

ANNUAL
REPORT
2017

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 2017. 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 2017 Annual Report. This past year was marked by a number of significant changes to the Commission. In September 2017, we mourned the sudden loss of Judge W. Douglas Parson, who served as a superior court judge member of the Commission from February 10, 2014 until his death on September 24, 2017. At the end of the year, we also bid farewell to the following Commission members who completed their terms: District Court Judge Wayne Michael, Mr. Fred Moody, Mr. Edward Hinson, Mr. Greg Greene and Ms. Lorraine Stephens. We are appreciative of their service and dedication to the work of the Commission. With those large shoes to fill, the Commission welcomed six new members to the Commission to begin six years terms that commenced on January 1, 2018: Superior Court Judge Jeffrey Foster, District Court Judge James Faison, Mr. Lonnie Player, Mr. Andy Penry, Ms. Talece Hunter and Col. Grady Hawkins. We look forward to their contributions and perspectives in the discharge of their duties.

In 2017, the Commission also introduced online complaint filing to make the Commission more accessible to our citizens. With this change, the Commission received 357 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. This marks a significant increase from 2016, when 251 complaints were filed. The Commission staff also continued to diligently address citizen questions, provide education and training for judges and court staff, and review and investigate meritorious complaints. The work remains challenging, important, and above all, necessary to ensure continued public confidence in our courts.

As in past years, we continue to look ahead to the challenges that face the administration of justice in North Carolina. The Commission and its staff remain dedicated in their efforts to promote the core values of a respected, fair and efficient judiciary – impartiality, independence and integrity. It remains an honor and a privilege to serve as 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 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.

2017 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 2017, 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 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 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 2017, the Commission issued two 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 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.

2017 WORKLOAD STATISTICS

Review and Investigation of Complaints

As set forth in Table 1, there were 394 complaints pending before the Commission in 2017. This number includes 357 new complaints received between January 1, 2017 and December 31, 2017, as well as 34 complaints that were pending and carried over from 2016. There were also three (3) complaints from previous years that were reconsidered in 2017 upon the request of the complainant based on new information. A summary of the complaints filed, pending, or re-opened in 2017 is provided in Table 1.

TABLE 1: 2017 WORKLOAD SUMMARY

2017 Total Workload	394
New complaints	357
Complaints carried over from 2016	34
Complaints re-opened/reconsidered	3

As of December 31, 2017, the Commission had taken action on 356 of the 394 pending complaints, with only 38 complaints awaiting initial review by the Commission in 2018. In addition to the 38 complaints awaiting initial review, the Commission also carried over 18 complaints to 2018. These included six (6) complaints subject to an ongoing preliminary investigation, eight (8) complaints subject to an ongoing formal investigation and four (4) disciplinary proceedings awaiting hearing. The Commission's disposition of the 356 complaints considered in 2017 is set forth in Table 2.

