

# STATE COMMISSION ON JUDICIAL CONDUCT

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## Agency at a Glance

The State Commission on Judicial Conduct's mission is to protect the public from judicial misconduct or incapacity by ensuring Texas' more than 3,900 judges comply with standards of conduct established in the Texas Constitution and by the Supreme Court. Originally created in 1965, the Commission operates as a judicial branch agency, and the constitution spells out all of the Commission's key duties and responsibilities, as follows.

- Investigating complaints against Texas judges.
- Issuing private and public sanctions to judges found to have committed judicial misconduct.
- Making recommendations for the removal or retirement of a judge based on misconduct or incapacity.

## Summary

As a judicial branch agency, the structure, enabling laws, rules, confidentiality, and oversight of the Commission on Judicial Conduct differ considerably from that of other state agencies. These differences posed challenges to the Sunset Commission's ability to evaluate this agency, and pose ongoing obstacles to the Legislature's ability to implement changes or reforms to the agency and Texas' approach to overseeing the conduct of judges.

Most critically, the Commission's structure and operations are prescribed in great detail in the Texas Constitution. Thus, any changes or reforms to these duties or responsibilities regarding Texas' approach to overseeing the conduct of judges would require voter approval of a Constitutional amendment, not simply a change in statute.

Another challenge involves the shared oversight of the Commission by the Texas Supreme Court and the Legislature. The Supreme Court promulgates the procedural rules that guide the Commission's operations in addition to direction provided by the Legislature in statute. Because statute and procedural rules have the same authority, a change in statute that differs from the procedural rules could bring into question which takes precedence.

The Commission also operates largely behind closed doors to protect the confidentiality of judges. While Sunset recognizes the need to protect judges from public disclosure of unfair or unwarranted complaints stemming from

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of judges in Texas.*

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individuals unhappy with the outcome of a case or from political opponents, this must be balanced against the public's right to know that the process is working fairly and effectively when judges misuse or abuse their substantial authority.

With only very limited access to its meetings and key documents, the Sunset Commission could not reach an overall conclusion regarding the Commission's efficiency, effectiveness, or impartiality. The Sunset Commission concluded that this unusual structure makes the need for an objective outside evaluation even more critical. With greater access, Sunset could conduct such a review, to provide a check on the Commission on Judicial Conduct's work, ensuring to the public the process's integrity while maintaining the necessary confidentiality of judges subject to disciplinary action. The following summarizes the Sunset Commission's recommendations regarding the State Commission on Judicial Conduct.

## *Issue 1*

### **The Texas Constitution Limits the Commission's Options to Hear Major Cases in Open Proceedings.**

Once the Commission institutes a formal proceeding, it can only dismiss the complaint, issue a censure, or make a recommendation on removal or retirement. The Commission's limited range of penalties available following a formal proceeding could deter it from pursuing cases of public import in open formal proceedings. Confidence in the integrity of the judiciary rests on high profile cases being heard openly.

## **Recommendations**

### ***Constitutional Amendment***

#### **1.1 Constitutionally authorize the Commission to use its full range of sanctions following formal proceedings.**

This recommendation would allow the Commission to issue one of its lesser sanctions, such as a public admonition, warning, reprimand, or order of education following a formal proceeding, in addition to issuing a public censure or recommending removal or retirement to the Review Tribunal. This change would equip the Commission with all the necessary tools it needs and remove any disincentive to taking a case to an open, formal proceeding when warranted.

To enact a change to the constitution, this recommendation would require the Legislature to pass a joint resolution containing this sanction authority and Texas voters to approve an amendment to the State Constitution.

### ***Change in Statute***

#### **1.2 Statutorily authorize a Court of Review to hear appeals of sanctions following formal proceedings, in the same manner as it hears appeals of censures.**

This recommendation would allow the Court of Review to hear appeals of public sanctions issued following a formal hearing in the same manner as public censures. The Court of Review would conduct a review of the record of the formal proceeding and would allow new evidence only with good cause shown, as is currently done for censures. The decision of the Court of Review would be final and not appealable.

## *Issue 2*

### **Inconsistencies Between Its Statute and Rules Create the Potential for Litigation and Inefficiencies in the Commission’s Operation.**

The Commission’s procedural rules being on an equal legal footing with state law creates the potential for conflicts and legal challenges. Further, since the Supreme Court has not updated the Commission’s procedural rules in many years, the Commission now has several discrepancies between its statute and its rules.

#### **Recommendation**

##### ***Change in Statute***

#### **2.1 Require the Commission on Judicial Conduct to report to the Supreme Court as needed on suggested changes to update its procedural rules.**

This recommendation would require the Commission to study its procedural rules for needed updates to reflect changes in case law, statute, and the constitution, and to report these findings to the Supreme Court on an as-needed basis. The Commission would also have to assess needed updates to improve Commission operations or increase Commission efficiency. This change would help enable the Supreme Court to more regularly update the rules to stay current and prevent conflicts that muddle the Commission’s process and provide fodder for legal challenges.

