS OF JUDICIAL MISCONDUCT



Most complaints filed with the Commission raise more than one claim or allegation. The most common allegations (some raised in the same complaint) include: 244 complaints alleging legal error, 95 complaints alleging bias, 80 complaints alleging denial of a fair hearing, 67 complaints alleging poor judicial demeanor, 32 complaints alleging inappropriate comments, 31 complaints alleging conflict of interest, 30 complaints alleging delay, 20 complaints alleging abuse of power or authority, 22 complaints alleging failure of administrative duties, 17 complaints alleging improper ex parte communications, 16 complaints alleging fraud or corruption, 10 complaints alleging pre-judgment, 7 complaints alleging criminal conduct or conspiracy, and 6 complaints alleging political misconduct. Only one complaint alleged disability of a judge.

Five Year Trends in Workload

The Commission's workload remained fairly consistent in 2018. As indicated in Table 9, there was a similar number of new complaints in 2018 as compared to 2017, and a similar number of complaints were pending at year end. The Commission also issued six statements of charges in 2018, the same number issued in 2017 and a marked increase from years past.

TABLE 9: FIVE YEAR TRENDS

	2018	2017	2016	2015	2014
Complaints Pending at Year Start	56	34	39	50	28
New Complaints Filed	355	357	251	227	250
Complaints Pending at Year End ¹	55	56	34	39	50
Dismissed Without Formal Investigation ²	343	309	236	217	204
Formal Investigations Ordered	16	28	15	16	29
Dismissed After Formal Investigation	5	11	8	12	14
Private Letters of Caution Issued	8	15	10	7	7
Statements of Charges Authorized	6	6	2	3	3
Disciplinary Hearings	2	2	2	2	2
Recommendations for Public Discipline	2	2	2	1	1
Charges Withdrawn or Dismissed	0	1	0	1	1

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

²Includes 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. Jeffrey 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