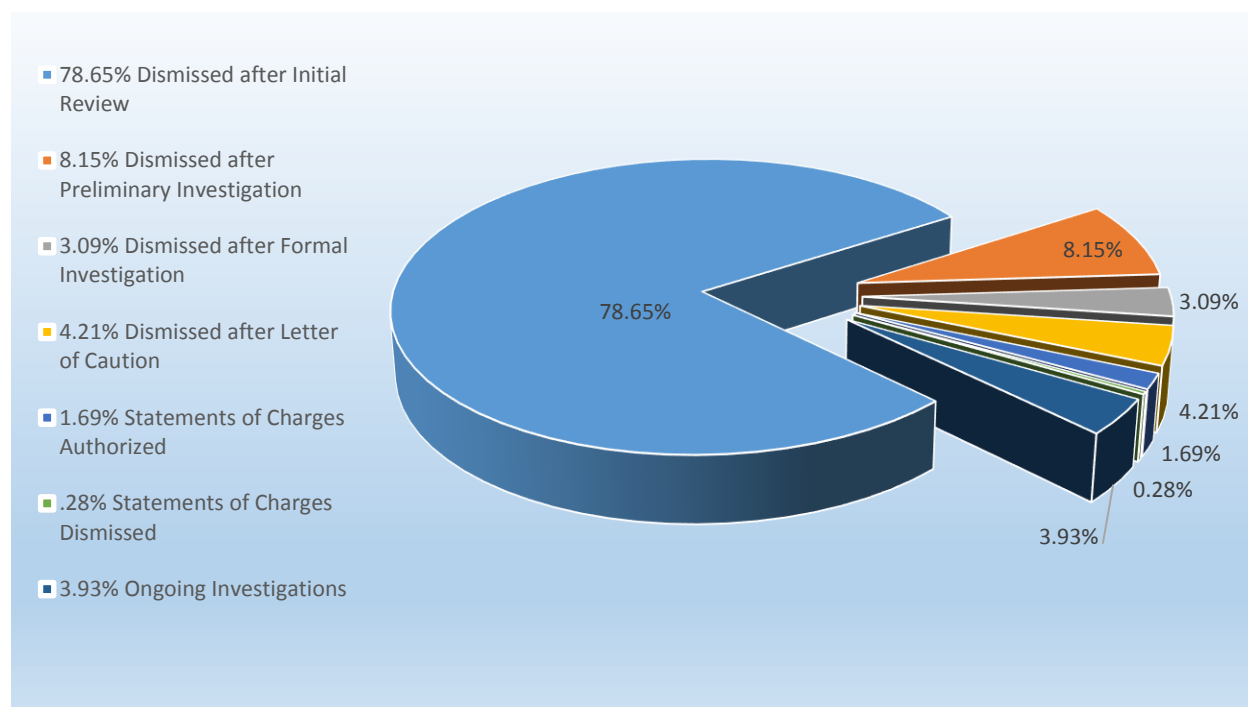
TABLE 2: 2017 COMPLAINT DISPOSITION SUMMARY

Total Complaints Considered in 2017	356
Dismissed After Initial Review	280
Dismissed After Preliminary Investigation	29
Dismissed After Formal Investigation	11
Dismissed with Letter of Caution	15
Statements of Charges Authorized	6
Disciplinary Proceeding Dismissed	1
Investigation Ongoing	14

Of the six disciplinary proceedings authorized in 2017, two (2) cases were heard before the Commission in 2017 and resulted in the filing of recommendations of public discipline with the North Carolina Supreme Court. Those two matters remain pending in the North Carolina Supreme Court with decisions expected in 2018. Four (4) cases are awaiting a hearing before the Commission in 2018. In 2017, the North Carolina Supreme Court issued a public reprimand in *In re LaBarre*, 369 N.C. 538 (2017) based on a Commission recommendation filed in 2016. The opinion is available on the Commission's website. One disciplinary proceeding initiated in 2016 was dismissed pursuant to a stipulated agreement with the Commission in 2017.

By the percentages, and as set forth in Table 3, of the 356 complaints considered in 2017, 78.65% were dismissed after initial review, 8.15% were dismissed after preliminary investigation, 3.09% were dismissed after formal investigation, 4.21% were dismissed with a private letter of caution, 1.69% of the complaints resulted in the initiation of disciplinary proceedings, and 3.93% remained subject to ongoing investigations. One statement of charges from a previous year was dismissed in 2017 pursuant to a stipulated agreement. This single case statistically was only .28% of the dispositions.