## *Issue 3*

### **Lack of Access to Key Meetings and Records Limits Sunset’s Ability to Fully Assess the Commission’s Oversight of Judges.**

The inability of Sunset staff to attend the Commission’s meetings and to review key documents seriously limited staff’s ability to evaluate the efficiency and effectiveness of the Commission’s primary duty — taking enforcement action in cases of potential judicial misconduct.

#### **Recommendations**

##### ***Change in Statute***

#### **3.1 Require the Commission to provide Sunset staff with access to observe its closed meetings and review its confidential records to ensure a complete and thorough evaluation of the Commission’s activities.**

The recommendation would clarify in statute that the Commission’s confidentiality and privilege provisions do not bar the Commission from being subject to a full Sunset review. The recommendation would also clarify that Sunset staff must maintain the same level of confidentiality as the staff of the Commission and, as a result, is entitled to access whatever components of the Commission’s process Sunset deems necessary.

#### **3.2 Review the Commission in six years, rather than the standard 12-year period.**

This recommendation would make a one-time change to provide for the next review to occur in six years, in 2019. Reviewing the Commission in six years, rather than the standard 12-year period, would

allow the Commission time to implement changes recommended as a result of this review and enable Sunset to more fully evaluate the Commission's disciplinary process. After 2019, the Commission would revert back to a periodic Sunset review every 12th year.

### **3.3 Maintain in law the requirement for the Commission to distribute an annual report on its activities to protect the public from judicial misconduct.**

This recommendation would simply maintain the requirement in the Commission's statute to annually report on its activities and sanctions.

## ***Issue 4***

### **The Commission's Lack of Open Meetings Provides No Means for the Public to Provide Input on Its Oversight of Judge's Conduct.**

Due to the Commission's strict requirements for confidentiality and its exemption from the Open Meetings Act, Public Information Act, and Administrative Procedures Act, most of the Commission's work takes place out of the public's view. In addition, because the Supreme Court promulgates the Commission's procedural rules, the public is never afforded the opportunity to provide feedback on the Commission's work and governance.

## **Recommendation**

### ***Change in Statute***

#### **4.1 Require the Commission to hold an annual public hearing to allow the public to offer input on the Commission's mission and operations.**

This recommendation would require the Commission to hold an open public meeting at least once every year, with notice to the public at least seven days in advance of the meeting. The purpose of the meeting would be to provide members of the public an opportunity to offer suggestions to the members and staff of the Commission to improve any aspects of their oversight of judicial conduct, handling of judicial complaints, or the efficiency of its overall operations.

## ***Issue 5***

### **The Commission Fails to Provide Clear Information on Reasons for Dismissing Complaints, Undermining the Public's Understanding of the Process.**

The Commission receives more than 1,000 complaints per year, dismissing the vast majority either immediately or after a preliminary investigation for failing to allege misconduct. The Commission typically informs the individual who filed the complaint, in very general terms, that the complaint did not allege a violation under the Commission's jurisdiction, or that the complaint pertains to decisions or rulings made by the judge while exercising judicial discretion. A survey conducted during the Sunset review of individuals who filed complaints revealed considerable confusion and frustration over the lack of clarity on these dismissals.

## Recommendation

### *Change in Statute*

#### **5.1 Require the Commission, after dismissing a complaint, to provide the individual who filed the complaint with the reason(s) in plain language why the allegation made in the complaint failed to meet the definition of judicial misconduct.**

This recommendation would require the Commission to include, in its notice that informs individuals that the Commission has dismissed their complaint, a specific explanation of how the conduct alleged in the complaint failed to constitute judicial misconduct. The Commission would have to provide this explanation in as plain and easily understandable language as possible.

## *Issue 6*

### **Lack of Clarity About the Commission's Status Has Resulted in Confusion About Whether It Functions as a State Agency or a Court.**

At times, confusion has arisen as to the status of the Commission — is it an administrative agency or does it function as a court? As a judicial branch agency, the Commission's statute and enabling article in the Constitution contain certain provisions typically reserved for a court, such as an exemption from the Open Meetings Act, Public Information Act, and Administrative Procedures Act. However, the Commission does not have the judicial criminal or civil authority of a court.

The Commission's 13-member body does include six judges appointed by the Supreme Court; however, the majority of its members are not judges — with five public members appointed by the Governor and two attorneys appointed by the State Bar. While many of its enforcement duties involve hearings and other legal matters, these duties are comparable to many other executive branch professional licensing boards and commissions that operate as administrative agencies, not courts.

## Recommendation

### *Change in Statute*

#### **6.1 Clarify in statute that the Commission is a state agency for the administration of judicial discipline, and does not have the power and authority of a court.**

This recommendation would make it clear in statute that the Commission does not have the power and authority of a court, but is instead a state agency within the judicial branch that administers judicial discipline.

## Fiscal Implication Summary

These recommendations would have a one-time publication cost to the State of \$104,813 for placing a constitutional amendment on the ballot.