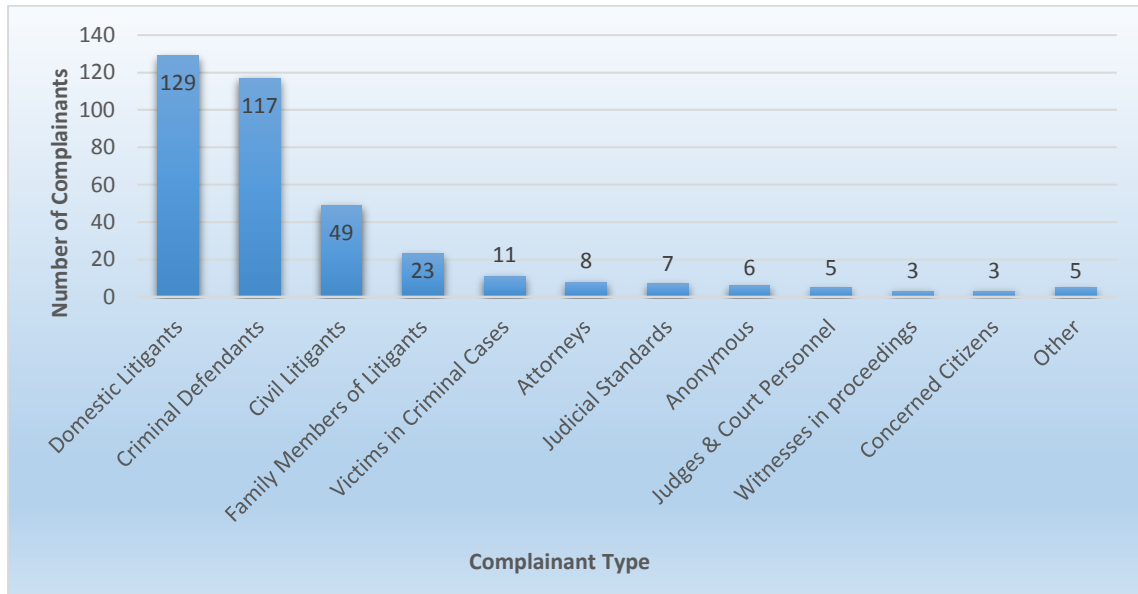
TABLE 3: 2017 DISPOSITION SUMMARY BY PERCENTAGE



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 366 different complainants in the 357 new complaints filed in 2017 (note that some complaints have multiple complainants). Table 4 identifies the categories of complainants who filed complaints with the Commission in 2017.

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 2017, and as set forth in Table 5, 268 complaints were directed at district court judges, 123 complaints were directed at superior court judges, 19 complaints were directed at judges of the Court of Appeals, 15 complaints were directed at justices of Supreme Court, and 3 complaints were directed at deputy commissioners of the Industrial Commission. There were no complaints filed against commissioners of the Industrial Commission in 2017.

TABLE 5: TARGETS OF COMPLAINTS: JUDGES AND COMMISSIONERS

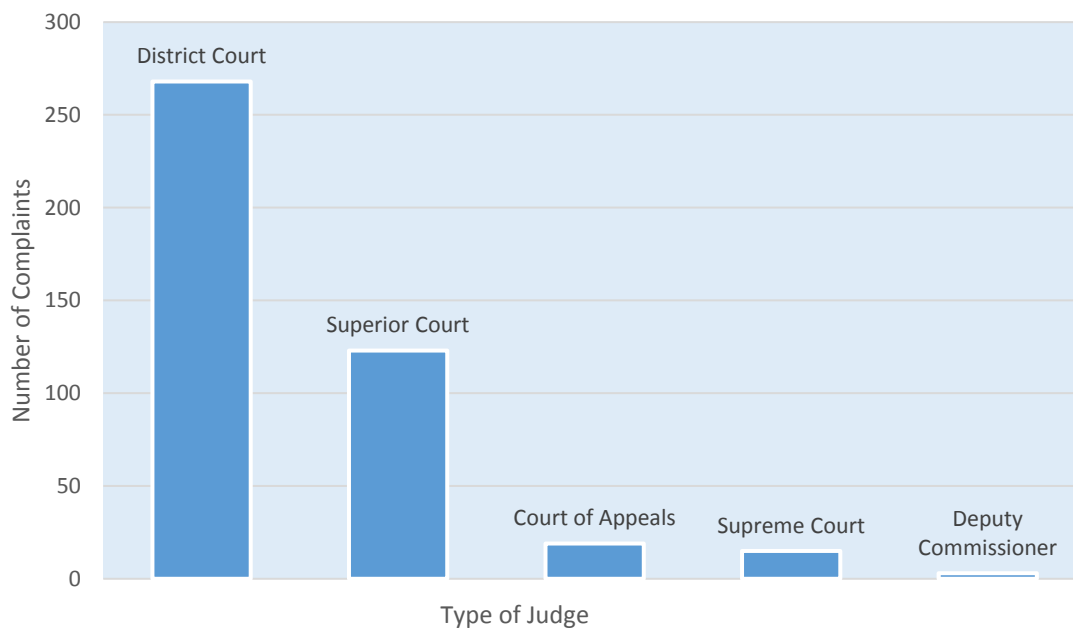


TABLE 6: COMPLAINTS AGAINST DISTRICT COURT JUDGES

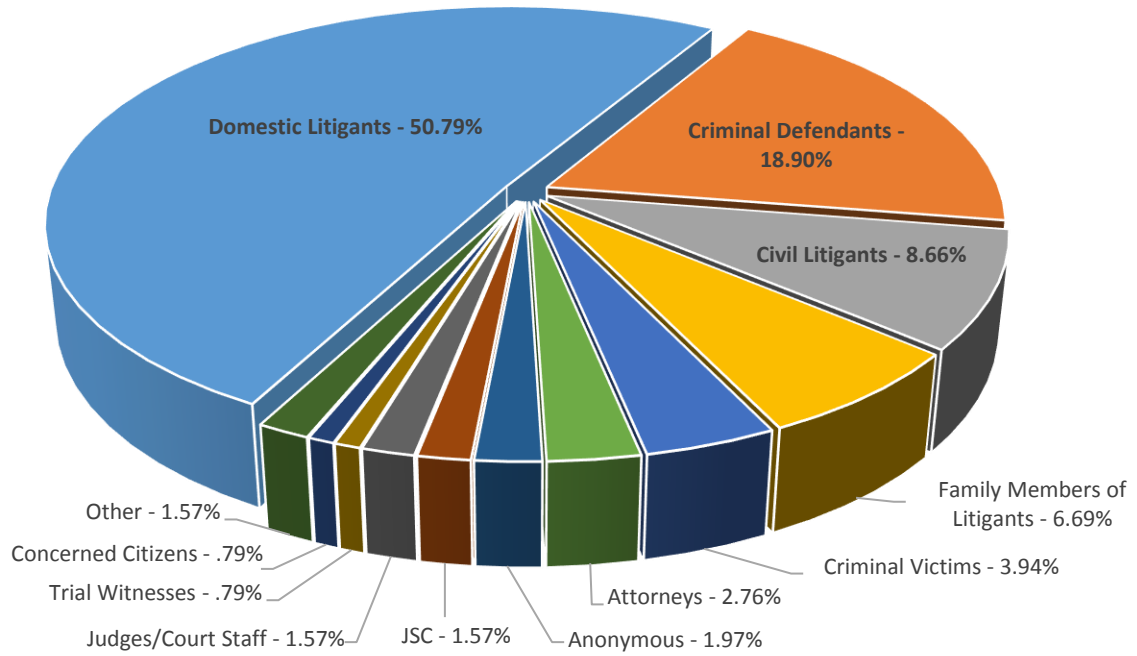
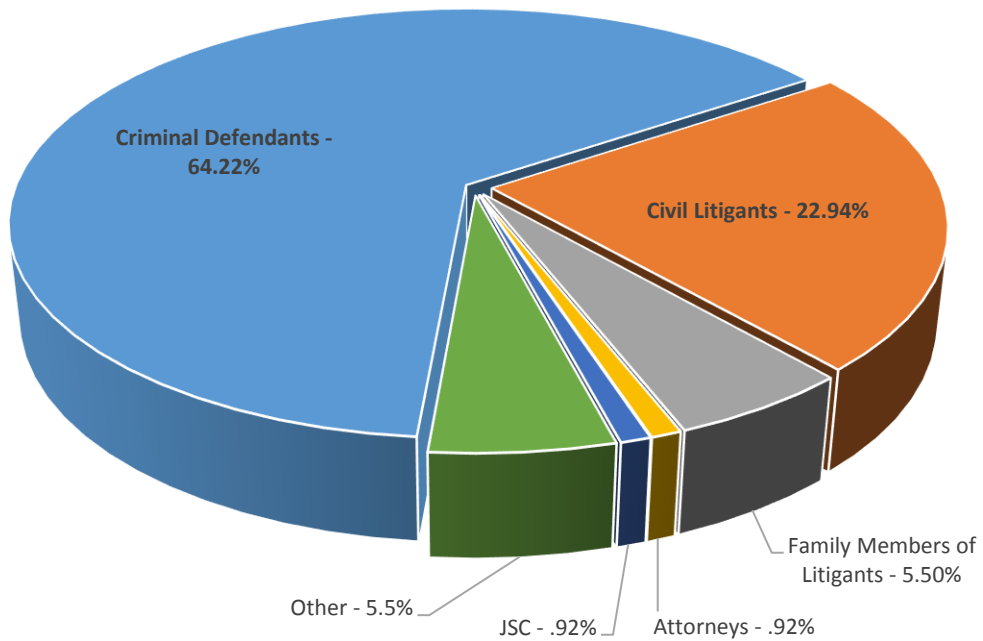
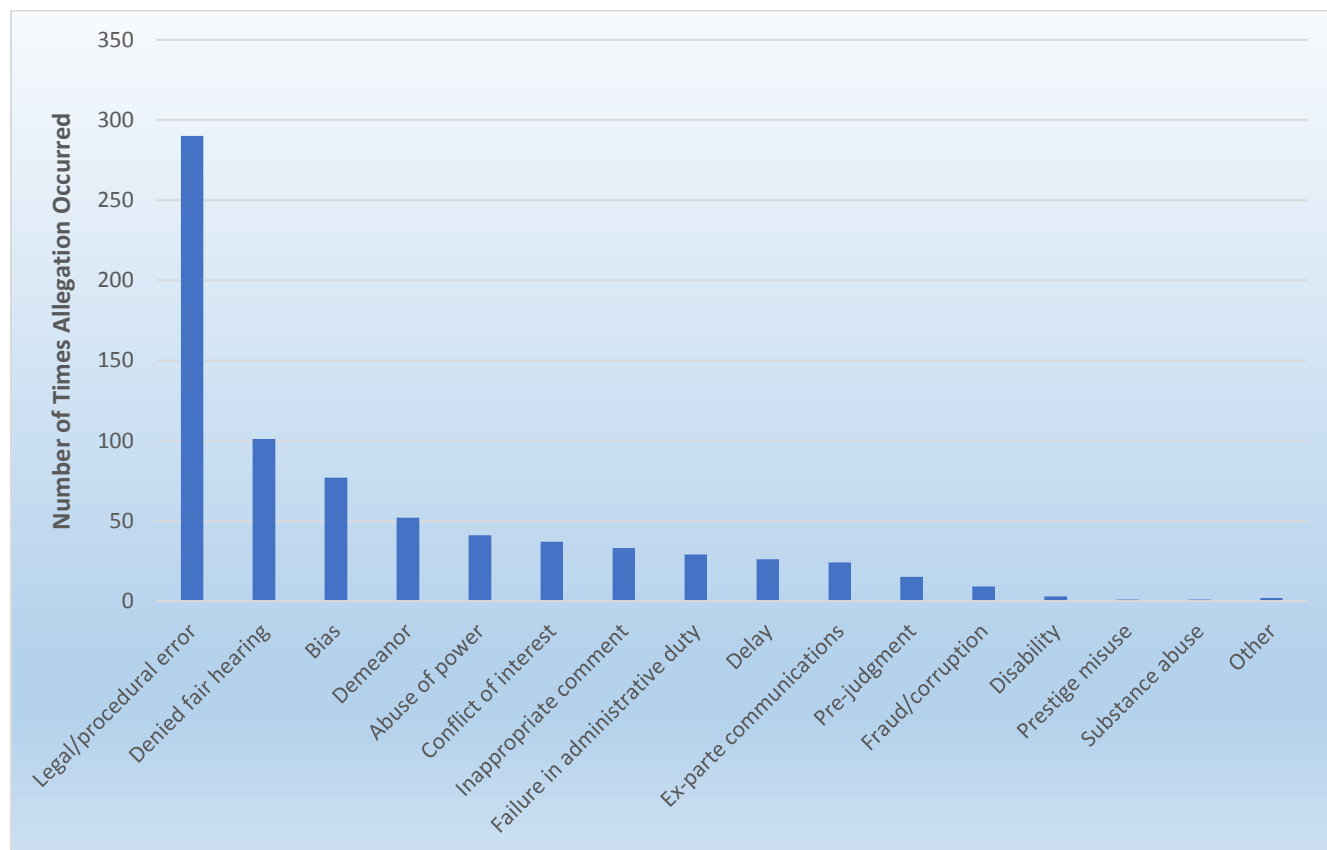


TABLE 7: COMPLAINTS AGAINST SUPERIOR COURT JUDGES



The complaints considered in 2017 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 2017 (note that a single complaint may raise multiple allegations).

TABLE 8: TYPES OF ALLEGATIONS OF JUDICIAL MISCONDUCT



Five Year Trends in Workload

The Commission's workload remained fairly consistent until 2017, when the introduction of electronic filing led to a large increase in the number of complaints received from the previous year. As indicated on Table 7, however, the number of hearings conducted and recommendations for public discipline 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 9: FIVE YEAR TRENDS

	2017	2016	2015	2014	2013
Complaints Pending at Year Start	34	39	50	28	57
New Complaints Filed	357	251	227	250	235
Complaints Pending at Year End¹	56	34	39	50	28
Dismissed Without Formal Investigation²	309	236	217	204	239
Formal Investigations Ordered	28	15	16	29	25
Dismissed After Formal Investigation	11	8	12	14	17
Private Letters of Caution Issued	15	10	7	7	8
Public Reprimands by Commission³	N/A	N/A	N/A	N/A	1
Statements of Charges Authorized	6	2	3	3	1
Charges Withdrawn or Dismissed	1 ⁴	0	1	1	1
Disciplinary Hearings	2	2	2	2	0
Recommendations for Public Discipline	2	2	1	1	0

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.

³The Commission's statutory authority to issue public reprimands was revoked in 2013.

⁴This action related to a statement of charges issued in 2016.

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